

Canadian Human Rights Tribunal  
personne

Tribunal canadien des droits de la

**BETWEEN:**

**NADIA CAZA**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**TÉLÉ-MÉTROPOLE INC.**

**- and -**

**MANON MALO**

**Respondents**

**RULING ON MOTION FOR DISQUALIFICATION**

**Ruling No. 2**

**2002/04/29**

**MEMBER:** Roger Doyon

**[TRANSLATION]**

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## **I. INTRODUCTION**

[1] Nadia Caza is employed by Télé-Métropole inc. On November 7, 1996, she filed an amended complaint with the Canadian Human Rights Commission (the Commission) against Télé-Métropole inc. On January 7, 1999, she filed a complaint with the Canadian Human Rights Commission against Manon Malo, an employee of Télé-Métropole inc.

[2] In her complaints, Nadia Caza alleges that Télé-Métropole inc. discriminated against her on the basis of national or ethnic origin (Egyptian or Arab) by, in the course of employment, differentiating adversely against her and in not providing her with a harassment-free work environment, contrary to sections 7 and 14 of the *Canadian Human Rights Act*. She also alleges that Manon Malo discriminated against her by harassing her because of her national or ethnic origin (Egyptian or Arab), in contravention of section 14 of the *Canadian Human Rights Act*.

[3] A Tribunal was appointed to hear the complaints and I was assigned to act as the Member.

[4] Hearings were held on January 15 and 16, 2002 and on January 22, 23 and 24, 2002. At these hearings, the Commission was represented by Giacomo Vigna and Monette Maillet. The Respondents were represented by Nicolas Di Iorio. The hearing was scheduled to continue on March 12 and 13, 2002.

[5] When the hearing resumed on March 12, 2002, Daniel Chénard, acting on a mandate from the Commission and with the agreement of Nadia Caza, the Complainant, filed a motion for disqualification for the purpose of having me declared incompetent to hold the office of Member to inquire into these complaints.

## **II. MOTION FOR DISQUALIFICATION**

[6] This motion for disqualification consists essentially of 3 components:

- A. Failure by the Member to respect a Memorandum of Understanding entered into by the parties.
- B. Numerous interventions by the Member during Nadia Caza's examination and cross-examination.
- C. Remarks made by the Member on the subject of Bin Laden.

### **III. ARGUMENTS IN SUPPORT OF THE THREE COMPONENTS OF THE MOTION**

#### **A. Failure by the Member to respect a Memorandum of Understanding entered into by the parties.**

[7] In support of the motion for disqualification, the Commission's counsel alleges that at the start of the hearing, namely on January 15, 2002, a Memorandum of Understanding was entered into by the parties and that I failed to respect this Memorandum of Understanding.

[8] What was the nature of this alleged Memorandum of Understanding referred to by the Commission's counsel? At the start of the hearing, the Respondents' counsel wanted to know what position the Complainant intended to adopt in relation to that adopted by the Commission. (Volume 1, pages 5-9)

**Mr. DI IORIO:** ... Another observation, Mr. Chairperson, we need to know whether Ms. Caza is adopting a position different from that of the Commission in this instance. They have had an opportunity to prepare themselves; obviously, the statement can come only from Ms. Caza. The point is that if she adopts a position different from that of the Commission, we should be informed of it now, because it will be necessary for us to take this into consideration; or if they are ... obviously, it is Mr. Vigna who will speak on her behalf?

**Mr. VIGNA:** Mr. Chairperson, may I be permitted to say a few words to her so that she can understand what that means?

**CHAIRPERSON:** Yes.

**Ms. CAZA:** Yes, I adopt the same position as the Commission.

**CHAIRPERSON:** You adopt the same position as the Commission.

**Ms. CAZA:** Yes, the Commission. However, I reserve the right to question witnesses. But if, as we go along, there is something that I don't agree with entirely, well, I would like to have the right to speak, if that is alright with you.

**Mr. DI IORIO:** But it is my understanding that, at such times, Ms. Caza will tell us this immediately. That is to say, if she does not agree with something she will say so then and there.

**CHAIRPERSON:** Yes, yes, she will tell us at the moment that the incident not to her liking comes up.

**Mr. DI IORIO:** Agreed.

**CHAIRPERSON:** I assume that she will discuss it first with Mr. Vigna or his colleague, but that her intervention will come immediately. We are agreed on that point?

**Ms. CAZA:** Yes.

**Mr. DI IORIO:** Because as far as I am concerned, when Mr. Vigna speaks, clearly, I will assume that he is also speaking for Ms. Caza, so as not to have to ask her each time: Do you have anything to add? It is for the sake of convenience that I raised this point.

**CHAIRPERSON:** Yes, yes, I understand. In principle, it is Mr. Vigna who ... you adopt the position that will be followed by Mr. Vigna.

**Ms. CAZA:** Yes.

**CHAIRPERSON:** Barring exceptions. At such times, you will consult with Mr. Vigna and decide whether you should intervene yourself, at the very moment when the ...

**Mr. DI IORIO:** Immediately.

**CHAIRPERSON:** Immediately, or you will let Mr. Vigna take the initiative. Do you agree with that, Madam?

**Ms. CAZA:** Yes. While retaining the right to ...

**CHAIRPERSON:** Excuse me?

**Ms. CAZA:** And question, retain the right to be able to question witnesses.

**CHAIRPERSON:** You may retain the right to be able to question a witness, yes, but at the time that he is testifying.

**Ms. CAZA:** Yes, absolutely.

**CHAIRPERSON:** What we will do is that when you are facing a witness called by the respondent, Mr. Vigna will proceed with the cross-examination; if you consider it appropriate to ask questions after Mr. Vigna's cross-examination, you will be able to do so.

**Ms. CAZA:** Thank you.

**CHAIRPERSON:** Are you in agreement with that, Mr. Di Iorio?

**Mr. DI IORIO:** Yes, that suits me fine. And I will not be telling anyone anything new, Mr. Chairman, in saying that this is subject to the usual rules when there is more than one party: this cannot give rise to a repetition of questions.

**CHAIRPERSON:** Exactly.

**Mr. DI IORIO:** Only new questions concerning new subjects.

**CHAIRPERSON:** On subjects that have not been dealt with in Mr. Vigna's cross-examination. In other words, if Mr. Vigna asks a witness a question during the cross-examination and that witness gives an answer, you may not - even if you are not satisfied with the answer - cross-examine the witness about that particular question. About other questions that may appear relevant to you and that Mr. Vigna has not covered in his cross-examination, or following discussion with Mr. Vigna, you may give him an opportunity to do so. Are we in agreement?

**Mr. DI IORIO:** Yes.

**Ms. CAZA:** Thank you.

[9] Counsel for the Commission claims that each time that the Complainant tried to exercise her right to speak, I did not allow her to do so and that I criticized her on several occasions.

[10] He cites the following extracts from the testimony:

**A. (Volume 3, pages 557-58)**

**Mr. DI IORIO:**

Q. To put the Tribunal in the context here, when you arrived in 1989, Daniella Le Myre was the supervisor?

A. Correct.

Q. Being a supervisor, she was not unionized, she was a non-unionized supervisor, a manager?

A. Yes.

Q. And she remained a manager until the end of 1990, when the position was abolished. Do you remember that?

A. It was abolished at the beginning of 1991.

Q. That is not far from 1990.

A. Because my father died on the 25th, that is one of the dates that I cannot forget March 25, 1991; at that point Daniella was still there.

Q. When you say "I cannot forget it" - incidentally, the other day you did forget it.

A. Not the death of my father.

Q. When you testified before the Tribunal, you forgot the date of your father's decease.

A. I find that unlikely. I find it unlikely, because my father, he was my father.

Q. Therefore, to put an end to it, according to you it was before your father's decease?

A. No, no.

Q. Immediately after, that the position was abolished?

**CHAIRPERSON:** She is saying that when her father died, in March 1991, at the time of her father's decease, Daniella Le Myre was still the supervisor.

[11] I do not believe that my intervention prevented the complainant from exercising her right to speak, or that it could constitute a criticism of her. It was, however, intended to show to counsel for the Respondents that the Complainant had previously given a clear reply to the question asked.

**B. (Volume 3, pages 623, 624 and 625)**

**Mr. DI IORIO:**

Q. Louise Couillard and Carole Bédard?

A. Bédard, Yes.

Q. Asked you to withdraw your complaint?

A. Correct.

Q. What words did they use when they asked you this?

A. Louise Couillard said to me: "The rest of us, we are on Manon's side, it would be better if you withdrew your letter."

Q. That is how they put it to you?

A. No, not both of them, Carole was my friend.

Q. So it was Louise Couillard who said to you: "The rest of us"?

A. Yes.

Q. And Carole Bédard was present?

A. No. Both of them on their own, each one separately.

Q. Each one, separately, told you to withdraw your complaint?

A. Yes.

Q. In what words did Louise Couillard say this to you?

A. Louise, ... I was going to the printer at the time; there were two printers and I had printed out on the other one because there were large sheets of paper which were coming out of the printer beside my office, so I had gone to get some sheets at the other printer ... it was then that she said it to me.

Q. And it was how long after you had filed your complaint?

A. A few weeks.

Q. A few weeks?

A. Yes.

Q. It was less than a month?

A. Maybe four, five.

Q. A maximum of four or five weeks?

A. Yes.

Q. That she said that to you?

A. Yes.

Q. And she said to you: "We are ...

**CHAIRPERSON:** "The rest of us, we are on Manon's side."

**WITNESS:** Yes. "It would be better if you withdrew your complaint."

[12] Counsel for the Commission criticizes me for having completed the question of the counsel for the Respondents, whereas all I did was to repeat the answer that the Complainant had already given, using the same words.

