

**Canadian Human Rights Tribunal      Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**NICOLE MURPHY**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**HALIFAX EMPLOYERS' ASSOCIATION**

**- and -**

**HALIFAX LONGSHOREMEN'S ASSOCIATION (LOCAL 269)**

**Respondents**

**RULING ON JURISDICTION**

## **Ruling No. 1**

**2001/02/27**

**PANEL:** Anne Mactavish, Chairperson

[1] The issue before me is whether the Canadian Human Rights Commission can proceed to a hearing in this matter, given the express desire of the complainant to withdraw her complaints.

### **I. History of This Proceeding**

[2] On March 8, 1998, Nicole Murphy filed two complaints with the Canadian Human Rights Commission, each alleging discrimination in hiring on the basis of sex. Ms. Murphy alleges that the Halifax Employers Association and the Halifax Longshoremen's Association each had policies or practices that exclude women from becoming longshoremen, contrary to Sections 7 and 10 of the *Canadian Human Rights Act*.

[3] On October 6, 2000, the Commission referred Ms. Murphy's complaints to the Canadian Human Rights Tribunal for hearing. The Commission asked that a single inquiry be instituted as, in the Commission's view, the complaints involve substantially the same issues of fact and law.

[4] Before a hearing on the merits had begun, Ms. Murphy advised the parties and the Tribunal, by letter dated January 2, 2001, that "... I would like to drop my complaint against both parties and I no longer wish to pursue this issue." The respondents are of the view that this matter should not proceed to hearing, given Ms. Murphy's desire to withdraw her complaints. The Commission is of the contrary view.

### **II. Relevant Provisions of the Canadian Human Rights Act**

[5] To fully understand the issue before me, and the context in which the issue arises, it is necessary to understand the statutory scheme governing complaints of discrimination under the *Canadian Human Rights Act*. The following are the relevant provisions of the *Act*:

40. (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission...

40. (3) Where the Commission has reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice, the Commission may initiate a complaint...

44. (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation...

44. (3) On receipt of a report referred to in subsection (1), the Commission

(a) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted...

48. (1) When, at any stage after the filing of a complaint and before the commencement of a hearing before a Human Rights Tribunal in respect thereof, a settlement is agreed on by the parties, the terms of the settlement shall be referred to the Commission for approval or rejection...

49. (1) At any stage after the filing of a complaint, the Commission may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.

(2) On receipt of a request, the Chairperson shall institute an inquiry by assigning a member of the Tribunal to inquire into the complaint, but the Chairperson may assign a panel of three members if he or she considers that the complexity of the complaint requires the inquiry to be conducted by three members...

50. (1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations...

51. In appearing at a hearing, presenting evidence and making representations, the Commission shall adopt such position as, in its opinion, is in the public interest having regard to the nature of the complaint.

### **III. Position of the Canadian Human Rights Commission**

[6] The Commission contends that the Tribunal has no jurisdiction to even consider this issue, as Section 49 of the *Act* limits the Tribunal's jurisdiction to inquiring into the complaint at the request of the Commission. Only the Commission can ask for the discontinuance of a matter before the Tribunal, when such a request is in the public interest. According to the Commission, Section 40 (3) of the *Act* gives it the mandate to initiate and continue with a complaint, in the absence of a complainant.

[7] The effect of Sections 44 (3) and 49 (1) of the *Act* is that it is only the Commission that can initiate a Tribunal inquiry. Just as a complainant does not decide whether or not to initiate an inquiry, the Commission says, neither does she have the power to halt an inquiry once one has already been commenced.

[8] Finally, the Commission says that if respondents were able to halt a hearing by exerting pressure on a complainant to withdraw the complaint, then the purpose of the *Act* would be frustrated.

[9] Ms. Murphy has not made any submissions on the jurisdictional issue.

### **IV. Position of the Respondent**

[10] Both respondents submit that there is no public interest in proceeding with the hearing, as no meaningful remedy can be achieved in the current circumstances. Having withdrawn her complaints, there is no longer any basis on which to seek an individual remedy for Ms. Murphy. Insofar as any systemic issues may be concerned, the hiring system in issue at the time of Ms. Murphy's complaint has since been replaced, effectively rendering moot any systemic issues that may have been raised by Ms. Murphy's complaint.

### **V. Analysis**

[11] I am of the view that this matter cannot proceed to hearing, but for reasons different than those suggested by the respondents.

[12] In examining the statutory scheme governing complaints of discrimination at the federal level, it is important to keep in mind that human rights complaints are not strictly private disputes. Human rights legislation, and its enforcement, serve both public and private purposes: the public purpose being the elimination of discrimination in society as

a whole, and the private purpose being the determination of individual rights and remedies in individual cases.<sup>(1)</sup> Human rights statutes are to be given a large and liberal interpretation, in order to best ensure the achievement of their objects.<sup>(2)</sup>

[13] Section 40 of the *Act* contemplates that complaints of discrimination may be brought in a number of different ways. One way is by a complaint filed by the victim of the allegedly discriminatory practice. Another is by a complaint initiated by the Commission itself. In this case, both complaints were filed by Ms. Murphy.

