

Date Issued: April 25, 2024

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Indexed as: Dale v. SpaTru Clinics and another, 2024 BCHRT 133

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:

Dannielle Dale

COMPLAINANT

AND:

SpaTru Clinics and Mike Quinn

RESPONDENTS

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

Tribunal Member:

Amber Prince

Advocate for the Complainant:

Conor McKenna (until December 3, 2020)

On their own behalf:

Dannielle Dale (after December 3, 2020)

On their own behalf:

Mike Quinn

Agent for SpaTru Clinics:

Mike Quinn

I INTRODUCTION

[1] Ms. Dale worked part-time as a receptionist at SpaTru Clinics [**SpaTru**]. She alleges that after learning she was pregnant, SpaTru owner, Mike Quinn, cut her hours and revoked an offer to train her for a full-time position. As a result, Ms. Dale says that she was forced to take her maternity leave early. She filed a complaint against SpaTru and Mr. Quinn [together, **the Respondents**]. She alleges that the Respondents' conduct is sex discrimination based on pregnancy, in violation of s. 13 of the BC *Human Rights Code* [**Code**].

[2] The Respondents deny discriminating against Ms. Dale. On Mr. Quinn's account Ms. Dale's hours were never cut, and he never offered her a full-time position. He says the only reasons she did not work more hours was because she didn't want to.

[3] Mr. Quinn applies to dismiss the complaint under s. 27(1)(c) of the *Code* on the basis that it has no reasonable prospect of success [the **Dismissal Application**]. The Dismissal Application is the only issue before me in this decision.

[4] I explain in this decision why I deny the Dismissal Application. In brief, I deny the Dismissal Application because Ms. Dale's evidence shows that she has a reasonable prospect of proving: Mr. Quinn gave her less hours; he revoked an offer to train and hire her for a full-time position; and as a result, Ms. Dale had to take her maternity leave early. As I will explain below, this means that Ms. Dale has a reasonable prospect of proving discrimination at a hearing. Mr. Quinn has not put forward enough evidence as this stage to persuade me otherwise.

[5] On behalf of the Tribunal, I apologize to the parties for the significant delay in issuing this decision. We have a backlog of cases because of a rapid spike in the number of complaints filed, as explained by our Chair here: <https://www.bchrt.bc.ca/message-from-the-chair-about-the-tribunals-backlog-strategy/>.

II ISSUE

[6] Section 27(1)(c) is part of the Tribunal's gate-keeping function. As part of this gate-keeping function, the Tribunal has discretion to dismiss a complaint if the complaint has no reasonable chance of succeeding at a hearing: *Lord v Fraser Health Authority*, 2021 BCSC 2176, para. 19.

[7] The Tribunal does not make findings of fact on a dismissal application, as it would at a hearing. Instead, the Tribunal considers the whole of the evidence to decide whether there is no reasonable prospect that a complaint could be proven, after a full hearing of the evidence: *Byelkova v Fraser Health Authority*, 2021 BCSC 1312, para. 24; *Francescutti v. Vancouver (City)*, 2017 BCCA 242, para. 52. The Tribunal bases its decision on the materials filed by the parties; not on what evidence might be given at the hearing: *University of British Columbia v. Chan*, 2013 BCSC 942, para. 77; *Conklin v University of British Columbia*, 2021 BCSC 1569, para. 32.

[8] The onus is on the applicant to show there is no reasonable prospect a complaint will succeed: *Byelkova*, para. 27. At this stage, the complainant must show that their evidence is based on more than speculation: *Lord*, para. 19.

[9] To prove discrimination at a hearing, Ms. Dale must prove that she was adversely impacted in her employment with the Respondents, and that her sex (pregnancy) was a factor in those adverse impacts: *Moore v. BC (Education)*, 2012 SCC 61, para. 33. If the Respondents can show that she has no reasonable prospect of proving one or more of these elements, Ms. Dale's complaint may be dismissed.

[10] The Tribunal may also dismiss a complaint under s. 27(1)(c) of the *Code* if it is reasonably certain that a respondent will establish a defence at a hearing of the complaint: *Purdy v. Douglas College and others*, 2016 BCHRT 117, para. 50. If it is reasonably certain that a respondent would establish a defence, based on the dismissal application materials, then there is likely no reasonable prospect that the complaint will succeed: *Purdy*, para. 50. In this complaint, the Respondents would need to show that they took all reasonable and practical steps to accommodate Ms. Dale's pregnancy based on what they knew or ought to have

known: *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 [*Meiorin*], para. 54.

[11] The Dismissal Application turns on whether Ms. Dale has no reasonable prospect of proving that she was adversely impacted in her employment at SpaTru and whether her pregnancy was a factor in those adverse impacts.

