

CANADIAN HUMAN RIGHTS TRIBUNAL      TRIBUNAL CANADIEN DES  
DROITS DE LA PERSONNE

RONALDO FILGUEIRA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

GARFIELD CONTAINER TRANSPORT INC.

Respondent

**RULING**

PANEL/MEMBER: Dr. Paul Groarke 2005 CHRT 29  
2005/07/29

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**I. THE APPLICATION**

[1] Ms. Rubio is appearing as an agent for the Complainant. She has applied to have the proceedings translated into Spanish. The request is that the Tribunal pay for the translation.

[2] I had the opportunity to ask the Complainant a number of questions when the application was made. I am satisfied, on the basis of his answers, and the information provided by Ms. Rubio, that he has a limited command of English. It is difficult to say how far this goes. He understood me when I asked him how he could work for the Respondent without speaking English.

[3] I am proceeding on the basis that the Complainant has some understanding of English but cannot speak it. His level of comprehension is low. The Registry has already provided translation of his testimony, on the basis of a direction that translation be provided for witnesses who have difficulty testifying in the language of the proceedings.

[4] The Complainant now applies to have the rest of the proceedings translated.

## **II. THE COMPLAINANT ALREADY HAS THE ASSISTANCE OF AN AGENT**

[5] I think it is significant that the Complainant already has the assistance of an agent. Although Mr. Filgueira has been in attendance throughout the inquiry, he is a passive participant and has left the conduct of his case in the hands of Ms. Rubio. She communicates with him in Spanish, his native language, and has kept him informed of the progress of the hearing.

[6] Ms. Rubio is not a lawyer and is not appearing as counsel. She appears only with the permission of the Tribunal.

## **III. THE RIGHT TO HAVE THE PROCEEDINGS TRANSLATED**

[7] I am not aware of any cases that deal with the question before me in the context of a human rights proceeding. Nor have I had the benefit of full legal argument. I will accordingly limit my remarks.

[8] The right to have the proceedings of the Tribunal translated into a language other than English or French can probably be traced to three legal sources. The first is the common law. The second is section 14 of the *Canadian Charter of Rights and Freedoms*. The third arises under the *Canadian Human Rights Act*.

### **A. The Common Law**

[9] The common law appears to deal with the right to have the proceedings translated as a question of fairness. It is apparent that what is fair will vary in the circumstances of each case. The standard is much higher in a criminal context.

[10] I believe that the common law still applies. Section 50(1) of the *Canadian Human Rights Act* states that the Tribunal shall give all of the parties "a full and ample opportunity" to present their cases. This brings in the principles of natural justice, which may give rise to procedural rights in certain situations. The parties must be allowed to present their cases and respond to the case on the other side. This may require the services of a translator.

[11] The purpose of providing translation is to protect the integrity of the process. A Tribunal faced with a request for translation must decide whether translation is needed in the circumstances of the case. The issue is whether the failure to provide the translation would compromise the fairness of the process. The need must be real and compelling.

### **B. Section 14 of the Charter of Rights**

[12] Section 14 of the *Charter of Rights* states:

[13] 14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

[14] Although it is a criminal case, the decision of the Supreme Court of Canada in *R. v. Tran*, [1994] 2 S.C.R. 951, holds that the parties in civil and administrative proceedings enjoy the rights enshrined in section 14. Chief Justice Lamer made it "very clear", however, at p. 93, that the rules that apply in different areas of the law must be developed in cases that arise in those areas.

[15] The Canadian Human Rights Commission has provided me with the decision of the Federal Court of Appeal in *Mohammadian v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. no. 916, which held that applicants before the Convention Refugee Determination Division of the Immigration and Refugee Board were entitled to the assistance of an interpreter under section 14. This is a helpful decision. I am not convinced that it affects the fundamental premise that the right to the assistance of an interpreter may require different things in different areas of the law.

[16] The dispute before the Tribunal invokes the rights of the person and accordingly raises matters of fundamental import. The human rights process does not raise the same kinds of concerns as the criminal law, however. It can also be distinguished from immigration and refugee cases, which deal directly with the legal status of the individual.

[17] Although there is a public element in all human rights litigation, the present case bears the hallmarks of private litigation. The Complainant is looking for monetary damages. The primary issue before me is whether he was discriminated against in the payment of his wages. He has already been before Labour Canada on one of the issues before me.

#### **(i) Legal Issues**

[18] There are other reasons why the Tribunal should be cautious in applying section 14. For one thing, the right in section 14 is subject to the "reasonable limits" contemplated in section 1 of the *Charter of Rights*. Although I have not had the benefit of submissions on the matter, the point is simply that the right in section 14 is not absolute.

