

**SHIV CHOPRA**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**HEALTH CANADA**

**Respondent**

**RULING**

PANEL/MEMBER: Pierre Deschamps 2007 CHRT 10  
2007/04/13

[1] In relation to the present proceedings, the Respondent has indicated that it plans to call as a witness Dr. Bailliu, a physician who, it appears, provided the Respondent with a medical certificate with respect to Dr. Lachance, a former employee of the Respondent. The Respondent has already indicated to the Tribunal that it had made the decision not to call Dr. Lachance as a witness because of medical reasons. The Respondent however wants to tender in evidence the medical certificate signed by Dr. Bailliu.

[2] In his Notice of motion dated April 4, 2007, the Complainant requests both disclosure of certain documents he submits are arguably relevant to Dr. Bailliu's testimony as well as information by way of particulars.

[3] The Tribunal has already indicated that the purpose of a motion for disclosure is to provide the moving party with arguably relevant *documents* and not to provide *information* by way of particulars.

[4] At the hearing, Counsel for the Respondent indicated that he was prepared to disclose some of the requested documents as long as they related to the medical certificate completed by Dr. Bailliu, dated September 14, 2006.

[5] Counsel for the Respondent thus indicated that he was prepared to provide Dr. Bailliu's curriculum vitae, Dr. Lachance's medical record as well as documentation pertaining to Dr. Lachance's medical record as long as it relates to the medical certificate completed by Dr. Bailliu on September 14, 2006.

[6] The question in issue here has to do with Dr. Bailliu's appearance as a witness to tender in evidence a medical certificate signed by her that relates to Dr. Lachance's health condition as of September 14, 2006.

[7] At this stage of the proceeding, the production of Dr. Bailliu's medical certificate is not in issue. What is however in issue is the disclosure of certain documents which the Complainant submits are arguably relevant with respect to her testimony in the event that Dr. Bailliu is called as a witness.

[8] The Tribunal finds that Dr. Bailliu's curriculum vitae, Dr. Lachance's medical record that she has in her possession as well as all documentation related to her assessment of Dr. Lachance are arguably relevant to Dr. Bailliu's testimony.

[9] The Tribunal will thus order that the Respondent comply with the Complainant's request for disclosure of documents related to paragraphs (i), (ii), (iii), (iv), (v), (vi), (vii) of Complainant's motion, such as Dr. Bailliu's curriculum vitae, Dr. Lachance's medical record, any invoice for professional fees, as long as these documents relate to the medical certificate completed by Dr. Bailliu's on September 14, 2006, subject to any solicitor-client or litigation privilege.

[10] The Tribunal is of the view that the documents or particulars referred to in paragraphs (viii), (ix), (x), (xi), (xii), (xiii) of Complainant's motion are not arguably relevant given the nature of Dr. Bailliu's purported testimony. The Complainant has failed to show that the documents or information referred to in these paragraphs relate to Dr. Bailliu's assessment of Dr. Lachance's medical condition as of September 14, 2006.

[11] Counsel for the Complainant will still be able, if Dr. Bailliu is called as a witness, to cross-examine her as to what information or documentation she relied upon when she completed her medical certificate and challenge her opinion as to Dr. Lachance's current state of health.

[12] As for the information requested in paragraphs (xiv) and (xv) of Complainant's motion, Counsel for the Complainant will be able to question Dr. Bailliu on these matters, if the latter is ever called as a witness.

[13] The Tribunal orders that the following documents be disclosed to Complainant's counsel:

- (1) Dr. Bailliu's current curriculum vitae - Motion, paragraph (a) (i);
- (2) Dr. Lachance's medical record in the possession of Dr. Bailliu as long as it relates to the medical condition referred to in the medical certificate - Motion, paragraph (a) (iii);
- (3) Any document, notes, correspondence related to Dr. Bailliu's assessment of Dr. Lachance with regards to her September 14, 2006 medical certificate - Motion, paragraphs (a), (ii), (iii) (iv), (vii);
- (4) Any document, such as invoices, pertaining to how Dr. Bailliu was compensated for preparing the certificate dated September 14, 2006, as well as her mandate, subject to solicitor-client and litigation privilege - Motion, paragraphs (a), (v), (vi);

[14] Counsel for the Respondent is to provide Counsel for the Complainant with a copy of the above-mentioned documents as soon as he has completed reviewing the documents.

[15] Counsel for the Complainant is not to disclose the documents received or any information related to them to anyone except to people in his office directly involved in this file.

[16] Counsel for the Complainant shall return to Counsel for the Respondent all documents disclosed if Dr. Bailliu's is not called as a witness.

*"Signed by"*

Pierre Deschamps

OTTAWA, Ontario

## PARTIES OF RECORD

TRIBUNAL FILE:	T901/2104
STYLE OF CAUSE:	Shiv Chopra v. Health Canada
RULING OF THE TRIBUNAL DATED:	April 13, 2007
APPEARANCES:	
David Yazbeck	On behalf of the Complainant
(No one appearing)	For the Canadian Human Rights Commission
David Migicovsky	For the Respondent