

Date Issued: April 19, 2024

File: CS-004129

Indexed as: Greenlees v. British Columbia Emergency Health Services, 2024 BCHRT 122

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:

Becky Greenlees

COMPLAINANT

AND:

British Columbia Emergency Health Services

RESPONDENT

REASONS FOR DECISION
APPLICATION TO AMEND A COMPLAINT
Rule 24

Tribunal Member:

Jessica Derynck

Counsel for the Complainant:

Alison Moore

Counsel for the Respondent:

Natasha T. Wood

I INTRODUCTION

[1] On May 23, 2021, Becky Greenlees filed a human rights complaint against British Columbia Emergency Health Services [**BCEHS**] alleging discrimination in employment based on physical disability.

[2] On April 21, 2023, Ms. Greenlees applied to amend her complaint. Ms. Greenlees's position is that the details she seeks to add are merely particulars of the allegations already set out in her complaint. Further, she says that any of her allegations that appear to have been filed outside the one year limitation period form part of a timely continuing contravention, or, in the alternative, should be accepted under s. 22(3) of the *Human Rights Code*.

[3] BCHES opposes the application. BCEHS says the proposed amendments are new out-of-time allegations under the guise of a continuing contravention that was not previously alleged, and that it is not in the public interest to accept them.

[4] For the following reasons, I allow the application to amend the complaint to add allegations dated May 23, 2020, or later. I also allow the application to amend the complaint to add allegations dating back to May 23, 2020, related to a temporary accommodated position that Ms. Greenlees held. The application to amend the complaint to add allegations before May 23, 2020, is denied.

II BACKGROUND

[5] Ms. Greenlees is an employee of BCEHS. She worked for BCEHS as a Primary Care Paramedic [**PCP**] until October 10, 2017, when she was injured at work. She has permanent physical limitations and restrictions as a result of her injury.

[6] Ms. Greenlees filed her complaint on May 23, 2021.

[7] Ms. Greenlees was self-represented when she filed her complaint.

[8] Step 4 of the Tribunal’s complaint form asks a complainant for information about the time limit for filing a complaint. In this section Ms. Greenlees said that the date of the most recent conduct she listed as discrimination was May 23, 2021. She did not allege that any conduct that occurred before May 23, 2020, was part of a continuing contravention of the *Code*. She answered “yes” to the questions “Did the most recent conduct happen in the last year?” and “Did all of the conduct happen in the last year for all Respondents?”

[9] In an affidavit in support of her application, Ms. Greenlees says she did not have assistance from a lawyer to fill out her complaint form, and she did not understand the questions in Step 4 of the form. She says she erroneously answered “yes” to the question “Did all of the conduct happen in the last year for all Respondents?” She says she intended to file her complaint in relation to events that occurred prior to May 23, 2020, as well as events that occurred after that date. She says she did not file her complaint earlier because she was trying to work with BCEHS in the accommodation process.

[10] In the complaint, Ms. Greenlees alleged:

- a. She has a physical disability from an injury at work.
- b. BCEHS has not accommodated her to allow her to be successful in an alternative career. The complaint form says “No permanent DTA [duty to accommodate] – Lack of communication with Employer HR/LR/DM – Nepotism”.
- c. She had three years of intermittent temporary DTAs while other employees were given special treatment and accommodations. BCEHS did not provide accurate documentation with her temporary DTAs, and ignored her correspondence and continual offers to work.
- d. BCEHS would not allow her to use an ergonomic keyboard or enhanced font size during a test to become an Emergency Call Taker, and gave her less than 24 hours notice of an “aptitude/critical test” (as written), all because the Talent Acquisition Leader did not want a person with disabilities working in dispatch.
- e. She experiences ongoing intimidation in the workplace due to her disability.

[11] On August 5, 2022, the Tribunal notified the parties that the complaint will proceed as a complaint of discrimination on the ground of physical disability in the area of employment. BCEHS filed a response to the complaint on October 3, 2022.

