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File: CS-003418

Indexed as: Bach v. BC Ministry of Finance, 2024 BCHRT 145

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:

Byron Bach

**COMPLAINANT**

AND:

His Majesty the King in Right of the Province of British Columbia as represented by the Ministry  
of Finance, BC Liquor Distribution Branch

**RESPONDENT**

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

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Tribunal Member:

Jonathan Chapnick

On his own behalf:

Byron Bach

Counsel for Respondent:

Graeme Norton

## I INTRODUCTION

[1] Under s. 13(1)(b) of the *Human Rights Code*, the Human Rights Tribunal will sometimes find employment discrimination based on “family status” where an adverse impact on an employee flows from a conflict between a family responsibility and a work requirement. The present case, involving the BC Liquor Distribution Branch [LDB] and a long-time LDB employee, Byron Bach, relates to an alleged conflict of this nature.

[2] Mr. Bach has worked for the LDB since 1999. He says he has also been working at another job at a grocery store, Save-On-Foods, since 1996. He says that, from 2005 to April 2021, he worked regular “graveyard shifts” (i.e., 12 a.m. to 8:30 a.m.) at Save-On, and then was available to work auxiliary shifts at LDB from 2 p.m. till close, six days a week. He says he worked both jobs full-time during that period. He says he did that because of his family responsibility to provide financially for his wife and three children. He says his wife cannot work for health reasons.

[3] Due to circumstances outlined below, on April 1, 2021, the LDB converted Mr. Bach from an auxiliary employee, receiving available work through the auxiliary recall process, to a regular employee, working in a continuous, full-time position under a particular scheduling rotation. Mr. Bach objected to this conversion. In anticipation of it, he filed a complaint to the Tribunal on March 2, 2021, alleging discrimination based on family status.

[4] Mr. Bach says the shift rotation for his regular position at the LDB conflicts with his job schedule at Save-On. He says he cannot do both. As a result, he says he will end up losing a job because of his conversion to regular status at the LDB. Mr. Bach says his job loss will interfere with his ability to fulfil his responsibility to provide financially for his family. He says the LDB has a duty to accommodate his family-related obligations. The accommodation he seeks is to remain an auxiliary employee. He alleges that being forced to convert to regular status is discrimination.

[5] The LDB denies discriminating. It says that to engage the *Code’s* protection against family status discrimination, a complainant must clearly show that they have experienced a

serious interference with a substantial parental or family duty or obligation. The LDB applies to dismiss Mr. Bach's complaint on the ground that he has no reasonable prospect of showing this at a hearing. The LDB says Mr. Bach "is asserting a personal preference to hold a second job with another employer in order to earn a desired level of income in a manner that is most convenient to him," and this does not meet the threshold for establishing family status discrimination. It says "there is simply no human right to work a second job of one's choosing," and so Mr. Bach's complaint should be dismissed.

[6] On the materials before me, I do not agree with the LDB's characterization of Mr. Bach's complaint, and I am not persuaded that he has no reasonable prospect of making his case at a hearing. For the reasons that follow, I deny the LDB's application to dismiss the complaint at this preliminary stage. To make this decision, I have considered all the information filed by the parties. In my reasons, I only refer to what is necessary to explain my decision. I make no findings of fact and reach no conclusions regarding the merits of Mr. Bach's complaint.

## **II BACKGROUND**

[7] In support of its application, the LDB submitted a sworn statement (supplemented by a second sworn statement) from its Executive Director of Human Resources and supporting documents. Mr. Bach's response is comprised of an unsworn statement of evidence and argument, as well as supporting documents. The following background information is drawn from the parties' materials.

[8] In his employment with the LDB, Mr. Bach is a member of the BC General Employees' Union. The terms and conditions of his employment are set out in a collective agreement. The collective agreement includes a mandatory conversion clause, under which, in certain circumstances upon reaching a particular threshold of hours worked, auxiliary employees must be converted to regular employee status. Historically, the LDB did not strictly apply this clause; rather, it permitted auxiliary employees who reached the hours threshold to decline conversion if they preferred. The LDB's evidence indicates Mr. Bach was offered conversion at least seven

times between February 2008 and June 2019. He says he has declined conversion at least 12 times in order to maintain his hours at both jobs and support his family.

