Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Between:

Benjamin Schecter

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian National Railway Company

Respondent

Decision

Member: Michel Doucet
Date: September 22, 2005
Citation: 2005 CHRT 35

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I. Introduction

[1] On August 31, 2002, Benjamin Schecter (the "Complainant") filed a complaint against the Canadian National Railway Company (the "Respondent"). He alleges that the Respondent engaged in a discriminatory practice on the ground of disability by failing to accommodate his relatives and himself in the provision of facilities contrary to section 5 of the *Canadian Human Rights Act* (the "*Act*").

[2] What should have been a very simple matter, unfortunately turned into a confrontational and, at times, aggressive hearing. The ill-feelings and the deep-rooted distrust of the parties towards one another was very apparent and made any logical approach to find a solution difficult, if not impossible. On the other hand, throughout the hearing, the Complainant, BenjaminSchecter, during that part of the hearing in which he participated, and Counsel for the Respondent, Mr. William G. McMurray, acted respectfully towards the Tribunal and towards the other persons present at the hearing.

[3] The interruptions and disturbances during these proceedings were mainly the responsibility of the Complainant's son and witness, Mr. Marshall Schecter. On numerous occasions, he showed disrespect towards the Tribunal and challenged its orders. He did not take lightly to any arguments or opinions which would differ from what he perceived to be the facts or the law. I will, during this decision, elaborate and comment on these circumstances, which eventually culminated in the Complainant leaving the hearing at the insistence of his son. The attitude of Marshall Schecter certainly did not help the Complainant's case and prevented him from explaining and presenting, in a reasoned and logical manner, the events which brought him before the Tribunal.

[4] The Complainant, Benjamin Schecter, is a Queen's Counsel and a member of the Quebec Bar. He is also a retired judge having served previously on the Quebec Court, criminal division. Moreover he served as a Member of the Canadian Human Rights Tribunal for a period of ten years, retiring a few months before this hearing. I had never met the Complainant before this

hearing, nor did I find out before being appointed to hear the case, that he was a former Member of the Tribunal.

[5] The Canadian Human Rights Commission's participation in this hearing was very limited. At the start of the hearing, Mr. Patrick O'Rourke, Counsel for the Commission, informed the Tribunal that the Commission had entered into an agreement with the Respondent which would settle, to the satisfaction of the Commission, the public interest issues in this matter. The Commission saw no need to further participate in the hearing and it informed the Tribunal of its intention to withdraw from the proceedings.

II. Preliminary Matters

[6] At the outset, the Respondent raised some preliminary issues which I dealt with orally during the hearing. The Complainant also raised an issue relating to the issuance of subpoenas to witnesses. I will now formally address these issues.

[7] In a preliminary motion, the Respondent sought an order that the complaint be dismissed on a summary basis. The reasons for this request were threefold: the Complainant had not adhered to the disclosure process of the Tribunal; the issue of public interest which had been referred to the Tribunal by the Commission had been resolved; and the facts set out in the complaint did not disclose any matters which should be determined by the Tribunal.

[8] In order to dispose of this preliminary motion, it would be appropriate to review some correspondence exchanged between the parties, the Commission and the Tribunal.

[9] The President of the Canadian Human Rights Commission, pursuant to paragraph 44(3)(a) of the *Act*, requested, on January 6, 2004, that the Acting Chairperson, as he then was, of the Canadian Human Rights Tribunal institute an inquiry into the complaint, as she was satisfied that, having regard to all the circumstances, an inquiry was warranted.

[10] On January 27, 2004, the Commission advised the Tribunal that its disclosure of documents in this matter had been sent to the Complainant and to the Respondent. The Tribunal informed the parties, on March 18, 2004, that the case would proceed to hearing and that they were entitled to present evidence and make legal submissions in support of their arguments before the Tribunal. The parties were also provided with copies of the *Canadian Human Rights Act*, the Tribunal's *Rules of Procedure* governing the practices of the Tribunal, a Tribunal's publication entitled "What happens next? A Guide to the Tribunal Process" and a questionnaire to assist the Tribunal with the planning of the inquiry. The parties were asked to respond in writing to the questionnaire and were instructed to send a copy of the completed questionnaire to the other parties and to the Tribunal before April 8, 2004.

[11] On April 19, 2004, the Tribunal received a faxed copy of the Complainant's questionnaire. In the section of the questionnaire entitled "Remedies sought", the Complainant wrote "Forcing principally to provide adequate parking facility at its stations, especially Central Station in Montreal, for handicapped persons." Further down in section 5 of the questionnaire, it was added in writing "Damages to be considered." The Respondent's questionnaire was filed on April26,2004.

[12] The Tribunal, as a result of the answers to its questionnaire, issued directions on June2,2004, pertaining to the scheduling of dates for the inquiry and disclosure. The Commission was directed to provide each party with a copy of its file by June 22, 2004. Pursuant to Rule 6(1) of the Tribunal's *Rules of Procedure*, the Complainant and the Commission were directed to provide *full disclosure* by July 16, 2004 and the Respondent was directed to provide its disclosure by August 10, 2004. Furthermore, the parties were made aware of Rule 9(3), which explains that no previously undisclosed issue or evidence is to be led at the hearing "Except with leave of the [presiding member] … and subject to a party's right to lead evidence in reply".

[13] The parties were further advised that disclosure includes exchange between them of the documentary evidence and witness lists with "will-say" statements. It was also indicated that disclosure consist of not only documents a party intends to introduce as evidence at the hearing

but those documents *arguably relevant* to the proceedings, whether or not a party intends to file them as evidence.

[14] The parties were also instructed to provide brief written particulars to outline the issues and the evidence that they would submit to the Tribunal. These particulars were to be filed with the Tribunal and copied to all parties by the deadlines which had been fixed.

[15] On August 13, 2004, the Complainant forwarded a letter to the Tribunal in which he named five potential witnesses but he did not provide "will-say" statements for these witnesses. That list did not include the Complainant, his wife or his son, Marshall Schecter. On page 2 of the letter, the Complainant listed the remedies and compensatory damages that he would be seeking at the hearing.

[16] The Respondent wrote to the Tribunal on August 17, 2004. It referred to the Complainant's letter of August 13, 2004, and stated that this letter did "not constitute proper disclosure" and proceeded to list a series of questions that it wanted addressed. On August19,2004, the Respondent served on the other parties its list of proposed witnesses and documents.

[17] On August 23, 2004, a letter was sent to the Tribunal by Mr. Marshall Schecter, the son of the Complainant, in which he objected to certain documents contained in the Respondent's list. He also provided further details concerning the compensatory remedies the Complainant would be seeking at the hearing and the list of his witnesses. He also indicated that the Complainant would be calling his wife and son as witnesses at the hearing.

[18] I will now address separately each of the issues raised by the Respondent in its preliminary motion. I will deal first with the issues of witnesses and disclosure of documents. According to Rule 6(1)f) of the *Rules of Procedure* of the Canadian Human Rights Tribunal, a party must not only list the names of the persons he wishes to call as witnesses but he must also provide in his disclosure "a summary of their testimony." The Complainant never provided this

summary for the witnesses he listed in his August 13, 2004 letter. In his August 23, 2004 letter, the Complainant suggested that he also intended to call his wife and his son as witnesses but he did not provide summaries of their testimony.

