

Date Issued: April 24, 2024

File: CS-002662

Indexed as: Jagpal v. Milieu Family Services Inc., 2024 BCHRT 131

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:

Rina Jagpal

**COMPLAINANT**

AND:

Milieu Family Services Inc.

**RESPONDENT**

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

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Tribunal Member:

Andrew Robb

On their own behalf:

Rina Jagpal

Counsel for the Respondent:

Mark Slobin

## I INTRODUCTION

[1] Rina Jagpal filed a human rights complaint against her former employer, Milieu Family Services Inc. [Milieu] She says Milieu discriminated against her based on her disabilities, by cancelling her promotion for reasons related to her physical disability, and by harassing her in the workplace, which aggravated her mental disability. She also alleges discrimination based on her sex, when a co-worker sexually harassed her and Milieu failed to respond appropriately, and when Milieu assigned her to more cooking and cleaning duties than her male co-workers were required to do.

[2] Milieu denies discriminating. It denies that any of its conduct was connected to Ms. Jagpal's disabilities. It says that what she describes as harassment by her managers is really just disagreement about how Milieu responded to her workplace complaints and her own performance issues. Milieu says it appropriately investigated and responded to her complaint about sexual harassment in the workplace, and denies that she was treated differently than her male co-workers.

[3] Milieu applies to dismiss Ms. Jagpal's complaint. It says the acts alleged in the complaint do not contravene the *Human Rights Code*, and the complaint has no reasonable prospect of success. It also says the part of the complaint alleging that Ms. Jagpal's promotion was cancelled should be dismissed because it was filed too late.

[4] For the following reasons, I allow Milieu's application, and I dismiss Ms. Jagpal's complaint. I find Ms. Jagpal has no reasonable prospect of proving discrimination based on her physical disability because there is no evidence that any adverse impact she experienced was connected to a physical disability. I find Milieu is reasonably certain to establish a justification defence to the allegation of discrimination based on mental disability, because Ms. Jagpal did not disclose a mental disability to Milieu, and there is no evidence that anyone at Milieu ever perceived her to have one. With respect to her allegation of sex-based discrimination, I find Ms. Jagpal has no reasonable prospect of proving that she faced sexual harassment, or that she was assigned to do more cooking and cleaning duties than her male co-workers.

[5] To make this decision, I have considered all the information filed by the parties. In these reasons, I only refer to what is necessary to explain my decision.

[6] I apologise to the parties for the Tribunal's delay in making this decision.

## II BACKGROUND

[7] Milieu provides services for children and adults with disabilities. Ms. Jagpal started working for Milieu in 2018. Her position was unionised. Her duties included supporting adults with disabilities with their activities of daily living, and providing residential care.

[8] Ms. Jagpal says that in late March 2019, Milieu's Quality Assurance Coordinator [the **QA Coordinator**] offered her a manager position at Mileu, and she signed documents for the position. She does not say what documents she signed, and she did not provide copies of the documents. She says she was never trained for the manager position, and when she asked about the position months later, Milieu's Adult Services Coordinator said it was given to someone else.

[9] Milieu denies that it offered Ms. Jagpal the manager position. It says she interviewed for the position but did not get it. Milieu says a different Milieu manager, not the QA Coordinator, was responsible for hiring for the position, but that manager left Milieu in April 2020, before Ms. Jagpal filed this complaint. Milieu says it does not know why Ms. Jagpal did not get the position. There is no evidence before me from the QA Coordinator, or from the manager who Milieu says was responsible for hiring for the position.

[10] Ms. Jagpal says she was supposed to start training for the manager position on April 10, 2019, but she had to call in sick that day, because she was experiencing symptoms of injuries she sustained in a motor vehicle accident in 2018. She says Milieu was aware of the motor vehicle accident.

[11] On April 11, 2019, Milieu's human resources manager sent an email to Ms. Jagpal, saying they had booked three training sessions for her: the first was a "manager orientation"

and the others were about human resources, and health and safety. The day before the scheduled manager orientation, the human resources manager sent another email to Ms. Jagpal, cancelling the session. The human resources manager did not give a reason for cancelling, but said the session would be rescheduled. There is no evidence before me about the other training sessions. Other than the two emails from the human resources manager, the parties did not provide any documents related to the job competition or the training for the manager position.

[12] Ms. Jagpal says she waited for the manager orientation training to be rescheduled, but it never was. There is no evidence before me about any further communications between the parties about Ms. Jagpal's application for the manager position, or about the training. Ms. Jagpal does not suggest there was any further communication until she asked about the position, months later.

