



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Sinem Ketenci

Applicant

-and-

Yeates School of Graduate Studies at Ryerson University

Respondent

DECISION

Adjudicator: Michelle Flaherty
Date: May 16, 2012
File Number: 2011-10143-I
Citation: 2012 HRTO 994
Indexed as **Ketenci v. Ryerson University**

APPEARANCES

Sinem Ketenci, Applicant)))	Self-represented
Yeates School of Graduate Studies at Ryerson University, Respondent))))	Robert Centa and Jodi Martin, Counsel
Ontario Human Rights Commission Lawyers for Animal Welfare))))	Cathy Pike, Counsel Neila Latchuck, Counsel

[1] The applicant has filed an Application under section 34 of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “*Code*”), alleging discrimination in goods, services and facilities on the basis of creed. In essence, the applicant alleges that her ethical veganism was a factor in how she was treated by the respondent.

[2] For the reasons that follow, the Application is dismissed. It is not necessary for me to determine whether or not ethical veganism is a creed within the meaning of the *Code*. Even assuming (without finding) that ethical veganism is a creed, I find that the applicant has no reasonable prospect of establishing that she was discriminated against because of her beliefs in ethical veganism.

INTRODUCTION

[3] The applicant was a graduate student in the Master of Social Work Program at Ryerson University. She states that the respondent discriminated against her because she sought to introduce animal rights issues into her academic work. She alleges that particular professors took issue when, in her scholarship, the applicant equated the value of animals to the value of humans. She submits that she was referred to as “racist and inhuman”, that she was demonized, that her academic work was unfairly evaluated, and that various professors (including her Major Research Project (“MRP”) supervisor) withdrew their support for her academic work and for her doctoral application. The applicant states that this constitutes discrimination within the meaning of the *Code*.

[4] The respondent disputes that ethical veganism is a creed within the meaning of the *Code*. It also denies the allegations of discrimination. The respondent states that it was well aware of the applicant’s ethical veganism when it admitted her into the master’s program, as she had been a prominent animal rights activist on campus. It states that conflict arose not because the applicant is an ethical vegan, but because she introduced these notions into her scholarship in a way that her professors felt was neither relevant nor analytically sound.

[5] In a Case Assessment Direction (“CAD”) dated November 8, 2011, the Tribunal directed that this matter proceed by way of a summary hearing without requiring a Response by the respondent. The Tribunal wrote:

In this case, the issue will be whether, assuming the allegations to be true, the applicant’s allegations may reasonably be considered to amount to a *Code* violation. In particular, the parties shall be prepared to address whether the Application raises the ground of creed and whether assuming the ground of creed is engaged, there is a reasonable prospect the applicant can establish discrimination.

[6] The summary hearing was conducted by telephone conference on March 19, 2012. At that time, I heard submissions from the applicant and from counsel for the respondent. Counsel for Lawyers for Animal Welfare (“LAW”) and the Ontario Human Rights Commission (“Commission”) also attended at the outset of the call. However, for the reasons I explain in more detail below, it was not necessary for me to hear oral submissions from them.

PROCEDURAL ISSUES

[7] LAW and the Commission filed Requests to Intervene in advance of the summary hearing. LAW sought to make submissions regarding whether or not ethical veganism is a creed within the meaning of the *Code*. The Commission, however, did not wish to make submissions on the substantive issues raised in the Application; its Request to Intervene was simply in regard to the order in which the Tribunal would address the issues identified in the CAD.

[8] The Commission submitted that, at the summary hearing, it would be appropriate for the Tribunal to first determine whether, assuming (without finding) that the ground of creed is engaged, the Application has no reasonable prospect of success. At a later date and only if necessary, the Tribunal could determine whether ethical veganism is a creed within the meaning of the *Code*.

[9] The respondent agreed with the Commission's proposal, as did LAW. The applicant objected to proceeding in this manner. At the summary hearing, she argued that both of the issues identified in the CAD are equally important and that both should be addressed by the Tribunal.

