

**Canadian Human Rights Tribunal
la personne**

Tribunal canadien des droits de

BETWEEN :

GINO DUMONT

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

TRANSPORT JEANNOT GAGNON

Respondent

RULING ON JURISDICTION

Ruling No. 1

2001/06/13

PANEL: Anne Mactavish, Chairperson

TRANSLATION

[1] This case involves a complaint brought by Gino Dumont against his former employer, Transport Jeannot Gagnon (TJG). Mr. Dumont alleges that TJG refused to recall him to work following his hospitalization, contrary to Section 7 of the *Canadian Human Rights Act*.

[2] Mr. Dumont's human rights complaint was filed on March 20, 1998, and relates to matters occurring in 1996. The Canadian Human Rights Commission evidently exercised the discretion conferred on it by Section 41 (1) (e) of the *Act*, and decided to deal with Mr. Dumont's complaint, notwithstanding that the complaint appears to relate to matters occurring more than one year prior to the filing of the complaint.

[3] As I understand TJG's submissions, TJG objects to this matter proceeding if the Canadian Human Rights Tribunal considers itself bound by the unilateral decision of the Canadian Human Rights Commission to deal with the complaint. According to TJG, if the Tribunal is unable to review Commission decisions to extend or abridge the time limits for the filing of human rights complaints, then the Tribunal is neither independent nor impartial, and thus lacks jurisdiction to deal with Mr. Dumont's complaint.

[4] In this regard, TJG refers to the recent decision of the Federal Court in *Bell Canada v. CTEA, Femmes Action and Canadian Human Rights Commission* ("*Bell Canada*").⁽¹⁾ In *Bell Canada*, Madam Justice Tremblay-Lamer of the Trial Division of the Federal Court of Canada found that the Canadian Human Rights Tribunal was not an institutionally independent and impartial body as a result of the Canadian Human Rights Commission having the power to issue guidelines binding upon the Tribunal.⁽²⁾ Tremblay-Lamer J.

also concluded that the independence of the Tribunal was compromised by requiring the Chairperson of the Tribunal's approval for members of the Tribunal to complete cases after the expiry of their appointments.⁽³⁾ As a consequence, Tremblay-Lamer J. ordered that there be no further proceedings in the *Bell Canada* matter until such time as the problems that she identified with the statutory regime were corrected.

[5] It should be noted that TJG does not contend that the Canadian Human Rights Tribunal lacks the requisite degree of institutional independence and impartiality for either of the reasons cited by Tremblay-Lamer J. in *Bell Canada*.

[6] The Canadian Human Rights Commission submits that the Tribunal does not have the power to review Commission decisions to deal with complaints filed more than one year after the last event giving rise to the complaint. The Commission further notes that the Supreme Court of Canada recently dealt with the issue of delay in the human rights context: In *Blencoe v. British Columbia (Human Rights Commission)* ⁽⁴⁾ the Court noted that the only consideration when examining the issue of delay was the prejudice to the parties. According to the Commission, there is no evidence that the decision of the Commission to deal with Mr. Dumont's complaint has resulted in any prejudice to TJG. As a consequence, TJG's jurisdictional challenge should be rejected.

I. Analysis

[7] The Canadian Human Rights Tribunal does not have the power to review the way in which the Canadian Human Rights Commission chooses to exercise its discretion pursuant to Section 41 (1) (e) of the *Act*. This is a matter within the exclusive purview of the Federal Court.⁽⁵⁾ The fact that the Commission made its decision to deal with Mr. Dumont's complaint, apparently without the benefit of submissions from TJG, may well have been of some significance.⁽⁶⁾ It is noteworthy, however, that there is no indication that TJG has attempted to judicially review the Commission's decision to deal with Mr. Dumont's complaint. Nor is there any evidence before me to suggest that TJG has made any attempt to judicially review the Commission's decision to refer Mr. Dumont's complaint to the Canadian Human Rights Tribunal for hearing.

