

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

BETWEEN:

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

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA

Respondent

MOTION TO AMEND COMPLAINTS X00344-X00372

Ruling No. 4

2000/08/31

PANEL:

**J. Grant Sinclair, Chairperson
Shirish Chotalia, Member
Pierre Deschamps, Member**

1. This is a motion by the Canadian Human Rights Commission dated August 22, 2000 for an order that complaints X00344 and X00372, referred to the Tribunal by the Commission, be amended to the form and wording of the complaint forms bearing numbers "amended X00344" and "amended X00372".

I. FINDINGS OF FACT

1. These complaints have a lengthy and complex history which is exhaustively chronicled in the Commission's investigation reports, the decision of the Federal Court of Appeal and the evidence of Linda Wu, a former Canadian Telephone Employees' Association officer. All of this was submitted in evidence on this motion. We will only repeat those parts of this history necessary to deal with this motion.
2. In the early 1990's, the Commission received a number of individual complaints alleging that Bell Canada discriminated against the complainants, contrary to section 11 of the *Canadian Human Rights Act*. These complaints combined four clerk occupational groups and six male occupational groups identified as male comparators of equal value. They involved sixty-two individual complaints from seventy-four clerks.
3. The four clerk occupational groups covered by the individual complaints were Clerk 7, Plant Loading; Clerk 7, Cable Dispatch; Clerk 9, Trunk Provisioning; and, Clerk 6, Materials Control. These groups were part of the Clerical and Associated bargaining unit at Bell represented by CTEA.
4. In addition to the individual complaints filed, CTEA filed with the Commission, complaint X00344 dated June 27, 1991; complaint X00372 dated April 1, 1992 and complaint X00417 dated October 22, 1992. The CTEA complaints were group complaints on behalf of all of the clerks in the occupational groups, Clerk 7, Cable Dispatch, the Clerk 7 Plant Loading, and Clerk 9 Trunk Provisioning. These complaints named specific male comparator jobs. CTEA did not file a group complaint for the Clerk 6, Materials Control Group. The reason for the CTEA group complaints was to cover all of the incumbents in these three clerk occupational groups (about 500 employees) instead of filing 500 individual complaints.
5. During the period November 1992, (the date of the Final Report of the Joint Pay Equity Study) and December 1993, there were a number of discussions and negotiations between Bell, CTEA and Communications, Energy and Paperworkers Union (which requested the other two bargaining units of Bell) in an attempt to resolve the wage gap identified in the Final Report. The parties were not able to achieve a satisfactory resolution. In January and February 1994, there were discussions between the Commission and CTEA and the individual complainants concerning filing new complaints using the male jobs in the Joint Pay Equity Study as comparators rather than specific male job comparators.

6. Most of the individual complainants maintained the wording of their original complaints. CTEA amended its three group complaints, X00344, X00372 and X00417 on March 4, 1994. The amendments changed the male comparators from specific male jobs to the male jobs in the Joint Pay Equity Study. The Commission advised Bell on March 11, 1994, that CTEA had filed these amendments.
7. On March 4, 1994, CTEA filed a systemic complaint with the Commission, X00460 alleging that Bell discriminated against all predominantly female clerical groups by paying them less than male dominated jobs of equal value as per the Joint Pay Equity Study, contrary to section 11 of the *Act*. This complaint covers approximately 17,000 incumbents.
8. This complaint followed similar systemic complaints which CEP and Femmes-Action had filed earlier with the Commission. CEP complaint, X00456 dated January 31, 1994, alleges that Bell discriminates against the predominantly female groups in the Operator Services and Dining Services bargaining unit and in the Craft and Services bargaining unit, by paying them less than male dominated jobs of equal value as per the Joint Pay Equity Study, contrary to section 11 of the *Act*.
9. Femmes-Action complaint X00455 covers a group of employees in the Telephone Operators, Cleaners and Dining Services Bargaining groups (about 1,050 individuals) alleging discrimination by Bell in comparison with all male dominated jobs of equal value as per the Joint Pay Equity Study contrary to sections 10, 11 and 53 of the *Act*.
10. On June 21, 1994, CTEA filed another systemic complaint X00469 with the Commission on behalf of the predominantly female Sales Associates occupational group. This complaint alleges discrimination by Bell by paying them less than male dominated jobs of equal value as per the Joint Pay Equity Study, contrary to section 11 of the *Act*.
11. On November 15, 1995, Paul Durber, Director, Pay Equity for the Commission wrote to André Beaudet, Director, Job Evaluation Bell, enclosing the Commission's revised investigation report and advising Mr. Beaudet that this report would be submitted to the Commissioners for decision at their February 1996 meeting.
12. This revised investigation report referenced the individual complaints; the three CTEA group complaints noting that the CTEA had amended the group complaints; and the four systemic complaints filed by CTEA, CEP and Femmes-Action.
13. This revised investigation report contained a number of Proposed Resolutions of the Commission including a Proposed Resolution whereby the Commission resolves, pursuant to sections 40(4) and 49 of the *Act*, to request the President of the Tribunal to appoint a single Human Rights Tribunal to inquire into all of the complaints against Bell listed in Annex 1. The revised investigation report filed as an exhibit with the Tribunal does not include Annex 1. Thus, the Tribunal does not know what complaints the investigator at least, proposed to be referred to a Human Rights Tribunal.
14. What the Tribunal does know from the evidence is that on May 27, 1996, Lucie Veillette, the Secretary to the Commission, wrote to André Beaudet,