[19] The wording of the section is also notable. Section 14 gives a party who does not speak the language of the proceedings the right "to the assistance of an interpreter". The section does not say that the party has a right to a formal translation of the proceedings. This may be necessary in the context of criminal charges or other penal statutes. But the two formulations are not the same.

[20] There are real differences between a right to the assistance of an interpreter and a right to translation of the hearing. This is illustrated by the practice of the Tribunal, which generally uses simultaneous translation. This is expeditious and efficient, and in keeping with the mandate of the Tribunal. The logistics of this mode of translation are such, however, that it cannot be provided without three interpreters. The process also requires an individual to monitor the microphones and speakers that are necessary to provide the service.

[21] The point is simply that there is some room for different interpretations of the scope of section 14. It might be possible to provide consecutive translation, with one interpreter, but that is a more cumbersome process and has costs and inefficiencies of its own. There may be more informal means of meeting the requirements of the section, but none have been suggested to me.

#### **(ii) The Nature of the Right**

[22] The nature of the right in section 14 should also be considered. The Tribunal should be wary of absolute or rhetorical standards, which bear no necessary relation to the task at hand. That task is to see that justice is done in the matter before it. I think this requires a pragmatic rather than an abstract standard, which recognizes that the right enshrined in section 14 is instrumental.

[23] A Tribunal should keep in mind that the right to the assistance of an interpreter serves a larger aim. It ensures that the parties to a legal proceeding can participate

meaningfully and effectively in the process, in a manner that guarantees the fairness, thoroughness and ultimately the legitimacy of the process.

[24] The goal of providing the assistance of an interpreter is to further the process. There are many procedural principles, such as natural justice and certain aspects of the right to make full answer and defence that come into play in this context. None of these principles are exhaustive, I think. They simply guarantee the right of each party to be heard by the Tribunal.

[25] This is apparent in the passage from Donald G.M. Brown and John M. Evans, for example, in *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback Publishing, 1998) at 10:4100, where they state:

[26] [...] a person with a right to be heard in proceedings before a court, or an administrative tribunal, is entitled to the assistance of an interpreter in order to ensure that the person can both present proofs and arguments in a manner that can be 'heard' by the decision-maker; and respond to the testimony of witnesses and to anything said by the adjudicator.

[27] I think this contains a helpful statement of the Tribunal's obligations in the present case.

### **C. The Canadian Human Rights Act**

[28] The third source of any right to translation may be the most difficult from a legal perspective. There are two fundamental submissions before me. The first is that the Tribunal has an obligation to put the Complainant in the same position as a litigant who understands the language of the proceedings. Anything less than this, she submits, is implicitly discriminatory and contravenes the *Canadian Human Rights Act*. The *Act* prohibits discrimination on the ground of national or ethnic origin.

[29] This submission is in keeping with the *Act*. Section 5 of the *Canadian Human Rights Act* prohibits discrimination in the provision of services "customarily available to the public". There is no doubt in my mind that the Registry of the Canadian Human Rights Tribunal provides many services to the public. It has a fundamental obligation to respect the principle of equality at the heart of the *Act* and cannot discriminate in the provision of these services.

[30] The second submission is that the Tribunal has a duty to accommodate Mr. Filgueira. This deserves serious consideration. I think it is clear that the Tribunal has an obligation, under the *Canadian Human Rights Act*, and probably in the general law, to accommodate someone who suffers from a physical or psychological disability. The obvious example is probably the provision of some form of assistance to individuals who have visual or auditory disabilities.

[31] The question is whether the same logic requires that assistance be provided to the members of linguistic minorities. I think the answer is probably yes. The case law establishes that the Tribunal would have an obligation to provide the Complainant with an interpreter if he was deaf. In some circumstances, at least, a language may place a party at a disadvantage and undermine its right to participate fully in the process. The more difficult task is to decide what level of assistance is required.

[32] The matter is more complicated than it may appear. I think that it is probably necessary to distinguish between the administrative and adjudicative functions of the Tribunal in this context. The Registry is charged with the task of providing those services

that are necessary to allow the parties to participate properly in the inquiry. The responsibilities of the members who hear cases lies in another area.

[33] There are fundamental issues here. I say this because there is a question whether the holding of an inquiry under the *Act*, and the legal process, in itself, can be properly described as a public service. There are at least some reasons to think otherwise. The physical and logistical aspects of an inquiry cannot be allowed to interfere with the requirements of the process. I do not see how a Tribunal can accommodate the parties, for example, and protect them from the rigours of cross-examination.

