Federal Court of Canada
Trial Division

MAY 29 1997
Section de première instance de
la Cour fédérale du Canada

97 149 060

T-431-97

BETWEEN:

CANADIAN BROADCASTING CORPORATION

Applicant

- and -

LEILA PAUL

Respondent

REASONS FOR ORDER

Nadon J.:

On Tuesday, April 29, 1997, I heard this application by the Canadian Human Rights Commission ("CHRC" or the "Commission") for leave to intervene in the application for judicial review commenced by the Canadian Broadcasting Corporation ("CBC") on March 13, 1997 By its originating notice of motion, the CBC seeks an order in the nature of *certiorari* quashing the decision of the CHRC dated February 13, 1997 The CHRC decision requested the President of the Canadian Human Rights Tribunal Panel to appoint a Canadian Human Rights Tribunal to inquire into a complaint brought against the CBC by the Respondent

In general terms, the CHRC seeks leave to file affidavit evidence and an intervenor record, to make submissions on any application to the Court and oral submissions at the hearing with the right to appeal any decision which is

rendered The CHRC states that its interest "flows from its mandate to represent the public interest in matters of human rights public policy, to defend its jurisdiction and its procedures" Specifically, the CHRC seeks to intervene in order.

1 to defend its jurisdiction by arguing that its jurisdiction is not ousted by the presence in a collective agreement of an anti-discrimination provision nor by the jurisdiction of an arbitrator named thereunder,

2 to explain the record with respect to the Applicant's claims of denial of procedural fairness,

3 to be heard on the following general questions of law which flow from the application

a) interpretation of subsection 41(a) of the Act,
b) interpretation of subsections 47(1) and (3) of the Act,
c) interpretation of subsections 44(3)(a)(i) and 44(4),

4 to defend and explain its procedures by arguing that it is not required to give reasons for its decisions

At the end of the hearing, I advised counsel for the parties that I would only allow the CHRC to intervene in respect of point number 1 I indicated to counsel that I would give brief reasons These are my reasons

During the hearing, Me Thibodeau, for the CBC, conceded that the CHRC was entitled to intervene to defend its jurisdiction as proposed in point number one of its notice of motion.

Me Duval, for the CHRC, abandoned point number 2 during the hearing, leaving only points number 3 and 4 for determination

In support of his argument that his client should be allowed to intervene to debate the questions of law which arose from the interpretation of subsections 41(1), 44(3)(a)(i), 44(4), 47(1) and 47(3) of the *Human Rights Act*, Me Duval referred me to the decision of Denault J. in *Bell Canada* v. *Communications, Energy and Paperworkers Union of Canada*, [1996] F.C.J. No. 1309 (QL). Firstly, Me Duval referred me to page 2 of Denault J.'s decision where he, correctly in my view, states the guiding principle in determining whether a tribunal should be allowed to intervene as follows:

> It is now well established that an administrative tribunal would have standing, on judicial review of its decision, to make submissions explaining the record and to defend its jurisdiction if the tribunal's expertise was required to draw the Court's attention to specialized knowledge and considerations without which a reasonable decision might appear unreasonable. However, the tribunal's participation does not include the right to make representations justifying or explaining its failure, or potential failure, to adhere to the rules of natural justice. Where Parliament has not seen fit to grant a tribunal status to participate fully in proceedings, the Court should refrain from doing so. It is also clear that Rule 1611 of the *Federal Court Rules* gives the Court the discretion to grant leave to intervene to an interested party. The Court may limit the extent of the intervention by imposing "such terms and conditions as it considers just". In the instant case, there can be little doubt that the Commission is an interested party in the legal sense of the word. While granting the Commission the right to intervene can only add to the integrity of the proceedings, limiting the Commission's participation to the issue of jurisdiction is of paramount importance in that the tribunal's impartiality must be preserved, unequivocally.

In coming to that conclusion Denault J. relied on the Supreme Court of Canada's decision in *North Western Utilities Ltd.* v. *Edmonton*, [1979] 1 S.C.R. 684 and the Federal Court of Appeal's decision in *Canadian Human Rights Commission* v. *Canada (A.G.)*, [1994] 2 F.C. 447.

