

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Anne Marsden

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Public Works and Government Services Canada

- and -

Courts Administration Service

Respondents

Ruling

Member: Robert Malo

Date: September 28, 2012

Citation: 2012 CHRT 21

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In accordance with the provisions in sections 5 and 6 of the *Canadian Human Rights Act*, the complainant, Anne Marsden, submitted three (3) complaints in the following file:

- (1) File T-1701/5611 against Public Works and Government Services Canada (investigation number 20090991 at the Canadian Human Rights Commission): this complaint relates to the fact that accommodation measures at the Federal Court located at 180 Queen Street West in Toronto are inadequate in light of the complainant's disabilities, namely, myelopathy, anxiety and post-traumatic stress disorder, and that this lack of accommodation prevents the complainant from having access to the Federal Court's facilities in Toronto;
- (2) File T1702/5711 against the Courts Administration Service (investigation number 20090989 at the Canadian Human Rights Commission): the complainant makes the same criticisms in regard to her above disabilities, but against the respondent, the Courts Administration Service, the legal entity in charge of the administrative services of four (4) federal courts, namely, the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and the Tax Court of Canada;
- (3) And a third complaint bearing number 20101136 against Human Resources and Skills Development Canada (HRSDC), a complaint currently under review by the Canadian Human Rights Commission: this last complaint also refers to the lack of accommodation measures, which denies the complainant adequate access to the Federal Court. The complainant alleges that she was subjected to differential treatment compared to persons without disabilities.

I. The Motion

[1] On January 18, 2012, two pre-hearing conferences were held between the Tribunal and the parties in the aforementioned files, namely, T1701/5611 and T1702/5711. During these pre-hearing conferences, the complainant indicated that she wished to file a motion to amend her complaint in order to ask the Tribunal to consider the following elements:

- (1) The achievement of efficiencies in terms of cost for all parties and the physical and emotional resources of the complainant by having all matters related to the complaint originally submitted to the Commission into three complaints heard consecutively and
- (2) Set out for the parties the complete scope of the three separated complaints related to the differential treatment of the complainant, due to disability, that affected the complainant's access to the Federal Court of Canada in her personal capacity, as the Estate Trustee of Eva Bourgoïn-Deceased and as 50% beneficiary of the Estate of Eva Bourgoïn-Deceased;

[2] Lastly, the complainant is seeking the following orders from the Tribunal:

- (1) That the matters before the Tribunal T1701/5611 and T1702/5711 and the matter before the Commission 20101136 be heard consecutively by the Tribunal as there components of one complaint.
- (2) All respondent parties be granted standing at the hearing of all matters heard consecutively where they are not the respondent party.
- (3) The Tribunal after considering the written submissions of all parties including the Reply of the complainant, if any, sets out the scope of each component of the complaint that is to be considered by the Tribunal.
- (4) The Commission, in the interest of efficiencies, the public interest and the best interests of all parties be requested by the Tribunal to expedite the investigation and consideration by the Commission of 20101136 Anne Marsden vs. Human Resources and Skills Development Canada. This complaint was formalized December 23, 2010 to respond to paragraph 74 of the investigation report of Commission 20090989 to properly cover the scope of the complaint identified as Commission File No. 20090989 and paragraph 56 of investigation report 20090991 that are now the Tribunal files T1701/5611 and T1702/5711 Anne

Marsden vs. Court Administration Service and Anne Marsden vs. Public Works and Government Services Canada.

II. The Parties' Positions

[3] After a careful review of the complainant's motion, the Tribunal summarizes the parties' positions in the following manner.

A. Position of the Complainant, Anne Marsden

[4] In support of her motion to amend, the complainant states in her memorandum of fact the various circumstances of her complaints on the lack of accommodations, which denies her adequate access to the hearings with respect to her files against the respondents, Public Works and Government Services Canada and Courts Administration Services.

