

now the Public Service Labour Relations Board. I have not counted, but the parties have been legal contestants on numerous occasions.

[3] The Respondent's primary concerns arise out of the findings of Mr. Hadjis in *Chopra v. Canada (Department of National Health and Welfare)* [2001] C.H.R.D. No. 20 (QL). There were also findings in *National Capital Alliance on Race Relations (NCARR) v. Canada (Health and Welfare)*, 1997 CHRD No. 3 (QL), however, which dealt with a complaint against the same employer under section 10 of the *Canadian Human Rights Act*. Then there is the other litigation.

[4] The Respondent's Notice of Motion asks me to strike out certain "aspects" of the complaint. This is problematic. The Tribunal is master of its own process and has every right to supervise the inquiry. It has no authority over the referral process, however. It is the Commission that decides what will be referred to the Tribunal. I do not see how I can strike passages from the complaints without implicitly undermining the authority of the Commission and entering into the referral process.

[5] This does not prevent the Tribunal from amending the complaints or deciding what is properly before it. Amendments are one thing; deletions another. There are exceptional situations, but as a general rule I do not think that I can remove passages from documents that originate outside the process. The Respondent has other sources of redress. I see no difficulty, for example, with an application to strike out paragraphs of the Statement of Particulars. The review of pleadings comes within the normal scope of the Tribunal's functions.

[6] The problem in the immediate case is that the pleadings have yet to be exchanged. I think a colloquial phrase probably says it best: the parties are getting ahead of themselves. It is too early to deal with the niceties of the case and the Motion is premature. I am nevertheless satisfied that some direction would be of assistance to the parties.

II. SPECIFIC ALLEGATIONS

[7] It may be helpful to comment on the specific allegations that concern the Respondent.

A. Allegation 1.

[8] The first is the alleged failure to appoint Dr. Chopra to the position of Director, Bureau of Veterinary Affairs in 1993. I agree with the Respondent, in saying that this issue has already been litigated.

[9] The simplest observation is chronological. Dr. Chopra has already obtained a finding of discrimination for the events that took place up until 1992. The Tribunal that found in his favour, however, received evidence relating to events that took place between 1992 and 1994. That evidence was presented by the Commission, on behalf of Dr. Chopra, and clearly formed part of Dr. Chopra's case. He had the benefit of this evidence.

[10] Mr. Hadjis appears to have treated this evidence as circumstantial evidence, which might bolster the Complainant's case. All I will say, at this time, however, is that the parties are bound by his findings. If either side were unhappy with his decision, their remedy lay in the Federal Court.

B. Allegation 2.

[11] The second allegation concerns an internal complaint that was lodged against Dr. Chopra in 1993. This was described as an attempt to discredit him. There was evidence with regard to these aspects of the matter before Mr. Hadjis, who found that the motives of the person who laid the complaint were not racial. Although it would be a mistake to

go into the details of Mr. Hadjis' decision, I want to make it clear that the parties are bound by his findings.

[12] Mr. Yazbeck goes further, however. He states that the Complainant wants to call evidence with respect to the Respondent's handling of the matter. This may or may not raise a new set of issues, which are properly before me. It is difficult to say, at this point in time. Any decision on the precise questions that might arise in this respect will have to be decided at the appropriate time.

C. Allegation 3.

[13] The third allegation relates to a document referred to as the "Cuddihy memo". This document has apparently played a prominent role in the three hearings that have already taken place. It clearly played a part in Mr. Hadjis' finding of discrimination.

[14] There are two aspects to the matter. The first goes to the merits of the complaint. At this point, I cannot see any reason why the Complainant would need to rely on the document, since the Tribunal is already bound by Mr. Hadjis' finding that he was discriminated against in the 1992 period.

[15] These comments do not exhaust the issue. It may still be necessary to provide the Tribunal with a certain amount of evidence to establish the context in which the later events took place. These kinds of issues should be vetted when the material allegations in the case have been clarified, either in the pleadings or during the course of testimony.