[12] I turn now to summarize the materials filed by the parties to put my decision in context. I have considered all of their materials, but I only refer to what is necessary to explain my decision. I make no findings of fact.

III BACKGROUND

[13] SpaTru provides health and aesthetic services in Langley and Maple Ridge. In 2019, Mr. Quinn had plans to open a third kiosk location in Abbotsford.

[14] On July 8, 2019, Ms. Dale started working for SpaTru as a part-time receptionist at the Maple Ridge location for an hourly rate. The parties have not provided a written job offer or job description setting out Ms. Dale's hours of work. Mr. Quinn says that Ms. Dale's hours were never consistent as her position was casual.

A. Alleged hours cut

[15] Ms. Dale says that Mr. Quinn became aware that she was pregnant around the end of October, 2019. Mr. Quinn does not recall exactly when he found out that Ms. Dale was pregnant. Ms. Dale says that by her November 15, 2019 pay period, her hours were cut.

[16] In support of her allegation that Mr. Quinn cut her hours, Ms. Dale provided a record of her payroll deposits. She provided a record of six deposits from July 15, 2019 to October 15, 2019. During that time period her pay averaged \$465.30 per pay period. Ms. Dale also provided a record of payroll deposits for six pay periods after Mr. Quinn became aware that she was pregnant. Ms. Dale's payroll deposits from November 15 to January 31, 2020 show that her pay

averaged \$382.02 per pay period. This means that, on average, Ms. Dale earned \$83.28 less per pay period after Mr. Quinn was aware of her pregnancy: Ms. Dale's evidence, pp. 10-52.

[17] Mr. Quinn's evidence is that Ms. Dale's hours were never consistent and points out that Ms. Quinn had the largest pay period from December 15-31, 2019: Dismissal Application, p. 5; Ms. Dale's evidence, p. 47.

[18] The parties agree that Ms. Dale missed a few days of work in mid-January, 2020 in connection with a snowstorm at that time, which impacted driving conditions. The parties disagree about whether Ms. Dale had a safe avenue to get to work during the snowstorm.

[19] Ms. Dale provided evidence that after the snowstorm, she was ready and willing to return to her shifts at the Maple Ridge location, except for two medical appointments on January 28 and 30, 2020. During the snowstorm, the SpaTru Manager sent a text to Ms. Dale stating: "It's supposed to snow some more so don't worry about the rest of the week, I have it figured out. Also, won't need you next week as [Mr. Quinn] is planning on being there." Ms. Dale responded: "Ok thanks but snow should be gone by next week so I'm happy and able to do the work." The SpaTru Manager replied: "[Mr. Quinn] wants to spend next week in Maple Ridge so we shouldn't need you, thanks any way": Dismissal Application Response, p. 8.

[20] Ms. Dale also sent the SpaTru manager a text on January 13, 2020 stating that she was available to work at the Maple Ridge location until the end of February too: Dismissal Application Response, p. 7. Ms. Dale says that January 15-31, 2020 was her last pay period at Spa Tru. Her records for that pay period show that she earned \$40.62: Dismissal Application Evidence, p. 52. Mr. Quinn says that the Maple Ridge location was not busy enough, and he did not have extra hours for Ms. Dale there: Dismissal Application, p. 9.

B. Alleged revoked training and Abbotsford position

[21] Ms. Dale alleges that before Mr. Quinn learned of her pregnancy, he told her that she could train and work full-time in a reception role that would be available at a new SpaTru

location in Abbotsford. In early October, 2019, Ms. Dale says that she had a conversation with Mr. Quinn as follows:

- Mr. Quinn said he was opening another SpaTru location (at a kiosk) in Abbotsford and would be hiring staff.
- Ms. Dale expressed an interest in the receptionist role that would be available at the new location. She told Mr. Quinn that she was moving, and the new location meant a shorter commute for.
- Mr. Quinn told Ms. Dale that the reception role would be available and agreed that she could be trained and work full-time in that position.

Response to Dismissal Application, p. 1.

[22] Mr. Quinn says that Ms. Dale was never promised full-time work at any location, including the Abbotsford location: Dismissal Application, p. 6; Reply, p. 1. However, Mr. Quinn's evidence is also that he decided to open a kiosk in Abbotsford with Ms. Dale in mind, "so she could work as much as she wanted": Dismissal Application, p. 5. Mr. Quinn says that the reason Ms. Dale did not ultimately work at the Abbotsford kiosk had nothing to do with her pregnancy. Rather, he says that Ms. Dale didn't want to work the hours at the Abbotsford kiosk; and only wanted to work at that location if her boyfriend could accompany her to work, which Mr. Quinn did not permit: Dismissal Application, p. 5.

