

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

JOHN WISEMAN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA

Respondent

RULING

MEMBER: Athanasios D. Hadjis 2007 CHRT 13
2007/04/25

[1] The Attorney General of Canada ("Attorney General"), acting on behalf of the Correctional Service of Canada and the Treasury Board of Canada, has made a motion for an order amending the style of cause in the present case and requiring the parties to compile a list of the individuals who may "benefit" from any eventual award made by the Tribunal.

[2] The Canadian Human Rights Commission ("Commission") filed written submissions in response to the motion. No submissions were filed by the complainant.

An order substituting the Attorney General of Canada as the respondent in this matter

[3] The Attorney General points out that this case involves allegations of discrimination against an employer. In the context of the federal public service, the employer is the Crown in Right of Canada. However, by virtue of the royal prerogative, legal proceedings cannot be taken against the Crown. Furthermore, departments are not legal entities. Thus, neither the Treasury Board of Canada nor the Correctional Service of Canada is a proper

respondent. The Attorney General, therefore, submits that the style of cause be amended to substitute the Attorney General as the Respondent to the complaint, as mandated by s. 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50. The Commission consents to this request.

[4] The Tribunal has in fact issued a comparable order in *Plante v. Royal Canadian Mounted Police*, 2003 CHRT 28, and I have personally presided in cases where similar amendments were ordered during the case management process (*Morin v. Attorney General of Canada*, Tribunal docket No. T739/4402) and during the hearing (*Maillet v. Attorney General of Canada*, Tribunal docket No. T935/5504).

[5] I therefore grant the Attorney General's request in this regard. In the future, I look forward to such matters being addressed by parties before complaints are referred to the Tribunal.

An order that the parties compile a list of the individuals who may "benefit" from any eventual award made by the Tribunal in this case

[6] It is alleged in the present complaint that the persons occupying the Assistant Team Leader positions within the Correctional Service of Canada are subject to discriminatory treatment resulting in unequal pay for work of equal value. The Attorney General submits that it would be helpful to all parties as well as the Tribunal to know from the outset who stands to benefit from any eventual award to be made by the Tribunal in this case. For instance, the Attorney General states that with this information, it will be "better able to understand the potential liability it faces and marshal the evidence it wishes to call". The Attorney General also points out that if the Tribunal knows which individuals occupied the positions and for what period of time, the calculation of the potential award will be simplified.

[7] The Attorney General therefore proposes that the parties compile, on a continuous basis, a list of those Assistant Team Leaders who may benefit from any eventual award made by the Tribunal. The list would include the names of those individuals who have held the position of Assistant Team Leader since 1995 and would identify the duration of their employment in this position.

[8] The Commission, for its part, claims that during a previous case management conference call, all parties had agreed to prepare just such a list. Nevertheless, the Commission consents to the issuance of the order being sought by the Respondent.

[9] I find the request reasonable, and an order to that effect is provided at the end of this ruling.

An order substituting the existing designation of the Complainant with the names of individuals who have been employed as Assistant Team Leaders

[10] The complaint form was signed on September 30, 2003, by an individual named John Wiseman. At the top of the form, under the heading "Your Name", the following information was entered:

John Wiseman
Regional Vice President
Canadian Association of Correctional Supervisors on behalf
of the Assistant Team Leader
positions in women's penitentiaries

[11] After the complaint was filed, the Commission assigned an investigator to investigate into the complaint. In the investigation report of May 1, 2006, the name of the

complainant is indicated as being the "Canadian Association of Correctional Supervisors" (CACS). On August 22, 2006, the Commission sent a letter to the Tribunal Chairperson notifying him that the Commission had reviewed the complaint "of the Canadian Association of Correctional Supervisors" and had decided to request that a Tribunal inquiry be instituted into the complaint.

[12] The Attorney General points out that the CACS is a voluntary association. Since Assistant Team Leaders are excluded from collective bargaining, the CACS is not a bargaining agent representing them. The Attorney General adds that the CACS is not incorporated and as such is neither a legal or natural person. The Attorney General contends, therefore, that the CACS does not have the "juridical capacity" to act as a party to these proceedings.

[13] According to s. 40(1) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, "any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice" may file a complaint with the Commission. The Attorney General submits that the ordinary meaning of the words "individual or group of individuals" demonstrates that Parliament expected that only individuals be allowed to file complaints, whether acting alone or organized around a common purpose. The juridical capacity to act as a party to a proceeding is only bestowed upon persons, whether natural or creations of law. The Attorney General argues that since the plain meaning of s. 40(1) confirms that Parliament intended to allow only natural persons to act as complainants, a voluntary association such as the CACS cannot act as a complainant.

