

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2023 CHRT 58
Date: December 28, 2023
File No.: HR-DP-2903-22

Between:

The Estate of Edward Peters

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Peters First Nation

Respondent

Ruling

Member: Athanasios Hadjis

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I. OVERVIEW

[1] The Estate of Edward Peters (the “Estate”) is the Complainant in this case. Mr. Peters passed away in 2019, a few months after he filed this complaint with the Canadian Human Rights Commission (the “Commission”).

[2] The hearing into the complaint is scheduled to start on February 12, 2024. On November 12, 2023, the Estate requested that the complaint be amended to add four paragraphs and that its Statement of Particulars (SOP) also be amended to add new remedial requests relating to the complaint amendments.

II. DECISION

[3] Four of the amendment requests are granted. The others are denied.

III. ANALYSIS

[4] Mr. Peters was a member of the Peters First Nation (PFN), the Respondent. His complaint form set out four specific areas of complaint, identified under the headings Complaint 1, Complaint 2, Complaint 3, and Complaint 4. They essentially alleged the following:

- a) Complaint 1: The PFN had destroyed fencing on the property Mr. Peter possessed. PFN staff had trespassed on the property and vandalized it.
- b) Complaint 2: In the mid 1990s, Mr. Peters’ home located on PFN territory burned down. The PFN refused to provide funding or other assistance to enable him to rebuild it. The PFN also denied Mr. Peters’ requests that it build him a new house. Mr. Peters claimed that the PFN provided these services to other community members from different family lines.
- c) Complaint 3: Mr. Peters was denied attendance and physically removed from band functions, including a meeting of the Chief and Band Council, which he

alleged had ordered that he be harassed whenever on the reserve or at band functions.

d) Complaint 4: The PFN excluded Mr. Peters' property from the installation of fibre-optic cabling.

[5] Mr. Peters claimed that his family status, disability, and age were factors in this treatment and therefore discriminatory under *the Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the "CHRA"). The Estate confirmed at the Tribunal's first Case Management Conference Call that it is not seeking a finding relating to Complaints 1 and 4. They are considered withdrawn.

[6] Elsewhere in the complaint, Mr. Peters alleges that he and other members of his family were mocked, harassed, and made to feel unwelcome. He also alleges that the PFN believed at the time that, due to his age, he would pass away before long and that the issues relating to his property and denial of services would be resolved by his death. This would prevent Mr. Peters from passing on his land to his children, and his bloodline would cease being with the PFN.

[7] There are seven proposed amendments in total.

[8] The PFN objects to the requests. The Commission takes no position on them, but its submissions in effect align with several of the Estate's proposed amendments.

[9] As noted in *Blodgett v. GE-Hitachi Nuclear Energy Canada Inc*, 2013 CHRT 24, at paras 16-17, s. 48.9(2) of the CHRA gives the Tribunal considerable discretion in the conduct of its proceedings. This includes granting or dismissing motions to amend a complaint. The Tribunal has discretion to grant amendments to determine "...the real questions in controversy between the parties," if granting them would be in the interests of justice (*Canada (Attorney General) v. Parent*, 2006 FC 1313 at para. 30 ("*Parent*"). The Tribunal must consider the prejudice that granting the amendment would cause to other parties. Amendments will be allowed where the balance of convenience favours the party seeking the amendment.

[10] The other party will not be prejudiced if it is able to prepare itself and argue its position on the new issues being raised (*Parent* at para. 40). An amendment must also not result in a new complaint and must be linked to allegations giving rise to the original complaint (*Tran v. Canada Revenue Agency*, 2010 CHRT 31 at paras 17-18). In other words, there must be a nexus, in fact and in law, between the complaint and the amendment sought.

[11] In this ruling, I analyze each amendment request in sequence though I have grouped several that raise common issues. I set out each amendment request word for word and indicate whether it amends the complaint or the Estate's SOP. I would also point out that I am dealing with each request as an amendment to the complaint's and SOP's *allegations*; I am obviously not making any finding at this stage on the merits of these additional allegations.

(i) Amendment 1

Amendment 1 (to the complaint):

From the time they became aware of the initial complaint openly accusing them of waiting for the Complainant to die, the Respondent knowingly exacerbated the accusation by actually ignoring the Complainant's complaints to the date of his death one-hundred and ninety-three (193) days later.

