

MICHELINE MONTREUIL

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN FORCES

Respondent

<u>RULING</u>	
MEMBER: Pierre Deschamps	2006 CHRT 56 2006/11/02 [TRANSLATION]

[1] This is a motion by the Canadian Human Rights Commission to exclude the respondent's expert witnesses during the testimony of their expert colleagues and the Commission's expert, Dr. Beltrami.

[2] The Commission claims that their presence during the testimony of the Commission's expert and the respondent's experts would color their testimony, since they could be influenced in their subsequent testimony, leading to prejudice in their cross-examination by the complainant and the Commission.

[3] In support of its claim, the Commission refers to various legal decisions on the exclusion of ordinary witnesses. None of the decisions it submitted deal with the exclusion of expert witnesses.

[4] For the Commission, there is no reason to make this distinction; the only relevant one is that between a witness that is a party and one that is not.

[5] The Commission notes that one of the expert reports that the respondent will produce was co-signed by three of the experts the respondent plans on calling to testify. It claims that if the respondent's witnesses are present during the cross-examination of one of the others, it will be prejudicial to its cross-examination.

[6] The complainant agrees with the Commission's position regarding the exclusion of the respondent's expert witnesses.

[7] The respondent objects to the exclusion of its expert witnesses during the hearing.

[8] Among the decisions cited by the respondent in support of its position, is the decision by the Court of Appeal of Québec, *Montpetit v. Léger* [1999] J.Q. No. 1216. In this case, the trial judge had ordered the exclusion of the defendant's expert witnesses during the cross-examination of one of them by counsel for the applicant.

[9] In its decision, the Court of Appeal was to make a very clear distinction between ordinary witnesses and expert witnesses, stating the opinion that, following the case law, excluding ordinary witnesses was the rule while excluding expert witnesses, even partially, was the exception that could only be legally justified in exceptional circumstances.

[10] The Tribunal is of the view that the mere fact that the respondent's experts co-signed the joint report does not create exceptional circumstances that justify waiving the rule that expert witnesses can be present during a hearing.

[11] As the Court of Appeal of Québec stated in *Montpetit v. Léger*, it is possible that the complainant and the Commission may suffer prejudice because of the presence of these experts during the cross-examination of one of them. However, as the Court of Appeal stated, [translation] "the trial judge will be able to draw any adverse conclusions regarding their credibility, if applicable."

[12] Hence, the Tribunal dismisses the Commission's motion. The respondent's expert witnesses may be present during all of the testimony by the complainant and the Commission's expert, as well as during the testimony of their expert colleagues when they are called as witnesses. The Commission's expert may also be present during the testimony of the complainant, as well as during the testimony of the respondent's expert witnesses.

Pierre Deschamps

QUÉBEC, Quebec

November

2,

2006

PARTIES OF RECORD

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RULING OF THE TRIBUNAL RENDERED FROM THE BENCH DATED:	November 2, 2006
APPEARANCES:	
Micheline Montreuil	For herself
Ikram Warsame	For the Canadian Human Rights Commission
Guy Lamb / Pauline Leroux	For the Respondent