

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**Between:**

**Stacey Lee Tabor**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Millbrook First Nation**

**Respondent**

**Ruling**

**Member:** Sophie Marchildon

**Date:** April 10, 2013

**Citation:** 2013 CHRT 9

[1] On March 7, 2011, pursuant to paragraph 44(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [the *Act*], the Canadian Human Rights Commission (“the Commission”) requested the Chairperson of the Canadian Human Rights Tribunal (“the Tribunal”) to institute an inquiry into two complaints by Stacey Lee Tabor (“the Complainant”) against the Millbrook First Nation (“the Respondent”).

[2] In her first complaint, filed with the Commission on May 21, 2008, the Complainant alleges the Respondent engaged in discriminatory practices under sections 7 and 10 of the *Act* on the grounds of sex and marital status. In her second complaint, filed with the Commission on January 16, 2009, the Complainant alleges the Respondent retaliated against her for having filed her first complaint, pursuant to section 14.1 of the *Act*.

[3] During a case management conference call held on February 25, 2013, counsel for the Complainant advised of his intention to file a motion to amend the complaints to add further allegations of retaliation. That motion is the subject of the present ruling.

## **I. Amending Complaints**

[4] It is well established that the Tribunal has the authority to amend complaints “...for the purpose of determining the real questions in controversy between the parties” (*Canderel Ltd. v. Canada*, [1994] 1 FC 3 (FCA); cited in *Canada (Attorney General) v. Parent*, 2006 FC 1313 at para. 30). In determining whether to allow an amendment, the Tribunal does not embark on a substantive review of the merits of the proposed amendment. Rather, as a general rule, an amendment is granted unless it is plain and obvious that the allegations in the amendment sought could not possibly succeed (see *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 2 at para. 6 [*Bressette*]; and, *Virk v. Bell Canada*, 2004 CHRT 10 at para. 7 [*Virk*]).

[5] That said, an amendment cannot introduce a substantially new complaint, as this would bypass the referral process mandated by the *Act* (see *Gaucher v. Canadian Armed Forces*, 2005 CHRT 1 at paras. 7-9; and, *Cook v. Onion Lake First Nation*, 2002 CanLII 45929 (CHRT) at

para. 11). The proposed amendment must be linked, at least by the complainant, to the allegations giving rise to the original complaint (see *Virk* at para. 7; and, *Cam-Linh (Holly) Tran v. Canada Revenue Agency*, 2010 CHRT 31 at paras. 17-18; and, *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2012 CHRT 24 at para. 16 [*FNCFCS et al.*]).

[6] Furthermore, the issue of prejudice must be considered when an amendment is proposed. An amendment cannot be granted "...if it results in a prejudice to the other party" (*Parent* at para. 40).

## **II. Ruling**

[7] The Complainant alleges that a number of retaliatory actions have been taken against her and her family since the filing of her complaint with the Commission in 2008. In sum, she alleges: her family's eligibility for benefits through the Respondent's social assistance program has been improperly assessed; the Respondent has pursued an unfounded welfare fraud case against her and has resisted efforts to resolve the matter; the Respondent has denied her and her son the benefit of her late father's home on the Millbrook First Nation reserve; and, that she and her husband have encountered significant difficulty accessing funding that should have been available to them to upgrade their job qualifications. The Complainant claims that these problems only started happening after she filed her complaint in 2008.

[8] In support of her allegations of further retaliation on behalf of the Respondent, the Complainant has provided a factual outline of the events giving rise to her additional allegations and has brought forward documentation to support those allegations. Among other things, the Complainant alleges that issues with the assessment of her family's social assistance benefits and denial of her husband's social benefits by the Respondent, have been ongoing since 2008, which timeframe corresponds with the filing of her initial complaint. All her additional allegations are against the same Respondent as in her initial complaint and she believes the alleged retaliatory conduct to be linked to the filing of that initial complaint. On this basis, the Complainant has

presented a tenable claim of retaliation, has linked it to the allegations giving rise to her original complaint, and it is not plain and obvious that the allegations could not possibly succeed.

[9] The Respondent argues the Complainant, in bringing forth her additional allegations of retaliation, did not clearly set out the relief sought or the grounds relied upon, pursuant to Rule 3(1)(c) of the Tribunal's *Rules of Procedure* (03-05-04). However, the Complainant submits that the relief sought is already set out in the original complaint and the additional allegations of retaliation are intended to strengthen her claim for remedies. According to the Commission, the sole question to be determined on this motion is whether the complaint should be amended to allow the addition of a second retaliation complaint.