[23] Mr. Quinn's evidence is also that there was not enough time to train Ms. Dale for the Abbotsford receptionist position before the kiosk fully opened because SpaTru "would have only had 1 month with Ms. Dale before she left for maternity": Dismissal Application, p. 6-7. Mr. Quinn says he offered Ms. Dale other work going through old files and making calls about the new Abbotsford location, but that Ms. Dale didn't want to do that: Dismissal Application, p. 7-8.

C. Alleged forced early maternity leave

[24] Ms. Dale says that she planned to go on maternity leave on March 20, 2020, but was forced to start her leave early because her hours were "significantly reduced" and she was denied further opportunities within the company: Dismissal Application Response, p. 9-10. As a

result, she says that she struggled financially, and her employment insurance benefits were delayed.

[25] Mr. Quinn denies that Ms. Dale was forced to take her maternity leave early. Instead, he says that he continued to have work for her but that she didn't want to do it: Dismissal Application, p. 7.

IV DECISION

[26] The application before me turns on whether Ms. Dale has no reasonable prospect of proving that she was adversely impacted in her employment at SpaTru, and whether her pregnancy was a factor in those adverse impacts. I turn next to Ms. Dale's allegations, and the evidence before me on those allegations, to determine whether Ms. Dale has no reasonable prospect of proving discrimination.

A. Alleged cut hours

[27] On the materials before me I am satisfied that Ms. Dale has a reasonable prospect of proving that there was some reduction in her hours after the Respondents learned about her pregnancy. Assuming that Mr. Quinn was aware of her pregnancy around the end of October, 2019, Ms. Dale's payroll records show an average reduction of \$83 per pay period from November, 2019 to January, 2020. In my view, the payroll records show a slight rather than a significant reduction in Ms. Dale's hours. Further, as Mr. Quinn points out, Ms. Dale had her largest pay period in December, 2019. I have also considered the evidence showing that Ms. Dale's January 2020 hours were affected by the snowstorm and two medical appointments.

[28] However, Ms. Dale has provided some evidence that she was available to work at the Maple Ridge location after the snowstorm in mid-January, 2020 (except for the two medical appointments), but that Mr. Quinn took over her shifts instead. Ms. Dale has provided evidence that she was also available to work in February, 2020. Mr. Quinn says that there wasn't enough hours at the Maple Ridge location for Ms. Dale, but he did not provide any supporting documents to show that. I also cannot reconcile, at this stage, Mr. Quinn's statement that on

one hand there weren't enough hours for Ms. Dale, and his statement on the other hand that Ms. Dale could have worked more hours but didn't want to.

[29] Ms. Dale has also provided evidence that she was available for shifts at the Abbotsford location, but Mr. Quinn told her that it was going to be tough to give her hours because "we will only have a few months with you": Dismissal Application Response, p. 3.

[30] I am satisfied on the whole of the materials before me that there is enough evidence at this stage to support Ms. Dale's allegation that she was available for work and was offered less shifts after Mr. Quinn became aware she was pregnant. In particular, I note that the timing of the reduced shifts could support a finding at a hearing that Ms. Dale's pregnancy was a factor: *Edmonds v. GFC Communications Inc. dba Angel Answering Service*, 2023 BCHRT 212, para. 24. Further, Mr. Quinn's text to Ms. Dale that it would be "tough" to give her more hours is clearly connected to Ms. Dale's pregnancy and anticipated maternity leave.

[31] On the whole of the evidence, Ms. Dale has a reasonable prospect of providing that she was adversely impacted by a reduction in her hours at SpaTru and that her pregnancy was a factor. The Respondents have not persuaded me otherwise, and I decline to dismiss this aspect of Ms. Dale's complaint.

B. Alleged revocation of training and Abbotsford position due to pregnancy

[32] On Mr. Quinn's own evidence, he decided to open the Abbotsford kiosk with Ms. Dale in mind, "so she could work as much as she wanted": Dismissal Application, p. 5. On the materials before me Mr. Quinn does not deny that he discussed the position with her and that she could be trained for it. Given this evidence, I cannot say that Ms. Dale has no reasonable prospect of proving that she was offered training and a position at the Abbotsford kiosk location.

[33] Mr. Quinn argues that he had a non-discriminatory reason for not training and hiring Ms. Dale as the full-time receptionist at the Abbotsford kiosk: she didn't want to work the hours or do other work offered: Dismissal Application, p. 5-8. Further, he implies that Ms. Dale was a bad employee, and that her past work performance was a factor in the hours she was

offered, when he states: “if she was a good employee she would have had more hours throughout her time with us”: Dismissal Application, p. 7. In his reply on his Dismissal Application, Mr. Quinn more directly characterizes Ms. Dale as a bad employee stating: “... she was very unreliable and unmotivated employee who refused to perform basic reception duties like calling clients because she was uncomfortable on the phone”: p. 1.

