

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 1

Date: January 6, 2022

File Nos.: T2688/6421, T2689/6251

Between:

Lise Nordhage-Sangster

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Border Services Agency and Mark Pridmore

Respondents

Ruling

Member: Colleen Harrington

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I. Introduction

[1] Lise Nordhage-Sangster (Complainant) filed two separate complaints with the Canadian Human Rights Commission (Commission), one against the Respondent Canada Border Services Agency (CBSA) on March 9, 2019, and one against the Respondent Mark Pridmore on May 9, 2019. Many of the allegations in the complaints are identical. In both complaints, she alleges harassment contrary to section 14 of the *Canadian Human Rights Act*, RSC 1985, c.H-6 (*CHRA*) based on the prohibited ground of sex. The complaint against CBSA also involves an allegation of discrimination on the basis of disability, contrary to section 7 of the *CHRA*. The complaint against Mr. Pridmore says the alleged discrimination ended in September of 2018, while the complaint against CBSA alleges discrimination that was ongoing as of the date of the complaint.

[2] On July 28, 2021, the Commission wrote to the Chairperson of the Canadian Human Rights Tribunal (Tribunal) requesting that an inquiry be instituted into both of Ms. Nordhage-Sangster's complaints.

[3] The Commission referred the two complaints to the Tribunal separately, pursuant to sections 44(3)(a) and 49 of the *CHRA*. The Commission then made a Motion asking the Tribunal to join the complaints so they can be heard together in a single inquiry. The Complainant agrees with the Commission's Motion, as does the CBSA. Mr. Pridmore opposes the Commission's Motion to join the complaints.

II. Decision

[4] I agree to join these two complaints, so that they may be heard together in a single inquiry.

III. Positions of the Parties

[5] The Commission says both complaints stem from a workplace relationship at a CBSA office in Ottawa involving a subordinate, the Complainant, and her manager, Mr. Pridmore. The Complainant alleges she was harassed by Mr. Pridmore and other CBSA supervisors.

The Commission says the two complaints are inextricably linked in that they allege that “the acts and omissions of Mr. Pridmore and other supervisors and directors contributed to a workplace environment where [the Complainant] was harassed, experienced sexual harassment and assault, both on and off-site, and [was] not accommodated; thus CBSA failed to provide her with a harassment-free workplace.”

[6] The Commission notes that both complaints are identical except that, in the complaint against Mr. Pridmore, Ms. Nordhage-Sangster describes certain events that occurred away from the office relating to his authority over her. It says that “these incidents extend the workplace beyond the physical location of the CBSA office and are, thus, relevant to both cases.”

[7] The Commission submits that a joint inquiry is most appropriate for these complaints because the “inextricably tied facts” will give rise to common issues of law and potential remedies. It argues that, if the cases were to proceed to separate inquiries, a duplication of testimonies would result due to the common incidents and witnesses involved. In a joint inquiry, Ms. Nordhage-Sangster and Mr. Pridmore, as well as other material witnesses for the CBSA, will only need to testify once and one Tribunal member will have the benefit of a full factual record. The Commission submits that it is in the interests of justice to avoid a multiplicity of proceedings and inconsistent rulings.

[8] The Commission further points out that the two complaints are at the beginning of the Tribunal’s process and joining them will not cause a delay for the parties.

[9] The CBSA consents to the Commission’s Motion to join the complaints into a single inquiry.

[10] In her submissions, Ms. Nordhage-Sangster says that only having to testify before the Tribunal in one proceeding will help to reduce the trauma she says she experiences by having to relive the alleged events.

[11] Mr. Pridmore asks the Tribunal to dismiss the Commission’s Motion to join the complaints into a single inquiry. He says that, although the two complaints are virtually identical in describing some of the allegations, this does not mean that the issues raised are

identical. Mr. Pridmore says that many of the allegations relate to “institutional failure to accommodate legitimate medical needs or to respond appropriately to complaints by an employee against her manager” Mr. Pridmore.

