

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 37
Date: November 23, 2022
File No(s): T2682/5821

Between:

Melissa Paton

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Spearing Service L.P.

Respondent

Ruling

Member: Jennifer A. Orange

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I. Overview

[1] The Respondent, Spearing Service L.P. (“Spearing”) has brought a motion to have the Complaint of Melissa Paton against it stayed or dismissed because it is *res judicata* on the basis of issue estoppel and/or an abuse of process. For the reasons that follow, I dismiss the motion.

II. Context

[2] The Complainant alleges that she has been discriminated against by her former employer, Spearing, on the basis of sex and family status in violation of ss. 7(a), 10(a), 11(1) and 11(2) of the [Canadian Human Rights Act, RSC 1985, c.H-6 \(CHRA\)](#) or the [Act](#). She set out in her Statement of Particulars that after she returned from a maternity leave in 2016, she experienced adverse differential treatment, which included a 20% wage cut, a prohibition against working overtime, a demotion in title and responsibilities, and that she was treated poorly by managers. She states that she “had no choice but to resign” due to this poor treatment.¹

[3] In its Statement of Particulars, the Respondent denies that it discriminated against the Complainant in breach of the *CHRA* and provides an explanation for the changes in the Complainant’s wages and responsibilities. They submit that Paton resigned from her employment and that this was confirmed by a decision of an adjudicator pursuant to the *Canada Labour Code, RSC 1985, c. L-2 (“CLC”)*.

[4] I have reviewed and considered the parties’ motion materials and summarize the facts relevant to this ruling here. It is not disputed between the parties that after this resignation, Paton filed a complaint pursuant to section 240 of the *CLC* alleging unjust dismissal, in particular, that she had been constructively dismissed. The Adjudicator held a hearing on February 16, 2018, and in a decision dated March 4, 2018, the Adjudicator found that Paton had not been constructively dismissed by Spearing but had resigned (the

¹ Complainant Statement of Particulars, paras. 3-17

“Adjudicator Decision”).² Paton did not judicially review the Adjudicator Decision and the parties do not dispute its finality.

[5] Spearing argues in this motion that in determining whether Paton had been constructively dismissed the Adjudicator considered the same facts and underlying issues as in her *CHRA* Complaint. Spearing submits that this Complaint is an attempt to relitigate issues addressed in the adjudicator’s decision and should be struck or dismissed, in whole or in part.

III. Issues

[6] Does the Tribunal have the jurisdiction to hear this motion?

[7] Does the 2018 Adjudicator Decision block the Complaint from proceeding as it is res judicata on the basis of issue estoppel, or in the alternative, is an abuse of process because this matter has been dealt with in a final decision by another adjudicative process?

IV. Analysis

A. Does the Tribunal have jurisdiction to hear this motion?

[8] The Complainant submits that the Tribunal does not have the jurisdiction to deal with this motion because it is estopped by the decision of the Canadian Human Rights Commission (“the CHRC”) to refer the matter to the Tribunal for an inquiry. The Complainant argues that the CHRC has jurisdiction under s 41(1)(d) of the CHRA to refuse to refer a complaint to the Tribunal for an inquiry if the CHRC finds it to be frivolous, vexatious or made in bad faith.³

[9] The CHRC argues in the same vein that this motion is a collateral attack on the CHRC’s decision to deal with the Complaint under s 41(1)(d).⁴ The crux of the CHRC’s

² Adjudication Under XIV-Part III of the Canada Labour Code, Complaint of Alleged Unjust Dismissal, Ms. Melissa R. Paton against Spearing Service L.P. Sask, March 4, 2018.

³ Brief of Law and Argument on Behalf of the Complainant, Melissa Paton, para 35-36, citing *Tweten v RTL Robinson Enterprises Ltd*, 2004 CHRT 8

⁴ Written Representations of the Canadian Human Rights Commission, paras 25-27

argument is that where a complainant files a complaint and there is a previous decision based on similar facts at another body, the CHRC is required to conduct its own independent assessment of the circumstances to determine whether the human rights issues have been addressed.⁵ As part of this assessment, in accordance with s. 41(1)(d) of the *CHRA*, the CHRC can dismiss a complaint that is found to be trivial, vexatious or made in bad faith.

