

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

BETWEEN:

NADIA CAZA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

TÉLÉ-MÉTROPOLE INC.

- and -

MANON MALO

Respondents

RULING ON JURISDICTION

Decision No. 1

2001/04/11

PANEL: Athanasios D. Hadjis, Chairperson

"TRANSLATION"

RESPONDENTS' MOTION

[1] On November 7, 1996, Ms. Nadia Caza filed a complaint against her employer, Télé-Métropole Inc. ("Télé-Métropole"). On January 7, 1999, the Complainant also filed a complaint against her supervisor as of that date, Ms. Manon Malo. Ms. Caza alleges in the first complaint that Télé-Métropole discriminated against her on the basis of her national or ethnic origin (Egyptian and Arab), in differentiating adversely in relation to her in the course of her employment and in not ensuring her a work environment free of harassment, the whole contrary to sections 7 and 14 of the *Canadian Human Rights Act*. In her second complaint, she alleges that Ms. Malo had harassed her because of her national or ethnic origin, contrary to section 14 of the *Act*. On January 16, 2001, the Canadian Human Rights Commission referred Ms. Caza's complaints to the Canadian Human Rights Tribunal for hearing.

[2] The two Respondents are represented by the same counsel and object to the continuation of the proceedings at this time on the ground that there is a reasonable apprehension of institutional bias with respect to the Canadian Human Rights Tribunal. In particular, the Respondents maintain that the Tribunal lacks sufficient institutional independence so as to allow it to provide the parties a fair and impartial hearing.

[3] In this regard, the Respondents rely upon the recent Federal Court ruling in *Bell Canada v. CTEA, Femmes Action and Canadian Human Rights Commission* ("*Bell Canada*").⁽¹⁾ In *Bell Canada*, Madam Justice Tremblay-Lamer, of the Federal Court of Canada Trial Division, concluded that the Tribunal was not an institutionally independent and impartial body as a result of the Canadian Human Rights Commission having the power to issue guidelines binding upon the Tribunal.⁽²⁾ Madam Justice Tremblay-Lamer also concluded that the independence of the Tribunal was compromised by requiring the Chairperson of the Tribunal's approval for members to complete cases after the expiry of their appointments.⁽³⁾ Accordingly, Madam Justice Tremblay-Lamer ordered that there be no further proceedings in the *Bell Canada* matter until such time as the problems that she identified with the statutory regime were corrected.

[4] The Respondents submits that the statutory scheme which Madam Justice Tremblay-Lamer deemed inadequate for ensuring the independence of the Tribunal, is engaged in this case, and that, consequently, the proceedings should be suspended until the problems identified by the Federal Court have been remedied and the Tribunal is able to ensure the parties a fair and impartial hearing.

[5] Subsidiarily, the Respondents submits that the Tribunal could invoke Section 18.3 of the *Federal Court Act*, which authorizes it to refer any question of law, of jurisdiction or of practice and procedure to the Federal Court Trial Division.

[6] In its reply, the Canadian Human Rights Commission points out that the *Bell Canada* ruling is under appeal and therefore not final. This appeal was heard from April 3 to 5, 2001, and the case is at present under advisement. The Commission also asserts that the *Bell Canada* matter differs from this case, because as opposed to that case, the present case does not concern pay equity. The Commission has not issued any guidelines pursuant to Sub-section 27(2) of the *Canadian Human Rights Act* that might apply to Ms. Caza's complaints and might therefore interfere with the exercise of the discretionary power of one or more Tribunal members hearing this case. According to the Commission, there is no indication that the appointment of any panel member who may hear the complaint will expire before the conclusion of the hearings in this matter; the question of the extension of a member's appointment is therefore not likely to arise. The Commission invokes, in support of its position, the grounds set out in the decision handed down by the Canadian Human Rights Tribunal in *Stevenson v. Canadian Security Intelligence Service* ⁽⁴⁾ ("*Stevenson*"), of November 7, 2000.

[7] Ms. Caza has not made any representation with respect to these issues other than to express to the officer of the Canadian Human Rights Tribunal registry who is responsible for the file, her will to see the case proceed as soon as possible.

[8] The Chairperson of the Canadian Human Rights Tribunal has assigned me to review and rule on these questions. The arguments of the parties were submitted in writing and oral submissions were not made.

ANALYSIS OF THE PARTIES' ARGUMENTS

[9] In responding to the submissions of the Commission, the Respondents relied on five decisions of the Canadian Human Rights Tribunal, in the cases of *Jackson v. Royal Canadian Mounted Police*, ⁽⁵⁾ *Martin v. Sauteaux Band Government*, ⁽⁶⁾ *Houlihan v. Halifax Employers Association*, ⁽⁷⁾ *Quigley v. Ocean Construction Supplies* ⁽⁸⁾ and *Eisler v. Canadian National Railway Company*. ⁽⁹⁾ These decisions were all rendered after the decision in *Stevenson*. I summarize hereafter the relevant conclusions which emerge from these five decisions:

