TD 6/ 86

Decision rendered October 14, 1986

TRANSLATION FROM FRENCH

CANADIAN HUMAN RIGHTS TRIBUNAL SITTING IN HEARING ROOM NO 2. TARIFF BOARD, 365 LAURIER AVE WEST, 20TH FLOOR, OTTAWA, ONTARIO, WEDNESDAY, AUGUST 27, 1986, 9: 30 AM LOCAL TIME.

CONCERNING the complaint filed by Jacques LeDeuff on May 29, 1984 pursuant to sections 5(b) and 13.1(1) of the Canadian Human Rights Act against the Canada employment and Immigration Commission. The complainant is alleging that, in the provision of services, the respondent engaged in a discriminatory practice based on national or ethnic origin.

BETWEEN:

JACQUES LeDEUFF, Complainant,

- and

THE CANADA EMPLOYMENT AND IMMIGRATION COMMISSION, Respondent.

BEFORE: Nicolas Cliche, Chairman

TRIBUNAL OFFICER Chantal Boulet

APPEARANCES: ANDRE BLUTEAU Counsel for the respondent
ANNE TROTIER Counsel for the Canadian Human Rights
RUSSELL JURIANSZ Commission and the complainant

DECISION

The Chairman of the Tribunal was appointed on May 13, 1986 to hear the complaint filed by Mr Jacques LeDeuff.

On May 29, 1984, Mr Jacques LeDeuff filed a complaint with the Canadian Human Rights Commission. It read as follows:

[translation] I allege that the respondent differentiated adversely in my regard and harassed me on the basis of its perception of my national or ethnic origin (perceived as being other than Canadian), contrary to sections 5(b) and 13.1(1)(a) of the Canadian Human Rights Act. Because my name sounded foreign, I was contacted by the respondent and asked what my immigration status was in Canada. According to the officer with whom I spoke, this is standard practice. I therefore believe that the respondent differentiates adversely in relation to individuals

and practises harassment on the basis of national or ethnic origin and on the basis of its perception of national or ethnic origin.

The complaint cites sections 5(b) and 13.1(1)(a) of the Canadian Human Rights Act, which read as follows:

5 Denial of good, service, facility or accommodation It is a discriminatory practice in the provision of goods, services, facilities or accommodation 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.

13.1(1) Harassment It is a discriminatory practice, (a) in the provision of goods, services, facilities or accommodation customarily available to the general public, (b) in the provision of commercial premises or residential accommodation, or (c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.

EVIDENCE OF THE CLAIMANT JACQUES LeDEUFF

The facts adduced by the complainant can be summarized as follows. On March 12, 1984, Mr Réal Hébert, an immigration officer with the Canada Employment and Immigration Commission, sent the complainant a call- in notice. This notice (Exhibit C- 2) contained no specific request. At the end was the following instruction: "On receipt, contact the undersigned, Réal Hébert at 997- 2911".

Mr Jacques LeDeuff was very surprised to receive this call- in notice. He had been born in Montreal in 1955, was a Canadian citizen, held a university degree in industrial relations and worked in personnel at a hospital in the Hull area.

He contacted Mr Hébert, surprised by this practice of the Canada Employment and Immigration Commission. He had never had to deal with this department before.

The immigration officer, Réal Hébert, asked the complainant if he was a Canadian citizen. He replied that he was. Mr Hébert said that he was satisfied with the complainant's response and that the Immigration Act did not apply to the complainant since he was a Canadian citizen.

Mr LeDeuff took advantage of his conversation with Mr Hébert to inquire about the reason for the call- in notice. Mr Hébert informed him that the Canada Employment and Immigration Commission was trying to identify people who were living in Canada illegally or who, as visitors or landed immigrants, had committed crimes on Canadian soil. It was the Commission's way of tracking down illegal immigrants and determining whether legally landed immigrants had committed crimes in Canada.

To do this, Mr Hébert paid regular visits to the registry of the Court of Sessions of the Peace in Hull. He examined the roll and took down names which seemed foreign, or non- Canadian, to him.

Mr Hébert did not go by any selection criteria. He simply drew up a list of foreign- sounding names. He selected about twenty (20) or thirty (30) names each time he visited the Court. These names were then investigated, either by using computers containing information on the status of individuals (whenever possible) or by checking directly with the person whose name was selected.