[5] In particular, at paragraph 33 of her affidavit, the complainant stated the following:

33. After discussion at the teleconference held on January 18, 2012 of the two complaints before the Tribunal it became obvious that I needed to serve a motion to have the Tribunal rule on the following issues:

- a. My complaints are before the Tribunal in three capacities:
 - i) personal ii) as the Estate Trustee for the Estate of Eva Bourgoïn – Deceased and iii) as 50% beneficiary of the Estate.

- b. The scope of the complaint submitted to the Commission need to be properly defined and to include the HRSDC complaint, stalled at the Commission, referred to in paragraph 74 in the CAS investigation report and paragraph 56 of the PWGS investigation report a true copy of which is attached hereto as part of Exhibit 3:
 - i. the deficiency of the Ottawa Registry access/accommodation issues

 - ii. the issue of CAS refusing service that involved a requested order for CAS and the respondent HRSDC to comply with accommodation needs **in relation to service of documents**

that was denying access to the court by the Estate of Eva Bourgoïn – Deceased. (covered in paragraph 26 of the CAS investigation report – Exhibit 3)

- iii. the issue of CAS Registry Officers refusing to meet my accommodation needs in relation to service of documents.
 - iv. the issues covered in the complaint formalized December 23, 2010 related to paragraph 74 of the CAS investigation report and 56 of the PWGSC investigation report that remains stalled at the Commission a true copy of which, along with Section 40 and 41 arguments is attached hereto as Exhibit 3.
- c. All matters, including the HRSDC/Justice Department complaint need to be heard consecutively by the Tribunal with all parties given standing for any matter where they are not a party – e.g. CAS would have standing at the PWGSC/HRSDC matter.

B. Respondents' Position: Public Works and Government Services Canada T1701/5611 and Courts Administration Service T1702/5711

[6] In their joint memorandum of fact, counsel for the respondents, Public Works and Government Services Canada and the Courts Administration Service, argued the respondents' position in the following manner:

Overview

1. It seems that the complainant is attempting to introduce three allegations for inquiry by the Tribunal: a) a complaint against Human Resources and Skills Development Canada (HRSDC), which is before the Canadian Human Rights Commission (Commission); b) allegations against the Federal Courts Registry in Ottawa; and c) allegation that a motion record was not accepted for filing.¹

¹ This allegation was included in the complaint but was not investigated.

2. The complaint against HRSDC² is at a very preliminary stage; the Commission did not make a decision on whether or not to deal with it. Since this complaint has not been referred to the Tribunal, it cannot be considered with files T1701/5611 and T1702/5711.

3. Second, it is clear that the complainant's allegations regarding the Federal Courts Registry in Ottawa were not before the Commission and were not investigated. Thus, these allegations were not referred to the Tribunal and cannot be considered with files T1701/5611 and T1702/5711.

4. Not only is the last allegation beyond the jurisdiction of the Tribunal, the complainant was informed that the reason her motion record was not accepted for filing was because it was out of time pursuant to the Federal Courts Rules.

(see Respondent's record, dated February 6, 2012, page 3 Overview 1, 2, 3 and 4)

[7] In short, the respondents' position is that the complainant's complaint against Human Resources and Skills Development Canada (HRSDC) is at a preliminary stage and that the Canadian Human Rights Commission has not had enough time to thoroughly review the complaint and, therefore, it has not yet been referred to the Tribunal.

[8] Consequently, the respondents indicate that the Tribunal would therefore not have jurisdiction to review a complaint against Human Resources and Skills Development Canada (HRSDC).

[9] In addition, the respondents submit that it would cause them prejudice if the complaints in files T1701/5611 and T1702/5711 were consolidated with the file in which the complainant filed a complaint against HRSDC, which is still under review by the Canadian Human Rights Commission.

² Complainant's Motion Record on scope files on January 20, 2012, Tab 4, Complaint no. 2010 1136 against HRSDC filed on December 29, 2010 with the Commission

[10] Further, the respondents argue that if the complaint against HRSDC was to be heard consecutively with the two files T1701/5611 and T1702/5711, it would be premature, given that no decision has been made pursuant to the provisions of sections 40 and 41 of the *Canadian Human Rights Act*.