[12] Ms. Greenlees applies to amend her complaint to include an allegation that she has been diagnosed with ADD and requires accommodation when taking tests as a result [**ADD Allegation**]. She also made the following allegations about Emergency Call Taker test [**Test**]:

- a. On December 5, 2018, she took the Test. Her disabilities were not accommodated, and she failed the test [**December 5, 2018, Test Allegation**].
- b. On February 5, 2019, she took the Test again. Again, she was not accommodated, and again she did not pass the Test [**February 5, 2019, Test Allegation**].
- c. On August 13, 2020, Ms. Greenlees took the Test again. She was not accommodated, and again failed the Test [**August 13, 2020, Test Allegation**].

[13] Ms. Greenlees also applies to add the following allegations:

- a. BCEHS did not offer her any temporary or permanent accommodated position between June 2019 and February 2020 [**June 2019 to February 2020 Accommodation Allegation**].
- b. On March 31, 2020, she entered into a Temporary DTA Agreement with BCEHS to do “Project Work”, but in reality, she mainly cleaned bathrooms and floors, took out garbage, and received deliveries. This position was initially scheduled to end on June 5, 2020, but was extended to May 31, 2021. While in this position she was subject to degrading comments, her DTA Agreement was not kept confidential, she had to report to several different supervisors, she was frequently paid late and incorrectly, had to use her personal vehicle for work-related travel and was not paid mileage, and was subject to a different process for obtaining a required uniform that led to her being told she could not work to perform respirator fit testing in August 2020 because she did not have the required uniform [**Temporary DTA Allegation**].

- c. In October 2021, she entered into a Permanent DTA Agreement with BCEHS and began working on the Transfer Fleet. She continued to experience issues with incorrect pay, is paid at a lower rate than her former PCP wage while others on the Transfer Fleet are paid at their licence level, she is denied permission to attend physiotherapy appointments during work hours to treat her injury, and she continues to experience comments and an attitude towards disabled employees resulting in a persistent feeling that employees with disabilities are not valued [**Permanent DTA Allegation**].

III ANALYSIS AND DECISION

A. Applications to Amend Under Rule 24(4)(a)

[14] Under Rule 24(1) of the Tribunal's *Rules of Practice and Procedure*, a complainant may add details to the allegations made in a complaint at any time by filing an amendment. A complainant may also amend their complaint to add a new allegation but must apply to do so if the allegation occurred outside of the time limit for filing the complaint: Rules 24(2) and 24(4). A new allegation must also allege facts that, if proven, could establish a contravention of the *Code*: Rule 24(3).

[15] The parties disagree about which date the Tribunal should use for determining whether the allegations in the amendment are timely, the date of the allegations contained in the amendment or the date on which the amendment was filed.

[16] BCEHS submits that the relevant date for determining whether a proposed amendment falls outside of the time limit for filing is the date of the application, April 21, 2023. BCEHS submits that any new allegations that predate April 21, 2022, are late-filed. BCEHS relies on *A. v. University*, 2020 BCHRT 58 [**A. v. University**]. In that case the complainant sought to amend his complaint to add new allegations dating between two years and nine months before, and one year and one month after, the complaint was filed. The Tribunal said that the relevant date for determining whether the proposed amendments were timely was the date the proposed amendments were filed: para. 13.

[17] Ms. Greenlees submits that the relevant date for determining whether any new allegations fall outside of the time limit is the date she filed her complaint. She says that only allegations that predate May 23, 2020, fall outside of the time limit. She submits that no application is necessary to add allegations dated May 23, 2020, or later, to her complaint. In reply to BCEHS's submission she relies on *Kruger v. Xerox Canada (No. 3)*, 2005 BCHRT 284 [*Kruger*].

