Federal Court of Appeal | Cour d'appel fédérale

Date: 20110613

Docket: A-477-10

Citation: 2011 FCA 202

CORAM: **NADON J.A.**
LAYDEN-STEVENSON J.A.
MAINVILLE J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA
(representing SOCIAL DEVELOPMENT CANADA,
TREASURY BOARD OF CANADA and
PUBLIC SERVICE HUMAN RESOURCES MANAGEMENT
AGENCY OF CANADA)

Appellants

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent

and

RUTH WALDEN et al

Respondents

Heard at Vancouver, British Columbia, on May 2, 2011.

Judgment delivered at Ottawa, Ontario, on June 13, 2011.

REASONS FOR JUDGMENT BY: LAYDEN-STEVENSON J.A.

CONCURRED IN BY: NADON J.A.
MAINVILLE J.A.

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REASONS FOR JUDGMENT

LAYDEN-STEVENSON J.A.

[1] Justice Kelen of the Federal Court (the judge) allowed two consolidated applications for judicial review of a decision of the Canadian Human Rights Tribunal (the tribunal). The tribunal declined to order compensation for lost wages in relation to a discriminatory job classification on

the basis that the respondent complainants (the complainants) had not established that wage loss resulted from the discriminatory practice. The tribunal awarded compensation for pain and suffering to two of the approximately 413 complainants. The judge set aside the tribunal's decision with respect to both compensation for lost wages and pain and suffering and remitted the matter to a new panel for determination. The Attorney General of Canada, representing the various relevant governmental departments (the Crown), appeals from the judgment, in part. The Crown appeals with respect to the wage loss aspect of the judgment but does not appeal with respect to the pain and suffering portion. The judge's reasons are reported at 2010 FC 1135, 377 F.T.R. 244. For the reasons that follow, I would dismiss the appeal.

Preliminary Observation

[2] This matter gave rise to two final decisions from the tribunal because the proceeding was bifurcated. The tribunal addressed the complainants' complaint in phases: a liability phase and a compensation phase. I will refer to the tribunal's decisions in relation to each phase as the "liability determination" and the "compensation determination". Curiously, notwithstanding that the decision under appeal relates to the tribunal's compensation determination, resolution of the issue before the Court turns largely on the tribunal's liability determination.

Background

[3] The background giving rise to the underlying complaint is comprehensively described in the tribunal's liability determination (2007 CHRT 56) and need not be repeated here. Succinctly, for context, the complainants comprise a group of nurses working as "Medical Adjudicators"

(adjudicators) in the Canada Pension Plan (CPP) Disability Benefits Program. Ruth Walden (Walden) is one of the complainants. The adjudicators, predominantly female, work alongside a group of doctors, predominantly male, working as “Medical Advisors” (advisors). Together, adjudicators and advisors determine individuals’ eligibility for disability benefits under the CPP.

[4] Advisors are classified under the Medicine Classification Standard (MD) within the public service’s Health Services Occupational Group (SH). The SH includes, by definition, positions that involve the application of medical or nursing knowledge (among other professional specialities) to the safety and physical and mental well-being of people. Adjudicators are classified under the Program Administration Classification Standard (PM) within the public service’s Program and Administrative Services Occupational Group (PA). The latter group includes positions that primarily involve the planning, development, delivery or management of administrative and federal government policies, programs, services or other activities directed to the public or to the federal public service. Although the use of the advisors’ professional knowledge (in the determination of eligibility for disability benefits) is reflected in the advisors’ classification, the adjudicators’ use of professional knowledge is not similarly reflected in their classification. In addition to professional recognition, advisors receive better compensation, benefits, training and opportunities for advancement than do adjudicators. Since 1988, the adjudicators have repeatedly and unsuccessfully sought better recognition through reclassification as health practitioners within the SH.

