

HUMAN RIGHTS BOARD OF ADJUDICATION

IN THE MATTER OF: A Complaint by Karen Willcox against Ladco Company Limited (o/a Lakewood Agencies), alleging a breach of s.14 of *The Human Rights Code*

AND IN THE MATTER OF: *The Human Rights Code*, C.C.S.M., Chapter H175, as amended

1. The respondent Ladco Company Limited o/a Lakewood Agencies has submitted a request pursuant to subsection 36(2) of *The Human Rights Code* that its name not be disclosed in the Notice of Hearing which must be published in the Manitoba Gazette and, in this case, the Winnipeg Free Press, concerning a complaint filed against it by Karen Willcox.
2. The respondent's position is that there is a stigma associated with being alleged to have breached a provision of *The Human Rights Code* which does not apply to other civil proceedings. It says that it is an entity which deals with a broad cross-section of the public in connection with accommodation and that it would be prejudicial to have published to the world, an allegation of a breach of the *Code*. It further submits that none of the allegations have yet been proven and that it should not be tarred with that brush in the absence of any findings of misconduct on its part.
3. The Commission opposes the application.
4. The Commission submits that changes were made to the predecessor legislation of the *Code*, *The Human Rights Act*, in 1987 when the current *Code* was proclaimed. Those changes included specifically noting that not only would hearings be public, but that the Notices to be sent to the parties would also be made public. It is the Commission's submission that this was done with the public interest in mind, acknowledging the educational mandate of the Commission to protect and uphold human rights in Manitoba.
5. The Commission points out that the wording of subsection 36(2) of *The Human Rights Code* specifically requires that the parties to an adjudication be named in the public Notice, unless the adjudicator "decides that it would be unduly prejudicial in the circumstances to disclose the names of some or all of the parties prior to the hearing". It says that in its role of having carriage of the complaint it does not represent the complainant; nor is it adversarial to the respondent. It distinguishes its role from participation of two parties who are adversarial to one another in a civil proceeding and submits that it is within its role to ensure that the *Code* is upheld in principle and in the public interest, It further submits that the wording of section 36 is specific and that while it permits for requests to be made to an adjudicator with respect to removing the name or names of a party from a Notice of Hearing, the term "unduly prejudicial" should be interpreted to mean more than mere prejudice that might arise in an administrative proceeding and sufficient prejudice to outweigh the public interest protected by the *Code*.

Analysis

6. The Commission relies on two authorities, both from the British Columbia Human

Rights Tribunal, in which publication bans, among other things, were requested: *Sinclair v Blackmore* (2004) 49 C.H.R.R. D1232 and *Qin v. Certified General Accountants Assn. of British Columbia* [2004] B.C.H.R.T.D. No. 37. In both instances the requests were denied.

7. In *Sinclair v. Blackmore* (2004) 49 C.H.R.R. D/232, the Tribunal noted that human rights legislation protects rights of a special, almost constitutional nature, citing *Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd.* (1985) 7 C.H.R.R. D/3102 at D/3105 (S.C.C.). It cited the legislated purposes of the *Code* in that province which included:

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- (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- (c) to prevent discrimination prohibited by this Code;
- (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;
- (e) to provide a means of redress for those persons who are discriminated against contrary to this Code.

8. Similarly, in *The Human Rights Code of Manitoba*, the responsibilities of the Commission are set out at section 4 of the *Code* as follows:

4 In addition to discharging its other responsibilities under this Code, the Commission shall:

- (a) promote the principle that all members of the human family are free and equal in dignity and rights and entitled to be treated on the basis of their personal merits regardless of their actual or presumed association with any group;
- (b) further the principle of equality of opportunity and equality in the exercise of civil and legal rights regardless of status;
- (c) disseminate knowledge and promote understanding of the civil and legal rights of residents of Manitoba and develop, promote and conduct educational programs for that purpose;
- (d) develop, promote and conduct educational programs designed to eliminate all forms of discrimination prohibited by this Code; and
- (e) promote understanding and acceptance of, and compliance with, this Code and the regulations.