Mr Hébert said that he relied an his own judgment. For example, he would not consider "Jacques Tremblay" a foreign- sounding name but would check out a name like "Mazankowski".

In the case of the complainant, Mr Hébert chose the name because he thought the complainant might be French, Belgian, Huguenot or American. In reality, Jacques LeDeuff had dual citizenship. He was a Canadian citizen because he had been born in Montreal, and a French citizen because both his parents were French.

Mr Hébert did not select the names of citizens from any particular country or of a given origin or race. He merely took down names which did not look Canadian to him. He also checked the records of the Office de la Construction du Québec and hunting and fishing permit applications.

Jacques LeDeuff is upset by this government practice. Citing the aforementioned sections of the Act, he maintains that he was discriminated against on the basis of his national or ethnic origin.

EVIDENCE OF THE RESPONDENT, THE CANADA EMPLOYMENT AND IMMIGRATION COMMISSION

The respondent, the Canada Employment and Immigration Commission, is responsible for administering the immigration program. It handles immigration applications and meets with people wishing to enter Canada. In addition, the Commission is responsible for identifying persons residing in Canada illegally, as well as visitors or legal immigrants who have committed crimes in Canada.

The Canada Employment and Immigration Commission was said to have been somewhat negligent in identifying illegal immigrants and landed immigrants who were breaking the law in the province of Quebec and therefore decided to step up its surveillance. Consequently, immigration officers now visit the registry of the Court of Sessions of the Peace in the main cities and examine the names of those accused or convicted in criminal court.

When a name seems foreign, an investigation is conducted to determine whether the person is a landed immigrant, an illegal immigrant or a Canadian citizen (to whom the act does not apply).

Mr Jacques LeDeuff was charged under section 234 and 236 of the Criminal Code (impaired driving) and pleaded guilty.

Réal Hébert chose his name because he thought there was a possibility it might not be Canadian.

Because the computers available to the Canadian government were of no help in determining whether Jacques LeDeuff was a Canadian citizen, Mr Hébert contacted the complainant and asked him: "Are you a Canadian citizen?". The complainant replied that he had been born in Montreal and was a Canadian citizen. Mr Hébert was satisfied with this response and considered the case closed. The complainant then asked a number of questions regarding the reasons behind this practice of the Employment and Immigration Commission.

ARGUMENTS OF THE PARTIES

The facts given in evidence were relatively straightforward and were not contested.

Counsel for the Canada Employment and Immigration Commission, Mr André Bluteau, advanced two main arguments.

First, Mr Bluteau submitted that, in the case at hand, the Canada Employment and Immigration Commission was not providing a service and hence was not subject to section 5 of the Human Rights Act.

Mr Bluteau drew a clear distinction between an investigation conducted by tie Canada Employment and Immigration Commission for the purpose of identifying illegal immigrants or landed immigrants who had committed crimes in Canada and a government service customarily available to the general public. According to the Commission, the case at hand involved an investigation of the Commission, an investigation permitted by law and not pertaining to the general public, in other words, not a service customarily available to the general public.

Secondly, the Commission submitted that, even if the Tribunal found that the Canada Employment and Immigration Commission was providing a service to the public, it did not act in a discriminatory manner in the case at hand - it did not act on a prohibited ground of discrimination based on national or ethnic origin (section 3 of the Canadian Human Rights Act).

According to the Canada Employment and Immigration Commission, the immigration officer, Réal Hébert, simply prepared a list of approximately twenty names which sounded foreign to him. He did not draw up a list of Pakistani, Vietnamese, Greek or French names. He merely drew up a list of foreign- sounding names for verification purposes.

When Mr Hébert spoke with the complainant, he did not ask whether he was Huguenot, French or American, or what his nationality or race was. He simply asked the complainant whether he was a Canadian citizen. According to Mr Bluteau, the Canada Employment and Immigration Commission is responsible for identifying illegal immigrants or landed immigrants who have committed crimes in Canada and must take certain steps to fulfil this responsibility. It is entirely logical, reasonable and legitimate for immigration officers to visit various courthouses and examine the rolls of criminal courts.

What could be more logical, in trying to track down landed immigrants who have committed crimes, than to check the rolls of criminal courts and verify the names which appear to be foreign?

The complainant and the Canadian Human Rights Commission are of the opinion that the application of the Immigration Act amounts to provision of a service and that section 5 of the Canadian Human Rights Act applies to the Canada Employment and Immigration Commission.