[5] The complainants alleged they were subject to discrimination on the basis of gender (section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act)) and that the Crown pursued a

discriminatory practice that deprived them of employment opportunities (section 10 of the Act). In its liability determination, the tribunal concluded that the complainants' allegations were substantiated. The tribunal ordered the public service to cease the discriminatory practice of failing to recognize the professional nature of the work performed by the adjudicators in a manner proportionate to the professional recognition accorded to the advisors. It granted the parties time to negotiate an acceptable resolution but retained jurisdiction to determine any outstanding matters if the parties were unable to come to an agreement. An application for judicial review of the liability determination was dismissed by Justice Mactavish: 2010 FC 490, 368 F.T.R. 85 (judicial review of liability determination). An appeal from her judgment was discontinued.

[6] When the parties were unable to reach an agreement concerning adequate remedies, the tribunal scheduled a further hearing. In an interim ruling, the tribunal granted the Crown's request to adduce evidence regarding its proposal for redressing the discriminatory practice. It also indicated the type of comparative analysis that would be appropriate for purposes of the compensation phase.

[7] In its compensation determination, the tribunal ordered that a new nursing classification subgroup be created for the adjudicators. The tribunal also detailed a number of problems with the evidence relating to compensable wage loss. The referenced evidence related to two witnesses. The first was the complainants' witness, an expert in job evaluation and compensation systems. His report, based on the tribunal's liability determination, its interim ruling and the job descriptions for the two positions, contained a comparative analysis of the work of the advisors and adjudicators. The second was the Crown's witness, a human resources consultant with expertise in job

classification, compensation and organizational design. Her evidence was confined to a critical analysis of the expert's report. More specifically, the Crown's witness emphasized that the existence of wage loss had to be empirically tested and could not be based on inferences drawn from the liability decision. The tribunal basically accepted the critique proffered by the Crown's witness and concluded that the results of the expert's study could not be regarded as reasonably accurate.

[8] The tribunal ultimately concluded that the complainants had failed to meet their burden of establishing the existence and quantum of compensable wage loss and declined to order compensation. It further declined to order the Crown to conduct a job evaluation study or to allow the complainants a further opportunity to gather additional evidence of wage loss. Both the Canadian Human Rights Commission (the Commission) and the complainants commenced applications for judicial review of the tribunal's compensation determination.

The Federal Court Decision

[9] The two applications for judicial review were consolidated. The Commission and the complainants advanced the same basic position in their respective applications to the Federal Court. Before addressing the merits of the applications before him, the judge reviewed the tribunal's liability determination and Justice Mactavish's reasons for judgment on judicial review of the liability determination. He explained that the crux of the liability determination was the discriminatory treatment that resulted from the fact that the adjudicators did not receive recognition for their work as health professionals. The judge noted that there was no challenge to the tribunal's determination that the most appropriate way to address the Crown's discriminatory practice was to

create a new nursing subgroup in the SH. The judge also made the following observation at paragraph 50 of his reasons for judgment:

> [T]he Tribunal's Liability Decision, and the Federal Court Judgment of Justice Mactavish upholding the Tribunal's Liability Decision, held that the discriminatory classification of the medical adjudicators as Program Managers resulted in the medical adjudicators receiving less pay[,] fewer professional development opportunities and fewer employment benefits than available to nurses and doctors classified within the Health Services Occupational Group. Accordingly, there can be no dispute that the medical adjudicators did suffer a loss of income and benefits due to the discriminatory job classification. Accordingly, the issue for the Tribunal regarding appropriate remedies was the quantification of the loss of wages and benefits. (See also Justice Mactavish's Judgment at paragraph 146 confirming loss of income due to the discriminatory practice).

[10] Noting the Crown's submission – that the tribunal found discrimination because of the manner in which the adjudicators had been classified but made no determination as to the existence of losses flowing from that classification – the judge held instead that the tribunal found discriminatory treatment because it identified certain elements of that treatment, including the lower salary and benefits paid to adjudicators. He relied on a number of excerpts from the tribunal's liability determination and the judicial review of liability determination to support that conclusion (reasons at paras. 50-57; liability determination at paras. 121, 143; judicial review of liability determination at paras. 136, 143, 146, 150). Turning to the applications before him, the judge concluded that they could be resolved by addressing only the tribunal's determinations relating to compensation for lost wages and for pain and suffering. As noted previously, the pain and suffering portion does not form part of this appeal.

