CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

WILLIAM J. BALTRUWEIT

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN SECURITY INTELLIGENCE SERVICE

Respondent

REASONS FOR RULING

MEMBER: J. Grant Sinclair

2004 CHRT 14
2004/04/29

[1] The complainant in this matter, William Baltruweit, filed a number of complaints in the 1990's with the Canadian Human Rights Commission against the respondent, the Canadian Security Intelligence Service. The relevant complaint for the purposes of this motion is dated November 4, 1998 in which the complainant alleges that CSIS discriminated against him, contrary to s.7 of the *Canadian Human Rights Act*.

[2] The Commission dismissed the complaint. On application for judicial review by the complainant, the Federal Court, Trial Division, allowed the application and referred the matter back to the Commission for redetermination. Both the Commission and the Attorney General have appealed this decision to the Federal Court of Appeal.

[3] After reconsideration, the Commission advised CSIS on October 1, 2003, that it had decided to appoint a conciliator to attempt a settlement and failing a settlement within 60 days, the Commission would refer the complaint to the Canadian Human Rights Tribunal.

[4] In response, the Attorney General filed a judicial review application, on behalf of CSIS, with the Federal Court on October 30, 2003, challenging the decision of the Commission. The Attorney General did not, in its application, request that the Federal Court stay the Tribunal proceedings pending resolution of the judicial review. The complaint was not settled and on January 6, 2004, the Commission referred the complaint for hearing to the Tribunal.

[5] The Attorney General now brings a motion dated February 9, 2004, asking this Tribunal to stay its proceedings until the final determination of its October 30, 2003 judicial review application.

[6] The Attorney General argues that the Tribunal should decide the motion using the three-stage test set out in *RJR-Macdonald Inc. v. Canada,* [1994] 1 S.C.R. 311, 334. It submits that this test has been satisfied in favour of the Attorney General.

[7] I do not agree that the *RJR- Macdonald* test should be applied by the Tribunal in a matter such as this. Rather, in my opinion, this Tribunal should follow the approach in its

ruling in *Leger v. Canadian National Railways Company*, [1999] Ruling No. 1, CHRT File T527/2299, (Nov. 26, 1999) and as elaborated more fully in the present ruling.

[8] This conclusion is based on the following analysis. *RJR-Macdonald* involved an application to the Supreme Court of Canada to stay the implementation of regulations under the *Tobacco Products Control Act*, pending an appeal from the Quebec Court of Appeal on the constitutionality of that legislation. On the preliminary question of its jurisdiction to deal with the application, the Supreme Court found that it had such jurisdiction under the *Supreme Court Act* and the *Supreme Court Rules*. Having so decided, the Supreme Court then posited that, in order to obtain the relief sought, the applicants must satisfy the three-stage test enunciated in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110. In the result, the Court dismissed the applications.

[9] In *Metropolitan Stores*, the Manitoba Food and Commercial Workers Union applied to the Manitoba Labour Board for an order under the *Manitoba Labour Relations Act*, imposing a first collective agreement on the employer, Metropolitan Stores and the union. *Metropolitan Stores* brought an originating notice of motion, to the Manitoba Court of Queen's Bench to have the relevant provisions of the *Labour Relations Act* declared unconstitutional and for an order to stay the Labour Board proceedings until the constitutional question was determined. The motion was denied by the trial court. The decision was appealed to the Manitoba Court of Appeal which granted the stay. The Supreme Court of Canada on appeal, reversed this decision. In doing so, the Supreme Court set out the principles, i.e. the three-stage test, that governs the exercise of discretion by a Superior Court Judge to grant a stay of proceedings.

[10] I have referred in some detail to the *RJR-Macdonald* and *Metropolitan Stores* cases because, in my view, it is important to appreciate that the three-stage test was used in a situation different than exists here, namely, where a supervisory court is asked to stay the proceedings of a lower court pending an appeal or judicial review application.

[11] In both of these cases, the reviewing courts had the statutory authority to stay proceedings. As does the Federal Court, Trial Division. Under s.18.2 of the *Federal Court Act*, the Federal Court may stay the proceedings of a federal tribunal pending judicial review.