[18] In *Kruger* the Tribunal dealt with an application to amend a complaint that was filed outside of the time limit. The Tribunal had already decided to allow the late-filed complaint to proceed. The complainant filed his amendment about ten months after filing the complaint, seeking to add new allegations regarding events giving rise to the complaint, including a new ground of discrimination. The Tribunal held that a proposed amendment was timely if the date of the allegation in the amendment occurred within the time limit for filing the complaint: para. 21. At paras. 21 and 22 the Tribunal said:

The question, therefore, is whether it is the date of the amendment request which determines whether the amendment was timely, or the date of the allegations contained in the amendment request. In my view, it is the latter; the date of the allegations contained in the amendment. Where those allegations involve events (or, in relation to a continuing contravention, where the last allegation involves an event) that occurred within six months of filing the complaint, Rule 25(4) would not apply and no application would be required.

In my view, the interpretation to be given to Rule 25(4) [now Rule 24(4)] is clearly expressed in the wording of the Rule itself. If an amendment adds an allegation that occurred outside the time limit for filing the complaint, the complainant must make an application. The crucial date is the date on which the events outlined in the amendment occurred, not when the amendment was filed. This makes sense for a number of reasons. First, if the crucial date was the date the amendment was filed, there would be no purpose to making an amendment: a complainant could simply file a new complaint. The ability to amend a complaint must mean more than that. Second, the interpretation I have given is in accordance with the harm which the Tribunal has held that the Rule is intended to avoid. As noted by the Tribunal in *Read v. Century Holdings Ltd. dba Best Western Tsawwassen Inn*, 2003 BCHRT 52:

it would not be consistent with the purposes of the Code if complainants could use the amendment procedure to circumvent the time limits set out

in the Code, a result which could otherwise follow if the Tribunal were not to exercise any supervising authority with respect to amendments which have the effect of bringing in events which occurred prior to the six month time limit. (at para. 62)

[19] The complainant in *Kruger* was required to make an application to amend his complaint because he sought to add new allegations which, like his complaint, were filed out of time: para. 25.

[20] Ms. Greenlees also relies on cases that follow *Kruger*, including: *Sheriff v Fairleigh Dickenson University*, 2023 BCHRT 40 at paras. 20 and 25; and *Sayyari v Provincial Health Services Authority and another*, 2021 BCHRT 134 at paras. 10 to 15. In *Sheriff*, the Tribunal said that the issue of whether an amendment includes a late-filed allegation has consistently been determined based on the time limit for filing the original complaint: para. 25. In *Sayyari* the Tribunal dealt with an application to amend a timely complaint and held that the complainant did not need to make an application to amend it to add allegations within the time limit for filing her complaint: para. 15.

[21] I find that the parts of Ms. Greenlees' proposed amendment that are dated May 23, 2020, or later, are timely.

[22] The Tribunal's statement in *A. v. University*, on which BCEHS relies, is not consistent with *Kruger* and other Tribunal decisions on this issue. The Tribunal did not address *Kruger* in *A. v. University*, and in *Sheriff* and *Sayyari* has since followed *Kruger* and stated that new allegations set out in a proposed amendment are timely if they fall within the time limit for filing the complaint. I find that the approach in *Kruger*, and the cases that follow it, is appropriate.

[23] Ms. Greenlees seeks to amend her complaint to add some allegations that predate May 23, 2020. She submits that these allegations form part of an alleged continuing contravention of the *Code*.

[24] BCEHS submits that the original complaint form does not allege a continuing contravention, and that Ms. Greenlees seeks to “sweep in” allegations that would otherwise fall far outside of the time limit.

[25] I find that the determinative issue when deciding whether Ms. Greenlees may amend her complaint to add new allegations that predate May 23, 2020, is not whether the new allegations form part of an alleged continuing contravention with timely allegations. Rather, I must consider whether it is in the public interest to accept allegations from before May 23, 2020, and if so, whether substantial prejudice will result to any person because of the delay: *Code*, s. 22(3).

[26] In *Gibbs v. Oak Bay Police Board (No. 2)*, 2011 BCHRT 194 [*Gibbs*], the Tribunal considered an application to amend a timely complaint. The complainant sought to add allegations predating the time limit for filing the complaint on the basis that the amendment alleged a continuing contravention of the *Code*. The respondent argued that the complainant attempted to use the amendment process to raise new allegations, which predated the complaint, for the first time.