On the facts before him, Denault J concluded that no issue of jurisdiction arose The learned judge came to the conclusion that the Commission was, in effect, seeking to argue the merits of the decision attacked This led Denault J to state that, in his view, the Commission could not "do through the back door that which it has no status to do through the front door"

Me Duval then referred me to page 4 of the learned judge's decision where he states

> I recognize that, to the extent that the Commission wishes to be heard on broad and general questions of law relative to the interpretation of sections 40(2) and (4), and 41 *b*), *d*) and *e*) of the *Canadian Human Rights Act*, there is an interest to be served in granting the Commission the intervenor status which it seeks

On the basis of that statement Me Duval argues that the Commission should be allowed in the present instance to be heard with respect to the interpretation of the aforementioned sections of the Act During the hearing, I indicated to Me Duval that if Denault J.'s intention was to allow the Commission the right to intervene whenever an issue arose as to the interpretation of provisions of the *Canadian Human Rights Act*, I could not agree

In my view, the Commission may intervene to argue points of law when the purpose thereof is either to explain the record or to defend its jurisdiction I do not wish to be taken as having a narrow view of the Commission's right to intervene. Thus, I take guidance from the Supreme Court of Canada's decision in *C A I M A W* v *Paccar of Canada Ltd* , [1989] 2 S.C R 983 and more particularly from the words of Laforest J where, at 1016, he states

> In *British Columbia Government Employees' Union v Industrial Relations Council* (unreported, B C C A , May 24, 1988), the British Columbia Court of Appeal held that the Industrial Relations Council had the right to make the submissions that the court below had erred in substituting its judgment for that of the Industrial Relations Council, and that the court erred in finding

> the Council's interpretation of the Act to be patently unreasonable In the course of his judgment, Taggart J A for the court made the following statement with which I am in complete agreement, at p 13
>
>> The traditional basis for holding that a tribunal should not appear to defend the correctness of its decision has been the feeling that it is unseemly and inappropriate for it to put itself in that position But when the issue becomes, as it does in relation to the patently unreasonable test whether the decision was reasonable, there is a powerful policy reason in favour of permitting the tribunal to make submissions That is the tribunal is in the best position to draw the attention of the court to those considerations, rooted in the specialized jurisdiction or expertise of the tribunal which may render reasonable what would otherwise appear unreasonable to someone not versed in the intricacies of the specialized area In some cases, the parties to the dispute may not adequately place those considerations before the court, either because the parties do not perceive them or do not regard it as being in their interest to stress them

I agree entirely with Taggart J.A that a tribunal should be allowed to make submissions in the circumstances which he relates Mr Justice Denault, in his decision in *Bell Canada* also alluded to similar circumstances when he stated that the tribunal could intervene to defend its jurisdiction where the tribunal's expertise was necessary "to draw the Court's attention to specialized knowledge and considerations without which a reasonable decision might appear unreasonable"

The difficulty with the Commission's arguments regarding point three of its motion is that it has not advanced any explanation to convince me that its desire to be heard regarding a number of sections of the Act is for reasons other than defending the decision In support of its motion, the Commission filed the affidavit of Alwyn Child, its Director of compliance Nowhere in his affidavit does Mr Child offer any explanation or provide a basis to support the Commission's motion with regard to points number 3 and 4 For example, in paragraph 3 of his affidavit, Mr Child states that the issues regarding the interpretation of certain sections of the Act and whether the Commission is required to give reasons for its decisions "are fundamental to the way the Commission conducts its business" Mr. Child does not tell us how and why these issues are fundamental

In paragraph 4 of his affidavit, Mr Child states that the decision to be rendered with regard to these issues "is likely to have sweeping implications for the investigation of numerous other human rights complaints" Again, as in paragraph 3 of his affidavit, Mr. Child is less than expansive It is not clear what the "sweeping implications" will be and why they shall take place.

It is my view that for the Commission to obtain leave to intervene as it proposes, the Commission must satisfy the Court that its purpose is not to defend the decision attacked Its purpose must be that which will not impeach its impartiality.

On the evidence before me I have not been persuaded that the Commission wishes to be heard regarding points number 3 and 4 for a purpose other than defending its decision

The Commission shall therefore be allowed to intervene to defend its jurisdiction on the basis set out in point number 1 of its notice of motion The Commission shall be allowed to file affidavit evidence and an intervenor record, to make submissions on any application to the Court and oral submissions at the hearing with the right to appeal any decision rendered

"MARC NADON"
JUDGE

Ottawa, Ontario
May 12, 1997

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-431-97

STYLE OF CAUSE: Canadian Broadcasting Corporation,

Applicant,

and

Leila Paul,

Respondent

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: April 29, 1997

REASONS FOR ORDER BY: The Honourable Mr Justice Nadon

DATED: May 12, 1997

APPEARANCES:

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