D. Allegation 4.

[16] The fourth allegation is that the Respondent failed to comply with the order of the Tribunal in *National Capital Alliance on Race Relations (NCARR) v. Canada (Health and Welfare)*. The Respondent says that the Complainant was not a party to the hearing and has no standing in the matter. It has also provided the Tribunal with a letter from the Chief Commissioner, stating that the Respondent has complied with the order. I agree with the Respondent that any question of compliance must be dealt with in the Federal Court, as contemplated by the *Act*.

[17] The matter goes further. Mr. Yazbeck stated that Dr. Chopra discussed the question of compliance with his superiors. I cannot say whether these conversations go to the substance of the more recent allegations or have a bearing on the present inquiry. The relevance of this kind of evidence needs to be decided in the course of the hearing, when circumstances permit a proper evaluation of the interests at stake.

E. Allegation 5.

[18] There is also a dispute over a ruling by the Public Service Staff Relations Board with respect to a five day suspension. There was debate as to the exact significance of the Board's ruling. This is not the time or place to deal with technical legal questions. At this point, it is enough to say that it is not the role of the Canadian Human Rights Tribunal to review the findings and decisions made by another adjudicative body within the proper scope of its responsibilities. It follows that the parties are not entitled to re-litigate the issue that went before the Staff Relations Board.

F. Allegation 6.

[19] Finally, there are allegations relating to Dr. Chopra's failure to obtain the Director's position in the Bureau of Veterinary Affairs during the period of 1997 to 1998. This was long after the period of time covered by the previous complaints, but before Mr. Hadjis dealt with the question of remedy.

[20] I cannot see that it matters. These allegations come squarely within the four corners of the present complaints. They were never before Mr. Hadjis. I do not see how it can be said that the factual and legal issues arising out of these allegations have been litigated. Issue estoppel does not apply.

III. CONCLUSIONS

[21] I have already stated that the present motion is premature. The issues that it raises have not been properly defined by the parties. The Tribunal has held on many occasions that rulings on evidentiary or procedural matters should be dealt with when the relevant interests have properly materialized before the Tribunal. It is a mistake to rule on these matters too early, before the repercussions of any ruling have become apparent.

[22] The *Canadian Human Rights Act* guarantees all of the parties a "full and ample opportunity" to present their cases. I agree with the Commission that the Tribunal's procedural mandate, in the process leading up to the hearing, is governed by a principle of caution. The Tribunal should be careful not to deprive a complainant of the opportunity to put its full case before the member hearing the matter. It is far too early in the process to determine the exact parameters of the inquiry.

[23] I should probably add that, in my view, the scope of the present inquiry is relatively broad. The Complainant has had an opportunity to tell his story to the Tribunal, roughly until 1994. The story does not end there, however. There is a sequel. As I understand it, he now intends to take up the narrative and continue it, until the date of his termination. He is entitled to do so.

[24] I think the parties agree that it would be a mistake to contemplate other hearings in the future. One of the purposes of inquiries is to provide some finality to these kinds of disputes. I accordingly think the Complainant should be given the latitude he needs to present any allegations of discrimination that continue into the present. This will hopefully resolve the issues between the two sides, once and for all.

IV. RULING

[25] All I can say, on the Motion, is that the parties are bound by the findings of the Tribunal in previous cases. They are not entitled to re-litigate issues that have already been decided. It is for the Tribunal to decide, as a matter of judgement, whether allegations or evidence cross into the same territory that was the subject of a finding by a previous Tribunal. Specific objections should be dealt with when they arise.

[26] It may still be necessary to make some reference to the events that form the subject of earlier findings, simply for the purpose of providing the present Tribunal with some history of the relations between the parties. This is a necessary part of the inquiry. It is well recognized that contextual evidence is of particular assistance in the human rights process.

[27] I have already directed the Complainants to file their Statement of Particulars by June 17th, 2005. If the Respondent feels that the particulars go beyond the legitimate scope of the complaints, it should raise the matter as expeditiously as possible.

"Signed by"_____

Dr. Paul Groarke

OTTAWA, Ontario
May

30,

2005

PARTIES OF RECORD

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APPEARANCES:	
David Yazbeck	On behalf of the Complainants
Philippe Dufresne	On behalf of the Canadian Human Rights Commission
David Migicovsky	On behalf of the Respondent