[11] The respondents further argue that the complainant's allegations with respect to the access issues at the Federal Courts Registry in Ottawa were not before the Commission and were not investigated by it.

[12] Thus, the respondents submit that the complaint filed by the complainant against HRSDC cannot be added to the two other complaints before the Tribunal, namely, against PWGSC (file number T1701/5611) and against the Courts Administration Service (file number T1702/5711), given that the Canadian Human Rights Commission has not completed its investigation into this new complaint and, consequently, the respondents are of the view that they were not given the opportunity to avail themselves of all of the procedures provided for under the Act.

[13] Lastly, the respondents argue the following with respect to the allegation against the Courts Administration Service:

24. Third, the allegation that CAS discriminated against the complainant when it did not accept a motion for filing should not be investigated by the Tribunal for three reasons:

1. This allegation was not investigated by the Commission;
2. The respondent did not accept the complainant's motion for filing as it was out of time; it was explained to the complainant that pursuant to Rule 362 of the Federal Courts Rules, two clear days are required when filing a motion to be heard on general sittings,²³ and
3. The Tribunal does not have jurisdiction to inquire into the processes of the Federal Court, which are authorized by the Federal Courts Act and the Federal Courts Rules.

(paragraph 24 of the respondents' submission)

C. Canadian Human Rights Commission's Position

[14] In its submission in response to the motion to amend filed by the complainant, the Commission stated the following:

Overview

1. This is in response to the Complainant's motion to determine the scope of her complaints and have her three complaints heard consecutively.
2. The Commission consents that the complaint number 20090991 against Public Works and Government Services Canada (PWGSC) and the complaint number 20090989 against Courts Administration Service (CAS) be heard consecutively or consolidated.
3. Ms. Marsden's complaint number 20101136 against Human Resources and Skills Development Canada (HRSDC) has not been referred to the Tribunal. Therefore, the Complainant's request to have this complaint heard at the same time as her other complaints is premature and immaterial to the present matters.
4. The allegation regarding the adverse differential treatment on the provision of services by CAS including the refusal to take a motion regarding her request for accommodation, is clearly indicated in Ms. Marsden's complaint against CAS and therefore is before the Tribunal for inquiry.
5. The Commission does not object to the proposed amendment by Ms. Marsden to include the allegation of discrimination with respect to the Federal Court Registry in Ottawa unless the Respondents can prove that doing so will cause them a prejudice."

(Commission Index A - Overview 1 to 5)

[15] Essentially, the Commission consents to complaint number 20090991 against Public Works and Government Service Canada (PWGSC) and complaint number 20090989 against the Courts Administration Service (CAS) being heard consecutively or consolidated.

[16] As for complaint number 20101136 against Human Resources and Skills Development Canada (HRSDC), given that this complaint has not yet been referred to the Tribunal, the Commission considers the review of this complaint to be premature and immaterial to these matters.

[17] The Commission notes that it has no objection to the proposed amendment by Ms. Marsden “to include the allegation of discrimination with respect to the Federal Court Registry in Ottawa, unless the Respondents can demonstrate that doing so will prejudice their defence.”

[18] Further, the Commission notes in its finding that it has no objection to the following order: “in the alternative, the parties could agree that depending on the outcome on the Toronto location, they agree to adopt the same conclusion for the Ottawa office”.

III. Analysis of the Law and Facts

Issues and conclusions

[19] After reviewing the parties’ positions in the documentation submitted to it, the Tribunal will make its determination in turn on each of the orders sought by the complainant.

[20] Can the matters in files T1701/5611 and T1702/572 and the matters before the Commission in file number 20101136 be heard consecutively by the Tribunal as three components of one complaint?

[21] The Tribunal partially consents to this question. In fact, the Tribunal finds that the matters T1701/5611 and T1702/57711 before it can be consolidated and heard consecutively based on how the Tribunal Member, at the time the said matters are heard, decides which procedures are the most practical and acceptable for disposing of these matters.

