Date: 20061031

Docket: T-1949-05

Citation: 2006 FC 1313

Ottawa, Ontario, October 31, 2006

PRESENT: THE HONOURABLE MR. JUSTICE BLANCHARD

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

ALAIN PARENT and
THE CANADIAN HUMAN RIGHTS COMMISSION

Respondents

REASONS FOR ORDER AND ORDER

1. Introduction

[1] This is an application for judicial review of a Canadian Human Rights Tribunal decision rendered on October 3, 2005 by member Athanios D. Hadjis granting respondent-complainant Alain Parent's motion to amend his complaint.

[2] The hearing date before the Tribunal is not yet scheduled.

[3] The applicant is asking this Court to set aside the Commission's decision on the ground that the Tribunal abused its discretion by allowing the complaint to be amended.

2. Factual Background

[4] On September 5, 2002, Alain Parent filed a complaint against the Canadian Forces (respondent). It was alleged on the complaint form that, on October 19, 2001 the respondent's chief medical officer categorized the complainant as unfit for civilian or military duty. The complainant asserted that he was mistreated and harassed by his superior officers because of his disability (post-traumatic stress disorder) and that they denied him medical treatments to which he was entitled, the whole in breach of section 7 of the *Canadian Human Rights Act*, R.S. 1985, c. H-6 (the Act). He further asserted that he was discharged in retaliation for having filed a complaint, also contrary to section 7 of the Act.

[5] On November 19, 2002, the respondent decided to discharge the complainant. On October 30, 2003, the investigation report recommended that the complaint be referred to the Tribunal for inquiry, which took place on May 25, 2004.

[6] On October 5, 2004, the complainant sought leave to amend his complaint and notified the Tribunal on October 21, 2004. On October 6, 2004, the respondent opposed the motion to amend. On October 28, 2004, the Tribunal cancelled the mediation scheduled between the parties and indicated that it was now up to the complainant to respond to the respondent's opposition set out in its letter of October 21, 2004.

[7] On January 31, 2005, the parties filed their Responses to the Tribunal's questionnaire, and on April 27, 2005, the Tribunal ordered the parties to file written representations regarding the complainant's motion to amend. On June 29, 2005, Alain Parent filed the document entitled "[Translation] Complainant's Representations Concerning Motion to Amend the Complaint"; and on July 21, 2005, the respondent filed its opposition. On September 30, 2005, the Tribunal granted the complainant's motion to amend. The decision was amended on October 3, 2005.

[8] A case conference was set for October 5, 2005 to determine the time line applicable to the planning and hearing of the case. On October 4, 2005, the respondent asked the Tribunal to adjourn the case conference because it was examining the possibility of filing an application for judicial review. The Tribunal denied the adjournment application, and on October 5, 2005, a case conference was held. At that time, the Tribunal set the following time-table: the complainant would have until December 6, 2005 to provide his statement of particulars and disclosure; the respondent had until February 21, 2006 to provide its statement of particulars and disclosure; the complainant had until March 7, 2006 to provide its reply to the respondent's statement of particulars. The hearing dates for this case will be set at the case conference of November 7, 2006.

3. Investigator's Report

[9] The investigator considered the following nine allegations in her report:

(1) The respondent asked the complainant to change doctors (according to the investigator, though, the evidence demonstrates that what the respondent actually

asked him to do was to find a doctor in Bagotville in addition to his treating physician in order to ensure medical follow-up, in accordance with procedure);

(2) The complainant received no medical attention between November 2001 and April 2002 (according to the investigator, the evidence demonstrates that he was seen by a physician in December 2001 and underwent psychological assessment in January 2002);

(3) The complainant did not receive a copy of the Textus final investigation report until several months after the respondent had received it (according to the investigator, though, the complainant was supposed to make an official request through the Access to Information Office—these allegations were not examined in the investigation as they call into question the integrity of a third party);

(4) The respondent received a message that the complainant had been accepted into a course at Borden, but did not inform the complainant of this until several weeks later;

