

What Happens When a Complainant Fails to Comply with Tribunal's Deadlines



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A recent decision in *Singh v. Revera Home Health*, [2015] B.C.H.R.T.D. No. 800 by Chair Bernd Walter of the B.C. Human Rights Tribunal will be of interest to users of the human rights system, particularly in jurisdictions like British Columbia or Ontario which have a “direct access” model.

The complainant, Jaspreet Singh, filed a complaint with the tribunal in May 2014. Singh alleged he was subjected to discrimination in employment on the basis of an unrelated criminal or summary conviction offence contrary to section 13 of the B.C. *Human Rights Code*.

Pursuant to the tribunal’s schedule for proceeding with the complaint, the complainant was required to satisfy certain disclosure obligations, including production of documents, by mid-December 2014. He failed to do so.

Counsel for the respondents communicated with the complainant regarding the missed deadline in early January 2015. The complainant responded he was “too busy” to deal with the matter.

Relying on the tribunal’s rules of practice and procedure, the respondents then brought an application for disclosure and an extension of time to apply for dismissal of the complaint on a preliminary basis without a hearing on the merits.

Chair Walter arranged a telephone conference for the beginning of February in an attempt to move the complaint forward. The complainant failed to attend the call and participate.

The chair made an order that the complainant contact the case manager at the tribunal within one week to confirm his intent to diligently pursue his complaint. The chair also ordered that the complainant comply with his disclosure obligations within two weeks.

Notwithstanding the fact that he was made aware of the tribunal’s orders, the complainant failed to meet both deadlines. The respondents then filed an application to dismiss the complaint pursuant to s. 27.5 of the code on the basis that the complainant failed to diligently pursue his complaint. The respondents also asked for

costs of \$1,000 pursuant to s. 37(4) of the code on account of the complainant's improper conduct.

Chair Walter dismissed Singh's complaint. The tribunal made "every effort" to involve the complainant and assist him in the management of his complaint, he said.

Despite clear notice that failure to comply would result in dismissal of his complaint, the complainant took no steps to advance the process. The tribunal chair also considered the respondents' submission to the effect that the complainant had engaged in improper conduct justifying an order for costs.

The chair noted that the tribunal has held in numerous cases that a failure to abide by its rules, orders and directions constitutes improper conduct. The purpose of a costs award is punitive and not compensatory; such an award is intended to have a deterrent effect and sanction conduct which negatively impacts the integrity of the tribunal's processes.

"In this case, the tribunal, as well as the Respondents, have devoted considerable resources to Mr. Singh's complaint," the chair said.

"There has been a settlement meeting, disclosure obligations were scheduled to which Mr. Singh did not respond; a subsequent conference in which Mr. Singh did not attend or participate, saying he was too busy; followed by further orders and directions with which he did not comply.

"Mr. Singh has repeatedly failed to comply or transgressed the tribunal's orders and directions, causing additional and unnecessary cost to the Respondents. He has engaged in persistent misconduct."

The tribunal chair awarded costs of \$800 against the complainant. As far as costs awards at the tribunal go, this was a relatively large award.

This decision is welcome news for respondents that are dealing with a complainant who files a complaint and then repeatedly fails to comply with the tribunal's processes and deadlines.

The tribunal is strongly inclined to give a complainant his or her day in court. However, this is not licence for the complainant to abuse the system and take virtually no steps to participate in the resolution of his or her complaint after filing.

It is important to uphold the integrity of the human rights system, properly allocate scarce resources and protect respondents from becoming engaged in needlessly drawn out, costly and inconvenient legal proceedings.

While every effort has been made to ensure accuracy in this article, you are urged to seek specific advice on matters of concern and not to rely solely on what is contained herein. The article is for general information purposes only and does not constitute legal advice.

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