



**Before:** Judge Sean Wallace  
**Registry:** Nairobi  
**Registrar:** Wanda L. Carter

WAMARA TIBENDERANA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON CASE MANAGEMENT**

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**Counsel for Applicant:**

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Anthony Kreil WILSON

**Counsel for Respondent:**

Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat  
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## **Introduction**

1. On 10 March 2024, the Applicant, a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (“MONUSCO”) filed an application challenging his separation from service for sexually harassing two women who were members of the Canadian military supporting MONUSCO’s activities.

2. In his application, the Applicant alleged, inter alia, that his due process rights were violated in that “he was presumed to be guilty from the outset” and that the allegations were not established by clear and convincing evidence.

3. Ten days before the scheduled hearing in this case, the Applicant filed a “Submission Regarding Racial Discrimination in Canadian Armed Forces” in which he alleged he “discovered extensive information regarding racial discrimination in the Canadian forces against black people.”

4. The submission included internet links to six websites. Five websites relate to a class action lawsuit filed in 2016 in the Federal Court of Canada. The lawsuit alleges that class members suffered racial discrimination and/or harassment in connection with their military service at any time since 17 April 1985. Although the parties have reached a proposed settlement of those claims, the settlement apparently has not been approved by the Court.

5. The Applicant indicates that he intends to “confront the CAF [Canadian Armed Forces] personnel witnesses in this case, all of whom are white, with the above rulings and challenge their credibility with respect to the claims they have made against [the Applicant].”

6. The Respondent opposes the Applicant’s submission and argues that it should be rejected.

## **Consideration**

7. First, the Applicant never raised any allegation of racial discrimination prior to filing his submission last week. He did not raise racial discrimination in his

application. He did not raise racial discrimination in his application. The Application determines the scope of the judicial review. See, Dispute Tribunal Statute, articles 2.1 and 9.4. It is manifestly unfair to add allegations of racial discrimination on the eve of the hearing.

8. Second, it is essential to note that the racial discrimination described in the lawsuit is not alleged to have been committed by the Respondent or its agents. Nor do the lawsuits allege that any of the witnesses in this case had committed acts of racial discrimination. Instead, the lawsuit claims that the Canadian Armed Forces was negligent in addressing racial discrimination within its ranks. Indeed, Canada disputes this allegation, and the settlement agreement expressly provides that the proposed settlement “is not to be construed as an admission of liability by Canada.” *Id.*, para. 19.02.

9. Third, the Dispute Tribunal’s Rules of Procedure provide that documents and statements made in connection with “any informal conflict-resolution process” are confidential and may not be used before the Dispute Tribunal. *Id.*, Article 15.7. This rule is consistent with both the Canadian settlement agreement (see, para. 18.04) and rules common in many national jurisdictions. See, *e.g.*, *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, [2013] 2 S.C.R. 623; *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35, [2014] 1 S.C.R. 800, at para. 31; and (United States) Fed.R.Evid 408.

10. Finally, the proffered evidence is not relevant to the issues in this case. The Applicant claims that he will use these websites to challenge the credibility of the “CAF personnel witnesses”. However, the Tribunal has not been able to see any mention of the witnesses in the referenced documents.

11. It would be the height of discriminatory stereotyping to presume that all white members of the Canadian military are racist. Yet that presumption underlies the Applicant’s argument regarding the use of this material. The Tribunal refuses to participate in that stereotyping.

12. Accordingly, the Applicant’s Submission Regarding Racial Discrimination in Canadian Armed Forces is rejected.

**Conclusion**

13. In view of the foregoing, the Tribunal REJECTS the Applicant's Submission Regarding Racial Discrimination in Canadian Armed Forces and the proposed use thereof.

*(Signed)*

Judge Sean Wallace

Dated this 7<sup>th</sup> day of November 2024

Entered in the Register on this 7<sup>th</sup> day of November 2024

*(Signed)*

Wanda L. Carter, Registrar, Nairobi