

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Deborah P. Labelle

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Rogers Communications Inc.

Respondent

Ruling

Member: Susheel Gupta

Date: February 29, 2012

Citation: 2012 CHRT 4

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[1] The complaint in this matter was filed by the Complainant, Deborah P. Labelle, on September 3, 2009, with the Canadian Human Rights Commission (the “Commission”). On March 2, 2011, the Commission, pursuant to s. 44 (3) (a) of the *Canadian Human Rights Act* (the “CHRA”), requested the Canadian Human Rights Tribunal (the "Tribunal") to institute an inquiry into the complaint. The Complainant alleges that the Respondent, Rogers Communications Inc., discriminated against her, on the grounds of sex, by treating her in a different manner as compared to other male employees and, ultimately, terminating her employment, contrary to s. 7 of the CHRA.

[2] This is a ruling concerning a Motion filed by the Respondent dated September 15, 2011, seeking an order dismissing the complaint. The Respondent’s grounds for the motion are that the Complainant failed to comply with her disclosure obligations, that she repeatedly failed to comply with the Tribunal’s Rules and procedures and that both the Tribunal and the Respondent have been frustrated in their efforts to move this case forward due to the willful and deliberate conduct of the Complainant. The Respondent alleges that unless the complaint is dismissed there will be an abuse of process.

[3] For the reasons given below, I am granting the Respondent's motion and dismissing the complaint.

I. Factual Background

A. Correspondence and Communications History

[4] On April 8, 2011, the Commission informed the Tribunal and the Parties that it would not be participating at the hearing into the merits of this complaint. However, the Commission’s letter provided the name and contact information of the Legal Counsel at the Commission assigned to this case should the Complainant have any questions.

[5] In keeping with the Tribunal's practice with regard to all complaints, the Tribunal offered the parties the opportunity to voluntarily attend a mediation session organized by the Tribunal. A

"mediation questionnaire" in this regard was sent to the parties by the Tribunal on April 12, 2011 (Letter No. 1). The parties were asked to reply by April 26, 2011.

[6] On April 19, 2011, the Commission wrote to the Tribunal indicating that it was prepared to participate in mediation. On April 20, 2011, the Respondents' Counsel wrote to the Tribunal indicating that their client did not wish to participate in mediation. The Tribunal did not receive anything from the Complainant.

[7] The courier service's Tracking History shows that the courier attempted delivery to the Complainant on April 14, 2011. On April 19, 2011, the courier service attempted delivery again and a "Final Notice" card was left at the Complainant's address wherein it notified the Complainant that the "Item will be returned to sender if not collected within 10 days." The letter was ultimately returned to the Tribunal.

[8] It should be noted that the Tribunal generally utilizes a courier service and registered mail wherein a signature is required by or on behalf of the named recipient. This is so the Tribunal has some proof of receipt of their mailed communications.

[9] The Tribunal's mediation is a voluntary regime; all Parties must consent in order for a "mediation" to be held. The Respondent's decision to proceed to a hearing, without mediation, rendered the Complainant's lack of a response moot. The Tribunal therefore proceeded to the next phase of setting out the dates for the disclosure and filing of documents for all Parties in preparation for a hearing into the complaint.

[10] On April 28, 2011, by courier, the Tribunal wrote to the Parties setting out the schedule for the submission of their respective statement of particulars and documentary disclosure, pursuant to Rule 6 of the Tribunal's *Rules of Procedure* (Letter No. 2). This was the first time a schedule of dates/deadlines was set by the Tribunal. The letter is a standard letter, explaining in detail, what is required as part of disclosure to be provided to the opposing party, including: what

is required to be in the Statement of Particulars, what the proposed remedies are, lists of documentary evidence/exhibits, lists of witnesses and witness statements, including experts and detailed calculation of wage loss.

[11] The dates set for this submission for each Party were as follows:

- i. Canadian Human Rights Commission: May 10, 2011
- ii. Complainant, Ms. Labelle: May 24, 2011
- iii. Respondent, Rogers Communications Inc.: June 14, 2011
- iv. Complainant's Reply : June 21, 2011

[12] The letter stated if any assistance was required, the Parties could contact the Tribunal's Registry Officer; with the name and contact information of the Registry Officer assigned to this file provided.

[13] Letter No. 2 to the Complainant was returned to the Tribunal, marked "return to sender". While there is no record in the file of what specific date the letter was received at the Tribunal or the Tracking History of the letter, the Tribunal's file does indicate that the Registry Officer spoke to the Complainant, after the letter was returned to the Tribunal, at which point the Complainant indicated that she had received a Notice Card from Canada Post to go pick up a letter. The Complainant further indicated that she did not have time to pick up the letter and that Canada Post must have sent it back to the Tribunal.

