



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Adele Mercier

Applicant

-and-

**Queen's University, Alistar Maclean, Christine Sypnowich, Dan Bradshaw,
David Bakhurst, Gordon Smith, Henry Laycock,
Rahul Kumar, Deborah Knight and Sergio Sismondo**

Respondents

-and-

Queen's University Faculty Association

Intervenor

INTERIM DECISION

Adjudicator: Maureen Doyle
Date: September 14, 2012
File Number: 2010-07587-I
Citation: 2012 HRTO 1737
Indexed as: **Mercier v. Queen's University**

WRITTEN SUBMISSIONS

Adele Mercier, Applicant)	Ron Ellis, Counsel
)	
)	
Queen's University, Alistar Maclean,)	
Christine Sypnowich, Dan Bradshaw,)	
David Bakhurst, Gordon Smith, Henry)	Alan Whyte, Counsel
Lacock, Rahul Kumar, Deborah Knight)	
and Sergio Sismondo, Respondents)	
)	

INTRODUCTION

[1] This is an Application filed under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), alleging discrimination with respect to employment because of sex and disability in addition to reprisal.

[2] The applicant is a professor of philosophy at the respondent university. Her Application relates to events at the university which she alleges constitute discrimination on the basis of sex and disability in addition to reprisal contrary to the *Code*.

[3] A number of Requests to Intervene have been received in this matter. In particular, the following persons and groups have made such a request: Mark Smith; Feminists Against Academic Discrimination (FAAD); Jennifer Saul; Monique Frize; Christopher Riddle; Janice Anderson; Dorit Naaman; Tonia St. Germain; and We Advocate Gender Equity (WAGE).

[4] Requests to intervene in matters before this Tribunal are governed by Rule 11. With respect to persons or organizations not the Ontario Human Rights Commission, the following portions of Rule 11 apply:

11.1 The tribunal may allow a person or organization to intervene in any case at any time on such terms as the Tribunal may determine. The Tribunal will determine the extent to which an intervenor will be permitted to participate in a hearing.

Intervention by a Person or Organization other than the Commission

11.2 A request to intervene by a person or organization, other than a request by the Commission, must be made in Form 5, Request to intervene, and must be delivered to all parties and any affected persons or organizations identified in the Application or the Response and filed with the Tribunal.

11.3 A Request to Intervene must include an answer to each question in Form 5 and must:

- a) describe the issue(s) that the person or organization wants to address;

- b) explain the proposed intervenor's interest in the issue(s) and its expertise, if any, regarding the issue(s);
- c) set out the proposed intervenor's position, if any, on each of the issues raised in the Application and Response; and
- d) set out all the material facts upon which the proposed intervenor will rely.

11.4 Where a party wishes to respond to a Request to Intervene, the response must be in Form 11, Response to Request, and must be filed with the Tribunal no later than 21 days after the Request to Intervene was delivered.

11.5 A copy of the Response to Request under Rule 11.4, if any, must be delivered to the proposed intervenor, all other parties and any identified or affected persons or organizations and filed with the Tribunal.

[5] In *D.R. v. Upper Grand District School Board*, 2011 HRTO 1187 ("*Upper Grand District School Board*"), at paragraph 12, the Tribunal stated:

In accordance with Rule 11 of the Tribunal's Rules of Procedure, the Tribunal may allow a person or organization to intervene in any case at any time on such terms as the Tribunal may determine. Tribunal jurisprudence has articulated a number of factors for consideration in assessing a request for intervention:

- i. Whether the intervenor has a significant interest or special contribution to make on the issues;
- ii. Whether the intervenor is likely to provide assistance to the Tribunal that will not otherwise be provided;
- iii. Whether the intervention will unduly delay, disrupt or prejudice the determination of the rights of the parties; and
- iv. If intervention is appropriate, are there conditions that should be placed on the intervention.

[6] The Tribunal has considered the above-noted criteria in determining a number of Requests to Intervene, including in *Carasco v. University of Windsor*, 2011 HRTO 630 ("*Carasco*").

[7] In his Request to Intervene, Mark Smith states that he wishes to address “the matter of Dr. Mercier’s impugned integrity and alleged harassment”. He indicates that the applicant was his doctoral thesis advisor and that he currently is employed in another department of the respondent university. He states that it is his position that Dr. Mercier “is a scholar, supervisor and colleague of great integrity” and that he wishes to see her “full status...restored on adequately dignified terms”. He indicates that his evidence will be his personal experience of the applicant as his doctoral supervisor. He indicates that the terms upon which he seeks to intervene is to testify on her behalf.

[8] The Request to Intervene filed by FAAD indicates that the issue it wishes to address are the “gender bias” of events described by the applicant. It indicates that its interest in the Application is that it “monitors discrimination against women, especially feminists, in academia in U.S., Canada and internationally”. It states its position on the facts and issues in the Application by asserting that they “raise questions about gender bias in the treatment of faculty”. In describing what material facts the proposed intervenor would rely upon, the Request states, in addition to the Application and Response, “my professional understanding of the way anti-feminist intellectual harassment operates in academia”. In describing the terms on which the proposed intervenor seeks to intervene, the Request states “As an expert witness on feminists in academia; as a professional with a vested interest in the outcome of this...hearing”. The name of the individual completing the Request to Intervene was Sharon Leder, who identifies herself as the president of FAAD, and it can be assumed that these last two responses indicate a reference to her.

