Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2018 CHRT 21
Date: July 12, 2018
File Nos.: T2240/6217 and T2241/6317

Between:

Lynda Gullason

- and –

Amir Attaran

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Tri-agency Institutional Programs Secretariat

Respondent

Ruling

Member: Colleen Harrington

Table of Contents

I. Background ... 1

II. Issues ... 2

III. Positions of the Parties ... 3

IV. Analysis ... 7

A. Issue 1: Tribunal's jurisdiction to sever complaints in respect of which a single inquiry has been requested ... 7

B. Issue 2: Do I agree to sever these complaints such that a separate inquiry is held in respect of each one? ... 11

V. Order ... 17

I. Background

[1] By letter dated October 20, 2017, the Canadian Human Rights Commission (Commission) requested that the Chairperson of the Canadian Human Rights Tribunal (Tribunal) institute a single inquiry into the complaints of Lynda Gullason and Amir Attaran against Tri-Agency Institutional Programs Secretariat (Respondent), as the Commission was satisfied that the complaints, "involve substantially the same issues of fact and law." The Commission relied upon subsection 40(4) of the *Canadian Human Rights Act* (the *Act*) in making the joint request to the Tribunal.

[2] As is its practice, the Tribunal offered the parties the opportunity to participate in its mediation process and, while the Respondent, the Commission and the Complainant Dr. Attaran agreed to engage in mediation, the Complainant Dr. Gullason declined. The mediation process is voluntary.

[3] Tribunal Member Kirsten Mercer was assigned to conduct the mediation, while I was assigned to inquire into the complaints.

[4] As Dr. Gullason had declined mediation, deadlines were set through the case management process for the exchange of documents and Statements of Particulars (SOPs). By email dated March 6, 2018, the Commission, with the consent of the Respondent, requested that I hold the complaint of Dr. Gullason in abeyance pending the outcome of the mediation of Dr. Attaran's complaint. The Commission's request indicated that the mediation process, "engages the question of alleged discrimination in the Canada Research Chairs Program", and that allowing the mediation to proceed first would avoid multiple concurrent proceedings with respect to the same issue. Dr. Gullason did not consent to have her complaint held in abeyance and so I asked the parties for brief submissions on the application for an abeyance.

[5] Dr. Gullason argued that she had not been asked and had not consented to the Commission referring her case for a joint inquiry by the Tribunal, that her case raises different issues from Dr. Attaran's, and that there should be a separate Tribunal proceeding established for her complaint without delay.

[6] Based upon Dr. Gullason's request to proceed to hearing separately from Dr. Attaran, I requested submissions from the parties about whether the complaints can and should be severed from one another, including whether I was being asked to review the decision of the Commission to request a joint inquiry.

[7] The Commission now agrees with Dr. Gullason that the complaints can proceed separately. The Respondent asks that the complaints remain joined and that Dr. Gullason's complaint remain in abeyance pending the outcome of Dr. Attaran's mediation. However, the Respondent has also advised the Tribunal that it intends to proceed first with the mediation of similar complaints from 2006, as the Respondent is subject to the enforcement of a Federal Court order in respect of these earlier complaints. The Respondent advised that it does not anticipate dealing with the 2006 complaints until the fall of 2018, which would effectively delay Dr. Attaran's mediation by several months.

[8] Most recently, I understand that Member Mercer has informed the parties to Dr. Attaran's mediation that, unless they advise her that they wish to proceed differently, she will notify the Tribunal Chair that further mediation efforts are premature at this time, given the schedule proposed by the Respondent and Dr. Attaran's disagreement with that schedule. This will result in Dr. Attaran's complaint proceeding to the case management and hearing stage that Dr. Gullason's complaint has already reached.

II. Issues

[9] The issues to be decided are:

1. Does the Tribunal have the jurisdiction to sever complaints in respect of which the Commission has requested a single inquiry?

2. If so, should I agree to sever the complaints of Dr. Gullason and Dr. Attaran?

[10] While I had also asked for submissions with respect to whether I should hold Dr. Gullason's complaint in abeyance pending the outcome of Dr. Attaran's mediation, this question no longer appears to be relevant based upon the current status of the *Attaran* mediation. In any event, it is unnecessary to decide given my decision to sever the complaints.

