

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2017 CHRT 5

Date: March 1, 2017

File No.: T2050/5114

Between:

Syndicat des communications de Radio-Canada

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Broadcasting Corporation

Respondent

Ruling

Member: Sophie Marchildon

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I. Procedural history of the complaint

[1] On April 28, 1999, the Syndicat des communications de Radio-Canada (the SCRC), filed a complaint with the Canadian Human Rights Commission (the Commission or CHRC) against the Canadian Broadcasting Corporation (CBC), alleging a wage disparity between assistantship and research positions held predominantly by women, and jobs held by level 9 technicians, a predominantly male workforce, in violation of section 11 of the *Canadian Human Rights Act (CHRA)*.

[2] The SCRC represents jobs related to assistantships and research while the Syndicat des techniciens et artisans du réseau français (STARF) represents jobs held by level 9 technicians.

[3] On August 13, 2014, the Commission asked the Canadian Human Rights Tribunal (the Tribunal) to institute an inquiry into the portion of the complaint concerning research-related jobs and indicated that the Commission had decided not to refer the portion of the complaint concerning jobs related to assistantships. On November 25, 2014, the Chair of the Tribunal assigned the case to me for the purposes of instituting an inquiry. According to the Commission, there have been a series of events and decisions between the filing date of the complaint and the date when the Tribunal receives the request to institute an inquiry. A brief overview of these events is therefore necessary.

[4] From April 28 to October 16, 1999: CBC claimed that the complaint was inadmissible and denied any claims of wage discrimination. It therefore filed objections pursuant to sections 40 and 41 of the *CHRA* and requested that the complaint be dismissed. In April 2000, the Commission decided to hear the complaint and proceed with an inquiry. On July 11, 2000, CBC filed an application for judicial review of the Commission's decision with the Federal Court.

[5] On August 16, 2000, the Commission informed CBC that the inquiry was going forward. On July 16, 2002, the Federal Court rendered its decision dismissing the application for judicial review.

[6] On April 5, 2004, the parties were advised that the Commission had decided to refer the complaint to conciliation and had asked the Chair of the Tribunal to institute an inquiry into the complaint if an agreement was not reached within 120 days.

[7] On July 8, 2004, CBC filed an application for judicial review of the Commission's decision.

[8] On April 12, 2005, the Federal Court ordered that the case be referred back to the Commission so that it could resume its inquiry into the complaint, with regard to a comparative assessment of the duties concerned and the question of whether the groups being compared were part of the same establishment within the meaning of the *CHRA*. The Court indicated that "[t]he two parties should cooperate fully with the investigator and provide the information that will be requested of them. Needless to say, if it does not already exist, such information should be prepared by the party or parties from which it is requested" (see *Canadian Broadcasting Corp. v. Syndicat des communications de Radio-Canada*, 2005 FC 466, at para. 52).

[9] On March 16, 2011, the Federal Court denied the application for judicial review of the Commission's decision not to deal with the portion of the complaint concerning the "assistantship" group (see *Syndicat des communications de Radio-Canada v. Canada (Attorney General)* 2011 FC 314).

II. The Commission's motion for disclosure

[10] The Commission filed a motion asking the Tribunal to order CBC to comply with the Tribunal's Rules of Procedure (03-05-04) ("the Rules") and to produce, by the deadline set by the Member, the various documents in its possession and that are relevant to any fact, issue or form of relief being sought, including the facts, issues and forms of relief mentioned by the other parties, and to do so within thirty (30) days of the Tribunal's decision.

[11] The Commission is seeking an order requiring CBC to disclose the documents requested by the SCRC in its letter of April 15, 2015 – which will be discussed in further detail below – to both the Commission and the SCRC within thirty (30) days of the decision.

[12] I have reviewed the entire case as well as the motion along with the attachments, and the arguments of all the parties. It should be noted that the Tribunal is not in possession of the attachments to the SCRC's Amended Statement of Particulars; consequently, these attachments were not analyzed for the purposes of this decision. For the sake of brevity, I will not describe each of the arguments presented by the parties here; I will instead provide a brief overview.

