

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2017 CHRT 20

Date: June 28, 2017

File No.: T2116/3215

Between:

Kathleen O'Grady

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Bell Canada

Respondent

Ruling

Member: Ronald Sydney Williams

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I. Background

[1] The Complainant has brought forth a Notice of Motion dated May 24, 2017 seeking:

1. To adjourn the decision making to continue proceedings, as per section 3.1.b of the CHRT Rules of procedure; and reconsideration for a “re-do” Tribunal hearing including 30 % amendment of inadmissible evidence tabs and have Commission participate in hearing; and
2. An order to amend Final Argument within 45 – 60 days in writing only; and
3. An order to file confidential Exhibit R-1, Tab 30 into a privileged lock box, and;
4. Or such further and other order as shall seem just to the Tribunal.

[2] The Respondent has filed a response to the Motion on June 6, 2017. The Respondent has replied to the Complainant’s pleadings in opposition to the requests of the Motion, but has also “consented to the Complainant filing reply submissions in writing provided that they are limited to and based solely on the evidence heard by the Tribunal and that the Respondent be given an opportunity to file written representations in response to the Complainant’s Reply.”

[3] The Complainant has filed a reply to the Respondent’s response on June 19, 2017.

II. Analysis

[4] I have reviewed the Complainant’s submissions, and with respect, find that many of the issues raised by the Complainant are as a result of her perception that the Respondent’s counsel conducted the Hearing in a manner which was disrespectful of the Complainant, unsympathetic to her health issues, and that she deliberately tried to interrupt and take advantage of her knowledge of the Rules of Procedure, and conduct of a Hearing over that of a lay person, and more importantly, an unrepresented party suffering with mental disorders.

[5] As a matter of first instance, the Tribunal states in the strongest of terms that this belief of the Complainant is completely unfounded. Without implying as to the success or failure of the Respondent’s case, I can quite clearly state that the Tribunal finds that

counsel for the Respondent, conducted herself with professionalism and respect to both the Tribunal and the Complainant. I formally dismiss any allegations to the contrary made by the Complainant as without merit; the Tribunal will not consider such allegations as part of its decision making. Therefore, all references throughout the Complainant's Notice of Motion and reply submissions which are derogatory to the Respondent's counsel, or to the manner in which she conducted her client's defense, shall be struck.

[6] However, the Tribunal did attempt to be abundantly considerate of the fact that the Complainant was not represented by counsel, and notwithstanding an impressive attempt to adequately prepare herself for the Hearing, Ms. O'Grady nevertheless, as most if not all unrepresented Complainants discover, was in a forum that was completely unfamiliar, and perhaps all the more difficult due to her health issues. However, while there is an obligation to allow all parties to have an opportunity to fully present their case, the Complainant cannot use her health issues to afford her special privileges, in re-opening the Hearing. She has not claimed the discovery of new evidence, not formally available to her at the time of the Hearing.

[7] The Canadian Human Rights Tribunal Rules of Procedure (03-05-04) (the "CHRT Rules") are unlike the rules of procedure in civil courts. The CHRT Rules are intended to be far more simplified, in part to compensate the party who stands without legal counsel and enable a full Hearing, notwithstanding that they may at times appear to be contrary to a learned counsel accustomed to appearing before the highest courts of our land.

[8] Ms. O'Grady states that she is bringing the motion to adjourn the decision-making and "reconsideration for a 're-do' Tribunal hearing including 30% amendment of inadmissible Evidence Tabs and have Commission participate in hearing" in accordance with Rule 3.1 (b) of the CHRT Rules of Procedure.

[9] While Rule 3.1 (b) provides for motions for an adjournment during the Hearing process, I would agree that this permits the Complainant's Motion to be brought prior to the decision on the merits being rendered. However, it is my opinion that this Rule, nor any other rule of procedure of the CHRT, permits a completed Hearing to be re-opened

and continued to adduce evidence and claims which were dealt with at the Hearing, and ruled inadmissible by the Tribunal.

[10] When arguments of admissibility of evidence were made, it was for the Tribunal to rule on the issue. Section 50(2) of the *Canadian Human Rights Act* (the “Act”) provides that the Tribunal may decide all questions of law or fact necessary to determining the matter. In addition, section 50(3)(e) permits the Tribunal to decide any procedural or evidentiary question arising during the Hearing.

[11] Ms. O’Grady does not raise any new evidence that was not previously available to the parties at the time of the Hearing. Rather, she wishes to argue or re-argue why some of the evidence ruled inadmissible should be reversed.