[19] It should have come as no surprise to the Respondent that these two witnesses would be called by the Complainant taking into consideration their close connection to the matters raised in the complaint. Even though a summary was not provided, the Respondent, with the information it had, was definitely in a position to anticipate the substance of their testimony. The purpose of a "will-say" statement is to prevent the other party from being taken by surprise when the hearing starts. I do not believe that this was the case in regards to these two witnesses and, no prejudice having been caused to the Respondent by the absence of the summary, I ruled that this objection was unfounded.

[20] In regards to the other witnesses listed by the Complainant, no summary was provided for them. It is for these witnesses that the Complainant requested subpoenas. According to section 50(3)a) of the *Act*, only those witnesses whose testimony are "necessary for the full hearing and consideration of the complaint" will be issued a subpoena and ordered to appear at the hearing of the complaint. With no "will-say" statement for these witnesses and no reasonable explanation for this failure to respect the rules of the Tribunal, I was not in a position to assess the relevancy of their proposed evidence.

[21] It is also important to understand that the issuance of a subpoena by the Tribunal is not an administrative act. The Tribunal has discretion in the decision to issue or not a subpoena. Section 50(3)(a) of the *Act* states that a member *may* issue a subpoena if the member *considers* it necessary for the full hearing and consideration of the complaint. (*CTEA v. Bell Canada*, T503/ 2098, ruling #2). Accordingly, not being in a position to consider if they were necessary, I refused to issue the subpoenas. I must add that a Tribunal hearing is not a fishing expedition and unless there is a relevant connection between the evidence which is sought from the witnesses for whom subpoenas are required and the matter before the Tribunal, subpoenas will not be issued.

[22] I will now address the issue relating to the disclosure of documents. The Tribunal's primary obligations as it relates to disclosure lies in the need to protect the fairness and integrity of the process. This generally requires full and ample disclosure by the parties. Any exception should be seen as a qualification carved out of the general rule.

[23] Under Rule 6(1) of the *Rules of Procedure* a Complainant who intends to lead evidence or who wishes to adopt a position which differs from that of the Canadian Human Rights Commission must provide in writing:

a) The material facts which he will seek to prove in support of his case.
b) The legal issues raised in the case, including the nature of the discrimination alleged.
c) The relief which it seeks.
d) All documents in its possession which are relevant to any matter in issue in the case and for which no privilege is claimed
e) All documents in its possession which are relevant to any matter in issue in the case and for which privilege is claimed including the grounds for the claim.
f) The witnesses it intends to call, including expert witnesses identified as such, and a summary of their testimony.

[24] The rules do provide remedy if a party tries to rely on a document which has not been disclosed. Rule 9(3) provides that if a party does not produce a document which is relevant, that party will not be able to introduce that document into evidence at the hearing except with leave of the Tribunal. Unless the Respondent can establish that the presentation of its case would be jeopardized by the failure of the Complainant to disclose the documents, I see no reason to dismiss the case on this basis. The remedy provided by the rule is sufficient, in my opinion, to cure the defect of non disclosure. If a document not disclosed by the Complainant was deemed essential to the Respondent's case, the Tribunal would order its production.

[25] I fail to see how the allegations of improper disclosure raised by the Respondent could justify an order dismissing the complaint. These procedural requirements are there to protect the fairness and integrity of the process. The Complainant is an officer of the court and a former Member of the Tribunal and he is well aware of the procedures of the Tribunal and he will not be surprised if he is adversely affected if he does not respect them.

[26] In regards to the issue of damages, section 53 of the *Act* provides what remedies are available to the victim of the discriminatory practice, should his or her complaint be substantiated. In this case, that person is the Complainant, Benjamin Schecter. In his disclosure dated August13,2004, the Complainant referred to the remedies he was seeking. The question of whether these would be available to him depends on his ability to present relevant evidence as to the damages that the alleged discriminatory practice of the Respondent caused him. In his questionnaire and disclosure, he also referred to policy remedies which are self explanatory and to compensatory damages which seem to refer to section 53(2)(e) of the *Act*. I emphasize that these compensatory damages, if any, would be those of the victim, in this case the Complainant.

[27] With regards to the second question raised by the Respondent to the effect that the only issue before the Tribunal was the policy issue identified by the Canadian Human Rights Commission, it would be important to clear up some confusion regarding the respective roles of the Commission and the Tribunal.

[28] The Commission is not an adjudicative body; that is the role of the Tribunal. When deciding whether a complaint should proceed to be inquired into by the Tribunal, the Commission fulfils a screening analysis. It is not the job of the Commission to determine if the complaint is made out. Rather its duty is to decide if, under the provisions of the *Act*, an inquiry is warranted having regard to all the facts. The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it.

[29] The main function of the Tribunal is adjudicative. It conducts formal hearings into complaints that have been referred to it by the Commission. It has many of the powers of a court.

It is empowered to find facts, to interpret and apply the law to the facts before it, and to award appropriate remedies. Moreover, its hearings have much the same structure as a formal trial before a court. The parties before the Tribunal lead evidence, call and cross-examine witnesses, and make submissions on how the law should be applied to the facts. The Tribunal is not involved in crafting policy, nor does it undertake its own independent investigations of complaints: the investigative and policy-making functions have deliberately been assigned by the legislature to a different body, the Commission.

[30] The Commission refers complaints to the Tribunal. That is exactly what it did in its letter of January 6, 2004. It is clear upon reading the letter from the Commission to the Tribunal's then Acting Chairperson that all aspects of the complaint were referred to the Tribunal. As my colleague, Member Hadjis, so clearly pointed out in *Côté v. Attorney General of Canada*, 2003 CHRT 32, "one must not lose sight of the fact that although the Commission has the authority to decide whether a complaint is to be referred to the Tribunal (ss. 44(3) and 49 of the *Act*), the complaint continues to remain the Complainant's, not the Commission's".

[31] Once it receives a complaint, the Tribunal, in accordance with section 50(2) of the *Act*, "decide[s] all questions of law or fact necessary to determining the matter." In this case, whatever was the intention of the Commission regarding the complaint or the remedies, once it has referred it to the Tribunal, the Commission becomes but one of the parties in the process.

[32] This brings me to the third issue relating to some inconsistencies in the complaint, which according to the Respondent illustrates that there is no issue before the Tribunal. I am of the opinion that there is an issue to be heard by the Tribunal and this issue is whether the Complainant has been able to establish that he has been discriminated against by reason of the failure of the Respondent to provide facilities that could accommodate his deficiency.

[33] The request by the Respondent that this matter be dismissed on a summary basis is therefore dismissed.

III. The Complainant's Witness, Marshall Schecter

[34] Before dealing with the issues, I feel that it is important that I comment on the behaviour of the Complainant's witness and son, Marshall Schecter. At the hearing, the Complainant chose to call only two witnesses in addition to himself. These witnesses were his wife, Mrs.IrmaSchecter, and his son, Mr. Marshall Schecter. The latter was the important witness for the Complainant, as he was in his words "perhaps the only person who can recite the facts […] which took place on the evening in question." Unfortunately for the Complainant, Mr.MarshallSchecter did not live up to that expectation. By his demeanour, short temper, enmity towards not only the opposing Counsel but also towards the Chairperson, his untimely interventions and numerous disruptions during the hearing, he became a very unreliable witness.