[13] The Commission alleges that CBC failed to comply with Rule 6 of the Rules, which requires each party to disclose the various documents in its possession that are relevant to any issue in question. The Commission therefore maintains that CBC has failed to comply with its obligation in this regard and is asking the Tribunal to order the disclosure of all documents relevant to this case.

[14] The Commission also points out that CBC's Statement of Particulars indicates that it is in possession of a series of documents likely to be relevant to the case before the Tribunal, but that it has not been able to submit these documents to the parties because they have not identified the documents that they would like to obtain.

[15] The Commission and the SCRC are not in a position to identify the documents to be obtained because these documents are not in their possession. The Commission further argues that when it comes to disclosure, the Tribunal must protect the fairness and integrity of the process. This requires full and complete disclosure of all potentially relevant documents by all parties and therefore, in order to achieve this objective, the Tribunal may order one of the parties to disclose these documents.

[16] The SCRC contends that CBC, by its own admission, is in possession of potentially relevant documents that the SCRC would like to obtain in order to present its evidence, establish the merits of the complaint and complete its expert reports. It further adds that in the context of this extremely complex case, disclosure is necessary in order to ensure that the process before the Tribunal progresses smoothly. Moreover, according to the SCRC, the employer has retained a number of various types of documents concerning the nature of the jobs of various groups, their compensation and the group members.

[17] The SCRC adds that in February 2015, it forwarded its documentary evidence to CBC. In a letter dated April 2015, the SCRC then asked CBC, in turn, to provide its disclosure. In light of CBC's refusal, the SCRC turned to the Tribunal to request an order for the disclosure of:

1. Any document, letter, email or note that could potentially prove relevant to this case, including but not limited to;
2. The collective agreements for SARDEC and ACTRA in effect between 1995 and 1998;
3. Job postings for the research group and the comparison group of category 9 technicians from June 1995 to date;
4. Documents, letters, emails, notes and questionnaires dealing with or concerning the duties, functions or requirements for employment in the comparison group of category 9 technicians from June 1995 to date; and
5. Documents, letters, emails, notes and questionnaires relating to or concerning job evaluations and/or the creation of monographs for the research group and the comparison group of category 9 technicians from June 1995 to date.

[18] In short, the SCRC maintains that its motion is supported by the objective of Rule 1 of the Rules. The Rules mentioned in this decision can be found in the Appendix.

[19] In response, CBC argues that the SCRC was in possession of documents that it had failed to disclose, including the collective agreements for SARDEC and ACTRA in effect from 1995 to 1998, the job postings for the group designated by the SCRC as the research group and the job postings for the comparison group.

[20] With respect to other requests for the above-mentioned documents, CBC maintains that these requests were so imprecise that it had found it impossible to respond to them. It further adds that the SCRC's Statement of Particulars is itself imprecise.

[21] CBC indicates that it is willing to cooperate fully with the Tribunal and the parties, and offer this cooperation in a context where the rules of natural justice are respected.

[22] In its response, CBC presented an application similar to a counterclaim under Quebec civil law and asked the Tribunal to order the SCRC to disclose the following documents:

1. A copy of any collective agreement that the SCRC intends to cite in support of its claims (and/or that it considers relevant to the purposes of this case) and to which it currently has access;
2. A copy of any job posting that the SCRC intends to cite in support of its claims (and/or that it considers relevant to the purposes of this case) and to which it currently has access;
3. A copy of any document to which the SCRC currently has access and that it intends to cite not only to enhance its evidence in the context of the inquiry, but to support the claim that the group 9 jobs represented by STARF could be considered to be a comparison group with a predominantly masculine workforce, in compliance with the legislative objectives (see paragraph 57 of the SCRC's Statement of Particulars);
4. A copy of any document to which the SCRC currently has access and that it intends to cite in the context of the inquiry, for the purposes of applying a potential evaluation plan considering the duties included in the research group and the comparison group;
5. A copy of any document to which the SCRC currently has access and that it intends to cite in the context of the inquiry, in order to demonstrate the duties of the comparison group identified;
6. That the Tribunal order the SCRC to clarify the job titles included in the comparison group;
7. The methodology proposed by the SCRC in order to compare the overall compensation of individuals holding positions included in the comparison group; and

8. Any specific documents to which it does not have access and which, in its opinion, are necessary for the purpose of evaluating the duties concerned and evaluating the compensation associated with these duties.