[9] In June 2019, the LDB notified all auxiliary employees that, effective August 1, 2019, it would begin strictly enforcing the mandatory conversion clause. In other words, auxiliary employees who reached the hours threshold would no longer be permitted to decline conversion. Mr. Bach says that, to avoid mandatory conversion, he reduced his availability for auxiliary shifts and worked very little for several months, which resulted in financial hardship. Eventually, however, on February 25, 2021, the LDB informed Mr. Bach that he would be converted to regular status effective April 1, 2021.

[10] The evidence indicates that, on March 30, 2021, Mr. Bach submitted a “Request for Review of Conversion to Regular Status” form to the LDB [**Request Form**], asking for accommodation based on the ground of family status. In the form, he said he had another full-time job to support his family. He explained that, in his other job, he worked from 12 a.m. to 8:30 a.m., returning home to rest by around 9 a.m., before working shifts at the LDB in the afternoons. He said he was unable to work under the LDB’s shift rotation for regular employees because, to maintain both his jobs and get sufficient rest, he could only work afternoon shifts at the LDB. He stated that he could not convert to regular status at the LDB because it would result in him having to quit his job. He said this would cause financial hardship for his family, explaining that he was the family’s sole provider because his wife was unable to work for health reasons. He requested accommodation in the form of retaining his auxiliary status and continuing to work afternoon shifts at the LDB. He stated, “all I am trying to [do] is fulfil my family duties to feed, [clothe], and provide shelter for my family.” He said that, if he was not able to continue working at both his jobs, he would experience “severe financial hardship” and would not be able to have “a successful family/work balance.” Mr. Bach subsequently submitted a medical note, dated March 17, 2021. The note appears to be from his wife’s family doctor. In it, the doctor states that certain health conditions (which I need not disclose in this decision) “have prevented [Mr. Bach’s wife] from pursuing employment.”

[11] The LDB denied Mr. Bach's request. It told him that "requests to not be converted for family status grounds" were only considered where there was "a serious interference" with an employee's "ability to provide childcare that would violate the Human Rights Code." The LDB said Mr. Bach's request was "in regards to a desire to work at LDB and maintain another full time job," which did not "fit the criteria for a family status request."

[12] On April 1, 2021, Mr. Bach was converted to regular status and began working a full-time work week under the applicable scheduling rotation. In its dismissal application, the LDB says he has worked in this manner without significant disruption since that time. Mr. Bach describes the period following his conversion differently. He says that, at first, his store manager allowed him to begin his 8 a.m. LDB shifts at 9:30 a.m., which was the earliest he could start after completing his graveyard shift at Save-On. However, he was not allowed to do this when his LDB shifts started at 7 a.m., so he took vacation during those weeks, until he ran out of vacation time. As a result of exhausting his vacation bank, he says he has had "7 AWL shifts" because "he could not be in two places at once." I take this to mean he is saying he was absent without leave or pay on seven occasions. He says he let his manager know before missing work on those days, and he has not been disciplined for his absences.

[13] Mr. Bach says that in around November 2021, his manager told him he could no longer start his 8 a.m. shifts late. At that point, he says he asked to "use lieu time or vacation time for the first portion of his shift since the store [was] not open till 9:30 a.m." He says his manager allowed him to do this. He says throughout 2022 he "used vacation at both jobs to try to make things work so he [could] support his family and provide them with the necessities of life."

[14] The LDB does not appear to dispute Mr. Bach's evidence regarding using vacation time and accumulating AWL shifts. It does, however, dispute other assertions made in Mr. Bach's response submission, accusing the LDB of preventing him from exchanging shifts and applying the collective agreement inconsistently following his conversion to regular status. I have not relied on the disputed assertions in deciding the present dismissal application.

