

Date Issued: April 12, 2024

File: CS-004493

Indexed as: Clark v. Vancouver Police Board, 2024 BCHRT 116

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:

Allan Clark

COMPLAINANT

AND:

Vancouver Police Board

RESPONDENT

REASONS FOR DECISION
TIMELINESS OF COMPLAINT
Section 22

Tribunal Member:

Steven Adamson

On his own behalf:

Allan Clark

Counsel for the Respondent:

David McKnight

I INTRODUCTION

[1] On June 16, 2021, Allan Clark filed a complaint of discrimination in services based on race, mental and physical disability, gender identity or expression and sexual orientation contrary to s. 8 of the *Human Rights Code* [**Code**], against the Vancouver Police Board [the **VPB**].

[2] The issue before me with respect to timeliness is whether to accept the complaint against the VPB. I make no findings regarding the merits of this complaint.

[3] For the reasons that follow, I find that it is not in the public interest to accept the late filed complaint for filing.

II BACKGROUND TO COMPLAINT

[4] Mr. Clark's complaint form states he is a gay First Nations male with mental health issues.

[5] Mr. Clark alleges that the VPB committed discreditable conduct and neglect of duty based on his Indigeneity and mental disabilities throughout his time in the province from September 2007 until December 2012.

[6] Mr. Clark alleges in all his interactions with the VPB he was automatically deemed guilty without investigation. He says that each time the VPB picked him up, charged and jailed him solely based on his appearance, sexuality and ancestry while white people made accusations against him.

[7] Mr. Clark's provided the following examples of the many encounters he had with the VPB.

[8] In May 2010 Mr. Clark alleges the VPB came to his home and charged him with assault against a youth who worked with his former partner. He says he was held in custody until December 2010 when the charges against him were dropped.

[9] Some time in 2011, Mr. Clark alleges the VPB attended his home forcing him to start talking so they could determine whether he was the person making noise outside the window

of a neighbouring white tenant. It appears Mr. Clark is alleging the VPB's actions perpetuated the racism of the other tenant, who agreed that it was him, resulting in his arrest. Mr. Clark alleges the charges were eventually stayed, but he characterizes the VPB as part of the "racist thumb" on his life.

[10] Mr. Clark alleges the threat of the VPB coming after him with unsubstantiated and racist claims went on for another year until he left the province in December 2012.

III ANALYSIS AND DECISION

[11] 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.

[12] 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: *Chartier v. School District No. 62*, 2003 BCHRT 39.

A. Time Limit

[13] The complaint was filed on June 16, 2021. To comply with the one-year time limit under s. 22(1) of the *Code*, the alleged act of discrimination had to occur on or after June 16, 2020.

[14] The latest specific allegations of discrimination in this case occurred in 2011. As such, 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

[15] 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.

[16] I have first considered the length of delay in filing. As noted above, the allegations of discrimination in this case occurred up some time in 2011. As such, the complaint allegations were over 9 years late filed, which is an extreme delay, and absent truly extraordinary circumstances, a respondent should not be expected to answer allegations of discrimination so long after the fact: *Prasad v. The College of Physicians and Surgeons of British Columbia*, 2004 BCHRT 21, at para. 15.

[17] Mr. Clark's reasons for delay focused on his belief that there are no statutes of limitations on First Nations human rights. He submits the First People of this land did not give up their inherent rights and the VPB are in a constant conflict of interest with Canada's First Peoples, including himself. A vote on the side of the VPB is a vote for continued "White Supremacy" against First Nations.

[18] I appreciate Mr. Clark's view that his human rights in relation to alleged allegations of discrimination are not subject to BC's *Code*, as an Indigenous person. I acknowledge that the *Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights* [**EOV Report**] at page 14 found that for a human rights framework and process to have legitimacy with Indigenous Peoples, it cannot further the denial and exclusion of Indigenous laws. Article 40 of the United Nations Declaration of the Rights of Indigenous Peoples [**UNDRIP**] calls for "effective

remedies for all infringements of their individual and collective rights” with consideration of “the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.” However, Mr. Clark has not pointed to any specific Indigenous custom, tradition, rule or legal system for me to consider in relation to the timeliness of his complaint.

[19] I am also aware that the EOJ Report observed at page 39 that Indigenous people surveyed often cited the time limit for bringing complaints before the Tribunal as an issue. In some cases, people reported that they experienced trauma (linked to intergenerational Indian Residential School or child welfare issues) which prevented them from filing on time. The EOJ Report’s recommendation 15.2 states the Tribunal should assess time extension requests with a trauma-informed lens and consider any circumstances Indigenous applicants raise tied to Indigenous traditions or ways of approaching conflict (such as attempts at relationship repair or restoration).

[20] While my time limit decision in this case is subject to the authority found in the *Code*, I have tried to render it with a trauma-informed lens. Here, Mr. Clark has not raised any circumstances tied to Indigenous tradition or ways of approaching conflict that explain his delay in filing or argued his delay in filing is related to trauma. I acknowledge that Mr. Clark experienced a great deal of trauma in his life from a young age with abuse at home and in foster care. I further appreciate that he saw his relationship with the VPB as one where he lived in fear of the police coming to his home and arresting him for discriminatory reasons, however, his evidence indicates that he left the province in 2012 and is now situated in a place where he is no longer within the reach of the VPB. With this in mind, I am unable to conclude there is sufficient public interest in allowing Mr. Clark’s late filed complaint to proceed so many years after he departed British Columbia.

[21] 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.

[22] Mr. Clark is seeking justice to get racists off the street, especially those carrying guns and with authority to use them. Such persons with the authority to arrest and incarcerate Indigenous People must be prevented from continuing to practice their racism. While acknowledging the existence of systemic racism in the province, and Mr. Clark's desire to affect change in how police treat Indigenous People, I am not satisfied that his complaint raises a novel issue that should be heard by the Tribunal to advance the purposes of the *Code*. The issues raised in Mr. Clark's complaint, have been considered by the Tribunal: *Kostyra v. Victoria Police Department*, 2015 BCHRT 124; *Campbell v. Vancouver Police Board (No. 4)*, 2019 BCHRT 275; *Johnson Sr. and AB (by Johnson Sr.) v. Vancouver Police Board*, 2021 BCHRT 102.

[23] Ultimately, the filing delay in this case is extreme, and that strongly weighs against the public interest: *Mohammed v. BC Ministry of Children and Family Development (No. 2)*, 2017 BCHRT 159, at para. 33. The reasons Mr. Clark has provided for the delay are not sufficient to overcome the strong weight against such a dated complaint. Finally, Mr. Clark's complaint is not so unique as to warrant an extraordinary extension of the Tribunal's time limit for filing a complaint: *LeMoine v. B. C. (Ministry of Public Safety and Solicitor General)*, 2009 BCHRT 163, at para. 32.

[24] For these reasons, I do not find that it is in the public interest to accept the late-filed complaint, and I need not address the issue of whether substantial prejudice would result. However, in the circumstances of this case, where the delay is excessive, I am prepared to presume there would be substantial prejudice to the respondents: *LeMoine*, at para. 34.

IV CONCLUSION

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

Steven Adamson
Tribunal Member