[34] I am not deciding the question. The purpose of an inquiry, however, is to determine the truth and provide some measure of justice to the parties. This must come first in any examination of the Tribunal's responsibilities to the litigants. Any request for accommodation must respect the limits that this inevitably places on the Tribunal's ability to accommodate.

[35] Whatever the obligations of the Tribunal, I think my discussion of the issues that arise under the common law and the *Charter of Rights* is sufficient to deal with the present application. I do not think that the Tribunal's obligations under the *Canadian Human Rights Act* require that the rest of the proceedings be translated.

#### **IV. CONCLUSION**

[36] It is very easy to say that Mr. Filgueira should be put in the same position as a litigant who was born and raised in the language of the proceedings. The problem is that this does not mean very much, once differences in education, upbringing and natural intelligence are taken into account. The idea that the Complainant must understand every word uttered in a hearing bears little relation to reality.

[37] The level of understanding required for full participation in a hearing is relatively low. A party must be able to make the decisions that must be made, in order to prosecute the case. This requires an understanding of the actual process. It also requires some appreciation of the significance of the process and the consequences that attach to it.

[38] The parties have already been through a mediation and I am satisfied from all the circumstances that the Complainant has a good understanding of the case. There is also the plain fact that he has the assistance of an agent in the case, who speaks his language. It is apparent that he has discussed the case at length with Ms. Rubio and is in continual communication with her. They have obviously discussed what evidence should be called and what his witnesses will say.

[39] I would have thought that the purpose of the agent, aside from conducting the case on the Complainant's behalf, is to ensure that he understands the process. Ms. Rubio cannot speak for Mr. Filgueira in the course of the hearing without reporting to him. There is nothing burdensome in this. It is part of the ordinary conversation that must take place, between any litigant and the person who appears for him.

[40] No one is asking Ms. Rubio to translate the proceedings or take over the role of an interpreter. There is no simple line of demarcation, however, between the responsibilities of an interpreter and the responsibilities of an agent. The margins overlap. I think it is clear that one of the reasons Ms. Rubio is acting is that she speaks Spanish.

[41] The substantive and the practical issues come together here. As an agent, Ms. Rubio appears in some legal sense as an extension of Mr. Filgueira. From a practical perspective, she needs to understand exactly what is occurring in the hearing. But of course she does. The legal question is whether this devolves to Mr. Filgueira. If someone

appears as an agent, in the capacity of a particular party, can her understanding of the process be attributed to the party?

[42] I think the fundamental premise of an inquiry is that the parties understand the process. There is some part of this requirement that is personal, whether a party appears on its own or with an agent. It cannot be transferred. The parties must know what is taking place. I nevertheless think the participation of Ms. Rubio in the hearing needs to be taken into account, in deciding whether Mr. Filgueira has a right to have the proceedings translated into Spanish.

[43] If the Complainant appeared by himself, I suspect that Mr. Filgueira would be entitled to the assistance of an interpreter for the duration of the hearing. There are procedural and practical reasons why this must be so. It would not be possible to hold a hearing without it. The plain fact of the matter, however, is that the Complainant is not appearing by himself.

[44] I naturally agree that Mr. Filgueira is entitled to be put in the same position of other litigants. That does not, however, require translation of the proceedings. It requires that he be given a full and ample opportunity, in the words of the *Canadian Human Rights Act*, to advance his case and reply to the other side. I am willing to go as far as I reasonably can, in order to ensure that his rights are protected.

[45] The Tribunal has an obligation to be prudent in matters of the public purse. Resources are always scarce. All other matters aside, the cost of setting a precedent must be considered, whether the matter is dealt with under the common law, section 1 of the *Charter of Rights*, or the *Canadian Human Rights Act*. I make no comment on the tests that apply in this context. I am nevertheless satisfied as a matter of fairness that some parts of the present inquiry need to be translated.

[46] Ms. Rubio has advised the Tribunal that some of the witnesses that the Respondent is calling will raise questions concerning the Complainant's performance of his duties. She claims that this evidence is new. It may also be central to the case. I agree that Mr. Filgueira needs to know what the witnesses say in this regard, if he is to discuss it with the person who is appearing on his behalf.

[47] I am accordingly prepared to order that the Complainant be provided with translation for this part of the case. The application of this ruling to the testimony of specific witnesses can be discussed at the appropriate time.

## V. RULING

[48] It is so ordered.

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"Signed by"  
Dr. Paul Groarke

TORONTO, Ontario  
July 29, 2005

## PARTIES OF RECORD

TRIBUNAL FILE:

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APPEARANCES:

Ronaldo Filgueira (himself)

Consuelo Rubio

On behalf of the Complainant

Harvey Capp

On behalf of the Respondent

Jason Kimelman