

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**

**File Nos.:** T1701/5611 and T1702/5711

**Member:** Robert Malo

**Date:** November 25, 2013

**Citation:** 2013 CHRT 31

## Table of Contents

I.	The Motion.....	1
II.	Respondents' Reply .....	2
III.	Canadian Human Rights Commission's Arguments .....	3
IV.	Decision .....	5
V.	Conclusion .....	8

## **I. The Motion**

[1] On August 15, 2013, the complainant sought orders from the Tribunal in the referenced file, orders that are contained in the conclusion of the email sent by the complainant, and which read as follows:

### **REQUEST FOR ORDERS**

I am, therefore, requesting the Tribunal order:

1. The Commission provide me with a point format, bound, single sided copy of their disclosure within one week of the Tribunal issuing a decision on this motion and indicate to me how they will be delivering the disclosure to meet my service of documents accommodations that they are very familiar with.
2. Ms. Zagorska return forthwith the Exhibit Book reputedly “borrowed” for the evening which she has persistently refused to return which I consider to be in contempt of the Tribunal members direction to provide the complainant with it on May 6, 2013 and the Members position that I would have it returned May 8, 2013.

and provide such an order before August 31, 2013.

[2] Subsequent to that first motion by the complainant, she amended her first motion dated August 21, 2013, in order to request the following orders:

### **ORDERS REQUESTED:**

1. Ms. Warsame/CHRC immediately serve the CHRC full disclosure for T1701/5611 and T1702/5711 and any disclosure related to the request o the complainant that the AG, counsel for HRSDC and HRSDC be part of this complaint presently before the Commission but separate parties in the manner stipulated for service of documents on the complainant.
2. CAS and PWGSC immediately return the Exhibit Book (in a manner that meets the complainants accommodation needs due to disability) served on the complainant on May 6, 2013 with a clear description of any changes in the

Exhibit Book (including pages that have been removed or are now included that were not included on May 6, 2013) that were made subsequent to the complainant being served the Exhibit Book on May 6, 2013.

[3] In particular, the orders sought by the complainant are of a strictly procedural nature and they affect the conduct of the proceeding already commenced in the complainant's file dated May 6 and 7, 2013.

[4] In her arguments, the complainant contends that the orders are required in order to ensure the fairness of the proceeding currently underway and she maintains that these orders are required in light of the fact that the CHRC failed to disclose its evidence in a manner so as "to meet the accommodations of the complainant or indeed at all".

## **II. Respondents' Reply**

[5] In response to the complainant's amended motion, respondents PWGSC and CAS indicated to the Tribunal that in the first conclusion sought in the complainant's amended motion, she referred to a third party that was not a party to the proceeding, namely, HRSDC, and immediately the respondents argued that this portion of the conclusion of the complainant's orders could not be considered given the Tribunal's lack of jurisdiction.

[6] Furthermore, in their submissions, the respondents indicated that the orders sought by the complainant had already been the subject of a Tribunal decision dated July 30, 2013, which was sent to the complainant in a letter addressed to her and dated July 30, 2013, and which specifically addressed the issues raised in the complainant's amended motion.

[7] In addition, the respondents noted that they had informed the Tribunal and the complainant beforehand of the possibility of a motion for dismissal once the complainant's motion was completed. Having done this, any order by the Tribunal that would force the respondents to submit their exhibit book to the complainant would be premature, given that there was a strong likelihood that they would not have to submit their evidence in the present proceeding.

[8] Further to this, the respondents pointed out that it would result in an abuse of process by the complainant because the issues had already been decided in the Tribunal's letter dated July 30, 2013, and accordingly, they pleaded *res judicata* as these issues had already been determined by the Tribunal.

[9] Consequently, they asked the Tribunal to dismiss the complainant's motion to amend.

### **III. Canadian Human Rights Commission's Arguments**

[10] In its prepared arguments in response to the complainant's motion to amend, dated August 26, 2013, the Canadian Human Rights Commission stated that it had, by means of its respondents, provided a paper copy (hard copy) of its evidence to the complainant. In addition, the Commission noted that prior to July 25, 2013, namely, for a period of about six months, the complainant had never raised any problem whatsoever with regard to its disclosure of evidence or demanded a paper copy of that evidence (see paragraph 6 of the Commission's arguments).

