

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**Between:**

**Cam-Linh (Holly) Tran**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canada Revenue Agency**

**Respondent**

**Ruling**

**Member:** Edward P. Lustig

**Date:** November 24, 2010

**Citation:** 2010 CHRT 31

[1] This is a Ruling on the motion of the Complainant to amend her Complaint by adding additional prohibited grounds of discrimination and a discriminatory practice to her Complaint.

[2] In August 2004, the Complainant applied for a position as a client services agent at Canada Revenue Agency's Vancouver Tax Services Office. In her application, the Complainant provided her phone number, email address and residential address to the Respondent.

[3] On June 28, 2005, the Complainant was accepted into a large pool of applicants who were determined qualified for the job.

[4] Subsequently, the Respondent attempted to reach the Complainant by telephone, using the original contact information, to offer her the job. However, the Complainant by then had a new phone number, new email address and the same residential address and she could not be reached using the phone number from the original contact information.

[5] The pool of qualified applicants expired June 27, 2007.

[6] In September 2007, the Complainant wrote a letter to Rod Quiney, Regional Assistant Commissioner (Pacific Region) for the Respondent, asking him to hire her directly for a similar position in Victoria. In her letter, the Complainant described her complaint that the Respondent should have used the new phone and e-mail contact information, but she did not mention any other complaints.

[7] In October 2007, Mr. Quiney replied to the Complainant's letter, refusing her request that he hire her. He gave several reasons for his refusal including the fact that the job she had qualified for was at the Vancouver office and that the pool that she was placed in had expired.

[8] On June 10, 2008, the Complainant filed a complaint with the Canadian Human Rights Commission (the "Commission") against the Respondent alleging discrimination related to employment on the prohibited ground of family status and, as well, alleged retaliation. The

Complaint alleges that the discriminatory conduct took place in Vancouver from September 2005 to October 29, 2007.

[9] The Complaint alleges that the Respondent failed to hire the Complainant because of her relationship to her brother-in-law Chris Hughes who represents her in this matter and because of retaliation for a previous human rights complaint she filed against the Respondent. The Complaint alleges that Chris Hughes is known to several of the Respondent's managers, including Rod Quiney, because Hughes has filed an Internal Affairs complaint (involving the Complainant in part), civil suits, human rights complaints, Federal Court challenges, grievances and Labour Relations Board complaints against the Respondent and "was a documented whistle blower and was CRA 's no 1 enemy".

[10] On December 12, 2009, the Complainant sent a second Complaint Form to the Commission (the "Amended Complaint"). The Amended Complaint was identical to the original Complaint Form except for two extra paragraphs at the end, which (1) alleged that the investigation revealed unintentional discrimination in the Respondent's method of keeping, updating and using contact information and (2) stated that the Complainant "self-identified as a 'visible minority ', provided a passport that showed Vietnam as place of birth, she is Chinese ethnically and has 'yellow'/asian skin colour". The Amended Complaint requested that the Commission investigate this file "under the additional grounds of national or ethnic origin, race, colour and section 10 (a) in addition to the current family status and retaliation".

[11] After receiving the Amended Complaint, Commission Investigator Dean Steacy allegedly told the Complainant's representative (Chris Hughes) that the Amended Complaint would be "untimely" and would cause a "long delay in the file".

[12] On February 25, 2010, Mr. Hughes, on behalf of the Complainant, withdrew the Amended Complaint.

[13] On July 16, 2010 the Commission referred the original Complaint to the Tribunal for an inquiry pursuant to paragraph 44 (3) (a) of the *Canadian Human Rights Act* (the "CHRA"). The Amended Complaint was not part of the referral.

[14] In her Notice of Motion the Complainant states that:

Now that the file is with the Tribunal we ask that the Tribunal grant this motion to add the following grounds, in addition to the current grounds of 'family status' and 'retaliation':

Sex (female), national or ethnic origin, race, colour as the complaint is female, Chinese/Asian born in Vietnam;  
and section 10 (a) due to the respondent's hiring practices and policies that prevented fully qualified female, visible minority from receiving a job offer.

[15] The Complainant's submissions, in support of her motion dated September 16, 2010, and in reply to the Respondent's submissions, dated October 24, 2010 in summary, are as follows:

- a) The Tribunal has the discretion to amend a complaint to deal with additional grounds of discrimination and additional allegations provided that the substance of the original complaint is respected and that sufficient notice has been given to the Respondent to enable it to properly defend itself.
- b) The Complainant is not adding any new "events" but is only adding grounds of discrimination to the original Complaint.
- c) The Commission was in error in advising the Complainant that her request for an amendment to the Complaint was "untimely".
- d) The substance of the original Complaint is being respected as the additional grounds can be derived from information that was provided by the Complainant in her job application and from the original Complaint.

- e) The Respondent is not prejudiced by the proposed additional grounds of discrimination.

The Complainant withdrew "ethnic origin" as an additional ground in her reply to the Respondent's submissions.

[16] The Respondent's submissions dated October 15, 2010, in reply to the Complainant's motion, in summary, are as follows:

- a) The proposed amendment does not disclose the substance of the allegations.
- b) The Tribunal's jurisdiction does not permit it to consider new complaints.
- c) The amendment fundamentally alters the allegations and constitutes a "new" complaint.
- d) The purpose of adding new allegations is not fulfilled in the present case.
- e) Allowing the amendment would prejudice the Respondent.

[17] The facts set out in the original Complaint are summarized in paragraph 9 herein. These are the facts that were investigated and reported on by the Commission that gave rise to the referral by the Commission to this Tribunal for an inquiry as described in paragraph 13 herein. It is not possible, in my view, to derive any logical connection or *nexus* from these facts to the allegations of the additional prohibited grounds of discrimination and the additional discriminatory practice proposed by the Complainant to be added by this motion, as described in the Amended Complaint in paragraph 10 herein and the Notice of Motion in paragraph 14 herein. Without such a connection or *nexus*, there is no statutory authority for the referral to occur under paragraph 44 (3) (a) of the *CHRA* with respect to the proposed amendment, since that is how the Tribunal obtains jurisdiction for the inquiry. Where a proposed new ground is no "mere

amendment" but in fact is a substantially new Complaint, as in my view is the case here, the Commission cannot be said to have requested the inquiry and the Tribunal has no jurisdiction to proceed. *Canada (Attorney General) v. Canada (Canadian Human Rights Commission)*, [1991] F.C.J. No. 334 [Q.L.], 43 F.T.R.

For this reason, the Tribunal has correctly established the following limitation on amendments:

The Commission must have considered the essential situation that forms the subject-matter of the inquiry, when it referred the Complaint to the Tribunal. This places certain limits on amendments, which must have their pedigree in the circumstances that were put before the Commission. *Gaucher v. Canadian Armed Forces*, 2005 CHRT 1

[18] A Complaint will be considered "new" were it bears no factual, logical or other connection with the original Complaint as is the case here with respect to the proposed amendment. As the proposed amendment introduces a new Complaint that was neither considered by the Commission nor referred to the Tribunal it exceeds the Tribunal's jurisdiction and must be denied.

[19] For these reasons, the motion to amend is dismissed.

*Signed by*

Edward P. Lustig  
Tribunal Member

Ottawa, Ontario  
November 24, 2010

**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T1486/3210

**Style of Cause:** Cam-Linh (Holly) Tran v. Canada Revenue Agency

**Ruling of the Tribunal Dated:** November 24, 2010

**Appearances:**

Chris Hughes, for the Complainant

No one appearing, for the Canadian Human Rights Commission

Sally Rudolf, for the Respondent