[10] I issued an oral ruling, holding that I would address the issues in the order proposed by the Commission. In my view, this is the most fair, just, and expeditious manner of proceeding. I accept that both of the issues identified in the CAD are important. However, as I explained orally, in order for the Application to move beyond the summary hearing stage, the applicant must establish both that ethical veganism is a creed within the meaning of the *Code* and that she has a reasonable prospect of showing that the respondent discriminated against her on the basis of her ethical veganism. If the applicant fails to establish either element, the case must be dismissed.

[11] At this stage of the proceeding I am prepared to assume (without finding) that ethical veganism is a creed within the meaning of the *Code*. If, in light of this assumption, the applicant establishes that the Application has a reasonable prospect of success, the Tribunal would go on to consider whether ethical veganism is, in fact, a creed within the meaning of the *Code*.

[12] LAW and the Commission stated that, in light of my procedural ruling as to the order in which the issues will be addressed, they did not seek to participate further in the summary hearing. Neither LAW nor the Commission attended for the remainder of the telephone conference call.

[13] Finally, the applicant objected to the respondent relying on a case it had not submitted 14 days in advance of the summary hearing. At the hearing, the respondent stated that the case law in question related to whether or not ethical veganism is a creed. Counsel for the respondent stated that, giving my ruling that this issue will not be addressed at this stage of the proceeding, he did not wish to rely on the case at the summary hearing.

THE FACTS AS ALLEGED BY THE APPLICANT

[14] As part of her Master's studies, the applicant intended to pursue an MRP on "Specieism and Social Work". She intended to consider, among other things, how humans would benefit from developing compassion for animals. The applicant states that she initially received positive feedback on her MRP work, but that after a disagreement with Dr. Benjamin, the university's position changed dramatically. The respondent eventually advised her that her MRP could not relate, either implicitly or explicitly, to animal rights.

[15] The applicant has submitted extensive documents to support her allegation that the behaviour of university staff, including criticism of her academic work, is discriminatory. I have reviewed all of these carefully, although I cite only the most relevant.

[16] In the Application, the applicant states that Dr. Benjamin provided her with feedback on an assignment. I understand her to be referring to the following handwritten comments by Dr. Benjamin, which the applicant has included along with her Application:

You link aboriginal spirituality to animal rights. Aboriginals respected animals but also saw them as giving sustenance as food.

You link liberation for animals, native and marginalized people. This is problematic, historically and present day. e.g. Black people/Africans were seen and treated as animals, not human to link them to animals. Once again is a very inhuman and racist connection. Also linking representatives of Iraqis [sic] with animals raised for food - - were Iraqis [sic] raised for food?

[17] The applicant takes issue with these comments. She feels that Dr. Benjamin is essentially calling her racist and inhuman.

[18] The applicant states that she met with Dr. Benjamin shortly after she received her written feedback. It is clear from the applicant's submissions that she and Dr. Benjamin disagreed about some of the ideas expressed by the applicant in her

assignment. Dr. Benjamin suggested that another faculty member grade the applicant's assignment, but the applicant declined and decided to change the assignment topic. The applicant states that the meeting "ended on a positive note, with an understanding that we would respect one another's beliefs."

[19] The applicant argues that her grades, which had been excellent, dropped following this disagreement with Dr. Benjamin. She alleges that Dr. Benjamin influenced her colleagues and other students by instilling in them a bias against the applicant. She states that Dr. Benjamin changed how others perceived her and that, following her meeting with Dr. Benjamin, people began treating the applicant differently.

[20] The applicant has filed email exchanges she had with Dr. Pon, her MRP supervisor. The applicant relies on an email dated November 2, 2010, in which Dr. Pon writes: "I am very much enjoying your MRP topic!". She also includes an email dated November 24, 2010, in which Dr. Pon writes: "Good work on the presentation. Good discussion ensued and I hope it was helpful to you. Grade is "A"".

