

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**Between:**

**Francine Desormeaux**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Ottawa-Carleton Regional Transit Commission**

**Respondent**

**Ruling**

**Member:** Anne Mactavish

**Date:** October 3, 2002

**Citation:** Ruling #3

[1] OC Transpo seeks to have the Amalgamated Transit Union added as a respondent in this proceeding. For the reasons given yesterday, I am satisfied that the *Canadian Human Rights Act* permits me to entertain OC Transpo's request. What remains to be determined is whether that request should be granted in all of the circumstances of this case.

[2] OC Transpo says that the presence of the Union is necessary in order to allow it to make full answer and defence to Ms. Desormeaux's complaint. According to the employer, in the event that I were to conclude at the end of the day that OC Transpo did not adequately discharge its duty to accommodate Ms. Desormeaux's disability, the Amalgamated Transit Union should have to share responsibility for any damages Ms. Desormeaux may have sustained as the Union failed to identify what it would take to properly accommodate Ms. Desormeaux.

[3] While counsel for the Amalgamated Transit Union does not oppose being added as a respondent, he says that it is not necessary. According to Mr. McLuckie, there is no law imposing a positive obligation on a union to bring forward suggestions as to how a disabled employee should be accommodated. Rather, the obligation on unions is to facilitate accommodative measures selected by the employer in consultation with the employee.

[4] Difficulties can arise with respect to the implementation of Tribunal orders in organized workplaces where those orders involve the reintegration of employees and touch on issues such as seniority rights or the operation of the collective agreement. In response to a question from the Tribunal on this point, counsel for the Amalgamated Transit Union undertook on behalf of his client that the Amalgamated Transit Union would fully co-operate in the implementation of any order that the Tribunal may ultimately make against OC Transpo with respect to Ms. Desormeaux's return to the workplace.

[5] The Commission and Ms. Desormeaux both strenuously oppose the Union being added as a respondent. Ms. Desormeaux states that she is simply not prepared for a hearing involving the Union as a respondent.

[6] Counsel for the Commission points to the timing of OC Transpo's request, noting that Ms. Desormeaux's complaint was filed in 1999 and relates to events taking place in 1998. According to counsel for the Commission, the investigation report into Ms. Desormeaux's complaint was completed in December of 2000. If OC Transpo was dissatisfied with the way in which the Commission had proceeded with Ms. Desormeaux's complaint, the Commission says, OC Transpo could have judicially reviewed the Commission's decision to refer the case to Tribunal. At the very least, OC Transpo should have identified this as an issue in the questionnaire sent to the parties by the Tribunal Registry following the referral of the case to the Tribunal.

[7] Finally, counsel for the Commission says that one of his principal witnesses is to be the former president of the Union and that the addition of the Union as a respondent at this late date would fundamentally disrupt his strategy for the hearing.

[8] Although I have previously concluded that the *Canadian Human Rights Act* empowers the Tribunal to add parties where the Tribunal deems it appropriate to do so, it seems to me that the legislative context as a whole suggests that any such discretion should be exercised with some caution.

[9] The *Act* contemplates a complaint-driven process. Ms. Desormeaux elected not to file a complaint against her Union.

[10] The *Act* also ascribes a gate-keeper role to the Canadian Human Rights Commission. Those named as respondents to human rights complaints are entitled to have the complaints made against them screened in order to ascertain if further inquiry into those complaints is warranted.

[11] The *Act* further provides respondents with certain procedural protection, including the opportunity to respond to the complaint in the course of an investigation and to persuade the Commission that the complaint is without merit. The *Act* further requires that complaints be

filed with the Commission within one year of the last event giving rise to the complaint. Although this limitation period can be extended by the Commission, it is clearly intended to afford proposed respondents some assurance that the complaints made against them will be filed in a timely manner.

[12] Adding parties to proceedings once the case has reached the Tribunal deprives the new respondents of these procedural benefits. While there may be situations where it is nevertheless appropriate to add a respondent after the Commission process is complete, having regard to the legislative scheme as a whole, I would think that these situations would be somewhat limited.

[13] There is a number of reasons why I do not think it would be appropriate to exercise my discretion to add the Amalgamated Transit Union as a respondent in this case.

[14] The first of these reasons relates to the timing of OC Transpo's request. Ms. Desormeaux's complaint was filed in 1999 and relates to events culminating in 1998. The facts that OC Transpo relies upon as a basis for adding the Union as a respondent would have been fully within the employer's knowledge at the time Ms. Desormeaux filed her complaint.