**C. (Volume 4, pages 646-47)**

**Mr. DI IORIO:**

Q. And then, we read here: "Discovery of the origins of Ms. Nadia Caza by Ms. Malo." And that was in June 1990?

A. If you like, except that I myself don't remember, as I have already told you.

Q. But you spoke of May, June 1990, you said that there were, it was ... I believe that you made a reference to the weather conditions prevailing at the time, when you placed it in May, June 1990. Do you remember? Do you want us to put May, June 1990?

A. No, no.

Q. Do you agree?

A. In my opinion, it was the beginning, but I don't really remember.

Q. But do you agree, June 1990?

A. I think it was much earlier than that.

Q. What would you put -- May, June 1990?

A. In any case, as I told you, I don't remember.

Q. So, we'll put May, June 1990, as an approximate indication. Do you agree?

A. Perfect.

Q. Third period, therefore the period from the discovery to - we'll put area, you see we are putting area - what we are explaining is that ...

**CHAIRPERSON:** Just a moment, please.

**Mr. DI IORIO:** Yes.

**CHAIRPERSON:**

Q. Yesterday, in your testimony, you said that Ms. Malo learned that you were an Arab in mid-1990?

A. That may be, but I don't recall the actual date.

Q. No, no, no, without recalling the actual date, yesterday, that is what you mentioned.

[13] Counsel for the Commission blames me for having interrupted the Complainant's cross-examination to make a clarification. I consider that it was my duty to do so. Counsel for the Respondents tried to get the Complainant to admit that an event had taken place in May or June 1990. The Complainant did not wish to indicate a precise month because she did not remember it. Since she had already testified on this point previously, I consulted my notes. It seemed entirely appropriate to me to remind her that she had already mentioned that the event had taken place in the middle of 1990, without going into any further details as to the month concerned. I consider that I acted in the best interests of the Complainant.

**D. (Volume 4, pages 656-57)**

**Ms. CAZA:**

A. I was insulted, abused, and you go and ask me how much income the sales department generates. What difference does it make whether it generates 1,000,000 or 200,000,000? People don't have the right to insult me; I would like to say that I don't understand. It was the same thing yesterday with the name of my mother, the name of my father. I fail to understand where all this is leading.

Q. You can ask your question, but I am not obliged to answer it. So ...

**CHAIRPERSON:** Madam, you may wonder about the relevance of the questions, but you cannot prevent Mr. Di Iorio from asking you these questions, because you are undergoing cross-examination.

**WITNESS:** Yes, I understand, except that my complaint is not about that.

**CHAIRPERSON:** No, listen, you have been examined by Mr. Vigna ...

**WITNESS:** As regards my complaint, yes.

**CHAIRPERSON:** And now we are at the cross-examination stage. And at the cross-examination stage counsel for the opposing party can ask you all the questions that he wishes.

**WITNESS:** Even if it has no relation to ...

**CHAIRPERSON:** To the extent that it can be demonstrated that these questions are not relevant, Mr. Vigna will raise objections. But to the extent that they are relevant, counsel for the respondent can ask you these questions.

[14] I thought it was my duty to explain to the Complainant the manner in which the cross-examination of a witness takes place, as well as the witness's obligation to answer the questions.

[15] The right to speak granted to the Complainant, to which the Commission's counsel refers, in accordance with the agreement reached at the start of the hearing, did not give her the right to question the Respondents' counsel.

**E. (Volume 4, page 666)**

**Mr. DI IORIO:**

Q. Explain to the Tribunal, step by step, what it is that you do?

A. What is this, am I taking an exam for local sales? I have been away from there for five years, or am I here to defend myself for having the same rights as everybody else within the Company?

**CHAIRPERSON:** Madam, I am very sorry to have to repeat it to you, but you will have to answer the questions that are put to you. If these questions are not relevant, counsel for the Commission will intervene to inform you accordingly. Up to now, however, you must answer the questions that have been put to you.

**WITNESS:** Alright. Could you repeat the question?

**F. (Volume 4, pages 837, 838 and 839)**

**CHAIRPERSON:** Madam, may I make a suggestion to you?

**WITNESS:** Yes.

**CHAIRPERSON:** Relax a little. You are watchful, you are afraid ...

**WITNESS:** But that's normal.

**CHAIRPERSON:** ... that Mr. Di Iorio will play ...

**WITNESS:** Some nasty tricks.

**CHAIRPERSON:** ... some nasty tricks. You said yourself this morning: "You never go wrong when you tell the truth."

**WITNESS:** Yes, but what I don't understand ...

**CHAIRPERSON:** Look ... Madam, listen to me. Mr. Di Iorio has treated you very kindly up to now. And it is because he is kind ...

**WITNESS:** Yes, and I hope he will stay that way.

**CHAIRPERSON:** ... because he is kind to you, you are terrified of him. It shows. You are afraid that a trap is being laid for you. That is not the case at all.

**WITNESS:** If you had gone through what I've gone through there ...

**CHAIRPERSON:** Listen. Forget about all that, listen to the questions that you are being asked and - if you are not ready to answer a question - take the time to think about it.

**WITNESS:** O.K. But there is also what happened yesterday, and then again this morning, like the green in the telephone [sic], the name of my mother. I mean to say, I wonder what he wants with all that. This is what I am thinking about.

**CHAIRPERSON:** Stop wondering and answer the questions, you will understand later why he asked you all that.

**WITNESS:** All right.

**CHAIRPERSON:** Because right now, you are trying ...

**WITNESS:** To worry myself to death.

**CHAIRPERSON:** When he asks you a question, you wonder "why is he asking me that question", and you try to answer it in terms of the answer that you have just given yourself as to why this question was asked. This is what you are doing.

**WITNESS:** Yes.

**CHAIRPERSON:** Concentrate on answering the questions that he puts to you.

[16] The Commission's counsel accuses me of having commented on the Complainant's attitude during his cross-examination. Having realized that the Complainant appeared to be fearful - and she admitted this, incidentally - I felt it to be my duty to intervene to reassure her, in order that she might feel more relaxed and give appropriate answers to the questions.

**G. (Volume 4, pages 821, 822 and 823)**

**Mr. DI IORIO:** Mr. Chairman, we have the names of the six investigators. I will let my associate read them.

**Mr. FILLION:** So, there was Françoise Girard.

**WITNESS:** Françoise Girard was not an investigator.

**Mr. FILLION:** In the disclosure there was a letter, however, naming her as an investigator to replace - I think it was Mr. Lapommeray, but I am not certain. Then, there was ...

**CHAIRPERSON:** Françoise?

**Mr. FILLION:** Françoise Girard. There was Jacques Lapommeray, Pierre Boileau.

**WITNESS:** He was a supervisor.

**Mr. FILLION:** Martin Chaumont, Marie Laterreur.

**WITNESS:** They mentioned her name, but she never investigated, she never worked on the investigation.

**CHAIRPERSON:** Madam, listen, you don't know.

**WITNESS:** They sent me a letter to the effect that it was Marie Laterreur, then, immediately afterward, they sent me a letter to say that the file had been entrusted to Gino Richer. Therefore, I was never questioned by Ms. Laterreur.

**CHAIRPERSON:** That is not the question, Madam. The question is not by whom you were questioned. Rather, it is to find out how many investigators were involved with the file ...

**WITNESS:** Who investigated.

**CHAIRPERSON:** ... who investigated.

**WITNESS:** That's it.

**CHAIRPERSON:** Correct. Note that the fact that Marie Laterreur did not question you does not mean that she did not investigate.

**WITNESS:** All right.

[17] The Commission's counsel claims that, when the Complainant tried to explain that she had never been questioned by Ms. Laterreur, I criticized her for not answering the question.

[18] With all due respect for the contrary opinion, I consider that after I had realized that the Complainant did not understand that we wanted to introduce in evidence the number of investigators involved in the file, rather than the identity of those who had questioned her, it was my responsibility to clarify this point for her. It was in no way a criticism directed at the Complainant for not having answered a question.

**B. Numerous interventions by the Member during Nadia Caza's examination and cross-examination**

[19] The Commission's counsel claims that because of my many interventions during the cross-examination of the Complainant, I acted in such a manner as to create a reasonable apprehension of bias on my part.

**i) Third day of the hearing**

[20] During the third day of the hearing, on January 22, 2002, the Commission's counsel criticized me for intervening on 24 occasions, namely the following:

**A. (Volume 3, page 478)**

**Mr. DI IORIO:**

Q. Another thing, Ms. Caza, did you take notes during the period that you have covered in your testimony, that is, since August 1989?

A. In August 1989, absolutely nothing happened, everything was going fine. It was from 1990 onward, when Madam found out that I was an Arab, that things began to turn sour.

Q. My question refers to the period covered by your testimony, namely from August 1989 until very recently, thus a period of almost, of over 12 years ...

A. No, I don't remember ...

Q. ... did you take notes during this period?

A. I remember facts, not dates.

**CHAIRPERSON:** Madam, listen carefully to the question that Mr. Di Iorio is asking you, because you are not at all answering the question. Listen carefully to the question.

**B. (Volume 3, pages 492, 493 and 494)**

**Mr. VIGNA:** Mr. Chairperson, I think that these are inappropriate comments from my colleague who has started to speak ...

**Mr. DI IORIO:** Mr. Chairperson, if one thing is allowed ... I, for my part, have never interrupted Mr. Vigna, and when I have finished speaking he will be able to speak, but he has no business interrupting me. If he disagrees with what I am saying he can take notes, and then say afterward that he disagrees. But I am not in the process of slandering anyone, so he has no business stopping me.

In my view, this consideration is lacking. I do not want people to take ... I am in the process of cross-examination and am entitled to a certain latitude; I would like this latitude to be respected.

