

Canadian Human Rights Tribunal

**Tribunal canadien des droits de la
personne**

BETWEEN:

SUZANNE LARENTE

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN BROADCASTING CORPORATION

Respondent

REASONS FOR DECISION

T.D. 08/02

2002/04/23

PANEL: Roger Doyon, Chairperson

TRANSLATION

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I. INTRODUCTION

[1] On May 19, 1998, the Complainant filed a complaint to the Canadian Human Rights Commission. She alleged that her employer, the Canadian Broadcasting Corporation, terminated her employment, on December 31, 1997, in violation of section 7 of the *Canadian Human Rights Act* (the Act).

II. EVIDENCE

A. Evidence of the Commission

(i) Suzanne Larente

[2] In 1975, Suzanne Larente obtained a D.E.C. in Secretarial Science and was hired by the CBC on May 26 of the same year as a temporary Accounting Clerk. After the position was posted, she was made a permanent employee. Her work consisted in providing administrative support in various services sectors of the CBC.

[3] In 1977, she joined the Human Resources Department, where she held the position of Overtime and Leave Clerk, as well as that of Salary Administration Clerk.

[4] In 1980, the Complainant obtained the position of Recruitment Officer. Until 1994 she was given responsibility for recruiting personnel to be hired by the CBC, based on human resource needs identified by managers in the various sectors. In most cases it was a matter of hiring auxiliary, temporary or supernumerary personnel for entrance-level positions in each of the CBC's employment categories. Her work frequently led her to represent the CBC in dealings with employment agencies or at schools during career days in order to promote the positions available and to promote interest in working for the CBC. In addition to attending to the planning and organization of all the routine activities involved in recruitment and supervision of personnel, she took an active part in promoting employment equity and respect for the *Employment Equity Act*.

[5] From May to November 1989, Suzanne Larente was temporarily assigned to the position of Staffing Advisor with the role of providing guidance for the manager in choosing future CBC employees from among those submitting their candidatures. She was called upon to sit on selection committees. The Staffing Advisor also advised employees in defining their career paths. She had an opportunity to submit her candidature for Staffing Advisor positions on two occasions, but she was not chosen.

[6] During the time that she was working as a Recruitment Officer, Suzanne Larente was able to take advantage of professional development courses provided by her employer and adapted

specifically to the CBC environment. Specifically, she took courses in staff relations, job evaluation and personnel selection. She also took part in a training program for new managers.

[7] In 1993, the CBC's Human Resources Department in Montreal, under the direction of Maurice Gill, was made up of five different services, all providing specialized services (Exhibit HR-5). This structuring in specialized services was referred to as the silo structure. Responsibility for each of the services was in the hands of a section chief answerable to the department director.

[8] Among them was the Staffing and Career Service whose Chief was Marie-Josée Laverdure. This service was made up of a Recruitment Officer, Suzanne Larente; three Staffing Advisors, Nicole Benoît, Lynda Dion and Suzanne Sweeney; a Senior Clerk, Sylvie Melançon; and four Regular Clerks including Martine Turcotte who answered directly to Suzanne Larente.

[9] The Job Evaluation and Salary Administration Service was the responsibility of Gérald Renaud. Jean-Claude Béliveau and Louise Ricard held positions as Job Evaluation Analysts in this service.

[10] The Pay, Leave and Employee Benefit Administration Service was assigned to André Coupal, its Chief. Marjolaine Chartier was Supervisor of employee benefits, where Anouk Cardin was the Clerk.

[11] The department also had an Occupational Health and Safety Service and, more recently, an Information Systems Co-ordinator.

[12] The Staff Relations and Training Services came under the Vice-President of human resources in Ottawa.

[13] In October 1993, Gaétan Jacques replaced Maurice Gill as Director of the Human Resources Department at the CBC.

[14] The Complainant stresses that a wind of change heralding cuts could already be felt with the arrival of Mr. Jacques.

[15] Gaétan Jacques called together all the human resources personnel to inform them of his management philosophy. He intended to introduce a market-oriented structure based on the single-window principle. He wanted to set up multidisciplinary advisory service teams, each of which would serve a specific clientele.

[16] Consequently, the specialties of all the advisors were to be grouped into one job description, that of Human Resources Advisor.

[17] Thus the Human Resources Advisor would deliver advisory services to one part of the human resources clientele.

[18] The new structure, implemented in April 1994, consisted of seven services, including four specialized services: the Compensation Consulting Service headed by Gérald Renaud with Jean-Claude Béliveau as Analyst; the Medical and Occupational Health and Safety Service under Lise Scott; the Recruitment and Placement Service led by Lynda Dion, a former Staffing Advisor, which now also included Martine Turcotte as Human Resources Advisor; and, the Administrative Data Processing Service which was the responsibility of Marcel Lapointe. There were also three human resources services: the French Radio Human Resources Advisory Service, the English Service, the Communication, Data Processing, Internal Audit and Other Services under the responsibility of Marie-Josée Laverdure, with three Human Resources Advisors, including former clerks Marjolaine Chartier and Sylvie Melançon; the French Television Program Human Resources Advisory Service with Alain Chabot as Team Leader and Nicole Benoît and Louise Ricard as Human Resources Advisors; and the Human Resources Advisory Service, Television Operations, which was entrusted to André Coupal, where the Human Resources Advisors were Suzanne Sweeney, Suzanne Larente and Anouk Cardin (Exhibit HR-6).

[19] After the new structure had been implemented, Gaétan Jacques again called a staff meeting and announced that the new structure remained flexible in that team members could be called upon to lend a hand in another team for a given period of time in order to provide the clientele with optimum service.

[20] Gaétan Jacques also informed the personnel that the ratio of employees at human resources to total employees at the CBC would lead to layoffs. Seniority would no longer be the criterion used to make decisions on layoffs but, rather, competence.

[21] In the new organizational structure the number of employees was reduced from 55 to 49. Cuts to positions were not carried out through attrition.

[22] Suzanne Larente welcomed this reorganization with great enthusiasm. It seemed to her that her new role as a generalist would provide her with significant professional development opportunities.

[23] Gaétan Jacques left the position of Director of the Human Resources Department in June 1995. He was replaced by Marie-Josée Laverdure, who became Acting Director until February 1996, at which time the CBC made Jean Émond Director of the department.

[24] During the course of 1996, the Staff Relations and Training Services, which had come under human resources in Ottawa, were transferred to the Human Resources Service in Montreal.

[25] Staff relations remained a specialized service, whereas the training service was integrated into the duties of the Human Resources Advisors. The objective of versatility for the Human Resources Advisors, established by Gaétan Jacques, continued to be in effect. However, this integration did not take place spontaneously, since each team already had Training Advisors.

[26] In November 1996, Jean Émond left the service and Daniel Gourde accepted the position of Director. In January 1997, Daniel Gourde informed the employees that the strength of the Human

Resources Service would have to be reduced by almost 40% by the end of March 1998 (Exhibit HR-10).

[27] Consequently, he decided to carry out an in-depth reorganization of the Human Resources Service (Exhibit HR-10).

[28] To begin with, Alain Chabot was promoted Assistant Director of Human Resources until his retirement in December 1997. Gaétane Thériault, who managed training in the radio and television sectors, became Administrative Assistant in the Human Resources Directorate.

[29] Next, Daniel Gourd undertook to integrate the Staff Relations and Training Services into the human resources teams.

[30] He put in place three human resources teams, which assumed responsibility for advising managers in the areas of information, management, human resource policy implementation and organizational development.

[31] The first team, known as the TV team, was assigned to conventional television, information TV, general planning, scheduling and broadcasting, English television and communications.

[32] Huguette Wiseman, who had been in the Staff Relations Service, became Chief of this team. Carole Martineau and Chantal Fortin, who had also been in staff relations, rounded out the team together with Nicole Benoît as Human Resources Advisors.

[33] The second team, called the Operations-Support Service Team, was assigned to Television Operations, Management and National Engineering Service; the Chief was Jean Fredette, who had held an important position in staff relations. This team was joined by the following as Human Resources Advisors: Lynda Dion, Chief of the Employment and Recruitment Office, Lise Mathieu from staff relations and Suzanne Larente, who remained a Human Resources Advisor. It also included Mance Bacon, who was assigned to training.

[34] The third team, known as the Radio Team, was assigned to French radio, English radio and Radio Canada International, all components under the control of the head office. Marie-Josée Laverdure kept her position as Chief. The Human Resources Advisors were Marjolaine Chartier and Sylvie Melançon, who were joined by Nicole Yergeau, a Training Officer.

[35] Thus, Daniel Gourd allocated the personnel formerly under the control of staff relations among the various teams, to ensure retention of the expertise required to fulfil the collective agreement bargaining mandates within each sector of the CBC that these teams would have to serve.

[36] These three human resources teams were joined by a specialized team known as the Employee Benefits and Compensation Team.

[37] This team was headed up by André Coupal, who was already the Human Resources Team Leader. It consisted of four advisors, namely Jean-Claude Béliveau, Anouk Cardin, Louise Ricard and Martine Turcotte.

[38] Finally, the Human Resources Service included a Health Unit with highly specialized personnel.

[39] The inclusion of staff relations responsibilities among the responsibilities of the Human Resources Advisors required a gradual involvement of the Human Resources Advisors in staff relations issues. However, some of the advisors did not have the basic staff relations knowledge. Daniel Gourd organized a staff relations training course from April 7 to September 4, 1997 (Exhibit HR-11); those without basic knowledge in staff relations were invited to attend.

[40] Suzanne Larente took the basic staff relations course until the end of her employment with the CBC.

