TD 7/84
Decision rendered July 12, 1984

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:
NOEL CAMPBELL, GREGORY McBRATNEY,
RONALD GRANT ATKINSON, FRED HULL,
& PHILIP O. RICARD, Complainants

- and -
HUDSON BAY MINING AND SMELTING CO.
LIMITED,

Respondent.

PRELIMINARY DECISION
Before: Kenneth Norman
Appearances:
For the Canadian Human Rights Commission
and the Complainants: Rene Duval.

For the Respondent: Walter L. Ritchie, Q.C.
Stan Lotocki
Denny Kells

Argument on jurisdictional questions
heard in Winnipeg on April 18, 1984.
Receipt of authorities relied upon
by Complainants, May 6, 1984.
Receipt of authorities relied upon
by Respondent, May 25, 1984.

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This decision addressed a number of preliminary objections taken by the Respondent as to this Tribunal's jurisdiction to proceed to hear the five
complaints on their merits. The first issue entailed an allegation of bias
on my part. This matter was fully argued on April 18 and, at the request of
Mr. Ritchie, for the Respondent, I ruled on it there and then. The balance
of the objections had to do with several irregularities said by Mr. Ritchie
to amount to fatal flaws in the process which led up to my first notice of
pre-hearing conference of February 13, 1984.

I will first reiterate and expand somewhat upon my oral ruling on the motion that I recuse myself on the ground of bias. Mr. Ritchie's contention
was, in a nutshell, that my occupancy of the Chair of the Saskatchewan Human

Rights Commission, from 1978 to 1983, and of the office of President of the

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Canadian Association of Statutory Human Rights Agencies in 1982/83, disqualified me from serving as the Tribunal in these cases. His point was that, based on the range of responsibilities set forth in Section 25 of The Saskatchewan Human Rights Code, for the Commission, I had taken, along with my fellow Commissioners, an active role, as a proponent of human rights. He cited a published speech which I delivered as President-Elect of the Canadian Association of Statutory Human Rights Agencies in Montebello, Quebec, in June of 1982. The gist of the cited, portions of this speech was to urge human rights commissions to not just content themselves with being defenders of legislated human rights, but to extend themselves into the role of being proponents of change, in the area of human rights. Two examples of such activism were cited in the speech. First, the Federal Human Rights Commission's call for abolition of mandatory retirement laws. And, second, the Saskatchewan Human Rights Commission's efforts to bring about a built environment accessibility code. Mr. Ritchie also made reference to two cases which found their way into the courts during my tenure of office in Saskatchewan. He submitted that "the seeing-eye dog case" and "the theatre case" stood as evidence of the activist role adopted by the Saskatchewan Human Rights Commission during my time as Chief Commissioner. (These cases are reported sub. nom. Re Peters et al. and University Hospital Board (1983) 147 D.L.R. (3d) 385. (Sask. C. of A.); Re Canadian Odeon Theatres Ltd. and Saskatchewan Human Rights Commission et al. (1982) 137 D.L.R. (3d) 759. (Sask. Q.B.) Mr. Ritchie cited a third case, which he called "the restaurant case", but I pointed out that this matter had been initiated and run its litigated course before I had assumed the Chair of the Saskatchewan Commission.

At the conclusion of argument, I adjourned briefly in order to consider the question before me. On resumption of the hearing, I read the following decision on the point of bias.

"On the Respondent’s motion that I recuse myself on the grounds of a reasonable apprehension of bias, I should say, at the outset, that this case
seems to be rather unique in that
it appears not to involve prior association with either of the parties. Rather, it seems to be seen as a matter of predisposition on a question of
human rights for disabled persons.

