CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

RICHARD HARKIN ET AL.

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL (CANADA)

Respondent

RULING

MEMBER: Karen A. Jensen

2009 CHRT 6
2009/02/18

[1] On November 27, 2001, Richard Harkin filed a complaint with the Canadian Human Rights Commission (the Commission) on behalf of a group of employees of the Public Service Staff Relations Board (PSSRB) as it was then known. The complaint alleged discrimination contrary to sections 10 and 11 of the *Canadian Human Rights Act* (the *Act* or the *CHRA*).

[2] In their s. 10 complaint, the Complainants allege that the Treasury Board (TB) and/or the PSSRB have engaged in a discriminatory practice by not extending to the Complainants payments to redress wage discrimination that were provided to employees in the core public service employed in the same occupational groups as the Complainants. The payments were made to core public service employees as a result of a decision and consent order of this Tribunal in 1998 and 1999.

[3] In their s. 11 complaint, the Complainants alleged that the TB and/or the PSSRB have discriminated against the Complainants by maintaining differences in wages between employees performing predominantly female work and employees performing predominantly male work of equal value in the same establishment, contrary to s. 11 of the *CHRA*.

[4] On September 22, 2008 the Complainants and the Commission advised the Tribunal and the Respondent that they had abandoned the s. 11 complaint of wage discrimination. The Complainants and the Commission continue, however, to pursue the s. 10 complaint.

[5] On November 14, 2008 the Respondent brought a motion for an order dismissing the complaint in its entirety on the basis that the Complainants have failed to disclose a *prima facie* case of discrimination under s. 10 of the *CHRA* in their Statement of Particulars and Further Statement of Particulars. The Respondent also alleges that the complaint has clearly no chance of success and is an abuse of process.

[6] The Commission brought a motion on November 20, 2008 to amend the complaint to include allegations that the TB's refusal to extend the pay equity adjustments to the Complainants was contrary to s. 7 of the *Act*. That motion was heard together with the motion to dismiss the complaint, on December 18, 2008 with supplementary submissions provided in January of 2009.

Background

[7] Under the *Public Service Staff Relations Act* ("*PSSRA*", now replaced by the *Public Service Labour Relations Act*), all employees included in the public service are employed by Her Majesty the Queen in Right of Canada. The Treasury Board (TB) represents Her Majesty the Queen in Right of Canada as the employer for those portions of the public service specified in Part I of Schedule I to the *PSSRA*. For employees in those portions of the public service of Canada specified in Part II of Schedule I of the *PSSRA*, the representatives of Her Majesty in Right of Canada are the "separate employer" agencies listed therein. The PSSRB is specified in Part II of Schedule I of the *PSSRA* as one such "separate employer" agency.

[8] The Complainants allege that although the designation as a separate employer agency purportedly affords the PSSRB a degree of autonomy, the Treasury Board and the Governor-in-Council have historically exerted significant control over the authority and actions of separate agencies, particularly with respect to their employees. In particular, the Complainants allege that the PSSRB does not have the authority to independently implement changes in the terms and conditions, including wage rates and benefits, of its employees. Rather, the PSSRB may only make such changes as are expressly authorized by the Treasury Board and/or the Governor-in-Council.

[9] The Complainants allege that the job evaluation instruments and wage rates in place at the PSSRB have been purposefully established to be broadly consistent with wage patterns established by the Treasury Board for the core public service.

[10] In 1984, the Public Service Alliance of Canada (PSAC) filed a complaint with the Commission alleging that the Treasury Board was engaging in wage discrimination contrary to sections 10 and 11 of the *CHRA* in respect of the wages paid to employees in the clerical and regulatory occupational groups in the core public service. On July 29, 1998, the Tribunal upheld the complaint. The Tribunal ordered that wage adjustments be made retroactively to March 8, 1985, with pay equity adjustments becoming an integral part of wages. The precise wage gap calculations and entitlements arising out of this decision were embodied ultimately in a consent order of the Tribunal dated November 6, 1999.

[11] The consent order provided for lump sum payments to employees in the core public service for whom the TB was the employer, retroactive to March 1985 and annual salary adjustments effective April 1, 1990.

[12] There were other pay equity complaints involving employees in the Professional Administration (PE) group and in the Library Science (LS) group in the core public service that were settled.

