



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Rosalie Pratt**

**Applicant**

**-and-**

**Tay Township Public Library Board and Corporation of the Township of Tay**

**Respondents**

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## DECISION

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**Adjudicator:** David Muir

**Date:** September 1, 2015

**File Number:** 2014-17905-I

**Citation:** 2015 HRTO 1162

**Indexed as:** **Pratt v. Tay Township Public Library Board**

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**APPEARANCES**

Rosalie Pratt, Applicant	)	Thersa Helbig, representative
	)	
	)	
Tay Township Public Library Board	)	M. Steve Rastin, Counsel
and Corporation of the Township of	)	
Tay, Respondents	)	
	)	

[1] In her Application to the Tribunal, the applicant has alleged that the respondents have discriminated against and/or harassed her because of race, ancestry, place of origin, ethnic origin and disability contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “*Code*”). She also alleged that the respondents reprisal against her contrary to the *Code*.

[2] In a Case Assessment Direction issued on January 27, 2015, the Tribunal directed that a summary hearing be held to determine whether or not the Application should be dismissed in whole or in part because it has no reasonable prospect of success. The Tribunal also indicated that it would also hear the parties’ submissions on two other issues raised by the respondents: (1) that the Tribunal remove the applicant’s representative; and (2) that the Application be severed into two separate Applications.

[3] At the outset of the hearing I heard the respondents’ argument that the applicant’s representative should be removed because her participation was an abuse of the Tribunal’s process because her representation of the applicant was simply part of her political campaign in the municipality by another means. After the hearing the submissions of the respondent and the applicant I indicated that I was disinclined to make the order sought and the summary hearing proceeded.

[4] Having considered the matter further, I acknowledge that in theory the respondents position might be sustained, at this stage of the proceeding there was no basis to conclude that the applicant’s representative participation in the case was an abuse of the Tribunal’s process and accordingly in the circumstances there is no basis to remove her.

[5] The hearing proceeded by telephone conference call. All parties participated. The applicant’s representative made extensive submissions but they did not add much to the detailed and articulate narrative of the Application.

[6] For the reasons below the Application is dismissed because I have concluded that there is no reasonable prospect that it can succeed.

[7] In her Reply the applicant made the following statement which appears to capture the essence of her claim of discrimination on the basis of ancestry and place of origin:

The Applicant was organized out because she complained about and challenged problems with the status quo. Why? Because she was not "one of them". It wasn't the colour of her skin but the tone of her communications (profiling). Tone of communications and manner of speaking are common identifiable characteristics of race, ethnicity and place of origin where colour of skin is not the obvious identifying characteristic. The Applicant endured the rudeness, ridicule and reprehensive reactions of the Respondents' employees, Council and Library Board Members. They were harmful to her self-worth and dignity. She developed serious mistrust and felt betrayed by her local government institutions. For the Applicant it felt like historical harms repeating themselves, except this time in a chosen country and community.

[8] In her Application the applicant described herself in the following terms in response to Question C6:

I have distinguishing mental and moral traits, namely a shrewdness and astuteness in speculation and money matters and high average of intellectual ability. I struggle at times to convey my thoughts precisely as English is my second language and precision is important to me. This sometimes results in a manner of speech/speaking and fluency that is misconstrued. I struggled for many years and worked very hard to lose my accent so that I would not be differentiated from a born-Canadian. I am stereotyped as being a dominant personality who wants to take over. I am a high achiever with creative ideas that sometimes undermine dominant ideas. These traits are considered unacceptable because they are at variance with the "local society" that is recognized as as the only normal way of doing things. It expresses itself by attempting to ignore, silence, shun and belittle me.

[9] The applicant also claims that the respondents failed to accommodate her hearing disability. The applicant alleges that she wrote to the City Clerk prior to meetings of council to request accommodation but that these requests were not honoured and when she attempted to signal during meetings that she was unable to hear by pulling on her ear she was ignored. The applicant alleges that the respondent knew that when she pulled on her ear it was a signal that she was having trouble hearing.

[10] As regards the applicant's claim of discrimination on the basis of ancestry, ethnic origin, place of origin, race and reprisal the applicant's theory of the case is that because of the way she speaks as described above she was perceived to be "not one of us" and consequently the respondents took steps to have her removed from the board of the Library.

[11] The applicant asserted that she was born in Hungary and she is a Jew. She did not dispute that she speaks accentless English. The applicant also advised that she has lived in Canada since the late 1950's. Her age was not disclosed. The respondents assert that they had no idea what the applicant's ethnic origin and to the extent that they thought about it at all she was thought to be English. The applicant's representative indicated that she was only dimly aware of the applicant's ethnic background although she has known her for years.

[12] When asked how anyone might have come to know about the applicant's ethnic origin, her representative indicated that she wore a good deal of jewellery including a Star of David.

[13] The parties were agreed that there was a well documented conflict amongst the various individuals in this narrative. There is no dispute that the applicant was eventually removed from the library board after an investigation of a bullying and harassment complaint made against her by one or more individuals associated with the public library.

