

BETWEEN:

ROSEALIE JACKSON

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ROYAL CANADIAN MOUNTED POLICE

- and -

STAFF SERGEANT ROBERT TAUBMAN

Respondents

RULING ON JURISDICTION

Ruling No. 1
2001/01/17

PANEL: Anne Mactavish, Chairperson

[1] This case involves two complaints brought by Rosealie Jackson, the first against her employer, the Royal Canadian Mounted Police, and a second complaint brought against one of Ms. Jackson's co-workers, Sergeant Robert Taubman. Ms. Jackson alleges that Sgt. Taubman sexually harassed her, contrary to Section 14 of the Canadian Human Rights Act. Ms. Jackson further alleges that the RCMP failed to provide her with a harassment-free work environment, contrary to Sections 7 and 14 of the Act.

[2] Sgt. Taubman objects to this matter proceeding on the basis that a reasonable apprehension of institutional bias exists with respect to the Canadian Human Rights Tribunal. Specifically, Sgt. Taubman asserts that the Tribunal lacks sufficient institutional independence so as to allow it to provide the parties with a fair and impartial hearing.

[3] In this regard, Sgt. Taubman relies upon the recent decision of the Federal Court in *Bell Canada v. CTEA, Femmes Action and Canadian Human Rights Commission* ("Bell Canada") (1). In *Bell Canada*, Madam Justice Tremblay-Lamer of the Trial Division of the Federal Court of Canada found that the Canadian Human Rights Tribunal was not an institutionally independent and impartial body as a result of the Canadian Human Rights Commission having the power to issue guidelines binding upon the Tribunal (2). Tremblay-Lamer J. also concluded that the independence of the

Tribunal was compromised by requiring the Chairperson of the Tribunal's approval for members of the Tribunal to complete cases after the expiry of their appointments (3). As a consequence, Tremblay-Lamer J. ordered that there be no further proceedings in the Bell Canada matter until such time as the problems that she identified with the statutory regime were corrected.

[4] Sgt. Taubman submits that the statutory scheme identified by Tremblay-Lamer J. as being inadequate to ensure the independence of the Canadian Human Rights Tribunal is engaged in this proceeding, and that, as a result, this case should not proceed until the final outcome of the Bell Canada matter. Sgt. Taubman further contends that the need to have this case heard by an independent Tribunal is enhanced as a result of the Commission's decision to refer this matter to the Tribunal for a hearing, contrary to the recommendation of the Commission investigator.

[5] The RCMP does not object to the jurisdiction of the Tribunal.

I. Applicability of the Bell Canada Decision to the Present Case

[6] Although invited to do so, neither the Canadian Human Rights Commission nor Ms. Jackson made any submissions with respect to the jurisdiction of the Tribunal to proceed with this matter in light of the decision in Bell Canada. They have not, however, conceded that the decision in Bell Canada applies to the facts of this case, and thus I will deal firstly with that issue.

[7] There is no suggestion that the Commission has issued guidelines in relation to the issues that arise in these complaints. I am of the view, however, that the reach of the decision in Bell Canada is not limited to cases in which guidelines have actually been issued by the Commission pursuant to Section 27 (2) of the Canadian Human Rights Act. According to Tremblay-Lamer J., the problem relating to the guidelines stems from the provisions of the Canadian Human Rights Act giving the Commission the power to make guidelines, and not from the existence of the guidelines themselves (4). This view is reaffirmed in the dispositive portion of Tremblay-Lamer J.'s decision where she states:

I conclude that the Tribunal's Vice-Chairperson erred in law and was not correct in determining that it was an independent and impartial body with respect to the power of the Commission to issue guidelines binding on the Tribunal ... (emphasis added) (5)

[8] The power of the Commission to issue guidelines is derived from the statute. This power is not limited to pay equity cases. The Canadian Human Rights Act governs all proceedings before the Tribunal. As a consequence, I am of the view that the decision in Bell Canada applies to cases where no guidelines may actually be in existence.

[9] With respect to the power conferred on the Chairperson of the Tribunal to approve members completing cases after the expiry of their appointments, I note that this type of provision is by no means unique to the Canadian Human Rights Act. Comparable provisions exist in the enabling legislation governing many administrative tribunals (6). Nevertheless, Tremblay-Lamer J. has concluded that Section 48.2 (2) of the Canadian Human Rights Act interferes with the security of tenure of members of the Tribunal in such a way that the independence and impartiality of the Tribunal is compromised.

[10] The problem that Tremblay-Lamer J. identified with the statute relates not to the way that the Chairperson's discretion may be exercised in a particular case, but rather to the existence of the discretion itself (7). Her conclusion in this regard is binding upon me.

