

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2019 CHRT 6  
**Date:** February 18, 2019  
**File No.:** T2243/6517

[ENGLISH TRANSLATION]

**Between:**

**Erin Terilyn Connors**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canadian Armed Forces**

**Respondent**

**Ruling**

**Member:** Marie Langlois  
Tribunal Member

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## **I. Complainant's motion to add "sex" as a prohibited ground of discrimination**

[1] On August 24, 2018, Erin Terilyn Connors (the complainant) filed a motion with the Canadian Human Rights Tribunal (the Tribunal) requesting that sex be added as a prohibited ground of discrimination to the complaint she had filed with the Canadian Human Rights Commission (the Commission) on August 5, 2016, against the Canadian Armed Forces (CAF or the respondent).

[2] The first page of the complaint form provided by the Commission contains questions identifying the complainant and the respondent. The first page also includes a checklist of areas of discrimination and a checklist of grounds of discrimination. There are 11 grounds of discrimination, including disability and sex. The complainant selected only disability as a ground of discrimination.

[3] The motion is to modify the selection by adding sex as a ground of discrimination.

## **II. Issues**

[4] The issues are as follows:

- A. Does the Tribunal have the jurisdiction to authorize the complainant to add a ground of discrimination not initially specified on the complaint form?
- B. If so, should sex be added as a ground of discrimination in this case?

## **III. Analysis**

### **A. Does the Tribunal have the jurisdiction to authorize the complainant to add a ground of discrimination not initially specified on the complaint form?**

[5] For the following reasons, the Tribunal considers that it has jurisdiction to authorize the complainant to add a ground of discrimination not initially specified on the complaint form.

[6] The *Canadian Human Rights Act*<sup>1</sup> (the Act or CHRA) gives the Tribunal member or panel hearing a matter under inquiry the power to decide all questions of law or fact necessary to determining the matter.<sup>2</sup> The Act specifies that, in relation to a hearing of the inquiry, the member or panel may, among other things, decide any procedural or evidentiary question arising during the hearing.<sup>3</sup> The member must give the parties full and ample opportunity to present evidence and make representations.<sup>4</sup>

[7] The case law is clear that the Tribunal has the jurisdiction to amend, clarify or determine the scope of the original discrimination complaint,<sup>5</sup> provided that no prejudice is caused to the other parties.<sup>6</sup> In this case, neither the Commission nor the respondent has challenged this power of the Tribunal.

[8] For these reasons, in accordance with the Act and in light of the case law, the Tribunal is of the view that it has the jurisdiction to authorize the complainant to amend her complaint by adding a ground of discrimination not initially specified on the complaint form.

**B. If so, should sex be added as a ground of discrimination in this case?**

[9] The complainant argues that the events alleged against the CAF include a sex discrimination component. She lists the events as follows:

- i. Sexual exploitation by Captain Kim Grondin: Ms. Connors' then addiction counselor;
- ii. Commanding Officer denying Ms. Connors [*sic*] (a sexual assault victim) request for a Summary Trial to be conducted *in camera*;
- iii. The Respondent's denial of accommodation to avoid sexual harassment in the dining hall during her period of confinement; and
- iv. The Respondent's decision to restrict Ms. Connors in a room with sexually explicit graffiti during her period of confinement.

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<sup>1</sup> *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.

<sup>2</sup> CHRA, section 50(2).

<sup>3</sup> CHRA, section 50(3)(e).

<sup>4</sup> CHRA, section 50(1).

<sup>5</sup> For example, see *Casler v. Canadian National Railway*, 2017 CHRT 6, paras. 7–11.

<sup>6</sup> For example, see *Canada (Human Rights Commission) v. Canadian Telephone Employees Assn.*, 2002 FCT 776, paras. 30 and 31.

[10] The Tribunal considers that the prohibited ground of discrimination raised by a complainant is part of their theory of the case. The theory is their own. The complainant may choose to include or not to include a ground of discrimination, just as they may raise one argument or another to justify the findings they are seeking, as long as they respect the substance of the original complaint.<sup>7</sup> However, since the Tribunal has the power to consider questions of law, it is not for the Tribunal to interfere with the strategic choices of the parties to raise this or that argument.

