

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

YVONNE SUGIMOTO

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ROYAL BANK OF CANADA

Respondent

RULING

MEMBER: J. Grant Sinclair 2006 CHRT 2
2006/01/18

[1] The Respondent, Royal Bank of Canada (RBC) filed a motion with the Tribunal requesting the Tribunal strike the Complainant's new allegation of discrimination relating to the 1996 Gender Buy-Back.

[2] The grounds for the motion are that the Complainant and the Commission have recently asserted a new ground of discrimination which was not part of the original complaint; that RBC did not have the opportunity to raise the objection that the new allegation is untimely; and, raising the new allegation of discrimination at this time breaches the rules of natural justice and is highly prejudicial to RBC.

[3] The Canadian Human Rights Commission has filed a responding motion that the Tribunal decline jurisdiction to hear the Respondent's motion; or, in the alternative, declare that the Respondent's motion is premature and reserve the right of the Respondent to argue the motion at the end of the hearing on a full evidentiary record.

[4] The complaint referenced by the motions is that of Yvonne Sugimoto, a retired employee of RBC. Her complaint is dated December 9, 2002.

[5] In her complaint, the Complainant alleges that RBC has discriminated against her as well as 700 other current and former female employees, by treating them in an adverse, differential manner on the ground of sex, contrary to ss. 7, 10, and 21 of the *Canadian Human Rights Act*. The issue is their pension entitlement.

[6] Her complaint sets out in very long and complex detail, the evolution of RBC's Pension Plan during the period from 1970 to 2001, including changes to the enrollment criteria and other amendments to the Plan.

[7] In terms of specific allegations of discrimination, the Complainant claims that the September 2001 Re-opener amendment to the Plan is discriminatory as RBC chose to give an advantage to male employees born between February 1950 and April 1953, by allowing them to retire with full pension benefits at age 56. Similarly situated RBC female employees could retire with full pension only at age 61 years, 10 months.

[8] The genesis of the Respondent's motion is found in a May 25, 2005 letter from RBC to the Commission and the Complainant. In this letter, RBC sets out that, "It has now come to our attention that the Commission and/or the Complainant may be taking the position that the 1996 Gender Buy-Back offered in 1996 to female employees of the Bank, including the Complainant, was discriminatory and contrary to the provisions of the *Canadian Human Rights Act*." RBC, in its letter, asked the Commission and the Complainant for clarification of their position. There is nothing in the letter as to when and how this came to RBC's attention.

[9] The Commission's clarification, sent on May 30, 2005, was that the combination of the 2001 Re-opener and the 1996 Gender Buy-Back has an adverse impact on women. As such, it constitutes discrimination contrary to ss. 7 and 10 of the *CHRA*.

[10] On May 31, 2005, the Complainant responded that it has always been her position that the 1996 Gender Buy-Back and the 2001 Re-opener are inextricably linked and cannot be viewed separately. It is the combination of these two events which has had an adverse impact on women, contrary to ss. 7 and 10 of the *CHRA*. The Complainant added that she and the other women should have been eligible for the pension option offered in 2001.

[11] The Complainant was hired by the RBC on February 23, 1970. Her date of birth is October 4, 1951. When she joined the RBC, she was 18 years, 4 months old. In 1970, the eligibility age for membership in the Plan was 21 years for men and 24 years for women.

[12] On May 1, 1974, RBC amended the Plan. The eligibility age to join the Plan was raised to 30 years of age for both men and women. The Plan was also amended to provide a non-contributory option. The non-contributory option allowed employees who had membership in the Plan, but were not yet 30 years of age, to continue as contributory members or suspend their membership until they attained 30. The Complainant was not offered this option of suspending membership in the Plan. She was not a member as at May 1, 1974. She was not 24 years old.

[13] On September 1, 1980, the Plan was again amended and the eligibility age was changed to the earlier of 25 years of age or 5 years of continuous employment with RBC. At that time, the Complainant had been with RBC for over 10 years and was 28 years, 9 months old. She joined the Plan effective March 1, 1980.

[14] In 1996, RBC, in order to deal with the past inequity in pension benefits, offered women who had continuously worked for the Bank since May 1, 1974, and, who were age 21 to 24 on May 1, 1974, a one-time option to purchase up to three years of contributory Plan membership. This is the "1996 Gender Buy-Back".

[15] The Complainant took up this option and on January 29, 1996 she purchased 19 months of pension plan entitlement at a cost to her of \$4,834. The Complainant was given a "deemed date joined pension plan" of August 1, 1978.

