

DECISION RENDERED ON JANUARY 30, 1981
T.D.-02-81

CANADIAN HUMAN RIGHTS TRIBUNAL
IN THE MATTER OF THE CANADIAN HUMAN RIGHTS ACT,
S.C. 1976-77, C.33 AS AMENDED.

AND IN THE MATTER OF A HEARING BEFORE HUMAN
RIGHTS TRIBUNAL APPOINTED UNDER SECTION 39
OF THE CANADIAN HUMAN RIGHTS ACT.

BETWEEN:

THE CANADIAN HUMAN RIGHTS COMMISSION

-COMPLAINANT

- and -

BELL CANADA

-RESPONDENT

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THE CANADIAN HUMAN RIGHTS ACT
IN THE MATTER of the complaint of
Canadian Human Rights Commission
alleging discrimination in employment
by Bell Canada.

A HEARING BEFORE:

Paul Lawrence Mullins, Jane Banfield Haynes, Giselle Cote-Harper.

Appointed a Board of Inquiry in the above
matters by The Canadian Human Rights
Commission pursuant to Section 39(1) of
The Canadian Human Rights Act

APPEARANCES:

Linda Silver Dranoff Counsel for the Canadian Human Rights
Commission

John Sopinka, Esq. Counsel for Bell Canada

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DECISION

This is a pre-hearing conference held to give counsel for the
Complainant and the Respondent an opportunity to present arguments on
three
preliminary matters which have been raised by counsel for the
Respondent by
reason of a complaint laid by the Canadian Human Rights Commission
against
Bell Canada under Section 7 and 10 of the Canadian Human Rights Act.

The first objection is one of jurisdiction and questions the validity of the appointment of the Tribunal under Section 39(1) of the Act and it focuses upon the question of whether a proper complaint had been laid prior to the appointment of the Tribunal.

The second issue was also a matter of jurisdiction and the Respondent argues that because the contract between Bell Canada and the Kingdom of Saudi Arabia was entered into prior to the proclamation of the Canadian Human Rights Act, the Act cannot be applied retroactively against it.

The third issue relates to the power of the Tribunal to issue a subpoena for the production of documents prior to Hearing.

In order to deal with the first issue of jurisdiction, the Tribunal has found it necessary to attempt to define the essential elements of a complaint. 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.

Counsel for the Commission submitted that the actual complaint was contained in a package of letters which were filed with the Tribunal as Exhibit C-2. This package contained the following correspondence, the relevant portions of which are as follows:

(1) Letter dated June 23, 1978 from R.G.L. Fairweather to Mr. L. J. Lugsden, Assistant General Counsel (Ontario) Bell Canada:

"In the first instance, we have received several complaints alleging that your company has been or is engaged in discrimination on grounds of religion in recruitment of people to work in Saudi Arabia, The Canadian Human Rights Commission must satisfy itself that these complaints are or are not substantiated before a report

under Section 36(b) of the Canadian Human Rights Act can be adopted. The Commission is grateful for the cooperation you extended to us in investigating this complaint to date. We would appreciate your continuing cooperation with respect to additional information from those involved directly in the recruitment

itself.

At the same time, in the course of examining the Bell Canada - Saudi Arabia Information Package you provided us, it has come to our attention that Bell Canada is apparently engaging in a discriminatory practice on grounds of sex in its recruitment of management personnel for this project. The Commission therefore intends to undertake a full investigation of Bell's recruitment practices in relation to this project, under Section 32(3) of the Act, and hereby so advises you.

(2) Letter dated July 31, 1978 from R.G.L. Fairweather, Chief Commissioner, Canadian Human Rights Commission to Mr. L.J. Lugsden, Assistant General Counsel (Ontario) Bell Canada:

"This is to advise you that the Canadian Human Rights Commission has completed its investigation of alleged discriminatory practices by Bell Canada in the recruitment and employment of persons to work on the Bell Canada - Saudi Arabia Project.

