

DANIELLE CÔTÉ

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**ATTORNEY GENERAL OF CANADA
(REPRESENTING THE ROYAL CANADIAN MOUNTED POLICE)**

Respondent

2003 CHRT 32

2003/10/02

Athanasios D. Hadjis

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[1] The Respondent has filed a motion seeking an order confirming that the scope of the complaint that was referred to the Tribunal does not extend to all of the events mentioned in the complaint form.

I. FACTS

[2] The Complainant became a member of the Royal Canadian Mounted Police ("RCMP") in 1985. In the mid-1990's, the RCMP assigned the Complainant to serve on the United Nations Mission in Haiti as a United Nations Civil Police Force Officer ("UNCIVPOL"). She alleges in her complaint form, dated June 27, 1996, that while serving in Haiti in 1995, a disciplinary measure was taken against her that resulted in her early repatriation to Canada, before the scheduled completion of her assignment. She claims that this measure was taken as a result of her having entered into a personal relationship with another UNCIVPOL, serving on assignment to the mission from France. Upon her return to Canada, the RCMP initiated an internal investigation into her conduct. She alleges that she received treatment that differed from that which was allotted to other male UNCIVPOL who became involved in similar relationships while in Haiti. She contends that she was discriminated against on the basis of her sex as well as her family status (she was a married mother of one child at the time).

[3] It is the Respondent's position that all RCMP staff transferred to UNCIVPOL duty are employed by the United Nations ("UN") for the entire duration of their assignment and their employment is subject to the rules and regulations of the UN. In effect, the member states of the UN "lend" these police officers to the UN at the request of the UN's Secretary-General. These individuals are expected to conduct themselves solely in accordance with the interests of the UN and are not to accept any orders in the execution of their functions from their government or any other authority, apart from the UN. While on assignment on such missions, UNCIVPOL report to a Police Commissioner who is in turn accountable to the Special Representative of the Secretary-General designated for the mission. The Police Commissioner designated to serve on the Haitian mission was a member of the RCMP. The Respondent contends that any incidents occurring while the Complainant was working for the UN fall outside the scope of the Canadian Human Rights Act ("Act") and that neither the Commission nor the Tribunal has jurisdiction to deal with the aspects of the complaint relating to those events. The RCMP made this position known to the Commission shortly after the RCMP was first informed that a human rights complaint had been filed against it, in a letter dated August 14, 1996, addressed to Marie Wankham, the Commission investigator assigned to examine the complaint.

[4] On June 3, 1997, Ms. Wankham wrote to the RCMP that [TRANSLATION] "we are of the opinion" that the Commission has no jurisdiction to inquire into the aspect of the complaint relating to the discriminatory acts on the part of UN personnel. She pointed out, however, that the Commission has the authority to study those aspects of the complaint relating to the discriminatory conduct of the RCMP that is alleged to have taken place in Canada, specifically, the RCMP's decision to initiate an internal inquiry regarding the Complainant's conduct, upon her repatriation to Canada.

[5] Over the next few years, the Commission's investigation was suspended while the Complainant exhausted her recourses internally within the RCMP. The Commission resumed its investigation thereafter, and a report by another investigator, Sylvie McNicoll, was released on October 8, 2002. The report reiterates that the Commission had already [TRANSLATION] "determined" that it did not have jurisdiction over the

aspects of the complaint dealing with the alleged discriminatory conduct of UN personnel in Haiti. The document also states, in bold lettering, that the investigation report relates only to those allegations pertaining to the internal inquiry conducted by the RCMP within Canada.

[6] On March 20, 2003, the Commission's Chief Commissioner sent a letter to the Chairperson of the Tribunal, informing her that the Commission was "satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted". The institution of an inquiry into the complaint was therefore being requested. The letter of referral does not specify whether any aspect of the complaint did not warrant an inquiry or fell outside the jurisdiction of the Commission or the Tribunal.

[7] The Respondent contends that upon receiving the Complainant's Notice of Factual and Legal Issues, in execution of her disclosure duties (Rule 6 of the Tribunal's Interim Rules of Procedure), it realized, to its surprise, that the Complainant intended to lead evidence with regard to the aspects of her complaint dealing with events that took place in Haiti. As a result, the Respondent filed the present motion, seeking an order to the effect that the only question remaining in issue before the Tribunal is the following: Was the decision by the RCMP to establish an internal investigation with respect to the Complainant based on prohibited grounds of discrimination, in contravention of the Act?

[8] In essence, therefore, I am being asked to determine whether those aspects of the complaint that relate to the discriminatory conduct that is alleged to have occurred in Haiti were referred to the Tribunal for inquiry.

II. ANALYSIS

[9] It is evident that at various stages over the course of the Commission's investigation into the complaint, spanning a period of several years, certain representatives of the Commission were of the opinion that it had no jurisdiction to inquire into those aspects of the complaint relating to the conduct of UN personnel. It appears that before Ms. Wankham sent her June 3, 1997 letter to the RCMP, the views of several senior Commission employees were sought. A written legal opinion from the General Counsel of the Commission's Legal Services Branch was also obtained, although the Commission has withheld disclosure of this document claiming the ground of solicitor/client privilege.

[10] The Respondent contends that the Commission's conduct leading up to the referral of the complaint to the Tribunal forms an integral part of the actual decision to refer the matter. It is argued that in effect, the Commission already decided in 1997 that only the Canadian aspects of the complaint warranted further inquiry, a decision that is now binding on the Commission. The only aspects of the complaint that could subsequently be referred to the Tribunal are those relating to the RCMP's conduct after the Complainant's repatriation. All that the Respondent is currently requesting from the Tribunal is a clarification or confirmation that solely this more narrow aspect of the complaint was the object of the referral.

