Canadian Human
Rights Tribunal

Tribunal canadien
des droits de la personne

BETWEEN:

DENIS LACROIX

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ROYAL CANADIAN MOUNTED POLICE

Respondent

RULING

MEMBER: Athanasios D. Hadjis

2009 CHRT 35
2009/11/09

[1] The named respondent in this complaint, the Royal Canadian Mounted Police, has made a motion seeking to have the style of cause amended, to have certain portions of the Complainant's Statement of Particulars stricken, and to amend its own Statement of Particulars.

Style of Cause

[2] The motion alleges that the RCMP is not a legal entity capable of suing or being sued, and is not a proper party to this proceeding. Instead, it is alleged that the Attorney General of Canada should be named as the appropriate respondent.

[3] The Respondent refers in its motion to s. 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (the *CLPA*), which provides that proceedings against Her Majesty in Right of Canada (the Crown) may be taken in the name of the Attorney General of Canada, or in the name of an agency of the Crown, if an Act of Parliament authorizes actions to be taken in its name.

[4] The Tribunal has had to deal with this issue several times in the past. Complainants alleging discriminatory conduct by the RCMP usually, and quite understandably, identify the RCMP as the respondent in their complaints. Upon referral of these complaints to the Tribunal, motions similar to the present one have been made requesting that the style of cause be amended. To my knowledge, and no information was provided to the contrary, the Tribunal has granted all of these motions. In *Plante v. Royal Canadian Mounted Police*, 2003 CHRT 28 at para. 7, the Tribunal found that on the basis of the jurisprudence presented before it and the relevant provisions of the *CLPA*, the complainant's case in that matter should have been properly asserted against "the Attorney General of Canada (representing the Royal Canadian Mounted Police)".

[5] This ruling was followed in *Guay v. Royal Canadian Mounted Police*, 2004 CHRT 34, and similar motions have been granted in unpublished rulings issued orally during hearings in other cases, including *Maillet v. Attorney General of Canada*, (final decision reported as 2005 CHRT 48), and *Berberi v. Attorney General of Canada*, (final decision reported as 2009 CHRT 21).

[6] The Complainant urges me to "view with great caution" the findings in *Plante* and *Guay* and not follow them. Based on a number of authorities regarding the liability of non-corporate entities, he contends that the RCMP "has sufficient legal personality to be the named respondent in a human rights complaint" brought by an RCMP member.

[7] I am not persuaded by his argument. Section 23(1) of the *CLPA* provides that actions can be taken in the name of the entity where that entity is an "agency of the Crown" with specific legal authorization, and not merely because it has "sufficient legal personality".

[8] The Complainant placed much emphasis on the Supreme Court judgment in *Northern Pipeline Agency v. Perehinec*, [1983] 2 S.C.R. 513. This case is clearly distinguishable from the present one inasmuch as the defendant's constituting statute in that case (the *Northern Pipeline Act*, 1977-78 SC c. 20) was explicit in its description of the defendant as an "agency of the Government of Canada called the Northern Pipeline Agency". In contrast, s. 3 of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, simply states that "there shall continue to be a police force for Canada" known as the Royal Canadian Mounted Police. The force is never described as an agency in its constituting Act, let alone as being authorized to have proceedings taken against it in its own name, within the meaning of s. 23(1) of the *CLPA*. It is not clear, moreover, whether the Court even considered s. 23(1) or any applicable predecessor provision. Besides, the real issue upon which that case turned appears to have been whether the Northern Pipeline Agency could enter into a contract of employment in its own name, not whether an action could be taken against it in its name.

[9] The Complainant also referred me to the 1993 Alberta Queens Bench decision in *Rutherford v. Swanson*, [1993] A.J. No. 36, in support of his position. This decision is not particularly instructive, the issue there being whether members of the RCMP benefit from the immunity available to "Crown agents" with respect to summons to produce documents that are made pursuant to the Alberta Rules of Court. The Court held that the RCMP and its members were "acting" as Crown agents. There is no finding that the RCMP is an "agency" within the meaning of s. 23(1) of the CLPA.

[10] The Complainant also asserted in his submissions that the RCMP is listed as a separate agency under Schedule V of the *Financial Administration Act*, R.S.C. F-11. He is mistaken. In fact, the RCMP's name is found under Schedule IV of that Act as comprising one of the "Portions of the Core Public Administration".

[11] I am therefore not persuaded by the Complainant's submissions and grant the Respondent's motion to change the style of cause. The Complainant requested that in the event the motion is granted, the style of cause should be amended in the same manner as in *Plante* and *Guay*, i.e., "the Attorney General of Canada (representing the Royal Canadian Mounted Police)". However, such a designation would not accord, in my view, with a proper reading of s. 23(1) of the CLPA, which states that proceedings against the Crown may be taken in the name of the "Attorney General of Canada". It is the Crown that is being represented by the Attorney General of Canada, not the RCMP.

Motion to strike particulars

[12] The Complainant was a member of the RCMP whose employment was terminated in April 2003. The allegations in his human rights complaints are basically split into two groups, one relating to the period ending around October 1999, when the Complainant went on sick leave, and the other after August 2000. All of these allegations were for the most part reiterated in his Statement of Particulars. The Respondent wishes to strike out those portions of the Statement relating to the first period (referenced as being found within paragraphs 2-6, 38(f) and 39(e) of the Statement of Particulars).

