

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

ALAIN PARENT

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN FORCES

Respondent

RULING

MEMBER: Athanasios D. Hadjis

2005 CHRT 37
2005/09/30

[1] The Complainant has brought a motion to amend his complaint. When he filed the complaint with the Canadian Human Rights Commission on September 5, 2002, he was still a member of the Canadian Forces, the Respondent. He alleged in the complaint that on account of his disability (post-traumatic stress disorder), he was mistreated and harassed by his superiors, and was denied medical treatments to which he was entitled, the whole in breach of s. 7 of the *Canadian Human Rights Act* (the "Act"). In November 2002, two months after the complaint was filed, the Canadian Forces discharged the Complainant. On May 19, 2004, the Commission referred the complaint to the Tribunal for inquiry, pursuant to s. 49 of the *Act*.

[2] The Complainant now wishes to amend his complaint to allege that his medical condition was a factor in the decision to discharge him. He claims that the discharge constitutes a discriminatory practice under s. 7 of the *Act*. He also claims that the discharge was made in retaliation for his having filed the complaint, in contravention of s. 14.1.

[3] The Canadian Forces are contesting the motion. On a preliminary point, they contend that the motion should fail because the facts alleged are not supported by an affidavit. I do not share this view. The Tribunal's Rules of Procedure are not as formal as those of a court. Motions are not required to be supported by an affidavit (see Rule 3). Indeed, they need not follow any particular format. It is common for the Tribunal to receive motions by way of letters and even email messages. The main objective is to ensure that each party be given full and ample opportunity to be heard by the Tribunal.

[4] The Canadian Forces point out that Complainant Counsel details several facts and events in the notice of motion to explain why the complaint was not amended earlier in the process, none of which have been proven by way of affidavit. However, the Canadian Forces, in their contestation, refer to numerous facts and incidents that allegedly occurred

over the course of the complaint's progression, which are not supported by any affidavit either. It is important to note that the Complainant is not trying to *prove* his complaint at this time but to merely add several *allegations* to the complaint. Having taken all of the circumstances into account, I am satisfied that the Tribunal is in a position to address the motion to amend the complaint and the contestation, in a fair manner, based on the record before it. No additional evidence is required.

[5] In *Bressette v. Kettle and Stony Point First Nation Band Council*, [2004] CHRT 2 at paras. 5 and 6, the Tribunal articulated some of the principles that have been derived from a number of decisions dealing with the question of amending complaints. To begin with, a human rights complaint is not like a criminal indictment. The Tribunal has the discretion to amend a complaint to deal with additional allegations, provided sufficient notice is given to the respondent so that it is not prejudiced and can properly defend itself. It is not necessary for allegations of retaliation that arise after a complaint has been filed, to be made by way of separate proceedings. Rather, an amendment should be granted unless it is plain and obvious that the additional allegations could not possibly succeed.

[6] The Canadian Forces contend that there is no connection between the Complainant's discharge and his human rights complaint. According to the *National Defence Act*, R.S.C. 1985, c. N-5, officers and non-commissioned members can only be discharged by the Chief of the Defence Staff or his designated officer, in accordance with the *Administrative Orders of the Canadian Forces*. The individuals who were involved in the discriminatory practices alleged in the complaint could therefore not have participated in the decision to release the Complainant. It is therefore unrealistic for the Complainant to suggest that there is a linkage between his discharge and the alleged discrimination.

[7] In my view, the soundness of this argument can only be assessed after a full inquiry by the Tribunal into all of the facts. At this stage, the Complainant is merely seeking to add certain allegations, which he will have the burden of later proving at the hearing. It is not plain and obvious that the Complainant would not succeed with these allegations.

[8] The Canadian Forces submit that the Complainant is attempting to short-circuit the human rights process as set out in the *Act*, by attempting to refer a complaint directly to the Tribunal without first having submitted it for consideration and investigation by the Commission. I disagree. The new facts being alleged do not constitute a complaint that is distinct from that which was originally filed with the Commission in 2002. Rather, these facts are an outgrowth of the alleged discriminatory practices that had occurred prior to the filing of the complaint. Essentially, the Complainant submits that the discrimination he experienced while employed by the Canadian Forces was also a factor in his subsequent discharge. He further alleges that his filing of the complaint was in and of itself a factor (an act of retaliation in breach of s. 14.1 of the *Act*). It is an ongoing series of events that is being asserted, not a separate unrelated occurrence.

