

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2018 CHRT 7

Date: March 9, 2018

File No.: T2156/3016

Between:

Rosanne Harrison

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Curve Lake First Nation

Respondent

Ruling

Member: Lisa Gallivan

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I. Background

[1] This Decision determines a Motion to Add a Necessary Party filed by Curve Lake First Nation (the “Respondent”). The Respondent is seeking an order pursuant to Rule 8(3) of the Tribunal’s *Rules of Procedure* (“the *Rules*”) adding Canada Post as a necessary party to the within matter.

[2] In June 2014, Roseanne Harrison (the “Complainant”) applied for a position as a Canada Post Postmaster on Curve Lake First Nation through an independent competition selection process controlled by Canada Post.

[3] There were two candidates in the competition; the Complainant and the then current Postmaster, who was Native, or married to a Native man.

[4] The position required the candidates to provide Canada Post with suitable premises within the community within which to operate the post office.

[5] The Complainant did not have premises when she was awarded the position.

[6] On June 8, 2014, the Complainant was notified by Canada Post that she was the successful candidate in the competition.

[7] Shortly after this notification, the Complainant began searching for suitable premises within the community within which to operate the post office.

[8] As a result of this search, Canada Post was made aware of the Respondent’s concern that the position was being awarded to a non-Native person.

[9] On October 1, 2014, the Complainant was notified by Canada Post that she would not be awarded the position because she did not satisfy Canada Post’s requirement to provide a suitable premises for the post office.

[10] The position was subsequently awarded to the then current Postmaster, who was a Native person.

[11] The Complainant alleges that she was discriminated against on the basis of race based on the fact that she was “white and non-native”.

[12] The Complainant also filed a separate complaint against Canada Post at the same time. The Complainant subsequently asked to withdraw the complaint against Canada Post.

[13] On September 2, 2015, the Commission decided to take no further proceedings in the complaint against Canada Post as a result of the Complainant's request to withdraw.

[14] Canada Post is the Complainant's current employer.

A. Respondent's Motion to Add a Necessary Party

[15] The Respondent claims that Canada Post is a necessary party and must be added to the within matter because:

- a. Canada Post's selection process in choosing and awarding a contract for postal services gives rise to the dispute and the reasons why the Complainant was not successful in obtaining the position is directly linked to Canada Post's actions;
- b. No possible remedy or relief is available without Canada Post's involvement; and
- c. Only Canada Post has the relevant and necessary evidence concerning its Competition Selection Process, and the resultant denial of the Complainant's application.

[16] The Respondent is also seeking costs on this Motion from the Commission.

B. Commission's Position on the Motion

[17] The Commission takes no position on the Motion to add Canada Post as a party to the within matter.

[18] The Commission takes the position that costs are not available in this Motion.

C. Complainant's Position on the Motion

[19] The Complainant did not participate in the Motion.

D. Canada Post's Position on the Motion

[20] Canada Post was provided with the Notice of the Motion by courier on October 31, 2016. Canada Post did not participate in the Motion.

II. Issues

[21] Should Canada Post be added as a party to the within complaint?

[22] Should the Respondent be awarded costs of the motion from the Commission?

III. The Law

A. Should Canada Post be added as a party to the within complaint?

[23] The Tribunal has the authority to add parties to a complaint under the appropriate circumstances (s. 48.9(2)(b) of the *Canadian Human Rights Act*, Rule 8 of the *Rules* and *Brown v. Canada (National Capital Commission)*, 2008 FC 734).

[24] The test to add a new respondent after the Tribunal has been charged with inquiring into a complaint was outlined by the Tribunal in *Syndicat des employés d'exécution de Québec-téléphone section locale 5044 du SCFP v. TELUS Communications (Quebec) Inc.*, 2003 CHRT 31, ("*Telus*") as follows:

[30] The panel is of the opinion that the forced addition of a new respondent once the Tribunal has been charged with inquiring into a complaint is appropriate, in the absence of formal rules to this effect, if it is established that the presence of this new party is necessary to dispose of the complaint of which the Tribunal is seized and that it is not reasonably foreseeable, once the complaint was filed with the Commission, that the addition of a new respondent would be necessary to dispose of the complaint.

[25] In *Coupal and Milinkovich v. Canada Border Services Agency*, 2008 CHRT 24, the Tribunal also noted that the addition of parties should be done with caution and only after careful consideration of the factors noted in *Telus* and consideration of whether the addition of the new party will result in serious prejudice:

[9] It has been said that adding parties should be done with caution and only after careful consideration of a number of factors. These factors include: whether the addition of the party is necessary to resolve the complaint; whether it could not reasonably have been foreseen that the new party should have been added when the complaint was filed; and, whether the addition of a party will result in serious prejudice to the opposing party. (See for example: *Brown v. National Capital Commission*, 2003 CHRT 43 ; *Wade v. Canada (Attorney General)*, 2008 CHRT 9; and, *Groupe d'aide et d'information sur le harcèlement sexuel au travail v. Barbe*, 2003 CHRT 24 where the Tribunal granted a motion to add a complainant. See also: *Syndicat des employés d'exécution de Québec-Téléphone v. TELUS Communications (Québec) Inc.* 2003 CHRT 31 at para. 30; and, *Smith v. CNR* 2005 CHRT 23 at para. 52).

