

**LORRAINE ROCH**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**MALTAIS TRANSPORT LTÉE  
AND GAÉTAN MALTAIS**

**Respondents**

**MOTION FOR DISMISSAL FILED BY  
THE RESPONDENT MALTAIS TRANSPORT LTÉE**

**MEMBER: Michel Doucet**

**2003 CHRT 33**

**03/10/22**

**TRANSLATION**

[1] On July 7, 2003, the Canadian Human Rights Tribunal received from Mr. Robert Brunet, Counsel for the Respondent, Maltais Transport Ltée, a motion for dismissal based

on an alleged lack of factual or legal nexus between the Complainant, Lorraine Roch, and the Respondent, Maltais Transport Ltée.

[2] On September 25, 2003, the Canadian Human Rights Commission filed its submissions against this motion. The Complainant, Lorraine Roch, and the Respondent, Gaétan Maltais, did not make any submissions regarding this motion.

[3] In its motion, the Respondent, Maltais Transport Ltée claims that, in this case, there is no nexus either in fact or law, between it and the Complainant. It also claims that it never approved, permitted, encouraged or tolerated the alleged actions of the Respondent Gaétan Maltais. It claims that no legal nexus exists between it and Gaétan Maltais. Maltais Transport Ltée argues that there is no allegation in the complaint accusing it of anything and that it cannot be held responsible for the actions or conduct of Gaétan Maltais even though the latter was at one point a shareholder, administrator and officer of Maltais Transport Ltée.

[4] The Tribunal, at this point in the procedure, is not required to rule on the validity or invalidity of the Respondent's allegations. The purpose of this motion is to decide whether to summarily dismiss the complaint against Maltais Transport Ltée.

[5] To properly understand the Tribunal's jurisdiction for hearing such a motion for dismissal, it is necessary to refer to the legislative framework of the Canadian Human Rights Act<sup>1</sup> including sections 41, 44, 49, 50 and 53. These sections provide for:

<p>41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that</p> <p>(a) the alleged victim of the discriminatory practice to which the complain relates ought to exhaust grievance or review procedures otherwise reasonably available;</p> <p>(b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;</p> <p>(c) the complaint is beyond the jurisdiction of the Commission;</p> <p>(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or</p>	<p>41.(1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :</p> <p>(a) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui sont normalement ouverts ;</p> <p>(b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale ;</p> <p>(c) la plainte n'est pas de sa compétence ;</p> <p>(d) la plainte est frivole, vexatoire ou entachée de mauvaise foi ;</p>
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(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.

[...]

44. (1) An investigator shall, as soon as possible after the conclusion of an investigation submit to the Commission a report of the findings of the investigation...

(3) On receipt of a report referred to in subsection (1), the Commission

(a) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report related if the Commission is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted ...

4) After receipt of a report referred to in subsection (1), the Commission:

(a) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3);

[...]

(e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.

[...]

44. (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission ;

a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue ;

(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,...

4) Après réception du rapport, la Commission :

(a) informe par écrit les parties à la plainte de la décision qu'elle a prise en

	<p>vertu des paragraphes (2) ou (3) ;</p> <p>[...]</p>
<p>49. (1) At any stage after the filing of a complaint, the Commission may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.</p> <p>(2) On receipt of a request, the Chairperson shall institute an inquiry by assigning a member of the Tribunal to inquire into the complaint....</p> <p>[...]</p>	<p>49. (1) La Commission peut, à toute étape postérieure au dépôt de la plainte, demander au président du Tribunal de désigner un membre pour instruire la plainte, si elle est convaincue, compte tenu des circonstances relatives à celle-ci, que l'instruction est justifiée.</p> <p>(2) Sur réception de la demande, le président désigne un membre pour instruire la plainte....</p> <p>[...]</p>
<p>50. (1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member...conducting the inquiry, any other interested party, the member...shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make presentations.</p> <p>[...]</p>	<p>50. (1) Le membre instructeur, après avis conforme à la Commission, aux parties et, à son appréciation, à tout intéressé, instruit la plainte pour laquelle il a été désigné; il donne à ceux-ci la possibilité pleine et entière de comparaître et de présenter, en personne ou par l'intermédiaire d'un avocat, des éléments de preuve ainsi que leurs observations.</p> <p>[...]</p>
<p>53. (1) At the conclusion of an inquiry, the member...conducting the inquiry shall dismiss the complaint if the member...finds that the complaint is not substantiated.</p> <p>(2) If at the conclusion of the inquiry the member...finds that the complaint is</p>	<p>[...]</p> <p>53. (1) À l'issue de l'instruction, le membre instructeur rejette la plainte qu'il</p>

