

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 10
Date: March 7, 2024
File No(s): T2582/13920

Between:

Ray Davidson

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Global Affairs Canada

Respondent

Ruling

Member: Kathryn A. Raymond, K.C.

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I. Overview of Ruling on Motion to Adjourn Hearing

[1] The hearing of the inquiry into the complaint of Ray Davidson, the Complainant, was scheduled to begin on November 28, 2023. On November 9, 2023, Global Affairs Canada (GAC), the Respondent, filed an urgent motion to adjourn the hearing *sine die*, which means without a new date for the hearing. GAC requested an adjournment *sine die* because one of the Respondent counsel was no longer available to attend the hearing for entirely understandable personal reasons. The remaining Respondent counsel did not wish to proceed without the assistance of another counsel.

[2] The Respondent's application for an adjournment was denied for the reasons provided below. The reasons include, but are not limited to, that it is in the interests of procedural efficiency to proceed with the hearing as the scheduling of this case is directly related to two other cases before this Tribunal. All three cases are subject to existing procedural orders that would be impacted by an adjournment. The Tribunal provided an alternate solution to the requested adjournment to address the underlying reason for the request so that the hearing could proceed in a fair manner. That solution included affording Respondent counsel an extra series of dates for preparation for the hearing or as hearing dates, as needed.

II. The Complaint

[3] Mr. Davidson's complaint against GAC relates to not having been selected as a consultant in 2015. Mr. Davidson is Black and alleges he was discriminated against based on colour, national or ethnic origin and race, contrary to sections 7 and 10 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the "Act"). Mr. Davidson believes that the reasons offered by GAC to justify its decision not to retain him are a pretext. Mr. Davidson says he was rejected because GAC has "by and large only hired white... consultants, and very often those of French-Canadian origin."

III. The Procedural Background

[4] The procedural background to this complaint and two other human rights complaints filed by Mr. Davidson against other respondents is extensive. Certain aspects of this background provide relevant context to the Respondent's request for an adjournment.

[5] Mr. Davidson filed this complaint of discrimination with the Canadian Human Rights Commission (the "Commission") in October 2016. Mr. Davidson's complaint was initially dismissed by the Commission. That decision was judicially reviewed and quashed by the Federal Court, and the complaint was sent back to the Commission for additional disclosure to Mr. Davidson and continued investigation by the Commission (*Davidson v. Canada (Attorney General)*, [2019 FC 997](#)). The Commission subsequently referred the complaint to the Tribunal in December 2020 for inquiry. The former Chairperson was to conduct case management and hear this case. However, his appointment expired in September 2021, and the Tribunal had to reassign this matter.

[6] The parties filed Statements of Particulars ("SOPs") that did not provide the particulars and disclosure required by the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the "Rules"). Extensive case management by way of case management conference calls (CMCCs) was required to address this issue because of its implications for the potential fairness of this proceeding. The parties' final opportunity to complete disclosure and make any remaining amendments to their SOPs concluded in the fall of 2023. As noted, the hearing into this complaint was scheduled to begin in November 2023.

[7] On October 26, 2023, this complaint and Mr. Davidson's other two complaints were the subject of three rulings in *Davidson v. Global Affairs Canada*, [2023 CHRT 49](#), *Davidson v. Immigration, Refugees and Citizenship Canada*, [2023 CHRT 48](#) (the "IRCC complaint") and *Davidson v. Public Services and Procurement Canada*, [2023 CHRT 50](#). In those rulings, I declined to grant an order bifurcating all three complaints into six hearings, as suggested and agreed upon by the parties. I provided procedural directions for each complaint, including an order directing the sequence in which the inquiries into the three different complaints should be heard and decided. Mr. Davidson's case against GAC was to be heard

first. Liability in Mr. Davidson's case against GAC was to be decided first, followed by a decision concerning liability in the IRCC complaint, for reasons explained in those rulings.

