Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation : 2018 CHRT 12
Date : May 16, 2018
File No. : T2230/5217

Between :

[ENGLISH TRANSLATION]

Laurent Duverger

Complainant

- and -

Canadian Human Rights Commission

Commission

- and –

2553-4330 Québec Inc.(Aéropro)

Respondent

Ruling

Member : Gabriel Gaudreault

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I. Context to this Case

[1] On March 9, 2018, the Canadian Human Rights Tribunal (Tribunal) was seized with a motion by Laurent Duverger (the complainant or Mr. Duverger) requesting that the hearing be held in Ottawa, Ontario. The company, 2553-4330 Québec Inc. (Aéropro or the respondent), opposes the request and filed its submissions on April 3, 2018. It is requesting that the hearing be held in Quebec City, Quebec or, alternatively, in Montreal, Quebec, or Longueuil, Quebec. The complainant was provided with an opportunity to file a reply on April 10, 2018. The Commission, which is not attending the hearing, made no submissions regarding this request.

[2] Given the nature of this motion and in the interests of brevity, the Tribunal finds it unnecessary to undertake a detailed review of the contents of Mr. Duverger's complaint.

II. Parties' Positions

[3] The Tribunal has read the parties' submissions as well as the documents and case law attached thereto. The parties' positions may be summarized as follows.

A. The Complainant

[4] Mr. Duverger, who currently resides in Gatineau, Quebec, is requesting that the Tribunal's hearing be held in Ottawa. He has expressly requested that the Tribunal not hold the hearing in the vicinity of Chibougamau, Quebec City, Montreal or Trois-Rivières, Quebec.

[5] In his motion, the complainant explains that the harassment he endured from a supervisor at Aéropro has caused him post-traumatic stress. This was the diagnosis made by four psychiatrists in 2012, 2013 and 2015. In his submissions, Mr. Duverger includes a few excerpts of these expert psychiatric diagnoses. It is important to note that this supervisor will be appearing as a witness at the Tribunal's hearing.

[6] The complainant further explained to the Tribunal that during a hearing in a related case that was held in Montreal on September 22 and 23, 2015, he had problems

concentrating because he feared the supervisor in question. He alleged that this individual had threatened him on a number of occasions, including at least one occasion on which a death threat was made to him. That hearing had to be postponed on the second day in order for him to review his case outside of the region of Montreal.

[7] Mr. Duverger informed the Tribunal that he would consent to appear by videoconference. He noted that this means had been used by both the Federal Court and the Federal Court of Appeal at their respective hearings.

[8] The complainant also attached excerpts from various newspaper articles, including from La Presse, about the respondent and its aeronautic business. He claims that these exhibits illustrate why the hearing should not be held in Quebec City.

[9] Lastly, he points out that the Federal Court and the Federal Court of Appeal had both refused to hold hearings in that city in other cases involving Aéropro.

[10] In his reply, Mr. Duverger reiterates the facts and arguments from his letter dated March 9, 2018. He contends that the case law filed by Aéropro did not include threats similar to those he received by the company's supervisor.

[11] The complainant cites two Tribunal rulings. First, he invokes *Baumbach v. Deer Lake Education Authority*, 2004 CHRT 13 [*Baumbach*], specifically the first lines from paragraph 6, which read as follows:

> [6] It is the usual practice of the Tribunal to hold hearings in the place where the discrimination has occurred. However, this is not a hard and fast rule and the Tribunal strives to accommodate the parties where it is appropriate to do so.

[12] Second, he cites *Temple v. Horizon International Distributors*, 2016 CHRT 20 [*Temple 2016*], a ruling wherein the Tribunal allowed the hearing to be held via videoconference.

B. The Respondent

[13] For its part, Aéropro is of the view that the hearing should be held in Quebec City, and not in Ottawa. According to it, the alleged discrimination is purported to have occurred in Chibougamau, which is geographically closer to Quebec City than to Ottawa.

