

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE

MARY MELLON

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

HUMAN RESOURCES DEVELOPMENT CANADA

Respondent

**RULING ON THE QUALIFICATION
OF THE WITNESS AS AN EXPERT**

PANEL/MEMBER: Michel Doucet 2005 CHRT 12
2005/02/23

[1] The following ruling deals with a request by the complainant that one of its witnesses, Mr. William Wilkerson, President of Global Business and the Economic Roundtable on Addiction and Mental Health, be qualified as an expert in the field of managing mental health issues in the workplace.

[2] The Respondent opposed this request. It referred us to three authorities: *R. v. Mohan*, (1994) 80 C.C.C. (3d) 401, a criminal case, *Mayfield v. Mayfield*, [2001] O.J. No.2212, a civil matter and the Tribunal's decision in *Public Service Alliance of Canada v. Minister of Personnel for the Government of the Northwest Territories*, decided on August 27, 2001.

[3] The *Mohan* decision in particular deals with factors to be applied in deciding whether expert evidence is admissible. According to the decision, admission of expert evidence depends on the application of the following criteria:

- a) relevance;
- b) necessity in assisting the trier of fact;
- c) the absence of any exclusionary rule;
- d) a properly qualified expert.

[4] In applying the *Mohan* criteria in a Tribunal setting, we must always remember that we are not dealing with the admission of expert evidence in a trial by jury setting and that the issue of the qualification of the expert cannot be considered in a *voir dire*, where the

judge involved has the opportunity to assess the evidence to be given and apply to it the *Mohan* criteria.

[5] As stated by my colleague, Paul Groarke, in the *PSAC* decision:

The purpose of expert evidence is to assist an adjudicative body in deciding the facts of the case. It does so by providing the trier of facts with knowledge and "ready-made" inferences which stand outside the scope of their experience. It follows that experts have a special role in litigation which relies on statistical and scientific evidence. The issue in each instance is whether the evidence is "necessary" to decide the issues in the case. It is important to distinguish between the issues which arise on an application for leave to call witnesses and the issues which arise with respect to the admissibility of their testimony. Although it is inevitable that there will be some blurring of the line between the two areas, issues with respect to the relevance and admissibility of an expert's testimony are more properly decided when the witness is called.

[6] Counsel for the Respondent appeared to take the position that the relevant question was whether the proposed evidence was necessary in assisting the Tribunal to decide the issue. It is important to remember that a Tribunal is not in a position, at the qualification stage, where it can fully assess the reliability of the proposed witness' evidence. The most that can be expected at this stage is for the Tribunal to address the issue whether this testimony would logically contribute to the case of the party calling the witness. Paraphrasing my colleague Paul Groarke: "It is accordingly sufficient if it can be reasonably said that the expert's testimony is needed to determine one of the factual issues in the case."

[7] In order to do this and in all fairness to the opposing party it is important that the Tribunal and the opposing party have access to the substance of the expert's proposed testimony. That is why the Tribunal in its Interim Rules of Procedure provides at rule 6(4):

6(4) Where a party has given Notice of its intention to call an expert witness under 6(1)(f), it shall, in addition to the summary required under 6(1)(f), serve and file a report not less than ten days before the commencement of the hearing which report shall,

- a) be signed by the expert,
- b) set out the expert's name, address and qualification; and
- c) set out the substance of the expert's proposed testimony.

[8] In this case, counsel for the complainant did not provide a Notice of its intention to call an expert witness, nor did he file a report of the substance of the expert's proposed testimony. This being the case, the Tribunal will not qualify this witness as an expert witness.

"Signed by"

Michel Doucet

OTTAWA, Ontario
February 23, 2005

[9] **CANADIAN HUMAN RIGHTS TRIBUNAL**

[10] **PARTIES OF RECORD**

[11] TRIBUNAL FILE NO.: T928/4804

[12] STYLE OF CAUSE: Mary Mellon v. Human Resources Development Canada

[13] RULING OF THE TRIBUNAL DATED: February 23, 2005

[14] APPEARANCES:

[15] Craig Spencer For the Complainant

[16] Chris Leafloor For Human Resources Development Canada

[17]

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APPEARANCES:	
Craig Spencer	For the Complainant
Chris Leafloor	For Human Resources Development Canada