[11] In this case, when the original complaint was filed, the complainant indicated that disability was the ground of discrimination. She now wishes to add sex. This is not about adding facts or events to the original complaint, but about adding a ground of discrimination so that the facts can be analyzed from this perspective as well.

[12] The Tribunal finds that the described events that may support this allegation relate on their face, without presuming their probative value or drawing any conclusion as to their veracity, to the fact that the complainant is female.

[13] The Act specifically provides for sex as a prohibited ground of discrimination.<sup>8</sup>

[14] Neither the respondent nor the Commission objects to the complainant's adding sex as a ground of discrimination. No possibility of prejudice as a result of the proposed amendment has been raised.

[15] For these reasons, the Tribunal grants the complainant the right to amend her original complaint to include sex as a ground of discrimination.

#### **IV. Ruling on the complainant's motion**

[16] The Tribunal grants the complainant's motion.

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<sup>7</sup> *Casler v. Canadian National Railway*, *supra*, note 5; *Canada (Human Rights Commission) v. Canadian Telephone Employees Assn.*, *supra*, note 6.

<sup>8</sup> CHRA, section 3.

## **V. Respondent's motion to limit the scope of inquiry into the complaint**

[17] On October 11, 2018, the respondent filed a motion with the Tribunal requesting that the upcoming hearing not deal with allegations of discrimination based on the events in 2009 during which the complainant was allegedly sexually assaulted in the course of her work. As well, the respondent requested that the hearing not deal with events in 2013–2014 during which the complainant was allegedly sexually exploited in the course of psychological care received from a CAF member. In addition, the respondent required that certain allegations of facts and certain remedies sought by the complainant with respect to her release from the CAF be removed from the complainant's statement of particulars. The respondent argued that the allegations were outside the scope of the complaint reviewed by the Commission and went beyond the request for inquiry before the Tribunal.

[18] The complainant objected. The Commission, for its part, did not take a position on the alleged discrimination in relation to the events of 2009 and 2013–2014, and it objected to the respondent's motion to remove the complainant's allegations in relation to her release from the CAF and the relief for lost wages and benefits that she was seeking.

## **VI. Issues**

[19] The issues are as follows:

- A. Does the Tribunal have the jurisdiction to limit the scope of inquiry into the complaint?
- B. If so, are the limits requested by the respondent justified?

## **VII. Analysis**

### **A. Does the Tribunal have the jurisdiction to limit the scope of inquiry into the complaint?**

[20] As noted above, the Tribunal has the jurisdiction to amend, clarify or determine the scope of the original discrimination complaint,<sup>9</sup> provided that no prejudice is caused to the

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<sup>9</sup> *Casler v. Canadian National Railway*, *supra*, note 5.

other parties.<sup>10</sup> The Tribunal is of the view that the power to define the scope of a complaint is akin to the power to define the scope of the inquiry into the complaint and is part of the discretionary powers conferred on the Tribunal by the Act. The Tribunal therefore has the power to limit or define the scope of the allegations made before it so that they respect the scope of the original complaint or the request to the Tribunal to institute an inquiry.

[21] Moreover, the parties do not contest this power of the Tribunal.

[22] The answer to the question must therefore be yes.

### **B If so, are the limits requested by the respondent justified?**

[23] The Tribunal finds that it is not necessary to limit the scope of the allegations before it regarding the events of 2009 and 2013–2014 and that the remedies sought for lost wages and benefits should be upheld for the reasons set out below.

[24] As noted above, the Tribunal has the power, in prescribed circumstances, to define and therefore limit the scope of allegations and claims for compensation before it.

[25] Moreover, it is settled case law that the general rule is to allow amendments to the complaint, provided that they do not alter the substance of the original complaint and do not cause prejudice to the respondent.<sup>11</sup> The Tribunal does not believe that a different application or different principles are warranted when the amendment is being requested not by the complainant but rather, as in this case, by the respondent, which is requiring that the inquiry into the case not address certain allegations of fact made in the complainant's statement of particulars.

