

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**BETWEEN:**

**TELECOMMUNICATIONS EMPLOYEES ASSOCIATION OF MANITOBA INC.,  
BARBARA CUSTANCE, CARMEN GIROUX, CHUCK HANDO,  
KATHLEEN MULLIGAN, JANICE SIRETT**

**Complainants**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**MANITOBA TELECOM SERVICES**

**Respondent**

**RULING**

**MEMBER:** Michel Doucet

2007 CHRT 28  
2007/07/16

[1] The Complainants filed a motion for an Order compelling the Canadian Human Rights Commission and the Respondent to produce a complete, uncensored copy of the Employment Equity Compliance Report of Manitoba Telecom Services, dated May 26, 2004, and, in particular for the production of the *Interim Report* mentioned in Appendix “D” of said Report. This motion had been presented to the Tribunal on July 3, 2007, and the Tribunal Chairperson, Grant Sinclair, who was the assigned case manager, directed that it be dealt with at the opening of the hearing on July 9, 2007.

[2] The Respondent opposes the production of this document. It argues that this document contains privileged information protected by section 34 of the *Employment Equity Act*, S.C. 1995, c. 44, which states:

34 (1) Information obtained by the Commission under this Act is privileged and shall not knowingly be, or permitted to be, communicated, disclosed or made available without the written consent of the person from whom it was obtained.

(2) No member of the Commission or person employed by it who obtains information that is privileged under subsection (1) shall be required, in connection with any legal proceedings, other than proceedings relating to the administration or enforcement of this Act, to give evidence relating to that information or to produce any statement or other writing containing that information.

(5) No information obtained by the Commission or a Tribunal under this Act may be used in any proceedings under any other Act without the consent of the employer concerned.

[3] The Respondent further argues that any information contained in this document would not be relevant and would constitute hearsay evidence.

[4] I will deal briefly with the second argument. The production of documents is subject to the test of arguable relevance, not a particularly high bar to meet. There must be some relevance between the information or document sought and the issue in dispute. There can be no doubt that it is in the public interest to ensure that all relevant evidence is available in a proceeding such as this one. A party is entitled to get information or documents that are or could be arguably relevant

to the proceedings. This does not mean that these documents or this information will be admitted in evidence or that significant weight will be afforded to them.

[5] Does section 34 of the *Employment Equity Act* prevent the disclosure of this document? The purpose of the *Employment Equity Act* is to ensure equal representation in the workplace of persons who fall within the four designated groups -- women, Aboriginal peoples, persons with disabilities, and visible minorities. Pursuant to its mandate under section 22, the Commission may initiate an employment equity compliance review audit on any employer subject to the *Employment Equity Act*. Subsection 34(1) provides that information obtained by the Commission from employers during an audit is privileged and shall not knowingly be communicated, disclosed or made available without the consent of the person from whom it was obtained.

[6] The Respondent argues that the public benefit to be fostered by ensuring that the information contained in the *Interim Report* remains confidential is to promote a full and frank exchange of information between employers and the Commission.

[7] In considering the public interest in keeping information confidential, it is necessary to consider the purpose of the *Canadian Human Rights Act* and the *Employment Equity Act*. Both are quasi-constitutional in nature: see *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571, *Ontario (Human Rights Commission) v. Simpson-Sears*, [1985] 2 S.C.R. 536. The purpose of *Employment Equity Act* is to bring about equal representation in the workplace of members of designated groups. While the purpose of the *Canadian Human Rights Act* is to give effect to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices. Both purposes as we can see are very similar and they both seek to attain very important social goals.

[8] The Complainants are not seeking disclosure of the documents or information provided by the Respondent to the Commission, which information would be privileged under section 34 of the *Employment Equity Act*. Rather, the document requested is the *Interim Report*, a document

prepared by the Commission, which is an Appendix to the *Final Report*, prepared by the Commission. The *Final Report* was disclosed without any objections neither by the Commission, nor by the Respondent.

[9] The Respondent argued that some part of the *Interim Report* contained information which had been provided to the Commission and was therefore protected under section 34 of the *Employment Equity Act*. The Respondent provided a copy of the *Interim Report* to the tribunal in which it had highlighted the passages which, according to them, made reference to such information. I have had the opportunity to review this document and the highlighted passages.

[10] Upon considering the evidence before me, I come to the conclusion that, putting aside the passages that have been highlighted, there is no reason why the document should not be disclosed to the Complainants.

[11] I therefore order that the Respondent provide forthwith to the Complainant a copy of the *Interim Report* in Appendix “D” of the Employment Equity Compliance Review Report, dated May 26, 2004 and that the following information, which is privileged under section 34 of the *Employment Equity Act*, be blanked out :

- Page 3 - Section entitled II Audit Methodology and Status
- Page 4 - The first line in the first paragraph of Section B. Employer Accomplishments
- Page 10 - The paragraph following the heading *Methodology for 2002 Employment Systems Review*
- Page 10 - The First paragraph following the heading – *Areas Selected for the Assessment of MTS's Employment System Review*

[12] The conditions contained in Chairperson Sinclair's Order of June 29, 2007, apply to this Order.

*"Signed by"*

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Michel Doucet

OTTAWA, Ontario  
July 16, 2007

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**PARTIES OF RECORD**

TRIBUNAL FILE: T1161/4306

STYLE OF CAUSE: Telecommunications Employees Association of  
Manitoba Inc., Barbara Custance,  
Carmen Giroux, Chuck Hando,  
Kathleen Mulligan, Janice Sirett  
v. Manitoba Telecom Services

DATE AND PLACE OF HEARING: July 9 to 11, 2007  
Winnipeg, Manitoba

RULING OF THE TRIBUNAL DATED: July 16, 2007

APPEARANCES:

R. Ivan Holloway For the Complainants  
Luke Bernas

No one appearing For the Canadian Human Rights Commission

Gerry Parkinson For the Respondent  
Paul McDonald