[12] The 193-day period is apparently the time between when the Commission sent the complaint to the PFN seeking its position and the date when Mr. Peters died. The PFN's response to the Commission seems to have been filed within weeks (by March 8, 2019). The Estate is upset that the PFN did not immediately act upon the allegations in the complaint and implement the remedies Mr. Peters was seeking while the Commission investigated the complaint.

[13] I note that Mr. Peters had already alleged in his complaint that, over the years, the PFN had not dealt with his concerns in the expectation that he would die before they were addressed. To that extent, I fail to see the necessity to amend the complaint to reiterate the same point. As for the duration between when the PFN was notified of the complaint and when Mr. Peters died, it is a matter of fact, and the parties can argue its significance at the hearing. It is not a new issue that warrants an amendment to the complaint at this stage of the hearing process.

(ii) Amendments 2 and 3***Amendment 2 (to the complaint):***

Contrary to s. 14.1 of the CHRA, the Respondent retaliated against the Complainant; to wit:

While they were aware of the outstanding complaints regarding age, the Respondent used the Complainant's recent death as reason to unlawfully single him out and deny a significant court-sanctioned Specific Claim monetary entitlement due the Complainant and hence his Estate (his family);

on the prohibited grounds of age, family status, and marital status.

Amendment 3 (to the complaint):

Contrary to ss. 5(b) of the CHRA, the Respondent differentiated adversely against the Estate of the Complainant; to wit:

With the submission of their Statement of Particulars, the Respondent exacerbated the initiating complaint by citing and relying on the death of the Complainant as an attritional precluding factor to potential make-whole remedy prescribed by the Canadian Human Rights Act;

on the prohibited grounds of age, family status, and marital status.

[14] I note that the Estate clarified in its reply submissions that, in Amendment 2, it intended to also refer to s. 5(b) of the CHRA, "in the alternative or in addition."

[15] Although the wording of Amendments 2 and 3 is somewhat confusing, the Estate's submissions supporting the requests explain that these proposed amendments relate to an agreement that the Government of Canada signed with the PFN and several other First Nations communities, in settlement of their specific claims (the "Seabird Settlement"). The agreement provided compensation to the PFN, which resulted in its members receiving monetary disbursements of over \$200,000.

[16] According to the Estate, Mr. Peters voted in the referendum approving the Seabird Settlement and was alive when it was signed on August 13, 2019. He died five days later, on August 18, 2019.

[17] The Estate says that although Mr. Peters died before any disbursements to members had yet been made, the PFN paid \$3,000 to the Estate posthumously, representing the first

of four quarterly instalments of \$3,000 each, as part of the initial disbursement to all members. The PFN did not give the Estate the three remaining quarterly instalments nor the two subsequent \$100,000 instalments that other members received.

[18] The Estate alleges that Mr. Peters was entitled to receive the full disbursement as a living member when the agreement came into effect but that the PFN deliberately refused to pay his Estate any of the remaining sums as ongoing discrimination and in retaliation against him for having filed a human rights complaint.

[19] The PFN argues that this issue was not specifically mentioned in the complaint and that therefore the Tribunal should not deal with it. However, the Estate is asking to amend the complaint precisely for that reason, to add matters that are not mentioned in the initial complaint, provided the request meets the criteria established in the case law.

[20] I am satisfied that there is a sufficient nexus between these new allegations and the original complaint to warrant allowing the amendments. Although the complaint did set out four specific instances of alleged discriminatory practices, they all had a recurring theme, namely that the PFN was discriminating against Mr. Peters mainly because its leadership disliked his family (family status) but also because of his disability and his age. The Estate submits that he became entitled to the disbursements while alive and that, had he been told before his death that the PFN would deny them to him, he would have certainly added this claim of alleged adverse differential treatment in the provision of a service to his complaint, pursuant to s. 5(b) of the CHRA. While I make no finding at this stage about the merits of this allegation, I find that it does not constitute a new complaint. The allegation flows from those already made in the complaint initially.

[21] The Estate submits that the denial of the alleged service was also in retaliation against Mr. Peters for having filed the complaint about the other instances of alleged discrimination.

