

Date Issued: March 28, 2024

File: CS-008131

Indexed as: Bean (by Scott) v. Nelson Police Board and another (No. 2), 2024 BCHRT 99

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:

Oliva Bean (by Erica Scott)

COMPLAINANT

AND:

Nelson Police Board and Donovan Fisher

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO RECONSIDER A DECISION
RULE 36

Tribunal Member:

Steven Adamson

On behalf of the Complainant:

Erica Scott

Counsel for the Respondent:

Andrea Zwack

I INTRODUCTION

[1] Erica Scott filed a complaint on behalf of her daughter, Olivia Bean, against the Nelson Police Board [**NPB**] and its Chief Constable, Donovan Fisher. In a decision, dated October 31, 2023, the Tribunal decided the complaint did not contain any timely allegations of discrimination, and it was not in the public interest to accept the late-filed complaint for filing: 2023 BCHRT 176 [**Decision**]. Ms. Bean now applies to have the Tribunal reconsider the Decision.

[2] The application for reconsideration was late filed. However, I decided to allow the application to proceed as Ms. Scott notified the Tribunal of her dissatisfaction with the Decision within the two-week timeframe for filing and later informed that the advocate who previously assisted her was no longer available. In these circumstances, I decided it was reasonable to allow Ms. Scott to late file the application by just over two weeks. I then sought submissions from the parties on the application and have considered them in rendering my decision.

[3] The application for reconsideration is denied for the following reasons.

II BACKGROUND

[4] Background information regarding the complaint is found in the Decision and is not repeated here in full.

[5] Ms. Bean's complaint was filed on June 7, 2022. The Complaint involves two distinct allegations periods. The first concerns allegations of transphobic discrimination in 2015 related to a sexual assault investigation conducted by then NPB Detective Constable, Nate Holt [the **2015 investigation**]. The second involves the Chief Constable's October 22, 2021, decision regarding the investigation into the 2015 investigation concluding there were no issues related to the Detective Constable's 2015 sexual assault investigation [the **2021 investigation**].

[6] Ms. Bean's reconsideration request focuses on the Decision's finding that the 2021 investigation did not contain any arguable contraventions of the *Code*. First, she argues the Decision contains several breaches of procedural fairness for not reviewing interview video

recordings evidence from the 2015 investigation in making my findings about the existence of an arguable contravention associated with the 2021 investigation. If I understand Ms. Bean correctly, if I had reviewed the video tape evidence prior to making my decision I would have concluded that the Chief Constable discriminated in his decision supporting the conduct of the Detective Constable. Ms. Bean submits the Tribunal's process discouraged her from submitting this evidence in support of her time limits application and it was unfair for me to find there was a lack of evidence linking the Chief Constable's conclusions about the Detective Constable's investigation to Ms. Bean's personal characteristics.

[7] In support of her conclusion that the outcome of the 2021 investigation contains allegations of discrimination, Ms. Bean submitted approximately ten pages of transcripts she produced from the two interviews in 2015. In her view, the transcripts prove the Detective Constable did not speak appropriately or compassionately to her as a sexual assault survivor. Ms. Bean submits that the way the officer treated her was an enraging, horrific display of transphobia and sexism and ignorance.

[8] Second, Ms. Bean argues the Decision should not have considered the contents of the Chief Constable's written decision, dated October 28, 2021, in the analysis of whether an arguable contravention of the *Code* existed in relation to the 2021 investigation. In her view, it was wrong to consider the NPB's evidence and this resulted in the Decision inappropriately wading into the merits of the case.

III ANALYSIS AND DECISION

[9] The Tribunal has a limited jurisdiction to reconsider its own decisions: Rule 36 of the Tribunal's *Rules of Practice and Procedure*. Specifically, the Tribunal may reconsider a decision if it is in the interests of justice and fairness to do so: *Routkovskaia v. British Columbia (Human Rights Tribunal)*, 2012 BCCA 141 at para. 23. The Tribunal exercises this power sparingly, giving due consideration to the principle of finality in administrative proceedings: *Grant v. City of Vancouver and others (No. 4)*, 2007 BCHRT 206 [**Grant**] at para 10.