[8] The hearing dates in the IRCC complaint are set for November and December 2024, on the basis that liability in this case will be decided beforehand. The parties in the IRCC complaint will require time to finalize their preparations for their hearing with knowledge of the outcome in this case. The fact that the Tribunal must determine liability in this case before hearing the IRCC complaint is of key relevance to this ruling.

[9] The hearing of this inquiry was scheduled to be held over two weeks in November and December 2023, based on estimates discussed at a CMCC with the parties. Opening statements were expected to take half a day. Mr. Davidson is the only witness for the Complainant, and he thought his direct examination would take a day. The Respondent anticipated that cross-examination of Mr. Davidson would require a day. The Commission was calling no witnesses. The Respondent expected to call four to five witnesses at half a day each, for a total of about two and a half days. A four-day week and a three-day week of hearing days were scheduled to allow extra time and avoid fatigue.

[10] During case management of this matter, including at most of the CMCCs, the Respondent has been represented by two co-counsel and a paralegal.

IV. The Process for the Motion

[11] GAC's urgent motion for an adjournment of the hearing *sine die* was filed under Rule 26 of the Rules. In the alternative, pursuant to Rule 8 of the Rules, GAC requested that the Tribunal forego compliance with Rule 26 of the Rules to secure an informal, expeditious and fair determination of the matter. Rule 26 states the requirements applicable to filing materials for motions. The Respondent's written submissions were considered satisfactory for the purposes of the motion, as requested. Mr. Davidson responded immediately with written submissions objecting to the adjournment of the hearing. The formal requirements of Rule 26 were dispensed with, and a hearing of the motion by way of a telephone conference was scheduled and proceeded on November 9, 2023, on agreement.

V. The Respondent's Position

[12] The Respondent asked that the hearing be adjourned *sine die* because co-counsel for the Respondent suffered the traumatic loss of an immediate family member in the days preceding the motion. I was advised that co-counsel had ceased work with no planned return to work before 2024. The Tribunal wishes to express its condolences to co-counsel and her family concerning the personal loss she has suffered.

[13] The Respondent submitted that it was not feasible for it to proceed with one counsel or to bring in a replacement co-counsel because of the complexities of the matter, the preparation time required, the amount of documentary evidence and the number of witnesses to be called by the Respondent. The Respondent also pointed to the need for other procedural steps at the hearing such as opening statements, cross-examination of Mr. Davidson and closing arguments.

[14] I asked why additional resources could not be made available for the presentation of the Respondent's case. Respondent counsel advised the Tribunal that the motion for an adjournment was made as a last resort after discussions with management in her office.

[15] The Respondent submitted that the disposition of this complaint will not be affected by an adjournment as the decision regarding damages will only take place after the hearing in the IRCC complaint and that the hearing has not yet been scheduled. [The latter statement was incorrect; this was brought to the attention of Respondent counsel].

[16] The Respondent suggested that two of the scheduled hearing dates be used for mediation of this complaint. The Respondent acknowledged that Mr. Davidson did not consent to mediation.

VI. The Commission's Position

[17] The Commission consents to participating in mediation within the timeframe of the hearing dates and indicates that it will cooperate in scheduling dates for the hearing to be held.

VII. The Complainant's Position

[18] Mr. Davidson strenuously contests the requested adjournment and asks that the hearing begin as planned on November 28, 2023. Mr. Davidson says that he is ready to present his case. He cited the momentum achieved by the investment of time and resources in case management and the potential loss of focus for him as a self-representing complainant. Mr. Davidson also asserts that waiting to proceed at some unknown time will cause him undue anxiety. He cites time constraints on the Tribunal, as discussed in case management concerning other cases, and expressed concern that a significant delay in this case would delay the proceedings in his other related files, including the IRCC complaint.

VIII. The Issue

[19] The issue is whether the Respondent has made a persuasive case that it will be prejudiced if the hearing proceeds as planned and how that harm compares to the prejudice to the Complainant if the adjournment is granted.