[14] On May 17, 2011, the Tribunal made a second attempt to provide the Complainant with the letter. The Tribunal's file indicates that the courier service made its first attempted delivery on May 19, 2011. A Notice Card was left behind at the Complainant's address indicating that a letter was available for pick-up at the post office. On May 25, 2011, the courier service left a Final Notice card indicating that the letter at the post office would be available for pick-up and

would be returned to sender if not picked up within 10 days. The Tracking History indicates that the letter was signed for and picked up by Ms. Labelle on June 2, 2011.

[15] What remains unclear in the Tribunal file is which letter this was that the Complainant had received, i.e. whether it was the Tribunal's Letter No. 1, or Letter No. 2 that was resent to the Complainant.

[16] On May 24, 2011, by courier, the Tribunal sent a third letter (Letter No. 3) to all Parties setting out a new schedule for disclosure upon all Parties. The reason for the amended schedule, as stated in the letter, was that: "... due to an error not all parties were in receipt of the original letter dated April 28, 2011. Please be advised that in the interests of fairness to all parties, new dates of disclosure are included in this letter."

[17] The new dates set for disclosure and filing by each Party were as follows:

- i. Canadian Human Rights Commission: June 3, 2011
- ii. Complainant, Ms. Labelle: June 17, 2011
- iii. Respondent, Rogers Communications Inc.: July 8, 2011
- iv. Complainant's Reply : July 15, 2011

[18] The Commission filed their disclosure materials on May 31, 2011.

[19] Letter No. 3 to the Complainant was again returned to the Tribunal by the courier service utilized. On July 3, 2011, the letter was sent back to the Tribunal because it had not been picked up, and was ultimately received by the Tribunal on July 7, 2011.

[20] On June 27, 2011, 10 days after the Complainant's disclosure obligations were required to be fulfilled, the Respondent wrote to the Tribunal indicating that the Complainant had failed to comply with her disclosure obligations and requested that the Tribunal dismiss the complaint.

[21] The Tribunal Registry attempted to reach the Complainant during the weeks of June 27 and July 4, 2011, without any success. The Registry Officer left voicemail messages at the Complainant's home telephone number and mobile phone number requesting that the Complainant contact the Tribunal Registry with regards to her file.

[22] On July 6, 2011, the Tribunal sent another letter (Letter No. 4), by courier, to the Complainant referring to Letter No. 3, indicating that the "written particulars" which were due on June 17, 2011, had not been received. The Tribunal, once again, set a new date for the Complainant of July 12, 2011 to comply with her disclosure and related documentary obligations.

[23] On July 7, the Tribunal Registry called and spoke to the Complainant Ms. Labelle wherein the Complainant was advised that the Tribunal had received Letter No. 3 "return to sender". The Complainant explained that the reason for this was that she was not at home during the day and thus, could not sign for any couriered mail. The Complainant requested that all future communications be made by Regular Mail, left in her mailbox, to which the Tribunal Registry agreed.

[24] Further, during this conversation, the Complainant was informed of the Respondent's Motion to Dismiss due to the failure of the Complainant in filing her Statement of Particulars and other disclosure requirements under the Tribunal's *Rules of Procedure* in response to which the Complainant ended her participation on the phone call.

[25] On July 12, 2011, the Tribunal had still not received the Complainant's documentary disclosure. The Tribunal Registry Officer received a voicemail message wherein the

Complainant indicated she had received Letter No. 4 requesting the Complainant's documentary disclosure "and is very upset about it and feels that this whole process is a joke and would like to speak to the Registry Officer's supervisor to express her disgust with human rights."

[26] On or around July 12, 2011¹, the Respondent's Counsel contacted the Tribunal Registry by telephone, indicating their dissatisfaction with the fact that the Complainant had been given yet another extension of time (which was provided in Letter No. 4), but the Respondent had not been granted a similar extension. The Registry Officer explained that the previous letters sent by the Tribunal to the Complainant had all been returned to the Tribunal marked as "return to sender", and therefore the Complainant had not received the previous letters. Further, the Registry Officer indicated that Letter No. 4 could be disregarded and that a new letter with new dates for all parties would be sent out to all Parties.

[27] On July 12, 2011, in light of the new information that Letter No. 3 to the Complainant from the Tribunal had been returned to the Tribunal, a new letter (dated July 11, 2011 (Letter No. 5)) with a new set of disclosure dates was sent to all Parties. The letter stated that "due to recent issues with mailing and the Complainant not being in receipt of previous letters from the Tribunal, the Tribunal is amending all filing deadlines and further extending deadlines for all parties.". This marked the third time that a schedule/deadline was set by the Tribunal and represented approximately a 2 month delay in the course of these proceedings.