[10] In this case, the CHRC did consider the Adjudicator Decision and found that, “In all of the circumstances, it is not possible to conclude that the remaining allegations in the complaint have been previously considered before another decision maker.”⁶ The “remaining allegations” refer to those allegations of discrimination in the course of employment, but do not include (1) the deactivation of the Complainant’s email account; (2) her exclusion from Occupational Health and Safety Committee notices and meetings; and (3) the decision regarding her constructive dismissal.⁷

[11] Both of these parties submit that Spearing could have filed for judicial review of the CHRC’s referral decision to the Federal Court. In this instance, it did not.

[12] Spearing submits that, in short, once a matter is referred to the Tribunal, the Tribunal may decide to expand or limit complaints referred to it.⁸

[13] The CHRC’s referral of a complaint to the Tribunal creates the Tribunal’s jurisdiction to conduct an inquiry into the complaint.⁹ Subsection 50(2) of the *Act* grants the Tribunal powers to make all determinations of fact and law that are necessary to determine the matter. While there may have been a separate opportunity for Spearing to challenge the CHRC’s referral decision, this does not preclude the Tribunal’s power to review the scope of the Complaint in the determination of the inquiry.¹⁰

⁵ Written Representations of the Canadian Human Rights Commission, para 26

⁶ Brief of Law and Argument on Behalf of the Complainant, Melissa Paton, para 35, citing Decision of the Commission, February 26, 2020, Tab 10, Complainant’s Book of Authorities

⁷ Decision of the Commission, February 26, 2020, Tab 10, Complainant’s Book of Authorities

⁸ Spearing Reply, para 16

⁹ *Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2 , para 14; *CHRA* ss. 49 and 50; Reply of Spearing, para 16

¹⁰ *Karas*, para 20

[14] I find that the Tribunal has the jurisdiction to determine the scope of the issues in this Complaint, as set out in the referral of the Complaint by the Commission to the Tribunal. Therefore, I find that the Tribunal has the jurisdiction to hear this motion.

[15] I now turn to the questions of whether this Complaint should be dismissed on the basis of issue estoppel or because it is an abuse of process.

B. Res Judicata/Issue Estoppel

[16] The doctrine of res judicata prevents the hearing of matters that have already been decided in a forum with concurrent jurisdiction.¹¹ Issue estoppel, the prohibition of rehearing issues that have already been decided, is a principle of res judicata. Issue estoppel may apply to adjudicative proceedings like this Complaint under the *CHRA*.¹²

[17] The purpose of a “finality doctrine” like issue estoppel is to prevent unfairness by preventing an abuse of process. As stated by this Tribunal in *Jamison Todd v. City of Ottawa*, the “twin values of finality and fairness lie at the heart of these doctrines”.¹³

[18] In explaining the purpose of these doctrines, Justice Abella in *British Columbia (Workers’ Compensation Board) v. Figliola*, [2011 SCC 52](#) (“*Figliola*”) wrote:

All of these questions go to determining whether the substance of a complaint has been “appropriately dealt with”. At the end of the day, it really is a question of whether it makes sense to expend public and private resources on the relitigation of what is essentially the same dispute.¹⁴

[19] The Supreme Court of Canada in *Danyluk* affirmed three necessary preconditions to a finding of issue estoppel:

- i. the same question has already been decided in another forum;
- ii. the judicial decision which is said to create the estoppel was final; and

¹¹ *Danyluk v. Ainsworth Technologies Inc.*, [2001 SCC 44](#) (“*Danyluk*”)

¹² *British Columbia (Worker’s Compensation Board) v Figliola*, 2011 SCC 52 at para 27

¹³ *Jamison Todd v City of Ottawa*, 2017 CHRT 23 (“*Todd*”) at para 27

¹⁴ *Figliola* at para 37

- iii. the parties to the judicial decision are the same as the parties to the proceedings in which the estoppel is raised.¹⁵

[20] Regarding the first step in the *Danyluk* test, Spearing submits that although the question explicitly stated by the Adjudicator was whether the Spearing engaged in conduct that would constitute the constructive dismissal of Paton, the consideration of the issue of whether Spearing discriminated against Paton on the basis of her sex and family status in violation of the *CHRA* was implicit or a logical consequence of this decision.¹⁶

[21] Paton submits, on the other hand, that while there may be “factual overlaps” between the matter before the Adjudicator and the matter here, the Adjudicator Decision applied a different legal test because it was a different legal issue.¹⁷ In other words, the test for constructive dismissal under the *CLC* is different than the test for discrimination under ss. 7(a), 10(a), 11(1) and 11(2) of the *CHRA*.