[23] According to CBC, most of the documents sought by the SCRC are in its possession or under its control. According to CBC, it agreed to proceed on the basis of a *subpoena duces tecum* to be served in anticipation of the inquiry and to limit disclosure prior to the inquiry since this was the approach recommended by the SCRC. In light of a change in approach, CBC maintains that the SCRC should complete its file rather than do so during the inquiry.

[24] Another argument put forward by CBC concerns the complainant's obligation with respect to evidence. CBC confirms that it is willing to disclose additional documents that it deems relevant in light of the information received concerning the methodology used to compare jobs and salaries. Moreover, following the transmission of these documents, CBC requests that if the SCRC believes that additional documents exist, these documents should be clearly identified, and the SCRC should contact either CBC and/or the Tribunal in this regard.

[25] CBC asked the Tribunal to take note of its commitment indicated in its letter dated April 24, 2015, whereby CBC will provide the specific documents required insofar as they are in its possession. CBC added that it would then be in a position to complete its disclosure which, in its opinion, is consistent with the principles of natural justice. Finally, it argues that these principles of natural justice require the complainants to state their evidence.

III. The applicable law

[26] First and foremost, it would be helpful to refer to subsection 48.9(1) of the *CHRA*, which stipulates that "[p]roceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow."

[27] Consequently, in compliance with the principles of natural justice and subsection 50(1) of the *CHRA*, parties before the Tribunal must be given a full and ample

opportunity to present their case. This requires the disclosure of arguably relevant evidence between the parties. If there is a rational connection between a requested document and the facts, issues or forms of relief identified by the parties, this document should be disclosed pursuant to Rules 6(1)(d) and (e) of the Tribunal's Rules (see *Guay v. Canada (Royal Canadian Mounted Police)*, 2004 CHRT 34, at para. 42 (“*Guay*”); *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28, at para. 4 (“*TEAM Inc.*”); and *Rai v. Royal Canadian Mounted Police*, 2013 CHRT 6, at para. 28 (“*Rai*”)).

[28] While the Rules do not specify the manner or form by which production is to take place, the purpose of the Rules and the principles of fairness in general dictate that the disclosure and production of documents be sufficient to allow each party the full and ample opportunity to be heard (see *Grand Chief Stan Louttit et al v. Attorney General of Canada*, 2013 CHRT 3, at para. 14 (“*Louttit*”)).

[29] The Rules provide that the parties are required to disclose the potentially relevant documents in their possession. The parties are not required to create documents for the purposes of disclosure (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 42, at para. 17).

[30] Moreover, Rule 1(2) states that they “. . . shall be liberally applied by each Panel to the case before it so as to advance the purposes set out in 1(1).” One of the purposes of the Rules is to ensure that the “arguments and evidence be disclosed and presented in a timely and efficient manner” (Rule 1(1)(b)) and that “all proceedings before the Tribunal be conducted as informally and expeditiously as possible” (Rule 1(1)(c)). I would add that Rule 1(1)(c) is consistent with subsection 48.9(1) of the *CHRA* (see *Rai*, at para. 34).

[31] It is important to remember that relevance is assessed in relation to the complaint and the Statement of Particulars (see *Lindor v. Public Works and Government Services Canada*, 2012 CHRT 14, at para. 56).

[32] Moreover, relevance is a notion that is distinct from the admissibility of evidence for the purposes of a hearing and this principle is set out in the decision rendered in *TEAM Inc.*, at paragraph 4:

“The production of documents is subject to the test of arguable relevance, not a particularly high bar to meet. There must be some relevance between the information or document sought and the issue in dispute. There can be no doubt that it is in the public interest to ensure that all relevant evidence is available in a proceeding such as this one. A party is entitled to get information or documents that are or could be arguably relevant to the proceedings. This does not mean that these documents or this information will be admitted in evidence or that significant weight will be afforded to them.”