### III DECISION

[15] The LDB applies to dismiss Mr. Bach's complaint under s. 27(1)(c) of the *Code*. Section 27(1)(c) gives the Tribunal discretion to dismiss complaints that have no reasonable prospect of success and therefore do not warrant the time and expense of a hearing: *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95, at paras. 22-26, leave to appeal ref'd [2006] S.C.C.A. No. 171; *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at para. 27. The Tribunal does not make findings of fact under s. 27(1)(c). Instead, my task in applying this section of the *Code* is to look at the information filed by the parties to decide if there is no reasonable prospect that findings of fact supporting the complaint could be made on a balance of probabilities after a hearing of the evidence: *Berezoutskaia* at para. 22. The onus is on the LDB to establish that Mr. Bach's complaint should be dismissed under s. 27(1)(c): *Paulsen v. BC Hydro and another*, 2020 BCHRT 75 at para. 11. The LDB must show me that either (1) Mr. Bach has no reasonable prospect of proving the elements of his complaint, or (2) the LDB is reasonably certain to establish a defence: *Lado v. Hardbite Chips and others*, 2019 BCHRT 134 at para. 25. The LDB's dismissal application seeks to establish the former.

[16] To make his case at a hearing, Mr. Bach would need to prove three things: (1) he has a personal characteristic that is protected by the *Code*, (2) he was adversely impacted in employment, and (3) his personal characteristic was a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33; see also *British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.*, 2023 BCCA 168 at paras. 100-101 [**Gibraltar Mines**]. Under s. 27(1)(c), my assessment of Mr. Bach's prospects for satisfying the three elements of his case involves testing the evidence for some probability he could prevail: *Lado* at para. 26. The threshold to advance a complaint to a hearing is low; Mr. Bach does not need to prove his case or show the Tribunal all the evidence he may introduce at a hearing: *Sadvandi v. Hudson's Bay Company*, 2024 BCHRT 8 at para. 19. Rather, for his complaint to continue forward, the materials before me must suggest a nexus between his protected characteristic and the alleged adverse impact in his employment; there must be more than mere speculation that discrimination has occurred: *Gichuru v. Pallai (No. 2)*, 2010 BCHRT 125 at para. 107, quoting

*Runyowa and Kanani v. Vicinia Strata Plan LMS1647 and another*, 2007 BCHRT 89 at para. 22. The LDB says Mr. Bach’s complaint falls short of this standard. I disagree. I am not satisfied that Mr. Bach has no reasonable prospect of making his case at a hearing. I will address the three elements of his case in turn.

**A. Does Mr. Bach have a personal characteristic that is protected by the Code?**

[17] Code protections, including the protection against family status discrimination in employment, must be given a broad and liberal interpretation so as to best achieve the legislation’s public purposes: see *Gibraltar Mines* at paras. 76-77. The definition of “family status” under the Code is meant to be flexible: *Gibraltar Mines* at para. 91. The ground of family status may be engaged in several ways. For example, the family status ground may be engaged as a result of a person’s “absolute” status of being, for instance, a parent, spouse, or sibling: *Wang Oceanfood Industries and Luong (No. 2)*, 2006 BCHRT 379 at para. 14; see generally *B v. Ontario (Human Rights Commission)*, 2002 SCC 66 [**B v. Ontario**]. The ground may also be engaged as a result of a person’s “relative” status of being in a family relationship with a particular person: *Wang* at para. 14; *B. v. Ontario*. In addition, the ground may be engaged by way of the substantial interests (i.e., duties, obligations, responsibilities, etc.) that flow from a person’s status as a family member: see *Gibraltar Mines* at paras. 62, 70, 77, 95, 97-98, and 99-101.

[18] The LDB says Mr. Bach’s complaint is based on conjecture and is not supported by the evidentiary record. It says the only evidence of his wife’s health-related inability to work is the brief medical note from her doctor, which is phrased in the past tense and does not speak to the duration of her inability to work “or any specific treatments that she requires that would necessitate [Mr. Bach’s] involvement.” The LDB says its determination in April 2021 that Mr. Bach’s circumstances did not engage the ground of family status was not discriminatory. It says the threshold for engaging the family status ground “has generally been understood to include legal obligations to parent a child or obligations of a similarly significant nature involving other family members, such as elderly parents” requiring care. It argues that an employee’s “personal

preferences” do not amount to substantial family obligations within this analysis, citing *Falardeau v. Ferguson Moving and others*, 2009 BCHRT 272.