[14] The respondent claims that it is the practice of the Tribunal to hold hearings in the place in which the alleged discrimination occurred. In this regard, it cites Tribunal rulings in *Warman v. Guille*, 2006 CHRT 17 [*Warman*] and *O'Bomsawin v. Abenakis of Odanak Council*, 2016 CHRT 15 [*O'Bomsawin*]. According to the respondent, there is a direct link between the alleged discriminatory acts and Quebec City, given that its company headquarters is located in that city. Conversely, it submits that there is no link between the alleged discrimination and Ottawa. The respondent notes that the complainant lives in Gatineau as a result of his new employment, and as such, it should not have to bear the consequences of a personal decision to relocate to that city.

[15] The respondent confirmed at the hearing that its representative will be Aurèle Labbé. He will also be called as a witness. He resides in Quebec City, as does Steven Côté, counsel for the respondent. Richard Légaré, who will also be called to appear at the hearing, lives in Trois-Rivières, which is close to Quebec City.

[16] The respondent argues that the costs of travel and accommodation of its counsel, representative and witnesses would be unreasonable should the Tribunal decide to hold the hearing in Ottawa. Conversely, the complainant, who has neither counsel nor witnesses, would assume few costs if the hearing were held outside Ottawa.

[17] Alternatively, Aéropro proposed a compromise solution to the Tribunal, namely, to hold the hearing either in Montreal or Longueuil. It confirmed that the Federal Court and an arbitrator had previously held hearings in these cities.

[18] As to the use of videoconferencing, Aéropro stated that it intends to call three witnesses and feels that it would be at a disadvantage if it had to use videoconferencing. Lastly, given the extent of Mr. Duverger's allegations and claims, as well as the numerous documents, Aéropro is of the view that, in order for it to have a full and ample opportunity

to mount a defence, it is essential that it be able to cross-examine the complainant in person.

[19] With respect to the fears expressed by the complainant in his submissions if the hearing were to be held in Montreal, Quebec City or Longueuil, Aéropro finds these to be far-fetched and baseless, citing *Warman v. Lemire,* 2006 CHRT 7, in that regard.

III. Law and Analysis

[20] I should begin by noting that neither the *Canadian Human Rights Act,* RSC, 1985, c. H-6 (*CHRA* or the Act) nor the *Canadian Human Rights Tribunal Rules of Procedure* (03-05-04) (*Rules*) contain any specific provision regarding the location in which Tribunal hearings should be held.

[21] That said, the Tribunal generally holds hearings in the place where the discrimination has occurred. However, this practice is not set in stone and the Tribunal will attempt to accommodate the needs of the parties, such as where they and any potential witnesses reside (*Baumbach*, at para. 6; *Warman*, at para. 4; *O'Bomsawin*, at paras. 4-5). The Tribunal may also take the financial resources available to the parties into account (*O'Bomsawin* at para. 5).

[22] Furthermore, as Tribunal Vice-Chairman Susheel Gupta writes, in *Temple 2016*, at paragraph 11:

> [11] … Ultimately, [the Tribunal] must ensure the venue for the hearing meets the standards of the *CHRA* that require a fair, informal, expeditious and open hearing process, where each party is given a full and ample opportunity to appear, present evidence and make representations (see ss. 48.9(1), 50(1) and 52(1) of the *CHRA*).

[23] In this case, it is clear that the parties are diametrically opposed as to where the hearing should be held. The complainant refuses to agree to the hearing being held in Montreal, Trois-Rivières, Quebec City or Chibougamau. He is requesting that it be held in Ottawa. The respondent refuses to agree to the hearing being held in that city. Aéropro is requesting that the hearing be held in Quebec City, but is proposing as an alternative that

they be held in Montreal or Longueuil. Lastly, the complainant consents to the use of videoconferencing while the respondent formally objects to this option. The parties cannot find common ground on any point.

[24] In light of the impasse between the parties, I have no choice but to rule on the matter and find an alternate solution.

[25] First, Aéropro's representative, counsel, as well as most of its witnesses, are all located in or near Quebec City. Having all of these people travel to Montreal, Longueuil or even Trois-Rivières, including the complainant and the Tribunal, does not strike me as being a feasible solution. However, I am of the view that the respondent ought to be allowed to attend hearings in Quebec City, if it so wishes.

[26] Next, I am also sensitive to Mr. Duverger's fears. It is clear to me that his post-traumatic stress would definitely have an impact on his ability to represent himself should he be required to attend hearings in Quebec City in person.