[41] Moreover, in June 1997, the Human Resources Directorate informed the Human Resources Advisors that a new description of their tasks would be written (Exhibit HR-13). Among other things, it stated the following:

Only one work description for the position of Human Resources Advisor will be written. It will describe the varied responsibilities and activities of the Human Resources Advisor in the multi-task environment in which we will now be working While we would like you to keep your skills up to date, we also expect you to participate, according to your abilities, in the other tasks that are the advisor's responsibility You will, moreover, be evaluated on the basis of your versatility.

[42] On June 18, 1997, the new Human Resources Advisor work description became official (Exhibit HR-15). The responsibilities of training and staff relations were added to the Human Resources Advisor's previous tasks.

[43] The incumbent advises managers and employees on the interpretation of human resources policies and programs, and co-ordinates and oversees their implementation; he or she interprets collective agreements and, on delegation, writes and negotiates them.

[44] Suzanne Larente considers that she met the requirements of the position. She states the following (Volume 1, page 113):

I developed over the years concurrently with the work description and, before 1994, was a recruitment and staffing specialist. After 1994 I worked in the other areas of human resources, as in the description. Ultimately, like all the other advisors who held a position in an advisory service team, we held positions and were called upon to play an advisory role in different areas of human resources. And yes, I was fully ready. Furthermore, I had had an opportunity to hold mandates in the new areas that were added, such as staff relations, and this had

enabled me to acquire the desired versatility to an even greater extent. I met the requirements of the position.

[45] Following the announcement by Daniel Gourd in January 1997 that positions would be cut, and after the restructuring of the Human Resources Service, rumours of imminent layoffs began to circulate.

[46] Indeed, according to Suzanne Larente, Lynda Dion told her that she had confidential information from André Coupal, Employee Benefits-Compensation Team Leader, to the effect that Marjolaine Chartier, Nicole Benoît and Jean-Claude Béliveau would lose their jobs.

[47] On Thursday, August 28, 1997, the Complainant received a telephone call from Alain Chabot, Assistant Director of Human Resources, asking her to report to Daniel Gourd's office.

[48] She was received by Daniel Gourd and the meeting took place without anyone else being present. Daniel Gourd informed her that her position had been considered to be surplus and that he had to terminate her employment as of December 31, 1997. Daniel Gourd cited budget cutbacks as the reason for this decision.

[49] The Complainant was dumbfounded and insisted on knowing the exact grounds on which this decision was based. Daniel Gourd reportedly replied (Volume 1, page 118):

It has nothing to do with you, with your competence; it is a result of budget cuts. We kept those who were likely to meet the challenge of tomorrow, overall. On the whole, we kept those who were likely to meet the challenge of tomorrow.

[50] Suzanne Larente was so distressed that she was unable to engage in conversation. She asked for a second meeting and Daniel Gourd agreed. The meeting ended with Suzanne Larente being handed an official letter of termination (Exhibit HR-16). Daniel Gourd also offered her a letter of reference, if needed.

[51] She then went to meet a consultant from Drake Beam Moring, a consulting firm whose services are retained by the CBC to help laid-off employees redirect their careers.

[52] The following week, on the Tuesday following Labour Day, she reported for work. After having met her colleagues and her immediate supervisor, Jean Fredette, she requested a second meeting with Daniel Gourd and met with him that same day.

[53] During this second meeting with Daniel Gourd, Suzanne Larente expressed a wish to keep her office until December 31, 1997 to facilitate internal measures undertaken by her to find a reassignment, to complete the staff relations courses, to take the Change Management and Human Resource Management training courses scheduled to start in the autumn, and to have her employer assume the cost of hiring an actuary to assess her financial situation upon retirement.

[54] She also wanted an explanation of the evaluation process that had been used and of the basis on which it had been decided to terminate her employment.

[55] Finally, since she was then 44 years of age and since CBC employees aged 45 were entitled to substantial benefits upon retirement, she would have liked her employment to be extended through a reassignment to human resources, to minimize her losses under her pension plan.

[56] Daniel Gourd agreed to the request to keep an office until December 31, 1997, to complete her staff relations training and for the employer to pay the cost of hiring an actuary. He also mentioned to her that his decision had been taken on the recommendation of the management team, to meet the overall needs of the Human Resources Service. He added that he had kept on staff those people who were most likely to meet the service's needs. The Complainant maintains that she took notes during this meeting (Exhibit HR-17).

[57] The Complainant considers that, because of her expertise, she was in a position to meet the service's needs. She had been evaluated in 1995 by André Coupal (Exhibit HR-21).

[58] She had been rated satisfactory in this evaluation. André Coupal mentioned that the Complainant's transfer from her position in staffing to that of Advisor in human resources had not been easy. He noted, nevertheless, that Suzanne Larente displayed a great deal of motivation and worked hard. Her strong points were that she was a methodical and conscientious worker. He saw a need for greater self-confidence and independence.

[59] Finally, Daniel Gourd mentioned to the Complainant that he could not respond in a positive manner to her request for a reassignment.

[60] Within the context of her job search, in October 1997, Suzanne Larente asked Daniel Gourd for a letter of reference. The latter asked her to prepare a draft letter and to send it to his secretary, which she did. Daniel Gourd signed this letter without making any changes to it (Exhibit HR-23).

[61] The Complainant ended her employment at the CBC on December 31, 1997.

[62] Suzanne Larente claims that her knowledge and experience should have allowed her to keep her employment in preference to Anouk Cardin or Martine Turcotte. Like Anouk Cardin, she had worked as a generalist since 1994 but Anouk Cardin did not possess the same level of skills as hers.

[63] As for Martine Turcotte, she had never been assigned to a multidisciplinary advisory service team. She had been a Clerk in the Staffing and Career Service, as well as a Recruitment Officer.

[64] As far as Marjolaine Chartier is concerned, the Complainant believes that she kept her position because, following André Coupal's departure for Ottawa, she remained the only person who had any real expertise in employee benefits.

(ii) Marjolaine Chartier

[65] From the time of her recruitment in 1972, Marjolaine Chartier held a variety of positions in the Human Resources Service at the CBC. In 1980, she became an Advisor in the Employee Benefits Service and Supervisor of that service in 1983. She had supervisory authority over one advisor and a number of assistants, including Anouk Cardin. André Coupal was the Chief of this service.

[66] This service was responsible for administering all the employee benefit plans provided by the CBC for its Montreal employees. It also looked after the insurance plans and funds that were part of the employee benefits.

[67] Following the restructuring of the Human Resources Service in 1994, she became a Human Resources Advisor attached to Marie-Josée Laverdure's team.

[68] After the reorganization of the Human Resources Service carried out by Daniel Gourd, she remained attached to the Radio Team headed by Marie-Josée Laverdure. At the time of the position cutbacks carried out by Daniel Gourd, Marjolaine Chartier was 50 years old and she was eligible for the voluntary separation incentive programs. Her Section Chief, Marie-Josée Laverdure, gave her the choice of opting for retirement or remaining at work because of her expertise in employee benefits. She also feels that she was offered the option of keeping her job because of the departure of Sylvie Melançon for Moncton and the departure of André Coupal for Ottawa.

[69] She chose to continue to work as a generalist in Marie-Josée Laverdure's team. However, she had to be absent from work from March 1998 to April 1999 because of illness. Her return to work was difficult because the duties had become more complex. At the start of 2000, a voluntary separation incentive program was announced. Marjolaine Chartier gathered the relevant information before coming to a decision. While she was studying the options open to her, she received a letter of termination of employment from her Section Chief, Serge Laverdière. The latter mentioned that she could choose between the benefits attached to termination and those available under the voluntary separation incentive program.

[70] Distraught as a result of this letter of termination, she went to meet André Coupal, at the time Acting Director of the Human Resources Service. André Coupal then withdrew the letter of termination and she opted to take advantage of the voluntary separation program.

(iii) Nicole Benoît

[71] Nicole Benoît began her career in the Respondent's Human Resources Service in 1975 as a Secretary in the Employee Benefits Service. In 1978, she was promoted to the position of Administrative Assistant in the Staff Relations Service. She continued her studies in the evening to obtain her certificate in Personnel Management from the École des hautes études commerciales (HEC) and her certificate in Industrial Relations I and II from the Université de Montréal.

[72] In 1981, Nicole Benoît was promoted to the position of Human Resources Officer at Radio Canada International, a component of the CBC that broadcasts on short wave in several languages throughout the world.

[73] This assignment gave her the opportunity to familiarize herself with all aspects of work in human resources. In 1989, she became a Staffing Advisor in the Human Resources Service under the supervision of Marie-Josée Laverdure. During the restructuring carried out in 1994 by Director Gaétan Jacques, she joined Alain Chabot's team as a Human Resources Advisor.

[74] In January 1994, Nicole Benoît was offered a posting to Ottawa for two months to work with the teams setting up the TIPPS and OCTET software. She accepted the posting, following which she resumed her position as Human Resources Advisor.

[75] In 1995, this software had to be introduced to Montreal. Gaétan Jacques, after having obtained an assessment of Nicole Benoît's potential by a psychologist, offered her the position of Project Leader for this task. Since this involved a heavy responsibility, Nicole Benoît accepted it with a promise of constant support from Gaétan Jacques.

[76] However, Gaétan Jacques left human resources and Nicole Benoît experienced difficulty in performing the task entrusted to her. Another person was tasked with providing her with the necessary support, but this did not work out, with the result that Nicole Benoît resigned from this position in February 1996 and went back to work as a Human Resources Advisor in the team headed by Huguette Wiseman.

[77] On the morning of August 28, 1997, she was summoned to the office of Daniel Gourd, who informed her of her termination on the ground that her potential did not correspond to the future directions of the Corporation.

[78] Nicole Benoît considers that she lost her employment after 23 years of service because she was 43 years of age. She maintains that, despite her age, she was in full possession of her faculties and still capable of rendering great service to her employer.