[14] In my view this aspect of the Application has no reasonable prospect of success. Beyond asserting that there was conflict and that the applicant was not born in this country there is nothing beyond the applicant's supposition that the actions of the respondent were informed in whole or in part by these facts.

[15] The applicant's position was in equal part circular and then contradictory. The applicant argued in effect that because she spoke and interacted with people in a stereotypical way she was perceived to be a Hungarian Jew and then treated in a

differential way as a consequence. However at the same time the applicant indicated that in her written correspondence she was unfailingly non-stereotypical, polite and gracious in her communications.

[16] A significant element of this dispute in the applicant's view was an investigation report commissioned by the Library Board who retained outside counsel to investigate the complaints of bullying of staff by the applicant. The report substantiated the allegations of bullying by the applicant and lead to her suspension from the Library Board.

[17] The applicant takes significant issue with this report and makes a number of allegations of procedural unfairness by the investigator. It is the report that sparked the Application, the applicant alleges, although it appears that the report was released after the Application was filed.

[18] The Tribunal does not have the power to deal with or remedy general allegations of unfairness. The Tribunal only has the power to deal with discrimination, harassment or reprisal that is prohibited by the *Code*. Discrimination in the legal sense requires proof that the respondents' adverse treatment of the applicant is based, at least in part, on a prohibited ground of discrimination under the *Code*. In other words, the prohibited ground must be connected to the adverse treatment. In this case there is nothing connecting the alleged actions of the respondents and the grounds cited beyond the applicant's submissions. More is required to call into play the significant private and public resources engaged by a full hearing of the merits than mere suspicion that the applicant has experienced discrimination. As regards the allegedly flawed investigation the applicant appears to believe that the respondents should be responsible for any alleged procedural defects in the report. I do not agree – again the Tribunal does not have the power to remedy unfairness - in the absence of any evidence of a conspiracy to remove the applicant with the aid of the report or otherwise because of her ethnic background there is no basis to proceed to a full hearing of the merits. In this case there is no evidence which would link the actions of the respondent or the outside investigator to any of the *Code* grounds cited.

[19] The applicant also alleges that the respondents failed to accommodate her disability related needs. She alleges that the respondents did not adequately respond to a hearing impairment she has claimed to have. The applicant also alleges that council deliberately did not use the system on March 20, 2013 and did not post council materials for this meeting on the website in order as a form of reprisal. The applicant alleges that she complained about this in January 2013 but received no response.

[20] The respondents deny these allegations and point to a letter from the Mayor dated March 25, 2013 inviting the applicant to a meeting to discuss all of her various issues with them. The applicant did not respond to the invitation.

[21] It does appear that the respondent did install an audio system in its council chamber in order to accommodate persons with hearing impairments. The respondents did not concede that this was done specifically in response to a request of the applicant but acknowledged that she was an individual who had indicated such a need. The system was installed in 2011. It seems to have been useful. However the applicant alleged that there were times when she could not hear what was being said. She alleged that when she was having trouble hearing she would tug on her earlobe and the municipalities' fire chief would go into the back and adjust the system. There is no indication of how often this occurred. The applicant alleges that at some point this practice stopped. The applicant asserts that she last attended a meeting of council in March 20, 2013. The Application was filed on June 9, 2014.

[22] Similarly the Application as it relates to the disability claim is also dismissed for at least two reasons. First it appears that these allegations are not timely because the applicant ceased attending council meetings in March 2013 and the Application was filed in June 2014.

[23] Section 34(1) and 34(2) set out the time limit for filing an application under the *Code*:

34. (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

(a) within one year after the incident to which the application relates; or

(b) if there was a series of incidents, within one year after the last incident in the series.

(2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

[24] The applicant argued that the two aspects of the case are interconnected. The only apparent connection between them is the applicant. Accordingly, I do not find that the allegations relating to disability constitute a series of incidents with the allegations relating to race, ancestry, etc. The applicant also argued that she only filed the Application because of what she believes was a flawed investigation report with respect to her other disputes with the Library Board. This is not in my view a good faith defence within the meaning of s. 34(2). The Application is dismissed because it is out of time.

[25] I would also observe although it is not necessary to do so that I agree with the respondent that the applicant did not participate in the accommodation process and therefore this aspect of the Application should be denied. Whatever the merits of the applicant's claim that a tug on her earlobe should be understood to be a request for accommodation the fact is that the applicant was invited to a meeting to raise all of her issues with the respondent and chose not to do so. In the circumstances of this case I find that her failure to take up the opportunity to discuss her concerns is fatal to the claim and there is no reasonable prospect that it can succeed.

[26] Having come to these conclusions there is no need to deal with the respondents request that this Application be severed.



[27] This Application is dismissed.

Dated at Toronto, this 1<sup>st</sup> day of September, 2015.

*“signed by”*

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David Muir  
Vice-chair