



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Michael Przysuski

Applicant

-and-

**YRCC 818 - York Region Condominium Corporation #818, Philip Usprech,
Harland Staviss, Arnold Machtinger, Paul Kochberg, and Rhoda Etcovitch**

Respondents

INTERIM DECISION

Adjudicator: Romona Gananathan

Date: August 14, 2020

File Number: 2019-37850-I

Citation: 2020 HRTO 702

Indexed as: **Przysuski v. YRCC 818 - York Region Condominium
Corporation #818**

WRITTEN SUBMISSIONS

Michael Przysuski, Applicant)	Self-represented
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)	
YRCC 818 - York Region Condominium Corporation #818, Philip Usprech, Harland Staviss, Arnold Machtinger, Paul Kochberg, and Rhoda Etcovitch, Respondents)	Timothy Duggan, Counsel
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[1] This Interim Decision addresses whether the Application should be deferred pending the outcome of a parallel civil proceeding.

[2] The applicant filed an Application alleging discrimination because of disability contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”). Specifically, the applicant alleged that the respondents mocked and harassed him during a board meeting, that the respondents scheduled meetings at times that the applicant could not attend despite his request for accommodation, and that he was excluded from an important board meeting deliberately.

[3] The Tribunal sought submissions from the parties because it appeared that a parallel civil claim involving these parties and some or all of the issues in dispute in this Application is ongoing.

[4] The applicant opposes the deferral and submits that a group of owners who voted for the applicant to be their representative on the YRCC 818’s board of directors, brought an unrelated civil suit against the same respondents seeking different remedies. He submits that “Counsel for the applicants to the civil suit has undertaken to revise the Notice of Application, which has not yet been issued, to remove any relief sought pertaining to accommodation for the applicant” in this case. The applicant submits that the legal issues are different, and that the delay will impact him during the few months before his term on the board concludes in June 2020.

[5] The respondents submit that these proceedings should be deferred pending the outcome of the civil proceeding, because the applicant’s human rights Application is referenced in the parallel proceeding involving the same respondents to this Application, where the underlying factual disputes are the same. In essence, the applicants in the civil matter are seeking an order prohibiting the respondents from using YRCC 818’s funds to defend this human rights Application or for any other purpose until the disposition of this human rights Application. They are also seeking a declaration for the removal of the respondents’ directors from the YRCC 818’s board of directors because

they allege, amongst other things, that the respondents' failure to accommodate the applicant is contrary to the directors' duty of care.

[6] The respondents intend to bring a motion to consolidate the proceedings in the Superior Court of Justice, that they submit has the jurisdiction to interpret and apply the *Code*. They argue that if this Application is not deferred, there will be a multiplicity of proceedings in which the same witnesses are required to give the same evidence in two different legal proceedings, that could result in contradictory findings of fact with respect to the same issues.

FINDINGS

[7] The Tribunal may defer consideration of an application on such terms as it may determine, on its own initiative or at the request of any party (Rule 14.1 of the Tribunal's Rules of Procedure). Deferral of an application seeks to ensure that proceedings dealing with the same facts or issues do not run concurrently, thereby raising the possibility of inconsistent decisions on facts or law.

[8] The Tribunal generally considers the following factors in determining whether to defer consideration of an application: the subject matter of the other proceeding, the nature of the other proceeding; the type of remedies available in the other proceeding; and whether it would be fair overall to the parties to defer the application having regard to the status of each proceeding and the steps that have been taken to pursue them. See *Baghdasseri v. 674469 Ontario*, 2008 HRTO 404.

[9] In this case, there is significant overlap between the facts and human rights issues raised in the Application and those raised in civil proceeding. Although the applicant may have taken steps to remove himself and/or any related relief sought pertaining to the accommodation of the applicant in the civil proceeding and the available remedies may be different, this is precisely the type of "forum shopping" and case-splitting that s. 45 is designed to prevent.

[10] Some important underlying issues appear likely to be common to both sets of proceedings, such that there could be a possibility of inconsistent decisions on facts or law if the proceedings were to run concurrently. For example, I am not persuaded that the determination of the civil matter, including whether to remove the board members will not require the hearing of evidence and findings of fact about whether the respondents failed to accommodate the applicant's disability in the course of their duties. As noted by the respondents, the Superior Court of Justice has the jurisdiction to interpret and apply the *Code*, and it may be appropriate to have the issues heard in that venue to avoid a duplication of proceedings and any inconsistent findings of fact. It would be unfair to the parties to proceed with concurrent proceedings involving the same issues and witnesses.

[11] For these reasons, I find it appropriate to defer consideration of the Application pending the conclusion of the civil proceeding.

[12] If the applicant believes that the civil proceeding did not appropriately deal with the substance of this Application, he may seek to re-activate his deferred Application. However, the applicant should take note that, under s. 45.1 of the *Code*, the Tribunal has the power to dismiss Applications if the substance of an Application has been appropriately dealt with in another proceeding.

[13] Rules 14.3 and 14.4 of the Tribunal's Rules of Procedure address how the Application may be brought back before the Tribunal following conclusion of another proceeding. It should be noted that, a party wishing to proceed with an application must file a Request for Order During Proceedings (Form 10) no later than **60 days** after the conclusion of the other proceeding. The Tribunal's Rules of Procedure and Forms can be found on its website at www.sjto.gov.on.ca/hrto/.

ORDER

[14] For the reasons set out above, the Tribunal will defer consideration of the Application pending the outcome of the civil proceeding in this case.

Dated at Toronto, this 14th day of August 2020.

“Signed by”

Romona Gananathan
Vice-chair