(iv) Suzanne Sweeney

[79] Suzanne Sweeney arrived at the CBC as a Secretary in 1975 and subsequently became a Staffing Advisor. Following the restructuring of 1994, she became a Human Resources Advisor at the age of 53.

[80] Suzanne Sweeney viewed her new duties as a Human Resources Advisor with apprehension (Volume 2, pages 354-55):

I did not feel that I was suited to the work and we were going to be measured; consequently I did not think that my performance evaluation would correspond to what was expected.

[81] In March 1996, a voluntary separation incentive program was announced. Because of her age and her years of service, Suzanne Sweeney was the first on the eligibility list for this program among the staff of the Human Resources Service. She decided to take advantage of the program because this was financially more advantageous for her. She asked to be included in the program and to leave her employment on December 31, 1997; the request was granted.

(v) Jean-Claude Béliveau

[82] Jean-Claude Béliveau began work with the CBC as a Mail Clerk; he later became a Storekeeper and, in 1977, a Human Resources Clerk. In 1980, he was promoted to the position of Senior Salary Analyst. In 1984, he was twinned with an economist to carry out a Canada-wide wage survey; subsequently he became a Job Evaluation Analyst. He assumed responsibility for writing the job descriptions and for carrying out evaluations.

[83] During the 1994 restructuring when Gaétan Jacques was Director, Jean-Claude Béliveau was a Human Resources Advisor in the Compensation Consulting Service. In 1996, he became Human Resources Advisor under Alain Chabot.

[84] After the arrival of Daniel Gourd, he was terminated at the 43 years of age.

B. Evidence of the Respondent

(i) Huguette Wiseman

[85] Huguette Wiseman has been a member of the Quebec Bar Association since 1973. She was hired by the CBC in 1977 as Chief of Human Resources in Ottawa, then became Officer in charge of special television information broadcasts.

[86] She was transferred to Montreal in 1984 as a Staff Relations Officer and subsequently became Chief of the Staff Relations Service for the CBC French-language networks, a service that came under the authority of the head office in Ottawa. Her team was made up of Staff Relations Advisors, among who were Carole Martineau and Chantal Fortin.

[87] In 1997, Daniel Gourd undertook to incorporate the Staff Relations Service into the Human Resources Service. Huguette Wiseman was entrusted with responsibility for the Television Team (Exhibit HR-10). Her mandate was to oversee the implementation of the collective agreements signed with the Association des réalisateurs (AR), the Syndicat des communications de Radio-Canada (SCRC), the Union des artistes (UDA), the Société des auteurs, recherchistes, documentalistes et compositeurs (SARDeC), and the Guilde des musiciens.

[88] Carole Martineau and Chantal Fortin remained in Huguette Wiseman's team and were joined by Nicole Benoît and Claude Canuel, the latter working as a Training Advisor.

[89] Following the restructuring, Daniel Gourd had to reduce the number of people in the Human Resources Service. He therefore asked her to evaluate the employees under her responsibility in order to identify those who were most apt to fulfil the team's mandate efficiently.

[90] Huguette Wiseman had no written criteria available to her outlining the procedure for evaluating the personnel in her charge. Daniel Gourd had asked that the personnel be evaluated in terms of their experience, interest in a more varied workload, versatility, flexibility, aptitude for working in staff relations and succession potential.

[91] Following an analysis of the academic record submitted to her by Nicole Benoît, as well as of the latter's work record, Huguette Wiseman made known her opinion to Daniel Gourd as follows (Volume 4, page 563):

I informed Daniel that I did not think that Nicole was capable of fulfilling the mandate, which was a new mandate, it should be emphasized. A change of direction was in progress, an attempt was being made to set up multi-task teams, to harmonize the various disciplines so to speak. For my part, I told Daniel fairly quickly that I considered that Nicole Benoît was not able to fulfil this mandate.

I had, on a number of times, occasion to discuss files dealing with different subjects with her, and I came to the conclusion that she had considerable difficulty in analysing a problem rapidly, in summing up a situation. A great deal of time was lost over details and I tried to make her see how it was really essential to focus on the essence of problems.

[92] She maintains that she never took Nicole Benoît's age into account in reaching her decision.

[93] Daniel Gourd had informed Huguette Wiseman that he had been very impressed with the work of Martine Turcotte, with whom he had had contact in connection with the re-evaluation of management positions at the CBC. He had mentioned to her that he intended to assign Martine Turcotte to his team.

(ii) Jean Fredette

[94] Jean Fredette obtained a B.A. in Industrial Relations following completion of his studies at the Université de Montréal in 1971.

[95] From 1972 to 1978, he was employed at Revenue Canada as a Staff Relations Officer, then in personnel administration and, finally, as Chief of the Staff Relations Program Section.

[96] In 1978, he joined the CBC as the first national Industrial Relations Officer, with a mandate to manage 13 union certification units. Over the years, as a result of amalgamations, the number of units decreased to four.

[97] Following Daniel Gourd's arrival as Director of the Human Resources Service in the autumn of 1996, the Staff Relations Service was incorporated into the Human Resources Service.

[98] Jean Fredette agreed to become the Chief of a team in the Human Resources Service whose clientele was Television Operations, Management Services and National Engineering.

[99] This team had a mandate to plan, manage and co-ordinate the work of human resources, and to provide staffing, training and management services.

[100] The team was also in charge of the application of collective agreements signed with the Syndicat des techniciens et artisans de Radio-Canada (STARC), which has 1,200 members, and with the Canadian Union of Public Employees (CUPE), which represents office workers.

[101] The team of Jean Fredette was made up of three Human Resources Advisors: Lynda Dion, formerly Chief of the Recruitment Office, Lise Mathieu, formerly Senior Staff Relations Officer, and Suzanne Larente, retained in her own position. Mance Bacon joined this team as Training Advisor.

[102] At the end of 1996, Jean Fredette chaired a negotiating committee with STARC in which he acted as spokesperson. In addition to assuming responsibility for the staffing service, Lynda Dion joined Lise Mathieu as a member of the negotiating team dealing with CUPE and an agreement was reached in September 1997.

[103] A memorandum of understanding envisaging job cuts was signed with STARC in mid-December, but it was rejected by the members and the parties found themselves in conciliation in January and February 1997. An agreement was reached on April 1, 1997. Suzanne Larente was asked to work with Jean Fredette in developing various negotiation scenarios. He was very satisfied with the Complainant's work.

[104] Daniel Gourd had informed the staff of the Human Resources Service that there would be job cuts. Jean Fredette had to cut one of the positions in his team, while at the same time furthering the team's mandate which was to advise its clientele in the areas of staff relations, training, staffing, organizational development and human resources in general. Moreover, as Daniel Gourd pointed out, he had to promote versatility among the staff since this was essential to the maintenance of an appropriate service.

[105] Jean Fredette decided that Mance Bacon had to remain as a member of the team because she was the only person to have worked in the field of training. As for Lise Mathieu, she was a staff relations specialist and had to continue work on files already entrusted to her. Because of their expertise, these two persons had to be kept in their positions to maintain the quality of the team's service.

[106] Jean Fredette had to make a choice between Lynda Dion and Suzanne Larente. He chose to retain Lynda Dion in her position and justified his decision in the following terms (Volume 4, pages 648-49):

... Until January 1997, Lynda was Chief of the Recruitment Service. Lynda's career progression had been more rapid than that of Suzanne. Lynda, as I also mentioned, had been assigned to other files and had served, notably, on the CUPTE negotiating committee. It was in the light of these considerations that I decided to opt for Lynda.

Her experience, the way in which she handled new tasks gave some indication of how she might deal with the new situation in the future ... and that was it, her career development, her progress, her experience, her potential.

[107] He maintains that age was not a factor he took into account to guide his decision. He made his choice known to the other team leaders and to Daniel Gourd, who took the decision in the final analysis.

[108] The final decision, to the best of Jean Fredette's recollection, to terminate Suzanne Larente's employment was taken at the end of June 1997.

(iii) Gaétan Jacques

[109] Gaétan Jacques has a B.A. in Industrial Relations from the Université de Montréal, which he obtained in 1982, and an M.B.A. in International Business from the École des hautes études commerciales in Montreal, obtained in 1992. He started his career with Consolidated Bathurst in 1982 where he held various positions connected with human resources, including that of Director of Human Resources in a Shawinigan factory from January 1988 to April 1990. Before his arrival to work for the Respondent, he was Senior Co-ordinator of the total quality procedures.

[110] He had developed skills in adapting work organization to the new technologies, market constraints and financial constraints facing companies.

[111] Gaétan Jacques was hired by the CBC in October 1993 as Director of the Department of Human Resources as a replacement for Maurice Gill.

[112] The mandate that he was then given was to establish a Human Resources Service, one that would be able to meet the new needs of the CBC, which was undergoing a major work reorganization. There was a merging of union certifications and collective agreement negotiations. He wanted the Human Resources Service to be able to support managers in the numerous organizational changes that were going to take place. He also had a mandate to comply with the budgetary restraints ordered by the government with respect to the CBC in the budget of April 1993.

[113] Gaétan Jacques found that, at the CBC, specialization was carried to extremes, not only in the Human Resources Department but also in all sectors of the organization. To him, the organization of work in a silo structure was unproductive and generated disproportionate labour costs when compare whit what might be reasonably expected in a modern corporation. It was his intention to implement a system of work organization based on the single-window principle, which ensures flexibility and versatility.

[114] He was therefore in favour of manning the Human Resources Department with teams of multidisciplinary advisory services, each assigned to specific clientele and competent to advise these clientele on the full range of human resources services. A manager would therefore no longer have to call upon several specialized intervenors to meet his needs. He wanted the

professionals of the Human Resources Department to be generalists, capable of fulfilling all aspects of the human resources role.

