

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2024 CHRT 1  
**Date:** January 5, 2024  
**File No(s):** T2721/9721

**Between:**

**Zia Rehman**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Department of National Defence**

**Respondent**

**Ruling**

**Member:** Athanasios Hadjis

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## **I. REQUEST FOR THE PRODUCTION OF DOCUMENTS AND INFORMATION**

[1] This is a ruling on a request by the Complainant, Zia Rehman, for the production of documents and information. The hearing of his complaint is scheduled to start in just over a week, on January 15, 2024. The request was filed on December 27, 2023, and the other parties' submissions were received on January 3, 2024, as directed by the Tribunal.

### **A. Order regarding Telus Communications Inc.**

[2] The Complainant wants Telus Communications Inc. (Telus), a third party to this complaint, to provide certain phone records before the hearing. The Complainant already plans to call a representative of Telus to testify at the hearing. The Tribunal provided him with a summons for a Telus representative to appear at the hearing.

[3] The requested phone records are pages of a phone bill for November 23, 2016, listing the calls from four telephone numbers to the Complainant's number.

[4] The Complainant seeks an order from the Tribunal compelling Telus to produce the records to him in advance of the hearing. The Canadian Human Rights Commission (Commission) consents to the order. The Respondent, the Department of National Defence, consents to a form of order that would allow Telus to produce the records. They both request that copies of the records be provided to them as soon as the Complainant acquires them.

[5] The Tribunal has the authority under s. 50(3)(a) of the *Canadian Human Rights Act* R.S.C.1985, c. H-6 (the "CHRA") to summon and enforce the attendance of witnesses to give oral or written evidence and to produce any documents and things considered necessary (see *Warman v. Harrison*, 2006 CHRT 19 at para. 4 ("*Warman*")). The summons that the Tribunal provided to the Complainant had a space for him to fill out and list the documents that the witness would be required to bring to the hearing.

[6] None of the parties addressed the question, however, of whether the Tribunal has the authority to order a third party to produce documents in advance of a hearing. The Tribunal held in *Warman* that it did not have the power to order the production of documents from third parties who are not witnesses.

[7] In the present case, a Telus representative will be a witness and will be required to bring with them *to the hearing* any documents listed in the summons. The CHRA makes no mention of the Tribunal having the authority to order a third-party witness to provide documents in advance of the hearing.

[8] Given these restrictions, Telus is “ordered” to produce the requested documents at the hearing, in accordance with the summons. The Tribunal is not aware of any reason why Telus would be unable to provide them to requesting party in advance, but the Tribunal is not prepared to issue an order that exceeds its powers as set out in the CHRA.

[9] If the Complainant acquires the requested records before the hearing, he must provide them to the other parties within 24 hours.

[10] The Complainant’s request is denied.

#### **B. Disclosure of contact information of a former employee of the Respondent**

[11] The Complainant has tried to send a subpoena to one of his witnesses, who I need only referred to by the initials PH for the purposes of this ruling. However, the Complainant does not have PH’s contact information. He seeks an order that the Respondent provide any contact information including any physical address, home address, email address and forwarding address, and personal email or current job information of PH.

[12] The Commission does not oppose the request. The Respondent consents to the order, to the extent that it has this information.

[13] The Tribunal grants the request.

#### **C. Disclosure of contact information of an employee of the Respondent**

[14] The Complainant states that the Respondent did not provide some of the documents covered by a disclosure order that I issued after a case management conference call that I held on November 16, 2023. The Respondent informed the Complainant that it produced all

the documents that it had, adding that some documents were purged or lost with the passage of time, which, in some cases, is more than eight years.

[15] The Complainant points out that on December 1, 2020, a Commission officer had instructed the Respondent to retain all materials related to the allegations until the complaint process is complete, including electronic documents.

[16] The Complainant therefore seeks an order from the Tribunal that the Respondent disclose the name and contact information of the “person in-charge of Control/Preservation of documents/ or Manager at Department of National Defense who will testify as a witness on why those documents were not preserved and instructions of the Human Rights Commission Officer was ignored” [*sic*].

[17] The Commission does not oppose the request. The loss or destruction of the evidence is relevant and if the Respondent does not propose a witness from the existing list who can address the issue, the contact information of a relevant witness should be provided.

[18] The Respondent does not consent to the request. It states that there is no individual that will be available to speak to the maintenance of files throughout Canada in numerous offices involving dozens of people over the last eight years. Trying to identify all of this in such a short timeline would create an impossible task. The Respondent notes that it is calling 12 witnesses to the hearing and the Complainant is calling another 2 witnesses who were employed at the Department of National Defence at the relevant times. The matter of what happened to any documents can be explored through the examination and cross-examination of these witnesses.

