



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Louis Sterling

Applicant

-and-

Wendy's Restaurant of Canada

Respondent

AND BETWEEN:

Regina Sterling

Applicant

-and-

Wendy's Restaurant of Canada

Respondent

INTERIM DECISION

Adjudicator: Ena Chadha
Date: August 2, 2011
File Number: 2010-04525-I; 2010-05734-I
Citation: 2011 HRTO 1432
Indexed as: **Sterling v. Wendy's Restaurant of Canada**

[1] The applicant, Louis Sterling, filed an Application with the Tribunal under section 34 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), on January 8, 2010, alleging discrimination and reprisal with respect to employment on the basis of race, colour, place of origin, ethnic origin, creed, marital status, age and record of offences. The respondents filed a Response to this Application on April 7, 2010, denying the allegations of discrimination and reprisal.

[2] The applicant, Regina Sterling, filed an Application with the Tribunal under section 34 of the *Code* on May 20, 2010, alleging discrimination and reprisal with respect to employment on the basis of family status, marital status and association with a person identified by a *Code* ground. The respondents filed a Response to this Application on August 10, 2010, denying the allegations of discrimination and reprisal.

[3] The applicants in these two Applications are spouses and both Applications relate to the applicants’ employment with the same corporate respondent.

[4] This Interim Decision deals with the following two preliminary issues: 1) the issue of possible consolidation of the Applications as noted in the Tribunal’s Case Assessment Direction dated April 5, 2011, and 2) the respondents’ Request to remove the various personal respondents named in the two Applications.

Consolidation

[5] Louis Sterling alleges that he was subjected to harassment, unfair treatment and wrongfully dismissed following false allegations that he sexually harassed an employee. His Application is filed against the corporate respondent and 12 personal respondents. Regina Sterling alleges that she was treated unfairly in her employment because of the false allegations against her husband and that she was compelled to quit her job because of the mistreatment. Her Application identifies the corporate respondent and four personal respondents, two of whom are also named in her husband’s Application.

[6] Rule 1.7(d) of the Tribunal’s Rules of Procedure states that, to provide for the

fair, just and expeditious resolution of any matter before it, the Tribunal may consolidate or hear Applications together. In *Persaud v. Toronto District School Board*, 2008 HRTO 25, the Tribunal set out the factors that should be considered in deciding whether to consolidate or hear proceedings together:

- (a) The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of the witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;
- (b) The potential prejudice to the respondents that could result from a single hearing, including the lengthening of the hearing for each respondent as issues unique to the other respondent are dealt with, and the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one respondent or the other; and
- (c) Whether there are common issues of fact or law.

[7] The applicants consent to consolidation.

[8] While the respondents oppose consolidation, the respondents propose that the hearing into Louis Sterling's Application proceed first followed directly after with the hearing into Regina Sterling's Application. The respondents submit that the events alleged in Louis Sterling's Application are entirely different from the events alleged in Regina Sterling's Application. The respondents submit that there are few common facts in the Applications and the grounds and legal issues are different.

[9] Given the absence of common facts/allegations and the respondents' concerns, the Tribunal will not consolidate the Applications. However, in light of the overlapping interests present in the two Applications, I am satisfied that proceeding before one adjudicator with the hearing of the first Application followed by the hearing of the second Application may facilitate a fair and expeditious resolution of the issues in the Applications.

Removal of Personal Respondents

[10] A total of 14 personal respondents have been named by the applicants.

[11] The respondents submit that it is appropriate to remove the personal respondents because the allegations do not pertain to actions in their personal capacity and that the remedies sought are only those that the corporate respondent can provide.

[12] The applicants object to the respondents' Request to remove the personal respondents. The applicants submit that the individuals subjected them to unfair treatment, including gossip.

[13] In *Persaud v. Toronto District School Board*, 2008 HRTO 31, the Tribunal outlined the following list of “non-exhaustive” factors in considering whether a personal respondent should be removed:

1. Is there a corporate respondent in the proceeding that also is alleged to be liable for the same conduct?
2. Is there any issue raised as to the corporate respondent's deemed or vicarious liability for the conduct of the personal respondent who sought to be removed?
3. Is there any issue as to the ability of the corporate respondent to respond to or remedy the alleged *Code* infringement?
4. Does any compelling reason exist to continue the proceeding as against the personal respondent, such as where it is the individual conduct of the personal respondent that is a central issue or where the nature of the alleged conduct of the personal respondent may make it appropriate to award a remedy specifically against that individual if an infringement is found?
5. Would any prejudice be caused to any party as a result of removing the personal respondent?

[14] I find that the above-noted factors favour removal of all of the personal respondents. Based on the parties' submissions, it appears that a majority of the personal respondents are members of management and/or human resources and some

are co-workers. It appears that all of the allegations with respect to these individuals relate to alleged actions or comments during the regular course of their employment. The corporate respondent accepts being deemed liable for the conduct of its employees and representatives acting in the course of their duties and agrees that, if a *Code* infringement is established, that it may be found to be in violation of the *Code* in that regard. The applicants have not identified any prejudice or concerns with respect to the corporate respondent's responsibility and ability to satisfy any remedies. The removal of the personal respondents does not affect the applicants' rights to a full hearing of their allegations as the identified individuals will be called as witnesses. As such, I agree with the respondents that there is no compelling reason to continue the proceedings against the personal respondents.

[15] In *Sigrist and Carson v. London District Catholic School Board et al*, 2008 HRTO 14, at para. 42, the Tribunal set out the general concerns regarding the unwarranted inclusion of personal respondents:

The unnecessary naming of personal respondents is a practice to be discouraged, as this serves to unnecessarily add to the complexity of proceedings and can often operate as a roadblock to resolution. Pursuant to section 45(1) of the *Code*, a corporation is deemed to be liable for "any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent". Where there is no issue as to the ability of a corporate respondent to respond to or remedy an alleged *Code* infringement and no issue raised as to a corporate respondent's deemed or vicarious liability for the actions of an individual who is sought to be added as a personal respondent, then in my view the individual ought not be added as a personal respondent in the absence of some compelling juridical reason. A compelling juridical reason may exist, for example, where it is the individual conduct of a proposed personal respondent that is a central issue as opposed to actions which are more in the nature of following organizational practices or policies or where the nature of the alleged conduct of a proposed personal respondent may make it appropriate to award a remedy specifically against that individual if an infringement is found.

[16] I find that it is appropriate to remove all of the personal respondents from the proceedings at this time. I am satisfied that, considering all the circumstances, it is not

necessary to proceed against the personal respondents in order to have a fair, just and expeditious resolution of the merits of the Applications.

Order

[17] The personal respondents are removed from the Applications and the styles of cause are amended accordingly. The two Applications will be heard by a single adjudicator and the hearing of Regina Sterling’s Application will be scheduled to follow directly after the hearing of Louis Sterling’s Application.

[18] I am not seized of this matter.

Dated at Toronto, this 2nd day of August, 2011.

“Signed by”

Ena Chadha
Vice-chair