[12] Mr. Pridmore says there are also accusations of retaliation by CBSA, which is a distinct discriminatory practice. He says it is therefore possible that, even if the Tribunal dismisses the complaint against him, CBSA could still be found to have punished the Complainant for making a complaint, and thereby to have discriminated against her. He says conversely that any finding of discrimination against him would not necessarily result in liability on the part of CBSA.

[13] With respect to the public interest in avoiding a multiplicity of proceedings, Mr. Pridmore submits that holding two separate proceedings would not necessarily result in undue duplication of evidence since each case will require a determination by the Tribunal of distinct issues and facts. He says that the case against him involves allegations of interpersonal violence, while the complaint against CBSA involves numerous individuals, virtually none of whom are alleged to have witnessed the conduct he is accused of. Mr. Pridmore says the issues to be determined in the CBSA complaint involve what CBSA knew and what steps it took to address any complaints. He says the Tribunal will have to consider whether CBSA provided the Complainant with a harassment-free environment, whether it retaliated, and whether it failed to accommodate her medical needs. Therefore, he says the witnesses and evidence in the two proceedings are not necessarily likely to be the same.

[14] Mr. Pridmore argues that holding a joint inquiry will result in prejudice to him, as the hearing will be longer and will involve witnesses who lack any ability to shed light upon the allegations against him. He says this will force him to incur increased costs to defend himself.

[15] In an email sent to the Tribunal and parties before the Commission filed this Motion, Mr. Pridmore requested that each complaint be assigned to “a different adjudicator in order to ensure the principals of procedural fairness and natural justice are satisfied.” This position was not repeated in his response to the Commission’s Motion, however.

[16] In replying to Mr. Pridmore's submissions, the Commission notes that neither complaint referred to the Tribunal includes an allegation of retaliation pursuant to section 14.1 of the *CHRA*, but that this would not necessitate two separate inquiries in any event.

IV. Legal Framework

[17] As a quasi-judicial administrative tribunal, the Tribunal's jurisdiction is rooted in its enabling statute, the *CHRA*. Subsection 48.9(1) of the *CHRA* requires the Tribunal to conduct its proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

[18] The Tribunal accepts that, as master of its own procedure, it has the discretion to deal with complaints in a single inquiry, even if they were referred to it separately by the Commission (s. 50 *CHRA*; see also: *Karas v. Canadian Blood Services and Health Canada*, 2020 CHRT 12 (CanLII) [*Karas*]; *Lattey v. Canadian Pacific Railway*, 2002 CanLII 45928 (CHRT) [*Lattey*]).

[19] The Tribunal in *Lattey* set out certain factors that should be considered and balanced when deciding whether to join complaints into a single inquiry (at para 13; reaffirmed in *Karas* at para 15). These include:

1. The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;
2. The potential prejudice to the respondents that could result from a single hearing, including the lengthening of the hearing for each respondent as issues unique to the other respondent 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 respondent or the other; and
3. Whether there are common issues of fact or law.

[20] The Tribunal considers these factors to be "a useful way to evaluate whether it is in the public interest to proceed with a single inquiry or separate inquiries" (*Gullason and Attaran v. Tri-agency Institutional Programs Secretariat*, 2018 CHRT 21 (CanLII) at para

50). It is accepted that these factors are not exhaustive, and the Tribunal should consider what factors are important in each particular case (*Karas* at para 17).

[21] The Tribunal in *Karas* also stated that the issue of prejudice should not be considered only from the Respondent's perspective, but from the perspective of all parties and of the public (at paras 96-98).

V. Analysis

[22] At this stage of the proceedings the Tribunal is only in possession of the two complaints that were filed with the Commission in 2019. Statements of Particulars have not yet been filed. The Tribunal must rely on the complaints and the submissions of the parties to ascertain whether it is in the interests of justice to proceed with a joint inquiry into both complaints.

[23] The Commission has indicated that it investigated these complaints prior to referring them to the Tribunal. It says that, if the complaints proceed in separate inquiries, there will be a duplication of testimony because both complaints involve a common manager-employee relationship, common incidents, and common witnesses. It says the Complainant would be required to testify twice about the same events and that Mr. Pridmore is a material witness in both cases. It also says that there are CBSA witnesses common to both complaints who may also have to testify twice, including those not mentioned in the complaints but that were identified during the Commission's investigation. Mr. Pridmore does not dispute any of this, while the Complainant and the CBSA both agree with the Commission's Motion.

