

Date Issued: October 7, 2024

File: CS-001372

Indexed as: Chilliwack Teachers' Association v. Neufeld (No. 4), 2024 BCHRT 284

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:

British Columbia Teachers' Federation obo Chilliwack Teachers' Association

COMPLAINANT

AND:

Barry Neufeld

RESPONDENT

AND:

BC's Office of the Human Rights Commissioner

INTERVENOR

REASONS FOR DECISION
APPLICATION TO ADJOURN
Rule 30

Tribunal Members:

Devyn Cousineau, Robin Dean, and Ijeamaka Anika

Counsel for the Complainant:

Lindsay Waddell and Alanna Tom

Counsel for the Respondent:

James SM Kitchen

I INTRODUCTION

[1] This complaint is scheduled for a hearing from October 21 – November 1, 2024. Barry Neufeld applies to adjourn the hearing for at least six weeks to give his recently retained legal counsel time to adequately prepare.

[2] The British Columbia Teachers Federation [BCTF], acting on behalf of the Chilliwack Teachers' Association, opposes the application. It argues that, given the unique procedural history of the case, the adjournment is not reasonable and that it would be unduly prejudiced by further delay.

[3] We have determined that a five-week adjournment is reasonable to allow Mr. Neufeld's counsel to prepare, and would not unduly prejudice any party. The adjournment is granted, and the hearing is re-scheduled for November 25 – December 6, 2024.

II PRELIMINARY ISSUE: APPLICATION TO FILE FURTHERS SUBMISSIONS

[4] After the close of submissions on this application, the BCTF applied to file a further submission. It seeks to admit a blog post from Mr. Neufeld published two days before the BCTF's response was submitted. The blog post contains information about when Mr. Neufeld first met his current counsel, James Kitchen. The BCTF argues it is evidence supporting that Mr. Neufeld has not been completely candid about his search for counsel – a critical issue in the adjournment application. Mr. Neufeld opposes the further submission.

[5] The Tribunal has discretion to accept further submissions where fairness requires that a party be given an opportunity to respond to new issues raised in a reply, or to address new information not available when they filed their submission: *Kruger v. Xerox Canada Ltd (No. 2)*, 2005 BCHRT 24. Neither of those circumstances apply here. Mr. Neufeld's blog post was available to the BCTF before it filed its response and is not responsive to a new issue raised in Mr. Neufeld's reply. In our view, fairness does not require us to consider the further submission: Rule 28(5). The application is denied.

III APPLICATION TO ADJOURN

[6] A party applying to adjourn a hearing must show why the request is reasonable, and why granting the request will not unduly prejudice the other participants: Rule 30. The Tribunal must interpret and apply these considerations in a manner that facilitates the “just and timely resolution of complaints”: Rule 1(1). We begin with the criteria of reasonableness.

A. Is the request reasonable?

[7] Mr. Neufeld argues that his request for an adjournment is reasonable because he has only recently been able to retain Mr. Kitchen as his legal counsel and Mr. Kitchen needs more time to prepare for the hearing. Mr. Kitchen is a sole practitioner who is operating largely without staff until the end of the year. This complaint is complex, both factually and legally. There are thousands of documents, and dozens of hours of video. The legal issues in the complaint include the scope and application of both ss. 7 and 13 of the *Human Rights Code*, as well s. 43, and involve a balancing of interests under the *Charter of Rights and Freedoms*. Mr. Neufeld seeks an adjournment of “a minimum of 6 weeks” to allow his legal counsel to prepare.

[8] The BCTF argues that the request is not reasonable, in light of the procedural history and a lack of evidence regarding Mr. Neufeld’s diligence in trying to retain legal counsel.

[9] We agree that the reasonableness of this application must be considered in light of the procedural history of this complaint. Here we provide a brief summary.

1. Procedural history

[10] This complaint was filed on January 29, 2018. It is about public comments that Mr. Neufeld made in 2017 and 2018, and a defamation suit he filed against the former BCTF President in 2018. In 2021, the Human Rights Tribunal denied an application to dismiss the complaint: *Chilliwack Teachers’ Association v. Neufeld*, 2021 BCHRT 6. Both parties sought judicial review of this decision. Their petitions were dismissed by the court in August 2023: *British Columbia Teachers’ Association v Neufeld*, 2023 BCSC 1460. After this, the Tribunal scheduled a hearing for June 1 - July 4, 2024.