The common law principles in the case of a tribunal, such as this, are set down in de Smith’s, Judicial Review of Administrative Action, 4th ed. at
pages 252-53, as follows:

In adminstrative law situations, no real difficulty arises in applying rules against interest and likelihood of bias if the

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decision-maker is a member of a tribunal closely analogous to a court of
law. If the main functions of a tribunal are to determine disputed questions of law and fact, and to exercise discretionary powers by reference to standards that are not self-created but explicitly prescribed by statutory or other rules, on the basis of evidence openly tendered, and if, moveover, the adjudicators can normally be expected to
preserve a detached attitude towards the parties and issues before them,
then a "departure from the standard of even-handed justice which the law
requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as arbitrator," ought not to be and will not be countenanced. An adjudicator may indeed seldom achieve "the icy impartiality of a Rhadamanthus," and the idea that "by taking the oath of office as a judge, a man ceases to be human and strips himself of all predelections,
becomes a passionless thinking machine," is doubtless a myth. The common law nevertheless disqualifies a judge, magistrate or independent arbitrator from adjudicating whenever circumstances point to a real likelihood that he will have a bias, by which is mean "an operative prejudice, whether conscious or unconscious," in relation to a party or an issue before him.

In Regina v. Pickersgill et al, ex parte Smith et al., (1971) 14 D.L.R. (3d) 716. (Man. Q.B.), to which I was referred this morning, there is a good
discussion of this area by Mr. Justice
Wilson of the Manitoba Court of Queen’s Bench, at pages 722-23:
Bias, of course, is a question of fact, however conscious or unconscious of its existence may be he whose conduct is impugned. And so, while overt hostility to a party before the Court is enough to destroy the validity of the proceedings, as in the Gooliah case (1967), 63 D.L.R. (2d) 224, or in Re R. v. Jackson, Re Elliott (1959), 125 C.C.C. 205, 31 C.R. 131, 29 W.W.R. 41; "mere possession of a tentative point of view on the case" is not enough (the Gooliah case, p. 229),

nor
was prohibition ordered where, as in Ex p. Wilder (1902), 66 J.P. 761, it was sought to debar a Justice trying a motor-car case because he was prejudiced against automobiles, nor to oust a Magistrate from trying an accused against whom in earlier years he had acted as Crown prosecutor: R. v. Walker, (1968) 3 C.C.C 254, 63 W.W.R. 381; nor where in other proceedings the Magistrate had expressed strong views upon matters akin to the charge upon which the applicant now stood before him: Re Doherty and Stewart, 86 C.C.C. 253, (1946) O.W.N. 752. In all such cases it must be presumed that the arbitrator will recognize that "to perform his
task properly he must remain constantly in the grip of his judicial function, and not yield to his preconceptions, or become captive to unexamined and untested preliminary impressions": the Gooliah case, p. 229.

And so, while nowhere else do I find it said that the order of prohibition will go only in a substantially clear case of "imminent danger of injustice": Goulet v. Winters (1919), 49 D.L.R. 484 at p. 486,
32 C.C.C. 111, 56 Que. S.C. 521 - that, I think, goes too far - nevertheless, the mere assertion of bias is not enough, for if it were,

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every tribunal could be estopped from acting.
Nor will mere suspicion suffice: see R. v. Camborne Justices, Ex. p. Pearce, (1954) 2 ALL E.R. 850, where the Divisional Court considered and rejected the several cases there discussed and upon whose supposed authority a mere suspicion of bias it was said would support the order.

Finally, Mr. Justice Wilson refers to the decision of the then Master of
the Rolls, Lord Denning, in Metropolitan Properties
Co. (F.G.C.), Ltd. v. Lannon et al., (1968) 3 All E.R. 304, a case which I think is a clear precursor to Committee For Justice and Liberty et
al. v. National Energy Board (1976), 68 D.L.R. (3d) 716. (S.C.C.), a decision
of our Supreme Court, eight years later, where Lord Denning said:

Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough.

