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Indexed as: The Parent v. The School District, 2024 BCHRT 113

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

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

BETWEEN:

The Parent

COMPLAINANT

AND:

The School District

RESPONDENT

REASONS FOR DECISION
TIMELINESS OF COMPLAINT
Section 22

Tribunal Member:

Steven Adamson

On her own behalf:

The Parent

Counsel for the Respondent:

Ilan B. Burkes and Ellen Ferguson

I INTRODUCTION

[1] On September 26, 2023, the Parent filed a complaint against her former employer, the School District, alleging it discriminated against her in employment based on family status, contrary to s. 13 of the *Human Rights Code* [**Code**].

[2] The Parent filed an amendment to her complaint alleging that the School District also discriminated against her in the provision of a service based on family status, contrary to s. 8 of the *Code*. The allegations in the complaint are about the Parent's dealings with the School District, both as an employee and as a parent of a student that attended a school in the School District. The allegations appear to arise from challenges her son was experiencing at school regarding a number of disabilities and certain accommodations he required. The Parent says that in attempting to address these issues with the School District, as a parent she was discriminated against under s. 8. The Parent further says that the challenges her son was experienced ultimately impacted her work performance, resulting in discrimination by the School District under s. 13.

[3] The issue before me is whether the allegations in the complaint are timely, and if not, whether to accept them under s. 22(3) of the *Code*. I make no findings regarding the merits of this complaint.

[4] For the reasons that follow, I find that the complaint does not allege a timely continuing contravention of the *Code* and it is not in the public interest to accept the late filed complaint for filing. In this case the Parent's employment ending in June 2018 with respect to both her employment and services complaint does not form part of a continuing contravention and it is not in the public interest to allow it to proceed late filed.

II ORDER LIMITING PUBLICATION

[5] As will be evident from my reasons below, this complaint is relates to another complaint filed by the Parent against the School District on behalf of her son.

[6] Rules 5(6) and (7) of the Tribunal's *Rules of Practice and Procedure* deal with the limiting of publication of personal information. Under Rule 5(7), the Tribunal limits in the ordinary

course the public disclosure of information that would identify a minor. This complaint involves a minor and relates to other complaints filed on his behalf. I have, therefore, decided to anonymize the parties on my own motion to protect the child's identity. In the decision I refer to the Complainant as the "Parent", the Respondent as the "School District", and the Parent's son as the "Child".

III BACKGROUND

[7] The Child has various mental disabilities, including anxiety, attention deficit hyperactivity disorder [ADHD], and a learning disability in written expression. He attends school in the School District.

[8] In the Grade 5 school year from mid 2017 to mid 2018, the Parent alleges the Child was struggling in school. She says that everything reached a "crisis mode" in that year as he would come home and have "meltdowns" after school, crying, throwing things, and punching pillows. The Parent says that she was constantly being called by school staff to pick him up or resolve issues at school. She alleges that communicating with staff was challenging as they did not understand his disabilities and his teacher was inexperienced.

[9] At this time, the Parent was also a long-term employee of the School District. She worked as a secretary in another school for children with disabilities. The Parent also notes that she has a physical disability that causes her to stutter.

[10] The Parent alleges that the stress caused by issues related to the Child at school in Grade 5, from mid 2017 to mid 2018, resulted in her losing sleep and missing work. She further alleges that her stuttering increased due to being physically exhausted and burnt out. This resulted in her having increased difficulties performing her duties at work, particularly those relating to answering the phone.

[11] On June 6, 2018, the Parent alleges she "resigned" from her secretary position to avoid an "emotional breakdown" related to issues with the Child at school. It appears, however, that her employment status with the School District continued on with a year without pay followed by a four month stint in another position before the employment relationship ended.

[12] In September 2018, the Parent says that the School District put her on an unpaid leave of absence for a year.

[13] In the fall of 2019, the Parent states that she returned to work at the School District on a limited basis as an on-call lunch supervisor working one hour a day a couple of days per week.

[14] In January 2020, the Parent alleges that her employment with the School District came to an end. She says that she quit because she was upset about the handling of her daughter's human rights complaint by the School District, without providing any details, and not because of anything to do with the Child.

[15] On September 15, 2020, the Parent filed a complaint with the Tribunal on behalf of the Child against the School District alleging that it failed to accommodate his disabilities up to a June 2018.

[16] On February 23, 2021, the Tribunal rejected the September 2020 complaint on the basis that it was late filed by more than 15 months, and it was found not in the public interest to allow it to proceed.

[17] On April 26, 2022, the Parent filed another complaint on behalf of the Child against the School District alleging that the School District failed to accommodate him in the first half of 2022 for incidents related to his Grade 9 English Class.

[18] On September 22, 2023, the Tribunal notified the parties that the April 2022 complaint would proceed.