**CHAIRPERSON:** In this regard, Mr. Vigna, I believe that Mr. Di Iorio, during your examination, showed a great deal of respect for your manner of proceeding, even though in some respects, you know ... in any case, as far as I am concerned, I felt that you were often suggestive; yet he did not intervene. It is not my role to intervene either, except that I believe we have tried, I for my part in any case, to ensure that Ms. Caza is able to express all the points that she claims ... all the pitfalls that she claims to have encountered.

She has had a great deal of latitude and, as I said at the beginning of the hearing, in connection with the evidence, I cautioned Mr. Di Iorio - a caution that I think he has very largely respected - to the effect that here before the Tribunal, known as a Human Rights Tribunal, we are much more liberal than in strictly civil actions, to which the rules of evidence of the Civil Code apply. And in this connection I think that Mr. Di Iorio understood the message and made very few interventions and objections.

During cross-examination, on the other hand, he asks questions; perhaps he has an objective in view, but we don't know this for the time being. Presumably, he is not asking the questions to pass the time, there is a purpose behind them. To sum up, all that is part of the give and take of cross-examination and I think that you should let him proceed.

**Mr. VIGNA:** Mr. Chairperson, this is my first objection, I have not overly burdened the Tribunal with them; perhaps I felt the need to object because we were entering the sphere of private life. If you will permit a final remark, I had no wish to interrupt my colleague, but when the discussion turns to the Commission, to resources, to the government, I believe that this is not relevant to the issue. That is all I have to say, Mr. Chairperson.

**CHAIRPERSON:** Very good. Continue. Ms. Caza was saying that she had a daughter who had completed her university studies and was an accountant.

### **C. (Volume 3, page 508)**

**DI IORIO:**

Q. And you left Alexandria to come directly to Quebec?

A Yes, to Montreal.

Q. So you did not pass through other countries?

A. You mean stop there?

**CHAIRPERSON:** Stay there.

**WITNESS:** No.

**D. (Volume 3, page 511)**

**Mr. DI IORIO:**

Q. And you say that your mother is not of Arab origin?

A. Yes, she is of Arab origin, but she is Catholic.

Q. Turning to your father, for how many generations has his family been in Egypt?

A. It has always been in Egypt.

Q. Always?

A. Yes.

Q. And your mother?

A. Also always. There are Christians and Muslims in Egypt, but they have always been there. That is to say, they have not immigrated from elsewhere.

**CHAIRPERSON:**

Q. Your father was an Arab, a Muslim Arab, and your mother was an Arab Catholic?

A. That's correct.

**E. (Volume 3, pages 516, 517 and 518)**

**Mr. DI IORIO:**

Q. And you say that you changed your name in Egypt?

A. Correct. Excuse me, Mr. Chairperson?

**CHAIRPERSON:** Yes.

**WITNESS:** I, too, fail to see the sense of all these questions. I mean to say, I signed a complaint at the Canadian Human Rights Commission because I was not getting the same treatment as my fellow workers. The fact that I come from Egypt, my father's name, my mother's name, my grandfather's name - I don't see what that has to do with the fact that I did not receive the same treatment as everybody else.

**CHAIRPERSON:** I will answer that for you myself. Let us take a simple assumption, nothing but an assumption. Just now Mr. Di Iorio asked you if Ms. Malo was a fellow worker of yours. You said that she was.

**WITNESS:** Yes.

**CHAIRPERSON:** And you mentioned, at the very start of your testimony last week, that you had developed friendly relations with this woman.

**WITNESS:** At the start, yes.

**CHAIRPERSON:** After that, you said to Mr. Di Iorio that you had never spoken with Ms. Malo about your personal affairs.

**WITNESS:** Correct. I never speak to anyone ...

**CHAIRPERSON:** About your private life.

**WITNESS:** Yes.

**CHAIRPERSON:** If Ms. Malo was to testify and say to us: I was on such good terms with Ms. Caza that she herself told me that, to be able to leave Alexandria, she changed her name and called herself Verdi.

**WITNESS:** I would be astonished.

**CHAIRPERSON:** Look, Madam, let me finish what I am saying.

**WITNESS:** Yes, but she is there, she can hear what we are saying.

**CHAIRPERSON:** All this is to explain to you that the questions that he is asking you may or may not be of use to verify the credibility of your testimony. Rightly or wrongly, this is the objective that he is pursuing, and he has the right to do so.

**WITNESS:** Yes, but if I tell everything, it will certainly be an easy matter afterward to say she told me this, that and the other thing. It is the first time that I express ...

**CHAIRPERSON:** It will be up to me to assess that, Madam, that will be up to me.

**F. (Volume 3, pages 569, 570 and 571)**

**CHAIRPERSON:** Just a moment, Mr. Di Iorio.

**Mr. DI IORIO:** Yes.

**CHAIRPERSON:** You asked a question but Ms. Caza did not have the time to answer it; the question was left hanging. You asked the following: "Did you file a grievance because you did not obtain the position?"

**WITNESS:** No.

**CHAIRPERSON:**

Q. Why didn't you file a grievance?

A. Because it wouldn't have done any good. To begin with, I did not have the evidence and I was not there during the interviews. Second, it would not have led to anything; furthermore, in addition to having Manon on my back, I would have had Gilles on my back even more; then Manon would have said to everyone: Do you see that, she is jealous, she has pinched my job. It would only have fanned the flames. Consequently, I was better off to keep quiet and carry on.

Q. But how can you be sure that she would have said that? How can you anticipate what she would have said?

A. Because of her actions.

Q. You assume it?

A. Because of her actions before that, the way she turned the girls against me. I said: I lied, I have it in for her, I spoke behind her back, then things really started to go badly. So I was not in favour of filing a grievance, and Gilles did not want me. It would have been ridiculous to file a grievance in order to get it. I filed a grievance for her maternity leave replacement, I didn't get it either. The position was de-unionized.

**G. (Volume 3, pages 618-19)**

**Mr. DI IORIO:** If you have no objection, Mr. Chairperson, if you don't object I would just like to check?

**CHAIRPERSON:** Yes, Yes, Yes.

**BRIEF RECESS**

**Mr. DI IORIO:** Excuse me, Ms. Caza.

**WITNESS:** You're welcome.

**CHAIRPERSON:** Just to set the context again, she said that, you asked her the question: "How do you know that Mr. Bertrand and Ms. Malo were aware of the complaint?" She

replied that she had seen documents which proved that Mr. Bertrand had been informed by the Chairperson of the Commission.

After that she began to speak about two people, colleagues who had informed her that they were aware of the complaint that she had made. And she said that she had concluded that Ms. Malo had spread the news.

Q. Is that correct, Madam?

A. Yes. And they asked me to withdraw the letter.

Q. Fine. Who were these two persons?

A. Carole Bédard and Louise Couillard.

**H. (Volume 3, pages 620-21)**

**CHAIRPERSON:**

Q. Was it not the president of TVA who sent a letter to the Canadian Human Rights Commission in which he said that he had indeed received the complaint and that he had mandated Mr. Bertrand, who was Director of Human Resources ...

A. That's right.

Q. ... to take charge of the matter?

A. Exactly.

Q. Fine. And when was that?

A. In 1996.

Q. Yes. But, Madam, you did not submit your complaint ...

**Mr. DI IORIO:** On July 30th.

**CHAIRPERSON:**

Q. On August 30, 1996.

A. On August 30th.

**Mr. DI IORIO:** On August 30th.

**CHAIRPERSON:**

Q. On August 30, 1996 you filed your complaint.

A. Yes.

Q. Fine. You refer to a letter from the president of TVA to the Canadian Human Rights Commission that you saw. Fine. And what was the date of this letter?

A. Probably the month of September.

Q. You estimate that it was in the month of September?

A. Yes.

**I. (Volume 3, page 630)**

**Mr. DI IORIO:**

Q. Just now you indicated that ... but wait, there was the complaint ... so I am adjusting it on the basis of your testimony. Alright? O.K. Because these periods - I am not imposing them on you. All I am doing is trying to establish the context with reference to time.

A. No, that's alright, because you are writing and, furthermore, I don't want you to say to me afterward that it was such and such a time.

**CHAIRPERSON:** No, no, Madam, there is no danger of that happening.

**WITNESS:** O.K.

**CHAIRPERSON:** Mr. Di Iorio's identification of the time periods does not change anything. What he is trying to do, on the basis of the different periods that you acknowledge, is to set the events within the context of each of these periods.

**WITNESS:** Alright. Thank you.

**ii) Fourth day of the hearing**

[21] On the fourth day of the hearing, namely on January 23, 2002, the Commission's counsel criticizes me for having put 79 questions to the Complainant. He refers to the following quotations:

**A. (Volume 4, pages 663-64)**

**Mr. DI IORIO:**

Q. Ms. Caza, you were there for seven years. Could you tell the Tribunal what a local sales client is?

A. A local sales client is a client like Circuit Ford, which advertised only in Montreal. There was also Créations Magiques, which was local and subsequently became regional as well -- the popular magic bags. And the small clients that we had, Au Bon Marché. Even McDonald's; McDonald's was local and regional, Burger King as well.

Q. And what makes McDonald's a local client ...?

**CHAIRPERSON:**

Q Is it national or regional?

A. National.

Q. Because you said regional.

A. No, it's national.

Q. So, a local sales client is one that buys publicity on the Montreal network only?

A. And the surrounding area.

Q. And a client that is national buys publicity for the entire province?

A. Yes.

Q. For all the networks in the province of Quebec?

A. Not Quebec, even ... Yes. It is now five years since I last worked there.

**Mr. DI IORIO:**

Q. Why do you say that?

**CHAIRPERSON:**

Q. No, but I, I don't want to know what is happening there today. What we are trying to find out - during the time that you were working there and were a local sales clerk - what we are trying to find out is what was the difference between a local sales client and a national sales client?