[33] That said, the request must not be speculative or amount to a “fishing expedition”. The requested documents should be described with sufficient precision (see *Guay*, at para. 43).

IV. Analysis

A. General duty of disclosure before the Tribunal

[34] The Rules of disclosure are essentially intended to allow the parties to obtain all the potentially relevant documents in order to prepare to present their evidence before the Tribunal. This facilitates the smooth running of the proceedings as an integral part of the proper administration of justice and the principles of procedural fairness.

[35] That said, the Rules also provide for ongoing disclosure in anticipation of situations where new evidence may arise or when documents which were omitted must be disclosed.

[36] For the purposes of disclosure, the complaint, the theory of the case included in the Statement of Particulars and the entire Statement of Particulars in itself, all serve as guides for identifying the potential relevance of the documents. This potential relevance will be analyzed from both the point of view of the complaining party and the respondent or the party representing the public interest, in this case, the Commission. In other words, the documents to be disclosed are not limited to those which support the position of a single party, but the positions of all the parties.

[37] The process before the Tribunal is a new process that requires full and complete disclosure within the same forum. Consequently, documents that were disclosed in the context of earlier processes and outside Tribunal-related processes are not considered to

form an integral part of this process and must therefore be disclosed and communicated among the parties.

[38] In principle, the parties clearly identify the documents in their list of disclosure and sometimes ask the other parties to identify the documents needed in order to avoid any duplication. However, even though this approach may be considered to be effective, it is not mandatory and is not always appropriate. It will not prove to be very useful if one party does not include certain documents in its list of disclosure and the omitted documents are potentially relevant to the opposing party.

[39] The parties must include enough information in their lists in order to allow the other parties to understand what these documents include (see *Louttit*, at para. 15). The parties are subsequently required to forward the list to the other parties concerned and update it if applicable.

[40] Therefore, this does not mean asking a party to identify the specific documents that it wants and which are not included in the disclosure list of another party. In order to comply with its duty of disclosure, it is important to describe the documents in order to allow the opposing party to identify them and to provide these documents to the opposing party. In short, the party that is in possession of a document is in a better position to describe it than the party who does not have the document in its possession and is often unaware that it exists.

[41] At best, as in this case, a party that believes that certain documents are in the possession of the other party and are not clearly described on the latter's disclosure list may request them by identifying categories of documents that rationally relate to a fact, an issue or a form of relief that is being sought, which is what the Commission and the SCRC did here. (See paragraph 17 of this decision, points 1, 4 and 5).

[42] As pointed out by the Commission, it is important not to confuse the disclosure of potentially relevant documents in the context of the Tribunal process with the disclosure of evidence which will be presented before the Tribunal in the context of the inquiry.

[43] CBC indicates that it is entitled to expect compliance with the principles of natural justice, to know the theory of the case presented by the SCRC and the Commission and to have information on the evidence it will be required to respond to when presenting its defence.

[44] This principle is applicable here since all the parties before the Tribunal have a full and ample opportunity to be heard at the inquiry.

[45] However, there is no infringement on fairness or natural justice based on the fact that the parties are required to disclose the potentially relevant documentation in their possession.

[46] That said, I will start by addressing the Commission's first general request, i.e., to obtain disclosure for:

- any document, letter, email or note that could potentially prove relevant to this case. (See point 1 in paragraph 17).

[47] I note that the Commission forwarded a detailed list of its disclosure to the parties and to the Tribunal. This list includes two Appendices, Appendix A and B. Appendix A, which includes 141 pages, is a list for which no privilege was claimed.

[48] In reviewing this list, I note that it includes a good number of collective agreements, tables, postings and documents that are potentially relevant to this case. In its response, CBC does not make any reference to the fact that it did not receive this disclosure. CBC is therefore presumably in possession of the Commission's disclosure.

[49] In analyzing the list of the Commission's disclosure, I note that there are similarities between the types of documents which were disclosed and those targeted by requests for disclosure in the context of this motion. The requests by the Commission and the SCRC therefore appear to be reasonable under the circumstances.