[35] On the first day of the hearing, the Complainant indicated that, being a lawyer, he would represent himself. This did not stop Mr. Marshall Schecter from interfering in the proceedings and acting as if this was his complaint. The Tribunal, although it could have limited his participation decided, in the erroneous belief that this would facilitate the hearing, to allow him to make representations on behalf of his father. Knowing what it knows now, the decision of the Tribunal might today be different.

[36] At the start of the hearing, Marshall Schecter intervened to indicate that documentation provided to the parties by the Tribunal had not been received by him. The Tribunal's files indicate that the letter in question dated March 18, 2004 was sent, with the accompanying documents, to the Complainant's address.

[37] Again, on the first day, during the Respondent's arguments on its preliminary motions, Mr.Marshall Schecter interrupted Counsel and said: "Excuse me. Are we going to be listening to this, or are you supposed to be ruling on this. Because he is presenting his case at this point in time." At another time, he accused opposing Counsel of "not telling the truth" and called him "a liar." He also characterised a potential witness of the Respondent as a "bigot".

[38] On August 31, 2004, the second day of the hearing, the issue of disclosure of documents came up. The Respondent requested copies of various documents which were referred to in the Complainant's disclosure. One particular document sought to be produced was a letter signed by Mr. Marshall Schecter addressed to Mr. Charles Unterberg of the Canadian Human Rights Commission. It referred to "pertinent information concerning … the complaint at Central Station in Montreal on June 7." It then proceeded to list four letters and gave the number of pages attached to those letters. One of those letters was on the letterhead of the law firm Berkovitz and Strauber, and it was signed by the Complainant. It indicated that there were documents enclosed with it. The Respondent was asking that copies of these attached documents be provided.

[39] Marshall Schecter at first indicated that he was in the process of moving and that a lot of these documents were in storage and he might not be able to find them. The Tribunal indicated that these documents would have to be produced by September 2, 2004 or an explanation why they could not be produced would have to be given. After a short adjournment, Marshall Schecter returned and indicated that these documents could not be produced on September 2, 2004, because his "printer" had told him that he could not do the copies by that time.

[40] The Tribunal then proceeded to order that on Thursday September 2, 2004, the documents with the necessary copies be produced. The following exchange then ensued:

> **Mr. M. Schecter** : Excuse me. I am sorry to interject. I cannot comply with it. I –
>
> **The Chairperson** : Well, then at that point –
>
> **Mr. M. Schecter** : Excuse me. May I finish, please. I called the printer, they –
>
> **The Chairperson** : There are ---
>
> **Mr. M. Schecter** : I called Banner Blueprint who I use for my architecture, I know these people. I have been dealing with them for 20 years. It will take at least three days to get them, if I bring them over this evening. I can't get them done any quicker, and I'm putting myself on Record.

The Chairperson : I am also a lawyer, and I have been asked to do things on very short notice, and it was done. There are more than one copier in the City of Montreal, I'm sure. […] My Order is that those documents be exchanged onThursday morning. If not, I will adjourn at that time.

Mr. M. Schecter : Then I ask for an adjourn—

The Chairperson : This is my Order.

Mr. M. Schecter : Then I ask to – if we could have it postponed until next week, please?

The Chairperson : It won't be postponed until next week. It will bepostponed until the parties have done full disclosure, and then we will see what dates will be set.

Mr. M. Schecter : Then I suggest we do that right now, please.

The Chairperson : Then this will be adjourned *sine die*.

Mr. B. Schecter : May I have – may I have a word,…[…] Mr. Chair. I am aware of the difficulties which my son has mentioned to the Tribunal, and I want to tell you one thing, he acts in most cases, as fast as any human being can, and I know that it will be physically impossible to have everything that we are discussing now to be prepared on Thursday. He checked on the telephone, and – it is not an effort to conceal or to delay anything.

The Chairperson : I know that, Mr. Schecter. But, we are talking about one copy at this point of those documents to be produced.

Mr. M. Schecter : One or six is the same.

The Chairperson : Well, six copies will be when the evidence will beintroduced in front of the Tribunal. We are not there yet. We are talking about one copy to be provided to the other party. I will be back here on Thursday morning, and if the parties are not ready at that time to provide those documents, I willadjourn this matter, and wait until all proper – I will not accept – this Tribunal is an important Tribunal, and you know that, Mr. Schecter.

Mr. B. Schecter : Oh, yes. Indeed.

> **The Chairperson** : You understand that this case, will not be turned into something that it is not. It is a judicial proceeding, and we will respect the rules of the Tribunal. At that point, I am suggesting that these documents be exchanged on Thursday morning. There is 48 hours. If it cannot be done, then it will be adjourned.
>
> […]
>
> **Mr. M. Schecter** : For all documents. They cannot be done.
>
> **The Chairperson** : Your son has the list of the documents that we arereferring to. So, I will be back here on Thursday morning, and we will see where the parties are at. So, this concludes the matter for today, unless there areother issues.
>
> […]
>
> **Mr. M. Schecter** : […] I just want to mention on the Record that I will not be able to provide all the documentation.
>
> **The Chairperson** : Well, you will explain to the Tribunal at that time why you are not able to provide those documents on the 2nd. But we will reconvene on the 2nd and we will see where we are at.

[41] The documents were produced and provided to the Respondent on Thursday, September2, 2004, as ordered.

[42] On September 3, 2004, a motion was filed by the Respondent regarding the production of other documents which had been filed with the "Bureau d'éthique professionnelle" of the City of Longueil Police Service, concerning agents Greffard and Sauvé, and the events of June 7, 2001 at CN Central Station." Mr. Marshall Schecter objected to the production of these documents arguing that the information contained in them was privileged under the *Young Offenders Act*, S.C., c. Y-1 [Repealed, 2002, c. 1, s. 199.]. These events had been raised in the complaint and in a letter addressed to the Tribunal on August 13, 2004 by Mr. Marshall Schecter.

[43] In the complaint they were referred to as follows:

> "At this time, my wife and grandson were confronted by Montreal UrbanCommunity (MUC) policemen. One of the policemen grabbed mygrandson, threatened him, shoved his knee violently in my grandson's back and slapped his face several times…
>
> My son [Marshall Schecter] tried to intervene but another policeman pushed him brutally.
>
> My wife was in shock and in tears and tried to obtain explanation from thepolicemen who became very aggressive; one of the policemen punched her in the chest and another pinched her left arm."

[44] Again in a letter dated August 13, 2004, signed by Mr. Marshall Schecter as "[representative] of [his] family's interest" under the heading "Compensatory Damages", we read:

> For the cruel and brutal beating, and arrest of my son, and assault charge laid against him, a minor, initiated by C.N. and an ex employee of C.N, to create leverage inorder to abandon our case. The assault case against my minor son was later dropped by the Crown.
>
> For the physical and vicious assault against my Mother and myself, and the needless pushing my Father (handicapped) into a paddy wagon by 4 black gloved C.N.Security Guards plus 4 police officers. The psychological pressures which have affected my entire family, the arrogance of C.N., the denigration and lack of respect against my family, and particularly my Father who has a stellar reputation in Law for 65 years. Also, the constant harassment by C.N. until the present day.
>
> The compensatory damages sought is the maximum prescribed by law under the Commission's *sic* power, multiplied by four, that is my son, Mother, Father andmyself.

