



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**B E T W E E N:**

**Neville Hewage**

**Applicant**

**-and-**

**City of Greater Sudbury, Nick Benkovich, Gary Comin, Drew Peloquin, Richard Dixon, Wendi Mannerow and Kevin Fowke**

**Respondents**

**-and-**

**Canadian Union of Public Employees, Local 4705**

**Intervenor**

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## INTERIM DECISION

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**Adjudicator:** Keith Brennenstuhl  
**Date:** December 3, 2012  
**File Number:** 2012-11186-I  
**Citation:** 2012 HRTO 2249  
**Indexed as:** **Hewage v. Sudbury (City)**

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**WRITTEN SUBMISSIONS**

Neville Hewage, Applicant	)	Self-represented
	)	
	)	
	)	
City of Greater Sudbury, Nick Benkovich,	)	Mireille Khoraych, Counsel
Gary Comin, Drew Peloquin, Richard	)	
Dixon, Wendi Mannerow and Kevin Fowke,	)	
Respondents	)	

[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 on the basis of race, colour, ancestry, ethnic origin and place of origin.

[2] By Case Assessment Direction dated July 31, 2012 the Tribunal directed that a summary hearing by conference call be held to determine whether this Application should be dismissed, in whole or in part, on the basis that there is no reasonable prospect that the Application or part of the Application will succeed and to deal with various Requests for Order During Proceedings. The Case Assessment Direction directed the parties to deliver to each other and file with the Tribunal copies of any documents or cases they intend to rely on no later than 14 days prior to the summary hearing. The summary hearing is scheduled for January 25, 2013.

[3] On November 8, 2012, the applicant made a Request that the respondents produce the job descriptions for four of the personal respondents and that documents to be relied on by the respondents be produced no later than 45 days prior to the summary hearing.

## **JOB DESCRIPTIONS**

[4] The applicant submits that the job descriptions are required because the respondents have requested that the individual respondents be removed from the Application and that the job descriptions would be of assistance in determining the issue of the removal of the personal respondents.

[5] In the Case Assessment Direction the Tribunal cited *Persaud v. Toronto District School Board*, 2008 HRTO 31 wherein the test to be applied in determining whether personal respondents should be removed, consisting of five non-exhaustive criteria, is set out. In my view, the job descriptions are neither necessary, nor relevant, to any of those criteria. Moreover, the applicant has not pointed to any other criteria for which the

job descriptions may be of relevance in determining the issue. The Request for production of the job descriptions is denied.

## EARLY PRODUCTION

[6] The applicant submits that early production of the documents that the respondents intend to rely on at the summary hearing should be ordered because 14 days will not provide him with sufficient time to prepare his defence and because the Tribunal's general rule is that documents must be disclosed no later than 45 days prior to the hearing.

[7] The general rule to which the applicant refers is to be found at Rule 16 of the Tribunal's Rules of Procedure; however, Rule 19A.2 provides that Rule 16 does not apply to summary hearings. The Tribunals' Practice Direction confirms that Rule 16 does not apply to summary hearings. Rule 19A.2 provides for the provision of directions for disclosure prior to the summary hearing and the Tribunal routinely provides that the parties are to exchange their documents no later than 14 days prior to the summary hearing. Such was the direction in the Case Assessment Direction.

[8] The applicant has not pointed to any circumstances that make the 14 day disclosure in this matter inappropriate or why this length of time is not sufficient for him. In my view, there is no compelling basis for deviating from the Tribunal's practices and the direction on production set out in the Case Assessment Direction. The request for early production is denied.

Dated at Toronto, this 3<sup>rd</sup> day of December, 2012.

*"Signed by"*

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Keith Brennenstuhl  
Vice-chair