A. O.K.

**B. (Volume 4, pages 681-82)**

**CHAIRPERSON:**

Q. Are you saying that these two persons were hostile to you because you did a part ...

A. No, I wouldn't go so far as that, but let us say that they were not happy about it because, ultimately, it became a problem for them. If I did it, then everybody would do it. That does not help at a time when you already are not very well accepted in the department. But I liked doing that, I liked my work, it gave me a feeling of satisfaction.

Q. But your fellow workers did not like it?

A. Yes, but not the representatives, they often took me to the restaurant, they brought me presents.

Q. So your fellow workers did not like it because your position was a unionized one. At that time, as part of your work description as a sales clerk, you did the work or part of the work ...

A. A part.

Q. ... of the representatives; that is what your fellow workers held against you?

A. Exactly.

Q. And it was not the kind of thing likely to create good relations between you and them?

A. That's true, except that, taking into account that the relations were not at all good, I had nothing to lose, apart from having the satisfaction of achieving something.

**C. (Volume 4, pages 690-91)**

**CHAIRPERSON:**

Q. I am going to stop you, Madam.

A Yes.

Q. I would like you to answer the question that Mr. Di Iorio put to you. He did not ask you how many of them you had, he asked you who made the decision regarding the number ...

A. That's why I ...

Q. ... the number of representatives assigned to each sales clerk; from whom did this decision come? We will get the answer to this question and then, subsequently, you will describe the progression for us.

A. O.K.

Q. So what is the answer?

A. The answer is that, at the very beginning, it was Robert Lauzon.

Q. Who was the Director.

A. When I arrived at TVA.

Q. So he was the Director?

A. At that point, yes.

Q. Of the service ...

A. Who made the decision.

Q. ... of local sales?

A. Yes. But, as I already explained, at the very beginning when I arrived there were more clerks and more representatives. It did not last long.

Q. And that particular decision, was it always made by the Director of Local Sales?

A. No. It was ... after that it was Ms. Malo.

Q. And subsequently by the section chief?

A. Yes.

**D. (Volume 4, pages 714-15)**

**CHAIRPERSON:**

Q. Madam, if you don't know, ...

A. No, I don't know.

Q. Fine, answer "I don't know."

A. O.K.

Q. You only need to say "I don't know."

A. O.K.

Q. What you have said so far ... you began by saying that you could see the origin, whether it was a call of internal or external origin.

A. Yes.

Q. Following Mr. Di Iorio's questions, you said: "At the beginning, we did not see it."

A. Correct.

Q. Mr. Di Iorio is trying to find out whether you saw something. If you do not know, say "I don't know", Madam.

A. I don't know, I did not see it.

Q. If, after that, he asks you: When did you begin to see it, you will try to tell us when. That's all. Simply answer the question.

A. O.K. No, I don't know when we began to see it, I don't remember that.

**E. (Volume 4, page 741)**

**CHAIRPERSON:**

Q. But you did not tell the union at that time, you did not report to the union the words that Ms. Malo allegedly said to you?

A. No, I reported them later.

**Mr. DI IORIO:**

Q. You simply said: "I want to file a grievance for racism."

A. Yes, because she does not like me because I am an Arab.

Q. That is what you said?

A. Yes. If I remember correctly, yes.

**CHAIRPERSON:**

Q. Because what?

A. If I remember correctly.

Q. You said, you said that you wanted to file a grievance on the ground of racism because...?

A. Because of the treatment I was receiving; the difference was terrible. There was something that was not right.

**F. (Volume 4, pages 757, 758 and 759)**

**Mr. DI IORIO:**

Q. "I had more proof that I had done whatever was necessary." Do you remember having said these words?

A. I had done ... I didn't understand.

Q. "I had more proof that I had done whatever was necessary." Do you remember having said these words?

A. I don't even understand the sentence. I had done ...

Q. "I had more proof ..."

**CHAIRPERSON:**

A. "More proof ..."

**Mr. DI IORIO:**

Q. "... that I had done whatever was necessary."

A. I said that?

Q. Yes.

A. In connection to what? I don't understand. "I had more proof that I had done whatever was necessary."

**Mr. DI IORIO:**

Q. You do not remember having spoken these words?

A. It is possible. If Mr. Chairperson heard them, I must have said them, but, frankly, I don't see the meaning. In what context did I say that? It must have a meaning.

Q. It is less than a minute since you said these words, you addressed them to the Chairperson of the Tribunal. Do you remember having spoken them?

A. I am trying to understand why I said that, if I said that.

**CHAIRPERSON:**

Q. You said that on July 22 you went to see the Commission to obtain some information.

A. Yes.

Q. That on July 29 you saw Ms. Brière; that on July 31 you filed a grievance; and you said that in the month of August, specifically August 31 ...

A. The 30th.

Q. August 30, you said: "I had more proof that I had done whatever was necessary." That is what you said.

**Mr. DI IORIO:** Yes.

**WITNESS:** Alright. What I mean is that I gave her some time, I had proof that I had given her time. It was more than a month, so I had done whatever was necessary before signing. Now I understand, because, you see, I am very tired and tense. But yes, I did say that. But it was the way in which you asked me the question, I did not understand it at all."

**G. (Volume 4, pages 799-800)**

**CHAIRPERSON:**

Q. The question, Madam, is not to find out what happened or what did not happen ...

A. But I did not say to TVA that I was called Verdi.

Q. We are not telling you that , either.

A. Oh, O.K.

Q. We are asking you the following question: When somebody has an Italian name and speaks Italian, could a reasonable person conclude that the person is Italian?

A. Yes.

Q. Fine, that's all.

**H. (Volume 4, page 804)**

**Mr. DI IORIO:**

Q. What CEGEP did your daughters attend?

A. Why?

Q. What CEGEP did your daughters attend?

A. May I ask why?

**CHAIRPERSON:** Madam, answer the questions. I have had to remind you of this several times.

**I. (Volume 4, pages 823, 824 and 825)**

**Mr. DI IORIO:**

Mr. Chairperson, when I refer to the number of investigators, obviously I must give a number. I can only go by what the Commission has done, and it appointed six investigators. There were six investigators who were appointed over a period beginning in 1996. That is what I stated and I do not think that Mr. Vigna is contradicting this assertion.

**Mr. VIGNA:** I don't wish to get into a debate on that subject. Reference has been made to six investigators; I don't want the impression to be given that there were six investigators working on this file at the same time. There was a great deal of turnover.

**CHAIRPERSON:** No, no. What Mr. Di Iorio wants to say to you is that - in order to investigate this particular complaint - there were six investigators who worked on the file. That does not mean that there were six of them working together at the same time. Whether two worked at the same time or three worked at the same time, that is not the question. The point is how many investigators were called upon to take part in the investigation in connection with this complaint, that is all.

**Mr. VIGNA:** I am not saying that he is claiming that either; I just want to make sure that there is no misunderstanding on this point. Furthermore, it must be understood that there is a great deal of turnover ... I don't know this expression in French.

**CHAIRPERSON:** *Mobilité de main-d'oeuvre.*

**Mr. VIGNA:** Of *mobilité de main-d'oeuvre* [turnover] at the Commission. So it is quite possible that there were several people who had a hand in this file. There were also two counsel - my colleague before me and then myself. In any case, I don't want to dwell on the subject, I think that it is ...

**CHAIRPERSON:** For my part, I just want to make a little observation, that I am not here to pass judgment on the Commission's work. That is not my role.

**J. (Volume 4, pages 828-29)**

**CHAIRPERSON:**

Q. Madam, do not confuse issues. We are trying to understand the sequence of events.

A. Alright.

Q. O.K. Mr. Di Iorio asked you: "When did Ms. Malo know that you were accusing her of racism?" You answered that she knew it officially at the moment that you filed your grievance on July 31, 1996.

A. Yes.

Q. And you said: "She knew it orally when I told her so."

A. Yes.

Q. When was it that you told her?

A. I told her that if she did not stop that ... no, not like that. That was afterward. I said to her: "I know that you don't like my face because I am an Arab, but that's not a reason to have it in for me. You knew me before and found me to be a decent person. I am still the same person." It is not normal for somebody to turn against a person like that.

Q. And Mr. Di Iorio's next question was the following: "When did you say that to Ms. Malo?"

A. In 1996, after I had received two or three letters. I knew that Ms. Malo wanted me to leave the company at any cost, that is why she said to me: "You're going to be out of here."

Q. Excuse me?

A. I said that I knew that Ms. Malo wanted me to leave the company at any cost and that it was for this reason that she said to me: "You're going to be out of here." And I was thrown out of sales, too.

**K. (Volume 4, page 852)**

**Mr. DI IORIO:**

Q. So you recall your baptism?

A. Yes, Yes. It's vague, but ... what I want to say is that my father said that all religions were good. There was only one God, and they were all ... what's the right word ... different interpretations.