[45] These events having been raised by the Complainant to justify his request for compensatory damages, documents concerning them became "arguably relevant" and had to be disclosed unless they were privileged. Having heard the parties' arguments on this matter, the Tribunal proceeded to order that the document filed with the "Bureau d'éthique professionnelle"

of the City of Longueil Police Service concerning agents Greffard and Sauvé, and the events of June 7, 2001 at CN Central Station" be disclosed and, in order to address the concerns of the Complainant concerning his grandson, I ordered that any information concerning a minor which might be included in that document be removed. It was further ordered that the Respondent consult the document for the purpose of this hearing only and that it not disclose its content to anyone other than its Legal Counsel.

[46] At this point, Mr. Marshall Schecter became very aggressive and voiced strongly his intention not to comply with this order to a point where his father had to interject and tell him "That's enough." Later on during the day, this whole matter concerning compensatory damages for the Complainant and his family was resolved when the Complainant acknowledged that the only person who could ask for compensatory damages was himself, if his claim was substantiated. The claim for compensatory damages referred to in Mr. Marshall Schecter's letter of August13,2004 for his mother, his son and himself was dropped by the Complainant.

[47] Later on during that same day, Mr. Marshall Schecter objected to the presence in the room of a gentleman from the Police Department saying that he did not want him in the hearing. The following exchange followed:

> **The Chairperson** : Are you asking for an exclusion of witnesses?
>
> **Mr. M. Schecter** : I'm asking for his exclusion because we haven't accepted him as a witness yet -- because this is a situation pertaining to [redacted] again and [redacted] is relevant in there and it is against the Young Offenders Act.
>
> **The Chairperson** : Mr. Schecter, it's a public hearing. Unless you ask for an exclusion of witnesses, it's a public…
>
> **Mr. M. Schecter** : Well this is Mr. – are you Mr. Desève? Well if he's Mr. Desève, his name is one of the witnesses.
>
> **The Chairperson** : Are you asking for an exclusion of witnesses?
>
> **Mr. M. Schecter** : I'm asking for his exclusion in this courtroom.

The Chairperson : I'm not going to exclude one witness. Are you asking for an exclusion of witnesses?

Mr. M. Schecter : Well, why should he be able to come into this testimony since he wasn't there, he has nothing to do with the situation but he's bringing a document in, again, against [redacted]. So what I would suggest we do at this point, if you don't mind me saying, and I'm not a lawyer but I want to put forth, and let's discuss the Young Offenders Act. I don't want to argue but I'm telling you that it's pertaining because he's put it in evidence and I've seen that document from the Crown. So we're going back again and I never gave it to CN.

The Chairperson : If they are documents pertaining to [redacted] that they will be trying to produce in evidence, you'll be able to raise those objections then. This morning when I'm talking about disclosure of documents, it doesn't mean that they're in evidence.

Mr. M. Schecter : I'm not going to sit here for days after day and talk about [redacted], okay. […] Well, we came down here to testify. Either we testify or we leave. Please let us know and let's get on with the case.

[48] The Complainant was then asked to call his first witness, Mr. Marshall Schecter again interjected:

Mr. M. Schecter : Well then, go ahead. They wanted to call my father.

The Chairperson : No, it's your –it's your case, Mr. Schecter.

[…]

Mr. B. Schecter : Well, that's up to me then because I'm the Counsel here and whether or not I will wear two hats later on is another matter but I'm Counsel and we're ready to – we're ready to start.

Mr. M. Schecter : One of the reasons we cannot call any witnesses because we were precluded by CN and the Police Department from getting any witnesses.

Mr. B. Schecter : Well, that will come in evidence…

Mr. M. Schecter : Exactly. So right now we have nobody to call.

[49] Notwithstanding his son's comments, the Complainant then proceeded to present his evidence.

[50] On September 10, 2004 there was another strong intervention by Mr. Marshall Schecter regarding a line of questioning from Respondent Counsel that he found disrespectful towards his father. His father then indicated to his son that if there were any objections to be made that he would make them. He also stated that sometimes his son "gets a little overzealous in his protection" of him.

[51] On September 23, 2004, during his mother's testimony, Mr. Marshall Schecter again interrupted the proceedings and proceeded to explain the evidence given by his mother concerning the physical layout of an apartment building in which the Complainant and she had lived. According to Mr. Marshall Schecter, he had "the right to object" since Counsel for the Respondent was "giving erroneous information." The Chair had to explain to Mr.MarshallSchecter that his father was representing himself and that if he so wished, he could in reply ask the witness to correct the information if it was erroneous.

[52] The hearing adjourned on September 23, 2004 and only reconvened on May 9, 2005. On that day, Marshall Schecter was the Complainant's witness. He was a most recalcitrant witness and, at times, aggressive and antagonistic.

[53] In actual fact, what infuriated the witness was my questioning as to where he was parked on the day of June 7, 2001. The witness did not seem to realise that the adjudicative process in our adversarial system relies on *viva voce* testimony adduced from witnesses examined before the trier of facts, in this case, the Presiding Member of the Tribunal. In general terms, it is the role of the parties, not the Tribunal, to call and examine witnesses. While the presentation of evidence is left to the parties and Counsel, the trier of facts has the right to question witnesses. In fact, I would add that it is its duty to do so if he or she is of the view that the examination is necessary in order to properly evaluate the witness' evidence. In his questions, the trier of facts is not limited to queries designed to clear up doubtful points, but can extend the questions to

matters not dealt with in Counsel's examination of the witness. (See Sopinka, Lederman and Bryant, *The Law of Evidence in Canada*, 2nd edition, at section 16.9.) These were the reasons for the questions I put to the witness. I felt that the examination-in-chief was incomplete and a lot of points which should have been dealt with were still unanswered.

[54] When first asked where he was parked the witness said that he could not "accurately indicate the precise location". In order to assist him, I asked him to look at a drawing of the Central Station Complex which had been introduced in evidence. I then asked him again if he could show me where he was parked and he answered: "In this vicinity. I can't say accurately…" For my benefit, when I would be reviewing the evidence, I asked him to put his initial next to the area he had pointed to and that is when things got out of hand. He said that he'd rather not do as he was asked because he did not "want to be held to it." He further added that "If I go down there and measure it, then I'll be happy to do it." The following exchange then followed:

> **The Chairperson** : Could you just initial right there, your initials--Marshall Schecter--just to indicate at about where you were…
>
> **Mr. M. Schecter** : I'd rather not.
>
> **The Chairperson** : Well, I would ask you to do it to indicate…
>
> **Mr. M. Schecter** : I don't want to be held to it. I don't want to be held to it, because I know I was around here...

[55] The witness was forgetting that he was under oath and that he would be held to the evidence he was giving and if this evidence was not clear then it would be difficult for me to make a ruling in the Complainant's favour on this issue.

[56] The witness then started to be argumentative, raised his voice and again challenged my authority. The exchange continued:

> **The Chairperson** : So, you can't indicate precisely where you were?

