

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

MICHELINE MONTREUIL

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN FORCES GRIEVANCE BOARD

Respondent

RULING

2006 CHRT 36

2006/08/25

MEMBER: Athanasios D. Hadjis

[1] During a case management conference call held on June 21, 2006, the Canadian Forces Grievance Board (the "Board") raised concerns about the sufficiency of Me Micheline Montreuil's summary regarding the anticipated testimony of her witness, Pierre Lacasse. Consequently, Me Montreuil prepared a more detailed summary, which she provided to the Board shortly thereafter. On July 11, 2006, the Board informed the Tribunal that in its view, the amended summary of Mr. Lacasse's testimony was still insufficient.

[2] In this amended summary, which is about 20 lines long, Me Montreuil explains that Mr. Lacasse will testify that he is a retired member of the military who worked for the Board on a contractual basis until November 2003. He will testify that he heard two Board managers (whose names are specified in the summary) making disparaging remarks regarding Me Montreuil, which included comments to the effect that she would not be hired because she is a transgendered person and that it would be hard to imagine a transgendered person working as a grievance officer. According to the summary, Mr. Lacasse will also testify that he has never met nor is he related to Me Montreuil. He will

also give evidence that it was he who contacted Me Montreuil to inform her of the conversation that he had heard.

[3] The Board alleges that the summary is insufficient because the following details are lacking:

What was the context of the conversation?

Who was present and who took part in the conversation?

To whom were the remarks made?

How many times were the remarks made and on what date(s)?

Where were the remarks made?

Where was Mr. Lacasse when he heard the remarks?

[4] The Board claims that it will be unable to prepare its defence without answers to these questions.

[5] The summary of anticipated testimony forms part of the Statement of Particulars that each party is required to prepare and file pursuant to Rule 6(1) of the Tribunal's Rules of Procedure. Aside from this summary, the Statement of Particulars must contain a list of documents to be disclosed, and set out the material facts that the party seeks to prove in support of its case, as well as its position on the legal issues raised and the relief that the party is seeking, if applicable.

[6] As the Tribunal noted in *Public Service Alliance of Canada v. Northwest Territories (Minister of Personnel)*, [2000] C.H.R.D. No. 9 (C.H.R.T.)(QL) at para. 7, a party is only entitled to the *material facts* on which the opposing party is relying in pleading its case. The party filing its Statement of Particulars is not required to plead its *evidence* at this stage. This principle would logically extend, in my view, to the summaries of testimonies that form part of a Statement of Particulars. As the Tribunal went on to state, the rationale behind the procedure of filing Statements of Particulars is to clarify the issues in the case and establish the case that the other parties must meet in presenting their own evidence.

[7] In the present case, the details provided in Me Montreuil's amended summary are more than sufficient to inform the Board of the case it must meet. The Board has been put on notice that Mr. Lacasse will testify that he heard two named managers speak of Me Montreuil in disparaging terms to the effect that she would not be hired due to her transgendered status.

[8] It would appear from the Board's written submissions on its motion that its concerns regarding the sufficiency of Me Montreuil's summary are rooted in the fact that the two named managers who allegedly engaged in the conversation deny having any recollection of any such discussion.

[9] I fail to see how this has any bearing on the matter before me. It is hardly unheard of for two opposing parties to have contradictory recollections of events. This is precisely why hearings are held and why tribunals are called upon to render decisions after hearing all of the evidence. It is important to not lose sight of the fact that Me Montreuil has the ultimate burden of proving her case, with evidence that may include Mr. Lacasse's testimony regarding the alleged conversation. If the Board, based on the word of its employees, believes it has grounds to question the accuracy or veracity of Mr. Lacasse's evidence, it can explore these questions through its cross examination of this witness.

[10] I therefore see no reason to order Me Montreuil to provide further details regarding the proposed testimony of Mr. Lacasse. The Board's motion is dismissed.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

August

25,

2006

PARTIES OF RECORD

TRIBUNAL FILE:	T1108/8905
STYLE OF CAUSE:	Micheline Montreuil v. Canadian Forces Grievance Board
RULING OF THE TRIBUNAL DATED:	August 25, 2006
APPEARANCES:	
Micheline Montreuil	For herself
Ikram Warsame	For the Canadian Human Rights Commission
Nadine Dupuis	For the Respondent