[115] Gaétan Jacques also found that the number of people working in the Human Resources Department, some 55 employees, was much too high in relation to the total number of employees within the organization, all the more so in that the department did not include the Staff Relations and Training Services. Moreover, there were far too many clerical positions in relation to professional positions.

[116] He held meetings with the staff to outline his findings and his vision of the Human Resources Department. He told the staff that the administrative reorganization could lead to job losses at the clerical level as a result of the introduction of automated systems in human resources such as TIPPS and OCTET. These were automated human resource management systems that would allow for the elimination of all clerical involvement in data capture from payroll management.

[117] Gaétan Jacques also explained that the Human Resources Service was a support service for managers that had to be productive, using as few resources as possible. To achieve this objective, the contribution of the Human Resources Service would be increased substantially; this could be done if services were provided by professional employees rather than holders of clerical positions.

[118] Gaétan Jacques also informed the staff that the principle of seniority or number of years of service as the predominant consideration in promotions would be abandoned. In future the first considerations in advancement would be competence and university training. The latter would include human resources training, in keeping with the quest for a multidisciplinary advisory service. Consequently, in April 1994, the Human Resources Service would be completely reorganized on the basis of client service, to be provided by Human Resources Advisors (Exhibit HR-6).

[119] In his opinion, the process of posting job openings had outlived its usefulness in the Human Resources Service. He felt that in an organization with some 50 employees the managers had a sufficient knowledge of the skills of the personnel to be able to choose those who would obtain promotions should the need arise.

[120] It was in accordance with this policy, without any job openings being posted, that Martine Turcotte, Anouk Cardin and Louise Ricard, all of whom had university degrees, were promoted Human Resources Advisors, with a 12-month probationary period beginning on April 4, 1994, and that Suzanne Larente was promoted Human Resources Advisor.

[121] The outcome of this administrative reorganization was that the tasks performed by the various specialized employees were now grouped together into one job, that of Human Resources Advisor, who would in future assume an advisory role in all aspects of the Human Resources Services.

(iv) Marie-Josée Laverdure

[122] Marie-Josée Laverdure has a B.A. in Sociology and has done the coursework for an M.A. in Sociology.

[123] She was hired by the CBC in 1971 as Officer in charge of the Employment Office.

[124] In 1973, Marie-Josée Laverdure was given responsibility for staffing. Then, in 1975, she became responsible for both the office and staffing.

[125] In 1977 she was promoted Co-ordinator of the Equal Opportunities Program in the CBC's French Services Division, namely French Radio and Television from Moncton to Vancouver.

[126] In 1980, she returned as Team Leader of the Staffing and Career Service, where she remained until 1993. Following the reform undertaken by Gaétan Jacques in 1994, she became Chief of the Human Resources Advisory Service consisting of three Human Resources Advisors and three Assistants.

[127] In June 1995, she accepted the position of Acting Director of the Human Resources Service, until the arrival of Jean Émond in February 1996. She then returned to her former position. She kept three Human Resources Advisors.

[128] Marie-Josée Laverdure was least affected by Daniel Gourd's reforms. Thus, she kept her three Human Resources Advisors, namely Marjolaine Chartier, Sylvie Melançon and Gilles Proulx. The latter opted for voluntary retirement a few months later and Sylvie Melançon was posted to Moncton for a three-year period to occupy the position of Chief of Human Resources. She returned to Montreal on July 24, 2000 as a Human Resources Advisor. Consequently, she worked with Marjolaine Chartier in the position of Chief of Human Resources and was later joined by Nicole Yergeau, Training Advisor, and Chantal Fortin, Staff Relations Advisor.

[129] Because her team was the least affected, she was consulted to a minimal extent by Daniel Gourd. She was present at the meeting between Marjolaine Chartier and André Coupal following Marjolaine Chartier's receipt of a letter of termination from her supervisor Serge Laverdière.

(v) Lynda Dion

[130] Lynda Dion began her employment at the CBC in 1977 as a Human Resources Assistant and, in 1987; she obtained a promotion and became a Staffing Advisor. In 1994, she was promoted to the position of Chief of the Recruitment Department; subsequently, in 1997, she became a Human Resources Advisor.

[131] She has a B.A. in Industrial Relations, with a minor in Personnel Administration, which she obtained by taking evening classes.

[132] Following the restructuring of the Human Resources Service in 1997, a climate of insecurity prevailed among the staff, who were waiting for the layoffs that Daniel Gourd had

announced. Rumours circulated concerning when and how the layoffs would take place and the number of employees likely to be laid off. Conversations among the employees were rife with speculation.

[133] Nevertheless, Lynda Dion categorically denies having said to Suzanne Larente that she had been told in confidence by André Coupal that Marjolaine Chartier, Nicole Benoît and Jean-Claude Béliveau would be laid off.

(iv) André Coupal

[134] André Coupal holds a B.A. in Industrial Relations, which he obtained in 1984 at the Université de Montréal. In 1975 he entered the service of the CBC where he occupied various positions, from the clerical level to that of Industrial Relations Officer, to which position he was promoted in 1981. In 1986, he was promoted Senior Industrial Relations Officer and, in 1989, Chief of Employee Benefits, Leave and Pay Administration. His supervisor in the Employee Benefits Service was Marjolaine Chartier, while Anouk Cardin was Clerk in that same service (Exhibit HR-5).

[135] Following the restructuring of the Human Resources Service carried out by Gaétan Jacques in 1994, André Coupal became Chief of the Human Resources Advisory Service, T.V. Operations. Suzanne Sweeney, Suzanne Larente and Anouk Cardin were promoted as Human Resources Advisors assigned to this service, as were three Human Resources Assistants (Exhibit HR-6).

[136] In January 1997, following Daniel Gourd's reform, he became Chief of the Compensation, Employee Benefits and Job Evaluation Advisory Service. Anouk Cardin remained with him as a Human Resources Advisor and was joined by Louise Ricard, Jean-Claude Béliveau and Martine Turcotte (Exhibit HR-9).

[137] Subsequent to this reform, Daniel Gourd advised André Coupal - like all the Section Chiefs - that he would have to evaluate the staff in his service in the light of the impending cutbacks. He asked him to evaluate employees in such a way as to accurately validate the competencies of each and to determine the level of versatility within the advisor teams.

[138] André Coupal evaluated the personnel in the presence of Louise Ricard, the Senior Human Relations Advisor. She had been assigned the role of André Coupal's replacement because the latter was frequently absent to travel to Ottawa in his capacity as Officer in charge of the TIPPS project, a responsibility that he assumed until June 1997. Louise Ricard had to remain in the team because of her expertise and experience.

[139] As for Martine Turcotte, she was an excellent advisor, replacing Anouk Cardin who was on maternity leave.

[140] With regard to Anouk Cardin, she had been hired by André Coupal in 1993 to work as a Clerk in his service. She became a Human Resources Advisor during the restructuring undertaken in 1994.

She is a very dynamic advisor, displaying a great deal of judgment; she performs her work very rapidly and is a fast learner. She soon displayed versatility in the fields in question. (Volume 6, page 899)

[141] Following this evaluation, André Coupal recommended to Daniel Gourd that Jean-Claude Béliveau's position be cut because he was a person over-specialized in evaluation and could not meet the requirement for versatility in the team. He maintains that age did not play any part in reaching that decision.

[142] André Coupal recounts that, at the time of Daniel Gourd's restructuring, it would have been possible - in conjunction with the other team leaders - to transfer an advisor from one team to another. He considers that he had the advisors to meet the needs of his team and that there was no reason to make any changes.

[143] André Coupal maintains that, during the reform carried out by Gaétan Jacques, Marjolaine Chartier had expertise in employee benefits, but she did not have the expertise of Lise Ricard or Anouk Cardin.

[144] At the time of the reform undertaken by Daniel Gourd, both Louise Ricard and Anouk Cardin mastered the social benefits portfolio, with the result that it was not necessary for Marjolaine Chartier to join his team.

[145] Furthermore, André Coupal had carried out an evaluation of Anouk Cardin's work as a Human Resources Advisor for the period from April 1994 to May 1995. Under the heading "overall results", we read the following (Exhibit I-8):

Anouk jumped at the opportunity offered her to show that she had what it took to be an advisor. Although at a junior level, she met the challenges of another level. She is eager to learn and very efficient. Her contribution to the team is above the average.

[146] André Coupal did not consider Suzanne Larente as a potential candidate for his team because he believed that Anouk Cardin's performance was superior to that of Suzanne Larente, for whom he had also done an evaluation for the period from April 1994 to May 1995 (Exhibit HR-21). He explains this in the following terms (Volume 6, pages 912, 913 and 914):

When I did the evaluation, I realized that, in any case, throughout that entire year Anouk had performed much better, she was much faster. She had better judgment and her contribution was really above the average.

As regards Suzanne Larente, she put a great deal of effort into her work and displayed a great deal of willingness. However, the transition to the new role proved to be difficult. She found it difficult to leave her roles in staffing and recruitment behind her, and she needed more time to adapt to the new role.

Some aspects of her ability to work independently were paradoxical; what I mean to say is that there are things about which she always asked me the same questions. She often asked me to confirm something that, in my view, she should have known long ago and that was often commonplace.

On the other hand, there were at least two or three other occasions where she acted on her own initiative in matters where, in my opinion, she should have consulted me. Among other things, at one time she confirmed to a set designer that she could pay \$70,000 of her cash-out into a registered retirement savings plan, whereas in fact the amount that she could transfer was \$90,000.

In another case, also involving a graphic arts designer, she confirmed to him that we were going to pay him more than \$6,000 for annual leave, although in fact we did not owe him this amount. I had to meet with this individual several times in order to discuss the matter with him and to convince him not to take the Canadian Broadcasting Corporation to court because of something that one of its officers had told him.

[147] André Coupal was called upon to comment on the incidents surrounding the sending of a letter of termination to Marjolaine Chartier in March 2000 while he was Acting Director of the Human Resources Service.