[12] There is nothing in the *Canadian Human Rights Act* that confers the statutory power on the Canadian Human Rights Tribunal to stay its proceedings pending an application for judicial review. Nor, in my opinion, does the statutory regime of the *Act* suggest that such a power can be inferred.

[13] A review of the relevant provisions of the *Act* suggests the contrary. Equality of opportunity and freedom from discrimination is the declared public policy goal of the *Act*. (s.2). This is to be achieved through the operations of the Commission which first receives and investigates complaints and may decide to refer the complaint to the Tribunal if it concludes that a hearing is warranted. If the Tribunal makes a finding of discrimination after a full hearing, it has the power to grant a remedy that is remedial not punitive, a remedy fashioned to eliminate the discrimination.

[14] The *Act* requires that proceedings before the Tribunal be conducted informally and expeditiously and also provides that this mandate of the Tribunal is subject to the rules of natural justice (s.48.9 (1)). This last requirement is underscored by s.50(1) of the *Act*,

which requires that all parties to the hearing be given a full and ample opportunity in person or by counsel to present evidence and make representations.

[15] It is well established that administrative tribunals are the masters of their own proceedings. As such, they possess significant discretion in deciding requests for adjournments. This principle was discussed in some detail by the Supreme Court of Canada in *Prassad v. Minister of Employment and Immigration*, [1989] 1. S.C.R. 560. In this case, the appellant sought an adjournment of her immigration inquiry pending a decision on her application to the Minister to permit her to remain in Canada. The adjudicator refused the adjournment.

[16] In dealing with her appeal, the Supreme Court stated that administrative tribunals, in the absence of specific statutory rules or regulations, are masters of and control their own proceedings. But when tribunals exercise judicial or quasi-judicial functions, they must comply with the rules of natural justice. [See also Re *Cedarvale Tree Services Ltd. and Labourers' International Union of North America*, (1971), 22 D.L.R. (3d) 40, 50 (Ont. C.A.), *Pierre v. Manpower and Immigration*, [1978] 2 F.C. 849, 851 (FC.T.D.)]

[17] It is clear then that this Tribunal, when exercising its discretion, must do so having regard to principles of natural justice. Some examples of natural justice concerns to which the Tribunal could respond to, would be unavailability of evidence, the need to adjourn to obtain counsel, or late disclosure by an opposite party.

[18] In essence, it appears from its submissions on this motion, that the Attorney General is arguing that:

(1) the referral by the Commission to the Tribunal is a nullity and thus the Tribunal has no jurisdiction to proceed;
(2) if the Tribunal proceeds and the referral is later quashed, any relief granted in the pending court actions will be futile and moot;
(3) if the Tribunal proceeds and the referral is later quashed, security risks will have been needlessly taken. This assertion is not based on any proved evidence and in any case, can be dealt by the Tribunal within the hearing under s.52 of the *Act*;
(4) there is an interest in preserving the *status quo* while court issues are decided;
(5) the balance of convenience favours not proceeding so as not to waste judicial resources;
(6) the proper administration of the *Act* by the Commission is a question of public interest which presumably overrides the value of an expeditious Tribunal hearing.

[19] I do not see anything in these arguments that speaks to the respondent CSIS's ability to defend itself before the Tribunal. There are no issues raised about its ability to marshall evidence, retain counsel, or otherwise respond to the complainant's allegation. Nor are there any concerns raised about the impartiality of the pending Tribunal process. Ultimately, in these submissions there are no expressed natural justice concerns that would temper the admonition in s.48.9 (1) of the *Act* for the Tribunal to proceed as expeditiously as possible.

[20] In my opinion, the appropriate forum to seek a stay of the Tribunal proceedings is the Federal Court. It is the forum that has carriage of the judicial review application. It has the express statutory authority to grant or deny a stay. In my view, this is not a case for institutional fungibility.

[21] Accordingly, and for the reasons expressed in this ruling, the motion of the Attorney General is dismissed.

Signed
by
J. Grant Sinclair

OTTAWA, Ontario
April 29, 2004

PARTIES OF RECORD

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APPEARANCES:

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Fiona Keith	For the Canadian Human Rights Commission
Monika A. Lozinska	For the Respondent