(5) The respondent refused to grant the complainant a promotion (according to the investigator, in June 2001, the evidence supports the complainant's allegation, but the situation was rectified in November 2001 after a grievance was filed);

(6) The respondent posted a notice visible to all personnel to the effect that the complainant was not permitted to carry his service weapon (the investigator found that this was not normal procedure and, therefore, that the respondent had differentiated adversely against the complainant in his employment);

(7) In August 2001, the respondent ignored the recommendation of the treating physician to transfer the complainant because his health was deteriorating (the investigator noted that the complainant was transferred seven months later to Valcartier];

(8) LCol Faucher issued two counselling and probation (C&P) notices to the complainant while he was on sick leave, despite the fact that he knew about the complainant's condition; and

(9) On August 28, 2000, while the complainant was on authorized sick leave from August 17 to September 15, 2000, the respondent decided to relieve him of his chief investigator duties because of his health condition and replace him with another person. Furthermore, on September 25, 2000, the respondent refused to reinstate the complainant in his chief investigator position despite a note from his treating physician attesting to the fact that he was fit to go back to work.

[10] The investigator explained in her report that the first two allegations were unsubstantiated by the evidence and that, while there was evidence for the other allegations, they did not, except for the last one, demonstrate that the impugned actions were taken in retaliation against the complainant by reason of his health condition. The investigator pointed out, however, that some of the measures that were taken did not reflect standard procedure.

[11] Regarding the last allegation, she determined that the evidence supported the complainant's allegation that he was relieved of his duties as chief investigator by reason of his health condition. She recommended that this allegation of the complaint be referred to the Tribunal.

4. Impugned Decision

[12] The complainant filed a motion with the Tribunal so as to be allowed to amend his complaint in order to include the allegation that his health condition was a factor in the decision to discharge him. The Commission granted the complainant's motion. It is that decision which now forms the subject of this application for judicial review.

[13] In opposing the motion before the Tribunal, the respondent raised several issues. It asserted that the motion should be denied because there was no affidavit in support of the allegations. The Tribunal determined that its rules of procedure were not as formal as those of a court. Consequently, it is not necessary for affidavits to be produced in support of motions. Furthermore, the Tribunal held that it "has the discretion to amend a complaint to deal with additional allegations, provided sufficient notice is given to the respondent so that it is not prejudiced and can properly defend itself."

[14] The respondent also contended that there is no connection between the fact that the complainant was discharged and his initial human rights complaint. In the view of the Tribunal, the soundness of that argument can only be assessed following a full inquiry into all of the facts of the complaint; at this stage, the complainant is merely seeking to add certain allegations, and he will have the burden of proving them later on.

[15] The respondent also contended before the Tribunal that the complainant is trying to short-circuit the process by attempting to refer a complaint directly to the Tribunal without first having submitted it for consideration and investigation by the Commission. The Tribunal

rejected that argument and determined that the new facts being alleged do not constitute a complaint distinct from the one originally filed with the Commission in 2002. The Tribunal accepted the complainant's contentions to the effect that the discrimination he experienced and the filing of the complaint were factors that played a role in his subsequent discharge from the Canadian Forces.

[16] The Tribunal determined, referring to *Cook v. Onion Lake First Nation* (2002), 43 C.H.R.R. D/77, that issues arising out of the same set of factual circumstances should normally be heard together. However, an amendment to a complaint should not be granted where it would unjustly prejudice the other party. The Canadian Forces are asserting that they will be prejudiced if the motion is granted, specifically, that they will be obliged to prepare a defence against the additional allegations. The Tribunal was not convinced that this constitutes a real and significant prejudice. It also disagreed with the respondent's contention that the Canadian Forces would be prejudiced by the fact that the new allegations will not pass through the Commission's investigation and conciliation processes, as the original complaint had. According to the Tribunal, the benefit for a complainant is the opportunity to resolve complaints at an early stage, before referral to the Tribunal. Once a complaint is referred, though, a respondent can present the Tribunal with the same arguments it would have raised with the Commission investigator.

