CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

KATHLEEN MOORE

Complainant

- and -CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and - CANADIAN GRAIN COMMISSION

Respondent

RULING

MEMBER: J. Grant Sinclair 2006 CHRT 38 2006/08/30

- [1] In her motion dated July 24, 2006, the Complainant, Kathleen Moore, asked that her complaint be amended to add allegations of discrimination under ss. 10 and 14.1 of the *Canadian Human Rights Act*. As to the section 14.1 amendment, the Respondent's position is that it does not oppose but does not consent to this amendment. The facts alleged in support demonstrate that the criteria for such an amendment, as enunciated in many Tribunal rulings, are satisfied. Accordingly, the complaint is amended to add the allegations under s. 14.1 of the *Act*.
- [2] In opposing the s. 10 amendment request, the Respondent first argues that, under s. 51 of the *Act*, it is the Commission that is the guardian of the public interest. Only the Commission, and not an individual complainant, can put forward allegations of systemic discrimination under s. 10 and seek a systemic remedy under s. 53(2)(a) of the *Act*. The Commission has withdrawn from these proceedings and did not seek such an amendment.
- [3] The Respondent also relies on the Tribunal's ruling in *Toth and Canadian Human Rights Commission v. the Kitchener Aero Avionics*, 2005 CHRT 19, specifically the reasoning of the Tribunal in paragraph 37 of its decision. In this paragraph, the Tribunal noted that "the remedies sought by the Complainant are personal and compensatory and do not engage the larger public interest."

- [4] In dealing with the public interest argument, it is not necessary to define "public interest" as found in s. 51 of the *Act*. It suffices to say that s. 51 says nothing about an individual complainant's standing to file a complaint alleging a systemic discriminatory practice. In fact, s. 40 of the *Act* expressly allows an individual or group of individuals to file a complaint with the Commission. This section does not preclude an individual systemic complaint.
- [5] Nor is there anything in s. 53(2)(a) of the Act which constrains the Tribunal in granting a systemic remedy where the complainant is an individual and not the Commission. When the Tribunal is constrained in awarding the full range of remedies under s. 53, it is expressly provided for in the Act. An example of this is s. 54(1).
- [6] Turning now to *Toth*, the Tribunal had to decide a *res judicata* motion, not a motion to add s. 10 to the complaint. In my opinion, the Tribunal's comments in paragraph 37 must be read in the context of the particular facts of that case and is distinguishable from the present case.
- [7] Even if *Toth* may be read as limiting a complainant to a personal and compensatory remedy, it conflicts with the Tribunal ruling in *Aleta Gaucher and Canadian Human Rights Commission v. Canadian Armed Forces*, 2005 CHRT 1.
- [8] In *Gaucher*, the Commission sought to amend a complaint to add a s. 10 allegation. The Tribunal concluded that no amendment was necessary, but granted the amendment to clarify, as it said, the legalities of the situation. The Tribunal reasoned (in paragraph 15) that s. 53(2)(a) of the *Act* does not distinguish between the private and the systemic aspects of a complaint and it is a mistake to draw a dichotomy between complaints under s. 7 and s. 10 of the *Act*.
- [9] I am not bound by the *Toth* decision and I prefer the Tribunal reasoning in *Gaucher*. It is a case that involves the same question as this case.
- [10] For these reasons, I have concluded that the Complainant in this case may, within the framework of her current complaint, allege that the Respondent has engaged in systemic discriminatory practices and may claim a systemic remedy. She can do this without amendment to her complaint. Of course, it is up to the Tribunal hearing the complaint to determine whether or not such allegations can be sustained and if so, whether a systemic remedy is the appropriate remedy in the circumstances.
- [11] I would like to note that the Complainant's motion and the submissions of both counsel have had very beneficial results. The Respondent has repeatedly claimed, and with justification, that it has no clear appreciation of the case that it has to meet.
- [12] In the materials submitted by the Complainant in support of her motion and in her Amended Statement of Particulars, the Complainant has now clearly defined the facts upon which she is relying; the issues that arise out of her complaint; and the remedies she seeks. This is all to the good and should allay the Respondent's concerns.
- [13] There were also some collateral matters raised at the hearing. The Complainant has asked the Respondent to provide further production, specifically as set out in paragraphs 51-56 of the Complainant's Amended Statement of Particulars. The Respondent will review these requests and advise the Complainant of its position by October 6, 2006.
- [14] Finally, the Tribunal has tentatively re-scheduled the hearing of the complaint to commence in Thunder Bay, in the week of April 2-5, 2007, continue in the week of April 10-13, and, if necessary, to resume on April 23, 2007.

OTTAWA, Ontario August 30, 2006

PARTIES OF RECORD

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APPEARANCES:	
Craig Spencer	For the Complainant
No one appearing	For the Canadian Human Rights Commission
Sid Restall	For the Respondent