



Manitoba Labour Board

Suite 500, 5th Floor - 175 Hargrave Street Winnipeg, Manitoba, Canada R3C 3R8

T 204 945-2089 F 204 945-1296

www.manitoba.ca/labour/labbrd

MLBRegistrar@gov.mb.ca

DISMISSAL NO. 2295

Case No. 213/18/PIDA

**IN THE MATTER OF: *THE PUBLIC INTEREST DISCLOSURE
(WHISTLEBLOWER PROTECTION) ACT***

- and -

IN THE MATTER OF: An Application by

S.T.,

Complainant,

- and -

**CIVIL SERVICE COMMISSION AND
MANITOBA FAMILIES – RURAL AND NORTHERN
SERVICES, EASTMAN CHILD AND FAMILY SERVICES,**

Respondent.

BEFORE: K. Pelletier, Vice-Chairperson

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

SUBSTANTIVE ORDER

1. On October 19, 2018, the Complainant filed an Application pursuant to *The Public Interest and Disclosure Act*, C.C.S.M. c. P217 (the “Act”), relating to matters that occurred in the Complainant’s employment. Specifically, the Complainant claims that she made a disclosure in accordance with the *Act* on or about September 11, 2012.
2. On November 14, 2018, the Respondent, through counsel, filed its Reply. The Respondent denies that the Complainant made a disclosure. The Respondent requests that the Application be dismissed summarily as a result of the undue delay involved in the filing by the Complainant. The Respondent further claims that the

Complainant has provided no explanation for the lengthy delay beyond the general statement that the “lapse of time is due to the bad faith of the employer.”

3. The Respondent also submits that the Application is duplicative, without merit, and an abuse of process, and that the issues are *res judicata*, as the Complainant is only seeking to relitigate, in a different forum, the same issues that were considered through the Grievance and Human Rights Complaint processes.
4. In any event, the Respondent argues that it has not engaged in any conduct that would constitute a violation of s. 27, or any other section, of the *Act*.
5. On November 19, 2018, the Complainant filed a response to the Reply, further outlining that she made a disclosure under the *Act*, and that the delay in filing is as a result of an “ongoing violation of public interest”.
6. The Board has determined that it should address, in the first instance, the position of the Respondent that the Application ought to be dismissed on the grounds of undue delay as, if this position is upheld, such a finding would be dispositive of the case and the Application would be dismissed.
7. On the issue of undue delay, the Board is satisfied that an oral hearing is not necessary as the matter can be determined by a review of the written material filed by the parties.
8. Based on the material filed by the parties, the Board is satisfied that the material facts relevant to the issue of undue delay may be summarized as follows:
 - a. The Complainant was employed with the Respondent between April 2, 2012, and September 11, 2012, at which time she was terminated during her probationary employment period.
 - b. During her employment, the Complainant was represented by the Manitoba Government and General Employees’ Union (“MGEU”) and governed by a Collective Agreement between the Respondent and the MGEU, which expired on March 21, 2014. The Collective Agreement contains provisions relating to probationary employees.
 - c. Following the termination of her employment, a grievance was filed, which was denied by the Respondent and not pursued further.
 - d. In her initial Application, the Complainant says that she made a disclosure pursuant to the *Act* in or about June 2012. In her response, she notes that the violation of the *Act* “began in 2010”.

- e. The Complainant notes that she has delayed in filing the within Application for the following reasons:
 - i. This is an ongoing violation, with the most recent incident occurring “just two or three months ago”;
 - ii. She disclosed wrongdoings to the Ombudsman, and was directed to the Board;
 - iii. Undue delay should not be applicable to “this public interest case”; and
 - iv. Because she was unjustly terminated, she is “the one affected by this delay”.

9. When deciding whether there has been undue delay in the filing of any application, the Board is guided by the following provisions of the *Act* and principles:

- a. The *Act* provides at s. 28(2):

Section 30 and subsections 31(1) and (2) of *The Labour Relations Act* (procedures for dealing with unfair labour practice) apply to a complaint filed under subsection (1), with necessary changes.

- b. *The Labour Relations Act* provides that the Board has the discretion to:
 - a) refuse to accept an application if an individual has unduly delayed the filing the complaint;
 - b) decline to take further action on a complaint;
 - or c) dismiss a request, application or complaint at any time. Subsections 30(2) and 30(3)(c) provide as follows:

Undue delay

30(2) The board may refuse to accept a complaint filed under subsection (1) where, in the opinion of the board, the complainant unduly delayed in filing the complaint after the occurrence, or the last occurrence, of the alleged unfair labour practice.

Disposition of complaint

30(3) Where the board accepts a complaint filed under subsection (1), the board may

- (a) refer the complaint to a representative of the board for the purposes of subsection (4); or
- (b) proceed directly to hold a hearing into the alleged unfair labour practice; or

(c) at any time decline to take further action on the complaint.

- c. Undue delay has been interpreted by the Board to mean periods of as little as six months in duration.
10. The Complainant was terminated from employment on September 11, 2012. The alleged disclosure occurred in or about June 2012. Since that time, she has not been in the employ of the Respondent. There has been a period of upwards of six years of inactivity.
11. The Board has considered the Complainant's explanation for the delay in the filing of the within application. The Board does not accept that any of the explanations provided by the Complainant sufficiently address the excessive delay involved. In a labour relations context, it is understood that time is of the essence. This principle has been recognized in the field of labour relations, not only to ensure the timely commencement and resolution of outstanding complaints, but also to bring finality to parties, who can expect that claims which reasonably appear to have been resolved, or claims that have not been advanced within a reasonable period, will not later re-emerge.
12. The Board has determined that the Complainant has excessively delayed in advancing her complaint, and accordingly dismisses the Application pursuant to subsection 30(2) of *The Labour Relations Act*.
13. In light of this determination, it is not necessary to address the Respondent's alternate positions.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the Application filed by S.T. on October 19, 2018.

DATED at WINNIPEG, Manitoba this 10th day of January, 2019, and signed on behalf of the Manitoba Labour Board by

"Original signed by"

K. Pelletier, Vice-Chairperson