[28] The new dates set for each Party were as follows:

- i. Canadian Human Rights Commission: June 3, 2011

¹ There is no time indicated in the file on when the Respondent contacted and spoke to the Tribunal Registry Officer. I can only assume that this conversation occurred either prior to the July 12, 2011 letter, with new filing deadline dates, went out to all Parties or that the conversation occurred before counsel for the Respondents had read the letter.

- ii. Complainant, Ms. Labelle: July 26, 2011
- iii. Respondent, Rogers Communications Inc.: August 16, 2011
- iv. Complainant's Reply: August 23, 2011

[29] On July 26 or 27, 2011², the Respondent called the Tribunal Registry Officer to indicate that they had still not received the Complainant's statement of particulars and that they were upset with the repeated extensions granted by the Tribunal.

[30] On July 27, 2011, after 9:00pm, the Tribunal Registry received a fax from the Complainant; past the July 26, 2011 deadline for the Complainant to meet her filing and disclosure requirements. The fax/letter stated as follows:

File No. 20090592

In response to your voice mail.

In response to this letter, I am seeking 1 year's salary -- \$42,000 from Rogers. I did receive Unemployment benefits during this time.

The supporting documents are the numerous repeat documents that I have forwarded on to various people at Human Rights over the past 2 years.

I work until 4pm and am unavailable for any conference call until after this time.

Debbie Labelle

² The Tribunal file indicates that this conversation occurred on July 26, 2011, while an email from the Respondent indicates that the call occurred on July 27, 2011.

[31] On August 5, 2011, the Respondent wrote an email to the Tribunal to confirm the July 27, 2011 conversation between the Respondent and the Tribunal Registry Office that the Complainant had failed to meet the time limit to serve and file her Statement of Particulars which were due on July 26, 2011. The Respondent further wrote that the Tribunal Registry Officer had advised the Respondent that they would not be required to serve and file its Statement of Particulars by the deadline of August 16, 2011. And, further, that the Tribunal would provide the Respondent reasonable advance notice if and when the Tribunal subsequently required the Respondent to serve and file its Statement of Particulars.

[32] The same day, the Tribunal Registry was able to reach the Complainant by telephone. The Complainant was advised that the Tribunal was not in possession of any documents she may have sent to the Commission because the Tribunal is a different department and that when a complaint is referred to the Tribunal, the only document that the Tribunal receives from the Commission is the Complaint form. The Registry Officer indicated that the Complainant's letter/Statement of Particulars was deficient as it did not comply with the disclosure requirements (statement of facts, disclosure list, witnesses, etc...) and that any material in the possession of the Commission was not in the possession of the Tribunal because we are separate departments.

[33] The Complainant advised the Tribunal Registry Officer that she was not aware that the departments were separate and that she had not taken the time to read the letters that had been sent to her previously and that she would need time to get her documents together and submit her statement of particulars. The Tribunal Registry Officer advised the Complainant that should she require any help with respect to the actual formatting of her statement of particulars that she should consult with the CHRC Counsel assigned to her case. The Complainant informed the Tribunal Registry Officer that she would be contacting the CHRC Counsel as soon as possible and she apologized for the delay.

[34] On August 8, 2011, the Respondent sent a letter to the Tribunal seeking to have the complaint dismissed. It did not appear that this letter had been sent to the Complainant or the Commission.

[35] On August 10, 2011, the Respondent sent the Tribunal another letter seeking to have the complaint dismissed. This letter expanded upon the August 8, 2011 letter, and also did not appear to have been sent to the Complainant or the Commission.

[36] On August 16, 2011, the Respondent wrote again to the Tribunal with respect to the letters of August 8, 10, 2011 and a telephone call they had had with the Tribunal Registry Officer four days earlier. As August 16, 2011, was the last set deadline for the Respondent to file their respective statement of particulars and comply with their document disclosure and other requirements pursuant to the *Tribunal's Rules of Procedure*, the Respondent indicated that they would not be filing their material by August 16, 2011 as they had received no material from the Complainant and were not in a position to "respond" to information they had not received. The Respondent further indicated that they were awaiting responses to their letter of August 8 and 10, 2011.

[37] I was assigned the file the same day. I directed the Registry Officer to confirm with the Respondent that the Tribunal had received their recent letters, and directed that the Respondent was no longer required to file and serve their statement of particulars as per the disclosure schedule set out in the Tribunal's letter of July 11, 2011. Further, I directed that a Case Management Conference Call (CMCC) be held in order to discuss the Respondent's Motion to Dismiss letters, the history of the file and how to proceed.