**CHAIRPERSON:** It's a question of interpretation.

**WITNESS:** Yes.

**iii) Fifth day of the hearing**

[22] During the fifth day of the hearing, namely January 24, 2002, the Commission's counsel criticizes me for having interrupted the Complainant's cross-examination and addressed 184 questions to her. He refers to the following quotations:

**A. (Volume 5, pages 879-80)**

**CHAIRPERSON:**

Q. What do you usually say?

A. Well, I make them out to be younger to make myself look younger.

Q. Yes, but you told us that Josée was born on February 18, 1974 and Jamie on August 15, 1975?

A. Yes.

Q. That is what you told us?

A. Yes.

Q. What is the truth?

A. I checked at home, it's 1971 and 1972.

Q. So, Josée was born on February 18, 1971?

A. Yes.

Q. And Jamie, on August 15?

A. August 15, 1972, yes.

Q. 1972.

**B. (Volume 5, page 881)**

**Mr. DI IORIO:**

Q. And your own birth date is the correct one, Ms. Caza?

A. Yes, it's March 17, 1942.

Q. The date that you gave to the Tribunal is the correct one?

A. Yes, yes. Except, of course, I don't like to mention that, either.

**CHAIRPERSON:**

Q. Excuse me?

A. I don't like to mention the year 1942. Consequently, at the office I never mentioned my age or the age of my children. Except to the personnel service, the insurances, etc.

**C. (Volume 5, page 885)**

**Mr. DI IORIO:**

Q. Your daughters lived with you while they attended secondary school and the CEGEP?

A. Yes, and the university.

Q. The whole period?

A. Yes.

Q. Without interruption?

A. Except Jamie, who alternated between her parents.

Q. She went to live with her father?

A. Yes.

Q. So, she did not live with you?

A. I said that she alternated ... she went to her father's place, she came to my place, she went to her father's place.

**CHAIRPERSON:**

Q. While pursuing the university studies that you referred to?

A. Yes, yes.

**D. (Volume 5, pages 889, 890 and 891)**

**Mr. DI IORIO:**

Q. So, on the ninth floor there is the captioning?

A. Yes, there was. Because, in this case, I want to answer calmly, because in view of the ... I want to be clear in my mind so that afterward you do not say to me: You said, you said. As with the ages of my children, I did not at all see the connection ... if I made it seem smaller.

**CHAIRPERSON:** You saw the connection, then, in the morning?

**WITNESS:** Yes.

**CHAIRPERSON:** Remember that the day before yesterday you wondered about ...

**WITNESS:** Why.

**CHAIRPERSON:** ... the relevance of certain questions.

**WITNESS:** Yes, I understand that.

**CHAIRPERSON:** You are now getting the answers.

**WITNESS:** O.K.

**CHAIRPERSON:** I tried to make you understand that, when a question was put to you, it was of no advantage to you to wonder what was the purpose of the question; this would simply create difficulties and, eventually, risk creating problems. Consequently, concentrate on giving answers to the questions and don't wonder about why they are being put to you.

Q. So, you are saying that the captioning was done on the ninth floor?

A. Yes. Yes, the captioning office was on the ninth floor. And the little kitchen referred to was on the ninth floor.

**Mr. DI IORIO:**

Q. Ms. Caza.

A. Excuse me ... When I went to take up the LCN, I went to take it to the tenth floor, and I remember that at times ... Wait, was it on the ninth floor or the tenth floor ... did it change floors with Global? Because Global is there. Now I am no longer certain.

**CHAIRPERSON:**

Q. What you are saying is that you are no longer certain and that the little kitchen in question was located on the ninth or the tenth floor, because it is possible that you met Carole Lapierre on the tenth floor?

A. The thing is that since that time many renovations and changes have taken place, and now there is Global which is located on the ninth floor. Was it on the ninth floor and then moved up to the tenth? Because I saw it on the tenth floor when I went to take up the LCN, and the LCN is on the tenth. So, if the floor is important, it is on the ninth or tenth floor. It seems to me that at the time it was on the ninth. They moved to the tenth floor; I must be careful and clarify.

**E. (Volume 5, pages 893, 894 and 895)**

**Mr. VIGNA:** Mr. Chairperson, I fail to understand the question itself. Are we talking about what she saw or about what was reported to her? It is not clear.

**CHAIRPERSON:** What he is saying is the following. What Mr. Di Iorio is saying is that, at a particular time, the precise time and place cannot be established, there was a dinner attended by both Ms. Caza and Ms. Lapierre. Alright so far?

**Mr. VIGNA:** Yes.

**CHAIRPERSON:** On the occasion of the dinner referred to, Ms. Lapierre told Ms. Caza that, during a meeting with Manon Malo, Manon Malo said something. Is that clear? And then, Mr. Di Iorio asks: "When Ms. Lapierre told you that Manon Malo allegedly said something to her, did she say that she was alone with Manon Malo at that particular moment?" And Ms. Caza answers.

**WITNESS:** No, it was during a meeting.

**Mr. DI IORIO:**

Q. Thus there were other people present?

A. Yes.

**CHAIRPERSON:** Do you understand?

**Mr. VIGNA:** Yes, your Honour. It is just that if she was not there, it is hearsay.

**CHAIRPERSON:** No, but it is hearsay all along.

**Mr. VIGNA:** Alright, your Honour, I don't wish to dwell on it.

**CHAIRPERSON:** It's always hearsay, except when it involves, it involves the Respondent.

**Mr. DI IORIO:** My cross-examination is about her hearsay, incidentally.

**CHAIRPERSON:** That's right. It is you who introduced it.

**Mr. DI IORIO:** It is Mr. Vigna who asked a question that called for a response based on hearsay, and I am cross-examining on that.

**CHAIRPERSON:** It is you who introduced the point that Ms. Lapierre allegedly said to Ms. Caza, allegedly reported to Ms. Caza, words said by Ms. Malo, words that she, Ms. Lapierre, apparently heard, so it would seem. And what Mr. Di Iorio wants to know is, at the time that these words were allegedly said, were they said solely in the presence of Ms. Lapierre or were other people present. Is that your question?

**Mr. DI IORIO:** Yes.

**Mr. VIGNA:** Alright, your Honour.

**CHAIRPERSON:** I wanted to make sure that I, too, had understood correctly.

**MR. DI IORIO:** Yes.

Q. Ms. Caza.

**CHAIRPERSON:**

Q. So you answered "No"?

A. Excuse me?

Q. You answered that - when Ms. Malo allegedly uttered, allegedly said things, that Ms. Lapierre supposedly heard - these things were not said solely in the presence of Ms. Lapierre and Ms. Malo?

A. Correct.

**F. (Volume 5, pages 896-97)**

**Mr. DI IORIO:**

Q. You do not recall if she added any comments, but you do recall that she did not say that it was racist?

A. I don't recall whether she said that it was racist or not.

Q. You don't recall that either.

A. No, because it came after I had said: That's terrible, why had she done that to me? I had never done anything to her, what did she have against me? To that she replied: You were an Arab, she said, not like the rest of us. There, that was the conversation.

**CHAIRPERSON:**

Q. And it is not a part of her culture to help others?

A. Correct. Because she convinced everybody that I did not wish to help them. That is why she had everybody sign the famous paper.

**G. (Volume 5, pages 902 to 906)**

**CHAIRPERSON:**

Q. This conversation that we are referring to and regarding which Ms. Lapierre said something to you - when did this particular conversation take place?

A. 1994, around 1994.

Q. 1994. And you say that the claim by people that it was not in your culture to help others probably refers, according to you, to filing?

A. Yes.

Q. That is it? And in support of that you say that you are referring to a document produced by the Commission, of people who ...

A. Produced by TVA.

Q Excuse me?

A. Produced by TVA to the Commission.

Q. Yes, agreed, but which was produced before me and that you took note of?

A. No. People said to me: "Tear up the contracts, just get rid of them" or again: "Do my filing." I had three representatives. I was willing to help ...

Q. But that is not my question, Madam. I am asking you the following: the document that we are talking about, and it is you who referred to it just now, at what point did you come to know of this document?

A. Afterward, yes.

Q. Excuse me?

A. Afterward, yes. But they asked me to do the filing and so on before. I came to know of the document when it was written, not before. But I don't understand your question.

Q. You say that, in 1994, when Ms. Lapierre reported Ms. Malo's sentence to you, to the effect that: "It is not a part of her culture to help others", you remarked: "It probably referred to the filing"?

A. Yes.

Q. Good.

A. That is what I said -- in filing at that time, but not in filing in 1994. Ms. Malo said that sentence in 1990, 1991; it was probably that, at that particular time: "She does not help others." I said to myself, what does that mean - to help others? Ah, that's what she was referring to, to filing and shredding of contracts. It was a deduction that I made.

Q. So, Ms. Lapierre - this sentence that you are referring to - she said to you that this sentence had been uttered by Ms. Malo in 1991. She told you that?

A. 1990, 1991.

Q. She told you that it was in 1990, 1991 that Ms. Malo allegedly uttered this sentence?

A. Yes. She told me that, during a meeting, Ms. Malo said that I was not like ... that I was an Arab, that I was not like the others. And that in my culture ...

Q. It was not in your culture to help others?

A. Yes.

Q. And Ms. Malo allegedly said that in 1990, 1991, that is what you are saying to me?

A. Yes.

Q. And it was Ms. Lapierre who said to you that this meeting, during which Ms. Malo allegedly made these statements, took place in 1990, 1991?

A. Yes, because Ms. Lapierre's position had been abolished ...

Q. No, no, Madam ...

A. Well, it's because I'm trying to place the dates.

Q. I am not interested in knowing by what means you arrive at the conclusion. That is not my question. I want to know if Ms. Lapierre said to you that the meeting with Ms. Malo,

and possibly other persons, during which Ms. Malo made this statement - let us call it that in quotation marks, so as not to have to repeat it each time - took place in 1990, 1991...