[22] In addition, the CHRC submits that the Adjudicator was not asked to consider the same questions as are before this Tribunal. The Commission wrote:

The Tribunal is being asked whether the Respondent discriminated against Ms. Paton on the ground of sex when it i) overlooked her for a position as Inventory Controller ii) unjustly denied her the position of Part and Fleets Manager iii) demoted her from Parts Manager iv) reduced her salary and changed her job title upon her return from maternity leave, v) implemented inventory control and security procedures that changed her job duties and access to work areas, vi) harassed and bullied her following her return from maternity leave. Furthermore, the Tribunal is also being asked to determine whether the question of what personal and systemic remedies should be awarded if Ms. Paton’s Complaint is substantiated.¹⁸

[23] All of the parties rely on the text of the Adjudicator Decision. Spearing submits that the facts decided by the Adjudicator are the same facts at issue in this Complaint and that this forecloses a reconsideration of these facts here.¹⁹ Spearing submits that the Adjudicator found that, “Spearing’s actions were held to be purely fiscal and operational decisions, and,

¹⁵ *Danyluk* at para 25

¹⁶ Spearing Notice of Motion, para 32

¹⁷ Brief of Law and Argument on Behalf of the Complainant, Melissa Paton, para 40

¹⁸ Written submissions of the Canadian Human Rights Commission (in response to the Respondent’s motion to dismiss the complaint on the basis of res judicata and issue estoppel and/or abuse of process), para 19

¹⁹ Spearing Reply, para 4

most importantly, they were held as being non-discriminatory.”²⁰ It argues that the Adjudicator found no evidence to suggest that Paton was constructively dismissed by Spearing or treated with “deliberate malicious intent” following her return from maternity leave.²¹ Paton and the CHRC submit that while many of the facts before the Adjudicator are the same as in this Complaint, the legal issue brought in this Complaint was not before the Adjudicator and he did not decide it.²²

(i) The Adjudicator Decision

[24] I turn now to the text of the Adjudicator Decision. After reviewing the evidence and submissions of the parties, the Adjudicator started his analysis by noting that Paton had four factual allegations: (1) her reduction in salary and change in job title constituted a demotion; (2) the employer implemented inventory control and security procedures changed her duties and diminished her job; (3) that she was harassed and bullied following her return from maternity leave coincidental with the initiation of new inventory and security procedures; and (4) that she was unjustly denied a promotion.²³

[25] The Adjudicator then summarized Paton’s argument as, “the employers [sic] behaviour constituted a constructive dismissal leaving her no option but to resign her employment.”²⁴

[26] The Adjudicator proceeded to set out the legal test for constructive dismissal citing the Supreme Court of Canada decision in *Potter v New Brunswick Legal Aid Services Commission*, 2015 SCC 10, and applied the law to the facts before him.²⁵ He concluded that, “Given the foregoing I find that Ms. Paton was not constructively dismissed but resigned from her employment.”²⁶

²⁰ Spearing Notice of Motion, para 5

²¹ Spearing Notice of Motion, para 48, referring to CIRB Decision, pages 15-17

²² Brief of Law and Argument on Behalf of the Complainant, Melissa Paton, para 40; Written Representations of the Canadian Human Rights Commission, para 17

²³ Adjudicator Decision, page 15

²⁴ Adjudicator Decision, page 15

²⁵ Adjudicator Decision, page 15

²⁶ Adjudicator Decision, page 17

[27] In his decision, as Spearing points out in its motion materials, the Adjudicator makes some findings that could relate to a finding that there was no discrimination under the *CHRA*. On p. 16, he noted that the evidence showed that Spearing had an anti harassment policy and that all employees had to “sign off” on it. On p. 17, the adjudicator wrote that while management might not have been aware of the impact of their behaviour in a male dominated work setting, there was “no evidence that it was deliberately intended.” The Adjudicator then found that “there is no evidence that Ms. Parton [sic] was discriminated against in seeking the appointment to the Parts and Fleet Manager position.”²⁷

[28] In the section titled, “Decision”, the Adjudicator stated that, “while there may not have been a management appreciation of the reality of a female working in a male dominated environment, there was no evidence of a deliberate malicious intent”.²⁸

[29] In its reply submissions, Spearing argues that the factual findings in the Adjudicator Decision may not be relitigated here. While there are overlapping factual elements between the Adjudicator Decision and this Complaint, I find that the legal issues are different and that the Adjudicator did not make findings relating to discrimination under the *CHRA*. The Adjudicator explicitly stated the legal test for a finding of constructive dismissal, but he did not set out the test for discrimination under the *CHRA* or even mention the *Act* in his analysis.

