

Decision rendered on June 9, 1994

CANADIAN HUMAN RIGHTS ACT  
R.S.C., 1985, c. H-6 (as amended)

HUMAN RIGHTS TRIBUNAL

BETWEEN:

JOHN F. FRY

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DEPARTMENT OF NATIONAL REVENUE (TAXATION)

Respondent

DECISION

TRIBUNAL: Norman Fetterly - Chairperson

APPEARANCES: Ms. Fiona Keith, Counsel for the  
Canadian Human Rights Commission

Martin Ward, Counsel for the Department of  
National Revenue (Taxation)

John F. Fry, in person

G.H. Fitzgerald, appearing on behalf of  
the complainant, John F. Fry

DATES AND

LOCATION OF HEARING: March 9, 10, 11, 1993

June 28, 29, 30, 1993

September 8, 9, 1993

Halifax,

## THE COMPLAINT

John F. Fry, complains that in the provision of goods, services facilities or accommodation customarily available to the general public he was denied access to or differentiated adversely against by Revenue Canada (also referred to as the Department of National Revenue), in respect to the provision of such goods, services, facilities or accommodation by reason of his disability contrary to Sect. 5, subsections (a) and (b) of the Canadian Human Rights Act.

The Complainant, Mr. Fry, is a public accountant who practices and resides in the City of Halifax. He alleges he has suffered from progressive loss of hearing and that he was deaf for all practical purposes when the incidents complained of occurred.

It is common ground between the parties that impaired hearing is a disability for the purposes of sect. 3(1) of the Act. As such it is a prohibited ground of discrimination.

In his written Complaint Mr. Fry alleges he represented a tax payer who was under investigation by the Department of National Revenue and that on October 18, 1988 he gave written notification to the Department of his appointment by the tax payer together with a request that all contact be done through him.

The complaint form then describes in some detail the alleged discriminatory incidents as follows:

On January 17, 1989, a meeting was held in my office with two representatives of the Department of National Revenue (Taxation) and the taxpayer's bookkeeper. I explained my hearing problem to one of the Department of National Revenue (Taxation) representatives and advised him that if I could not lip read him he would have to write his communication. For all practical purposes, there was no Audiological Evaluation Report of Gordon Whitehead, MA, Aud.(C) dated January 4, 1989, as follows:

"Right ear: there is no measurable hearing in this ear, secondary to past surgical procedure to remove acoustic neuroma". See Ex. HR -5."

With regard to his left ear, the Complainant's evidence which I accept, is that it had progressively worsened for several years prior to the Hearing in 1993. He says for all practical purposes he has been totally deaf as far as communication is concerned for

at least ten years. Quoting again from the Audiological Evaluation Report, as follows:

"Left ear: there is a profound sensorineural hearing loss present, assumed to be due to the left acoustic neuroma. There has been significant threshold deterioration in this ear since the test on file dated February 28, 1984..... In addition to his loss of hearing sensitivity measured by threshold, he exhibits quite a severe speech discrimination problem.

Since the date of that report Mr. Fry states he has lost any ability to discriminate between sounds and to control the level of his voice. The use of a hearing aid is of limited value affording him only some measure of control over his voice. But even in that regard the lack of voice control was evident during Mr. Fry's oral

- 2 -

testimony.

The progressive loss of Mr. Fry's hearing loss was verified and corroborated by his wife, Mrs. Fry and by a Mr. Swami who testified on his behalf.

For all practical purposes, therefore, the Complainant has suffered a complete and total loss of hearing, and I so find. Although the Complainant's hearing ability was not seriously disputed throughout the Hearings, I thought it best to put at rest any lingering reservations or doubts that might remain regarding the extent of his hearing loss before addressing the other issues. In that regard I am indebted to counsel for their written submissions which have assisted greatly in defining the issues and analyzing the evidence.

## COMMUNICATION AND COMPREHENSION

Notwithstanding his disability the Complainant continued to practice accountancy, relying on written communication and lip reading in order to exchange information.

When asked how he communicated with people in the course of his practice Mr. Fry testified he communicates for the most part in writing and can lip read if he is fully conversant with the subject

matter. Even then, he says, he may assume things he hasn't actually heard.

When cross-examined Mr. Fry testified that he could only lip read when he is aware of the subject matter and is able to control it.

Mrs. Fry testified in order for her husband to lip read it was important to look directly at him, be brief and open one's mouth. It required a conscious effort. If there was more than one person present, it was difficult for him to lip read.

