

Canadian Human Rights Tribunal

**Tribunal canadien des droits de la
personne**

BETWEEN:

AMANDA DAY

Complainant

- and -

DEPARTMENT OF NATIONAL DEFENCE

AND MICHAEL HORTIE

Respondents

RULING ON THE DISCLOSURE OF THE POLICE FILE

2003 CHRT 3

2003/01/28

MEMBER: Dr. Paul Groarke

[1] I have reviewed the material provided to the Tribunal and excised some of the information on the medical files. I am more concerned, however, about the material in the file from the Saanich police department, which concerns allegations of sexual assault. Some of this material is of a private nature.

[2] I have nevertheless found it impossible to separate the allegations of sexual assault from the broader allegation of harassment. As a matter of natural justice, I accordingly believe that the Respondent is entitled to review the police file in preparing its defence.

[3] This still leaves a question of disclosure. Aside from any ancillary powers that the Tribunal may enjoy, section 52(1) of the *Canadian Human Rights Act* gives the Tribunal the authority to "take any measures and make any order" that it considers necessary "to ensure the confidentiality of the inquiry". The section refers to the "inquiry" rather than the hearing, and in my view includes the disclosure of documents under the Tribunal's rules.

[4] I am satisfied that the public disclosure of the more sensitive material could cause "undue hardship" to the Complainant under section 52(1)(c). I am accordingly ordering the release of the file, on the condition that its confidentiality is maintained. The material on the file is not to be shared with anyone outside the employment of counsel, other than medical or psychological witnesses. The same direction applies to the medical information. I wish to make it clear that I consider any contravention of this direction a breach of my order.

[5] I should add that the release of documents for the purposes of disclosure does not mean that they are admissible or even relevant to the hearing. If counsel feels that it is necessary to raise these matters during the course of taking evidence, the matter can be revisited at that time.

"Original signed by"

Dr. Paul Groarke

OTTAWA, Ontario

January 28, 2003

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NOS.: T627/1501 and T628/1601

STYLE OF CAUSE: Amanda Day v. Department of National Defence and Michael Hortie

RULING OF THE TRIBUNAL DATED: January 28, 2003

APPEARANCES:

Amanda Day On her own behalf

Joyce Thayer For Department of National Defence

J. David Houston For Michael Hortie