[27] The Tribunal held that the original complaint form defined the temporal scope of the complaint and that an application was required to add allegations farther back in time: paras. 36 to 38. The Tribunal said that an entitlement to file new allegations predating those set out in the complaint as part of a continuing contravention would undermine the respondent’s right to notice of the case it must meet: para. 38. Whether new allegations that fall outside of the time limit form part of an alleged continuing contravention is not determinative. The Tribunal must decide whether it is in the public interest to accept the allegations that fall outside of the time limit, and if so, whether any substantial prejudice would result: para. 41.

[28] I follow the same approach in this case. To decide whether to allow the proposed amendments to the complaint I first determine the scope of the complaint filed on May 23, 2021. For the reasons set out below, I find that the original complaint form does not allege a continuing contravention of the *Code*.

[29] Then, to address the proposed amendments, I must:

- a. For each proposed amendment, determine whether it constitutes particulars of the allegations in the complaint or a new allegation;
- b. For any new allegation, determine whether it alleges a breach of the *Code*;
- c. If so, determine whether the new allegation falls within the time limit for filing, or predates May 23, 2020 and falls outside of the time limit;
- d. For any new allegation that predates May 23, 2020, decide whether or not it is in the public interest to proceed with the allegation and no substantial prejudice will result: *Code*, s. 22(3).

[30] I begin with explaining the scope of the complaint as Ms. Greenless filed it on May 23, 2021.

B. What is the scope of the complaint?

[31] There is a dispute about the temporal scope of the complaint as filed on May 23, 2021. Briefly, BCEHS submits that the temporal scope is limited to May 23, 2020 to May 23, 2021 (the 1 year prior to filing). Ms. Greenless submits the temporal scope is longer – she says her allegations go back before May 23, 2020, and form a continuing contravention with her timely allegations. In this section I will summarize the parties’ submissions on this issue and explain why I accept BCEHS’ position regarding temporal scope of the complaint.

[32] Ms. Greenless submits that her original complaint form alleges a continuing contravention. She acknowledges that she did not technically frame her complaint as a continuing contravention, but says it is clear from her description of her allegations in the complaint form that this was her intention. She says her proposed amendments do not contain new allegations, but provide further and better particulars of her complaint.

[33] A continuing contravention is a succession or repetition of separate acts of discrimination of the same character: *School District v. Child*, 2018 BCCA 136 [**School District**] at para. 48. To allege a timely continuing contravention, a complaint must allege an occurrence or

example of discrimination that falls within the time limit: *School District* at para. 44. An allegation of conduct that occurred before the time limit for filing is not late-filed if it forms part of an alleged continuing contravention: *Code*, s. 22(2). Separate allegations of discrimination must be sufficiently particularized to form the basis of a continuing contravention: *B.S. v. School District*, 2019 BCHRT 100 at paras. 57 to 58.

[34] In an affidavit filed in support of her application, Ms. Greenlees says she did not have legal assistance when she filed her complaint, and she erroneously answered “yes” to the question “Did all of the conduct happen in the last year for all Respondents?” She says she intended to file her complaint in relation to events that occurred prior to May 23, 2020, as well as events that occurred after. She says she did not file her complaint earlier because she was trying to work with BCHES in the accommodation process.

[35] BCEHS submits that Ms. Greenlees did not allege a continuing contravention in her complaint, and through this application is seeking to add new late-filed allegations that do not form part of an alleged continuing contravention.

[36] For the following reasons I am not satisfied that the temporal scope of the complaint predates May 23, 2020.