[11] Throughout these early stages of the complaint process, Mr. Neufeld was represented by legal counsel. On February 26, 2024, his counsel withdrew. From that time until he retained Mr. Kitchen on around September 19, 2024, Mr. Neufeld was self-represented or represented by a lay advocate, Kari Simpson.

[12] On April 11, 2024, Mr. Neufeld applied to adjourn the hearing. In his application, he explained that he was “no longer represented by Guild Yule as of January 30, 2024” and that his former legal counsel “told me that if he was going to continue to defend me, he required a retainer of \$150,000” – which he could not afford.

[13] The Tribunal convened a case conference to address the adjournment application. Mr. Neufeld advised that he had been actively seeking counsel, but no one was available for the June dates. He said that a lawyer would be available in the fall. At the suggestion of BCTF counsel, the adjournment request was deferred to allow Mr. Neufeld to secure legal representation. The Tribunal directed Mr. Neufeld to provide an update on May 1, and to renew his adjournment application by no later than May 6. He did neither.

[14] On May 10, Mr. Neufeld emailed the Tribunal to say that he now had legal representation, and wanted them to participate in the next case conference. Four days later, he filed another adjournment application indicating he did not have legal representation.

[15] The Tribunal heard oral arguments on Mr. Neufeld’s adjournment application and issued a letter decision dated May 16, 2024. In that letter, it summarized Mr. Neufeld’s efforts to find legal counsel and his position on the adjournment:

... he has been in contact with three lawyers, two of whom are not able to represent him. He continues to be in touch with a third lawyer who is not available for the current hearing dates. It is unconfirmed whether the third lawyer will, in fact, represent Mr. Neufeld in this case.

Mr. Neufeld stated that if the hearing were adjourned until September 2024, either his counsel would be available, or he would be ready and able to represent himself. [emphasis added]

[16] The BCTF opposed the adjournment application, in part because of its concern that there was no guarantee that Mr. Neufeld would have counsel by the re-scheduled hearing dates and “there is a risk that a new counsel could seek a further adjournment based on their availability”.

[17] Ultimately, the parties agreed to a compromise: they retained one week of hearing in July to address Mr. Neufeld’s jurisdictional argument and adjourned the remaining two weeks of hearing until the fall. Mr. Neufeld agreed to connect his potential counsel with counsel for the BCTF to identify new hearing dates. The Tribunal put the parties on notice that “absent compelling reasons, the Tribunal will not grant any further adjournments. Once new dates are set down, the Tribunal expects the parties to be ready for the hearing”.

[18] The BCTF followed up with Mr. Neufeld to seek the contact information for his potential legal counsel and arrange dates, but he did not reply. On May 28, 2024, Tribunal scheduled the hearing for October 21 – November 1, 2024. In doing so, the Tribunal Member again emphasised: “The Tribunal will not grant any further adjournments of this case absent serious and compelling reasons”.

[19] In the meantime, Mr. Neufeld had continuously missed his deadlines to file pre-hearing forms, including his witness list. On July 4, 2024, the Tribunal heard oral arguments about Mr. Neufeld’s jurisdictional challenge. At the end of the day, with the consent of Mr. Neufeld and his lay advocate, the Tribunal extended his deadline for filing his witness list, will say statements, and expert evidence until July 23, 2024. He missed that deadline. On August 8, Mr. Neufeld filed a witness list and will say statements.

[20] The Tribunal convened another case conference on September 12, 2024. The agenda for the conference included: objections to Mr. Neufeld’s proposed witnesses, and the parties’ time estimates for each witness. Ms. Simpson represented Mr. Neufeld in this case conference. She acknowledged there were issues with Mr. Neufeld’s witness list, but she was not prepared to address the BCTF’s evidentiary objections or to confirm Mr. Neufeld’s witness list. She agreed to submit a revised witness list by September 25.