[19] *Falardeau* involved an employee who alleged that his employer interfered with his obligation to care for his son by requiring him to work overtime. The Tribunal dismissed the employee’s case after an evidentiary hearing, finding no evidence of an interference with a substantial family duty or obligation. Rather, in the Tribunal’s view, the evidence suggested the employee “may have made an issue of overtime because of his dislike of work on construction sites, rather than because of his family responsibilities”: *Falardeau* at para. 31. The LDB urges a similar analysis in the present complaint, describing the interest at stake as Mr. Bach’s desire for work-life balance and “personal preference to hold a second job with another employer in order to earn a desired level of income in a manner that is most convenient to him.” I agree that an interest of this description, without more, is unlikely to engage the ground of family status. However, on the evidence before me, I am not satisfied that, at a hearing, the Tribunal would find this description to be accurate in the circumstances of this complaint.

[20] Mr. Bach’s position is that the interest at stake in his case is the responsibility to provide financially for his wife and three children. He says his wife cannot work for health reasons, so he is solely responsible for generating the financial means to support his family. His evidence includes a medical note, which corroborates that certain health conditions have prevented his wife from pursuing employment. He does not claim that his complaint arises from any sort of direct involvement in her treatment or care. In the Request Form, he stated that his aim in refusing conversion was to fulfill his duty “to feed, [clothe], and provide shelter” for his family. Despite the LDB’s concerns regarding the strength of Mr. Bach’s evidence, at this preliminary stage of these proceedings, on the materials before me, I am not prepared to conclude that he has no reasonable prospect of proving that the interest at stake in this complaint is his spousal and parental responsibility to generate the financial means to support his family. Nor am I satisfied that he has no reasonable chance of establishing that this interest amounts to a “substantial” family duty or obligation within the meaning of the family status discrimination analysis.



[21] I appreciate that past discrimination cases involving family obligations have typically related to direct child care duties or spousal or elder care responsibilities. In this regard, Mr. Bach's complaint appears to be somewhat novel in nature. The novelty of a claim, however, should not necessarily act as a bar to its adjudication: *BC/Yukon Association of Drug War Survivors v. City of Abbotsford and another*, 2020 BCHRT 86 at para. 103 [BCYADWS]. In my view, the materials before me provide an arguable basis for Mr. Bach's claim, which warrants a thoughtful decision on the merits made by this Tribunal based on an evidentiary record and fulsome arguments: see *BCYADWS* at para. 103.

### **B. Was Mr. Bach adversely impacted in employment?**

[22] Not every negative impact in employment related to a person's family status will be discrimination; the impact must be a serious one: *Gibraltar* at paras. 69, 96, and 101. The issue of what constitutes adverse treatment or impact for the purposes of the discrimination analysis is determined contextually, having regard to the purposes of the *Code*: *Miller v. Union of BC Performers*, 2020 BCHRT 133 at para. 7; see, e.g., *Brito v. Affordable Housing Societies and another*, 2017 BCHRT 270 at paras. 41-46 and cases cited therein.

[23] The LDB says Mr. Bach's complaint is conjectural and includes statements that are inconsistent with the evidentiary record. It points to Mr. Bach's statement that his conversion to regular status will cause him to lose a job, arguing that the evidence demonstrates this statement is not accurate. It asserts that Mr. Bach "has been able to work his regular full-time schedule with the LDB without significant disruption since April 2021, while also remaining employed by Save-On-Foods." I find that this assertion – that Mr. Bach's conversion to regular status has proceeded "without significant disruption" – is not supported in the materials before me regarding Mr. Bach's circumstances.