A comment by Mr. Westhaver, one of the officials of Revenue Canada, during his testimony best describes the challenge that presented itself in attempting to communicate verbally with Mr. Fry. At page 861 of the transcript the following exchange took place:

Q. Did he understand --

A. Well, I think the best way to describe it, he -- you know, of course, I can't hear what -- I don't know what he's hearing, but he seemed to understand somewhat of the concept because -he didn't understand the concept because.....

Mr. Westhaver went on to testify that he believed if Mr. Fry didn't understand the concept he did understand what was being told to him.

## ISSUES

The following issues arise from the alleged discrimination:

- (1) Does Revenue Canada customarily make available services to taxpayers' representatives within the meaning of Sec. 5 of the Act?.
- (2) Was the Complainant denied access to or differentiated

adversely against in the provision of services by Revenue Canada?

(3) If so, what, if any, damages or losses were sustained by the Complainant as a result of such denial of access or adverse differentiation?

Section 5 of the Human Rights Act states:

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual on a prohibited ground of discrimination.

1976-77,c.33,s.5.

Mr. Harris qualifies this admission by stating in his evidence that his branch treats accountants and lawyers differently. He insists in the case of accountants, unlike lawyers, his branch does in fact, as a matter of policy, go directly to the taxpayer on occasion but he gives no specific examples from his own experience. Moreover Mr. Harris himself recommended to the taxpayer, Mr. Bitar, that he engage an accountant in order to assure that his best interests were served in a conversation he had with him on September 7, 1988.

Mr. Harris agreed under cross examination in cases involving special investigations most taxpayers had a representative and that this was in fact desirable so as to ensure fair treatment and in order to facilitate the process.

Taken as a whole Mr. Harris' evidence suggests that where a taxpayer provides a written request to deal with and direct correspondence to the taxpayers representative, then in the normal course of events, this would be done.

The Federal Court of Appeal has said, in obiter:

..... that, by definition, services rendered by public servants at public expense are services to the public and therefore fall within the ambit of sect. 5".

Re. Singh (1989) 1F.C.430 at 440.

Mr. Westhaver, a colleague of Mr. Harris and his immediate superior in the special investigation branch, commented as follows at P.870 Vol. VIII of the transcript:

"You might deal with a representative if the taxpayer so desired.....if the investigation is going forward".

However Mr. Westhaver agreed that the investigation was not delayed by Mr. Fry withholding information from Revenue Canada. See Vol. VIII P.880. The condition as to the investigation going forward is a judgment call by Mr. Westhaver in his official capacity.

In a sense the exercise of a discretion by Revenue Canada begs the question because the exercise of that discretion must be done in a

- 4 -

non-discriminatory fashion, see the *University of British Columbia v Berg* (1993) 152 NR 99. In that case Chief Justice Lamer comments on the exercise of discretion in the provision of a service or facility which is customarily available to the public, as follows at 143, par 74:

"I do not think that a purposive approach to interpreting this provision can allow a discretion to be exercised on prohibited grounds of discrimination, once the service or facility which is the subject of the discretion is otherwise found to fall within purview of that Act, i.e. to be customarily available to the public..... Similarly, in this context, while the existence of a discretion may mean that the person with the discretion is under no obligation or duty to extend the service or facility to everyone who asks for it, he or she is surely under an obligation to not make his or her decision in a discriminatory fashion".

The question as to whether or not a service is customarily available within the meaning of Sect. 5 is a question of fact. see *UBC vs Berg*, *Supra*.

I find, as a matter of fact, that in its relationship with the Complainant, Revenue Canada was providing goods, services facilities or accommodation customarily available to the general public within the meaning of sect. 5 of the Act.

The issue as to whether employees of Revenue Canada denied access to or differentiated adversely in the provision of services to the Complainant can be resolved only by a careful consideration of the evidence.

Because of the circumstances, the relationship between the Complainant and the representatives of Revenue Canada was to some degree adversarial. It is therefore difficult to distinguish between what might be attributable to a normal disagreement between protagonists and the less easily identifiable concept of discrimination. Much of the evidence pertained to the relationship between the taxpayer, Mr. Bitar, who was under investigation and Mr. Harris of the special investigation branch of Revenue Canada.