[22] With respect to the complaint submitted before the Commission and bearing the number 20101136 against Human Resources and Skills Development Canada (HRSDC), this last complaint cannot be referred to the Tribunal, given that it is still under review by the Canadian Human Rights Commission. As long as the Canadian Human Rights Commission has not ruled on whether the complaint may be referred to the Tribunal, no decision can be rendered at this time.

[23] As for the allegation regarding the complainant's adverse differential treatment with respect to the provision of services by the CAS, this complaint can be heard by the Tribunal, given that it is part of the complaint already filed by the complainant in files T-1701/57711 and T-1701-/5611. In fact, these allegations appear in the investigation reports on the first two complaints (in report number 20090989, see paragraph 74, and in investigation report 20090991, see paragraph 56).

[24] In fact, the allegations that appear in the investigation reports with respect to the first two complaints, in reports 20090989 (see paragraph 74) and 20090991 (see paragraph 56), are essentially the same and refer to complaints of deficiencies in the physical facilities of the Federal Court in Toronto to the detriment of her known disabling condition and these same deficiencies were noted in the Office of the Registrar of the Federal Court in Ottawa (see paragraph 26 and following of the affidavit by Anne Marsden dated January 19, 2012 appearing in her motion).

[25] In support of this decision, the Tribunal referred to four Federal Court decisions, *Canada (Attorney General) v Brown*, 2008 FC 734, *Canada (Attorney General) v Parent*, 2006 FC 1313 (CanLII) and the *Canadian Museum of Civilization Corporation v Public Service Alliance of Canada*, 2006 FC 704, and the *Canada (Human Rights Commission) v Canadian Telephone Employees Association*, [2002] FCT 776.

[26] In these decisions, the Tribunal was able to find the principles that apply to the complainant's amendment application.

[27] Therefore, the Honourable Justice Blanchard, in *Canada (Attorney General) v Parent*, in respect of an application for the judicial review of a Canadian Human Rights Tribunal decision rendered in this matter, noted the following in paragraph 19:

[19] Under subsection 48.9(2) of the Act, the Tribunal enjoys considerable discretion with respect to the conduct of proceedings. The exercise of this discretion for the purpose of granting a motion to amend a complaint is dependent not only on the Act but on an assessment of the facts. It is therefore a question of mixed law and fact.

[28] Also, in his decision, Blanchard J. referred to *Cook v Onion Lake First Nation*, [2002] CHRR No 12, and referring to Member Groarke, wrote:

[33] The rule of practice is accordingly that issues arising out of the same set of factual circumstances should normally be heard together.

[29] Also, Blanchard J., in referring to a decision of the Nova Scotia Court of Appeal in *IMP Group Ltd v Dillman* [1995] N.S.J. No. 326:

[35] To raise a new complaint at the hearing stage would circumvent the whole legislative process that is designed to provide for attempts at conciliation and settlement. This matter did not go through the preliminary stages of investigation, conciliation and referral by the Commission to an inquiry pursuant to s. 32(a) of the Act. The Board dealt with a matter which had never been referred to it.

[30] And further in the decision, Blanchard J. summarized his thinking as follows in regard to the facts of this matter:

[39] It would have been preferable for the respondent Alain Parent to seek the amendment of the complaint at the time he was discharged, since it would have enabled the question to be investigated at the preliminary stage. Be that as it may, I believe that the Tribunal did not abuse its discretion by allowing the amendment, which does not constitute a new complaint in my opinion because the two alleged discriminatory acts are founded essentially upon the same factual circumstances.

[31] And a little further, he added:

[41] The Tribunal enjoys a wide discretion under the Act in terms of decision-making at this stage. Given the circumstances in this case, where the same factor—the health of Alain Parent—is being advanced as the motive for the two alleged discriminatory acts, and given the fact that Alain Parent’s discharge was raised in the investigation report, I find that the Tribunal had jurisdiction to render its decision and did not abuse its discretion. Thus, I find that the Tribunal was entitled to determine that the new facts alleged do not constitute a complaint distinct from the one referred to the Commission in 2002.