[24] Mr. Pridmore also does not dispute that there are common issues of fact or law identified in the two complaints. He says, rather, that the issues raised are not identical. However, this is not what is required in order for the Tribunal to decide whether to join complaints in a single inquiry. As the Tribunal in *Karas* stated, "The *Lattey* test ... does not mean that all questions of fact and of law must be common in their entirety" (at para 74).

[25] Mr. Pridmore concedes that, in order to decide the complaint against CBSA, the Tribunal will need to determine "what CBSA knew and what steps they took to address any

complaints and provide [the Complainant] with a harassment-free environment.” While the evidence required to determine whether discrimination occurred may not be exactly the same for each complaint, it seems clear that it will be, as the Commission says, “inextricably linked” since the allegations against CBSA appear to flow from those against Mr. Pridmore.

[26] As the allegations relating to each complaint are interconnected, I am not persuaded that a joint hearing into both complaints will be appreciably longer than a hearing into Mr. Pridmore’s complaint alone would be. The complaints are at the beginning of the Tribunal’s process and can be joined without causing a delay to any party. Both Ms. Nordhage-Sangster and Mr. Pridmore will only have to testify in one hearing, as opposed to two, which will ultimately save time and resources for both of them.

[27] I am of the view that any potential prejudice to Mr. Pridmore from having to participate in a joint hearing would be outweighed by the prejudice to the Complainant and the Commission from having to participate in two separate hearings. I note that the Commission is a separate party whose role is to represent the public interest.

[28] I also agree that, in the circumstances of these complaints, two separate hearings would expose all of the parties to the potential risk of inconsistent findings with respect to the same underlying facts, especially if different Members of the Tribunal were assigned to hear the complaints.

[29] I agree with the Commission that, in the circumstances of these complaints, it is in the interests of justice to avoid more than one proceeding. A single inquiry will permit the Tribunal to proceed as expeditiously as possible while ensuring all parties can participate fairly in the proceeding.

[30] Even though the two complaints will be heard together, each Respondent will still be able to call their own evidence and to cross examine both the Complainant and the other Respondent’s witnesses. The Tribunal appreciates that the complaint against CBSA involves the additional discriminatory practice under section 7 of the *CHRA*. It is the normal function of an adjudicative body dealing with more than one respondent “to consider the evidence adduced, determine its admissibility as against each party and to weigh the evidence only as it relates to that party against whose interest it has been admitted” (*Lattey*

at para 16, citing *Hodder v. Nova Scotia (Department of Finance)*, [1996] N.S.H.R.B.I.D. No. 7 at para 22).

[31] If a finding of discrimination is made against either Respondent, the remedies awarded will reflect the liability of each particular Respondent based on the findings of fact and law made by the Tribunal in the course of the inquiry.

VI. Order

[32] I hereby order:

1. That the two complaints of Lise Nordhage-Sangster against CBSA and Mark Pridmore be joined so they may be heard in a single inquiry;
2. That the parties may each file a single Statement of Particulars (SOP) relating to the two complaints and a single list of non-privileged and privileged documents, and may produce a single disclosure package for transmission to the parties;
3. The order for filing Statements of Particulars and disclosing documents is as follows:
 - a. Commission's SOP
 - b. Complainant's SOP
 - c. Respondents' SOPs
 - d. Replies of Commission and Complainant to the Respondents' SOPs.

Dates for the filing of SOPs will be provided to the parties by the Tribunal in separate correspondence.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
January 6, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2688/6421, T2689/6251

Style of Cause: Lise Nordhage-Sangster v. Canada Border Services Agency and Mark Pridmore

Ruling of the Tribunal Dated: January 6, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Caroline Carrasco, for the Canadian Human Rights Commission

Lise Nordhage-Sangster, on her own behalf

Elizabeth Kikuchi and Sarah Chênevert-Beaudoin, for Canada Border Services Agency

Kathleen Kealey, for Mark Pridmore