[19] On September 25, 2023, the Parent emailed the Tribunal case manager seeking to add herself as a complainant in the April 2022 complaint under the ground of family status. The Parent asked the Tribunal whether it was necessary to file an application in circumstances where she had already described in the complaint form how the School District's conduct negatively affected her employment.

[20] On September 26, 2023, the Tribunal case manager informed the Parent that she would need to file a new complaint. The case manager informed the Parent that any new complaint would be screened by the Tribunal to determine whether it can proceed. The case manager

further informed the Parent that she could request the joining of two complaints if her new complaint was allowed in.

[21] On September 26, 2023, the Parent filed a complaint against the School District for employment based on family status. The Parent also filed an application to fast-track the processing of her complaint so it might be heard together with her son's April 2022 complaint.

[22] On November 14, 2023, the Tribunal decided to fast-track the September 2023 complaint after concluding it was related her son's April 2022 complaint. The Tribunal sought further information from the Parent regarding the details of her employment relationship with the School District, whether she was seeking to add a services complaint based on the information provided, whether she wished to add disability to the grounds of discrimination alleged and provide more details regarding the late filing of the September 2023 complaint. Finally, the Tribunal deferred the April 2022 complaint pending the screening of the September 2023 complaint.

[23] On December 20, 2023, the Tribunal notified the parties that the September 2023 complaint was proceeding to a decision on timeliness on an expedited basis and invited their submissions.

IV ANALYSIS AND DECISION

[24] Section 22 of the *Code* provides:

- (1) A complaint must be filed within one year of the alleged contravention.
- (2) If a continuing contravention is alleged in a complaint, the complaint must be filed within one year of the last alleged instance of the contravention.
- (3) If a complaint is filed after the expiration of the time limit referred to in subsection (1) or (2), a member or panel may accept all or part of the complaint if the member or panel determines that:
 - (a) it is in the public interest to accept the complaint, and
 - (b) no substantial prejudice will result to any person because of the delay.

[25] The time limit set out in s. 22 of the *Code* is a substantive provision which is intended to ensure that complainants pursue their human rights remedies diligently and to allow respondents the comfort of performing their activities without the possibility of a dated complaint: *Chartier v. School District No. 62*, 2003 BCHRT 39 at para. 12.

A. Continuing Contravention

[26] The complaint was filed on September 26, 2023. To comply with the one-year time limit under s. 22(1) of the *Code*, the last alleged act of discrimination had to occur on or after September 26, 2022.

[27] The Parent appears to argue a continuing contravention of the *Code* exists in this case. She states that her decision to take leave in 2018 is part of a continuing chain of events leading up to the filing of this complaint. The Parent reports continuing to be active in her son's education on an ongoing basis to ensure he gets the support he needs. As such, she continues to defer her own employment to ensure the Child's educational needs are being met by the School District.

[28] A complaint is filed in time if the last allegation of discrimination happened within one year, and older allegations are part of a "continuing contravention": *Code*, s. 22(2); *School District v. Parent obo the Child*, 2018 BCCA 136 at para. 68. A continuing contravention is "a succession or repetition of separate acts of discrimination of the same character" that could be considered separate contraventions of the *Code*, and "not merely one act of discrimination which may have continuing effects or consequences": *Chen v. Surrey (City)*, 2015 BCCA 57 at para. 23; *School District* at para. 50.

[29] From my review of the materials before me, I find the complaint does not contain any allegations of discrimination that occurred within the 1 year prior to filing. While appreciating the Parent continues to refrain from engaging in consistent employment as she remains active in the Child's education to ensure he receives the necessary supports, in my view this situation is best characterized as one act of discrimination, the Parent leaving her job to be there for the Child in mid 2018, with continuing consequences up to the time of filing this complaint. While the Parent reports that she later permanently severed her employment ties with the School

District in January 2020, she states that she did so for reasons unrelated to the discrimination allegations associated with the School District's treatment of the Child. As such, the fact that her employment came to an end in January 2020 is not relevant to my analysis because the Parent does not allege that this was discriminatory.

[30] By way of summary, the Parent has not raised any timely allegations of discrimination in the one-year period prior to filing this complaint. In this case, the latest allegations occurred in June 2018 with continuing consequences up to the time of filing this complaint. As such, no continuing contravention of the *Code* exists. The complaint is late-filed, and I proceed to an analysis of whether the Tribunal should exercise its discretion to accept the complaint outside the one-year time limit because it is in the public interest to do so, and no substantial prejudice will result to any person because of the delay: *Code* s. 22(3). I begin with the public interest determination.

B. Public Interest

[31] Whether it is in the public interest to accept the late-filed complaint is a multi-faceted analysis. The enquiry is fact and context specific and assessed in accordance with the purposes of the *Code*: *Hoang v. Warnaco and Johns*, 2007 BCHRT 24 at para. 26. The Tribunal considers a non-exhaustive list of factors, including the length of the delay, the reasons for the delay, and the public interest in the complaint itself: *British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite*, 2014 BCCA 220 [**Mzite**] at para. 53. These are important factors, but they are not necessarily determinative: *Goddard v. Dixon*, 2012 BCSC 161 at para. 152; *Mzite* at para. 55.

