

Canadian Human Rights Tribunal      Tribunal canadien des droits de la  
personne

**BETWEEN:**

**SELWYN PIETERS**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**DEPARTMENT OF NATIONAL REVENUE**

**Respondent**

**RULING - APPLICATION FOR INTERESTED PARTY STATUS**

**Ruling No. 1**

**2001/10/03**

**PANEL:** Anne Mactavish, Chairperson

[1] Selwyn Pieters has filed a complaint against the Department of National Revenue (now the Canadian Customs and Revenue Agency or "CCRA") wherein he alleges that he was subject to differential treatment while crossing the Canada - U.S. border. In particular, Mr. Pieters contends that he was singled out by Customs officers for a search of his luggage, because of his race. A hearing into Mr. Pieters's complaint is scheduled to begin in January of 2002.

[2] The African Canadian Legal Clinic ("ACLC") has applied pursuant to Rule 8 of the Canadian Human Rights Tribunal Draft Rules of Procedure for leave to intervene in these proceedings. The ACLC seeks full interested party status, including the right to introduce evidence, examine and cross-examine witnesses, present oral argument, and to appeal from an adverse decision. In the alternative, the ACLC asks to be allowed to file a brief not exceeding twenty-five pages in length, and to present oral argument.

[3] The ACLC's application is supported by the Canadian Human Rights Commission and by Mr. Pieters. The CCRA consents to the ACLC being granted interested party status on the more limited basis sought in the alternative, but opposes its application for full interested party status.

## **I. The Applicant**

[4] The African Canadian Legal Clinic is a not-for-profit organization funded by the Ontario Legal Aid Plan. The Clinic has a province-wide membership comprised of individuals committed to working towards racial equality, who have expertise and experience in this area.

[5] The ACLC serves and represents the African Canadian community, and fulfills its mandate, in part, through test case litigation. It provides advice and representation to African-Canadians in cases involving issues of systemic and institutional racism, where precedent-setting decisions are likely to result. It is actively involved in research, including research into the issue of 'racial profiling' in Customs matters.

[6] The ACLC notes that this is the first human rights inquiry into racial discrimination in Canada's Customs practices, and as such, is a matter of substantial public interest for the African Canadian community. African Canadians, the ACLC alleges, are disproportionately affected by racially discriminatory search practices.

[7] The ACLC has previously been granted standing in proceedings before the Supreme Court of Canada, the Federal Court of Canada, the Ontario Court of Appeal, the Ontario Superior Court as well as before administrative Boards and Commissions of Inquiry.

## **II. The Nature of ACLC's Proposed Participation**

[8] The ACLC advises that if it is granted full interested party status, it intends to call a criminologist and an anti-racism expert, if neither is to be called by either the Canadian Human Rights Commission or Mr. Pieters, as well as a psychologist or social worker who works with the African Canadian Community and who can address search issues. It also proposes to call up to three other individuals who have experienced Customs searches and interrogations, to introduce transcripts from focus group discussions, and to file a brief not exceeding twenty-five pages in length. The ACLC estimates that its evidence will take up to three days to complete, and further undertakes to confine its cross-examinations to the systemic issues raised by Mr. Pieters' complaint.

## **III. Position of the CCRA**

[9] The CCRA opposes the ACLC being granted full interested party status on the basis that the evidence that the ACLC seeks to adduce is redundant, in light of the evidence that Mr. Pieters' proposes to lead, and is, as well, both irrelevant and prejudicial.

[10] The CCRA points out that Mr. Pieters is taking an expansive approach to his complaint, and has indicated that he intends to call 'possibly five' witnesses, including two or possibly three experts. Mr. Pieters does not identify the proposed experts' areas of expertise. According to the CCRA, the ACLC's plan to call three additional witnesses is almost certainly duplicative of Mr. Pieters's intentions. The CCRA also notes that, quite apart from any issue that may arise as to the admissibility of 'focus group' transcripts, any attempt to adduce such evidence would presumably require the assistance of yet another properly qualified expert witness.

[11] Insofar as the issues of relevance and prejudice are concerned, the CCRA says that the proposed testimony of other individuals who have experienced Customs searches and interrogations is inadmissible, as it is both irrelevant and prejudicial. If these other individuals believe that they have been the victims of discrimination, it is open to them to file complaints with the Canadian Human Rights Commission, failing which, the CCRA says, they should not be heard by this Tribunal.

