

2001/11/01

PANEL: Anne Mactavish, Chairperson

[1] This case involves a complaint brought by Ann Hudjic against Air Canada. Ms. Hudjic alleges that Air Canada discriminated against her in the provision of a service customarily available to the public on the basis of her disability, contrary to Section 5 of the *Canadian Human Rights Act*.

[2] Air Canada 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, Air Canada 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, Air Canada relies upon the decision of the Trial Division 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 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] Madam Justice Tremblay-Lamer's decision in *Bell Canada* was overturned by the Federal Court of Appeal.⁽⁴⁾ Bell Canada has applied for leave to appeal from the decision of the Federal Court of Appeal, and that application is pending. Air Canada contends that no steps should be taken in this matter until such time as there has been a final determination of the question of the Tribunal's independence, either by the denial of Bell Canada's application for leave, or by a decision on the merits from the Supreme Court of Canada. In the alternative, Air Canada says that the Tribunal should refer the question of its independence to the Federal Court, pursuant to Section 18.3 of the *Federal Court Act*.

[5] The Canadian Human Rights Commission submits that the issue of the independence of the Canadian Human Rights Tribunal has been determined by the Federal Court of Appeal in the *Bell Canada* matter. Further, Air Canada has failed to establish at least two of the three requirements for a stay to be granted.⁽⁵⁾ Regardless of whether or not Air Canada's motion raises a serious issue, the Commission says that Air Canada has not adduced any evidence that it will suffer irreparable harm if the matter is to proceed, nor has it established that the balance of convenience favours a stay.

[6] Ms. Hudjic has not made any submissions with respect to Air Canada's motion.

I. ANALYSIS

[7] In my view, the fact that Bell Canada is seeking 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.

[8] Given that the Federal Court of Appeal has already pronounced itself on the issue, I see nothing to be gained by referring the issue to the Trial Division of the Federal Court, nor is there any other reason to further delay this hearing of this matter.

[9] Air Canada has not established that it will suffer irreparable harm if this matter proceeds while the Leave application in *Bell Canada* is pending. The fact that the Tribunal proceedings may subsequently be declared moot is not irreparable harm. ⁽⁶⁾ In any event, Air Canada not even asserted that it will suffer such harm if the matter is to proceed. Further, the courts have repeatedly asserted that the public interest favours having complaints of discrimination dealt with expeditiously. ⁽⁷⁾

II. ORDER

[10] For the foregoing reasons, Air Canada's motion is dismissed.

Anne L. Mactavish

OTTAWA, Ontario

November 1, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T658/4601

STYLE OF CAUSE: Ann Hujdic v. Air Canada

RULING OF THE TRIBUNAL DATED: November 1, 2001

APPEARANCES:

Ann Hujdic On her own behalf

Carla Qualtrough For the Canadian Human Rights Commission

Louise-Hélène Sénécal For Air Canada

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. *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 312
6. *Canadian National Railways v. Leger* (2000), T-1547-99
7. See, for example the decision of Richard J. (as he then was) in the *Bell Canada v. Communications, Energy and Paperworkers Union of Canada et al.*, [1997] F.C.J. No. 207