The last Canadian word on this subject is Chief Justice Laskin's penultimate paragraph in the National Energy Board case, at page 733:

This Court in fixing on the test of reasonable apprehension of
bias, as in Ghirardosi v. Minister of Highways (B.C.) (1966), 56 D.L.R. (2d) 469 ... and again in Blanchette v. C.I.S. Ltd. (1973), 36 D.L.R. (3d) 561 ... (where Pigeon, J., said at p. 579 ... that "a reasonable apprehension that the Judge might not act in an entirely impartial manner is ground for disqualification"), was merely re-stating what Rand, J., said in Szilard v. Szasz, (1955) 1 D.L.R. 370 at p. 373 ... in
speaking of the "probability or reasoned suspicion of biased appraisal

and judgment, unintended though it be". This test is grounded in a firm concern that there be no lack of public confidence in the impartiality of adjudicative agencies, and I think that emphasis is lent to this concern in the present case by the fact that the National Energy Board is enjoined to have regard for the public interest.

The National Energy Board case, as I read it, takes one no further than the common law principles expressed by the Master of the Rolls, Lord Denning,
in the Lannon case. The point is that there must be a probability of reasoned suspicion of biased appraisal and judgment. On the actual facts of
the case, the National Energy Board case that is, it was, as I read it, a matter of 'prior association', with the very issue to be decided inter partes.

On the footing of these principles, I look to my own case. In June of 1978 I was appointed Chief Commissioner of the Saskatchewan Human Rights

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Commission. I held that office for five years during the tenure of office of
two governments in the Province of Saskatchewan. My role was one of law enforcement, education and regulation -- not adjudication - and one of advancement of the principles and provisions of the Saskatchewan Human Rights
Code, as provided for in Section 25 thereof, and as I indicated in my speech
in Montebello two years ago, to which Mr. Ritchie made reference.

I purport to sit here today chosen by the Governor General-in-Council to
a Tribunal Panel, under the Canadian Human Rights Act. I do not come to this
adjudication with "an operative prejudice" with regard to the parties or the
issue before me, beyond supporting the concept that the law ought to be enforced. As a lawyer and law professor, I hold human rights law to be no
exception in this regard. In sum, I am not persuaded that I ought to recuse
myself. I accepted this appointment with a clear conscience that I could
hear and decide these cases, with which I have had no prior association, on
the evidence and with impartiality and dispassion. And, I propose to do just
that, unless I am advised, on judicial review, that I have erred this morning
in declining Mr. Ritchie's invitation that I recuse myself."

By way of supplement to these oral reasons, I would add one further citation. In the past month, I have done some research with a view to ascertaining whether a bias argument, akin to Mr. Ritchie's, had ever

before
been put to a human rights adjudication board. Whispering Hills Country Club
Inc. v. Kentucky Commission on Human Rights Ky., 475 S.W. 2d 645., is just
such a case. In that case the adjudicatory body was the Commission itself.
The appellant objected to the presence, on the hearing panel, of two
individuals who were Negro and, that two of the panelists had long standing
associations with civil rights groups, such as the N.A.A.C.P., the Christian
Leadership Conference, and the Kentucky Civil Liberties Union. Justice Hill,
for the Kentucky Court of Appeals, found no bias, in the following passage,
at page 648:

Insofar as concerns the color or philosophies of the hearing
commissioners, we simply say those matters, without other evidence, do
not imply bias or prejudice. Being black nowadays would not violate the
standards used to determine bias or prejudice. 1 Am. Jur. 2d, Admr.
Law, Para. 64, p. 860. Neither would the philosophies of the members
favoring the enforcement of the civil rights statutes disqualify them or
constitute bias or prejudice. The purpose of the statute is "to
safeguard all individuals because of race, color, religion or national
origin." The legislative purpose would be thwarted by a board composed
of a majority that did not believe in the wisdom or constitutionality of
the statute.

The cited reference to the second edition of American Jurisprudence, vol. 1,
contains a statement of the criteria relied

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upon in the Whispering Hills Country Club case, at page 862 that:
... the mere formation of an opinion and the expression of that
opinion has been held not to disqualify an officer or agency from
passing on the merits of a particular controversy.

