

## Investigation Memo

**James Cyrnowski**  
(Complainant)

v.

**Todd [REDACTED]**  
(Respondent)

**N2019/05/0064**

**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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Thank you for your co-operation when attending our offices.**

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From: Shereen Tayles, Human Rights Officer

Complaint #: N2019/05/0064

To: Dianne Addy, Northern Director

Date: September 19, 2019

Subject: James Cyrynowski v. Todd [REDACTED]

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

### **Complaint (Attachment A)**

1. On September 1, 2017, the Commission accepted a complaint from James Cyrynowski ("Cyrynowski") alleging that the Respondent, Todd [REDACTED], discriminated against him in the area of employment advertisements, applications or interviews, on the grounds of age and gender, contrary to section 8 of the *Alberta Human Rights Act* (the *Act*). Cyrynowski stated that on August 31, 2017, he applied for a job as a babysitter, which was posted on Kijiji, but was denied the position, because of his age and gender.

2. Cyrynowski alleges that he submitted his interest for an ad on kijiji looking for a babysitter for two boys. The ad read:

*Babysitter wanted for evening Friday Sept 1 and other evenings.*

3. Parsons responded ten minutes later with the following:

*Hi*

*Can you tell me what town you live in and your age and if your [sic] male or female? Sorry for all the questions.*

*Thank you*

4. Cyrynowski replied:

*Hi, I live in Edmonton. I'm male and 28 years old.*

5. Cyrynowski alleges he never heard back from him again.

### **Response (Attachment B)**

6. [REDACTED] states that on August 31, he posted an ad for a babysitter, but his plans for the evening were cancelled and he no longer needed a babysitter. [REDACTED] did not follow-up with Cyrynowski or any of the other people who responded to his ad. Cyrynowski did not make any attempt to follow up with [REDACTED] about why he did not hear back, and instead submitted a human rights complaint the very next day.

**Additional Information from the Investigation (Attachment C)**

7. Cyrynowski provided comments on [REDACTED]'s response to the complaint.

**Analysis and Recommendation**

8. The issue for the Commission is to consider whether there is a reasonable basis to proceed with this Complaint.
9. 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.
10. 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.
11. 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.
12. It is recommended that it be dismissed for the following reasons:
  - i. The information provided in the Kijiji ad indicates that the Respondent required a babysitter for one evening, and possibly for future evenings, although there was no guarantee of future work. The position in question requires caring for a young and vulnerable child within a private home. In this circumstance, a parent's personal preference, including questions relating to that preference, for a caregiver can be justified as a Bona Fide Occupational Requirement ("BFOR") under the *Act*.
  - ii. In addition, the need for the position ended, so there was no position to fill. There was therefore no negative impact on the Complainant, and no contravention to the *Act*.
13. 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