## THE INVESTIGATION

Mr. Bitar, of Lebanese origin, emigrated to Canada in 1976 and eventually settled in Kentville, near Halifax where he owned and operated a Pizza Restaurant. He became a subject of investigation by Revenue Canada in June, 1988 at which time Mr. Harris first made contact with him.

Mr. Harris was armed with a net worth statement which indicated a large discrepancy over a five or six year period to Mr. Bitar's reported income over that same period. The explanation given by Mr. Bitar did not satisfy Mr. Harris who said he would continue his investigation and would get back to Mr. Bitar sometime in the future.

Mr. Harris continued his investigation of Mr. Bitar throughout the summer of 1988 by checking and analyzing deposits to and withdrawals from the several bank accounts in Mr. Bitar's name.

- 5 -

On September 7, 1988 Mr. Harris called Mr. Bitar by telephone to set up a meeting with him at his home in Kentville. Mr. Harris told Mr. Bitar that he would at that time produce the results of his investigation. He suggested that Mr. Bitar arrange to have present at the meeting either a friend who understood the process or an accountant.

In their subsequent meeting and discussions Mr. Bitar explained the source of the deposits as being gifts or advances from his father in Lebanon. Mr. Harris said that this explanation was not acceptable unless documented by statements, bank records and cancelled cheques from Lebanon. He also stated that he had information on file which indicated Mr. Bitar was laundering drug money. He also accused Mr. Bitar of lying.

On the day following their meeting in Kentville Mr. Bitar called on Mr. Harris' at his office in Halifax when he requested a written list of what was needed to substantiate the sums of money representing gifts from his father in Lebanon. Mr. Harris prepared a list, then and there, which he gave to Mr. Bitar. See Ex. HR-4.

On September 21, 1988 Mr. Harris received a phone call from Mr. Bitar and a Mr. MacDonald, C.A. in which he was advised that Mr. MacDonald's firm in Kentville would be representing Mr. Bitar.

Following that phone conversation Mr. Harris received a letter dated October 18, 1988 from Mr. Fry, Ex. HR-3. The letter contained a written authorization signed by Mr. Bitar appointing Mr. Fry as his representative.

Mr. Harris was understandably confused and checked with Mr. MacDonald and with Mr. Bitar who, he says, advised him not to deal with either Mr. MacDonald or Mr. Fry. Instead Mr. Bitar said that he would obtain the required documentation and information on a planned visit to Lebanon from which he would be returning in a month or a month and a half. At that time according to Mr. Harris, Mr. Bitar said he would deliver the information to him when he returned.

The documentation which Mr. Bitar brought back with him from Lebanon consisted in a notarized letter by a Lebanese attorney verifying that Mr. Bitar's father, Mr. Toufic Elias Bitar had given his son \$400,000 Canadian Dollars over a five year period from 1983 to 1988. Attached to this certificate were two cancelled cheques for \$23,992.57 and \$24,500.00 respectively. Also attached a photograph of equipment allegedly owned by Mr. Bitar's father. see Ex. HR-10A.

The documents were not delivered to Mr. Harris but instead were given to Mr. Swami, a bookkeeper and former articled student with Mr. Fry. Mr. Swami had continued a working relationship with Mr.



Fry after setting up his own bookkeeping business in separate premises.

I have attempted to briefly outline the dealings between Mr. Bitar and Mr. Harris leading up to the meeting at Mr. Fry's office on January 17, 1989 from which arose the first incident of alleged discrimination complained of.

While it has been useful in order to appreciate the events preceding the January 17, 1989 meeting from the perspective of Mr.

- 6 -

Harris and the Respondent, it is now important to describe briefly and focus upon the circumstances in which Mr. Fry became involved in the affairs of Mr. Bitar.

#### EVENTS LEADING UP TO THE MEETING OF JANUARY 17, 1989

Mr. Fry was introduced to Mr. Bitar by Mr. Swami, who had a following in the Lebanese community. They met at Mr. Fry's office which is located in the basement of his home, on September 27, 1988. The discussion at that time consisted of Mr. Fry lip reading Mr. Swami who he had known for some time and the passing of written notes where necessary. Mr. Bitar delivered to Mr. Fry a package of material pertaining to his financial and tax situation.

At that meeting Mr. Bitar signed the written authorization, Ex. HR-2 authorizing Mr. Fry to represent him "in matters of finance and taxation".