[24] Mr. Bach's evidence is that, as a result of his conversion to regular status at the LDB, he will end up losing a job because his regular scheduling rotation at the LDB conflicts with his work schedule at Save-On. While he does not say he has lost a job yet, his evidence, which the LDB does not specifically dispute, is that he is working graveyard shifts at Save-On, followed by

day shifts at the LDB, using vacation at both jobs to give himself time to get from one workplace to the other. He also says he missed seven shifts at the LDB because he could not be in two places at once, which the LDB has not specifically denied. In my view, on this evidence, the Tribunal could potentially find that Mr. Bach has experienced serious adverse impacts in his employment as a result of his conversion to regular status, in the form of lost work, the prospect of job loss, and the financial and other costs of using vacation time to cover portions of his conflicting work schedules in order to maintain his employment.

[25] I do not accept that Mr. Bach's complaint is based on conjecture. The allegations in issue are not based on speculation about what went on in someone's mind. This is not a case where the alleged discrimination must be inferred. Mr. Bach's evidence is direct, it is not based on suspicion. He states that he is solely responsible for providing financially for his family, and he describes how his employment has been impacted since his conversion to regular status. There are no inferences to be drawn from these statements of evidence. At a hearing, Mr. Bach will need to prove the truth of these statements on a balance of probabilities. Based on the information before me, I am not able to conclude that he has no reasonable prospect of doing so.

### **C. Was Mr. Bach's protected characteristic a factor in the adverse impacts?**

[26] To succeed at a hearing, Mr. Bach would need to show that his "family status" – i.e., the substantial obligation flowing from his status as a family member, which he alleges is the responsibility to provide financially for his wife and three children – was a factor in the alleged adverse impacts in employment discussed above: *Gibraltar* at para. 101. Whether there is a connection between a protected characteristic and an adverse impact "is a matter of fact": *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30 at para. 46. In each case, the Tribunal must decide on the factor or factors that played a role in the adverse impact. There is no need to describe the relevant factors as "significant" or "material." If a protected characteristic was connected to the adverse impact, then it must have been material: *Stewart* at para. 46.

[27] To establish this connection in the circumstances of Mr. Bach’s case, he would need to prove that the work requirement at issue – conversion to regular status – conflicted with his family obligation to provide for his family, in the sense that the requirement amounted to a “serious interference” with the obligation: *Gibraltar Mines* at paras. 62, 70, 77, 88, 101.

[28] The LDB says Mr. Bach has provided no evidence to establish a serious interference with his family obligations. It says the evidentiary record suggests he sought an exemption from mandatory conversion because of his employment at Save-On and his desire for work-life balance. It argues that, in most family status cases, complainants are unable to meet the threshold for proving discrimination. In this regard, it cites *Envirocon Environmental Services, ULC v. Suen*, 2019 BCCA 46 [*Envirocon*], in which the Court found that a work assignment requiring an employee to be away from his wife and newborn for several weeks did not amount to discrimination based on family status. The Court reasoned that while the employee’s “desire to remain close to home to be with his child and assist his wife in caring for the child” was understandable, he was “no different from the vast majority of parents” and there was nothing in the record to suggest “his child would not be well cared for in his absence”: *Envirocon* at para. 32.

[29] The LDB also cites *Ziegler v. Pacific Blue Cross (No. 2)*, 2020 BCHRT 125, which involved a discrimination complaint filed by an employee who resigned from her job because changes to her work schedule conflicted with her childcare arrangements. The Tribunal dismissed the employee’s complaint after an evidentiary hearing, determining that she had failed to prove family status discrimination “by failing to explore the availability of day care options that would meet her child’s daycare needs and instead opting to seek and obtain alternate employment”: *Ziegler* at para. 67. The Tribunal found that the employee “made insufficient efforts to ascertain whether she could arrange alternate daycare,” instead putting her energies into seeking an exemption from the new schedule and searching for another job: paras. 65-66. Under the circumstances, the Tribunal concluded that “more [was] required” to satisfy the test for family status discrimination: para. 68.

