



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Mirko Dabic

Applicants

-and-

Windsor Police Service

Respondent

DECISION

Adjudicator: David A. Wright
Date: September 29, 2010
File Number: 2009-03983-I
Citation: 2010 HRTO 1994
Indexed as: **Dabic v. Windsor Police Service**

INTRODUCTION

[1] Officers of the respondent Windsor Police Services arrested the applicant on January 8, 2009 and charged him with two counts of domestic assault, which were later withdrawn. The arrest followed calls to the police by the applicant's son in which he advised that his father had a mental illness, and alleged that the applicant had been drinking and had assaulted his wife. The applicant alleges that his arrest and "torture" by the police were discriminatory on the basis of ethnic origin and disability. He states that this was discrimination on the basis of ethnic origin because he is a Serbian person and on the basis of disability because the police drove him to the hospital and later put a disabled person in jail.

[2] Following an Interim Decision finding that the allegations appeared to be within the Tribunal's jurisdiction, 2010 HRTO 745 (CanLII), the Application was delivered to the respondent, which filed a complete Response attaching the "Windsor Police Service Narrative Text Hardcopy" about the incident, which included the officers' narrative and the statement of the applicant's son. The respondent made various preliminary objections, including asking for the Application to be dismissed pursuant to s. 45.1 of the *Code*.

[3] By Case Assessment Direction dated July 9, 2010, the Tribunal, on its own initiative, directed that the matter be scheduled for a Summary Hearing pursuant to Rule 19A of the Tribunal's *Rules of Procedure*. It stated as follows at para. 3:

In my opinion, the most appropriate procedure, given the issues raised in the Application, is to hold a summary hearing on whether the Application has a reasonable prospect of success. In particular, the parties shall address the issue of whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities that he was discriminated against on the basis of ethnic origin or disability by the actions of the police that he challenges. The parties shall also be prepared to address the issue of whether the Application should be dismissed pursuant to s. 45.1 of the *Code* as requested by the respondent. The applicant shall make his submissions first during the teleconference.

The Case Assessment Direction also directed the respondent to disclose to the applicant any records relating to the incidents in question that had not already been provided to the applicant. The Summary Hearing was held on September 8, 2010.

DECISION

[4] The Application does not have a reasonable prospect of success and it is dismissed.

ANALYSIS

Summary Hearings

[5] Rule 19A deals with Summary Hearings. It came into effect on July 1, 2010, and reads as follows:

19A.1 The Tribunal may hold a summary hearing, on its own initiative or at the request of a party, on the question of whether an Application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application or part of the Application will succeed.

19A.2 Rules 16 and 17 do not apply to summary hearings. The Tribunal may give directions about steps the parties must take prior to the summary hearing, including disclosure or witness statements.

19A.3 When a party requests that an Application be dismissed pursuant to this Rule, it shall deliver to the other parties and file with the Tribunal a Request for Summary Hearing (Form 26), which includes full argument in support of the Request that the Application be dismissed. The party making the Request shall also deliver to the other parties a copy of the Practice Direction: Summary Hearing Requests.

19A.4 A party may respond to the Request for Summary Hearing by completing Form 11, delivering a copy to all parties and filing it with the Tribunal not later than 14 days after the Request for Summary Hearing was delivered.

19A.5 Upon review of the Request and any Response to the Request, the Tribunal will determine whether to hold a summary hearing on the question of whether the Application should be dismissed, in whole or in

part, on the basis that there is no reasonable prospect that the Application will succeed. The Tribunal need not give reasons for a decision to hold or not to hold a summary hearing following a party's request.

19A.6 Where the Tribunal decides not to dismiss an Application following a summary hearing, it need not give reasons.

[6] The issue before me in determining this Summary Hearing is whether the Application has "a reasonable prospect of success" within the meaning of Rule 19A.1. The Tribunal's jurisprudence on this question will develop as the standard is applied to different factual situations, and I believe it is not appropriate, at least at this early stage in the application of Rule 19A, to set out a definitive test or standard about the meaning of this phrase. I do make some initial observations about the type of inquiry that may be involved in a summary hearing.

[7] A summary hearing is generally ordered at an early stage in the process. In some cases, the respondent may not have been required to provide a response. In others, the respondent may have responded but disclosure of all arguably relevant documents and the preparation of witness statements, which generally occur following the Notice of Hearing, will not yet have happened.

[8] In some cases, the issue at the summary hearing may be whether, assuming all the allegations in the application to be true, it has a reasonable prospect of success. In these cases, the focus will generally be on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a *Code* violation.

[9] In other cases, the focus of the summary hearing may be on whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her *Code* rights were violated. Often, such cases will deal with whether the applicant can show a link between an event and the grounds upon which he or she makes the claim. The issue will be whether there is a reasonable prospect that evidence the applicant has or that is reasonably available to him or her can show a link between the event and the alleged prohibited ground.

[10] In considering what evidence is reasonably available to the applicant, the Tribunal must be attentive to the fact that in some cases of alleged discrimination, information about the reasons for the actions taken by a respondent are within the sole knowledge of the respondent. Evidence about the reasons for actions taken by a respondent may sometimes come through the disclosure process and through cross-examination of the people involved. The Tribunal must consider whether there is a reasonable prospect that such evidence may lead to a finding of discrimination. However, when there is no reasonable prospect that any such evidence could allow the applicant to prove his or her case on a balance of probabilities, the application must be dismissed following the summary hearing.

Application to the Facts

[11] During the summary hearing, the applicant made limited submissions. They included his allegation that his family was trying to remove him from his apartment by trying to increase his anxiety. He stated that his family and the police officer have something unknown against him. He submitted that he was certain that his wife has a friend in the police station who was using police officers to remove him from his residence, and that he was discriminated against and harassed by his wife and son.

[12] In my view, there is no reasonable prospect that the applicant can prove discrimination or harassment on the basis of ethnic origin or disability by the respondent Windsor Police Service. It is evident that the police received a call from his family and arrested him based on the allegations of assault and the officers' observations. There is no information in the police file or that is reasonably likely to be available that would suggest a link between his arrest and his ethnic origin or disability. Although there has been disclosure of the police file, the Tribunal has before it only a bald allegation of discrimination with nothing to suggest that the actions of the police were connected with grounds under the *Human Rights Code*. In addition, there is no general principle, as suggested by the applicant, that it is a violation of the *Code* for a person with a mental disability to be brought to jail upon arrest rather than to a psychiatric facility.

[13] Accordingly, there is no reasonable prospect that the Application will succeed and it is dismissed.

Dated at Toronto, this 29th day of September, 2010.

"Signed by"

David A. Wright
Interim Chair