

BETWEEN:

BRENDA PATERSON

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

VERBIL TRANSPORT

- and -

R.W. CHERINGTON

Respondents

RULING ON JURISDICTION

Ruling No. 1

2001/03/29

PANEL: J. Grant Sinclair, Vice-Chairperson

I. Introduction

[1] Brenda Paterson filed a complaint dated July 24, 1998, with the Canadian Human Rights Commission against Verbil Transport and against R.W. Bill Cherington, her supervisor at Verbil Transport. In her complaint, Ms. Paterson alleges discrimination contrary to section 7 and 14 of the *Canadian Human Rights Act*. The Commission referred her complaint to the Canadian Human Rights Tribunal on January 16, 2001.

II. Respondents' Position

[2] In their completed Questionnaire dated March 1, 2001, and in their March 8, 2001 submission the Respondent objected to the Tribunal proceeding with 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. The reasons are that the Commission has the power to issue guidelines binding on the Tribunal relating to the application of the *Act*.⁽²⁾ The Federal Court also found offensive to independence, the Tribunal Chairperson's discretion to extend a member's term to conclude an inquiry.⁽³⁾

III. Commission's Position

[3] The Commission, on the other hand, submits that *Bell Canada* does not apply to this complaint because no guidelines have been passed relating to the subject matter of this complaint. The Commission also contends that there is no likelihood that the term of any Tribunal Member assigned to this case will expire before the case is completed.

IV. Does *Bell Canada* Apply?

[4] 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. It is the *power* of the Commission to make the guidelines and not the *existence* of the guidelines that creates the independence problem. Under the *Act*, the power to pass guidelines binding on the Tribunal extends to all classes of cases. Comparably, it is the existence of the discretion and not whether there will or will not be a need to exercise the discretion in a particular case that compromises the Tribunal's independence.

[5] Accordingly, I conclude that the *Bell Canada* decision applies to this matter and this complaint should not proceed at this time unless the Respondents have waived their right to object to the Tribunal's lack of independence.

V. Have the Respondents Waived Their Right to Object

[6] A review of the file indicates that nothing has been done by the Respondents to justify the conclusion that they have waived their right to object. On the contrary, in my view, the Respondents objected at the first practicable opportunity, namely at the time they responded to the questionnaire.

VI. Conclusion

[7] 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

March 29, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

TRIBUNAL FILE NO.: T631/1901 and T632/2001

STYLE OF CAUSE: Brenda Paterson v. Verbil Transport and R.W. Bill Cherington

RULING OF THE TRIBUNAL DATED: March 29, 2001

APPEARANCES:

Brenda Paterson For the Complainant

Eddie Taylor For the Canadian Human Rights Commission

Patrick McMurchy For the Respondents

1. Docket T-890-99, November 2, 2000.
2. Sections 27(2) and (3) of the *Canadian Human Rights Act*.
3. Section 48.2(2) of the *Act*.