

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

KAREN SCHUYLER

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ONEIDA NATION OF THE THAMES

Respondent

RULING ON THE CONSOLIDATION OF COMPLAINTS

MEMBER: Athanasios D. Hadjis

2005 CHRT 10

2005/02/17

[1] This ruling relates to a request by the Canadian Human Rights Commission ("Commission") to have the Tribunal conduct one hearing to inquire into the Complainant's two human rights complaints against the same respondent. Her first complaint, which I will refer to as the "Disability Complaint" (Commission File Number 20020557), was filed on July 31, 2002. Her second complaint, which I will refer to as the "Retaliation Complaint" (Commission File Number 20031212), was filed on January 20, 2004.

[2] The Complainant alleges in her Disability Complaint that her employer, the Respondent, discriminated against her on the ground of her disability in contravention of s. 7 of the *Act*. She claims that the Respondent refused to accommodate her when she returned to work after having undergone surgery and other treatments for colon cancer.

[3] In the Retaliation Complaint, the Complainant alleges that the Respondent retaliated against her because she filed the Disability Complaint. She sets out a list of 30 incidents that she claims constitute retaliation. She submits that this conduct diminished her authority at work, hindered her ability to effectively carry out her duties, and negatively affected her credibility with staff and managers under her supervision. The final listed incident of retaliation is the dismissal from her job, which occurred on September 2, 2003.

[4] The Commission referred the Disability Complaint to the Tribunal on August 19, 2004. The Retaliation Complaint was referred on December 20, 2004, and was accompanied by a letter from the Chief Commissioner requesting that the Retaliation Complaint be consolidated with the Disability Complaint, as the Commission "was satisfied" that the two complaints "involve substantially the same issues of fact and law". On January 20, 2005, the Respondent notified the parties and the Tribunal that it objected to the consolidation of the two complaints, disagreeing with the Commission's position that similar issues are involved in both cases.

[5] There is no specific provision in the *Act* regarding the power of the Tribunal to join complaints where the parties to each complaint are the same. Section 40 (4) provides that

the Commission may request the Chairperson of the Tribunal to institute a single inquiry in situations where two or more complainants have each filed separate complaints against the same respondent. This is not the case here. However, as was noted by the Tribunal in *Lattey v. C.P.R. and M. Douglas* (February 25, 2002), T685/7301 and T686/7401 (C.H.R.T.) at para. 12, the issue of whether to hold a single hearing or multiple hearings into complaints is, in the absence of any specific statutory direction, a procedural matter that the Tribunal has the authority to address as master of its own procedure.

[6] The Respondent submits that the Tribunal should refuse to hear both complaints in one hearing, since the issues being dealt with in each are substantially different. It is argued that while the Disability Complaint relates to an alleged failure to accommodate, the Retaliation Complaint concerns the termination of the Complainant's employment. The Respondent notes that the Complainant has filed an unjust dismissal complaint pursuant to the *Canada Labour Code*, which will be heard before an adjudicator within the next few months.

[7] I do not agree with the Respondent's submission. The Retaliation Complaint deals with significantly more events than just the termination of her employment. The Complainant specifically alleges that all of the incidents detailed in the complaint, including her dismissal, constitute retaliation against her for having filed the Disability Complaint. The issue raised is not so much whether her dismissal was unjust but rather whether retaliation against the filing of the Disability Complaint constituted at least one of the factors in the alleged conduct against her, in violation of s. 14.1 of the *Act*. This is precisely the form of discrimination contemplated by this provision.

[8] The Tribunal has had occasion in the past to rule on whether to allow the amendment of an existing complaint of discrimination in order to add a claim of retaliation under s. 14.1 (see e.g. *Kavanagh v. Correctional Services of Canada* (May 31, 1999), T505/2298 (C.H.R.T.); *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 2; *Blondin v. Purolator Courier Ltd.*, 2005 CHRT 7). It has been observed in these cases that it makes sense for evidence of acts made in reprisal to an existing human rights complaint, to be heard within the context of the hearing into that complaint. Before granting such amendments, however, the Tribunal should be satisfied that the respondent is not prejudiced by a lack of sufficient notice of the new allegations. The respondent must be given the chance to properly defend itself.

[9] These notions can certainly be extended to the present situation. The allegations set out in the Retaliation Complaint are hardly new to the Respondent - the complaint was filed over a year ago. It has not been demonstrated to me how the joinder at this stage of two separate yet connected pre-existing complaints could potentially prejudice the Respondent in the presentation of its case. If anything, avoiding a multiplicity of proceedings would appear to be in the common interest of all parties, including the Respondent.

[10] The Respondent has raised an additional submission, which relates to the Commission's authority, pursuant to s. 41 (1) b) of the *Act*, to refuse to deal with a complaint that could be more appropriately dealt with by another legal procedure. The Respondent takes issue with the Commission's decision to not exercise this authority and refuse to deal with the Retaliation Complaint, in light of the Complainant's pending *Canada Labour Code* complaint. The Respondent is in effect seeking a review of the Commission's conduct with regard to the Retaliation Complaint. However, this is a

matter that falls within the exclusive purview of the Federal Court, not the Tribunal (see *Eyerley v. Seaspan International Ltd.*, (August 2, 2000), T565/2300 (C.H.R.T.) at para. 4). I cannot therefore address this submission.

[11] For the above reasons, the Commission's request to consolidate the Disability Complaint and the Retaliation Complaint is granted. The Tribunal will conduct one hearing to inquire into the two complaints.

Signed by _____

Athanasios D. Hadjis

OTTAWA, Ontario

February 17, 2005

PARTIES OF RECORD

TRIBUNAL FILE NOS: T980/10004 and T1014/13404
STYLE OF CAUSE: Karen Schuyler v. Oneida Nation of the Thames

RULING OF THE TRIBUNAL DATED: February 17, 2005

APPEARANCES:
Karen Schuyler On her own behalf
Daniel Pagowski On behalf of the Canadian Human Rights Commission
John C. Peters On behalf of the Respondent