

MICHELINE MONTREUIL

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN FORCES

Respondent

<u>RULING</u>	
MEMBER: Karen A. Jensen	2005 CHRT 45 2005/11/28

[1] The Canadian Forces have submitted a motion to compel the disclosure of certain medical files of the complainant, Micheline Montreuil.

[2] Ms. Montreuil filed a complaint against the Canadian Forces on December 17, 2002, alleging that the Forces discriminated against her on the basis of sex and perceived disability when they refused to allow her to re-enlist in the Canadian Forces. The Forces cited Ms. Montreuil's failure to meet the required medical conditions as the reason for their refusal.

[3] Ms. Montreuil considers herself to be a transgendered person. She was born a man. However, at a certain point in time she began the medical process to become a woman. She did not complete this process.

[4] Ms. Montreuil consulted with three physicians for the purpose of changing her sexual identity. Those physicians are Dr. Serge Ct, a psychiatrist, Dr. Roland Tremblay, an endocrinologist and Dr. Martine Lehoux, a dermatologist. The Canadian Forces now want Ms. Montreuil to disclose the medical files of these three physicians as well as the names and files of any other physicians that might have been involved in the sex change process.

[5] Ms. Montreuil refuses to disclose the files of the three physicians because, she says, they are not relevant. She argues that the Canadian Forces are attempting to make a medical issue out of what is essentially a sociological question of fact and attitude regarding transgendered people. She argues that the medical process involved in changing her sexual identity is not in issue in this case.

[6] However, it must be noted that Rule 6(1)(d) of the Tribunal's Rules of Procedure requires the disclosure of all documents that relate to a fact or issue in the case, including those facts and issues that have been identified by other parties.

[7] The Canadian Forces maintain that Ms. Montreuil has medical conditions related to the sex change process and her sexual identity which prevent her from meeting the medical standards for enlistment. While Ms. Montreuil may not believe that there are any medical issues with regard to her sexual identity and the sex change process in this case, the Canadian Forces believe that there are.

[8] As this Tribunal stated in *Beaudry v. Attorney General of Canada* [2002] C.H.R.D. No. 32 at para. 7 (Q.L.), the respondent must not be deprived of the right of access to all

relevant information needed to present a complete defence to the complaint. The Canadian Forces have stated their intention to call an expert witness to testify about Ms. Montreuil's medical condition. The medical files relating to the sex change process will be of assistance to the Respondent's expert in assessing Ms. Montreuil's medical condition.

[9] Ms. Montreuil has also taken issue with the scope of the disclosure request, arguing that it amounts to a fishing expedition. However, in my view, the scope of the disclosure is appropriately restricted; only those medical files dealing with Ms. Montreuil's involvement in the sex change process and her sexual identity are to be disclosed. According to the material filed on this motion, Ms. Montreuil's consultations with Doctors Ct, Tremblay and Lehoux were limited to the sex change process. Therefore, the disclosure of these doctors' files on Ms. Montreuil is unlikely to result in the disclosure of information that is unrelated to the issues in the complaint.

[10] A point of clarification is needed here. The Canadian Forces have requested a *subpoena duces tecum* for the doctors' medical records. A *subpoena duces tecum* is an order compelling a person to appear for examination under oath and to bring with them certain documents. At the disclosure stage of the Tribunal's process, this is not necessary. All that is needed at this point is simply an order from the Tribunal that the documents must be disclosed.

[11] Therefore, I order that the complete medical files of Micheline Montreuil (or Pierre Montreuil, as she was previously known) including clinical study notes, consultation reports, blood test results and any other laboratory or test results from the following physicians be disclosed:

- i. Dr. Serge Ct, M.D., psychiatrist, CSPQ, FRCP (C), Htel-Dieu du Sacr-Cur de Jsus de Qubec, avenue du Sacr-Cur, Qubec (Qubec) G1N 2W1;
- ii. Dr. Roland R. Tremblay, D.Sc., M.D. Ph.D., endocrinologist, Centre hospitalier universitaire de Qubec, 2705, boulevard Laurier, Sainte-Foy (Qubec) G1V 4G2;
- iii. Dr. Martine Lehoux, M.D. Centre Dermatologique du Qubec Mtropolitain, 2880, chemin des Quatre-Bourgeois, suite 101, Sainte-Foy (Qubec) G1V 4X7.

[12] To protect Ms. Montreuil's right to confidentiality, the documents should be disclosed to counsel for the Canadian Forces and should not be disclosed to any other individuals without prior permission from the Tribunal and without notifying Ms. Montreuil. The documents may be consulted by medical experts retained by the Canadian Forces for the purposes of this litigation only and should not be used for any purpose outside of the present litigation. The documents must be returned when the legal file is closed.

[13] In her response to the motion, Ms. Montreuil stated that she has not consulted with any other specialists concerning her transition from a man to a transgendered person prior to 1997. Therefore, it would not appear that any further disclosure of medical documentation regarding the sex change process is required beyond the medical files of the above-noted doctors. However, Ms. Montreuil is reminded that she has an ongoing obligation to disclose all existing documentation relating to the sex change process whether before or after 1997.

[14] In response to the motion for disclosure, Ms. Montreuil indicated that from the ages 13 - 43 years, she was a transvestite in various different ways. The Canadian Forces, in reply, have stated that Ms. Montreuil's transvestitism is relevant to whether she had and continues to have a gender identity problem. Therefore, the Forces have requested the disclosure of all medical documentation dealing with Ms. Montreuil's transvestitism.

[15] This issue may warrant further discussion. Therefore, I will provide the parties with an opportunity, if needed, to discuss the disclosure of such documentation, as well as other outstanding issues, during the next case management conference call. At that point I will, if necessary, issue a ruling. The parties will be contacted within a week of the date of this ruling to set up that conference call.

"Signed by"
Karen A. Jensen

OTTAWA, Ontario

November 28, 2005

PARTIES OF RECORD

TRIBUNAL FILE: T1047/2805
STYLE OF CAUSE: Micheline Montreuil v. Canadian Forces

November 28, 2005

RULING OF THE TRIBUNAL DATED:

APPEARANCES:

Micheline Montreuil	On her own behalf
Franois Lumbu	For the Canadian Human Rights Commission
Claude Morissette	For the Respondent