[21] On September 19, 2024, Mr. Kitchen wrote to counsel for the BCTF to advise that he had been retained by Mr. Neufeld and would be seeking an adjournment. He filed this application on September 23, 2024.

[22] In sum, the relevant procedural history and context for Mr. Neufeld's adjournment request includes:

- a. this complaint has been outstanding for six years;
- b. Mr. Neufeld has previously been granted an adjournment for the purpose of securing legal counsel;
- c. Mr. Neufeld assured the Tribunal and the parties that he would be prepared to proceed with the hearing as early as September 2024 – with or without legal counsel;
- d. Mr. Neufeld has consistently missed deadlines, including those related to the preparation of the hearing; and
- e. the Tribunal has forecast that further requests for an adjournment may not be reasonable, indicating that it would not grant a further adjournment absent “serious and compelling reasons”.

In this context, we return now to the reasonableness of the current adjournment application.

2. The request for a short adjournment is reasonable

[23] To assess whether an adjournment request is reasonable, the Tribunal may consider several factors, including the reason for the request, the length of the requested adjournment, and the timing of the application: *Dhillon v. London Drugs and Kuttnick*, 2005 BCHRT 423. Where the adjournment is to allow new counsel to prepare, the Tribunal may also consider factors related to the party's efforts and resources to retain counsel, counsel's ability to prepare for the hearing, and the potential prejudice of proceeding without counsel: see e.g. *Doratty v. Fording Coal Ltd*, 2004 BCHRT 82.

[24] In this case, several considerations weigh in favour of the reasonableness of the request. We are satisfied that Mr. Kitchen has acted reasonably and promptly to seek the adjournment. He was not involved in setting the hearing dates. He will be acting largely on his own to represent Mr. Neufeld, and reasonably requires time to review the voluminous materials and develop legal arguments. Considering in part the challenges that Mr. Neufeld has had in complying with the Tribunal's deadlines and directions, it is reasonable to expect that the Tribunal and Mr. Neufeld will be greatly assisted by Mr. Kitchen's involvement in the case. Further, he has asked for a short adjournment, for which the parties have made themselves available. We are grateful for their efforts in this regard as any other adjournment would bring us into 2025 and possibly entail splitting up the hearing weeks.

[25] The primary factors weighing against the reasonableness of the request are the procedural history we have outlined above, and a relative dearth of evidence to support Mr. Neufeld's diligence in trying to secure counsel since his previous retainer ended. In that regard, we note that the evidence of his efforts appear to be the same as the evidence that supported his first adjournment request in May 2024. Though Mr. Neufeld argues that it was open to the BCTF to cross-examine him about those efforts, cross-examination is not a typical or proportionate aspect of an interim application like this.

[26] Weighing all the above factors, in our view, a short adjournment is reasonable. Considering the history of the complaint, and in particular the age of the complaint and the Tribunal and parties' efforts to have it finally resolved, it would not be reasonable to adjourn the hearing until 2025. However, a five-week adjournment would be relatively short and would give Mr. Kitchen nearly all the time he says he needs to adequately prepare. This short adjournment is reasonable to allow Mr. Neufeld the benefit of legal counsel, while balancing the all the parties' interests in concluding this matter without further delay.

B. Will the adjournment unduly prejudice any party?

[27] We appreciate that any further delay in resolving this complaint carries some prejudice. The counsel and witnesses for the BCTF have been preparing to present their case on October

21 and will now be delayed by another month. This is not ideal. However, in our view a five-week delay will not cause any party “undue” prejudice, particularly in circumstances where they have had three weeks’ notice of the adjournment.

[28] In sum, we are satisfied that the adjournment request is reasonable and will not unduly prejudice any party.

IV ORDER

[29] The application for an adjournment is granted. The hearing of this complaint is adjourned until November 25 – December 6, 2024. The Tribunal will work with the parties to ensure the hearing proceeds, and completes, on these dates.

Devyn Cousineau
Vice Chair
Human Rights Tribunal

I AGREE: Robin Dean, Tribunal Member
I AGREE: Ijeamaka Anika, Tribunal Member