[13] Ms. Jagpal says the manager position was eventually given to a different person, AC. She says AC started working for Milieu in early August 2019, and immediately started harassing Ms. Jagpal. Ms. Jagpal does not give examples of the harassment that occurred in August 2019, but she says the ensuing stress aggravated the symptoms of her injuries from her motor vehicle accident in 2018. Starting around August 15, 2019, Ms. Jagpal went on medical leave. In a note dated September 3, 2019, her physician said she should be excused from work for the next six weeks, due to her injuries.

[14] In a letter dated October 3, 2019, Milieu advised Ms. Jagpal that she had not provided sufficient medical documentation to support her leave. The letter said that if medical documentation was not submitted by October 9, 2019, then Ms. Jagpal would be expected to return to work the next day. Ms. Jagpal replied and said her physician was away and the soonest she could get the required documentation was October 16, 2019.

[15] In a note dated October 16, 2019, Ms. Jagpal's physician said she would be ready to return to her regular duties on October 27, 2019. Milieu accepted this, and Ms. Jagpal returned to work.

[16] Ms. Jagpal says that after she returned to work she faced continued harassment by AC, and also by a new manager, AP, who started working for Milieu in December 2019. She says the harassment included AC being rude to her, and asking her to provide photographic evidence to prove when she cleaned the bathrooms in the residence where she worked. Ms. Jagpal says AC did not require photos from male workers, even though their duties also included cleaning the bathrooms. Milieu says all staff were expected to help clean the bathrooms, and to provide photographic evidence to prove when they cleaned the bathrooms.

[17] On December 27, 2019, AC and AP sent Ms. Jagpal a “letter of expectation”. It asked Ms. Jagpal to review Milieu’s policies about employee conduct, harassment in the workplace, and employee discipline. The letter said all staff must conduct themselves professionally, and must respect the personal space and boundaries of the people served by Milieu. It also said Ms. Jagpal’s performance evaluation would be based, in part, on her compliance with Milieu’s policies.

[18] Ms. Jagpal objected to the letter of expectation. She felt she had been unfairly singled out for discipline. She says she filed a grievance with her union. On February 19, 2020, the union told her that Milieu had agreed to rescind the letter of expectation.

[19] In February 2020, another new manager, SB, started working for Milieu. Ms. Jagpal says SB gave her a performance evaluation in March 2020. As part of the performance evaluation, Ms. Jagpal’s managers completed an evaluation form saying she was meeting expectations in all areas of her employment, with some exceptions. According to the evaluation she needed improvement in the areas of working with others, demonstrating professional conduct, dealing with emergencies, and being willing to implement new ideas. The evaluation also described concerns about Ms. Jagpal’s communications and listening skills, and asked Ms. Jagpal to ensure she spoke positively, in a professional manner, with her managers.

[20] Ms. Jagpal objected to her managers’ criticism of her performance. She says the performance evaluation was part of the harassment she faced from her managers.

[21] Ms. Jagpal says Milieu altered the performance evaluation form that it provided to the Tribunal, in support of this application. Milieu provided a version of the form that includes SB's signature, as Ms. Jagpal's manager, whereas Ms. Jagpal's version of the form shows AC as her manager, and is not signed. Other than that the versions appear to be identical. I do not consider the differences between the two versions of the form to be relevant to this application.

[22] In June 2020, Ms. Jagpal made a written complaint to Milieu about a co-worker, JD. She says he had been harassing female co-workers for a long time, and she decided to come forward because a new co-worker, MG, complained to her about JD.

[23] Ms. Jagpal's written complaint criticized JD's performance of his job duties. It also said he had been rude to Ms. Jagpal and spread gossip about her, and his demeanor was superior towards women. Around the same time, Milieu received similar complaints about JD, from MG and another co-worker. Milieu says MG later sent an email to SB, saying Ms. Jagpal had written MG's complaint and insisted that MG sign it. The email said MG regretted making the complaint.

[24] Milieu says it investigated the complaints against JD and found there was support for some of Ms. Jagpal's criticisms of his work. But the investigation did not find JD had engaged in inappropriate behaviour or that he had violated Milieu's policies.

[25] On July 2, 2020, in an email to Milieu's executive director, Ms. Jagpal said she had detected the smell of cannabis coming from SB's backpack, and SB sometimes seemed impaired at work. Ms. Jagpal says she first detected the smell of cannabis in May 2020, and her evidence includes a photograph of what appears to be cannabis in a backpack. Milieu investigated and found there had been a smell of cannabis in the workplace, but there was no evidence that SB was responsible. It also found no evidence SB had violated Milieu's substance use policy.