IX. The Analysis

A. The Procedural Authority and Discretion of the Tribunal

[20] The Tribunal is authorized to make procedural decisions respecting matters before it, including adjournment requests, by section 50(3)(e) of the Act. In exercising its discretion in this regard, the Tribunal considers the request for an adjournment of a hearing with regard for section 48.9(1) of the Act, which requires that proceedings be conducted informally and expeditiously, subject to the rules of natural justice and the Rules.

B. Relevant Legal Considerations

[21] In *Fraser v. Royal Canadian Mounted Police* [2013 CHRT 23](#) ("*Fraser*"), at para 4, the Tribunal considered a request for an adjournment about one week before the hearing was scheduled to begin. At para 26, Member Marchildon cited with approval the comments in

Zhou v. National Research Council, [2009 CHRT 11](#) at para 8, concerning the need to protect the considerable Tribunal resources required for each hearing:

The Tribunal must run an efficient hearing system in order to achieve its legislative mandate to hear and resolve complaints expeditiously (s. 48.9(1) of the *CHRA*; *Canada Post Corporation v. PSAC and the CHRC*, 2008 FC 223 at para. 274; *Nova Scotia Construction Safety Association, Collins and Kelly v. Nova Scotia Human Rights Commission and Davidson*, 2006 NSCA 63 at para. 76). A hearing requires the dedication of considerable financial and human resources. Those resources cannot be reallocated without significant disruption to the whole system, especially at this stage in the process. Such disruptions have an impact on the timeliness not only of the present case, but also of other cases in the system. For those reasons, an adjournment is granted only in cases where proceeding will clearly have an impact on the fairness of the hearing.

[22] In other words, the party seeking to adjourn a hearing must first establish that the hearing cannot proceed in a fair manner to justify the loss of Tribunal resources invested in ensuring that the hearing was ready to proceed. The Tribunal must also consider any disruption caused to the whole system, including the impact on other cases.

[23] Moreover, the Tribunal must consider the comparative prejudice to the parties resulting from denying or granting the adjournment (*Fraser* at para 27). The motion for an adjournment requires that I balance the competing interests of the Respondent and Complainant and assess the weight to be placed upon the parties' differing concerns.

[24] As was noted in *MacBain v. Canada (Human Rights Comm.) (No. 1)*, [1984 Can LII 5023 \(CHRT\)](#) at para 33, requests for adjournments also involve considerations of the public interest:

It is in the public interest to have allegations of discrimination dealt with expeditiously not only to permit relief to the complainant if the complaint is substantiated, but also in the broader context of fostering human rights in the community at large. As well it is in the public interest to absolve the respondent in a timely fashion should the allegations be unfounded.

[25] There is a public interest in the expeditious resolution of discrimination complaints and avoiding the loss of time and resources already invested in order to have the hearing proceed.

C. The Application of Relevant Considerations to This Case

[26] An adjournment of the hearing undoubtedly causes prejudice to the Complainant. His concerns about the delay being significant are valid. Moreover, the disruptive effect of the adjournment of this hearing includes a potential impact on the Complainant's other cases and related earlier rulings of the Tribunal. The "trickle down effect" of related disruption to other cases and to other parties is not insignificant.

[27] In the course of issuing the rulings of October 26, 2023 that decided the order in which the Tribunal and parties will proceed with Mr. Davidson's three complaints, the Tribunal indicated that there were hearing dates in this case and that they were to be preserved. This message should have signalled that a request for an adjournment would need to be accompanied by persuasive and detailed justification.

[28] This is not a proceeding where preparations by counsel for the hearing are beginning at a late stage. The issues raised by this complaint have been canvassed in case management with the Tribunal in advance to identify what the hearing of the inquiry should address and why. The parties have had multiple opportunities to complete the gathering of information and evidence needed for their particulars, documentary disclosure and witness will-says. They have concluded the disclosure stage to the extent that they are prepared to do so. A series of amended SOPs have been filed with additional required particulars. It is fair to say that the review of the issues in this case during case management gives the parties and the Tribunal added familiarity with what is expected to be presented by each party at the hearing.

