

DECISION RENDERED ON JANUARY 29, 1982
T.D. 3/82
IN THE MATTER OF THE CANADIAN HUMAN RIGHTS ACT
S.C. 1976-77, C. 33 as amended
And in the Matter of a Hearing Before a Human Rights
Tribunal Appointed Under Section 39 of the Canadian Human
Rights Act

BETWEEN: SHERRY MacGILLIVRAY
Complainant
- and -
HUME'S TRANSPORT LIMITED
Respondent
BEFORE: MARY LOIS DYER
TRIBUNAL

DECISION OF TRIBUNAL
APPEARANCES:
RUSSELL G. JURIAN SZ: COUNSEL FOR The
Complainant AND The
Canadian Human
Rights Commission

JOAN M. GILMOUR: Counsel for the
Respondent HUME'S
TRANSPORT LIMITED

DATES OF HEARING: JUNE 4 and 26, 1981

INTRODUCTION

Sherry MacGillivray filed a complaint dated May 17, 1980 against Hume's Transport Ltd. alleging discrimination on the basis of sex and marital status in the following terms:

"While I was employed as a payroll clerk with Hume's Transport, the company refused to pay OHIP premiums for myself and my family, although they did so for male employees who were married. I believe this to be contrary to ss. 7(b) and 10 of the Canadian Human Rights Act."

The Complainant and the Respondent were represented by counsel and eight witnesses gave evidence at the hearing.

I was appointed under the Canadian Human Rights Act (S.C. 1976-77, C. 35) to act as a human rights tribunal in the matter of the complaint.

Prior to an enquiry into the merits of the complaint the jurisdiction of the tribunal and that of the Commission in investigating the complaint was challenged by the Respondent. Counsel for the Respondent and for the

Human Rights Commission argued the issue orally. The tribunal took the arguments under advisement, requested submission of written arguments on the point by counsel and heard the merits of the case.

The matter of jurisdiction will be considered first.

JURISDICTION

For the purposes of the issues that follow, let me state the facts. Sherry MacGillivray (the "Complainant") was employed full-time as a payroll clerk in the office of the Respondent, Hume's Transport Ltd. ("Hume's") from February, 1979 to and including November, 1979. During this period, Hume's deducted from the Complainant's remuneration the premiums required to be paid under the provisions of the Ontario Health Insurance Plan for insured services, in accordance with the provisions of the Health Insurance Act, S.O. 1972, C. 91, as amended (the "OHIP premiums"). A total of \$280.00 dollars was deducted from the Complainant's remuneration on account of OHIP premiums.

Hume's at all material times was an interprovincial transport carrier and employed more than 15 persons in its office for the purposes of the Health Insurance Act.

The Complainant alleges that Hume's Transport Ltd. breached ss. 7(b) and 10 of the Canadian Human Rights Act, in that during the period of her full-time employment it did not pay OHIP premiums for her and her family, although it allegedly did pay OHIP premiums for male employees. Counsel for the Commission and for Hume's Transport Ltd. agreed that the complaint would proceed before the Tribunal only on the grounds of alleged discrimination on the basis of sex.

Section 65 of the Canadian Human Rights Act provides as follows:
"65. Notwithstanding any provisions of this Act, no complaint may be dealt with under Part III

a) that relates to any action that does not increase discrimination and that is taken by a person before the expiry of two years after the commencement of that Part in accordance with the provision of

i) any superannuation or pension fund or plan, based on age, sex or marital status that is applicable to employees or former employees of the person on the commencement of that Part, or

ii) any insurance plan applicable to employees or former employees of the person on the commencement of that Part that provides benefits in respect of life, death, accident, sickness, pregnancy, dental care, disability or unemployment insurance based on age, sex or marital status; or

b) that relates to any provision of any fund or plan described in paragraph a) before the expiry of two years after the commencement of that Part."

