

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Nancy Green

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

**Public Service Commission
Treasury Board
Human Resources and Development Canada**

Respondents

Ruling

Members: Elizabeth A.G. Leighton and Sheila M. Devine

Date: July 3, 2003

Citation: 2003 CHRT 25

[1] The Respondents' Motion asks for the following relief:

- (a) an Order striking the Complainant's "input" document dated May 29th, 2003 from the Tribunal Record;
- (b) an Order requiring the Complainant to provide the Respondents with a proper notice of factual and legal issues (disclosure) containing all of the relevant information and documents in accordance with Section 6 of the Canadian Human Rights Tribunal Interim Rules of Procedure;
- (c) an Order pursuant to Section 53(3)(a) of the Canadian Human Rights Act compelling the Complainant to provide to the Respondents copies of the Complainant's Income Tax Returns, Notices of Assessment, and any other documents relevant to the Complainant's income tax situation from years 1989 to 2002;
- (d) an Order pursuant to Section 50(3)(a) of the Canadian Human Rights Act compelling the Complainant to provide the Respondents with a consent document pursuant to Section 241(5) of the Income Tax Act authorizing disclosure by the Canada Customs and Revenue Agency to the Respondents of all of the Complainant's taxpayer information with respect to taxation years 1989 to 2002 inclusive;
- (e) an Order providing that if the Complainant does not comply with Orders (b), (c) and (d) within 14 days following the Tribunal's Order, the Complainant's complaint shall be dismissed;
- (f) an Order extending the deadline for the production of the Respondents' notice of factual and legal issues (disclosure) to the date falling 6 weeks after the

Complainant has complied with her obligations pursuant to Orders (b), (c) and (d); and

(g) such further and other relief as the Tribunal deems just.

[2] The Tribunal heard the Motion by Teleconference, on June 25th, 2003. Jan Brongers represented the Respondents; Nancy Green represented herself; the Commission, although appropriately served, was not represented on the Motion.

[3] The Respondents submitted that the disclosure presented to them in Ms. Green's document characterized as "input" is "vague and confusing"; in other words, insufficient to allow the Respondents to make full response. It does not, according to the Respondents, set out with sufficient specificity the material facts, the legal issues and the evidence upon which Ms. Green relies in her request that the Tribunal address the income tax implications of its Decision, dated June 26, 1998. More specifically, she has questioned the calculation of the "gross up" ordered by the Tribunal in that Decision.

[4] The Respondents' Motion is, in essence, a request that Ms. Green start again, and present to them disclosure under headings contemplated in Section 6(1) of the Canadian Human Rights Tribunal Interim Rules of Procedure. Those headings are as follows: "Material Facts", "Legal Issues", "Specific Relief", and "Summary of Evidence to be presented by Witnesses".

[5] The Respondents submitted that, as the Interim Rules of Procedure necessitate summaries of evidence to be heard from witnesses, and, as Ms. Green named, as potential witnesses, Julia Mott, identified as an expert who may be called to give "financial advisor information" and Brian Saxe, an expert who may be called to give "tax accountant information", summaries of their evidence is required.

[6] The Respondents also submitted that a summary of Ms. Green's evidence should be included in the disclosure.

[7] The Respondents argued that they are unable to answer Ms. Green's current vague disclosure. Indeed, because of its confusing nature, the Respondents argued that they are being placed in a position where they must guess what Ms. Green wants and how that can be accomplished. The evidentiary burden, they argued, is being shifted to the Respondents because of the "vague and confusing" nature of Ms. Green's disclosure.

[8] What is specifically needed, argued the Respondents, are copies of Ms. Green's annual Income Tax Returns, including the Notices of Assessment, from 1989 to 2002, both of which could most easily be received by the Respondents from the Canada Customs and Revenue Agency if the Tribunal ordered that Ms. Green sign a consent document, pursuant to Section 241(5) of the Income Tax Act, authorizing such disclosure.

[9] Failure to produce more specific disclosure should, according to the Respondents' argument, result in a dismissal of the Hearing. The Respondents submitted that the current disclosure is so lacking in specificity as to be rendered useless and, as such, should be set aside. Without disclosure, the Hearing cannot proceed fairly, and should be dismissed.

[10] If the Tribunal makes the Orders requested by the Respondents, the time-frames contemplated in March, 2003 (Ms. Green's disclosure to be served by May 29th, 2003 and the Respondents' disclosure to be served by July 11th) should be changed to allow the Respondents six weeks from their receipt of Ms. Green's "new disclosure" to produce reply disclosure.

[11] Ms. Green's response to these arguments on this Motion was that, as an unrepresented Complainant, she "did her best" to create an "input" document, her disclosure. She indicated that she had been the first witness in this Hearing, giving evidence in October, 2002 and having that evidence cross-examined.