[29] As well, some issues were narrowed or resolved by agreement during case management. This limits the number and the nature of the issues that are anticipated to be addressed at the hearing. For example, the Respondent and the Commission advised the Tribunal that they have reached an agreement respecting public interest remedies. Likewise, the parties reached an agreement regarding aspects of the loss of income claim and prejudgement interest, should those remedies be ordered. While there are matters to still be clarified by the parties, it is anticipated that there will be decreased or no need for

evidence and argument respecting those issues at the hearing. The reduction of the issues has made the case less complex and has lessened the number of witnesses.

[30] Respondent counsel is experienced and has been assisted by a paralegal throughout. The Respondent's argument that it is not feasible for it to proceed with one counsel is not persuasive given the capability of Respondent counsel as demonstrated during case management, the assistance of a paralegal and the extent of early and ongoing preparation for the hearing. Furthermore, as noted earlier, the issues to be addressed at the hearing are particularized in the amended SOPs or limited by agreements reached between the parties.

[31] Given the seven days of anticipated evidence and argument, the hearing will not be short, but it is not so long as to make co-counsel an absolute necessity for the hearing to be fair to the Respondent. The Respondent has not identified any specific prejudice to the ability of the remaining counsel to prepare or to have time to prepare.

[32] While there are a number of documents anticipated to be admitted into evidence during the hearing, many of the documents are from a single source, namely the Respondent's internal case management system. The parties are filing a Joint List of Documents.

[33] Respondent counsel advised the Tribunal that it was not feasible for her to proceed with the hearing alone and not possible for her office to provide a replacement co-counsel because of the complexities of the matter, the preparation time required, the amount of documentary evidence and the number of witnesses to be called by the Respondent. Counsel advised the Tribunal that she had made inquiries within her office but that no one was available to assist.

[34] If two counsel are required to represent the Respondent, that placed an obligation upon Respondent counsel's office to demonstrate that its lawyers were engaged in other hearings scheduled at the same time or that it had made best efforts to change work assignments to address and resolve the issues created by the loss of co-counsel. The obligation was to provide support for what was, in essence, counsel's motion to adjourn this hearing *sine die*.

[35] Protecting the hearing dates should take precedence given the investment of the Tribunal's resources, the interests of the other parties and the public interest in this hearing proceeding. A ruling that determined that this complaint must be heard first was issued previously, and hearing dates were set for the IRCC complaint based on the overall schedule of the three complaints. All of this should not be thrown into question by the unsupported position that no one else within the office of Respondent counsel could be made available to assist. Any potential prejudice suffered by the Respondent by having one less counsel available for the hearing can be addressed by giving the remaining counsel additional time to prepare her case, as outlined in the section below.

X. The Outcome

[36] The parties were advised of the outcome of the Respondent's motion on November 9, 2023, at the conclusion of oral submissions. They were informed that I was not prepared to grant an adjournment of the hearing and, in particular, an adjournment *sine die*.

[37] Mr. Davidson had advised the Respondent that he was not prepared to go to mediation instead of a hearing. Mediation must proceed on consent. While I encouraged the option of mediation with the parties again on November 9, 2023, it will not be ordered against a party's wishes.

[38] Respondent counsel clarified that she did not mean to suggest by the Respondent's request for an adjournment *sine die* that new dates would not be set. However, the motion was for an order adjourning the hearing *sine die* and for mediation to proceed on two of the hearing dates. The Respondent did not offer new dates or indicate its availability with its motion materials.