A. She did not specify a date. She said to me: "Ms. Malo said that during a meeting, when I was in local sales."

Q. At that moment ...

A. I made the assumption, I tried to think of the approximate date. No, she didn't give me a date.

Q. And when she said that to you, she was not in local sales?

A. No. She was in captioning.

Q. She had worked with you in local sales?

A. Yes.

Q. Do you recall at what time she left local sales?

A. Well that's what I was trying to say, around April 1991.

Q. Fine. Now, she could not have heard that after April 1991?

A. Correct. That's what I was trying ... but I get tangled up in my words.

Q. That is what I want to know. I want to know when this statement was made.

A. O.K.

#### **H. (Volume 5, pages 911-12)**

#### **CHAIRPERSON:**

Q. Madam.

A. I don't understand what he means by: Do I agree?

Q. I will put the question to you myself.

A. O.K.

Q. Just a moment. If I say to you, Madam, because you are an Arab ... you are an Arab, we are agreed on that?

A. Yes.

Q. I say that you are an Arab and it is not in your culture to help others ... If I say that to you, is that correct?

A. No, it is not correct.

Q. But that is the question that he is asking you.

A. I'm sorry.

Q. That's all it is. Is it correct or is it not correct?

A. It is not correct that in my culture people are not used to helping others.

Q. It is not correct that in your culture you do not help others?

A. That's right.

Q. Or that you are not inclined to help others?

A. No, it's not true.

Q. Good.

**I. (Volume 5, pages 919, 920 and 921)**

**CHAIRPERSON:**

Q. Madam, you said just now that the conversation that you had with Ms. Lapierre, in which she reported to you a statement made by Ms. Malo in 1991, only confirmed the suspicions that ...

A. Yes, that I had always had.

Q. That you had to the effect that Ms. Malo did not like you because you were an Arab?

A. Correct.

Q. That is what you said?

A. Yes.

Q. What made you suspect that Ms. Malo did not like you because you were an Arab?

A. Because after I had told her that I was an Arab, her behaviour changed as if from day to night. She could not even stand having me next to her to just ... I waited for her to finish with the photocopier before I went and did my photocopies; she would just take her papers and leave. Give me a break! If I went to the washroom, she left. If I went to the water cooler, she would avoid me like the plague.

So there was something not normal in all of that. I tell someone that I am an Arab and, after that, he keeps clear of me. It's as a result of all these uncertainties. Then when I asked her: "What have I done to you? Why, have I done or said something to you to cause you to behave so differently?" She replied: "I can't stand your face, etc." That is why I did not go and ask her a second time, I had already asked her.

Q. Because in your testimony you already told us that from the moment when Ms. Malo allegedly told you that she could not stand your face, for Christ's sake, from that moment on, O.K., you started to wonder about the reasons?

A. Yes.

Q. And that you did not know why she did not like you?

A. I had suspicions, but I did not know. I had difficulty in ...

Q. You say today that you had suspicions. I, having re-read my notes, find that you said previously that you wondered about it, and that you asked yourself why things were like that.

A. Yes.

Q. "What have I done to her?"

A. Correct, Yes.

Q. Therefore, you did not have any suspicions, you were looking for the answer?

A. Yes.

**J. (Volume 5, pages 930-31)**

**CHAIRPERSON:** Look, you are not being criticized for anything ...

**WITNESS:** No, I know, it is just that I ...

**CHAIRPERSON:** ... it's a finding. What Mr. Di Iorio is doing is summing up in a few sentences ...

**WITNESS:** He is trying to make me out to be a liar.

**CHAIRPERSON:** It is not at all that.

**Mr. DI IORIO:** I did not understand what the witness said.

**CHAIRPERSON:** She said: "He is trying to make me out to be a liar." That is not it at all. He is taking your answers, making a summary of your answers. He is saying: You have told me A, B, C, D, E, yes or no? He is not saying that you are a liar.

**K. (Volume 5, pages 938-39)**

**Mr. DI IORIO:**

Q. How do you come to say that I know that you make your daughters out to be younger than they are?

A. It's a conclusion that I've drawn.

**CHAIRPERSON:**

Q. Is it a conclusion or a series of assumptions?

A. Assumptions. It's an assumption. Excuse me, I'm having difficulty with my terms.

**CHAIRPERSON:** Attention must be paid to terms, Madam. There is an important difference in whether you answer that it is a conclusion or an assertion ...

**WITNESS:** It is not the same thing.

**CHAIRPERSON:** ... whether you answer that it is an assumption, an impression or a certainty; this is very important, do you understand? If you say: Such and such a person did such and such a thing, and if you are asked on what basis you are saying it ...

**WITNESS:** It's an impression.

**CHAIRPERSON:** ... It's an impression. You will understand that this does not have the same weight as a certainty.

**WITNESS:** Yes.

**L. (Volume 5, pages 945-46)**

**CHAIRPERSON:**

Q. Madam, there is something that I don't understand. You said that you had a meeting with Carole Lapierre.

A. For dinner, yes.

Q. A dinner.

A. We ate our lunches.

Q. And you mentioned that Carole Lapierre told you that these words had allegedly been said during a meeting ...

A. During a meeting.

Q. Just a minute, let me finish. With Manon Malo, a meeting attended by other people as well?

A. Correct.

Q. Mr. Di Iorio asked you: "What other people?" You replied: "I don't know, she didn't tell me." Other questions were then raised and I, in turn, followed up again on what I have just said to you, because I wanted to get another answer from you, and you said to me, you repeated to me a second time that Ms. Malo had said that during a meeting with other people ...

A. Correct.

Q. ... and that you did not know who was there.

A. Correct.

Q. How do you know now that Mr. Brault was allegedly there?

A. Well, it was ...

Q. That is the question.

A. Yes, O.K. I deduced that he was there, I made the link with the letter that everybody signed. I said to myself that it must have been that same day, when the four individuals signed. Because I was aware that they had been to see Mr. Brault, and then with the sentence, I thought ... Furthermore, I never understood what had happened, because one day he said "yes" to me, then he said "no", and then again he said to me: Ms. Malo was not there on that day." So, naturally I don't mention it at the present time, but, yes, when I signed the complaint I was sure that he was there.

**M. (Volume 5, pages 951 to 954)**

**CHAIRPERSON:**

Q. Listen, Madam, in your testimony just now you said what had led you to deduce that Mr. Brault could have been aware of the sentence in question ...

A. It's the complaint.

Q. ... it was the letter submitted in which your work colleagues were blaming you for things.

A. Correct.

Q. O.K.?

A. Yes.

Q. And you say that this letter ... Mr. Brault participated in the meeting that led to the production of this letter. That is what you said?

A. I deduced that they were there, except that ... whether he participated or not, I was not there.

Q. "They were there" refers to whom?

A. Manon Malo, Bergeron, Riopelle and Carole Lapierre.

Q. And Brault?

A. I thought that he was there.

Q. So, you thought that the meeting from which stemmed this famous letter ...

A. Correct.

Q. ... that the individuals who signed this letter held a meeting and that Mr. Brault was there?

A. Yes, I deduced that.

Q. And you also deduced that it was during this meeting that Ms. Malo allegedly said the words that Carole Lapierre reported to you?

A. Correct.

Q. You deduced these things?

A. Correct.

Q. And it was after you had made this deduction that you went to see Mr. Brault and you were right on target?

A. Yes, well, I made what I considered the logical deduction; I went to see him and that is what he told me.

Q. And this logical deduction of yours led you to go and see Mr. Brault?

A. Yes.

Q. Did Mr. Brault confirm to you that these words had been said during a meeting attended by the persons in question, that he himself had attended this meeting and that it had resulted in the letter in question?

A. No, no.

Q. He did not say this to you?

A. No.

Q. He did not say to you: where? when? how?

A. No. Because the question that I asked him ...

Q. The question that you asked him was as follows: "Are you aware that ...?"

A. Yes.

Q. "Do you remember that ...?"

A. That's right.

Q. And he gave you an answer?

A. Yes.

Q. And you did not ask him: where? when? how? why?

A. No.

**N. (Volume 5, pages 971-72)**

**CHAIRPERSON:**

Q. But what Ms. Lapierre had told you was not a certainty?

A. Yes, but I thought that the president had heard it too, because Ms. Lapierre ... I did not want to mention her name in order to protect her.

Q. So, what you are doing is ... you want to base your complaint not on Ms. Lapierre's words but on the words of the union president?

A. What he heard.

Q. Yes, but Ms. Lapierre heard it as well?

A. Yes, that's true. Except that she said to me: "I don't want my name to appear."

Q. So you are basing your complaint on ... the second paragraph of your complaint is based solely on the words that you allegedly exchanged with Mr. Brault?

A. At that point, yes.

Q. But you don't consider it appropriate to include in your complaint the earlier words that you exchanged or the conversation that you had with Ms. Lapierre?

A. No. I did not want to include her name there because TVA was going to get a copy. So I did not mention Ms. Lapierre. I did, however, mention her immediately afterward to the investigators, in documents that were supposed to be confidential.

Q. When did you ...

A. Ask for confidentiality? I even asked for confidentiality in a letter that I wrote to Ms. Lucie Fortier.

**O. (Volume 5, pages 990, 991 and 992)**

**CHAIRPERSON:**

Q. Let us clarify this point. You claim that Mr. Bertrand sent a document to the Commission in which he allegedly stated that Mr. Brault had said that he did not remember it?

A. Correct, remember anything.

Q. That he did not remember anything?

A. Correct.

Q. And after that you mention another document and state that you had read this latter document?

A. Yes.

Q. Which you call a document coming from Mr. Bertrand?

A. Yes.

Q. And that, equipped with this information, you went to see Mr. Brault; that was the second meeting?

A. The third, because I had seen him twice before that, in the cafeteria.

Q. But at the second meeting, when you saw Mr. Brault and asked him questions ... it was as a result of what event that you felt it necessary to question him?

A. Ah yes, it was the second time. Because I had heard that he did not remember anything following the document referred to; at that point I said: "How come you don't remember?"