[11] For these reasons I am satisfied that the decision in Bell Canada applies to this case.

II. Conclusion Regarding the Complaint against Sgt. Taubman

[12] In light of the foregoing finding, and given the timely objection by Sgt. Taubman (8), I am of the view that I have no alternative but to adjourn Ms. Jackson's complaint against Sgt. Taubman sine die, until such time as the problems with the Canadian Human Rights Act identified by Tremblay-Lamer J. are corrected, or until the Canadian Human Rights Tribunal is found to be institutionally independent and impartial. It is with great reluctance that I come to this

conclusion. It is well established that there is a public interest in having complaints of discrimination dealt with expeditiously (9). The effect of my decision to adjourn the complaint against Sgt. Taubman sine die does not serve this public interest. It does not serve the interest of Ms. Jackson, who, two years after filing her complaint regarding Sgt. Taubman with the Commission, remains unable to have her 'day in court'. It also leaves Sgt. Taubman with the Sword of Damocles of unproven allegations of discrimination hanging over his head for an indefinite period of time, with no opportunity for vindication.

[13] However, the public interest extends beyond speedy justice: Canadians involved in the human rights process are entitled to hearings before a fair and impartial Tribunal. According to the Federal Court, the Canadian Human Rights Tribunal is not such a Tribunal.

III. The Complaint against the RCMP

[14] Ms. Jackson has filed a separate and distinct complaint against the RCMP. The RCMP has indicated that it has no objection to the jurisdiction of the Tribunal, as it relates to Ms. Jackson's complaint against it. Accordingly, I am not making any order with respect to the complaint against the RCMP at this time.

[15] I note that correspondence received from counsel for the Commission and Ms. Jackson makes reference to 'the joinder of the complaints', and indicates that they may have further submissions to make on this issue. In the event that any of the parties wish to make submissions with respect to whether Ms. Jackson's complaint against the RCMP can or should proceed in light of my conclusion regarding the complaint against Sgt. Taubman, such submissions may be made in writing, and should be served and filed with the Tribunal no later than February 12, 2001.

IV. Order

[16] For the foregoing reasons, Sgt. Taubman's motion is granted, and Ms. Jackson's complaint against Sgt. Taubman is adjourned sine die, until such time as the problems with the Canadian Human Rights Act identified by Tremblay-Lamer J. in *Bell Canada* are corrected, or until the Canadian Human Rights Tribunal is found to be institutionally independent and impartial.

1. [2000] F.C.J. No. 1747
2. See Section 27 (2) and (3) of the Canadian Human Rights Act.
3. Section 48.2 (2) of the Canadian Human Rights Act.
4. *Bell Canada*, at para. 86.
5. *Bell Canada*, at para. 128.
6. See, by way of example: Section 63 of the Immigration Act, R.S.C. 1985, c- I-2, with respect to members of the Immigration and Refugee Board; Section 9(1) of the Canadian International Trade Tribunal Act, R.S.C. 1985, c. 47 (4th supp.), Section 12(2) of the Canada Labour Code governing members of the Canada Industrial Relations Board; Section 14(3) of the Status of the Artist Act, 1992, c. 33 with respect to members of the Canadian Artists and Producers Professional Relations Tribunal; and Section 7(1) of the Veterans Review and Appeal Board Act, S.C. 1995, c. 18. See also Section 45(1) of the Federal Court Act and Section 16 of the Tax Court of Canada Act, R.S.C. 1985, c. T-2.
7. *Bell Canada*, at para. 109.
8. I am satisfied that Sgt. Taubman's objection to the jurisdiction of the Tribunal was raised at the earliest practicable opportunity, and that, therefore, the principle of waiver does not operate against Sgt. Taubman. (See *Zündel v. Canadian Human Rights Commission et al.*, [2000] F.C.J. No. 1838 and *In Re Human Rights Tribunal and Atomic Energy of Canada Ltd.*, [1986] 1 F.C. 103)

9. Coincidentally, this principle was restated by Mr. Justice Richard, then of the Federal Court (Trial Division) in an earlier decision in the Bell Canada case. (See Bell Canada v. Communications, Energy and Paperworkers Union of Canada et al., [1997] F.C.J. No. 207)

Anne L. Mactavish, Chairperson

OTTAWA, Ontario
January 17, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T611/6900

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RULING OF THE TRIBUNAL DATED: January 17, 2001

APPEARANCES:

Cynthia Sams For Rosealie Jackson

Eddie Taylor For the Canadian Human Rights Commission

Michel Lapierre For Royal Canadian Mounted Police

James Barnes For Staff Sergeant Robert Taubman