III. Positions of the Parties

Complainant Dr. Attaran

[11] Dr. Attaran is of the view that the two complaints were *de facto* severed when he agreed to participate in mediation and Dr. Gullason did not. He is content to proceed separately from Dr. Gullason. He agrees that the two complaints are quite different and that they should remain severed. However, Dr. Attaran also suggests the Tribunal should direct that, while the complaints may proceed separately, his should be the “lead” case, while Dr. Gullason’s complaint should be placed in abeyance *sine die* pending the final resolution of the systemic discrimination issues in his complaint, either through mediation or through a full inquiry.

[12] Dr. Attaran consents to the Commission’s original request that Dr. Gullason’s complaint be held in abeyance pending the conclusion of his mediation. Dr. Attaran suggests that, because he is employed as a law professor and is an experienced litigator, while Dr. Gullason is unwaged and not currently working in academia, it is “…in the interest of justice to place her complaint in abeyance” in the hope that he can negotiate a settlement that also satisfies her complaint. Dr. Attaran argues that he is sensitive to the gender concerns identified in Dr. Gullason’s complaint, and he intends to negotiate a systemic settlement that is sensitive to these concerns.

Complainant Dr. Gullason

[13] Not surprisingly, Dr. Gullason disagrees with Dr. Attaran’s suggestion that his complaint be considered the “lead” case and that it proceed first, both through mediation and to a hearing if necessary, while her case is held in abeyance indefinitely.

[14] Dr. Gullason takes the view, like Dr. Attaran, that her complaint was severed from Dr. Attaran’s when she declined Tribunal-assisted mediation and is disappointed that the Tribunal has asked the parties for submissions on this issue.

[15] Dr. Gullason points out that it is her right to have fair and timely access to a hearing and says she does not feel that the Tribunal is treating her fairly. Also, as Dr. Attaran is interested in mediation, and she is not, Dr. Gullason expresses concern about the delays

that would result if the cases are dealt with together and her case is held in abeyance pending the outcome of the mediation.

[16] She argues that the issues in the two cases are very different and that her complaint only tangentially intersects with Dr. Attaran's on the single issue of equity hiring targets. Dr. Gullason submits that it is only the systemic aspect of the two complaints that the Respondent and Commission are attempting to link, not the personal aspects, and that it would be inappropriate for either complainant to be involved in the hearing of the other's.

[17] Dr. Gullason suggests there would be a conflict of interest if their complaints proceed together as she is challenging as discriminatory the means by which Dr. Attaran attained his research chair. She also argues that her complaint is at a different, more advanced, stage of the Tribunal's process and that her case will involve different witnesses and documentary evidence. She says both waiting for the completion of mediation and proceeding to hearing together are highly prejudicial to her right to a fair and expeditious hearing, and will have an effect on her both personally and professionally.

[18] Following receipt of the Respondent's letter indicating that it intends to mediate the 2006 complaints first, Dr. Gullason provided further submissions in which she reiterates her position that, should her complaint be placed in abeyance pending the outcome of mediation, she will be denied natural justice, as the delay in hearing her case would be unfair and unreasonable.

Commission

[19] The Commission does not oppose Dr. Gullason's request for her complaint to be severed from Dr. Attaran's and to proceed separately to hearing.

[20] Subsection 40(4) of the *Act* states that the Commission "may request the Chairperson of the Tribunal to institute a single inquiry into the complaints under section 49" if it "is satisfied that the complaints involve substantially the same issues of fact and law". The Commission notes that this section does not on its own enable the referral of a complaint to the Tribunal, as the operative referral provision is still subsection 49(1), which does not mandate the Tribunal to institute a *single* inquiry. The Commission submits

that the Tribunal has the jurisdiction to sever complaints referred to it for a "single inquiry" pursuant to subsection 40(4) of the *Act*, so long as it does so in a procedurally fair manner.

[21] The Commission further argues that, while it has the discretion to ask the Tribunal to hear complaints in a single inquiry, "this request does not go to the heart of the Commission's decision to refer a complaint under subsection 49(1), that is, whether the Commission was 'satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted'."

