

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Micheline Montreuil

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Forces

Respondent

Ruling

Member: Pierre Deschamps

Date: April 5, 2007

Citation: 2007 CHRT 8

[1] When the hearing in this case resumed on March 26, 2007, the complainant filed a motion to amend the hearing schedule established during the hearing weeks of October and December 2006. This motion followed a letter that the complainant had sent to the parties, as well as to the Tribunal, on March 22, 2007, advising that such a motion would be filed.

I. The position of the parties

A. The complainant

[2] The complainant's motion is based on the fact that her situation has changed since the hearing schedule was set because she has been employed since December 11, 2006, at the Conseil de la justice administrative du Québec, a body monitoring the ethical conduct of about 500 administrative judges.

[3] The complainant submits that it is impossible for her to be absent from her current employment for more than two weeks per month and that she would have to resign from her job if she were forced to be absent. Moreover, the complainant submits that, short of resigning from her job, she would only be able to be present before the Tribunal when her work schedule would so permit.

[4] According to the complainant, the body that employs her cannot do without her for 6 or 7 consecutive weeks. In her arguments, the complainant claims that she makes up one-third of the body's resources and that her absence would deprive six million potential litigants from Quebec of her services.

[5] In a letter dated February 23, 2007, the complainant also states that she was not able to find a reasonable accommodation with her employer with regard to the continued periods of absence related to the hearing of this complaint.

[6] The complainant is therefore asking the Tribunal to adhere to the Tribunal's usual practice, namely a maximum of two weeks of hearing at a time (letter dated March 22, 2007).

[7] That being said, at the hearing of March 26, 2007, the complainant however argued before the Tribunal that she was prepared to resign from her employment if the hearing of her complaint took place over two consecutive months.

[8] Finally, the complainant informed the Tribunal that if there were federal elections, she was a likely candidate for the New Democratic Party. She would then have to be absent for an indeterminate period, namely for the period of the electoral campaign. The complainant argued that she could hardly imagine not being available to almost 85,000 constituents for the period of the electoral campaign. As for her job, the complainant pointed out that, under her collective agreement, she would be entitled to unpaid leave.

B. The Commission

[9] As for the Commission, it submits that the complainant's request is aimed at accommodating her and that it is not capricious on her part, given the difficulties transgender persons have finding employment.

[10] For the Commission, requiring the complainant to be present for four consecutive weeks is extremely difficult for her. Moreover, denying the complainant's request would prevent her from fully participating in the hearing of her complaint. The Commission argues that the complainant has the right to be accommodated and reiterates that the Commission will make itself available, whatever the outcome.

[11] At the hearing, the Commission did not make any concrete suggestion regarding the manner in which it proposed to resume the hearings if the Tribunal were to grant the complainant's motion.

C. The respondent's position

[12] For the respondent, the Canadian Armed Forces, amending the hearing schedule that has already been established is not something that can be envisaged. Rather, in this case, the

complainant's request is excessive and no evidence was heard justifying any amendment whatsoever to the hearing calendar. According to the respondent, the current schedule must be maintained, with the exception of minor changes.

[13] The respondent argues that the amendment of the present schedule would be prejudicial to it just when it is ready to tender its evidence. The respondent states that its witnesses are called in a logical order and to change the order of the respondent's witnesses would, at this stage, would be prejudicial.

[14] Moreover, the respondent argues that changing the hearing schedule would have the effect of cancelling several weeks of hearings already scheduled. The respondent argues that the Tribunal, contrary to what the complainant alleges, must control the conduct of the hearing and determine the hearing dates while respecting the rights of the parties. It points out that the hearing schedule, as established, does not result from a decision by one of the parties, but from a consensus by all the parties.

[15] According to the respondent, the complainant must accept the consequences associated with the hearing of her complaint and the undertakings made by counsel. It points out that the complainant's multiple activities should not dictate the conduct of this case and the hearing schedule.

[16] The respondent submits that this case should be closely and tightly managed and that the Tribunal must ensure that the hearings proceed in a reasonable manner.

[17] The respondent therefore asks the Tribunal to maintain the present hearing schedule.

II. Discussion

[18] The Tribunal finds that the complainant is a very busy person. On top of her current employment, she is the Webmaster of the website for the Conseil de la justice administrative. As well, she teaches ethics at the Lévis Campus of the Université du Québec à Rimouski, she sits or

sat on several committees or commissions, intends to be a candidate in the next federal elections. The complainant is also involved in litigation before the Tax Court of Canada and the Court of Appeal. Two cases are currently before the Tribunal where she is the complainant.

[19] In this regard, the Tribunal is aware of the fact that the complainant is involved in a case scheduled to proceed before the Tribunal during the weeks of April 17 and 24, 2007. These dates were set once the dates in this case were known. The complainant's acceptance of these dates makes it so that she has six consecutive weeks of hearings in April and May, a situation which does not appear to be acceptable to her employer.

