File No.: T503/2098
Ruling No.: 1

CANADIAN HUMAN RIGHTS ACT

R.S.C., 1985, c. H-6 (as amended)

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

CANADIAN TELEPHONE EMPLOYEES' ASSOCIATION,
COMMUNICATIONS, ENERGY AND
PAPERWORKERS UNION OF CANADA,
FEMMES-ACTION

Complainants

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

BELL CANADA

Respondent

RULING ON MOTIONS 1, 2 and 3

TRIBUNAL:

J. Grant Sinclair, Q.C. Chairperson
Pierre Deschamps Member

The Respondent, Bell Canada, has filed six preliminary motions, three of which were heard by the Tribunal commencing the week of August 3, 1999. The following is the Tribunal's decision on Motions 1, 2 and 3.

Motion 1:

In this motion, Bell seeks three orders from the Tribunal. First, that complaints X-00344 and X-00372 have been abandoned. Second, that complaints X-00417, X-00460, X-00469, and X-00456 are void because they were filed more than one year after the alleged discriminatory practice occurred. Third, Bell seeks particulars as to the time in which the discriminatory practice alleged in complaint X-00455 took place.

Dealing with the first order requested, the facts are that both complaints X-00344 and X-00372 were amended. But it is the original complaints that have been referred to the Tribunal, not the amended ones. Bell argues that the Tribunal has no jurisdiction to hear the original two complaints as they have been abandoned.

If abandon means to give up completely or before completion, this is not the case with these two complaints. The evidence before us is that the complaints were amended to broaden the comparators specified from one to many. The amended complaints indicated that these were amendments to the original complaints. This does not indicate abandonment. But rather, it indicates an intention to proceed with the original complaint, although in a somewhat revised form.

Further, it is not clear why Bell is making this argument at this point in time. We make this comment in light of the comments made by the Federal Court of Appeal in *CEP & CTEA v. Bell Canada*. There, the Federal Court of Appeal pointed out this sterile debate could have been avoided but for the Commission's administrative sloppiness. But in any case, the Court found that this "mistake" (as so characterized by Bell's counsel) did not cause any prejudice to Bell which knew all along what complaints were in issue.

It is our opinion that this issue is not one of abandonment, but rather an issue of amendment. This latter issue is yet to be dealt with.

On the timeliness issue, Bell's position is that the Commission did not extend the time limit. Thus, four of the complaints are time-barred.

In our opinion, there is a relatively simple answer to Bell's argument. The evidence derived from the Revised Investigation Report indicates that the complaints are of an ongoing, systemic nature. Therefore, the time limit provided for in section 41(e) of the *Act* has not run. We understand that the Tribunal is not bound by any conclusions in the Revised Investigation Report. Nonetheless, given our knowledge of the facts to date, we accept the logic of this position.

We also consider that we are bound by the Federal Court of Appeal's finding on this question in *CEP & CTEA V. Bell Canada*. Here the Court stated that the Commission's finding that the complaints were not out of time is unassailable on the facts of the case. The Federal Court of Appeal also noted by reference to *PSAC v. Canada (Dept. of National Defence)*, that systemic discrimination, as alleged in the *CEP & CTEA* case, by its very nature extends over time.

Finally, as to the time in which the discriminatory practises alleged by Femmes-Action took place, it appears from both the Federal Court of Appeal decision in *CEP & CTEA*, and the Revised Investigation Report, that the starting date was November 23, 1992, the date of the Final Report of the Joint Study, and is ongoing. Femmes-Action is to confirm forthwith in writing to Bell that this is the relevant date.

It is our conclusion that Motion 1 should be dismissed.

Motion 2:

In this motion, Bell asks for an order dismissing the complaints as void for vagueness or void as lacking the essential elements of a valid complaint. Alternatively, Bell requests that the Commission and/or the Complainants provide particulars, as set out in Schedule A to the motion.

According to Bell's interpretation of section 11 of the *Canadian Human Rights Act* (under which these complaints are filed), at least the following elements should be specified in the complaints: identification of the alleged victims of discrimination, the comparator jobs and the establishment. Bell argues that the complaints are not sufficiently particularized in that the complaints lack one, or two, or all of these required elements.

Bell does concede that at least two of the complaints are remediable because they lack only one of the essential elements. However, it seems that the remaining five complaints are beyond repair.