[10] The burden is on the person seeking to have a matter re-opened to show that the interests of fairness and justice demand such an order: *Grant* at para. 10.

[11] The Tribunal does not have authority to reconsider a decision based on an argument that the decision was wrong or unreasonable or because there has been a change of circumstances: *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499 [**Fraser Health**] at paras. 135 and 160. The Tribunal will not reconsider a decision to address arguments that could have been made in the first instance but were not, or to hear a party reargue its case: *Ramadan v. Kwantlen Polytechnic University and another (No. 2)*, 2018 BCHRT 56 at para. 13. When a party simply disagrees with a Tribunal decision, the appropriate recourse is judicial review by the BC Supreme Court.

[12] The Tribunal may reconsider a decision where there has not been procedural fairness (*Fraser Health* at para. 161).

[13] Ms. Bean alleges the Decision contains a procedural error as it did not consider the 2015 interview video recordings evidence in the application. Further, the Decision erred in reviewing the contents of the Chief Constable's October 28, 2021, letter concluding the Detective Constable's investigation and interviews were not deficient and were conducted with patience, empathy, and compassion.

[14] After considering Ms. Bean's application I am not convinced the Decision contains any procedural errors related to the acceptance or review of evidence. I have first considered the issue of whether it was incumbent on me to review the video recordings of the 2015 sexual assault investigation interviews. In this case, Ms. Bean did not submit this evidence for consideration, and, in my view, I was not required to seek it out in order to make my decision.

[15] The Tribunal provided information to Ms. Bean prompting her to file any evidence relevant to the Decision. The Tribunal's complaint initiating form, Form 1.1 received June 7, 2022, instructed Ms. Bean in Step 9 to file evidence to show why she filed her complaint late. In addition, the Tribunal's Notice of Late Filed Complaint, dated December 13, 2022, informs the parties that the Tribunal can only make a late filed complaint decision based on the information

and evidence they provide. The notice instructs them to attach any information such as an affidavit or other documents, which support what they have to say about the late filing.

[16] From my review of the file, I do not see where Ms. Bean attempted to file the interview video recordings evidence with the Tribunal.

[17] Ms. Bean also had the assistance of an advocate in the preparation of her time limit application submissions. I note her Form 5 – Time Limit Reply included several appendices containing documentary evidence. If she believed it was crucial for the Tribunal to review the interview video evidence in rendering the Decision, she had the opportunity to submit it at the that time.

[18] I have also considered whether my review and consideration of the Chief Constable's decision, dated October 28, 2021, was a procedural error in rendering the Decision. I note a copy of the decision was included in the evidence provided by Ms. Bean as Appendix A-2 to her Form 5 – Time Limit Reply. She argued the Chief Constable's letter informing her of the 2021 investigation outcome was discrimination on its face. I found the contents of this letter relevant in deciding whether any allegations of discrimination existed in 2021 investigation. In my view, the letter provided a window into the Chief Constable's reasons for his findings, and I concluded after weighing the evidence that allegations of discrimination were not made out by Ms. Bean. I do not see any procedural error in reviewing and relying on evidence submitted by Ms. Bean regarding allegations of discrimination related to the outcome of the Chief Constable's 2021 investigation.

[19] Finally, I have considered Ms. Bean's other statements that appear related to her dissatisfaction the Decision. These include her belief that the Decision lacks compassion and understanding of sexual assault victims in being able to come forward within the one-year timeframe for filing. She also provided a detailed criticism of the Detective Constable's actions during the 2015 Investigation with reference to the interview evidence transcript she created. Finally, Ms. Bean noted the general difficulty for lay people to access the Tribunal's process. In my view, there is no basis in any of the other items raised by Ms. Bean for a reconsideration of

the Decision. Reconsideration is not an opportunity to re-argue the application, and it would be neither fair or efficient for me to reconsider the Decision based on new argument and evidence that could have been presented in the original application. On the contrary, granting the application would undermine the finality of the Tribunal's process: *Sue-Hong v. Enagic Canada Corp. and others (No. 2)*, 2023 BCHRT 208 at para. 7.

IV CONCLUSION

[20] The application is denied. This complaint file is closed.

Steven Adamson
Tribunal Member