[50] Moreover, in paragraph 80 of its Amended Statement of Particulars, the SCRC indicates its approval of the evidence communicated to the parties by the Commission in December 2014.

[51] In paragraphs 81 and 82 of this same Amended Statement of Particulars, the SCRC confirms that it forwarded the documents in its possession, i.e., the documents forwarded by CBC to the SCRC, as well as documents created contemporaneously, when these documents were received.

[52] During the conference call dated June 22, 2015, the SCRC confirmed that it had gone as far as possible in terms of the substantiated allegations set out in its Statement of Particulars. The rest of the documents required to present evidence were allegedly in the hands of CBC.

[53] For example, paragraph 89 of the SCRC's Amended Statement of Particulars refers to numerous gaps in communication provided by CBC, related to certain information concerning contracts for the research group.

[54] The SCRC therefore argues that the disclosure requested from CBC will help complete its expert reports.

[55] CBC is in possession of the SCRC's Statement of Particulars, which sets out its case theory and the basis for its claims. The Federal Court also shed some light on this case by setting the context for the Commission's inquiry.

[56] For all these reasons, I believe that the parties are well aware of the allegations and issues, despite the need for clarification in the future.

[57] It is important to note that because we are dealing with allegations of wage disparity, the documents that are being requested in the Commission's motion appear to be potentially relevant to this case and must therefore be disclosed.

B. Detailed analysis

[58] I will now conduct an analysis of each of the requests for the various categories of documents by the Commission and the SCRC in order to determine the potential relevance of the documents requested in the disclosure motion.

(i) The collective agreements for SARDEC and ACTRA in effect between 1995 and 1998

[59] The SCRC's Amended Statement of Particulars mentions these agreements in the following paragraphs; for the sake of brevity, the paragraphs referenced are not reproduced in their entirety here:

[TRANSLATION]

Paragraph 6: Prior to June 1998, the group of researchers comprised three (3) job titles, which were exclusively under the purview of the union which represented them before the redefinition of the bargaining units by the Canada Industrial Relations Board in 1995: the SJRC researchers (a journalists' union), the SARDEC researchers (an authors' union) and the Researcher/ACTRA Program (an artists' union).

Paragraph 7: Between 1995 and 1998, the employees in group I were therefore covered by three different collective agreements as indicated in the collective agreement of the Syndicat des journalistes de Radio-Canada (CSN) filed by the CHRC, exhibit 170.

See also paragraphs 29, 30 and 44 (non-exhaustively).

[60] In light of the above references and paragraphs, there is a rational connection between the requested documents, i.e., the SARDEC and ACTRA collective agreements, and the allegations. Therefore, the documents are potentially relevant. Moreover, the reference to another collective agreement filed by the Commission suggests that the Commission disclosed this agreement to the parties. It is therefore justified that CBC, in turn, should comply with the Rules and disclose the documents that are in its possession.

[61] Consequently, CBC must disclose and provide these documents to the parties; I will include this information in the order.

(ii) The job postings for the research group and the comparison group of category 9 technicians, i.e., Intermediate Broadcasting Technician; Intermediate Switcher; Intermediate Cameraman; Intermediate Editor; Intermediate Sound Technician from June 1995 to date

[62] Paragraph 37 of the SCRC's Amended Statement of Particulars states that:

[TRANSLATION]

From June 1995 to the date of the filing of the complaint, the requirements related to the positions in the professional research group were similar in terms of training, experience and qualifications required, as indicated in job postings: CHRC-36 to 39, 100 to 103, 326, 330, 339 to 341, 348, 351, 355, 364, 366, 373 and job evaluation questionnaires filed in support of these proceedings for positions held at the time by

[63] Moreover, with respect to the comparison group, paragraph 50 indicates that:

[TRANSLATION]

Job descriptions and postings were filed by the CHRC demonstrating the nature of job functions and requirements i.e., Exhibits CHRC-19 to 33, 81, 82, 91, 99,189, 193.

See also paragraph 31 (non-exhaustively).