[16] On July 12, 1996, the Complainant wrote to RBC commending it for its attempt to eliminate the Plan gender gap. However she pointed out in her letter, that the 1996 Gender Buy-Back did not eliminate the Plan gender gap for the period May 1, 1974 to

March 1, 1980. The 1996 Gender Buy-Back reduced the gender gap by 19 months, but there still existed a 72 month gap between men and women, similarly situated in terms of age and employment with the RBC.

[17] The Complainant concluded her letter by asking what efforts RBC was making to close this remaining pension gap.

[18] RBC responded to the Complainant's concerns on September 17, 1996. In its letter, RBC pointed out that it had considered, when developing the 1996 Gender Buy-Back, allowing female employees to buy back service after May 1, 1974 up to age 30. However, RBC concluded that to do so would be unfair to other employees who were members of the plan as of May 1, 1974 and who had opted out until age 30.

[19] The Complainant took no further action at that time with respect to her concerns.

[20] In the 1990's, RBC came to the conclusion that the May 1, 1974 amendment to the Plan could be read as having a third option. The third option would have allowed a RBC employee, male or female, under 30 years of age on May 1, 1974, who was a member of the Plan, to remain in the Plan as a non-contributory member until attaining age 30.

[21] As a result, on September 26, 2001, RBC offered all employees who had continuous employment from May 1, 1974, and who had elected to suspend their plan membership until age 30, the option to receive non-contributory service equal to the period from the suspension date to the date that they turned 30 years of age, (up to a maximum of 70 months).

[22] It is the 2001 Re-opener that the Complainant, in her complaint, alleges is discriminatory. She alleges it gives a significant pension benefit to RBC male employees born between February 1950 and April 1953 with continuous service, which benefit is not accorded to RBC female employees born between those dates and having the same period of continuous service.

DECISION

[23] In my opinion, the Respondent's motion is premature. It should be dealt with in the context of a complete evidentiary record after a full hearing on the merits of the complaint. I say this for a number of reasons.

[24] First, there is nothing in the complaint that alleges that the 1996 Gender Buy-Back was discriminatory in itself. Nor do the clarifications of the Commission and the Complainant allege that the 1996 Gender Buy-Back in itself is discriminatory.

[25] For the Commission, it is the combination of the 1996 Gender Buy-Back and the 2001 Re-opener that is discriminatory. For the Complainant, the two amendments are inextricably linked and it is a combination of the two that is allegedly discriminatory. In my view, the positions of the Commission and the Complainant on this question require additional clarification.

[26] Second, and equally to the point, is the Complainant's assertion that it has always been her position that the 1996 and 2001 amendments are inextricably linked. The inference being that no new discriminatory allegation is being raised. Whether this is the case factually and whether the Respondent was aware of this, was not adequately dealt with by the parties at the hearing of the Respondent's motion and needs to be fleshed out.

[27] Thirdly, the Tribunal's normal case management process has not been completed. This process requires "disclosure" from the parties. Disclosure includes relevant document disclosure, witness disclosure and a statement of particulars.

[28] The statement of particulars is akin to a statement of claim and a statement of defense in a civil proceeding. The statement of particulars of both the Commission and the Complainant would detail the facts relied upon by these two parties, the issues raised and the remedy they are seeking. The Respondent's statement of particulars would be its response, as is the case with any defense. All disclosure was suspended pending this motion.

[29] The Respondent is asking the Tribunal to strike the "new" allegation of discrimination before any pleadings have been filed; the allegation has only been raised in correspondence between counsel for the parties.

[30] Moreover, depending on the remedy that the Commission and the Complainant are seeking, it may not be necessary to decide whether the 1996 Gender Buy-Back is discriminatory.

[31] It is also possible however that I am being asked to make a decision on a preliminary basis which may well decide the complaint on the merits without a full hearing. It is inadvisable for the Tribunal to make such a decision in the above-described circumstances.

[32] Accordingly, I reserve my decision on both the Respondent's motion and the Commission's motion until a full evidentiary record is established at a hearing.

[33] This is without prejudice to the rights of the Respondent and the Commission to argue their respective motions, on the full record, as part of their closing submissions.

"Signed by"

J. Grant Sinclair

OTTAWA, Ontario
January 18, 2006

PARTIES OF RECORD

TRIBUNAL FILE:	T1015/13504
STYLE OF CAUSE:	Yvonne Sugimoto v. Royal Bank of Canada
DATE AND PLACE OF HEARING ON THE PRELIMINARY MOTION:	November 11, 2005 Toronto, Ontario

RULING OF THE TRIBUNAL DATED:	January 18, 2006
APPEARANCES:	
M. Norman Grosman Natalie MacDonald	For the Complainant
Philippe Dufresne	For the Canadian Human Rights Commission
Stephen J. Shamie Elizabeth Brown	For the Respondent