

**Employment Equity Review Tribunal
d'emploi**

Tribunal de l'équité en matière

BETWEEN:

LAURENTIAN BANK OF CANADA

Employer

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

RULING ON JURISDICTION

Ruling No. 1

2001/06/27

PANEL: Anne Mactavish, Chairperson

[1] The Laurentian Bank has requested a review of the direction issued to the Bank by the Canadian Human Rights Commission pursuant to Section 25 (3) of the *Employment Equity Act*. In accordance with Section 28 of the *Employment Equity Act*, upon receipt of such a request, I am required to establish an Employment Equity Review Tribunal to consider the matter.

[2] While apparently seeking relief from an Employment Equity Review Tribunal, at the same time, the Bank has also challenged the jurisdiction of the Tribunal, invoking its right to have its case dealt with by an independent and impartial Tribunal. According to the Bank, the Employment Equity Review Tribunal is not such a Tribunal. In this regard, the Bank refers to 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 that Tribunal.⁽²⁾ Tremblay-Lamer J. also concluded that the independence of the Canadian Human Rights 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.

[3] The Bank contends that its request to review the Commission’s direction should be held in abeyance until such time as the deficiencies in the legislation identified by Tremblay-Lamer J. have been addressed by amendments to the legislation.

[4] The Canadian Human Rights Commission submits that the provision of the *Canadian Human Rights Act* giving the Commission the power to enact Guidelines which are binding on the Canadian Human Rights Tribunal have no bearing on cases under the *Employment Equity Act*, heard by Employment Equity Review Tribunals.

[5] With respect to the ability of members to complete cases after the expiry of their appointments, the Commission states that the *Employment Equity Act* is silent on this issue. The provisions of Section 48.2 of the *Canadian Human Rights Act*, requiring the approval of the Chairperson of the Canadian Human Rights Tribunal for members to be able to complete cases to which they have been assigned do not apply to Tribunals constituted under the *Employment Equity Act*. As I understand the Commission’s argument, it is contending that, as a result, the problem identified by Tremblay-Lamer J. in this regard does not arise in connection with Employment Equity Review Tribunals.

[6] Madam Justice Tremblay-Lamer’s decision in *Bell Canada* was overturned by the Federal Court of Appeal shortly after the parties filed their initial submissions in relation

to this matter.⁽⁴⁾ Notwithstanding the decision of the Federal Court of Appeal, however, the Bank contends that no steps should be taken in this matter until such time as the period for applying for leave to appeal to the Supreme Court of Canada in the *Bell Canada* matter has expired.

[7] The Bank further submits that the issue of the applicability of the 1998 *Canadian Human Rights Act* amendments to Employment Equity Review Tribunals must be determined in any event. According to the Bank, if the position of the Commission is correct, and Section 48.2 (2) of the *Canadian Human Rights Act* does not apply to members of Employment Equity Review Tribunals, then the power to extend the terms of members to allow them to complete cases reverts to the Minister of Justice. The Trial Division of the Federal Court has previously found that this type of structure did not provide the necessary level of institutional independence.⁽⁵⁾ The Bank submits that nothing in the most recent decision of the Federal Court of Appeal in *Bell Canada* affects that conclusion.

I. Analysis

[8] Both parties have approached this issue on the assumption that there is nothing in the *Employment Equity Act* that specifically addresses the issue of what happens when the term of a member of an Employment Equity Review Tribunal expires in the middle of a proceeding. Neither party appears to be aware of Section 28 (4.1) of the *Employment Equity Act*, which section was introduced as part of the consequential amendments to the *Employment Equity Act* resulting from the enactment of Bill S-5.⁽⁶⁾

[9] Section 28 (4.1) of the *Employment Equity Act* provides, in part:

A member whose appointment expires may, with the approval of the Chairperson [of the Canadian Human Rights Tribunal], conclude any hearing that the member has begun

[10] The language of Section 28 (4.1) of the *Employment Equity Act* is very similar to that of Section 48.2 (2) of the *Canadian Human Rights Act*. In its recent decision in the *Bell Canada* case, the Federal Court of Appeal found that the power of the Chairperson of the Canadian Human Rights Tribunal pursuant to Section 48.2 (2) of the *Canadian Human Rights Act* was not fatal to the independence of the Canadian Human Rights Tribunal. The Court noted that the Chairperson is sufficiently insulated from the executive branch of government, holding that the power vested in the Chairperson by Section 48.2 (2) of the *Canadian Human Rights Act* does not compromise the independence or impartiality of the Canadian Human Rights Tribunal.

[11] This reasoning is equally applicable to Employment Equity Review Tribunals.

[12] Finally, the Bank contends that no steps should be taken in this matter until such time as the period for applying for leave to appeal to the Supreme Court of Canada in the

Bell Canada matter has expired. The fact that Bell Canada may choose to seek leave to appeal the recent decision of the Federal Court of Appeal is irrelevant. At this point, the decision of the Federal Court of Appeal is a valid judicial pronouncement, and represents the state of the law. I see no basis to further delay this matter.

II. Order

[13] For the foregoing reasons, the Bank's motion is dismissed. The Tribunal Registry will canvass the parties for suitable dates for the hearing.

Anne L. Mactavish, Chairperson

OTTAWA, Ontario

June 27, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: E004/0101

STYLE OF CAUSE: Laurentian Bank of Canada v. Canadian Human Rights Commission

DECISION OF THE TRIBUNAL DATED: June 27, 2001

APPEARANCES:

Dominique Monet For the Laurentian Bank of Canada

René Duval For the Canadian Human Rights Commission

1. Docket T-890-99, November 2, 2000.
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. 2001 FCA 161
5. *Bell Canada v. Canadian Telephone Employees Ass'n*, [1998] 3 F.C. 244 (T.D.), per McGillis J. In fact, the power to make appointments under the *Canadian Human Rights Act* vested in the Governor in Council, both before and after the 1998 amendments, and not with the Minister of Justice. It was the power of the Governor in Council to extend the terms of Tribunal members, so as to allow them to complete hearings, that Madam Justice McGillis found compromised the independence of Tribunal members under the pre-1998 Tribunal structure. Section 48.2 (2) was added to the *Canadian Human Rights Act* after the decision of McGillis J.
6. See *An Act to Amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts*, S.C. 1998, c. 9, Section 39 (1).