The Ontario Health Insurance Plan is a provincial health system designed to provide residents of Ontario with health insurance coverage by premium payment. The Plan was established by s. 9 of the Health Insurance Act:

"9. The Health Services Insurance Plan established by the Health Services Insurance Act and the Hospital Care Insurance Plan established by the Hospital Services Commission Act are hereby continued in the Plan for the purpose of providing for insurance against the costs of insured services on a non-profit basis on uniform terms and conditions available to all residents of Ontario, in accordance with this Act, and providing other health benefits related hereto."

It is important to note the definition provided in the Health Insurance Act for "insured persons" and thereby those insured persons entitled to insured services under that Act. Section 15 notes:

ss. (1) and (2) repealed and the following ss. (1), (2), (2a) substituted 1974, c. 60, s. 4:

"(2) Where the number of employees of an employer totals 15 or more, the employees who are residents of Ontario are a mandatory group.

"(2a) Where the number of employees of an employer totals more than 5 but fewer than 15, the general manager may upon application therefore designate the employees who are residents of Ontario as a mandatory group.

"(3) Every person who is a member of a mandatory group shall be an insured person in accordance with this Act and the regulations.

"(4) The employer shall deduct from the remuneration of each employee in his mandatory group the premiums required under this Act or such part as is agreed upon by the employer and his employee but each member of the group is primarily able to pay the premium.

"(5) The deduction by an employer from the remuneration of an employee in his mandatory group of the premium required under this Act shall discharge the primary liability of that employee to pay the premium 50 deducted.

"(6) No person shall make any charge for acting in his capacity as the employer of the mandatory group."

Interpretation of Statute

The basis and foundation of the Respondent's argument and objection is pursuant to s. 65(b) of the Canadian Human Rights Act and not s. 65(a). The Respondent argues that s. 65 of the Canadian Human Rights Act prohibits any complaint from being dealt with under Part III of the Act that relates to any provision of the specified types of plan or fund before the expiration of two years after the commencement of Part III. In other words, the transitional measures provided for by the Act apply to the type of insurance plan at issue here, the Ontario Health Insurance Plan.

The object of the Canadian Human Rights Act is set out expressly in s. 2(a) of the Act. and provides that:

"a) Every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, color, religion, age, sex or marital status, or conviction for an offence for which a pardon has been granted or by discriminatory employment practices based on physical handicap."

Section 11 of the Interpretation Act, R.S.C. 1970, c.1-23 provides that:

"Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its object."

It is well understood in Canada that the Human Rights Act was conceived and passed as remedial legislation to cure the ills of discriminatory practices. As remedial legislation, it must be interpreted fairly and liberally to insure the attainment of its goals as indicated by its statutory provisions. Where ambiguity exists it must be resolved to attain the goals of human rights legislation rather than resist them.

The case re Attorney General for Alberta v. Gares (1976) 67 D.L.R. (3d) 635, records this principle in the judgment of Mr. Justice MacDonald of

the
Alberta Supreme Court at p. 687:

"From the preamble it becomes clear that the prohibition in s. 5 was designed to protect the 'equal rights of all persons ... without regard to ... sex ... This leads me to the conclusion that the word 'employ' in s. 5(1), if ambiguous, should be given a liberal construction as best insures the attainment of the object of this statute."

The importance of the issues demands a liberal construction of s. 65 and any ambiguity that exists must be resolved and construed so as to attain the goals of the remedial human rights legislation. Consequently, the Canadian Human Rights Act as a whole should be given a liberal construction to best

insure the attainment of its objectives.

However, there is a principle of interpretation that the application of exceptions to a general prohibition against discrimination in remedial legislation will be very limited. In following this general principle I concur with the decision of Sidney Lederman, sitting as a board of inquiry under the Ontario Human Rights Code in the matter of Betty Ann Shack v. London Drive Ur-Self Ltd., and dated June 7, 1974, which followed the U.S. Court of Appeals' decision of Weeks v. Southern Bell Telephone Telegraph Company (1969) 408 F. 2nd 228 at p. 232:

"Finally when dealing with a humanitarian remedial statute which serves an important public purpose, it has been the practice to cast the burden of proving an exception to the general policy of this statute upon the person claiming it."