[13] The TB subsequently announced that lump sum equalization payments would be made to employees in the core public service to redress pay inequities as a result of the resolution of the above-noted complaints. The Treasury Board then authorized separate employer agencies, including the PSSRB, to make equivalent payments to employees including the Complainants. The TB advised the separate employers that the payments would be covered by the TB until the separate employers completed their own pay equity studies or until March 31, 1992, whichever was earlier.

[14] The PSSRB did not conduct a pay equity study. The Complainants and the Commission allege that the PSSRB could not do so as it did not have a male comparator occupational group required by s. 11 of the *CHRA*. The Complainants and the Commission allege that PSSRB requested the TB to waive the requirement to undertake a pay equity study and instead extend the same pay equity payments to PSSRB employees as were provided to core public service employees. It is alleged that the TB refused to do so.

[15] The Complainants further allege that while sex-based wage discrimination was corrected for core public service employees in certain occupational groups, the historic and ongoing wage rate discrimination continues unchecked in respect of public service employees working at the PSSRB. Specifically, given that PSSRB employees are subject to the same

classification and other policies as their counterparts in the core public service, and as these employees have historically been compensated at rates comparable to those paid to their counterparts in the core public service, the Complainants allege the Respondent's ongoing failure to provide them with the same wage adjustments as were paid to employees in the core public service amounts to a discriminatory practice in contravention of s. 10 of the *CHRA*.

[16] The Respondent alleges that the complaint does not disclose the elements required to make out a *prima facie* case of discrimination under the *CHRA*. According to the Respondent, it is plain and obvious, at this stage in the proceedings, that the complaint will not succeed and is an abuse of process. It is requested that the complaint be dismissed without further inquiry.

[17] The Commission and the Complainants state that there is no basis for the motion as it is not plain and obvious that the complaint hase no chance of success. The complaint raises serious issues of fact and law. Accordingly, they assert that it is inappropriate to dismiss the complaint at this stage.

Analysis

[18] A motion to dismiss a human rights complaint without a hearing on the basis that the Statements of Particulars filed by the Complainants and the Commission have failed to disclose a *prima facie* case of discrimination is an unusual request. Although similar requests may have been made in a handful of other cases, to my knowledge the Tribunal has never dismissed a complaint on the basis that the allegations or particulars did not make out a case of discrimination without hearing any evidence. Certainly there are cases where the complainant has presented his or her case at a hearing and the respondent has then made a motion for non-suit (*Filgueira v. Garfield Container Transport* 2005 CHRT 32; *Fahmy v. Greater Toronto Airports Authority* 2008 CHRT 12; *Dokis v. Dokis Indian Band* [1995] C.H.R.D. No. 15). However, in this case the Respondent has presented its motion and requested a decision before the Complainants and the Commission have had an opportunity to present their case.

[19] The Respondent has provided no authority establishing that the Tribunal may dismiss a complaint when the particulars fail to disclose a *prima facie* case of discrimination. All of the cases provided by the Respondent as authority for dismissing the complaint on this basis involved courts who based their decision on their inherent jurisdiction to stay actions as well as the relevant Rules of Civil Procedure (*Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959; *Dawson v. Rexcraft Storage* (1998), 164 D.L.R. (4th) 257 (Ont. C.A.); *Prentice v. Canada*, 2005 FCA 395; *Grinshpun v. Canada* 2001 FCT 1252; *Leblanc v. Canada* 2003 FCT 776).

[20] The Tribunal, as a statutory body, possesses only those powers bestowed upon it by its constituting statute, the *Canadian Human Rights Act*. It has neither the statutory nor the inherent authority to dismiss a case without a hearing on the basis that the complaint does not disclose a *prima facie* case of discrimination. In contrast, the British Columbia Human Rights Tribunal has express statutory authority to dismiss a complaint without a hearing where there is no reasonable prospect of success (s. 27(1)(c) of the British Columbia *Human Rights Code*).

[21] It is true that in *Cremasco et al. v. Canada Post Corporation*, Ruling No. I, 2002/09/30 (aff'd: *Canada (Human Rights Commission v. Canada Post Corp.*, 2004 FC 81), the Federal Court affirmed the Tribunal's power, as master of its own procedures, to prevent abuse of those procedures by dismissing a case that was eight years old and had already been subject to two arbitrations and a separate complaint to the Commission (*Cremasco*, at para. 14). However, the Court's affirmation of the Tribunal's decision in those circumstances does not lead to a conclusion that it has the jurisdiction to dismiss complaints on the grounds that the Statement of Particulars fails to disclose a *prima facie* case. In my view, if Parliament had

intended the Tribunal to exercise what would essentially be a second screening function following the Commission's initial decision under s. 41(1)(d), it would have provided express statutory authority to do so.

