

In the Supreme Court of British Columbia

Between:

Kyra Singh

Petitioner

And:

XYZ Incorporated, Matthew Jones,
and the British Columbia Human Rights Tribunal

Respondents

PETITION TO THE COURT

ON NOTICE TO:

XYZ Incorporated and Matthew Jones
123 Main Street
Vancouver, BC V4V 4V4

British Columbia Human Rights Tribunal
1170-605 Robson Street
Vancouver BC, V6B 5J3

Deputy Attorney General
Ministry of Justice
PO Box 9290 Stn Prov Govt
Victoria BC V8W 9J7

This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

(a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or

(d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

(2) The ADDRESS FOR SERVICE of the petitioner(s) is:

Kyra Singh
1234 ABC Street
Vancouver, BC V1V 2V2

Fax number address for service (if any) of the petitioner(s): N/A

E-mail address for service (if any) of the petitioner(s): N/A

(3) The name and office address of the petitioner's(s') lawyer is: N/A

Claim of the Petitioners

Part 1: ORDERS SOUGHT

1. An order setting aside the decision of the British Columbia Human Rights Tribunal (the "Tribunal") dated September 20th, 2021 in file number XXXXX and remitting the matter back to the Tribunal with directions;

2. Costs; and
3. Any other order the Court deems just.

Part 2: FACTUAL BASIS

The Parties

1. The Respondent XYZ Incorporated operates a paper supply company in Vancouver. The Respondent Matthew Jones is employed as the manager of the Vancouver Branch of XYZ Incorporated.
2. The Petitioner, Kyra Singh, is employed as a salesperson at XYZ Incorporated. Her direct supervisor is Matthew Jones.

Ms. Singh's Human Rights Complaint

3. On July 7th, 2021, Ms. Singh filed a complaint with the Tribunal (the "Complaint") with regard to incidents she experienced while working at XYZ Incorporated on September 3rd, 2009 and on March 13th, 2021. Ms. Singh made the following allegations in her Complaint:
 - On September 3rd, 2009, Mr. Jones called Ms. Singh into his office at XYZ Incorporated for a sales review.
 - While in his office on that date, Mr. Jones told Ms. Singh that her sales would be better if she "used her good looks and flirted more with clients". Mr. Jones placed his hand on Ms. Singh's knee and said that he found her to be "very attractive". Ms. Singh then exited Mr. Jones' office.
 - For the following months Ms. Singh felt very uncomfortable around Mr. Jones' and in the workplace generally.
 - On March 13th, 2021, Mr. Jones walked past Ms. Singh's work station, placed his hand on her desk and asked her, "How are those sales coming?" He winked at Ms. Singh and then walked away from her desk.
 - Mr. Jones' conduct discriminated against Ms. Singh on the basis of sex.
4. On August 19th, 2021, the Tribunal accepted Ms. Singh's Complaint on the basis of sex.
5. On September 2nd, 2021, the Respondents filed their Complaint Response with the Tribunal. In the Complaint Response, the Respondents argued that the

Complaint should be dismissed because it was not filed within six months of an alleged incident of discrimination. Mr. Jones also denied that he touched Ms. Singh inappropriately, commented on Ms. Singh's appearance, or advised her to flirt with clients.

Application to Dismiss

6. On July 26th, 2021, the Respondents filed an application to dismiss the Complaint (the "Application to Dismiss") pursuant to section 27(1)(g) of the *Human Rights Code*. This was on the basis that the Complaint was filed out of time. The Respondents argued that the last discriminatory allegation described in the Complaint happened nine months before the Complaint was filed, which was past the six month deadline.

Response to the Application to Dismiss

7. On August 8th, 2021, Ms. Singh filed her response to the Application to Dismiss (the "Response").
8. In the Response, Ms. Singh stated that she delayed filing a complaint earlier because she was afraid of retribution from her supervisor Mr. Jones and her employer XYZ Incorporated.
9. Ms. Singh argued that the Tribunal should not dismiss the Complaint for timeliness because it was filed within six months of an allegation of discrimination: Mr. Jones' allusion, on March 13th, 2021, to the earlier incident in his office. This allegation, combined with the September 3rd, 2009 office incident, created a continuing contravention – they were a succession of discriminatory acts of similar character. This continuing contravention rendered the entire Complaint timely.
10. Ms. Singh also argued that, in the alternative, the Tribunal should accept the Complaint because, pursuant to section 22(3) of the *Human Rights Code*, it is in the public interest to do so, and no substantial prejudice would result because of the delay. In support of this, Ms. Singh submitted that Mr. Jones is still in a

position to discriminate against other women at XYZ Incorporated and that it is therefore in the public interest for the Tribunal to adjudicate the Complaint. She then stated that there is no substantial prejudice in this case because no evidence has been destroyed since the dates of the Complaint's allegations and all parties' memories are still fresh.

Tribunal Decision

11. The Tribunal issued its decision on the Respondents' Application to Dismiss on September 20, 2021 (the "Decision").
12. In the Decision, the Tribunal dismissed the Complaint on the basis that it was filed out of time. It found that the Complaint's allegations did not constitute a continuing contravention.
13. The Tribunal also stated that it would not use its discretion to accept the Complaint under section 22(3) of the *Code*. However, it did not specifically mention Ms. Singh's arguments regarding why it is in the public interest to accept the Complaint, and why accepting the Complaint would create no substantial prejudice.

Part 3: LEGAL BASIS

1. The Petitioner will rely on the following:
 - a. The *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241;
 - b. The *Administrative Tribunals Act*, S.B.C. 2004, c. 45;
 - c. The *Human Rights Code* R.S.B.C. 1996, c. 210 (as amended);
 - d. The *Supreme Court Civil Rules*, B.C. Reg. 168/2009; and
 - e. The inherent jurisdiction of this Court.
2. The Tribunal's Decision was patently unreasonable because:
 - a. The Tribunal erred in finding that the Complaint did not contain a continuing contravention of the Code.

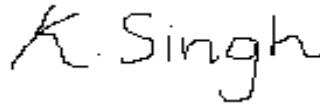
- b. The Tribunal failed to address Ms. Singh's arguments that it was in the public interest to accept her Complaint, and that no substantial prejudice would result.

PART 4: MATERIAL TO BE RELIED ON

- 1. Affidavit #1 of Kyra Singh made November 15, 2021.

The petitioner estimates that the hearing of the petition will take one day.

Date: November 21st, 2021



Signature of
 petitioner lawyer for petitioner(s)

Kyra Singh

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

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Date:[dd/mmm/yyyy]

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Signature of Judge Master