Q. Fine. And after that you refer to another document that you allegedly saw?

A. Yes.

Q. What was written in it?

A. It was written that Manon Malo had never said that.

Q. Fine. What did you do after that?

A. Well, I called the investigator and said to him: "You are sure that he said that?" He replied: "Yes, absolutely." After that he said to me: "In any case, when we questioned him, he was not under oath."

Q. And what did you do after that?

A. I didn't do anything, there was nothing more that I could do.

Q. You did not speak to Mr. Brault?

A. Yes, when I saw him accidentally. I was going up to the tenth floor to bring my ...

Q. So it was later?

A. Later.

Q. When you saw him, what did you say to him at that point?

A. I said to him: "How come you don't remember, I don't understand what that means; you said to me, yes, you had heard her?" I did not say to him: Did you hear about such a matter? Rather, I said: "You said to me: 'Yes, I heard that, but I don't remember who said it.' You also said to me that you had taken my side, by telling me, ever since she had been in Canada. And, then, when I came back a second time, you said to me: 'I'm not afraid of anyone, I'm going to tell the truth.'" At that point he became ill at ease and replied that, no, he had not said that: "In any case, this time Manon Malo was not there." I did not have the time to figure out what "this time" meant.

**P. (Volume 5, pages 999 to 1002)**

**CHAIRPERSON:**

Q. Madam, except that ... we'll end up understanding each other, O.K.?

A. Yes.

Q. It is not difficult to answer the questions that are being put to you. Initially, you arrive at the conclusion that Mr. Brault was present at a meeting during which Ms. Malo uttered a sentence.

A. Correct.

Q. You leave and go to meet Mr. Brault. We will call that the first meeting.

A. Correct.

Q. O.K.?

A. Yes.

Q. And following this meeting, you file your complaint?

A. Yes.

Q. Once you have filed your complaint, you happen to read a document.

A. There was an exchange of correspondence, yes.

Q. Follow me, please!

A. O.K.

Q. You read a document that you claim to be a document sent to the Commission by Mr. Bertrand.

A. Correct.

Q. In which document Mr. Bertrand writes that Mr. Brault had allegedly stated that he did not remember.

A. Correct.

Q. Being informed of that, you have a second meeting with Mr. Brault in the cafeteria.

A. Correct.

Q. And it is there that Mr. Brault tells you that he is not afraid and that he is going to tell the truth.

A. Correct.

Q. O.K.?

A. Yes.

Q. When you see Mr. Brault, you say to him: "Did you not say that you didn't remember?"

A. Yes, I said: "Apparently, you didn't remember."

Q. "Apparently" - sorry, that's what you said? Fine. So that's two meetings taken care of. And then there was a third one.

A. Correct.

Q. What led to the third meeting?

A. Following the issue of ...

Q. Following a document that you saw?

A. Correct.

Q. What was written in this document?

A. That Manon had never said that.

Q. And who reportedly said that?

A. Mr. Brault to the investigator.

Q. That Manon had never said that?

A. That's correct.

Q. Some time went by after you saw that ...

A. Yes.

Q. ... and you had an impromptu meeting with Mr. Brault on the tenth floor?

A. Correct.

Q. And this was some time later, because LCN was then in operation?

A. Yes.

Q. Fine. You arrive face to face with Mr. Brault?

A. Correct.

Q. What do you say to him?

A. I then said to him: "How come you remembered everything; you said to me that you were going to tell the truth, and then you say to the investigator that Manon Malo never said that?"

Q. Fine.

A. Then he answered that Manon Malo had not been there on that day. "On that day?" I didn't understand what it was supposed to mean, "on that day"; did someone else say it?

**Q. (Volume 5, pages 1027-1028)**

**CHAIRPERSON:**

Q. But the question, Madam, is as follows: Do you have knowledge ...

A. Yes, what I have knowledge of.

Q. ... do you have personal knowledge - when a grievance is filed - of the progression that a grievance follows after it has been filed? That is the question.

A. There are meetings, then there is arbitration, but what I wanted to explain to you, Mr. Chairperson, is that it takes an enormous amount of time.

Q. So, according to you, first there is the grievance?

A. Yes.

Q. This can be followed by discussions?

A. Correct.

Q. And next, there can be arbitration?

A. Correct.

Q. To the best of your knowledge?

A. To the best of my knowledge.

**R. (Volume 5, pages 1041 to 1044)**

**CHAIRPERSON:**

Q. But did it affect you mentally, in 1996?

A. Yes, yes.

Q. To the point that you had to consult doctors?

A. Yes. And I can, I mean to say I can show you ... as I told you the other day, the Standard Life insurance company has all the applications, and you will see that there was Prozac, Ativan and Rivotril for a long time.

People don't take these things just for the fun of it; except that my medical file, if I have some problems somewhere - no, I don't let anyone go and look at my ... I can produce evidence that I have taken medication.

Q. But if, Madam, you are taking this medication because of the state of your mental health and this is a result, according to your doctors' findings, of causes other than those that you have told us - how will we be able to know this?

A. Alright, it's pretty complicated as you say, because each time that I have been to the clinic to see a doctor, especially an emergency clinic, which they call a polyclinic, you surely don't think that each time I am going to tell my story to the doctor? The first time that I did tell it to the doctor - it was Dr. Poirier - it took me a while to relate everything.

Q. But for the doctor to prescribe medication of the type that you describe to us, it was nevertheless necessary for you to tell him something in order for him to be able to make a diagnosis?

A. Yes. I told him how I felt, that I was unable to sleep, that I felt very, very tense. He tried asking me for the reason, but I didn't want to tell him, but he could see that I was very nervous. So he prescribed medication for me and told me to come and see him again. When I returned to the clinic, because there were some times when I didn't take any, I hit upon another doctor. So I took the medication, but I never told.

Even with Dr. Poirier, when I saw him in 2000, I had not gone there to tell him my woes. I went there simply because I had a very sore throat and ear; so he prescribed Pondocillin tablets for me, it's a sort of antibiotic.

Q. When you say that you started to consult the doctor in 1996 and that you took medication, was this in a sporadic fashion?

A. Yes. What does "sporadic" mean?

Q. It means that it was not all the time.

A. Correct. Correct.

Q. At what intervals did you take this medication and at what intervals did you consult the doctors? Did you go to see the doctor in July 1996 and he gave you medication for a month, and then you returned six months later?

A. Perhaps two, three months later. But I could jog my memory with the help of the drug store, the local drug store where I bought my medication. They could look up all the medication concerning only that. What I mean to say is that if I had a problem with my toe, I wouldn't need to get that.

Q. No, I agree with you, that's for sure.

**S. (Volume 5, pages 1047 to 1051)**

**CHAIRPERSON:**

Q. You had nevertheless met with Ms. ...

A. Yes. That was so that I could say to myself that I had tried everything. I wanted to try everything, that is what I told the Commission on the 22nd ...

Q. What is the name of the woman whom you met a few days before filing your grievance?

**Mr. DI IORIO:** Marcelle Brière.

**WITNESS:** Yes, because I wanted to make it official.

**CHAIRPERSON:** Ms. Brière.

Q. Good. You met Ms. Brière on July 29, if my memory serves me well?

A. Correct.

Q. And you told her everything?

A. From A to Z.

Q. From A to Z. You have told us that Ms. Brière promised you that she would take care of it?

A. Yes.

Q. When Ms. Brière promised you that she would take care of it, were you confident that she would do so?

A. Yes.

Q. Nevertheless, at that point you filed a grievance, on the 31st, two days later?

A. Yes. Because with Ms. Brière - I had no document to prove that I had complained, because in the past, supposing that I had said something, there was no evidence that I had. So I wanted to have the proof that I had done something.

Q. Good. Then after you had presented your grievance, a month later you decided to file a complaint?

A. I waited, yes.

Q. A month later, before filing your complaint, did you ask the union people for information, to find out what had happened to your grievance?

A. Nothing was happening, that was why.

Q. That is not my question.

A. Yes, I made enquiries.

Q. That is what Mr. ...

A. Yes, I made enquiries, and ...

Q. Mr. Di Iorio, that is what he is asking you.

A. O.K., that's right. No.

Q. You made enquiries ...

A. Yes.

Q. ... before filing your complaint, to find out what follow-up had been given to your grievance?

A. Correct.

Q. To whom did you speak about it and when?

A. I asked Théo St-Pierre about it.

Q. So, you asked him that in the days preceding the filing of your complaint?

A. Yes.

Q. And when you asked Mr. Théo St-Pierre about this, what was his answer to you?

A. He told me: "No." No, as usual.

Q. What did you ask him?

A. I said: "Do you have any news, are they going to do something?" And he said: "To date, nothing has happened."

Q. "To date ...", what did he answer you?

A. "To date, nothing was happening."

Q. "Nothing was happening." Earlier you said that Mr. Théo had said to you that the matter would be discussed together with other grievances during a meeting of the grievance committee?

A. In general, the grievances are discussed.

Q. But did he say that to you at that point?

A. No, not at that point. It was when I spoke about the other grievances, because it had been a while since I had asked the union: "It's all very nice to file grievances, but what good does it do to me personally?" I mean to say, I sign a grievance and then it goes into a filing cabinet. What happens with these grievances? It was then that I got the answer that it was being taken care of. Even with the new union, I asked the same question and

they told me that there were grievance committees; then there was a meeting - I don't know exactly when - and then they settled certain grievances.

**C. Remarks by the Member on the subject of Bin Laden.**

[23] As the third element in support of the motion for disqualification, the Commission's counsel criticizes me for comments on the subject of Bin Laden.

[24] It is appropriate to refer to the transcripts to establish clearly the context of these remarks. (Volume 4, pages 849, 850 and 851)

**Mr. DI IORIO:**

Q. Thus, at any given time, was there something - a fact that you saw, that you heard and that originated with Manon - you saw Manon or you heard Manon, you touched Manon or you felt Manon or you tasted Manon, so to speak - something that could be perceived with the senses, concerning Manon, that made you conclude that she did not like Arabs?

