



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**B E T W E E N:**

**Tonka Misetich**

**Applicant**

**-and-**

**Value Village Inc. and Savers Inc.**

**Respondents**

**-and-**

**Ontario Human Rights Commission**

**Intervenor**

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## INTERIM DECISION

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**Adjudicator:** Jennifer Scott  
**Date:** December 11, 2014  
**File Number:** 2013-15612-I  
**Citation:** 2014 HRTO 1781  
**Indexed as:** **Misetich v. Value Village Stores Inc.**

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## WRITTEN SUBMISSIONS

Tonka Misetich, Applicant	) ) )	Self-represented
Value Village Stores Inc. and Savers Inc., Respondents	) ) ) )	Kathryn Bird, Counsel
Ontario Human Rights Commission, Intervenor	) ) ) )	Cathy Pike, Counsel

[1] This matter is scheduled for a hearing on December 17 and 18, 2014, in St. Catharines, Ontario.

[2] By Interim Decision, 2014 HRTO 1691, I ordered production of certain documents relating to the applicant's elder care responsibilities. In that decision, I commented on the test for family status discrimination in the context of determining the arguable relevance of the documents sought by the respondents.

[3] On December 10, 2014, the Tribunal received a Notice of Commission Intervention under section 37(2) of the *Code*. The Ontario Human Rights Commission (the "Commission") requested leave to intervene as a party to make oral submissions on the applicable legal test in cases involving family status obligations. The Commission asserted the test for family status discrimination as set out by the Federal Court of Appeal in *Attorney General of Canada v. Johnstone*, 2014 FCA 110, is unreasonable and unworkable.

[4] The Commission advised that it is not taking a position on the merits of the Application, will not be calling evidence, and that its arguments will be based on the material filed by the parties and the Tribunal's interim ruling. The applicant consents to the Commission's intervention.

[5] By Registrar's letter, the Tribunal confirmed the Commission's status as an intervenor in this Application.

[6] On December 11, 2014, the respondents requested an adjournment of the hearing scheduled for next week. They submit that given the short notice of the Commission's intervention, they will not be able to appropriately deal with the issues raised by the Commission in time for the hearing. They request that the hearing be converted to a conference call on December 17, 2014, to determine the appropriate process for adjudicating the Application, including, but not limited to, an assessment of whether the Commission's intervention ought to be dealt with on a preliminary basis in advance of the hearing on the merits.

[7] The Commission and the applicant consent to the respondents' request for an adjournment of the hearing scheduled.

[8] The Tribunal's practice is to grant adjournments only in exceptional circumstances. See *Vallentyne v. Royal Canadian Legion*, 2009 HRTO 660 at para. 4. The Tribunal's Practice Direction on Requests for Adjournments states that:

Requests for adjournments, particularly at the last minute, are a significant impediment to fair and timely access to justice. Therefore, the HRTO will only grant adjournments in extraordinary circumstances such as illness of a party, witness or representative. Absent exceptional circumstances, the HRTO will not grant adjournments, even when all parties consent.

[9] While I understand the respondents' concern regarding the last-minute request of the Commission to intervene, I do not agree that the Commission's request to make oral submissions on the legal test for family status discrimination, based on the material filed by the parties, necessitates an adjournment. The Commission's submissions will be heard in final argument and it is highly unlikely that we will get there during the hearing dates scheduled. In any event, I am prepared to require the Commission to provide its submissions in writing, after the close of the hearing, and will give the respondents ample time to respond. For these reasons, I find the respondents have failed to establish the exceptional circumstances necessary to grant the adjournment. The adjournment request is denied.

[10] Before closing, I want to be clear with the parties that I have not decided the issue of the appropriate test for family status discrimination. My comments in the Interim Decision were in the context of a production request and nothing more. No evidence was required for the Interim Decision and importantly, there was no evidence on the merits of the case. The issue of the appropriate legal test for family status discrimination and the application of that test to the facts of this case will be decided on the basis of the evidence that is filed during the hearing and the parties' submissions on that issue.

## DIRECTIONS

[11] The hearing will commence in St. Catharines on December 17, 2014.

[12] The parties are advised of the Tribunal's mediation/adjudication process set out in Rule 15A of the Tribunal's Rules of Procedure. A copy of the Tribunal's mediation/adjudication agreement is attached to this Case Assessment Direction for the parties' review. The Tribunal will offer this process at the commencement of the hearing on December 17, 2013.

This Dated at Toronto, this 11<sup>th</sup> day of December, 2014.

*"Signed by"*

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Jennifer Scott  
Vice-chair