[21] I have also reviewed what appears to be the power point presentation referred to above. It is entitled "Speciesism and Social Work". One of the slides describes the research topic as follows: "Should animal rights be included in social work education and practice?" The power point includes some general and brief information about the importance of the research, stating that it will help humans to become more compassionate if they acknowledge the rights of others, including animals.

[22] The applicant has also filed excerpts of an undated document, which I understand to be a paper she wrote. The applicant received a grade of 4 out of 5 for this paper. There are seven comments in the document, which appear to be feedback she received from a professor. In essence, the comments go to the analysis proposed by the applicant. For example, one of the comments suggest that certain parts of the paper be "more rigorously argued". One comment relates to the following sentence: "Lastly the paper will explore the services needed for animal rights activists who suffer from

speciesism because their feelings are too connected to other species.” The comment relates to the word “too” and suggests that the applicant use a less-judgmental term.

[23] In her Application, the applicant refers to a number of oral comments she says were made by faculty or fellow students. For example, the applicant alleges that:

- a. Dr. Poole, her teaching assistant supervisor, stated that the applicant was “not a critical thinker”, that she speaks “simply” and is “not scholarly” and is “dishonest”;
- b. one of her fellow students stated that some students try to advance their agenda through their MRP and that this is not ethical, professional or scholarly. The applicant alleges that her fellow student was influenced by Dr. Benjamin and others;
- c. Dr. Sandys told one of the applicant’s classmates that “animal rights activists want people with disabilities killed”;
- d. other professors or administrators referred to her as hostile and inappropriate and they disagreed with some of the tenets of animal rights activism; and
- e. Dr. Pon commented that the applicant was “very offensive, dogmatic, not a critical-thinker, not open-minded, and dishonest”. He is also alleged to have told the applicant that she spoke simply and did not express herself in a scholarly manner. The applicant argues that Dr. Pon’s comments essentially mirror those of Dr. Poole.

[24] The applicant’s relationship with Dr. Pon appears to have deteriorated beginning in December 2010. At some time in January, 2011, Dr. Pon advised the applicant that he would no longer be her MRP supervisor. Dr. Pon also wrote two letters to the Ontario Institute for Studies in Education (OISE), withdrawing his previously-given support for the applicant’s application to doctoral programs. The applicant argues that, given Dr. Pon’s previous support for her research topic, he must have been influenced by Dr. Benjamin and/or be discriminating against her because of her creed.

[25] The applicant applied to doctoral programs at OISE, but was not accepted. The applicant filed letters from OISE, indicating that the withdrawal of Dr. Pon's support negatively impacted its evaluation of the applicant's doctoral application.

[26] On May 17 2011, the applicant received an email from the Director of the Graduate Program at Ryerson. This email states:

Sinem,

Please understand that the School of Social Work will not approve your original [thesis] topic on speciesism and Social Work. This topic is not consistent with the curricular objectives of the [Master of Social Work] program at Ryerson University.

If you do wish to complete an MRP at this time, please submit a two- page proposal on a new topic, no later than May 31, 12:00pm. [...]

I have a number of concerns about your email correspondence in relation to this issue. I find them hostile and inappropriate (along with being an inaccurate representation of the content and tone of our discussion). In future all such emails will be forwarded to the Student Conduct Office for further action.

[27] The applicant has also presented a selection of her email exchanges with administrators at Ryerson University. I note that the email exchanges appear to be incomplete, they consist mostly of the applicant's emails and include only a few responses from the respondent. The emails themselves suggest that the respondent did, in fact, respond to many of the applicant's other emails.

[28] It is clear from the emails provided by the applicant that, beginning in May, she contacted University administrators to express concerns that she was being discriminated against because she could not pursue her proposed MRP topic. Even without the benefit of seeing the respondent's replies to some of this correspondence, it is clear that the applicant is upset with the respondent's decision regarding her MRP topic and that she vigorously disputes it, particularly as she had received good grades and feedback while pursuing this topic for the first four months. In some of the

correspondence, the applicant states that it is her intention to begin legal action against the respondent. She also insists on being able to pursue her original MRP topic.

