

[VIEW AS A PDF](#)

Background

PUC Distribution Inc. ("PUC Distribution") delivered electricity to Michael's Thompson's home through a system of underground cables.

Michael Thompson claimed that he suffered from electromagnetic hypersensitivity ("EHS"), and as a result, he could not tolerate the level of electromagnetic fields (the "EMF") generated by the cables underneath his home. According to Mr. Thompson, the EMF caused neurological changes including, headaches, stomach pain, and chest pain. He also claimed that he could not sleep well in most rooms of his house due to the EMF.

When PUC Distribution failed to resolve Mr. Thompson's complaints about EMF levels, he filed an application with the Tribunal asserting discrimination with respect to goods and services because of disability. The Tribunal held a summary hearing to determine whether the application had no reasonable prospect of success and whether it was appropriate to dismiss the application without a hearing.

Decision

The Tribunal first considered whether Mr. Thompson would be able to establish that he was a person with a “disability”. The Tribunal explained that there was a substantial body of medical and scientific literature suggesting that EHS is only a collection of symptoms rather than an actual illness or identifiable condition. The Tribunal noted, however, that Mr. Thompson obtained a letter from a doctor at a well-respected hospital stating that he suffered from Environmental Sensitivities, including sensitivities to electromagnetic frequencies. As a result of the letter, the Tribunal could not conclude that Mr. Thompson had no reasonable prospect of establishing that he had a disability.

The Tribunal nonetheless found that Mr. Thompson had no reasonable prospect of establishing a link between his disability and PUC Distribution's transmission of electricity through his home.

In his attempt to establish the requisite link between the EHS symptoms and the EMF emitted from the underground cables, Mr. Thompson testified that:

- he regularly took EMF readings in his house, and his symptoms varied in accordance with the readings;
- the underground cables must have been responsible for his symptoms because it was the sole source of electricity; and
- if there were no underground electrical cables, he would not have been experiencing any EHS symptoms.

The Tribunal found that Mr. Thompson sincerely believed that the EMF level and his EHS symptoms were correlated. However, the Tribunal emphasized the lack of credible evidence to support his beliefs, explaining as follows:

- Mr. Thompson's medical letter did not provide an opinion on whether the EMF could result in him experiencing symptoms associated with EHS;
- Mr. Thompson did not produce any scientific or engineering reports or studies suggesting that the EMF from underground cables might have been causing him to experience symptoms associated with EHS;
- Mr. Thompson did not intend to call any expert witnesses to provide opinion evidence that his symptoms were in any way related to the EMF coming from the underground electrical cables; and
- a review of the medical and scientific literature provided by the parties suggested that it was not yet widely accepted in the medical and scientific communities that EMF exposure could result in health problems.

Due to Mr. Thompson's reliance on subjective evidence and his failure to identify credible objective evidence, the Tribunal dismissed the application without a hearing on the basis that it had no reasonable prospect of success.

Commentary

The Tribunal's decision reminds employers and businesses of the broad definition of "disability" in the *Human Rights Code*. Although EHS has not yet been widely accepted by the medical and scientific communities as an illness or identifiable condition, individuals suffering from EHS may be able to establish that they have a disability within the meaning of the *Human Rights Code*. The Tribunal's decision also highlights the burden on employees and individuals to provide objective evidence in order to establish that a company has discriminated against them by failing to accommodate their EHS needs.

For other decisions on the issue of electromagnetic sensitivity, please see *Robinson v York Condominium Corporation No 365*, 2014 HRTO 1059; and *Citizens for Safe Technology Society obo others v BC Hydro and Power Authority (No 3)*, 2014 BCHRT 211.

For further information, please contact Anthony Panacci at 416-408-5568 or your regular lawyer at the firm.