[27] For these reasons, I find that the best way to reconcile the needs of both the complainant and the respondent is to allow the hearings to be held via videoconference. Moreover, proceeding in this manner is consistent with procedural fairness.

[28] Consequently, the Tribunal will sit in the city of Ottawa, with the use of videoconferencing. Aéropro, its representative and witnesses may, if they wish, attend the hearing via videoconference from Quebec City. They will also have the option of travelling to Ottawa to attend in person, if they so choose.

[29] Although the respondent has clearly objected to the use of videoconferencing for the reasons summarized at paragraph 18 of this ruling, I cannot accept their arguments, for the reasons that follow.

[30] First, I will echo some of the reasons provided by Hélène Panagakos, a member of the Immigration and Refugee Board (Refugee Protection Division) (IRB, in her interlocutory decision in *X (Re)*, 2004 CanLII 56771 (CA IRB)) [X (Re)]. Without delving into all of the details of the decision, one of the parties to the proceedings objected to the fact that the hearings of the Refugee Protection Division were being held by

videoconference. Although the decision is from the IRB, I would like to point out that subsection 162(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 provides as follows:

> **Procedure**
>
> **(2)** Each Division shall deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.
>
> [Emphasis added.]

[31] Indeed, the wording of this section essentially reiterates the same elements as subsection 48.9(1) of the *CHRA*, which provides that:

> **48.9 (1)** Proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.
>
> [Emphasis added.]

[32] Given that the IRB and our Tribunal are guided by the same legal precepts, a number of Member Panagakos' observations are relevant here.

[33] At page 4 of her decision, she writes:

> Furthermore, Canadian courts have determined that the requirements for procedural fairness are met and that a hearing by videoconference does not substantially differ from a hearing in person.
>
> > The videoconference procedure …. allows the witness to be brought electronically into the Court where the Court has the opportunity to hear and see the evidence as it is given and to control the evidentiary process while it is taking place. The witness is live before the Court and the Court is live before the witness. R. v. Dix (1998) 1998 ABQB 370 (CanLII), 125 C.C.C. (3d) 377 (Alberta Court of Queen's Bench)
> >
> > The evidence (by videoconference) had all the features of evidence given in court except for the actual presence of the witnesses (…). There was nothing about the manner in which the witnesses testified that suggested that the remote location of the Court and the mode by which the evidence was being

> taken had any influence upon them. Bradley v. Bradley (1999) B.C.J. No. 2116 (B.C. Supreme Court)

[34] As set out in subsection 50(1) of the *CHRA*, the Tribunal must provide the parties with full and ample opportunity to parties to appear at the inquiry, present evidence and make representation. Hearings by videoconference, although technology is used, remain *viva voce* hearings.

[35] Both the respondent and the complainant will have a full and ample opportunity to appear, present evidence and make representations. They will be able to question and cross-examine witnesses, as well as submit documentation. The use of videoconferencing will ensure that the purposes of subsection 50(1) of the *CHRA* are achieved.

[36] Lastly, I am of the view that the Tribunal is just as capable of assessing the credibility of witnesses via videoconferencing as it would be in person. In that regard, I find it apt to quote Member Panagakos, in her reasons for decision in *X (Re),* at pages 6 and 7:

> Canadian case law on the subject indicates that an adequate assessment of credibility can be made by videoconference. The Panel refers to the decision of *R. v. Gibson* [[2003] B.C.J. No. 812 (B.C. Supreme Court), at paras. 5 and 7], indicating that videoconferencing was entirely acceptable and that the claimant could clearly be seen and observed, including his facial expressions and body language. Furthermore, it indicates that on balance, the use of video technology will not preclude a fair trial and will not in any way impede the right to make full answer and defence.
>
> > (…) the (…) video link was entirely acceptable. I could clearly see and observe the witness (…) including her facial expressions and her body language. In fact, I would go so far as to say that a well-placed camera may accentuate the expressions of a witness under cross-examination. (…) I am satisfied that the use of video technology will not preclude a fair trial and will not in any way impede the right to make full answer and defence. ***R. v. Gibson*** (2003) B.C.J. No. 812 (B.C. Supreme Court)
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> In the decision of *Bradley v. Bradley* [[1999] B.C.J. No. 2116 (B.C. Supreme Court), at para. 25], it is indicated that videoconferencing had all the features of evidence given in court except for the actual presence of the witnesses. There was nothing about the manner in which the witness

