

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**PATRICK E. QUIGLEY**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**OCEAN CONSTRUCTION SUPPLIES**

**Respondent**

**RULING ON JURISDICTION**

## **Ruling No. 2**

**2001/09/17**

**PANEL:** Anne Mactavish, Chairperson

[1] Patrick Quigley filed a complaint with the Canadian Human Rights Commission wherein he alleges that his employer, Ocean Construction Supplies (OCS), failed to accommodate his disability and terminated his employment, contrary to the provisions of Section 7 of the *Canadian Human Rights Act*.

[2] OCS challenges the jurisdiction of the Canadian Human Rights Tribunal to deal with Mr. Quigley's complaint, contending that the essential nature of the dispute arises under the collective agreement between Mr. Quigley's union and the company. OCS also raises concerns with respect to the role of the Canadian Human Rights Commission in this proceeding. Three other preliminary objections identified by OCS have been withdrawn for the present time.

### **I. Jurisdiction of the Canadian Human Rights Tribunal**

[3] OCS advises that Mr. Quigley's complaint has already been the subject of grievance proceedings and an application to the Canada Labour Relations Board, which was dismissed. OCS alleges that Mr. Quigley now wishes to litigate exactly the same matter before this Tribunal. Counsel cites the practical problems that Canadian employers face as a consequence of being required to face "double and triple jeopardy over the exact same garden-variety, everyday grievance if they remotely involve a 'disability' ..." In this regard, OCS relies on the decision of the Supreme Court of Canada in *Weber v. Ontario Hydro* <sup>(1)</sup> and *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*. <sup>(2)</sup>

[4] In *Weber*, the Supreme Court of Canada determined that where the essential character of a dispute arises under a collective agreement, the claimant must proceed by way of arbitration. For the reasons given in my earlier ruling in *Eyerley v. Seaspan International Limited* <sup>(3)</sup>, I am of the view that the decision in *Weber* does not stand for the proposition that concurrent jurisdiction may not exist between labour arbitrators and statutory human

rights adjudication processes. Similarly, I am satisfied that the decision in *Regina Police* is readily distinguishable from the present situation. Finally, I am not persuaded that the essential nature of Mr. Quigley's complaint arises under the collective agreement. Accordingly, the Canadian Human Rights Tribunal does have jurisdiction to deal with Mr. Quigley's complaint.

[5] As to the effect that the decisions in the earlier proceedings should have, it should be noted that OCS has not argued that either or both of the earlier decisions relating to Mr. Quigley's situation operate to create an issue estoppel, or to render the matter *res judicata*. In any event, OCS has not provided the Tribunal with copies of any grievances filed with respect to Mr. Quigley's situation, or any decisions from either the arbitration board or the CLRB. It is therefore impossible for me to determine if the requirements of these doctrines have been met.

## **II. Conduct of the Canadian Human Rights Commission**

[6] OCS also advises that it "strenuously contest[s] the role of the Commission at the hearing." According to OCS "It appears from experience that the Commission acts as prosecutor and as counsel for the complainant, taking an adversarial role against the respondent." Noting the statutory obligation on the Canadian Human Rights Commission to act in the public interest, OCS submits that "Surely an objective definition of the public interest would require an even-handed and fair approach to the facts of any case, and to the presentation of the law." OCS submits that such an approach would preclude the Commission from solely representing the interests of the complainant. By way of example, OCS suggests that facts, medical reports or witnesses which are against the interests of the complainant, but relevant to the issues raised by the complaint, should be brought forward.

[7] It is surely up to the Canadian Human Rights Commission to determine how best to represent the public interest in the context of a particular case. In any event, I note that there are limits on the power of the Canadian Human Rights Tribunal to review the jurisdiction and conduct of the Canadian Human Rights Commission. <sup>(4)</sup>

[8] Further, OCS's concerns in this case appear to be largely anticipatory, based upon counsel's experience in other proceedings. OCS has not indicated any specific concern about anything that the Canadian Human Rights Commission has done in relation to its conduct of this case. I note that the Canadian Human Rights Tribunal Draft Rules of Procedure place significant disclosure obligations on parties appearing before the Tribunal, including the Canadian Human Rights Commission. In the event that OCS has any specific concerns with respect to the adequacy of the disclosure provided by the Canadian Human Rights Commission in this case, it may contact the Registry in order that the matter may be addressed, in a timely fashion, in advance of the hearing.

### **III. Order**

[9] For the foregoing reasons OCS's motion are dismissed.

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Anne L. Mactavish

OTTAWA, Ontario

September 17, 2001

**CANADIAN HUMAN RIGHTS TRIBUNAL**  
**COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T582/4000

STYLE OF CAUSE: Patrick E. Quigley v. Ocean Construction Supplies

RULING OF THE TRIBUNAL DATED: September 17, 2001

APPEARANCES:

Patrick Quigley On his own behalf

Daniel Pagowski For the Canadian Human Rights Commission

Michael Hunter Counsel for the Ocean Construction Supplies

1. [1995] 2 S.C.R. 929

2. [2000] 1 S.C.R. 360

3. Canadian Human Rights Tribunal Ruling No. 2, August 2, 2000.

4. *Vermette v. Canadian Broadcasting Corporation*, (1994), 94 C.L.L.C. 17,034 aff'd [1996] F.C.J. No. 1274, (1996) 120 F.T.R. 81