5. Issue

A. Did the Canadian Human Rights Tribunal abuse its discretion by allowing Alain Parent's complaint to be amended?

6. Standard of Review

[17] The Supreme Court of Canada has clearly indicated that, in a judicial review, the judge must carry out a pragmatic and functional analysis "[i]n every case where a statute delegates power to an administrative decision-maker" (*Dr Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226). The Federal Court of Appeal decision in *Sketchley v. Canada (Attorney General)*, [2005] F.C.J. no. 2056 (QL), is entirely in line with that directive, as shown in the following passage at paragraph 50: "… this analysis must be applied anew with respect to each decision, and not merely each general type of decision of a particular decision-maker under a particular legislative provision." (emphasis in the original)

[18] In the case before us, the specific issue subject to a functional and pragmatic analysis is the following: Did the Tribunal abuse its discretion by allowing the amendment?

[19] Under subsection 48.9(2) of the Act, the Tribunal enjoys considerable discretion with respect to the conduct of proceedings. The exercise of this discretion for the purpose of granting a motion to amend a complaint is dependent not only on the Act but on an assessment of the facts. It is therefore a question of mixed law and fact.

(i) *Presence or absence of a privative clause or statutory right of appeal*

[20] The first factor that must be considered is the presence or absence of a privative clause or statutory right of appeal. In the matter before us, the jurisdiction of the Tribunal is founded on the following provision:

44(3) On receipt of a report referred to in subsection (1), the Commission

(*a*) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and

(ii) that the complaint to which the report relates should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*); or

(*b*) shall dismiss the complaint to which the report relates if it is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or

(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*).

44(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :

a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :

(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,
(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe (2) ni de la rejeter aux termes des alinéas 41*c*) à *e*);

b) rejette la plainte, si elle est convaincue :

(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,

(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41*c*) à *e*).

[21] Upon reading this provision, it is clear that no direction is given with respect to appeals, so this factor does not affect the standard of review. As the Supreme Court stated in *Dr. Q*, at paragraph 27, "silence is neutral and does not imply a high standard of scrutiny" (quoting from *Pushpanathan v. Canada (Minister of Citizenship and Immigration*), [1998] 1 S.C.R. 1222 at paragraph 30).

(ii) *Relative expertise*

[22] According to *Sketchley*, there are three dimensions for the Court to consider when evaluating the factor of the Tribunal's expertise: it must characterize the expertise of the tribunal in question; it must consider its own expertise relative to that of the tribunal; and it must identify the nature of the specific issue before the administrative decision-maker relative to this expertise (*Pushpanathan, supra,* at paragraph 33).

[23] As I said above, the question before the Court is one of mixed fact and law. The expertise of the Commission relates to the determination of facts. Furthermore, the question of law is closely related to the Tribunal's area of expertise, i.e., the interpretation of its enabling statute. In the area of human rights, the determination of an issue of mixed fact and law is within the ambit of the Tribunal's specific expertise. The Tribunal has been granted a remarkable degree of latitude in establishing its rules of procedure and, in this sense, holds a certain advantage over the Court when it comes to determining whether or not an amendment should be allowed. In my opinion, the Tribunal's relative expertise on this issue militates in favour of applying a standard that requires a higher degree of curial deference.

(iii) *Object of the legislation and the provision in particular*

[24] The object of the Act, as set out in section 2, is essentially to prevent discriminatory practices based on a series of enumerated grounds. As the Court pointed out in *Sketchley*, at paragraph 74, “The protection of human and individual rights is a fundamental value in Canada and any institution, organization or person given the mandate by law to delve into human rights issues should be subjected to some control by judicial authorities.”

[25] The object of subsection 48.9(1) is to empower the Commission to accomplish its task efficiently and effectively, in accordance with the principles of procedural fairness. This provision must be interpreted broadly so that it can address unforeseen issues. It is likely that Parliament enacted the provision to cover the full range of procedural situations. That is an indication that considerable restraint is called for.