[29] On September 21, 2011, the applicant received the following letter from the respondent's discrimination and harassment prevention officer. This letter appears to be in response to a complaint brought by the applicant in May 2011. The officer writes:

The decision of the Faculty not to approve your Major Paper topic is not discriminatory. It is a decision based on the academic mission of the School of Social Work. Furthermore the decision does not impact on your ability to practice veganism but rather limits or impacts on your ability to import a component of your faith based interest into your master's course work. There is no positive obligation on the School to expand course work to allow for the inclusion of all creed or faith based discussions.

In closing, I find there is no basis to conclude that the School is disallowing your examination of animal rights because of the link to veganism or Jainism.

[30] The applicant's proposed topic was reviewed by the Research Ethics Board ("REB"). The REB asks the applicant to respond to a number of concerns, but it does not take issue with the topic of the MRP. It is not clear to me that the REB's role would have been to consider the applicant's proposed topic (as opposed to whether or not her proposed research meets ethical standards). While I accept that the applicant's research proposal had advanced to the stage of REB review, I do not find the REB's assessment to suggest that the applicant's research topic was appropriate or that its subject-matter had been approved by the respondent.

ANALYSIS

[31] Section 1 of the *Code* states:

Every person has the right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

[32] As the Tribunal indicated in its CAD of November 8, 2011, the issue in this case is whether, assuming the applicant's allegations to be true, they may reasonably be considered to amount to a *Code* violation. Given my procedural ruling regarding the order in which the issues will be considered, I will determine whether, assuming the ground of creed is engaged, there is a reasonable prospect the applicant can establish discrimination.

[33] In considering this issue, I am mindful that the Tribunal does not have the general power to deal with allegations of unfairness. It can only deal with alleged discrimination on the grounds set out in the *Code*: see *Dabic v. Windsor Police Service*, 2010 HRTO 1994. In addition, as the Tribunal indicated in *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389, for an application to continue in the Tribunal's process following a summary hearing, there must be a basis beyond mere speculation and accusations to believe that an applicant could show discrimination on the basis of one of the grounds alleged in the *Code*.

The *Code* and its application to scholarship

[34] It is clear to me that the applicant has deeply-held beliefs to which she is very committed. It is also clear that the applicant interpreted critique of her scholarship as an attack on her own values and beliefs.

[35] The applicant argues that the *Code* applies to the respondent's criticism of her academic work because that work is an articulation of the values and beliefs associated with her creed. I understand the applicant's position to be that her personal beliefs in ethical veganism and the articulation of those beliefs in her academic work are so intimately linked that I ought not to distinguish between them.

[36] I cannot accept the applicant's argument in this regard. I find that there is an important distinction between criticism of the applicant's scholarship and criticism or

comments concerning her personally-held beliefs, including her beliefs in ethical veganism and animal activism.

[37] In my view, the *Code* does not extend so far as to preclude the respondent from critiquing academic work simply because it contains an articulation of a student's values or beliefs. To hold otherwise would be to shelter academic work from oversight or criticism because it makes reference to the author's creed. This would create a distinction in how scholarship is evaluated depending on whether or not it relates to a student's own beliefs. I do not believe that the *Code* was intended to create such a distinction.

[38] Further, to accept the applicant's arguments would be to hold that, where a *Code* ground is engaged, it is discriminatory to express disagreement in an academic context. This could chill academic discussion and stifle the exchange of ideas simply because they relate to a person's creed. Again, I do not believe the *Code* was intended for this purpose.

[39] I find that academic criticism of a person's scholarship will not constitute discrimination simply because it relates to a student's personally-held values or beliefs. In other words, it is not discriminatory to critique the articulation of a personal belief in academic work. Importantly, however, it is possible for an academic evaluation or assessment to be discriminatory.

[40] For example, if an applicant can establish that her academic work was evaluated differently from others' and that a *Code*-related ground was a factor in that evaluation, there is a basis for a finding of discrimination. Similarly, the *Code* may apply to comments made in the course of an academic evaluation. As I have indicated, where those comments are directed at and constitute a critique of a student's academic work, they will not be discriminatory. However, there will be discrimination where the comment or critique transcends the scholarship and amounts to differential treatment of a student because of a *Code*-related ground.

