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CASE SUMMARY: COMPLAINT DISMISSED: WHAT CAN THE BC HUMAN RIGHTS TRIBUNAL CONSIDER WHEN DISMISSING A COMPLAINT ON THE BASIS THAT IT “WOULD NOT FURTHER THE PURPOSE OF THIS CODE”

The court considered the scope of the authority of the BC Human Rights Tribunal to take into account the results of a separate workplace proceeding when deciding to dismiss a complaint under the Human Rights Code pursuant to section 27(1)(d)(ii).

Administrative law – Decisions reviewed – Human Rights Tribunal – Judicial review – Appeals – Application – Compliance with legislation – Standard of review – Patent unreasonableness – Human rights complaints – Duty to accommodate

Sebastian v. Vancouver Coastal Health Authority, [2019] B.C.J. No. 1201, 2019 BCCA 241, British Columbia Court of Appeal, June 28, 2019, L.A. Fenlon, B. Fisher and P. Abrioux JJ.A.

The appellant, an X-Ray technician for the Vancouver Coastal Health Authority, appealed from an order of the chamber’s judge dismissing his petition for judicial review of the decision of the BC Human Rights Tribunal (the “Tribunal”). The Tribunal dismissed the appellant’s complaint on the basis that to proceed with it would not further the purpose of the Human Rights Code, pursuant to section 27(1)(d)(ii).

The appellant’s complaint arose from his employment with VCHA. He also filed nine grievances, eight of which related to workplace accommodation issues. By way of arbitration under the Labour Relations Code, the grievances were all resolved by a Consent Order. This left the appellant’s claim for damage for injury to dignity before the Tribunal. The appellant claimed he did not agree to the terms of the Consent Order but accepted the monetary compensation and did not take any action against his union under the Labour Relations Code regarding the way it represented him. As to the outstanding damages claim, the VCHA made a with prejudice offer to settle the claim for \$15,000 (the “Settlement Offer”). The offer was not accepted. VCHA then applied to the Tribunal to have the complaint dismissed pursuant to section 27(1)(d)(ii) of the Code. The Tribunal agreed and dismissed the complaint. The Tribunal’s decision was also confirmed on judicial review.

There were two main issues before the court on appeal: Whether the chambers judge erred in finding that (1) the Consent Order, together with the Settlement Offer, could provide a basis to dismiss the complaint under section 27(1)(d)(ii) of the Code; and (2) the Tribunal could consider results of another proceeding given it had not been pleaded.

The appellant's primary argument was that the Consent Order ought to have been treated by the Tribunal as a "nullity" because these were grievances, pursuant to which he was represented by the union, not individual statutory rights protected by the Code. In other words, he said his individual rights under the Code ought not to be affected by the Consent Order, especially since he did not participate in that process or "consent" to the Consent Order. The court rejected the appellant's position. The court confirmed that labour arbitrators and human rights tribunals have concurrent jurisdiction over human rights issues arising out of unionized workplaces. This overlap is recognized in section 27(1)(f) of the Code that permits the Tribunal to dismiss a complaint where the "substance of the complaint ... has been appropriately dealt with in another proceeding". The court also observed that finality, fairness and the integrity of the justice system permeates section 27(1) of the Code, objectives which embrace the avoidance of unnecessary inconsistency and delay. To this end, the court held that it was reasonable for the Tribunal to have taken into account the Consent Order when deciding to dismiss the complaint under section 27(1)(d)(ii), although observing that it would have been preferable if the section had been specifically pleaded. The court confirmed that the Tribunal has "broad discretion" to consider whether permitting a complaint to proceed would further the purpose of the Code. Unduly restricting that discretion, the court held, would be inconsistent with the purpose of the Code and section 27(1) specifically. Finally, the court also emphasized the fact that the appellant chose to advance both avenues (the grievances and the complaint) and continued with both up to the point of the Consent Order. The appellant could have directed the union to withdraw the grievances, but he did not.

In the end, the court found the chambers judge was correct in concluding that the Tribunal's decision was not patently unreasonable and dismissed the appeal.

This case was digested by [Adam R. Way](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Adam R. Way at away@harpergrey.com.