> testified that suggested that the remote location of the court and the mode by which the evidence was being taken had any influence upon him.
>
> In R. v. *Heynen*, it is indicated that there was no breach of any principles of fundamental justice, the use of video testimony enhanced the capacity of the court to evaluate testimony. There was no significant difficulty in evaluating testimony but rather the judge found several advantages such as camera angles and close-up views, in many respects, enhanced the ability to evaluate demeanour.
>
> > (…) In some respects, the use of video testimony enhanced the capacity of the Court to evaluate testimony. (…) I found no significant difficulty in evaluating testimony, but rather noted several advantages. Camera angles and close-up views, in many respects, enhance the ability to evaluate demeanour. **R. v. Heynen** (2000) Y.J. No.6 (Yukon Territorial Court)
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> In *Gonzalez* versus M.E.I, which is the only Canadian case dealing with a refugee claimant being heard by videoconference, it was argued that videoconferences did not accurately assess the demeanour of the claimant. The court rejected this argument, finding that videoconference did not adversely affect the procedural fairness owed by the Board to the claimant.

[37] According to the complainant's submissions, the parties had previously availed themselves of the use of videoconferencing in various legal proceedings and before several adjudicative bodies. When they did so, the use of such technology was not completely foreign to them and I find that any potential repercussions on the parties' level of comfort would not be an issue in this case. The respondent failed to raise any arguments that would lead me to believe that the use of videoconferencing in the other proceedings cause it any substantial prejudice.

[38] Having said that, I am of the view that in certain circumstances, the Tribunal may decide that the use of videoconferencing would not be appropriate, such as cases in which a person has certain disabilities, where the matter is highly complex, or where the available technologies cannot provide sufficient videoconferencing quality. These examples are not exhaustive and the Tribunal should assess the circumstances and make decisions on a case-by-case basis.

[39] As for the respondent's arguments with respect to the extent of the complainant's allegations, the amount of his claim and the number of documents cited, I would point out that there are only three days of hearings scheduled. These three days include the complainant's evidence, Aéropro's defence, the questioning and cross-examination of witnesses, and closing arguments. Thus, the Tribunal finds it highly unlikely that the use of videoconferencing would have any significant negative impact on the administration of the evidence or on the hearing itself.

[40] In *Temple v. Horizon International Distributors*, 2017 CHRT 30, the undersigned already conducted a hearing via videoconference that lasted 7 days between Winnipeg, Manitoba, and Calgary, Alberta, two cities that are not in the same time zone. At paragraph 4 of that ruling, I wrote as follows:

> [4] Considering the constant use of videoconferencing during this seven-day hearing, including for some of the testimony, the Tribunal was very proactive in guiding the parties throughout the hearing, specifically in managing documents and testimony. The Tribunal also ensured that the parties were able to follow and understand the hearing even if they were not physically present. The Tribunal asked the parties, repeatedly, to inform it of any technological difficulties. The parties did not hesitate to do so when there were any, and measures were taken to rectify the situation.

[41] The parties can therefore rest assured that the Tribunal will be just as proactive during their hearing. As for the documentation, the Tribunal will guide the parties on the manner in which these should be filed documents. The parties will need to show openness and cooperation in order to facilitate the management of the documentary evidence in addition to ensuring that the hearing runs smoothly.

IV. Ruling

[42] For these reasons, I am granting the complainant's request. More specifically, the Tribunal will sit in Ottawa. I allow the respondent, its witnesses and counsel to attend the hearing via videoconference from Quebec City if they wish to do so. They will also have the option of travelling to Ottawa to attend the hearing in person, if they so choose. The

videoconference will be taken care of by the Tribunal and the manner in which the videoconference will unfold will be communicated at a future date.

Signed by

Gabriel Gaudreault
Member of the Tribunal

Ottawa, Ontario
May 16, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2230/5217

Style of Cause: Laurent Duverger v. 2553-4330 Québec Inc. (Aéropro)

Ruling of the Tribunal Dated: May 16, 2018

Motion dealt with in writing without appearance of parties

Written submissions by:

Laurent Duverger, for himself

Steven Côté, for the Respondent