

7th Floor, Commerce Place
10155-102 Street NW
Edmonton, Alberta T5J 4L4
Telephone: 780-638-4635
Fax: 780-638-4641

Mezzanine Level, J.J. Bowlen Building
620 – 7th Avenue SW
Calgary, Alberta T2P 0Y8
Telephone: 403-476-4939
Fax: 403-476-4945

Email: AHRCTribunal@gov.ab.ca

VIA EMAIL/XPRESSPOST

March 16, 2021

James Cyrynowski
Complainant

Marty Moore
Legal Counsel for the Respondent

Dear James Cyrynowski and Marty Moore:

Re: James Cyrynowski v. Danielle [REDACTED] – N2019/06/0096

Enclosed is the Decision for the above noted complaint.

Yours truly,



Emmanuel Owusu
Acting Registrar

Enc.

cc. Nancy Henderson, Director, Alberta Human Rights Commission

HUMAN RIGHTS TRIBUNAL OF ALBERTA

Citation: Cyrynowski v [REDACTED] 2021 AHRC 70

BETWEEN:

James Cyrynowski

Complainant

- and -

Danielle [REDACTED]

Respondent

**SECTION 26 DECISION
ALBERTA HUMAN RIGHTS ACT**

Member of the Commission: Kathryn Oviatt

Decision Date: March 16, 2021

File Number: N2019/06/0096

Review of Key Facts and Arguments

[1] The complainant, James Cyrynowski, alleges that the respondent, Danielle [REDACTED], discriminated in the area of employment advertisements, applications, interviews on the ground of family status (the Complaint) in contravention of section 8 of the *Alberta Human Rights Act* (the Act).¹

[2] The respondent is the mother of three children. She posted an advertisement for a temporary part-time babysitter on Kijiji, an online classified's website. The respondent wanted temporary assistance with childcare for approximately an hour and fifteen minutes on weekday mornings prior to her children's daycare opening.

[3] The complainant responded to the advertisement, expressing his interest in her post. The respondent replied, asking if he had children. The complainant advised that he did not yet have children and explained that his girlfriend had experienced multiple miscarriages. The respondent expressed condolences and asked for further information including references. The complainant provided the requested information. They did not have further contact and the respondent hired someone else. The complainant argued that his family status was a factor in the respondent's decision not to hire him.

[4] The respondent denied that she discriminated against the complainant and explained that she found an appropriate person in her area who worked next door to her children's daycare. She noted that the babysitting was a short-term requirement and the logistics worked best with the person she found.

[5] The respondent also noted that she was one of many parents who the complainant named in human rights complaints. She pointed to the Alberta Court of Queen's Bench decision in *Cyrynowski v Alberta (Human Rights Commission)* (*Cyrynowski*) in which the court upheld the Chief of the Commission and Tribunal's decision to dismiss a similar complaint brought by this same complainant.²

Director's Decision

[6] The human rights officer (Investigator) assigned to investigate the Complaint recommended to the Director of the Commission (Director) that the Complaint be dismissed. The Investigator reviewed each allegation and concluded that there the Complaint should be dismissed as without merit. The Director agreed with the Investigator's recommendations, and dismissed the Complaint, noting:

¹ *Alberta Human Rights Act*, RSA 2000, c A-25.5

² *Cyrynowski v Alberta (Human Rights Commission)*, 2017 ABQB 745 (*Cyrynowski*)

There is no evidence to support that you were unsuccessful in the application process for any protected ground. Your speculation as to why you were not successful is not a foundation for a meritorious complaint under the Act. Given that the position required a part-time experienced caregiver for three young children in a private home, the personal preference for a caregiver, including experience with children, can be justified as a bona fide occupational requirement under the Act.

