

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Stuart John Fraser

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: Sophie Marchildon

Date: October 2, 2013

Citation: 2013 CHRT 23

Table of Contents

I.	Complaint & Motion to adjourn	1
II.	Background	1
III.	Positions of the parties	5
IV.	Analysis.....	6
V.	Ruling.....	9

I. Complaint & Motion to adjourn

[1] According to the Complainant, a non-active member of the Royal Canadian Mounted Police (RCMP), he has been diagnosed with Post Traumatic Stress Disorder (PTSD) as a result of a duty related traffic accident. As a result of his PTSD, the Complainant says the Department of Veterans Affairs awarded him a partial disability pension on February 23, 2004.

[2] The Complainant claims his employer, the Respondent in this case, failed to accommodate his PTSD. According to the Complainant, this failure to accommodate his PTSD exacerbated his symptoms and culminated in his inability to work.

[3] As a result, the Complainant claims the Respondent has engaged in a discriminatory practice pursuant to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [CHRA], on the ground of his disability.

[4] This matter is currently scheduled for hearing from October 7, 2013 to October 25, 2013 in Vancouver, British Columbia. On September 30, 2013, the Respondent requested the hearing be adjourned.

II. Background

[5] This matter was referred to the Tribunal on August 2, 2012. After an offer to attempt to mediate the complaint was denied, the Tribunal actively case managed the file in preparation for hearing.

[6] A Case Management Conference Call (CMCC) was held on February 4, 2013. During that call, all parties confirmed that they had disclosed their files in full. Aside from some contention on the venue of the hearing, no other issues were identified by the parties and, therefore, dates for the hearing were set.

[7] Another CMCC was held on April 19, 2013. No disclosure issues were identified by the parties; nor any issues related to the Complainant's disability pension.

[8] The Tribunal held a further CMCC on July 10, 2013. At that time, the Respondent brought forward four items: the status of an agreed statement of facts; the Tribunal's jurisdiction to deal with future loss; the availability of the Complainant's Veterans Affairs pension file; and, the scope of the Complainant's proposed witness list.

[9] With regard to the Tribunal's jurisdiction to deal with future loss, the Tribunal requested written submissions and set a schedule for doing so, followed by a CMCC scheduled for September 30, 2013.

[10] For the Veterans Affairs pension file, the Complainant indicated that he made an *Access to Information Act* request for the file and would discuss the matter with the Respondent once a response to the request was provided. The Respondent indicated that late production of these materials may prejudice its case. The Tribunal asked that the parties advise it if there were any developments on the issue prior to the conference call scheduled for September 30, 2013.

[11] Regarding the scope of the Complainant's proposed witness list, the Respondent indicated that it may seek to have some of the subpoenas quashed. The parties agreed to discuss the issue between them and, if an agreement could not be reached, the Respondent would file a motion to quash the subpoenas. The Tribunal reminded the parties that a motion can be filed at any time; however, to preserve the integrity of the process, outstanding issues need to be resolved expeditiously, if possible. The Tribunal indicated that the more outstanding issues that arise at this stage in the process, the more it can impact the hearing and potentially create delays.

[12] On August 12, 2013, the Respondent advised the Tribunal that it will no longer bring a motion regarding the issue of the Tribunal's jurisdiction to award future loss, and resolved to provide those submissions as part of its final arguments following the hearing. Therefore, leading up to the next CMCC, the Tribunal wrote to the parties on September 19, 2013 as follows:

The agenda for the Case Management Conference Call to be held on September 30, 2013 at 10:30 a.m. (Pacific), 1:30 p.m. (Eastern) is as follows:

1. Quashing subpoenas for 2 witnesses

The parties are asked to be prepared to provide an update to the Tribunal. In the event this remains a live issue, the parties are requested to be fully prepared to make oral submissions on this specific issue to allow the Tribunal member if possible, to make an oral ruling on the call to expedite matters.

