HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Galina Okouneva

Applicant

-and-

Ryerson University and Mohamed Lachemi

Respondents

INTERIM DECISION

Adjudicator: Ena Chadha

Date: September 11, 2012

File Number: 2012-11390-I

Citation: 2012 HRTO 1719

Indexed as: **Okouneva v. Ryerson University**

WRITTEN SUBMISSIONS

Galina Okouneva, Applicant	)	Self-represented
Ryerson University and Mohamed Lachemi, Respondents	)	Mireille Khoraych, Counsel

[1] This Application was filed on April 24, 2012 under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"), alleging discrimination with respect to employment on the grounds of disability and sex.

[2] On June 15, 2012, the Tribunal issued Interim Decision 2012 HRTO 1191 finding that it is not "plain and obvious" on the face of the Application that the Application does not fall within the Tribunal's jurisdiction. The Tribunal ordered that the Application continue to be processed. The Tribunal noted that the Interim Decision was not a final decision with respect to the issue of whether some or all of the Application is barred by section 34 of the *Code*. The Tribunal directed the respondents to provide information with respect to the applicant's grievance.

[3] The respondents filed a Response on July 20, 2010 and Requests for Order During Proceedings ("RFOP"). In the RFOP, the respondents ask the Tribunal to dismiss the Application in whole or in part on the basis of delay and, in the alternative, that the personal respondent be removed from Application. In the Response and the RFOP, the respondents also request that the Application be deferred pending the outcome of an on-going related arbitration hearing. The respondents note that the applicant filed a grievance in March 2011 regarding the facts as alleged in the Application and that an arbitration hearing is currently proceeding before Arbitrator William Kaplan.

[4] The applicant filed a Reply on August 8, 2012 and response submissions to the RFOP on August 17, 2012. While the applicant disputes the respondents' various requests, the applicant agrees to defer the Application pending the completion of the arbitration.

Deferral

[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). Deferral of an

application ensures that proceedings dealing with the same issues do not run concurrently, thereby raising the possibility of inconsistent decisions on facts or law.

[6] Some factors that have been identified as relevant in deciding whether to defer consideration of an application before the Tribunal are the subject matter of the other proceeding, the nature of the other proceeding, the types of remedies available in the other proceeding, and whether it would be fair overall to the parties to defer, having regard to the status of each proceeding and the steps that have been taken to pursue them. See *Baghdasserians v. 674469 Ontario*, 2008 HRTO 404.

[7] The Tribunal generally defers applications where the parties are already engaged in a concurrent legal proceeding, particularly when the other proceeding is an on-going grievance under a collective agreement based on the same facts and issues as raised in the Application. In so doing, the Tribunal has relied on *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, wherein the Supreme Court of Canada confirmed that grievance arbitrators have not only the power but also the responsibility to implement and enforce the substantive rights and obligations of human rights and other employment-related statutes as if they were part of the collective agreement.

[8] Having reviewed the materials in the file and the parties' submissions, I conclude that there is significant overlap in the subject matter of the Application and the applicant's outstanding grievance, which is currently before Arbitrator Kaplan. The grievance and arbitration process were launched prior to the Application. There is real risk of inconsistent findings of fact and duplication of resources if the Application proceeds concurrently with the arbitration. As such, the most fair, just and expeditious approach is to defer consideration of this Application pending the completion of the arbitration process.

Order

[9] The Application is deferred until the completion of the arbitration process.

[10] 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). Given the decision to defer this Application, the respondents' requests to dismiss, strike, and/or remove the personal respondent, can be dealt with if and when the Application is reactivated.

[11] I am not seized

Dated at Toronto, this 11th day of September, 2012.

"signed by"

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Ena Chadha
Vice-chair