

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2019 CHRT 17

**Date:** April 25, 2019

**File No.:** T1248/6007

**Between:**

**Levan Turner**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canada Border Services Agency**

**Respondent**

**Ruling**

**Member:** Edward P. Lustig

## I. Background

[1] The Complainant has requested me to rule on whether certain documents that were part of the parties' Joint Book of Documents (JBD) at the hearing in this matter can now be admitted into evidence as part of the record of the hearing.

[2] The evidence phase of the hearing was completed on January 28, 2019 in Victoria BC. Following the last witness's testimony that day, counsel for the Complainant, Mr. Yazbeck, stated that as a result of the Respondent not having called as a witness one of the persons that had appeared on its list of witnesses, Ms. Shalini Sharma, he was not able to introduce into evidence certain documents in the parties' JBD that he had intended to introduce through this witness on cross examination. Counsel for the Respondent, Mr. Stark, had written to Mr. Yazbeck on January 24, 2019 to inform him that he was not going to call Ms. Sharma as a witness and that the only other witness to be called by the Respondent on January 28<sup>th</sup> was Ms. Nina Patel. At the end of the day, the parties agreed to try to work out a number of outstanding evidential and other matters before the scheduled dates for argument on June 11-13, 2019.

[3] Subsequently, the parties were able to reach an agreement with respect to the filing on consent of a number of documents as well as a number of other matters, however, they were not able to agree on the following documents or groups of documents ("the disputed documents"):

- JBD Volume 4, Tab 90: Implementation Instructions Reclassification of the Border Services Officer- Customs from PM-02 to PM-03
- JBD Volume 4, Tab 91: Work Description for Border Services Officer (PM-03) effective October 8, 2004
- JBD Volume 4, Tab 92: Guidelines for the Reclassification of the Border Services Officer - Customs from PM-02 to PM-03
- JBD Volume 8, Tab 169: Application files in Selection Process 2001-CCRA-PAC-3961-7009 for the following candidate: Dustin Young (Pages 1 to 34)
- JBD Volume 8, Tab 170: Application files in Selection Process 2002-1060-PAC-3961-7012 for the following candidates:

- Jamie Ager
- Jason Cotie
- Carol Green
- Dean Henderson
- Heath Lariviere
- Stacie Rosentreter
- Dustin Young

[4] Counsel provided the Tribunal with what they agreed was the relevant correspondence in relation to the disputed documents and made oral submissions during a conference call that was held on April 16, 2019.

## **II. Parties' Positions**

[5] The Complainant's position on the disputed documents is summarized in paragraphs 6 and 7.

[6] The disputed documents are in the books created by the Respondent and its predecessors and were previously agreed by the Respondent to be considered as part of the record subject to the right to object to their relevance or weight. The Complainant relies on correspondence from the Respondent dated November 17, 2017 wherein Mr. Stark wrote to Mr. Yazbeck that the "...respondent is agreeable to a joint book of documents comprised of the exhibits from the first hearing."

[7] The disputed documents are the Respondent's own documents from the first hearing of this case before Chair Sinclair and there can be no possible objection to them being filed subject to the right of Respondent to object to their relevance "later". Proceeding in this way is completely consistent with the previous understanding regarding the documents. As indicated at the last day of the hearing the Complainant had fully intended to put these documents in through Ms. Sharma and would have put them in through other witnesses had Mr. Yazbeck known that she would not testify. Proceeding in this fashion of allowing the disputed documents to be filed and then to deal with objections to their relevance etc. during the argument phase of the hearing will ensure procedural fairness. The Complainant did not make submissions respecting the relevance of the disputed documents in the correspondence or in the conference call.

[8] The Respondent's position on the disputed documents is summarized in paragraphs 9, 10, 11 and 12.

[9] The disputed documents are not temporally relevant to this case given their effective dates.

[10] The Respondent does not accept that the documents would have been put to Ms. Sharma as she had no involvement in the matters with respect to some of the documents. There were other witnesses who testified at the hearing that the Complainant could have but chose not to put these documents to on cross examination.

[11] It would be unfair to the Respondent to have the disputed documents allowed into evidence at this stage after the conclusion of the hearing of the evidence without having the opportunity to rebut anything that might have arisen in respect to the documents had they been put to a witness including objecting to their relevance and rebutting any testimony about them either on redirect or through reply evidence.

[12] The Respondent disputes that there was an agreement that the documents were to be considered part of the record as a result of certain stipulating correspondence between counsel subsequent to the November 17, 2017 correspondence referred to in paragraph 6.

### **III. Analysis**

[13] For the reasons that follow I will not allow the Complainant's request to admit the disputed documents into evidence as part of the record in this case and to assess its relevance during the argument phase of the hearing.

[14] The onus is upon each party to produce documents during the evidence phase of the hearing that are within the JBD through witnesses called by either party who can attest, under oath, to the validity of the document and to its contents in relation to the matter in issue. This allows for the opposite side to either cross-examine or re-examine, or call rebuttal evidence, as the case may be. This allows the Tribunal to assess the document properly and fully for its truth, context and value. To try to have documents

assessed by the Tribunal in this regard after the evidence phase of the hearing during the argument phase when written arguments have already been exchanged and filed with the Tribunal, can be both unfair to the opposite party contesting the document (in this case the Respondent) and unhelpful in allowing the Tribunal to assess the document properly and fully for its truth, context and value.

[15] Sometimes this is unavoidable. However, in this case, if the Complainant had wanted the disputed documents admitted during the evidence phase he could and should have tried to introduce them through witnesses who testified during the hearing prior to January 24, 2019 and then after he became aware on that date that Ms. Sharma was not going to be a witness, before the evidence phase was completed on January 28, 2019, by introducing them through Ms. Patel or by calling reply witnesses.

[16] In any case, having reviewed the disputed documents myself, I concur with the Respondent's submissions respecting their lack of relevancy and therefore, for all of these reasons, conclude that they should not be admitted into evidence as part of the record or referred to in the parties' arguments.

[17] The documents that have been consented to are admitted into evidence and may be referred to in the parties' arguments.

#### **IV. Order**

[18] For the foregoing reasons the Complainant's motion is dismissed.

*Signed by*

Edward P. Lustig  
Tribunal Member

Ottawa, Ontario  
April 25, 2019

# Canadian Human Rights Tribunal

## Parties of Record

**Tribunal File:** T1248/6007

**Style of Cause:** Levan Turner v. Canada Border Services Agency

**Ruling of the Tribunal Dated:** April 25, 2019

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

**Written representations by:**

David Yazbeck, for the Complainant

Graham Stark, for the Respondent