2. Agreed statement of facts and/or Agreed book of documents

3. Other outstanding matters

The parties are asked to be fully prepared to give a complete update to the Tribunal on any outstanding issue and be fully prepared to make oral submissions on any outstanding issue, if it is already known by both parties, to allow the Tribunal member if possible, to make an oral ruling on the call to expedite matters.

4. Vacating the October 25 hearing date

[13] Prior to the CMCC, the Respondent indicated the scope of the Complainant's witness list and its potential request to quash subpoenas was no longer a live issue. However, on September 25, 2013, the Complainant wrote to the Tribunal:

Counsel for the Respondents have advised that they intend to apply to the Canadian Human Rights Tribunal (CHRT) for a stay of the hearing, pursuant to s. 111 of the *Pension Act* - on the basis that the CHRT hearing should be stayed until Cst. Fraser has reapplied for a Veteran's Affairs ("VA") pension ("VA Pension") in relation to the events which form the subject matter of the CHRT complaint and the Court Action.

Cst. Fraser will object to that Application.

Any Application pursuant to s. 111 of the *Pension Act*, should be delivered in writing to the CHRT and Counsel for Cst. Fraser and for the Canadian Human Rights Commission immediately and at least 2 clear business days before the September 30th Case Management Conference.

[14] The Tribunal responded to the Complainant's correspondence on September 26, 2013:

Dear Counsel,

Tribunal Member Sophie Marchildon has reviewed the correspondence below from Mr. Beasley.

Given the upcoming hearing, and ensuring that the Conference Call proceeds in an efficient manner, Member Marchildon asks the Respondent to advise the Tribunal, in writing, on how they intend to proceed on this issue and to provide additional details, by end of day tomorrow (September 27, 2013) to allow sufficient time for review before the call.

[15] The Respondent provided its response on September 26, 2013:

Please be advised that the Respondent yesterday received from Complainant's Counsel a letter dated September 24, 2013 enclosing a CD with 734 pages of records held by Veterans Affairs Canada. Previously we received, on September 17, 2013, a CD with copies of records held by Veterans Review Appeal Board. The Respondent has been waiting for disclosure of these records for a significant period of time and will need to conduct a thorough review of them prior to making a final determination as to whether Section 111 of the *Pension Act* applies. While we will endeavour to complete this task as soon as practicable the Complainant's suggested timeline for delivery of application materials is unreasonable.

[16] During the September 30, 2013 CMCC, the Respondent requested that the upcoming hearing of the matter, scheduled for October 7 to 25, 2013 be adjourned. The parties provided oral submissions during the CMCC and confirmed they were satisfied they had a full and ample opportunity to present their case on the adjournment request.

[17] Following the September 30, 2013 CMCC, the Respondent sent the following letter to the Tribunal:

We understand the Member will be deciding the adjournment request by tomorrow. Further to today's conference call, and in the event that the Tribunal declines the respondent's adjournment request and decides to bifurcate the hearing scheduled to commence on October 7, 2013, the respondent has the following suggestion regarding the timing of the hearing and its motion.

The hearing is currently scheduled for almost 3 full weeks. If the question of damages is bifurcated, than all 3 weeks should not be necessary at this time. Given the late production of the VA pension materials, it will be difficult for the respondent to bring its motion on October 7, 2013 for all the reasons discussed on this morning's call. Consequently, our suggestion is that, if the Tribunal decides not to grant the adjournment request and decides to bifurcate the hearing, the hearing should not commence until

October 15, 2013 at the earliest thus giving the respondent time to review the VA materials, determine whether s.111 of the Pension Act applies and if so, to bring the application. The expectation would be that if the documents support such an application, the respondent would bring it on October 14, 2013.

[18] The Respondent's letter reflects its submissions made at the CMCC earlier that same day.

[19] The Complainant responded as follows:

The Complainant, Stuart Fraser, objects to the delivery of that letter, and to the request in the letter. Member Marchildon closed submissions on the adjournment request. Prior to closing submissions, she asked the parties if there were other submissions. The DOJ did not raise any further submissions.

