

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE

ALETA GAUCHER

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN ARMED FORCES

Respondent

RULING

MEMBER: Athanasios D. Hadjis 2006 CHRT 40
2006/09/22

[1] In her Amended Statement of Particulars, dated June 15, 2006, the Complainant declared her intention to call Professor Patrica Monture as an expert witness in this case. She is to give evidence on "discrimination in the context of the facts of this matter and in the context of her research and publications".

[2] The Respondent objects to the Complainant adducing this evidence.

[3] Prof. Monture is a member of the Sociology Department at the University of Saskatchewan. She outlines the substance of her proposed evidence in an expert report, which was prepared in the form of a three-page affidavit. In paragraphs 1 through 3 of the affidavit, she explains that her area of study is primarily in law and society, as well as constitutional law, "including Aboriginal and Treaty rights, Aboriginal women, and criminology". She also sets out her related experience in the area.

[4] I have reviewed the affidavit and agree with the Respondent that Prof. Monture's proposed evidence is either irrelevant, unnecessary to the Tribunal, or improperly gives evidence on the ultimate issue. The evidence should therefore be excluded.

Irrelevant Evidence

[5] The Supreme Court, in *R. v. Mohan* [1994] 2 S.C.R. 9, described the criteria for the admissibility of expert evidence. The Court pointed out, at paragraph 18, that relevance is a threshold requirement for the admission of expert evidence, as it is with all other evidence.

[6] In my view, a portion of Prof. Monture's evidence is clearly irrelevant, namely her opinion, found at paragraph 11 of her affidavit, to the effect that the Canadian Human Rights Commission's response to the complaint demonstrates a clear lack of understanding of Aboriginal women's experience, systemic discrimination and intersectionality.

[7] The issue in this case is whether the evidence adduced establishes that the Respondent engaged in a discriminatory practice, in contravention of the *Canadian Human Rights Act*. I fail to see how the Commission's response to the complaint will be in any way relevant to this issue.

Unnecessary Evidence

[8] In *Mohan*, the Court also states, at paragraph 21, that an expert's function is to provide the judge and jury with a ready-made inference that the judge and jury, due to the technical nature of the facts, are unable to formulate. The Supreme Court went on to say that if, on the proven facts, a judge or jury can form their own conclusions without help, the experience of the expert is unnecessary.

[9] In paragraphs 4 through 10 of the affidavit, Prof. Monture refers to literature in the area of discrimination and then purports to define the concepts of individual and systemic discrimination, as well as the intersectionality of discrimination on the basis of multiple proscribed grounds of discrimination. These concepts are matters that are regularly addressed by the Canadian Human Rights Tribunal in its decisions. The Tribunal's superior expertise regarding fact finding and adjudication in the human rights context has been judicially recognized (see e.g. *R v. Mossop*, [1993] 1 S.C.R. 554).

[10] In my view, this portion of Prof. Monture's proposed evidence falls squarely within the experience and knowledge of the Tribunal and is accordingly unnecessary.

Evidence of the Ultimate Issue

[11] In paragraph 8 of her affidavit, Prof. Monture states that in her opinion several of the incidents alleged by the complainant to have occurred while she was a member of the CF, constitute "clear and obvious examples of individual discrimination". This is, in effect, her opinion on the ultimate issue that the Tribunal will be deciding in this case, i.e. whether the Complainant was the victim of a discriminatory practice.

[12] As the Tribunal pointed out in *Brooks v. Department of Fisheries and Oceans*, 2004 CHRT 20, while the rule against providing an opinion on the ultimate issue has been relaxed in recent years, it must still be respected. Every adjudicative body has an obligation to reach its own conclusion on the fundamental issues in a case, without direction from the parties. In my view, this is particularly so with respect to human rights issues, regarding which the Tribunal has the above mentioned expertise and is therefore able to draw the very inferences being proposed by Prof. Monture in her report, without her help.

Conclusion

[13] For all of these reasons, the proposed expert testimony of Prof. Monture and her affidavit are excluded from the evidence in this case.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario
September 22, 2006

PARTIES OF RECORD

TRIBUNAL FILE:	T903/2304
STYLE OF CAUSE:	Aleta Gaucher v. Canadian Armed Forces
RULING OF THE TRIBUNAL DATED:	September 22, 2006
APPEARANCES:	
Dennis Callihoo	For the Complainant
No one appearing	For the Canadian Human Rights Commission
Doreen Mueller Peter Barber	For the Respondent