[38] The Tribunal Registry Officer was able to reach the Complainant by telephone on August 16, 2011 to indicate that I had requested a CMCC be held in this matter on or before August 25, 2011.

[39] Further, the Registry Officer forwarded the Motion to Dismiss letters of the Respondent's to both the Complainant and the Commission, since they had not received those materials from the Respondent. The Registry Officer also wrote, by email, to the Respondents advising them to copy any further correspondence regarding motions or objections to both the Complainant and the Commission, in addition to sending to the Tribunal.

[40] On August 19, 2011, the CMCC was scheduled with all Parties for August 25, 2011 at 5:00PM.

B. August 25, Case Management Call

[41] On August 25, 2011, the CMCC occurred with myself present, a Tribunal Registry Officer, the Complainant and Counsels representing the Respondent. During that call, the Agenda I had set was to discuss: 1) Clarification of the Previous Tribunal letters; 2) the Respondent's Motion to Dismiss; and, 3) Next Steps/Procedure.

[42] I indicated that there had been some miscommunications regarding the previous "disclosure" letters which I felt was important to discuss in order to bring all Parties to a common understanding, as not all Parties were made aware of all the facts surrounding these letters. I informed the Parties that the first two letters, dated April 28 and May 24, 2011 – the copies sent to the Complainant -- were returned to the Tribunal by the courier service as "return to sender". I further explained that it was my understanding that as each letter was returned to the Tribunal, a new letter with new disclosure dates was then sent out, for example, Letter No. 3 was sent out as a result of Letter No. 2 being returned and the Letter No. 4 letter being sent out as a result of the Letter No. 3 being returned.

[43] Ms. Labelle indicated that the Commission³ sent her about 4 letters which she did not receive. She did not explain how she knew she had not received these letters. However, the Complainant further indicated she received Letter No. 5. The Complainant further indicated that she was not at home during the day and could not sign for registered mail. She stated that if the Tribunal wanted to send her anything further, to send it by regular mail.

[44] I then clarified with the Complainant that the Commission is not the Tribunal and that both are separate and distinct institutions. Further, that anything she may have submitted to the Commission would not necessarily be in the possession of the Tribunal. The Complainant responded that she had only recently learned of the distinction after having spoken to the Tribunal Registry Officer on August 5, 2011.

[45] I then summarized the conversation that occurred between the Tribunal Registry Officer and the Complainant which had occurred on July 7, 2011, wherein the Complainant was advised that the Tribunal had received Letter No. 3 “return to sender”.

[46] The Complainant indicated that she had sent a one page fax to the Commission on July 25, 2011, and then sent the same one page fax to the Tribunal on July 27, 2011. This document was her Statement of Particulars. The Complainant had not sent a copy to the Respondents.

[47] I then summarized the conversation that the Complainant had with the Tribunal Registry Officer on August 5, 2011 (see paragraphs 32-33 above).

[48] The Complainant indicated on the CMCC that she had not contacted the Commission for assistance even though during her August 5, 2011 call she indicated she would be contacting the

³ Based upon the alleged confusion the Complainant had previously indicated she had between the “Commission” and the “Tribunal”, I infer that she was referring to the Tribunal’s letters.

Commission. That portion of the exchange of conversation between the Complainant and myself was as follows, based upon the recording of the CMCC:

Member: On August 5th, our Registry spoke to yourself Ms. Labelle indicating that we had not received the required disclosure under the Act. Also indicated that the Commission was separate and distinct. You indicated that you had not received the Tribunal letters. You also indicated that our Registry Officer did indicate to you on the 5th that if you needed assistance in completing the required documents you could contact the Human Rights Commission. Have you contacted them?

Complainant: I have not bothered at all.

Member: Is there a reason for that?

Complainant: Kind of a busy life, I have a very busy life. And I sent you the, like, and as far as I am concerned, you have all the information. Like I said, I sent you probably about, well not you, but the other entity that you referred to probably about 10 documents and you want this repeated again. I'm just flabbergasted like all the information I sent you, you don't have.

Member: We're separate government departments Ms. Labelle. Do you understand that? The Tribunal is like a court separate and distinct from the Commission which is an investigatory body.

Complainant: Yeah I know, that's the joke I have been involved with for 2 years, I realize that.

[49] At this point in the CMCC, I clarified to the Respondents that upon my review of the file, it was apparent that the Respondent was not made aware of the non-receipt of all of the letters by the Complainant, and the reasons the Tribunal had decided to set new disclosure dates on several occasions.