[26] Moreover, the inquiry into the case may not deal with a new complaint that the Commission has not considered since, under the Act, a request to the Tribunal to institute an inquiry into a complaint may be made only if the Commission has considered the

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<sup>10</sup> *Canada (Human Rights Commission) v. Canadian Telephone Employees Assn.*, *supra*, note 6.

<sup>11</sup> *Cook v. Onion Lake First Nation*, [2002] C.H.R.D. No. 12; *IMP Group Limited v. Dillman* (1995), 24 C.H.R.R. D/329; *Canadian Museum of Civilization Corporation v. Public Service Alliance of Canada (Local 70396)*, 2006 FC 704; *Canada (Human Rights Commission) v. Canadian Telephone Employees Assn.*, *supra*, note 6.

complaint.<sup>12</sup> Indeed, the Supreme Court of Canada states that the Act sets out a complete mechanism for dealing with complaints and that the Commission is central to that mechanism.<sup>13</sup>

[27] Note that, in *Dillman*,<sup>14</sup> the Nova Scotia Court of Appeal criticizes the administrative tribunal established under Nova Scotia's *Human Rights Act*<sup>15</sup> for allowing an amendment that extended the facts of the original complaint to the point where it constituted a new complaint that the Nova Scotia Human Rights Commission had not considered, as required under the *Human Rights Act*. The original complaint was related to harassment by a co-worker, while the amendment was related to the employer's refusal to give the complainant a promotion. The events referred to in the amendment had not been considered by the Human Rights Commission; therefore, the process set out in the legislation had been bypassed. The Court of Appeal found that the proposed amendment constituted a new complaint that had not been referred to the administrative tribunal by the Human Rights Commission, contrary to the requirements of the *Human Rights Act*. The original complaint and the subsequent amendment were in essence two different complaints. For these reasons, the Nova Scotia Court of Appeal allowed the appeal.

[28] These principles have also been articulated by the Tribunal and the Federal Court.<sup>16</sup> The scope of the dispute before the Tribunal may not introduce a new complaint that has not already been considered by the Commission and that does not respect the Commission's request to institute an inquiry. The Tribunal therefore does not have the power to deal with a complaint that has not been dealt with first by the Commission and that has not been referred to the Tribunal for inquiry.<sup>17</sup> It is therefore necessary to confine oneself to the complaint and the Commission's decisions with respect to the complaint, in particular the request for inquiry that the Commission has made to the Tribunal.

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<sup>12</sup> CHRA, subsection 44(3) and section 49.

<sup>13</sup> *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, para. 48.

<sup>14</sup> *IMP Group Limited v. Dillman*, *supra*, note 11.

<sup>15</sup> *Human Rights Act*, R.S.N.S. 1989, c. 214.

<sup>16</sup> *Casler v. Canadian National Railway*, *supra*, note 5; *Canadian Museum of Civilization Corporation v. Public Service Alliance of Canada (Local 70396)*, *supra*, note 11.

<sup>17</sup> *Cook v. Onion Lake First Nation*, *supra*, note 11.



[29] The concept of a complaint is nevertheless broad enough to be interpreted in a way that encompasses the full extent of the complainant's allegations.<sup>18</sup> A complaint is the first step in the process and it is inevitable that new facts and circumstances will come to light in the course of the Commission's investigation.<sup>19</sup> The complaint is refined and clarified as the process moves forward.<sup>20</sup> However, a limit is necessary when the amendment to a complaint can no longer be considered a simple amendment but is instead more similar to a new complaint.<sup>21</sup> Likewise, upon reading the complainant's statement of particulars, the allegations of facts to be analyzed by the Tribunal for purposes of determining the dispute must somehow emanate from or arise out of the complaint, but must not depart from it in such a way as to constitute a new complaint.

[30] In this case, the Tribunal finds that the alleged events of sexual assault in 2009 and sexual exploitation in 2013–2014 are specifically mentioned in the wording of the complainant's original complaint. However, they were not investigated by the Commission's assessor. This is what the assessor writes explicitly in the report submitted to the members of the Commission, which led to the decision to refer the complaint to the Tribunal. A few excerpts from the report are worth mentioning:

#### The Assessment Process

The assessor reviewed the parties<sup>1</sup> [sic] positions and all documentary evidence submitted during the course of the assessment.

