



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Matthew Barton**

**Applicant**

**-and-**

**City of Greater Sudbury, Brian Renwick, Nick Benkovich  
and Patrick Thompson**

**Respondents**

**-and-**

**Canadian Union of Public Employees**

**Intervenor**

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## INTERIM DECISION

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**Adjudicator:** Naomi Overend  
**Date:** January 10, 2011  
**File Number:** 2010-06103-I  
**Citation:** 2011 HRTO 76  
**Indexed as:** **Barton v. Sudbury (City)**

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[1] The applicant filed this Application on June 29, 2010, under s. 34 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended, (the “Code”), alleging discrimination in membership in a vocational association and employment on the basis of marital status, association and reprisal. In the Application, the applicant notes that he is a chief steward and member of CUPE 4705 Outside Unit (“CUPE”) and that he had filed three grievances with respect to the allegations of harassment of discrimination found in his Application.

[2] This Interim Decision addresses the following issues: (1) CUPE’s request to intervene; (2) the applicant’s request to amend his Application to include the ground of disability; (3) the respondents’ request to defer the Application pending the conclusion of the grievances; and (4) the respondents’ request to dismiss the allegation of discrimination related to membership in a vocational association as outside the jurisdiction of the Tribunal.

## **INTERVENTION**

[3] CUPE filed a Request to Intervene (Form 5) as an interested party. It notes that it is the exclusive bargaining agent for the applicant. It also indicates that the remedies sought by the applicant “could affect other employees in the CUPE bargaining unit and would be subject to the terms of the CUPE collective agreement.”

[4] The applicant and the respondent did not take advantage of their opportunity under Rule 11.4 to file a response to the Request to Intervene, and have therefore neither agreed nor objected to the proposed intervention.

[5] A union almost always has an interest in a human rights application involving a member, and unless there are exceptional circumstances, the Tribunal will grant the bargaining agent intervenor status when requested. In this case, I can see no reason, to deny CUPE’s request to intervene. The Request to Intervene is granted. The extent of CUPE’s participation in the Tribunal’s proceedings will be determined by the Vice-chair or Member assigned to determine the issue or issues as they arise.

## **AMENDMENT**

[6] The applicant filed a Request for Order During Proceedings (Form 10) asking to amend his Application to include the ground of disability. The respondents were advised of their right to file a Response to this Request, but did not do so and the time for doing so has now passed. The Request is simply based on the allegations in the original Application, some of which relate to the applicant not being accommodated when he was required to go off on medical leave. It does not expand the allegations to which the respondents must respond.

[7] The request to amend to include the ground of disability is granted.

## **DEFERRAL**

[8] In the Response, the respondents asked the Tribunal to defer the Application until the grievance proceedings initiated by the applicant are completed. They did not provide any further submissions on why they believed deferral was appropriate, but included copies of the grievances, which appear to cover the allegations in the Application and which assert that the applicant had been subject to discrimination and harassment.

[9] The applicant filed two Replies to the Response, one of which specifically addressed the issue of deferral. In the Reply on deferral, dated November 30, 2010, the applicant opposes deferring his Application on the basis that the delay will cause him harm. He indicated that unspecified grievances (presumably the ones filed in 2009) had gone to step 4 in February 2010, and had not proceeded any further since that time because the parties were in contract negotiations and because of “undue process.” He alleges that this delay is a problem for him because his certification to work in the water/wastewater field will expire.

[10] It is not clear from the applicant’s submissions on this issue when his certification will expire. It is also not clear whether he sought a placement in which he will be able to

use his certification as a remedy in his Application to this Tribunal. The applicant is directed to serve on the respondents and intervenor and file with the Tribunal written submissions, which provide clarification with respect to these two issues by January 21, 2011.

[11] The respondents and intervenor will have a further 7 days from receipt of the applicant's submissions to serve on the other parties and file with the Tribunal their submissions on the issue of deferral.

## **JURISDICTION**

[12] As noted above, the applicant alleges discrimination in the areas of employment and membership in a vocational association. It would appear that the applicant has confused the area of vocational association with a ground of discrimination. That is, he appears to be alleging that the respondents discriminated against him on the basis of his leadership role in a vocational association. He does not appear to be making allegations that his bargaining agent discriminated against him, and has not named CUPE (or officers or representatives thereof) as a respondent in these proceedings.

[13] The applicant should serve on the respondents and intervenor, and file with the Tribunal, written submissions with respect to whether he wishes to continue with the allegation of discrimination on the basis of membership in a vocational association and, if so, why it is within the jurisdiction of the Tribunal. The respondents and intervenor will have a further 7 days from receipt of the applicant's submissions to serve and file their written submissions on the issue of jurisdiction, if such submissions are deemed necessary.

[14] I am not seized of this matter.

Dated at Toronto, this 10<sup>th</sup> day of January, 2011.

*“signed by”*

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Naomi Overend  
Vice-chair