

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2020 CHRT 32

Date: October 15, 2020

File Nos.: T2263/1818 and T2264/1918

Between:

Estate of Rose Jones and Doris Edwards

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Saddle Lake Cree Nation

Respondent

Ruling

Member: Colleen Harrington

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I. Introduction

[1] On October 7, 2020, I issued an Order dismissing the complaint of the Estate of Rose Jones against Saddle Lake Cree Nation. I indicated that reasons for my Order would follow in the form of a Ruling. Below are my reasons for the Order to dismiss the complaint.

II. Overview

[2] The Respondent in this matter, Saddle Lake Cree Nation (the Nation), has brought a Motion seeking an Order from the Canadian Human Rights Tribunal (Tribunal or CHRT) dismissing the complaint of the Estate of Rose Jones, one of two Complainants in this matter.

[3] Ms. Jones and her sister Doris Edwards filed complaints with the Canadian Human Rights Commission (Commission) against the Nation on July 29, 2015. The complaints allege that the Nation discriminated against them on the basis of sex, family status, and national or ethnic origin by reassigning the home they were living in on the Nation to their siblings. This effectively resulted in their eviction from their home, and the Nation did not provide them with alternate housing.

[4] Sadly, on May 5, 2016, Ms. Jones died, while the complaints were still in the Commission's screening process. The Nation says that the Complainants' lawyer, Mr. Dixon, advised the Commission of Ms. Jones' passing, but represented that Ms. Edwards would continue to carry the complaint on behalf of her sister.

[5] According to the Nation, the Commission began its investigation of the complaints in September of 2016. The Nation advised the Commission of its position that, as Ms. Jones had passed away, her complaint ought not to be dealt with further by the Commission.

[6] According to the Nation, "On its own volition, the Commission amended the Summary of Complaint on July 27, 2017 to re[-]identify the Complainant as the 'Estate of Rose Jones'".

[7] On April 5, 2018, the Commission asked the Tribunal's Chairperson to institute an inquiry into the complaints of Doris Edwards and the Estate of Rose Jones. The Commission

also requested that the complaints be consolidated as it was satisfied that they involved substantially the same issues of fact and law. In January of 2019 I was appointed by the Chairperson to inquire into the complaints.

[8] As part of the case management process, the parties filed Statements of Particulars (SOP) and participated in several conference calls with the Tribunal. Mr. Dixon appeared to be representing both Complainants, having filed the SOP of “Doris Edwards and on behalf of her deceased sister, Rose Jones.”

[9] A hearing was tentatively scheduled to take place in the fall of 2019 in Edmonton but it was adjourned as the parties dealt with disagreements relating to an Agreed Statement of Facts. In November of 2019, the Respondent filed this Motion to dismiss Ms. Jones’ complaint. It asked that the Motion be dealt with prior to any further steps being taken towards a hearing, including settling the agreed statement of facts.

[10] Before deadlines were established for submissions in this Motion, the parties advised the Tribunal that they were pursuing settlement discussions. They asked to be given the opportunity to focus on this, rather than responding to the Motion. I agreed and the parties spent several months in settlement discussions, providing the Tribunal with regular updates on their progress.

[11] On April 30, 2020, Mr. Dixon wrote to advise that a settlement had been agreed to between Ms. Edwards and the Nation. On May 22, 2020, the Commission notified the Tribunal that settlement discussions had stalled because there appeared to be no authorized representative for the Estate of Rose Jones.

[12] A Case Management Conference Call was convened on May 28, 2020 at which time Mr. Dixon confirmed that he did not represent the Estate of Rose Jones and that he never had. It was also confirmed that Ms. Edwards had never been authorized to act on behalf of her sister’s Estate and she did not intend to take any steps to be allowed to do so. As such, the Tribunal agreed to write to Ms. Jones’ children to inquire as to whether any of them wished to represent her Estate in these proceedings. Ms. Edwards provided the Tribunal with the names and contact information for three of Ms. Jones’ four adult children. Neither

Ms. Edwards nor Ms. Jones' other children were able to provide the Tribunal with the contact information for Ms. Jones' other child.

[13] The Tribunal wrote to Ms. Jones' children to ask if they wished to pursue the human rights complaint on behalf of her Estate, or if they were aware of any other person who may wish to do so. Two of Ms. Jones' children replied to the Tribunal's letter, but neither was willing to represent her Estate in the proceedings, nor did they suggest anyone else the Tribunal could contact in that regard.

[14] The Tribunal advised the parties of the responses it had received from Ms. Jones' children and then required the parties to provide submissions with respect to the Nation's Motion to dismiss the complaint.

III. The Motion

[15] In its initial Motion submissions, the Nation makes two arguments in support of its position that Ms. Jones' complaint should be dismissed:

- i. The complaint did not survive Ms. Jones' death; and
- ii. No personal representative has been appointed who has the requisite legal authority to pursue the complaint against the Nation.