[9] As noted by the Tribunal in the case of *Cook v. Onion Lake First Nations* (2002), 43 C.H.R.R. D/77 at para. 17 (C.H.R.T.), issues arising out of the same set of factual circumstances should normally be heard together. However, an amendment to a complaint should not be granted where it would prejudice the respondent unfairly. Such prejudice must be real and significant (*Cook*, at para. 20). There must be actual prejudice. The Tribunal in *Cook* suggested that among the factors to be considered are delay and "might include" the loss of the Commission's investigation and conciliation processes.

[10] In the present case, the Respondent does not dispute that the Complainant informed the Commission investigator of his discharge and that it was specifically mentioned in the investigator's report. However, the Complainant made known his intention to seek an amendment to the complaint in June 2005, over two and a half years after the discharge. The Canadian Forces claim that they will be prejudiced if the motion is granted, namely by having to prepare a defence to the "new" allegations.

[11] I am not convinced that this constitutes a real and significant prejudice. In my opinion, the mere passage of many months or even years from the filing date of the original complaint does not necessarily mean that the addition of allegations will cause a respondent real and significant prejudice. As the Tribunal observed in *Gaucher v. Canadian Armed Forces*, [2005] CHRT 1, at para. 10, the complaint form exists primarily for the purposes of the Commission. It is a necessary first step, which raises a set of facts that calls for further investigation. It is the Statement of Particulars (filed pursuant to Rule 6 of the Tribunal's Rules of Procedure), rather than the original complaint, that sets the more precise terms of the hearing. In the present case, neither the disclosure of documents nor the exchange of the statements of particulars has occurred as yet. We are still many months away from the hearing. There is ample time for the Canadian Forces to prepare their defence to the aspects of the Complaint raised in this motion to amend. Any specific concerns relating to the timeline can be addressed when the dates for disclosure and the hearing are set during the case management process.

[12] Furthermore, I do not agree with the Canadian Forces' submission that they are prejudiced by the fact that the new allegations will not pass through the Commission's investigation and conciliation processes, as the original complaint had. The obvious benefit of these processes is the opportunity to resolve complaints at an early stage, before referral to the Tribunal. Once a complaint is referred, nothing prevents a respondent from bringing before the Tribunal any defences and explanations that it would have raised with the Commission investigator. In addition, the Tribunal's own mediation process offers parties the same opportunity to settle their dispute as the Commission's conciliation process.

[13] This is all not to say that complainants should feel free to omit facts from their original complaints, based on a mistaken assumption that they have an absolute right to insert additional allegations later on. Such conduct could be viewed as abusive.

[14] In the present circumstances, however, I am satisfied that the Complainant has not conducted himself in such a manner. The Complainant informed the Commission investigator of his discharge shortly after its occurrence. For some reason, the complaint was not amended at the time. That is of little consequence in the circumstances of the case. In my opinion, allowing the amendment to be made now will not result in a real or significant prejudice to the Canadian Forces.

[15] The Canadian Forces have pointed out that as this amendment is being sought two and a half years after the Complainant's discharge, it is prescribed or time-barred. Pursuant to s. 41 (1) (e) of the *Act*, the Commission has the discretion to not deal with a complaint that is based more than one year, or such longer period as the Commission considers appropriate in the circumstances, before receipt of the complaint. This provision plainly relates to new complaints. However, a new complaint is not being advanced in the present case. The Commission has already exercised its discretion and referred the complaint to the Tribunal. The incidents raised in the amendment relate

directly to the allegations already mentioned in the complaint. In granting the motion, no period is being extended. The Complainant is simply being permitted to complete his existing complaint to include facts that arose after its original formation.

[16] For all these reasons, the Complainant's motion is granted. The Complaint is amended to include the following paragraphs as set out in the Complainant's submissions on the motion to amend:

- (1) The Complainant, Alain Parent, had an employment contract with the Canadian Forces that extended until 2019.
- (2) The Complainant considers his discharge from the Canadian Forces to be a discriminatory act based on his state of health, in contravention of s. 7, and an act of retaliation, in contravention of s. 14.1 of the *Canadian Human Rights Act*;
- (3) The manner with which the Canadian Forces dealt with the Complainant, in terminating his employment and discriminating against him on account of his disability, resulted in the destruction of his career plan, for which he should be compensated.

"Signed by"
Athanasios D. Hadjis

OTTAWA, Ontario
September

30,

2005

PARTIES OF RECORD

TRIBUNAL FILE: T934/5404

STYLE OF CAUSE: Alain Parent v. Canadian Forces

RULING OF THE TRIBUNAL DATED: September 30, 2005

APPEARANCES:

Josée Potvin For the Complainant

Pierre Lecavalier For the Respondent