[22] The Commission suggests that Dr. Gullason could not have judicially reviewed its decision, as it was in her favour, despite recommending that the complaints be heard together. The Commission refers to a decision of the Federal Court of Appeal in which Justice Décary stated:

> A party that wins but does not necessarily endorse the reasons given certainly has no interest in attacking the judgment, whether by an appeal or by an application for judicial review. Technically, it is the disposition that is attacked, not the reasons leading up to it. …[1]

[23] Given that Dr. Gullason would not have had an interest in attacking the disposition of the Commission to refer her case to the Tribunal for an inquiry, she could not have sought judicial review. Her first appropriate opportunity to ask to sever the complaints arose during the Tribunal's case management process. As such, the Commission submits that the Tribunal is not exercising supervisory jurisdiction over it when making a decision about severance. Such a decision on the Tribunal's part would not be interfering with the operative part of the Commission's decision to refer, but rather would be, "making a procedural decision at first instance as to whether the complaints should be severed, consistent with" certain procedural powers enumerated in the *Act*.

[24] Finally, the Commission argues that, from a practical perspective, it would be problematic for the Tribunal to be prevented from severing complaints jointly referred to it in certain situations, such as where the circumstances of the parties change, or where the material issues of the parties turn out to be differently viewed at the hearing stage.

---

[1] *Canada (Attorney General) v. Dussault*, 2003 FCA 5 (CanLII) at para.5

[25] The Commission submits that the factors considered by the Tribunal in *Lattey v. Canadian Pacific Railway*, 2002 CanLII 45928 (CHRT) (*Lattey*) and *Cruden v. Canada (International Development Agency)*, 2010 CHRT 32 (*Cruden*), that are relied upon when considering applications to *join* complaints, could be applied when considering whether to sever complaints jointly referred by the Commission. The Commission notes the *Lattey* factors address considerations of efficiency, expediency and fairness and that an overall consideration and balancing of these factors and Dr. Gullason's circumstances would support her request to sever her complaint from Dr. Attaran's.

Respondent

[26] The Respondent takes issue with the Tribunal considering Dr. Gullason's request to proceed separately as a motion to sever the complaints, arguing that such a formal procedural request should proceed by way of a formal motion including affidavit evidence.

[27] The Respondent takes the position that, as an administrative tribunal that is master of its own procedure, the Tribunal has the jurisdiction to sever the complaints. However, the Respondent does not support severing the complaints, arguing that they, "raise similar if not identical" systemic issues and, as such, "it is impractical, if not impossible, for one matter to proceed to a hearing without the other." The Respondent is of the view that the "risk of inconsistent or contradictory outcomes is significant and contrary to any public interest in the outcomes as well as appropriate and expeditious use of public resources."

[28] The Respondent says if some of the systemic issues are resolved at mediation, there would be no benefit to having the Tribunal consider those same issues at a hearing.

[29] The Respondent also says, "[a]t this point, there is no indication of 'inefficiencies that may result from the cases being heard separately'", although there is, "ample evidence that the two matters share sufficient common issues as to make a joint hearing the most practical and expeditious way forward."

[30] The Respondent maintains its position that Dr. Gullason's complaint should be held in abeyance until the conclusion of Dr. Attaran's mediation. The Respondent says it is actively working to address the systemic issues raised in both complaints, and is currently

dealing with three separate proceedings in respect of the same systemic issues, although it has decided to give priority to the mediation of the 2006 complaints.

IV. Analysis

A. Issue 1: Tribunal's jurisdiction to sever complaints in respect of which a single inquiry has been requested

[31] The Tribunal acquires its jurisdiction over human rights complaints from the request by the Commission to institute an inquiry pursuant to subsection 49(1) of the *Act*. The *Act* specifically provides the Commission with the power to ask the Chairperson to institute a single inquiry into complaints filed by different complainants against a common respondent in certain specific situations. Subsection 40(4) says:

> If complaints are filed jointly or separately by more than one individual or group alleging that a particular person is engaging or has engaged in a discriminatory practice or a series of similar discriminatory practices and the Commission is satisfied that the complaints involve substantially the same issues of fact and law, it may deal with the complaints together under this Part *and may request the Chairperson of the Tribunal to institute a single inquiry into the complaints under section 49*. [emphasis added]

[32] Drs. Gullason and Attaran argue that, because the language in subsection 40(4) is permissive, the Tribunal is not obliged to accept the Commission's request to institute a single inquiry.