[44] Accordingly, while one may speak of a new alleged discriminatory act, i.e., discharging the respondent, the act is the result of the same circumstances and, strictly speaking, one cannot call this a new complaint. In the absence of a prejudice to the applicant, the Tribunal was entitled to grant the amendment and, as I determined above, did not abuse its discretion.

[45] Finally, I also reject the applicant's arguments with respect to the absence of evidence to allow the motion. I concur with what the Tribunal wrote on that subject:

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.

[46] It should be noted that allegations made in an amended complaint must be proven at the Tribunal hearing stage.

[32] The Tribunal has also noted that, in *Canada (Canadian Human Rights Commission) v Canadian Telephone Employees Association*, [2002] FCT 776, a decision rendered before the Honourable Justice Kelen, in relation to an application for judicial review of the Canadian Human Rights Tribunal decision setting aside a motion to amend two wage disparity complaints, read as follows:

[30] The jurisprudence is clear that the Tribunal has the jurisdiction to amend complaints of discrimination. In *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, as per Sopinka J. at pages 978 and 996, the Supreme Court of Canada recognized that a Human Rights Commission can

amend a deficient complaint to bring the complaint into conformity with the nature of the proceedings before the Tribunal. This can be done at any time during the proceedings.

[31] This jurisprudence is echoed in the decisions of the Federal Court with respect to amendments to pleadings under Rule 75 of the Federal Court Rules, 1998. I refer to the case of *Rolls Royce plc v Fitzwilliam* 2000 CanLII 16748 (FC), (2000), 10 C.P.R. (4th) 1 (F.C.T.D.), where Blanchard J. set out as a general rule that proposed amendments should be allowed where they do not result in prejudice to the opposing party:

10 Although leave is discretionary, as a general rule a proposed amendment should be allowed in the absence of prejudice to the opposing party. As stated by Décaré J.A., speaking for the Federal Court of Appeal, in *Canderel Ltd v Canada*, 1993 CanLII 2990 (FCA), [1994] 1 FC 3 (FCA) at p 10:

"... the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice."

...

[37] I find that the motion to amend was an attempt to correct an obvious error, and bring the Tribunal proceedings in line with the relevant evidence. It was not an attempt to bring wholly new complaints into a proceeding already in progress.

IV. Summary of Orders Sought

A. Consolidation of files T1701 and T1702

[33] The Tribunal reviewed investigation reports 20090989 and 20090991, which supported files T1701/5611 and T1702/5711.

[34] As the Tribunal noted above, the facts appearing in the complainant's complaints referred to the lack of accommodations at the Federal Court at 180 Queen Street West in Toronto, facts

that seem to be the same as the lack of accommodations at the Federal Court in Ottawa (see paragraph 74 of the investigation report 20090989).

[35] Similarly, in investigation report 20090991, at paragraph 56, the same allegations of facts reappear in regard to the lack of accommodation measures at the Federal Court in Toronto and in Ottawa (see paragraph 56).

[36] It is clear that the Tribunal must agree with the consolidation of these files for the purpose of the hearing, which would only increase efficiency in relation to the hearing of these complaints, out of concern for better administration of justice (*Wheatcroft v Canadian International Development Agency*, 2010 CHRT 32; *Schuyler v Oneida Nation of the Thames*, 2005 CHRT 10).

[37] Therefore, it is certainly appropriate that the two files T1701/5611 and T1702/5711 should be consolidated for the purposes of a joint and/or consecutive hearing based on what will be decided by the presiding Tribunal Member to achieve the proper management of the hearing for these files.

B. Consolidation of complaint in file 20101136 against Human Resources and Skills Development Canada (HRSDC)

[38] The Tribunal considers that it cannot allow the motion of the complainant, Anne Marsden, as drafted.

[39] In fact, complaint number 20101136 is still under review before the Canada Human Rights Commission and the Commission has not referred said complaint to the Tribunal, under the provisions of the *Canadian Human Rights Act*.

[40] To act otherwise would go against the provisions of the Act, which provides for an inquiry mechanism under the authority of the Canada Human Rights Commission and which could deny the parties a inquiry process and advance every argument before the Commission

(see reference by Blanchard J. to a decision of the Nova Scotia Court of Appeal in *IMP Group LTD v. Dillman*, [1995] NSJ No 326, at paragraph 35).