[12] Accordingly, I will not make an Order to “re-do” or reopen the Hearing for the purpose of attempting to submit argument which is in effect an appeal of the Tribunal’s ruling that the evidence was not admissible. The Complainant’s first request under her Notice of Motion thereby fails.

[13] In her initial request for the Motion, Ms. O’Grady also included to “have the Commission participate in hearing.” The Canadian Human Rights Commission’s (the “Commission” or “CHRC”) jurisdiction to appear at a Tribunal hearing is governed under section 51 of the *Canadian Human Rights Act*. That section states: “In appearing at a hearing, presenting evidence and making representations, the Commission shall adopt such position as in its opinion, is in the public interest having regard to the nature of the complaint.”

[14] The CHRC is an independent body from the CHRT. The Commission determines if it will participate at a Tribunal hearing in accordance with its mandate pursuant to section 51 of the *Act*. While the Tribunal gives notice to the Commission of the Hearing via the Notice of Hearing, which is sent to all parties to a Tribunal case, and shall invite the Commission (as with other parties, receiving notice of the Hearing), the right to appear at the Hearing. It is for the Commission to decide if it shall participate and, if so, to define the extent of its participation (full participation at the Hearing versus participation that is limited to the case management process without participation at the Hearing). In the present

matter, the Commission advised the Tribunal, upon referring the Complaint, that it had elected to limit its participation to the case management process. While the Commission is free to reconsider its decision to participate at the Hearing at any point in the process, it has not done so in this case. The Tribunal does not have jurisdiction to order the attendance of the Commission at any of its hearings.

[15] Therefore, the Complainant's first request under her Motion is denied in all of its aspects.

[16] The Complainant wishes to amend her final written submissions presented during Final Argument on May 9, 2017, and submit the same in writing within 60 days of my finding in this decision.

[17] Section 50(1) of the *Act* provides that the complainant shall have a full and ample opportunity to put forward his or her case. Rule 1 of the CHRT Rules provides that the parties shall have a full and ample opportunity to be heard.

[18] During the course of the Hearing, I believe that the Complainant was afforded this opportunity to be fully heard and to present her evidence. She has stated in her submissions in support of this Motion that at times she was much overcome with anxiety, which prevented her to fully participate. The Complainant argues that she was prevented in Final Argument, as a result of objections from Respondent counsel, from presenting new evidence, which evidence was either not submitted at the Hearing or ruled inadmissible.

[19] However, there are ample decisions of the CHRT that endorse the principle that the parties are entitled to a full and complete Hearing.

[20] As a result, I will permit the Complainant to refile her final written submissions, presented during Final Argument, within 60 days of the release of this decision. The Complainant is to limit her final written submissions to evidence accepted and argued at the Hearing, by either party. These final written submissions are not to be used as a tool to present new allegations, or statements which might otherwise be more appropriate for a Statement of Particulars (SOP). The Complainant is merely to deal with the evidence

accepted at the Hearing. The Tribunal will then consider the Complainant's amended final written submissions and determine if the evidence is persuasive.

[21] I further dismiss the Complainant's request to file the document found in Exhibit R-2, Tab 30 into a privileged lock box. The reasons stated by the Complainant in support thereof were either insufficient or not persuasive.

III. Order

[22] Accordingly, I will make the following Order:

1. That the Complainant be entitled to amend her final written submissions, provided that they do not raise any fact or issue which was not submitted before me at the Hearing; that the argument is to be based on the evidence accepted by the Tribunal at the Hearing from either party; that it not form part of the Complainant's argument any derogatory remarks directed at Respondent counsel; and that they be submitted no later than 60 days from the date of this decision.
2. That the Respondent shall have 60 days after receipt of the Complainant's amended final written submissions, to also file amended final written submissions in response, should it wish to.
3. That both parties have 30 days to file a reply.
4. That no new evidence be presented, unless it bears directly on the Complainant's SOP or the Respondent's SOP and unless it was not available or known about at the time of the Hearing.

Signed by

Ronald Sydney Williams
Tribunal Member

Ottawa, Ontario
June 28, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2116/3215

Style of Cause: Kathleen O'Grady v. Bell Canada

Ruling of the Tribunal Dated: June 28, 2017

Motion dealt with in writing without appearance of parties

Written representations by:

Kathleen O'Grady, for herself

Maryse Tremblay, counsel for the Respondent