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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:

Sonya Tolson

COMPLAINANT

AND:

Prairie Pacific Coast Express and Lori Sinclair

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO DISMISS A COMPLAINT
Section 27(1)(a)

Tribunal Member:

Robin Dean

For the Complainant:

No submissions

Counsel for the Respondents:

Philip Pauls

I INTRODUCTION

[1] This is an application to dismiss under s. 27(1)(a) of the *Human Rights Code*. Section 27(1)(a) permits the Tribunal to dismiss all or part of a complaint that is not within its jurisdiction. However, there must be “sufficient foundational facts” and a “clear legal question” for the Tribunal to determine its jurisdiction at a preliminary stage: *HTMQ v. McGrath*, 2009 BCSC 180 at para. 64. The Tribunal may defer a decision about its jurisdiction when additional evidence or factual inquiry is necessary for it to make that decision.

[2] In this decision, I am asked to determine whether the Tribunal has jurisdiction over Sonya Tolson’s complaint against Prairie Pacific Coast Express, a federally incorporated company that provides office services to interprovincial trucking companies. Ms. Tolson’s complaint alleges that she was discriminated against in employment on the basis of physical disability and mental disability contrary to s. 13 of the *Code*.

[3] In deciding Prairie Pacific Coast Express’ application to dismiss the complaint under s. 27(1)(a), I must examine whether Prairie Pacific Coast Express’ business is either a federal undertaking under the functional test or so integral to the interprovincial trucking companies it supports as to bring it under federal jurisdiction.

[4] I ultimately determine that I do not have enough information to decide the preliminary jurisdictional issue before me. I therefore deny Prairie Pacific Coast Express’ application to dismiss. To make this decision, I have considered all the information filed by the parties.¹ In these reasons, I refer only to what is necessary to explain my decision. I make no findings of fact.

II DECISION

[5] This case involves a part of the *Code* that touches on labour relations. Labour relations, including human rights regarding employment, are presumptively provincial under the division

¹ Ms. Tolson did not respond to the application to dismiss. I do not have her submissions on this jurisdictional issue.

of powers set out in the *Constitution Act, 1867* as a matter of property and civil rights: *Andrew v. Prism Sulphur Corporation*, 2003 BCHRT 51 at para. 16; *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union*, 2010 SCC 45 at para. 11. Federal regulation of labour relations is the exception and arises when a particular entity is a “federal work, undertaking, or business”: *NIL/TU,O* at para. 11-12.

[6] In determining whether a particular entity is a federal work, undertaking, or business, courts and tribunals apply a “functional test”, examining the nature, operations and habitual activities of the entity to see if it is a federal undertaking: *NIL/TU,O* at para. 14 & 18. If the functional test is inconclusive as to whether a particular undertaking is “federal”, a court or tribunal should then consider whether provincial regulation of labour relations would impair the “core” of whatever federal regulation governed the entity: *NIL/TU,O* at para. 18.

[7] Where the entity itself is not a federal work, undertaking, or business, the entity will nevertheless be federally regulated if it is an integral part of a federally regulated undertaking: the *Stevedores Reference*, [1955] S.C.R 529. Sometimes this is referred to as derivative jurisdiction: *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23 at para. 17. In either case – direct or derivative jurisdiction – the task is to examine the entity’s essential operational nature: *Tessier* at para. 18.

[8] Whether Prairie Pacific Coast Express is itself federally regulated is therefore a highly fact-specific inquiry that depends on the specific circumstances of the case. Here, there is a lack of information before me on the nature of the Prairie Pacific Coast Express’ business and its relationship to the businesses of the interprovincial trucking companies it serves. Prairie Pacific Coast Express’ application to dismiss is lean. It essentially says three things: (1) it was created to provide office services to interprovincial trucking companies; (2) it is federally incorporated; and (3) its human resource program is modelled on the *Canada Labour Code*. There is nothing from which I can conclude that Prairie Pacific Coast Express is federally regulated.

[9] First, that Prairie Pacific Coast Express provides services to federally regulated undertakings does not mean that it is federally regulated. As discussed above, since the

provision of office services is not itself a federal undertaking, there must be evidence to show that Prairie Pacific Coast Express is integral to those companies that are federal undertakings in order to come under federal jurisdiction. Prairie Pacific Coast Express has not provided the Tribunal with sufficient information to make this determination.

[10] Second, that Prairie Pacific Coast Express is federally incorporated does not determine the issue of whether the *Code* applies. Nothing turns upon whether a particular company is incorporated provincially or federally: *Canadian Pioneer Management Corporation v. Saskatchewan (Labour Relations Board)*, 1979 CanLII 180 (SCC), [1980] 1 S.C.R. 433 at 453; *Arrow Transfer Co. Ltd.*, [1974] 1 CLRBR 29 at 34-3. Federal corporations can be subject to provincial laws of general application: *British Columbia Power Corporation v. British Columbia (Attorney General)*, 1963 CanLII 552 at 657-658.

[11] Additionally, nothing turns on Prairie Pacific Coast Express adopting the *Canada Labour Code* “as the benchmark against which it has designed its human resource programs.” While it may be prudent to reference the federal or provincial law that will apply to a particular business when designing a human resource program, doing so does not render that business under a specific jurisdiction.

[12] It is open to Prairie Pacific Coast Express at a hearing of this matter to adduce the kind of evidence needed to demonstrate that it is federally regulated; however, since I do not have this information before me, I must deny Prairie Pacific Coast Express’ application to dismiss under s. 27(1)(a).

III CONCLUSION

[13] Prairie Pacific Coast Express has not persuaded me that it is reasonably certain to prove that it is federally regulated and thus outside the jurisdiction of the British Columbia Human Rights Tribunal. I deny Prairie Pacific Coast Express’ application to dismiss under s. 27(1)(a).

[14] I note that should Prairie Pacific Coast Express wish to raise the issue of jurisdiction at a hearing of this matter, it must first give the Attorneys General of Canada and British Columbia notice under s. 46 of the *Administrative Tribunals Act*.²

Robin Dean
Tribunal Member

² It does not appear Prairie Pacific Coast Express provided notice to the Attorneys General on the jurisdictional question raised in this application. It ought to have. However, since I have not decided the jurisdictional issue, I do not find this defect fatal.