[26] On August 5, 2020, Ms. Jagpal met with the QA Coordinator and another Milieu manager. A representative of Ms. Jagpal's union also attended the meeting. Ms. Jagpal recorded the meeting and had the recording transcribed. She provided a 29-page document

that appears to be a verbatim transcript. She says Milieu also disclosed a transcript of the meeting, but its version was fabricated. She provided both versions, in response to Milieu's application to dismiss her complaint. Milieu's version appears to be notes of the meeting made by a Milieu employee, rather than a transcript. Milieu's notes say Ms. Jagpal made a negative remark about a Milieu client. Ms. Jagpal denies that she made the remark. Her transcript supports her position—it shows she did not make the remark. Milieu maintains that she made the remark, and questions the credibility of her transcript.

[27] I do not consider the differences between the two records of the meeting, or whether she made the remark or not, to be relevant to this application. It is not disputed that topics of discussion at the meeting included Ms. Jagpal's complaints about co-workers and managers, her alleged violations of Milieu policy, and her concerns about client care, especially dental care. It is also not disputed that during the meeting, Ms. Jagpal said she felt targeted by Milieu's managers.

[28] In a note dated August 5, 2020, the same day as the meeting, Ms. Jagpal's physician said she had experienced worsening of her anxiety and acute stress related to her work, and she would be unable to work for the next three weeks.

[29] Ms. Jagpal did not return to work at Milieu. On August 17, 2020, her physician completed an insurance form saying she had been diagnosed with mental health disabilities related to workplace harassment. In a note dated August 24, 2020, her physician said she continued to receive therapy for stress and anxiety related to her work, and she would be unable to work for the next four weeks.

[30] On September 11, 2020, Ms. Jagpal filed this human rights complaint.

[31] In a note dated September 21, 2020, Ms. Jagpal's physician said her condition had improved while she was away from work, but her anxiety and mental health worsened when she thought about returning to Milieu. The note said the physician recommended that she should pursue other work opportunities instead of returning.

[32] In late September or early October 2020, Ms. Jagpal notified Milieu that she was resigning from her position. She says she resigned due to the toxic work environment and physical and mental strain.

### III DECISION

[33] Milieu applies to dismiss Ms. Jagpal's complaint on the basis that it has no reasonable prospect of success: *Code*, s. 27(1)(c). The onus is on Milieu to establish the basis for dismissal.

[34] Section 27(1)(c) is part of the Tribunal's gate-keeping function. It allows the Tribunal to remove complaints which do not warrant the time and expense of a hearing.

[35] The Tribunal does not make findings of fact under s. 27(1)(c). Instead, the Tribunal looks at the evidence to decide whether "there is no reasonable prospect that findings of fact that would support the complaint could be made on a balance of probabilities after a full hearing of the evidence": *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95 at para. 22. The Tribunal must base its decision on the materials filed by the parties, and not on speculation about what evidence may be filed at the hearing: *University of British Columbia v. Chan*, 2013 BCSC 942 at para. 77.

[36] A dismissal application is not the same as a hearing: *Lord v. Fraser Health Authority*, 2021 BCSC 2176 at para. 20; *SEPQA v. Canadian Human Rights Commission*, [1989] 2 SCR 879 at 899. The threshold to advance a complaint to a hearing is low. In a dismissal application, a complainant does not have to prove their complaint or show the Tribunal all the evidence they may introduce at a hearing. They only have to show that the evidence takes their complaint out of the "realm of conjecture": *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at para. 27.

[37] Many human rights complaints raise issues of credibility. This is not, by itself, a sufficient reason to deny an application to dismiss: *Evans v. University of British Columbia*, 2008 BCSC 1026 at para. 34. However, if there are foundational or key issues of credibility, the complaint must go to a hearing: *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para 67.



[38] To prove her complaint at a hearing, Ms. Jagpal will have to prove she has characteristics protected by the *Code*, she was adversely impacted in her employment, and her protected characteristics were a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33. If she does that, the burden shifts to Milieu to justify the impact as a *bona fide* occupational requirement. If the impact is justified, there is no discrimination.

[39] Milieu says Ms. Jagpal never provided any evidence that she has a mental or physical disability. It also says there is no evidence that she faced any adverse treatment connected to her sex.