The response of the Commission and the complainant Unions is that these issues were dealt with by the Federal Court of Appeal and Bell is foreclosed, on the basis of *res judicata* and issue estoppel from raising them again. They also point out that the parties have been involved in a long and intensive process to resolve the subject matter of the complaints. Bell and the Unions were equal partners in producing the Final Report of the Pay Equity Joint Committee, dated November 23, 1992. There have been numerous

exchanges between the Commission and Bell during the Commission's investigation of the complaints. The result of this is the Revised Investigation Report, dated November 14, 1995. Both of these Reports were filed as exhibits on this motion.

The Commission and the Complainants assert that the process leading to these two Reports, the Reports themselves, plus the complaint forms all add up to give Bell extensive knowledge of the particulars of the complaints. Thus, there are no grounds to dismiss the complaints, nor is there any need for further particulars.

We have read a number of authorities provided by the parties relating to the sufficiency of a complaint form and the need for particulars. The following propositions may be extracted from these cases. There is no particular form or content prescribed for a complaint. Section 40(1) of the *Act* requires only that a complaint be in a form acceptable to the Commission.

A complaint under the *Act* is not like an information in a criminal case. There is nothing in the *Act* to support the conclusion that a single document called a formal complaint stands or falls in terms of particularity in the same way as an information under the Criminal Code.

The cases also indicate that, in determining whether there has been a sufficient particularization of the complaints, one can look beyond the complaint form to such things as, correspondence and other exchanges between the parties; investigation reports; file documents including interviewer's notes and summaries of the investigating officer from fact finding and conciliation efforts.

We consider that the complaints, the Final Report of the Pay Equity Joint Committee and the Revised Investigation Report should all be taken as sources of information and as providing particulars of the complaints. We have concluded, on the basis of our knowledge and understanding of the complaints to date, and our review of these documents, that there is sufficient information contained therein to inform Bell of the case that it has to meet. There is also the fact that Bell has been intimately involved in this "pay equity" process for some time.

It may be, if and when these complaints proceed to a hearing, that Bell considers that further information is required during the proceedings. If such is the case, a demand for particulars can be made at that time.

Having concluded as we have on this motion, there is no need to deal with the arguments of res judicata and issue estoppel.

Motion 2 is dismissed.

Motion 3:

In this motion, Bell Canada asks for a ruling that the Unions lack standing under section 40(1) of the *Canadian Human Rights Act*.

The basis of Bell's request is that the Unions are not individuals or a group of individuals under this section nor, Bell argues, has any alleged victim of discrimination authorized the Unions to file a complaint under the *Act*.

The response of the Commission and of the Complainant Unions to Bell's arguments is that the Unions constitute a group of persons for the purposes of section 40(1) of the *Act*. Further, this question has already been decided by the Federal Court of Appeal and therefore res judicata and issue estoppel applies.

With respect to the issue of standing, Bell's position is that there is no provision in the *Act* that specifically authorizes a union to bring a complaint of discrimination. In support of its argument, Bell refers to various Annual Reports (1987-91) of the Commission which recommended that the *Act* be amended to allow unions to bring complaints. Further, Bell argues that the history of labour legislation shows that, for a union to have the power to do certain acts, this power must be expressly conferred on it by legislation. Bell also argues that a union is an entity separate and distinct from its members.

The Unions and the Commission, of course, disagree with Bell's position. They argue that by applying proper canons of statutory interpretation in the context of a human rights statute, trade unions are groups of individuals for purposes of section 40(1) of the *Act*. They argue that in this case, the Unions are to be viewed as a voluntary association of individuals and are but a vehicle through which individual rights are protected.

It is the view of the Tribunal that the *Act* must be given a liberal and purposive interpretation. As stated by Driedger, in a human rights legislation context, "interpretative doubts, if they arise, must be resolved in a way that advances the overall purpose of the legislation, which is the promotion and protection of rights".

It is our opinion that a liberal and purposive interpretation of the *Act* supports a conclusion that a union, acting to protect individuals rights as opposed to collective rights can be said to be a 'group of individuals' under section 40(1) of the *Act*.

We do not have to deal with the question of res judicata or issue estoppel. Nor do we need to address the question of the consent of the union members.

Motion 3 is dismissed.

DATED at Ottawa, Ontario, this 29th day of November, 1999.

J. GRANT SINCLAIR,
Chair

Pierre Deschamps,
Member