

Date Issued: March 1, 2024

File: CS-000806

Indexed as: Cotton v. BC Ministry of Health (No. 2), 2024 BCHRT 61

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:

Carrie Cotton

COMPLAINANT

AND:

His Majesty the King in Right of the Province of British Columbia as represented by the Ministry
of Health

RESPONDENT

REASONS FOR DECISION
APPLICATION TO RECONSIDER A DECISION
Rule 36

Tribunal Member:

Christopher J. Foy

On their own behalf:

Carrie Cotton

Counsel for the Respondent:

No submissions sought

I INTRODUCTION

[1] Ms. Carrie Cotton filed a complaint against His Majesty the King in Right of the Province of British Columbia as represented by the Ministry of Health [**Ministry**]. She alleges that the Ministry discriminated against her based on sex regarding her employment contrary to the *Human Rights Code*. The Ministry brought an application to dismiss Ms. Cotton's complaint. I granted the Ministry's application and dismissed the complaint: *Cotton v. BC Ministry of Health*, 2024 BCHRT 5 [**Dismissal Decision**]. Ms. Cotton now applies to have the Tribunal reconsider the Dismissal Decision.

[2] I have not found it necessary to seek submissions from the Ministry.

[3] Ms. Cotton's application for reconsideration was filed late. In this decision I decline to exercise my discretion to accept her late filed application for reconsideration. If I have erred in that exercise of discretion, I would deny Ms. Cotton's application in any event. She has not shown that reconsideration is in the interests of fairness and justice.

II DECISION

A. Should the late-filed application be accepted?

[4] Under Rule 36 of the Tribunal's *Rules of Practice and Procedure* [**Rules**], a party seeking reconsideration of a decision must apply within 14 days "of the date on which the circumstances that form the basis of the application came to the party's attention or could have come to the party's attention if the party exercised reasonable diligence, whichever is earlier". The purpose of this time limit is to "encourage prompt applications for reconsideration, and reduce uncertainty about the finality of a Tribunal decision": *MacLennan v. BC Ministry of Public Safety and Solicitor General*, 2018 BCHRT 214 at para. 16.

[5] The Tribunal notified the parties on January 4, 2024, of the Dismissal Decision. Therefore, to be timely, Ms. Cotton’s application needed to be filed by no later than January 18, 2024. Ms. Cotton applied for reconsideration on January 23, 2024, resulting in it being five days late.

[6] The Tribunal has discretion to waive or vary time limits set out in the Rules, as it considers appropriate: Rule 2(2). A person seeking to apply for reconsideration outside the 14-day time limit must persuade the Tribunal that the just and timely resolution of the complaint requires that the time limit be waived. The Tribunal will consider whether waiving the limit furthers the fair and timely resolution of the complaint and the purposes of the *Code*. Some of the relevant factors may include whether there are serious grounds for reconsideration, the length of the delay, the explanation for the delay, and prejudice to any person. This is a highly discretionary exercise: *MacLennan* at para. 19.

[7] Ms. Cotton states that before the Dismissal Decision was published, she received an email from the Tribunal indicating the case “would not move forward until 2024”. She is seeking reconsideration on the basis that the Dismissal Decision came “much earlier than I expected given the pace of progress on backlogged cases”, and she thought she would have more time to submit an additional document to the Tribunal that she was working on.

[8] In my view, this is not a serious ground for reconsideration. If a party wants to provide a further submission, it is incumbent upon them to submit an application to file that submission expeditiously as opposed to waiting with the hope that they will be able to complete their submission prior to the Tribunal making a decision.

[9] In considering the length of the delay, a five-day delay is brief. However, the fact that the delay is short cannot operate on its own to support waiving the time limit. For example, the Tribunal has declined to accept a complaint for filing that was two days late: *Adolphs v. Boucher Institute of Naturopathic Medicine*, 2014 BCSC 298 at paras. 1 and 6. Any other approach would

undermine the substantive benefit of a limitation period: *Kang v. University of British Columbia and Azmina Manji*, 2015 BCHRT 10 at para. 48.

[10] Further, Ms. Cotton submits that she is not a lawyer and the 14-day time limitation did not provide her the time required to review and absorb the ruling and respond. The Tribunal has adopted Rules and procedures to ensure fairness and accessibility for all parties. The fact that Ms. Cotton is self-represented is not a basis for extending the time limit without other evidence. The Tribunal website lists a number of organizations that are available to assist self-represented litigants. There is no evidence Ms. Cotton attempted to access those resources and was rebuffed.

[11] Taking into account that Ms. Cotton has not presented serious grounds for reconsideration, the length of the delay, and the lack of a reasonable explanation for it, she has not persuaded me to exercise my discretion to waive the time limit for filing.

[12] Even if I am wrong and should have accepted Ms. Cotton's late-filed application for reconsideration, I would deny her application for reconsideration on the merits.

B. Merits of reconsideration

[13] The power to reconsider a decision, once made, is necessarily very narrow. Among other things, this ensures that the resources of the Tribunal and the parties are not endlessly taken up in re-arguing the same issues, which would be neither efficient nor fair: *Grant v. City of Vancouver and others (No. 4)*, 2007 BCHRT 206 at para. 10.

[14] The Tribunal's jurisdiction to reconsider its own decisions is limited to cases where reconsideration is in the interests of fairness and justice: *Zutter v. British Columbia (Council of Human Rights)* [1995] B.C.J. No. 626 (C.A.); *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499 at para. 160, upheld on this point in 2016 SCC 25; *Chandler v. Alberta Association of Architects* [1989] 2 S.C.R. 848.

[15] Reconsideration is not an opportunity for parties to "enter new facts that with reasonable diligence were available in the first instance, to make arguments that could have been made in the first instance but were not, or to reargue matters that were argued in the first instance in an attempt to achieve a different result": *Ramadan v. Kwantlen Polytechnic University and another (No. 2)*, 2018 BCHRT 56 at para. 13. Here, the burden is on Ms. Cotton to show that reconsideration is in the interests of fairness and justice: *Grant* at para. 10; Rule 36(1).

[16] In her application, Ms. Cotton has provided a four-page document that she created to bolster her argument and evidence in response to the Ministry's application to dismiss. She explains, "I initiated the document for submission but was delayed in attaining the contact information that would serve to validate the submission". She argues that without this document that she created, the Tribunal did not have "additional information in support of my bullying complaint."

[17] This is not a basis on which I can reconsider the Dismissal Decision. Ms. Cotton had the opportunity to respond to the Ministry's application to dismiss and she provided a response submission as per the schedule for exchange of submissions. In my view, much of the material in Ms. Cotton's new document could have been submitted during her response submission to the Ministry's application to dismiss. This is a situation where Ms. Cotton is attempting to reargue matters that were argued or could have been argued in the first instance in an attempt to achieve a different result.

[18] It would be neither fair nor efficient for me to reconsider the Dismissal Decision based on this newly created written submission which could have been provided in Ms. Cotton's response to the Ministry's application to dismiss. To the contrary, granting Ms. Cotton's application for reconsideration would undermine the finality of the Tribunal's process.

III CONCLUSION

[19] Ms. Cotton's application for reconsideration was filed out of time. I decline to exercise my discretion to waive the time limit. If I am mistaken regarding the exercise of my discretion, I deny the application for reconsideration in any event.

Christopher J. Foy
Tribunal Member