

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA
PERSONNE

BOB BROWN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

SOCIETE DE TRANSPORT DE L'OUTAOUAIS

Respondent

RULING

MEMBER: Karen A. Jensen 2008 CHRT 36
2008/08/29

[1] The Respondent, Société de transport de l'Outaouais (STO), has asked the Tribunal to add the Ottawa-Carleton Regional Transit Commission (OC Transpo) and the Attorney General of Quebec (the A.G.Q.) as respondents in Bob Brown's complaint against the STO. The Canadian Human Rights Commission, OC Transpo and the A.G.Q. oppose the request.

[2] Mr. Brown is a quadriplegic and uses a wheelchair for mobility. He lives in Ottawa's downtown core. During Ottawa's winter festival (Winterlude) in 2005, he was unable to board an STO bus going to an event in Jacques Cartier Park in Gatineau, Quebec because the STO bus was not wheelchair accessible. He complained to the Canadian Human Rights Commission that STO had discriminated against him on the basis of his disability.

[3] In 2005, the STO and OC Transpo had an agreement to share the provision of bus services for Winterlude events. The events took place in both Ottawa and Gatineau, Quebec, which is just across the river from Ottawa. OC Transpo states that the buses it made available during Winterlude 2005 were low-floor buses which were accessible to persons with disabilities. The STO states that the buses it used at this time were not wheelchair accessible. The STO provided an adapted transit service which was not available to Mr. Brown because he is not a resident of Quebec. However, OC Transpo's adapted bus service was available to Mr. Brown.

[4] The Tribunal has the jurisdiction to add parties. However, the discretion to do so should be exercised cautiously and only when necessary to resolve the complaint (*Smith v. CNR* 2005 CHRT 23; *Desormeaux v. OC Transpo* (oral ruling: October 2, 2002 (T701/0602)); *Syndicat des employés d'exécution de Québec-téléphone v. Telus Communications* 2003 CHRT 31).

The Addition of OC Transpo as a Respondent

[5] The STO argues that OC Transpo's participation as a party is necessary for the resolution of the complaint. Given that the bus services were jointly offered by the two organizations, they must both be named as parties, according to the STO.

[6] I disagree. It is the STO's service that is the subject of the complaint in this case, not the bus services, in general, that were provided during Winterlude. Mr. Brown has alleged that unlike able-bodied Ontario residents who wanted to attend events in Quebec, he was unable to board an STO bus. He does not take issue with the bus services provided by OC Transpo during Winterlude. Therefore, the fact that bus services during Winterlude 2005 were jointly offered by OC Transpo and the STO does not necessitate the addition of OC Transpo as a respondent.

[7] The Respondent also argues that OC Transpo should be added as a party because it is OC Transpo's responsibility to provide bus services to Ontarians with disabilities. This allegation suggests a possible defense to the complaint and the need perhaps, to call a witness from OC Transpo to testify. However, it does not raise a question of liability on the part of OC Transpo since there is no suggestion that OC Transpo denied Mr. Brown transportation services on the basis of his disability.

[8] With respect to remedy, Mr. Brown is seeking the accommodation necessary to use STO's bus services to travel to locations in Quebec as able-bodied travelers may do. In the event that the complaint is substantiated, OC Transpo's presence as a party is not necessary to provide such a remedy.

[9] For these reasons, the STO's request to add OC Transpo as a respondent is denied.

The Addition of the A.G.Q. as a Respondent

[10] The STO requests that the Attorney General of Quebec be added as a respondent because Mr. Brown's complaint may bring the constitutionality of the *Act Respecting Public Transit Authorities* (the *Act*) and the Policy on admissibility for adapted transportation (the *Policy*) into question. According to the STO, the *Act* and the *Policy* require that adapted transit users be residents of Quebec. Mr. Brown's demand that he should be accommodated regardless of his residency constitutes a challenge to the requirements of the *Act* and the *Policy*. Therefore, the STO argues that the A.G.Q. must be added as a respondent to defend the constitutionality of the *Act* and the *Policy*.

[11] This argument must also be rejected. Neither Mr. Brown nor the Commission has directly or indirectly challenged the constitutionality of the *Act* or the *Policy*. The issue in the complaint is whether the failure to provide wheelchair accessible transportation to Mr. Brown was discriminatory or not. The STO may choose to raise the residency requirements in its defense, but the constitutionality of the *Act* and the *Policy* have not been put in issue.

[12] Moreover, even if a constitutional question had been raised, the parties would be required only to provide notice to the A.G.Q. so that he might present evidence and make submissions if so desired (s. 57 of the *Federal Courts Act*). In this case, the A.G.Q. does not view a constitutional question as having been raised, and declines to participate in this matter. It is neither necessary nor appropriate to add the A.G.Q. as a party over his objections.

[13] Therefore, the STO's request to add the A.G.Q. as a respondent is also denied.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario
August 29, 2008

PARTIES OF RECORD

TRIBUNAL FILE:	T1278/0808
STYLE OF CAUSE:	Bob Brown v. Société de transport de l'Outaouais
RULING OF THE TRIBUNAL DATED:	August 29, 2008
APPEARANCES:	
Bob Brown	For himself
Ikram Warsame	For the Canadian Human Rights Commission
Raymond Doray	For the Respondent