

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**PUBLIC SERVICE ALLIANCE OF CANADA**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CANADA POST CORPORATION**

**Respondent**

**RULING ON RESPONDENT'S SUBMISSION**

**RE ARMSTRONG REPLY EVIDENCE**

**Ruling No. 5**

**2002/04/26**

**PANEL: Benjamin Schecter, Chairperson**

**Elizabeth Leighton, Member**

**Gerald Rayner, Member**

**I. BACKGROUND**

[1] On August 30, 2000, this Tribunal rendered an oral Decision regarding the reports of Dr. Pat Armstrong, which the Commission wished to submit as reply evidence.

[2] The essence of the decision was that Dr. Armstrong's reports contained language which could be characterized as legal opinion or legal argument. Therefore, those reports, entered as I-22 and I-23, were not admitted as then currently drafted.

[3] The Commission was then faced with making a choice of one of three options, as follows:

1. To have Dr. Armstrong recast her reports, limiting her opinion to areas of her expertise with a caution ... to avoidance of giving legal opinion.
2. To proceed with Dr. Armstrong as a witness, but have her reports excluded.
3. To find an alternative witness.

[4] The Commission decided to request new, revised reports of Dr. Armstrong, and, after presenting these reports to all parties and the Tribunal, to call her as an expert witness. The revised reports are now before this Tribunal as I-29 and I-30.

## II. ISSUE

[5] Given the Commission's decision to proceed with revised reports from Dr. Armstrong, the Tribunal considers that the issue now before us is to determine whether or not reports I-29 and I-30 comply with the Tribunal's decision and directions of August 30, 2000.

## III. SUBMISSIONS

[6] The Respondent has objected to the admission into evidence of the revised reports.

[7] In its submission, the Respondent argues that the revised reports do not represent proper reply evidence, and that they are duplicative of the evidence of Dr. John Kervin, particularly with regard to the question of "unbundling". Additionally, they argue that the reports offend the rule in *Browne v. Dunn*, and that they continue to contain legal opinion and argument.

[8] Further, the Respondent argues that I-29 and I-30 contain evidence that is confirmatory of evidence that Dr. Armstrong led by way of her previous report (PSAC-2). For all these reasons, the Respondent argues that to admit Dr. Armstrong's revised reports would be prejudicial to the Respondent's case.

[9] The Commission and the Complainant argue strenuously that the only issue before the Tribunal should be whether Dr. Armstrong's revised reports comply with the August 2000 decision and directions of the Tribunal.

[10] They argue that Dr. Armstrong, as one of Canada's leading experts in pay equity, has in fact, revised her original reports, I-22 and I-23, to comply with the directions of the Tribunal.

[11] Moreover, the Commission and the Complainant argue that what the Respondent considered confirmatory statements are, in reality, Dr. Armstrong's attempt to put the subject matter in its proper context.

[12] With respect to the Respondent's arguments based on the rule in *Browne v. Dunn*, the Commission and the Complainant argue that, in this case, there is no suggestion that the Respondent's witnesses, Dr. Mark Killingsworth and Professor Paul Weiler, are unworthy of credit. Therefore, the rule in *Browne v. Dunn*, which deals primarily with credibility of witnesses, has no applicability.

#### IV. CONCLUSION

[13] The Tribunal has concluded, after hearing the arguments of all parties, that it is not appropriate to revisit all aspects of its decision of August 2000.

[14] The Tribunal finds that the argument concerning the nature of proper reply evidence was dealt with by its decision in August 2000, and is not seminal to the issue of whether Dr. Armstrong's reports, as revised, are admissible.

[15] The Tribunal does not accept the argument that Dr. Armstrong's revised reports are duplicative of the material presented by Dr. Kervin. Dr. Kervin's expertise was primarily in the area of data analysis and the use of statistical methodology. Dr. Armstrong's expertise in women's work, women's wages, and the sociological side of pay equity legislation gives her reports a different perspective.

[16] The issue concerning *Browne v. Dunn* was not addressed in the August 2000 decision; however, the Tribunal accepts that there is no intention to attack the credibility of either Dr. Killingsworth or Professor Weiler in Dr. Armstrong's revised reports.

[17] Any references to Dr. Armstrong's original report (PSAC-2) will be considered by the Tribunal to be contextual.

[18] The Tribunal finds that the principal issue is whether Dr. Armstrong's revised reports comply with the Tribunal's August 2000 decision and directions that she limit her reports to her areas of expertise and avoid legal arguments or opinions. The Tribunal believes that Dr. Armstrong's revised reports are generally free of legal arguments or opinions. Her reports do, however, necessarily make reference to pay equity legislation, as she has been qualified as an expert in the sociological side of this area, for this case. The Tribunal would find such an expert remiss if those references were not included in the reports.

[19] The Tribunal concludes that the reports, as recast, do comply with the August 2000 decision. Therefore, in the interests of fairness, I-29 and I-30 will be admitted into evidence. The Tribunal will of course, give this evidence its appropriate weight.

"Original signed by"

Benjamin Schecter, Chairperson

Elizabeth Leighton, Member

Gerald Rayner, Member

OTTAWA, Ontario

April 26, 2002

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T299/1392

STYLE OF CAUSE: Public Service Alliance of Canada v. Canada Post Corporation

PLACE OF HEARING: Ottawa, Ontario

(April 25, 2002)

DECISION OF THE TRIBUNAL DATED: April 26, 2002

**APPEARANCES:**

James Cameron For the Public Service Alliance of Canada

Peter Engelmann For the Canadian Human Rights Commission

Guy Dufort and Jennifer Perry For the Canada Post Corporation