[9] In the Request to Intervene filed by Jennifer Saul, she states that she wishes to address the “under-representation of women in philosophy, barriers to women in academia, norms of discussion in philosophy of language”. She indicates that her interest in the proceedings relates to her expertise, as she has authored several papers on women in philosophy and is the Director of Society for Women in Philosophy UK, is a founding member of International Women in Philosophy Task Force and is Distinguished Woman Philosopher 2011. She indicates that her position regarding the

issues raised in the Application is that the applicant describes a “pattern of behaviour” which she states is common for women in academia and that “Use of violent examples, and of one’s colleagues in examples, is commonplace in philosophy of language for comic effect”. She indicates that she would rely upon studies of gender in philosophy and academia and studies of biases regarding women and “personal experience as a philosopher of language”. The terms upon which she seeks to intervene are “whatever terms are appropriate, including as an expert witness”.

[10] In the Request to Intervene filed by Monique Frize, she states that the issue she wishes to address is gender bias in the events described by the Applicant. She indicates that her interest is related to the fact that she is an author of a book on women in science and engineering and that she believes that the issues are “similar to those of women in philosophy”. She indicates that she has been involved in “similar cases” through the Canadian Association of University Teachers and that she feels that her “background and expertise could help clarify some key points in this case”. She states that her position on the facts and issues raised in this matter is that they “raise questions about gender bias in the treatment of women faculty especially in male-dominated fields”. The material facts she indicated she would rely on were the Application, the Response and her “professional understanding of the way that gender bias and intellectual and personal harassment operates in academia”. She seeks to intervene as an “expert witness on women in academia”.

[11] In the Request to Intervene filed by Christopher Riddle, he states that the issue he wishes to address is “the allegations of sex discrimination at Queen’s University”. In describing his interest and expertise, he states that he earned his PhD in the Philosophy Department at the respondent university and that he was a student there during the time period relevant to “the majority of allegations”. He states that he is an Assistant Professor of Philosophy, though he does not indicate where, and states that his work “focuses primarily on oppression centred around the experience of disability”. He states that he has been “trained to be sensitive to issues of oppression and discrimination” and that he believes he “can add insight into the accusations made”. In describing his

position on the facts and issues raised in this matter, he states that he cannot comment on all of the applicant's allegations, but that he can "support the claim that sex discrimination was present in the department from minimally, 2007 until 2011". He described the material facts upon which he would rely by stating "I witnessed discrimination first hand through preferential treatment being given to a select group of male students, while female students were dismissed". He states that he would be "willing to provide reports outlining in detail, my experiences within the department in whatever medium is deemed most relevant at the time".

[12] In the Request to Intervene filed by Janice Anderson, in describing the issues she wishes to address, she states that she wishes to "address the symbolic construction within workplace discourse of 'alienation space' which develops around those who question the deep power structures which rule organizational life". She indicates an interest in "how the micro practices of what we say about each other at work intersect with bureaucratic decision-making in predictable ways to create 'outsiders within'". She indicates that her interest in this matter springs from her "academic specialty in organizational conflict and change processes". She states that she has written in the area of "organizational shunning and on the differential organizational experiences of professional men and women". She indicates that she has "experienced these processes in the course of [her] decade-long equal pay lawsuit against [her] employer". Her employer is not the respondent. She describes her position on the facts and issues raised in the Application by commenting on her observations of "organizational shunning" and states that it is essential for wrong-doing to be recognized "to alter the communication patterns in the lower levels of the organization". She indicates that the material facts upon which she would rely are contained in the materials filed in this matter. She seeks to act as a witness.

[13] In the Request to Intervene submitted by Dorit Naaman, she indicates that she wishes to be sure "systemic gendered aspects" of the allegations are explored. She states that as a woman faculty member at the respondent university, she has a "stake" in ensuring equity for faculty and students, but that she has no special expertise in the

area. Her position regarding the facts and issues raised in this matter is that the applicant's allegations "seem to be highly gendered". In indicating upon what material facts she would rely, she makes reference to her participation in an independent study about labour issues at the respondent university by Helen Breslauer and the Henry Report which she describes as being "on racial issues" at the respondent university. She seeks to be a "feminist witness to gendered issues in academia".

[14] In the Request to Intervene filed by Tonia St. Germain, she indicates that the issue she wishes to address is gender bias. She indicates that her interest and expertise in the issue derive from the fact that she is a Board member for FAAD. Her position on the facts and issues raised in this matter is that they "raise questions about gender bias in the treatment of faculty". The material facts upon which she would rely are the Application and Response and her "professional understanding of the way anti-feminist intellectual harassment operates in academia". She seeks to intervene as an "expert witness on feminists in academia" and "as a professional with a vested interest in the outcome of this Tribunal hearing".