[33] While on a plain reading of subsection 40(4) it appears that the Chairperson has some discretion as to whether he or she will institute a single inquiry, section 49 of the *Act*, which is specifically referred to in subsection 40(4), suggests otherwise. Section 49 states:

> (1) At any stage after the filing of a complaint, the Commission may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.
>
> (2) On receipt of a request, the Chairperson shall institute an inquiry by assigning a member of the Tribunal to inquire into the complaint …. [emphasis added]

[34] Section 11 of the *Interpretation Act*, R.S.C., 1985, c. I-21 states: "The expression "shall" is to be construed as imperative and the expression "may" as permissive." As such,

as I see no intention to the contrary in the *Act*, once the Commission has exercised its discretion to request a single inquiry into more than one complaint, it would appear that the Chairperson must do so.

[35] The Commission's position is that subsection 40(4) does not, on its own, enable the referral of a complaint to the Tribunal, as the operative referral provision is subsection 49(1), which does not mandate the Tribunal to institute a *single* inquiry. This begs the question as to why the *Act* gives the Commission—the "gatekeeper" in the human rights complaint system[2]—the discretion to decide to request a joint inquiry when the Tribunal can choose to ignore that request. In her text *Statutory Interpretation*[3], Ruth Sullivan notes that it is an underlying assumption of statutory interpretation that, "the legislature is a careful user of language, that it says what it means exactly and therefore means exactly what it has said."

[36] In *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (*Mowat*), a case involving the interpretation of the *Act*, the Supreme Court of Canada stated the following with respect to statutory interpretation:

> [33] … the object is to seek the intent of Parliament by reading the words of the provision in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)* 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21). In approaching this task in relation to human rights legislation, one must be mindful that it expresses fundamental values and pursues fundamental goals. It must therefore be interpreted liberally and purposively so that the rights enunciated are given their full recognition and effect: see, e.g., R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 497-500. However, what is required is nonetheless an interpretation of the text of the statute which respects the words chosen by Parliament.

[37] The Tribunal has not previously decided a motion to sever complaints referred for a single inquiry pursuant to subsection 40(4). There have been several cases in which the Tribunal has decided whether it should join, or consolidate, complaints that were referred

---

[2] *Bailie et al. v. Air Canada and Air Canada Pilots Association*, 2017 CHRT 22 at para.81

[3] 3rd ed., Irwin Law Inc. 2016 at page 41

separately by the Commission, for example in *Lattey* and *Cruden*. These cases note that, while the *Act* gives the Commission the power to deal with cases together, and to ask the Tribunal to do the same, it is silent as to whether the Tribunal may join or sever complaints that have been referred by the Commission for inquiry. In *Lattey* and *Cruden* the Tribunal decided that, *in the absence of clear statutory direction*, it has the jurisdiction, as master of its own procedure, to deal with the procedural question of whether to join complaints referred to it separately by the Commission.

[38] In my view, subsection 40(4) of the *Act,* when read in conjunction with subsections 49(1) and (2), *does* provide clear statutory direction to the Tribunal Chairperson. When the Commission requests a single inquiry pursuant to subsection 40(4) of the *Act*, the Chairperson must comply with this request.

[39] However, there is no clear statutory direction that the single inquiry must remain as such no matter what happens in the course of the proceedings. As the Commission says, when viewed through a practical lens, this would be problematic and could result in unfairness to one or more parties.

[40] The Tribunal receives very limited information from the Commission upon receiving the request to institute an inquiry into a complaint. It is only through the case management process that the Tribunal learns more about the nature of complaints referred for hearing. In this case, the Commission referred the complaints jointly and all parties proceeded as if they were to be heard together by the Tribunal. While Drs. Attaran and Gullason say their complaints were *de facto* severed when he accepted mediation and she did not, I do not agree. It was not until the Commission asked to hold her complaint in abeyance that Dr. Gullason said she wanted to proceed separately, thus triggering the request to sever.

[41] The Commission submits that the Tribunal has the jurisdiction to sever complaints so long as it does so in a procedurally fair manner. I agree. If it becomes apparent, after a single inquiry has been instituted, that continuing to proceed jointly would not be expedient or procedurally fair, the Tribunal should have the discretion to consider an application to sever the complaints.

[42] The *Act* gives the Commission the power to investigate, and therefore do a thorough review of a complaint, prior to making its decision about whether to refer it to the Tribunal. Dr. Gullason says this did not happen in her case, that it was directly referred to the Tribunal without an investigation. This appears to be permitted under subsection 49(1) of the *Act*. Dr. Gullason also says the Commission did not ask her if she wanted her case referred jointly with Dr. Attaran's and, if asked, she would have said no.