a) The fact that the judgment rendered by Madam Justice Tremblay-Lamer in *Bell Canada* is under appeal is not relevant because, as of this moment, it is a valid formal judgment which is binding on any case before the Tribunal insofar as the facts in a case before the Tribunal do not differ from those in the *Bell Canada* case. [*Houlihan, Eisler*]

b) The reach of the decision in *Bell Canada* is not limited to cases where the Commission has issued guidelines pursuant to Sub-section 27(2) of the *Canadian Human Rights Act*. According to Madam Justice Tremblay-Lamer, the problem related to the guidelines stems from the provisions of this Act giving the Commission *the power* to make guidelines, and not from the existence of the guidelines themselves. This power derives from the *Act*, which governs all proceedings before the Canadian Human Rights Tribunal. Therefore, the judgment in *Bell Canada* applies to cases where no guidelines may actually be in existence. [*Eisler, Quigley, Houlihan, Martin, Jackson*]

c) The problem identified by Madam Justice Tremblay-Lamer with respect to the issue of the extension of a member's term relates not to the way that the discretion which the *Act* confers on the Chairperson may be exercised in a particular case, but rather to the existence of the discretion itself. The Court notes that there is no objective guarantee that the continuance of a member's duties after the expiry of the member's term would not be adversely affected by decisions *past* or present. Decisions made by members during the course of their mandates could thus presumably be affected by the knowledge that the member might, at some future date, require leave of the Chairperson to complete a proceeding. [*Eisler, Quigley, Houlihan, Martin, Jackson*]

d) Even if one considers the expiry dates of the appointments of Tribunal members, the terms of the majority of them are scheduled to expire sometime in 2001, and some as early as June 2001. Given the exigencies of the litigation process, it is far from certain that the question of the expiry of a term will not arise. [*Eisler, Houlihan*]

e) In each of the five cases cited above, the Tribunal concluded that the *Bell Canada* ruling applies and decided to adjourn the matters *sine die*, until such time as the problems with the *Act* identified by Madam Justice Tremblay-Lamer are corrected, or until the Canadian Human Rights Tribunal is found to be institutionally independent and impartial.

[10] I share and wholeheartedly agree with the opinions stated in these five decisions of the Tribunal.⁽¹⁰⁾ Like the complaints in these cases, Ms. Caza's complaints do not concern pay equity, but the problems identified by Madam Justice Tremblay-Lamer in the *Bell Canada* ruling arise nonetheless. I also share the following concerns expressed by the Tribunal in the *Eisler* case⁽¹¹⁾:

It is with great reluctance that I come to this conclusion. It is well established that there is a public interest in having complaints of discrimination dealt with expeditiously. The effect of my decision to adjourn this matter *sine die* does not serve this public interest. It does not serve the interest of Ms. Eisler, who, more than two years after filing her complaint of discrimination with the Commission, remains unable to have her 'day in court'. It also does not serve the interests of the individuals within CN allegedly

responsible for discriminatory conduct: they continue to have the Sword of Damocles of unproven allegations of discrimination hanging over their heads for an indefinite period of time, with no opportunity for vindication.

However, the public interest extends beyond speedy justice: Canadians involved in the human rights process are entitled to hearings before a fair and impartial Tribunal. According to the Federal Court, the Canadian Human Rights Tribunal is not such a Tribunal.

[11] I note that in the present case, it has been more than four years since the first complaint was filed.

ORDER

[12] For all these reasons, the Respondents' motion is granted. This case is adjourned *sine die* until such time as the problems with the *Canadian Human Rights Act* identified by Madam Justice Tremblay-Lamer in the *Bell Canada* decision are corrected, or until the Canadian Human Rights Tribunal is found to be institutionally independent and impartial. Accordingly, the subsidiary motion of the Respondents with respect to a referral of these matters to the Federal Court is denied.

Athanasios D. Hadjis, Chairperson

OTTAWA, Ontario

April 11, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T633/2101

STYLE OF CAUSE: NADIA CAZA v. TÉLÉ-MÉTROPOLE INC. AND MANON MALO

DECISION OF THE TRIBUNAL DATED: April 11, 2001

APPEARANCES:

Nadia Caza For the Complainant (on her own behalf)

Giacomo Vigna For the Canadian Human Rights Commission

Stéphane Fillion For Télé-Métropole Inc. and Manon Malo

1. File No. T-890-99, November 2, 2000.
2. See subsections 27(2) and (3) of the *Canadian Human Rights Act*.
3. Subsection 48.2(2) of the *Canadian Human Rights Act*.
4. File No. T568/2600, November 7, 2000.
5. File No. T611/6900, January 17, 2001
6. *File No. T589/4700, December 8, 2000*
7. *File No. T609/6700, December 8, 2000*
8. File No. T582/4000, December 18, 2000
9. *File No. T588/4600, December 12, 2000*
10. In two other decisions handed down in *Rampersadsingh v. Wignall*, File No. T591/4900, January 24, 2001, and *Paterson v. Verbil Transport*, File No. T631//1901 and T632/2001, March 29, 2001, the Canadian Human Rights Tribunal *each reached conclusions similar to those set out in the five above-cited cases.*
11. *Supra*, note 9, page 8.