[15] There is nothing before me to suggest that OC Transpo made any attempt to have the Union joined in the complaint at any stage during the more than three years that this case was before the Canadian Human Rights Commission.

[16] Ms. Desormeaux's complaint was referred to the Tribunal on April 10, 2002. By letter dated April 19, 2002, the Tribunal sent a questionnaire to the parties to assist in the planning of the hearing. The questionnaire specifically invites the parties to identify any preliminary jurisdictional or procedural issues. This is done in order that these issues can be addressed in a timely fashion in advance of the hearing. Although OC Transpo did identify a jurisdictional issue which was subsequently dealt with in writing, it made no mention of any desire to add the Union as a respondent.

[17] The first time that OC Transpo raised the issue of the Union's participation was in the disclosure package that it served on August 26. The first notification that the Union had that OC Transpo was seeking to join it in this proceeding was on September 16. The motion was made returnable on what was to have been the first day of the hearing.

[18] When asked about the timing of its request, counsel for OC Transpo asserted that it complied with the Tribunal rules with respect to the bringing of motions. Rule 5(2) of the Tribunal's Interim Rules of Procedure requires that motions be brought as soon as practicable. I have not been provided with any explanation as to why it was not practicable for OC Transpo to have brought this motion much earlier.

[19] I am mindful that as an administrative Tribunal the Canadian Human Rights Tribunal should conduct its hearings in a flexible and informal manner and should not be unduly constrained by procedural considerations. This is reflected in the wording of the statute, specifically section 48.9(1) of the Act which states that proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. Nevertheless, while OC Transpo has had many opportunities to address its concern, it has chosen not to do so until the eve of the hearing.

[20] The addition of the Union as a respondent is inevitably going to delay matters as issues such as the delivery of a statement of issues on behalf of the Union along with disclosure of the Union's documents will have to be addressed. I note at this juncture that there is really nothing in either Ms. Desormeaux's complaint or the pleadings for the Union to respond to, as what OC Transpo was really trying to assert is akin to what would be called a third party claim or a claim for contribution and indemnity in a civil litigation context. Presumably, therefore, a further statement of issues as between OC Transpo and the Union would have to be delivered.

[21] Although counsel for the Union has expressed his willingness to proceed right away in the event that the Union is added as a party, his co-operativeness cannot operate to deprive the other parties of the right to know the Union's case and to prepare their cases accordingly.

[22] I have also considered whether these concerns should be addressed by simply adjourning the hearing in order to allow the parties to properly prepare for the reconfigured hearing. Keeping in mind the admonitions of the Federal Court of Canada in cases such as *Bell Canada* that there is a public interest in having human rights cases dealt with expeditiously, as well as the potential prejudice to Ms. Desormeaux given that she has already booked off work to attend the hearing, and the unexplained delay on the part of OC Transpo in bringing this motion, I do not think it appropriate to adjourn the hearing.

[23] Having regard to all of the circumstances, including the Union's undertaking to assist in the implementation of any order that the Tribunal may ultimately make, I am not prepared to add the Union as a respondent.

[24] Before concluding, I should also note that there has been some discussion about adding the Union as an interested party. Both Mr. McLuckie and Mr. McDonald indicate that they have no objection to the Union participating in this capacity. As I understand OC Transpo's position, its request to add the Union was made in order that the Union could be required to share in any liability for any damages that may ultimately be assessed. Joining the Union as an interested party will not satisfy that aim. I also note that the Union has not itself applied for interested party status. Absent such a request from the Union, I am not prepared to add the Union as an interested party at this time.

[25] That is my ruling. Unless there is anything else that needs to be dealt with, we are adjourned for the day.

*Signed by*

Anne Mactavish  
Chairperson

Ottawa, Ontario  
October 3, 2002

**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T701/0602

**Style of Cause:** Francine Desormeaux v. Ottawa-Carleton Regional Transit Commission

**Ruling of the Tribunal Dated:** October 3, 2002

**Date and Place of Hearing:** October 3, 2002

Ottawa, Ontario

**Appearances:**

Francine Desormeaux, for herself

Mark McDonald, for the Canadian Human Rights Commission

Marion Breen, for the Respondent

John McLuckie, for the Interested Party, Amalgamated Transit Union