[43] The Tribunal is generally not privy to the Commission's work or reasons for its decisions, and has no supervisory jurisdiction over Commission decisions. Only the Federal Court may review a decision of the Commission.[4] I need not decide whether Dr. Gullason could or should have judicially reviewed the decision of the Commission, as it was not the referral to the Tribunal itself that triggered her motion to sever, but rather events following the joint referral of the complaints to, and acceptance by, the Tribunal. I agree that, by considering Dr. Gullason's request to proceed to hearing separately from Dr. Attaran, I am not reviewing the operative part of the Commission's decision to refer her complaint. Rather, I am making a procedural decision during the case management process in which Dr. Gullason asked to separate her complaint from Dr. Attaran's due to the unfairness she would experience by continuing to proceed to a single inquiry.

[44] With respect to the Respondent's argument that Dr. Gullason's request to proceed separately does not constitute a formal motion supported by affidavit evidence, I would note that neither the *Act,* nor the Tribunal's *Rules of Procedure* (03-05-04) (*Rules*), nor the Courts, require motions to be supported by affidavit evidence. Indeed, Justice Blanchard stated as follows in *Canada (Attorney General) v. Parent*, 2006 FC 1313 (CanLII):

> [45] Finally, I also reject the applicant's arguments with respect to the absence of evidence to allow the motion. I concur with what the Tribunal wrote on that subject:
>
> > The Tribunal's *Rules of Procedure* are not as formal as those of a court. Motions are not required to be supported by an affidavit (see Rule 3). Indeed, they need not follow any particular format. It is common for the Tribunal to receive motions by way of letters and even email messages. The main

---

[4] *I.L.W.U. (Marine Section) Local 400 v. Oster*, 2001 FCT 1115 (CanLII), [2002] 2 F.C. 430 (T.D.) at paras. 15-31

> objective is to ensure that each party be given full and ample opportunity to be heard by the Tribunal.

[45] Administrative tribunals are by nature less formal than courts and have the authority to control their own procedures. Subsection 50(3) of the *Act* permits the Tribunal to receive and accept any evidence that it sees fit, "whether on oath or by affidavit or otherwise". I did not request information from the parties in the form of sworn affidavits, as I did not feel it was necessary in the circumstances of this case. Ultimately, in the absence of a specific direction from the Tribunal in this regard under Rule 3(2) of the Tribunal's *Rules*, it was up to each party to ensure it provided me with all relevant information, in whatever format it chose, to enable me to understand its position and make my decision.

[46] The Tribunal is granted a significant degree of procedural autonomy under the *Act*, allowing it to control its process to ensure its hearings are informal and expeditious, while still according procedural fairness to all parties.[5] I am of the view that I have the jurisdiction to consider the motion to sever, and that I am not reconsidering the decision of the Commission to jointly refer the complaints, but rather am acting as master of my own procedure to allow these complaints to proceed fairly and expeditiously.

B. Issue 2: Do I agree to sever these complaints such that a separate inquiry is held in respect of each one?

[47] Dr. Gullason says there are many reasons why her complaint should proceed separately from Dr. Attaran's:

- She says her complaint concerns seven issues related to the lack of access that qualified potential applicants have to the Canada Research Chairs (CRC) Program, and that she and Dr. Attaran do not share the same essential understanding of gender equity. She says Dr. Attaran is arguing that members of each of the four designated groups should be awarded Research Chairs based on their proportion in the general population, while she is arguing that the target for each of the designated groups be based on PhD attainment rates. Dr. Gullason says that Dr. Attaran's complaint does not recognize, as hers does, that the equity targets to be met for the designated groups

[5] See for example subsections 48.9(2), 50(1), 50(2), 50(3)(e), and 52 of the *Act*.

are set too low for women and that the method for establishing the targets for women is discriminatory.

- Dr. Gullason's complaint focuses on Tier 2 positions and the interaction of career interruptions and qualifications for research funding.

- She has filed on different grounds, including gender and family status.

- Dr. Gullason argues her complaint involves different witnesses and evidence from Dr. Attaran's.