[64] In light of the above references and paragraphs, there is a rational connection between the requested documents and the allegations. The documents are therefore potentially relevant. Moreover, references to many of the Commission's documents suggest that the Commission disclosed them to the parties. It is therefore justified that CBC, in turn, should comply with the Rules and disclose the documents in its possession.

[65] For these reasons, CBC must disclose and provide these documents to the parties; I will include this information in the order.

(iii) Documents, letters, emails, notes and questionnaires dealing with or concerning the duties, functions or requirements for employment in the comparison group of category 9 technicians i.e.: Intermediate Broadcasting Technician; Intermediate Switcher; Intermediate Cameraman; Intermediate Editor and Intermediate Sound Technician from June 1995 to date

[66] Paragraph 69 of the SCRC's Amended Statement of Particulars states that:

[TRANSLATION]

Indeed, the functions of the research group evolved over time and this resulted in complicating their duties while the opposite was true for the

functions related to the comparison group identified, as will be demonstrated during the inquiry.

See also paragraphs 47 and 94 (non-exhaustively).

[67] In light of the above references and paragraphs, there is a rational connection between the requested documents and the allegations. The documents are therefore potentially relevant.

[68] Consequently, CBC must disclose and provide these documents to the parties; I will include this information in the order.

(iv) Documents, letters, emails, notes and questionnaires dealing with or concerning job evaluations and/or the creation of monographs for the research group and the comparison group of category 9 technicians, i.e., Intermediate Broadcasting Technician; Intermediate Switcher; Intermediate Cameraman; Intermediate Editor and Intermediate Sound Technician from June 1995 to date

[69] Paragraph 33 of the SCRC's Amended Statement of Particulars states that:

[TRANSLATION]

In March 2006, these jobs were subsequently divided into two job titles, i.e., researchers and investigative journalists, on completion of a joint exercise concerning job evaluations which ran from 2002 to 2006, as indicated in the employment monographs filed by the CHRC, Exhibits CHRC-432 and 440 and the job questionnaires completed at the time for positions in the professional research group exercised at the time by . . . Exhibit CHRC-475 filed in a bundle.

[70] And paragraph 34 indicates that:

[TRANSLATION]

This exercise of creating monographs took place after CBC and the SCRC agreed on a job evaluation plan, which reapplied the criteria provided in the Order of 1986, as indicated in version 7 of the 2005 evaluation plan, filed under Exhibits CHRC-406 and 407.

See also paragraphs: 35, 37, 38, 45, 52, 54, 59, 65, 66, 67, 68 and 94 (non-exhaustively).

[71] In light of the above references and paragraphs, there is a rational connection between the requested documents and the allegations. The documents are therefore potentially relevant.

[72] CBC should therefore disclose and provide these documents to the parties; I will include this information in the order.

V. Conclusion

[73] I believe that this Amended Statement of Particulars is sufficiently detailed to allow CBC to identify the potentially relevant documents with a rational connection to a fact, issue or a form of relief being sought.

[74] At this stage of the case file, the SCRC identifies the comparison group as a group that may be found within the sub-groups of category 9 technicians in Quebec and Moncton which were identified in the SCRC's amended Statement of Particulars, i.e.: Intermediate Broadcasting Technician; Intermediate Switcher; Intermediate Cameraman; Intermediate Editor; Intermediate Sound Technician, Head Technical Installer (see paragraph 12 of the SCRC's Amended Statement of Particulars).

[75] Therefore, I do not share CBC's opinion that the Amended Statement of Particulars provided by the SCRC and the comparison group is imprecise.

[76] I find that there is a rational connection between the requested documents identified in paragraph 17 of this decision and the facts, issues or forms of relief being sought by the Commission and the SCRC. As demonstrated above, the facts, issues and forms of relief being sought are supported by the SCRC's Amended Statement of Particulars. The documents are therefore potentially relevant to this case.

[77] Disclosure of the documents in CBC's possession will likely allow the SCRC to complete its evidence regarding the sub-groups that could potentially be grouped together in order to establish a comparison group. Ultimately, it is the SCRC's responsibility to provide evidence in this regard during the inquiry.