[148] The Chief of the team of advisors in which Marjolaine Chartier was working, namely Serge Laverdière, had notified Marjolaine of the difficulties that she was encountering in the performance of her work. She had a great deal of difficulty in following the pace of work, in adapting to the computer, for example, and her performance was not satisfactory.

[149] André Coupal knew that Marjolaine Chartier had gathered information because she was considering taking advantage of the voluntary separation program put in place in 2000 and for which she was eligible, but he did not know if she had taken a decision.

[150] He was also aware that Sylvie Melançon, who had been working in Moncton as Chief of Human Resources since 1997, was returning to Montreal in July 2000 and that her return would create a surplus position.

[151] After having discussed the situation with the Section Chief and the Vice-President of Human Resources in Ottawa, he authorized the sending of a letter of termination of employment to Marjolaine Chartier.

[152] Upon receipt of the letter of termination, Marjolaine Chartier asked for a meeting with André Coupal, which took place that same day. He found Marjolaine Chartier to be deeply distressed by this letter of termination. She refused to be simply laid off after so many years of service. She felt humiliated that her career should end with a layoff. To her the concept of "layoff" was unacceptable, despite the fact that she had known for a long time that this was the procedure to be followed.

[153] Being himself shaken by Marjolaine Chartier's behaviour, André Coupal decided to withdraw the letter of termination. However, he came to an understanding with her that the letter would be reactivated if she did not opt for the voluntary separation program.

[154] Marjolaine Chartier decided to take advantage of the voluntary separation program, since this was as financially advantageous as the termination indemnity to which she was entitled.

[155] Informed of Suzanne Larente's statements in her testimony to the effect that he had given privileged information to Lynda Dion concerning the identities of persons who would be laid off, André Coupal categorically denied having given any such information.

(vii) Lise Mathieu

[156] Lise Mathieu joined the CBC in 1972 as a Clerk in the Employment Office. After working as a Staffing Technician and Advisor from 1980 to 1987, she became a Staff Relations Officer for the artists and, in 1989, was promoted to the position of Senior Staff Relations Officer, whose role is to act as a negotiator. In 1997, during the reforms implemented by Daniel Gourd, she became a Human Resources Advisor.

[157] Daniel Gourd had given Martine Turcotte the task of rewriting the work description for Human Resources Advisors. This new work description had to encompass the tasks of Staff Relations Officers, Training Advisors and Human Resources Advisors (Exhibit HR-15).

[158] The new work description for Human Resources Advisors provoked a lively reaction, especially from Staff Relations Officers, who saw their responsibilities as being reduced. Their prerogative to negotiate and write collective agreements was now subject to delegation from the Section Chief or the Director of Human Resources, which had not been the case previously.

[159] Following explanations and discussions among the persons affected, the new work description was harmoniously accepted.

[160] Lise Mathieu tabled a document (Exhibit I-9) showing that, from October 31, 1995 to October 31, 1998, the Corporate Industrial Department had implemented six layoffs. Among the persons laid off, one was 29 years of age, two were in the 46-to-48-year range and three were between 52 and 55 years of age.

[161] For the Human Resources Department, Exhibit I-10 shows that between August 31, 1995 and March 31, 2000, 11 persons had their employment terminated, five of them being between 35 and 40 years of age and six between 43 and 48 years of age.

[162] Finally in August 1997, there were 41 employees assigned to the Human Resources Service - 38 after the layoffs of Nicole Benoît (44 years of age), Suzanne Larente (43 years of age) and Jean-Claude Béliveau - five of these employees being in the 28-to-29-year age group, fifteen being between 30 and 39 years of age, twelve being between 40 and 49 years of age, and six being aged 50 or 51.

(viii) Daniel Gourd

[163] For 15 years Daniel Gourd was a Journalist in radio and television, a Teacher and eventually a Producer at CBC. Subsequently he rose to a management position as Co-ordinator of religious broadcasts and, following that, became Co-ordinator of regional production in CBC's French television. From 1994 to 1996, he was Corporate Affairs Manager and Bargaining Co-ordinator for the CBC's French-language network.

[164] In November 1996, he accepted the position of Director of the Human Resources Service.

[165] Upon his arrival in the Human Resources Service, he had to contend with budget cuts of the order of \$400 million for the Canadian Broadcasting Corporation, ordered by the government. To implement the budgetary constraints, it became necessary to cut numerous positions, including cuts of 40% in the Human Resources Service. Furthermore, this had to be done by the end of March 1998.

[166] On January 10, 1997, Daniel Gourd undertook an organizational restructuring of the Human Resources Service (Exhibit HR-10).

[167] Once the reorganization of the Human Resources Service was completed, Daniel Gourd had to make cutbacks in the number of employees, as he had announced.

[168] Aware that personnel cutbacks in the Human Resources Service were inevitable, Daniel Gourd wanted to ensure that the employees who remained in place were capable of providing the best possible service. To start with, he intended to maintain the multidisciplinary teams set up by his predecessor, Gaétan Jacques, for the implementation of the single-window principle.

[169] Furthermore, he recommended employee versatility, both current and potential. He also attached great importance to succession potential. Daniel Gourd was of the opinion that it was always necessary to make provision for continuity. To this end, each director had to identify at least one person in his or her sector who had potential to assure the succession.

[170] He believed that the introduction of the TIPPS and OCTET systems, as well as advances in informatics, would lead to a reduction in administrative personnel, thus making it possible to retain the services of the Human Resources Advisors.

[171] The introduction of these systems, however, did not bring the anticipated results and layoffs among the administrative personnel were not as extensive as anticipated.

[172] Consequently he had to turn his attention to the Human Resources Advisor positions. While retaining the primary objective that each team had to have the necessary expertise to cover the full range of services, Daniel Gourd decided to reduce the number of Human Resources Advisors in each team from five to three.

[173] He held the view that each team had to be made up in the first instance of advisors assigned to staff relations, training and organizational development. They were followed by

advisors assigned to staffing, recruitment and job evaluation, since these activities were of lesser importance in a context of budget reductions and job cuts.

[174] As a result of his personal expertise in staff relations and training, as well as his knowledge of the mandates that had to be fulfilled, he decided to retain the services of Human Resources Advisors with expertise in staff relations, namely Chantal Fortin, Carole Martineau and Lise Mathieu. On the training side, he retained Claude Canuel, Mance Bacon and Nicole Yergeau.

[175] It became clear that the layoffs would affect the Human Resources Advisors working in staffing, recruitment and job evaluation.

[176] Since Daniel Gourd did not have the necessary knowledge in staffing, recruitment and job evaluation, he asked for the advice of his Assistant Director, Alain Chabot, who had been Team Leader in human resources and knew the persons involved.

[177] Furthermore, he asked the Team Leaders to carry out evaluations. He did not identify written evaluation criteria but stressed that the evaluation should be based on expertise, versatility and succession potential. Daniel Gourd maintains that the employees knew of these criteria in that they had been informed of them orally and, in part, in writing by the internal memorandum of June 9, 1997 (Exhibit HR-13).

[178] He describes expertise as a combination of experience, or the number of years spent working in the various disciplines, and knowledge.

[179] Versatility is defined as the ability to work more or less competently in fields other than one's field of specialization. The potential for and interest in versatility must be considered.

[180] Succession potential is demonstrated through an ability to assume increasingly complex duties that involve increasingly greater challenges, and to do so at all levels.

[181] Daniel Gourd claims that age played no part when evaluating succession potential. He expresses himself as follows (Volume 3, page 545):

I am a replacement for Madame Michèle Fortin, currently Vice-President of Television, and I am 54 years of age. Huguette Wiseman, Chief of the television team, was my potential replacement. She was 50 years of age. Alain Chabot was also my potential replacement and he was 50 years old. Replacement or succession potential is the ability to take on a responsibility at a higher level, one or two levels above your own, and age has nothing to do with that.

[182] Once their work was completed, the Team Leaders recommended the termination of Nicole Benoît, Jean-Claude Béliveau and Suzanne Larente; Daniel Gourd acted on their recommendations.

[183] Subsequently he held discussions with the Team Leaders regarding the allocation of personnel within the teams. Some Team Leaders wanted certain employees on their teams in

preference to others, and Daniel Gourd had to make the decision. Thus, for example, André Coupal wanted to have the services of Martine Turcotte. Daniel Gourd assigned Martine Turcotte to the Television Team under the leadership of Huguette Wiseman. He justified his decision by explaining that he had been able to assess her considerable skills while working with her on a specific file.

[184] Finally, Daniel Gourd made a decision regarding the organization of the Human Resources Service and informed the staff accordingly on August, 28 1997 (Exhibit HR-18).

[185] The Television Team was made up of Huguette Wiseman as Chief, Laurent Ouimet in training, Carole Martineau in staff relations and Martine Turcotte in staffing and miscellaneous advice.

[186] The Television Operations Support Service Team was under the direction of Jean Fredette, with Mance Bacon in training, Lise Mathieu in staff relations and Lynda Dion in staffing, recruitment and miscellaneous advice.

[187] The Radio Team was under the leadership of Marie-Josée Laverdure, with Nicole Yergeau in training, Chantal Fortin in staff relations and Marjolaine Chartier in staffing and miscellaneous advice.

[188] It should be mentioned that Gilles Proulx left this team to take his retirement. As for Sylvie Melançon, she had accepted a three-year mandate as Chief of Staff Relations in Moncton. However, it had been agreed with Daniel Gourd that she would be able to return to Montreal, if she so wished, upon the expiry of her posting.

[189] It was up to Daniel Gourd to inform the personnel affected by the layoffs.

[190] He had a meeting with Nicole Benoît to inform her of his decision. He explained to her that, while her competence was not being called into question, because of the new direction being embarked on by the Human Resources Department, her skills did not match those sought.