[11] Furthermore, the Commission made a reference, in correspondence dated July 29, 2013, and addressed to the complainant, to the fact that since its evidence had already been disclosed to the respondents, it did not intend to provide a second paper copy.

[12] The Commission also indicated that each of the exhibits in its disclosure is numbered with a production number that can easily be compared with the electronic copy provided to the complainant by the Commission.

[13] In support of its arguments, the Commission also referred to the Tribunal's letter dated July 30, 2013, which is useful to cite in its entirety in order to gain a better understanding of the present decision:

The Tribunal acknowledges receipt of your emails dated July 25, 2013, 5:26 p.m. and 5:37 p.m. requesting that the Respondent's Exhibit Book be returned to you by Respondent Counsel.

Upon review of the transcripts of the hearing, I can confirm that the Respondent's Exhibit Book was not entered into evidence. The Respondent is obligated to provide copies of their Exhibit Book to all parties at the hearing only once it is filed and entered as an exhibit. The Tribunal cannot order that evidence which will be relied upon during the hearing process be provided to any party in advance.

Please refer to Tribunal rule 9(4) which states:

9(4) Except with the consent of the parties, a document in a book of documents does not become evidence until it is introduced at the hearing and accepted by the Panel.

Also, further to your email dated July 29, 2013 3 :34 p.m. requesting that the Tribunal order the Canadian Human Rights Commission to provide you with "readable print size copy of the CD disclosure", the Tribunal asks that you provide the Commission with the specific document numbers that you wish to be enlarged. The Commission provided their disclosure to all parties on January 29, 2013 and no concerns were raised regarding the quality of the documents at that time. During the hearing, there were issues regarding the print quality of Document 15H of the Complainant's Exhibit Book, however, legible copies of that page were provided as confirmed at page 320 line 15 of the transcripts.

[14] Further in its arguments, the Commission referred to the fact that the Tribunal in its letter of July 30, 2013, had directed the complainant "to provide the Commission with the specific documents that (Mrs. Marsden) wishes to be enlarged".

[15] The Commission indicated that the complainant simply ignored the Tribunal's directions and decided to file a motion in which she repeated the same demands with regard to evidence that had already been addressed by the Tribunal in its letter of July 30, 2013.

[16] Moreover, the Commission formally denied that it had "knowingly treated the Complainant in an adverse and differential manner due to disability".

[17] Ultimately, the Commission indicated that the complainant could always comply with the letter of July 30, 2013 sent to her by the Tribunal in order to specify which of the documents already disclosed by the Commission she needed to have enlarged. Thus, the Commission could produce new copies of the specific documents in question.

#### **IV. Decision**

[18] The Tribunal has carefully considered the submissions before it, both by the complainant and the respondents, as well as by the Canadian Human Rights Commission.

[19] After having examined the merits of the case, and taking into account the conclusions of the complainant's motion to amend, the Tribunal maintains its decision dated July 30, 2013, with respect to the orders sought by the complainant.

[20] Regarding the first order sought by the complainant, the Tribunal refers to the decision dated July 30, 2013, which clearly indicated the process to be followed in order to obtain any clarification with regard to documents that did not appear to be up to standard in the disclosure of evidence to the complainant.

[21] The Tribunal notes here that the complainant in no way followed this process, preferring to file a motion to amend and thus seek a formal decision by the Tribunal.

[22] However, it appears that up until the moment of this decision, the complainant had been able to obtain documents submitted by the respondents and by the Canadian Human Rights Commission that met the requirements that had been acceptable to her in the past, but taking into account certain specific instructions as to how the documents should be sent to her.

[23] The Tribunal is of the view that all parties to this proceeding have shown good faith and that they have even been able to find the necessary compromises in order to provide the complainant with all of the documentation and proceedings requested, in light of her disabilities.

[24] Therefore, the Tribunal finds that no more precise order in this matter would serve the interests of justice, given that the possibility still remains that the present order might be null and void for all sorts of reasons that are beyond the Tribunal's control and personal to the complainant and that new instructions may be issued by the complainant to the respondents or to the Commission in the future with regard to the serving of proceedings on the complainant.

