

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**

MEMBER: Dr. Paul Groarke 2005 CHRT 27  
2005/07/20

[I. Introduction 1](#)

[II. The meaning of the word "counsel" 1](#)

[III. The right to be represented by an agent 3](#)

[IV. An agent has no independent status 5](#)

**I. INTRODUCTION**

[1] Section 50(1) of the *Canadian Human Rights Act* states that the Tribunal shall give all parties a "full and ample opportunity in person or through counsel, to appear at the inquiry, present evidence and make representations". The following ruling deals with the question of whether a lay person can appear as "counsel" for the Complainant.

[2] Ms. Rubio appears for the Complainant. She is not a lawyer. She has some training as a paralegal and has apparently appeared in the criminal courts, presumably on summary conviction matters. Ms. Rubio is fluent in Spanish, the Complainant's primary language. She has represented him throughout the course of his complaint.

[3] I want to be clear. The question is not whether Ms. Rubio can appear on behalf of the Complainant. The question is whether she can appear as counsel. The Respondent has informed the Tribunal, in writing and on the record, that it takes no position on the

question. The Canadian Human Rights Commission submits that the Respondent has waived its right to object to her appearance. The question is therefore moot.

[4] The problem is that the answer to the question before me may have a bearing on other questions that arise in the hearing. It is therefore necessary to deal with it.

## **II. THE MEANING OF THE WORD "COUNSEL"**

[5] My understanding of the word "counsel" in a legal context has always been that it refers to a lawyer. This is certainly the general usage in the courts. The word might be used, by analogy, to refer to someone who provides the same services as a lawyer. But that is a descriptive use and not a permissive one.

[6] The French version of the *Canadian Human Rights Act* confirms the English usage. Section 50(1) states:

Le membre instructeur, après avis conforme à la Commission, aux parties et, à son appréciation, à tout intéressé, instruit la plainte pour laquelle il a été désigné; il donne à ceux-ci la possibilité pleine et entière de comparaître et de présenter, en personne ou par l'intermédiaire d'un avocat, des éléments de preuve ainsi que leurs observations".

I think the meaning of the word "avocat" in the subsection is plain. The parties may present their cases in person, or through a lawyer.

[7] I say this in spite of the fact that I have been directed to a subsidiary definition of "avocat" in *Le Robert Micro*, which goes further. This merely suggests that the word may be used in a figurative sense, like the word "counsel", to refer to someone who performs the function of a lawyer. One could just as easily say that Ms. Rubio acted "as Mr. Filgueira's lawyer" in his dealings with the Commission. This is a metaphorical use of the word. It does not make her a lawyer. It does not give her the right to appear in those circumstances where the legislation restricts that right to lawyers.

[8] Ms. Rubio suggested that the decision of the Federal Court of Appeal in *Olvarria v. Minister of Manpower and Immigration* (1973), 41 D.L.R. (3d) 472 (F.C.A.) went in her favour. I cannot agree. The Court in *Olvarria* held that the word "counsel" in section 3 of the *Immigration Act* referred to a lawyer. The French text of section 3 referred to "un avocat".

[9] The Court then turned to the *Immigration Inquiries Regulations*, SOR/67 - 621, where the word was apparently used in a broader sense. The French text of the *Regulations* was different than the *Act* and rendered the word "counsel" as "un avocat ou autre conseiller". The Court extended the meaning of the English word in this context on the basis that the French version of the *Regulations* referred "unambiguously" to both a lawyer and an adviser. This is a matter of respecting the French text.

[10] The decision in *Olvarria* stands for the proposition that the meaning of "counsel" may be extended in those circumstances where the French text demonstrates that the word is being used in a figurative sense, to refer to those who provide the services of a lawyer. That is not the situation before me. The French text of s. 50(1) of the *Canadian Human Rights Act*, like the *Immigration Act*, refers to "un avocat". As the Court of Appeal in *Olvarria* recognized, the French usage reinforces and indeed restricts the ordinary meaning of the English term. The word "counsel" in s. 50(1) refers to a lawyer.

