

**Canadian Human Rights Tribunal    Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**BERYL NKWAZI**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CORRECTIONAL SERVICE CANADA**

**Respondent**

**RULING ON AMENDED APPLICATION FOR INTERESTED PARTY STATUS**

**Ruling No. 2  
2000/08/09**

**PANEL:** Anne Mactavish, Tribunal Chairperson

## **Nkwazi - Intervenor motion**

[1] This is an amended application for Interested Party status brought on behalf of the following organizations:

1. Saskatchewan Coalition Against Racism,
2. Saskatchewan Action Committee on the Status of Women / National Action Committee on the Status of Women,
3. Immigrant Refugee and Visible Minority Women of Saskatchewan,
4. African Association of Regina,
5. Immigrant Women of Saskatchewan, Regina Chapter, and
6. Action Committee on Anti-Racism in Education and Employment Sectors.

[2] The Applicants each seek to lead evidence and make submissions to the Tribunal, proposing to participate in the hearing in a 'complementary, non-overlapping fashion'. They estimate that their involvement in the hearing will not take more than six hours. The Applicants do not seek to cross-examine witnesses called by other parties.

[3] Each of the Applicant organizations argues that the determination of the issues in this case will have an effect on their ability to effectively assist the constituencies they represent in dealing with racial discrimination in the workplace.

[4] Ms. Nkwazi has filed a letter with the Tribunal indicating her support for the Application. Included with Ms. Nkwazi's letter of support was a copy of a letter from Ms. Nkwazi to the Canadian Human Rights Commission, which letter evidently makes reference to settlement discussions between the parties. I have disregarded this letter in its entirety.

[5] The Application is opposed by counsel for the Correctional Service of Canada.

## **Saskatchewan Coalition Against Racism (SCAR)**

[6] SCAR is a non-profit corporation whose mandate includes providing a forum for persons working to dismantle racism, to provide support and advocacy on behalf of persons struggling against racism, to promote social action to change institutional structures, programs, policies and practices that are racist in nature and to promote the principles of equality and respect for all human beings.

[7] SCAR submits that it has expertise to offer with respect to racial discrimination and the subtle forms that it may take. SCAR proposes to demonstrate the form of 'typical racial discrimination' within the federal public service by drawing parallels between the employment experience of other members of disadvantaged groups and that of Ms. Nkwazi.

### **Saskatchewan Action Committee on the Status of Women / National Action Committee on the Status of Women (SAC/NAC)**

[8] SAC/NAC are non-profit organizations whose mandates are to seek equality for women. Both SAC and NAC appear to be umbrella organizations made up of a number of other organizations with common objectives.

[9] SAC/NAC state that they have expertise regarding the intersecting and interlocking hierarchical nature of racial, gender and class discrimination. SAC/NAC propose to lead evidence with respect to the nature of subtle forms of discrimination that occur in the presence of these three elements, and the way in which employment and disciplinary practices have a chilling effect on the ability of people such as Ms. Nkwazi to address discrimination in the workplace.

### **Immigrant Refugee and Visible Minority Women of Saskatchewan (IRVM)**

[10] IRVM is a non-profit corporation whose mandate is to work towards the elimination of racism, sexism, and other forms of discrimination, and to enhance inter-cultural understanding in Saskatchewan.

[11] IRVM submits that it has expertise to offer with respect to the experience of immigrant visible minority women and the subtle forms of discrimination that they experience in the workplace. IRVM proposes to lead expert evidence concerning the nature of the experience and with respect to 'the multiple levels of differential treatment'.

### **African Association of Regina (AAR)**

[12] AAR is a non-profit corporation whose mandate includes uniting Africans in Saskatchewan, promoting African perspectives, enhancing African cultural identities, advocacy, and raising awareness of and addressing racism and sexism.

[13] AAR states that it has expertise in the experience of African immigrants in the workplace, and proposes to lead expert evidence concerning the nature of the discrimination that they encounter.

### **Immigrant Women of Saskatchewan, Regina Chapter (IWS)**

[14] IWS is a non-profit corporation whose mandate includes the promotion of the interests of immigrant and visible minority women and to empower such women in their struggle for equality.

[15] IWS states that it has expertise in the subtle forms of discrimination and retaliation such as that experienced by Ms. Nkwazi. IWS proposes to lead expert evidence with respect to systemic discrimination and its marginalizing effect on women such as Ms. Nkwazi, and how such discrimination is compounded by the presence of gender, race and class issues.

### **Action Committee on Anti-Racism in Education and Employment Sectors (Action Committee)**

[16] The Action Committee is a non-profit corporation whose mandate includes initiating and developing anti-racism projects, advocacy towards the elimination of discrimination in the educational and employment sectors, and advocacy in individual cases 'to assist in the development of good Canadian human rights precedent'.

[17] The Action Committee proposes to address the need to incorporate critical analysis theory in both the process and substance of this inquiry, and to make submissions with respect to prevailing myths surrounding the nature and intersecting realities of direct, systemic and institutional discrimination. The Action Committee also proposes to address the insufficiency of traditional adjudication processes, and how such processes tend to reinforce the power imbalance in favour of those who have traditionally been privileged.

[18] In the event that the Tribunal is not disposed to grant interested party status to all of the Applicants, the Applicants ask, in the alternative, that the Action Committee be granted interested party status as a representative of all of the Applicants.

