

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Greg Morrison Blain

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: Sophie Marchildon

Date: June 12, 2012

Citation: 2012 CHRT 13

I. BACKGROUND

[1] Mr. Greg Morrison Blain (Complainant) filed a complaint June 20, 2008, with the Canadian Human Rights Commission (Commission) alleging that Royal Canadian Mounted Police (Respondent) discriminated against him contrary to sections 7, 10 and 14 of the *Canadian Human Rights Act (CHRA)*. The Complainant alleges that he was denied his right to choose which posting to apply for based on discriminatory and stereotypical attitudes by his Superintendent about his Aboriginal status, which he also believes to constitute harassment. The Complainant also alleges that the numerous Code of Conduct investigations about his role in the Ashcroft Indian Band constitute discrimination and harassment on the basis of his Aboriginal heritage.

[2] On March 30, 2012, the Commission requested that the Canadian Human Rights Tribunal (Tribunal) inquire into the complaint pursuant to section 44(3) of the *CHRA*. The Commission is participating at the hearing representing the public interest in the proceedings.

[3] The Respondent has filed a judicial review application with the Federal Court of Canada, Trial Division, challenging the validity of the Commission's decision to refer the complaint to the Tribunal and requesting an order prohibiting the Tribunal from inquiring into the complaint. The application was issued on April 27, 2012 and has been served on the Complainant and the Commission. In a letter dated May 7, 2012, the Respondent has requested that the Tribunal stays its proceedings towards a hearing into the complaint until the Federal Court of Canada has ruled on its judicial review application, as the general issue before the Federal Court is to determine whether the Commission properly referred the human rights complaint to the Tribunal.

[4] On May 16, Mr. Susheel Gupta, Acting Chairman, assigned the undersigned to rule on this request. The Respondent did not file a notice of motion, nor did he file a formal motion in accordance with Rule 3 of the Tribunal's Rules of Procedure. After all the parties have had an opportunity to present their submissions, I ruled on the request based on the documentation provided.

II. POSITION OF THE PARTIES

[5] The Respondent did not make any other submission or raise any other issue in support of its request for a stay of the Tribunal's proceedings until the Federal Court has ruled on the Commission's decision to refer the complaint to the Tribunal.

[6] Further to the Respondent's request for a stay of the above-noted matter pending its judicial review application, the Complainant submits that the Respondent's request should be dismissed. The Complainant contends that the *CHRA* provides, under s. 48.9 (1), that "proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow". To stay this proceeding based on the bare fact that the Respondent has applied for judicial review would not be in accordance with s. 48.9 (1) of the *Act*, as it would prevent the expeditious resolution of this dispute. This complaint originated in June 2008 and it has already taken almost four years to reach this phase of the process. Further delay pending the Respondent's judicial review application would be prejudicial to the Complainant.

[7] In addition, the Complainant contends that the Respondent has requested a stay but has not actually provided any reasons in support of that request, aside from the bare fact of its judicial review application. Therefore, the Complainant submits that it is an insufficient basis to support a stay under the Tribunal's jurisprudence.

[8] The Complainant relies on a recent decision by the Tribunal in *Marshall v. Cerescorp Co.*, 2011 CHRT 5, to support its submissions and argues that the Respondent in that case had also applied for judicial review of the Commission's decision to refer the matter to the Tribunal, and did not wish to proceed in accordance with the Tribunal's process while the judicial review application was pending.

[9] The Complainant submits that when the judicial review application in the *Marshall* case was made, their case was more advanced at the Tribunal stage than this case when the

Respondent applied for an adjournment. However, in the *Marshall* case, even with dates set for the judicial review hearing, the Tribunal did not accede to the Respondent's adjournment request, as the Respondent had not demonstrated that the continuation of the Tribunal's proceedings would result in a denial of natural justice.

[10] Moreover, the Complainant submits that the Respondent has not made any allegations that it would be denied natural justice and procedural fairness if the adjournment request is not granted. The Complainant also alleges that such an allegation could not be established in this case and submits that the Respondent will have a full opportunity to present evidence and make submissions to the Tribunal. Thus, the Complainant contends that the timing and eventual outcome of the Respondent's judicial review application are presently unknown and that the Complainant should not be compelled to await the results of that application before the Tribunal proceeds to inquire into his complaint.