The application of a general act to a category of individuals must be considered provision of a service to the public.

Counsel for the Canadian Human Rights Commission also submitted that the Practice engaged in by the Canada Employment and Immigration Commission and its officer, Réal Hébert, was discriminatory since the choice of names was dictated by national or ethnic origin.

The Canadian Human Rights Commission feels that the national or ethnic origin of an individual should not be grounds for the selection of his or her name for investigation, since a Canadian name would not be subject to the same treatment.

The Canada Employment and Immigration Commission could carry out its mission quite ably by applying objective criteria - for example, choosing to investigate twenty per cent of all persons convicted of a crime or using a selection method based on factors other than national or ethnic origin.

DECISION

The Tribunal wishes to begin by addressing the first issue. Was the Canada Employment and Immigration Commission providing a service to the public? If not, section 5 of the Canadian Human Rights Act does not apply and this Tribunal cannot rule on whether the Canada Employment and immigration Commission acted on a prohibited ground of discrimination.

Counsel for the parties submitted a number of earlier decisions which the Tribunal read with interest.

In the BOARD OF INQUIRY DECISION UNDER THE INDIVIDUAL'S RIGHTS PROTECTION ACT, Anthony Mark Akena, complainant -vs- City of Edmonton and The Board of Police Commissioners and The Chief of Police of the City of Edmonton and Constable Colin Pringle, respondents, date: August 30, 1982, place: Edmonton, Alberta, before: John D Hill, volume 3, decision 222, paragraph 9635- 9718, the chairman of the board of inquiry, John D Hill, ruled that a municipal police force constituted a service customarily available to the public. This decision was based on a decision by Chief Justice Sinclair of the Court of Queen's Bench of Alberta, who had ruled that a municipal police force was a service to the public.

In the BOARD OF INQUIRY DECISION UNDER THE INDIVIDUAL'S RIGHTS PROTECTION ACT, Richard Gomez, complainant -vs- City of Edmonton and Board of Police Commissioners and Chief of Police of the City of Edmonton and Constable John Roger Pratt,

respondents, date: April 28, 1982, place: Edmonton, Alberta, before: John D Hill, volume 3, decision 178. paragraph 7822- 7912, the chairman of the board of inquiry, John D Hill, ruled as follows:

7852 "It is obvious that the words accommodation" and "facilities" as used in Section 3(b) could not reasonably be interpreted to include the kinds of duties that a Police Officer is required to perform; It then fell to be determined whether or not the word "services" as used in that Section might reasonably be interpreted to encompass the kinds of duties that a Police Officer is required to perform, under the Police Act. As the circumstances of this case are somewhat novel and do not appear to have been the subject of previous judicial interpretation, I have considered it advisable to avail myself of the provision of Section 21 of the Individual's Rights Protection Act and accordingly I stated a case to the Court of Queen's Bench as I felt this was an important question of law. Accordingly a Hearing was held before Chief Justice Sinclair in the Court of Queen's Bench of Alberta on June 29th, 1981, and on July 15th, 1981 the Chief Justice delivered orally his reasons for judgment. A copy of the Chief Justice's reasons for judgment is appended to this report as Appendix "A", Chief Justice Sinclair posed two questions:

(1) Do the functions performed by the Police amount to services: and (2) If the answer to question (1) is "yes", are such services customarily to the public?"

After considering various authorities, the Chief Justice stated: "I have come to the conclusion that the powers and duties of members of municipal police forces, including those of the Edmonton City Police Force, can be described as "services". In my opinion, those services are performed for the public."

In answer to the second question his Lordship stated: "I have come to the conclusion that services the Police are obliged by statute to provide the public may be said to be services customarily available to the public."

7853 "Although it was argued by counsel that I was not bound by the decision of the Chief Justice and was free to come to a different conclusion, it is my view that, once having invited the Court of Queen's Bench to interpret this particular section, then I am bound to accept it an the principle of "stare decisis." I do so moreover, without any hesitation, because I feel that the interpretation placed an this section by Chief Justice Sinclair is well reasoned having regard to the preamble to the Individual's Rights Protection Act and the two sections of the Interpretation Act above referred to."

