

Date Issued: March 22, 2024

File: CS-002591

Indexed as: McNeill v. Compass Group Canada and another, 2024 BCHRT 89

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:

William (Bill) McNeill

COMPLAINANT

AND:

Compass Group Canada and Hospital Employees' Union

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO DISMISS COMPLAINT
Sections 27(1)(g)

Tribunal Member:	Christopher J. Foy
Counsel for the Complainant:	Timothy Bhullar
Counsel for the Respondent Compass Group Canada:	Elizabeth Reid
Counsel for the Respondent Hospital Employees' Union:	Jessie K. Sunner

I INTRODUCTION

[1] William (Bill) McNeill filed a complaint against Compass Group Canada [**Compass**] and the Hospital Employees' Union [**HEU**] alleging that they discriminated against him based on sex regarding his employment and membership in a union contrary to the *Human Rights Code* [**Code**].

[2] From on or about February 2014 to November 2015, Mr. McNeill alleges that he was bullied and harassed by a female co-worker and that neither Compass nor the HEU took his complaints about this co-worker seriously which resulted in him suffering psychological and emotional stress.

[3] Both Compass and the HEU filed separate applications to dismiss Mr. McNeill's complaint on the basis that it was not filed within the one-year time limit for filing complaints. In the alternative, the Respondents raised several other arguments for dismissal under ss. 27(1)(b),(c),d(ii),(e), and (f) of the *Code*.

[4] I am satisfied that the only issue I need to address for both Respondents' applications to dismiss is under s. 27(1)(g) of the *Code*. The issue is whether Mr. McNeill's complaint is late filed and, if so, whether it is in the public interest to accept the complaint, and there is no substantial prejudice from the delay.

[5] While I do not refer in my decision to all the information filed by the parties in relation to this application to dismiss, I have considered it and thank the parties for their respective submissions. The following will not be a complete recitation of the parties' submissions, but only those necessary to come to my decision.

[6] Below I first set out the background to the complaint and I then set out my reasons for granting the applications to dismiss.

II BACKGROUND

[7] The following background summary is taken from the parties' submissions. I make no findings of fact.

[8] In or about December 2015, Mr. McNeill brought a bullying and harassment complaint through Compass' internal process against a female co-worker. Compass removed all contact between Mr. McNeill and the female co-worker and commenced an investigation.

[9] On December 18, 2015, Compass' investigator concluded that some bullying and harassment took place. The female co-worker was disciplined and Compass decided that going forward Mr. McNeill would no longer be required to work with her.

[10] On or about January 13, 2016, Mr. McNeill commenced a medical leave and filed an application to WorkSafe BC for compensation resulting from the workplace bullying and harassment.

[11] On January 14, 2016, Compass provided a letter to Mr. McNeill setting out Compass' view that they had taken appropriate steps in responding to his concerns regarding the female co-worker. This letter stated in part the following:

All workplace adjustment changes and any other steps deemed necessary were completed prior to you starting a leave related to mental stress at work on January 13, 2016. We believe that we have taken appropriate steps in responding to the concerns that you have brought forward..."

[12] On June 9, 2016, Mr. McNeill asked HEU to file a grievance on his behalf against Compass for failing to provide him with a safe working environment. The HEU declined to do so.

[13] At some point prior to August 22, 2018, the HEU was mistakenly under the impression that Compass had terminated Ms. McNeill and consequently filed a termination grievance on August 22, 2018 [**Termination Grievance**].

[14] On November 15, 2018, the Workers' Compensation Appeal Tribunal decided that Mr. McNeill sustained a compensable mental disorder resulting from the behaviour of the female co-worker.

[15] On May 7, 2019, Mr. McNeill told HEU that he refused to return to work at Compass while the female co-worker who had previously bullied and harassed him remained employed with Compass.

[16] On February 24, 2020, Mr. McNeill clarified with the HEU that he was not terminated but on medical leave.

[17] On March 4, 2020, the HEU withdrew the Termination Grievance.

[18] On September 4, 2020, Mr. McNeill filed this complaint.

[19] Mr. McNeill alleges that Compass:

...did not take his bullying and harassment complaints seriously nor did the Employer take adequate steps to resolve Mr. McNeill's complaints that he had against his female co-worker due to his gender despite having a 'zero tolerance' for bullying and harassment.

[20] Mr. McNeill alleges that the HEU:

...did not take his bullying and harassment complaints seriously nor did the Union take adequate steps to resolve Mr. McNeill's complaints that he had against his female co-worker due to his gender.

III DECISION

[21] There is a one-year time limit for filing a human rights complaint: *Code*, s. 22. 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.

[22] Section 22 of the *Code* is meant to ensure that complainants pursue their human rights remedies promptly so that respondents can go ahead with their activities without the possibility of a dated complaint: *Chartier v. School District No. 62*, 2003 BCHRT 39 at para. 12.

