

Canadian Human Rights Tribunal

personne

Tribunal canadien des droits de la

BETWEEN:

AMANDA DAY

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DEPARTMENT OF NATIONAL DEFENCE

AND MICHAEL HORTIE

Respondents

RULING ON BIFURCATION

Ruling No. 2

2002/12/05

MEMBER: Paul Groarke

[1] Before I address the issues that have arisen with respect to disclosure, I wish to address the question whether the hearing should be bifurcated.

[2] The Department of National Defence takes no position on bifurcation, while the Complainant supports it. Mr. Hortie and the Commission are opposed. The Commission has also made a distinction between the strict question of remedies and the calculation of damages. I do not believe that the distinction is helpful in the immediate case, since the question of remedies raises broader issues.

[3] The law establishes that the Human Rights Tribunal is the master of its own process. Proceedings are to be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. This gives the Tribunal considerable latitude in dealing with individual cases. It is for the Member assigned to a particular case to deal with procedural issues in the manner that seems most apposite to the facts before him.

[4] It is readily apparent that the present case raises delicate issues for the parties. One of the concerns in the case before me is that the Respondent is seeking disclosure of personal information on the question of remedies that has no bearing on the question of liability. There is also the fact that the Complainant is unrepresented. There are good reasons to believe that any questions regarding remedy will distract the parties from the factual questions that need to be addressed before proceeding further. It therefore seems better to determine what happened while the Complainant was at the Department of National Defence, and then decide what to do about it.

[5] There are a number of other considerations that lead me to the same conclusion. I believe that the hearing will be more trying for the Complainant if both aspects of the case are dealt with together. The subject of remedy raises provocative issues of its own, and introduces financial, emotional and psychological factors that will only cloud the question of liability. The case is already more complex than it needs to be, and I take the

firm view that anything which helps to clarify and simplify the issues in the hearing will improve the efficiency of the process.

[6] There is no way of knowing which manner of proceeding will require more resources, but experience tells me that parties inevitably focus on the question of liability in the course of a difficult hearing and tend to neglect the issues that arise on remedies. This is understandable, but provides another reason why it may be preferable to deal with liability and remedy separately when the question of remedy raises complicated issues. A different kind of logic applies when the question or remedy is a relatively simple one.

[7] I am accordingly directing that the hearing proceed in two stages, with the question of liability reserved for the first stage. This does not prevent the Complainant or Commission from leading evidence with respect to the effect of the alleged harassment on the Complainant, if that constitutes a relevant part of the case narrative. There may be some overlap in the evidence, but evidence relating solely to the question of remedy should be dealt with in the second stage.

"Original signed by"

Dr. Paul Groarke

OTTAWA, Ontario

December 5, 2002

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NOS.: T627/1501 and T628/1601

STYLE OF CAUSE: Amanda Day v. Department of National Defence and Michael Hortie

RULING OF THE TRIBUNAL DATED: December 5, 2002

APPEARANCES:

Amanda Day On her own behalf

Leslie Reaume For the Canadian Human Rights Commission

Michael Gianacopoulos and and Sharan Sangha For Department of National Defence

Michael Hortie On his own behalf