Mr. M. Schecter : If I go down there and measure it, then I'll be happy to do it.

The Chairperson : Okay, I've got no evidence of exactly where you were parked at that point. Okay.

Mr. M. Schecter : I would like to say that I want to have that measured, and then I'll come back and I will tell you, is that all right? […] Well--well, listen, you're asking me to put my – I don't know the scale of the plan…[...] and if we're going to get into technicalities, I have the right and I want it on record that I want to know what the scale is and I'll measure it off, and then I'll sign it. But…

The Chairperson : The scales are not important. The only thing…

Mr. M. Schecter : To me, yes, they are, sir. If we're talking technicalities, they are.

The Chairperson : Okay, sir, if you -- the evidence I've got is put in today, this is what I'm getting, and I'm not getting… [Interrupting me in mid-sentence.]

Mr. M. Schecter : [In a strong voice, almost yelling] Well, no, then, I'm sorry, we -- I' don't want to proceed without having the opportunity to take…

The Chairperson : Sir, I decide if we're going to proceed or not.

Mr. M. Schecter : [Shouting] No, I decide.

The Chairperson : No, you're the witness!

[57] I then tried to bring back order, but to no avail. To avoid a shouting match with the witness, I decided to adjourn the hearing for five minutes, hoping that this would cool him down.

[58] When the hearing resumed, the Complainant offered his apologies for what had just happened but his wife interjected and said that "there's no apology necessary." The Complainant tried to explain his son's behaviour but the witness did not let him finish and continued in the same way he had before the break. At one point the Complainant again intervened telling his son in a stern voice: "That's enough now…", but with no success. The

witness then proceeded to threaten me by saying that he would make a full report of the events "to the Tribunal, the Bar Association, and everything else because that's unethical and immoral. And that's it, no more discussion." Again his father intervened telling him "Just a moment, there's going to be cross-examination, just listen to Mr. McMurray, now."

[59] At that point, Mr. McMurray asked for a break to prepare his cross-examination. Since it was 11:28 a.m., I decided to break for lunch. I was hoping that this would provide the witness time to cool down and to reflect, with the guidance of his father, on his demeanour during the hearing. Again the witness challenged this decision saying in a loud tone "Excuse me, I have a meeting at three o'clock (3:00) and we have…" I called the hearing to order but again the witness interjected aggressively: "Let's go, finished! I won't be back, don't waste your time! [The exclamation marks are those of the Court Reporter.]

[60] Unfortunately, in the afternoon the Complainant and his witness did not return to the hearing and the Respondent was deprived of his right to cross-examine the witness. I then proceeded to adjourn the hearing until the next morning.

[61] That same afternoon of May 9, 2005, under my instructions, a letter signed by GregoryM.Smith, the Registrar of the Tribunal, was personally served on the Complainant. An Affidavit of Service sworn to by Michel Fiset, a sworn Bailiff of Justice of the Province of Quebec was filed before the Tribunal. In this affidavit, Mr. Fiset stated that he had personally served the Complainant with a copy of the letter on May 9, 2005 at 7:26 p.m. at his domicile. The letter in question informed the Complainant that the Tribunal had adjourned the hearing until 9:30a.m. on Tuesday, May 10, 2005 and that, should the Complainant not be present at that time, the Tribunal would proceed with the hearing of the complaint in his absence. The letter also informed the Complainant that the Tribunal would not tolerate any further outbursts from the Complainant's witness, Mr. Marshall Schecter. I am satisfied on the basis of this evidence that the Complainant did receive adequate notice that the proceedings would resume on May 10, 2005 and that he chose not to attend.

[62] On May 10, 2005 and for the following days of the hearing, the Registry Officer started the hearing by asking if Benjamin Schecter, the Complainant, or anybody representing him, was present in the hearing room. The record of the hearing reflects that no response was received to these enquiries.

[63] The Complainant was given a full and ample opportunity to appear at the hearing, present evidence and make representations. Without giving any reasons for his decision or filing a motion before the Tribunal to withdraw his complaint, he decided to ignore the instructions given in the Tribunal's letter of May 9, 2005 and chose to withdraw from any further participation in the hearing. By doing so the Complainant relinquished his rights therein to appear, present evidence, cross-examine the Respondent's witnesses and make final arguments.

[64] For its part, the Respondent chose to participate fully in these proceedings and it should not be prejudiced by the Complainant's decision not to do so.

[65] In accordance with the power vested in me by the *Act* to decide any procedural or legal questions arising during the hearing, I decided to proceed in the absence of the Complainant. I felt that it was important, for all parties involved, that the issue come to a final conclusion. A lot of time, preparation and financial resources have been devoted for the preparation of the hearing and for the hearing itself and it was my opinion that these could not be wasted because one witness decided that he was not going to participate anymore. (For decisions of the Tribunal where hearings proceeded in the absence of one of the parties see : *Fox v. Musqueam Indian Band & Hargitt*, 2004 CHRT17 (CanLII); *Sanusi v. Brown*, 2004 CHRT 33 (CanLII); *Groupe d'aide et d'information sur le harcèlement sexuel au travail de la Province de Québec Inc. and DesRosiers v. Barbe*, 2003 CHRT24 (CanLII); *Woiden, Flak, Yeary and Curle v. Lynn*, 2002 IIJCan 8171 (CHRT); *Warman v. Kybur*, 2003 CHRT 18 (IIJCan); *Chiliwack Anti-Racism Project Society v. Scott and Churst of Christ in Isreal*, 1996 IICan 1793 (CHRT); *Khaki and Elterman v. Canadian Liberty Net*, 1993 IIJCan2806 (CHRT)).

[66] It is unfortunate that the Complainant, a former judge and a former Member of the Tribunal, made the decision to withdraw from the hearing. But in fairness to him, having seen and heard what occurred on that day and on the previous days, I am still not convinced that he made that decision of his own free will. Be that as it may, the Complainant fully understands, I am sure, the consequences of this decision.

[67] Regarding the evidence given by Marshall Schecter, since the Respondent never had the opportunity to cross-examine him, the relevance and weight of this evidence will be very limited.

IV. The Facts

[68] The Complainant suffers from a chronic degenerative disease of the lumbar spine. Although, no medical evidence was submitted, the medical condition of the Complainant was not challenged by the Respondent and the Tribunal concludes that he does suffer from a deficiency.

[69] In 1999, the "Société de l'assurance automobile du Québec" sent him a "Certificat d'attestation" and a parking tag for disabled persons to hang from the rear view mirror of his car.

[70] The Complainant conceded that his knowledge of the events which forms the basis of his claim is limited, as he was not present during most of these and that a "good deal" of the information he has regarding these events came from his son. On many occasions, the Complainant put emphasis on the fact that most of the correspondence, calls and communications concerning this matter were done by his son.

[71] The Complainant's wife was not very helpful as a witness. She admitted that she also had a limited knowledge of the events and that she relied on the information given to her by her son. Also, her conduct as a witness did not help the Tribunal's task in finding out the facts. She was very argumentative and at some point showed impatience with Counsel and with the Tribunal.