The signing of the authorization form Ex. HR-2 was followed by a letter dated October 18, 1988 from Mr. Fry to Revenue Canada for the attention of Mr. Harris, Ex. HR-3. In his letter Mr. Fry confirms his appointment and encloses the original authorization form. The letter states in part:

"In future, will you please contact taxpayer through my office. As is within taxpayer's control, you may be assured of our willingness to cooperate with you to finalize this matter."

In his letter Mr. Fry responds to the request for more information concerning the business and personal records of Mr. Bitar's father,

a resident of Lebanon, by asking under what authority this information is being requested. It also asks Mr. Harris to explain in writing, in complete detail, how the "unidentified assets" figure was determined.

This letter did not elicit a response from Mr. Harris until some time later. In the meantime he had put his investigation on hold pending the return of Mr. Bitar from Lebanon. In early January, 1989 Mr. Harris phoned Mr. Bitar who had by then returned from Lebanon. He was told by Mr. Bitar that the information had been given to Mr. Fry with whom he wanted Mr. Harris to deal. According to Mr. Harris he was unable to contact Mr. Fry by phone or leave a message on his answering machine. He then attempted to contact Mr. Swami's office, whose name had been mentioned by Mr. Bitar in a previous discussion. He left a message there and several days later he again contacted Mr. Swami's office and spoke to him directly. He was told by Mr. Swami that he was familiar with Mr. Bitar's case and he would have Mr. Fry call him back. Two days later, according to Mr. Harris he received a phone call from an unidentified lady indicating that Mr. Fry and Mr. Swami would meet with him on January 17, 1989 at Mr. Fry's office, which was located in the basement of his residence.

According to the evidence of Mrs. Fry, the residence was equipped with a telephone message recording device which she monitored.

Business appointments were made by her. She absented herself from the house only one day a week on Fridays to do her shopping. On the days she was away a message could be left on the answering device. On other days of the week she acted as receptionist for incoming calls.

- 7 -

There was no satisfactory explanation given by Mr. Harris as to why he was unable to communicate directly with Mr. Fry's office or leave a message with him.

#### THE MEETING OF JANUARY 17, 1989

Mr. Harris and his immediate supervisor, Mr. Westhaver, attended at Mr. Fry's residence on January 17, 1989. Both gentlemen admitted to prior knowledge of Mr. Fry's hearing impairment. Although

uncertain as to the degree of Mr. Fry's impairment neither of them took measures in advance of the meeting to ascertain its severity.

When Mrs. Fry met Messrs. Harris and Westhaver at the door, she accompanied them to the small basement office. She advised them, as was her normal practice that her husband was deaf and pencils and paper were available to use.

At the beginning of the meeting Mr. Fry announced the ground rules in that he was "stone deaf" and they would have to communicate in writing using the pads and pencils he made available to them. Mr. Harris was seated directly opposite Mr. Fry across from his desk and he played an active role in what followed. Mr. Westhaver's role appears to have been that of an observer. Shortly afterwards Mr. Swami arrived. There was a discussion as to who represented Mr. Bitar. Mr. Harris gave Mr. Fry a written explanation about earlier incidents which lead to his confusion on that matter. See Ex. HR-6 on page 1 - the first three items.

There followed a discussion with regard to Mr. Bitar's net worth statement. Mr. Harris wrote a note to correct a miscalculation by Mr. Fry. See again Ex. HR-6, items 4 and 5. Except for a final note written as the meeting drew to its end there was no further written communication by Mr. Harris to Mr. Fry.

A sealed envelope containing the documents obtained by Mr. Bitar from Lebanon appeared having been delivered to Mr. Fry either at or shortly before the meeting commenced. Mr. Harris demanded to see the contents of the envelope. Mr. Fry, who had apparently not yet seen its contents refused to comply. He waved it in front of Mr. Harris and then deposited it in his desk drawer. At the same time Mr. Fry insisted Mr. Harris answer the query contained in his letter of October 18, 1988 as to what authority or legal basis Mr. Harris had for requiring a citizen of a foreign country to produce his banking records, cancelled cheques, etc.

At this meeting, Mr. Harris did not admit in writing to Mr. Fry that he lacked such authority. Subsequently he wrote to Mr. Fry by letter dated January 25, 1989, exhibit HR-8, in which he agreed he had no such authority. He claims he advised Mr. Fry of this verbally at the meeting. Mr. Swami's recollection of what was said does not support Harris' claim to have made it clear to Mr. Fry that he lacked authority. He continued to insist on production of the documents in Mr. Fry's possession while accusing him of withholding information.