[37] While she may have done so in error, Ms. Greenlees indicated in her complaint form that all of the conduct occurred within the year before filing. I consider this factor in determining the scope of her complaint but find that it is not determinative. I consider that Ms. Greenlees was self-represented when she filed her complaint. I also consider that BCEHS has a right to know the case against it in a timely manner: *Gibbs* at para. 38. I take a contextual approach to assessing the complaint form. Answering “yes” to the question of whether all alleged conduct falls within the time limit does not preclude a finding that the complaint form alleges a continuing contravention of the *Code* based on her description of her allegations. Rather, I must determine the scope of the complaint based on the entire complaint form.

[38] In her complaint form Ms. Greenlees alleges discrimination based on a physical disability from a workplace injury. This is the only ground of discrimination alleged in the complaint.

[39] Ms. Greenlees alleges in her complaint form that BCEHS did not accommodate her physical disability:

- After 3 years of intermittent temporary DTAs, while other employees given special treatment and accommodations. - Employer BCEHS ignores my correspondence and continual offers to work. ... - Employer didn't provide accurate documentation with my Temporary Duty to Accommodates. [As written]

[40] Ms. Greenlees' allegation related to the Emergency Call Taker test says:

- Employer would not allow me to use an ergonomic Keyboard, or enhance the font to a larger size to see during a test to become a Emergency Call Taker. All approved by Worksafe. Inadequate warning for a aptitude/ criticalll test, less than 24 hrs notice. All because the Talent Acquisition Leader did not want a disabled person in dispatch. [As written]

[41] Finally, Ms. Greenlees alleges "Intimidation and discrimination due to my disability which is continually ongoing on a daily basis."

[42] Ms. Greenlees submits that it is clear that she intended to frame her complaint as a continuing contravention. She submits that this is apparent from BCEHS's response to the complaint, which refers to events that fall outside of the time limit for filing, including dates that she took the Emergency Call Taker test.

[43] I find that BCEHS's response to the complaint does not assist me with determining the scope of the complaint. In its response to the complaint BCEHS refers to dates in 2018 and 2019 that Ms. Greenlees took the test, however, I find this is not an acknowledgement that these dates form part of the complaint. Ms. Greenlees did not date her allegations in her complaint form, and referred to a lack of accommodation during "a test". I find BCEHS asserting facts about test dates in its response is not an admission that all of the dates it refers to are within the scope of the complaint.

[44] I base my decision on the scope of the complaint on what Ms. Greenlees said in her complaint form. I consider that she was self-represented at the time and did not have specialized knowledge of how to file a complaint at the Tribunal: *Lord v. Fraser Health Authority*, 2021 BCSC 2176 at paras. 36 and 61.

[45] I also consider the comments of the British Columbia Supreme Court in *Miller v. Union of British Columbia Performers*, 2021 BCSC 1054 (affirmed 2022 BCCA 358) that the Tribunal has well-established experience facilitating self-represented parties' participation in its process, and the complaint and response forms are easy to complete: para. 88.

[46] The complaint form that Ms. Greenlees completed requires a complainant to describe details of alleged discrimination. The form says "Describe what this Respondent did that harmed you", with a space to list the dates of allegations. This requires a complainant to describe what happened, and when.

[47] I am not satisfied that the complaint form lists instances of alleged discrimination before May 23, 2020 that could form part of a continuing contravention. Ms. Greenlees did not date any of her allegations. She refers to "a test" where she says she was not accommodated rather than alleging that this occurred on multiple occasions. She says intimidation and discrimination are continually ongoing, but does not say that this began before May 23, 2020. The only reference to any time period outside of the time limit is the reference to "3 years of intermittent temporary DTAs where other employees were given special treatment and accommodations." But again, there are no dates provided and no details of who did what and when. Further, there is no explanation of alleged discriminatory conduct related to any intermittent temporary DTAs outside of the time limit. As such, on the materials before me, I cannot find that Ms. Greenlees alleged a continuing contravention, including conduct falling outside of the time limit, based on this reference to "3 years". When I view the explanation of the allegations in context with the statement that all conduct happened within the past year, I conclude that the temporal scope of the original complaint is May 23, 2020 to May 23, 2021.

