

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES DROITS  
DE LA PERSONNE

**WILLIAM G.M. SHMUIR**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CARNIVAL CRUISE LINES**

**Respondent**

**RULING**

MEMBER: Shirish P. Chotalia, Q.C.

2009 CHRT 39  
2009/12/31

[1] William Shmuir alleges that Carnival Cruise Lines, Castaway, and Disney Cruise Lines ("Carnival Cruise Lines") discriminated against him by refusing to hire him because of his disability, contrary to s. 7 of the *Canadian Human Rights Act* (the "*CHRA*").

[2] Mr. Shmuir filed a complaint dated March 21, 2007, with the Canadian Human Rights Commission, alleging discrimination on the basis of disability contrary to s. 7 of the *Act*. Mr. Shmuir alleges that he responded to a job posting on October 11, 2006, for the position of Corporate Trainer. He alleges that he disclosed his disability, being a visual impairment, to the recruitment company and to the Respondent's staff. Mr. Shmuir alleges that the Respondent failed to accommodate his disability and based upon an impressionistic assessment, denied him an opportunity to work for the Respondent.

[3] On July 3, 2009, the Commission referred Mr. Shmuir's human rights complaint to the Canadian Human Rights Tribunal for hearing.

[4] In his Statement of Particulars filed with the Tribunal, Mr. Shmuir argues that the laws that apply in this case include the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c.11 ("AODA"), the *Accessibility Standards for Customer Service* (429/07) ("the Regulations") and the *Canadian Charter of Rights and Freedoms* ("Charter"). He argues that the Respondent violated his constitutional rights further to the *Charter* both in the manner in which he was treated and the Respondent's failure to accommodate his disability. Mr. Shmuir also argues that the Respondent breached the AODA. The Complainant asks that the Tribunal apply the AODA and Regulations both in terms of liability and remedy. He asserts that the AODA Tribunal of the provincial government of Ontario has not yet been constituted and cites s. 16(1) of the *CHRA* as granting jurisdiction to the Tribunal to apply the AODA.

[5] Carnival Cruise Lines challenges the jurisdiction of the Tribunal to apply a provincial statute, in this case the AODA, and challenges the Tribunal's ability to grant remedies pursuant to the AODA and the Regulations. The Respondent further argues that the Tribunal does not have jurisdiction to make a determination under the *Charter*.

[6] The Canadian Human Rights Commission agrees with the Respondent's submissions in part. The Commission agrees that the Tribunal does not have jurisdiction to award remedies under the AODA or its Regulations, even if the provisions were completely in force. The Commission argues that the Tribunal does have jurisdiction to make determinations further to the *Charter* in some circumstances, where the constitutionality of the *Act* is at issue. However, in this case, the Commission notes that the Respondent is a private entity and that therefore the *Charter* issue is not engaged.

## **JURISDICTION OF THE TRIBUNAL**

[7] The jurisdiction of the Tribunal arises from s. 2 of the *CHRA*, which states that the legislation applies within the purview of matters coming within the legislative authority of Parliament; i.e. those matters falling within s. 91 of the *Constitution Act, 1867*. In an employment context, the *Act* applies to the federal crown, crown corporations, and to those businesses and employees employed upon or in connection with the operation of any federal work, undertaking or business as described in s. 92(10) of the *Constitution Act, 1867*. Moreover, under s. 4 of the *Act*, a discriminatory practice as described in ss. 5 to 14.1 may be the subject of a complaint under Part III, and anyone found to have engaged in a discriminatory practice may be made subject to an order as provided in ss. 53 and 54.

[8] The Tribunal is established further to s. 48.1 of the *Act* and has the ability to inquire into the complaints and render the orders referred to in section 4. The Tribunal only has those powers which are assigned to it by statute, or which arise therefrom by necessary implication.

[9] The Complainant misunderstands s. 16(1) of the *Act* that refers to special programs. This section exempts special programs, plans or arrangements designed to prevent disadvantages from a charge of discrimination. If the complainant seeks relief in the form of a special program under s. 16 of the *CHRA*, he needs to demonstrate how this is justifiable under s. 53(2)(a) of the *CHRA*. He cannot do so by invoking the AODA.

Section 16 of the *CHRA* does not extend the jurisdiction of the Tribunal to adjudicate on matters falling within provincial jurisdiction, nor does it enable the Tribunal to apply provincial statutes.

[10] With respect to the complainant's claim for *Charter* relief, while it is incorrect to say that the CHRT has no jurisdiction to apply the *Charter* (see *Nova Scotia (W.C.B.) v. Martin* 2003 SCC 54) the complainant has not demonstrated how, in this case, the *Charter* applies to an entity such as Carnival Cruise Lines. (See e.g.: *Greater Vancouver Transportation Authority v. Canadian Federation of Students* 2009 SCC 31, paras. 13-16) Nor has the complainant asserted that a provision of the *CHRA* is inconsistent with the *Charter*.

[11] Accordingly, the motion of Carnival Cruise Lines is allowed in part. There is no statutory authority enabling the CHRT to apply the *AODA* or to make a determination or award under this provincial statute or its Regulations.

[12] The Tribunal does not have the ability to grant costs. (See *Canada A.G. v. Mowat* 2009 FCA 309)

[13] Accordingly, all references to the *Charter*, the *AODA* and the Regulations are struck from the Complainant's Statement of Particulars.

"Signed by"

Shirish P. Chotalia, Q.C.

OTTAWA, Ontario  
December 31, 2009

#### PARTIES OF RECORD

TRIBUNAL FILE:	T1423/4909
STYLE OF CAUSE:	William G.M. Shmuir v. Carnival Cruise Lines
RULING OF THE TRIBUNAL DATED:	December 31, 2009
APPEARANCES:	

Ben Bishop	For the Complainant
Sheila Osborne-Brown	For the Canadian Human Rights Commission
Linda Nguyen/ David L. Rice	For the Respondent