[22] It must also be borne in mind that s. 50(1) provides the parties with a full and ample opportunity to present evidence and argument on the matters raised in the complaint. Granted, Justice von Finckenstein in *Cremasco* stated that where it is apparent that the parties have, in fact, been heard in another forum, the Tribunal is permitted to dismiss the complaint without a hearing. However, the Tribunal exercises great caution in dismissing complaints on that basis (*Telecommunications Employees' Association of Manitoba Inc. et al v. Manitoba Telecom Services*, 2007 CHRT 26; *O'Connor v. Canadian National Railway* 2006 CHRT 05); it must be clear that the parties have truly been heard and the issues conclusively resolved in the other forum.

[23] In addition, where it is apparent that the delay in bringing a complaint to the Tribunal was such that it would be a denial of natural justice to permit the complaint to be heard, the Tribunal has held that it may dismiss a complaint without a hearing (*Grover v. National Research Council of Canada* 2009 CHRT 1).

[24] Thus, in limited circumstances such as those mentioned above, the Tribunal may be justified in dismissing the complaint on a preliminary basis. Have the issues in the present case been conclusively resolved in another forum such that it would be an abuse of process to rehear them? No, clearly not. Would there be a denial of natural justice in hearing the present case? No such allegation has been made. Therefore, in my view, the Tribunal has no authority to dismiss the complaint at the present time.

[25] However, even if the Tribunal had the authority to dismiss the complaint without a hearing on the basis that it discloses no reasonable cause of action, I am of the view that the present case does not meet the test to do so.

[26] The test as enunciated by the Supreme Court of Canada in *Hunt v. Carey* is as follows: assuming the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action? Only if the action is certain to fail because it contains a radical defect that cannot be cured by an order for particulars, an amendment or some other change should the action be struck. (*Hunt v. Carey, supra,* at p. 24)

[27] In *PSAC v. Canada*, the Federal Court dismissed a motion to strike a *Charter* action in factual circumstances similar to those at issue in the present complaints. In dismissing the motion, the Court noted that a claim is not to be dismissed where the law is burgeoning or unsettled or where the disposition of the case on the merits calls for an assessment and finding of fact (*PSAC v. Canada* [2002] 1 F.C. 342).

[28] What follows is an analysis of the Respondent's arguments for striking the complaint.

"Employment Opportunity"

[29] Section 10(a) stipulates that it is a discriminatory practice for an employer to establish or pursue a policy or practice that deprives or tends to deprive an individual of any employment opportunity on a prohibited ground of discrimination.

[30] The Respondent asserts that the payments the Complainants are demanding to receive essentially constitute wages. In the Respondent's view it is plain and obvious that the term "employment opportunity" does not encompass wages. I disagree with the Respondent's assertion.

[31] In my view, the law on this point has not yet been settled. In *Stevenson v. Canadian Human Rights Commission* [1984] 2 F.C. 691 McQuaid J.A. opined, in *obiter* that the term "employment opportunities" applies to hiring, training and promotion. For that reason, he thought that retirement should not be considered an "employment opportunity" under s. 10. Marceau J.A. took the same approach (also in *obiter)* in *Canada (Attorney General) v.*

Mossop, [1991] 1 F.C. 18 when considering whether bereavement leave constituted an "employment benefit". Given that bereavement leave had no bearing on hiring, training, or promotion, Marceau J.A. was of the view that it was not an "employment opportunity" within the meaning of s. 10. On appeal, a majority of the Supreme Court of Canada declined to comment on this point. However, Madame Justice L'Heureux-Dubé (in dissent, though not specifically on this point) stated that based on the purpose of the *Act* and all of the evidence before it, it was reasonable for the Tribunal to conclude that bereavement leave was an "employment opportunity" within the meaning of s. 10 of the *Act*.

[32] Not only are there conflicting views on whether an "employment opportunity" is restricted to hiring, training and promotion among the judges of the higher courts, none of the decisions noted above dealt specifically with the question of whether salary and benefits are "employment opportunities". Therefore, it cannot be said that the law with respect to whether salary and benefits constitute an employment opportunity is settled.

