

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE  
LA PERSONNE

MICHELINE MONTREUIL

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN FORCES

Respondent

RULING

MEMBER: Pierre Deschamps 2007 CHRT 51  
2007/10/29

[1] The Tribunal has before it the respondent's motion to rehear Dr. Assalian and Dr. Karmel, the respondent's experts who have already testified in this matter, after the Commission's expert psychiatrist, Dr. Beltrami, has been heard as a witness, so that they can comment on Dr. Beltrami's *testimony* at the hearing. It should be noted that, during their testimony, Dr. Assalian and Dr. Karmel remarked on Dr. Beltrami's reports that were filed in evidence.

[2] The complainant and the Commission oppose this motion *inter alia* on the ground that the respondent cannot divide its evidence and that, in any event, the respondent would be given an undue advantage which would be prejudicial to them if the Tribunal were to grant the respondent's motion.

[3] The Tribunal is master of its own procedure. Pursuant to the *Canadian Human Rights Act*, the Tribunal holds inquiries into complaints referred to it by the Commission. In this respect, it can hear both ordinary and expert witnesses. That said, when a complaint is heard, the Tribunal must ensure that procedural fairness is observed so that one party is not given an advantage to the detriment of another in terms of the administration of the evidence.

[4] In this matter, it was decided that the respondent's experts, namely Dr. Assalian, Dr. Dufour and Dr. Karmel, would be heard prior to the Commission's expert, Dr. Beltrami. Dr. Assalian had been heard before Dr. Beltrami testified, regarding his reports as well as Dr. Beltrami's reports. Dr. Assalian was thereby able to comment on Dr. Beltrami's reports, but without hearing his testimony. Similarly, Dr. Karmel was able to comment on the parts of Dr. Beltrami's report bearing on the MMPI-2 test, without having heard Dr. Beltrami's testimony.

[5] Dr. Beltrami testified during the week of October 22, 2007. In the context of his testimony, which lasted five days, Dr. Beltrami commented on his reports and was also able to comment on several remarks made by Dr. Assalian during his testimony. He also referred to Dr. Karmel's report. Moreover, Dr. Beltrami was prompted to qualify certain assertions contained in his report.

[6] In other circumstances, Dr. Beltrami would have testified prior to Dr. Assalian and Dr. Karmel. He would then have been able to testify in regard to his own reports, as well as comment on the reports of Dr. Assalian and Dr. Karmel. In such case, as Dr. Assalian and Dr. Karmel would not have had yet testified, Dr. Beltrami could not have commented on their testimonies.

[7] That said, given the complexity of the medical issues raised in this matter, it is more likely that, once the respondent's experts had testified, the Commission would have requested that Dr. Beltrami be reheard to comment on their testimonies, a request that would have been very seriously considered by the Tribunal given the complexity of the issues raised in this matter and the importance that the Tribunal benefit from the most complete information possible on the medical issues raised.

[8] The issue now before the Tribunal is whether to rehear the respondent's two experts, who did not have the opportunity to comment on the testimony of the Commission's medical expert, not whether to rehear two ordinary witnesses of the respondent in order to have them complete their testimonies.

[9] The rehearing of an expert on one or more specific elements cannot be likened to rehearing a fact witness called to add to the witness' version of the facts after hearing another party's witnesses, thereby qualifying his or her own testimony.

[10] The rehearing of Dr. Assalian and Dr. Karmel, recognized as expert witnesses, is intended to give the Tribunal the most complete understanding possible of the medical elements at issue in this case. The administration of justice would not be properly served if the Tribunal were to deprive itself of the comments of these two expert witnesses regarding Dr. Beltrami's testimony.

[11] In this case, it is important for the Tribunal to benefit from the knowledge of the parties' experts in order to completely understand the specific medical factors at the heart of this litigation involving gender dysphoria, sexual identity disorder, transsexualism and transgenderism. On this point, it is important for the Tribunal to have the opinion of the respondent's experts in regard to Dr. Beltrami's testimony on these issues and on his assessment of the complainant, even more so because Dr. Beltrami qualified certain parts of his reports in his testimony.