[39] Rather than adjourn the hearing, I concluded that the problem was that Respondent counsel, who had planned to have the support of co-counsel and a paralegal, was not going to have the assistance of co-counsel at the hearing. It appeared possible that the hearing schedule may not allow Respondent counsel sufficient time to complete all preparations beforehand or conclude preparations during the hearing itself, outside of the traditional expectation that evenings and weekends will be used for ongoing preparation by the parties

during the hearing if required. From the most recent information on file, it seems that the Respondent now intends to call eight witnesses.

[40] The hearing had been scheduled to begin Tuesday, November 28, 2023, continue for four days until Friday, December 1, 2023, adjourn until Tuesday, December 5, 2023, and continue until Thursday, December 7, 2023. In order to provide the Respondent with further preparation time, I directed the parties to identify additional available dates for the hearing. An additional 12 days were identified based on a discussion of the schedule of all concerned and the Tribunal. Those dates were December 11, 12, 13, 14, 15, 2023, and January 2, 3, 4, 5, 8, 9, 10, 2024. It was made clear that use of all hearing days was to be within the discretion of Respondent counsel to support her ability to proceed as a single counsel.

[41] To give Respondent counsel an additional day of preparation time before the second week of hearing days, the December 5, 2023, hearing date was released.

[42] To lessen the amount of preparation required for the commencement of the hearing, I directed that the parties would not be required to make opening statements at the hearing. The most recent amended SOPs as listed at para 44 in *Davidson v. Global Affairs Canada*, 2024 CHRT 4 (unreported) (the “Amended SOPs”) will serve as their opening statements.

XI. Orders

[43] The Respondent’s motion to adjourn the hearing of the complaint *sine die* is dismissed.

[44] It is ordered that the hearing date of December 5, 2023, be released.

[45] It is ordered that the following dates be held for the hearing to accommodate Respondent counsel in addition to the hearing dates already set for this matter: December 11,12,13,14,15, 2023, and January 2, 3, 4, 5, 8, 9, 10, 2024.

[46] At the hearing, the parties’ Amended SOPs will serve as their opening statement.

XII. Postscript

[47] On November 14, 2023, Respondent counsel advised the Tribunal that an additional counsel was being added by her office to assist her with this case. When the hearing convened, the Tribunal extended its thanks to the new Respondent co-counsel for assisting with the case so that this case could proceed more readily for Respondent counsel, the other parties and the Tribunal.

[48] The Respondent requested that the period from November 28, 2023, to December 1, 2023, be used for the Complainant's testimony in chief and cross-examination only. In other words, the first week of hearing would only be used for the presentation of the Complainant's case even if the Complainant closed his case prior to the end of that week. Respondent counsel asked that December 6 - 7, 2023, be used for the Respondent's first witness and that the dates of December 11 - 15, 2023, be used for the Respondent's remaining witnesses. In addition, Respondent counsel requested that the hearing be conducted outside of regular hours on one day of hearing to accommodate the attendance of one of the Respondent's witnesses who was appearing at the hearing by Zoom from Kenya. These requests were granted.

[49] Respondent counsel advised the Tribunal that the Respondent anticipated being able to present its entire case by December 15, 2023, but understood that the Tribunal was prepared to hear testimony not completed by December 15, 2023, between January 2 - 5, 2024, inclusive. While Respondent counsel did not address the need for Reply evidence by Mr. Davidson, it was apparent that this schedule allowed time for any Reply evidence. Respondent counsel requested that final submissions be heard on January 8, 2024. The Tribunal provided time limits for oral submissions.

[50] In addition to the above hearing dates, the Tribunal continued the hearing on December 20, 2023, to help offset the time lost to unplanned motions at the hearing.

Signed by

Kathryn A. Raymond, K.C.
Tribunal Member

Ottawa, Ontario
March 7, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2582/13920

Style of Cause: Ray Davidson v. Global Affairs Canada

Ruling of the Tribunal Dated: March 7, 2024

Appearances:

Ray Davidson, for the Complainant

Christine Singh, for the Canadian Human Rights Commission

Helen Gray and Jennifer Francis, for the Respondent