[11] With respect to the applicable standard of review, the judge characterized the issue as whether the tribunal erred in imposing an incorrect standard of proof upon the complainants. He concluded that the standard of review was correctness.

[12] After summarizing the evidence on the issue of wage loss and acknowledging that the tribunal had rejected the complainants' evidence, the judge concluded that the tribunal erred in law by finding that the complainants had failed to establish on a balance of probabilities that wage loss resulted from the Crown's discriminatory practice. He found that the tribunal erred in holding the complainants to a more onerous standard of proof because it required them to prove the quantum of wage loss on a balance of probabilities despite that it had earlier determined that the discriminatory practice resulted in wage loss. In view of that earlier finding, the judge concluded that the tribunal had a duty to either assess the lost income or wages on the evidence before it, or refer the matter back to the parties to prepare better evidence on that issue.

The Statutory Provisions

[13] The relevant statutory provisions are attached to these reasons as Schedule "A".

The Standard of Review

[14] This Court's role, on appeal from an application for judicial review in the Federal Court, is to determine whether the judge identified the applicable standards of review and applied them correctly: *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 266; *Canada* (*Revenue Agency*) *v. Telfer*, 2009 FCA 23, [2009] D.T.C. 5046.

Analysis

[15] The judge's approach to the standard of review is problematic. As noted above, he concluded that the standard of review was correctness. I will return to this aspect of his reasons later. For the moment, I will focus on the judge's characterization of what he found to be the tribunal's error. On the one hand, he described the error as the selection of an incorrect standard of proof (reasons at paras. 40, 64) while, on the other hand, he suggested the error was the tribunal's imposition of an incorrect onus or burden of proof on the complainants (reasons at paras. 47, 59, 60). Despite what I would describe as an unfortunate choice of language by the judge, and contrary to the submissions of the parties, I see no reference in the judge's reasons to suggest that he advocated a standard of proof other than the balance of probabilities.

[16] It is settled law that the burden of proof in the human rights context is the same as in the civil context: he or she who alleges bears the burden of proving on a balance of probabilities: *Ontario Human Rights Commission v. Simpsons-Sears Limited*, [1985] 2 S.C.R. 536 (*O'Malley*). See also: *F.H v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 (*McDougall*). Read holistically and fairly, the judge's reasons indicate that he considered the essence of the tribunal's error to be that it asked itself the wrong question. He concluded that it had already determined the existence of compensable wage loss. Therefore, the only question before it was the amount of the wage loss. In short, in the judge's view, the error lay in the tribunal's requirement that the complainants again establish the existence of wage loss. For reasons to be discussed later, I agree with the judge in that respect.

[17] Returning to the judge's choice of the applicable standards of review, his conclusions do not materially affect his ultimate determination. However, for clarity, brief comments are warranted. The parties agree that the selection of the appropriate legal test is reviewable on a standard of review of correctness and I will say no more about that. However, to the extent that the judge may have considered that the assessment of compensation for wage loss under paragraph 53(2)(c) of the Act is reviewed for correctness, I respectfully disagree. Such an assessment constitutes a question of mixed fact and law. It is dependent upon the factual circumstances; it concerns the tribunal's appreciation and assessment of the evidence; it arises in connection with the tribunal's enabling statute; and it falls within the tribunal's expertise. The applicable standard of review is reasonableness. The tribunal's decision must demonstrate justification, transparency and intelligibility and fall within a range of possible, acceptable outcomes defensible in respect of the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190.

[18] In this case, the tribunal did not err simply by coming to an unreasonable assessment of compensation for wage loss. Rather, its decision is flawed because it proceeded on an improper assumption that materially affected its determination as to compensation under paragraph 53(2)(c) of the Act. The tribunal's compensation determination shows that it placed a burden on the complainants to demonstrate the existence of compensable wage loss (paras. 74, 147, 148, 151). As stated earlier, I concur with the judge's conclusion that the tribunal had already determined the existence of wage loss in its liability determination.

