

**ALETA GAUCHER**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CANADIAN ARMED FORCES**

**Respondent**

**RULING**

MEMBER: Athanasios D. Hadjis 2007 CHRT 9  
2007/04/12

[1] On March 30, 2007, Ms. Gaucher sent a letter to the Tribunal seeking an adjournment of the hearing, which had been scheduled to resume on April 16, 2006, in Edmonton. As she stated in her letter dated March 30, 2007, the reason for her request was that she had yet to find a lawyer to represent her.

[2] On April 5, 2007, Ms. Gaucher was informed that I had denied her request and that the reasons for my ruling would follow.

[3] In the meantime, before I issued my reasons, Ms. Gaucher sent an e-mail message to the Tribunal, on April 11, 2007, in which she indicated that since she had not been granted a further adjournment, she had "no choice" but to discontinue her action. As of the date and time when I am signing this present ruling, the Tribunal has yet to receive a more formal request to withdraw the complaint.

[4] Whether or not such a request will be forthcoming, I believe that it is still necessary for me to set out my reasons for refusing Ms. Gaucher's most recent request for a postponement of the hearing into her complaint.

[5] Ms. Gaucher filed her complaint with the Canadian Human Rights Commission on June 16, 1998. The Commission in turn referred the complaint to the Tribunal for inquiry on February 26, 2004. Since the referral, Ms. Gaucher has been represented by two different lawyers, the last of which she dismissed on November 1, 2006. By this point, the Tribunal had heard evidence over a total of almost three weeks. The first two weeks of hearings were conducted in Edmonton and the third week in Halifax. Ms. Gaucher had not closed her case by then, but it would appear that most of her intended witnesses had already testified.

[6] When Ms. Gaucher notified the Tribunal that she had dismissed her lawyer, she requested an adjournment of the hearing, which was at that time scheduled to continue for a little over two weeks, commencing on December 7, 2006. The Tribunal was also scheduled to hear the evidence of one witness by video conference, on November 28, 2006. On November 3, 2006, a case management conference call was conducted, to deal in part with the adjournment request. The Tribunal granted the adjournment, but informed the parties in clear and unambiguous terms that the case would proceed on the next

scheduled hearing dates, irrespective of whether the Complainant had managed to retain legal counsel by then or not.

[7] The parties informed the Tribunal that they were available to continue the case in April, and consequently, the Tribunal scheduled hearing dates for a two-week period beginning on April 16, 2007, to take place in Edmonton.

[8] A number of case management conference calls took place regularly in the months thereafter. On each such occasion, Ms. Gaucher explained that she had still been unable to find another lawyer to represent her in this case. I informed her that whatever the outcome of her search, I expected her to proceed, with or without counsel, when the case resumed in April.

[9] During the case management conference call that was conducted on March 29, 2007, Ms. Gaucher reiterated that she had yet to find new counsel and asked the Tribunal for another adjournment. As was noted in a follow up letter from the Tribunal, I directed that given the number of postponements that had already taken place in this matter (three postponements prior to the start of the hearing and another postponement when Ms. Gaucher dismissed her legal counsel in November 2006), the hearing could not be delayed any further. I instructed Ms. Gaucher to arrange to call her witnesses for the April hearing dates. I also informed her that if, as she indicated, one of her witnesses resided in Manitoba, arrangements could be made to have her testify by video conference.

[10] On March 30, 2007, Ms. Gaucher sent a letter to the Tribunal again requesting an adjournment. It is this last request that I am addressing in this ruling. She has basically asked me to revisit my earlier decision. I see no reason to change it. She cited certain difficulties that she has had obtaining approval for Legal Aid funding. She also indicated that her prior legal counsel withheld her file for a number of months, although I note from her letter that she apparently only attempted to retrieve the file on January 26, 2007, almost three months after she dismissed her lawyer.

[11] Ms. Gaucher claimed in her letter that she was unable to make arrangements to have some of her witnesses testify during the upcoming hearing dates because she was not in possession of her file, which included the list of potential witnesses that her legal counsel had prepared as part of the Tribunal's documentary disclosure process. Yet, on February 6, 2007, the Tribunal sent her a copy on CD of all the correspondence in the Tribunal case file, including her former counsel's Statements of Particulars, which contained the witness lists. Ms. Gaucher pointed out that the CD was sent to her old address and delivery was therefore delayed. She had not, however, informed the Tribunal of her new address.

[12] The Respondent, for its part, does not consent to this most recent adjournment request. Respondent counsel refers to the prejudice caused to it by the significant time and expense that is wasted each time counsel and witnesses are required to prepare for resumption of a hearing that is adjourned. She points out that there is a public interest in the timely conclusion of discrimination complaints.

[13] Indeed, proceedings before the Tribunal are to be conducted as informally and *expeditiously* as the requirements of natural justice and the rules of procedure allow (s. 48.9 of the *Canadian Human Rights Act*). In my view, to require Ms. Gaucher to complete her case at this stage, some nine years after she filed her complaint, three years after it was referred to the Tribunal, and three weeks into her evidence, after four prior

adjournments, would not be in breach of the requirements of natural justice. Ms. Gaucher acknowledged during the conference calls that she was having great difficulty finding a lawyer who would be willing to take up her file at this stage of the case and who was familiar enough with human rights law to take on the responsibility. Given these circumstances, there does not appear to be any reasonable expectation of Ms. Gaucher's finding a lawyer in the foreseeable future.

[14] In my view, to allow Ms. Gaucher to delay her case for what amounts to an indefinite period, without any resolution, would be unfair and unacceptably prejudicial to the Respondent. At some point, all parties must complete their cases. It is perhaps unfortunate that the Complainant has been unable to retain legal counsel, but this concern is outweighed by the unfairness to the other party of allowing this matter to remain unfinished, halfway through the evidence, while the Complainant continues to search indefinitely for a lawyer.

[15] These are the reasons for which I turned down Ms. Gaucher's latest request for an adjournment.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

April

12,

2007

#### PARTIES OF RECORD

TRIBUNAL FILE:	T903/2304
STYLE OF CAUSE:	Aleta Gaucher v. Canadian Armed Forces
RULING OF THE TRIBUNAL DATED:	April 12, 2007
APPEARANCES:	
Aleta Gaucher	For herself
No one appearing	For the Canadian Human Rights Commission
Doreen Mueller Peter Barber	For the Respondent