[14] The Commission takes a different view. It contends that the CACS constitutes a "group of individuals" within the meaning of s. 40(1). Even if, as the Attorney General contends, the provision can also be interpreted more narrowly to mean that only one individual or groups made up of identified individuals are capable of filing human rights complaints, this interpretation would be in clear contradiction of the well-established principle that human rights legislation must be interpreted in a manner that most advances the protection and promotion of human rights.

[15] Unfortunately, this entire debate seems to have ignored and left behind what is really at the core of the case: the human rights complaint that was filed on September 30, 2003. In my opinion, a plain reading of the complaint shows that it was not the CACS who filed the complaint but rather Mr. Wiseman. The name of the complainant given at the top of the form is clearly John Wiseman. He may happen to be the Regional Vice-President of the CACS, but the name given as the complainant is his.

[16] Mr. Wiseman's status as the complainant is evident elsewhere on the complaint form. He signed the form at the bottom with his personal signature alone. There is no indication that he is signing on behalf of a group or organization. Furthermore, his first statement at the top of the form, just below his name, is the following: "I have reasonable grounds for believing that I have been discriminated against in employment" (my emphasis). There is nothing in this statement to suggest that he is filing the complaint form as a representative of the CACS or any other group.

[17] In addition, after Mr. Wiseman filed the complaint, the Commission requested and obtained, pursuant to s. 40(2) of the *Act*, written confirmation from a number of individuals employed as Assistant Team Leaders (i.e. alleged victims of the discrimination), that they consented to the filing of the complaint. Copies of 25 signed

consent forms were attached to the Commission's submissions on the motion. The first line on 18 of those forms states, "I consent to John Wiseman or his designated alternate acting as my representative" in the present human rights complaint. On the remaining seven forms, the words "of CACS" are inserted after the words "designated alternate". Clearly, all of these individuals have named Mr. Wiseman as their representative. They have also authorized him to designate an alternate. However, from the material before me, there is no indication of his ever having amended his complaint so as to designate the CACS or anyone else, as the complainant or as Mr. Wiseman's "alternate" prior to the Commission's referral of the complaint to the Tribunal. No request for amendment has been brought before the Tribunal since the complainant's referral either. I can only assume that I am dealing with the same complaint that Mr. Wiseman originally filed with the Commission, and consequently, with the same complainant, Mr. Wiseman.

[18] For all of these reasons, it seems to me that the style of cause in this case has been set out inaccurately from the moment that the complaint was referred to the Tribunal. Rather than the CACS appearing as the complainant, Mr. Wiseman's name should rightly appear.

[19] I note that that even if it turns out that Mr. Wiseman is not himself a victim of the alleged discriminatory practice (e.g. if he was never employed as an Assistant Team Leader), he is still entitled under the *Act* to file a complaint as an individual if he has reasonable grounds for believing that a person has engaged in a discriminatory practice. (ss. 40(1) and 40(2)).

[20] I therefore deny the Attorney General's request for an order substituting the name of the complainant with the names of the individuals who signed the above-noted consent forms. However, given the actual wording on the complaint form, I instruct the Tribunal Registry to amend the style of cause in these proceedings to indicate that "John Wiseman" is the complainant in this case.

Order

[21] I order the following:

- (1) That the style of cause be amended to show the "Attorney General of Canada" as the Respondent;
- (2) That the parties compile, on a continuous basis, a list of those Assistant Team Leaders who may benefit from any eventual award made by the Tribunal. The list will include those individuals holding the position of Assistant Team Leader beginning in 1995 and will identify the duration of their employment as an Assistant Team Leader; and,
- (3) That the style of cause be amended to show "John Wiseman" as the Complainant.

[22] I further direct that these amendments to the style of cause take effect from this decision onwards.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

April

25,

2007

PARTIES OF RECORD

TRIBUNAL FILE:	T1162/4406
STYLE OF CAUSE:	John Wiseman v. Attorney General of Canada
RULING OF THE TRIBUNAL DATED:	April 25, 2007
APPEARANCES:	
John Wiseman	For himself
Ceilidh Snider	For the Canadian Human Rights Commission
Alain Préfontaine	For the Respondent