

Indexed as: Zamorano Meza v. Capilano Faculty Association and another, 2024 BCHRT 101

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Jose Manuel Zamorano Meza

COMPLAINANT

AND:

Capilano Faculty Association and Capilano University

RESPONDENTS

AND BETWEEN:

Jose Manuel Zamorano Meza

COMPLAINANT

AND:

Capilano Faculty Association and Eduardo Azmitia

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO JOIN COMPLAINTS
Section 21(6)

Tribunal Member:

Devyn Cousineau

Counsel for the Complainant:

Alison Moore

Counsel for Capilano University:

Sabrina Anis

Counsel for Capilano Faculty Association and
Eduardo Azmitia:

James Baugh

I INTRODUCTION

[1] Jose Zamorano Meza applies to join his two human rights complaints.

[2] Mr. Zamorano Meza filed his first complaint on April 9, 2021, against his employer, Capilano University. On August 25, 2022, the Tribunal granted Mr. Zamorano Meza's application to add his union, the Capilano Faculty Association [**Union**], as a respondent. In this complaint, Mr. Zamorano Meza alleges that the University and the Union discriminated against him in his employment based on his race, colour, and place of origin, in connection with events between February 2019 and March 2022. I will call this the **Discrimination Complaint**.

[3] Mr. Zamorano Meza filed his second complaint on August 16, 2023 against the Union and its president, Eduardo Azmitia. He alleges that the Union and Mr. Azmitia retaliated against him for filing the Discrimination Complaint beginning in August 2021 and that the retaliation is ongoing. I will call this the **Retaliation Complaint**.

[4] Mr. Zamorano Meza argues that, given the overlap between his two complaints, it is fair and reasonable to join them. The University, the Union, and Mr. Azmitia oppose joining the complaints. They argue that any overlap between the complaints is minimal, and that joining the complaints would be prejudicial.

[5] For the reasons that follow, the application to join the complaints is denied.

II DECISION

[6] Section 21(6) of the *Human Rights Code* allows the Tribunal to join two or more complaints if it is satisfied that "it is fair and reasonable in the circumstances to do so". To make this determination, the Tribunal considers the degree to which the parties and issues to be determined in each complaint overlap: *Dennis v. BC (Ministry of Skills Development and Labour) and others (No. 4)*, 2004 BCHRT 341 at para. 10. Relevant factors may include whether the parties and/or representatives are the same, the grounds are the same, there is overlap in background facts, and the assessment of evidence and law will be similar.

[7] The Tribunal also considers whether joining the complaints will promote their just and timely resolution: Tribunal *Rules of Practice and Procedure*, Rule 1(1); *Patterson v. BC Ministry of Public Safety and Solicitor General (No. 2)*, 2019 BCHRT 59 at para. 5; *CAW-Canada, Local 111 v Coast Mountain Bus Co*, 2011 BCHRT 325 at para. 39. Relevant factors may include the stage of proceedings for each complaint, whether joining the complaints will result in any delay, and the potential for prejudice to any party: *Patterson* at para. 9; *Clarke v City of Vancouver and another (No. 2)*, 2023 BCHRT 35 at para. 10.

[8] I begin with a brief description of Mr. Zamorano Meza’s two complaints.

A. The Discrimination Complaint

[9] Mr. Zamorano Meza is a teacher at Capilano University. He describes himself as a Mexican Mestizo immigrant with a foreign accent. He filed his Discrimination Complaint on April 9, 2021, naming the University as the respondent. He alleged that, between February 2019 and June 2020, the University treated him adversely based on his race, ancestry, and place of origin as follows:

- a. he was bullied and harassed by a colleague,
- b. he was unfairly evaluated and scored poorly in competency assessments,
- c. he was denied and blocked from a five-year teaching appointment,
- d. the University imposed barriers on his ability to teach courses that he was qualified for,
- e. the University failed to respond appropriately to his complaint of discrimination,
- f. he was “erased” as a candidate for a volunteer committee, and
- g. the University suggested that his five-year teaching appointment could be terminated after only one year.

[10] On June 17, 2022, Mr. Zamorano Meza applied to add the Union as a respondent to the complaint. The Tribunal granted this application in a letter decision dated August 25, 2022. In doing so, it only allowed some of Mr. Zamorano Meza's allegations against the Union to proceed, namely that Union representatives supported and participated in discriminatory decisions about his competency to teach certain courses between February 5 and April 19, 2019. The Tribunal did not allow Mr. Zamorano Meza's other allegations against the Union, arising out of its conduct after April 2019, to proceed.

[11] On October 31, 2023, Mr. Zamorano Meza amended his complaint to add further particulars to his complaint and "add allegations regarding events that have occurred since he filed the Complaint".

[12] The Discrimination Complaint is at the point where disclosure has been completed, and the next step in the process is for the Tribunal to review the complaint under its Case Path Pilot to determine whether it will proceed directly to hearing (which is the default process) or whether a dismissal application may further its just and timely resolution.

B. Retaliation Complaint

[13] Mr. Zamorano Meza filed his Retaliation Complaint against the Union and Mr. Azmitia on August 16, 2023. He alleges that the Union and Mr. Azmitia took steps to prevent a resolution of his human rights complaint, publicly denigrated him in connection with his complaint, curtailed his duties as part of the Union executive, and have failed to adequately represent his interests. The time period of these allegations begins in August 2021 and, as of the date of filing the complaint, is ongoing.

[14] This complaint is at the very preliminary stages of the Tribunal's process. The Tribunal has given the Union and Mr. Azmitia notice of the complaint. They have not yet filed their response to the complaint, and the parties have not begun or completed disclosure.