[78] At this stage of the case file, I believe that the reference to positions in the comparison group is sufficient for the purposes of disclosure and may be further clarified at a later date, once the SCRC has received and reviewed the disclosure from CBC. If applicable, the SCRC may then opt to further amend its Statement of Particulars to clarify the sub-groups comprising the comparison group. The parties will also be able to amend their Statement of Particulars to respond to the SCRC's amendments if applicable.

[79] With respect to CBC's request that the Tribunal order the SCRC to disclose the methodology which will be used to evaluate salaries, it is my opinion that this request is premature since the SCRC has confirmed that it will only be able to complete its expert reports after receiving CBC's disclosure. Moreover, the recommended methodology will potentially be identified by the experts.

[80] It is well established that this type of case is extremely complex and demands a certain amount of flexibility in the approach to be used, such as the approach adopted in paragraph 78 above. The objective here is not to mischaracterize the complaint or the theory of the case but to instead offer clarifications which may be necessary for the purposes of the case if necessary (see Rule 6(5)(a)). Moreover, a formal approach requiring the SCRC to complete its evidence at this stage, before CBC provides its disclosure, is at the very least questionable.

[81] For example, the case in *Public Service Alliance of Canada v. Canada Post Corporation*, 2005 CHRT 39, was heard over 250 days in a period of seven years and included thousands of documents filed as evidence. In another case it was noted that one party was required to review roughly 40,000 documents in order to compile a list of documents (see *Public Service Alliance of Canada v. Canada (Minister of Personnel of the Government of Northwest Territories)*, 1999 CanLII 19858). These are just two examples demonstrating the complexity of this type of case and the need for each party to have a certain amount of flexibility.

VI. Order

[82] I hereby order the SCRC to compile a detailed list of all the documents in its possession and for which no privilege is claimed.

[83] I hereby order the SCRC to compile a detailed list of all the documents in its possession for which privilege is claimed.

[84] I hereby order the SCRC to disclose these lists to the parties and the Tribunal by **April 3, 2017**.

[85] I hereby order the SCRC to provide an affidavit confirming that all the documents in its possession were included in the disclosure list and, with respect to the documents for which privilege is not claimed, to provide confirmation that they were disclosed and provided to the parties. This affidavit is to be attached to the SCRC's disclosure list and will be communicated to the parties and to the Tribunal by **April 3, 2017**.

[86] I hereby order CBC to comply with Rule 6 and, more specifically, with Rules 6(1)(d) and (e) and 6(4) of the Rules.

[87] I hereby order that by **June 5, 2017**, CBC is to disclose and produce any and all documents, letters, emails and notes that could potentially prove relevant to this case, i.e., in cases where there is a rational connection to a requested document and the facts, issues or forms of relief being sought by all the parties, including the following:

- the collective agreements of SARDEC and ACTRA in effect between 1995 and 1998;
- the job postings for the research group and the comparison group of category 9 technicians, i.e.: Intermediate Broadcasting Technician; Intermediate Switcher; Intermediate Cameraman; Intermediate Editor and Intermediate Sound Technician from June 1995 to date;
- documents, letters, emails, notes and questionnaires dealing with or concerning the duties, functions or requirements for employment within the comparison group of category 9 technicians i.e.: Intermediate Broadcasting Technician; Intermediate

Switcher; Intermediate Cameraman; Intermediate Editor and Intermediate Sound Technician from June 1995 to date; and

- documents, letters, emails, notes and questionnaires dealing with or concerning job evaluations and/or the creation of monographs for the research group and the comparison group of category 9 technicians, i.e.: Intermediate Broadcasting Technician; Intermediate Switcher; Intermediate Cameraman; Intermediate Editor and Intermediate Sound Technician from June 1995 to date.

[88] I must emphasize that the directives set out in this decision are issued subject to CBC's right to claim any and all privilege, if necessary and with supporting reasons, as provided in Rule 6(1)(e) of the Rules.