It would seem the meeting had become rather intense at this juncture. One has the impression of a heated exchange between Mr. Harris and Mr. Fry and that Mr. Fry's indignation lapsed into a mute acquiescence whereas Mr. Harris' attitude towards Mr. Fry changed to one of studied avoidance as he began to direct his remarks to Mr. Swami while exhibiting a reluctance to write notes

- 8 -

to Mr. Fry.

Mr. Swami says he agreed to the suggestion that he make notes of the discussion he had with Messrs. Harris and Westhaver. These notes appear on the second and third pages of exhibit HR-6.

This exhibit is itself a photocopy of the original and there is evidence of a line on the second page between items [1] and [2] and items [6] and [7] which would indicate a page ending and a separation of the listed items. This leads me to conclude and I do find as a matter of fact that items [1] and [2] on the second page of exhibit HR-6 were made during the meeting itself and that items [1] to [5] on the third page and items [6] and [7] on the second page were made after the departure of Messrs. Harris and Westhaver by Mr. Swami for the benefit of Mr. Fry. This is in accordance with Mr. Swami's evidence.

I accept Mr. Swami's notes written that day immediately following the conclusion of the meeting as a reasonably accurate reflection of the discussions which took place. Mr. Swami impressed me as an honest and fair witness despite some memory lapses. He was present at the meeting as was his normal custom on referrals to Mr. Fry, to assist and facilitate in the proceedings. He was not there as a principal and his role in this case was to check banking records under the direction of Mr. Fry. I do not believe that any assumptions by Messrs. Harris and Westhaver as to Mr. Swami's role being something more than what I have described are well founded.

Mr. Swami's testimony taken together with his notes made during and after the meeting suggest an accusatory and aggressive attitude on the part of Mr. Harris. There are allegations of lying against Mr. Bitar, warnings of reassessment and prosecution unless demands for information were met and accusations of withholding information which the representatives of Revenue Canada were not legally entitled to.

A previous case in which Mr. Fry, Mr. Swami and Mr. Westhaver were involved was discussed at the meeting. In the Ahir case information voluntarily given to Revenue Canada was used to substantiate a criminal charge against the taxpayer client. Referring to Mr. Swami's notes, third page, item [4] where he writes:

"If we cannot come to some understanding by this meeting they will assess him and charge him as they did to Ahir"

In two instances Mr. Swami mentions in his notes that Messrs. Harris and Westhaver were prepared to meet again "only once more with Mr. Fry in order to come to some understanding". See item 4 on the third page of Ex. HR-6.

In his concluding written memo to Mr. Fry, Mr. Harris states as follows:

"I will write a letter explaining your questions, and we will advise in letter that we feel you are withholding information of your client." see first page of Ex.Hr-6.

Approximately one week later Mr. Harris wrote the letter to Mr.Fry of January 25, 1989, Ex. HR-8, which amongst other things confirms the correct figure for the so called "unidentified assets"

- 9 -

amounting to \$313,548.65. The letter also requests an explanation as to where certain funds went. Mr. Fry responded by a letter dated February 13, 1989, Ex. HR-9, questioning the legal basis or reasonableness of Mr. Harris' request for information as to where certain funds had gone.

This letter was followed on February 13, 1989 by a further letter to Mr. Harris from Mr. Fry containing the documents obtained from Lebanon by Mr. Bitar. Ex. HR-10A. Two cancelled cheques for \$23, 992. 57 and \$24, 500. 00 respectively were copied to Mr. Harris in this letter as evidence of funds from Mr. Bitar's father. These same cheques had been produced and given to Mr. Harris earlier during his investigation. In his letter Mr. Fry stated he had met with Mr. Bitar to discuss the situation and that Mr. Bitar was writing to Lebanon for evidence of further gifts.

Mr. Harris was not satisfied with the information supplied to him by Mr. Fry. In pages 735 and 736 of the transcript Mr. Harris makes the following comments:

..... there were some things that perhaps I should have..... or maybe I should say there are some things that required a reply in HR 10 as Fry's letter of February 13, 1989 - but it would be my opinion that there are things that are important and things that are unimportant in the investigation.....

Mr. Harris says that Mr. Fry's letter of February 13 arrived at his office on February 21, but that he didn't have an opportunity to read it until several days later.

In any event a decision was made by Mr. Harris and approved by Mr. Westhaver to deal directly with Mr. Bitar and to circumvent Mr. Fry.

