

Ruling No. 1

2002/11/19

MEMBER: Paul Groarke

[1] It appears that the parties wish to revisit the issues that were canvassed at the sitting on November 8th. That sitting was scheduled to deal with a motion by the corporate Respondent for disclosure and an independent medical examination. In the course of the sitting, I advised the parties that I was reluctant to deal with the question of an independent medical examination, or the disclosure of sensitive personal information, unless it was necessary to do so.

[2] In my view, the Tribunal should move cautiously in dealing with these issues. When counsel advised me that most of the contested evidence goes to the issue of remedy, rather than liability, I accordingly asked the parties to advise me of their position on bifurcation. This would avoid the need to deal with the more sensitive issues at this time. On the motions, counsel essentially agreed to provide their written submissions on the motions within two weeks of the sitting.

[3] The parties were to inform me of their position on bifurcation last week. The Registry Officer left voice mail messages for counsel for the Commission on Wednesday, and again on Thursday. We received her reply by letter, on Friday, stating that she had yet to receive instructions. I regret to say that her letter neglected the fact that she had made an undertaking to advise the Tribunal of her position last week. This can be found at page 149 of the transcript.

[4] Counsel must have known that her request for a delay would pose some difficulties for the Respondent, in complying with its' undertaking to provide written argument on the issue of disclosure. Although I had misgivings, I gave the Commission until Monday to advise me of its position. At the same time, I gave the corporate Respondent additional time in which to file its written argument. On Monday, we received a second letter from the Commission, stating that it is generally opposed to bifurcation and requires the

particulars of the Respondent in order to deal with the issue. This is a new demand, which comes late in the process.

[5] We have now received a letter from the corporate Respondent, which has decided to take the position that it cannot file its written argument without the ruling on bifurcation. This is, again, a new position.

[6] This was followed by a rather stern round of correspondence from counsel for the individual Respondent, who chose not to appear at the sitting on November 8th. In point of fact, the Tribunal has been instructed by Mr. Hortie, the Respondent, to deal directly with him. As it turns out, the Registry Officer advised counsel of the situation last Wednesday, simply as a matter of courtesy. He stated that he would provide the Tribunal with his client's position by Thursday and failed to do so.

[7] We have, finally, received another letter from counsel for the corporate Respondent, which introduces a new element of equivocation into the process. The tone of the correspondence from all counsel leaves much to be desired and it is evident that the process is already beginning to unravel.

[8] In the circumstances, I feel obliged to remind counsel that my principal obligation is to see that the case proceeds in an efficient and expeditious manner. The obligation to proceed expeditiously governs all of the participants in a hearing and it is time to move forward. The present case was referred to the Tribunal in January 2001. It was scheduled for hearing in September 2001, and then adjourned to June 3rd of this year. It has now been re-scheduled for February 2003, two years after it was referred to the Tribunal. The correspondence from the parties on the file exceeds anything within reason.

[9] On the immediate matter, I can only say that the issue of bifurcation is within the keeping of the Tribunal, not the parties, and does not raise difficult or complex issues. In spite of this, I would like to give all of the parties an ample opportunity to advise me of their position on the question. I do not feel that it is fair or efficient to proceed by way of correspondence. Since new concerns appear to have arisen, I would also like to give counsel another opportunity to make submissions on the two motions before the Tribunal, which raise pressing legal issues. At this point in time, I have not received anything substantive from any of the parties except the Complainant.

[10] Since the week of November 25th has been set aside to deal with preliminary issues, I believe that the best course of action is to reconvene the hearing during that week. At that time, I would invite the parties to revisit all three issues. I have no knowledge of the wider issues between the parties and I wish to make it clear that I will not hold counsel to their previous positions. Any written submissions are to be provided to all the other parties on the day before the motion, and submitted to the Tribunal at the outset of the hearing. If the parties wish to raise any other issues, they are directed to advise the Registry Officer of their intentions to do so by this Friday. I intend to rule on all three issues shortly after the sitting.

[11] This leaves one outstanding matter. I am willing to give the Respondent an extra day to file its particulars, which are now due by Thursday at the latest. I should not have to remind counsel that they have had an inordinate amount of time in which to prepare them.

"Original signed by"

Dr. Paul Groarke

Ottawa, Ontario

November 19, 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: November 19, 2002

APPEARANCES:

Amanda Day On her own behalf

Leslie Reaume For the Canadian Human Rights Commission

Michael Gianacopoulos and Sharan Sangha For Department of National Defence

Michael Hortie On his own behalf