[41] Further, even though the ideas expressed relate to a student's creed, it may be perfectly appropriate for a professor to seek clarification or additional analysis of in an academic work. It may also be appropriate for a professor to express concerns as to the relevance of that idea to an area of study. However, where a *Code* ground is engaged, it will not be appropriate for the professor to suggest that a student is less worthy as a person because he or she holds a particular creed.

[42] Finally, even if I accept that the respondent's professors have a right to academic freedom and that this freedom is engaged in their evaluation of students' work, I find that the notion of academic freedom does not override the respondent's *Code* obligations. In other words, while academic freedom may include the ability to express a critical opinion of academic work, it is not a licence to discriminate by treating a person differently from others because of her beliefs.

Application of the principles to the facts

[43] In all of the circumstances of this case, I find that the Application has no reasonable prospect of success. In reaching this conclusion, I have relied on the facts as alleged by the applicant, the documents she has submitted, and the oral submissions of the parties.

[44] First, I find that most of the comments complained of are a critique of the applicant's academic work. For example, while the applicant appears to have taken Dr. Benjamin's comments (set out at para. 16 above) to mean that the applicant is, herself, inhuman or a racist, I find that a plain reading of the actual comments does not support such an interpretation.

[45] I understand Dr. Benjamin, in her written comments, to be taking issue with the way in which the applicant expressed ideas in an academic assignment. She points to what she perceives as flaws in the applicant's arguments, namely reasons why the analogies proposed by the applicant are lacking or inconsistent. Dr. Benjamin also

points out that some of the “connections” the applicant makes in her paper are “very inhuman and racist.”

[46] Dr. Benjamin certainly used very strong language in her comments. The applicant submits that Dr. Benjamin’s language shows that she disagreed not only with the applicant’s arguments, but also with the belief system that lead the applicant to advance those arguments.

[47] It is not entirely clear to me that Dr. Benjamin’s comments, although strongly worded, constituted a criticism of the tenets of ethical veganism. However, even if they did, I am not satisfied that this would be a basis for a finding of discrimination. For the reasons set out above, a critique of scholarship and the articulation of faith-based ideas in that scholarship is not discriminatory within the meaning of the *Code*.

[48] I note that much of the material submitted by the applicant is her own interpretation and impression of her professors’ comments. Few of the extensive documents submitted are authored by the respondent. To the extent that the documents submitted by the applicant are critical, that criticism relates to the applicant’s academic work and her expression of ideas in that academic work. For example, like Dr. Benjamin’s comments, the written comments in the undated paper suggest that more rigour and analytical basis is required in the applicant’s academic work.

[49] While the professors who provided written comments critiqued the applicant’s reasoning and questioned the relevance of animal rights to the study of social work, they did not make adherence to any particular set of values or beliefs a condition of academic success. I do not understand any of the comments to suggest that the applicant should abandon or compromise her beliefs in ethical veganism or animal rights or that she is less worthy of dignity as a person as a result of these beliefs.

[50] It is also very clear that the applicant disagrees with the feedback she received and that she vigorously challenged that feedback, directly with professors and in her communications with administrators. While I do not doubt that the applicant felt that she

was being personally attacked, none of the evidence or prospective evidence she points to suggests that she has a reasonable prospect of showing that the respondent's comments related to anything other than her scholarship.

[51] Second, I find that the remaining comments complained of by the applicant do not relate to her personal beliefs in ethical veganism and animal rights. For example, the alleged comments that she is not scholarly, that she is dishonest, hostile, and seeking to advance an agenda do not, in my view, relate so much to the fact that the applicant is an ethical vegan as they do to her behaviour or the respondent's perception of her behaviour.