[41] The Tribunal also notes that it cannot grant the consolidation of complaint number 20101136 against Human Resources and Skills Development Canada (HRSDC) because in doing so it would be introducing a new party to the dispute which would be viewed as overstepping its jurisdiction as stated by the Honourable Justice Simon Noël in *Attorney General of Canada v. Brown*, 2008 FC 734 (CanLII) (see paragraphs 27, 28, 38, 39, 40 and 41).

[42] The Tribunal also states that the joinder of a party within the meaning of the *Canadian Human Rights Tribunal Rules of Procedure* must be made by way of a motion by the persons referred to therein and not by the Tribunal on its own motion. The Tribunal notes, however, that the *Canadian Human Rights Tribunal Rules of Procedure* were never published in the *Canada Gazette* and do not constitute rules of procedure within the meaning of section 48.9 of the CHRA.

C. Allegation regarding the alleged differential treatment by CAS is before the Tribunal

[43] With respect to the allegation of “the alleged differential of treatment by CAS of the Commission’s submissions in response to the complainant’s motion,” the Tribunal notes that the complainant made reference to the fact that the CAS discriminated against her with respect to delivery of documents:

[20] ... in the delivery of documents and in the provision of other services by failing to accommodate her disabilities. She asserts that the Respondent further discriminated against her by failing to accept the filing of a motion dealing with her request for accommodation in the delivery of services.”

Saikali's Affidavit, Exhibit 2, complaint number 20090989, para. 9.

[44] The Tribunal considers that the Commission's submissions in that respect are relevant and would certainly allow the Tribunal to investigate the allegation as it is not a new complaint. In this regard, the Commission consents to this allegation being heard by the Tribunal.

[45] Again, in the best interests of justice and the parties, and under the case law cited above, it appears to the Tribunal that seeing as the facts were alleged in the original complaints in files T1701/5611 and T1702/5711, the Tribunal therefore has authority to investigate these facts.

[46] Further, the Tribunal notes in respect of the allegation that it is an additional element in the complaints filed by the complainant and that relate to issues of accessibility at the offices of the Federal Court in both Toronto and Ottawa.

[47] Consequently, the submission of an allegation of discrimination:

[24] we submit the allegation of discrimination in the provision of services by CAS, namely, the delivery of documents and the refusal to accept the complainant's motion for accommodation is before the Tribunal for determination.

may be heard by the Tribunal.

[48] In support of that decision, the Tribunal refers to *Attorney General of Canada v Parent*, 2006 FC 1313 (CanLII) (see above citations with respect to that decision).

[49] The respondents argue in their responses that the Tribunal does not have jurisdiction to investigate the allegation of discrimination described (see paragraph 13 above).

[50] The Tribunal considers that the allegation is part of the complaints of discrimination filed before the Canadian Human Rights Commission and in respect of which the Commission asked the Canadian Human Rights Tribunal to deal with its response to the complainant's motion to amend (see para 15 of this decision).

[51] The Tribunal notes that the respondents did not submit any authority or case law pertaining to that argument. Also, they did not indicate how they would suffer harm from the hearing of this allegation.

[52] Moreover, the Tribunal referred to the provisions of subsection 49(1) of the *Canadian Human Rights Act*, which reads as follows:

At any stage after the filing of a complaint, the Commission may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.

[53] The Tribunal notes that the provisions of subsection 49(1) suggest that the investigation of the Canadian Human Rights Commission is not a mandatory stage prior to inquiry before the Tribunal. Seeing as the allegation is mentioned in the complaint itself, the fact that the Canadian Human Rights Commission did not investigate this particular point does not appear to be fatal to the Tribunal's jurisdiction to examine at the time of the inquiry, especially since the Commission agrees that the Tribunal should proceed with its examination of the allegation.

