



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

AW

Applicant

-and-

Ottawa Catholic School Board

Respondent

DECISION

Adjudicator: Jennifer Scott

Date: August 28, 2020

File Number: 2017-26941-I

Citation: 2020 HRTO 741

Indexed as: **AW v. Ottawa Catholic School Board**

APPEARANCES

AW, Applicant)	Self-represented
)	
)	
)	
Ottawa Catholic School Board, Respondent)	Paul Marshall and Sophie Gagnier, Counsel
)	
)	

BACKGROUND

The Application

[1] This is an Application filed under section 34 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “*Code*”), alleging discrimination with respect to services because of disability and sex. The applicant’s mother YP is listed as her representative on the Application.

[2] The applicant is a young person with autism spectrum disorder and severe social anxiety. She alleges that she experienced discrimination when she attended a meeting with her school on February 2, 2015 and was advised that she was required to complete her courses in the classroom. Prior to this, the applicant had completed her courses outside of the regular classroom. Shortly after the meeting, the applicant left the respondent and finished grade 12 at a private school.

[3] The Application was filed on January 27, 2017, almost one year after the expiry of the one-year limitation period in the *Code* on February 2, 2016.

[4] The applicant was 17 years of age when the alleged discrimination took place and turned 18 a few months later. The applicant was 19 when the Application was filed and is 23 years old today.

Preliminary Hearing on Delay

[5] On August 8, 2017, the Tribunal directed a preliminary hearing on whether the Application should be dismissed for delay. The preliminary hearing was scheduled for October 16, 2017 and then rescheduled for December 18, 2017. The preliminary hearing on December 18, 2017 was adjourned because of the late disclosure of documents by the applicant.

[6] By Interim Decision 2019 HRTO 659 dated April 12, 2019, the Tribunal ordered the applicant to produce medical documents from her doctor for the period January 26,

2016 to January 26, 2017 because these documents were relevant to the applicant's good faith explanation for her delay in filing the Application. The Tribunal ordered the applicant to produce YP's medical documents for the same time period if the applicant intended to argue that YP's medical condition was relevant to the issue of delay.

[7] Following the Interim Decision 2019 HRTO 659, the preliminary hearing was rescheduled to April 22, 23 and 24, 2020. These dates were converted to a mediation/adjudication on April 22, 2020. The applicant was represented by counsel at the mediation/adjudication. The matter did not resolve.

[8] On May 7, 2020, the Tribunal was advised that the applicant's legal counsel were no longer representing the applicant.

[9] On May 8, 2020, the preliminary hearing was rescheduled to August 18 and 19, 2020.

First Adjournment Request

[10] On August 7, 2020, the applicant requested an adjournment of the preliminary hearing because YP was unable to participate. The applicant filed a note from YP's doctor which stated that YP was unable to participate in the hearing because of significant medical illness. The doctor recommended that it be postponed to a later date. The respondent opposed the applicant's adjournment request.

[11] By Interim Decision 2020 HRTO 690 dated August 12, 2020, the Tribunal denied the adjournment on the basis that insufficient material had been provided by the applicant regarding the inability of YP to participate in the hearing. There was no information provided by YP's doctor about the nature of the medical illness and/or why it was significant. There was also no information about the length of the adjournment or when YP would be able to participate in the hearing. Further, the applicant had not filed any information about her own ability to proceed nor had she filed any information about her ability to proceed without a representative. The Tribunal held the material filed was

insufficient to establish the exceptional circumstances necessary to grant an adjournment in a matter that had been originally scheduled in October 2017 and rescheduled many times.

Second Adjournment Request

[12] The preliminary hearing proceeded on August 18, 2020. At the commencement of the hearing, the applicant again requested an adjournment. She stated YP is her representative and was unable to participate in the hearing. The applicant said she was not prepared to attend the hearing and that asking an autistic person to defend herself against the respondent's lawyers was not a fair hearing. The applicant was asked what steps she had taken to obtain other representation. In particular, the applicant was asked if her father could represent her. The applicant advised her father was unwilling to do so. The applicant did not provide any additional medical documentation about YP's inability to participate in the hearing nor did she provide any medical information to establish that she was unable to represent herself because of her autism.

[13] The respondent opposed the second adjournment request and stated the request had already been denied and there was no further information provided by the applicant to reconsider that request.

[14] I agreed with the respondent that there was no basis upon which to reconsider my decision to deny the applicant's adjournment request because YP was unable to participate in the hearing. In the absence of any additional medical information, there was no reason to change that decision.