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<sup>1</sup> This is not an assessment of alleged sexual assault and/or exploitation. The assessor has made it clear to the parties. However, given that the information provides context to the complainant's allegation, the assessor is including it for background purposes.

[31] The footnote states that the events of 2009 (sexual assault) and 2013–2014 (sexual exploitation) were not considered by the Commission's assessor. They were therefore not part of the assessment. They are nevertheless mentioned in the report, but only to set the context for the events that were actually examined.

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<sup>18</sup> *Idem*, para. 11.

<sup>19</sup> *Casler v. Canadian National Railway*, *supra*, note 5.

<sup>20</sup> *Gaucher v. Canadian Armed Forces*, 2005 CHRT 1, para. 11.

<sup>21</sup> *Idem*.

[32] The assessor's report to the Commission sets out the events that were specifically assessed. They are divided into seven categories, as follows:

- A. Reporting requirement;
- B. Summary Trials;
- C. Discipline and/or Punishment;
- D. Confinement;
- E. Notice of Intent to Release;
- F. Respondent visits; and
- G. Denied requests.

[33] The events above are the events that were assessed. The assessment report and the complainant's complaint indicate that the events in question occurred in 2015 and 2016 and culminated in the complainant's release from the CAF on medical grounds on February 17, 2017.

[34] In short, the allegations of sexual assault and sexual exploitation are conceptually distinct events that occurred during a period (2009, 2013–2014) that was not considered in the Commission's assessment.

[35] That being said, the question remains as to whether the Tribunal may consider the allegations in its inquiry into the case, to determine whether the complainant has been subjected to discrimination or harassment by the CAF. The Tribunal is of the view that it may do so, for the following reasons.

[36] First, the Tribunal notes that the alleged events in 2009 and 2013–2014 are an integral part of the events reported by the complainant in her original discrimination complaint. Indeed, the complaint contains a series of facts that demonstrate, according to the complainant, that the respondent failed to provide her with an environment free of harassment and that discriminatory policies and practices were applied to her. To establish these breaches of the law, the complainant relies on events that began, as she wrote in her original complaint, on May 18, 2009, the date of the alleged sexual assault. She then

refers to the sexual exploitation she allegedly suffered in 2013–2014 and then to the disciplinary actions imposed on her from 2015 onwards. The Tribunal infers from the very wording of the complaint that the complainant is criticizing the CAF for acts or omissions particularly in relation to the events in 2009 and 2013–2014. The Tribunal considers that the complainant raises these points not only as a backdrop to the events that occurred after 2014, but also as part of the allegations of discrimination for the entire period from 2009 to 2017. These are therefore allegations of discrimination or harassment.

[37] Second, the Tribunal considers that it is not bound by the decision of the Commission's assessor to limit his investigation, particularly since the wording of the original complaint includes the events in question. Indeed, as noted above, the report of the Commission's assessor includes an explicit footnote stating that the alleged events of sexual assault in 2009 and sexual exploitation in 2013–2014 were not the subject of the assessment. Rather, they served as a backdrop to explain the complainant's psychological condition during the events of 2015 and 2016 that were investigated by the assessor.

[38] Why did the assessor not fully assess all the allegations, including those of sexual assault and exploitation? The report does not answer the question except to note that the assessor does not have to investigate each and every one of the alleged events. The assessor states that it is enough for him to obtain sufficient and adequate information to recommend that the complaint be referred to the Tribunal. Note the following excerpt from the report:

91. The Commission can refer a complaint to a Tribunal at any stage after the filing of a report. The Commission does not have a statutory duty to carry out an in-depth investigation of a complaint before referring it to a Tribunal for further inquiry, the Commission is obliged to consider the available information and evidence in order to satisfy itself that it has a sufficient and adequate basis upon which to refer the complaint.

[39] Therefore, the assessment report is used to justify or support a decision to proceed with the inquiry into the case before the Tribunal and not to limit the scope of the Tribunal's inquiry.