[26] Thus, to be successful in this motion, the Respondent must establish that:

- a. It is necessary to add Canada Post as a party to resolve the complaint;
- b. It could not reasonably be foreseen that Canada Post should have been added when the complaint was filed; and
- c. The addition of Canada Post will not result in serious prejudice.

[27] The Respondent argues that Canada Post is a necessary party and must be added to this complaint because:

- a. Its Competition Selection Process gives rise to the dispute and the reasons that the Complainant was not successful is directly linked to Canada Post's actions and decisions;
- b. No possible remedy is available without the involvement of Canada Post; and
- c. Only Canada Post has the relevant and necessary evidence concerning its Competition Selection Process and the reasons that the Complainant was denied the position of Postmaster.

[28] The Complainant in this case alleges that she was treated in an adverse differential manner contrary to Section 7 of the *Canadian Human Rights Act*. The Commission Investigator concluded that the allegations can be dealt with as a failure to receive a job or employment opportunity.

[29] Under the *Canada Post Corporation Act*, all officers and employees of the Canada Post Corporation are subject to the *Canada Post Corporation Act*. This includes the appointment of officers and employees and the terms and conditions of their employment.

[30] The Respondent in this case had no knowledge of the Competition Selection Process.

[31] Canada Post controlled and administered the Competition Selection Process. Canada Post made the decision to award the position of Postmaster to the Complainant and Canada Post made the decision to withdraw this position from the Complainant. The Respondent had no power or control over these decisions and did not participate in the Competition Selection Process.

[32] Given that it did not administer or participate in the Competition Selection Process and was not consulted prior to the award of the Postmaster position to the Complainant, the Respondent cannot refute a claim that the Complainant was denied the position of Postmaster because she is non-native or otherwise treated adversely contrary to section 7 of the *CHRA*. Only Canada Post can provide evidence as to the reasons that these decisions were made.

[33] For these reasons, I conclude that Canada Post has the information that is necessary for the resolution of this complaint.

[34] With respect to foreseeability, the Respondent argues that the Complainant acknowledged the necessity of Canada Post as a party when she named Canada Post as a Respondent in her original complaint filed separately against Canada Post.

[35] Whether or not it was foreseeable that a proposed party should be added to a complaint relates largely to consideration of whether or not the addition will cause prejudice to that party (see *beachesboy@aol.com v. Heather Fleming and Ronald Fleming*, 2007 CHRT 52):

[21] The question of foreseeability relates largely, as I see it, to the potential prejudice to new respondents that may arise from the denial of the benefits that accrue to them during the Commission process that precedes the complaint's referral to the Tribunal (see *Brown v. National Capital*

Commission, 2003 CHRT 43 at para. 46). These benefits include the possibility that the Commission will decide not to deal with the complaint (s. 41 of the *Act*), dismiss it (s. 44(3)(b)), or refer it to conciliation (s. 47) (see in this regard the Tribunal's oral decision in *Desormeaux*, cited in *Telus* at paras. 25-7). The Federal Court pointed out in *Parent v. Canada*, 2006 FC 1313, at paras. 40-1, that the question of prejudice to the respondent is the predominant factor to be considered by the Tribunal when ruling on amendments to complaints, though it should be noted that *Parent* dealt with the addition of factual allegations to a complaint, not new parties.

[36] Canada Post was clearly aware of the allegations of discrimination raised by the Complainant at the time they arose because there was a separate complaint filed against Canada Post at that time. Perhaps more importantly, Canada Post was involved in and provided evidence in the investigation of the Complaint. Four employees of Canada Post were interviewed during the Commission's investigation process.

[37] I am satisfied that Canada Post would not be denied the benefits that would accrue to them during the Commission process or be seriously prejudiced by their addition at this time.

[38] As a result, I conclude that Canada Post must be added as a necessary party to this complaint.

B. Should the Commission be required to pay the Respondent's cost of this motion?

[39] The Respondent has requested an award requiring the Commission to pay costs of this motion.

[40] In *Canada (Canadian Human Right Commission) v. Canada (Attorney General)*, 2011 SCC 53, the Supreme Court of Canada established that the Tribunal has no power to award legal costs:

[64] In our view, the text, context and purpose of the legislation clearly show that there is no authority in the Tribunal to award legal costs and that there is no other reasonable interpretation of the relevant provisions. Faced with a difficult point of statutory interpretation and conflicting judicial authority, the Tribunal adopted a dictionary meaning of "expenses" and articulated what it considered to be a beneficial policy outcome rather than

engage in an interpretative process taking account of the text, context and purpose of the provisions in issue. In our respectful view, this led the Tribunal to adopt an unreasonable interpretation of the provisions. The Court of Appeal was justified in reviewing and quashing the order of the Tribunal.

[41] I therefore conclude that the Respondents request for costs is denied.

IV. Ruling

[42] After analyzing the relevant evidence and applicable case law, I have concluded that the Tribunal should exercise its discretion and add Canada Post as a party to the within complaint.

[43] I further conclude that the Respondent's request for an award of costs is denied.

[44] The Respondent's Motion to add Canada Post as a necessary party is granted.

Signed by

Lisa Gallivan
Tribunal Member

Ottawa, Ontario
March 9, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2156/3016

Style of Cause: Rosanne Harrison v. Curve Lake First Nation

Ruling of the Tribunal Dated: March 9, 2018

Motion dealt with in writing without appearance of parties

Written representations by:

Rosanne Harrison, for herself

John Unrau, for the Canadian Human Rights Commission

Candice S. Metallic and Ryan Lake, for the Respondent