[54] In referring to the case law cited by the Tribunal earlier in this decision, the Tribunal considers that this issue is validly before it and, accordingly, the Tribunal will therefore proceed with hearing the allegation. However, the Tribunal grants the respondents the right to present before the Tribunal Member an argument on the merits of the issue at the time inquiry.

V. Other Requests Required

Second order required by the complainant:

- ii. All respondent parties be granted standing at the hearing of all matters heard consecutively where they are not the respondent party.

[55] Considering that the complaints filed by the complainant against the respondents, Public Works and Government Services Canada and Courts Administration Service, are essentially

based on the same facts and that the respondents are represented by the Attorney General of Canada, it would therefore be appropriate to grant the parties the possibility to intervene in each of the complaints in the files if they wish to do so in order to make any relevant argument.

[56] Moreover, for obvious practical reasons, and taking into account that the respondents have the same counsel, it is undeniable that the respondents could make their arguments in each of the complaints filed.

[57] Third order required by the complainant:

iii. The Tribunal after considering the written submissions of all parties including the Reply of the complainant, if any, sets out the scope of each component of the complaint that is to be considered by the Tribunal.

[58] The Tribunal considers that it cannot grant this order at the stage of the motion filed by the complainant as it considers that it would be an encroachment on the discretion of the Tribunal Member presiding over this matter to rule on such issues. Accordingly, the issue will remain under the jurisdiction of the Tribunal Member at the time of inquiry into these complaints.

iv. The Commission, in the interests of efficiencies, the public interest and the best interests of all parties be requested by the Tribunal to expedite the investigation and consideration by the Commission of 20101136 Anne Marsden vs Human Resources and Skills Development Canada this complaint was formalized December 23, 2010 to respond to paragraph 74 of the investigation report of Commission No,20090989 to properly cover the scope of the complaint identified as Commission File No. 20090989 and paragraph 56 of investigation report 20090991 that are now Tribunal Files T1701/5611 and T1702/5711 Anne Marsden vs. Courts Administration Service and Anne Marsden vs. Public Works and Government Services Canada.

[59] The Tribunal answered in the negative the question considering, with respect for the contrary opinion, that the Tribunal has no jurisdiction to order the Commission to proceed with an investigation into the complaint and to rule within timelines that could be set by the Tribunal (*Tweten v RTL Robinson Enterprises Ltd*, 2004 CHRT 8, at para 17.

[60] In that regard, the Tribunal refers to the wording of the *Canadian Human Rights Act* and more particularly the provisions of sections 48.9, 49 and 50 of the Act, which do not include any provisions allowing the Tribunal to issue such an order against the Canada Human Rights Commission.

[61] Consequently, the Tribunal cannot issue an order required by the complainant against the Commission to force it to proceed with the investigation into complaint number 200101136, *Anne Marsden v Human Resources and Skills Development Canada*.

VI. Decision

For these reasons, the Tribunal:

Orders that complaint numbers T1701/5611 v PWGSC and T1702/5711 v Courts Administration Service be heard as part of the same hearing to be set as these complaints essentially involve the same issues of facts and law;

Orders that:

- the allegation regarding the adverse differential treatment in the provision by CAS to comply with accommodations needs in relation to service of documents that was denied in access to the Court by the estate of Eva Bourguoin deceased (covered in para. 26 of the CAS investigation report, exhibit 3, notice of motion of complainant);
- the issue of CAS Registry officer refusing to meet the accommodations needs in relation to service of documents;
- the allegation of discrimination with respect to the Federal Court Registry in Ottawa.

shall all be before the Tribunal for investigation and hearing;

Grants the respondents the possibility to intervene in each of the complaints in the files if they wish to do so in order to make any relevant argument.

Dismisses all the other orders by the complainant.

Signed by

Robert Malo
Tribunal Member

Ottawa, Ontario
September 28, 2012

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T1701/5611 and T1702/5711

Style of Cause: Anne Marsden v. Public Works and Government Services Canada and Courts Administration Service

Ruling of the Tribunal Dated: September 28, 2012

Appearances:

Anne Marsden, for herself

Ikram Warsame, for the Canadian Human Rights Commission

Agnieszka Zagorska, for the Respondents