[40] Moreover, the Tribunal notes that the Commission is not strictly required to conduct an investigation before referring a complaint to the Tribunal under section 49(1) of the Act. In fact, the provision states that the Commission may, at any stage after the filing of a complaint, request that the Tribunal institute an inquiry into the complaint. The Commission's investigation is therefore not a prerequisite for the Tribunal to institute an inquiry into the complaint. Consequently, the fact that the assessor did not examine the allegations of sexual assault and sexual exploitation does not automatically preclude the Tribunal from considering them, especially since the complainant specifically refers to them in her original complaint.

[41] In this case, the investigator's approach cannot in itself determine the content of the complaint or the scope of the inquiry.

[42] Moreover, the Commission has not made any such decision. In fact, in its decision to request the Chairperson of the Tribunal to institute an inquiry into the complaint, the Commission does not specify whether events should be included or excluded from the Tribunal's inquiry. The Commission merely refers the complaint without further clarification. The Commission writes:

The Commission has decided, pursuant to section 49(1) of the *Canadian Human Rights Act*, to request that you institute an inquiry into the complaint as it is satisfied that, having regard to all the circumstances, an inquiry is warranted.

[43] In addition, the file does not contain any other decision of the Commission whereby it may have limited the complaint to certain alleged events. Although, as noted above, the assessor himself limited his assessment, the Commission referred the complaint without further clarification. The Tribunal concludes that it is seized of the complaint in its entirety.

[44] It should also be noted that the complainant states, in her reply to the respondent's motion, that sexual assault does not in itself constitute discrimination that is attributable to the respondent. She does not hold the respondent responsible for the assault itself, but criticizes the respondent for not conducting an appropriate investigation after the assault and for not accommodating her afterwards.

[45] As well, the complainant criticizes the CAF for failing to provide her with an environment free of discrimination and harassment and refers to the events in 2013–2014, among other things, in support of her allegations.

[46] Therefore, at this stage of the proceedings, the Tribunal cannot exclude the events in 2009 and 2013–2014 from its inquiry, as required by the respondent.

[47] In light of this finding, there is no reason to question the issue of prejudice to the respondent, since the events alleged to have occurred in 2009 and 2013–2014 are not new facts. They do not extend the original complaint. They do not change it, either. As stated above, they are an integral part of the original complaint.

[48] Consequently, the Tribunal dismisses the first part of the respondent's motion regarding the allegations in relation to the events of 2009 (sexual assault) and 2013–2014 (sexual exploitation). This finding disposes of the first part of the respondent's motion.

[49] As for the second part, namely the motion to remove from the complainant's statement of particulars the findings regarding her release from the CAF and the related remedies, the Tribunal cannot grant the motion for the following reasons.

[50] Should discrimination be found to have occurred, it is then up to the Tribunal to determine the appropriate remedies.<sup>22</sup> The Act provides for various remedies,<sup>23</sup> including compensation for lost wages and other expenses, compensation of up to \$20,000 for pain and suffering, and compensation of up to \$20,000 if the discriminatory practice was wilful or reckless. The Tribunal may also, among other things, grant the victim the rights, opportunities or privileges that the victim was allegedly denied as a result of the discriminatory practice.

[51] The case law holds that this is a discretionary power of the Tribunal that must be exercised judicially and in light of the evidence.<sup>24</sup> The Tribunal is in no way bound by the requests in the statement of particulars; it must assess them and dispose of them in

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<sup>22</sup> *Bell Canada v. Canadian Telephone Employees Association*, [2003] 1 S.C.R. 884, paras. 23 and 26.

<sup>23</sup> CHRA, subsections 53(2) and 53(3).

<sup>24</sup> *Canadian Human Rights Commission v. Dumont*, 2002 FCT 1280, para. 14; *Public Service Alliance of Canada v. Canada Post Corporation*, 2010 FCA 56, para. 295 (Evans J.A., dissenting), affirmed 2011 SCC 57; *Canada (Social Development) v. Canada (Human Rights Commission)*, 2011 FCA 202, para. 32.

accordance with the Act. It is only after the hearing, after considering the evidence and hearing the parties' arguments, that the Tribunal may exercise its discretion under the Act to determine and impose any required remedies, if it finds the complaint to be substantiated.

