

Investigation Memo

James Cyrynowski
(Complainant)

v.

Danielle [REDACTED]
(Respondent)

N2019/06/0096

September 26, 2019

This is a confidential document intended for review by the parties to the complaint only. The purpose of this document is to provide the results of the Commission's investigation and to assist the parties in resolving a complaint under the *Alberta Human Rights Act*. This document is not a human rights tribunal decision and it cannot be referred to at a tribunal hearing.

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From: Shereen Tayles, Human Rights Officer

Complaint #: N2019/06/0096

To: Dianne Addy, Northern Director

Date: September 19, 2019

Subject: James Cyrynowski v. Danielle [REDACTED]

All the information provided during the investigation process was shared with the parties.

Complaint (Attachment A)

1. On May 1, 2019, the Commission accepted a complaint from James Cyrynowski ("Cyrynowski") alleging that the Respondent, Danielle [REDACTED]), discriminated against him in the area of employment advertisements, applications or interviews, on the grounds of family status, contrary to section 8 of the *Alberta Human Rights Act* (the *Act*). Cyrynowski stated that on February 6, 2019, he applied for a job as a caregiver, which was posted on Kijiji, but was denied the position, because of his family status.
2. Cyrynowski alleges that he submitted his interest for an ad on kijiji looking for a part-time caregiver. He was asked if he has children. He stated that he does not and he did not get the job.

Response (Attachments B & C)

3. [REDACTED] stated that she has three children, ages 2, 8 and 11 years old. When her hours of employment changed, she posted an ad on kijiji looking for a part-time caregiver for one and a half hours in the morning to drop her children off at daycare, and this was only a short-term requirement. She received responses from several applicants, one of whom worked next to her children's daycare, so she hired that person, considering that was an ideal arrangement. [REDACTED] received so many responses that she did not answer each applicant to discuss details of her decision.
4. The original ad was not provided with the complaint, but [REDACTED] included copies of text messages of their exchanges. In the exchange, [REDACTED] asked if he has any children, and Cyrynowski replied he did not, although [REDACTED]. [REDACTED] asked whether he was currently employed and able to provide references, and Cyrynowski provided references. There were no more exchanges between the Cyrynowski and [REDACTED].
5. [REDACTED] stated that she asked about children because that showed experience, and as three children could be a "handful" she wanted to feel confident about the ability to handle that.

Additional Information from the Investigation (Attachment D)

6. Cyrynowski provided comments on [REDACTED]'s responses to the complaint.

Analysis and Recommendation

7. The issue for the Commission is to consider whether there is a reasonable basis to proceed with this Complaint.
8. In order to support a human rights complaint, a person must have a characteristic protected from discrimination under the *Act*, must have experienced a negative or adverse impact within one year of the complaint, and the protected characteristic must have been a factor in the negative or adverse impact.
9. On its face, it is contrary to the *Act* for an employer to make hiring decisions based on a protected ground. It is also contrary to section 8(1) of the *Act* for an employer to make inquiries of job applicants that expresses directly or indirectly any limitation, specification or preference relating a protected ground, including family status.
10. The *Act* also states that section 8(1) of the *Act* does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.
11. It is recommended that this complaint be dismissed for the following reasons:
 - i. The information provided in the Kijiji ad indicates that the Respondent required a caregiver to bring her children to daycare in the mornings. The position in question requires caring for several young and vulnerable children within a private home. In this circumstance, a parent's personal preference, and questions relating to that preference, for a caregiver can be justified as a Bona Fide Occupational Requirement ("BFOR") under the *Act*.
 - ii. In addition, [REDACTED] continued to inquire after Cyrynowski's suitability for the position, even after he stated he did not have children. There is therefore no information to support that she refused to hire him based on his family status.
12. Given the above information, it is recommended that there is no reasonable basis to proceed with this complaint, and that it be dismissed.



Shereen Tayles
Human Rights Officer