

**Canadian Human Rights Tribunal Tribunal canadien des droits de la
personne**

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADA POST CORPORATION

Respondent

RULING ON COMPLAINANT'S MOTION

2001/04/18

PANEL:

Benjamin Schechter

Elizabeth Leighton

Gerald Rayner

[1] A Motion was brought by the Complainant, Public Service Alliance of Canada, dated March 20th, 2001, seeking an Order from the Tribunal "permitting the testimony of Dr. Martin Wolf during the week of April 30, 2001".

Background

[2] The Complainant's Motion is brought in response to the decision of the Tribunal, rendered on November 6, 2000 to adjourn the Hearing "until the decision of the Federal Court, Trial Division concerning the judicial review of this Tribunal's October 21, 1998 decision has been rendered".

[3] When rendering its decision in November, 2000, the Tribunal understood that the judicial review by the Federal Court, Trial Division was scheduled to be heard on December 13, 2000. In fact, on that date, all parties consented to adjourn *sine die* the hearing of the application for judicial review.

[4] On November 6, 2000, the direct examination of Dr. Wolf, an expert witness brought by the Public Service Alliance of Canada, had been completed.. He was present, on that date, to resume his testimony.

Issues

1. Has the Tribunal authority to allow Dr. Wolf, an expert witness, to complete his testimony ?
2. If the answer is affirmative, should the Tribunal grant the Motion?

Submissions

[5] The Public Service Alliance of Canada submitted that the Tribunal's jurisdiction to allow Dr. Wolf to complete his testimony is based in the *Canadian Human Rights Act* itself. The Tribunal is, according to the *Act*, the master of its own procedure.

[6] Further, it argued that circumstances have changed substantially since the November 6, 2000 decision. The anticipated date for the hearing of the application for judicial review of the Tribunal's October, 1998 decision has moved from December 13, 2000,

about a month from the Tribunal's November 6th decision to adjourn, to a date presumed to be in the latter part of 2001.

[7] In order to make the best use of the time available to all parties as they await the hearing of, and the decision concerning, the application for judicial review of the Tribunal's October, 1998 decision, the Public Service Alliance of Canada urged that the Tribunal allow the completion of Dr. Wolf's evidence. Moreover, counsel indicated that Dr. Wolf's testimony has not been directed to the legal status of the guidelines under the *Act* or other issues raised by the judicial review application of Canada Post.

[8] Counsel for the Canadian Human Rights Commission adopted the arguments made by counsel for the Public Service Alliance of Canada. Additionally, she stressed, in her submissions, that the Tribunal has procedural jurisdiction to allow Dr. Wolf's testimony to be completed, and that a wait of perhaps over a year to complete that testimony was not acceptable.

[9] While recognizing that the Tribunal has its own discretionary jurisdiction, Counsel for Canada Post submitted that the decision made by the Tribunal on November 6th, 2000 was a decision based upon the law as it stood at the time of the Federal Court, Trial Division decision rendered by Tremblay-Lamer, J. She also submitted that there have been no changes in the law since the Tribunal's November, 2000 decision. She cited the case *Nadia Caza v. Tele-Metropole Inc. and Manon Malo* (April 11, 2001), T633/2101 (CHRT).

[10] Additionally, she argued that the evidence of Dr. Wolf deals with matters which are addressed by the Tremblay-Lamer, J. decision. That decision has been appealed to the Federal Court of Appeal, and arguments heard; a decision is anticipated within months. Counsel for Canada Post submitted that the decision of the Federal Court of Appeal will bring some finality to the issue of the institutional independence of Canadian Human Rights Tribunals.

Conclusion

[11] The Tribunal accepts what is apparently the position of all parties - that the Tribunal is the master of its own procedure.

[12] The Tribunal is of the opinion that its decision of November 6th, 2000 was procedural.

[13] The Tribunal finds, as a fact, that there has been a sufficient change in the circumstances since the rendering of the decision to adjourn, made on November 6th, 2000, to warrant an exercise of discretion.

[14] Not only have circumstances changed, considerably, but also that change has created a situation where, were the expert witness not to complete his evidence as soon as reasonably possible, it could be over a year before that evidence was before the Tribunal.

[15] It is a well known maxim that justice delayed is justice denied. It is a well known fact that witnesses whose testimony is unduly delayed may often become unavailable for one reason or another.

[16] Therefore, the Tribunal grants the Complainant's Motion that Dr. Wolf be allowed to complete his testimony before this Tribunal as soon as is practicable.

Benjamin Schecter

Elizabeth Leighton

Gerald Rayner

OTTAWA, Ontario

April 18, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

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APPEARANCES:

Jamie Cameron For Public Service Alliance of Canada

Fiona Keith For the Canadian Human Rights Commission

Joy Noonan For Canada Post Corporation