



HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Britney Lozza

Applicant

-and-

**Her Majesty the Queen in Right of Ontario as represented by
the Ministry of the Solicitor General (Ontario Provincial Police)**

Respondent

DECISION

Adjudicator: Romona Gananathan

Date: December 21, 2020

File Number: 2017-29111-I

Citation: 2020 HRTO 1022

Indexed as: **Lozza v. Ontario (Solicitor General)**

WRITTEN SUBMISSIONS

Britney Lozza, Applicant	)	Self-represented
	)	
	)	
	)	
Her Majesty the Queen in Right of Ontario	)	Claudia Brabazon, Counsel
as represented by the Ministry of the	)	
Solicitor General, Respondent	)	
	)	
	)	

[1] The applicant filed an Application alleging discrimination and reprisal or threat of reprisal, in the area of services on the grounds of sex, gender identity, gender expression contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”).

[2] On September 8, 2020, the applicant filed a Form 9 Request to Withdraw the Application. On September 8, 2020 the respondent consented to the withdrawal of the Application.

[3] On October 16, 2020 the applicant communicated with the Tribunal via email seeking to cancel the Withdrawal of the Application.

[4] The purpose of this Decision is to address the applicant’s request to cancel the Request to Withdraw this Application.

THE REQUEST TO WITHDRAW

[5] Rule 10.5 of the Tribunal’s Rules of Procedure states:

Where a Response to the Application has already been filed, an Application may be withdrawn only with the permission of the Tribunal and upon such terms as the Tribunal may determine.

[6] This Tribunal has considered such requests for the cancellation of a Form 9 Withdrawal as a Request for Reconsideration. See, *Ihasz v. Ontario (Revenue)*, 2013 HRTO 333 (“*Ihasz*”), at para 27, which states:

Withdrawal of an application under Rule 10 of the Rules is not automatic and requires an order of the Tribunal. Pursuant to Rule 10.5, the Tribunal’s permission is required to withdraw an application where a response has been filed, as in this case. Where, as here, the Request to Withdraw is unopposed, the Tribunal will generally allow withdrawal through an administrative closing letter, but in other cases an adjudicated decision is required. See for example, *Dixon v. Ontario (Attorney General)*, 2011 HRTO 2011.

[7] As noted in *Ihasz*, the Tribunal's usual practice is to issue an administrative closing letter where the parties consented to the withdrawal.

[8] Unfortunately in this case, the Tribunal had not processed an administrative closing letter with this file number. This may be due to an administrative error because on the same date of filing a Form 9 Request to Withdraw on this file, the applicant had also filed a Form 9 for another application bearing Tribunal file # 2020-42263-I also as against the same respondent, Her Majesty the Queen in Right of Ontario as represented by the Ministry of the Solicitor General. The Tribunal issued a closing letter confirming the withdrawal of that application #2020-42263-I on September 21, 2020, but failed to issue a separate administrative closing letter bearing file number 2017-29111-I. This was an administrative oversight.

[9] Despite the fact that the Tribunal is required to close the matter upon the filing of a Response, and it did not affirmatively permit this matter to be withdrawn pursuant to Rule 10.5, in my view, in the circumstances and in fairness, the Application was withdrawn on consent of the respondent.

[10] The applicant's communication seeking to resile from an earlier decision at this point, raises a number of considerations.

[11] The respondent in this case provided its consent to the withdrawal of this Application and there was reliance on this withdrawal. The Tribunal's administrative oversight or failure to confirm the administrative closing of this file on consent, should not be the basis for this Application to continue. I find that to do so, would be unfair to the respondent. There is significant prejudice to the respondent in this case, since this file has been ongoing since 2017.

[12] In my view, there is also no evidence to indicate that the applicant was in a "drug induced psychosis" to now permit the applicant to resile from that decision.

[13] In the reasons provided by the applicant as to why the Tribunal should permit the cancellation of the Request to Withdraw. The applicant submits:

I no longer wish to withdraw 2017-29111-1. I was suffering from cannabis psychosis and this caused an extreme amount of paranoia. I thought that the OPP were stalking me because of what Jason Tereszko had said during out OLRB hearing. That is why I requested to withdraw.

[14] Attached to the request was a copy of the Ontario Labour Relations Board (“OLRB”) decision dated August 21, 2020, *Britney Lozza v Jason A. Tereszko operating as Northern Nerds*, 2020 CanLII 62081 (ON LRB), as well as a brief doctor’s note dated July 27, 2020 that states, “Due to medical reasons requires accommodation in the form of a video hearing”.

[15] The only submission in support of the reconsideration of the withdrawn Application is that the applicant was “suffering from cannabis psychosis and this caused an extreme amount of paranoia”. The applicant provided no medical evidence to support this assertion that they lacked capacity to withdraw the Application at the time.

[16] When relying on medical evidence to support such a request, the Tribunal requires parties to provide evidence establishing that condition. See *Taranco v. Michedes (a.k.a. Michaelides)*, 2011 HRTO 1188, *Karamesinis v. National Steel Cars*, 2009 HRTO 1812, *Rivard v. George Brown College*, 2009 HRTO 2212, *Pelletier v. Nortrax Canada*, 2011 HRTO 1968, and *Boodhoo v. McMaster University*, 2010 HRTO 1757.

[17] The medical note provided by the applicant predates the request and in any event does not address the request to withdraw or the applicant’s capacity at the time. On the contrary it suggests that the applicant would be able to participate in litigation in a videoconference hearing. There is no mention of the applicant’s paranoia or substance abuse requiring any further accommodations, nor any suggestion that the applicant’s mental capacity would preclude them from participating in the Tribunal’s processes.

[18] The applicant’s unsubstantiated assessment of their own medical condition or capacity at the time is not a sufficient basis on which to conclude that the Tribunal should allow the applicant to resile from an earlier decision to Withdraw the Application on consent. This is particularly so when considered in the context of the applicant’s ability to

make decisions and represent themselves, not just in this proceeding, but in several other cases before this Tribunal and evidently at the OLRB.

[19] In the circumstances, the applicant's request is denied. The Application will remain closed as withdrawn on consent of the respondent.

Dated at Toronto, this 21st day of December, 2020.

"Signed by"

Romona Gananathan
Vice-chair