In the decision HUMAN RIGHTS TRIBUNAL (CANADA), Roberta Bailey, William Carson, Réal J Pellerin, Michael McCaffrey and the Canadian Human Rights Commission, complainants -vs- Her Majesty the Queen in Right of Canada, represented by the Minister of National Revenue, respondent, date: October 14, 1980, decision DT- 6/ 80, the Human Rights Tribunal conducted a thorough analysis of the concept of services. On page 88 of the 138- page decision, the Tribunal endeavoured to define the word "service".

The Tribunal cited Webster's New International Dictionary, which defined the word "service" as follows:

Performance of official duties for a sovereign or state; official function; ... also, a form or particular duty of such work; as, jury service.

The present Tribunal is of the opinion that the Canada Employment and Immigration Commission derives its authority from an act passed by the Parliament of Canada. The scope of this act is general and whenever the Government of Canada applies an act of general scope, it is providing a service to the public. The Canada Employment and Immigration Commission was carrying out an official duty as an agent of the Crown and thus was providing a service to the public.

The present Tribunal therefore judges that, in taking the steps it did in the LeDeuff case, the Canada Employment and Immigration Commission was providing a service to the public and consequently was obliged to refrain from acting on a prohibited ground of discrimination.

We must now address the second issue. Did the Canada Employment and Immigration Commission act on a prohibited ground of discrimination based on national or ethnic origin? The immigration officer, Mr Réal Hébert, explained his method in detail. The Canada Employment and Immigration Commission is responsible for identifying illegal immigrants and landed immigrants who have committed crimes in Canada.

To do this, it has developed a procedure, which it applies in all regions of Canada. Officers of the Canada Employment and Immigration Commission visit the registries of criminal courts and prepare a list of names which appear to be foreign or non- Canadian.

Réal Hébert admitted that he did not follow any guidelines or apply any objective standards, and that he simply relied on his own judgment in trying to determine which of the persons on the roll might be in Canada illegally or be landed immigrants in conflict with the law.

If the evidence had shown that Réal Hébert systematically looked for names of a particular origin, race or ethnic group, it might be possible to claim that the investigation procedure was directed against a specific origin, race or ethnic group. However, the evidence showed that the immigration officer, Mr Hébert, merely selected names which did not appear to be Canadian, regardless of the country of origin, race or ethnic group concerned.

The Canada Employment and Immigration Commission is responsible for identifying persons living in Canada illegally and landed immigrants who have committed crimes in Canada. What could be more logical than to go to the registry of criminal courts, examine the names of those accused and verify the status of the persons whose names were selected?

Réal Hébert did not ask the complainant if he was French, Huguenot or Belgian. He asked him if he was a Canadian citizen. The complainant replied in the affirmative, saying that he had been born in Montreal. Mr Hébert was satisfied with this answer and decided there was no need to investigate any further.

It does not appear, from the evidence, that the procedure used by the Canada Employment and Immigration Commission is discriminatory, directed against individuals of a particular race or

national or ethnic origin. The Commission is merely verifying the status of persons who might not be Canadian.

Each case must be analysed on its own merits. If it appeared that the Canada Employment and Immigration Commission was trying to track down individuals of a specific country, national or ethnic origin or race, without just cause, the present Tribunal might have to reconsider its decision. However, in the case at hand, the Canada Employment and Immigration Commission was simply verifying the names of persons who seemed to be of foreign extraction and who had committed crimes in Canada.

The present Tribunal does not feel the respondent acted in a discriminatory manner.

Moreover, the complainant did not suffer any harm or loss; he was not deprived of any right or privilege because of his national or ethnic origin.

He was asked if he was a Canadian citizen, he replied in the affirmative and the immigration officer deemed the case closed. The complainant did not suffer any harm or loss. He merely answered a question asked to determine whether or not he was a Canadian citizen.

FOR ALL THESE REASONS, the Tribunal judges that the Canada Employment and immigration Commission acted in a reasonable manner with the sole purpose of identifying illegal immigrants or landed immigrants who had committed crimes in Canada and that its practice was not directed against individuals of a particular national or ethnic origin. In the case at hand, there was no discrimination aimed at differentiating adversely in relation to an individual or a group of individuals by applying the criterion of national or ethnic origin. The complainant suffered no harm or loss. Thus, the complaint is unsubstantiated in fact and law and must be dismissed.

FOR ALL THESE REASONS, the complaint is dismissed. SAINT- JOSEPH DE BEAUCE September 23, 1986

(sgd) NICOLAS CLICHE Chairman