

COMMUNICATIONS, ENERGY AND PAPERWORKERS
UNION OF CANADA AND FEMMES -ACTION

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA

Respondent

**RULING ON DISCLOSURE OF
MEDICAL RECORDS**

PANEL: J. Grant Sinclair 2005 CHRT 9
 Pierre Deschamps 2005/02/11

[1] CEP intends to call seven witnesses in support of its claim for pain and suffering pursuant to section 53 (2)(e) of the *Canadian Human Rights Act*. Bell Canada requests that the Tribunal issue an order compelling these witnesses to disclose their medical records covering the period of 1990 to 2004.

[2] The medical records that Bell seeks include all clinical notes and reports made by any attending physician, psychiatrist or other health professional and all OHIP or RAMQ records pertaining to each of them. Bell seeks also any medical records which are in the possession or custody of any hospital or other health care institution, including all clinical notes and reports made by any physician, psychiatrist or other health professional employed by, or on the staff of, such hospital or other health care institution for the period and all OHIP or RAMQ records in the possession or custody of such hospital or other health care institution.

[3] In its November 20, 2003 letter sent to Bell, CEP states that the witnesses who will be called will give evidence about the emotional, psychological and financial impact on them of Bell's failure to implement the results of the Joint Study. In a subsequent letter dated October 1, 2004, CEP adds that these witnesses will generally provide evidence in respect of injury to dignity and self-respect, financial hardship, stress and frustration caused to them and other bargaining unit members as a result of the discrimination they have experienced.

[4] Bell argues that, in making a claim for pain and suffering, these witnesses have necessarily put their respective medical conditions in issue and must disclose their medical records.

[5] CEP resists Bell's request arguing that a claim for compensation for pain and suffering does not necessarily involve an individual's medical condition and does not give an automatic right to the disclosure of medical records. CEP states that it has no intention of leading medical evidence in support of its claim for pain and suffering. Its witnesses will not allege that they sought any medical attention because of discrimination. And Bell's request is an unnecessary intrusion into their private lives.

[6] The Canadian Human Rights Commission also opposes Bell's motion. It adopts in their entirety CEP's submissions.

[7] In support of its request, Bell relies mainly on the decision of this Tribunal in *McAvinn. V. Straight Crossing Bridge Ltd.*, unreported, January 3, 2001, (T-558/1600), (CHRT). Bell counsels also referred the Tribunal to *Hay v. University of Alberta Hospital*, (1990) 69 D.L.R. (4th) 755, *Frenette v. Metropolitan Life Insurance Company*, [1992] 1 S.C.R. 647 and *A. (M.) v. Ryan*, [1997] 1 S.C.R. 157.

[8] In support of its arguments, CEP relies essentially on the decision rendered by the Supreme Court of Canada in *Ryan*.

[9] We do not agree that a claim for pain and suffering necessarily puts medical conditions in issue and calls for the production of medical records.

[10] This Tribunal has awarded compensation for pain and suffering without having heard medical evidence nor ordered the disclosure of medical records (*Druken et al. v. Canada Employment and Immigration Commission*, 8 C.H.R.R. D 4379, *Warman v. Kyburz*, 2003 CHRT 18, 2003/05/09, *Vlug v. CBC, T.D. 6/00, 2000/11/15*, *Bushey v. Sharma*, 2003 CHRT 21, 2003/06/05). Tribunals and Courts often rely on a person's testimony as well as the whole of the evidence to make an award for pain and suffering.

[11] That is not to say that an individual's medical condition and medical records will never be relevant to a claim for pain and suffering. Cases such as *McAvinn v. Strait Crossing Bridge Ltd*, 2001/11/15 (CHRT) illustrate that possibility.

[12] In *McAvinn*, the complainant clearly made her medical condition an issue when she testified that she had sought medical care in relation to the anxiety she had experienced because of the alleged discrimination.

[13] At this stage of the proceedings, unlike in *McAvinn*, the Tribunal has no evidence that the witnesses CEP intends to call ever sought medical care in relation to pain and suffering. In fact, CEP has clearly taken the position that these witnesses will not be alleging that they received medical attention because of Bell's alleged discrimination.

[14] CEP's two letters, however, show that the witnesses to be called intend to give evidence about the emotional, psychological and financial impact of Bell's failure to abide by the results of the Joint Study (*CEP's November 23, 2003 letter*), and propose to give evidence in respect of injury to dignity and self-respect, financial hardship, stress and frustration caused to them and other bargaining unit members (*CEP's October 1, 2004 letter*).

[15] In our opinion, it is not apparent that the medical records of the individuals who will be called to testify would yield any relevant information as to the financial hardship that these individuals might have experienced in relation to Bell's conduct. The same can be said with respect to frustration and injury to

dignity and self-respect.

[16] The emotional and psychological impact of Bell's conduct on these witnesses and the stress they might have experienced due to Bell's conduct is more problematic. As to this impact, their medical records may or may not be useful to Bell's defense. Indeed, Bell may best achieve its goals through cross-examination rather than by disclosure of medical records, with the attendant intrusion into the privacy of the witnesses.

[17] The Tribunal is not in a position at this time to make any ruling as to the disclosure of medical records as they relate to psychological and emotional impact or stress. Any decision will, if necessary, be made in the context of the evidence of each witness and how that evidence unfolds.

Signed by
J. Grant Sinclair, Chairperson

Signed by
Pierre Deschamps, Member

OTTAWA, Ontario

February 11, 2005

PARTIES OF RECORD

TRIBUNAL FILE: T503/2098

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