[33] Moreover, while there are a number of Tribunal decisions in which the members have found s. 10 to be applicable to conditions that enable employment and affect the advancement of individuals in employment, those decisions have not conclusively ruled out the possibility that salary and benefits may, in certain circumstances, constitute employment opportunities (*Walden et al v. Social Development Canada et al*., 2007 CHRT 56; *Hay v. Cameco* [1991] CHRD No. 5; TD 5/91; *Green v. Canada (Public Service Commission)*, [1998] CHRD No. TD 6/98; *Gauthier v. Canadian Armed Forces*, [1989] CHRD No. 3; *O'Connell v. Canadian Broadcasting Corporation* [1988] CHRD No. TD 9/88). It must also be noted that Tribunal decisions are not binding upon other members of the Tribunal. Therefore, it cannot be said that there is binding and settled law on this point such that it is plain and obvious that the Complainants would fail to establish that the payments constitute an employment opportunity.

[34] Finally, the Complainants assert that their claim is not just about wages; they allege that the refusal to fully address wage parity at the PSSRB amounted to the maintenance of discriminatory job evaluation instruments in this workplace. The Complainants want the opportunity to make the argument that this constitutes the denial of an employment opportunity even within the more restricted interpretation of that term. It is not so plain and obvious that this argument will fail that the Complainants should be denied the opportunity to make it.

The Nexis with a Prohibited Ground of Discrimination

[35] The Respondent asserts that it is plain and obvious that the Complainants will not be able to establish that the Respondent's refusal or failure to extend the payments to the Complainants was based on gender. Two reasons are given for this assertion.

[36] Firstly, according to the Respondent, the alleged discriminatory practices differentiate between employees of the core public service and of the PSSRB on the basis of the individual's employment, which is not a prohibited ground of discrimination.

[37] The s. 11 complaint that led to the Tribunal's order and the settlement agreement were filed against the Treasury Board as employer, and made allegations of pay inequity between female-dominated and male-dominated groups in the core public service that perform work of equal value. The Complainants were not parties to the complaint nor were they covered by the settlement because they were not employed in the core public service.

[38] Secondly, the Respondent alleges that even assuming that PSSRB employees are employed by the TB for human rights purposes, as is alleged by the Complainants and the Commission, the difference in treatment between them and core public service employees is still not based on sex. Section 11 of the *CHRA* stipulates that it is a discriminatory practice for an employer to maintain differences in wages between male and female employees in the same establishment who are performing work of equal value.

[39] In the current case, the Respondent alleges that the employees of the core public service and of the PSSRB are employed in different establishments.

[40] With respect to the first argument, I would simply echo the words of Prothonotary Aronovitch in *Public Service Alliance of Canada v. Canada* 2001 FCT 890 at para. 31. That case dealt with a motion by the same Respondent as in the present case to strike the Complainants' Statement of Claim in which they alleged that the Respondent's failure to extend the pay equity adjustments provided to core public service employees violated their right to equality under s. 15 of the *Charter of Rights and Freedoms*. In dealing with the argument regarding the basis for the differential treatment, Prothonotary Aronovitch stated that the nature of the relationship between the TB and separate employers, the degree of influence or control, the modeling of wages, if any, require determinations of fact. The identity of the true or ultimate employer raises a serious question of law which is of general importance, and defies determination, in summary fashion, in the context of a motion to dismiss.

[41] I find that the same considerations apply in the present case. The identity of the employer, an issue that is central to the Complainants' case, is largely a factual determination which must be made on the basis of a full evidentiary record.

[42] With regard to the Respondent's second argument, it seems to me that a refusal to extend the pay equity adjustments on the basis that they are not required by s. 11 does not preclude the application of s. 10 of the *Act* to the facts of the case. Section 10 provides that it is a discriminatory practice for "an employer, employee organization or employer organization" to establish or pursue a policy or practice that deprives individuals of employment opportunities. Section 10 is not limited to male and female employees employed in the same establishment; it applies to an employer. Therefore, the Complainants and the Commission are not precluded from attempting to establish that the Treasury Board, as the true employer of PSSRB employees, maintained a wage and job evaluation system that was discriminatory on the basis of sex.

"Policy", "Practice" or "Agreement"

[43] The Respondent alleges that the refusal or failure to extend the terms of a Tribunal order and of a settlement agreement is not a "policy", "practice" or "agreement" as those terms are used in s. 10. Moreover, the refusal or failure to extend the payments lacks the repetitive and prospective nature of a policy or practice, according to the Respondent.