[30] I disagree with Spearing’s submission that the consideration of the issue of whether Spearing discriminated against Paton on the basis of her sex and family status in violation of the *CHRA* was implicit or a logical consequence of this decision.²⁹ The tests are different and the evidence required to make a finding of discrimination under the *CHRA* may well be different than the evidence required to find conduct that constituted constructive dismissal.

[31] I am not convinced that the Adjudicator’s findings that there was no evidence of deliberate malicious intent were an application of the *CHRA*. It is not merely that it would have been a misapplication of the test. To borrow the phrase of Justice Abella, I do not see

²⁷ Adjudicator Decision, page 17

²⁸ Adjudicator Decision, page 17

²⁹ Spearing Notice of Motion, para 32

the tests for ss. 7(a), 10(a), 11(1) and 11(2) of the *CHRA* have been “appropriately dealt with”.³⁰

[32] I am buttressed by the fact that in the parties’ submissions and summary of the evidence included in the Adjudicator Decision there is no evidence nor submissions regarding the application of the *CHRA*. On p. 8 of the Adjudicator’s Decision, the Adjudicator seemed to address Roberta Taylor, Human Resources representative of Spearing, when he stated “You are subject to the Canada Labour Code and the Canadian Human Rights Code [sic]. Do you have an employee handbook?”. In response, Ms. Taylor confirmed that Spearing did have a policy handbook with a harassment policy.³¹ There were no submissions made about discrimination under the *CHRA*.

[33] As this Tribunal stated in *Todd*, “Any sacrifice of judicial resources made as a result of the Tribunal’s consideration of evidence that formed part of the [decision] is offset by the more important consideration of ensuring the procedural fairness of a full hearing of the Complaint.”³² I am convinced that a full hearing of this Complaint is necessary to ensure procedural fairness.

[34] I therefore find that Spearing fails to meet the first requirement of the issue estoppel test in that this Complaint is not addressing a question that has already been decided by the CLC Adjudicator. The parties agree that the second requirement has been met in that the Adjudicator Decision was a final decision. The parties disagree on whether the fact that the CHRC is a party to this Complaint, but not at the CLC hearing, means that the parties are not the same for the purposes of the third requirement of the issue estoppel test. As I found that the first requirement is not met, it is not necessary for me to make a finding regarding the third requirement. Issue estoppel is not made out.

³⁰ *Figliola* at para 37

³¹ Adjudicator Decision, page 9

³² *Todd*, para 76

C. Abuse of Process

[35] Spearing further submits that to proceed with this Complaint would be an abuse of process.³³

[36] Even in a case where the requirements of issue estoppel are not met, this Tribunal can apply the doctrine of abuse of process to preclude the relitigation of a matter where it would be abusive to do so.³⁴

[37] The Supreme Court of Canada in *Figliola* confirmed several key principles to consider when determining whether there is an abuse of process, including “judicial economy, consistency, finality, and the integrity of the administration of justice.”³⁵

[38] The application of the finality doctrines, such as issue estoppel and abuse of process, is a highly discretionary exercise, driven by the needs of both substantive and procedural justice. As the Court stated in *Danyluk*, and a majority of the SCC reiterated in *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, “a judicial doctrine developed to serve the ends of justice should not be applied mechanistically to work an injustice”.³⁶

[39] I have already found that the Adjudicator did not resolve the question that is before this Tribunal, so it would not risk offending judicial economy, consistency, finality, and the integrity of the administration of justice. For the foregoing reasons, I find that the Complaint is not an abuse of process.

V. Order

[40] For all of the reasons above, the Tribunal dismisses Spearing’s motion.

Signed by

Jennifer A. Orange
Tribunal Member

³³ Spearing Notice of Motion, para 66

³⁴ *Todd; Constantinescu v Correctional Services Canada*, 2019 CHRT 49 at paras 111-112 and 133-137

³⁵ *Figliola* at para 33; *Todd* at para 68

³⁶ *Danyluk* at para 1; *Penner* at para 30

Ottawa, Ontario
November 23, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2682/5821

Style of Cause: Melissa Paton v. Spearing Service L.P.

Ruling of the Tribunal Dated: November 23, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

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