[16] The Commission does not oppose the order sought by the Nation to dismiss the complaint. However, it has provided submissions setting out its response to the Nation's arguments. The Commission submits that, based on the unique facts of this particular case, the Tribunal can dismiss the Estate complaint because no person or organization has expressed an interest in taking carriage of the complaint. The Commission asks that, in making its ruling, the Tribunal either reject or refrain from endorsing the broader legal propositions put forward by the Nation.

[17] In its Reply submissions, the Nation says that, fundamentally, it is of the view that the complaint of the Estate of Rose Jones ought to be dismissed on the basis that there is no person or organization who has stepped forward, even after being approached by the Tribunal, to be appointed as the representative of her Estate before the Tribunal.

[18] The Complainant Ms. Edwards does not oppose the Respondent's Motion.

IV. Decision

[19] I agree to dismiss the complaint of the Estate of Rose Jones on the basis that no person or organization has expressed an interest in taking carriage of this complaint.

V. Analysis

[20] The Nation filed this Motion after being informed by Mr. Dixon that no formal proceedings in respect of the Estate of Ms. Jones had been initiated. By April of 2020, when discussing possible minutes of settlement, the Nation was advised that Ms. Edwards had no authority to enter into an agreement whereby the Estate complaint would also be discontinued.

[21] The Nation's initial position was that, as Ms. Jones had apparently died without a will, in order for her complaint to proceed, a personal representative for her Estate must be appointed by the Alberta Court of Queen's Bench, or an administrator must be appointed under the estate provisions of the *Indian Act*. The Nation relies on a case from the Human Rights Tribunal of Ontario, *Denham v Hamilton Health Sciences Volunteer Association*,¹ in which the Tribunal declined to permit the husband of the intestate complainant to represent his deceased wife's estate without first being appointed by the Court as an estate trustee. The Nation argues that, under Alberta's *Estate Administration Act*, only a personal representative appointed pursuant to an Order from the Alberta Court of Queen's Bench has the authority to maintain a claim that could result in an award of money from the Nation.

[22] The Commission agrees with the Nation that, to proceed with a case involving the estate of a victim of discrimination, there should be some person or organization the Tribunal will recognize as an appropriate representative of the interests of the estate. It agrees that,

¹ 2012 HRTO 858

where a personal representative has been appointed under a will, the *Indian Act*, or applicable provincial legislation, that representative would generally be an appropriate person to speak for the estate in a Tribunal proceeding. However, the Commission notes that nothing in the *Canadian Human Rights Act*² (*CHRA* or the *Act*) or the Tribunal's case law expressly requires the involvement of such a legally appointed representative.

[23] The Commission notes that, in appropriate circumstances, the Tribunal has proceeded with an inquiry, and awarded remedies to estates, even without the involvement of a legally appointed personal representative. For example, in *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada*,³ the Tribunal granted financial compensation to individual victims of discrimination, and to the estates of deceased victims, despite the fact that none of the individual victims or estates had direct representation in the proceedings. Rather, the Tribunal was satisfied that the Complainant organizations – the Assembly of First Nations and the First Nations Child and Family Caring Society – could properly speak on behalf of the affected communities, subject to the right of individuals and estates to opt out if desired.

[24] Based on the particular facts of this case, as no person or organization has expressed an interest in representing Ms. Jones' Estate, the Commission does not oppose the Nation's request for an order dismissing the Estate complaint. The Commission agrees that the Tribunal will not be able to proceed fairly without some form of appropriate input on behalf of Ms. Jones' Estate.

[25] The Nation argues that it will be prejudiced if the Estate complaint is not dismissed. It says it has expended time and money to participate in conciliation and mediation processes at both the Commission and Tribunal stages, only to realize that these processes could not end successfully due to a lack of Estate representation.

[26] The Nation points out that, over four years after Ms. Jones passed away, no steps have been taken by the Estate to advance her complaint. The ongoing existence of the Estate complaint is also causing further delays for Ms. Edwards in her attempt to reach a

² RSC 1985, c H-6.

³ 2020 CHRT 7 [*"Caring Society"*]

settlement, because of the Nation's ongoing uncertainty as to whether there will be finality to the proceedings before the Tribunal.

[27] The Tribunal made efforts to contact individuals who might be expected to represent Ms. Jones' Estate, or to have knowledge of the affairs of her Estate. Ms. Edwards has declined to speak for the Estate, as have Ms. Jones' children who responded to the Tribunal's inquiries.

[28] I agree with the Commission and the Nation that, as no one has expressed any interest in representing the interests of Ms. Jones' Estate before the Tribunal, this complaint should be dismissed.

[29] The Nation argued, in the alternative, that the complaint of Ms. Jones did not survive her death and so should be dismissed on that basis. It relied on case law from other jurisdictions, as well as *Charter* jurisprudence, to argue that a human rights complaint cannot survive the death of a complainant, because individual rights die with the individual.