[44] The Complainants' position on the nature of the impugned policy or practice would seem to have shifted over time. At first, in their Joint Statement of Particulars with the Commission they stated that the impugned policy and practice was the failure or refusal to extend the payments to them. However, in their Response to the Motion to Strike, the Complainants state that the basis of the complaint is the failure or refusal to extend to the Complainants the same wage rate adjustments as were paid to core public service employees. This failure or refusal is discriminatory because the job evaluation systems and wage rates for PSSRB employees have been modeled on the basis of standards that have already been found to result in discrimination on the basis of sex. *Taken together, these are the policies and practices which the Complainants allege to be discriminatory.*

[45] As it is currently framed, the Complainants' position with regard to the policy or practice presents a novel argument that cannot be dismissed at this stage.

[46] Moreover, there are questions of fact, such as the degree of the TB's influence over the wage and classification systems at the PSSRB and the rationale for not extending the payments, which must be determined before a conclusion may be reached on this issue. For that reason also, it is not appropriate to dismiss the complaint at this preliminary stage.

[47] The Commission's position with respect to the impugned practice or policy remains somewhat unclear. In its further Amended Statement of Particulars filed on the date the

motion was heard - December 18, 2008 - the Commission states that the "impugned policy or practice is Treasury Board's and/or PSSRB's refusal to extend the remedial retroactive pay equity pay increases paid to the relevant occupational groups in the core public service to the Complainants. This despite the fact that the job classification system and wage rates for the Complainants duplicate that already found to be discriminatory in the core public service on the basis of sex."

[48] The question then is whether the impugned practice, from the Commission's point of view, is just the refusal or failure to extend the payments to the Complainants, or as alleged by the Complainants, a combination of the refusal plus the maintenance of allegedly discriminatory pay rates and job classification systems? If it is just the refusal or failure to extend the payments, then how is it that this constitutes a practice or policy?

[49] Nonetheless, the lack of clarity with respect to the Commission's particulars does not mean that the motion to dismiss should be granted. As indicated above, it is not plain and obvious that the Complainants' most recent formulation of the practice or policy will fail. The Commission, however, must clarify its position or risk the application of Rule 9(3) of the Tribunal's Rules of Procedure.

[50] Therefore, although the motion to strike the complaint is dismissed, I will grant the Respondent's request to direct that further particulars be provided to clarify the issues in this case. The Commission and the Complainant are directed to provide responses to questions "a" through "f" of the Respondent's request for particulars set out in its submissions with regard to the s. 7 amendment dated January 9, 2009. Question "g" has been sufficiently particularized in the material provided to date. Therefore, further particulars are not needed on this point.

The Motion to Amend the Complaint to Include Section 7

[51] On November 20, 2008 the Commission brought a motion to amend the complaint to include allegations that the TB's refusal to extend the pay equity adjustments to the Complainants was contrary to s. 7 of the *Act*. Section 7(b) of the *Act* provides that it is a discriminatory practice, directly or indirectly, to differentiate adversely in relation to an employee in the course of employment on a prohibited ground. The Complainants consented to the motion to amend the complaint.

[52] The Commission asserts that the proposed amendment is based on the same facts that are alleged in the s. 10 complaint. The Commission and the Complainants are therefore, of the view that the proposed amendment does not constitute a new complaint, but merely brings the complaint in line with the facts of the case and the issues raised in the complaint. It is argued that the proposed amendment will cause no prejudice to the Respondent. The Commission provided an Amended Statement of Particulars in December 2008 which included particulars regarding the s. 7 amendment.

[53] The Respondent, on the other hand, asserts that by the proposed amendment, the Commission raises new allegations of fact that are prejudicial to the Respondent because they (1) open up a new and unanticipated line of inquiry; (2) are insufficiently particularized to establish a *prima facie* breach of s. 7; and (3) do not permit the Respondent to know the case it has to meet.

[54] For the reasons that follow, I am of the view that the requirements to grant an amendment have been met in the present case. The proposed amendment arises out of the same factual circumstances as the s. 10 complaint. The Respondent will suffer no prejudice as the amendment has been made well in advance of the hearing.

The Law

[55] The Tribunal has the discretion to permit amendments to original complaints provided sufficient notice is given to the respondent so that it is not prejudiced and can properly defend itself. However, when the proposed amendment arises out of a different set of facts such that

it constitutes a new complaint that takes the complaint outside of the scope of the referral, the Tribunal lacks the jurisdiction to inquire into the proposed amendment (*Canadian Museum of Civilization Corp. v. Public Service Alliance of Canada* 2006 FC 704, at paras. 40, 50 and 52).