[34] The problem with Mr. Quinn’s evidence is three-fold.

[35] First, Mr. Quinn has not supplied any evidence of Ms. Dale’s performance issues or criticisms of Ms. Dale’s work at all since she started on July 8, 2019. If Mr. Quinn or the SpaTru manager had serious issues about Ms. Dale’s performance, I would expect there to be some documentation about that: *Klein v. Advance Forklift and Kahlon*, 2008 BCHRT 395, para. 24. There is none before me. In particular, there is no evidence of any performance issues before Mr. Quinn was aware of Ms. Dale’s pregnancy: *Klein*, para. 24. On the contrary, the evidence before me shows that Ms. Dale was ready and willing to work barring safety concerns getting to work in a snowstorm and attending two medical appointments.

[36] Second, even if Ms. Dale was performing poorly, she is only required to show that her pregnancy was a factor in being denied the ability to train for and work at the Abbotsford kiosk to ground a complaint: *Graves v. Nanaimo Chrysler Dodge Jeep Ram Ltd. and others*, 2021 BCHRT 114, para. 17.

[37] Third, Mr. Quinn’s own evidence is that while he had Ms. Dale in mind for the Abbotsford position, he later decided that because of her pregnancy she would not be given the opportunity to train for and work in the full-time reception position. As he put it: “ ... it takes 3-6 months to train for medical reception, and by the time we were fully opened [at the Abbotsford kiosk] we would have only 1 month with Ms. Dale before she left us for maternity”: Application Response, p. 7.¹ This response shows that the reason the Respondents did not train

¹ Mr. Quinn refers to the Abbotsford reception position as a “medical reception” position. It is not clear on the materials before me if or how the training or duties for the Abbotsford position was different from Ms. Dale’s part-time reception position with SpaTru.

and hire Ms. Dale for the Abbotsford position, was due to her pregnancy. This is also consistent with Mr. Quinn's text to Ms. Dale about the reason she could not train for the position: "... just trying to get open it's going to be tough as we will have only a few months with you": Dismissal Application Response, p. 3.

[38] The evidence supports Ms. Dale's allegation that she lost a training and employment opportunity and that her pregnancy was a factor.

[39] In the Dismissal Application Mr. Quinn states that he has had two other employees who were pregnant and "worked for us as long as they could until they decided they could no longer work. One of which is still an employee, and the other has come back after her maternity leave": p. 9. Given this evidence, it is unclear to me why Ms. Dale could not have trained and worked in the new position as long as she could, with the position filled until she returned from maternity leave. The Respondents haven't argued, and there is no evidence before me to show that they took all reasonable and practical steps to accommodate Ms. Dale's pregnancy.

[40] Ms. Dale has a reasonable prospect of proving that the Respondents offered her training and a position at the Abbotsford kiosk and revoked that offer because of Ms. Dale's pregnancy and anticipated maternity leave. In other words, Ms. Dale has a reasonable prospect of proving this allegation, that it had an adverse impact on her, and her pregnancy was a factor. The Respondents have not persuaded me otherwise, and I decline to dismiss this aspect of Ms. Dale's complaint.

C. Alleged forced early maternity leave

[41] Ms. Dale's allegation that she was forced to take her maternity leave early is premised on her other two allegations that the Respondents reduced her hours and revoked the training and Abbotsford position. I have determined that Ms. Dale has a reasonable prospect of proving those two allegations. It follows that Ms. Dale has a reasonable prospect of proving that due to less shifts at SpaTru in general, and a revocation of the Abbotsford opportunity, she had to take her maternity leave earlier than she planned.

[42] Mr. Quinn's response to this allegation was that he continued to have work for Ms. Dale but that she did not want to do it. But he has not provided enough evidence at this stage to show that he offered Ms. Dale work, and she refused it. He has not, for example, put forward any documentary evidence or direct evidence from the SpaTru manager to support his version of events. Given this lack of evidence, the Respondents have not persuaded me that Ms. Dale has no reasonable prospect of proving this allegation, and I decline to dismiss it.

V CONCLUSION

[43] I deny the Respondents' application to dismiss Ms. Dale's complaint based on s. 27(1)(c) of the *Code*.

[44] The Tribunal's mediation services remain open to the parties to try to resolve this matter by mutual agreement before proceeding to hearing.

Amber Prince
Tribunal Member