The footnoted case beneath this assertion is United States v. Morgan, 313
U.S. 409, 61 S. Ct. 999, which is summed up as standing for the proposition
that:

Cabinet officers charged by Congress with adjudicatory
functions are not assumed to be flabby creatures any more than
judges are. Both may have an underlying philosophy in approaching
a specific case. But both are assumed to be men of conscience, and
intellectual discipline, capable of judging a particular
controversy fairly on the basis of its own circumstances. This
assumption is not disturbed by proof that the officer both held and

expressed strong views on a matter believed erroneously by him to have been involved in a court decision dealing with a previous aspect of the proceeding before him.

For the reasons which I orally delivered at the hearing, supplemented by the American jurisprudence on point, to which I have now referred, I am of the opinion that I do not fall into jurisdictional error, on the ground of apprehended bias, by declining to stand down from my appointment as a Human Rights Tribunal with regard to the five complainants listed on the captioning page of this preliminary decision.

The second objection to jurisdiction made by Mr. Ritchie entailed the impropriety of my having been appointed to hear all five complaints. The first argument under this heading was misconceived. Mr. Ritchie began his presentation with reference to Section 32(4) of the Canadian Human Rights Act. He was under the impression that I had been appointed thereunder, as a single Human Rights Tribunal to adjudicate all five complaints together. On this footing, he wished to submit argument that the Commission had erred in coming to the statutorily required conclusion that the complaints involved "substantially the same issues of fact and law". In fact, the Commission made no such determination. Rather, over the signature of the Chief Commissioner, it authored five separate appointments on November 10, 1983, under Section 39(1) of the Act. That, once so appointed, I saw fit to send out a pre-hearing conference notice, with a view to dealing with the matter of how the five separate references to Tribunal might be dealt with procedurally, is neither here nor there on the point of lack of jurisdiction which Mr. Ritchie wished to make.

With this, Mr. Ritchie moved to the second prong of this argument. He submitted that five separate tribunals ought to have been appointed. To have the same person hear all five cases is to deprive the Respondent of the benefit of a tribunal which is uninfluenced by any evidence that was heard in another hearing arising out of another complaint. On this contention, the Respondent’s position is not that I lack jurisdiction, but

that I ought to hear one case only. After that, I ought to renounce jurisdiction over the remaining four cases in order that there be no appearance of bias. Mr. Duval submitted that there was no issue to decide.
The five separate appointments are valid, on their face. No attempt was made
by the appointing body to consolidate the hearing into one, under its statutory authority to do so. That ought to be the end of the matter, as far
as my jurisdiction is concerned. With regard to the bias argument, Mr. Duval
suggested that it was premature to address it at this time. It would arise,
if at all, only after I had heard and disposed of the first complaint. In
the event that I should choose to deal with it now, Mr. Duval pointed out
that judges are frequently called upon to try consecutive cases involving the
same person or persons, in remote locations in the country and in small communities. Further, he submitted that administrative tribunals do this all
the time. In the case of regulatory bodies, it is an every day occurrence.

Although I think that Mr. Duval's point as to the premature nature of this argument is a good one, as I have given some time to the question, I
will set forth my opinion, at this stage. First, I do not think that the
regulatory cases are apposite. That is a matter of necessity. Similarily,
the judge seated in a small community, is less than an exact fit with the
situation which I face. Certainly the appointing body could have appointed
five different Tribunals. But, they chose not to. Does this choice amount
to a fatal flaw in four of the appointments?
I think not. Labour arbitrators often sit on case after case involving the same parties. Sometimes this is by consent of the parties, but
sometimes it is by virtue of appointments made by ministers of labour or
judges or statutory labour relations tribunals. I know of no case where, in
these situations, an argument like the one here mounted by Mr. Ritchie has
been advanced, let alone taken hold. If indeed, as Mr. Ritchie asserted,
"... the complaints do not involve substantially the same issues of fact and
law but all five complaints involve medical circumstances which are peculiar
to each of the complainants" (Transcript at page 33, lines 22 to 25.) then it

seems unlikely that any reasonable apprehension of bias might properly be
reached by the disinterested observer should I proceed to hear the second
complaint referred to me after having heard and determined the first one; the
third, having disposed of the second, and so on. In any case, this opinion
is not a ruling on the issue. It is my present inclination, set down in this
decision in the hope that it might be helpful to the parties. My ruling on
this second preliminary objection is that it is premature. No question of
bias can be raised, even to the level of arguability, until the first
complaint is heard and determined.