[56] The Respondent asserts that the December particulars raise new facts, namely a new allegation regarding the issue of "establishment" and that this changes the nature of the complaint before the Tribunal. In its December Statement of Particulars, the Commission alleged that the PSSRB and the core public service were part of the same establishment.

[57] The Respondent argues that in making this assertion, the Commission is effectively alleging that Treasury Board and the other parties breached s. 11 when they failed to include PSSRB employees in the settlement of the s. 11 complaint involving Treasury Board and core public servants. This would constitute a new complaint or would radically change the nature of the complaint before the Tribunal.

[58] I see no evidence that the Commission or the Complainants intends to take the complaint in the direction suggested by the Respondent. Nor does the Commission's assertion that the TB and the PSSRB are part of the same establishment necessitate such a change in the complaint. The s. 11 complaint has been withdrawn. Therefore, there is no basis for making the argument suggested by the Respondent.

[59] The Respondent also asserts that the s. 7 amendment should not be granted since it is plain and obvious that the complaint would fail because the Complainants and the Commission have failed to identify a male comparator group. It is argued that reference to a male comparator group is essential to make out a complaint of discrimination under s. 7.

[60] In *Bressette v. Kettle and Stony Point First Nation Band Council* [2004] C.H.R.D. 2, this Tribunal stated that an amendment to include retaliation should be granted unless it is plain and obvious that the allegations in the amendment sought could not possibly succeed. In considering such an amendment the Tribunal will not embark on a substantive review of the merits of the amendment. That should be done only in the fullness of the evidence after a full hearing.

[61] The Complainants have identified the alleged adverse differential treatment as being the fact that they were and still are being compensated according to wage rates and classification systems which have been found to be discriminatory on the basis of sex in the TB pay equity complaint. The Commission states that if a male comparator is required, then it is implicit in the previous statement that the male comparator group is the male-dominated classifications to which the predominantly female core public service classifications were compared in the TB pay equity case.

[62] For the purposes of deciding the present matter, it is not necessary to determine whether a comparator group is necessary, and if so, whether the correct comparator group has been identified. That is an issue that will be determined on the basis of a full evidenciary record. In the context of the present motion, I find that it is not plain and obvious that the proposed amendment is destined to fail for want of an appropriate comparator group.

[63] Finally, the Respondent complains that there have been so many different representations about the nature of the discriminatory conduct that is in issue in the s. 7 complaint that it is unsure of the case it has to meet. It will therefore suffer prejudice if the amendment is granted. With respect, I think that many of the different characterizations of the alleged discriminatory conduct to which the Respondent refers in paragraph 28 of its written representations dated January 9, 2009, have now been clarified as being components or different expressions of the Complainants' full allegation. That allegation is as follows: TB's and/or the PSSRB's failure to extend the pay equity adjustments resulting from the 1999 Consent Order and the 1999 PE Settlement to the Complainants has resulted in the application of a wage and classification structure at the PSSRB which has been found to be

discriminatory in another context. Therefore, the Complainants have allegedly been subjected to a discriminatory wage and classification structure.

[64] It should be clarified whether the allegation regarding TB's requirement that the PSSRB conduct its own pay equity study despite the fact that there were no male comparator groups at the PSSRB forms part of the alleged differential treatment. However, aside from the last point, I do not see any uncertainty in the case that the Respondent has to meet. Therefore, there would be no prejudice arising from the amendment.

[65] Finally, the Respondent states that there has been insufficient particularization of the proposed s. 7 amendment. It would be prejudiced by an amendment that does not contain a greater degree of precision. I am in agreement with the Complainants that it is not a requirement that full particulars be provided before an amendment is granted. In the present case, there is a sufficient degree of particularity to the proposed amendment to allow the Tribunal to ascertain whether the amendment should be granted.

[66] The Respondent requested a full Statement of Particulars concerning the s. 7 complaint in the event that that the amendment was granted. In its revised Statement of Particulars dated December 17, 2008, the Commission provided particulars regarding the s. 7 complaint. As noted, the Commission is to clarify whether the allegation regarding TB's requirement that the PSSRB conduct its own pay equity study forms part of the alleged adverse differential treatment. If the Respondent is of the view that additional particulars are needed, it should indicate to the Tribunal and to the parties what particulars it is seeking.

[67] The motion to amend the complaint to include s. 7 is granted.

"*Signed by*"

Karen A. Jensen

OTTAWA, Ontario
February 18, 2009

PARTIES OF RECORD

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APPEARANCES:	
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Marie Crowley Talitha Nabbali	For the Respondent