Request for Review

[7] The complainant filed a Request for Review of the Director's decision. He argued that the Director erred by not addressing the application process, and that the Director failed to conduct the three-part analysis in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU (Meiorin)*.³

[8] The respondent filed a response to the Request for Review. She repeated her submissions that the issues arising from this Complaint had already been addressed in *Cyrnowski*, and that proceeding with the Complaint would violate the respondent's rights in the *Canadian Charter of Rights and Freedoms (Charter)*.⁴

Analysis and Decision

[9] Having considered the submissions of the parties and reviewed the record of the Director's decision to dismiss this Complaint, I am upholding that decision.

[10] This review is under subsection 26(3) of the Act, which states in part, "The Chief of the Commission and Tribunals shall, (a) review the record of the director's decision and decide whether (i) the complaint should have been dismissed..."

[11] The test that I must apply in carrying out my review function under section 26 of the Act is whether there is a reasonable basis in the evidence for proceeding to a hearing before a Tribunal. The threshold is low and I am given wide latitude in performing this screening function.⁵

[12] There is not a reasonable basis in the evidence that the respondent chose to not offer or further interview the complainant because of his family status. She continued to make inquiries about his circumstances and requested references. Ultimately, she chose a caregiver who best accorded with her family's logistics.

³ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 SCR 3 (*Meiorin*)

⁴ *Canadian Charter of Rights and Freedoms*, s 8, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (*Charter*)

⁵ *Mis v Alberta Human Rights Commission*, 2001 ABCA 212 at paras 8 & 9

[13] In addition, the fact that the respondent asked the complainant a question about his family status during the assessment process does not create a reasonable basis in the evidence to proceed further. This Complaint is similar to the complaint in *Cyrynowski*, which the Court of Queen's Bench of Alberta noted was "a test case" for the multiple complaints that the complainant had brought against parents who posted online advertisements for private babysitters.⁶

[14] In *Cyrynowski*, the court accepted that the Chief of the Commission and Tribunal's decision to dismiss the complaint was reasonable. The Chief concluded that although advertising for babysitting positions came within s. 8 of the *Act*, a parent's "preference as to who looks after her young child in her home, should be accorded utmost deference and is a *bona fide* occupational requirement."⁷ Accordingly, the Chief determined that there was not a reasonable basis in the evidence to proceed. I agree with both his conclusion and his analysis.

[15] In addition, while I do not have authority to directly apply and interpret the constitution outside of division of powers issues,⁸ the *Act* should be interpreted with respect for *Charter* values.⁹ In *B. (R.) v. Children's Aid Society of Metropolitan Toronto* the Supreme Court of Canada noted that parenting decisions involving nurturing and caring for a child is a *Charter* protected right, observing:¹⁰

... the parental interest in bringing up, nurturing and caring for a child, including medical care and moral upbringing, is an individual interest of fundamental importance to our society.

[16] The Chief's decision in *Cyrynowski*, reflected this *Charter* value towards parental rights when he recognized that the "utmost deference" should be awarded to parental choice of childcare within their homes. A *Charter* values approach to applying the *Act* to the facts of this Complaint does not support proceeding further. To proceed further would require the respondent to endure the stress, inconvenience, additional delay, and, potentially, financial impacts of defending herself at a fully contested hearing to justify her parenting decisions. This is not in the interests of justice, fairness, or the intentions of the *Act*.

⁶ *Cyrynowski*, *supra* at para 2

⁷ *Cyrynowski*, *supra* at para 52

⁸ *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3 s. 11; *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006, Schedule 1

⁹ *Amir and Siddique v Webber Academy Foundation*, 2020 AHRC 58, at para 12; *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395, at paras 24, 35

¹⁰ *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, 1995 CanLII 115 (SCC), [1995] 1 SCR 315, at 371

[17] Having reviewed all the information and for the reasons above, there is no reasonable basis in the evidence to proceed to a hearing. Under section 26(3)(a), I am upholding the Director's decision to dismiss the Complaint.

March 16, 2021

Kathryn Oviatt
Member of the Commission
as delegated by the Chief of the Commission and
Tribunals pursuant to section 26(4)