

[4] In dealing with the public interest argument, it is not necessary to define "public interest" as found in s. 51 of the *Act*. It suffices to say that s. 51 says nothing about an individual complainant's standing to file a complaint alleging a systemic discriminatory practice. In fact, s. 40 of the *Act* expressly allows an individual or group of individuals to file a complaint with the Commission. This section does not preclude an individual systemic complaint.

[5] Nor is there anything in s. 53(2)(a) of the *Act* which constrains the Tribunal in granting a systemic remedy where the complainant is an individual and not the Commission. When the Tribunal is constrained in awarding the full range of remedies under s. 53, it is expressly provided for in the *Act*. An example of this is s. 54(1).

[6] Turning now to *Toth*, the Tribunal had to decide a *res judicata* motion, not a motion to add s. 10 to the complaint. In my opinion, the Tribunal's comments in paragraph 37 must be read in the context of the particular facts of that case and is distinguishable from the present case.

[7] Even if *Toth* may be read as limiting a complainant to a personal and compensatory remedy, it conflicts with the Tribunal ruling in *Aleta Gaucher and Canadian Human Rights Commission v. Canadian Armed Forces*, 2005 CHRT 1.

[8] In *Gaucher*, the Commission sought to amend a complaint to add a s. 10 allegation. The Tribunal concluded that no amendment was necessary, but granted the amendment to clarify, as it said, the legalities of the situation. The Tribunal reasoned (in paragraph 15) that s. 53(2)(a) of the *Act* does not distinguish between the private and the systemic aspects of a complaint and it is a mistake to draw a dichotomy between complaints under s. 7 and s. 10 of the *Act*.

[9] I am not bound by the *Toth* decision and I prefer the Tribunal reasoning in *Gaucher*. It is a case that involves the same question as this case.

[10] For these reasons, I have concluded that the Complainant in this case may, within the framework of her current complaint, allege that the Respondent has engaged in systemic discriminatory practices and may claim a systemic remedy. She can do this without amendment to her complaint. Of course, it is up to the Tribunal hearing the complaint to determine whether or not such allegations can be sustained and if so, whether a systemic remedy is the appropriate remedy in the circumstances.

[11] I would like to note that the Complainant's motion and the submissions of both counsel have had very beneficial results. The Respondent has repeatedly claimed, and with justification, that it has no clear appreciation of the case that it has to meet.

[12] In the materials submitted by the Complainant in support of her motion and in her Amended Statement of Particulars, the Complainant has now clearly defined the facts upon which she is relying; the issues that arise out of her complaint; and the remedies she seeks. This is all to the good and should allay the Respondent's concerns.

[13] There were also some collateral matters raised at the hearing. The Complainant has asked the Respondent to provide further production, specifically as set out in paragraphs 51-56 of the Complainant's Amended Statement of Particulars. The Respondent will review these requests and advise the Complainant of its position by October 6, 2006.

[14] Finally, the Tribunal has tentatively re-scheduled the hearing of the complaint to commence in Thunder Bay, in the week of April 2-5, 2007, continue in the week of April 10-13, and, if necessary, to resume on April 23, 2007.

"Signed by"
J. Grant Sinclair

OTTAWA, Ontario
August 30, 2006

PARTIES OF RECORD

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APPEARANCES:	
Craig Spencer	For the Complainant
No one appearing	For the Canadian Human Rights Commission
Sid Restall	For the Respondent