[191] Jean-Claude Béliveau was highly specialized in job evaluation and did not intend to develop skills in other fields. Consequently, his great expertise in evaluation was less needed within the context that prevailed at the time.

[192] As far as Suzanne Larente is concerned, a first meeting took place to notify her of her termination of employment. This news was a considerable shock for the Complainant; the exchange was brief, with not much detail as to the reasons for the decision.

[193] Daniel Gourd had a second meeting at the request of Suzanne Larente. He explained to her that, within a context of job cuts, choices had had to be made and her position had not been retained. He added that the decision had been based on considerations of expertise, versatility and succession potential, and that she did not have sufficient versatility and succession potential. He denied categorically having mentioned that room had to be made for younger people.

[194] Asked to comment on the fact that age might have played a part in the decision-making, Daniel Gourd stated as follows (Volume 3, page 455):

Absolutely not. Look, I will tell you frankly that whenever I am asked to give someone's age, I have difficulty coming up with an answer. It is not one of my main concerns. All the decisions that were taken were genuinely based on the criteria that I spoke to you about.

If you look at the number of people who remained, there were many among them who, it is quite obvious today, are people who belonged to the same generation. Age was not a criterion, at any moment whatsoever, that played a part in the decisions that I took.

[195] Daniel Gourd also claims that he is quite sure that, during this second meeting with Suzanne Larente, she did not take any notes. In support of this claim, he maintains that he always insists on looking people in the eyes when he is talking to them; he considers this even more important under the circumstances in which he was meeting the Complainant, namely to inform her of the reasons for her termination.

[196] Daniel Gourd had to explain his reasons for signing the letter of reference prepared by the Complainant, the content of which was exaggerated (Volume 3, pages 540-41):

Q. So you do not consider it to be important, as a manager ...

A. I think it is very important.

Q. ... not to sign exaggerated letters ?

A. I think it is very important.

R. And it is important to be careful not to sign letters ...

A. I think it is very important. I also think it is very important to enable someone who is being laid off to have a chance to find a job; in this situation, faced with two important considerations, I chose the one that I found to be more important. I did this to give the best possible letter to the person in this situation, who needed such a letter to be able to find a position, as she said at the time.

S. Therefore, what you are saying is that there are certain reasons that can justify the signing of exaggerated letters?

T. I agree that I was not doing a disservice to future employers with this letter, because I knew that Ms. Larente was a competent employee, a good employee. Therefore, by making a recommendation that would enable her to find another position, I knew that I was not doing a disservice to a potential employer. The letter and the criteria that she assigned to herself, namely the level, I found this to

be exaggerated but I was not ready to start bargaining with Ms. Larente by saying: Look, Ms. Larente, don't you think you are laying it on a bit thick, etc.

Consideration must also be given to the circumstances. So I had a choice of signing or not signing. I found this letter to be exaggerated, but in the circumstances - and I admit today that I made a mistake - I made a judgment in the circumstances that I should sign her letter.

So I made a mistake, that is what you are asking me, yes, I made a mistake by signing that letter. It is the only time that I have done that and I should not have.

III. LAW

[197] The complaint of Suzanne Larente refers to the application of section 7 of the *Canadian Human Rights Act* (the Act):

It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

[198] Section 3 of the Act establishes that age is a prohibited ground of discrimination.

[199] In the *Etoobicoke*⁽¹⁾ case, the Supreme Court ruled that, in a matter of discrimination, it was up to the Complainant to establish *prima facie* evidence of discrimination.

The Complainant has the initial burden to demonstrate sufficient proof, until proof to the contrary, of discrimination; once this proof has been established, it is the Respondent who must establish justification according to the balance of probabilities. [TRANSLATION]

[200] Sufficient proof was defined in the *O'Malley*⁽²⁾ case as being "one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the Complainant's favour in the absence of an answer from the Respondent-Employer."

[201] Once the *prima facie* case has been established, it is up to the Respondent to refute this evidence by providing a reasonable explanation to justify his conduct. It is the Tribunal's responsibility to assess the credibility of the explanation in the light of the whole of evidence.

[202] Direct evidence of discriminatory acts is not easy to provide, since it is rare for the discriminatory acts to take place in a very clear manner. Consequently, in the absence of direct evidence, the Federal Court has stated in the *Chopra*⁽³⁾ case that "discrimination may be established by way of inference, through the use of 'circumstantial evidence'. This latter type of

evidence, which may be likened to a jigsaw puzzle, usually depends on a series of facts, each of which would by itself be insufficient to conclude to an inference of discrimination but when combined may justify it."

[203] In a discrimination case relating to employment, the Complainant is not required to show that the discrimination based on age was the only reason that guided the employer in reaching his decision. In the *Chopra* case, the Court teaches us as follows:

... However, it is sufficient to reach a conclusion that discrimination was one of the factors that influenced the employer in refusing Mr. Basi the position; it is not incumbent on me to determine that it was the sole or primary reason for that decision.

IV. ANALYSIS

[204] Before 1994, the Human Resources Department at the CBC was made up of various specialized services, namely the Staffing and Careers Service, the Job Evaluation and Salary Administration Service, the Pay, Leave and Employee Benefits Administration Service, and the Occupational Health and Safety Service.

[205] In the Staffing and Careers Service, Lynda Dion, Nicole Benoît and Suzanne Sweeney worked as Staffing Advisors, while Sylvie Melançon was employed as Senior Clerk. The service also included a Recruitment Officer, Suzanne Larente, and a Clerk, Martine Turcotte.

[206] In the Pay, Leave and Employee Benefits Administration Service, Marjolaine Chartier supervised the Employee Benefits Team. Anouk Cardin was the team's Clerk.

[207] In the Job Evaluation and Salary Administration Service, the Job Evaluation Analyst positions were held by Jean-Claude Béliveau and Louise Ricard.

[208] In 1994, Gaétan Jacques, at the time Director of the Human Resources Department, discontinued specialty-based client service and adopted a new organizational structure, namely a market-oriented structure aimed at providing the clientele with the full range of human resources services.

[209] Thus employees who had been working in specialties changed their status from that of specialists to that of generalists by becoming Human Resources Advisors.

[210] These Human Resources Advisors were ultimately required to provide services for a defined clientele in areas that had been previously served by specialists.

[211] Consequently, Nicole Benoît, a Staffing Advisor, and Louise Ricard, a Job Evaluation Analyst, were promoted to the level of Human Resources Advisor in Alain Chabot's team.

[212] Staffing Advisor Suzanne Sweeney and Recruitment Officer Suzanne Larente were promoted Human Resources Advisors in André Coupal's team.

[213] The supervisor of the Employee Benefits Service, Marjolaine Chartier, was promoted Human Resources Advisor in Marie-Josée Laverdure's team.

[214] Job Evaluation Analyst Jean-Claude Béliveau was promoted to the position of Human Resources Advisor in Gérald Renaud's team. Staffing Advisor Lynda Dion was promoted as Chief of the Recruitment and Placement Service.

[215] All these persons who became Human Resources Advisors found themselves on an equal footing. All of them certainly had acquired expertise in their respective specialties, except for the Complainant, who had temporarily occupied a position as Staffing Advisor from May to November 1989.

[216] From that point on, they gradually had to meet the challenge of fulfilling the duties then incumbent on Human Resources Advisors.

[217] Moreover, since the position of Human Resources Advisor called for a more extensive knowledge of human resources, Gaétan Jacques decided that employees who held university degrees would be promoted Human Resources Advisors. In line with this thinking, the Senior Clerk in the Staffing and Career Service, Sylvie Melançon, was promoted Human Resources Advisor in Marie-Josée Laverdure's team. Anouk Cardin, a Clerk in the Employee Benefits Service, was promoted Human Resources Advisor in André Coupal's team. As for Martine Turcotte, a Clerk in the Recruitment Service, she was promoted Human Resources Advisor in Lynda Dion's team. They were all subject to a twelve-month probationary period.

[218] They would also have to adapt to their new tasks and gradually show that they are able to meet the requirement of this new position.

[219] All these persons were promoted Human Resources Advisors without competition. In the view of the Commission's Counsel, the CBC, by its decision to grant a position of Human Resources Advisor to employees holding university diplomas, created an employment policy.

[220] It was incumbent on the CBC to demonstrate, according to the jurisprudence, that this policy was adopted in good faith, that it was neutral, that it had no adverse effect on a group on a prohibited ground such as age, and that it was essential for the fulfillment of the goals that it pursued.

[221] The Commission's Counsel maintains that the rule requiring employees to possess a university degree to qualify for the position of Human Resources Advisor - although it may appear neutral in itself - had the effect of disadvantaging persons in the Complainant's age group. He submitted statistical evidence (Exhibit HR-34) to show that in 1994 there were far fewer persons in the Complainant's age group who held a university degree than those in Anouk Cardin's and Martine Turcotte's age group. Consequently, persons in Suzanne Larente's age group were disadvantaged by this policy.

[222] Moreover, the CBC had to demonstrate that the adoption of such a policy was a Bona Fide Occupational Requirement. Counsel for the Commission maintains that the CBC has failed to prove this and that, even if it had succeeded in doing so, it had still failed in its obligation to provide the employees without university degrees with the training that it was in a position to provide so that they could fulfil the role of Human Resources Advisor. Ultimately the adoption of this policy led to the layoff, three years later, of three Human Resources Advisors, including the Complainant.

[223] The Tribunal does not subscribe to the claims of the Counsel for the Commission to the effect that the CBC developed a policy as he understands it.

[224] The evidence shows that Gaétan Jacques wanted Human Resources Advisor positions to be filled in future by persons who held university degrees, specifically in Industrial Relations. Gaétan Jacques' objective did not affect current employees, since the restructuring enabled several individuals to obtain promotions as Human Resources Advisors even though they did not have university degrees.

