

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

BETWEEN:

MICHELINE MONTREUIL

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN FORCES

Respondent

RULING

MEMBER: Karen A. Jensen

2006 CHRT 43
2006/10/16

[1] This is a ruling in response to a request by the Respondent, the Canadian Forces, for an order requiring the Complainant, Ms. Micheline Montreuil, to disclose certain documents.

[2] The request is made in the context of a complaint filed by Ms. Montreuil. Ms. Montreuil considers herself to be a transgendered person. In her complaint, she alleges that the CF discriminated against her on the basis of her sex and perceived disability when they refused to allow her to enlist in the Forces in 1999.

[3] The Respondent has requested the following documents:

- (1) the expert report of Dr. Serge Côté, dated March 18, 1998;
- (2) the disability report of Dr. Jean Rodrigue, dated January 5, 1998 establishing the Complainant's inability to work from January 19, 1998 to August 19, 1998;

[4] The Complainant states that Dr. Côté's expert report was produced in the context of a grievance that she filed against a former employer, the Collège François-Xavier-Garneau. The question in that case was whether Mr. Montreuil, as she was known at the time, was fit to consent to a settlement agreement that provided for his voluntary resignation from the Collège. Mr. Montreuil maintained that he was unable to make a sound decision in that regard. He consulted with a psychiatrist, Dr. Serge Côté, who produced a report and testified on Mr. Montreuil's behalf at the arbitration. Excerpts of Dr. Côté's report appear in the Arbitrator's decision. In those excerpts, Dr. Côté makes reference to the fact that when Mr. Montreuil signed the agreement in December of 1997, he was in a state of significant distress having been confronted, for the first time in his life, with his double identity. It would appear that when he was referring to "double identity" Dr. Côté was referring to Mr. Montreuil's sexual identity.

[5] The disability report by Dr. Rodrigue is purportedly a document that was submitted to an insurance company in support of an application for insurance coverage for the period from December 1997 to August 1998, during which Mr. Montreuil was unable to work due to the psychological difficulties referred to above.

[6] In response to the Respondent's request for disclosure of the above-noted documents, Ms. Montreuil asserts that the requested documents are not relevant to the present proceedings and are subject to the right of professional secrecy. Therefore, they should not be disclosed.

[7] I agree with the Respondent that the documents are arguably relevant to the present proceedings. Ms. Montreuil's fitness to serve in the Canadian Forces is in issue in this case. The requested documents relate to psychological difficulties that would appear to flow, at least in part, from issues regarding her sexual identity. The documents allegedly relate to the fact that as a result of these difficulties, Ms. Montreuil was unable to work for the better part of 1998. This was one year prior to her attempt to enlist in the Canadian Forces on June 30, 1999.

[8] What is less clear, however, is whether these particular documents are subject to privilege or professional secrecy, as this term is employed in Quebec law. This point has not been properly addressed by the parties. Ms. Montreuil has alleged that the documents are subject to professional secrecy, but she has not made any argument with respect to this issue. The submissions of counsel for the Respondent and counsel for the Canadian Human Rights Commission deal principally with the issue of relevance. None of the parties have addressed the issues regarding privilege that arise in the context of this particular request.

[9] Having regard to these considerations, the matter will be addressed at the hearing on the merits of the case which is due to commence on October 23, 2006.

"Signed by"

Karen A. Jensen

OTTAWA, Ontario
October 16, 2006

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE: T1047/2805

STYLE OF CAUSE: Micheline Montreuil c. Forces canadiennes

RULING OF THE TRIBUNAL DATED: October 16, 2006

APPEARANCES:

Micheline Montreuil	For herself
Ikram Warsame	For the Canadian Human Rights Commission
Guy Lamb / Pauline Leroux	For the Respondent