- Dr. Gullason submits that it would be a conflict of interest for her complaint to proceed to hearing with Dr. Attaran's, because part of her complaint is about the awarding of research chairs to external nominees without holding advertised, open competitions in a process known as 'single candidate' or 'star' searches. She suggests that, because Dr. Attaran obtained his research chair through one of these searches, it is inappropriate for him to be involved in her complaint about the same allegedly discriminatory practice that has benefitted him.

- Dr. Gullason notes that her complaint was filed with the Commission prior to Dr. Attaran's, that she is unwaged, and that she does not have a tenured position like Dr. Attaran, which allows him to spend time on his complaint without risking his position.

- Dr. Attaran has agreed to mediation and she has not. That is her right. Waiting for his mediation to proceed would be unfair to her as she is unwaged and still potentially experiencing the discriminatory impact alleged in her complaint.

- She asserts that hearing the complaints together could prolong her case, resulting in further delay in receiving a decision, which could have a professional impact on her in terms of her ability to advance her career.

- Her case is well-advanced in the pre-hearing process, as she has already provided her Statement of Particulars.

- Finally, Dr. Gullason takes issue with Dr. Attaran making submissions that relate to her case. She feels his submissions indicate that he believes, “as a law professor and litigator, he has more inherent value as a complainant” than she does, and that he displays a “dismissive and unjust attitude” towards her and her complaint. Her submissions end with a list of requests, one of which is that I instruct Dr. Attaran to not contact her again under any circumstances.

[48] Dr. Attaran agrees that his complaint is quite different from hers and that they should proceed separately. He also argues that his case should be the “lead” case and proceed ahead of Dr. Gullason’s.

[49] The Respondent argues that the complaints should proceed together for the sake of efficiency, as there are likely to be common witnesses and evidence, especially with respect to the systemic aspect of the complaints. However, it also concedes that, at this time, “there is no indication of ‘inefficiencies that may result from the cases being heard separately’”.

[50] The Commission argues that I should consider the factors set out in *Lattey* and *Cruden* when deciding whether to sever. I agree that it is appropriate to consider these factors, as they are a useful way to evaluate whether it is in the public interest to proceed with a single inquiry or separate inquiries.

[51] In *Lattey*, former Chairperson Mactavish listed the following factors that must be balanced in considering whether two complaints should be heard together, which I have adapted to the circumstances of the current case:

1. The public interest in avoiding a multiplicity of proceedings, including consideration of expense, delay, the convenience of the witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;

2. The potential prejudice to the complainants that could result from a single hearing, including the lengthening of the hearing for each complainant as issues unique to the other complainant are dealt with, and the potential for confusion that may result from

the introduction of evidence that may not relate to the allegations specifically involving one complainant or the other; and

3. Whether there are common issues of fact or law.

[52] The Tribunal in *Cruden* notes that these factors are not exhaustive and emphasizes the importance of a case by case approach.

[53] The Commission says that, on a strict application of the first and third factors, it may not be in the public interest to proceed separately. The Commission says the overarching issue in both complaints is whether the CRC program is discriminatory, and that it is reasonable to conclude that much of the evidence addressing the details of the program would need to be produced in both hearings. Moreover, some of the same witnesses would need to testify, as there would be overlap in the facts relating to the settlement of the 2006 complaints against the same Respondent.

[54] However, the Commission submits that an overall consideration and balancing of the *Lattey* factors and other circumstances weighs in favour of the Tribunal agreeing to sever the complaints, especially when considering the potential prejudice to the Complainants, particularly Dr. Gullason. I agree.

[55] The Respondent says the complaints raise “similar if not identical” systemic issues which necessitate hearing the complaints together, but did not to expand on what it considers these systemic issues to be. While the systemic issues may be similar and some of the witnesses and evidence may be common to both complaints, both Drs. Gullason and Attaran, as well as the Commission, agree that the complaints are different in many important respects.

[56] Dr. Gullason clearly sets out the differences between her complaint and Dr. Attaran’s, and provides compelling arguments as to why hearing the complaints together would be problematic and could result in unfairness to her. Not only would she face further delay, but she is also challenging the method by which Dr. Attaran was awarded his research chair. Given the submissions of Dr. Attaran and Dr. Gullason with respect to one another and their respective complaints, a joint hearing would likely prove

difficult for all involved, as there could be an adversarial relationship between the complainants regarding some of the factual and legal issues.