[15] In the Request to Intervene filed by WAGE, they state that the issues they wish to address are gender discrimination, denials of due process, hostile workplace, male faculty hostility and retaliation. In describing their interest and expertise in the issues, they state that they have been "aiding women faculty in the U.S. since 1993" and that they "counsel and support plaintiffs in all aspects of their cases". They state that they act as expert witnesses and generate publicity and that their Governing Council is made up mostly of women professors "who have either fought discrimination cases themselves and/or have led the fight on behalf of others". They identify themselves as "former plaintiffs". They state that they understand gender discrimination "from the inside out" and that one of their goals is to educate others. With regard to their position on the facts and issues, they state that this case "fits the pattern of gender discrimination that we have dealt with individually and at WAGE for decades". They indicate that the material facts upon which they would rely are the Application and Response and "our experience and expertise in the manifestations of gender

discrimination in the academy”. The terms upon which they seek to intervene are “as expert witnesses, as feminists, as professors”.

[16] The respondents filed a number of Responses to the Requests to Intervene, opposing them. Generally, they submitted that those seeking intervenor status do not have a significant interest regarding the issues in this matter and that it is not likely that they will be “able to provide assistance to the Tribunal that would not otherwise be provided by the parties”. They cite the factors articulated in *Upper Grand District School Board*, and they cite *Carasco*.

[17] The only Request to Intervene to which the applicant has filed a Response is the request filed by Mark Smith. In her Response, she indicates that she “does not oppose the Respondents’ request to dismiss” the request. She indicates agreement that his

participation in the proceedings as an intervenor, rather than as a witness only, is not so important as to justify the procedural complications involved in his being granted intervenor status.

Decision

[18] Given the number of Requests to Intervene received in this matter, and given that each group and individual making a request seeks to lead evidence, the inclusion of these groups and individuals as parties would delay these proceedings, which may well be quite lengthy in any event. There is potential prejudice to the respondents associated with this delay and they have objected to these Requests. I am mindful of the potential prejudice and of the respondents’ objections and I am not satisfied that the groups and individuals making the Requests have a special interest or would be of special assistance to the Tribunal which would warrant their inclusion as parties. The Requests to Intervene are denied.

[19] The Request filed by Christopher Riddle does not indicate a significant interest in the outcome of these proceedings and he has described the area of his expertise as “oppression centred around the experience of disability”. The applicant may seek to

introduce him as a witness offering evidence of his observations of sex discrimination at the respondent university. It is not clear, however, that as an intervenor he would be able to provide any assistance to the Tribunal that would not otherwise be provided, especially given the lack of details in his request as to the special insight he may bring. Further, granting him intervenor status would unduly delay these proceedings.

[20] Similarly, the Request filed by Mark Smith does not indicate a significant interest in the outcome of these proceedings. He has simply indicated that he seeks to testify on the applicant's behalf. The applicant may seek to call him as a witness, but as with Christopher Riddle, it is not clear that as an intervenor he would be able to provide any assistance as an to the Tribunal that would not otherwise be provided. Further, granting him intervenor status would unduly delay these proceedings as he wishes to lead evidence.

[21] The Request filed by Dorit Naaman does not indicate any significant interest in the outcome of these proceedings that is not shared by arguably all faculty at the respondent university. While she is a faculty member at the respondent university, I note that the Queen's University Faculty Association ("QUFA") has already been granted intervenor status. She has not articulated in her Request any significant or special interest which is different from those of QUFA and in any event she has stated a general interest in gender issues, about which she indicates she has no special expertise that would assist the Tribunal. Further, granting her intervenor status would unduly delay these proceedings as it appears she seeks to lead evidence about studies on labour issues and issues of race at the university which are not clearly related to the issues in the Application.

[22] With respect to the Requests filed by FAAD, Jennifer Saul, Monique Frize, Janice Anderson, Tonia St. Germain and WAGE, their Requests do not indicate any significant interest in the outcome of these proceedings. Their interest is described as more generally an interest in gender discrimination issues regarding women in academia. It is not clear that they will be able to provide the Tribunal with any meaningful assistance which would not otherwise be provided by the parties. Rather, their main argument in

favour of obtaining standing is based on the assertion they make that they have knowledge and experience they would bring to these issues. As stated at paragraph 26 in *Carasco*, in considering a Request to Intervene filed by Academic Women for Justice/Femmes Universitaires pour la Justice, “The parties are capable of relying on the academic literature and calling the necessary witnesses to address the issues in which this organization professes to be interested”. FAAD has not provided details which would provide a basis for a finding that they could provide assistance to the Tribunal. WAGE has indicated that it has experience as “former plaintiffs” and as supporting women academics in other cases and that they generate publicity. It is not evident that their participation as a party would be of assistance to the Tribunal. Finally, as noted above, granting these parties intervenor status would unduly delay these proceedings for what appears to be no added benefit to the Tribunal.

[23] I am not seized.

Dated at Toronto, this 14th day of September, 2012.

“Signed by”

Maureen Doyle
Vice-chair