C. Consideration of joinder

[15] Mr. Zamorano Meza argues that it is fair and reasonable to join his complaints because there are overlapping respondents and similar background facts. He says the Retaliation Complaint can only be understood in light of the Discrimination Complaint: *Dennis* at para. 12. He acknowledges that the two complaints do not overlap completely, but argues that is not a bar to joinder where other factors favour it: *Ollinger and others v. BC Housing Management Commission*, 2020 BCHRT 13 at para. 20. He says that some of the witnesses will be the same in both complaints, and that the Tribunal will be required to make findings of credibility. He points out that the Union's counsel is the same in both complaints.

[16] All of the Respondents oppose joinder. They acknowledge some overlap in the background context for both complaints, but say that the overlap ends there. They argue that the allegations in each complaint concern different time periods and different people. They each say that it is significant that the University is not a party to the Retaliation Complaint. The University argues it will be prejudiced by having to participate in the Retaliation Complaint, in which it is not a party and has no interest. For its part, the Union argues that it would be prejudiced if the University participated in the Retaliation Complaint because the University would become privy to information about internal Union business that would normally be kept confidential from the employer.

[17] I am not satisfied that joinder in this case is fair and reasonable.

[18] I begin with the factual overlap between the two complaints. As I have said, there is no dispute that there is some factual overlap. In both complaints, the Tribunal will need to hear some evidence about the general circumstances of Mr. Zamorano Meza's employment and his membership in the Union, as well as aspects of the collective agreement and the University's processes for assigning work. I also accept, as Mr. Zamorano Meza argues, that there is a natural connection between the circumstances of the original Discrimination Complaint and the alleged retaliation that he says arose from it: *Dennis* at para. 12; *Braund v. Northwestern Systems and others (No. 2)*, 2012 BCHRT 161 at para. 35. However, the degree of factual

overlap is, in my view, relatively minimal and outweighed by the ways in which the two complaints are distinct.

[19] Critically, the Discrimination Complaint is principally about the conduct of the University, as Mr. Zamorano Meza's employer. The allegations against the Union focus on its limited role within the job assignment process, and how its conduct allegedly discriminated against Mr. Zamorano Meza in connection with his employment. The Retaliation Complaint, on the other hand, focuses entirely on the conduct of Mr. Zamorano Meza's Union and its President in the context of internal Union business. Each complaint involves a different time period, as the retaliation allegations essentially pick up where the discrimination allegations end. As in *Clarke*, each complaint concerns relatively discrete events involving different people, at different times: para. 11. There will no doubt be some witnesses who testify in both proceedings, but it is reasonable to expect that the evidence they give in each proceeding will be about different events: see also *Watts v Onyx Industrial Services Ltd*, 2005 BCHRT 56 at para. 23; *Patterson* at para. 11. It is unlikely that any University witnesses will testify in the Retaliation Complaint, or that Union witnesses to events in the Retaliation Complaint will testify in the Discrimination Complaint. There is little or no efficiency gained where joinder requires numerous witnesses to testify about factually discrete events "unrelated in time and not at their core involving the same issue": *Heitner v. University of British Columbia*, 2019 BCHRT 108 at para .19.

[20] Second, I consider it significant in this case that the University is not a respondent to the Retaliation Complaint. I recognize that there are circumstances where the Tribunal may join complaints where the respondents are not identical: eg. *Spence v. tekmar Control Systems and others*, 2009 BCHRT 211 at para. 53; *Vorley v. BC (Ministry of Solicitor General) and others (No. 3)*, 2005 BCHRT 528. However, in this case, I find this is a factor that weighs considerably against joinder because of the potential for prejudice against the Respondents.

[21] I accept that the University would be prejudiced by having to participate in a complaint in which it is not a party. This prejudice arises from the additional time and expense of reviewing documents and participating in interim applications, and eventually having to

participate in a hearing in which it has no interest: *Francis v. Victoria Shipyards (No. 2)*, 2011 BCHRT 346 at para. 13; *Kilgour v. Teligence Communications Inc*, 2006 BCHRT 406 at para. 33. Unlike *Vorley* and *Spence*, this is not a situation where counsel would be appearing in both proceedings regardless of joinder. Nor is it likely that the Retaliation Complaint will be heard in one or two days, such that any prejudice from having to participate in extra hearing days may be outweighed by potential efficiency gains.

[22] I also accept that the Union would be prejudiced by having to disclose its internal communications to the University, if the two complaints were joined. In the ordinary course, the employer would not have access to this information: *University of the Fraser Valley (Re)*, [2018] BCLRBD No. 24 at para. 45. There are strong policy reasons for this, unique to labour relations. While there may be complaints where such disclosure is unavoidable, this is not one of them.

[23] In sum, I find this is not a circumstance where it is fair and reasonable to join Mr. Zamorano Meza's two complaints. They will proceed separately.

[24] There may be opportunities later in each process to address overlapping factual issues and find efficiencies. For example, any potential prejudice that may arise from the prospect of inconsistent findings in each complaint may be addressed by application of common law finality doctrines such as issue estoppel. In addition, the parties to the Retaliation Complaint may consider how to use evidence submitted in the Discrimination Complaint to find efficiencies in the hearing of the Retaliation Complaint. The parties are fortunate to have the help of counsel to find these efficiencies.

III CONCLUSION

[25] The application to join Mr. Zamorano Meza's Discrimination Complaint and Retaliation Complaint is denied.

Devyn Cousineau
Vice Chair