[23] Section 27(1)(g) permits the Tribunal to dismiss a late-filed complaint. Compass and the HEU argue that all the allegations in Mr. McNeill's complaint are late filed and should be dismissed under s. 27(1)(g) of the *Code*. Mr. McNeill concedes that his complaint is late filed, but argues that the Tribunal should exercise its discretion to accept the complaint under s.22(3) of the *Code*.

[24] As I am satisfied that the complaint is late filed, the issue I must decide is whether to exercise my discretion to accept the complaint because it is in the public interest to do so and there is no substantial prejudice to any person because of the delay: *Code*, s. 22(3), *School District v. Parent obo the Child*, 2018 BCCA 136 at para. 68.

A. Is the complaint late filed?

[25] Mr. McNeill does not dispute, and I accept, that his complaint is late filed.

[26] The complaint was filed on September 4, 2020. To comply with the one-year time limit an alleged instance of discrimination would have to have occurred on or after September 4, 2019.

[27] Although Mr. McNeill concedes that his complaint is late filed, he does not state when the last instance of alleged gender discrimination occurred. Based on the material, it is my view that the last instance of alleged gender discrimination against Mr. McNeill by Compass occurred on January 14, 2016 when Compass wrote to Mr. McNeill advising they took appropriate steps to respond to his concerns about the female co-worker.

[28] In my view, the last instance of alleged gender discrimination against Mr. McNeill by the HEU occurred on June 9, 2016, when the HEU told Mr. McNeill that they would not file a grievance against Compass alleging a failure to provide him with a safe working environment.

[29] Given that the complaint is late-filed, I now consider whether to accept all or part of the complaint under s. 22(3) of the *Code*. The onus is on Mr. McNeill to establish that relieving against the time limits would be in the public interest and would not result in substantial prejudice to Compass and the HEU. Mr. McNeill must establish both of these elements in order to obtain relief against the *Code*'s time limits: *Chartier v. School District No. 62*, 2003 BCHRT 39 at para. 12, and *O'Hara v. British Columbia (Human Rights Commission)*, 2002 BCSC 559 at para. 20 aff'd 2003 BCCA 139.

B. Public Interest

[30] The Tribunal assesses the public interest in a late-filed complaint in light of the purposes of the *Code*. These include identifying and eliminating persistent patterns of inequality, and providing a remedy for persons who are discriminated against: s. 3. It may consider factors like the length of the delay, the reasons for the delay, the complainant's interest in accessing the Tribunal, the respondent's interest in being able to continue its activities without worrying about stale complaints, whether the complainant got legal advice, 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 and 63; *Hoang v. Warnaco and Johns*, 2007 BCHRT 24; *Complainant v. The Board of Education of School District No. 61 (Greater Victoria)*, 2022 BCHRT 44 at para. 18. The analysis is multifaceted; the factors I have identified are not necessarily determinative and not every factor will be relevant in every case: *Goddard v. Dixon*, 2012 BCSC 161 at para. 152; *Mzite* at para. 55. The inquiry is always fact and context specific.

[31] Mr. McNeill sets out a number of reasons for the delay in filing his complaint including his mental condition; his pursuit of other processes including under the HEU's constitution; discussions with the HEU and Compass; and his lack of knowledge about the one-year time limit. For the following reasons, I have determined that Mr. McNeill has not satisfied the burden of establishing it is in the public interest to accept the complaint and accordingly, I decline to exercise my discretion to accept his complaint for filing under s. 22(3). I consider the relevant factors and Mr. McNeill's arguments in turn.

[32] First, I consider the length of the delay. Mr. McNeill's complaint was filed over four years late. A four-year delay is substantial which weighs against acceptance of the complaint: *Davy v. Northern Health Authority* 2019 BCHRT 288 at para. 15.

[33] Second, I consider the reasons for the delay. Mr. McNeill makes a number of arguments about the reasons for the delay in filing.

[34] Mr. McNeill states his complaint is untimely because of his mental condition and argues "he relied fully on the Employer and the Union to help him and act in his best interest". Where the delay is due to a disabling condition, the Tribunal has noted that it may be in the public interest to accept a late-filed complaint: *MacAlpine v. Office of the Representative for Children and Youth*, 2011 BCHRT 29 at para. 42. However, in this instance, there is no evidence before me that Mr. McNeill's mental condition precluded him from filing his complaint within the time limits.

[35] Further on the materials before me, it appears that Mr. McNeill was able to pursue other processes and proceedings, either on his own or with assistance. The materials set out that between January 2016 and September 4, 2020, Mr. McNeill was working and in June, 2016 corresponding with the HEU about filing a grievance against Compass for failing to provide a safe workplace. He was also corresponding with the HEU in May of 2019 regarding initiating an internal Union constitutional complaint against the female co-worker. In addition, he describes advocating on his own behalf. He describes a meeting in or about May 2019, which he attended with a union representative and Compass. Mr. McNeill says that he considered his union representative unprepared for that meeting and that he “pretty much had to represent myself, I did most of the talking.”.