<p>substantiated, the member...may...make an order against the person found to be engaging or to have engaged in the discriminatory practice...</p> <p>[...]</p>	<p>juge non fondée.</p> <p>2) À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, ... ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire...</p> <p>[...]</p>
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[6] The procedure, as set out in the Act, provides that the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that, among other things, the complaint is trivial, frivolous, vexatious or made in bad faith. If the Commission decides to accept the complaint, it appoints an investigator to investigate into it.

[7] The investigator files his or her report with the Commission as soon as possible after completing the investigation. Upon receipt of the report, the Commission, if it is satisfied that an inquiry into the complaint is warranted, may request the Chairperson of the Canadian Human Rights Tribunal to institute an inquiry into the complaint. The Commission informs the parties in writing of its decision to refer the complaint to the Tribunal.

[8] Upon receipt of the Commission's request, the Chairperson of the Tribunal shall institute an inquiry by assigning a member to inquire into the complaint. After due notice to the Commission and the parties, the member inquires into the complaint, giving the parties the opportunity to appear at the inquiry, present evidence and make representations. At the conclusion of the inquiry, the member may either dismiss the complaint if he or she finds it is not substantiated or make an order pursuant to 53(2) of the Act.

[9] The motion for dismissal, in this case, asks the Tribunal to make an order that would set aside the Commission's decision to refer the complaint against the Respondent to the Tribunal for an inquiry. As we have just seen, according to the Act, it is the Commission that first decides if the complaint is to be dealt with and which, after reviewing the investigator's report, decides if it is justified and, if such is the case, refers the complaint to the Tribunal. Can the Tribunal, at this point in the procedure, interfere with the Commission exercising its discretion?

[10] In *Eyerley v. Seaspan International Limited*, decided on August 2, 2000, the Chairperson of the Tribunal, Anne Mactavish, stated in paragraph 4:

It is not for this Tribunal to consider the jurisdiction or conduct of the Canadian Human Rights Commission. These matters are within the exclusive purview of the Trial Division of the Federal Court. Therefore, I have no intention of discussing the issue of Seaspan's challenge to the jurisdiction of the Commission.

[11] Likewise, in *International Longshore & Warehouse Union (Maritime Section), Local 400 v. Oster*<sup>2</sup>, Mr. Justice Gibson stated the following:

In the result, I conclude that the Tribunal erred against a standard of correctness, in assuming jurisdiction with respect to the Union's preliminary objections. The Union, having decided not to seek judicial review before this Court of the Commission's discretionary decision to extend the time limit under paragraph 41(1)(e) of the Act, was simply precluded from adopting the alternative recourse that it chose, that being to raise precisely the same issues that it could have raised on judicial review, before the Tribunal.

[12] As a result of the legislative framework described above and the cases cited, I am of the view that the Tribunal does not have the jurisdiction to hear the motion of the Respondent, *Maltais Transport Ltée*. The appropriate recourse would have been for the Respondent to seek judicial review of the Commission's decision to deal with the complaint and to refer it to the Tribunal before the Federal Court. After the decision is made to refer the complaint to the Tribunal, the member assigned by the Chairperson will inquire into the complaint and will give the parties full and ample opportunity to appear, present evidence and make representations. He will then decide the questions of law or fact necessary to determining the matter, including the issue of whether the Respondent, Gaétan Maltais, has engaged in a discriminatory practice and if this practice, if so determined, was committed "in the course of employment", as set out in section 65(1) of the Act. Again, in the event that it is determined that a discriminatory practice occurred and that this act was committed in the course of the employment of the Respondent (Gaétan Maltais), the Respondent *Maltais Transport Ltée* may present evidence at the hearing to escape the application of this section and may present evidence to establish the exceptions set out in section 65(2).

[13] The motion for dismissal filed by the Respondent, *Maltais Transport Ltée*, is therefore dismissed.

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Michel Doucet

OTTAWA, Ontario

October 22, 2003

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1. R.S.C. 1985, c. H-6.

2. [2002] F.C. No. 430, at paragraph 30 (T.D.).