The third preliminary objection to jurisdiction taken by the Respondent
has to do with the conduct of the Canadian Human Rights Commission, in the
months preceeding this hearing.

In light of this, it is submitted that I ought to dismiss all five
complaints. There are two aspects to this contention. The first has to do
with publicity given the cases by the Human Rights Commission and the second
entails delay. Each of these factors, it is said, prejudices the Respondent
to such a degree that it would be unable to obtain a fair hearing.

The publicity issue has to do with a Press Release put out by the
Canadian Human Rights Commission on Friday, October 21, 1983 under the
heading "Health Requirements For Miners Too Demanding? Rights Tribunal
Asked". Based on this release, the Winnipeg Free Press ran a small story the
next day. On the following Monday, the Flin Flon Reminder covered the story
in a little more detail. Unlike the Free Press, the Reminder did not just
carry a wire service story based on the release, it interviewed someone from
the Commission and a Mr. Jim Conner, Director of Human Resources with Hudson
Bay Mining and Smelting. Mr. Ritchie's point was that an analogy ought to be
drawn with criminal charges and preliminary inquiries. There are protections
for the accused which can result in publicity bans during the preliminary
inquiry. Mr. Duval's response was that, even if the parallel to preliminary
inquiries holds, publicity bans only go to the evidence. There is no ban on
releasing the fact that an accused has been committed for trial and

accompanying that release providing some basic information as to the nature
of the offence and the circumstances which gave rise to the charge. By way
of further support for his argument, Mr. Ritchie invited me to look to Ward
v. Canadian National Express (1981) C.H.R.R. D/415. In Ward, a Tribunal had disqualified itself because the Canadian
Human Rights Commission had, on appointing the Tribunal, simultaneously transmitted its resolution that the complaint had been substantiated. Since
the Commission was not statutorily bound to find that a complaint was substantiated before referring it to an independent Tribunal, the Commission’s act in so doing was said to give rise to a reasonable apprehsion
of bias.

Turning first to the preliminary inquiry analogy. I can see no good reason to engage in an act of transplanting the provisions of Section 467 of
the Criminal Code into the Canadian Human Rights Act. The Commission’s responsibility to determine which complaints shall go forward to independent
Tribunals does not look much like a preliminary inquiry to me. The Commission’s decision is taken in camera, without a formal hearing. And, as
the Ward case points out the Commission is under no duty similar to that of
a presiding judge on a preliminary inquiry. It is quite clear as to just
what a judge must be satisfied of, on the evidence, before committing an
accused person to trial. By contrast, a reading of the Canadian Human Rights
Act and Regulations leaves one with the conclusion that the Commission has a
wide discretion on the matter of its authority to send complaints forward to
independent Tribunals.

On the facts before me, I find no cogent case of prejudice. The Commission’s Press Release and the two ensuing newspaper stories seem to make
the point clearly enough that there is an important issue to be resolved by
a Human Rights Tribunal independent of the Canadian Human Rights Commission.
Nowhere does a
statement appear, equivalent to that which emerged from the Commission in
Ward. On the matter of revealing evidence, the only facts which are provided
strike me as being little more than a skeletal outline of the nature of the
issue between the Complainants and the Respondent. I take Mr. Duval’s

point
here, that even if the analogy to preliminary inquiries is sound, which I
reject, then the released information does not offend the rules about publicity following a committal to trial.

The second branch of the Respondent’s third jurisdictional argument has to do with delay in establishing the Tribunal. The first complaint referred
to this Tribunal is that of Gregory McBratney, dated August 18, 1980. The
remaining complaints are dated October 29, 1980, November 30, 1980, January
26, 1981 and February 4, 1981. Although Mr. Ritchie’s submission entailed
the assertion that it was "... almost four years away and this is just now
coming to hearing," (Transcript, pages 61-62.) the only delay which can be
laid at the feet of the Commission comes to an end with its appointment of
this Tribunal on November 10, 1983. From that time forward, scheduling of
the hearing took some time due to the lack of mutuality on the matter of a
date, and due to the Respondent’s retention of counsel.

