

**Canadian Human Rights Tribunal Tribunal canadien des droits de la
personne**

BETWEEN:

CHRISTINE CORBEIL

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

PRO NORTH TRANSPORTATION

- and -

BRIAN GLASS

Respondents

RULING ON JURISDICTION

Ruling No. 1

2001/02/15

PANEL: Pierre Deschamps

[1] This case involves complaints brought by Ms. Christine Corbeil against Pro North Transportation and its president, Mr. Brian Glass. In her complaints, Ms. Corbeil alleges that both respondents discriminated against her by failing to provide her with a harassment free working environment, contrary to sections 7 and 14 of the *Canadian Human Rights Act*.

[2] On April 7, 2000, the two above-mentioned complaints were referred by the Canadian Human Rights Commission to the Canadian Human Rights Tribunal so that the latter could institute an inquiry into them.

[3] On May 19, 2000, as part of its case management process, the Tribunal sent a case conference questionnaire to all parties requesting a written reply. Amongst other things, the questionnaire contained the heading "Preliminary matters" under which the parties were asked to identify "any questions of law, jurisdiction or procedural matters that (they) intended to raise at the beginning of the hearing".

[4] On June 16, 2000, the Respondents forwarded to the Tribunal a completed questionnaire form. Under the heading "Preliminary matters", the Respondents identified no preliminary matters they wanted to raise.

[5] The hearing into the complaints was first scheduled for October 30 to November 3, 2000 and November 13 to 17, 2000. On August 22, 2000, the Respondents requested an adjournment. That request was denied. On October 12, 2000, the Respondents requested an adjournment *sine die* because Mr. Glass, one of the named respondents, had suffered a heart attack. The request was granted pending confirmation of Mr. Glass' medical condition and his ability to be in attendance at the hearing.

[6] On November 2, 2000, the Federal Court of Canada rendered its decision in *Bell Canada v. CTEA, CEP, Femmes Action and Canadian Human Rights Commission* ("*Bell*

Canada")⁽¹⁾ which dealt with the institutional independence and impartiality of the Canadian Human Rights Tribunal. On November 8, 2000, by way of letter, the Tribunal informed the parties of this decision and invited the parties to make written submissions.

[7] On November 16, 2000, a conference call was held. At that time, the Tribunal directed all the parties to provide their written submissions regarding the *Bell Canada* decision by no later than November 29, 2000.

[8] In a letter dated November 29, 2000, the Respondents advised the Tribunal that they intended to raise the issue of the Tribunal's independence and impartiality at the outset of the relevant hearing before this Tribunal.

[9] In their letter, the Respondents expressed the view that, until the questions identified in *Bell Canada*, were resolved, it would be improper for the Tribunal to proceed with the hearing given the Tribunal's apparent lack of independence and impartiality.

[10] On December 6, 2000, in order to allow a full, fair and efficient planning process for the hearing, the Tribunal requested that the parties deal with the issue of impartiality and independence by way of written submissions before the commencement of the hearing. It provided the Respondents until December 15, 2000 to submit written arguments and the Commission and the Complainant, until December 22, 2000. The Tribunal also requested that the parties submit their positions on the issue of waiver in light of the Federal Court of Appeal decision rendered on November 10, 2000 in *Ziindel v. CHRC et al.*⁽²⁾

[11] On December 11, 2000, the Respondents submitted their statement of particulars as well as a list of the documents which the Respondents intend to rely upon at the hearing.

[12] On December 22, 2000, the Commission, as requested, submitted written representations to the Tribunal on the issue of the institutional independence and impartiality of the Tribunal. For their part, the Respondents failed to meet their December 6, 2000 deadline and did not ask for any extension of time. To date, the Respondents have yet to provide the Tribunal with written submissions on the issue of the Tribunal's institutional independence and impartiality apart from the notice contained in their November 29, 2000 letter.

[13] Notwithstanding the fact that the Respondents have failed to submit detailed written representations, the Tribunal will nonetheless deal with the issue of its institutional independence and impartiality and, more specifically, with the question of waiver of the right to raise this issue.

[14] As it stands, the jurisprudence strongly suggests that a party wishing to attack the institutional independence and impartiality of a tribunal is to do so at the earliest practicable opportunity, failing which a party may be deemed to have waived its right to object.⁽³⁾

[15] As to what is the earliest practicable opportunity, a thorough analysis of this question was carried out by the Chairperson of this Tribunal in *Eyerley v. Canadian Human Rights Commission and Seaspán International Limited*.⁽⁴⁾

It stems from this analysis that a question pertaining to the institutional independence and impartiality of a tribunal should be raised as soon as the evidence permits. This could be as soon as a tribunal acquires jurisdiction to hear a case or a party is asked, in preparation for a hearing, to identify any jurisdictional issue it wishes to raise.

[16] In the within proceeding, the record shows that the Respondents raised the issue of the Tribunal's institutional independence and impartiality only after the Tribunal had asked the parties to make submissions on this issue following the decision in *Bell Canada*.

[17] In light of the jurisprudence, the Tribunal finds that the issue of the Tribunal's institutional independence and impartiality should have been raised at least when the Respondents were asked, in June 2000, to identify, in the case conference questionnaire, preliminary matters concerning questions of law, jurisdiction or procedure they wished the Tribunal to address. The Respondents did not, at that time, in returning the completed questionnaire, identify any such matter.

[18] The Tribunal finds that the failure to raise the issue of the Tribunal's institutional independence and impartiality in the case conference questionnaire must be deemed a waiver of the Respondents' right to object to the jurisdiction of the Tribunal.⁽⁵⁾

[19] For the foregoing reasons, the Respondents' request is dismissed. This matter shall proceed to hearing on March 19, 2001.

Pierre Deschamps

OTTAWA, Ontario

February 15, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T559/1700 & T560/1800

STYLE OF CAUSE: Christine Coorbeil v. Pro North Transportation and Brian Glass

DECISION OF THE TRIBUNAL DATED: February 15, 2001

APPEARANCES:

Christine Corbeil Complainant

Dan Pagowski For the Canadian Human Rights Commission

Ernest Coetzee Counsel for Pro North Transportation

1. [2000] F.C.J. No. 1747 (T.D.)

2. [2000] F.C.J. No. 1838 (C.A.)

3. *Zündel v. Canadian Human Rights Commission et al.*, Supra note 2; *Eyerley v. Canadian Human Rights Commission and Seaspan International Limited*, Ruling No. 4, December 19, 2000 (C.H.R.T); *McAvinn v. Canadian Human Rights Commission and Strait Crossing Bridge Limited*, Ruling No. 2, November 23, 2000 (C.H.R.T.).

4. Supra note 3.

5. *Zündel v. Canadian Human Rights Commission et al.*, supra note 2; *McAvinn v. Canadian Human Rights Commission and Strait Crossing Bridge Limited*, supra note 3.