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IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Yanhu Yao

COMPLAINANT

A N D:

Her Majesty the Queen in right of the Province of British Columbia as
represented by the Ministry of Advanced Education, British Columbia Student
Assistance Program and Carl Ensom

RESPONDENTS

**REASONS FOR PRELIMINARY DECISION
APPLICATION TO DISMISS**

Tribunal Member:

Lindsay M. Lyster

On his own behalf:

Yanhu Yao

Counsel for the Respondents:

Audrey Lieberman

Introduction

[1] Yanhu Yao filed a complaint in which he alleged that Her Majesty the Queen in right of the Province of British Columbia as represented by the Ministry of Advanced Education, British Columbia Student Assistance Program (the “BCSAP”), and Carl Ensom discriminated against him on the basis of race and place of origin in respect of a service customarily available to the public, contrary to s. 8 of the *Human Rights Code*. The service in issue has to do with the provision of financial assistance for post-secondary education through the BCSAP.

[2] The respondents deny any discrimination. They filed an application to dismiss, in which they submit that the complaint should be dismissed on the basis that it fails to allege acts or omissions which contravene the *Code* (s. 27(1)(b)), and that it has no reasonable prospect of success (s. 27(1)(c)). Mr. Ensom swore an affidavit in support of the application.

[3] Following the close of submissions on the application to dismiss, Mr. Yao filed an amendment to his complaint. I have considered inviting further submissions on the application in light of the amendment, but for the reasons indicated below, I have determined that this is not necessary.

Background Facts

[4] Mr. Yao is originally from the People’s Republic of China. In 2004, he was a student at City Tech College (“City Tech”). Mr. Yao applied for and was approved to receive student assistance in the form of a loan and grant from BCSAP. The total amount was \$14,300, of which \$5,610 was a grant. Subsequently, BCSAP decided to perform an audit of applications received from students at City Tech. As a result of the audit, BCSAP decided that Mr. Yao was not entitled to the grant he had originally been given. That portion of his funding was transformed into a loan.

[5] The basis of BCSAP’s decision was that Mr. Yao’s post-secondary education in the People’s Republic of China had been incorrectly assessed. Under the program then in place, students with previous post-secondary study were eligible to receive part of their

BCSAP funding as a non-repayable grant. In order to be eligible for this funding, the applicant's previous post-secondary studies had to have been undertaken at an institution offering full-time programs of study. Only full-time programs were recognized for this purpose, although funding was provided to students who were enrolled in such programs on a part-time basis. In other words, students enrolled part-time in programs offered only on a part-time basis were not eligible. According to BCSAP, Mr. Yao's previous post-secondary studies were wrongly recognized as full-time. As he was enrolled part-time in a program which BCSAP considered to be part-time only, he was not entitled to the non-repayable grant.

[6] The audit was performed in the early months of January 2005. On March 18, 2005, BCSAP informed Mr. Yao of its decision to re-assess the grant portion of his funding as a loan. Mr. Yao was unhappy with BCSAP's decision. A lengthy series of communications ensued between Mr. Yao and BCSAP, including Mr. Ensom, who is employed as an Investigator in the Verification Unit of the Student Services Branch in the Ministry of Advanced Education. As I understand Mr. Yao's complaint, it focuses on the procedures BCSAP used in auditing his application and the communications which followed between him and BCSAP. As stated in his response to the application to dismiss:

I filed the discrimination complaint based upon the discrimination BCSAP used in administering my application and its re-assessment, and not based upon the final result of the assessment. The procedures used to assess my grant application were based upon made up regulations, withholding regulations, and delaying tactics based upon race.

Analysis

[7] In my view, this application is best considered under s. 27(1)(c), and I therefore consider whether the complaint has no reasonable prospect of success. As stated in *Wickham and Wickham v. Mesa Contemporary Folk Art and others*, 2004 BCHRT 134:

The role of the Tribunal, on an application, is not to determine whether the complainant has established a *prima facie* case of discrimination, nor to determine the *bona fides* of the response. Rather, it is an assessment, based on all of the material before the Tribunal, of whether there is a reasonable

prospect the complaint will succeed: *Bell v. Dr. Sherk and others*, 2003 BCHRT 63.

The assessment is not whether there is a mere chance that the complaint will succeed, which would be the lowest threshold a complainant would have to meet. Nor is it that there is a certainty that the complaint will succeed, which would be at the highest threshold a complainant would have to meet. Rather, the Tribunal is assessing whether there is a reasonable prospect the complaint will succeed based on all the information available to it. (at paras. 11 – 12)

[8] As explained in Mr. Ensom’s affidavit, the Ministry of Advanced Education provides assistance to students pursuant to the *Canada Student Financial Assistance Act*, SC 1994, c. 28, and regulations thereto, BC Order-in-Council No. 1363/1987 and BC Order-in-Council No. 1252/2000. It administers both the Canada Student Loan Program (the “CSLP”) and the BCSAP through its Student Services Branch. The CSLP provides the basic criteria for determining the eligibility of students for assistance. In 2003/04 CSLP and BCSAP had in place the BC Grant Program, under which applicants who had at least eight months but less than 32 months of previous post-secondary study were eligible to receive a portion of their BCSAP funding as a non-refundable grant. The purpose of the BC Grant Program was to limit the debt incurred by students. In order to be eligible, the student’s previous studies had to have been undertaken at an institution offering full-time programs. Students attending full-time programs on a part-time basis were eligible, while those attending programs offered solely on a part-time basis were not.