So, the question is, does three year’s delay amount to a basis for dismissing the complaints? In this regard, I share the view put forward by
John D. McCamus in Hyman v. Southam Marray Printing Division and International Brotherhood of Teamsters, (1982) C.H.R.R. D/617, at page 621:

My own view is that while unreasonable delay might be a factor to be taken into account in refusing or fashioning a remedy (see, on this point, Albemarle Paper Co. v. Moody (1975), 422 U.S. 405 at 424-25, 95 S. Ct. 2362 at 2374-2375), or in weighing the persuasive force or credibility of testimony or other evidence, delay in initiating or processing a complaint should not be considered a basis for dismissing the complaint at the outset of the proceedings before a board of inquiry unless it has given rise to a situation in which the board of inquiry is of the view that the facts relating to the incident in question cannot be established with sufficient certainty to constitute the basis of a determination that a contravention of the Code has occurred. Having been assigned, by order of the Minister of Labour, a statutorily defined task of undertaking an inquiry to ascertain certain facts, the board of inquiry should proceed to attempt to do so,

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notwithstanding the passage of considerable time, unless the passage of time has made fulfillment of its task impossible. In the absence of such, admittedly unlikely circumstances, the proper course, in my opinion, is for the board of inquiry to proceed and to weigh the prejudice or unfairness to a particular party which

may have been occasioned by delay in making particular findings of fact or in refusing to fashion a remedy.

On this footing, the motion that these complaints be dismissed, due to delay, is dismissed. The Respondent has not established that the passage of time has made fulfillment of this Tribunal's fact finding task impossible. It has not been suggested that a vital witness has disappeared. Nor has it been submitted that there exist some other insurmountable problems of proof, from the Respondent's perspective, should these cases go forward to hearings, due to the time that has gone by. Mr. Duval suggested that these cases were not the sort of fact finding challenges which sexual harassment cases tend to be. He submitted that it is not likely that credibility will feature strongly in the fact finding process. The facts have to do with the medical conditions and/or physical capacities of the complainants. Time, he argued, is unlikely to prejudice the Respondent in such cases, so far as proof of fact is concerned. This point strikes me as being well taken. And, if it is not, I have the right to take such prejudice as is established into account, in due course. It does not serve as a sufficient basis, at this stage, for a motion to dismiss the complaints.

The fourth and final preliminary submission of the Respondent entails lack of particularity with regard to the five complaints. This argument stems from The Canadian Human Rights Commission and Bell Canada, (1982) C.H.R.R. D/265. This is a two-page decision of a Human Rights Tribunal which specifies that:

Any valid complaint must contain at a very minimum, the following items:

(i) Identification of the Complainant, whether it is an individual person, a class, or the Canadian Human Rights Commission itself.

(ii) Identification of the victim or of the class being discriminated against as the case may be.

(iii) The time during which the violation of the Act took place.

(iv) The location of the alleged violation.
(v) The nature of the discriminatory practice.

(vi) The section and subsection upon which the discriminatory
practice is based, and finally,

(vii) An affirmation by the Complainant and/or the Commission
that they have reasonable grounds to believe that the
conduct constituted a discriminatory practice in
violation of the Canadian Human Rights Act.

Against this standard, Mr. Ritchie took me through each of the complaint
forms, in detail. In response, Mr. Duval filed a number of letters which he
said supplemented the information set down in the complaint forms themselves.
The letters were accepted in evidence on the footing that there was nothing
in the Canadian Human Rights Act to lead one to the conclusion that a single
document called a 'Formal Complaint' had to stand or fall, on judicial
scrutiny for particularity, in the same way as must an Information under the
Criminal Code. The Tribunal in Bell Canada indicated that it was prepared to
look to such letters in its inquiry into whether the seven criteria authored
by the Tribunal had been satisfied by the complainant.