[19] I acknowledge, as the Crown asserts, that the tribunal did not clearly articulate an express factual finding as to compensable wage loss in its liability determination. However, reasons are not to be parsed, but are to be read in totality. On a proper reading of the tribunal's reasons, the tribunal implicitly determined the existence of the requisite wage loss. At paragraphs 120 and 121 of its liability determination, the tribunal stated:

> [120] **The advisors bring a different kind of knowledge to the program, perform some different tasks and have been given different responsibilities than the adjudicators. This provides a reasonable and non-discriminatory explanation for some of the differences in salary and benefits**. It also explains why the advisor and the adjudicator positions might occupy different levels within a classification standard in Health Services.
>
> [121] **However, the differences in the work responsibilities of the respective positions are not extensive enough to explain the wide disparity in treatment between the advisors and the adjudicators.** In particular, the Respondent has failed to provide a reasonable non-discriminatory response to the following question: why have the advisors been recognized as health professionals, **and compensated accordingly**, when their primary function is to make eligibility determinations and yet, when the adjudicators perform the same primary function, they are designated as program administrators and **are paid half the salary of the advisors**? (my emphasis)

[20] The "differences in the work responsibilities" to which the tribunal refers are those described in paragraphs 117-119 of its liability determination. The "wide disparity in treatment" to which the tribunal refers in paragraph 121 is the difference in "salary and benefits" described in the earlier paragraph.

[21] The tribunal's consideration of the Crown's explanation for other aspects of differential treatment and lost employment opportunities is addressed in separate locations in the tribunal's reasons. For example, paragraph 136 of the liability determination deals specifically with the

Crown's explanation for the differences in professional recognition between the two groups. Similarly, paragraph 137 deals explicitly with the Crown's explanation concerning differences in the payment of professional fees, educational/training opportunities and the provision of career advancement opportunities.

[22] Further, the summary provided in the initial paragraphs of the liability determination is instructive. I refer specifically to the following paragraphs:

> [2] The Complainants say that the doctors (known as "medical advisors") and nurses (known as "medical adjudicators") do the same work: they apply their medical knowledge to determine eligibility for CPP disability benefits. When medical advisors perform that work, they are classified as health professionals within the Public Service classification system. However, when the medical adjudicators do this work, they are not classified as health professionals. Rather, they are designated as program administrators. **As a result of their classification, medical advisors receive better compensation**, benefits, training, professional recognition and opportunities for advancement than medical adjudicators.
>
> …
>
> [5] The Complainants meet the legal requirement to establish a *prima facie* case under s. 7 of the Act. To meet that requirement the Complainants were required to produce credible evidence which, in the absence of a reasonable explanation from the Respondents, would substantiate their complaints.
>
> [6] The Complainants' evidence supported their allegation that since 1972, medical adjudicators have performed the same or substantially similar work as the medical advisors. They both apply their medical qualifications and expertise to determine eligibility for CPP benefits. Yet, only the medical advisors are classified as health professionals within the Health Services (HS) Group in the Public Service, **and only the advisors receive the benefits** and recognition **that flow from that designation.**
>
> …
>
> [10] **The Respondents provided a reasonable explanation that rebutted part of the Complainants' *prima facie* case, but not all of it.** While there is a significant overlap in the common enterprise of eligibility determination, medical advisors exercise an oversight and advisory role that is not performed by the adjudicators. This results in some differences in the job tasks performed by advisors and adjudicators. These differences explain the

> distinction in the job titles and **explain some of the differences in compensation and benefits.**
>
> [11] **However, the differences are not significant enough to explain the wide disparity in treatment** and, more particularly, they do not explain why the advisors are recognized as health professionals and the adjudicators are not. The core function of both positions is applying professional knowledge to determine eligibility for CPP disability benefits. The Respondents have failed to provide a reasonable, non-discriminatory explanation as to why this function is medical work when the advisors do it, and program administration work when the adjudicators do it. (my emphasis)

[23] The tribunal's determination that the differences explain "some" of the disparity in "compensation and benefits" leads to the inevitable conclusion that the differences do not explain all of the variance in those subcategories of differential treatment. Notably, apart from the excerpts from the tribunal's reasons canvassed above, there are a number of other references contained in the judge's reasons (paras. 53-57) to support the finding of wage loss. Further, there are also additional relevant paragraphs in the reasons of Justice Mactavish (judicial review of liability determination at paras. 28, 34, 55 and 56). I reiterate that the Crown did not pursue its appeal of Justice Mactavish's judgment.

