

Canadian Human Rights Tribunal

personne

Tribunal canadien des droits de la

BETWEEN:

SERGE BEAUDRY

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA

Respondent

RULING ON DISCLOSURE

Ruling No. 1

2002/07/24

MEMBER: Athanasios Hadjis

[1] The Respondent submitted a motion requesting the Tribunal to make an order requiring the Complainant to provide it with certain documents and information in accordance with Rule 6 of the Interim Rules of Procedure of the Canadian Human Rights Tribunal.

[2] The documents and information in question fall into two categories:

a) those of a general nature, relating mainly to the redress sought by the Complainant; and

b) those of a medical nature, relating to the Complainant's psychological health during the period relevant to the complaint.

[3] During the hearing on the motion on July 19, 2002, the Complainant disclosed some information in the first category, and undertook to provide the remaining documents and information to the Respondent. The Tribunal ordered the Complainant to comply with these commitments by August 22, 2002.

[4] With regard to the medical documents, the Complainant does not contest the relevance to this matter of information on his psychological state between 1995 and 1998. Both at the hearing and in a subsequent letter to the Tribunal, he undertook to provide the Respondent with signed documents consenting to the disclosure of medical information from his files as compiled by the following health professionals:

a) Gilles Dupont, psychologist;

b) Frank Jones, physician;

c) F.P. McCarthy, physician;

d) Pierre Rodrigue, physician.

The Tribunal took note of these commitments and instructed the Complainant to forward the consent documents to the Respondent no later than July 25, 2002.

[5] However, the Complainant objected to full disclosure of his medical file in the hands or under the control of Dr. Dominique Noël, his psychologist. He maintained that this file might contain certain personal information wholly irrelevant to the matter at hand. The Complainant accordingly requested that a copy of this file be forwarded to the Tribunal for its consideration. The Tribunal could determine which of the documents in the file were potentially relevant to the case. Any document or portion of a document that was not potentially relevant would not be disclosed, but returned to the Complainant.

[6] The Respondent pointed out that since the psychological state of the Complainant from 1995 to 1998 was incontestably relevant to the case, it was unlikely that Dr. Noël's file held any information that was not relevant. The Respondent's concern was heightened by the fact that it had been asking for the medical files for a number of weeks. Since the hearing on the merits was scheduled to begin on October 10, 2002, the Respondent maintained that it required full disclosure of the documents as soon as possible in order to make a full examination of them and, possibly, consult its own experts.

[7] A Complainant has a right to privacy and confidentiality with respect to his or her medical records. The exercise of that right, however, must not deprive the Respondent of the right of access to all relevant information and the right to present a complete defence. [\(4\)](#) Accordingly, I shall first be provided with a copy of the Complainant's medical file in Dr. Noël's possession. I shall examine the documents therein and determine which are potentially relevant. These will then be disclosed to the Respondent. Documents that are not relevant will be returned to the Complainant. The medical file shall be supplied to the Tribunal on or before August 1, 2002. If the file is not supplied by that date, the Complainant shall forward to the Respondent, on or before August 5, 2002, his signed consent to the disclosure of said file.

[8] In order to facilitate the procedure to secure production of a copy of this file, the Tribunal is prepared to sign a subpoena *duces tecum*, under paragraph 50(3)(a) of the *Canadian Human Rights Act*, instructing Dr. Noël or any other person in possession of said file to produce it.

[9] I further take note of the commitment made at the hearing on the motion by counsel for the Respondent to the effect that any medical document provided to it by way of the disclosure process shall be consulted only by counsel for the Respondent and an expert or experts retained by them. Counsel for the Respondent further undertook to return all copies of the medical records to the Complainant upon the conclusion of the case.

[10] For these reasons, the Respondent's motion is allowed in part, on the conditions set out above.

"Original signed by"

Athanasios Hadjis

Ottawa, Ontario

July 24, 2002

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T694/8201

STYLE OF CAUSE: Serge Beaudry v. Attorney General of Canada

DATE AND PLACE OF HEARING: Ottawa, Ontario

July 19, 2002

DATE OF RULING: July 24, 2002

APPEARANCES:

Kim Beaudoin for the Complainant

Philippe Dufresne for the Canadian Human Rights Commission

Marie-Josée Montreuil for the Attorney General of Canada

1. ¹ *McAvinn v. Strait Crossing Bridge Limited* (January 3, 2001), T558/1600, paragraph 20 (CHRT)