[19] Correctional Services of Canada opposes the applications on a number of bases, alleging that the amended motion fails to provide any basis on which interested party status should be granted. Correctional Services of Canada submits that the Tribunal can deal with the issues raised by Ms. Nkwazi's complaint without the involvement of the Applicant organizations.

[20] Correctional Services of Canada further submits that the applications speak in generalities, and do not demonstrate any direct interest in these proceedings on the part of the Applicants. It is not clear from the material before the Tribunal what contribution the proposed interested parties could make, or how that contribution would assist me in fulfilling my mandate. The proposed 'expert' testimony appears to be largely anecdotal

evidence of the experiences of others in dealing with racism, which evidence would only serve to prejudice the respondent. The respondent contends that it is unclear what issues it is that the Applicants wish to address. As a result of all of these considerations Correctional Services of Canada states that it is impossible for me to make any determination with respect to the applications.

[21] Correctional Services of Canada also raises concerns with respect to the length of these proceedings. It notes that Ms. Nkwazi is now represented by counsel, and refers to the risk of duplication of evidence and submissions that could occur if the applicants are granted standing.

[22] Section 50 of the Canadian Human Rights Act gives the Tribunal wide discretion with respect to the granting of interested party status.<sup>(1)</sup>

[23] In deciding whether or not to grant interested party status in a particular case, the onus is on the Applicants to show how their expertise would be of assistance in the determination of the issues before the Tribunal.<sup>(2)</sup>

[24] On the basis of the information now before me, I am not prepared to exercise my discretion, and to grant interested party status to the six applicant organizations. I am not satisfied that the participation of all six of the Applicants in this hearing would assist me in fulfilling my mandate, which is, of course, to inquire into Ms. Nkwazi's complaint. Based upon the Applicants' submissions, I have serious concerns about the admissibility and relevance of at least some of the evidence sought to be adduced by the proposed interested parties. By way of example, it is hard to see how SCAR's proposed evidence regarding the anecdotal experiences of other public servants, presumably in other departments, would be of much assistance in determining what went on in Ms. Nkwazi's workplace. The participation of six organizations with similar mandates also raises concerns with respect to duplication of evidence. In addition, I am very concerned that the estimate offered by the proposed interested parties as to the time required to allow for their desired participation may be extremely optimistic. This is already shaping up to be a lengthy hearing, with attendant cost implications for all of the parties. In my view, it is not in anyone's interest that the hearing be unduly protracted. This aspect of the Applicants' request is accordingly dismissed.

[25] A review of the Applicants' submissions does, however, suggest that at least some of the evidence sought to be adduced by the Applicants may be of some assistance in the determination of issues now before the Tribunal regarding the substance of Ms. Nkwazi's complaint. However, neither the extent to which that evidence may exceed the expertise of the Tribunal, nor the admissibility of such evidence can be determined on the basis of the information now before the Tribunal. As a result, I am adjourning the Applicants' alternative request that the Action Committee be granted interested party status as a representative of all of the Applicant organizations, to be dealt with at the commencement of the hearing, upon the following terms:

a) On or before August 25, 2000, the Action Committee shall serve and file copies of all documentation on which it intends to rely at the hearing, along with a list of the witnesses it intends to call, including expert witnesses, and a summary of their proposed testimony.

b) In the event that the Action Committee proposes to lead any expert evidence, it shall serve and file a report, signed by the expert, setting out the substance of the expert's proposed testimony, as well as the expert's name, address and qualifications. Expert reports must be served and filed on or before September 1, 2000.

[26] Assuming that the Action Committee has complied with the foregoing, I will hear further submissions from the parties at the commencement of the hearing on the question of whether or not the Action Committee should be granted interested party status as a representative of all of the Applicants. Any issues that may arise as to the admissibility, relevance or probative value of any of the proposed evidence may be addressed at that time. Similarly, any issue regarding the expertise of any proposed expert witnesses may also be addressed at the commencement of the hearing.

[27] It should be clearly understood that participation of the proposed interested party will not be permitted to delay the commencement of this hearing, which has already been the subject of a lengthy delay as a consequence of the withdrawal of the Canadian Human Rights Commission.

[28] Once again, I would remind the parties that the mandate of the Tribunal is to inquire into the specific complaint filed by Ms. Nkwazi against her employer, the Correctional Service of Canada, and that the hearing in this matter will be confined to a consideration of the issues raised by Ms. Nkwazi's complaint.

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Anne Mactavish, Tribunal Chairperson

OTTAWA, Ontario

August 09, 2000

**CANADIAN HUMAN RIGHTS TRIBUNAL  
COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T538/3399

STYLE OF CAUSE: Beryl Nkwazi v. Correctional Service Canada

RULING OF THE TRIBUNAL DATED: August 09, 2000

APPEARANCES:

Beryl Nkwazi For herself

Daniel Pagowski For the Canadian Human Rights Commission

Denis Bonthoux For the Correctional Service Canada

Alan Jacobson For the proposed Interested Parties

1. *Citron v. Zundel and the Canadian Human Rights Commission*, Interim Ruling, unreported, June 18, 1997

2. *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, [2000] F.C.J. 220 (F.C.A.), at para. 12