Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2024 CHRT 25
Date: April 22, 2024
File Nos.: T2021/2214

Between:

Joseph Rainville

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Aboriginal Affairs and Northern Development Canada

Respondent

Ruling

Member: Jennifer Khurana

OVERVIEW

[1] Joseph Rainville is Indigenous and was born in 1946. He applied for registration as an “Indian” under the *Indian Act*, R.S.C. 1985, c. I-5. The Office of the Indian Registrar denied his application because Mr. Rainville did not meet the definition of “Indian” as defined in the *Indian Act* at the time of his application. Mr. Rainville filed a human rights complaint alleging that the criteria for registration under section 6 of the *Indian Act* are discriminatory on the basis of age and sex. The complaint was later amended to add the grounds of family status, and national or ethnic origin.

[2] The Respondent, formerly known as Aboriginal Affairs and Northern Development Canada, wants the Tribunal to dismiss Mr. Rainville’s complaint on a preliminary basis because it says the complaint has no reasonable chance of success. The Respondent submits that section 5 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the “Act”) cannot be used to challenge the criteria for registration found in the *Indian Act* and that the courts are the proper forum for direct challenges to legislation.

[3] The Canadian Human Rights Commission (the “Commission”) agrees that the complaint has no reasonable prospect of success. Mr. Rainville did not respond to the motion to dismiss.

[4] For the reasons that follow, I find that the complaint must be dismissed. It is outside the scope of the Act.

BACKGROUND

[5] The *Indian Act* creates a registration system under which individuals qualify for status as an “Indian” on the basis of an exhaustive list of eligibility criteria. These criteria do not necessarily correspond to the customs of Indigenous communities for determining their own membership or reflect an individual’s Aboriginal identity or heritage (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, at para 4 [*Matson/Andrews (SCC)*]).

[6] Mr. Rainville was born in 1946 and at the time of his birth, neither his maternal grandparents nor his parents had status under the *Indian Act*, despite his mother and maternal grandmother being Indigenous. As a result, Mr. Rainville was not eligible to be registered.

[7] Before 1985, the *Indian Act* stripped women of their *Indian Act* status when they married a man without status. In contrast, men did not lose anything, regardless of whom they married. If a man with status married a woman without status, the woman gained status.

[8] Legislative changes to the *Indian Act* were passed in 1985 and 2011 which restored the status entitlements of some women and their grandchildren who previously lost status through marriage. As a result of those changes, Mr. Rainville's maternal grandmother and mother were entitled to be registered under sections 6(1)(c) and 6(2) of the *Indian Act*. Grandchildren born on or after September 4, 1951, also became eligible for status.

[9] Mr. Rainville applied for registration on May 2, 2011. The Office of the Indian Registrar advised him on July 30, 2012, that he was not entitled to registration because he was born before the 1951 cut-off date set out in the *Indian Act* at the time. Mr. Rainville filed a complaint with the Commission in 2013 alleging that the *Indian Act* discriminates on the basis of age and/or sex. The Commission referred the complaint to the Tribunal in 2014, adding the grounds of family status and national or ethnic origin.

[10] Mr. Rainville's complaint was stayed pending relevant litigation in two other complaints before the Tribunal that also challenged the *Indian Act*. The Tribunal dismissed those complaints and found that section 5 of the Act could not be used to directly challenge discrimination written into federal laws passed by Parliament (*Matson et al v. Indian and Northern Affairs Canada*, 2013 CHRT 13; *Andrews et al v. Indian and Northern Affairs Canada*, 2013 CHRT 21 [known together as *Matson/Andrews (CHRT)*]). In other words, lawmaking is not a "service" within the meaning of the Act, and challenges to federal laws must be made in the courts. The Commission sought judicial review of the decisions, which were upheld by the Federal Court (*Canada (Human Rights Commission) v. Canada (Attorney General)*, 2015 FC 398), the Federal Court of Appeal (*Canada (Human Rights*

Commission) v. Canada (Attorney General), 2016 FCA 200), and ultimately upheld by the Supreme Court of Canada (*Matson/Andrews (SCC)*).

[11] The Tribunal wrote to the parties after the Supreme Court of Canada released its decision upholding the Tribunal's findings in *Matson/Andrews (CHRT)*. The Respondent argued that the complaint is beyond the scope of the Tribunal's jurisdiction. The Commission agreed that challenges to legislation must be pursued in the court system. It says that Mr. Rainville, like the parties in Matson/Andrews, is challenging discriminatory impacts flowing from the application of mandatory and unambiguous eligibility criteria that is written into federal legislation. Those challenges are outside the scope of the Act.