[72] During his tenure as a Member of the Canadian Human Rights Tribunal, the Complainant was required to travel to Ottawa to hear cases. On these occasions he and his wife would travel

by train leaving from CN Central Station in Montreal ("Central Station"). The Complainant and his wife testified that they had made the trip between Montreal and Ottawa by train "at least a hundred times". Apart from June 7, 2001, the Complainant admitted that they had always been satisfied with the services provided at Central Station.

[73] On their return to Montreal, their son, Marshall Schecter, would come and pick them up at Central Station. According to Mr. Marshall Schecter he had been at Central Station "for the last ten (10) years – approximately twenty five to thirty (25-30) times a year, coming and going, so it would make it fifty to sixty (50-60) times a year." Dropping-off his parents at the Central Station could take between five (5) to ten (10) minutes and picking them up between fifteen (15) and twenty (20) minutes. He also admitted that before June 7, 2001, he "never had an incident" at the Central Station.

[74] Mr. Michel Legault, who during the period relevant to this hearing was the Director, "Special Projects, Canada and U.S", for the Respondent, testified as to the physical layout of Central Station. Central Station is owned by the Respondent. Its purpose is mainly to provide access to the trains for the passengers of VIA Rail, Amtrak and AMT.

[75] Geographically, the Central Station Complex is situated in a square bordered to the north by Boulevard René-Lévesque, to the west by Mansfield Street, to the east by Université Street and to the south by la Gauchetière Street. To the south of complex the Complex there is an entrance in the shape of a horseshoe which allows egress and ingress to Central Station from de la Gauchetière Street. The "horseshoe" also serves as an access route for emergency vehicles. There is no public parking in the "horseshoe", although taxis that provide services to the passengers coming to Central Station are allowed to park there, as well as vehicles belonging to Budget Rent-A-Car. Some parking spaces are also reserved for the executives of the Respondent and of VIA Rail.

[76] The "horseshoe" area is supervised by security guards who, although they are employees of a third party, are under the control of the Respondent. One of the purposes for the presence of

these security guards is to make sure that there is a continuous flow of traffic through the horseshoe area. According to Mr. Legault, there is a policy of tolerance in the case where someone is helping somebody with restricted mobility or if they have a lot of luggage. In those circumstances, the security guards will allow the car to be left unattended for a few minutes so as to let the driver help the passenger get into Central Station or remove some luggage from the car.

[77] In the middle of the "horseshoe" there is a privately operated public parking lot accessible through la Gauchetière Street. It is also referred too as the South Plaza parking. There is another parking garage, the "Belmont Garage" which is accessible by Mansfield Street and University Street.

[78] The "Belmont Garage" is situated directly above the South Plaza parking. It has four (4) levels and a roof parking. Central Station is accessed from this garage by elevators and a stairway. The elevators give access to the eastern portion of the "horseshoe" next to the main entrance of Central Station.

[79] There are no public parking spots designated as "handicapped" in the South Plaza parking, but in the "Belmont Garage" two parking spots per floor, except for the roof, are designated as such. These parking spots are situated near the elevators, so that when disembarking, the elevator will be readily available for the driver and passengers of the vehicle. Once in the elevator they will be directed to the ground floor of the "Belmont Garage" where they will have to switch elevators to move to a second one which will bring them to the Central Station level.

[80] To facilitate mobility in and out of Central Station there are no curbs at the main entrance. The entrance is also equipped with automatic doors. Benches are available for people to sit on while they wait. VIA's personnel, called "Red Caps", are available to help passengers with their luggage.

[81] Regarding the physical features of Central Station, the Complainant testified that there was no difference on June 7, 2001 than what he had noticed on his previous visits.

[82] On June 7, 2001, the Complainant and his wife were returning by train to Montreal from Ottawa. The train was due to arrive at Central Station at 5:08 p.m. According to the evidence, VIA Train number 34, coming from Ottawa, arrived on that day, at 5:15 p.m., a seven (7) minutes delay. There were 93 passengers on board the train. At approximately the same time (5:06 p.m.), Train 60 from Toronto pulled into Central Station with 284 passengers on board.

[83] Marshall Schecter's recollection of the events that followed his arrival in the "horseshoe" on June 7, 2001 is different from that of the security guard, Éric Geoffroy, who was on duty in the South Plaza on that day. In view of the fact that the Respondent never had a chance to cross-examine Marshall Schecter and because of the conduct and behaviour of this witness which rendered his testimony unreliable, in case of conflict, the evidence of Mr. Geoffroy will be preferred.

[84] Marshall Schecter testified that he arrived at Central Station on June 7, 2001 at 4:57 p.m. Neither the Complainant, nor his wife could confirm this. In cross-examination the Complainant explained that he doesn't know from personal knowledge if the car was parked for more than 15minutes or not. He added "I only know from my son that he was there at 4:57" and that he would be in a better position to answer this question. Unfortunately, because of his decision to leave the hearing, this never happened.

[85] In the "Incident Report" he prepared on June 7, 2001, Mr. Geoffroy specified that Mr.Schecter arrived at Central Station at 4:40 p.m. I see no reason to doubt the evidence given by Mr. Geoffroy on this point. He presented himself as a calm and disinterested witness and referred to his notes which were contemporaneous to the events referred to in the complaint. The Complainant had the chance to cross-examine Mr. Geoffroy but in deciding to withdraw from the proceedings, he relinquished this right and the evidence of Mr. Geoffroy remained

unchallenged. I will accept Mr. Geoffroy's evidence that Marshall Schecter arrived at the station around 4:40 p.m. and not at 4:57 p.m.

[86] Marshall Schecter testified that a security guard of the Respondent approached him "within sixty seconds" of his arrival at Central Station and asked him "could you move your car please?" His answer was "No, I won't." He said that he then asked the security guard why he should move his car and the answer was "Because you're blocking." He replied that he would move the car about one or two car lengths but according to him this did not satisfy the security guard. At that point, he said that he hung the handicap "vignette" on the rear view mirror and stated "I'm not moving at all". He added that the security guard then started to "harass" him and "went into a rage".

[87] When asked where he was parked on that particular day, Marshall Schecter never gave a precise answer. When he was requested to indicate on a drawing of the Central Station Complex where he was parked and to put his initial next to the area indicated, he answered "I'd rather not." The events that followed have been touched on in another part of this decision and there is no need to go over them again, except to add that the Tribunal was never given any evidence by the Complainant's witnesses as to where the car was parked on that day and can only draw a negative conclusion from this absence of evidence.

[88] Mr. Geoffroy did not deny that he approached Mr. Schecter's car upon its arrival. He added that the car was parked on the north side of the "horseshoe", very close to the main entrance to Central Station.

[89] He said that he approached the vehicle and asked the driver what he was waiting for since there was no train arrival expected at that time. He added that Marshall Schecter answered that he was there to pick up his father who was arriving on the Ottawa train and who had difficulty walking. Mr. Geoffroy then asked him to come back at 5:00 p.m. since the waiting time is not more than five (5) minutes in the "horseshoe". Marshall Schecter answered that he was not going

to move and then took the “vignette” for handicap parking out of the glove compartment and hung it on the rear-view mirror.

[90] Mr. Geoffroy testified that in order to appease the situation, he suggested that Mr. Schecter move his vehicle up thirty (30) to thirty-five (35) feet so that it would not block the traffic. Mr.Schecter again refused.