[48] I now turn to review each amendment that Ms. Greenlees seeks to add to her complaint.

C. ADD Allegation

[49] Ms. Greenlees did not include the ground of mental disability in her complaint form. She did not allege in her complaint that she had ADD or that it was a factor in any allegedly

discriminatory conduct. However, she alleged in her complaint that she was not accommodated to take the Test. Ms. Greenlees says in her amendment that she has ADD and requires accommodation when taking tests. The ADD Allegation is directly tied to the Test Allegations. It is another basis for alleging that a failure to accommodate her to take the Test is a breach of the *Code*. For any Test Allegations that are timely, I accept Ms. Greenlees proposed amendment alleging that this was discrimination based on mental disability (ADD) as well as physical disability.

D. Test Allegations

[50] Ms. Greenlees alleged in her complaint form that she was not accommodated to take the Emergency Call Taker Test. Her August 13, 2020, Test Allegation is not new. Rather, it provides details about a timely instance of discrimination set out in her complaint form. I allow her amendment to add the August 13, 2020, Test Allegation.

[51] I have determined that the complaint as originally filed does not allege a continuing contravention. This means the February 5, 2019, and December 5, 2018, Test Allegations are new allegations that Ms. Greenlees must apply to add to her complaint because they fall outside of the time limit for filing. The issue I must decide is whether to accept these amendments under s. 22(3) of the *Code: Gibb*, paras. 37-38 and 42 and 69. Therefore, I must determine, first, whether it is in the public interest to allow these allegations to proceed.

[52] Determining whether it is in the public interest to proceed with late-filed allegations requires a multifaceted analysis where the Tribunal considers all relevant factors in the context of the circumstances of the particular case and the purposes of the *Code*. The length of the delay and reasons for the delay are important factors, but are not necessarily determinative: *Goddard v. Dixon*, 2012 BCSC 161 at para. 152. The Tribunal also considers the public interest in the complaint itself, and the respondent's interest in carrying on with its activities without concern about stale complaints: *British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite*, 2014 BCCA 220 at para. 53.

[53] Ms. Greenlees submits that it is in the public interest to allow her amendments because she was self-represented when she filed her complaint and did not understand the questions related to timeliness. She also says she did not file her complaint earlier because she was trying to work with BCEHS in the accommodation process. She submits that the allegations she seeks to add may have broader implications for BCEHS employees if they are allowed to proceed. She also says that her complaint raises issues on behalf of a particular vulnerable group, paramedics, and this weighs in favour of allowing her amendment: *Spalek v. Provincial Health Services Authority*, 2021 BCHRT 169 [**Spalek**] at para. 41.

[54] I first consider the length of the delay. The February 5, 2019, and December 5, 2018, Test Allegations occurred 15 and 17 months before the timeline for filing the complaint. This is a lengthy delay. This alone is not determinative, but it is a significant factor that weighs against a finding that proceeding with the allegations is in the public interest.

[55] I also find that Ms. Greenlees' explanation for the delay weighs against a finding that allowing the late-filed allegations to proceed is in the public interest. Ms. Greenlees says she did not file her complaint earlier because she was trying to work with BCEHS in the accommodation process. She refers to a case in which the Tribunal noted that achieving a reasonable accommodation is a process that can take some time and negotiation between the parties, and it would be damaging to that process to expect employees to file a human rights complaint at the first indication of a problem: *Penner v. BC (Ministry of Public Safety and Solicitor General)*, 2005 BCHRT 465; *Howard obo Howard v. BC Housing*, 2023 BCHRT 6 at para. 17.

[56] This does not explain why Ms. Greenlees did not file a complaint about the December 5, 2018, and February 5, 2019, Test Allegations for well over one year after those specific incidents occurred. Pursuit of an internal process is not a factor that weighs in favour of finding a public interest in allowing the allegations to proceed: *Eldor v. University of British Columbia*, 2009 BCHRT 204 at para. 68.

