

SALLY WADE

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(REPRESENTING THE DEPARTMENT OF FOREIGN AFFAIRS
AND INTERNATIONAL TRADE AND TREASURY BOARD)**

Respondent

- and -

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

RULING

MEMBER: Karen A. Jensen 2008 CHRT 9
2008/04/11

[1] This is a ruling on a motion presented by the Department of Foreign Affairs and International Trade (DFAIT). It involves a complaint by Sally Wade that her employer, DFAIT discriminated against her on the basis of her marital status and family status by denying her a three bedroom staff quarter pursuant to the Foreign Service Directive. The Directive is part of the collective agreement between Treasury Board and Ms. Wade's bargaining agent, the Public Service of Canada (PSAC).

[2] The Respondent, the Department of Foreign Affairs and International Trade (DFAIT), requests an Order:

- (i) adding Treasury Board as a party to the complaint (as represented by the Attorney General of Canada);
- (ii) adding the Public Service Alliance of Canada (PSAC) as a respondent to the complaint; and,
- (iii) amending the style of cause by substituting "the Attorney General of Canada" for the "the Department of Foreign Affairs and International Trade".

[3] The Complainant does not object to the requests, but states that if PSAC is added as a respondent, the complaint should be amended to include sections 9 and 10 of the *Canadian Human Rights Act*. Section 10 is already part of the original complaint.

[4] Section 9 of the *Act* provides that it is a discriminatory practice for an employee organization to limit, segregate, classify or otherwise act in a way that would limit or deprive individuals of employment opportunities.

[5] PSAC does not oppose the motion to add it as a Respondent, nor does it oppose the addition of Treasury Board and the amendment of the style of cause. Finally, PSAC does not object to the addition of s. 9 to the complaint.

[6] The Respondent DFAIT does not object to the amendment of the complaint to include s. 9.

[7] The Canadian Human Rights Commission did not participate in the motion.

The Addition of Treasury Board and the PSAC as Respondents

[8] Section 48.9(2)(b) of the *CHRA* provides the Tribunal with the authority to add parties to its proceedings. A new party should be added at the inquiry stage only if the addition of the party is necessary to properly dispose of the complaint and if there is a tenable basis for the allegations against the new party. The Tribunal must also consider the prejudice that may result to the parties by adding them at this stage in the process (*Syndicat des employés d'exécution de Québec-Téléphone v. TELUS Communications (Québec) Inc.*, [2003] C.H.R.D. No. 29; *Brown v. National Capital Commission*, [2003] C.H.R.D. No. 36; *Smith v. Canadian National Railway* 2005 CHRT 23).

[9] Treasury Board and PSAC negotiate the terms of the Foreign Service Directives; it is Treasury Board and PSAC that have knowledge about the Directives. DFAIT has no power to affect the wording of the Directives. If the complaint is substantiated and a remedy ordered, Treasury Board and PSAC are the organizations that will implement the remedy with respect to the Directives. Therefore, these two organizations are important to the resolution of the complaint. Furthermore, there is a tenable basis for the allegations that PSAC and Treasury Board may share liability in the event that the complaint is substantiated.

[10] The proposed Respondents have not objected to their addition as parties and have not argued that any prejudice will arise from adding them at this stage of the process.

[11] Therefore, I order that Treasury Board and PSAC will be added as parties to the complaint.

The amendment of the Complaint to include s. 9 of the CHRA

[12] The Complainant has requested that the complaint be amended to include s. 9 of the *CHRA* which prohibits an employee organization from limiting an employee's employment opportunities on the basis of prohibited grounds of discrimination.

[13] The Tribunal has the authority to amend complaints where the amendment respects the scope of the original complaint, and where the parties have been given sufficient notice of the amendment (*Canadian Museum of Civilization v. PSAC* 2006 FC 704 at paras. 50-52).

[14] In the present case, PSAC does not object to the proposed amendment to the complaint. It states that citing the proper sections of the *Act* is critical to ensuring that the issues are fully aired before the Tribunal.

[15] I agree with the PSAC on this point. I order the complaint to be amended to include s. 9 of the *CHRA*.

The Amendment of the Style of Cause

[16] Counsel for the Respondent states that the Attorney General of Canada, as the representative of the federal Crown should be substituted for DFAIT as the Respondent.

[17] The Respondent argues that DFAIT does not have a distinct and legal personality. It is simply a department of the Government of Canada. Therefore, DFAIT does not have the capacity to be party to a complaint. The proper party to the complaint is the Attorney General of Canada as the representative of the federal Crown (*Munro v. Canada* (1992), 11 O.R. (3d) 1 (Gen. Div.) at pp. 10-13).

[18] Although s. 7.2 of the *Financial Administration Act* vests Treasury Board with the capacity to be named as a respondent, both DFAIT and Treasury Board fall under the umbrella of the Attorney General of Canada. Therefore, the Respondent argued that it was unnecessary to refer to either DFAIT or Treasury Board in the style of cause. However, the Respondent stated that it would not object to amending the style of cause to read "the Attorney General of Canada (representing the Department of Foreign Affairs and International Trade and Treasury Board)".

[19] The Complainant and PSAC voiced no objection to the amendment of the style of cause provided it read as suggested above.

[20] A review of the jurisprudence cited by the Respondent, as well as the relevant legislation, discloses that the Respondent is correct, and that the Complainant's case should properly be brought against the Attorney General of Canada. The Tribunal has in fact issued comparable orders in other cases involving the federal Crown (*Plante v. Royal Canadian Mounted Police*, 2003 CHRT 28; *Wiseman v. Attorney General of Canada*, 2007 CHRT 13; *Guay v. Royal Canadian Mounted Police* [2004] C.H.R.D. No. 32).

[21] Therefore, I order that the style of cause be amended to read: *Sally Wade v. Attorney General of Canada (representing the Department of Foreign Affairs and International Trade and Treasury Board) and Public Service Alliance of Canada*.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario

April

11,

2008

PARTIES OF RECORD

TRIBUNAL FILE:	T1241/5307
STYLE OF CAUSE:	Sally Wade v. Attorney General of Canada et al.
RULING OF THE TRIBUNAL DATED:	April 11, 2008
APPEARANCES:	
Karrin Galldin	For the Complainant
No one appearing	For the Canadian Human Rights Commission
Catherine Lawrence	For the Respondent Attorney General of Canada
Lisa Addario	For the Respondent Public Service Alliance of

	Canada
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