(iv) *Nature of the issue*

[26] A question of mixed law and fact calls for “more deference if the question is fact-intensive, and less deference if it is law-intensive” (*Dr. Q*, at paragraph 34). If the Commission decides to reject an amendment request on the basis of a holding it makes with respect to a question of law, less deference will be required when reviewing that decision. In the case at bar, the Commission’s primary consideration was whether the act of discrimination alleged in the amendment was based on the same circumstances that formed the basis of the initial complaint. The Tribunal also had to examine the question of the prejudice caused. These are basically questions of fact, warranting a higher degree of restraint.

[27] Accordingly, based on my pragmatic and functional analysis, I find that the standard of review applicable to the matter before us is that of reasonableness *simpliciter*.

[28] With respect to mixed questions of law and fact, the Federal Court of Appeal came to the same determination in *Canadian Human Rights Commission v. Attorney General of Canada*, 2005 FCA 154, at paragraph 22 :

> In *Lincoln v. Bay Ferries Ltd.*, (2004), 322 N.R. 50, 2004 FCA 204, the Court stated (at para. 16) that the parties agreed on the standards of review applicable to the different kinds of questions decided by a Tribunal under the *Canadian Human Rights Act*. Thus, questions of law decided by the Tribunal are reviewable on a standard of correctness; questions of mixed fact and law are reviewable on a standard of reasonableness *simpliciter*; and "fact-finding and adjudication in a human rights context" are reviewable for patent unreasonableness. (my emphasis)

7. Analysis

[29] The relevant sections of the Act are set out in the Appendix.

[30] The Tribunal enjoys considerable discretion with respect to the examination of complaints under subsections 48.9(1) and (2) and sections 49 and 50 of the Act. As for the exercise of that discretion in regard to an amendment request, Mr. Justice Robert Décary wrote in *Canderel Ltd. v. Canada (C.A.)*, [1994] 1 F.C. 3, 1993 CanLII 2990 (F.C.A.), that " […] the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the

allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice."

[31] The courts are very deferential when this discretion is exercised, and in *Bell Canada v. Communications, Energy and Paperworkers Union of Canada (C.A.)*, [1999] 1 F.C. 113, [1998] F.C.J. no. 1609, Décary J.A. emphasized that this was in fact Parliament's intention:

> The Act grants the Commission a remarkable degree of latitude when it is performing its screening function on receipt of an investigation report. Subsections 40(2) and 40(4) and sections 41 and 44 are replete with expressions such as "is satisfied", "ought to", "reasonably available", "could more appropriately be dealt with", "all the circumstances", "considers appropriate in the circumstances" which leave no doubt as to the intent of Parliament. […] Parliament did not want the courts at this stage to intervene lightly in the decisions of the Commission.

[32] The applicant submits that the amendments made by respondent Alain Parent do not arise from the same facts as in the original complaint and, for that reason, should not be allowed. More specifically, the applicant contends that the decision to discharge Alain Parent was made by persons other than those referred to in the original complaint.

[33] In *Cook v. Onion Lake First Nation*, [2002] C.H.R.R. no. 12, Member Groarke wrote: "The rule of practice is accordingly that issues arising out of the same set of factual circumstances should normally be heard together."

[34] In *Kavanagh v. C.S.C.* (May 31, 1999), T505/2298 (C.H.R.T.), the Chairperson of this Tribunal adopted the reasoning of the Ontario Board of Inquiry in *Entrop v. Imperial Oil Limited*

(1994) 23 C.H.R.R. D/186, where, at paragraph 9, it is written that it "would be impractical, inefficient and unfair to require individuals to make allegations of reprisals only through the format of separate proceedings." The same approach was followed in *Fowler v. Flicka Gymnastics Club*, 31 C.H.R.R. D/397 (B.C.H.R.C.), where the complainant argued that the amendment arose "out of the facts which form the basis of the original complaint."

