CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

RAMANAN THAMBIAH

Complainant

- and - CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and - MARITIME EMPLOYERS ASSOCIATION

Respondent

RULING

MEMBER: Athanasios D. Hadjis 2009 CHRT 30 2009/10/16

- [1] The Complainant has alleged in the present complaint that the Respondent denied the Complainant a position on the first reserve (a position that would have provided the Complainant with security of employment at the Port of Montreal) on the basis of his age, ethnicity and/or family status.
- [2] The Complainant has brought a preliminary motion requesting that the Tribunal order the disclosure of the following documents:
- (1) video-tapes of the truck driving test taken by a candidate other than the Complainant who had also applied for the position;
- (2) notes about the Complainant's performance on the test;
- (3) statistics relating to the age and ethnic composition of employees in the first reserve as well as the family relationship between employees of the first reserve and employees of the Maritime Employers' Association.
 - [3] Counsel for the Respondent states that it does not have documents in its possession relating to the age of employees of the first reserve. Similarly, there are no documents in its possession relating to the family ties between employees of the first reserve and other employees of the Maritime Employers' Association. Counsel for the Respondent states that his client has already disclosed all its notes relating to the Complainant's test.
 - [4] With regard to the video-tape(s) of the other candidate's test, counsel for the Respondent argues that the tapes are not relevant and cannot be disclosed without the consent of the other individual. However, s. 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* permits an organization to disclose personal information without the knowledge or consent of the individual pursuant to an order of the Tribunal.
 - [5] The video-tape of another candidate's performance on the test is arguably relevant to the question of whether the Complainant was denied a chance to repeat the test when others who did not share his characteristics were permitted to repeat the test. Therefore,

the Respondent is ordered to disclose the video-tape(s). The parties are reminded that the Tribunal has the authority, pursuant to s. 52 of the *Canadian Human Rights Act*, to take any measures necessary to ensure the confidentiality of the inquiry.

- [6] In addition, if the Respondent is in possession of documents relating to the ethnic composition of the members of the first reserve, it must disclose these documents, as they would also be arguably relevant to the issues of this case.
- [7] With regard to the other requested documents, I accept Respondent counsel's word that his client is not in possession of any such documents. The Respondent is not required under the Tribunal's *Rules of Procedure* to manufacture documents; it must simply produce those documents that are in its possession.

"Signed by" Athanasios D. Hadjis

OTTAWA, Ontario October 16, 2009

PARTIES OF RECORD

TRIBUNAL FILE:	T1365/9508
STYLE OF CAUSE:	Ramanan Thambiah v. Maritime Employers Association
RULING	
	October 16, 2009
OF THE TRIBUNAL DATED:	
APPEARANCES:	
Deborah Mankovitz	For the Complainant
No one appearing	For the Canadian Human Rights Commission
Daniel Leduc	For the Respondent