

BRIEFING NOTE

Larson v. School District No. 39, 2015 BCHRT 12

http://www.bchrt.bc.ca/decisions/2015/pdf/jan/12_Larson_v_School_District_No_39_2015_BCHRT_12.pdf

Where an individual experiences adverse treatment, is it sufficient to simply allege discrimination in a human rights complaint, without providing any particulars as to how the adverse treatment is connected to a protected ground under the *Human Rights Code*, R.S.B.C. 1996, c. 210 (the “Code”)? In *Larson v. School District No. 39, 2015 BCHRT 12* (“*Larson*”), the Tribunal, reaffirming past authorities, held that it is not.

The Complainant in *Larson* filed a complaint against the Vancouver School Board (the “VSB”), alleging discrimination in employment on the basis of age, contrary to s. 13 of the *Code*. As some of the allegations were outside the six-month time limit in s. 22 of the *Code*, the Tribunal sought submissions from the VSB regarding the timeliness of the complaint (referred to as a Form 4 – Time Limit Response). Guild Yule LLP acted for the VSB.

The Complainant was employed as a teacher on call for the VSB. His employment was effectively terminated after seven investigations into various complaints concerning his conduct as a teacher on call and three suspensions. He was 60 years old at the time of termination. In his human rights complaint, the Complainant alleged that he was terminated because of his age. Yet, apart from boldly asserting that he was discriminated against and vaguely referring to “administrators” suggesting that he retire, at no point in his complaint did the Complainant state how any of the decisions to which he took exception were related to his age. In essence, the Complainant pleaded: (1) he was disciplined on six occasions and then terminated after a seventh incident; (2) he disagrees with the VSB’s decisions; (3) he is now 60 years old; (4) therefore, his termination had a discriminatory impact on him.

The VSB took the position that the Complainant failed to plead sufficient particulars which, if true, could constitute a contravention of the *Code*, and as such no part the complaint should be accepted for filing – even those allegations that were within the six-month time limit. In particular, the VSB argued that it is not enough that a complainant be a member of a protected group and experience adverse treatment – there must be a nexus between the two factors. The Complainant could not simply say he is now 60 years old and, that being the case, discrimination may be inferred in a termination of his employment.

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The Tribunal agreed with the VSB's submissions. After canvassing the Complainant's allegations, the Tribunal Chair held that the Complainant "submitted no persuasive evidence that would support an inference that his age was a factor in VSB's treatment of him, such as would take his complaint beyond the realm of speculation and conjecture": *Larson* at para. 25. On that basis, the Tribunal member refused the complaint for filing.

The main legal takeaway? If a human rights complaint does not disclose an arguable contravention of the *Code*, then it is not a complaint which can be accepted for filing, regardless of when the allegations are said to have occurred.

The main practical takeaway? Rather than wait to make an application under s. 27(1)(b) of the *Code* (that the complaint should be dismissed, without a hearing, because the acts or omissions alleged in the complaint do not contravene the *Code*), respondents should seize any reasonable opportunity when submitting a Form 4 – Time Limit Response to argue that the complaint should be struck in its entirety for failing to disclose an arguable contravention of the *Code*. This may prove to be a reasonably quick and cost-effective way to dispose of meritless human rights complaints at the front end.

Jordan practices in the area of general commercial and insurance litigation, including the defence of municipalities, school districts, health authorities and businesses. He has represented clients at the B.C. Human Rights Tribunal, the Provincial Court of British Columbia and the British Columbia Supreme Court.



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