HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Kristen Worley

Applicants

-and-

Ontario Cycling Association, Cycling Canada Cyclisme, International Olympic Committee and Union Cycliste Internationale

Respondents

INTERIM DECISION

Adjudicator: Jo-Anne Pickel

Date: August 26, 2015

File Number: 2015-21367-I

Citation: 2015 HRTO 1135

Indexed as: **Worley v. Ontario Cycling Association**

WRITTEN SUBMISSIONS

Kristen Worley, Applicant	)	Brenda Culbert, Counsel
Union Cycliste Internationale, Respondent	)	Nicolas Valticos, Counsel
International Olympic Committee, Respondent	)	Ronald Slaght, Counsel
Ontario Cycling Association and Cycling Canada Cyclisme, Respondents	)	Albert Formosa, Counsel

[1] This Interim Decision addresses the issue of whether the respondents, Union Cycliste Internationale ("UCI") and International Olympic Committee ("IOC"), have received effective legal notice of this Application. In particular, the Interim Decision addresses whether it is necessary to serve the Application materials in accordance with the procedures set out in the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Service Convention").

BACKGROUND TO THE APPLICATION

[2] In her Application, the applicant alleges that the respondents discriminated against her because of sex contrary to the *Human Rights Code*, R.S.O. 1990 c. H. 19, as amended (the "*Code*"). In particular, the applicant alleges that she is being discriminated against by the policies of the Ontario Cycling Association ("OCA") and Cycling Canada Cyclisme ("CCC") on gender verification and anti-doping. These policies are based on the UCI's policies which are in turn based on the IOC's policies.

[3] In accordance with the Tribunal's usual practice, the Tribunal sent a Notice of Application ("Notice") as well as a copy of the Application to all respondents. The Tribunal sent the Notice and enclosed documents to UCI in Switzerland by regular mail, facsimile, and e-mail and to the IOC in Switzerland by regular mail and facsimile. The Tribunal sent the Notice and enclosed documents to the other two respondents by regular mail, facsimile, and e-mail.

[4] By letter dated August 13, 2015, Ronald Slaght, counsel to the IOC, acknowledged that the IOC had received the Tribunal's Notice and enclosed documents. Mr. Slaght submitted that the Application was not validly served in accordance with the procedures set out in The Hague Service Convention. He also advised the Tribunal that the IOC intends to bring an application in the Superior Court of Justice for an order prohibiting the Tribunal from asserting jurisdiction over the IOC and for a declaration that the IOC has not been validly served.

[5] By letter dated August 14, 2015, Nicolas Valticos, the UCI's Head of Legal Services, requested that the Tribunal serve the Application using the channels of transmission provided for under the Hague Service Convention.

WHETHER UCI AND IOC HAVE RECEIVED EFFECTIVE LEGAL NOTICE OF APPLICATION

[6] The Tribunal has had the occasion to consider whether compliance with the Hague Service Convention is required in Tribunal proceedings in *Wambach v. Canadian Soccer Association*, 2014 HRTO 1760 ("*Wambach*"). In that case, I found that Ontario law does not require compliance with the Hague Service Convention in Tribunal proceedings.

[7] The legal analysis and conclusions contained in *Wambach* apply equally to this case. I will not repeat the *Wambach* analysis in full here but instead reproduce the following key paragraphs:

> [24] In order for international conventions/treaties to have the force of law in Canada, they must be implemented into Canadian law through the enactment of legislation by the appropriate legislative body. It is well-established that courts and tribunals will interpret statutes so as to conform as far as possible with Canada's treaty obligations or international customary law. In other words, Parliament and the provincial legislatures are presumed not to intend to legislate in breach of Canada's international law obligations: see *Thibodeau v. Air Canada*, 2014 SCC 67 at para. 113, and *Zingre v. The Queen et al*., 1981 CanLII 32 (SCC), [1981] 2 SCR 392. However, this presumption is not absolute; it is rebuttable.
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> [25] The Ontario legislature has required compliance with the Hague Service Convention in court proceedings governed by the *Rules of Civil Procedure*. However, it has not required such compliance in Tribunal proceedings. In my view, the legislature's failure to implement, or decision not to implement, the Convention in relation to proceedings before this Tribunal and other administrative tribunals must be given effect.
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> [26] I find that it is not appropriate to read into the *Code* a requirement that Tribunal materials must be served in accordance with the procedures set out in the Convention. Although a legislature must be

> presumed to legislate in compliance with international law, this presumption can be rebutted when it is clear that the legislature has made certain legislative choices about the proper scope of application of international treaties. I do not agree with FIFA's submission that, in the absence of a provision expressly excluding the application of the Convention, the Convention must apply. I find that the Ontario legislature has made a clear legislative choice not to require compliance with the Hague Service Convention in Tribunal cases or, it appears, in cases before any administrative tribunal in Ontario. This choice is consistent with the Tribunal's mandate to provide accessible and less formal means for the enforcement of rights under the *Code*.

[8] Whether the legislature's choices are consistent with the Hague Service Convention or not, they are binding on this Tribunal. For the reasons set out in detail in *Wambach*, I find that there is no requirement that materials in proceedings before the Tribunal be served using the procedures set out in The Hague Service Convention. I find that it is appropriate for the Tribunal and parties to send materials to a foreign-based party using one of the methods of transmission listed in the Tribunal's Rules of Procedure. If it becomes clear that a party has not received the materials that were transmitted, it is open to the Tribunal or a party to use the procedures contained in The Hague Service Convention or, for that matter, any other method to ensure effective notice. However, for the reasons set out above and developed more fully in *Wambach*, I find that Ontario law does not require the use of the Convention's service procedures in Tribunal proceedings.

DEADLINE FOR RESPONSES

[9] The UCI, OCA and CCC have all requested an extension of the deadline for their Responses which were originally due August 14, 2015. These requests are granted. The deadline for all the respondents' Responses is extended to September 14, 2015. The IOC has stated an intention to bring an application for a court order to prohibit the Tribunal from proceeding with this Application. However, to date, the Tribunal has not received notice of any application or stay of proceeding. In the absence of such a stay, the Tribunal will proceed with its processing of the Application.

[10] Finally, I note that the UCI requested a copy of the complete file for the Application including the applicant's medical history before it is required to respond to the Application. The UCI has been provided with the complete file that the Tribunal has for the Application to date, which only includes the Application. Absent exceptional circumstances, the Tribunal generally requires respondents to file a completed response prior to raising preliminary issues, such as requests for disclosure or particulars: see for example *Rose v. Toronto Police Services Board*, 2011 HRTO 1784 and *Asefa v. Can-Am Logistics*, 2010 HRTO 1531 and cases cited therein. Although it is sometimes appropriate to order access to a medical file at an early stage in order to ensure that respondents are in a position to respond meaningfully to an Application, I do not consider it necessary to order such early disclosure in this case. In my view, there is sufficient detail in the Application for the respondents to discern the nature of the alleged infringements of the *Code* and the legal issues that need to be answered. They will of course be entitled to disclosure of arguably relevant materials in due course in accordance with the timeframe set out in the Tribunal's Rules of Procedure.

ORDER AND NEXT STEPS

[11] For all the reasons set out above and more fully explained in *Wambach*, I find that both the UCI and IOC have effective legal notice of this proceeding under applicable law and the Tribunal's Rules of Procedure. Compliance with The Hague Service Convention is not required.

[12] The deadline for all Responses is extended to September 14, 2014 and the UCI's request for early disclosure is denied.

Dated at Toronto, this 26th day of August, 2015.

"Signed By"

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Jo-Anne Pickel
Vice-chair