

**Canadian Human Rights
Tribunal**



CANADA

**Tribunal canadien des
droits de la personne**

BETWEEN:

**COMMUNICATIONS, ENERGY AND PAPERWORKERS
UNION OF CANADA AND FEMMES-ACTION**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA

Respondent

RULING

PANEL: J. Grant Sinclair
Pierre Deschamps

2005 CHRT 34
2005/09/15

Canada

[1] This motion is the most recent of a series of motions by Bell for the production/disclosure of documents.

[2] In its remedy claim, the complainants, CEP and Femmes-Action, are asking for \$1,000 per year, under s. 53(2)(c) of the *CHRA*, for the pain and suffering experienced by each employee in a CEP female-dominated job class, from February 11, 1990 (or the date they became an employee, if such date is later) until the date of the final Tribunal decision. CEP and Femmes-Action allege that these employees experienced pain and suffering because of the failure of Bell to implement the joint pay equity study and make wage adjustments.

[3] To substantiate its claims, the CEP will call as witnesses, six or seven former Bell operators. These witnesses will provide evidence of a representative nature in respect of injury to dignity and self-respect, financial hardship, stress and frustration caused to them, other bargaining unit members and, in some cases their families.

[4] Bell's request for disclosure is extraordinary in its scope. Bell asks that these witnesses and their respective spouse(s) or partner(s) produce up-to-date documents showing income, expenses, assets, liabilities for the period extending from February 11, 1990 to the present. More specifically:

- a) tax returns;
- b) agreements for credit cards, loans, mortgages, lines of credit and other sources of finance used or available and monthly and/or annual statements related thereto;
- c) any documents showing dates of birth and retirement, date(s) of marriage(s), cohabitation(s), separation(s), divorce(s), birth of any child and showing any arrangement, agreement or court order for the sharing of income, maintenance, expenses, assets and liabilities such as child support and/or spousal support;

- d) any financial statements prepared either for the purposes of applying for financing, for personal or other use;
- e) documents showing or relating to any other matters or circumstances having a material effect on the financial circumstances of each witness, including but not limited to, serious illness, accident, fire, choice of vacation destinations and other personal travel.

[5] Bell argues that the documents are arguably relevant and required for an understanding of the financial circumstances of each witness during the period in question, so that Bell can conduct a proper cross-examination.

[6] Bell also wants to use the financial circumstances of the CEP witnesses to challenge the expert opinion of Dr. Gould as to the appropriate interest rate on any monetary compensation that the Tribunal may award.

[7] CEP objects to the disclosure/production of these documents because they are not arguably relevant, they are an unnecessary intrusion into the private life of the proposed witnesses, and these documents or records are privileged and confidential. The Commission takes no position on Bell's motion.

[8] In addition to its argument of "necessity", Bell also put forward the recent Supreme Court of Canada decision in *Smith & Nephew Inc. v. Glegg*, 2005 SCC 31 in support of its demands.

[9] *Glegg* did not deal with financial disclosure. It dealt with disclosure of psychiatric medical records. During her examination for discovery, the plaintiff revealed that she had consulted a psychiatrist about 40 times. The defendants argued that the psychiatrist's medical records were relevant and necessary for a full and proper defence. They sought production. The plaintiff objected.

[10] In its reasons, the Supreme Court paid particular attention to the provisions of the *Québec Civil Code* and the *Québec Charter of Human Rights and Freedom*. This aspect of its reasons is not relevant here.

[11] What is relevant is the Court's "Requirement of relevance" portion of its decision. On the question of relevance, the Supreme Court noted that a defendant must show not that the evidence is relevant in the traditional sense, but that disclosure of the document will be useful, is appropriate, is likely to contribute to advancing the debate and is based on an acceptable objective that he or she seeks to attain in the case, and that the document is related to the dispute (at para.23).

[12] As we noted earlier, Bell's request is inordinately over-reaching. For example, Bell asks the Tribunal to order third parties, i.e. spouses or partners to produce certain documents. We have no jurisdiction to make such an order.

[13] Further, Bell's motion may require that the witnesses, spouses or partners create documents that do not already exist. We can not require this.

[14] Another example of over-reaching is Bell's request that the witnesses produce documents showing or relating to any other matters or circumstances having a material effect on the financial circumstances of each witness. This request amounts to the proverbial "fishing expedition". It lacks specificity and requires the witnesses to make a determination of whether any document in the past 15 years has had a "material effect" on their financial circumstances.

[15] The issue for the Tribunal on pain and suffering is two-fold. First, did the complainants suffer any pain and suffering because of Bell's refusal to make wage adjustments; and, secondly, if so, what is the quantum of damages that should be awarded.

[16] In their "will say" statements, CEP's witnesses allege that Bell's refusal to fully address the wage gap has negatively impaired their financial circumstances. This has had certain consequences. For example, some could not make ends meet; some were not able to provide

hockey or dance lessons for their children; some had to cash in RRSP's to better assist in their children's education; some could not afford braces for the children's teeth, etc. As a result, they experienced pain and suffering to the tune of \$1,000 per witness per year for a number of years.

[17] In making this claim for compensation, the complainants are not asking for compensation for financial loss. Rather, their claim is that the alleged financial hardship led to the witnesses experiencing pain and suffering.

[18] The onus is on the complainants to establish this link. It is not on Bell to disprove this. In our opinion, the productions sought by Bell would not be useful or advance the debate before the Tribunal. Rather, the cross-examination of these witnesses under oath would provide a more useful evidentiary basis for the Tribunal to decide whether or not the witnesses did experience pain and suffering and if so, what, if any, is the appropriate amount of compensation.

[19] As for Bell's argument that it needs these productions to deal with Dr. Gould's expert opinion, the Tribunal notes that Dr. Gould's evidence dealt essentially with the question of the appropriate rate of interest to be applied to any compensation that may be awarded by the Tribunal.

[20] Dr. Gould's evidence was general in nature. He did not consider the specific financial circumstances of any of the CEP members. In fact, he opined that the individual financial circumstances of the CEP members were not relevant.

[21] For Dr. Gould, it was not important to know where each of the complainants lived, their level of debt, their spending habits, their family situation, etc.

[22] Given the financial information he had about the group, i.e. individuals earning between "\$27,000 - \$32,000 annually, Dr. Gould was able to conclude that, as a group, they all had some debt.

[23] Dr. Gould's general conclusion as to whether CEP members, Bell telephone operators, had mortgages, consumer loans or credit cards can be easily tested by cross-examination of the CEP witnesses.

[24] Further, the validity of any general assumptions or conclusions, rather than specific circumstances, made by Dr. Gould can be refuted by expert evidence from Bell.

[25] Bell's motion is dismissed.

Signed by

J. Grant Sinclair, Chairperson

Signed by

Pierre Deschamps, Member

OTTAWA, Ontario
September 15, 2005

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE: T503/2098

STYLE OF CAUSE: Communications, Energy and Paperworkers
Union of Canada and Femmes-Action
v. Bell Canada

RULING OF THE TRIBUNAL DATED: September 15, 2005

WRITTEN SUBMISSIONS BY:

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