[24] In my view, the inescapable result arising from the various references found throughout the tribunal's liability determination is that, read as a whole, the tribunal's reasons constitute a determination, albeit an implicit one, that some wage loss or benefits loss had been established as a result of the discrimination.

[25] For these reasons, I find the judge's decision that the tribunal erred in concluding that the complainants had the burden of establishing both "the existence and quantum of wage loss" at the

second phase of the hearing to be proper. I note peripherally that the compensation determination suggests that the tribunal may have been unduly influenced by the testimony of the Crown's witness (that wage loss resulting from the discriminatory practice must be empirically tested) and that it retreated from its earlier finding in the liability determination as a result (para. 119).

[26] Yet, that does not end the matter for the Crown further submitted that, if it is found that the tribunal erred in concluding that the complainants had to establish wage loss, the appeal should nonetheless be allowed on the basis that the complainants did not establish the quantum of wage loss. Although this argument is superficially appealing, it must be rejected in view of the complainants' responsive submission.

[27] Relying on this court's decision in *Public Service Alliance of Canada v. Canada* (*Department of National Defence*), [1996] 3 F.C. 789 (C.A.) (*PSAC*), the complainants characterized this matter as "an onus case." That is, they maintained that since they had established the existence of wage loss, the onus shifted to the Crown to lead evidence as to quantum.

[28] I have three observations to make regarding the respective submissions of the parties. First, the *PSAC* case concerned a complaint under section 11 of the Act. This is not a section 11 case; it is a case concerning sections 7 and 10 of the Act. There is a statutory presumption with respect to section 11. That is not the case in relation to sections 7 and 10. No authority was cited in support of the complainants' position in this respect.

[29] Second, the proposition advanced by the complainants appears to run contrary to the reasoning in both *O'Malley* and *McDougall*. That is, he or she who alleges bears the burden of proving on a balance of probabilities. The general rule, however, is not absolute. The rationale underlying the requirement in *O'Malley* and *PSAC* – that the employer should bear the burden of proof because the employer is in possession of the necessary information to show either undue hardship (*O'Malley*) or job changes that would affect the wage gap (*PSAC*) – was explained by the Supreme Court in *Snell v. Farrell*, [1990] 2 S.C.R. 311 at paragraphs 30-33. Basically, if there is a significant imbalance in the access of the parties to evidence relating to a particular point, this imbalance can justify shifting the burden to the party with substantially greater access to the relevant evidence. This leads me to my third observation.

[30] The tribunal's reasons are silent on this issue. In the absence of the issue being addressed by the tribunal, the Federal Court, and by extension this Court, is ill-equipped to determine whether the circumstances are such that the Crown is substantially better placed to access evidence relating to the quantum of compensable wage loss. The jurisprudence requires a significant gap before shifting the burden of proof. It is the tribunal, not the court, which possesses familiarity with the factual circumstances and the respective capacities of the parties to produce the evidence that the tribunal considers necessary to adjudicate the matter. The question is not an insignificant one and the tribunal's ruling will be of utmost importance to the parties.

[31] In my view, in the circumstances, it would be inappropriate for this Court to pronounce on

the issue of whether the burden of proof should shift. It would be equally inappropriate to accept the Crown's argument that its appeal should be allowed on the basis advanced.