[91] Mr. Geoffroy added that Mr. Marshall Schecter and his son then became verbally aggressive and he decided to call a colleague as back up. By this time it was around 5:00 p.m. His colleague tried to communicate with Mr. Schecter but to no avail. The decision was then made to call the Montreal Urban Police. The first police car arrived on the scene at 5:10 p.m. Mr. Geoffroy proceeded to explain what had just happened and then the police officers took control of the situation. He added that his colleagues and him remained as interested observers but did not intervene in the events that followed.

[92] The situation having escalated, the police officers called in reinforcement and, soon after, two more police vehicles arrived at the scene. The Complainant and his wife were not present in the “horseshoe” area during these events.

[93] Upon arriving at Central Station from Ottawa, the Complainant and his wife testified that it was their routine to wait after the other passengers had gotten off the train before detraining. The Complainant admitted that he cannot walk very fast because of his deficiency. From the train platform to the main concourse of the station, he would take the escalator since he “always avoid[ed] stairs whenever possible.” He also added that before leaving Central Station, he would go to the men’s washroom and when he came out his grandson would escort him to his car.

[94] Mrs. Schecter testified that the “detraining” on June 7, 2001 took between seven to ten minutes. So when they got off the train, which arrived at 5:15 p.m., and up the escalator, it would have been close to 5:25 p.m. The Complainant then had to walk to the washroom and after proceed to the horseshoe area.

[95] According to the evidence of the Complainant and that of his wife, on June 7, 2001, they met their grandson at the top of the escalator. The Complainant's wife said that she could see that he was nervous, although she did not say if she questioned him at that time about the reasons for this nervousness. The Complainant said that he then proceeded to the washroom accompanied by his grandson.

[96] The evidence of the Complainant's wife on what took place thereafter is interesting. She testified: "he [the grandson] walked my husband to the men's room where we left my husband and [my] grandson proceeded to escort me to our car where my son was waiting for us". (The emphasis is mine.) Why did she not wait for her husband or ask her grandson to do so in view of her husband's condition and the fact that on many occasions during her evidence she stated that her husband depended on her to move around? She certainly did not need to be "escorted" back to the car as there is no evidence that she cannot walk by herself. She later added that they had "completely forgot[ten] about the fact [that they had] left my husband in the men's room." This behaviour is certainly perplexing in view of the evidence given at the hearing pertaining to the difficulty that the Complainant has to walk unassisted. One would have expected that either Mrs.Schecter or the grandson would have waited for the Complainant to come out of the washroom.

[97] The Complainant testified that when he came out of the washroom, there was nobody there to help him. He added that a "young stranger" helped him walk back to the parking area, where he noticed that his grandson was being detained in a police van. He stated that he appealed to the policemen who, upon his request, released his grandson.

[98] The evidence of the Complainant and that of his wife does not coincide with the evidence of Mr. Geoffroy. According to his report, neither Marshall Schecter, nor his son, were allowed to enter Central Station on June 7, 2001. He testified that the younger Schecter had, before the police arrived, attempted to enter Central Station but was prevented from doing so. He further indicated in his report that the Complainant and his wife arrived at the main entrance of the South Plaza together just when the two other police vehicles were arriving at the scene.

[99] He added that there was a lot of yelling and that his colleague and he stayed out of the way and let the police officers deal with the situation. At one point, he noticed that the Complainant was talking with one of the police officers about the situation pertaining to his grandson. The officers released the grandson in his grandfather's care at about 5:30 p.m. Mr. Geoffroy added that Marshall Schecter then turned towards him and told him "You'll pay for this."

[100] The Complainant also testified that at some point he was put into a City of Montreal police car or van. He also testified that his wife drove away in their car and that he stayed behind with his son and grandson.

[101] The Complainant's wife added that her husband "was discarded like a piece of worthless meat" by the Respondent's security guard. She added that she was ordered by a CN security guard to remove the car and to park outside the "horseshoe" area. Again this is an interesting comment considering the fact that during cross-examination, when asked if she recalled where the car was parked on June 7, 2001, she answered: " How can I remember? When I got there I never saw a car. All I saw were policemen fighting and pushing." Later she added: "I know it was passed—I did not see it near the horseshoe. It was parked much further because the altercation happened close to the entrance. […] I didn't see the car there, so it must have been further away." (The emphasis is mine). If she had to move the car as she testified, she had to know where it was parked.

[102] The Complainant's recollection of the events that followed was that he was later "delivered" by a police vehicle to where his wife had gone to park the car. He could not remember where the car had been parked by his wife or how the police officers knew where she had parked the car. The Complainant's wife added that her husband was brought to her about half an hour later in a police car but she did not indicate where she was parked or how the police knew where to find her. She then said that they proceeded back to the Central Station to pick up her son and grandson.

[103] This evidence does not correspond with the recollection that Mr. Geoffroy has of the incident. According to his report, the Schecter's vehicle remained parked at exactly the same spot throughout this entire confrontation and it was never moved by anybody. He further added that the whole family left together in the car at 5:35 p.m.

[104] On June 12, 2001, the Complainant's wife prepared a handwritten statement of what happened on June 7, 2001. In this statement, she makes no reference to the Respondent or any of its employees or to the fact that the Complainant was put into a police vehicle. This is most surprising bearing in mind her evidence at the hearing that they were "grabbed by security guards" and not policemen, that "they pushed my husband […] into a paddy wagon" and that the security guards "discarded [him] like a piece of worthless meat." One would have expected, considering the seriousness of these accusations, that she would have mentioned these in her handwritten notes. But nowhere in these notes are there any references to these events regarding her husband and the Respondent's security guards.

[105] It is also important to note that nowhere in the Complaint Form are there any references to these incidences pertaining to the Complainant. On the contrary, on reading the complaint one has the impression that the arrival of the Complainant at the "horseshoe area" had some appeasing effect. The Complainant states in his complaint: "In the meantime, when I came out of the washroom, there was nobody there to help me. A young stranger helped me walk to the parking area where I saw my grandson detained in a police van. I then appealed to a MUC policeman and, upon my request, my grandson was released." The complaint continues "I consider that the Canadian National Railway Company discriminated against me by not providing parking spaces designated specifically for vehicles with a parking tag for disabled persons. As a consequence of the lack of accommodation, my wife, Irma Schecter and my son, Marshall Schecter were assaulted and my grandson, Myles Schecter was assaulted […]." Again there is no reference to an assault on the Complainant by employees of the Respondent.

[106] Consequently, I find that Mrs. Irma Schecter's testimony regarding her husband being pushed and "discarded" by the Respondent's security guards is totally unfounded and unsupported by the evidence.

V. The Decision

[107] In his complaint the Complainant alleges that the Respondent engaged in a discriminatory practice on the ground of a disability by failing to accommodate his relatives and himself in the provision of facilities contrary to section 5 of the *Act*.

[108] Section 5 provides:

> 5. It is a discriminatory practice in the provision of goods, services, facilities oraccommodation customarily available to the general public
>
> *(a)* to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
>
> *(b)* to differentiate adversely in relation to any individual,
>
> on a prohibited ground of discrimination.

