

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**SHELLEY LEONARDIS**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CANADA POST CORPORATION**

**- and -**

**GLEN KORDOBAN**

**Respondents**

**RULING REGARDING MEDICAL EVIDENCE**

## **Ruling No. 2**

**2002/08/28**

**MEMBER: Anne Mactavish**

[1] The Canadian Human Rights Commission seeks leave of the Tribunal to file medical reports prepared by Ms. Leonardis' treating physicians, without calling the physicians to testify at the hearing. The basis for this request is the wish to avoid inconveniencing the doctors.

[2] It appears that this evidence is to be led to support Ms. Leonardis' claim for damages.

[3] Canada Post and Mr. Kordoban object to the reports being filed without the physicians being called to testify, submitting that fairness requires that they be able to challenge the evidence of these witnesses.

[4] I agree with the submissions of the respondents. While Section 50 (3) (c)<sup>(1)</sup> of the *Canadian Human Rights Act* provides that the Canadian Human Rights Tribunal is not bound by the strict rules of evidence, hearings before the Tribunal are nevertheless subject to principles of fairness. It seems to me that it would be fundamentally unfair to the respondents to allow the Commission to lead evidence to support what may be a substantial claim for damages, while denying the respondents any opportunity to challenge that evidence. I am not prepared to do so, especially given that no reason has been advanced for not calling the physicians, apart from the desire to avoid inconveniencing them.

[5] In the event that the Commission intends to lead medical evidence with respect to Ms. Leonardis, the Commission shall ensure that the physicians in issue are available to testify, unless the respondents have consented to the evidence being admitted without the need to call the physician in question.<sup>(2)</sup>

[6] The Commission has suggested that the respondents be asked to indicate which doctors they require be available to testify, and what documentary evidence they are

prepared to consent to admitting without the doctors testifying. This is a reasonable request. I direct that the respondents so advise the Commission by Wednesday, September 4, 2002. I would also encourage the parties to consult amongst themselves as to the timing of the physicians' testimony, in order to minimize any inconvenience to them. Subpoenas will be issued, if requested by the Commission, in order to facilitate the attendance of the physicians.

"Original signed by"

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Anne Mactavish

OTTAWA, Ontario

August 28, 2002

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

TRIBUNAL FILE NOS.: T708/1302 & T709/1402

STYLE OF CAUSE: Shelley Leonardis v. Canada Post Corporation and Glen Kordoban

RULING OF THE TRIBUNAL DATED: August 28, 2002

APPEARANCES:

Robert A. Philp, Q.C. For the Complainant

Giacomo Vigna For the Canadian Human Rights Commission

Zygmunt Machelak For Canada Post Corporation and Glen Kordoban

1. <sup>1</sup> In their submissions, both the Commission and the respondents rely on Section 48.3 (9) of the *Act*. This provision relates to the powers of a judge of the Federal Court when conducting an inquiry under the remedial and disciplinary provisions of the *Act*, and does not relate to the powers of the Tribunal when conducting an inquiry into a complaint.

2. <sup>2</sup> Where a medical report is filed at a hearing, and the opposing party requests the opportunity to cross-examine the author of the report, the doctor testifies as a witness for the party filing the report. It is the responsibility of that party to arrange for the doctor's attendance at the hearing. See *Brampton Hydro-Electric Commission and I.B.E.W., Local 636*, 17 C.L.A.S. 66.