[11] The Commission disagrees. Counsel for the Commission argued that the Respondent is effectively asking the Tribunal to review the Commission's decision to refer the entire complaint for inquiry. The Chief Commissioner's letter to the Tribunal Chairperson was explicit: an inquiry into the complaint was requested without any limitations or conditions added. Moreover, it is specified that the Commission's decision has been made having regard to "all of the circumstances of the complaint". These circumstances, it is pointed out, are not just comprised of Ms. Wankham's letter and the subsequent investigation report, but also include correspondence from the Complainant objecting to the Respondent's contentions on the matter of the Commission's jurisdiction. In addition, the Commission submits that some of the documents relating to the UN mission in Haiti suggest that member states retained authority regarding the discipline of their police officers who were assigned to this mission. These documents were also before the Commission when it decided to refer the complaint to the Tribunal. If the Respondent does not agree with the Commission's decision to refer the entire complaint, it is free to seek review before the appropriate forum, the Federal Court.

[12] In my opinion, it is evident from the Chief Commissioner's letter to the Tribunal Chairperson that all the aspects of the complaint, as set out in the complaint form that was signed by the Complainant in 1996, were referred to the Tribunal by the Commission. I do not find anything in the Chief Commissioner's letter from which to infer that less than the entire complaint was being sent on for inquiry by the Tribunal. Furthermore, one must not lose sight of the fact that although the Commission has the authority to decide whether a complaint is to be referred to the Tribunal (ss. 44(3) and 49 of the Act), the complaint continues to remain the complainant's, not the Commission's.¹ The Complainant in the present case has never amended her complaint.

[13] Implicit in the Respondent's motion is the proposition that due to the Commission's prior declared findings regarding the scope of the complaint, the Commission was no longer able to refer the entire complaint to the Tribunal. What the Respondent is therefore requesting amounts to having the Tribunal look behind the Commission's decision and review it in order to determine whether the Commission possessed the jurisdiction to make such a referral. The Tribunal does not exercise such supervisory jurisdiction over the actions and decisions of the Commission. This authority falls within the exclusive purview of the Federal Court,² even in cases where the Commission's decision to refer runs contrary to the findings of its investigator.³

[14] For these reasons, the order being sought by the Respondent is denied. I find that all the aspects of the complaint filed by the Complainant in 1996, have been referred to the Tribunal for inquiry, including the discriminatory conduct that is alleged to have occurred in Haiti.

III. ADJOURNMENT

[15] The Respondent requests in its motion that in the event that the order being sought is not granted by the Tribunal, the hearing into the complaint be adjourned in order to allow the Respondent to amend its disclosure documents. The Respondent's motion was filed in the week preceding the scheduled start of the hearing into the merits of the complaint.

The motion was argued before the Tribunal on the first of those scheduled hearing dates, September 17, 2003. During the course of the day, the parties agreed amongst themselves to a postponement of the hearing on the merits, for reasons that are to some extent unrelated to this motion. The new set of hearing dates has now been scheduled for a three-week period commencing on January 26, 2004.

[16] Had the Complainant and the Commission been insistent on proceeding with the hearing on the merits immediately after the release of this ruling, I would have certainly granted the Respondent's request for an adjournment. Unquestionably, some confusion developed with regard to the scope of the complaint being referred to the Tribunal and I do not find the assumptions made by the Respondent to have been unreasonable. Indeed, in its written pleadings regarding the motion, the Commission consented to the Respondent's request for an adjournment, expressing its regret that the Respondent may have been led into error by the investigator's decision.

[17] I find, however, that the four-month period leading up to the new hearing dates is sufficient to allow the Respondent to modify its disclosure documents and prepare its case, and I am therefore not ordering any further adjournment. The parties are encouraged to communicate with each other and determine the dates by which any additional disclosure of documents and information necessitated by the findings in the present ruling should occur. In the event that the parties are unable to reach an agreement, any one of them should contact the Tribunal registry as soon as possible in order to have a conference call or other form of meeting with the Tribunal arranged.

Athanasios D. Hadjis

OTTAWA, Ontario

October 2, 2003

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE NO.:	T797/4703 Danielle Côté v. Attorney General of Canada
STYLE OF CAUSE:	(Representing the Royal Canadian Mounted Police) Montreal, Quebec
DATE & PLACE OF HEARING:	September 17, 2003

RULING OF THE TRIBUNAL
DATED:

October 2, 2003

APPEARANCES:

Danielle Côté

On her own behalf

Patrick O'Rourke

For the Canadian Human Rights Commission

Alain Préfontaine

For the Respondent

1. *Murphy v. Halifax Employers' Association and International Longshoremen's Association (Local 269)* (27 February 2001), Ottawa T602/6000 & T603/6100 at paras. 11-21 (C.H.R.T.).

2. *Leonardis v. Canada Post Corp.* [2002] C.H.R.D. No. 24 at para. 5 (C.H.R.T.) (QL); *Parisien v. Ottawa-Carleton Regional Transit Commission* [2002] C.H.R.D. No. 23 at para. 9 (C.H.R.T.) (QL); *Desormeaux v. Ottawa-Carleton Regional Transit Commission* [2002] C.H.R.D. No. 22 at para. 10 (C.H.R.T.) (QL); *Eyerley v. Seaspan International Ltd.* [2000] C.H.R.D. No. 14 at para. 4 (C.H.R.T.) (QL); *Quigley v. Ocean Construction Supplies* [2001] C.H.R.D. No. 46 at para. 7 (C.H.R.T.) (QL).

3. *Syndicat des employés d'exécution de Québec-Téléphone, section locale 5044 du SCFP v. Telus Communications (Québec) Inc.*, 2003 CHRT 31 at para. 61-63.