[15] The applicant's second adjournment request was denied. There was no medical information provided by the applicant to support her assertion that she was unable to represent herself because of her autism. I was not prepared to assume that a person with autism cannot represent themselves absent medical information saying this.

ANALYSIS

[16] Section 34 of the *Code* provides that an application must be filed within one year of the incident to which the application relates, or within one year of the last incident in a series of events.

[17] In this case, the incident of discrimination occurred on February 2, 2015. The one-year time period expired on February 2, 2016. The Application was filed on January 27, 2017, almost one year later.

[18] Under section 34(2) of the *Code*, the Tribunal may accept a late Application if it is satisfied the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. The applicant bears the onus of establishing good faith. If the applicant establishes good faith, the burden shifts to the respondent to establish prejudice. If the applicant does not establish good faith, there is no need to consider the question of prejudice.

[19] An applicant's disability may be a good faith explanation for delay if it is so debilitating that it prevented an applicant from pursuing his or her legal rights under the *Code*. The Tribunal has consistently held that it requires medical evidence to establish this test. See *Pervais v. Thunder Bay Police Service*, 2020 HRT0 615 at para. 11 and the cases cited there.

[20] It is not enough for an applicant to simply point to a disability. There must be medical evidence establishing a causal link between the disability and the inability to file an application within the one-year limitation period. See *Paul James v. York University and Ontario Human Rights Tribunal*, 2015 ONSC 2234.

[21] The question before me is whether the applicant's disabilities were so debilitating that she was unable to file her Application during the one-year limitation period and whether they constitute a good faith explanation for her delay in filing after the limitation period expired.

[22] The applicant testified that she has severe social anxiety disorder and autism. She said she was unable to enter school most of the time, was unable to enter stores and buy things for herself, was unable to speak on the phone to anyone and had very few friends. The applicant testified that filing an application with the Tribunal was a huge task and that she would not know where to start.

[23] The applicant was cross examined on her evidence. During her cross examination, the applicant agreed that in December 2014 she was able to travel to the United States on her own and navigated a connecting flight to her destination. She said that she successfully completed a co-op course in the first term of her 2014/2015 school year and that she left her school with the respondent on February 4, 2015. The applicant agreed that she completed grade 12 at a private school. The applicant said she applied to university and started university in the fall of 2016. The applicant stated that she subsequently applied to college and attended her college program in the fall of 2018. She remains in that program today. The applicant said she had help from her mother preparing her post-secondary school applications. The applicant stated that following the incident of discrimination, she worked at Tim Horton's for one year and became a supervisor in that job. She said that she also worked at Home Hardware as a cashier for one year.

[24] The applicant described her disabilities in her evidence. It is apparent from this evidence that the applicant has had to contend with many challenges. However, the difficulties that she described in her evidence – being unable to enter school most of the time, unable to enter stores and buy things for herself, unable to speak on the phone to anyone and having very few friends – do not relate to the ability to file an application.

[25] The alleged discrimination took place on February 5, 2015. The applicant had until February 6, 2016 to file her Application. The applicant has not filed any medical evidence to establish a link between her social anxiety and autism and her failure to file the Application in that one-year period. Nor has she filed any medical evidence to establish that these same disabilities were the reason she delayed filing her Application for one year after the limitation period expired. There is, therefore, insufficient evidence upon which to conclude that the applicant's disabilities prevented her from filing the Application

in a timely way and insufficient evidence to establish a good faith explanation for her delay.

[26] The applicant relied on her mother to file this Application. She testified that she was not sure that she has ever read the Application. It appears that she has not because she was unable to answer any questions posed by counsel for the respondent concerning the content of the Application. The fact that the applicant relied on her mother to file the Application does not excuse her from the one-year limitation period. The applicant turned 18 in July 2015 and was no longer a minor. At that point, it was the applicant's responsibility to file her Application and to do so in a timely way.

[27] There is no evidence upon which I can conclude that the applicant's anxiety and autism prevented her from being able to file her Application on time and there is no evidence to establish these disabilities constitute a good faith explanation for the applicant's delay. The Application is untimely and the Tribunal has no jurisdiction to hear it.

ORDER

[28] The Application is dismissed as being outside of the Tribunal's jurisdiction.

Dated at Toronto, this 28th day of August, 2020.



Jennifer Scott
Vice-chair