[225] It should also be emphasized that it was not in any way Gaétan Jacques' intention to terminate the employment of the Human Resources Advisors (Volume 5, pages 695-96):

My intention was to strengthen the professional group; consequently, if cuts had to be made, I intended not to make them in the professional group but, on the contrary, to make them in so far as possible to the clerical group whose added value, so to speak, to the Canadian Broadcasting Corporation was not as high. Thus even in a hypothesis where I had ultimately had to make a cut from 55 to 35 employees, my intention would have been to retain the services of 35 professionals, if this had been in my power.

[226] If we were to accept the thesis of the Counsel for the Commission, we would have to accept that the promotions given to Anouk Cardin and Martine Turcotte led - intentionally or not - to the layoff of Suzanne Larente and her colleagues three years later. The Tribunal is unable to reach this conclusion.

[227] Following the reform implemented by Gaétan Jacques, a climate of uncertainty hovered over the Human Resources Advisors. They knew that they were now competing with each other and, as Gaétan Jacques had put it, would now have to "measure up". Moreover, since layoffs were looming on the horizon, employees were invited not to neglect any employment opportunity that might come up.

[228] In February 1993, the Conservative government envisaged cuts in the CBC's budget totalling \$50 million during the 1995-96 fiscal year and another \$50 million during 1996-97, giving a permanent reduction of \$100 million. Following the tabling of the 1994 budget, the Liberal government revised the timetable for the reductions, making them take effect in 1996-97 and 1997-98 (Exhibit HR-35).

[229] The Commission criticizes Gaétan Jacques because, at a time when he was aware of the impending budget cuts which would result in inevitable layoffs, he granted significant promotions to Martine Turcotte, Anouk Cardin and Sylvie Melançon, with a 12-month probationary period.

[230] Furthermore, he granted them permanent status in April 1995, despite the fact that in February 1995 the federal budget - as a result of the national deficit - included budget cuts for the CBC totalling \$400 million by 1997-98. Thus the layoffs that took effect in 1997 were being prepared, including that of the Complainant.

[231] The evidence does not prove the merit of the acts complained of. In the first instance, the TIPPS and OCTET projects, which were to result in the termination of clerical positions, had not yet been implemented. In the second instance, in April 1995 the Respondent had not yet given any sign of its intention to cut positions among the Human Resources Advisors.

[232] Once the reform undertaken by Gaétan Jacques was implemented, Suzanne Larente considers that she performed well in her new tasks (Volume 1, page 64):

Actually, things went very well. I had several files to look after and I saw them through, finalized them, with a great deal of personal satisfaction and to the satisfaction of my clients as well.

[233] Suzanne Larente recalls that she was entrusted with mandates in several areas of human resources, which enabled her to make progress toward the versatility sought by her employer in Human Resources Advisors.

[234] Furthermore, she took part in the negotiations with STARC together with Jean Fredette; she helped with the preparation of a negotiation scenario and Jean Fredette appeared to be very satisfied with the work that she had done.

[235] In April 1995, André Coupal carried out an evaluation of Suzanne Larente's work, at which point she had assumed the responsibilities of a Human Resources Advisor for a year (Exhibit HR-21).

[236] The results of this evaluation showed that the Complainant was methodical and conscientious. However, the transition to her role as a Human Resources Advisor was proving difficult. She displayed a great deal of motivation and worked hard, but her adaptation had not been completed and she needed to improve her self-confidence. She was subsequently entrusted with a variety of files to continue her progress and assess her potential.

[237] During 1996, the Staff Relations and Training Services were transferred from the CBC head office in Ottawa to the Human Resources Service in Montreal.

[238] In November 1996, Daniel Gourd became Director of the Human Resources Service and, following the \$400 million budget cuts imposed on the CBC, he had to reduce the staff of the Human Resources Service by 40% by the end of March 1998.

[239] He decided to integrate the Staff Relations and Training Services into the human resources teams and to undertake a restructuring of the Human Resources Service (Exhibit HR-10).

[240] He created three teams assigned to human resources and one specialized team for the Employee Benefits and Compensation Service.

[241] Once this structure was in place, Daniel Gourd had to proceed with the layoffs. He was not successful in restricting all the necessary layoffs to the clerical personnel, which obliged him to consider the layoff of three Human Resources Advisors.

[242] The evidence has shown that Suzanne Larente, 43 years old, Jean-Claude Béliveau, 43 years old and Nicole Benoît, 44 years old, were laid off, whereas Martine Turcotte, 30 years old, and Anouk Cardin, 28 years old, kept their employment.

[243] The issue in dispute is the following: "Was age the factor or one of the factors that led to the termination of Suzanne Larente's employment?"

[244] To prove that she was a victim of discrimination, it is not enough that the Complainant has the firm belief or impression that she was not retained in employment because of her age. It is necessary for the body of evidence, whether direct or circumstantial, to lead to a conclusion of discrimination.

[245] The Commission claims that the process used by Daniel Gourd to determine which Human Resources Advisors were to be laid off made it possible to lay off the older Human Resources Advisors, to the detriment of the younger ones.

[246] The evidence shows that Daniel Gourd had recognized experience and expertise in staff relations and training but that he had no knowledge of staffing, recruitment and job evaluation, areas that were the responsibility of Human Resources Advisors.

[247] The Commission also asks how could he judge that Martine Turcotte, who had been a Clerk in the Recruitment Service and a Human Resources Advisor in the Recruitment and Placement Service, should be assigned to the position of Human Resources Advisor?

[248] Daniel Gourd has explained that, to guide him in his decision-making, he called upon the expertise of his Assistant Director, Alain Chabot, and that of his section heads (Volume 3, pages 482-83):

... I relied on the Chiefs and also on Alain Chabot, who at the time was Assistant Director and had extensive experience in all those sectors. Moreover, I had involved Mr. Chabot to make sure that there was, at the central level, the management level, another source of expertise to balance that of the Chiefs, whose perspective was centred more on the services that they had to provide for their clients.

Consequently, I needed someone like Alain Chabot who had all that expertise and who had himself been a team leader, who had been in staffing, who had more or less done the rounds, to provide me with the expertise that I did not have ...

[249] In addition, Daniel Gourd had had an opportunity to work with Martine Turcotte on a specific file, namely the re-evaluation of management positions at the CBC. He had appreciated her considerable skills.

[250] In this connection, Huguette Wiseman confirms Daniel Gourd's testimony concerning his assessment of Martine Turcotte (Volume 4, page 564):

Daniel had just finished work with Martine on a rather complex file, namely the re-evaluation of management positions at the CBC. It was complex because all the job descriptions had to be redone, it was necessary to actually go and meet the managers, to ask questions, to be able to extract the substance from the job descriptions and to put it down on paper. Daniel was involved in this and Martine helped him greatly. He said to me: "I am very impressed with this girl. I think that with the mandate to be entrusted ... I think that in this exercise Martine has displayed many of the qualities that we are looking for."

[251] The Tribunal is of the opinion that the preponderance of the evidence shows that Daniel Gourd's decision to assign Martine Turcotte to the service managed by Huguette Wiseman was sound, justified on reasonable grounds and not intended to retain in employment a younger person to the detriment of those who were laid off and were older.

[252] Daniel Gourd asked the Section Chiefs to evaluate the Human Resources Advisors in their respective services. He asked them to base their evaluation on expertise, versatility and succession potential, and to inform him of their recommendations.

[253] The Commission considers that the evaluation process adopted by Daniel Gourd was a subjective one. It suggests that the employer should have adopted an objective evaluation process, one that involved entrusting the entire task of evaluating the Human Resources Advisors to an individual or group of individuals.

[254] The Tribunal does not see anything in the evidence that supports the view that an objective evaluation process, such as that preferred by the Commission, would have produced a different result as regards the terminations of the Human Resources Advisors, and in particular of the Complainant.

[255] Jean Fredette heads the Operations-Support Service Team to which were assigned three Human Resources Advisors, namely Lynda Dion who was Chief of the Employment and Recruitment Office, Lise Mathieu who was in staff relations, and Suzanne Larente, who retained her position as Human Resources Advisor. Jean Fredette was responsible for evaluating these Human Resources Advisors.

[256] In the case of Lise Mathieu, who was a staff relations specialist and whose expertise was necessary for the maintenance of the team's services, Jean Fredette justifiably decided to retain her in employment.

[257] As for Lynda Dion, the evidence shows that Jean Fredette had not had any work experience with her before January 1997. Yet he maintains, in his testimony, that Lynda Dion's career progression had been more rapid than that of Suzanne Larente.

[258] Lynda Dion had been a Staffing Advisor and Team Leader in the Recruitment and Placement Service. Suzanne Larente, for her part, had been a Recruitment Officer and Human Resources Advisor for three years, which had enabled her to take the first steps in and move toward the versatility sought for Human Resources Advisors. Furthermore, prior to 1997 Jean Fredette had never had an opportunity to work with the Complainant.

[259] Jean Fredette also justifies his choice of Lynda Dion in the following terms (Volume 6, page 649):

Her experience, the way in which she handled new tasks give some indication of how she might deal with the new situation in the future ... and that was it, her career development, her progress, her experience, her potential.

[260] The Tribunal considers that Jean Fredette was not in a position to render such a judgment because he had hardly had an opportunity to work with her.

[261] Moreover, apart from the fact that Lynda Dion's career had progressed more rapidly than that of Suzanne Larente, Jean Fredette has not revealed any basis to suggest that Suzanne Larente did not meet the evaluation criteria laid down by Daniel Gourd. Nor does André Coupal's evidence shed any light in this respect.