[36] Mr. McNeill was represented by counsel in a successful judicial review on or about April 10, 2018 of an earlier denial of his WorkSafe BC claim. Mr. McNeill is also represented by counsel on this application. Consequently, on the whole of the evidence before me, I am not persuaded that any mental condition Mr. McNeill suffered between January 2016 and September 4, 2020 limited his ability to advance his legal interests, either on his own or after retaining counsel, and to file a timely complaint.

[37] Next, Mr. McNeill says that he brought up the option of human rights to the HEU and was told by the HEU representatives and the HEU president to “leave it in their capable hands”. He further says that there was a “revolving door” of HEU representatives and at times the HEU was unresponsive or told him it was too late to file a human rights complaint. Mr. McNeill has not put sufficient evidence or particulars to support the argument that the delay in filing his complaint was because of the HEU. The materials demonstrate that the reference from the HEU to leave matters “in their capable hands” is an April 30, 2019 email from HEU’s president to Mr. McNeill regarding Mr. McNeill’s desire to file a complaint against the female co-worker under Article 19 of the HEU’s constitution, with no mention of a human rights complaint.

[38] In my view these submissions do not attract any public interest in allowing his late filed complaint to proceed as Mr. McNeill's reasons for failing to file a timely human rights complaint concern his perception that the HEU failed in its duty to fairly represent him.

[39] A duty for a union to fairly represent a member is a duty that arises under s. 12 of the *Labour Relations Code*, and which is enforced by the Labour Relations Board. Whether the HEU may or may not have failed in its duty to fairly represent Mr. McNeill does not attract any public interest in allowing his late filed complaint to proceed when there is insufficient evidence to support an argument that the HEU was the cause of the delay.

[40] If a complainant wishes to pursue a duty of fair representation complaint at the Labour Relations Board, the proper course would be to file their human rights complaint in a timely manner and request the human rights complaint process be deferred pending the outcome of the Labour Relations Board process under s. 25 of the *Code*.

[41] Next, Mr. McNeill says that he was making efforts to deal with his concerns internally through the HEU and discussions with Compass “in hopes of having the matter dealt with by them without the need to resort to a human rights complaint.”. The Tribunal has repeatedly said that pursuing another process does not suspend the time limit under the *Code*, and is not enough, on its own, to relieve against the time limit: *Sones v. District of Squamish*, 2016 BCHRT 99 at para. 44 and *Devitt and Hargrove obo others v. School District No. 43 and another*, 2011 BCHRT 218 at para. 20.

[42] Mr. McNeill submits that he was not represented by counsel during the relevant period and he was not aware of a deadline to file a complaint with the Tribunal. The Tribunal has adopted rules and procedures to ensure fairness and accessibility for all parties. The Tribunal website lists a number of organizations that are available to assist self-represented litigants. The fact that Mr. McNeill was self-represented at times is not a basis for extending the time limit without other evidence. Mr. McNeill has not put any evidence before me regarding when

he learned about the deadline for filing and/or any evidence or argument that the moment he learned about the deadline he moved as fast as he could to file the claim.

[43] Finally, in determining whether accepting a late-filed complaint is in the public interest, the Tribunal may also consider 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 BCHRT 10 at para. 22; *Bains v. Advanced Air Supply and others*, 2013 BCHRT 74 at para. 22; *Mathieu v. Victoria Shipyards and others*, 2010 BCHRT 224 at para. 60.

[44] Mr. McNeill's complaint relates to an employer and union response to workplace bullying and harassment. I do not view this complaint as raising anything particularly unique, novel, or unusual, but only specific issues regarding Mr. McNeill's personal situation. It is common for the Tribunal to hear many cases concerning gender discrimination in the employment context.

[45] Finally, I understand from Mr. McNeill's complaint that since he alleges that nothing was done "by the company, union or worksafe" regarding the actions of the female co-worker, he argues there is a possibility that people could have been injured and that is why "It is in the public interest to bring forward." In this case there is evidence that Compass took steps to discipline the female co-worker and accommodate Mr. McNeill's work situation so they no longer worked together. In my view, Mr. McNeill's argument is insufficient to sustain a conclusion that it is in the public interest to accept this untimely complaint. Many complainants argue that if their complaint is successful, it will have a deterrent effect. This must be weighed against the argument that allowing a late-filed complaint to be accepted, in the absence of factors supporting the public interest beyond deterrence, could encourage other complainants to ignore the substantive time limits set out in the *Code: A. v. School District No. C*, 2009 BCHRT 256 at para. 101.

[46] On the basis of all of the information before me, and in particular because of the length of the delay, the absence of any persuasive reason for the delay and the lack of any other factors that would render it in the public interest to accept the complaint, I decline to exercise my discretion to accept the complaint for filing. I therefore need not consider the issue of substantial prejudice.

IV CONCLUSION

[47] Compass' and HEU's respective applications to dismiss Mr. McNeill's complaint based on s. 27(1)(g) is granted. Given this result, it is unnecessary to consider the Respondents' applications to dismiss based on ss. 27(1)(b), (c), (d)(ii), (e), (f) of the *Code*.

Christopher J. Foy
Tribunal Member