[25] Consequently, the Tribunal requests that the complainant provide, clearly and unequivocally, any instructions she finds useful and relevant in order for the other parties to this proceeding to serve proceedings on her. The Tribunal remains convinced that the other parties in this matter will agree to all potential accommodations that would meet the requirements of the complainant, thus avoiding the need for a formal order by the Tribunal.

[26] With regard to the first conclusion sought in the complainant's motion to amend, the Tribunal adopts the respondents' comments to the effect that HRSDC is not a party to the present proceeding and as a consequence, the Tribunal has no jurisdiction with respect to this third party.

[27] In light of the foregoing reasons, the Tribunal therefore dismisses the first order sought by the complainant.

[28] As for the second order in the complainant's motion to amend, which seeks from the Tribunal an order to return the exhibit book (of the respondents) that had been provided to her at the hearing on May 6, 2013, the Tribunal notes that the exhibit book was not introduced into evidence, which means that, pursuant to Rule 9(4) of the Canadian Human Rights Tribunal Rules of Procedure: "Except with the consent of the parties, a document does not become evidence until it is introduced at the hearing and accepted by the Panel."

[29] Even though the complainant received from the respondents the said exhibit book at the hearing, at the Tribunal's suggestion, for the purposes of courtesy and a better understanding of the evidence, the Tribunal notes that nowhere in the transcript of the hearings of May 6 and 7, 2013 does it indicate that the said book was introduced into evidence by the respondents. At most, the complainant's book was duly introduced into evidence, which is consistent with the fact that the complainant began this proceeding by introducing her own exhibit book into evidence.

[30] Given that the complainant had surely not finished her disclosure May 7, 2013 and that the respondents had not yet begun their disclosure, no exhibit book had been duly and legally



introduced into evidence at the beginning of the hearing of this matter May 6 and 7, 2013 by the respondents.

[31] Furthermore, the Tribunal finds that the letter of July 30, 2013 sent to the complainant, which decided the same issues that were raised in the complainant's motion to amend, shows that these issues had already been determined by the Tribunal in accordance with the rules of practice and procedure of the Tribunal, the fact of which was noted in the letter of July 30, 2013

[32] Forcing the respondents to hand over their own exhibit book to the complainant, as she demands in her amended motion, would be an abuse of process in the eyes of the Tribunal and would be contrary to Rule 9(4) of the Canadian Human Rights Tribunal Rules of Procedure.

[33] In addition, the Tribunal notes that the complainant has already obtained a paper copy of the disclosure of evidence she is once again seeking from the respondents.

[34] The Tribunal finds that the complainant has obtained both an electronic and paper copy of the said evidence and that if some of the exhibits from this evidence turned out to have been unreadable, the Tribunal had indicated to the complainant in its letter of July 30, 2013, that she could inform the other parties which documents she would need new copies of in order to gain a better understanding of the said documents.

[35] The Tribunal notes that the complainant did not comply with this simple and practical requirement that would have resolved the issues that confronted the complainant.

[36] Finally, the Tribunal notes the offer by the Canadian Human Rights Commission, at paragraph 22 of its memorandum:

There is nothing in document numbers CHRC 185/1 and CHRC 222/19 which suggests that the Commission committed to provide a bound print copy of its disclosure. The Commission complied with its disclosure's obligation and provided its disclosure on a CD format as usual. At no time before her July 2013 emails, the Complainant raised concerns regarding the Commission's disclosure nor requested a print copy of the disclosure. That being said, in the event that Mrs. Marsden needs another copy of a

specific document in the Commission's disclosure and provides the Commission with the description of the document as previously directed by the Tribunal, we will provide her with another copy of the said document.

## **V. Conclusion**

[37] In light of the aforementioned reasons in this decision, the Tribunal therefore dismisses the complainant's amended motion dated August 21, 2013.

[38] The Tribunal takes note of the following offer made by the Canadian Human Rights Commission:

That being said, in the event that Mrs. Marsden needs another copy of a specific document in the Commission's disclosure and provides the Commission with the description of the document as previously directed by the Tribunal, we will provide her with another copy of the said document.

*Signed by*

Robert Malo  
Tribunal Member

Ottawa, Ontario  
November 25 2013