[11] The Commission submits that the granting of a stay pending a judicial review application is a matter of public interest and that the request should thus be dismissed. The Commission contends that the request by the Respondent for a stay of proceedings is based on the fact that a judicial review application of the Commission's decision to refer the complaint to the Tribunal has been initiated and that this mere fact is insufficient in law to justify a stay, notably, in light of s. 48.9 of the *CHRA*, as well as the case law. Moreover, the Commission contends that no issue of natural justice has been raised to justify this request.

III. ANALYSIS

[12] In pondering the request for a stay, consideration must be given to s. 48.9(1) of the *CHRA*, which states that “[p]roceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.”

[13] It is well established that this Tribunal is the master of its own procedure and that deciding on an adjournment of proceedings is very much within its discretion. I find the principles reasoned in *Baltruweit*, 2004 CHRT 14 (CanLII), to be applicable in this case:

[15] It is well established that administrative tribunals are the masters of their own proceedings. As such, they possess significant discretion in deciding requests for adjournments. This principle was discussed in some detail by the Supreme Court of Canada in *Prasad v. Minister of Employment and Immigration*, [1989] 1. S.C.R. 560. In this case, the appellant sought an adjournment of her immigration inquiry pending a decision on her application to the Minister to permit her to remain in Canada. The adjudicator refused the adjournment.

[16] In dealing with her appeal, the Supreme Court stated that administrative tribunals, in the absence of specific statutory rules or regulations, are masters of and control their own proceedings. But when tribunals exercise judicial or quasi-judicial functions, they must comply with the rules of natural justice. [See also *Re Cedarvale Tree Services Ltd. and Labourers' International Union of North America*, (1971), 22 D.L.R. (3d) 40, 50 (Ont. C.A.), *Pierre v. Manpower and Immigration*, [1978] 2 F.C. 849, 851 (F.C.T.D.)].

[14] This said, the exercise of the Tribunal's discretion is subject to the rules of procedural fairness and natural justice, and the regime of the *Act*. The *Act* requires the Tribunal to institute an inquiry into the complaint when requested by the Commission and also requires that the Tribunal give the parties a full and ample opportunity to present their case and make representations. Section 2 of the *Act* expresses an overriding public interest in the elimination of discriminatory practices. Pursuant to section 2 of the *Act*, allegations of discrimination are to be dealt with expeditiously and in a timely fashion.

[15] In a recent decision I find applicable in this case and that was already cited by the Complainant, *Marshall v. Cerescorp Co*, the Tribunal member Edward P. Lustig reasoned, at paras. 11-12:

According to section 48.9(1) of the *Canadian Human Rights Act*, proceedings before the Tribunal are to be conducted as informally and, of particular relevance to this motion, as expeditiously as the requirements of natural justice and the rules

of procedure allow. However, as master of its own procedure, the Tribunal may, nonetheless, adjourn its proceedings where appropriate in its discretion (See *Léger v. Canadian Railways (1999)* C.H.R.D. No. 6 (CHRT), at para. 4; *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at para. 15). The Tribunal must exercise this discretion having regard to principles of natural justice (*Baltruweit*, at para. 17). Some examples of natural justice concerns to which the Tribunal could respond would include the unavailability of evidence, the need to adjourn to obtain counsel, or late disclosure by an opposite party.

(...) In order for the Respondent to obtain an adjournment, it must establish that allowing the proceedings before the Tribunal to follow their normal course will result in a denial to the Respondent of natural justice. The Respondent has not persuaded me that any such prejudice would necessarily result if an adjournment were not granted.

[16] It is my conclusion that the Respondent has not demonstrated that it will be denied procedural fairness or natural justice, or a full and ample opportunity to present evidence and make representations if it is not granted an adjournment. Accordingly, the Respondent's request for an adjournment is denied.

Signed by

Sophie Marchildon
Administrative Judge

Ottawa, Ontario
June 12, 2012

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1808/3812

Style of Cause: Greg Morrison Blain v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: June 12, 2012

Appearances:

Stephanie Drake, for the Complainant

Giacomo Vigna, for the Canadian Human Rights Commission

Susanne Pereira, for the Respondent