



[1] The following application deals with an objection from the respondent with respect to the Commission's participation in the hearing. The objection arises out of correspondence between the Commission and the respondent, in which the Commission advised the respondent that it would restrict its participation in the hearing to "an enhanced opening statement" and a watching brief.

[2] In a letter to the parties dated October 10, 2003, the Commission wrote as follows:

As to the extent of the Commission's participation, at this time it is anticipated that the Commission's role in the hearing will be limited to providing an enhanced opening statement following by a watching brief as the case is heard. The Commission will of course be involved in the implementation and enforcement of any resulting Tribunal order. That said, the Commission reserves the right to take a full role in the hearing as it sees fit or is required to take as the case progresses.

The respondent was not satisfied with this means of proceeding.

[3] At a later point, the respondent requested further elaboration of the contents of the enhanced opening statement. In a letter dated October 30, 2003, the Commission advised:

Our opening statement will refer to case law and the principles set out therein. We will not refer to evidence nor will we be taking a position as to how the Tribunal should address the issues that may arise in the case in light of the allegations and unproven facts contained in the Complaint Form. This admittedly non-traditional opening statement is a highlighting of principles that apply to a case of this nature. It is not a presentation or forecast as to what the evidence will ultimately show.

The respondent does not accept that it is possible to restrict the proposed opening statement in this way and objects to anything less than the full participation of the Commission in the hearing.

[4] The respondent has applied for a ruling from the Tribunal that the Commission cannot restrict its participation in the hearing in this manner. It has also argued that the Commission must participate fully in the hearing or absent itself from the entire proceeding. The Commission has opposed the respondent's application, primarily on the basis that the Tribunal has no jurisdiction to determine the extent of the Commission's participation in the hearing. In making this submission, counsel relied chiefly on the principle that the Tribunal has no authority to review the decisions of the Commission.

[5] We have already dealt with the issue of an opening address in *Mowat v. Canadian Armed Forces*, 2003 CHRT 39. We were advised by counsel for the Commission during argument that the "enhanced opening statement" that the Commission had contemplated

in the present case was similar in form and content to the opening statement to be given in the cases of *Howell v. Canadian Armed Forces* and *McKay v. Royal Canadian Mounted Police*.

[6] In our view, the Commission is obliged to respect the jurisprudence on opening statements, the *Canadian Human Rights Act*, and the Rules of the Tribunal in the preparation and provision of such statements. The purpose of an opening statement is to provide an outline of what is to follow. In a case where the Commission has no intention of presenting evidence or participating further in the case, an opening statement is of little assistance. The case law would suggest that any submissions on the law are more appropriately made at the end of the case.

[7] It is for the parties who are participating fully in the case to frame the issues in the hearing. If the Commission wants a role in such a process, it accordingly has an obligation to participate in the production of evidence and the presentation of argument at the logical time. It would be unfair for the Commission to raise issues that must be answered, in its absence, by the other parties to the process.

[8] It will be apparent from our decision in *Mowat* that we do not accept the Commission's characterization of the matter as a jurisdictional issue. The Tribunal recognizes that it has no jurisdiction to review the decisions of the Commission, which is a matter for the Federal Court. The Tribunal is nevertheless the master of its own process and has a responsibility to ensure that the proceedings before it are conducted in a way that respects the principles of fairness and natural justice.

[9] There is also the question of a watching brief. This is a term which is open to interpretation. It is unclear to us, at this point in time, what the Commission means by a watching brief. There is no doubt that the Commission has a right to participate as it chooses in every hearing before the Tribunal, subject to the Tribunal's responsibility to ensure that the principles of fairness and natural justice are respected.

[10] In our view, this is sufficient to deal with the motion before us. The Commission will not be permitted to submit the proposed statement at the beginning of the hearing. The extent of the Commission's obligation to participate fully or not at all is a question for the Federal Court. Any other issues that the respondent raises with respect to the Commission's participation can be dealt with by the Tribunal hearing the case.

*Signed by*

J. Grant Sinclair

*Signed by*

Dr. Paul Groarke

OTTAWA, Ontario

December 8, 2003

**CANADIAN HUMAN RIGHTS TRIBUNAL  
PARTIES OF RECORD**

TRIBUNAL FILE: T844/9403

STYLE OF CAUSE: Mark Anderson v. Royal Canadian Mounted Police

DATE & PLACE OF HEARING: November 13, 2003

Winnipeg, Manitoba

RULING OF THE TRIBUNAL DATED: December 8, 2003

APPEARANCES:

Sharon Cartmill On behalf of the Complainant

Daniel Pagowski For the Canadian Human Rights Commission

Sid Restall and Kevin Staska For the Respondent