[20] Given her many activities and the new job that she has, the complainant argues that it would be preferable for her if the Tribunal were to sit for only two weeks each month. That would make it possible for her not to resign from her current employment. I would add, in passing, that there was no evidence submitted to the Tribunal to the effect that the complainant would be compelled to resign from her employment if the Tribunal did not grant her motion.

[21] In this case, the Tribunal is aware that the actual hearing schedule places many constraints on the parties, as well as on the Tribunal. That being said, the Tribunal reminds the parties that the hearing dates in this matter were set, for the better part, in October and December 2006 *with the consent of all the parties*. Several days of hearings were then used to prepare the hearing schedule. Once the schedule was established, the Tribunal made the necessary arrangements to reserve hearing rooms in various places. The scheduling of the hearing dates in this matter also had an impact on the availability of the member to hear other complaints and set dates in other matters pending before the Tribunal.

[22] In the current state of the case, four weeks of hearings are scheduled for May, five weeks of hearings in July and one week in October. Another week of hearing may be necessary in October so that, if need be, the complainant can tender evidence in reply.

[23] Amending the current schedule at this stage of the proceedings as suggested by the complainant, when the respondent is about to tender its evidence, i.e. having a maximum of two weeks per month to accommodate her would involve:

- (1) Cancelling two weeks of hearing in May and postponing them until July because the member is not available in June; cancelling the arrangements made to reserve hearing rooms; rescheduling the testimony of the respondent's medical experts to July, irrespective of their availability;
- (2) Postponing five weeks of hearing from the month of July to October and November, as the member is not available in August and September; cancelling the arrangements made to reserve hearing rooms; the uncertainty of the availability of the respondent's expert witnesses at later dates;
- (3) Postponing the testimony of Dr. Beltrami, scheduled for the week of October 22, 2007;
- (4) Scheduling two weeks of hearing in October for the resumption of the respondent's evidence;
- (5) Scheduling two weeks of hearing in November for the resumption of the respondent's evidence;
- (6) Scheduling two weeks of hearing in December: one week for the respondent to close its evidence and one week to hear Dr. Beltrami's testimony in the context of the Commission's evidence;
- (7) Scheduling another week of hearing in January for the complainant to possibly tender evidence in reply.

[24] As a matter of fact, a change to the current schedule as initially proposed by the complainant, who has finished tendering her evidence, would mean that the respondent would be compelled to adduce its evidence over a period of eight months, i.e. from May to December 2007, while according to the current schedule, the respondent's evidence would be closed at the beginning of August. In the Tribunal's opinion, this would not serve the interests of justice and would prejudice the respondent which, at this stage of the proceedings, has had the presence of its witnesses, both ordinary and expert, secured for some time.

[25] At the hearing, the complainant, even though she proposed that the hearings be limited to two weeks a month so that she does not lose her job, as she submits, argued nevertheless that she was prepared to resign from her job if the hearings took place over a period of two consecutive months.

[26] To ensure that the hearing of this complaint proceeds properly, one party cannot simply propose a new *modus operandi* without specifying the ins and outs and leave the determination of a new hearing schedule to a later date, without regard to the availability of the member, counsel, and witnesses. The sound management of a hearing does not permit this.

[27] The complainant was aware of the hearing schedule currently in effect when she accepted her new job. In December 2006, when the complainant got her new job, she should have informed her employer of the state of the judicial proceedings before the Tribunal and the time required to deal with them.

[28] The Tribunal is prepared to accommodate the parties insofar as the party's request is reasonable and the proposed alternatives are viable. The alternatives proposed by the complainant in this case, i.e. two consecutive months of hearing or two weeks of hearing per month, are not reasonable at this stage of the hearing of her complaint.

[29] In this case, the parties have the duty to respect the undertakings that were made, on an informed basis, with regard to how this case will proceed.

[30] Finally, it is important to note that once the respondent's evidence is closed, there will still be several days of hearing for which the schedule has not yet been determined, if only for Dr. Beltrami's testimony during the week of October 22, 2007.

[31] With regard to the continuance of the hearings in this case, the parties will in due course be able to make all of the submissions they deem worthwhile. For now, the schedule already established must be observed.

III. Decision

[32] For the considerations stated above, the complainant's motion to amend the existing hearing schedule is denied. The hearing will therefore resume, as scheduled, on April 30, 2006, and the hearings shall proceed according to the hearing schedule already sent to the parties.

Signed by

Pierre Deschamps
Tribunal Member

Ottawa, Ontario
April 5, 2007

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1047/2805

Style of Cause: Micheline Montreuil v. Canadian Forces

Ruling of the Tribunal Dated: April 5, 2007

Appearances:

Micheline Montreuil, for herself

Ikram Warsame, for the Canadian Human Rights Commission

Guy Lamb and Pauline Leroux, for the Respondent