

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Stacy Lee Tabor

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Millbrook First Nation

Respondent

Ruling

File No(s): T1658/1311 & T1659/1411

Member: Sophie Marchildon

Date: July 23, 2014

Citation: 2014 CHRT 21

I. Complaint & Motion to Dismiss

[1] The Complainant alleges the Respondent has engaged in discriminatory practices, on the grounds of sex and marital status, pursuant to sections 7 and 10 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [the *Act*]. She also claims the Respondent has retaliated against her for having filed her first complaint, pursuant to section 14.1 of the *Act*.

[2] Prior to the hearing of this matter, the Respondent brings a motion to dismiss the complaint on the basis of the former section 67 of the *Act*, which provided as follows:

Nothing in this Act affects any provision of the *Indian Act* or any provision made under or pursuant to that Act.

[3] Although section 67 was repealed by *An Act to Amend the Canadian Human Rights Act*, S.C. 2008, c. 30, the provision was still in force when the complaint was filed on May 21, 2008.

[4] The Respondent's motion to dismiss is the subject of the present ruling.

II. Ruling

[5] At the Complainant and Commission's request, and in order to avoid unnecessary costs to the parties, I have carefully reviewed the submissions of the parties and supporting case law in an attempt to rule on this motion prior to the hearing. However, at this time, I find I do not have sufficient information to make a determination on the application of section 67 to the allegations in this case.

[6] While the Tribunal has the power to consider motions to dismiss complaints brought in advance of a full hearing on the merits, and dismiss the complaint if appropriate, that power needs to be exercised cautiously and only in the clearest of cases (see *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445, at para. 140). That is because the Tribunal must be fair to each party and, as stated in section 50(1) of the *Act*, provide each of the

parties a full and ample opportunity to appear before the Tribunal, present evidence and make representations.

[7] In my view, in order to properly make a determination on the connection between the impugned decisions and actions alleged in the complaint and the provisions of the *Indian Act* requiring or permitting those impugned decisions or actions, I will need to hear evidence and make findings of fact. I believe this is best achieved by proceeding with a full hearing of the merits of the complaint.

[8] Proceeding to a hearing and determining the section 67 motion afterwards is the same approach the Tribunal took in *Malec v. Conseil des Montagnais de Natashquan*, 2009 CHRT 9. Moreover, I am unaware of a decision by the Tribunal where section 67 was applied to dismiss a complaint prior to a hearing on the merits.

[9] Therefore, pursuant to Rule 3(2)(c) of the Tribunal's *Rules of Procedure (03-05-04)*, I will wait to make a decision on the Respondent's motion to dismiss until after the hearing.

[10] As part of the hearing, the parties can bring evidence in support of the motion. The parties can then provide arguments on the motion as part of their final arguments. I would then render a decision on the motion as part of the final decision in this matter.

[11] Prior to tomorrow's case management conference call, the parties are asked to seek instructions from their clients on any issues that may arise from this ruling in terms of moving forward with the hearing.

Signed by

Sophie Marchildon
Administrative Judge

Ottawa, Ontario
July 23, 2014