I am further persuaded by the case Boyd v. Mar-Su Interior Decorators Ltd., which was a matter before the board of inquiry appointed under the Ontario Human Rights Code and a decision of R.S. MacKay, Q.C. and dated February 22, 1978 which stated at p. 4:

"Even if the evidence pertaining to the exception in s. 4(c) were more doubtful, the results would still be the same because as an exception to a general prohibition against discrimination, which in turn is remedial legislation, the onus is upon Mr. Grip to affirmatively establish that the exception applies."

Therefore, s. 65 of the Canadian Human Rights Act must be construed narrowly as it prescribes an exception to the general prohibition of discrimination set out in ss. 7(b) and 10.

Let us then examine the Ontario Health Insurance Plan as it relates to the issues at hand. The Province of Ontario under its constitutional mandate of jurisdiction over matters of "property and civil rights" established the Ontario Health Insurance Plan by s. 9 of the Health Insurance Act of Ontario in 1972. Section 4 of the Health Insurance Act provides that the employees of any employer who has more than 15 employees constitute a "mandatory group". Section 15(4) of this same Act provides that:

"The employer shall deduct from the remuneration of each employee in his mandatory group the premiums required under this Act or such other part as is agreed upon by the employer and his employee but each member of the group is primarily liable to pay the premium."

The Ontario Regulations 323/72 at s. 9 provides that the manner of payment of Ontario Health Insurance Plan premiums can be varied and is usually the result of an agreement between the employer and employee. The Act

provides specifically that a payment will be made but the determination of how much of the premium will be paid by the employer or employee is not a matter of specific provision.

Section 65(b) of the Canadian Human Rights Act refers to "provisions of an insurance plan". It is recognized that the Ontario Health Insurance Plan is an insurance plan such as was contemplated by the Act. The importance of the exception then rests on the interpretation of the word "provisions" of an insurance plan.

The Shorter Oxford English Dictionary contains a definition of "provision" which has been relied on by Canadian courts in the past:

"Each of the clauses or divisions of a legal or formal statement, or statement itself, providing for some particular matter; also a clause in which such a statement which makes an express stipulation or condition; a proviso."

(In re Jorgenson, [1923] 2 W.W.R. 600)
The case of R. v. Crow Ex Parte Staples, (1970) 10 D.L.R. (3d) 618,

also
adopted the Oxford definition of "provision" when the Nova Scotia
Supreme
Court interpreted it as "a clause or defined part of a written
instrument".

I rely on the definition provided by the Shorter Oxford English
Dictionary and in particular the words "also a clause in which such a
statement which makes an express stipulation or condition; a proviso."

I find that the use of the word "provision" in the context of s. 65(b)
refers to the specific written terms of the formal insurance plan, in
this
case the Ontario Health Insurance Plan.

What then are the written terms of the Ontario Health Insurance Plan?
The Insurance Act of Ontario and the regulations made thereunder
stipulate
the provisions of the Ontario Health Insurance Plan. They stipulate
matters,
such as who is entitled to coverage, who is exempt, that a premium will
be
paid, to whom it shall be remitted, and what constitutes a group. The
plan is
specific on some points but mute concerning others.

For example, the provisions of the insurance plan do not specifically
state the relative contribution between the employer and the employee
towards
the premium. Nor do the provisions of the insurance plan specifically
regulate the relative contribution between the employer and employee
towards
the premium. It does, however, specifically state that these
arrangements are the subject of agreement between the employer and
employee.
They are not specifically stipulated in their many variations as a term
or
proviso of the Plan. I conclude that such an employer/employee
agreement,
because it is not stated as an express stipulation, condition or
proviso, is
consequently not a proviso and therefore outside the scope of the
insurance
plan.

The contribution of employer and employee towards the premium for the
Ontario Health Insurance Plan is an administrative arrangement and
usually
the subject of discussion at the time of employment. It is well known
that
some employers pay the premium in total while others only a portion of
the
premium and others still deduct the entire premium from the

remuneration of
the employee.