[13] The facts giving rise to this case began in 1999, when the Complainant was involved in two separate motor vehicle accidents (one in February and one in August). He suffered several injuries from these accidents. He alleges in his human rights complaint that after the first accident he was "treated differently". He claims that after the second accident (as a result of which he went on sick leave), the RCMP failed to accommodate him and that more senior members of the RCMP engaged in harassing conduct towards him, relating to his disability. He lists some examples of this conduct, which is alleged to have occurred in September and October 1999.

[14] He claims that from August 2000 onwards, the RCMP refused his requests to be accommodated in his return to work. He asserts that rather than accommodate him appropriately, RCMP representatives (including his career manager and supervisor) repeatedly told him that he had to return to full-time operational duties or face discharge.

[15] The Complainant filed his human rights complaint on February 27, 2004. On October 23, 2008, the Commission wrote a letter to the parties advising them of its decision in respect of the complaints. The Commission stated that, pursuant to s. 41(1) of the *CHRA*, it had decided to deal only with “those allegations that related to the alleged failure to accommodate and the termination of employment which are based on acts that occurred between August 2000 and April 2, 2003”. This determination was founded on the Commission’s conclusion that “the allegations of harassment and adverse differential treatment are based on acts the last of which occurred in October 1999”. In the same letter, the Commission also advised the parties that it would be requesting the Chairperson of the Tribunal institute an inquiry into the complaint because “further inquiry was warranted”.

[16] As I indicated earlier, the Complainant has essentially repeated in his Statement of Particulars all of the facts recited in his human rights complaint. The Respondent’s motion seeks, therefore, to strike from the Statement any references to those allegations that the Commission decided not to deal with in its October 23, 2008, letter. The Respondent points out that the scope of Tribunal inquiries is limited to matters arising from the complaints accompanying Commission requests that an inquiry be held. Where the Commission exercises its discretion, pursuant to s. 41 of the *CHRA*, not to deal with any of the allegations in a complaint, the Commission cannot be considered to have ultimately referred those portions of the complaint to the Tribunal (*Kowalski v. Ryder Integrated Logistics*, 2009 CHRT 22 at para. 10).

[17] The Complainant acknowledges that the Commission did not refer the allegations of harassment to the Tribunal, and consequently consents that paragraph 38(f), which alleges that harassment is an issue in the case, and paragraph 39 (e), in which an order for pain and suffering compensation is sought in respect of the alleged harassment, be stricken from his Statement of Particulars.

[18] However, the Complainant submits that he should not be ordered to strike the "factual particulars from 1999" which he claims form part of the "background and context of the case". He alleges that these facts are relevant to his claims that the RCMP failed to accommodate him. Specifically, he argues that paragraphs 2 to 6 of his Statement allude to several derogatory comments made by his superiors about his head injury and mental disability, and provide important context with respect to the stigma and stereotypical attitudes associated with his type of disability. He alleges that these were factors, as much or more than any legitimate consideration of operational hardship, that explain the Respondent's failure to accommodate him.

[19] The Complainant also argues that his supervisors' allegedly stereotypical comments, made in 1999, lend credence to his allegation that the RCMP's failure to provide a supportive work environment is indicative of its "violation of the duty to accommodate".

[20] The Complainant therefore submits that although he cannot rely on the 1999 comments to support a harassment complaint, he should be permitted to lead evidence on those comments because they are so closely related, and therefore relevant, to his allegations of a failure to accommodate, subject to the weight that the Tribunal may ultimately place on it.

[21] I accept the Complainant's submission in this regard and agree that these factual assertions are potentially relevant to the inquiry. The Respondent, in turn, has not at this stage, prior to the start of the hearing, established that these factual assertions are so clearly irrelevant to the inquiry that they should be struck from the Complainant's Statement of Particulars. I therefore decline to strike the paragraphs alluding to these factual assertions from the Statement. If this evidence is ultimately adduced at the hearing, however, it will be up to the member or panel conducting the inquiry to determine what weight should be attributed it, if any, taking into account factors that would include the impact on the evidence of the passage of time since the events occurred in 1999 (see by analogy the Tribunal decision in *Uzoaba v. Canada (Correctional Services)* (1994), 26 C.H.R.R. D/361 (C.H.R.T.), aff'd *Canada (Attorney General) v. Uzoaba*, [1995] 2 F.C. 569 (T.D.)).

[22] Consequently, only paragraphs 38(f) and 39(e) are ordered stricken from the Complainant's Statement of Particulars.

Amendment of Respondent's Statement of Particulars

[23] The Respondent has moved to strike paragraphs 3 and 27(e) from the Respondent's Statement of Particulars. The Complainant did not provide any submissions or comments with respect to this request.

[24] The Respondent's request is granted.

Order

(1) The style of cause in the present case shall be amended to indicate the Respondent as "Attorney General of Canada".

(2) Paragraphs 38(f) and 39(e) are ordered stricken from the Complainant's Statement of Particulars.

(3) Paragraphs 3 and 27(e) are ordered stricken from the Respondent's Statement of Particulars.

[25] The parties are to serve on each other and provide the Tribunal with the amended versions of their respective Statements of Particulars within seven days of this ruling.

"*Signed by*"

Athanasios D. Hadjis

OTTAWA, Ontario
November 9, 2009

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

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RULING OF THE TRIBUNAL DATED:	November 9, 2009

APPEARANCES:

Paul Champ	For the Complainant
No one appearing	For the Canadian Human Rights Commission
Susanne Pereira/Keitha J. Elvin-Jensen	For the Respondent