[30] The Commission responded to this argument by referring to recent case law, including the Ruling in *Caring Society*, in which the Tribunal has concluded that, not only can complaints filed under the *CHRA* survive the death of a complainant or victim of discrimination, but that the estate of a deceased victim can be awarded damages for the discrimination they experienced while alive.⁴

[31] As the Commission points out, the Nation relied on the same case law considered by the Tribunal in *Caring Society*⁵, to support its argument that individual rights die with the individual. However, after carefully considering these cases, as well as the earlier Tribunal Ruling in *Stevenson v. Canadian National Railway Company*,⁶ the Tribunal in *Caring Society* concluded that allowing the estates of deceased victims to proceed and to be awarded damages was consistent with the *CHRA*.

⁴ *Ibid* at paras.135-149, 151.

⁵ Including *Canada (Attorney General) v. Hislop*, 20017 SCC 10; *British Columbia v. Gregoire*, 2005 BCCA 585; *Viner v. Hudson Bay Company*, 2012 CanLII 98528; and *Morrison v. Ontario Speed Skating Association*, 2010 HRTO 1058

⁶ 2001 CanLII 38288 (CHRT) ["*Stevenson*"]

[32] In *The Estate of Annie Oleson v. Wagmatcook First Nation*,⁷ the Tribunal further agreed with the Rulings in *Stevenson* and *Caring Society* and also held that human rights proceedings can continue, and monetary remedies may be paid, in respect of the estates of deceased victims of discrimination. I agree with the conclusions of the Tribunal in these cases that a complainant's death does not automatically extinguish their complaint.

[33] I note, however, that *Stevenson*, *Caring Society* and *Oleson* all differ factually from the present case. Ms. Jones did not die after the complaint was referred to the Tribunal, as in *Oleson* and *Stevenson*, nor was her complaint made by a representative organization, as in *Caring Society*. Rather, Ms. Jones died while her complaint was still being dealt with by the Commission, whose role is defined by the *CHRA*. The *CHRA* gives the Commission and the Tribunal different powers and functions to reflect their different roles in the human rights complaint process. "The Commission has a preliminary screening and investigative role, acting as a gatekeeper to the inquiry process, which includes consideration of the public interest. The Tribunal, on the other hand, has adjudicative powers granted under the *CHRA* to hold a full, quasi-judicial *de novo* inquiry."⁸

[34] 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* also gives the Commission the ability to ask the Tribunal's Chairperson to institute a single inquiry into complaints filed by different complainants against a common respondent in certain specific situations under subsection 40(4) of the *Act*.

[35] The Tribunal has previously determined that, when the Commission requests a single inquiry into more than one complaint pursuant to subsection 40(4), the Chairperson must comply with this request.⁹ It is also the case that the Tribunal has no supervisory jurisdiction over the Commission's decisions. Only the Federal Court may review a decision of the Commission.¹⁰

⁷ 2020 CHRT 29 ["*Oleson*"]

⁸ *Baillie et al. v. Air Canada and Air Canada Pilots Association*, 2017 CHRT 22 at para.81.

⁹ *Gullason and Attaran v. Tri-agency Institutional Programs Secretariat*, 2018 CHRT 21 ["*Gullason and Attaran*"] at paras.34 and 38.

¹⁰ *Ibid* at para.43. See also *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.

[36] The Commission made the decision to proceed with the complaint of the Estate of Rose Jones by investigating it and then requesting that the Tribunal Chairperson institute a single inquiry into both complaints. No party challenged the Commission's decision at the Federal Court and so the Tribunal was required to institute an inquiry into both complaints as requested. The parties proceeded through case management as if the complaints were to be heard together. The Tribunal was not notified until well into its process that there was no Estate representative for Ms. Jones' complaint.

[37] The Tribunal decided in *Gullason and Attaran* that, although it must comply with a request of the Commission to institute a single inquiry, it is entitled, in the course of its proceedings, to sever the complaints in appropriate circumstances.

[38] The Tribunal has determined that, as master of its own proceedings, it may make decisions about matters that arise during the case management process. In deciding to dismiss Ms. Jones' complaint, I am not reviewing or reconsidering the Commission's decision to jointly refer the complaints. Rather, I am acting as the master of my own proceedings in considering a request by the Nation to dismiss the complaint in order to permit the matter to proceed in a fair and expeditious manner. This will permit both the Nation and Ms. Edwards to proceed with certainty and finality.

VI. Conclusion

[39] As no person or organization has expressed an interest in representing the interests of the Estate in these proceedings, the Respondent's Motion to dismiss the complaint of the Estate of Rose Jones is granted.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
October 15, 2020

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2263/1818 and T2264/1918

Style of Cause: Estate of Rose Jones and Doris Edwards v. Saddle Lake Cree Nation

Ruling of the Tribunal Dated: October 15, 2020

Motion dealt with in writing without appearance of parties

Written representations by:

James L. Dixon, Q.C., for the Complainant

Brittany Tovee, for the Canadian Human Rights Commission

Brooke Barrett, for the Respondent