[19] I agree. The best means to proceed at this stage, with the hearing starting in just over a week, is to address the issue through the evidence of the existing witnesses. The matter can be revisited if the missing material is determined to be relevant to the case and if the evidence fails to explain what happened to it.

[20] The Complainant's request is denied.

**D. Disclosure of a witness' address**

[21] The Complainant requests that the Respondent be ordered to reveal the address of one of his witnesses, which had been redacted from a document, so that a summons can be served on the person. I need only refer to the witness by the initials MS for the purposes of this ruling. The Respondent consents to the order.

[22] The Tribunal grants the request.

**E. Names of candidates on document CAN-013**

[23] This request relates to disclosed document CAN-013, which PH prepared and provided to the Commission during its pre-referral screening process in July 2021. PH was a director-general with the Respondent at the time. The document details the educational credentials of the 20 candidates who remained in the pool of qualified candidates in the appointment process at issue in this case. The candidates are only identified by number.

[24] In the period since then, however, the Complainant and the Commission have learned the names of all 20 candidates through the disclosure of other documents.

[25] The Complainant requests that the names of the candidates identified only by number in CAN-013 be revealed. He contends that the information is crucial since he alleges some of the candidates "did not have any education credentials and were hired against the Complainant's education and qualification."

[26] The Commission consents to the request. It maintains that with the names revealed, the parties will be able to make sense of this material and assess its relevance to the examinations of the proposed witnesses. The revealed names will also assist the Tribunal if a party proposes to address CAN-013 with a witness and enter it into evidence.

[27] The Respondent objects to the request. It states that it has already provided a document (CAN-282) that discloses the educational information of the individuals in the pool by name. It submits that the summary of CAN-013 is of no assistance. Copies of both documents were provided with the Respondent's submissions.

[28] I note that CAN-282 does not have the same level of detail as CAN-013, such as the names of the educational institutions attended. If the parties do end up entering CAN-013 into evidence, I can see how all participants, including the Tribunal, would benefit from knowing which of the named candidates is represented by the numbered entries in CAN-013.

[29] That said, however, the Complainant is not asking for an existing document to be disclosed. The existing document was disclosed – CAN-013. The Complainant is asking the Respondent to basically modify CAN-013 and create a new document. That is not part of the disclosure process. A party's obligation to disclose is limited to documents that are "in the party's possession." The Tribunal cannot order a party to generate or create new documents for disclosure (*Nwabuikwu v. Royal Canadian Mounted Police*, 2020 CHRT 9 at para. 8; *Gaucher v. Canadian Armed Forces*, 2005 CHRT 42 at para. 17).

[30] The request is therefore denied.

## **II. ADDITIONAL REQUESTS BY RESPONDENT**

[31] The Respondent made several requests in its response to the Complainant's motion.

[32] The Respondent states that the Complainant has not provided a summary of the anticipated testimony for one of his witnesses, who I need only refer to as SB for the purposes of this ruling. The Complainant must provide the summary before she can testify (Rule 18(1)(e) of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137). I note, however, that in a "brief" filed by the Complainant on October 6, 2022, ahead of a case management conference call, he provided a list of proposed witnesses as it stood at that time. It included SB's name on page 6 along with a 15-line paragraph of what "she will need to explain." It is essentially a summary of her anticipated testimony. The Complainant has therefore complied with Rule 18(1)(e). This request is denied.

[33] The Respondent observed what it perceives as potential gaps in the Complainant's scheduling of witnesses, which may result in the hearing not being completed in the time allotted. This matter can be addressed by the Tribunal at the start of the hearing.

[34] Finally, the Respondent expressed concern that the Complainant intends to challenge appointments for which he clearly lacked the essential qualifications, such as positions requiring health or medical experience. The Tribunal will address any issues on the scope of the case and the relevance of the evidence presented as they arise at the hearing.

### **III. ORDER**

[35] The Tribunal makes the following order:

- A) The Respondent must provide to the Complainant, by January 8, 2024, any contact information for PH, including any physical address, home address, email address and forwarding address, and personal email or current job information.
- B) The Respondent must provide to the Complainant, by January 8, 2024, the address of MS.

*Signed by*

Athanasios Hadjis  
Tribunal Member

Ottawa, Ontario  
January 5, 2024



## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal Files:** T2721/9721

**Style of Cause:** Zia Rehman v. Department of National Defence

**Ruling of the Tribunal Dated:** January 5, 2024

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

**Written representations by:**

Zia Rehman, for the Complainant

Caroline Carrasco and Jonathan Bujeau, for the Canadian Human Rights Commission

Barry Benkendorf and Alexandra Warkentin, for the Respondent