[35] In addition, the Nova Scotia Court of Appeal in *I.M.P. Group Ltd. v. Dillman*, [1995] N.S.J. No. 326, criticized a Board of Inquiry for allowing an amendment that went beyond the facts of the original complaint. In paragraph 35, the Court stated as follows:

> To raise a new complaint at the hearing stage would circumvent the whole legislative process that is designed to provide for attempts at conciliation and settlement. This matter did not go through the preliminary stages of investigation, conciliation and referral by the Commission to an inquiry pursuant to s. 32(a) of the *Act*. The Board dealt with a matter which had never been referred to it.

[36] In the case at bar, the Commission's decision to recommend referral of a complaint to the Tribunal was based on the evidence, which [TRANSLATION] "demonstrated that these measures were taken in retaliation against the complainant because of his health condition." The Commission determined that the allegation to the effect that the complainant was relieved of his chief investigator position by reason of his disability should be accepted.

[37] The applicant is not challenging the claim that the respondent Alain Parent, during the investigation of the initial complaint, informed the investigator that he was discharged on discriminatory grounds. Indeed, that fact is explicitly mentioned in the investigator's report.

[38] The facts forming the basis of the initial complaint, including respondent Alain Parent's disability (post-traumatic stress disorder), are the same as those forming the basis of the amendment granted by the Tribunal. In other words, the disability that caused him to be relieved of his chief investigator position according to his initial complaint was also the alleged cause of his discharge. Therefore, the discriminatory acts alleged against the Canadian Forces in both the initial complaint and in the granted amendment are based on this same factor, i.e., the disability suffered by respondent Alain Parent.

[39] It would have been preferable for respondent Alain Parent to seek the amendment of the complaint at the time he was discharged, since it would have enabled the question to be investigated at the preliminary stage. Be that as it may, I believe that the Tribunal did not abuse its discretion by allowing the amendment, which does not constitute a new complaint in my opinion because the two alleged discriminatory acts are founded essentially upon the same factual circumstances.

[40] The issue of prejudice is the predominant factor to be considered in such circumstances: the amendment must not be granted if it results in a prejudice to the other party. In this case, even though the complaint could have been amended at an earlier stage of the proceedings, nothing in the evidence indicates that the Canadian Forces were unable to prepare themselves and argue their position on the issues raised. The amendment caused no prejudice to the Canadian Forces, and in the circumstances, the balance of convenience favours the position of Alain Parent.

[41] The Tribunal enjoys a wide discretion under the Act in terms of decision-making at this stage. Given the circumstances in this case, where the same factor—the health of Alain Parent—is being advanced as the motive for the two alleged discriminatory acts, and given the fact that Alain Parent's discharge was raised in the investigation report, I find that the Tribunal had jurisdiction to render its decision and did not abuse its discretion. Thus, I find that the Tribunal was entitled to determine that the new facts alleged do not constitute a complaint distinct from the one referred to the Commission in 2002.

[42] The applicant also contends that the Tribunal by-passed the analysis and investigation process of the Canadian Human Rights Commission provided for in section 49 of the Act. He explains that it is up to the Commission to decide, after investigation, whether or not a complaint will be referred to the Tribunal for a hearing. Whereas the amendment incorporates new facts that arose while the case was still at the Commission investigation stage, the applicant argues that a delay of almost two years before filing a motion to make the amendment is unacceptable.

[43] I do not accept the applicant's argument. In the circumstances, [there is a common factor underpinning] the allegations of discrimination in both the initial complaint and the granted amendment have a common thread, namely, the health of respondent Alain Parent. This constitutes the link allowing the Tribunal to rule as it did. The discrimination complained of by the respondent is alleged to be a factor in his discharge from the Canadian Forces as well.

[44] Accordingly, while one may speak of a new alleged discriminatory act, i.e., discharging the respondent, the act is the result of the same circumstances and, strictly speaking, one cannot call this a new complaint. In the absence of a prejudice to the applicant, the Tribunal was entitled to grant the amendment and, as I determined above, did not abuse its discretion.