Conclusion

[32] Although I have taken a somewhat different path, I have arrived at essentially the same conclusion as the judge. I note that the judge's reasons state that the tribunal must "assess the lost income or wage losses on the material before it, or refer the issue back to the parties to prepare better evidence on what the wage losses would have been, but for the discriminatory practice." The formal judgment of the Federal Court sets aside the tribunal's compensation determination and refers it back to a new panel of the tribunal in accordance with the reasons for judgment. In my view, the question of quantum of wage loss and the nature of proof required for the purposes of paragraph 53(2)(c) is a matter best left to the tribunal, given its expertise in the interpretation of the Act. Consequently, I would leave it to the tribunal to determine how to go about conducting the redetermination of the compensation phase of the hearing. As I understand the situation, the pain and suffering aspect of the compensation determination is presently before the tribunal.

[33] For these reasons, I would dismiss the appeal with costs to the respondent complainants. I would not award costs to the Commission.

"Carolyn Layden-Stevenson"
J.A.

"I agree M. Nadon J.A."

"I agree Robert M. Mainville J.A."

SCHEDULE " A"
to the Reasons dated xx, xx, 2011
in A-477-10

Canadian Human Rights Act (R.S.C.1985, c. H-6)	*Loi canadienne sur les droits de la personne* (L.R.C. 1985, ch. H-6)
7. It is a discriminatory practice, directly or indirectly,	7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
(a) to refuse to employ or continue to employ any individual, or	a) de refuser d'employer ou de continuer d'employer un individu;
(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.	b) de le défavoriser en cours d'emploi.
10. It is a discriminatory practice for an employer, employee organization or employer organization	10. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :
(a) to establish or pursue a policy or practice, or	a) de fixer ou d'appliquer des lignes de conduite;
(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment	b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

opportunities on a prohibited ground of discrimination.

11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

11. (1) Constitue un acte discriminatoire le fait pour l'employeur d'instaurer ou de pratiquer la disparité salariale entre les hommes et les femmes qui exécutent, dans le même établissement, des fonctions équivalentes.

Assessment of value of work

(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

Critère

(2) Le critère permettant d'établir l'équivalence des fonctions exécutées par des salariés dans le même établissement est le dosage de qualifications, d'efforts et de responsabilités nécessaire pour leur exécution, compte tenu des conditions de travail.

Separate establishments

(3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.

Établissements distincts

(3) Les établissements distincts qu'un employeur aménage ou maintient dans le but principal de justifier une disparité salariale entre hommes et femmes sont réputés, pour l'application du présent article, ne constituer qu'un seul et même établissement.

Different wages based on prescribed reasonable factors

(4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued

Disparité salariale non discriminatoire

(4) Ne constitue pas un acte discriminatoire au sens du paragraphe (1) la disparité salariale entre hommes et femmes fondée sur un facteur reconnu comme raisonnable par une

by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference.

ordonnance de la Commission canadienne des droits de la personne en vertu du paragraphe 27(2).

Idem

Idem

(5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.

(5) Des considérations fondées sur le sexe ne sauraient motiver la disparité salariale.

No reduction of wages

Diminutions de salaire interdites

(6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.

(6) Il est interdit à l'employeur de procéder à des diminutions salariales pour mettre fin aux actes discriminatoires visés au présent article.

Definition of "wages"

Définition de « salaire »

(7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes

(7) Pour l'application du présent article, « salaire » s'entend de toute forme de rémunération payable à un individu en contrepartie de son travail et, notamment :

(a) salaries, commissions, vacation pay, dismissal wages and bonuses;

a) des traitements, commissions, indemnités de vacances ou de licenciement et des primes;

(b) reasonable value for board, rent, housing and lodging;

b) de la juste valeur des prestations en repas, loyers, logement et hébergement;

(c) payments in kind;

c) des rétributions en nature;

(d) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and

d) des cotisations de l'employeur aux caisses ou régimes de pension, aux régimes d'assurance contre l'invalidité prolongée et aux régimes d'assurance-maladie de toute nature;

(e) any other advantage received directly or indirectly from the individual's employer.

e) des autres avantages reçus directement ou indirectement de l'employeur.

53 (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:

53 (2) À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, sous réserve de l'article 54, ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :

(c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;

c) d'indemniser la victime de la totalité, ou de la fraction des pertes de salaire et des dépenses entraînées par l'acte;

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	NADON, MAINVILLE JJ.A.
DATED:	June 13, 2011

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