[30] The LDB says it has not singled out Mr. Bach, treated him differently from other employees, or applied the collective agreement inconsistently. It says Mr. Bach has not shown he has made any efforts to pursue alternative employment arrangements to allow him to work as a regular employee at the LDB, and there is no evidence he has explored schedule changes with Save-On. It argues that there is no evidence “that the financial needs of [his] family could not be met through a variety of different work arrangements that are compatible with him being a regular full-time status employee of the LDB.” It says Mr. Bach is “essentially taking the position that the mere fact that he has dependents requires the LDB to provide him with a family status accommodation.”

[31] I do not see Mr. Bach advancing this position in the materials before me.

[32] Mr. Bach’s evidence is that the regular shift rotation at the LDB conflicts with his job schedule at Save-On. Consistent with this evidence, in the Request Form, he said he could not convert to regular status at the LDB because it would result in him having to quit his job, which would interfere with his responsibility to generate the financial means to support his family. This is the “serious interference” he is claiming – the alleged conflict between the mandatory conversion clause and his stated family obligation. At a hearing, Mr. Bach would need to prove this conflict on a balance of probabilities, in order to establish that his family status was a factor in the adverse impacts discussed above. On the materials before me, I am not satisfied that he has no reasonable prospect of doing so. Based on the whole of evidence provided by the parties, I am not persuaded that he has no reasonable chance of proving that: the regular shift rotation at the LDB is incompatible with his schedule at Save-On; as a result, he faced the prospect of job loss and missed several shifts because he could not be in two places at once; job loss would seriously interfere with his substantial obligation to provide for his family; so, to stave off job loss and interference with his family obligation, he used vacation time and other leave to cover portions of his conflicting work schedules.

[33] To make his case at a hearing, Mr. Bach would not need to prove that his family status was the sole factor in the alleged adverse impacts: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training*

*Center*), 2015 SCC 39 at paras. 45-52. My findings regarding his chances of success are therefore not changed by the evidence suggesting other factors (e.g., a desire for work-life balance) may have been at play. I am also not compelled by the LDB's assertions that it did not single out Mr. Bach or treat him differently from other employees. The discrimination inquiry is about impact: *Stewart* at para. 45. It is not about treating everyone the same: see *Miller* at para. 8.

[34] In addition, I find *Envirocon* unhelpful to my analysis of the LDB's dismissal application. The decision in *Envirocon* turned on an assessment of the specific facts alleged by the complainant in that case, which were distinguishable from those now before me.

[35] Finally, I am not persuaded by the LDB's arguments regarding *Ziegler* and the lack of evidence regarding Mr. Bach's efforts to change his work schedule at Save-On or pursue other alternative employment arrangements. First, the evidence indicates Mr. Bach has made efforts to "make things work" in his regular position at the LDB. Second, and in any event, I agree with the Alberta Court of Appeal and other decision-makers that a complainant's efforts to resolve an alleged family/work conflict on their own are not determinative of whether they experienced an adverse impact in their employment related to their family status: *United Nurses of Alberta v. Alberta Health Services*, 2021 ABCA 194 at para. 75 [**United Nurses**]; see also *Misetich v. Value Village Stores Inc.*, 2016 HRTO 1229 at para. 48. Rather, such efforts – sometimes referred to as "self-accommodation" efforts – may be relevant in the second stage of the discrimination analysis, when the Tribunal considers the respondent's justification defence, particularly as it relates to the duty to accommodate: *United Nurses* at para. 75; *Misetich* at para. 57.

[36] For all of the above reasons, the LDB has not established that Mr. Bach's complaint has no reasonable prospect of success and does not merit a hearing. I therefore deny its application to dismiss Mr. Bach's complaint under s. 27(1)(c) of the *Code*.

#### **IV CONCLUSION**

[37] The LDB's application to dismiss is denied. Mr. Bach's complaint will proceed to a hearing. In the meantime, I encourage the parties to make further efforts to settle this matter by coming to a reasonable and practical compromise, so they can put this dispute behind them without the need for further litigation.

Jonathan Chapnick  
Tribunal Member