[32] I have first considered the length of delay in filing. As noted above, the allegations in this case occurred in June 2018. As such, the complaint allegations are over four years late. A delay of more than one year is considered by the Tribunal to be excessive and militates strongly against the public interest: *Naziel-Wilson v. Providence Health Care and another*, 2014 BCHRT 170 at para. 13.

[33] The Parent provided several reasons for the delay in filing; however, I am not satisfied on the materials before me that they attract the public interest in allowing the complaint to proceed.

[34] First, she candidly reports that she was waiting to file her complaint until such time as the Tribunal notified her that her son's complaint was being permitted to proceed further in the Tribunal's process. She thought, in error, that she could amend the Child's complaint to add her name as a complainant. The parent also thought that her amendment could be filed in time as the Child's complaint was timely for allegations of discrimination occurring in April 2022, but had a long history starting with his days in elementary school in Grade 5 when she decided to leave her job. The Parent noted that when the Tribunal informed her that she would need to file a separate complaint as amending her son's complaint was not allowed, she filled out her complaint form immediately to start the complaint.

[35] Ignorance of the *Code*, or the time required to become aware of one's rights, is generally not an acceptable reason, on its own, for the delay in filing: *Rashead v. Vereschagin (No. 2)*, 2005 BCHRT 74 at para. 12; *Ferrier v. BCAA*, 2009 BCHRT 412 at para. 31. In this case, the Parent has demonstrated the ability to file complaints on behalf of her children prior to filing this complaint. In participating in this application, she also demonstrated the ability to research and understand human rights law and the Tribunal's complaint procedure. If the Parent felt wronged by the School District in mid 2018, on the materials before me it appears that she had the capacity to make herself aware of the *Code* and the Tribunal's process and could have done so within the one-year time limit for filing. The materials before me do not indicate otherwise where she filed complaints in 2020 and 2022.

[36] The Parent argued that her case is unique and questioned whether the Tribunal's decision to not allow her to amend the Child's complaint to add her as a complainant was a new process that she could not have known about even if she studied the Tribunal's public information materials. As noted above, it was open to the Parent to set out allegations of discrimination in the areas of employment and services based on family status. In my view, filing such a complaint was feasible based on a review of the Tribunal's public information without specifically having to become aware of case law on whether a parent can file a

complaint in the area of services against a school that was not accommodating their child. In addition, the Tribunal's *Rules of Practice and Procedure* indicate in Rule 25 that adding a complainant in all cases requires the person to file a separate complaint and apply to have that complaint joined to the prior complaint. In this case, I do not see the kind of barrier necessary to prevent the Parent from filing her complaint capable of attracting the public interest in allowing it to proceed late filed.

[37] In determining whether acceptance of a late-filed complaint is in the public interest, the Tribunal also considers whether there is anything particularly unique, novel, or unusual about the complaint that has not been addressed in other complaints: *Hau v. SFU Student Services and others*, 2014 BHCRT 10 at para. 22; *Bains v. Advanced Air Supply and others*, 2012 BCHRT 74 at para. 22; *Mathieu v. Victoria Shipyards and others*, 2010 BCHRT 244 at para. 60. Where a complaint raises a novel issue on behalf of a vulnerable group, which advances the purposes of the *Code*, this factor may weigh in favour of finding a public interest in accepting the complaint: *Mzite* at paras. 65-66. The Tribunal has considered gaps in its jurisprudence, on the one hand, and the existence of good precedents, on the other hand, in determining whether to permit a complaint to proceed: *Mzite* at para. 67.

[38] The Parent states she is clearly not the only parent who needs to go on leave when their children with disabilities are not properly able to access their education and are not being supported. She submits that "the system" needs to start recognizing the toll and impacts on parents' employment when disabled children are not getting what they need. The Parent argues her case is unique regarding the issue of a parent bringing a complaint of consequential harm arising from conduct related to their child in school. The Parent argues the School District is incorrect in its assertion that the issue is settled such that she is barred from succeeding because she does not have the necessary services relationship with the Respondent. I do not agree with the Parent that the services and family status aspect of her complaint is unique. There is a decision on this issue that was noted by the parties: *Independent School Authority v. Parent*, 2022 BCSC 570.

[39] In the end, I do not find this Complaint attracts the public interest in allowing it to proceed late filed. The Complaint was filed over four years late and the Parent has not provided

any reasons for the late filing that attract the public interest in letting in proceed late. Further, the complaint is not sufficiently unique or novel to attract the public interest. Having not found it is in the public interest to accept the late-filed complaint, I need not address the issue of whether substantial prejudice would result.

V CONCLUSION

[40] For these reasons, the complaint is not accepted for filing.

Steven Adamson
Tribunal Member