[45] Finally, I also reject the applicant's arguments with respect to the absence of evidence to allow the motion. I concur with what the Tribunal wrote on that subject:

> The Tribunal's Rules of Procedure are not as formal as those of a court. Motions are not required to be supported by an affidavit (see Rule 3). Indeed, they need not follow any particular format. It is common for the Tribunal to receive motions by way of letters and even email messages. The main objective is to ensure that each party be given full and ample opportunity to be heard by the Tribunal.

[46] It should be noted that allegations made in an amended complaint must be proven at the Tribunal hearing stage.

8. Conclusion

[47] In the case at bar, the Tribunal's decision to allow the amendment does not violate the rules of procedural fairness. Allowing the amendment was within the ambit of the Tribunal's discretionary jurisdiction. I am therefore of the opinion that the application for judicial review should be dismissed with costs.

ORDER

THE COURT ORDERS AS FOLLOWS:

1. The application for judicial review is dismissed with costs.

"Edmond P. Blanchard"
Judge

Certified true translation
François Brunet, LLB, BCL

APPENDIX

41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that

(*a*) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;

(*b*) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;

(*c*) the complaint is beyond the jurisdiction of the Commission;

(*d*) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(*e*) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.

41. (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :

a) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;

c) la plainte n'est pas de sa compétence;

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;

e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.

48.9 (1) Proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

48.9 (1) L'instruction des plaintes se fait sans formalisme et de façon expéditive dans le respect des principes de justice naturelle et des règles de pratique.

(2) Le président du Tribunal

(2) The Chairperson may make rules of procedure governing the practice and procedure before the Tribunal, including, but not limited to, rules governing

(a) the giving of notices to parties;

(b) the addition of parties and interested persons to the proceedings;

(c) the summoning of witnesses;

(d) the production and service of documents;

(e) discovery proceedings;

(f) pre-hearing conferences;

(g) the introduction of evidence;

(h) time limits within which hearings must be held and decisions must be made; and

(i) awards of interest.

49. (1) At any stage after the filing of a complaint, the Commission may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.

(2) On receipt of a request, the Chairperson shall institute an inquiry by assigning a member of the Tribunal to inquire into the complaint, but the Chairperson may assign a

peut établir des règles de pratique régissant, notamment :

a) l’envoi des avis aux parties;

b) l’adjonction de parties ou d’intervenants à l’affaire;

c) l’assignation des témoins;

d) la production et la signification de documents;

e) les enquêtes préalables;

f) les conférences préparatoires;

g) la présentation des éléments de preuve;

h) le délai d’audition et le délai pour rendre les décisions;

i) l’adjudication des intérêts.

49. (1) La Commission peut, à toute étape postérieure au dépôt de la plainte, demander au président du Tribunal de désigner un membre pour instruire la plainte, si elle est convaincue, compte tenu des circonstances relatives à celle-ci, que l’instruction est justifiée.

(2) Sur réception de la demande, le président désigne un membre pour instruire la plainte. Il peut, s’il estime que la difficulté de l’affaire le justifie, désigner trois membres, auxquels dès lors les articles 50 à 58 s’appliquent.

panel of three members if he or she considers that the complexity of the complaint requires the inquiry to be conducted by three members.

(3) If a panel of three members has been assigned to inquire into the complaint, the Chairperson shall designate one of them to chair the inquiry, but the Chairperson shall chair the inquiry if he or she is a member of the panel.

(4) The Chairperson shall make a copy of the rules of procedure available to each party to the complaint.

(5) If the complaint involves a question about whether another Act or a regulation made under another Act is inconsistent with this Act or a regulation made under it, the member assigned to inquire into the complaint or, if three members have been assigned, the member chairing the inquiry, must be a member of the bar of a province or the Chambre des notaires du Québec.

(6) If a question as described in subsection (5) arises after a member or panel has been assigned and the requirements of that subsection are not met, the inquiry shall nevertheless proceed with the member or panel as designated.