## **III. THE RIGHT TO BE REPRESENTED BY AN AGENT**

[11] This does not mean that Ms. Rubio cannot appear. There are other possibilities. The decision of the Divisional Court in *Re Men's Clothing Manufacturer's Association et al.*

and *Arthurs et al.* (1979), 26 O.R. (2d) 20 (H.C.J.), recognizes that there is a common law right to be represented by an agent, quite distinct from any right to counsel.

[12] The decision of the New Brunswick Court of Appeal in *Thomas v. Association of New Brunswick Registered Nursing Assistants* (2003), 230 D.L.R. (4<sup>th</sup>) 337 discusses the law relating to agents. At para. 25, Robertson J.A. holds;

In summary, at common law, persons appearing before adjudicative tribunals possess the right to be represented by an agent of their choosing.

This right exists independently of any right to counsel.

[13] There are many reasons for an agent to appear. At para. 21, the Court says:

An intelligent lay person may be able to define issues and articulate responses more easily than the party to the proceedings. Alternatively, the agent's presence may be for the sole purpose of lending moral support or to assist a principal with a physical or mental handicap. In these circumstances, the lay representative's participation may be countenanced....

I think this kind of reasoning extends to someone who has difficulty in the official languages of the Tribunal.

[14] The nature of the business that comes before the Human Rights Tribunal adds to the significance of these kinds of observations in the present context. It seems to me that there are situations where the use of an agent is an inevitable part of the human rights process. I am thinking of cases where a complainant suffers from a psychological or physical condition that makes it difficult and perhaps impossible to appear without the assistance of an agent.

[15] The Tribunal nevertheless remains the master of its own process. As the New Brunswick Court of Appeal says, in *Thomas*, at para. 25:

... the right is not absolute. Tribunals retain a residual discretion to limit participation to those persons that the tribunal believes will facilitate, rather than hinder, the adjudicative process.

The Court remarks in an earlier passage, at para. 21, that the participation of "a lay person" in complex legal cases may "only confuse matters further". A Tribunal accordingly retains the discretion "... to exclude or to define the extent of any agent's participation at any stage of the proceedings".

[16] I think all of this helps to explain the significance of s. 50(1) of the *Canadian Human Rights Act*, which recognizes the right to counsel. Under the subsection, a party is entitled to conduct its case through a lawyer. A lawyer who is retained by a party appears as of right. An agent appears only with the permission of the Tribunal. There are obvious reasons for this.

[17] In my view, Mr. Filgueira is entitled to an agent. He nevertheless has an obligation to satisfy the Tribunal, if the Tribunal deems it necessary, that the agent who represents him is in a position to facilitate the process. There are no concerns in the present case. I am satisfied that Ms. Rubio should be allowed to appear for Mr. Filgueira. She has the advantage of speaking his language; she has some training in the law; and she has a thorough knowledge of the case. I think it is apparent that her appearance will protect the fairness, efficiency and integrity of the hearing.

#### **IV. AN AGENT HAS NO INDEPENDENT STATUS**

[18] I want to make a final comment. Ms. Rubio referred to herself as a "representative". I am not entirely comfortable with the implications in such a statement. It is one thing to

say that Ms. Rubio represents Mr. Filgueira, as his agent, and another thing to say that she is a representative, as if she has some independent capacity to appear. This is dubious: an agent appears only in the capacity of the person for whom she acts.

[19] This does not affect the practicalities of the situation. An agent speaks for the Complainant. She has the capacity to convey his wishes to the Tribunal, ask questions for him, and otherwise participate in the hearing. She does not have the professional or legal status of a lawyer, however, and has no independent standing in an adjudicative forum.

[20] There are fundamental differences here. A lawyer has a distinct legal personality, which can be separated from her client. This is what gives her the status of counsel. The significance of this distinction will have to be considered at another time.

igned by \_\_\_\_\_

Paul Groarke

OTTAWA, Ontario  
July 20, 2005

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Dr.

#### PARTIES OF RECORD

TRIBUNAL FILE:	T952/7204
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APPEARANCES:	
Ronaldo Filgueira (himself) Consuelo Rubio	For the Complainant
Harvey Capp Jason Kimelman	For the Respondent

