

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Fallan Davis

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Border Services Agency

Respondent

Ruling

Member: Réjean Bélanger

Date: March 28, 2011

Citation: 2011 CHRT 6

[1] The hearing on the merits of this case commenced on November 30, 2009 and continued for 2 weeks, in Cornwall, Ontario. By the end of the second week, the complainant had testified for approximately 9 days. The case subsequently adjourned for a few months to give the respondent time to resolve a technical issue relating to videotape evidence.

[2] On March 9, 2010, the Respondent in this case brought a motion for an order that the presiding member recuse himself on the basis that a reasonable apprehension of bias has arisen. The grounds put forward in support of the bias allegation included the following:

- (i) That the presiding member had, through his comments, rulings and conduct in the course of the hearing, raised a reasonable apprehension of bias;
- (ii) That the presiding member had, by imposing restrictions on the cross-examination of the complainant, prejudiced the respondent's case. Furthermore, the imposition of such restrictions had given rise to a reasonable apprehension of bias.

[3] The complainant and the Commission opposed the motion, and oral arguments on the motion were heard on October 13, 2010.

[4] After having given careful consideration to the evidence, authorities and arguments presented by the parties in this motion, I have decided that the motion must be dismissed. I believe that my conduct during this hearing was judicial, impartial and conducive to all parties being given a full and ample opportunity to be heard. Indeed, prior to the bringing of the recusal motion, I remained ready to continue on with the hearing of the respondent's case and committed to hearing its evidence and argument with an open mind.

[5] However, I am mindful of the fact that my mere denial of the recusal motion would not be the end of the matter, and that further delays would most likely be incurred in this case as the respondent would inevitably pursue judicial review of my ruling in the Federal Court. Depending on the Court's judgment, an appeal to the Federal Court of Appeal would be also quite possible.

[6] For this reason, I am hereby informing the parties that I will resign from this case, as of the day after this ruling, and that I will ask the Chairperson of the Canadian Human Rights Tribunal to assign another member or panel to inquire into the complaint. Based on all of the circumstances of the case, I feel that such action is in the best interests of justice. In particular, it may provide an opportunity for the parties to reconsider some kind of alternative means of resolving their dispute, or at the very least, narrow the issues in dispute before a new decision-maker or decision-makers, to be assigned by the Tribunal Chairperson.

[7] The respondent's motion is dismissed.

Signed by

Réjean Bélanger
Tribunal Member

OTTAWA, Ontario
March 28, 2011

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1342/7208

Style of Cause: Fallan Davis v. Canada Border Services Agency

Ruling of the Tribunal Dated: March 28, 2011

Date and Place of Hearing: October 13, 2010

Cornwall, Ontario

Appearances:

Janet (Katenies) Davis and Kakweraias, for the Complainant

Daniel Poulin and Brian Smith, for the Canadian Human Rights Commission

Sean Gaudet and Susan Keenan, for the Respondent