[50] Subsequent to this, the Complainant became disconnected from the call; the Tribunal requested a break in order to attempt to reach the Complainant and determine if the Complainant could/would re-join the call. The Registry Officer called the Complainant on a separate line.

They spoke briefly and the Complainant indicated she would not rejoin the call. I then recommenced the CMCC with the Respondents wherein I indicated that the Tribunal Registry Officer was able to reach the Complainant and that the Complainant had ended her participation in the CMCC voluntarily.

[51] Mindful of the fact that the Complainant was no longer on the CMCC, I moved the discussion along to the Respondent's Motion to Dismiss. The Respondents indicated that they would like to supplement their previous submissions and re-submit as one document. A timeline for the submission of the Motion documents was then discussed and set, as follows:

- i. Respondent's Motion: September 15, 2011
- ii. Complainant's Response: October 6, 2011
- iii. Respondent's Reply: October 27, 2011

[52] A summary of the CMCC, including a bold notation about the dates with respect to the Motion, was sent to the Respondent the following day on August 26, 2011, by email, and both regular mail and e-mail to the Complainant.

C. Further Communications and Correspondence

[53] In light of the timelines that were set for the Motion, I instructed the Tribunal Registry Officer to try to reach the Complainant by telephone to ensure she had received the CMCC Summary Letter dated August 26, 2011. A message was left for the Complainant on September 7, 2011. As of September 14, 2011, the Registry Officer had not received a call back from the Complainant as had been requested. I thus requested that a Process Server be utilized in order to ensure a copy of the August 26, 2011, Summary Letter would be received by the Complainant. A copy of the letter was sent to a Process Server on September 15, 2011, which included the address of the Complainant and a request for an Affidavit of Service upon completion or attempt

of service. The sworn Affidavit of Service indicates that the letter was served personally, on the Complainant Ms. Deborah Labelle, on September 21, 2011, at her residence.

[54] On September 16, 2011, the Complainant left a voicemail message with the Tribunal Registry Officer. The Complainant expressed anger over the Respondent's Motion to Dismiss, which she had received. Specifically, she was angry with the Tribunal for allegedly sharing all of her documents with the Respondents. Some of what the Complainant said on the message is: "I just got a letter from Rogers' lawyers about their Motion to Dismiss and I am very concerned with what I see. It appears that you've given the other side all of the documents that I have forwarded on to the human rights counsel and I am pretty disgusted with that. I thought that was all proprietary information between me and the counsel." The Complainant went on to state that she had suffered a violation of confidentiality and privacy, requested to speak to the Registry Officer's supervisor and rhetorically asks if this is "another plan to make sure they [Respondent] win?"

[55] That same day, the Tribunal wrote to the Complainant, copying all Parties, clarifying that the Tribunal had not shared any information or documents that she provided to Counsel with the Commission. The only document that was provided to the Respondents, by the Tribunal, was the Complainant's July 27, 2011 fax which was to have been her Statement of Particulars (see paragraph 30). The letter stated that the Tribunal was not in possession of any documents she had provided to the Commission. Further, the letter re-stated that the Tribunal and the Commission are separate and distinct entities. Finally, the Complainant was advised that should she have any concerns with the disclosure of materials she had provided to the Commission, she should contact the Commission's Counsel assigned to her file.

[56] The Respondent filed their Motion to Dismiss and Reply within the deadline as had been previously set. The Complainant also sent her Response before her deadline as had been previously set.

II. The Positions of the Parties

A. Respondent's Arguments for the Motion

[57] The Respondents made submissions with respect to the findings of the Commission's Investigation and the report submitted by the Commission's Investigator. Specifically, the Investigator made recommendations that the Commission dismiss the complaint based on the facts that it did not appear to the Investigator that the Complainant had been treated in an adverse differential manner, nor did the termination of the Complainant appear to be related to a ground under the *Act*.

[58] The Respondent further argued that the Complainant disregarded and frustrated the Tribunal process. Specifically, the Respondent relied upon the Tribunal's *Rules of Procedures* and *Practice Note 3* which sets out the requirements upon each Party in order to advance their respective case. The Respondent argued that the failure to abide by the *Rules*, specifically the filing of a Statement of Particulars by a complainant, will result in a complaint being unsubstantiated. In support of this argument, the Respondent set out the list of letters and filing dates that were set by the Tribunal to which the Complainant was non-compliant.

[59] The Respondent further argued that the "Tribunal has inherent authority to control its process, which includes the authority to dismiss a complaint".

