

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

JOHN CHARLTON

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 269**

Respondent

REQUEST FOR AN ADJOURNMENT

MEMBER: Michel Doucet

2004 CHRT 12
2004/03/5

[1] A request for an adjournment of the hearing in this matter was forwarded to the Canadian Human Rights Tribunal on February 27, 2004 by Mr. David A. Mombourquette, the new counsel of the complainant. Unfortunately, for some unexplained reason, this letter was not received by the Tribunal. Following a conference call held on March 2, 2004, a copy of this letter was e-mailed to the Tribunal.

[2] The dates for the hearing in this matter were scheduled for March 8 to 12, 2004, in Halifax, Nova Scotia. The parties were informed of these dates on September 29, 2003. On February 19, 2004, the Tribunal appointed a new member to hear this case, and informed the parties that the hearing would now start on March 10, 2004 and that further dates would be agreed upon at that time.

[3] In his letter of February 27, 2004, Mr. Mombourquette informed the Tribunal that he had been retained by the complainant with respect to this matter. He indicated that he had been contacted earlier in that week by the complainant's previous counsel, Rebecca Saturley, of Steward McKelvey Stirling Scales, to determine whether he would be in a position to represent the complainant. He added that he was able to speak to the complainant on Thursday, February 26, 2004, and that the complainant then agreed to retain his services. The decision to change counsel at this very late stage in the proceeding was not initiated by the complainant but by his former counsel Ms. Saturley.

[4] With respect to the reason for this decision, it would seem that after the respondent's disclosure on February 12, 2004, Ms. Saturley concluded that there was a potential conflict between her representation of the complainant and her firm's longstanding relationship with the Halifax Employers Association. No further details were given as to why this only became apparent at this very late date in the process.

[5] Need I repeat that a conflicting interest is one that would be likely to affect the lawyer's judgment or advice on behalf of, or loyalty to a client or prospective client. If a dispute develops in a matter and it cannot be resolved, then obviously the lawyer cannot continue to act for any of the clients and has a duty to withdraw from the matter. A lawyer has a duty not to act for more than one client where it is reasonably obvious that an issue contentious between them may arise or that their interests, rights or obligations will diverge as the matter progresses.

[6] It would seem that this is the conclusion to which Ms. Saturley arrived after consulting the respondent's disclosure of February 12, 2004, although the Tribunal fails to see what new information was disclosed which had not been available previously to counsel. The Tribunal also takes serious issue with the lateness of Ms. Saturley's action. According to Mr. Mombourquette's letter he was only contacted in the week of February 23, 2004, to determine whether he would be in a position to represent the complainant, ten days after the reception of the respondent's disclosure. It is clear that this would be a proper case to award costs against the former counsel of the complainant, if such power had been granted to the Tribunal by the *Canadian Human Rights Act* but unfortunately that power is not mine.

[7] I would refer the parties to the *Legal Ethics and Professional Conduct Handbook* of the Nova Scotia Barristers' Society, which indicates that a lawyer has a duty to a client not to withdraw services except for good cause and upon notice appropriate in the circumstances. Although the client has a right to terminate the lawyer-client relationship at will, the lawyer does not enjoy the same freedom of action. Having accepted a professional employment, the lawyer has a duty to complete the task as ably as possible unless there is justifiable cause for terminating the relationship. The lawyer who withdraws from employment has a duty to minimize expenses and avoid prejudice to the client, doing everything reasonably possible to facilitate the expeditious and orderly transfer of the matter to the successor lawyer.

[8] Returning to the matter at hand, Mr. Mombourquette has requested this adjournment in order to better familiarize himself with the matter prior to the hearing. He also says that he is unavailable on the dates set because of a previous engagement before the Nova Scotia Labour Relations Board. During the conference call held on March 2, 2004, to discuss this request, he indicated that there were no other lawyers available in his law firm who could handle this file on the dates set for the hearing.

[9] Counsel for the respondent has vigorously opposed this request. In a letter dated March 1, 2004, addressed to the Tribunal, Mr. Ronald A. Pink, raises the issue of the potential conflict of interest of Ms. Saturley and indicates that this conflict of interest is no different now than it was when she started acting for the complainant or when she represented the complainant in mediation before the Tribunal in October of 2003. Although the Tribunal might be inclined to agree with counsel's conclusions on this matter, it remains that the complainant has now retained new counsel and that is the issue that I have to address when considering this request for adjournment.

[10] In his letter, Mr. Pink argues that an adjournment this late in the process would be costly to his client; that it would require a complete re-preparation of the file at some later date. He adds that the reason for this is due to the fact that Ms. Saturley has referred her former client to a counsel who does not have the scheduled hearing dates available.

[11] While I sympathise with the frustration of the respondent's counsel who are ready to move forward with this matter, I must also take into consideration that the reasons for this unfortunate situation has nothing to do with the complainant. From my understanding of Mr. Mombourquette's letter, the complainant was only made aware of this new development on February 26, 2004. Up until that time, he was under the impression that he was represented by Ms. Saturley and that everything was moving ahead.

[12] In these circumstances, I feel that to refuse the adjournment would punish unfairly the complainant who cannot be held responsible for this situation.

[13] Though I do so reluctantly, I will grant the request for an adjournment with the following conditions:

- A. Should the complainant be successful in his claim against the respondent at the hearing, his right to damages, if he is entitled to such damages, will be limited to those incurred up to March 10, 2004, at the most;
- B. Counsel for the complainant will forthwith provide the Tribunal with dates on which he is available for a 5-day hearing in the month of March, April, May or June 2004.
- C. On reception of these dates, the Tribunal will consult respondent counsel and set dates for the commencement of the hearing;
- D. If the complainant's counsel is unable to provide dates when he is available for those months, then the Tribunal, in consultation with respondent's counsel, will set dates and the complainant's counsel will be informed and he or somebody from his firm will make themselves available for those dates;
- E. Counsel for the complainant will provide before March 12, 2004, a final list of witnesses and a summary of the evidence that these witnesses will be giving at the hearing;
- F. A copy of this order shall be forwarded to the complainant's previous counsel.

Signed by
Michel Doucet

OTTAWA, Ontario

March 5, 2004

PARTIES OF RECORD

TRIBUNAL FILE:	T845/9503
STYLE OF CAUSE:	John Charlton v. International Longshoremen's Association, Local 269
DATE OF CONFERENCE CALL:	March 2, 2004

RULING OF THE TRIBUNAL DATED:	March 5, 2004
APPEARANCES:	
David A. Mombourquette	For the Complainant
Ronald Pink Bettina Quistgaard	For the Respondent