[109] Numerous decisions have indicated that the *Act* should be given a large and a liberal interpretation consistent with its quasi-constitutional status and in a manner that ensures the attainment of its objectives. The purpose of the *Act* is set out in section 2:

> 2. The purpose of this *Act* is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with otherindividuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties andobligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

[110] In *Ontario Human Rights Commission v. Simpson-Sears*, [1985] 2 S.C.R. 536, at page 547, the Supreme Court addressed the issue of the purpose of a human rights act in this manner:

> The accepted rules of construction are flexible enough to enable the Court torecognize in the construction of a human rights code the special nature andpurpose of the enactment […] and give to it an interpretation which willadvance its broad purposes. Legislation of this type is of a special nature, not quite constitutional but certainly more than the ordinary—and it is for the courts to seek out its purpose and give it effect. The Code aims at the removal ofdiscrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to provide relief for the victims ofdiscrimination. [The emphasis is mine.]

[111] In *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, the Supreme Court added, at paragraph 8:

> The purpose of the Act is set forth in s. 2 as being to extend the laws of Canada to give effect to the principle that every individual should have an equal opportunity with other individuals to live his or her own life without being hindered bydiscriminatory practices based on certain prohibited grounds of discrimination […] the Act must be so interpreted as to advance the broad policy considerations underlying it.

[112] Accordingly, the *Act* should be used to further its purpose; it should not be used as a tool to pursue vengeance for events not related to a discriminatory practice.

[113] In this case, the only issue I have to decide is whether the Respondent's conduct is such that a discriminatory practice on the basis of disability occurred. There are very few cases which assist in determining the answer to this question because the large majority of human rights cases arise from employment situations and very few cases have been decided on an allegation of discrimination in the provision of services, facilities or accommodation, such as is the case here.

[114] In the case of *Re Saskatchewan Human Rights Commission et al and Canadian Odeon Theatres Limited* (1985) 18 D.L.R. 4th 93, the Complainant bought a ticket to see a movie and entered the theatre, but was required to sit in his wheelchair at the front of the theatre. He filed a

complaint under the Saskatchewan Human Rights Code, alleging discrimination with respect to services or facilities offered to the public on the basis of physical handicap. An adjudicator found in his favour. The decision was set aside on appeal but was restored on further appeal to the Saskatchewan Court of Appeal. The majority judgment was delivered by Vancise, J.A. At page 113, he stated:

> The question to be determined in this case is whether the physical arrangements for the viewing of a movie which are available to all members of the public but which have the practical effect or consequence of discriminating against one or more members of the public because of a prohibited ground, i.e., physical disability, is discrimination.

[115] At page 115, he further stated:

> The treatment of a person differently from others may or may not amount todiscrimination just as treating people equally is not determinative of the issue. If the effect of the treatment has adverse consequences which are incompatible with the objects of the legislation by restricting or excluding a right of full and equalrecognition and exercise of those rights it will be discriminatory: see also *Re Rocca Group Ltd. and Muise* (1979), 102 D.L.R. (3D) 529, 22 Nfld. & P.E.I.R. 1; *Post Office v Union of Post Office Workers*, [1974] 1 W.L.R. 89.

[116] Discrimination in a human rights context is exclusion, restriction or preference of treatment based on one of a number of protected characteristics, the result of which is the prevention or impairment of the exercise of human rights and freedoms guaranteed in the Code. In order to determine whether the Complainant was discriminated against in this case, I must of necessity identify the specific act or acts of which he complains as being discriminatory or which resulted in discrimination. It is apparent from an examination of the complaint filed, and the evidence, that the specific act complained of as constituting discrimination is the fact that the Complainant's son was not able to park in the "horseshoe" area of Central Station in order to wait for his father who was due to arrive on the Ottawa train. The issue in this case is whether the conduct of the Respondent towards the Complainant, a physically reliant person, results in treatment which is restrictive, detrimental or prejudicial to him. If it does, it is discriminatory and contrary to the provision of section 5 of the *Act*.

[117] The *Act* must be given a liberal interpretation to ensure that its purpose as set out in section 2 is achieved. Accordingly, in order to find whether the Complainant was discriminated against, it is necessary to determine if the service or facility offered to him varied in any significant manner from the service or facility offered by the Respondent to the general public. The answer to this inquiry is no. The service offered to the Complainant did not vary significantly from the service offered to the general public. The evidence shows that the Complainant was allowed to proceed to the "horseshoe" area, to park there for a certain time in order to disembark or embark into his vehicle. The evidence shows that he had done this on numerous previous occasions and, according to the Complainant's own evidence, he had never encountered any bad experiences at the Central Station on these occasions. What had changed on June 7, 2001 was the presence of police officers. The question is then: Why were these police officers present at the "horseshoe" on that evening?

[118] The only answer to this question is the stubbornness of the Complainant's son. When he was first approached by the security guard, there was no reason for the Complainant son's refusal to move his car. His father was not in the car, nor was he waiting to board the car. The Complainant's son could at that time have moved the car and sent his son in Central Station to meet his parents. He could have returned later to Central Station to pick up his parents. The only reason why he refused to do so is that he found this to be an inconvenience to himself; it had nothing to do with his father's deficiency. If he did reasonably believe that the security guards were acting in a discriminatory manner, he should have realised that confrontation was not the answer. He should have moved his car and later filed a grievance or a complaint in his father's name with the appropriate authorities.

[119] The decision he made to stay there and confront the security guards was most unwise. It also demonstrates a trait of his character which was revealed at the hearing and corroborated by other evidence: he has a very short temper. Mr. Jacques Perron, Legal Counsel for the Respondent, who testified at the hearing, as well as a "Memorandum to File" written by Mr.Charles Unterburg of the Commission, both made references to this characteristic of the witness' behaviour.

[120] Unfortunately, the Complainant was confronted with these events but in no way can he inflict the consequences of these on the Respondent or his employees. No evidence was presented at the hearing by the Complainant to support such a conclusion. Had the Complainant presented his case fully and had he proceeded to cross-examine the Respondent's witnesses, my conclusion might have been different. Sadly for him, the evidence before me does not support his claim.

[121] In view of these circumstances, I cannot find, as this Tribunal did in *Canadian Paraplegic Assn. v. Canada (Elections Canada)*, 1992 CanLII 284 (C.H.R.T.), that the Respondent's action is discriminatory. I cannot find that there was here a difference in treatment within the meaning of section 5 of the *Act*. I cannot find that the Respondent was responsible for any embarrassment, risk of injury or inconvenience to the Complainant. The Complainant was the victim of a set of circumstances which had nothing to do with discrimination, at least based on the evidence before me.

VI. Conclusion

[122] For the reasons given above, this complaint is dismissed.

Signed by

Michel Doucet
Tribunal Member

Ottawa, Ontario
September 22, 2005

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T881/0104

Style of Cause: Benjamin Schecter v. Canadian National Railway Company

Decision of the Tribunal Dated: September 22, 2005

Date and Place of Hearing: August 30 and 31, 2004
September 2, 9, 10 and 23, 2004
May 9 to 11, 2005
May 16, 2005

Montreal, Quebec

Appearances:

Benjamin Schecter, for himself

No one appearing, for the Canadian Human Rights Commission

William G. McMurray, for the Respondent