[12] The Tribunal must remind the parties that the experts that they have testify are meant to enlighten the Tribunal on specific points which are not matters of judicial notice. In principle, the experts are not there to support the argument advanced by the party that made it, but to provide the Tribunal with information that will enable it to make an enlightened decision on the issues submitted to it for adjudication.

[13] In order for an expert that a party wants to have reheard to fully enlightened the Tribunal on technical or scientific issues at the heart of a litigation, the expert that the party wants to have reheard for a specific purpose must have heard or have knowledge of the testimony of the witness on which he or she is called to remark.

[14] It appears from the comments made by the respondent's counsel at the hearing of October 26, 2007, that Dr. Assalian, even though he was not present during Dr. Beltrami's testimony during the week of October 22, 2007, nevertheless received the stenographer's

transcript of Dr. Beltrami's testimony in this case. Dr. Assalian would therefore have knowledge of Dr. Beltrami's testimony in this proceeding.

[15] In regard to Dr. Karmel, the Tribunal noted that he was present in the hearing room during Dr. Beltrami's examination by the Commission's counsel, namely on October 22, 23 and 24, 2007. Moreover, Dr. Karmel was able, during those three days, to benefit from an interpreter's services to facilitate his comprehension of Dr. Beltrami's testimony, as Dr. Beltrami had testified in French. However, Dr. Karmel was not present during the cross-examination of Dr. Beltrami on October 25 and 26, 2007.

[16] Considering the complexity of the medical issues submitted to the Tribunal in this case, the Tribunal is of the opinion that it is important that Dr. Assalian and Dr Karmel be reheard for the sole purpose of commenting on Dr. Beltrami's testimony, in order to fully clarify the medical issues that the Tribunal is called to decide.

[17] The Tribunal therefore authorizes that Dr. Assalian, psychiatrist, be called back as an expert witness for the sole purpose of commenting on the testimony given by Dr. Beltrami during the hearings held in the week of October 22, 2007, insofar that he can state that he read the transcript of Dr. Beltrami's testimony and that his testimony bears only on Dr. Beltrami's testimony.

[18] The Tribunal also authorizes the rehearing of Dr. Karmel, psychologist, for the sole purpose of commenting on Dr. Beltrami's testimony regarding the administration and interpretation of the MMPI-2 test completed by the complainant. Dr. Karmel, who was not present for the hearing on October 25 and 26, 2007, will not be able to comment in any way on Dr. Beltrami's testimony during those two days.

[19] The Tribunal is of the opinion that in this case there would be no prejudice caused to the Commission or to the complainant. The Commission is there to represent the public interest, as the Commission's counsel often pointed out. In principle, in a proceeding such as this one the Commission has no interest in having the Tribunal deprived of the clarification that could be provided by these experts who have been recognized as such by the Tribunal, regardless of the party that had them heard.

[20] The Tribunal therefore authorizes the rehearing of Dr. Assalian and Dr. Karmel as experts in their respective fields of expertise *for the sole purpose* of commenting on Dr. Beltrami's testimony. The rehearing of these two witnesses will take place on November 5, 2007, beginning at 9:30 a.m. The Commission and the complainant will be able to cross-examine Dr. Assalian and Dr. Karmel, if need be.

Pierre Deschamps

OTTAWA, Ontario  
October 29, 2007

PARTIES OF RECORD

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STYLE OF CAUSE:	Micheline Montreuil v. Canadian Forces
RULING OF THE TRIBUNAL DATED:	October 29, 2007
APPEARANCES:	
Micheline Montreuil	For herself
Ikram Warsame	For the Canadian Human Rights Commission
Guy Lamb / Claude Morissette	For the Respondent