[262] It must also be kept in mind that the final decision belonged to Daniel Gourd and that he followed the recommendations of the Section Chiefs. However, Daniel Gourd relates that during his second meeting with the Complainant he did not go into much detail; rather, he gave an explanation in general terms (Volume 3, page 454):

Look, on the whole what I said was, I explained to some extent what the nature of our concerns was in terms of orientation. I also explained that certain choices had been made and that, in the final analysis, she had not been selected in those choices, generally speaking.

[263] The Complainant received no explanation from Daniel Gourd in support of the claim that she did not meet the evaluation criteria established.

[264] The Tribunal recognizes that the CBC could maintain in employment those Human Resources Advisors who had the desired skills and experience to perform competently the tasks of this position. It could also do so by providing the Human Resources Advisors with the necessary training, as it had already done.

[265] Having reviewed the totality of the evidence, the Tribunal has arrived at the conclusion that the Complainant's expertise, knowledge and experience, in conjunction with the training planned for the Human Resources Advisors, enabled her to perform adequately the duties of a Human Resources Advisor as established in June 1997 (Exhibit HR-15).

[266] The Tribunal considers it more probable that the employer based its decision to terminate the Complainant's employment on her age rather than on her inability to fill the position of Human Resources Advisor.

[267] Consequently the Tribunal allows the complaint of Suzanne Larente made pursuant to section 7 of the *Canadian Human Rights Act*.

V. REMEDIES

[268] Given that the Tribunal has reached the conclusion that Suzanne Larente was a victim of discrimination on a prohibited ground, it now has to rule on the appropriate remedies in accordance with the provisions of section 53 of the Act and in the light of the applicable case law.

[269] The Commission and the Complainant claim the following remedies:

- a) reinstatement of the Complainant in her employment;
- b) the loss of salary incurred by the Complainant since January 1, 1998 and until the date of her reinstatement;
- c) compensation for pain and suffering;
- d) letter of apology;
- e) reimbursement of legal costs;
- f) interest.

A. Analysis of remedies sought

(i) Reinstatement of the Complainant in her employment

[270] Having ruled that the CBC has engaged in a discriminatory practice by refusing to continue the Complainant's employment after December 31, 1997, the Tribunal orders the CBC to reinstate Suzanne Larente, at the first reasonable opportunity, in the position of Human Resources Advisor that she held at the time of her layoff.

(ii) The loss of salary incurred by the Complainant from January 1, 1998 until the date of her reinstatement

[271] At the time of termination of her employment, she had an annual salary of \$46,040. She estimates that an amount of \$9,208 or 20% of her salary should be added to her annual salary for the years 1998, 1999, 2000 and 2001 to compensate for the loss of fringe benefits pertaining to her employment. The Tribunal is not in possession of any evidence allowing it to conclude that the demand is justified.

[272] Suzanne Larente estimates that, in 1999, she would have obtained an 8% salary increase, increasing her annual remuneration to \$49,723. She explains this annual increase by the fact that her employment, which was at level 2, would have risen to level 3.

[273] The evidence shows that the Complainant became a Human Resources Advisor in 1994. It was a position that included levels 1, 2 and 3 and she had been classified at level 2. Advancement from one level to another does not take place automatically with the passage of time. Rather, it is the result of a performance evaluation. From 1994 until her layoff, the employer had not given the Complainant any promotion. Consequently the advancement sought remains pure speculation that the Tribunal cannot endorse.

[274] The Complainant claims that she would have received annual salary increases of \$1,988 in 2000 and \$1,009 in 2001. She recognizes, however, that these increases are estimates. In fact they are not based on any evidence and cannot be accepted.

[275] For the purposes of calculating the loss of salary, therefore, the Tribunal accepts an annual salary of \$46,040.

[276] The Complainant claims the salary that she lost between January 1, 1998 and December 14, 2001, from which must be deducted the income that she earned during that period.

[277] However, in the *Jolicoeur*⁽⁴⁾ case, precedent teaches us that:

The illegally dismissed employee has an obligation to minimize the damage resulting from his dismissal. He must make a reasonable effort to find and accept another position suited to his qualifications.

[TRANSLATION]

[278] The Complainant admits that from January 1998 until the end of June 1999 she was engaged in full-time study and that she did not undertake any job searches. Because she was not available for employment during this period, she failed in her obligation to minimise her damage and cannot be compensated for the period in question.

[279] The Complainant has produced, in a bundle, documents intended to show that after she had concluded her full-time studies, she undertook numerous job searches.

[280] Following analysis of these documents, the Tribunal finds that as of September 1999 the Complainant made sufficient efforts to find employment, except for the months of June, July and August 2000. She therefore fulfilled her obligation to minimize her damage.

[281] Consequently, the Complainant must be compensated for the loss of salary incurred during a period of 25 months, namely in the amount of \$95,916.

[282] However, during this period the Complainant received Employment Insurance Benefits in the amount of \$24,180 and employment income of \$52,400, for a total amount of \$76,580.

[283] Consequently the loss of salary incurred by the Complainant is \$19,336, to which must be added the amount of \$24,180 that she will have to refund to employment insurance. To sum up, the loss of wages incurred by the Complainant was \$43,516.

[284] However, the Complainant admits that at the time of termination of her employment she received a cash-out of \$57,329 and the sum of \$5,400 for training expenses, giving a total amount received of \$62,729.

[285] The Tribunal considers that, in the circumstances, there are no grounds to require the Respondent to pay the Complainant compensation in respect of any loss of wages incurred by her.

[286] The Complainant claims from the CBC the payment of compensation for the financial loss pertaining to her pension plan. Since the Tribunal has ordered the Complainant's reinstatement, it takes note of the Respondent's agreement that it will take steps to reinstate the Complainant's pension plan.

(iii) Pain and suffering

[287] Suzanne Larente's complaint refers to discriminatory practice that took place before June 30, 1998. The parties agree that she is governed by the old *Canadian Human Rights Act* which provided for a maximum of \$5,000 to be awarded for pain and suffering.

[288] The evidence shows clearly that Suzanne Larente was extremely distressed at the announcement of her termination. She felt betrayed by her employer after 22 years of loyal service and humiliated by the thought of being rejected by her employer as a result of her age. Her confidence was greatly affected.

[289] Taking all the circumstances into account, the Tribunal awards Suzanne Larente an amount of \$3,500 for pain and suffering.

(iv) Letter of apology

[290] The evidence show that after having informed her of her layoff in August 1997, the CBC provided support for and showed great compassion toward Suzanne Larente.

[291] She was allowed to continue to occupy her office until December 31, 1997 and given the liberty to take all the steps she considered appropriate to redirect her career. The CBC provided her with the services of a consultant to guide her in her new initiatives, not to mention the lump sum of \$5,400 allocated for her training expenses. She was also given the time to complete the staff relations training courses which, at the time of her layoff, were made available by the CBC to the Human Resources Advisors. The CBC gave her a letter of reference.

[292] Consequently, the Tribunal believes that, in the circumstances, it is not appropriate to order the CBC to provide the Complainant with a letter of apology.

(v) Reimbursement of legal costs

[293] The Complainant claims the reimbursement of the legal expenses incurred by her to assert her rights following the termination of her employment.

[294] She submitted a series of lawyers' bills and bills for legal expenses that she had paid to her solicitors (Exhibit HR-29). The vast majority of these lawyers' bills and bills for legal expenses relate to the mandate that she entrusted to her solicitors within the context of a constructive dismissal complaint that she brought against the CBC in accordance with the provisions of section 240 of the Canada Labour Code. This complaint was heard by an arbitration board and a decision was handed down on January 29, 1999.

[295] The Tribunal does not believe that it is obliged to order the Respondent to reimburse to the Complainant the legal fees and expenses that she incurred in exercising a right that was in no way related to the complaint before it.

[296] The Complainant certainly did pay legal fees and expenses for legal advices provided by her solicitors within the context of her complaint to the Canadian Human Rights Commission.

[297] Nevertheless, for the Tribunal to order the reimbursement of her legal fees and expenses by the CBC, the Complainant had to show that they were incurred as a result of the CBC's reprehensible conduct and wrongdoing. However, there is nothing in the evidence to show that the CBC's behaviour justified the legal fees and expenses incurred by the Complainant or that an order requiring the CBC to reimburse these fees and expenses is called for.

(vi) Interest

[298] By virtue of the discretionary power conferred on it in section 53(4) of the Act, the Tribunal orders that interest to be paid on the compensation of \$3,500 awarded for pain and suffering. The interest shall be calculated in accordance with rule 9 (12) of the Canadian Human Rights Tribunal Interim Rules of Procedure.

VI. ORDER

[299] The Tribunal declares that the CBC has infringed Suzanne Larente's rights under the *Canadian Human Rights Act* and orders as follows:

- 1) That the CBC reinstate Suzanne Larente, at the first reasonable opportunity, in the position of Human Resources Advisor that she held at the time of her layoff and that it reinstate the pension plan to which she would have been entitled if her layoff had not taken place;
- 2) that the CBC pay to Suzanne Larente the sum of \$3,500 for pain and suffering;
- 3) that the CBC pay interest on the compensation of \$3,500 awarded for pain and suffering in accordance with rule 9 (12) of the Canadian Human Rights Tribunal Interim Rules of Procedure.

Original signed by

Roger Doyon, Chairperson

OTTAWA, Ontario

April 23, 2002

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

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APPEARANCES:

Suzanne Larente On her own behalf

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1. ¹ *The Ontario Human Rights Commission v. The Municipality of Etobicoke* [1982] 1 S.C.R. 202, p. 208.

2. ² *The Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.* [1985] 2 S.C.R. 536, p. 558.

3. ³ *The Canadian Human Rights Commission and Shiv Chopra v. The Department of National Health and Welfare* [1998] A.C.F. No. 432 (F.C.T.D.)

4. ⁴ *Jacques Jolicoeur v. Lithographie Montreal Ltée*, 1982, S.C. p. 230 at p. 235