

Borutski and others v. Kiwanis Club of White Rock and others, 2009 BCHRT 46

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2009 BCHRT 46

IN THE MATTER OF THE *HUMAN RIGHTS CODE*

R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before

the British Columbia Human Rights Tribunal

B E T W E E N:

Rose Marie Borutski and Joan Murphy and Dorothy Watson and Barb Hamm and Lorraine Tumman and Elsie L. Cormack and Ted Kopp and Henry Hamm and Linda Chandler and Rosemary Hancock and Mandy Neufeld and Trudy Thompson and Denis Lee

COMPLAINANTS

A N D:

Kiwanis Club of White Rock, operating Kiwanis Park Place and Janet Furcht and Her Majesty the Queen in right of the Province of British Columbia as represented by the Ministry of Housing and Social Development and the Ministry of Health and BC Housing and Crescent Housing Society

RESPONDENTS

REASONS FOR PRELIMINARY DECISION

JOINDER

Tribunal Member:

Enid Marion

Representative for the Complainants, other than Ms.
Borutski:

Rose Marie Borutski

Counsel for Rose Marie Bortuski:

Dan Soiseth

Vicki Shillington

Counsel for the Respondent Janet Frucht, Crescent
Housing Society and Kiwanis Club of White Rock
operating Kiwanis Park Place:

Joe Coutts

Counsel for the Respondent Her Majesty the Queen
in right of the Province of British Columbia as
represented by the Ministry of Housing and Social
Development and the Ministry of Health:

Sharon Kearney

Counsel for the Respondent BC Housing:

Kevin Boonstra

Introduction

[1] Ms. Borutski filed an individual complaint (No. 6020) against the Kiwanis Club of White Rock, operating Kiwanis Park Place, Janet Furcht, Her Majesty the Queen in right of the Province of British Columbia as represented by the Ministry of Housing and Social Development and the Ministry of Health, and BC Housing and Crescent Housing Society (collectively the “Respondents”). She alleges discrimination based on physical disability contrary to s. 8 and s. 10 of the *Human Rights Code* due to exposure to second hand smoke in her subsidized residence.

[2] Shortly thereafter, Joan Murphy, Dorothy Watson, Barb Hamm, Lorraine Tumman, Elsie L. Cormack, Rose Marie Borutski, Ted Kopp, Henry Hamm, Linda Chandler, Rosemary Hancock, Mandy Neufeld, Trudy Thompson and Denis Lee (collectively the “Complainants”) filed a complaint (No. 6041) against the same Respondents, alleging discrimination based on physical disability contrary to s. 8 and s. 10 of the *Code*.

[3] In addition, Complaint No. 6041 contains allegations by Rose Marie Borutski, Linda Chandler, Mandy Neufeld and Trudy Thompson that the same Respondents discriminated against them based on mental disability contrary to s. 8 and s. 10 of the *Code*.

[4] All Complainants say the Respondents failed to accommodate their physical or mental disabilities by allowing them to be exposed to second hand smoke in their subsidized housing.

Joinder

[5] On December 18, 2008, the Tribunal wrote to the parties inviting submissions on whether these two complaints should be joined for the purpose of hearing.

[6] Ms. Borutski does not oppose the joinder. The remainder of the Complainants, though provided an opportunity to do so, did not respond to the issue of joinder.

[7] BC Housing notes that the substance of the two complaints is the same and supports joinder for all purposes, including the hearing. The Province supports joinder for all purposes, including hearing.

[8] The Tribunal has authority to join two or more complaints if doing so would be fair and reasonable in the circumstances: s. 21(6) of the *Code*. When determining if it is fair and reasonable in the circumstances to join two or more complaints, the Tribunal examines the complaints and the responses to assess the similarity of the legal and factual issues raised: *Vetro v. Pacific Transit Cooperative and others* (No. 3), 2005 BCHRT 410.

[9] No responses to the complaints have yet been filed by any of the Respondents. Despite this, it is evident from a review of the complaints that the legal and factual issues raised by the complaints are similar. For example, all Complainants live in subsidized housing at Kiwanis

Park Place and describe circumstances existing at that residence that have exposed them to second hand smoke. It is clear that there will be overlap in both oral and documentary evidence.

[10] Ms. Borutski's individual complaint provides detailed information about her specific circumstances, but raises the same central legal issue as Complaint No. 6041. Given this, it is my view that joinder will avoid duplication, expense and be an efficient use of the Tribunal's and the parties' resources.

[11] In the circumstances, it is fair and reasonable to join the complaints and I order the joinder of Complaints No. 6020 and 6041 for all purposes, including hearing. The style of cause set out above reflects this decision.

Application to Dismiss

[12] BC Housing included, in its submission on joinder, a request to dismiss Ms. Borutski's individual complaint (No. 6020). The other Respondents supported this request. This decision only addresses the joinder of the complaints. If BC Housing, or any of the Respondents, wish to file an application to dismiss all, or part, of the joined complaint, they are free to do so within the timeframes set out in the Tribunal's *Rules of Practice and Procedure*.

[13] If BC Housing wishes the Tribunal to consider, at this time, its letter of January 14, 2009 as an application to dismiss part of the joined complaint, then it should promptly notify the Case Manager. A schedule for submissions will then be set.

Enid Marion, Tribunal Member