[57] If Ms. Greenlees had included the late-filed Test Allegations in her complaint form, the Tribunal would have determined whether they formed part of an alleged continuing contravention. I do not need to decide this issue, but I note that the gap between February 5, 2019, and August 13, 2020, would have been a significant factor weighing against a finding of a continuing contravention. In any case, Ms. Greenlees would have had an opportunity to argue that she alleged a continuing contravention had she included the allegations in her original complaint. However, I find that her explanation for not including these allegations in her complaint form does not weigh in favour of a finding that accepting the allegations at this stage is in the public interest. Even if she did not understand the timeliness questions on the complaint form, this does not explain why she did not include any dates the tests in her description of her allegations or explain that she was referring multiple test incidents at all.

[58] I also find that there is not a high level of public interest in the allegations themselves. Ms. Greenlees relies on *Spalek* to submit that there is a public interest in proceeding because her complaint may generally impact paramedics. The Tribunal's decision in *Spalek*, in which paramedics were found to be a particularly vulnerable group, involved a complainant with a severe mental disability that impacted her functioning. The Tribunal found that this was why she did not file her complaint in time: para. 35. Her mental health symptoms were also a consideration in finding that novelty and vulnerability weighed in factor of a finding that proceeding would be in the public interest: paras. 38 to 41. In contrast, Ms. Greenlees does not say that any disability kept her from filing her complaint earlier. There is no particular novelty or vulnerability at issue in this complaint that weighs in factor of a finding that proceeding would be in the public interest. Otherwise, complaints about an alleged failure to accommodate an employee's disability are common at the Tribunal, and there is no particular public interest in proceeding with the issues in this complaint.

[59] Ms. Greenlees also submits that BCEHS was aware of the dates she took the tests, and of the context of her DTA process. I find that this factor does not weigh in favour of a finding that proceeding with the allegations is in the public interest. Even if BCEHS was aware of the events that occurred prior to May 23, 2020, it could not have known that Ms. Greenlees alleged

that any particular conduct was discriminatory until she made allegations about that conduct in her amendment. A respondent being aware of events does not impact the interest in knowing that a complainant considers those events to be discriminatory in a timely way.

[60] Otherwise, I find that the submissions about BCEHS's knowledge of events relates more to the question of prejudice than public interest. Given my finding that it is not in the public interest to add these allegations, I do not need to consider whether no substantial prejudice would result.

[61] The application to add the August 13, 2020, Test Allegation to the complaint is allowed.

[62] The application to add the December 5, 2018, and February 5, 2019, Test Allegations is denied.

E. June 2019 to February 2020 Accommodation Allegation

[63] Ms. Greenlees alleges that BCEHS failed to offer her any temporary or permanent accommodated positions between June 2019 and February 2020. This is a new allegation that is late-filed. The end of this time period, February 2020, falls three months outside of the time limit for filing the complaint. Again, the issue I must decide here is whether to accept these amendments under s. 22(3) of the *Code: Gibb*, paras. 37-38 and 42 and 69.

[64] I find that it is not in the public interest to allow this allegation to proceed. My reasons for this are similar to my reason for denying the application to add the late-filed Test Allegations. Although the delay is less significant if the February 2020 date is considered, it appears that Ms. Greenlees alleges discriminatory conduct dating back to June 2019, which is 11 months before the time limit for filing. This is a significant delay. I have explained above why the explanation for the delay and other factors do not weigh in favour of a finding of public interest.

[65] The application to add the June 2019 to February 2020 Accommodation Allegation to the complaint is denied.

F. Temporary DTA Allegation

[66] Ms. Greenlees alleges that she experienced discrimination while working in a temporary position between March 31, 2020, and May 31, 2021. She says the discrimination began on her first day in this position when one of her colleagues made a degrading and hurtful comment about her new duties. Under this allegation, she describes a failure to protect her confidentiality, and issues with supervisors, pay, mileage, and obtaining a uniform.