[12] The CCRA further submits that the admission of such evidence would be highly prejudicial as the respondent would not be in a position to respond to any allegations that these individuals might make. Not only would the CCRA be unlikely to have any records regarding the witnesses in question, it would be unable to locate any records that may in

fact exist, as it has no information as to the individuals' identities, the dates, places or other details of their alleged border crossings.

[13] Finally, the CCRA submits that this hearing, for which four weeks have already been set aside, would be unduly lengthened by the full participation of the ACLC.

#### **IV. Analysis**

[14] Section 50 of the *Canadian Human Rights Act* gives the Tribunal wide discretion with respect to the granting of interested party status.<sup>(1)</sup> In deciding whether or not to grant interested party status in a particular case, the onus is on the Applicant to show how its expertise would be of assistance in the determination of the issues before the Tribunal.<sup>(2)</sup>

[15] I am not persuaded that the involvement of the ACLC would be duplicative of the efforts of either the Canadian Human Rights Commission or Mr. Pieters. It is apparent from the disclosure provided by the Commission that it is taking a very narrow approach to this case, and that it may not address any of the systemic issues that may be raised by Mr. Pieters's complaint. Although Mr. Pieters is taking a broader approach to the case, he has only indicated that it is *possible* that he may call expert testimony, and not that he definitely will be adducing such evidence. In any event, the submissions of the ACLC are quite clear: The ACLC is only seeking to adduce expert testimony in fields such as criminology, psychology and 'anti-racism' in the event that neither the Commission nor Mr. Pieters do so.

[16] Insofar as the proposed testimony of other individuals who have experienced Customs searches and interrogations is concerned, I do not agree that the fact that these individuals may not have filed complaints with the Canadian Human Rights Commission should somehow disqualify them from being able to testify before this Tribunal. It is not uncommon in human rights cases to receive similar fact evidence from other victims of an alleged discriminatory practice. The issue for the Tribunal in such cases is whether the probative value of the proposed testimony outweighs its prejudicial effect.<sup>(3)</sup> On the basis of the record before me, I am not currently in a position to make that determination. Similarly, I am not in a position to determine either the relevance or the admissibility of the proposed 'focus group' testimony.

[17] I am satisfied, however, that the ACLC possesses a particular expertise in the issues raised by Mr. Pieters's complaint, and that the participation of the ACLC could assist in the determination of the issues presented by Mr. Pieters' complaint. While the involvement of the ACLC will inevitably result in a somewhat longer hearing, in my view, the novelty and the importance of the issues raised by Mr. Pieters' complaint justify such a result.

[18] The ACLC will be granted full interested party status, including the right to introduce evidence, examine and cross-examine witnesses, file a brief not exceeding twenty-five pages in length and present oral argument.—<sup>(4)</sup>I would encourage the ACLC to consult on an on-going basis with both the Commission and Mr. Pieters, in order to ensure that there is no duplication in their efforts.

[19] The ACLC will provide full disclosure of the evidence that it seeks to adduce in accordance with Rule 6 of the Tribunal Rules. This disclosure must include the identities, border crossings and crossing dates for the other proposed witnesses who have experienced Customs searches and interrogations, together with any other information that the ACLC may have regarding the incidents in question. Disclosure must be completed by November 15, 2001. Any responding evidence shall be disclosed by the CCRA in accordance with the December 15, 2001 deadline previously established.

[20] In making this order, I am not determining any issues with respect to the admissibility of any of the evidence sought to be adduced by the ACLC. In my view, those issues are best decided at the hearing, once all of the parties know precisely what the evidence is that is in issue.

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Anne L. Mactavish

OTTAWA, Ontario

October 3, 2001

**CANADIAN HUMAN RIGHTS TRIBUNAL**  
**COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T650/3801

STYLE OF CAUSE: Selwyn Pieters v. Department of National Revenue

RULING OF THE TRIBUNAL DATED: October 3, 2001

APPEARANCES:

Selwyn Pieters On his own behalf

Philippe Dufresne For the Canadian Human Rights Commission

John B. Edmond For the Department of National Revenue

Sheena Scott

Marie Chen For the African Canadian Legal Clinic

1. *Citron v. Zundel and the Canadian Human Rights Commission*, Interim Ruling, unreported, June 18, 1997

2. *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, [2000] F.C.J. 220 (F.C.A.), at para. 12

3. *R. v. Morin*, [1988] 2 S.C.R. 345.

4. The issue of whether an individual or group granted interested party status by the Canadian Human Rights Tribunal has the right to seek judicial review of a Tribunal decision is a question presumably governed by the *Federal Court Act*, and one that should be determined by the Federal Court, if and when it is required to do so.