50. (1) After due notice to the Commission, the complainant,

(3) Le président assume lui-même la présidence de la formation collégiale ou, lorsqu'il n'en fait pas partie, la délègue à l'un des membres instructeurs.

(4) Le président met à la disposition des parties un exemplaire des règles de pratique.

(5) Dans le cas où la plainte met en cause la compatibilité d'une disposition d'une autre loi fédérale ou de ses règlements d'application avec la présente loi ou ses règlements d'application, le membre instructeur ou celui qui préside l'instruction, lorsqu'elle est collégiale, doit être membre du barreau d'une province ou de la Chambre des notaires du Québec.

(6) Le fait qu'une partie à l'enquête soulève la question de la compatibilité visée au paragraphe (5) en cours d'instruction n'a pas pour effet de dessaisir le ou les membres désignés pour entendre l'affaire et qui ne seraient pas autrement qualifiés pour l'entendre.

50. (1) Le membre instructeur, après avis conforme à la Commission, aux parties et, à son appréciation, à tout intéressé, instruit la plainte pour

the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.

(2) In the course of hearing and determining any matter under inquiry, the member or panel may decide all questions of law or fact necessary to determining the matter.

(3) In relation to a hearing of the inquiry, the member or panel may

(*a*) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the member or panel considers necessary for the full hearing and consideration of the complaint;

(*b*) administer oaths;

(*c*) subject to subsections (4) and (5), receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit, whether or not that evidence or information is

laquelle il a été désigné; il donne à ceux-ci la possibilité pleine et entière de comparaître et de présenter, en personne ou par l'intermédiaire d'un avocat, des éléments de preuve ainsi que leurs observations.

(2) Il tranche les questions de droit et les questions de fait dans les affaires dont il est saisi en vertu de la présente partie.

(3) Pour la tenue de ses audiences, le membre instructeur à le pouvoir :

a) d'assigner et de contraindre les témoins à comparaître, à déposer verbalement ou par écrit sous la foi du serment et à produire les pièces qu'il juge indispensables à l'examen complet de la plainte, au même titre qu'une cour supérieure d'archives;

b) de faire prêter serment;

c) de recevoir, sous réserve des paragraphes (4) et (5), des éléments de preuve ou des renseignements par déclaration verbale ou écrite sous serment ou par tout autre moyen qu'il estime indiqué, indépendamment de leur admissibilité devant un tribunal judiciaire;

d) de modifier les délais prévus par les règles de

or would be admissible in a court of law;

(*d*) lengthen or shorten any time limit established by the rules of procedure; and

(*e*) decide any procedural or evidentiary question arising during the hearing.

(4) The member or panel may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

(5) A conciliator appointed to settle the complaint is not a competent or compellable witness at the hearing.

(6) Any person summoned to attend the hearing is entitled in the discretion of the member or panel to receive the same fees and allowances as those paid to persons summoned to attend before the Federal Court.

pratique;

e) de trancher toute question de procédure ou de preuve.

(4) Il ne peut admettre en preuve les éléments qui, dans le droit de la preuve, sont confidentiels devant les tribunaux judiciaires.

(5) Le conciliateur n’est un témoin ni compétent ni contraignable à l’instruction.

(6) Les témoins assignés à comparaître en vertu du présent article peuvent, à l’appréciation du membre instructeur, recevoir les frais et indemnités accordés aux témoins assignés devant la Cour fédérale.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1949-05
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. ALAIN PARENT *et al.*
PLACE OF HEARING:	Québec, Quebec
DATE OF HEARING:	October 5, 2006
REASONS FOR ORDER AND ORDER:	The Honourable Mr. Justice Blanchard
DATED:	October 31, 2006

APPEARANCES:

Pierre Lecavalier	FOR THE APPLICANT
Josée Potvin	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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Fradette, Gagnon, Têtu, Le Bel, Potvin Chicoutimi, Quebec	FOR THE RESPONDENTS