[14] There is discretion in the Commission not to deal with complaints where, for example, the complaint is beyond the jurisdiction of the Commission.<sup>(3)</sup> When the Commission decides to deal with a complaint, Section 43 of the *Act* contemplates an investigation of the complaint by a representative of the Commission. Section 44 requires that the Commission investigator prepare a report of the findings of the investigation. Upon receiving the investigation report, the Commission then has a number of options, one of which is to request that the Chairperson of the Canadian Human Rights Tribunal institute an inquiry into the complaint to which the report relates. That is what has occurred in relation to Ms. Murphy's complaints.

[15] It should be noted that the *only* complaints referred to the Tribunal for hearing were those filed by Ms. Murphy. There is no suggestion that the Commission has ever chosen to exercise the power conferred on it by initiating complaints against the respondents under subsection 40 (3) of the *Act*.

[16] A review of the *Canadian Human Rights Act* does not disclose any statutory impediment to the withdrawal of a complaint by a complainant in a human rights proceeding. Although not relied upon by the Commission, I note that Section 48 of the *Act* does give the Commission control over the settlement of complaints up to the commencement of the Tribunal hearing. In my view, however, there is a difference between a bi-lateral or multi-party settlement, and the unilateral withdrawal of a complaint by a complainant.

[17] Subsection 50 (1) of the *Act* gives each of the complainant, the Commission and the respondent(s) party status at the inquiry before the Canadian Human Rights Tribunal, while Section 51 of the *Act* mandates the Commission to represent the public interest at the inquiry. Being a party at an inquiry dealing with a human rights complaint is not, however, the same as being a party to the complaint itself.<sup>(4)</sup>

[18] There may well be systemic issues raised by Ms. Murphy's complaints, which issues may be of interest to the Commission, having regard to its statutory obligation to represent the public interest. In my view, the fact that the Commission is a party to the inquiry before the Tribunal, with the power to appear, lead evidence and make representations, does not create an independent *lis* between the Commission and the respondents that may be pursued in the absence of a continuing *lis* between the complainant and the respondents.<sup>(5)</sup>

[19] I agree with the Commission's submission that Section 49 of the *Act* limits the Tribunal's jurisdiction to inquiring into the complaints referred to the Tribunal by the Commission. In this case, the complaints that were investigated by the Commission and which were referred to the Tribunal for hearing were Ms. Murphy's complaints. Ms. Murphy has now indicated that she wishes to withdraw both complaints. In the absence of any complaints, there is nothing for the Tribunal to inquire into.

[20] The *Canadian Human Rights Act* specifically contemplates that there may be situations where the Canadian Human Rights Commission may want to proceed with a complaint in the absence of an individual complainant. If the Commission is of the view that Ms. Murphy's complaints raised issues of concern to the Commission, it is entirely open to the Commission to initiate complaints against the respondents pursuant to subsection 40 (3) of the *Act*.

[21] I do not accept the Commission's submission that the purpose of the *Act* would be frustrated if respondents were able to halt a hearing by exerting pressure on a complainant to withdraw her complaints. I should observe at the outset that there is no evidence before the Tribunal to suggest that either respondent has exerted any inappropriate pressure on Ms. Murphy to withdraw her complaints. Thus, no issue arises as to whether her request to withdraw her complaints may have been made under duress. If the Commission has any concerns with respect to the respondents' actions in this regard, there are specific mechanisms in the *Act* to deal with such situations. The Commission can itself initiate a complaint under Section 14.1 of the *Act*, which make it a discriminatory practice to retaliate or threaten retaliation against an individual who has filed a complaint with the Commission. Alternately, it is open to the Commission to refer the matter to the Attorney General for investigation of a possible violation of Section 59 of the *Act*, which makes it an offence to threaten, intimidate or discriminate against an individual because that individual has made a complaint under the *Act*.

## **VI. Order**

[22] For the foregoing reasons, no further steps will be taken in connection with this matter, and the Tribunal's file relating to Ms. Murphy's complaints will be closed.

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Anne L. Mactavish

OTTAWA, Ontario

February 27, 2001

**CANADIAN HUMAN RIGHTS TRIBUNAL**  
**COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T602/6000 & T603/6100

STYLE OF CAUSE: Nicole Murphy v. Halifax Employers' Association and International Longshoremen's Association, Local 269

RULING OF THE TRIBUNAL DATED: February 27, 2001

APPEARANCES:

Nicole Murphy The Complainant herself

Eddie Taylor For the Canadian Human Rights Commission

Ronald A. Pink For the Halifax Longshoremen's Association, Local 269

Brian G. Johnston For the Halifax Employers' Association

1. *Shannon v. British Columbia (Minister of Government Services)*, [2000] B.C.H.R.T. No. 52

2. *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal City*; *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbrand (City)*, 2000 S.C.C. 27, [2000] S.C.J. No. 24 (Q.L.)

3. See Section 41 of the *Canadian Human Rights Act*

4. *Shannon*, supra, at para. 35.

5. In this regard I am in agreement with the comments of the British Columbia Human Rights Tribunal in *Shannon*, supra, while recognizing that the statutory regime under consideration in that decision differs significantly from that established by the *Canadian*

*Human Rights Act*. See also *McKenzie Forest Products Inc. v. Tilberg*, (2000), 48 O.R. (3d) 150 for a discussion of the role of the parties to a human rights complaint.