#### THE MARCH 8TH MEETING IN KENTVILLE

Accordingly Messrs. Harris and Westhaver went to Kentville on March 8, 1989 without notifying Mr. Fry of their intentions. This occurred without the promised final meeting with Mr. Fry and without responding to his letter of February 13, 1989.

What took place at Kentville involved a discussion between Mr. Bitar and Mr. Harris with Mr. Westhaver in his usual role as observer.

Mr. Bitar's testimony under cross examination concerning his dealings with Mr. Harris during the investigative phase of their relationship is disjointed, contradictory and contains numerous memory lapses. It might perhaps be explained as due to unfamiliarity with the English language, apprehension of some further unpleasantness with Revenue Canada or for other reasons not apparent to the Tribunal. Mr. Bitar on the advice of counsel asked for and received the protection of the Canada Evidence Act.

On the other hand in the final result Mr. Bitar was never charged with any offence either under the Income Tax Act or under the Criminal Code. The claim for income tax arrears for the years 1982 to 1986 was settled amicably. On May 2, 1982 Revenue Canada settled for a total of \$21,314.56 and waived all interest and

penalties. See Ex. C-2. On November 24, 1992 the Chief of

- 10 -

Collections for Revenue Canada wrote Mr. Bitar thanking him for his cooperation. See Ex. C-1.

Mr. Bitar by the time the hearing commenced in March of 1993 had already put into effect a decision to return to his native Lebanon and for that reason his testimony was given priority in consideration of his travel plans.

A. I said, "Why do you deal with me directly? Why don't you deal with Mr. Fry?" He said, "Mr. Fry is deaf it's not convenient for us to deal with him." I said, "Why don't you write to him?" He said, "That takes time." That's all. See the transcript P.310 and P.311.

Mr. Harris' notes written following the meeting with Mr. Bitar as shown in ex. HR-5 on the second last page are as follows:

He said - referring to Mr. Bitar - I should talk to Mr. Fry if I wanted to know anything because he gave everything to Fry. I said all you gave Fry was the letter from Lebanon. I did not want to talk to Fry because he was deaf and could not hear me.

In his testimony under direct examination Mr. Harris' recollection of this discussion went as follows:

So he - Mr. Bitar - "Well, why don't you call Mr. Fry" and I said, I can't call Mr. Fry because he's deaf.

By way of explanation of these remarks Mr. Harris comments in his direct examination as follows:

I suppose -- what I said, "I can't call Mr. Fry because he's deaf," I was being picky with Mr. Bitar because he was frustrating me. He wouldn't talk to me. He's telling me, "Go call Mr. Fry." There's no need to go call Mr. Fry, he didn't know anything. I didn't say I wasn't going to deal with Mr. Fry because he's deaf, I said, "I can't call him." I was being cute to Mr. Bitar probably at this time. See the transcript at P.720 and P.721.

Write him. Didn't want to

Mr. Fry offered this note to Respondent's Counsel to file as an exhibit but the offer was declined.

In his cross examination Mr. Bitar was questioned as to why his memory of this conversation with Mr. Harris was so clear when he experienced difficulty remembering other events and conversations which occurred during the investigation. He stated at page 52 of the transcript as follows:

A. Well, because when I heard what he said to me, I never forgot them words because they hurt me also. They hurt me bad in my head, so they stay in my mind forever.

Q. Why did the words hurt you?

A. Well, because I've been -- Mr. Fry worked for me, represent me, and for all this time they avoid him, they stop dealing with him, they left me in the dark, and if somebody came up to you and said "Mr. Fry is deaf, it's not convenient to

- 11 -

deal with him anymore," you know, you don't forget the bad words for the rest of your life sometime.

When considering the evidence as a whole, including Mr. Harris' notes of his conversation with Mr. Bitar on March 8 which were made shortly afterwards, Mr. Bitar's recollection of that conversation as reported to Mr. Fry and Mr. Swami, my conclusion regarding the interpretation of those remarks as stated previously is buttressed and reinforced.

There is a discernible pattern in the attitude and behaviour of the representatives of Revenue Canada throughout the events of January, February and March 1989. These include their failure to contact

called Fry. No, Fry is deaf.

because it was inconvenient".

adversely against Mr. Fry on account of his deafness. These gentlemen displayed admirable energy and persistence in carrying out what they conceived was their duty as investigators in the face



of what they felt to be a frustrating lack of progress. Their preoccupation in pursuing their investigative course of action probably resulted in a certain loss of sensitivity to the inherent challenges which the situation presented to them.

