

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

**COMMUNICATIONS, ENERGY AND PAPERWORKERS
UNION OF CANADA AND FEMMES-ACTION**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA

Respondent

RULING ON ADMISSIBILITY OF EXPERT TESTIMONY

PANEL: J. Grant Sinclair
Pierre Deschamps

2005 CHRT 15
2005/01/28

[1] Bell has brought a motion requesting that the proposed expert testimony of Dr. Lawrence Gould not be received in evidence by the Tribunal because the subject of his testimony is one within the Tribunal's own knowledge and experience. In support of its motion, Bell relies on the *Mohan* decision and argues that Dr. Gould's testimony or evidence is not necessary to assist the Tribunal in making a final determination on the issue of interest.

[2] Under section 53(4) of the *CHRA*, as we have discussed this many times in the last few days, the Tribunal may make an award of interest and determine the rate of interest and the period of interest that it considers appropriate subject to Rule 9.12 of the Tribunal's Rules of Procedure, which provides for a specific rate and an interest period unless the Tribunal orders otherwise. CEP has come here asking that the Tribunal order otherwise and relies on Dr. Gould's expert evidence to establish the rate and method of calculation of interest as it should apply in this particular case.

[3] Dr. Gould has been qualified as an expert in finance by this Tribunal. In doing so, the Tribunal heard evidence from Dr. Gould that the matters of interest and the method of calculation of interest are an integral part of finance and financial expertise, as he has described it. On the basis of this evidence and evidence of his academic qualifications and experience, he was accepted as an expert to testify with respect to the appropriate interest rate and method of calculation.

[4] Section 50(3)(c) of the *CHRA* provides that the Tribunal may receive and accept any evidence and other information that the Tribunal sees fit whether or not that information would be admissible as evidence in a court of law subject to the law of privilege. In our view, as we indicated yesterday when the motion was being argued, this is the starting point for determining the admissibility of expert evidence.

[5] Going back to *Mohan*, it sets out four criteria to be considered with respect to the admissibility of expert evidence. Those are: (a) relevance, (b) necessity in assisting the trier of fact, (c) the absence of any exclusionary rule and (d) a properly qualified expert. At this point (a), (c) and (d) are not in issue and only (b) is the question that has to be determined. In our opinion, in light of section 50(3)(c) of the *Act*, *Mohan* is not strictly transferrable when the question of the admissibility of expert testimony arises before the Tribunal.

[6] However, given the facts of this case, the nature of Dr. Gould's proposed evidence and without elaborating any further on how section 50(3)(c) interacts with *Mohan*, we are satisfied that the *Mohan* criteria can be used here and criteria (b) is answered in favour of admitting Dr. Gould's expert evidence.

[7] With respect to the necessity in assisting the trier of fact, the Court stated in *Mohan* that what is required is that the opinion be necessary in the sense that it provide information which is likely to be outside the experience and knowledge of a judge or jury or the trier of fact. In making that statement, the Court also referred to the case of *R. v. Abbey*. In that case, the Court said the evidence must be necessary so the trier of fact can appreciate the technical nature of the matters in issue.

[8] In our view, because of the complexity of the questions that Dr. Gould proposes to deal with and the issues to be decided, the Tribunal has concluded that his expert testimony will be useful to assist the Tribunal in deciding the issues that arise with respect to an appropriate award of interest. We also have concluded that the subject matter addressed in his report is outside our expertise and knowledge. Accordingly, Bell's motion is dismissed and Dr. Gould's evidence will be received by the Tribunal.

Signed by
J. Grant Sinclair, Chairperson

Signed by
Pierre Deschamps, Member

OTTAWA, Ontario

January 28, 2005

PARTIES OF RECORD

TRIBUNAL FILE:	T503/2098
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APPEARANCES:	
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