[22] The Tribunal can allow complaints to be amended to include retaliation claims, which, by definition, would occur after a human rights complaint has been filed. It is not necessary for individuals to make allegations of reprisal or retaliation arising after a complaint by way of separate proceedings, unless it is plain and obvious that the allegations could not possibly

succeed (*Tabor v. Millbrook First Nation*, 2013 CHRT 9 at para. 4). It may seem odd for an allegation of retaliation to be made after a complainant has died. However, assuming the allegation is that Mr. Peters himself (not the individuals who make up his estate) was retaliated against for having filed *his* complaint, I do not find that it is plain and obvious that such a claim would fail in the particular circumstances of this case.

[23] Having found that there is a nexus between the amendments and the original complaint, the remaining issue to be determined is whether the other party will be able to prepare itself and argue its position on the new matters being raised or if it will be otherwise prejudiced.

[24] I do find it troubling that these amendment requests are being made at such a late stage in the process. The complaint was filed on January 24, 2019. The Commission's human rights officer assigned to this case prepared her Report for Decision on July 22, 2022. The 27-page report makes no mention of the Seabird Settlement, even though her notes from her interview with a PFN councillor show that she asked several questions about the Seabird Settlement. The Commission decided to request that the Chairperson of the Tribunal institute an inquiry into the complaint on November 16, 2022. The Seabird Settlement is not mentioned in the Commission's decision.

[25] The Commission contends that the timing of the amendment request does not necessarily pose an obstacle. In *Parent*, the Federal Court rejected the argument that the complainant could not seek to amend a complaint before the Tribunal when the facts arose while the case was at the Commission investigation stage. I note, however, that the request to amend the complaint in *Parent* came before the disclosure of documents or the exchange of SOPs had occurred. In the current case, all SOPs have been exchanged, and disclosure is almost complete, though some requests for additional disclosure have been made of late. The hearing begins in a matter of weeks.

[26] That said, the PFN did not specifically argue in its submissions on the motion that it will be unable to prepare itself to address the Seabird Settlement issue by the scheduled hearing dates. However, the PFN claims that substantial additional evidence than anticipated would need to be led if the amendment is allowed. The Commission counters

that it is likely that the witnesses that the PFN already intends to have testify, including the councillor who the human rights officer interviewed during the investigation, are likely those who would have the information to address the additional questions arising from these amendments. The Commission submits that the need for extra witnesses appears unlikely.

[27] Whether or not more witnesses are needed, I can see how the scope of the case is potentially broadened with the amendments, which may have an impact on the proceedings. The parties might make other requests, which I will deal with as needed. I will ensure that measures to enable all parties to be prepared and able to argue their respective positions are in place.

[28] Besides, the principal prejudice that the PFN raises in its submissions is about whether the Estate is entitled to receive the disbursements in the first place as well as the impact that giving them would have on the PFN's funds and other members. These are arguments regarding the merits of the Estate's claim and the defences that may be available to the PFN. These arguments do not have a bearing on whether the interests of justice justify granting the request to amend the complaint.

[29] For these reasons, I find that the balance of convenience favours the Estate. I grant the request for Amendments 2 and 3 to the complaint.

(iii) Amendments 4 and 5

Amendment 4 (to the complaint):

Contrary to ss. 5(b) of the CHRA, the Respondent differentiated adversely against the Estate of the Complainant; to wit:

With the submission of their Statement of Particulars, the Respondent exacerbated the initiating complaint by citing and relying on the unlawful membership denials of the Complainant's family as a stacked means to preclude potential make-whole remedy prescribed by the CHRA; on the prohibited grounds of age, family status, and marital status.

Amendment 5 (to the Estate's Statement of Particulars):

The Estate seeks an order that the remedy requested in paragraph 210 of its [Amended Statement of Particulars] be struck in its entirety and replaced with the following:

Pursuant to s. 53(2)(a) of the CHRA, the Estate seeks a declaration that the Band ceases its discrimination against the Complainant's family (the Estate) and to take

measures to redress/reconsider their errors in Leah McNeil's 2013 membership application in a non-discriminatory manner and in accordance with the Peters First Nation Membership Code and associated recent litigation Judgments, and such redress should be directly under the oversight of the Canadian Human Rights Commission.