[8] The issue before me is whether the fact that the Tribunal does not have the power to review the decision of the Commission to deal with Mr. Dumont's complaint compromises the independence and impartiality of the Tribunal, so as to deprive it of jurisdiction in this case.

[9] The notions of independence and impartiality, although closely related, are nevertheless distinct concepts. As the Supreme Court of Canada noted in *2747-3174 Québec Inc. v Québec (Régie des permis d'alcool)* ⁽⁷⁾, however, the governing factors in the test for institutional impartiality are those used for the determination of issues of bias: That is, the test established in *Committee for Justice and Liberty et al. v. National Energy Board et al.* ⁽⁸⁾ The so-called 'de Grandpré test' asks what an informed person, viewing the

matter realistically and practically - and having thought the matter through - would conclude.

[10] In my view, the fact that the Tribunal does not have the power to review the way in which the Commission chooses to exercise its discretion pursuant to Section 41 (1) (e) of the *Act* does not compromise either the institutional independence or the impartiality of the Tribunal, so as to deprive it of jurisdiction to deal with Mr. Dumont's complaint.

[11] TJG's argument is predicated upon the assumption that the Tribunal is bound to follow the decision of the Commission to deal with the complaint. In my view, that understanding fundamentally misapprehends the complaint process, and the relationship between a Commission investigation and a Tribunal hearing.

[12] The decision of the Canadian Human Rights Commission under Section 41 (1) (e) of the *Act* simply allows the Commission to investigate the complaint in issue. After such an investigation has been completed, there are several avenues open to the Commission: It can dismiss the complaint, refer the complaint to be dealt with in another forum, or refer it to the Tribunal for hearing - which is what has happened in this case.

[13] Although the Tribunal cannot review the decision of the Commission to deal with the complaint, it does not follow that the Tribunal is without jurisdiction to consider the issue of delay. As the Supreme Court of Canada noted in *Blencoe*, after the referral of a complaint to a human rights Tribunal, it is still open to a respondent to argue that the delay in issue in a particular case is such that it would result in a hearing that lacked the essential elements of fairness. Similarly, a respondent can also argue that the delay is such that it amounts to an abuse of process. If TJG has concerns in this regard, these are matters that may be raised by it before the Tribunal.

[14] In light of the foregoing, TJG's objection to the jurisdiction of the Canadian Human Rights Tribunal is dismissed.

[15] TJG has raised a number of other issues in its submissions. In my view, these are matters better dealt with in the context of the hearing on the merits, and will be deferred to that time.

"Original signed by"

Anne L. Mactavish, Chairperson

OTTAWA, Ontario

June 13, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

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RULING OF THE TRIBUNAL DATED: June 13, 2001

APPEARANCES:

Gino Dumont On his own behalf

Giacomo Vigna For the Canadian Human Rights Commission

Alain H. Belzile For Transport Jeannot Gagnon

1. Docket T-890-99, November 2, 2000. Since receiving the parties' submissions concerning TJG's objection, Tremblay-Lamer J.'s decision in *Bell Canada* has been overturned by the Federal Court of Appeal (2001 FCA 161). However, TJG's argument is based on matters that were not considered by either the Trial Division or Court of Appeal in *Bell Canada*. Given the circumstances, however, I have not relied upon the Court of Appeal decision in *Bell Canada* in dealing with TJG's objection.

2. See Section 27 (2) and (3) of the *Canadian Human Rights Act*.

3. Section 48.2 (2) of the *Canadian Human Rights Act*.

4. 2 [2000] S.C.R. 307

5. *Wall v. Kitigan Zibi Education Council*, unreported T.D. 6/97 (C.H.R.T.)

6. *Canada Post Corp. v. Barrette*, [2000] 4 F.C. 145 (C.A.)

7. [1996] 3 S.C.R. 919

8. [1978] 1 S.C.R. 369