CECIL BROOKS

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DEPARTMENT OF FISHERIES AND OCEANS

Respondent

RULING

MEMBER: Athanasios D. Hadjis 2007 CHRT 4
2007/02/15

[1] The Respondent has made a motion requesting an adjournment of the "re-hearing" into a portion of the complaint.

[2] On December 3, 2004, the Tribunal that originally heard the evidence regarding the complaint in this case issued a decision finding that the allegations of racial discrimination in the Respondent's job competition process were substantiated (*Brooks v. Department of Fisheries and Oceans*, 2004 CHRT 36). The Respondent filed an application for judicial review by the Federal Court of the Tribunal's decision.

[3] The Tribunal also concluded in its decision that the Complainant would not have obtained an indeterminate position, even if the competition had been properly conducted. The impact of this finding was that the Complainant was denied his claim for instatement in the position he had applied for and any resulting lost wages. Consequently, the Complainant also applied for judicial review of the Tribunal's decision, but solely with regard to this particular finding.

[4] On October 18, 2006, Justice Michael A. Kelen rendered his judgment dismissing the Respondent's application for judicial review but allowing the Complainant's (*Canada (Attorney General) v. Brooks*, 2006 FC 1244). The Court held that the Tribunal had applied the wrong legal test in finding that the Complainant would not have obtained a permanent position in the absence of discrimination. The Court, therefore, set aside this finding and referred the matter back to the Tribunal for re-determination by a differently constituted panel, based on the record already before the Tribunal. The Court also directed that the parties be given the opportunity to make representations to the Tribunal on the issue. Accordingly, the Tribunal recently informed the parties that a date (probably in the months of April or May 2007), will be selected for this "re-hearing", which is not expected to last for more than one day.

[5] On November 17, 2006, the Respondent appealed the Federal Court's judgment to the Federal Court of Appeal. The Respondent has now made a motion to the Tribunal requesting that the re-hearing be adjourned pending the disposition of the appeal by the Federal Court of Appeal.

[6] According to Section 48.9(1) of the *Canadian Human Rights Act*, proceedings before the Tribunal are to be conducted as informally and, of particular relevance to this motion, as *expeditiously* as the requirements of natural justice and the rules of procedure allow. However, as master of its own procedure, the Tribunal may, nonetheless, adjourn its proceedings where appropriate in its discretion (See *Léger v. Canadian National Railways* [1999] C.H.R.D. No. 6 (CHRT), at para. 4; *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at para. 15). The Tribunal must exercise this discretion having regard to principles of natural justice (*Baltruweit*, at para. 17). Some examples of natural justice concerns to which the Tribunal could respond would include the unavailability of evidence, the need to adjourn to obtain counsel, or late disclosure by an opposite party.

[7] The Respondent has not persuaded me that any natural justice concerns of this sort are present in this case.

[8] The Respondent has raised the possibility that the Federal Court of Appeal may overturn the decisions of the Federal Court and the Tribunal, in whole or in part, with the possible result that there will be a finding that discrimination never took place. If, in the meantime, the Tribunal has re-heard the matter sent back for re-determination by the Federal Court, any resulting decisions would be rendered null and void. The time and effort expended by the parties in this process will have been for naught, particularly if, as the Respondent suggests in its written submissions, "the assumption should be that the Tribunal will arrive at the same conclusion [after the re-hearing] as it did earlier". This situation, it is argued, would bring the administration of justice into serious disrepute.

[9] But why should any such assumptions be made? It is equally possible that the differently constituted Tribunal panel will arrive at another conclusion than the previous panel and that the Federal Court of Appeal will uphold the decision of Federal Court, in which case, if the present adjournment is granted, the re-hearing process will have been postponed unnecessarily for months or perhaps years. The process will have to start up again at that point and the ultimate resolution of the complaint will be even further delayed. This would hardly constitute an expeditious conduct of Tribunal proceedings.

[10] There is no way to predict what the final outcome of the proceedings in this case will be. However, in order for the Respondent to obtain an adjournment, it must establish that allowing the proceedings to follow their normal course, which includes following through with Justice Kelen's order for a re-hearing, will result in a denial to the Respondent of natural justice. The Respondent has failed to establish that any such prejudice would necessarily come to it.

[11] The Respondent's motion is therefore dismissed.

"*Signed by*"

Athanasios D. Hadjis

OTTAWA, Ontario
February 15, 2007

PARTIES OF RECORD

TRIBUNAL FILE:	T838/8803
STYLE OF CAUSE:	Cecil Brooks v. Department of Fisheries and Oceans
RULING OF THE TRIBUNAL DATED:	February 15, 2007
APPEARANCES:	
Davies Bagambiire Stephen Flaherty	For the Complainant
No one appearing	For the Canadian Human Rights Commission
Scott McCrossin Melissa Cameron	For the Respondent