The Complainant has subpoenaed witnesses for the hearing beginning on October 7. Some of those witnesses are not available in the week of October 15 or October 21.

III. Positions of the parties

[20] The basis for the Respondent's request is that it received additional disclosure from the Complainant on September 17 and 25, 2013. The latter being approximately 734 pages of record and provided less than two weeks before the scheduled hearing. According to the Respondent, it needs an opportunity to fully review those records in order to make full answer and defence to the Complainant's allegations. The Respondent also would like an opportunity to review and consider the documents in order to determine whether it will bring an application to stay this matter pursuant to section 111 of the *Pension Act*, R.S.C., 1985, c. P-6. The Respondent says the late disclosure and short timeframe to review documents does not allow sufficient time to fully consider the documents and to decide whether a stay under section 111 of the *Pension Act* applies. In the Respondent's view, the Complainant's failure to provide ongoing disclosure and production of documents as is necessary is the reason for the late disclosure and the resultant request to adjourn.

[21] The Complainant says he is prejudiced by the Respondent's last minute request to adjourn. He is prepared to proceed and wants to proceed with the hearing. According to the Complainant, the Respondent received the initial disclosure of his documents more than a year

ago. While additional documents were requested in July 2013, those documents were not in the possession of the Complainant and, therefore, he does not view them as encompassed by his ongoing disclosure obligation. In any event, the Complainant says it did what it could to get those documents to the Respondent expeditiously in September 2013. Therefore, in the Complainant's view, the request to adjourn could have been made much earlier and the Respondent's delay should not prejudice the Complainant in proceeding with his case.

[22] The Commission opposes the request to adjourn. Specifically related to the potential for a stay application under section 111 of the *Pension Act*, the Commission argues the Respondent could have raised this issue at the Commission stage pursuant to paragraph 41(1)(b) of the *CHRA*. Alternatively, it could have argued the issue as part of its statement of particulars before the Tribunal and provided the Complainant an opportunity to reply. The Commission says it is now too late, a week before the hearing, to be bringing these issues forward.

IV. Analysis

[23] As reflected in the parties' correspondence prior to the September 30, 2013 CMCC, their positions on the adjournment submitted orally during the call, and their letters following the call, there seems to have been confusion on whether the Respondent was seeking an adjournment because of the late disclosure or pursuant to section 111 of the *Pension Act*. Now having reviewed all these submissions, it is clear that the Respondent seeks an adjournment because of the late disclosure.

[24] That said, the late disclosure may result in the Respondent bringing a section 111 *Pension Act* stay application later on in these proceedings. However, that is a potential issue for another day, when the Respondent determines whether section 111 of the *Pension Act* applies and brings a motion in that regard. Therefore, this ruling will not address any issues related to section 111 of the *Pension Act*.

[25] Moving on to the adjournment request, it is well established that the Tribunal is the master of its own procedure and the adjournment of proceedings falls within its discretion. This

discretion must be exercised with consideration for subsection 48.9(1) of the *CHRA* and the requirement that proceedings be conducted informally and expeditiously, subject to the rules of natural justice (see *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at paras. 14-17; *Zhou v. National Research Council*, 2009 CHRT 11 at para. 4 [*Zhou*]; *Léger v. Canadian National Railway Company*, 1999 CanLII 19862 (CHRT) at para. 6; *Marshall v. Cerescorp Co.*, 2011 CHRT 5 at para. 11; *Blain v. Royal Canadian Mounted Police*, 2012 CHRT 13 at paras. 12-15; and, *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada)*, 2013 CHRT 16 at para. 50).