For my part, I am not prepared to take the seven criteria set down in
Bell Canada, as if they had been chipped in stone. The Tribunal in Bell
Canada recognizes that Sections 32(1) and 32(3) give the Commission the power
to initiate a complaint in a form acceptable to it. But, the Tribunal
expresses the belief that Parliament can't have intended to give the
Commission a totally free hand in this matter. On this footing, the seven
criteria are put to paper. The principle upon which these requirements rest
is articulated by the Tribunal, at page 266:

The most fundamental principles of natural justice demand that
the complaint be set out in such a way as to enable the Respondent
to clearly identify the offences alleged with sufficient
particularity to enable it to prepare a proper defence.

I take no issue with this principle. It is essential that a respondent not
be misled by a complaint. A Respondent must be left in a position where it
knows what it is facing and can prepare a defence, without being prejudiced
by vagueness or ambiguity in the form of words chosen by a complainant.

I draw support, in this regard, from a decision by Peter A. Cumming, to
which I was referred by Mr. Duval. The case is Bahjat Tabar and Chong Man

Lee v. David Scott and West End Construction Limited (1982) C.H.R.R. D/1073.
One of the issues raised before that board of inquiry under the Ontario Human
Rights Code was akin to one of Mr. Ritchie's arguments before me. The respondent, before Mr. Cumming, sought dismissal of the complaints on the
ground of misnomer of the respondent. To this argument, the inquirer responded:

... there was absolutely no conceivable prejudice to West End

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Construction Limited by reason of the slight misdescription in the first Complaints and the continuing misdescription in the second Complaints. West End Construction Limited always knew full well that it was the business entity against whom all Complaints were directed.

Although I will grant that Mr. Ritchie was able to demonstrate that the five complaints failed, to a greater or lesser extent, to measure up to the
marks set in Bell Canada, this does not result in the complaints being a
nullity, in my opinion. The flaws pointed out by Mr. Ritchie, in light of
the letters filed by Mr. Duval, amount to a failure to 'cross t's and dot
i's'. Once I go over the complaints, in turn, and the letters exchanged thereon, I am left in no doubt as to whether the Respondent faced this hearing knowing where it stood with sufficient detail as to be able to prepare a proper defence. No case of prejudice has been made out by the Respondent. There was prejudice in Bell Canada. And, that makes all the difference. It is the principle upon which Bell Canada stands which is to be
respected. And, I consider that I have done so, in this treatment of the
technical arguments as to lack of particularity advanced by the Respondent
before me.

In an case, even on the footing that the seven criteria set down in Bell
Canada are sacrosanct, it does seem rather harsh to apply them retroactively
to these five complaints. The first four were signed before Bell Canada was
authored, and that of Noel Campbell was signed within a week of Bell Canada.
In light of this, I place particular weight on the exchanges of correspondence filed by Mr. Duval. They disclose no prejudice on the part of
the Respondent. And, that seems to me to be the point. Mr. Ritchie very much disagreed with this principle. He insisted that Bell Canada had drawn
a parallel between Complaints under the Canadian Human Rights Act and

Informations under the Criminal Code, at least to this extent. He submitted
that there ought to be no onus on his client to establish prejudice (Transcript, page 129, line 25.) Either the complaints, together with accompanying letters, measured up to the specific standards laid down in Bell
Canada or they did not. In the latter case, a complaint would not be a proper one and it would follow that I would have no jurisdiction to proceed
to hear it.

Whether the principle of fairness, of a respondent knowing where it stands prior to a hearing, lies at the heart of Bell Canada, as I have said,
or whether the seven criteria are to be taken to be crucial, it does seem to
me that prejudice must be shown by the Respondent if a jurisdiction argument
is to succeed on the ground of lack of particularity in the complaints. No
case of prejudice has been established by the Respondent before me.

Therefore, this final objection to my jurisdiction is dismissed.