The complaint as filed by Sherry MacGillivray, alleges discrimination on the basis of sex because the company "refused to pay OHIP premiums for myself and my family, although they did so for male employees who were married". The complaint refers to the general administrative arrangement or practice determined by the company respecting the portion of premium payment for the Ontario Health Insurance Plan to be paid by the employee.

In summary, then, I find that the administrative arrangement concerning the portion of premium paid as between the employer and employee is not a provision of the Ontario Health Insurance Plan. I find that these arrangements are not within the exceptions provided for by s. 65 of the Canadian Human Rights Act. No transitional period applies to shelter these administrative arrangements from the review of this tribunal and consequently I find that this tribunal does indeed have jurisdiction to review the complaint concerning these administrative arrangements and determine the merits.

THE COMPLAINT

The complaint filed with the Canadian Human Rights Commission dated May 17, 1980 against Hume's Transport Ltd. by Sherry MacGillivray alleged discrimination on the basis of sex and marital status.

It was agreed by counsel for the Commission and for Hume's Transport Ltd, that the complaint was to proceed before the tribunal only on the grounds of alleged discrimination on the basis of sex.

APPOINTMENT OF TRIBUNAL

The Canadian Human Rights Act sets forth a special regime for the investigation, settlement and adjudication of complaints of discriminatory practices within defined areas of federal legislative jurisdiction. The Canadian Human Rights Commission, according to its prescribed criteria under ss. 33, 35 and 36 of the Act, dealt with a complaint filed and signed by Sherry MacGillivray, and on receipt of an investigator's report, appointed a Human Rights Tribunal to inquire into the complaint according to s. 39 of the Act. The Tribunal sat on June 4 and 26, 1981.

Having ruled on the matter of jurisdiction, the Tribunal proceeds to establish the facts pursuant to the complaint based on the evidence, to determine the merits of the case and to render its decision.

THE EVIDENCE

Mr. R. Keith Barrett, manager of the Group Enrolment Section of the Ontario Health Insurance Plan, gave evidence. He testified that an Ontario resident may be insured through his employer or on a direct basis. He went on to say that an employer group is one of six or more employees and that 15 or more employees constituted a mandatory group whereby the employer was obliged to register all the employees. Questioned further by counsel for the Complainant, on the matter of premium payments, Mr. Barrett replied (transcript page 22):

Q. Is that an obligation on the employer to remit premiums for his employees, his other employees?

A. Correct, yes.

Q. Does the Ontario Health Insurance Plan prevent the employer from turning around and collecting the premiums from the employee?

A. The matter of premiums is between employee and employer. We keep no records on the contributions that are paid or aren't paid on our behalf.

Q. Are the requirements of the Plan that there be some contribution?

A. No, no. Our requirements are only that the premiums be submitted. The matter of who pays is between the employee and the employer.

Mr. Barrett was questioned on the matter of single and dependent coverage in the Plan by Mr. Juriansz (transcript page 23):

Q. If one spouse is covered and the other spouse is also in a group that might provide coverage, is there provision for exemption?

A. There is exemption forms that are to be completed for new employees that indicate to their employer and to us - the forms are passed along - that they are not being registered in the group because they are covered by the spouse's employer.

In cross-examination, the administrative arrangement is discussed again at pages 26 and 27 of the transcript between Mr. Barrett and counsel for the Respondent:

Q. Yes, I am not getting at that. I am just getting at who is responsible to pay the premiums. If it is registered in your name, I am correct that you are the one who has to pay the premiums for the family?

A. Our agreement, of course, is with the employer and he is required to pay; the employee is not.

Q. And the employer may choose to pay the premiums or may deduct that from the employee to pay the premiums?

A. That is correct.

Next the Complainant, Mrs. Sherry MacGillivray gave evidence. Mrs. MacGillivray stated she was married in 1967 and is the mother of two children. Mrs. MacGillivray testified that she did not work following her marriage and that her husband was employed at that time as a truck driver for Canada Packers Limited. During the eleven and a half years of his employment with Canada Packers, Mr. MacGillivray and his family had OHIP coverage through the Canada Packers' group. In 1978, Mr. MacGillivray left his job at Canada Packers and began working at Robinson Evergreens.