[12] The Respondent filed this motion requesting that the Tribunal dismiss the complaint.

ISSUES

[13] I must decide whether Mr. Rainville's complaint is within the scope of section 5 of the Act or whether it should be dismissed as it has no reasonable prospect of success. I am not determining whether the legislation was discriminatory or whether it was unfair.

[14] To decide whether the Tribunal has the jurisdiction to hear the complaint, I must answer the following questions:

1. **Does Mr.°Rainville challenge legislation? If so, does he also allege discrimination in how a service was provided?**
2. **If the complaint is a challenge to legislation only, does it fall within section 5 of the Act?**

REASONS

[15] The Tribunal is the master of its own procedure and has the authority to determine the process to be followed in deciding the issues raised by a human rights complaint. It does not always have to hold a full evidentiary hearing in relation to each and every issue raised by a complaint to decide substantive issues coming before it (*Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 at para 119 [*First Nations Child and Family Caring Society*]). The nature of the procedure to secure the just, fair and

expeditious determination of each complaint coming before the Tribunal may vary from case to case, depending on the type of issues involved (*First Nations Child and Family Caring Society* at para 128).

[16] The Tribunal may consider and grant preliminary motions to dismiss cases but must do so in a procedurally fair manner, cautiously and only in the clearest of cases (*First Nations Child and Family Caring Society* at paras 132 and 140).

[17] In my view, this is a situation where it is appropriate for the Tribunal to decide this discrete threshold question on a preliminary basis. The parties were given the opportunity to file motion materials and submissions. It is not a situation where issues of fact and law are complex and intermingled (*First Nations Child and Family Caring Society* at paras 142-143) such that it would be more efficient to proceed to a full hearing on the merits.

1. Does Mr. Rainville challenge legislation? If so, does he also allege discrimination in how a service was provided?

[18] Yes. Mr. Rainville challenged the criteria for registration as an "Indian" under section 6 of the *Indian Act*. The source of the alleged discrimination is the definition of "Indian" and the registration criteria under section 6 of the *Indian Act*.

[19] In other words, the complaint is directed at the non-discretionary criteria set out in the legislation itself. Mr. Rainville does not allege that the Office of the Indian Registrar processing his application for registration behaved in a discriminatory way in its administration of the legislation.

2. If the complaint is a challenge to legislation only, does it fall within section 5 of the Act?

[20] No. It is settled law that section 5 of the Act cannot be used to support a direct challenge to legislation. Section 5 of the Act requires that services customarily available to the general public be provided in a non-discriminatory manner (*Beattie v. Aboriginal Affairs and Northern Development Canada*, 2014 CHRT 1 at para 102 [*Beattie*]). However, lawmaking is not a service customarily offered to the public, and legislation does not in and

of itself constitute a “service” (*Matson/Andrews (SCC),* at paras 57-62). The proper forum to bring challenges to legislation is by way of a constitutional challenge before the courts.

[21] In certain cases where government officials have discretion in implementing legislation, or where legislation is ambiguous and open to multiple interpretations, a case may well fall within the scope of the Act (*Beattie* at paras 99 and 102).

[22] But that is not the situation here. Mr. Rainville is challenging the unambiguous eligibility criteria written into the legislation. The Respondent’s employees had no discretion to register Mr. Rainville according to the wording of the *Indian Act* at the time. Nor is it a situation where the Respondent’s officials could have interpreted the cut-off date provision in another way.

[23] Considering the jurisprudence and the nature of the complaints, I accept the Respondent’s and the Commission’s submissions that the complaint has no reasonable prospect of success and must be dismissed. The complaint does not challenge the way a service was provided and only targets the legislation itself as discriminatory. It is outside the Tribunal’s jurisdiction to decide, and I am barred from proceeding.

[24] Although I have dismissed the complaint, as the Commission submits, since the time the Respondent filed its motion to dismiss, amendments to the *Indian Act* removed the 1951 cut-off date and granted entitlements to all individuals born before April 1985 who are directly descended from women who previously lost status due to marriage. The Respondent advised the Tribunal that Mr. Rainville has since been registered under the *Indian Act*.

ORDER

[25] The Respondent’s motion is allowed. The complaint is dismissed.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
April 22, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2021/2214

Style of Cause: Joseph Rainville v. Aboriginal Affairs and Norther Development Canada

Ruling of the Tribunal Dated: April 22, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Brian Smith, for the Canadian Human Rights Commission

Michael Beggs, for the Respondent