

Files: 04-11R
05-11R

NORTHWEST TERRITORIES HUMAN RIGHTS ADJUDICATION PANEL

IN THE MATTER OF the Northwest Territories

Human Rights Act, R.S.N.W.T, 1988. as amended,

BETWEEN:

ELIZABETH PORTMAN

Appellant

-and-

GOVERNMENT OF THE NORTHWEST TERRITORIES and

SUN LIFE ASSURANCE COMPANY OF CANADA

Respondents

Reasons for Decision

Ruling on application to have counsel appointed for the complainant

Before: Adrian Wright, Adjudicator, Human Rights Adjudication Panel

Mode of Hearing: Telephone conference

Date of Hearing: 12 March 2014

Elizabeth Portman, for herself

Trisha Paradis, Counsel for the Respondent, Government of the Northwest Territories in both complaints

Jeff Wiedman for James Neilson, Q.C., Counsel for the Respondent Sun Life Assurance Company of Canada

These are reasons arising from an application by Ms Portman to have publicly-funded legal counsel appointed to act for her on these complaints. I made a decision dated 2 December 2013 dismissing Ms Portman's application to have these complaints heard together. This issue was argued as though it applies to both complaints. The problem concerns both complaints. So this decision is made on both complaints.

Background

Complaint 04-11R alleges Sun Life and the Government of the Northwest Territories ("GNWT") discriminated against Ms Portman on the basis of disability. GNWT did this by providing a disability insurance policy as a term of its employment of Ms Portman. This policy did not extend benefits to individuals suffering from disability when they started employment. Ms Portman says Sun Life discriminated by providing a policy which did not provide such benefits. This complaint is systemic – it applies to any probationary employee of GNWT with a disability at the time they commenced employment with GNWT.

The second complaint (number 05-11) alleges GNWT did not accommodate her so she could return to work either part-time or full-time. Sun Life is not a party to complaint 05-11.

Ms Portman says she cannot properly pursue either complaint because both the law and evidence on both is complex. She does not have the education, experience or resources to properly and fully prosecute it. As a result she requests she be provided counsel to move these complaints forward and to otherwise advise and represent her.

Positions of the parties

Ms Portman referred me to the preamble to the *Human Rights Act*:

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations

Also,

[a]nd whereas it is of vital importance to promote respect for and observance of human rights in the Northwest Territories, including the rights and freedoms protected under the Canadian Charter of Rights and Freedoms, and rights and freedoms protected under international human rights instruments, while at the same time promoting respect for,

and the observance of, the rights and freedoms of aboriginal peoples that are recognized and affirmed under the Constitution of Canada;

Ms Portman contends these bring into the *Human Rights Act* a number of international conventions dealing with human rights. One is the United Nations Convention on the Rights of Persons with Disabilities. Canada is a signatory to this convention. Ms Portman refers to Article 13 of this Convention:

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others including through the provision of procedural and age-appropriate accommodations in order to facilitate their effective role as direct and indirect participants, including as witnesses in all legal proceedings including at investigative and other preliminary stages.

Ms Portman argues this is the first convention providing access to justice for persons with disabilities. She submits this requires GNWT provide her with counsel to represent her in this complaint.

GNWT argues adjudicators under the *Human Rights Act* acquire authority from either the *Human Rights Act* or *Public Inquiries Act* - if neither statute gives an adjudicator the power to appoint counsel for a party, an adjudicator has no jurisdiction to appoint counsel for a party (and have that lawyer paid by the GNWT). Since neither piece of legislation creates this power, an adjudicator does not have the authority to appoint counsel for a party to represent that party in a human rights complaint. GNWT also relies on a decision from the Supreme Court of Canada – *British Columbia v. Christie* 2007 SCC 21: there is no general right to legal counsel as an aspect of the rule of law.

Decision

I agree with GNWT – I must find my authority to make any order from the *Human Rights Act* or *Public Inquiries Act*. Section 55 of the *Human Rights Act* says the parties to a complaint or an appeal are entitled to appear and be represented by counsel at a pre-hearing conference or an appeal. This gives the parties the right to counsel. It does not require the cost of this counsel be paid by the public purse. There is nothing in the *Human Rights Act* allowing me either to appoint counsel for a party or to require a party or the public purse to pay that counsel.

The parts of the preamble to the *Human Rights Act* relied on by Ms Portman also do not give me that authority. The preamble indicates the promotion of human rights recognized in, amongst

other places, “international human rights instruments” is of “vital importance”. The United Nations Convention on the Rights of Persons with Disabilities may be such an instrument; the preamble does not, however incorporate the requirements of this convention into the *Human Rights Act*. Furthermore that convention does not require states who signed it to afford publicly-funded counsel to disabled persons; instead it requires those states to ensure disabled persons have “effective access to justice ... on an *equal basis with others...*” (emphasis added).

This means disabled persons have equivalent access to justice as others. As the Supreme Court said in *Christie* quoted above – there is no general right to counsel. This means there is no general right to have counsel act for a party before a tribunal. If a party cannot afford to pay for counsel and that party cannot otherwise obtain counsel, the party will be unrepresented – the State has no obligation to provide counsel. This is the same both for persons with disabilities and those without disabilities. As a result, the United Nations Convention on the Rights of Persons with Disabilities – and specifically Article 13 of that convention – does not assist Ms Portman.

Section 59 of the *Human Rights Act* gives me the powers of a Board established under the *Public Inquiries Act*. Section 10 of the *Public Inquiries Act* allows me to engage counsel to aid and assist me. This does not allow me to either appoint counsel for one of the parties or to have the cost of counsel for the parties funded by the public purse.

So, since the *Human Rights Act* does not authorize me to appoint counsel for a party and have that counsel paid by the public purse, I do not have that power. As a result, I cannot appoint counsel for Ms Portman as requested by her.

For these reasons, Ms Portman’s application is dismissed.

DATED at Yellowknife NT this 1st day of May 2014

A handwritten signature in black ink, appearing to be 'Adrian Wright', written in a cursive style.

Adrian Wright

Adjudicator

Human Rights Adjudication Panel