Mrs. MacGillivray testified that, at about this time, their marriage ran into some difficulty and she separated from her husband. They reunited in September, 1978 at which time Mrs. MacGillivray made an application at Hume's Transport for a part-time position which enabled her to be close to home to assist her school age children. Mrs. MacGillivray, after filling out an application, took on a part-time position at Hume's Transport as a payroll clerk on or about September 12th, 1978. At that time, Mrs. MacGillivray's husband was unemployed. In answer to a question by Mr. Juriansz concerning OHIP coverage during this period, Mrs. MacGillivray stated (transcript page 38):

A. After he stopped working, there would be about a three months' lapse because you are always prepaid three months ahead, as far as I could remember. When he started at Robinson Evergreens, I think they may have taken off one or two months, but that was all, if they took that. I know he had started some form of it but, as I say, he wasn't in the job that long. When I separated, Welfare automatically takes care of OHIP for yourself and whatever children you have with you. When we went back together, I don't even think we had any coverage at that point in time. We applied for assistance, premium assistance from OHIP.

Q. And were you granted premium assistance?

A. Yes, we were.

Mrs. MacGillivray went on to testify that she enjoyed her job at Hume's and worked very hard. Her objective was to get on full time. Usually, she worked Monday, Tuesday and Wednesday but, from time to time, did additional work on Thursdays and Fridays, as needed. Mrs. MacGillivray stated that

she
both wanted and needed a full time job. In February, 1979, Mrs.
MacGillivray
was taken on full time at Hume's Transport.

Mr. Juriansz proceeded to a discussion of OHIP coverage with Mrs.
MacGillivray (transcript page 39, 40 and 41):

Q. When you came full time, did you expect that Hume's Transport would

pay your OHIP coverage?

A. As a matter of fact, that was basically what I was really hoping.
I knew it would be more money in getting the OHIP paid also. I felt
that once you started full time then that would probably alleviate
being able to be covered with assistance, premium assistance,
because you have to let them know.

Q. Did you believe that all full-time employees at Hume's would be
covered by OHIP?

A. Yes, I did.

Q. And they would have their premiums paid by the employer?

A. Yes.

Mrs. MacGillivray testified that, before she received her first pay
cheque, she had a discussion with Mr. Bob Kristof, an employee of
Hume's, in
connection with her OHIP premiums. Mr. Kristof advised her that her
OHIP
premiums would not be paid by Hume's. A day or two later, Mrs.
MacGillivray
approached Mr. Kristof for an explanation as to why her premiums were
not
covered by the employer. She recalls that Mr. Kristof indicated that it
was
the "husband's job" to be responsible for her OHIP payments. Mrs.
MacGillivray recalls telling Mr. Kristof at that time that her husband
was
not working and that she was the only one supporting her family. Later,
at
the suggestion of another employee, Mrs. MacGillivray approached Mr.
Robert
Hume for a further explanation. At page 43 and 44 of the transcript,
Mrs.
MacGillivray recalls what happened:

Q. (Mr. Juriansz) And then what happened?

A. Well, as I say, I can't remember the exact time I did it but I was
in the little kitchen they had, having a coffee break and I was
discussing it, and a few people there at the point in time did say,
"Well, why don't you approach one of the Hume's and ask them about
it? This was upstairs. I went downstairs and Mr. Robert Hume was
sitting downstairs in one of the chairs reading the paper and I
asked him if it was possible if he could investigate - not exact

words - about my OHIP and why I wouldn't be covered, and could I possibly be covered. His only answer to me was, "I will discuss it with my partners" and I didn't hear any more.

Mrs. MacGillivray stated that she had no further conversations with Mr. Hume or other partners or supervisors after that. Mrs. MacGillivray continued

to work full time at Hume's until late November, 1979. At that time, Mrs.

