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

BETWEEN:

MAURICE BRESSETTE

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

KETTLE AND STONY POINT FIRST NATION BAND COUNCIL

Respondent

RULING ON AMENDMENT TO COMPLAINT

MEMBER: J. Grant Sinclair

2004 CHRT 02

2004/01/15

[1] The complainant Maurice Bressette filed a complaint with the Canadian Human Rights Commission dated March 30, 2002, against the respondent Kettle and Stony Point First Nation Band Council. In the complaint, he alleged that the respondent discriminated against him on the ground of family status by refusing to hire him as a Family Case Worker, contrary to s. 7 of the *Canadian Human Rights Act*.

[2] On October 30, 2003, the Tribunal held a preliminary hearing to deal with two motions, one by the respondent disputing the Tribunal's jurisdiction under s. 67 of the *Act*; and one by the complainant to amend his complaint to add allegations of retaliation against him by the respondent, contrary to s. 14.1 of the *Act*.

[3] The complainant's motion was not dealt with at the preliminary hearing. Instead, the Tribunal directed that complainant's amendment motion be dealt with the way of written submissions from the parties, the complainant to file by November 7, 2003, and the respondent to file by November 17, 2003. The Tribunal also scheduled the hearing dates for the complaint to be April 19-23, 2004 and April 26-30, 2004. The disclosure date for the complainant is March 31, 2004 and February 27, 2004 for the respondent.

[4] There are a number of decisions by both this Tribunal and provincial human rights tribunals that deal with the question of amending a complaint to add an allegation of retaliation. (See *Kavanagh* v. *Correctional Services of Canada* (May 31, 1999), T505/2298 (C.H.R.T.); *Entrop v. Imperial Oil Limited* (1994) 23 C.H.R.R. D/186); *(Fowler v. Flicka Gymnastics Clu*b, [1998] B.C.H.R.T. No.2); *Schnell v. Machiavelli Associates v. John Micka* (April 25, 2001), T594/5200 (CHRT).

[5] Certain principles can be derived from these decisions as follows. A human rights complaint is not like a criminal indictment. There is discretion in the Tribunal to amend the complaint to deal with additional allegations, provided that sufficient notice is given to the respondent so that it is not prejudiced and can properly defend itself. The fact that the proposed amendment involves a different section of the *Act* to that in the original complaint does not deprive the Tribunal of jurisdiction.

[6] It should not be necessary for individuals to make allegations of reprisal or retaliation arising after a complaint, by way of separate proceedings. Rather, an amendment should be granted unless it is plain and obvious that the allegations in the amendment sought could not possibly succeed. An obvious example, at least for allegations of retaliation, would be where the alleged incidents of retaliation were shown to have occurred prior to the filing of the complaint. The Tribunal should not embark on a substantive review of the merits of the amendment. That should be done only in the fullness of the evidence after a full hearing.

[7] In his submission, the complainant referred to numerous incidents occurring after March 30, 2002, which he alleges amount to retaliation. In my opinion, out of this multitude of incidents referred to by the complainant, some disclose a tenable claim for retaliation. It is not plain and obvious that the complainant would not succeed with these allegations.

[8] This is not to say that the complainant has established that the respondent did contravene s. 14.1 of the *Act*. This remains to be proven by the complainant at the hearing of the complaint. All that this Tribunal has concluded is that the original complaint should be amended to add an allegation under s. 14.1 of the *Act*.

[9] In its submission, the respondent argued that the complainant's submission and documentation is just a continuation of a dialogue between the Band Chief, the Band Administrator, the Band Council, and this should not and can not be characterized as retaliatory. In my view, this is not a basis for refusing the amendment. It is a submission that should be made, on evidence, at the hearing of the complaint.

[10] Finally, dealing with the question of prejudice to the respondent, I note that the respondent has known at least since October 22, 2003 when the complainant first filed his motion, that the complainant intended to seek this amendment. The respondent also has known since that date, the documentation and the incidents that the complainant relies upon. Further, since November 7, 2003, the complainant has provided further disclosure to the respondent setting out further incidents he intends to rely upon. The complainant is also to provide full disclosure by March 31, 2004.

[11] In my opinion, the respondent has been given adequate notice of the case to be met and will not suffer any prejudice if the amendment is granted.

[12] Accordingly, for the foregoing reasons, the complainant's motion to amend the original complaint to add an allegation of retaliation under s. 14.1 of the *Act*, is granted.

Signed by

J. Grant Sinclair

OTTAWA, Ontario

January 15, 2004

CANADIAN HUMAN RIGHTS TRIBUNAL PARTIES OF RECORD

TRIBUNAL FILE: T827/7703

STYLE OF CAUSE: Maurice Bressette v. Kettle and Stony Point First Nation Band Council

RULING OF THE TRIBUNAL DATED: January 15, 2004

APPEARANCES:

Maurice Bressette On his own behalf

Patrick O'Rourke For the Canadian Human Rights Commission

Jonathon George For the Respondent