[30] Apparently, the PFN declined the membership applications presented by members of Mr. Peters' family, who seemingly are also his heirs. This is a claim that belongs to them as individuals, not in their capacity as heirs or executors of Mr. Peters' Estate. There is consequently no nexus between the complaint filed by Mr. Peters about the discriminatory practices he alleged to have been the victim of and these individuals' personal claims against the PFN.

[31] These amendment requests are therefore denied.

(iv) Amendments 6 and 7

Amendment 6 (to the Statement of Particulars):

Pursuant to ss. 53(2)(e) of the CHRA, the Estate seeks an order(s) that the Respondent compensate the Complainant the amount of \$5,000.00 for each of Amendments 1 to 3 above for the pain and suffering caused by the Respondent's discrimination.

Amendment 7 (to the Statement of Particulars):

Pursuant to s. 53(3) of the CHRA, the Estate seeks an order that the Band compensate the Estate the amount of \$5,000.00 for each of the four proposed amendments as the Band has engaged in willful and reckless discrimination during investigation and inquiry.

[32] Given that I am granting two of the requested amendments to the complaint, it follows that amendments to the SOP for remedial claims relating to those complaint amendments should also be allowed. The Estate's SOP is therefore amended to include these additional compensation claims solely with respect to the two complaint amendments that are being allowed (Amendments 2 and 3).

[33] However, I must again underscore that these are all merely amendments to allegations. I am mindful that the SOP already includes claims for maximum amounts under both of these provisions of the CHRA. The inclusion of these two amendments to the SOP

does not in any way mean that the Estate is entitled to any finding substantiating these additional claims or granting these remedies. That remains to be determined.

(v) Additional amendment requests

[34] The Estate suggested that the pleadings on the motion be deemed to constitute amendments to the parties' SOPs. This is unnecessary, particularly at this late stage in the proceedings. This ruling provides sufficient guidance.

[35] The Estate also requested that parties reassess their disclosure obligations in light of this ruling. Parties indeed have an ongoing duty to disclose arguably relevant material in their possession. However, I am also mindful that the Estate made its amendment request less than three months before the start of the hearing, a period that extends over the holidays. These considerations will be taken into account in dealing with disclosure issues.

IV. ORDER

[36] I grant the Estate's amendment requests 2, 3, 6, and 7. I deny the remaining amendment requests.

[37] The complaint is amended to include the following text:

Amendment 2:

Contrary to s. 14.1 and, in the alternative or in addition, s. 5(b) of the CHRA, the Respondent retaliated against the Complainant; to wit:

While they were aware of the outstanding complaints regarding age, the Respondent used the Complainant's recent death as reason to unlawfully single him out and deny a significant court-sanctioned Specific Claim monetary entitlement due the Complainant and hence his Estate (his family);

on the prohibited grounds of age, family status, and marital status.

Amendment 3:

Contrary to ss. 5(b) of the CHRA, the Respondent differentiated adversely against the Estate of the Complainant; to wit:

With the submission of their Statement of Particulars, the Respondent exacerbated the initiating complaint by citing and relying on the death of the Complainant as an attritional precluding factor to potential make-whole remedy prescribed by the Canadian Human Rights Act;

on the prohibited grounds of age, family status, and marital status.

[38] The Estate's SOP is amended to add the following text:

Pursuant to ss. 53(2)(e) of the CHRA, the Estate seeks an order(s) that the Respondent compensate the Complainant the amount of \$5,000.00 for each of Amendments 2 and 3 of the complaint for the pain and suffering caused by the Respondent's discrimination.

Pursuant to s. 53(3) of the CHRA, the Estate seeks an order that the Band compensate the Estate the amount of \$5,000.00 for each of Amendments 2 and 3 of the complaint as the Band has engaged in willful and reckless discrimination during investigation and inquiry.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, Ontario
December 28, 2023

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2903-22

Style of Cause: The Estate of Edward Peters v. Peters First Nation

Ruling of the Tribunal Dated: December 28, 2023

Motion dealt with in writing without appearance of parties.

Written representations by:

Darryl G. Kipp, for the Complainant

Sophia Karantonis, for the Canadian Human Rights Commission

Stan H. Ashcroft, for the Respondent