

Canadian Human Rights Tribunal

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Tribunal canadien des droits de la

**BETWEEN:**

**AMANDA DAY**

**Complainant**

**- and -**

**DEPARTMENT OF NATIONAL DEFENCE**

**AND MICHAEL HORTIE**

**Respondents**

**RULING ON THE PAYMENT OF**

**WITNESS FEES**

2003/02/13

**MEMBER:**Dr. Paul Groarke

[1] The following ruling deals with the payment of witness fees. Counsel for the Respondent has agreed to accept the delivery of a number of subpoenas that have been issued to the Complainant, but has requested conduct money. The Complainant has accordingly asked me to stipulate the necessary fees.

[2] The matter is dealt with in section 50(6) of the *Canadian Human Rights Act*, which states that any person "summoned to attend a hearing is entitled in the discretion of the member or panel to receive the same fees and allowances as those paid to persons summoned to attend before the Federal Court." I note that a witness is "entitled" to these fees and allowances: although the subsection gives me a discretion in the matter, I think that the fees and allowances should be paid unless there are compelling reasons to depart from normal practice. Testifying at a hearing is an inconvenient and often troublesome duty, which requires witnesses to rearrange their private lives in order to accommodate the interests of society. I am firmly of the view that they should be compensated for their trouble. The process of applying for subpoenas and paying these fees may also discourage the parties from calling unnecessary witnesses.

[3] The practice in the Federal Court is governed by rules 42 and 43 of the *Federal Court Rules*, which state that a witness is entitled to the fees and travel expenses set out in *Tariff A*. Section 3 of the *Tariff* states that witness fees should be paid in the amount of "\$20 per day plus reasonable travel expenses, or the amount permitted in similar circumstances in the superior court of the province where the witness appears, whichever is greater." I am not aware of any rulings by the Tribunal, but I think the discretionary element in section 50(6) of the *Canadian Human Rights Act* allows me to vary these amounts in accordance with the circumstances of the case. The fees should not be so high that they interfere with the Complainant's right to present her case.

[4] I accordingly believe that I have the authority to set a one time fee of \$25 for ordinary witnesses within the City of Victoria, inclusive of travel expenses. This is conduct money and is to be provided to the witnesses when they receive their subpoenas. The witnesses have no obligation to appear if they do not receive the money.

[5] I realize that these fees may be seen more as a notional form of payment than anything else. I nevertheless think they serve a symbolic purpose in recognizing the central place of witnesses in the system of justice. If individual witnesses are required to attend the hearing over an extended period of time, the matter can be revisited.

"Original signed by"

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Dr. Paul Groarke

OTTAWA, Ontario

February 13, 2003

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

TRIBUNAL FILE NOS.: T627/1501 and T628/1601

STYLE OF CAUSE: Amanda Day v. Department of National Defence and Michael Hortie

RULING OF THE TRIBUNAL DATED: February 13, 2003

APPEARANCES:

Amanda Day On her own behalf

Joyce Thayer For Department of National Defence

J. David Houston For Michael Hortie