



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Donald Upchurch**

**Applicant**

**-and-**

**MTI Mechanical Trade Industries Ltd. and  
Stephen Chartrand**

**Respondents**

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## INTERIM DECISION

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**Adjudicator:** Faisal Bhabha

**Date:** June 10, 2010

**File Number:** 2009-04450-I

**Citation:** 2010 HRTO 1323

**Indexed as:** **Upchurch v. MTI Mechanical Trade Industries**

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## INTRODUCTION

[1] This Application, made under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), was filed on December 29, 2009, and was subsequently replaced by an amended Application filed on March 23, 2010. The applicant alleges discrimination on the basis of disability as well as reprisal in employment. The respondents deny the allegations.

### Request to Intervene

[2] There is an affected party, the applicant’s former bargaining agent, the United Association of Journeymen and Apprentices, Local 46 (the “Union”), which has made a Request to Intervene in this matter. The Union seeks to participate fully in the proceedings, including questioning witnesses and making submissions to the Tribunal about the facts and law applicable to the case. It argues that its interest in the proceeding stems not only from its role as bargaining agent, but also because it represented the applicant in a grievance filed in respect of the applicant’s termination of employment, and is a respondent to a Duty of Fair Representation (“DFR”) complaint filed by the applicant arising out of the same facts raised in the Application. Finally, the Union argues that it has knowledge of the history of the applicant’s relationship with the employer and has expertise regarding the conditions of employment.

[3] The applicant opposes the Request to Intervene, advancing a theory that the Union’s primary motivation is to use these proceedings as a tactic in defending against the applicant’s DFR complaint. The applicant argues that this is a misuse of the Tribunal process, and that beyond mounting a “back door” attack on the applicant’s DFR complaint, any other Union interest in these proceedings is marginal at best. The applicant argues that any information or perspective the Union has to offer could easily be obtained by calling Union members as witnesses.

[4] The respondent consents to the Union’s intervention request.

[5] Pursuant to Rule 11.1, The Tribunal may allow any person or organization to intervene in any case at any time on such terms as the Tribunal may determine. The Tribunal has the discretion to determine the extent to which an intervenor will be permitted to participate in a proceeding. In *Boyce v. Toronto Community Housing Corporation*, 2009 HRTO 131 (CanLII), the Tribunal stated at para. 13:

A union or association nearly always has an interest in a human rights application brought by an employee in a bargaining unit it represents when the application alleges discrimination in employment. Absent exceptional circumstances, the applicant's bargaining agent will be granted intervention status in Tribunal proceedings where it requests it.

[6] While it is true that a union will nearly always have *some* interest in a human rights application brought by a current or former member, the nature of that interest will depend on the specific circumstances at play, and may not be an interest which warrants granting intervenor status. I would not go so far as to require "exceptional circumstances" to deny intervenor status to a union in circumstances such as these. Where the parties do not oppose an intervention request by a union, as in *Boyce*, it is likely that the request will be granted in all but exceptional circumstances. However, where one or more of the parties opposes the request, as here, the Tribunal must give full consideration to the nature of the union's interest in the particular circumstances of the case as well as the reason for the opposing party's objection. On that basis, the Tribunal must determine whether the union's involvement would be helpful to the Tribunal's understanding of the issues and in facilitating the fair, just and expeditious handling of the Application.

[7] The Union has provided detailed submissions on the merits of the Application, which reads much like a Response. I am not persuaded that such submissions are helpful. The relationship and history between the applicant and his former bargaining agent are not at all at issue in the Application. The respondent is the only party required to answer the allegations of discrimination. The Union faces no risk of liability in these proceedings, has not been named as a party and is not implicated in any allegations in the Application that could be reasonably interpreted to constitute claims of

discrimination as against the Union. Likewise, no Union member is named as a party, no provision of the collective agreement or workplace policy is impugned and the applicant is not seeking accommodation or reinstatement as a remedy.

[8] While I accept that generally remedies awarded in a human rights proceeding might affect other members of the Union, it is necessary to be specific as to the potential impact. The Union has not particularized any specific risks associated with potential remedies in this case. I am satisfied that the possibility of adverse impact is negligible. Allowing the Union's Request could expand the scope and complexity of the hearing and could appear to overlap with ongoing litigation at the Ontario Labour Relations Board.

[9] For these reasons, the Union's Request to Intervene is denied.

### **Request for Early Dismissal**

[10] The respondents have made a Request for Early Dismissal of the Applications pursuant to section 45.1 of the *Code* on the basis that another proceeding has in whole or in part appropriately dealt with the substance of the Application. Specifically, the respondents allege that proceedings before the Workplace Safety and Insurance Board ("WSIB") dealt with the substance of the Application.

[11] Section 45.1 of the *Code* reads as follows:

The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application.

[12] The Tribunal has stated that section 45.1 should be considered in two parts: (a) where there was another "proceeding", and (b) if so, whether it "appropriately dealt with" the substance of the Application. See *Campbell v. Toronto District School Board*, 2008 HRTO 62 (CanLII).

[13] The Tribunal will dismiss an Application without an oral hearing when it is plain and obvious that it does not have jurisdiction. See *Masood v. Bruce Power*, 2008 HRTO 381 (CanLII); *Bisbee v. Hudson's Bay Trading Company*, 2009 HRTO 1284 (CanLII); *Morin c. Alliance de la fonction publique du Canada*, 2008 HRTO 58 (CanLII). However, the Tribunal may not finally dispose of an application that is within its jurisdiction without affording the parties an opportunity to make oral submissions.

[14] It is appropriate in the circumstances to schedule an oral hearing to deal with the preliminary questions. The parties should come prepared to adduce evidence, if necessary, and to make oral submissions with respect to whether another proceeding has appropriately dealt with the subject of the Applications and if the Tribunal should therefore dismiss the Application pursuant to section 45.1 of the *Code*.

Dated at Toronto, this 10<sup>th</sup> day of June, 2010.

*“Signed By”*

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Faisal Bhabha  
Vice-chair