[67] I find that the Temporary DTA Allegation largely consists of particulars or details of the allegations in the original complaint form that BCEHS did not accommodate Ms. Greenlees' disability to allow her to succeed in alternative work, and that she experiences ongoing intimidation due to her disability. For the time period for filing the initial complaint (i.e. May 23, 2020 to May 23, 2021), no application is required to add details to the complaint and Ms. Greenlees is entitled to make those amendments as of right: Rule 25(1).

[68] I only need to decide whether it is in the public interest to allow Ms. Greenlees to add allegations that predate her complaint, that is between March 31 and May 23, 2020. Once again, the issue I must decide here is whether to accept these amendments under s. 22(3) of the *Code: Gibb*, paras. 37-38 and 42 and 69. To accept the allegations, Ms. Greenlees would need to persuade me, first, that it is in the public interest to do so. I am not persuaded that it is. My reasons are, again, similar to those for denying the application to add the other untimely allegations.

[69] The start of this period falls less than two months outside of the time limit. This is not as lengthy as the delays for the other allegations, but it is not insignificant. This delay weighs slightly against a finding that proceeding would be in the public interest.

[70] Ms. Greenlees' explanation for her delay also weighs against a finding of public interest in extending the scope of the complaint beyond the time limit. Although she filed her complaint while she was still working in the temporary position, she has not explained why, if she believed she experienced discrimination while working in this position, she did not describe any instances of discrimination related to this position in her complaint. Further, the delay does not

entirely prevent Ms. Greenlees from advancing this allegation. My decision only limits the temporal scope of the allegation.

[71] I have explained above why other factors do not weigh in favour of a finding of public interest.

[72] The complaint is amended to add the particulars and details from the Temporary DTA Allegation that fall on May 23, 2020, or later. The application to add earlier allegations related to the temporary position is denied.

G. Permanent DTA Allegation

[73] In the amendment, Ms. Greenlees alleges that since October 2021, BCEHS has not reasonably accommodated Ms. Greenlees in her permanent position. I find that this is not a new allegation, but adds particulars to the timely allegation that the Respondent has not reasonably accommodated Ms. Greenlees. I understand these particulars as dating between October 2021 to April 21, 2023 (the date the amendment was filed), and therefore postdating the filing of the complaint, and there is no time limit issue that arises. Ms. Greenlees allegations of continued discrimination include that BCEHS pays her at a lower wage rate while others in this position are paid at their licence level, she is denied permission to attend appointments related to her injury, and she continues to experience comments and an attitude that she feels devalue her as an employee with a disability. These are allegations of discrimination contrary to the *Code*, and an application is not required to add them to the complaint.

H. Summary

[74] The application to amend the complaint to add the ADD Allegation, the August 13, 2020, Test Allegation, details falling under the Temporary DTA Allegation dated May 23, 2020, and later, and the Permanent DTA Allegation, is allowed.

[75] The application to amend the complaint to add the December 5, 2018, Test Allegation, February 5, 2019, Test Allegation, June 2019 to February 2020 Accommodation Allegation, and any parts of the Temporary DTA Allegation predating May 23, 2020, is denied.

IV CONCLUSION

[76] The application to amend the complaint to add the allegations and particulars in the amendment dated May 23, 2020, or later, is allowed. The application to add allegations that predate May 23, 2020, is denied.

[77] The case manager will contact the parties to give Ms. Greenlees a deadline to file a revised amendment to her complaint that reflects this decision, and give BCEHS a deadline to file an amended response to the complaint.

Jessica Derynck
Tribunal Member

This version of the decision has been amended in accordance with the correction of April 30, 2024:

[78] The citation set forth in the third line of the cover page has been changed from “2023 BCHRT 122” to “2024 BCHRT 122”.

[79] In paragraph 4, the reference to the “March 31, 2020” date has been changed to “May 23, 2020”.

[80] In paragraph 72, the phrase “details from the Temporary DTA Allegation that predate May 23, 2020” has been changed to “details from the Temporary DTA Allegation that fall on May 23, 2020, or later”.