Director, Organization and Job Design at Bell advising that the Commission has reviewed the investigation report on the complaints of CTEA against Bell. Ms. Veillette lists the CTEA complaints as being:

(X00469) dated June 21, 1994

(X00460) dated March 4, 1994

(X00417) dated October 22, 1992, as amended

(X00372) dated April 1, 1992

(X00344) dated June 27, 1991

and advised Bell that the Commission has decided, pursuant to section 49 of the *Act*, to request the President of the Human Rights Tribunal to appoint a Tribunal to inquire into these complaints.

15. Ms. Veillette further advised that the Commission had decided to request that a single Tribunal be appointed to hear Femmes-Action complaint X00455 and CEP complaint X00456.
16. This letter was followed by a letter from Max Yalden, the Chief Commissioner of the Commission, dated May 30, 1996, to Anne Mactavish, President of the Human Rights Tribunal. In his letter, Mr. Yalden advised Ms. Mactavish that the Commission had decided, pursuant to section 49 of the *Act*, to request a Human Rights Tribunal be appointed to inquire into the complaints against Bell. The complaints listed in the Chief Commissioner's letter are:

X00417 C.T.E.A. October 22, 1992, as amended

X00469 C.T.E.A. June 21, 1994

X00460 C.T.E.A. March 4, 1994

X00372 C.T.E.A. April 1, 1992

X00344 C.T.E.A. June 27, 1991

X00455 Femmes-Action January 25, 1994

X00456 C.E.P. January 31, 1994

A copy of each of the complaint forms for each of the complaints listed above was enclosed with this letter.

17. Mr. Yalden further advised that the Commission had also decided to request that a single Tribunal be appointed to hear all the complaints as they involved substantially the same issues of fact and law.

II. DECISION

1. The Commission in its motion requested that the Tribunal amend complaints X00344 and X00372 that have been referred to it by the Commission. In our opinion, this is not a question of amendment since these complaints were amended by CTEA on March 4, 1994 and filed with the Commission.
2. Further, the Commission chose not to refer any of the individual complaints and chose to refer CTEA amended complaint X00417. This is consistent with a choice rather than an omission.
3. What the Commission is asking is that this Tribunal override the Commission's clear and unequivocal referral decision and substitute our decision for that of the Commission. We do not have the jurisdiction to grant this request.
4. In his argument, Commission counsel referred to footnote 1 in the judgment of the Federal Court of Appeal. His submission, in brief, was that Bell's counsel thought that referring only the original complaints was a mistake and, according to the Court of Appeal, this mistake could be easily corrected by the Tribunal.
5. We do not agree with this argument. First of all, the Motions Judge and the Court of Appeal did not have for consideration the May 30, 1996, letter from the Chief Commissioner referring the complaints to a Human Rights Tribunal. This letter, plus the enclosed copies of each of complaint form referred, confirms the Commission's decision (first communicated to Bell in its May 27, 1996 letter) to refer only the original complaints in question.
6. Secondly, the Court of Appeal's reference to the acknowledgment of Bell's counsel that he thought it was a "mistake" should not be viewed as a finding by the Court that the Commission had made a mistake by referring only the original complaints. What the Court is commenting on is the fact that Bell did not and can not raise the impact of the "mistake" as another ground for attacking either the validity of the two complaints or the validity of the decision of the Commission as a whole. Nor could Bell rely on the "mistake" as a basis for challenging the referral on the grounds of prejudice.
7. Finally, the Court of Appeal stated in Footnote 1 that the "mistake" could be easily corrected "before" the Tribunal and not "by" the Tribunal.
8. If the Commission considered that it was by mistake that the amended complaints were not referred to Tribunal, it was incumbent on the Commission to make that proof. The Commission did not offer any evidence on this question although invited to do so on at least two occasions by the Tribunal.
9. The Commission has known at least since if not before November 24, 1997 (the date when Bell's judicial review application was argued) that there was an issue concerning the two CTEA amended group complaints that were not referred to Tribunal.

10. The Commission could have remedied this problem by referring these two amended complaints to the Tribunal at any time since. The Commission has not done so.

11. For all these reasons, the motion of the Commission is hereby dismissed.

J. Grant Sinclair, Chairperson

Shirish Chotalia, Member

Pierre Deschamps, Member

OTTAWA, Ontario

August 31, 2000

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T503/2098

STYLE OF CAUSE: CTEA et al. v. Bell Canada

PLACE OF HEARING: Ottawa, Ontario

August 22, 23 and 24, 2000

RULING OF THE TRIBUNAL DATED: August 31, 2000

APPEARANCES:

Larry Steinberg For the CTEA

Peter Engelmann For the CEP

Alain Portelance For Femmes-Action

Patrick O'Rourke For the Canadian Human Rights Commission

Guy Dufort For Bell Canada

Roy Heenan

Gary Rosen