[40] I address Ms. Jagpal's allegations, and whether they have a reasonable chance of success, in three categories: the alleged cancellation of her promotion in April 2019; the alleged harassment by her managers during 2019 and 2020; and Ms. Jagpal's allegations of discrimination based on sex, including her complaint about JD and Milieu's response, and her allegation that she was assigned to cleaning and cooking duties more often than male co-workers.

### **A. Cancellation of Ms. Jagpal's promotion**

[41] Ms. Jagpal says Milieu promoted her to a manager position, but then cancelled the promotion and gave it to a different person. She says this was connected to her physical disability. I understand her argument to be that Milieu decided to cancel the promotion because she took a sick day on April 10, 2019, which she says was to have been the first day of her training for the new position. Ms. Jagpal has not suggested any other possible connection between the alleged cancellation of her promotion and any physical disability.

[42] Milieu denies that it promoted Ms. Jagpal, but it does not address the human resources manager's emails in April 2019, scheduling her "management orientation" and other training. Milieu offers no evidence to explain why it would have scheduled Ms. Jagpal for a management orientation if she had not been hired to a manager position.

[43] I am not persuaded that Ms. Jagpal has no reasonable prospect of proving she was offered the promotion. But she did not ultimately assume the manager position. So the question is whether she has no reasonable prospect of proving the promotion was cancelled for reasons connected to her disability.

[44] There is no evidence before me that Milieu knew Ms. Jagpal's sick day on April 10, 2019, was related to injuries from her motor vehicle accident in 2018. She does not suggest that she provided a doctor's note or any other information about her sick day, to anyone at Milieu.

[45] The human resources manager's emails to schedule Ms. Jagpal's management orientation and other training were sent after her sick day on April 10, 2019. Ms. Jagpal does not explain why Milieu would offer to schedule her management training after she took the sick day, if the sick day was the reason why Milieu decided to cancel the promotion.

[46] There is no evidence before me about why the promotion may have been cancelled. Ms. Jagpal suggests it was related to her sick day on April 10, 2019, or her injuries from her motor vehicle accident, but there is no evidence that supports this suggestion. Since there is no relevant evidence, I find she has no reasonable prospect of proving Milieu's cancellation of her promotion was connected to her disability.

## **B. Harassment by managers**

[47] Ms. Jagpal's complaint alleges harassment by her managers on multiple occasions in 2019 and 2020. She refers to the following specific instances of harassment:

- a. When Milieu contacted her while she was on medical leave, in October 2019, and advised that if she did not submit medical documentation to support her leave, she would be expected to return to work.
- b. The letter of expectation, dated December 27, 2019.
- c. The performance evaluation, in March 2020.

- d. Milieu's response to her allegations about SB using cannabis and JD harassing her.
- e. Undated allegations of managers being rude and abruptly giving her orders.

[48] The first of these allegations appears to be related to Ms. Jagpal's physical disability, since her medical leave in 2019 was due to her injuries from her motor vehicle accident. Milieu says it contacted her in October 2019 because she did not comply with mandatory requirements to provide documentation to Milieu's insurance provider, to substantiate her medical leave. Ms. Jagpal says the reason for her delay in providing the documentation was because her physician had a family emergency. She eventually provided the required documentation, and it was accepted by Milieu and Milieu's insurance provider.

[49] In my view, Ms. Jagpal has not alleged anything that would take this communication from Milieu outside the realm of normal and appropriate conduct by an employer. There is no evidence the communication had any negative effect on Ms. Jagpal. She says she explained the situation to Milieu and the problem was resolved. I find she has no reasonable prospect of proving she experienced an adverse impact that was connected to her disability, as a result of Milieu contacting her to request medical documentation.

[50] The remainder of Ms. Jagpal's harassment allegations appear to be related to her complaint based on mental disability. She argues that her managers' conduct, including the letter of expectation, the performance evaluation, the response to her workplace complaints, and her negative interactions with managers, had a negative effect on her mental health. She provided information showing her physician diagnosed her with mental health disabilities related to workplace harassment. She suggests Milieu caused or contributed to her mental health disability. Even if this is true, the Tribunal has found that causing or contributing to a disability, on its own, is not discrimination: *Vandale v. Town of Golden and others*, 2009 BCHRT 219 at para. 43.

[51] If Milieu had reason to be aware of Ms. Jagpal's mental disability, and failed to accommodate her, then that could amount to discrimination. But there is no evidence before

me that Milieu knew Ms. Jagpal had a mental disability, or that anyone at Milieu perceived that she had a mental disability, before she stopped working for Milieu. She does not say she told anyone about her mental disability, or its symptoms, while she worked for Milieu. The medical notes she provided that refer to her mental disability post-date her last day of work.