MacGillivray became ill and required a brief period of hospitalization followed by two weeks of nurse's care at home. She went into the hospital on

a Friday and telephoned Mr. Bob Kristof at Hume's on Monday with the report

that she would be required to be off work for two weeks. Later that same

week, on Wednesday, she received a call from Mr. Kristof advising her that

she was laid off. Mrs. MacGillivray indicated that, after her recovery, she

started looking for another position and finally found one in February, 1980.

She has been working for this company ever since. Mrs. MacGillivray indicated

that her current employer pays a portion of the OHIP premium while she, the

employee, pays the other portion.

Mr. Juriansz asked Mrs. MacGillivray the following questions as direct examination concluded (transcript page 47):

Q. Did you know that the family premiums for married male employees were being paid by Hume's?

A. Yes, I did.

Q. Did you know any other employee at Hume's who was having the OHIP premiums deducted from their pay cheque, other than yourself?

A. Not to my knowledge, I didn't.

In cross-examination, Mrs. MacGillivray indicated that she understood that the practice with respect to part-time employees at Hume's was that the

employer did not pay any part of the OHIP premium. Mrs. MacGillivray also

noted that she was simply advised by Mr. Kristof that she would be taken on

full-time to do accounts payable and that no salary or raises or OHIP was

discussed at that particular time.

Miss Gilmour examined Mrs. MacGillivray extensively in cross-examination

concerning her conversation with Mr. Kristof about OHIP payments and she held firm to her earlier statements. She did disclose her understanding that her OHIP would be paid was gained from periodic discussions with other employees, although none were in management positions. Mrs. MacGillivray also stated she was aware that the OHIP payments of some employees were not paid because these employees were covered by their spouses.

There was some discussion of the amount of money Mrs. MacGillivray received at the termination of her employment but Miss Gilmour concluded that it would be more expeditious to establish this final payment to Mrs. MacGillivray through other witnesses.

Mr. Robert Kristof testified he was employed as a bookkeeper at Hume's Transport for 14 years and among other responsibilities prepared the payroll.

Mr. Kristof said that he prepared Mrs. MacGillivray's payroll cheques.

Mr. Kristof gave evidence that, following an interview and discussions with management, he hired Mrs. MacGillivray as a part-time employee. It was he who

later informed her that she would be taken on as a full-time employee.

Mr. Kristof could not recall with any certainty when the discussion took place

concerning the OHIP premiums. Mr. Juriansz asked Mr. Kristof to explain about

the first discussion with Mrs. MacGillivray concerning OHIP. Mr. Kristof

explained (transcript page 81-82):

A. I know it was somehow on the upsetting note because Mrs. MacGillivray thought that she is in the employ, that she immediately has everything as a privilege, but unfortunately the Messrs. Hume's are the only ones who decide on whatever is done as far as OHIP. I know she brought it to me and I said, "Well, as far as I know, it was all the time the - somehow the man takes care of this but again maybe, you know, not being informed about the human rights at the time so maybe I was mistaken, not being informed. But I said, "the only men who would decide if you can come into the group are the managers, in this case, Messrs. Hume's." So even if I would promise something or indicate something, the word is nothing. Really, I can maybe advise or hint or information, but I have nothing to do with the Messrs. Hume's. They decide. They make the decisions.

Mr. Kristof explained that he had discussed Mrs. MacGillivray's full-time employment with Mr. Robert Hume with reference to salary which, it was decided, would be simply an extension of the part-time rate. No discussion was held concerning the subject of OHIP.