A. Her attitude. That's all.

Q. It's the attitude. But there were no words uttered by Manon which suggested to you that she did not like Arabs?

A. No, other than: "Hey, he was a Muslim." Apart from that, no.

Q. And you will agree with me that "Hey, he was a Muslim" is not in itself indicative of racism?

A. Maybe not, but it is not always what one says, but the way that one says it.

**CHAIRPERSON:**

Q. Or the perception that one has of it.

A. Yes, I, I could say, I don't know, have a joke with someone and he could find that joke extremely funny. Yet, if I changed my tone of voice it would be very insulting. I am saying to you that it depends on how something is said, with what degree of rigidity and ...

Q. Madam, I can say to you this afternoon with a smile on my face that, given that you are a Muslim, of Muslim origin, ... I can nevertheless have a joke at your expense by asking you if you have an affinity with Bin Laden.

A. Oh, that's not the same, that's not at all the same, it's a joke.

Q. Good. If, on the other hand, I say to you that she is like Bin Laden, she is similar to him?

A. Yes, then, that's different.

Q. That's different?

A. Yes.

Q. We're in agreement?

A. Yes.

**Mr. DI IORIO:**

Q. You are not a Muslim?

A. I was a Muslim but I was baptized; my mother chose the name Marie-Thérèse Nadia instead of just Nadia. But, basically, it seems that at the time the priest did not agree to simply put Nadia. She baptized me in secret because, in Egypt, a Muslim woman cannot change religions and she cannot marry a Christian. That is why we wanted to leave. We are ... it is the father who chooses his daughter's husband.

Q. You are saying that you were formerly a Muslim?

A. Well, I was born a Muslim. If you have a Muslim father, then, according to Arab, Egyptian law, you are automatically a Muslim.

Q. According to the rules of Islam?

A. Correct, according to the rules of Islam.

#### **IV. ANALYSIS**

[25] In effect the Commission's counsel claims that, as a result of my interventions during the testimony of the Complainant Nadia Caza, I created a reasonable apprehension of bias, justifying the legitimacy of the motion for disqualification.

[26] What is a reasonable apprehension of bias? In the *Committee for Justice and Liberty* <sup>(1)</sup> case, Mr. Justice de Grandpré defined the test applicable to a reasonable apprehension of bias:

The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be a reasonable one held by reasonable and right-minded persons, applying themselves to the

question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly?"

I can see no real difference between the expressions found in the decided cases, be they "reasonable apprehension of bias", "reasonable suspicion of bias" or "real likelihood of bias". The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test related to the "very sensitive or scrupulous conscience".

This is the proper approach which, of course, must be adjusted to the facts of the case. The question of bias in a member of a court of justice cannot be examined in the same light as that in a member of an administrative tribunal entrusted by statute with an administrative discretion exercised in the light of its experience and of that of its technical advisers.

The basic principle is of course the same, namely that natural justice be rendered. But its application must take into consideration the special circumstances of the tribunal. As stated by Reid, *Administrative Law and Practice*, 1971, at page 220:

... "tribunals" is a basket word embracing many kinds and sorts. It is quickly obvious that a standard appropriate to one may be inappropriate to another. Hence, facts which may constitute bias in one, may not amount to bias in another.

[27] In the *R.D.S.* <sup>(2)</sup> case, the Supreme Court set forth the manner in which a reasonable person must approach the question of a reasonable apprehension of bias:

We conclude that the reasonable person contemplated by de Grandpré J., and endorsed by Canadian courts is a person who approaches the question of whether there exists a reasonable apprehension of bias with a complex and contextualized understanding of the issues in the case. The reasonable person understands the impossibility of judicial neutrality, but demands judicial impartiality. The reasonable person is cognizant of the racial dynamics in the local community, and, as a member of the Canadian community, is supportive of the principles of equality.

Before concluding that there exists a reasonable apprehension of bias in the conduct of a judge, the reasonable person would require some clear evidence that the judge in question had improperly used his or her perspective in the decision-making process; this flows from the presumption of impartiality of the judiciary. There must be some indication that the judge was not approaching the case with an open mind fair to all parties. Awareness of the context within which a case occurred would not constitute such evidence; on the contrary, such awareness is consistent with the highest tradition of judicial impartiality.

[28] I intend to analyse the three components of the application for disqualification in the light of the principles established by case law.

[29] With regard to my failure to respect an agreement entered into by the parties at the start of the hearing, it appears from the quotations advanced by the Commission's counsel and appearing in the evidence that the Complainant had a right to speak to cross-examine a witness if she so desired, following the cross-examination of the Commission's counsel. She could also proceed to cross-examine a witness after having consulted the Commission's counsel, if she considered it appropriate. The Complainant has not yet had an opportunity to exercise this right.

[30] As for the right to speak, I do not believe that I prevented the Complainant from exercising this right within the context of the rules governing the cross-examination of witnesses. I consider that it was incumbent on me to inform the Complainant of her obligation to answer the questions of the adverse party's counsel. A witness can certainly wonder about the reasons which motivate the counsel who is cross-examining him, but it is the judge's responsibility to inform him that it is not up to him to question the counsel on his intentions - without such information constituting a reprimand of the Complainant.

[31] To conclude on this point, I am firmly convinced that the quotations produced by the Commission's counsel and reproduced in this decision do not in any way show that I might have reprimanded the Complainant. At the risk of repeating myself, I believe that informing the Complainant of her obligation to answer the questions put to her by the adverse party did not constitute any form of reprimand directed to her or any infringement of her freedom of expression. I consider that it was my duty to do so.

[32] As regards the second component of the application, the Commission's counsel criticizes me for having interrupted the Complainant's testimony, as well as my numerous interventions, thereby creating, through my actions, a reasonable apprehension of bias on my part.

[33] I would like to emphasize that I do not know of any rule that prohibits a judge from interrupting the cross-examination of a witness or from intervening to ask him questions or provide him with explanations when it seems necessary to him to do so.

[34] I have re-read very carefully the quotations provided in support of the criticisms levelled at me. I have concluded that I had to intervene to facilitate my understanding of the Complainant's answers to the questions put by the Respondents' counsel. I have also concluded that, on several occasions, the Complainant had not understood the questions put to her. I believe that it was then my responsibility to intervene to satisfy myself that the Complainant had a good understanding of the questions directed to her. I intervened to enable the Complainant, whose answers to questions had been ambiguous, to provide clear answers.

[35] I do not believe that my interventions deprived the Complainant of her absolute right to a fair hearing. I consider that my interventions were never unfavourable to the Complainant and were never intended to undermine her credibility.

[36] I do not believe that my attitude or frame of mind during the Complainant's testimony warrant a conclusion that I departed from the rule of impartiality. My interventions were directed solely to finding the truth in order that justice might be done.

[37] With regard to the third component of the application for disqualification, concerning my comments on the subject of Bin Laden, the Commission's counsel maintains that I committed an error in claiming that the Complainant was of Muslim origin. Unfortunately, that is not what the evidence shows. In her testimony, the Complainant stated that she was born a Muslim, since her father was a Muslim.

[38] The Commission's counsel maintains that the example that I put forward by saying: "I can nevertheless have a joke at your expense by asking you if you have an affinity with Bin Laden " was an inopportune remark in connection with a witness under cross-examination. He expresses himself as follows:

To ask "do you have an affinity with Bin Laden", even when joking, is in my view inopportune. (Volume 5, page 1208)

[39] He also maintains that the comments that I made, even in joking, "give the impression, to an outsider, that there is a distraction on the part of the decision-maker who hears a case involving an Arab and has in mind the fact that Bin Laden is an individual who belongs to the Arab world." (Volume 5, page 1211)

[40] I cannot follow the reasoning of the Commission's counsel. When the comments are put in the context in which they were uttered, I do not think that a reasonable person, well versed in the adjudicative process, could conclude that the comments in question created a reasonable apprehension of bias. Moreover, I do not think that a mere impression is sufficient.

[41] I do not, furthermore, believe that my comments were injurious or that the Complainant felt dominated by me in my role as a decision-maker.

[42] The evidence shows clearly that at no time did my comments evoke fear in the Complainant. On the contrary, the evidence shows that she was nervous following the questions of the Respondents' counsel. I intervened to reassure her and to show that it was my role to monitor the behaviour of counsel for the Respondents.

## **V. CONCLUSION**

[43] I have reached the conclusion that counsel for the Commission, who had the burden of clearly establishing that my interventions might have created a reasonable apprehension of bias, has not been able to adduce such proof.

[44] I consider that a reasonable person who meets the criteria established by jurisprudence cannot, following analysis of the criticisms levelled at me, reach the conclusion that my interventions created a reasonable apprehension of bias.

[45] Consequently, the motion for disqualification is dismissed.

"Original signed by"

Roger Doyon, Chairperson

OTTAWA, Ontario

April 29, 2002

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

TRIBUNAL FILE NOS.: T633/2101; T634/2201

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DATE OF TRIBUNAL'S DECISION: April 29, 2002

APPEARANCES:

Nadia Caza On her own behalf

Daniel Chénard and Monette Maillet For the Canadian Human Rights Commission

Nicola Di Iorio and Stéphane Fillion For Télé-Métropole inc. and Manon Malo

1. 1 *Committee for Justice and Liberty v. Canada (National Energy Board)* [1978] 1 S.C.R. p. 369 at pages 394 and 395.

2. 2 *R.D.S. v. Her Majesty the Queen* [1997] 3 S.C.R. p. 484 at page 509.