[10] The relief sought by the Complainant in the context of the present motion was made clear during the case management conference call held on February 25, 2013: to amend the complaints to add further allegations of retaliation. Consequently, pursuant to a written submissions schedule, the Complainant provided the grounds for her request for the amendment on February 28, 2013. The Respondent provided its response thereto on March 6, 2013. The Complainant provided her reply on March 11 and 15, 2013; and, the Commission provided its submissions on March 21, 2013. In response to further correspondence on March 19, 2013, the Tribunal also provided the Respondent with the opportunity to provide additional submissions in regards to the motion to amend the complaint, specifying that the merits of the additional allegations of retaliation would be best addressed at the hearing if the motion to amend the complaint is granted. Therefore, through the case management conference call and the written submissions of the other parties, the Respondent was made aware of the relief sought and the grounds for the Complainant's motion to amend. It also had a full and ample opportunity to respond thereto. There is no prejudice to the Respondent in this regard.

[11] The Respondent also submits that, rather than being permitted to amend her complaint, the Complainant should be required to follow the complaints procedure outlined at section 40 of the *Act* and file a separate retaliation complaint with the Commission. According to the Respondent, the Commission's complaint vetting process includes procedural steps that could

end the matter before it reaches the Tribunal stage; and, the Respondent should not be deprived the benefit of these procedural steps. On the other hand, the Commission points to the possibility that, if the amendment is not granted, a separate hearing may have to be held in the future to address the retaliation allegations. According to the Commission, this would thwart the administration of justice and the principle of judicial economy. The Commission adds that, in any event, the Respondent will not be prejudiced by the amendment as it will have ample opportunity to respond to the allegations of retaliation before the Tribunal.

[12] In the context of a motion to amend a complaint to add allegations of retaliation, the Tribunal has previously stated that “[i]t should not be necessary for individuals to make allegations of reprisal or retaliation arising after a complaint, by way of separate proceedings” (*Bressette* at para. 6). As the Ontario Board of Inquiry stated in *Entrop v. Imperial Oil Ltd.* (*No. 3*), (1994) 23 C.H.R.R. D/186, at paragraph 9:

It would be impractical, inefficient and unfair to require individuals to make allegations of reprisals only through the format of separate proceedings. This would necessitate their going to the end of the queue to obtain investigation, conciliation and adjudication on matters which are fundamentally related to proceedings already underway. Insofar as reprisals are intended to intimidate or coerce complainants from seeking to enforce their rights under the *Code*, this would thwart the integrity of the initial proceedings, and make a mockery of the *Code*'s obvious intent to safeguard complainants from adverse consequences for claiming protection under the *Code*.

[13] Therefore, “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” (*Karen Schuyler v. Oneida Nation of the Thames*, 2005 CHRT 10 at para. 8; see also *FNCFCs et al.* at para. 16).

[14] While the Respondent may not receive the benefit of an investigation and report from the Commission regarding the Complainant's additional allegations of retaliation, it will nonetheless be given a full and ample opportunity to respond to those allegations. Any prejudice in this regard can be addressed through the filing of amended Statements of Particulars by the

Respondent, in response to the Complainant's amended Statement of Particulars. This will also provide the Respondent with an opportunity to address any of the Complainant's allegations that it claims are not clear, are difficult to follow or relate to alleged treatment of persons other than the Complainant.

[15] For the foregoing reasons, the motion to amend the complaint is granted. The parties are directed to file amended Statements of Particulars pursuant to a schedule that will be established during the upcoming case management conference call on April 12, 2013.

*Signed by*

Sophie Marchildon  
Administrative Judge

OTTAWA, Ontario  
April 10, 2013

# **Canadian Human Rights Tribunal**

## **Parties of Record**

**Tribunal File:** T1658/1311 & T1659/1411

**Style of Cause:** Stacey Lee Tabor v. Millbrook First Nation

**Ruling of the Tribunal Dated:** April 10, 2013

### **Appearances:**

Gary A. Richard, for the Complainant

Sarah Pentney, for the Canadian Human Rights Commission

Ellen R. Sampson, for the Respondent