

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Diane Carolyn Emmett

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Revenue Agency

Respondent

Ruling

Member: Shirish P. Chotalia

Date: February 24, 2012

Citation: 2012 CHRT 3

Table of Contents

	Page
I. Complaint & Adjourment Request	1
II. Law & Analysis	1

I. Complaint & Adjournment Request

[1] On August 25, 2011, pursuant to section 44(3)(a) of the *Canadian Human Rights Act* (the *Act*), the Canadian Human Rights Commission (the Commission) requested that the Canadian Human Rights Tribunal (the Tribunal) institute an inquiry into the complaint of Diane Carolyn Emmett (the Complainant) against Canada Revenue Agency (the Respondent). The Complainant alleges that she has been subject to adverse differential treatment in the course of her employment as she has not been given the same opportunities for development and advancement as her male colleagues and more youthful employees. In this regard, the Complainant also alleges that the Respondent has systemically discriminated against women by denying them employment opportunities. Accordingly, she claims to have been a victim of discrimination on the basis of sex and age, contrary to sections 7 and 10 of the *Act*.

[2] On September 26, 2011, the Respondent filed a Notice of Application for judicial review of the Commission's decision to refer this matter to the Tribunal. On November 16, 2011, the Respondent requested that the Tribunal adjourn its proceedings in this matter pending the outcome and appeal, if any, of its judicial review application.

II. Law & Analysis

[3] Pursuant to section 48.9(1) of the *Act*, proceedings before the Tribunal are to be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. Accordingly, in deciding whether to grant an adjournment, the Tribunal must weigh the goal of resolving human rights complaints in a timely manner against the requirement to be fair to all parties and to provide them with a full and ample opportunity to present their case (see *Leger v. Canadian National Railways Company*, [1999] Ruling No. 1, CHRT File T527/2299, (Nov. 26, 1999) at paras. 4-6 [*Leger*]; and, *Baltruweit v. Canadian Security Intelligence Service*, 2004 CHRT 14 at paras. 12-17 [*Baltruweit*]).

[4] Relying on *Leger* and *Baltruweit*, the Respondent argues that, as master of its own procedure, the Tribunal may adjourn proceedings where appropriate in its discretion, having

regard to the principles of natural justice. In this regard, the Respondent submits that its ability to mount a defence to the Complainant's allegations is compromised without a decision on the judicial review. Given that the Commission's investigator recommended dismissal of the complaint and without the benefit of adequate written reasons from the Commission setting out the basis for its referral, the Respondent is unaware of the preliminary case to meet and, therefore, cannot present a meaningful response to the complaint that they would otherwise have if reasons were provided.

[5] The Respondent's argument fails to consider the separate roles of the Commission and the Tribunal under the *Act*. With regards to a complaint of discrimination under the *Act*, the role of the Commission is to investigate the complaint and determine whether an inquiry into the complaint by the Tribunal is warranted (see sections 43, 44 and 49 of the *Act*). If an inquiry is requested by the Commission, section 50 of the *Act* provides that the Tribunal give all parties a full and ample opportunity to appear at the inquiry, present evidence and make representations. As such, the Tribunal's inquiry proceeds without reliance on the Commission's investigation report and/or reasons for referring the complaint. In each case before the Tribunal, the complainant must establish a *prima facie* case of discrimination and, if established, the respondent is given an opportunity to demonstrate that the discrimination did not occur or was justified under the *Act*. Therefore, through the Tribunal's proceedings, the Respondent will be made aware of the Complainant's case and will be given a full and ample opportunity to present its case.

[6] The Respondent also argues that if the adjournment request is denied, and the application for judicial review is successful, the Tribunal proceedings will be rendered a legal nullity and will be terminated. As a result, there would be a needless expenditure of both public and private resources. Furthermore, the Respondent points out that the Complainant has also filed two additional complaints with similar allegations, which are currently at the investigation stage before the Commission. Therefore, it may be beneficial to all parties to have all three complaints heard together.

[7] Both these arguments are speculative and do not raise issues of natural justice or procedural fairness. Absent any fairness issues, pursuant to section 48.9(1) of the *Act*, the Tribunal's proceedings in this matter should continue as expeditiously as possible.

[8] For these reasons, in my opinion, the Tribunal would be justified in dismissing the Respondent's request for an adjournment.

Signed by

Shirish P. Chotalia, Q.C.
Tribunal Chairperson

OTTAWA, Ontario
February 24, 2012

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1727/8211

Style of Cause: Dian Carolyn Emmett v. Canada Revenue Agency

Ruling of the Tribunal Dated: February 24, 2012

Appearances:

Diane Carolyn Emmett, for the Complainant

Ikram Warsame, for the Canadian Human Rights Commission

Gillian Patterson, for the Respondent