Signed by

Sophie Marchildon
Tribunal Member

Ottawa, Ontario
March 1, 2017

ANNEX

CANADIAN HUMAN RIGHTS TRIBUNAL RULES OF PROCEDURE (03-05-04)

RÈGLES DE PROCÉDURE DU TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE (03-05-04)

1 PURPOSE, INTERPRETATION

1 OBJET, INTERPRÉTATION

Purpose

Objet

1(1) These Rules are enacted to ensure that

1(1) Les présentes règles ont pour objet de permettre

(a) all parties to an inquiry have the full and ample opportunity to be heard;

a) que toutes les parties à une instruction aient la possibilité pleine et entière de se faire entendre;

(b) arguments and evidence be disclosed and presented in a timely and efficient manner; and

b) que l'argumentation et la preuve soient présentées en temps opportun et de façon efficace;

(c) all proceedings before the Tribunal be conducted as informally and expeditiously as possible.

c) que toutes les affaires dont le Tribunal est saisi soient instruites de la façon la moins formaliste et la plus rapide possible.

Application

Application

1(2) These Rules shall be liberally applied by each Panel to the case before it so as to advance the purposes set out in 1(1).

1(2) Les présentes règles doivent être appliquées de façon libérale par le membre instructeur dans l'affaire dont il a été saisi, afin de favoriser les fins énoncées au paragraphe 1(1).

6 STATEMENT OF PARTICULARS, DISCLOSURE, PRODUCTION

6 EXPOSÉ DES PRÉCISIONS, DIVULGATION, PRODUCTION

Statement of Particulars

Exposé des précisions

6(1) Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out,

6(1) Chaque partie doit signifier et déposer dans le délai fixé par le membre instructeur un exposé des précisions indiquant :

(a) the material facts that the party seeks to prove in support of its case;

a) les faits pertinents que la partie cherche à établir à l'appui de sa cause;

(b) its position on the legal issues raised by the case;

b) sa position au sujet des questions de droit que soulève la cause;

(c) the relief that it seeks;

c) le redressement recherché;

(d) a list of all documents in the party's possession, for which no privilege is claimed, that relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

(e) a list of all documents in the party's possession, for which privilege is claimed, that relate to a fact, issue or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

(f) a list identifying all witnesses the party intends to call, other than expert witnesses, together with a summary of the anticipated testimony of each witness.

...

Production of documents

6(4) Where a party has identified a document under 6(1)(d), it shall provide a copy of the document to all other parties. It shall not file the document with the Registry.

Ongoing disclosure and production

6(5) A party shall provide such additional disclosure and production as is necessary

(a) where new facts, issues or forms of relief are raised by another party's Statement of Particulars or Reply; or

(b) where the party discovers that its compliance with 6(1)(d), 6(1)(e), 6(1)(f), 6(3) or 6(4) is inaccurate or incomplete.

d) les divers documents qu'elle a en sa possession – pour lesquels aucun privilège de non-divulgence n'est invoqué – et qui sont pertinents à un fait, une question ou une forme de redressement demandée en l'occurrence, y compris les faits, les questions et les formes de redressement mentionnés par d'autres parties en vertu de cette règle;

e) les divers documents qu'elle a en sa possession – pour lesquels un privilège de non-divulgence est invoqué – et qui sont pertinents à un fait, une question ou une forme de redressement demandée en l'occurrence, y compris les faits, les questions et les formes de redressement mentionnés par d'autres parties en vertu de cette règle;

f) les noms des divers témoins – autres que les témoins experts – qu'elle a l'intention de citer ainsi qu'un résumé du témoignage prévu de chacun d'eux.

...

Production de documents

6(4) Si une partie a fait mention d'un document conformément à l'alinéa 6(1)d), elle doit en fournir une copie à toutes les autres parties. Elle ne dépose pas le document au greffe.

Divulgence et production continues

6(5) Une partie doit divulguer et produire les documents supplémentaires nécessaires

a) si de nouveaux faits ou de nouvelles questions ou formes de redressement sont soulevés dans l'exposé des précisions ou la réplique d'une autre partie; ou

b) si elle constate qu'elle ne s'est pas conformée correctement ou complètement aux alinéas 6(1)d), 6(1)e) et 6(1)f) ou aux paragraphes 6(3) ou 6(4).