[57] It would appear that, while both complainants allege the CRC program is discriminatory, they are challenging different aspects of it on different grounds, and so their evidentiary requirements to prove their complaints will be different, even if the Respondent may rely upon some of the same evidence to defend against the claims. The second factor in *Lattey* notes the potential prejudice that can result from a single hearing, not only because of the possibility of lengthening the hearing to allow both complainants to call their full cases, but also because of the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one complainant or the other.

[58] The Respondent has not provided me with sufficient information to suggest the evidence in both matters will be "intertwined" such that the complaints must be heard together, as was the case in *Lattey*.

[59] In my view, based upon the information provided by the parties, the issues are not so similar that the two complaints must proceed to a single inquiry. In considering all of the factors, I do not see the existence of similar systemic issues as being enough to tip the balance in favour of a single inquiry.

[60] With respect to the argument that some of the systemic issues could be resolved by way of mediation, this also is not a sufficiently compelling reason to require the two complaints to proceed together. The Respondent opposes severing the complaints on the basis of hearing efficiency, yet it has also indicated its plan to deal with the 2006 complaints first, while expecting the complaints of Drs. Gullason and Attaran to be held in abeyance. The Respondent is hopeful that it will resolve the systemic issues common to all of the complaints through the mediation of the 2006 complaints. However, there is no guarantee that this will actually happen. Also, Drs. Gullason and Attaran will not be parties to any negotiated resolution that could arise from the mediation of the 2006 complaints and a settlement of these complaints may not be acceptable to either complainant.

[61] In any event, once mediation of the 2006 complaints is complete, if some of the systemic issues are resolved, this can be raised during the hearing process and dealt with accordingly, given that the Respondent, and possibly the Commission, will be participating in both mediation and at hearing.

[62] In addition, while I understand it is now Dr. Attaran's position that his complaint should proceed to hearing, as he does not agree to wait to mediate his complaint until after the 2006 complaints are dealt with, the fact remains that he was—and presumably still is—interested in engaging in mediation, and Member Mercer has invited the parties to re-engage in settlement discussions at a later date. As it is possible that Dr. Attaran's complaint may be mediated at some point in the future, it would be unfair to expect Dr. Gullason to face the possibility of a future request that her complaint be held in abeyance again.

[63] Dr. Gullason has rejected mediation, as is her right, citing the fact that the settlement of the 2006 complaints is still outstanding and affecting her complaint. She should not be expected to wait for the other parties to complete mediation without any guarantees of a resolution of any of her issues through that process.

[64] Given all of the above, I fail to see how the Respondent's insistence on a single inquiry for both complainants adequately addresses the issue of hearing efficiency, which must be considered in light of the public interest in having complaints of discrimination dealt with expeditiously.[6]

[65] The Commission notes that there are possible ways to mitigate the Respondent's concerns. I agree. As suggested in *Cruden*, the parties could ask to file transcripts from one hearing in the other hearing. Also, having the same Tribunal member hear both cases would ensure familiarity with the issues and evidence without the unwieldiness of a single inquiry, and reduce the likelihood of an inconsistent analysis of the common issues when making decisions.

---

[6] See s. 48.9(1) of the *Act* and *Bell Canada v. Communications, Energy and Paperworkers Union of Canada et al.*, 1997 CanLII 17562 (FC).

[66] In *Cruden*, the Tribunal concluded that the inefficiencies that may result from the cases being heard separately were outweighed by the prejudice Ms. Cruden would incur by having to wait for her complaints to be heard together with another complaint. I am of the view that, in this case as well, the inefficiencies that may result from the cases being heard separately are outweighed by the prejudice that the complainants will likely experience by proceeding to a single inquiry into their complaints. As such, I agree to sever the complaints.

V. Order

[67] The Tribunal hereby orders that the complaint of Dr. Gullason be severed from the complaint of Dr. Attaran and that a separate inquiry be held in respect of each complaint.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
July 12, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2240/6217 & T2241/6317

Style of Cause: Lynda Gullason and Amir Attaran v. Tri-agency Institutional Programs Secretariat

Ruling of the Tribunal Dated: July 12, 2018

Motion dealt with in writing without appearance of parties

Written representations by:

Lynda Gullason, for herself

Amir Attaran, for himself

Sheila Osborne-Brown, for the Canadian Human Rights Commission

Jyll Hansen, for the Respondent