[52] The respondent disputes the admissibility of the allegation that the CAF initiated release procedures, thereby terminating the complainant's military career and, consequently, the claim for future losses related to her release. The respondent here suggests a distinction between, on the one hand, the allegation concerning the ground for release (which in its view is apparent from the complaint) and, on the other hand, the allegation concerning the very decision to release the complainant (which in its view has never before been challenged by the complainant by grievance or otherwise). It submits that the complainant cannot raise her release on medical grounds and related remedies before the Tribunal.

[53] It should be noted that the original complaint was signed by the complainant on August 5, 2016, the CAF's letter of intent to release is dated February 19, 2016, and the complainant's actual release from the CAF occurred on February 17, 2017, as it appears from the complainant's statement of particulars. In the statement of particulars, the complainant argues that her release from the CAF was initially considered a release because she was "unsuitable for further service" but then, after submissions by her counsel, the release was imposed on "medical grounds" (which would entitle her to additional benefits). The complainant states that the entire process leading to her release was discriminatory.

[54] When the complainant made her initial complaint in August 2016, she did not yet know that the steps taken by her counsel starting on July 22, 2016, regarding the reason for her release, would be successful. It was not until February 2017, six months after filing her complaint, that she learned that her military career was over on "medical grounds". It goes without saying that the original complaint does not contain any allegations regarding her release on this specific ground. However, the complaint refers to the alleged discriminatory process that resulted in the letter of intent to release the complainant because she was "unsuitable for future service". The complainant believes that this was

the result of a discriminatory process, and that is what she is disputing. The Tribunal finds that, ultimately, whether the reason for release is “medical grounds” or “unsuitable for future service” does not change the allegations of discrimination in the overall process raised in the original complaint.

[55] In her statement of particulars, the complainant alleged that, had it not been for the discriminatory actions and decisions of the CAF, she would have continued her career as a member of the military. The Tribunal finds that this allegation falls squarely within the scope of the original complaint.

[56] In the circumstances, the Tribunal finds that there is no justification for limiting its inquiry as the respondent has requested, by excluding the allegations related to the complainant’s release on “medical grounds”. The Tribunal’s inquiry may therefore cover the entire process leading to the end of the complainant’s military career, to establish whether discriminatory practices have been committed or whether the decisions made are based on prohibited grounds of discrimination.

[57] As for the respondent’s motion to limit the remedies requested by the complainant, the Tribunal is of the view that, at this stage of the proceedings, that is, before the respondent’s statement of particulars has been received and before the case has been heard, it is premature to consider the remedies requested in relation to the complainant’s release from the CAF. The same is true for all the remedies in the complainant’s statement of particulars. The respondent will be able to present its arguments regarding the requested remedies in its statement of particulars and, of course, at the hearing.

[58] For these reasons, the Tribunal finds no justification for removing from the complainant’s statement of particulars the allegations and remedies sought by the complainant in relation to her release from the CAF, and the Tribunal therefore rejects this part of the respondent's motion.

### **VIII. Ruling on the respondent’s motion**

[59] The Tribunal dismisses the respondent’s motion.

**IX. Follow-up**

[60] The respondent, having asked the Tribunal to be allowed to submit its statement of particulars following this ruling, must submit it within 21 days of the ruling.

[61] The Tribunal registry officer will contact the parties to set a date for a hearing management conference.

*Signed by*

Marie Langlois  
Tribunal Member

Ottawa, Ontario  
February 18, 2019



**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T2243/6517

**Style of Cause:** Erin Terilyn Connors v. Canadian Armed Forces

**Ruling of the Tribunal Dated:** February 18, 2019

**Motion dealt with in writing without appearance of parties**

**Written Representations by:**

Michel W. Drapeau and Bruno Sharpe, for the Complainant

Fiona Keith and Daphne Fedoruk, for the Canadian Human Rights Commission

Craig Collins-Williams and Helene Robertson, for the Respondent