

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

**Evelyne Malec, Sylvie Malec, Marcelline Kaltush, Monique Ishpatao,
Anne B. Tettaut, Anna Malec, Germaine Mestépapéo, Estelle Kaltush**

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Conseil des Montagnais de Natashquan

Respondent

Ruling

Member: Athanasios D. Hadjis

Date: February 10, 2009

Citation: 2009 CHRT 5

[1] The Complainants have filed a motion to amend their complaint to add allegations that the Respondent, the Conseil Natashquan Montagnais (the Band), has retaliated against several of the Complainants, in breach of s. 14.1 of the *Canadian Human Rights Act*. The Commission has filed a motion of its own requesting the same amendment.

[2] The Complainants are all teachers employed by the Band. Their complaint was filed on April 21, 2007, and it alleges that the Band pays the Complainants, who are Aboriginal, lower salaries than the Band's non-Aboriginal teachers.

[3] The Complainants now claim that the Band has retaliated against several of the Complainants (Evelyne Malec, Anna Malec, Sylvie Malec, and Estelle Kaltush), for having filed the complaint. These alleged incidents of retaliation consist of disciplinary actions that presumably were taken between September 9, 2008, and December 16, 2008. The incidents are detailed in the Complainant's motion, dated December 17, 2008, and in their Statement of Particulars, dated January 30, 2009.

[4] The Tribunal has discretion to amend a complaint to deal with additional allegations, provided sufficient notice is given to the respondent, so that it is not prejudiced and can properly defend itself (*Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 2, at para. 5). The Tribunal will ordinarily allow amendments that raise allegations of retaliation arising after a complaint, unless it is plain and obvious that the allegations could not possibly succeed (*Bressette* at para. 6). The inclusion of such new allegations in a complaint does not mean, however, that the complainant has established that the respondent has in fact contravened s. 14.1 of the *Act*. This will remain to be proven by the complainant at the hearing into the complaint.

[5] In the present case, the Complainants' allegations raise a tenable claim of retaliation. It is not plain and obvious to me that the Complainants would fail to establish that the alleged disciplinary actions were retaliatory. The allegations are thus not, as the Band contends, an attempt to introduce a new issue that is clearly unrelated to the complaint.

[6] Furthermore, the Band has not put evidence before me of any prejudice to it were the amendments allowed. The Complainants and the Commission filed their motions before their Statements of Particulars were even due. The Band's Statement of Particulars is not due until February 27, 2009. The hearing dates have not been set yet. The Band will thus have ample time to prepare its defence to the new allegations.

[7] I therefore grant the Commission's and the Complainants' motions to amend the complaint to include the allegations of retaliation.

[8] The Complainants also sought an amendment to the complaint to allege a breach of s. 59 and s. 60 of the *Act*. These provisions relate to statutory offences under the *Act*. The prosecution of such offences does not take place before the Tribunal. The Complainants' request is therefore dismissed.

[9] The Complainants have also requested an order that the proceedings be conducted *in camera*, pursuant to s. 52. The request is premature. The Complainants may raise the matter at the hearing.

Signed by

Athanasios D. Hadjis
Tribunal Member

Ottawa, Ontario
February 10, 2009

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1318/4808

Style of Cause: Evelyne Malec, Sylvie Malec, Marcelline Kaltush, Monique Ishpatao, Anne B. Tettaut, Anna Malec, Germaine Mestépapéo, Estelle Kaltush
v. Conseil des Montagnais de Natashquan

Ruling of the Tribunal Dated: February 10, 2009

Appearances:

Richard Boies, for the Complainants

Ikram Warsame, for the Canadian Human Rights Commission

Maurice Dussault, for the Respondent