

BETWEEN:

CAROL RAMPERSADSINGH

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

DWIGHT WIGNALL

Respondent

RULING ON JURISDICTION

Ruling No. 1

2001/01/24

PANEL: J. Grant Sinclair, Vice-Chairperson

I. Introduction

[1] Carol Rampersadsingh filed a complaint dated March 29, 1996, with the Canadian Human Rights Commission against Dwight Wignall, an employee of Canada Post Corporation. In her complaint, Ms. Rampersadsingh alleges that Mr. Wignall discriminated against her in her employment because of her national or ethnic origin and sex contrary to section 14 of the *Canadian Human Rights Act*. The Commission referred her complaint to the Canadian Human Rights Tribunal on October 6, 2000.

II. Respondent's Position

[2] Mr. Wignall, the Respondent in this case, objects to the Tribunal hearing this complaint citing the decision of the Federal Court Trial Division in *Bell Canada v. C.T.E.A., C.E.P., Femmes-Action and the Canadian Human Rights Commission*.⁽¹⁾ In *Bell Canada*, the Federal Court Trial Division found that the Tribunal is not an institutionally independent and impartial body. One of the grounds for this finding is that the Commission has the power to issue guidelines relating to the application of the *Act*, which guidelines are binding on the Tribunal.⁽²⁾

III. Commission's Position

[3] The Commission, on the other hand, submits that *Bell Canada* does not apply to this complaint because the respondent failed to raise the independence issue at the earliest opportunity and thus, has waived his right to object. The Commission also contends that this Tribunal is bound by an earlier Tribunal decision in *Stevenson v. Canadian Security Intelligence Service*⁽³⁾ that decided that *Bell Canada* has no application to complaints where no guidelines have been issued by the Commission with respect to the subject matter of the complaint.

[4] Finally, the Commission contends that not only is *Bell Canada* under appeal, but the interest of justice and the doctrine of necessity supports the Tribunal proceeding to hear the complaint.

IV. The *Bell Canada* Appeal

[5] In my view, the fact that *Bell Canada* has been appealed is of no consequence. It is a decision of the Federal Court that is binding on this Tribunal unless for other reasons *Bell Canada* does not apply to this case.

V. Does *Bell Canada* Apply?

[6] In my opinion, *Bell Canada* is not limited only to those classes of cases where the Commission has exercised its power under the *Act* and issued binding guidelines. In this regard, I respectfully disagree with the reasoning of the Tribunal in *Stevenson* and do not consider myself bound by that decision. Rather, I prefer the reasoning of other Tribunals that have dealt with this question. These Tribunals decided that it is the *power* of the Commission to make the guidelines and not the *existence* of the guidelines that creates the independence problem.⁽⁴⁾ Under the *Act*, the power to pass guidelines binding on the Tribunal extends to all classes of cases. Accordingly, I conclude that the *Bell Canada* decision applies to this matter and this complaint should not proceed at this time unless there is waiver or the interest of justice or the doctrine of necessity dictate otherwise.

VI. Has the Respondent Waived Its Rights to Object

[7] Apart from the bare assertion, the Commission has not provided any facts or cited any legal authority in favor of its argument that the respondent has waived his right to object to the Tribunal proceeding. There is no basis upon which the Tribunal can accept this contention. Moreover, a review of the file indicates that nothing has been done by the respondent to justify the conclusion that he has impliedly submitted to the jurisdiction of the Tribunal.

VII. Do the Interest of Justice or the Doctrine of Necessity Apply?

[8] As is the case with its waiver argument, the Commission did not elaborate as to how or why the interest of justice or the doctrine of necessity requires that this matter proceed. Without more, I can not evaluate the Commission's submissions except to say that the Commission has not made its case. I can say, however, that the doctrine of necessity was argued by the Commission and rejected by the Federal Court of Appeal in *MacBain v. Canada (Canadian Human Rights Commission)*⁽⁵⁾. In that case, the Court confirmed that the Tribunal lacked the requisite independence and impartiality and declared certain provisions of the *Act* inoperative. The consequence of the decision was that proceedings before the Tribunal were suspended until the *Act* was amended.

[9] Finally, as to the interest of justice, this includes more than just speedy justice. It also includes the right to a hearing before an independent and impartial Tribunal.

VIII. Conclusion

[10] For the foregoing reasons, this matter is adjourned *sine die* until the problems with the *Canadian Human Rights Act* identified in *Bell Canada* are corrected .

J. Grant Sinclair, Vice -Chairperson

OTTAWA, Ontario

January 24, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T591/4900

STYLE OF CAUSE: Carol Rampersadsingh v. Dwight Wignall

RULING OF THE TRIBUNAL DATED: January 24, 2001

APPEARANCES:

Carol Rampersadsingh For the complainant

Tripti Prinja For the Canadian Human Rights Commission

Dwight Wignall For the respondent

1. Docket T-890-99, November 2, 2000.

2. Sections 27(2) and (3) of the *Canadian Human Rights Act*.

3. Reasons for Decision, November 7, 2000 (C.H.R.T.)

4. See *Nancie Martin v. Sauteaux Band Government*, Ruling No. 1, December 8, 2000; *Kevin Houlihan, Daniel A. Simms, Bill Darrington, Carl P. Haley, Perry D. Mercer v. Halifax Employer's Association and International Longshoremen's Association, Local 269*, Ruling No. 1, December 8, 2000; *Diane J. Eisler v. Canadian National Railway Company*, Ruling No. 1, December 12, 2000; *Patrick E. Quigley v. Ocean Construction Supplies*, Ruling No. 1, December 18, 2000; *Patrick J. Eyerley v. Seaspan International Limited*, Ruling No. 4, December 19, 2000.

5. [1985] 1 F.C. 856 (F.C.A.)