9. As the Tribunal in *Sinclair, supra*, noted, in order for these purposes and responsibilities to be fulfilled it is essential that the adjudication panel conduct its hearings in public and that the public have meaningful access to its hearings.

10. In my view, an analysis of the procedure for hearings set out in *The Human Rights Code* of Manitoba makes it clear that the intention of this legislation is for the hearings to be public and that the public have meaningful access to its hearings, unless to do so would cause undue prejudice to one of the parties.

11. Subsection 39(3) of the *Code* provides:

39(3) Every hearing shall be open to the public, but in order to prevent undue prejudice to any party or witness, the adjudicator may prohibit publication or broadcasting of the identity of the party or witness until the adjudicator's final decision has been rendered.

12. Subsection 38(1) of the *Code* provides:

38(1) The adjudicator shall cause notice of the date, time, place and subject matter of the hearing to be published, at least three days prior to the hearing, in the Manitoba Gazette and at least one newspaper that circulates in the part of the Province where the hearing will be held, and may send the same notice to such other news media as the adjudicator considers appropriate.

13. Subsection 36(2) of the *Code* provides:

36(2) The notice referred to in subsection (1) shall contain the names of the parties unless the adjudicator, at the request of any party, decides that it would be unduly prejudicial in the circumstances to disclose the names of some or all of the parties prior to the hearing.

14. The legislation has, therefore, set out a clear intention that the hearing itself and Notice to the public of the hearing both be made available to the public unless a party can establish that it would be unduly prejudicial in the circumstances to do so.

15. In the decisions relied upon by the Commission in this matter, the Tribunal, in addressing a request for a publication ban, followed the common law principles relating to such requests.

16. The *Sinclair* decision, for example, citing the Supreme Court of Canada in *R. v Merstuok*, [2001] 3 S.C.R. 442, cited the proper analytical approach to such cases as follows (at paragraph 32):

A publication ban should only be ordered when:

- (a) such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair trial, and the efficacy of the administration of justice.

17. The Tribunal in *Sinclair* (at paragraph 26) stated that in its view this is the proper approach, with appropriate modifications to take into account the human rights context, to follow regarding applications to limit the publication of information related to a complaint.

18. I agree with that approach. In applying this analysis, I find that the respondent has not established that it would be “unduly prejudicial” in the circumstances to disclose its name in the Notice to the public.

19. The respondent’s submission that none of the allegations have yet been proven and that it therefore should not be tarred with that brush in the absence of any findings of misconduct is similar to the argument that was made by the respondent in *Qin v. Certified General Accountants Assn. of British Columbia* [2004] B.C.H.R.T.D. No. 37.

20. In that case the Tribunal found that while the respondent had set out its privacy interests it did not specify why its interests ought to outweigh those of the public in having access to the Tribunal’s proceedings. In weighing the respondent’s privacy interests with the public’s right to access information about matters before the Tribunal, the Tribunal found that there was no evidentiary foundation on which to find in favour of the respondent.

21. Similarly, in this case, although the respondent makes the statement that it ought not to be “tarred with” the brush of allegations of violations of *The Human Rights Code* in the absence of any findings, there is no evidence in this case which would allow me to find that the respondent’s privacy interests outweigh the public’s interest in having access to information about matters before this Tribunal; nor do I find that there is evidence that the respondent will be unduly prejudiced in the circumstances by the disclosure of its name in the public Notice.

22. The respondent also argued that there is a stigma associated with being alleged to have breached a provision of *The Human Rights Code* which does not apply to other civil proceedings. Again, I do not find that there is any evidence to support this submission. There is no evidence, for example, that being named as a respondent to a complaint filed under *The Human Rights Code* has any greater stigma, than being named in a Statement of Claim, the subject maker of which might include any one of a number of alleged breaches of obligations and duties.

23. It is understandable that a respondent would not want its name disclosed to the public. In this case, however, I do not find that there is any evidence that the respondent would be unduly prejudiced in the circumstances such as would outweigh both the objectives of the

Code and the public interest in the human rights process in having the parties named in public Notices.

24. Accordingly, the respondent's request that its name not be published in the Gazette or the Winnipeg Free Press, is denied.

Original signed by:
Sherri Walsh, Adjudicator
March 1, 2011