[52] I find that even if Ms. Jagpal could establish a connection between her mental disability and an adverse impact she experienced as a result of the conduct that she characterises as harassment, Milieu is reasonably certain to establish its conduct was justified, because it had no way to know she had a mental disability, and no opportunity to try to accommodate her.

### **C. Discrimination based on sex**

[53] Ms. Jagpal says JD sexually harassed her and her female co-workers. Her complaint to Milieu in June 2020 alleged unwelcome remarks and a demeanor of superiority towards women. It said he did not do all his assigned duties, and he was rude to her on one occasion when he demanded she take her feet off the sofa, while she was resting her legs. But her complaint to Milieu did not explain how his actions reflected a demeanor of superiority towards women, or refer to any specific examples of conduct that could be sexual harassment. Nor did Ms. Jagpal include any examples of his demeanor of superiority or his harassment in her human rights complaint, or her response to the application to dismiss.

[54] Milieu says it investigated Ms. Jagpal's complaint about JD, and the other complaints it received around the same time. It says it interviewed the complainants, and JD, and other Milieu staff. Milieu says none of the complainants or witnesses could identify specific examples of harassment or inappropriate conduct by JD.

[55] Ms. Jagpal has not made any specific allegations that are capable of establishing her broad allegations of mistreatment in connection to her sex. Since she has not described any specific instances of conduct that could be sexual harassment or that could reflect a demeanor of superiority towards women, I find Ms. Jagpal has no reasonable prospect of proving she faced sexual harassment by JD.

[56] Ms. Jagpal also alleges that Milieu discriminated based on her sex by assigning her to cleaning and cooking duties more often than male co-workers. She says Milieu required her to send photos to her managers, to prove she had done the cleaning, and this was not required of her male co-workers.

[57] The only evidence Ms. Jagpal offers in support of her assertion that she was asked to do more cleaning and cooking than her male co-workers is a series of text messages between Ms. Jagpal and AC, dated November 26, 2019. The text messages show Ms. Jagpal cleaned a bathroom on that date, and include photos of the clean bathroom. But there is nothing in them that suggests Milieu assigned her to clean bathrooms more than any of her co-workers.

[58] In response to Ms. Jagpal's allegation that she was assigned to cooking and cleaning duties more often than male co-workers, Milieu provided excerpts from its staff communications book. The communications book appears to include regular updates and instructions by Milieu managers and staff who worked at the same residence as Ms. Jagpal. It shows that during 2018 and 2019, all staff were reminded to attend to cleaning duties, and to provide photos to prove the cleaning was done. Milieu says the requirement to send in photos to validate cleaning applied to all staff at the residence where Ms. Jagpal worked. Its evidence includes two photos which it says it received from JD, when he was required to prove he did the cleaning.

[59] The communications book indicates that everyone who worked in the same residence as Ms. Jagpal was asked to clean, and to send photographic evidence that the cleaning was done, but it does not prove that all workers actually did this, nor does it demonstrate how Milieu addressed any issues of unequal work. Similarly, the two photos that were apparently sent by JD to prove he had done the cleaning do not prove he was asked to do so as often as Ms. Jagpal was.

[60] However, Milieu's evidence does provide helpful context for Ms. Jagpal's allegations about the gendered division of labour at the residence where she worked. It suggests that

Milieu notified all staff that they were expected to contribute to the cooking and cleaning, and to prove their work with photographic evidence.

[61] Ms. Jagpal does not say when she was required to cook and clean more than her male co-workers, or why she believes her male co-workers were not required to do so as often as she was, or how she knows her male co-workers were not asked to send photographic evidence that they had done the cleaning. In this context I am not persuaded that Ms. Jagpal's bare assertion that she was asked to cook and clean more than her male co-workers is sufficient to bring her allegation out of the "realm of conjecture".

[62] Since this allegation includes no specific details, and is not supported by any evidence other than Ms. Jagpal's bare assertion, I find Ms. Jagpal has no reasonable prospect of proving Milieu required her to do more cooking and cleaning duties than her male co-workers.

#### **IV CONCLUSION**

[63] The complaint is dismissed under s. 27(1)(c) of the *Code*, because it has no reasonable prospect of success. This means it is not necessary for me to address Milieu's applications under s. 27(1)(b) and 27(1)(g).

Andrew Robb  
Tribunal Member  
Human Rights Tribunal