

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

FALLAN DAVIS

Complainant

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

CANADA BORDER SERVICES AGENCY

Respondent

NOTICE OF MOTION

The respondent will make a motion to the Tribunal orally at the outset of the hearing on Monday March 15, 2010, pursuant to section 3(1) of the Canadian Human Rights Tribunal Rules of Procedure.

THE MOTION IS FOR AN ORDER:

- (a) That the presiding member recuse himself on the basis that a reasonable apprehension of bias has arisen; and
- (b) That a new member be appointed to hearing the complaint.

THE GROUNDS FOR THE MOTION ARE:

- (a) Through the presiding member's comments, rulings and conduct in the course of the hearing a reasonable apprehension of bias has arisen.
- (b) Comments made by the member suggest that he is partial to the complainant's position before having heard any of the respondent's witnesses.

(c) Comments made by the member suggest that he intends to allow the Complaint before having heard any of the respondent's witnesses.

(d) Comments made by the member suggest that he is approaching the respondent's case with a closed mind.

(e) Restrictions imposed by the member on cross-examination of the complainant's witnesses are unreasonable and have prejudiced the respondent's case. Through such restrictions the member has unreasonably undermined the respondent's ability to present its case, giving rise to a reasonable apprehension of bias.

(f) An informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude that it is more likely than not that the member, whether consciously or unconsciously, will not decide this case fairly.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion.

March 9, 2010	Department of Justice Ontario Regional Office The Exchange Tower 130 King Street West Suite 3400, Box 36 Toronto, Ontario M5X 1K6 Per: Sean Gaudet Tel: 416-973-0392 Fax: 416-952-4518 Solicitor for the Respondent, Canadian Border Services Agency
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