

Canadian Human Rights Tribunal

**Tribunal canadien des droits de la
personne**

BETWEEN:

**COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA,
FEMMES-ACTION**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA

Respondent

RULING ON DISCLOSURE AND PRODUCTION

2003 CHRT 1
2003/01/10

PANEL: J. Grant Sinclair, Chair

Pierre Deschamps, Member

[1] This ruling is in response to two motions, one brought by the Canadian Human Rights Commission and one by the Communications, Energy and Paperworkers Union of Canada. Both motions seek an order from this Tribunal that Bell Canada disclose and produce to them the documents specified in the notices of motion. The Commission and CEP argued that the specified documents are arguably relevant to the issues in this case.

[2] Bell has opposed both motions on the following grounds:

(i) because of their scope, size and nature, the requests are unduly burdensome to Bell in terms of the time required to search for the documents and the costs involved;

(ii) the Commission and CEP represented from the outset that the only documents that they would rely on to prove their case were 74 documents generated by the Joint Study and selected by the Commission and CEP from among many other documents of the Joint Study. Bell says that it relied on this representation to prepare its defense and conduct its cross-examinations. To order further disclosure at this point in the hearing, would allow the Commission and CEP to materially alter their case to Bell's detriment and they should be estopped from doing so and/or be taken to have waived their right to further disclosure;

(iii) the Commission and CEP, knowing that Bell challenged the validity of the Joint Study for the purposes of section 11 of the *Act*, should have reasonably anticipated that more than 74 documents were necessary to make their case and their request is untimely and prejudicial to Bell.

[3] The Commission and CEP have consistently taken the position that the Joint Study was their case and they would be relying on the 74 Joint Study documents, which they had identified, to prove their case.

[4] The hearing of the complaints by this Tribunal began in January 1999. The Tribunal dealt with a number of preliminary motions brought by Bell and only began hearing the merits of the complaints on April 17, 2000. Rule 6 of the Tribunal's Interim Rules of Procedure requires each party to give written notice of all documents in its possession relevant to any matter in issue in the case. None of the parties provided such disclosure nor have any of the parties, at any time, requested that the Tribunal order such disclosure.

[5] The hearing on the merits continued until November 2, 2000, when the Federal Court, Trial Division suspended the hearing because of Tribunal institutional bias. The hearing resumed on September 10, 2001, following the reversal decision of the Federal Court of Appeal.

[6] The record shows that there have been disclosure requests by both the Commission and CEP for documents beyond the 74 Joint Study documents. On April 25, 2000, Bell provided, at the request of the Commission, General Circulars pertaining to the issue of establishment. On September 5, 2001, CEP requested from Bell documents relating to population data, documents relating to exhibit HR-76 and reports or analysis relating to the reliability of the Joint Study in Bell's possession.

[7] During the January 22, 2002 hearing week, it became apparent to the Tribunal that the issues with respect to each party's case had not yet been fully defined. At this time, Commission counsel told the Tribunal that he had no idea of the specifics of Bell's defense. Bell's counsel, for his part, stated that Bell still did not know the case of the Commission. Further, CEP counsel advised the Tribunal that there remained outstanding disclosure requests and indicated that efforts would be made to resolve them through counsel. If not so resolved, CEP might request a blanket disclosure order from the Tribunal.

[8] In an attempt to define the issues and resolve the disclosure questions, the Tribunal, with the agreement of the parties, directed that each party provide a statement of case setting out the material facts to be proved, the legal issues raised by the case, the witnesses to be called and the remedies sought. The Tribunal, again with the agreement of the parties, did not make a blanket disclosure order, but left disclosure questions to be resolved in good faith by the parties. Should any dispute arise relating to disclosure, the Tribunal would deal with it.

[9] The Commission, C.T.E.A., CEP and Femmes-Action filed their statements of case on April 2, 2002, and Bell filed on May 13, 2002. The parties continued discussions on document disclosure from that time onward but could not come to any agreement. Thus, these two motions.

[10] On the evidence and given our knowledge of the issues in this case, we have concluded that the documents requested meet the test of arguable relevance. Bell did not seriously dispute this.

[11] As to the burdensome nature of the disclosure request, evidence given on the motions indicates that the documents requested are located in six to eight filing cabinets at the Bell offices, 1000 De La Gauchetière Street, Montreal. Further, Bell's counsel advised the Tribunal that no JEWIC documentation had been found at that location. In response, Commission counsel withdrew the request for disclosure of the JEWIC documents unless Bell, on its own initiative, was able to locate them elsewhere. In these circumstances, Bell's counsel conceded that a search for the documents at 1000 De la Gauchetière only would not be unduly burdensome. We agree.

[12] In our view, this is sufficient to dispose of the two motions. The Commission and CEP have requested disclosure and production of the documents itemized in the two motions. We fail to see how Bell is prejudiced by disclosure. Bell is free to object to the production of the documents disclosed. Bell is free to object to the admissibility into evidence of any of the documents disclosed or produced. In our opinion, Bell's submissions on waiver, estoppel and reasonable anticipation are premature.

ORDER

The motions are granted and the Tribunal orders as follows:

1. Bell shall, in a timely manner and using all reasonable efforts, prepare a list of all documents relating to the Joint Study that are found in the filing cabinets referred to in the evidence of Linda Benwell located at the Bell offices, 1000 De la Gauchetière, Montreal. The list shall include any documentation relating to the JEWIC job evaluation process and any hard copies of electronic communications, correspondence or documentation for the period 1991-1993 prepared by Michèle Boyer, André Beaudet, Matina Bisbicos or Louise Belle-Isle.
2. If no JEWIC documentation is found at 1000 De la Gauchetière, Bell is not required to search elsewhere for such documentation.
3. Bell is not required to search for any Joint Study related electronic communications, correspondence or documentation other than that referred to in paragraph 1.
4. Bell shall provide the Commission and CEP with the list of documents referred to in paragraph 1 and in the event that Bell, on its own initiative, finds any JEWIC documentation at some other location, then it shall provide the Commission and CEP with a list of these documents.
5. Bell shall produce copies of any of the documents on the lists referred to in paragraph 4 requested by the Commission and CEP.
6. Bell shall also produce to CEP copies of the documentation requested to paragraphs 3(j) and 3(k) of CEP's Notice of Motion.

7. Any undue costs incurred by Bell for copying the documentation referred to in paragraphs 5 and 6 shall be paid for by the Commission and CEP.

8. The hearing scheduled for the week of Monday, January 13, 2003, is adjourned to Monday, January 27, 2003. If Bell disputes the production as ordered in paragraphs 5 and 6, the Tribunal, on motion, will hear this matter commencing on Monday, January 27, 2003. If Bell does not dispute production, the hearing on the merits will resume on January 27, 2003.

9. If Bell cannot reasonably meet the schedule for disclosure and production, Bell should so advise the Tribunal and the Tribunal will deal with this accordingly.

"Original signed by"

J. Grant Sinclair, Chair

Pierre Deschamps, Member

OTTAWA, Ontario

January 10, 2003

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

TRIBUNAL FILE NO.: T503/2098

STYLE OF CAUSE: CEP et al v. Bell Canada

PLACE OF HEARING: Ottawa, Ontario

December 16-20, 2002

RULING OF THE TRIBUNAL DATED: January 10, 2003

APPEARANCES:

Peter Engelmann For the CEP

Francine Charron and Marc Pilon For Femmes-Action

Andrew Raven and Patrick O'Rourke For the Canadian Human Rights Commission

Gary Rosen, Peter Mantas and Guy Dufort For Bell Canada