## REMEDY

The Complainant claims for professional services rendered but not billed or charged to his client. The sum claimed is made up in part by six hours of undocumented services rendered in 1988 and thirty-six hours of documented services rendered in 1989, see ex. HR-7. The rate claimed for the services is \$75.00 per hour. The total amount claimed amounts to forty-two hours at \$75.00 per hour or \$3150.00.

The claim is made under Sect. 53 (2)(C) of the Human Rights Act which states:

If, at the conclusion of its inquiry, a Tribunal finds that the complaint to which the inquiry relates is substantiated, it may ... make an order ... :

c) that the person compensate the victim, as the Tribunal may consider proper, for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice

The claim for compensation based on subsection (c) presents a problem because the Human Rights Act does not define "wages" nor, apparently, has the word "wages" been considered by other Tribunals or by the courts in the context of the legislation.

The Human Rights Act simply refers in subsection (c) to "wages". There is no enlargement, expansion, extension or definition of that word as in the Davenport vs. McNiven case, supra.

The characteristic common to the dictionary meaning is a specified or periodic time frame for which wages, whether in the form of salary, commission, vacation pay, dismissal wages, bonuses are

payable for personal services rendered.

There was no firm understanding between Mr. Bitar and Mr. Fry at the beginning as to what fees were to be charged over what estimated period of time. This, of course, is not uncommon when professionals undertake to perform services for a client. The time factor is usually incapable of being estimated with any degree of accuracy.

We were urged to give the legislation, and in particular sect. 53 (2)(c) the broadest, most liberal and curative interpretation possible having regard to its quasi constitutional nature and remedial objectives.

It is, however, impossible to ignore the plain meaning of subsection (c) which refers specifically to "wages". In my opinion, therefore, the word "wages" must be given its restricted dictionary meaning. I am regretfully unable to award compensation for wages to the Complainant.

It was argued, if there was discrimination, it was not the proximate cause of any loss of "wages" claimed by the Complainant. Finally it was argued that Mr. Fry's claim was not quantifiable and was therefore void for uncertainty.

Mr. Fry chose not to bill his client for the services he performed because he "hadn't achieved anything". In that regard, according to Mr. Fry, Revenue Canada had changed its position from a projection of an assessment based on net worth to one of undeclared income based on bank deposits.

In a letter to Mr. Bitar, Ex. HR-14, Mr. Harris focused on "unreported income". A copy of that letter was sent to Mr. Fry. He expressed his opinion that Revenue Canada had, in effect, changed the name of the game. It would be necessary he said to start all over again. See Mr. Fry's testimony at Vol. 1, P.79.

Mr. Fry formally withdrew from the case on September 5, 1989. In the meantime he had referred his client to a Mr. Newton, a solicitor, with some expertise in tax matters.

If I am wrong in my interpretation of subsection (c) of sect. 53 (2) Mr. Fry's remarks as was mentioned above, lead me to conclude that it was for these reasons i.e., the change by Revenue Canada from net worth to undisclosed income, rather than the prior discriminatory activities of Revenue Canada which led Mr. Fry to the decision not

to bill his client. Accordingly, and in the alternative I would dismiss the claim for "wages" on these grounds.

I do not think it necessary to deal with the question of uncertainty or the difficulty of quantifying the claim in the light of the foregoing findings.

#### HURT FEELINGS

Mr. Fry became visibly upset after the meeting of January 17, 1989 when he had the opportunity of reviewing Mr. Swami's notes. Both Mr. Swami and Mrs. Fry testified to that effect.

According to Mrs. Fry her husband is a proud man who apparently enjoyed some recognition in the community for his professional

- 13 -

expertise in tax matters. He had also been on good terms with Revenue Canada generally.

His hearing disability no doubt was a concern in his dealings with the public and with Revenue Canada.

The meeting of January 17, 1989 followed by the conduct and remarks of the representatives of Revenue Canada at Kentville in March of 1989 were an affront to Mr. Fry's dignity and a threat to his professional career. I believe Mr. Fry was deeply and genuinely hurt by the remarks made about his deafness.

I therefore award the sum of Two Thousand (\$2000.00) for hurt feelings. Simple interest at the Bank of Canada prime rate from the date of signing of the complaint is awarded on the amount awarded for hurt feelings.

Signed at Anglemont, B.C. this day of May, 1994.