

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

BARBARA TANZOS

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

AZ BUS TOURS INC.

Respondent

RULING

MEMBER: Michel Doucet 2007 CHRT 32
2007/08/08

[1] At the hearing, the complainant, Barbara Tanzos, sought to introduce in evidence a transcript and tapes of a telephone conversation she had on March 24, 2001, with Mr. Ron Roffey, the Operations Manager of the respondent, AZ Bus Tours Inc., and of a meeting with Terry Barnett, the respondent's General Manager, held on September 6, 2001.

[2] The respondent objected to the introduction of these tapes and of the transcript of these conversations. It argued that these conversations had been taped without the knowledge and consent of Mr. Barnett and Mr. Roffey. The respondent added that the action of the complainant constituted a recording of private conversations between individuals done without their consent. It further argued that these taped conversations violated paragraph 7(b) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and paragraphs 5(1) and (2) of the *Canadian Evidence Act*, R.S. 1985, c. 5. Counsel for the respondent finally added that the probative value of the information contained on these tapes is outweighed by the prejudicial effects that its

introduction would have on the respondent, although she never identified what these prejudicial effects were.

[3] I have reviewed the authorities on this matter and have come to the conclusion that the tapes and the transcripts should be admitted into evidence for the following reasons.

[4] In the decision *R. v. Pleich* (1980), 55 C.C.C.(2d) 13, the Ontario Court of Appeal held that taped conversations should be treated much like testimony from a witness who had overheard a conversation and made accurate notes. Audiotapes are original evidence that can provide cogent and convincing evidence. A tape has no memory problem and will better disclose exactly how words were used and the manner in which they were spoken than a witness who was a party to the conversation many years ago.

[5] In the criminal context there are statutory provisions governing the authorization of intercepted private communication and their subsequent admissibility as evidence. Such is not the case in a civil matter. If the complainant had been deemed a government actor for the purposes of the *Canadian Charter of Rights and Freedoms*, the reception of this covertly tape recorded evidence could have been the subject of an attack on the grounds that the respondent's charter rights to freedom from unreasonable search and seizure had been infringed. But the *Charter* does not apply in this case since the parties are not government actors.

[6] Outside criminal matters, most of the cases regarding covertly tape recorded evidence have arisen in labour relations situations. Labour relation boards have long espoused a policy that such evidence is not admissible because of the paramount importance of maintaining trust and informality in the parties' ongoing relations. Such is not the case in this matter. This is not a situation of labour relations and certainly not a matter where the trust and informality of the ongoing relationship of the parties still exist.

[7] I have reviewed the legislative provisions raised by counsel for the respondent and I conclude that they are not relevant to the decision I have to make on the issue of admissibility. I refer the parties to subparagraph 50(3)c) and paragraph 50(4) of the *Canadian Human Rights Act* which reads as follows:

50 (3) In relation to a hearing of the inquiry, the member or panel may:

(c) Subject to subsections (4) and (5), receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit, whether or not that evidence or information is or would be admissible in a court of law.

(4) The member or panel may not admit or accept as evidence anything that would be inadmissible in a court by reasons of any privilege under the law of evidence.

[8] No decision or argument was presented which would show that such evidence would be inadmissible in a court of law. Applying the best evidence rule, the tapes, in all cases where they are not consistent with the transcript, will have precedence.

"Signed by"

Michel Doucet

OTTAWA, Ontario
August 8, 2007

PARTIES OF RECORD

TRIBUNAL FILE:	T832/8203
STYLE OF CAUSE:	Barbara Tanzos v. AZ Bus Tours Inc.
DATE AND PLACE OF HEARING:	February 5 to 7, 2007 Barrie, Ontario
RULING OF THE TRIBUNAL DATED:	February 5, 2007
APPEARANCES:	
Barbara Tanzos	For herself
No one appearing	For the Canadian Human Rights Commission
Natalia Chang	For AZ Bus Tours Inc.