[12] She has completed her testimony which concerned her reasons for requesting a re-convening of the Tribunal to address the calculation of the "gross up" presented to her by her

employer pursuant to the June, 1998 Decision. She indicated that her tax summaries are part of the Hearing Record, as Exhibits presented when her evidence was given.

[13] Additionally, Ms. Green indicated that she had followed the March, 2003 request of the Respondents' Counsel, Mr. Unrau, and had attended at the Office of the Respondents' employee, Mr. Roger Dart, with her Income Tax Returns, and Notices of Assessment. She submitted that she had remained with Mr. Dart in order that she be immediately available to him to answer any questions he had concerning that tax information, and had offered that he could make copies of the information. According to Ms. Green, that offer was declined.

[14] Ms. Green submitted that her evidence, and the "input" document represent her best effort to present her layman's understanding, or lack thereof, of the income tax implications of the June, 1998 Decision. Ms. Green noted that her concern is that there has been a loss of Registered Retirement Savings Plan contribution "room", and consequent tax savings which would have generated interest income.

[15] Ms. Green argued that it is these income tax implications which should have been addressed when the "gross up" was calculated. Additionally, Ms. Green submitted that the Respondents' concern about the income tax implications of the Decision's interest award might also be addressed during this Hearing.

[16] The Tribunal agrees that Ms. Green has presented the relief she is seeking during her direct evidence and its cross-examination, and in her "input" document.

[17] The issue before the Tribunal is the methodology for the calculation of the "gross up" on the award made in June, 1998 concerning Ms. Green's original Complaint. What is that methodology? How does it address the income tax implications of the award? More specifically, how does it address the loss of the value of the R R S P contributions which Ms. Green would have had available to her, on an annual basis, had she been receiving the higher annual rate of pay she was awarded? Should the "gross up" include consideration of the interest award?

[18] The tax summaries, made exhibits during Ms. Green's testimony, are part of the Hearing Record. Ms. Green has indicated in her "input" document what she feels is relevant income tax information, winnowed from the actual documents presented to Roger Dart, the Respondents' named contact person. This includes her gross income for the years 1989-2000, her taxable income for those years, the R R S P "room" for those years with the 50% notation, and the calculation concerning lost interest on the R R S P non-contributions.

[19] The "input" document is not organized pursuant to Section 6(1) of the Interim Rules of Procedure. This may have been caused by the fact that some of the requirements of that section had already been addressed by Ms. Green's evidence, including exhibits.

[20] Additionally, the testimony of the proposed experts, in summary form, is not included. There is no specific calculation of the monetary relief suggested by Ms. Green to represent a more appropriate "gross up".

[21] These latter items, however, will undoubtedly be included in the Experts' Reports which must be served upon the Respondents, pursuant to Section 6(4) of the Interim Rules of Procedure, ten (10) days before the Hearing dates of August 12-13, 2003.

[22] The Respondents are correct in their indication to the Tribunal that the "input" document lacks the organization contemplated by the Interim Rules of Procedure. The Tribunal, however, is not persuaded that, when read in conjunction with the evidence of Ms. Green, it is so lacking in specificity that it "ambushes" the Respondents as alleged.

[23] The requirement that Experts' Reports be served ten days before the Hearing may assuage the Respondents' concerns, especially about the need for income tax information for both the Tribunal and for themselves. The experts proposed by Ms. Green - a financial advisor and a tax accountant - will undoubtedly be basing their opinions upon Ms. Green's tax information. The Respondents will receive those Experts' Reports and opinions, with the foundations for those opinions, at the appropriate time.

[24] Of course, as the Respondents argued, the Tribunal can make its final decision based only on what it has before it. How much information she wishes the Tribunal to have in order to make that decision is up to Ms. Green.

[25] The organization of the materials may not be as the Respondents would wish it to be; the materials may not be as fulsome as the Respondents would like. The materials are not, however, completely lacking in information to address the disclosure requirements of Section 6(1) of the Interim Rules of Procedure. The Reports of Ms. Green's experts will, hopefully, address the concerns of the Respondents.

[26] For these reasons, the Tribunal dismisses the Respondents' Motion.

Signed by

Elizabeth A.G. Leighton
Chairperson

Sheila M. Devine
Tribunal Member

Ottawa, Ontario
July 3, 2003

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T447/0296

Style of Cause: Nancy Green v. Public Service Commission of Canada, Treasury Board
and Human Resources Development Canada

Ruling of the Tribunal Dated: July 3, 2003

Date and Place of Hearing: June 25, 2003

Ottawa, Ontario
(by Teleconference)

Appearances:

Nancy Green, for herself

No one appearing, for the Canadian Human Rights Commission

Jan Brongers, for the Respondents

Reference: T.D. 6/98
June 26, 1998