[60] The Respondent also argues that there has been harm to both Rogers and a potential harm to the reputation of the Canadian Human Rights System. The harm to Rogers is that they have incurred significant legal costs that cannot be recovered and it would be unfair to allow the Complainant to disregard the Tribunal's rules and processes while requiring Rogers to comply.

[61] With regards to the reputation of the Canadian Human Rights System, the Respondent submits that the Complainant "is abusing the limited public resources available for the Canadian Human Rights System to pursue her personal vendetta against Rogers, which is not the result of

discrimination based on a protected ground under the *Act*. Ms. Labelle has stated that she has given the Commission all information she has in support of her complaint. Given that Ms. Labelle has no other evidence to substantiate her complaint, proceeding with a hearing into Ms. Labelle's complaint would be an inefficient use of the Tribunal's limited resources."

B. Complainant's Response Arguments

[62] The Complainant submits that she had never received the first 4 letters from the Tribunal and thus, was never made aware of her deadlines for compliance with her disclosure obligations and document preparation and submission obligations pursuant to the *Tribunal's Rules of Procedure*.

[63] The Complainant also argues that once she did finally receive a letter from the Tribunal, setting out her obligations, she did comply, but was later informed that her material was incomplete. The Complainant stated that she had assumed all of her previous submissions⁴ were already with the Tribunal. She submits that it was only in August of 2011, that she was informed that the Tribunal did not have any documentation she may have previously submitted to the Commission.

[64] The Complainant further submits that she was informed that she could contact the Commission for assistance, but as she does not get home until between 4:30-5:00 p.m., her experience has shown that staff at the Commission leave between 4:00-4:30 p.m.

[65] The Complainant argues that she lives with 2 teenage daughters who repeatedly check messages before the Complainant comes home and thus the Complainant never gets the

⁴ I infer to mean those documents to which she had submitted to the Commission.

messages. The Complainant states that if she does not receive the letters or messages, then she does not know that something is required of her.

[66] With regards to the August 25, 2011, CMCC, the Complainant submits that “my cell phone dropped the call. Given the run around that Mr. Nixon [Counsel for the Respondent] was causing on the conference call, I refused to re-join the call to listen to more of the same harassing conversation he was subjecting us to.”

[67] The Complainant submits that she has provided irrefutable evidence to support her claim. Further, she submits that the Respondent has made misleading statements.

[68] The Complainant argues that the last communication she received from the Tribunal was with regards to the conference call and that she has received no further requests from them [the Tribunal] requiring any more submissions.

[69] The Complainant submitted the following with regards to her knowledge of the process: “And, I’d also like to point out that as a lay person, the terms Statement of Particulars has little meaning to me. We lay people do the best we can when a request is made. If more information is still required, then I should have been advised of this requirement from the Tribunal rather than find this out from Rogers.”

[70] Finally, the Complainant submitted and concluded the following with respect to her Response to the Motion: “And as I stated above, this document is going only to the Commission. I will not be sending ANY information to Rogers.”

III. Analysis

[71] It is the Commission’s role to investigate into a complaint and within their sole discretion whether to refer a complaint to the Tribunal for an Inquiry. A decision of the Commission can be judicially reviewed by a Party only to the Federal Court of Canada. Here, the Respondent had

an opportunity to seek judicial review the decision of the Commission, but chose not to do so. The Tribunal is not an appellate body to which a Party can appeal decisions of the Commission, nor does the Tribunal have the jurisdiction to review a decision of the Commission, (*Public Service Alliance of Canada (Local 70396) v. Canadian Museum of Civilization Corp.*, 2006 CHRT 1 at para. 27; *International Longshore & Warehouse Union (Maritime Section), Local 400 v. Oster*, [2001] F.C.J. No. 1533, 2001 FCT 1115 at para. 29; *Tweten v. RTL Robinson Enterprises Ltd.*, [2004] C.H.R.D. No. 14, 2004 CHRT 8 at para.17) (at para. 27).

[72] As such, I do not place any weight on this aspect of the Respondent's arguments.

[73] Rule 1(5) of the Tribunal's *Rules of Procedure* states that "Unless the Panel grants an extension or an adjournment, all time limits for complying with these Rules and all dates set for a hearing, a motion or a case conference are peremptory."

[74] At no time throughout these proceedings has there been any request by the Complainant seeking an adjournment or extension of time in order for her to fulfill her filing and disclosure requirements. Acknowledging that there were some mailed correspondence, which set out the "due dates" for the Complainant to provide her materials, that the Complainant did not receive, there is also evidence that the Complainant was made aware of her responsibilities by both voicemail messages left for the Complainant and telephone conversations with the Tribunal Registry on July 7 and August 5, 2011. Further, the Complainant indicated she had received Letter No. 5 from the Tribunal which also set out compliance dates for her documents. She failed to meet those dates and did not ask for an extension of time.