[26] In fulfilling the Tribunal's mandate to proceed expeditiously, I also consider the Tribunal's comments in *Zhou*, at paragraph 8, to be relevant to the circumstances of this case:

The Tribunal must run an efficient hearing system in order to achieve its legislative mandate to hear and resolve complaints expeditiously (s. 48.9(1) of the *CHRA*; *Canada Post Corporation v. PSAC and the CHRC*, 2008 FC 223 at para. 274; *Nova Scotia Construction Safety Association, Collins and Kelly v. Nova Scotia Human Rights Commission and Davidson*, 2006 NSCA 63 at para. 76. A hearing requires the dedication of considerable financial and human resources. Those resources cannot be reallocated without significant disruption to the whole system, especially at this stage in the process. Such disruptions have an impact on the timeliness not only of the present case, but also of other cases in the system. For those reasons, an adjournment is granted only in cases where proceeding will clearly have an impact on the fairness of the hearing.

[27] Therefore, in my view, the considerations which the Tribunal must weigh in deciding to exercise its discretion to grant an adjournment in this case include:

- (a) the prejudice caused to the Complainant in delaying this matter;
- (b) the prejudice caused to the Respondent, in proceeding without delay, without the benefit of having fully reviewed and considered the additional disclosure documents, and having to prepare its case in a short timeframe; and,

- (c) the impact to the Tribunal system in delaying the proceedings and/or having to find additional hearing dates suitable to the Tribunal, the parties and the witnesses.

[28] As these considerations demonstrate, there is no obvious solution to the issue at hand. At least one, if not all parties, will suffer a prejudice regardless of the decision taken.

[29] In balancing both parties' interests, I find that the Complainant would be prejudiced the most if we do not proceed as planned. He is ready to proceed; and, all the witnesses have been summoned and are prepared for the hearing. If the current hearing schedule is adjourned beyond the dates planned, the Tribunal's schedule would only allow for the Complainant to be heard, at the earliest in March 2014. This does not best address the Complainant's right to be heard in a timely fashion and the Tribunal's mandate to proceed as expeditiously as possible pursuant to subsection 48.9(1) of the *CHRA*. In addition, it would also affect the Tribunal's resources for this and other cases as described in *Zhou* above given the fact that 3 consecutive hearing weeks have been set aside for October 2013 since early February 2013.

[30] That said, I understand the prejudice expressed by the Respondent as well. There is no perfect way to address this. While some of the late disclosed documents may relate to the substance of the complaint and/or the remedies sought by the Complainant, given the Respondent's suggestion that a section 111 *Pension Act* stay may apply, it seems there is an overarching concern regarding the Complainant's disability pension and the potential for double recovery. In any event, the documents are not before me and I cannot determine their relevance to any particular issue in the case at this time. However, to address the potential of a section 111 *Pension Act* stay application, it may be beneficial to separate the evidence on the substance of the complaint from the evidence related to remedies. That said, the potential for a motion on section 111 of the *Pension Act* is not sufficient to adjourn the whole of the hearing.

[31] Thus being said, the hearing shall proceed as planned. However, the portion of the hearing on the potential remedies to be awarded may be bifurcated after I have heard further

submissions on this issue at the commencement of the hearing. Parties will be asked to have instructions on possible dates for the hearing on remedies for early next year.

[32] To address the late disclosure, the Respondent will have the possibility of recalling witnesses, subject to submissions from the parties and my ruling thereon. Furthermore, the Respondent can raise any issues related to prejudice during the hearing, and following submissions from the parties, I will rule on the issue. This may result in a short adjournment of half a day, or a day or two, pending on the nature of the objection raised.

[33] Therefore, the Complainant should bear in mind that in starting to present its evidence at the hearing, if its late disclosure impacts the Respondent's case, it could potentially delay the hearing even though the current adjournment request was denied.

V. Ruling

[34] For the reasons above, the Respondent's request for an adjournment is denied.

Signed by

Sophie Marchildon
Administrative Judge

Ottawa, Ontario
October 2, 2013

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1845/7512

Style of Cause: Stuart John Fraser v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: October 2, 2013

Appearances:

Thomas F. Beasley and David S. Jarrett, for the Complainant

Jonathan Bujreau, for the Canadian Human Rights Commission

Lynn Burch, Graham Stark and David Everett, for the Respondent