[52] As the Tribunal noted in *Gurney v. McDonald's Restaurants of Canada*, 2011 HRTO 984 at para. 7, a person's hurt feelings, anxiety or upset about a situation do not necessarily mean that the *Code* was violated. It is not for the Tribunal to police language used by the parties. While I appreciate that comments of this nature are offensive to the applicant, my role is not to address offensive language but to determine whether the comments could constitute discrimination within the meaning of the *Code*.

[53] It is apparent that there were a number of heated exchanges between the applicant and the respondent's faculty and administrators and that relations between the parties deteriorated over time. By the spring of 2011, both parties had taken a position and each was frustrated with what it perceived as the intransigence of the other. The comments in question relate to the interpersonal difficulties between the parties, not anything intrinsic to the applicant's belief in ethical veganism or animal activism.

[54] I appreciate that the applicant is also very offended by an alleged comment (to a fellow student) that animal activists "want people with disabilities killed." For the purposes of the summary hearing, I am prepared to assume (without finding) that this statement was made.

[55] The applicant states that animal rights is the foundation of ethical veganism and vice versa. While the statement referred to above is offensive and inaccurate, I cannot

conclude that it constitutes discrimination against the applicant on the basis of her creed. While it may be frustrating and upsetting to hear the tenets of one's belief system described inaccurately, such a misrepresentation does not, alone, constitute discrimination.

[56] Third, I find that the applicant has no reasonable prospect of establishing discrimination on the basis that Dr. Benjamin influenced other faculty or students or that the withdrawal of support for the applicant was based on any such influence.

[57] As I have indicated, it does not constitute discrimination for Dr. Benjamin to criticize the applicant's scholarship, even where it relates to the applicant's personally-held beliefs. It follows that it is not discriminatory for Dr. Benjamin to communicate concerns about the applicant's scholarship to other professors. Even if Dr. Benjamin spoke to her colleagues about the applicant's scholarship and even if this lead to others' withdrawing their support for the applicant, I fail to see how this could constitute a breach of the *Code*.

[58] I do not accept the applicant's arguments that she received no constructive feedback about her MRP or that this could assist her in establishing discrimination. Even based on only the applicant's own materials, it is clear to me that she did, in fact, receive constructive feedback. It is clear from Dr. Benjamin's comments in November 2009 and from Dr. Lessa's suggestions regarding the analytical framework used by the applicant, that in the fall of 2009 at least two professors had expressed concerns about the applicant's analysis and had suggested what the applicant might do to address those concerns.

[59] I do not accept that any failure by the respondent to follow its academic policies establishes that this is not an academic matter but rather an attack on the applicant because of her personal beliefs and values. As I have indicated, the Tribunal's role is not to determine general questions of fairness, including deciding whether or not the respondent followed its own policies: see *Dabic, supra*. The Tribunal does not have a general power to determine whether the applicant was treated fairly.

[60] While I make no conclusion as to whether or not the respondent followed its academic policies, I note that in its correspondence throughout this dispute, the respondent has maintained that the comments complained of relate to its academic assessment of the applicant's scholarship. In any event, whether or not the respondent treated the applicant's concerns as an "academic matter" under its policies is not determinative of the issues before the Tribunal.

[61] Finally, the applicant submits that the respondent discriminated against her by prohibiting her from pursuing research relating to animal rights. She points out that she initially received positive feedback on this topic and that other universities (and other schools of social work) have done research in this area.

[62] My role is not to consider whether the respondent's decision was fair or appropriate, but to determine whether the applicant has a reasonable prospect of showing that it was discriminatory. In all of the circumstances, it appears that the applicant produced work that was critiqued as being analytically unsound and irrelevant, that the applicant vigorously challenged this critique and insisted on being able to advance the same arguments. The situation between the parties deteriorated and the respondent took an uncompromising position, concluding that the applicant could not pursue a topic that related, in any way, to animal rights. In all of these circumstances, I find that the allegations that the respondent's decision preventing the applicant from pursuing a topic involving animal rights were discriminatory has no reasonable prospect of success.

[63] For all of these reasons, the Application is dismissed.

Dated at Toronto, this 16th day of May, 2012.

"signed by"

Michelle Flaherty
Vice-chair