[75] The Complainant was made aware by both the Commission and the Tribunal that her matter had been forwarded on to the Tribunal. The Complainant was aware that mail had been sent to her, by courier, and she had never gone to pick them up. While the Complainant had indicated that she worked outside of her home during the day and thus, could not be there to sign for and receive registered mail, she was able to do so on June 2, 2011. The Complainant's

choice not to pick up the other registered mail sent to her frustrated the efforts of the Tribunal in moving her complaint forward and was a repudiation of the Tribunal's processes.

[76] These facts are akin to those of *Public Service Alliance of Canada v. Canada Revenue Agency*, 2009 CHRT 31 (CanLII), where it was stated, at para. 20:

“Any party seeking leave or authorization from the Tribunal to file documents outside prescribed time limits should at least be able to demonstrate that there was some valid justification for the late filing”. The Complainant's justification for not filing on time was that she had never received the Tribunal's correspondence. She further indicated that she had filed material with the Commission and felt that that was enough. This is not a valid justification, particularly given the fact of the evidence of the telephone calls she had with the Tribunal Registry wherein her missed filing deadlines and a clarification of the distinctions between the Commission and the Tribunal were discussed. Further, the Complainant's deliberate choice not to pick up the registered mail is not a valid justification.

[77] In *Johnston v. Canadian Armed Forces*, 2007 CHRT 42 (CanLII), the Tribunal recognized the two approaches which have developed with respect to dismissal for delay previously pointed out in *Seitz v. Canada*, 2002 FCT 456.

[78] The first approach, which is sometimes referred to as the "classic" test, was set out in *Nichols v. Canada*, [1990] F.C.J. No. 567 (F.C.T.D)(Q.L.). It is a threefold test consisting, first, of determining whether there has been an inordinate delay; second, whether the delay is inexcusable; and third, whether the defendants are likely to be seriously prejudiced by the delay (*Seitz* at para. 10).

[79] The second approach is appropriate in circumstances where litigants engage in a "wholesale disregard" for time limits provided in the rules of court (*Seitz* at paras. 16-18). This is how the Complainant has, in my view, conducted herself in the present case.

[80] As summarized in *Johnston*:

“according to *Seitz*, such breaches are not to be looked at only from the viewpoint of the litigants, but also in light of the abuse of and prejudice to the due administration of justice. Where an action has remained static for an unreasonable length of time, there is an abuse of the administration of justice, which is separate and apart from any prejudice caused by inordinate and inexcusable delay, elements that must be established under the "classic" test. *Seitz* notes that these sorts of breaches will give rise to an abuse of process and will constitute grounds for dismissal”. See also *Grovit and Others v. Doctor and Others*, [1997]1 W.L.R. 640 and *Trusthouse Forte California Inc. v. Gateway Soap and Chemical Co.*, 1998 CanLII 8897 (FC), 1998 CanLII 8897

[81] I consider the second approach from *Seitz* to be appropriate for consideration based upon the facts before me in this particular case. It is clear to me that the Complainant has failed to comply with the time limits that were set by the Tribunal in order to advance her complaint. Numerous efforts were made by the Tribunal to communicate deadlines to the Complainant and the Tribunal allowed numerous extensions to these deadlines. The August 25, 2011 CMCC was another opportunity that was provided by the Tribunal in order to allow the Complainant to explain whether the Tribunal had an incorrect mailing address, whether the Complainant had an email address or fax number that could be utilized to send her mail and also provided an opportunity for the Complainant to explain to the Tribunal of any facts she deemed relevant for consideration on why she had not received the Tribunal's correspondence nor contacted the Tribunal in order to advance her case.

[82] Ultimately, the Tribunal is responsible for ensuring that the principles of natural justice and procedural fairness are afforded to all parties. In this case, the Tribunal attempted the following to ensure fairness to the Complainant:

- Provided several extensions of time to the Complainant for her to comply with her disclosure and filing obligations;
- Contacted the Complainant on several occasions by telephone and informed her of her obligations;

- Contacted the Complainant and explained that she could obtain assistance from the Commission in order to meet her filing and disclosure obligations;
- Provided the Complainant with an opportunity to explain her failure to pick up or receive the mailed communications sent to her; and
- Provided an opportunity to the Complainant to provide an explanation of why she had not advanced her case and how she intended to do so.