[9] Mr. Yao’s application was originally assessed on the basis that his education in China met these eligibility requirements. It was for this reason that his funding originally included a grant portion.

[10] BCSAP audited his application, along with approximately 200 others from students at City Tech. The reasons BCSAP decided to undertake this audit are not important to the application before me.

[11] The fact that applications may be subject to audit was fully explained in the information booklet provided to applicants for BCSAP funding. The application, which Mr. Yao signed, also indicates that all information is subject to audit and verification.

[12] On conducting the audit, BCSAP determined that Mr. Yao's previous education did not, in fact, meet the eligibility requirements that would entitle him to a non-refundable grant.

[13] On receiving BCSAP's decision, Mr. Yao engaged BCSAP in a lengthy series of e-mail and telephone discussions. He wished to persuade BCSAP that it had wrongly assessed his post-secondary studies in China. He was unsuccessful in doing so, and BCSAP maintained its decision.

[14] Mr. Yao alleges that the respondents discriminated against him on the basis of his race and place of origin in the manner in which they audited his application. His complaint is lengthy, and includes allegations that the respondents: requested more documents from him as a method of delay based on discrimination; negligently failed to carefully examine the documents he submitted; negligently misrepresented the eligibility requirements; wrongly assessed his education in China; invented different reasons to refuse his grant; refused his requests for specific guideline information; wilfully or negligently sent documents to an incorrect address; and failed to use a translator to get correct information.

[15] In his amendment, Mr. Yao made the following additional allegations. First, he alleged that the BCSAP eligibility requirement that students be either a Canadian citizen or be a permanent resident with a valid IMM 1000 is discriminatory in that Canada Immigration no longer issued IMM 1000s at the time he landed in Vancouver, and he was instead issued an IMM 5292, and thus he could not fulfill the requirement. Second, he alleged that BCSAP requires students with foreign names who are Canadian citizens to submit their IMM 1000 or IMM 5292. He gives as an example a Chinese student who is a Canadian citizen but was still required to submit an IMM 1000. Third, he alleged that a statement made by the Minister of Advanced Education on February 4, 2005, in which she stated that BCSAP would audit and trace students post-secondary records according to their transcripts and records of landing, was discriminatory, in that only immigrants would possess a record of landing, and thus a different process would be imposed upon them.

[16] Dealing first with the allegations contained in Mr. Yao's original complaint, I find that they have no reasonable prospect of success. His complaint is based upon assumptions and speculation, unsupported by facts which would tend to support any allegation of discrimination. By way of example, he alleges that "BCSAP misinterprets regulations based on my race and place of origin." But there are no facts alleged which would tend to support the allegation that anything the respondents did was based on Mr. Yao's race or place of origin. To similar effect are allegations such as "racial discrimination expressed as a careless disregard still surfaces repeatedly in correspondence from BCSAP." Many more similar allegations could be repeated.

[17] In essence, Mr. Yao alleges that the respondents, either negligently or wilfully, mishandled the re-assessment of his student assistance. He speculates that the reason for the alleged mishandling was discrimination. But there are no facts alleged in his complaint which would tend to support that speculation.

[18] The only allegation of fact made which could tend to provide any support for the allegation that the respondents discriminated against Mr. Yao on the basis of his race or place of origin is contained in his response to the application, where he alleges for the first time that on June 3, 2005 Mr. Ensom said to him on the telephone "If you don't like to stay in BC, why you don't go back to China?" In their reply, the respondents deny that Mr. Ensom made such a statement. Given the nature of the discrimination alleged in the complaint, this is an allegation which I would have expected to have seen in the complaint itself, rather than in the response to the application to dismiss. As in *Horner v. Concord Security Corporation*, 2003 BCHRT 86 at para. 22 – 23, the timing of this allegation being made draws into question Mr. Yao's credibility in making it.

[19] I turn now to the allegations contained in the amendment. I deal with them in order. The first allegation is incapable of supporting a complaint in that there is no allegation that in fact the respondents ever applied to Mr. Yao any requirement that he possess an IMM 1000. Similarly, the second allegation does not assist Mr. Yao in that it relates solely to the treatment which he alleges someone else received. Mr. Yao does not allege that he is a Canadian citizen who was required to provide an IMM 1000. The third allegation also does not further Mr. Yao's complaint. The fact that the respondents may

employ different tools to audit and trace different students does not in and of itself indicate any discrimination. Different tools may well be necessary to assess post-secondary education obtained in or outside Canada.

[20] Given that none of the allegations contained in the amendment furthers Mr. Yao's complaint, I have not found it necessary to re-open submissions on the application to dismiss to give the respondents an opportunity to respond to them.

[21] Looking at the matter as a whole, I find that Mr. Yao's complaint has no reasonable prospect of success.

Conclusion

[22] The complaint, including the amendment, is dismissed pursuant to s. 27(1)(c).

Lindsay M. Lyster, Tribunal Member