



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Kathy Gaudet**

**Applicant**

**-and-**

**The Ottawa Hospital**

**Respondent**

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## INTERIM DECISION

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**Adjudicator:** Eric Whist  
**Date:** January 19, 2009  
**File Number:** 2008-00495-1  
**Citation:** 2009 HRTO 60  
**Indexed as:** Gaudet v. Ottawa Hospital

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[1] The applicant filed an Application under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended, (the "Code") on October 6, 2008. This Interim Decision deals with a request by the respondent to defer consideration of the Application pending the outcome of a grievance.

## **BACKGROUND**

[2] The applicant is a Registered Nurse who alleges that her former employer, the Ottawa Hospital, discriminated against her by failing to appropriately accommodate her disability. In her Application the applicant indicates that she filed a grievance with her union, the Ontario Nurses Association (ONA), and that this grievance has been completed with no positive resolution.

[3] In its Response the respondent states that the applicant filed a grievance on November 9, 2007 with the ONA and that this grievance has not been resolved as it has yet to proceed to arbitration. The Response argues that the complaint of discriminatory treatment that forms the basis of the applicant's grievance can be dealt with under the anti-discrimination provisions of the collective agreement between the Ottawa Hospital and the ONA. The Response notes the authority of arbitrators hearing grievances under the *Labour Relations Act, 2005*, S.O. 2005, c.1, schedule A, as amended, to determine issues of alleged discrimination and to interpret and apply the *Code* as required. A copy of the collective agreement and the applicant's grievance were provided with the Response.

[4] In her Reply the applicant acknowledges that the grievance has not been resolved but argues that a deferral should not be granted. The applicant argues that, contrary to the respondent's claims, the grievance procedure has not efficiently or effectively responded to her grievance to date. She further argues that the grievance procedure has been fundamentally unfair because the respondent has refused to accept the medical evidence she provided to demonstrate her disability.

**DECISION**

[5] The Tribunal may defer consideration of an application, on such terms as it may determine, on its own initiative or at the request of any party (Rule 14.1). The Tribunal will generally defer an application where there is an ongoing grievance under a collective agreement based on the same facts and issues. However, the Tribunal must also consider, in light of the particular circumstances of each case, whether deferral is the most fair, just and expeditious way of proceeding with the Application.


[6] I find, based on the information provided by the applicant and respondent, that the facts and issues raised by the Application are part of a grievance that is still in progress. And, while the applicant may not be satisfied with the respondent's actions to date in response to her grievance, she does have the opportunity to have her grievance proceed to arbitration before an independent arbitrator with the authority to decide on her allegations.

[7] In these circumstances deferral is appropriate. The Tribunal orders the deferral of the Application pending the conclusion of the grievance.

[8] Where a party wishes to proceed with an application which has been deferred, the party must make a Request for an Order During Proceedings in accordance with Rule 19 within 60 days after the conclusion of the other proceeding (Rules 14.3 and 14.4).

[9] I am not seized of this matter.

Dated at Toronto, this 19<sup>th</sup> day of January, 2009.

  
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Eric Whist  
Vice-chair