



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Kathy Gaudet

Applicant

-and-

The Ottawa Hospital

Respondent

INTERIM DECISION

Adjudicator: Kathleen Martin
Date: February 13, 2009
File Number: 2008-00495-1
Citation: 2009 HRTO 158
Indexed as: Gaudet v. Ottawa Hospital

[1] This is an Application under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended, (the "Code") alleging discrimination in employment on the basis of disability. The Application was deferred by the Tribunal on January 19, 2009, *Gaudet v. Ottawa Hospital*, 2009 HRTO 60 (CanLII), pending the conclusion of a grievance. This Interim Decision addresses the applicant's request to re-activate the Application.

BACKGROUND

[2] The applicant is a Registered Nurse who alleges that her former employer, the Ottawa Hospital, discriminated against her by failing to accommodate her disability. At the time she was employed at the Ottawa Hospital, the applicant was a member of the Ontario Nurses Association (the "union"). Both the Application and Response referenced an outstanding grievance. In the Response, the respondent sought deferral on the basis that the applicant's complaint of discriminatory treatment formed the basis of the applicant's grievance and could be dealt with under the collective agreement.

[3] On January 19, 2009, the Tribunal deferred the Application pending the conclusion of the grievance. At the same time, the Tribunal indicated that where a party wishes to proceed with an application which has been deferred, the party must make a Request for Order During Proceedings in accordance with Rule 19 within 60 days after the conclusion of the other proceeding (Rules 14.3 and 14.4).

[4] On January 22, 2009, the Tribunal received a Request for Order During Proceedings from the applicant requesting that the deferred Application be re-activated (the "Request"). In her Request, the applicant states that she was advised by her union on January 12, 2009 that the "subject grievances" had been withdrawn. The applicant submits that as a result of the union's withdrawal, she cannot proceed to arbitration and she is left with no alternative but to resume the Tribunal proceeding. A copy of the union's e-mail advising the applicant of the withdrawal, dated January 12, 2009, was attached to the Request.

[5] In response, the respondent submits that the human rights application is one that is more appropriately dealt with under the *Labour Relations Act*, 1995, S.O. 1995, c. 1,

Sched. A (the "LRA"). The respondent submits that because the grievance was withdrawn on a "without prejudice" basis, the applicant can ask the union to reconsider its decision and if she is not satisfied with the union's representation, she has remedies under the LRA that she can avail herself of. Accordingly, the respondent requests that the Tribunal exercise its discretion to continue to defer the Application until the applicant has exhausted all of her remedies under the collective agreement and the LRA. In the alternative, the respondent states that it will be relying on the union's withdrawal of the grievance as evidence of its position on the merits of the Application.

[6] The union was sent a copy of the applicant's Request. No submissions were received from the union.

DECISION

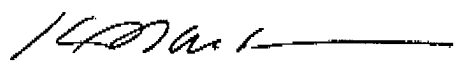
[7] I find that this Application should now proceed in accordance with the Tribunal's normal procedures.

[8] In the Tribunal's earlier decision on this matter, the Application was deferred pending the conclusion of the grievance. Given the withdrawal of the grievance, I find that the grievance has been concluded. I see no reason to require the applicant to pursue the avenues described by the respondent for re-opening the grievance. At this time, there is no longer any proceeding for the Tribunal to defer to and the applicant is entitled to have her Application proceed before the Tribunal.

[9] The parties had previously expressed a willingness to participate in mediation. This matter is referred to the Tribunal's Registrar to schedule a mediation date.

[10] I am not seized.

Dated at Toronto, this 13th day of February, 2009



Kathleen Martin
Vice-chair