In the first instance, with reference to the complaint submitted by the Honourable Herb Gray, P.C., M.P., alleging that your company has been or is engaged in a discriminatory practice on the grounds of religion in the recruitment and employment of persons to work in Saudi Arabia, our investigation has not found evidence to uphold the allegation of the complainant. The Commission, therefore, has dismissed the complaint of the Honourable Mr. Herb Gray, in accordance with Section 36(3) (b) of the Canadian Human Rights Act, because it has not been substantiated.

In the second instance, pursuant to my letter to you dated June 23, 1978, the investigation has found evidence that Bell Canada has engaged in a discriminatory practice as defined in Section 7(b) and 10(a) and (b) of the Canadian Human Rights Act on the grounds of sex.

The Commission has, therefore, adopted the report of the investigator as provided in Section 36(3) (a) of the Canadian Human Rights Act and hereby appoints Georges Carrier, of the Commission staff, as conciliator for the purpose of attempting to bring about a settlement of the complaint as indicated in Section 37 of the aforementioned Canadian Human Rights Act. Mr. Carrier will call upon you, at your convenience, upon being advised of your willingness to meet with him."

We are prepared to accept the proposition that it is not essential that the complaint be set out in a formal document and that it can be initiated by

way of letter provided the letter sets out the essential elements of a complaint. The letters filed with the Tribunal upon which the Commission relies as constituting the complaint lack the following items:

(a) The identity of the Complainant, whether it be an individual person

or the Commission itself;

(b) The time the alleged violation took place;

(c) The location of the alleged violation.

In fact, although the correspondence indicated that the complaint is based upon discrimination on account of sex, it does not even indicate which

sex, if any, was discriminated against. In addition, in the letter of July

31, 1978, the Commission indicates it has accepted the report of the Investigator as provided in Section 36(3) (a) of the Canadian Human Rights

Act, but it does not indicate that as a consequence thereof, it has reasonable ground to believe that a violation of the Act has in fact taken place.

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. In this case the correspondence, which we have been

advised constitutes the complaint, contains many items superfluous to the

laying of a complaint including in the letter of July

31, 1978, two paragraphs dealing with the dismissal of a completely separate

and distinct complaint based on religious discrimination. If it was truly

intended that this correspondence would actually constitute the complaint it

can only be described as being grossly deficient.

Accordingly, even a most general interpretation of the letters prohibits

us from finding that a complaint has been properly laid. The Canadian Human

Rights Act provides, under Section 39(1), as follows:

"The Commission may, at any stage after the filing of a complaint, appointed Human Rights Tribunal (hereinafter in this Part referred to as a "Tribunal") to inquire into the complaint."

We accept the argument of Counsel for the Respondent that since a proper

complaint has not been filed, this Tribunal has not been appointed in accordance with the Canadian Human Rights Act and accordingly has no jurisdiction to hear the matter before them.

As a result of our finding on the first issue of jurisdiction, we find it unnecessary to deal with the other two issues which were argued before the Tribunal.

This Tribunal further feels that it would be remiss if it did not express its disappointment that a matter under the Canadian Human Rights Act must be dismissed by reason of technical objections without any hearing being held on the merits more particularly so since the shortcomings that make our decision necessary lie in the hands of the Canadian Human Rights Commission itself. In matters which affect the human rights of individuals in our society it is imperative that the principles of natural

justice be adhered to in their fullest. Although sections 32(1) and 32(3) give the Commission the power to initiate a complaint in a form acceptable to it we do not believe that it was the intention of Parliament to give them a totally free hand. The purposes of this Act cannot be achieved if we fail to insist upon the same standards as this country has come to expect in all litigious matters. To do otherwise would undermine the public acceptance and credibility upon which all the laws in this country depend.

DATED at Toronto, Ontario this 27th day of January, 1981.

PAUL LAWRENCE MULLINS
Chairperson

JANE BANFIELD HAYNES
GISELE COTE-HARPER