[83] The Tribunal is entitled to protect the integrity of its processes from abuse brought on by a Party's failure to abide by time limits and comply with the *Rules of Procedure*. The Complainant is responsible for advancing her complaint and complying with the set deadlines. The following actions by the Complainant in this case demonstrate the Complainant's choice not to advance her case and thus, are breaches according the second test in *Seitz*:

- Her failure to comply with any of the time limits set by the Tribunal, even when the Tribunal had provided extensions thereto;
- Her failure and decision to not go and pick up the couriered mail sent to her by the Tribunal;
- Her failure and decision not to seek assistance from the Commission in preparing and submitting her required filing material with the Tribunal and disclosure upon the Respondent;
- Her failure to seek any extensions of time limits from the Tribunal upon learning of her missed deadlines
- Her failure to participate fully in the Case Management Conference Call on August 25, 2011; and
- Her failure to abide by the Rules of Procedure and ensure any material she files would also be served on the Respondents, as she had indicated she would not do so in her Response to this Motion.

[84] During the August 25, 2011 CMCC, the Complainant indicated that she was aware the Tribunal had attempted to send her correspondence by courier, but was unable to offer a reasonable or excusable reason for not making the efforts to pick up such letters. The Complainant also admits in her response to the Motion that she chose to end her continued participation on the CMCC. I find these actions, including the actions listed above, to constitute a repudiation of the Tribunal's process by the Complainant.

[85] I must note that if the Tribunal were to schedule a Hearing date for an inquiry into this complaint, the Respondents would be in a position where the Complainant had not disclosed a single document, filed sufficient and satisfactory materials with the Tribunal, had not disclosed her witnesses or the Statement of Particulars outlining the complaint. The Respondent would be in a position where it would not know what case or facts it must rebut, what witnesses it must call to rebut the Complainant's facts and what other evidence it must advance to effectively prepare its case.

[86] In *Kuhlmann v. Westcan Bulk Transport Ltd.*, 2007 CHRT 50 (CanLII), the Complainant arrived at the hearing having not complied with her disclosure requirements pursuant to the Tribunal's Rules. The following excerpt describes the situation I find that the Respondents would be in, if they were compelled to appear at such a hearing:

[18] Ms. Kuhlmann arrives today at the hearing without having disclosed a single document or complied with any of her other disclosure obligations. Are there any "exceptional circumstances" in this case to justify allowing her to proceed without complying with her disclosure obligations? I do not see any. On the contrary, as the Respondent points out, it finds itself in a "most untenable position". It must retain experts and expend time and money to fully prepare for the hearing, without knowledge of the case it must rebut. And in fact, it has not been able to prepare itself for today's hearing. In addition, there is no evidence of the Respondent having failed to comply with its duties in this process. For instance, given the Complainant's failure to disclose, it sought the Tribunal's authorization to be dispensed from disclosing at the dates that were stipulated for its disclosure.

[19] The only justification that Ms. Kuhlmann appears to be providing for her failure to meet her disclosure obligations is her inability to get a response to her

satisfaction from the Commission on the matters she has raised with them. This is not a relevant matter for the case at hand. Ms. Kuhlmann knows since at least April 2007 that the Commission will not be appearing. If she still wanted to pursue her complaint, it was incumbent upon her to focus her attention on the Tribunal process. She has failed to do so. I therefore see no reason to grant her leave from her disclosure obligations. Pursuant to Rule 9(3), and given her entire failure to disclose, she is foreclosed from leading any evidence in support of her complaint, raising any issue arising there from, calling any witness, or claiming any relief.

[20] I also see no reason to adjourn this case to enable Ms. Kuhlmann to comply with her disclosure obligations. She has had ample opportunity to comply over the last two months, she has been repeatedly reminded of what she has to do to satisfy these requirements, and has opted not to do so. The Rules of Procedure are put in place to enable a fair and expeditious Tribunal hearing process. They are not there to be ignored and cast aside cavalierly, simply because a party opted to not comply with them. All parties have a duty to respect the Rules and Tribunal directives, be they Respondents or Complainants.

[87] I find that this set of circumstances would be unfair to the Respondents and cause them prejudice if they were required to prepare for such a hearing.

[88] For all the reasons above, I therefore grant the Respondent's motion, the complaint is dismissed.

Signed by

Susheel Gupta
Tribunal Vice-Chairperson

OTTAWA, Ontario
February 29, 2012

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1655/01011

Style of Cause: Deborah P. Labelle v. Rogers Communications Inc.

Ruling of the Tribunal Dated: February 29, 2012

Appearances:

Deborah P. Labelle, the Complainant

François Lumbu, for the Canadian Human Rights Commission

Richard J. Nixon, for the Respondent