

**BEACHESBOY@AOL.COM**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**HEATHER FLEMING AND RONALD FLEMING**

**Respondents**

**DECISION**

MEMBER: Karen A. Jensen 2008 CHRT 7  
2008/03/20

[1] These are the reasons which I delivered orally during this hearing.

[2] This hearing was convened on Monday, March 3, 2008 in Ottawa with a videoconference link to the Federal Court in Edmonton to allow the Respondents, Ronald and Heather Fleming, to be present without having to travel to Ottawa. At the commencement of the hearing, the Tribunal Registry Officer read the Case for Hearing and called for appearances. Ms. Ikram Warsame was present and appeared on behalf of the Canadian Human Rights Commission.

[3] The Complainant, beachesboy@aol.com, was not present at the hearing, nor was anyone present who appeared on his behalf.

[4] The Respondents, Mr. and Mrs. Ronald and Heather Fleming, were not present at the hearing, nor was anyone present who appeared on their behalf.

[5] The Tribunal requested that the Manager of the Federal Court building ascertain whether there was anyone in the lobby of the Court by the name of Fleming. The Manager reported that there was no one in the lobby.

[6] The Notice of Hearing in this matter, dated February 1, 2008, was filed by the Registry Officer. The Registry Officer stated that the Notice of Hearing had been sent to the Respondents by courier and to the Complainant by email. The Tribunal notes that in previous correspondence, the Respondents indicated that they would not accept personal service of documents on their premises. Therefore, all correspondence was sent to them by regular mail or courier.

[7] The Registry Officer also filed copies of correspondence from the Complainant indicating that he would be unable to attend the hearing for three months due to work commitments, and that he was also unable to participate in a teleconference due to work commitments. The Registry Officer filed a copy of the electronic mail that was sent to the Complainant on February 25, 2008, from the Tribunal indicating that the Tribunal is required to conduct inquiries into complaints of discrimination on an expeditious manner. Given that the Complainant was not available to discuss the issue of an adjournment prior

to the commencement of the hearing, the Tribunal ordered that this matter be dealt with at the outset of the hearing on Monday, March 3, 2008.

[8] The Tribunal also indicated to the Complainant in the electronic correspondence of February 25, 2008 that it was open to the Complainant to point to the Tribunal's Notice of Hearing to substantiate to his employer that he had a valid reason for his absence. It was also open to the Commission to request a subpoena requiring his testimony.

[9] The Complainant participated in establishing the dates for the hearing and had been aware of them for some time. In addition, the Complainant was part of the decision to set the hearing venue in Ottawa with a videoconference link to Edmonton.

[10] Ms. Warsame, for the Commission, indicated at the hearing on Monday morning that the Complainant had not responded to inquiries regarding travel arrangements for the hearing on March 3, 2008. Furthermore, the Complainant had not responded to the Commission's request to provide assistance in the preparation of the Book of Documents for the hearing. Ms. Warsame indicated that the Complainant was her only witness and therefore, if he did not attend the hearing she was not in a position to call evidence on this matter.

[11] The Tribunal ordered that the hearing be adjourned for two days to provide the Complainant and the Respondents time to communicate to the Tribunal as to whether they intended to proceed with the complaint, or if they were requesting a further adjournment or a dismissal of the complaint.

[12] The Tribunal then issued a letter on the same day, March 3, 2008 confirming that the matter had been adjourned until March 5, 2008. In the same letter, the Tribunal noted that the matter had been pending before the Tribunal since October of 2006. The Tribunal has an obligation to proceed expeditiously with inquiries. Therefore, the request for an adjournment of three months was unreasonable. The Tribunal directed that the Complainants and/or the Respondents attend the hearing on March 5, 2008. The Tribunal indicated that if these directions were not complied with, it may dismiss the complaint (In fact, the letter sent by the Tribunal Registry invited the Complainant to attend or provide submissions).

[13] The Tribunal has reconvened today, Wednesday, March 5, 2008. Ms. Warsame is present on behalf of the Commission. Neither the Complainant nor the Respondents are present today, nor is anyone present who appeared on their behalf. The Registry Officer was informed by personnel at the Federal Court Building in Edmonton that no one had presented themselves for the hearing into this matter today.

[14] The Complainant and the Respondent have not communicated with the Tribunal regarding their non-attendance, nor have they provided a suggestion for a more reasonable time frame for an adjournment.

[15] Ms. Warsame provided an outline of the attempts that the Commission has made to contact the Complainant to ascertain his intentions with respect to the complaint. The Complainant has not responded to these requests for information. On that basis, the Commission decided not to issue a subpoena for his attendance and testimony at the hearing today. Ms. Warsame indicated that the Complainant is her only witness. Given that he is not present today, she is unable to call any evidence in support of the complaint.

[16] Accordingly, I find that the complaint has not been substantiated and the complaint is hereby dismissed under s. 53(1) of the *Canadian Human Rights Act*.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario

March

20,

2008

PARTIES OF RECORD

TRIBUNAL FILE:	T1170/5206
STYLE OF CAUSE:	beachesboy@aol.com v. Heather Fleming and Ronald Fleming
DATE AND PLACE OF HEARING:	March 3 <sup>rd</sup> and 5 <sup>th</sup> , 2008  Ottawa, Ontario Edmonton, Alberta (via videoconference)
DECISION OF THE TRIBUNAL DATED:	March 20, 2008 (Oral decision given to the parties on March 5 <sup>th</sup> , 2008)
APPEARANCES:	
No one appearing	For the Complainant
Ikram Warsame	For the Canadian Human Rights Commission
No one appearing	For the Respondents