Counsel for the Complainant then went on to establish the facts concerning the payment of OHIP premiums respecting other married women employees (transcript page 78-79-80):

A. (Mr. Kristof) Well, I don't recall but I can only say that the general ruling, which I have interpreted, not probably having any good reason to do so, but again that was done in the past, so I somehow only relate whatever Messrs. Hume's wanted to have done. In the past we had a number of married girls there and they worked for us but the company didn't pay a premium for them because the husbands took care of it. There were two cases where - that goes really way back about 12 years - where a lady married with four children came to the office employee group and she agreed that it would be deducted from her pay and later on, at some later, maybe a year later, Messrs. Hume's decided that they would take care of the premium and that was it. So I somehow was saying -

Q. Do you remember the name of that woman?

A. Mrs. Davis.

Q. Mrs. Davis?

A. Yes.

Q. Who was the other woman?

A. Oh, I rather would refer to this one first.

Q. OK. Tell us about this one.

A. And then when Mr. Hume, Mr. A.E. Hume, the president of the company - again I don't know, I was not there, I was simply informed from now on we will take care of the premium. So that was the decision which I had no part, no influence, nothing in it. I simply got the information so it will be done. And I think afterwards this particular lady - yes, he left us - she left us. She left us, oh, about three months afterwards.

Q. You said she had four children. Did she have a husband?

A. Yes.

Q. Was the husband working?

A. I don't think so. I don't think he - he was laid off. So therefore, she joined our group and paid out of her pay, out of her pay which can be proven at any time, there is no question about it.

Q. Now you told us about another lady.

A. There's another lady, Evelyn Popowich. Again I don't know, the company - the husband was laid off just the same and I simply received from the managers directions that the company will take care of the premiums.

Q. When she first started working there, did the company -

A. She paid herself.

Q. And then -

A. The company somehow, I don't know what was said, what was discussed, I simply got the final say from the managers, "[b]ut this way."

Mr. Juriansz then went on to establish with Mr. Kristof the OHIP payment situation with other male employees (transcript page 83-86):

Q. Do you look after the other employees as well, their pay cheques?

A. Right.

Q. And other new employees?

A. Right.

Q. Do you sometimes interview them?

A. Most of the time, if it's in the accounting field, yes.

Q. Then you discuss it with the Humes?

A. Oh, only, only.

Q. Have you ever interviewed a man and hired a man?

A. Yes.

Q. A married man?

A. A single man.

Q. Have you ever hired a married man?

A. As far as I know, no, single men.

Q. Married men have started with the company, though, haven't they?

A. I can't recall offhand. I didn't interview any married men, no.

Give me a name. I'll tell you if I did interview him.

Q. J. Glover.

A. Oh, he was there before my time, 25 years.

Q. H. Cante.

A. He's retired.

Q. K.M. Bullock.

A. Before my time.

Q. How about J.H. Henze?

A. Yes, that was the only man who was single. I interviewed him, yes, but with a final say of Robert Hume.

Q. D. Kramer?

A. No, I had nothing to do - this is dispatch.

Q. But he began after you?

A. I have nothing to do with him.

Q. You prepare his pay cheque?

A. I prepare his pay cheque but I have nothing to do. This is another Mr. Hume who does interview those dispatchers.

Q. So somebody else hired him?

A. Yes.

Q. And said, "This is a new employee"?

A. Right.

Q. You prepared his pay cheque?

A. Right.

Q. Did you deduct OHIP premiums from his pay cheque?

A. I probably got his transfer because he used to be the sergeant in the army. I got his transfer from the sergeant from Mr. A.W. Hume and he told me, "Yes, this is okay", and that's it.

Q. This is okay to pay the OHIP?

A. Probably.

Q. Mr. Hume told you to pay the OHIP?

A. Yes.

Q. Rather than deduct it?

A. Right, right.

Q. What about Mr. Don Perkins?

A. Well, he's with us 25 years so I guess I have nothing to do with him.

Q. Is there a Cutajar, D. Cutajar?

A. Cutajar, yes, he is night dispatcher. I have nothing to do with him.

Q. But you prepared his pay cheque when he began?

A. Yes, yes. The company pays for him, OHIP.

Q. But did you discuss OHIP with anybody else?

A. Nothing. I am getting it from Mr. A.W. Hume, the final decision presented to me, what I should do.

Q. In each case, Mr. Hume directs you to pay OHIP?

A. Exactly, exactly, because those are the owners. What they decide I simply obey and do their -

Q. But you received no such direction in the case of Mrs. MacGillivray?

A. No.

At page 87 of the transcript, Mr. Kristof replied to a question concerning discussions with him on the matter of any policy respecting OHIP payments:

A. Well, there was no policy written as such, but as far as I know when the policy started we had maybe 50-50 girls in the staff and then everybody paid himself. Then suddenly it was paid by the unions, but the unions achieved that it would be paid by the

employer. At that time Mr. A.T. Hume said, "Okay. There are certain people we are going to pay the premium for them just the same, but it was up to them and it was all oral. Miss Gilmour asked Mr. Kristof if he was in a position at Hume's to make policies with respect to what goes on in the office and Mr. Kristof indicated that he was in no such position and that he never made such decisions. Mr. Kristof denied having been advised by Mrs. MacGillivray that her husband was unemployed (transcript page 97). Mr. Kristof does not recall any conversations with Robert Hume about her request or with Mrs. MacGillivray concerning the decision to not pay her premium on her behalf

(transcript page
98).

Mr. Kristof further stated that at termination Mrs. MacGillivray received 4% vacation pay in the amount of \$154.89; one week's pay at \$161.35; one week's severance pay \$161.35, and two week's additional severance pay in the amount of \$322.70 (Exhibit no. R-1 - document prepared by Mr. Kristof outlining amount paid to Mrs. MacGillivray at the termination of her employment). Mr. Kristof stated that these figures were extracted from the payroll journals.

Mr. Kristof gave further evidence that Pat Davis left the employ of Hume's Transport about 1970 and that Evelyn Popowich left the employ of the company in 1977. He further gave evidence that both his premiums and that of Mr. MacGibbon were not paid by Hume's Transport because both their spouses were covered by their respective employers.

Mr. John Henze gave evidence that he was the paymaster at Hume's Transport and had been employed there approximately three years, In his testimony, he indicated he had nothing to do with payroll for the office employees. His brief testimony is not relevant to the case.

Ms. Donna Wilkie testified she was employed by the Canadian Human Rights Commission as an investigator since 1978. Ms. Wilkie was designated the investigator in the complaint of Mrs. Sherry MacGillivray. Ms. Wilkie telephoned Mr. Robert Hume on December 12, made notes of that conversation and, from time to time during her testimony, referred to them. They were later submitted as Exhibit C-7. Ms. Wilkie recalled telephoning Mr. Hume in connection with the complaint filed against the company and informed him of the process of the Commission with respect to the complaint. Ms. Wilkie recalls at page 109 of the transcript:

A. (The Witness) Okay. I called Mr. Hume on December 12th, as I said, to explain to him that a complaint had been filed, to briefly explain the process of the Commission and to inform him on the nature of the complaint. I did so, and he responded by saying, yes, Hume's did pay OHIP premiums but that their policy was they wouldn't allow people becoming employed by Hume's to switch their policy name from that - let me go back - they wouldn't allow the employee coming on staff to switch the policy from the spouse's name to the name of the employee being employed, And that he

said that he recognized that that might have more of an impact on women but it wasn't the intent of the policy or practice to do so. We arranged at that time to meet on December 14th.

Ms. Wilkie gave evidence that her notes indicated Mr. Hume recalled two cases where females had been covered because their families were not covered where their husbands worked.

With respect to the conversation on December 14th with Mr. Hume in his office, Ms. Wilkie's testimony indicates at page 110 of the transcript:

A. He again went over the fact that there was no intent in their policy to affect one group more than another, that when employees came to Hume's Transport and were taken on staff, that they covered people who were not previously covered. If a person were married, they wouldn't allow the policy to be transferred from the spouse to the person who is coming on staff, that they did pay the entire premium for persons for whom they did cover.

At that time I asked him about the two people he had mentioned in our previous conversation, one of whom he said had been the predecessor to Mrs. MacGillivray, and that they had covered her. The other he at that time didn't recall. He referred to a woman by the name of Phyllis who was presently on staff who subsequently turned out to be what was a woman who was a widow.

Ms. Wilkie repeated this evidence at page 113 of the transcript at which time her handwritten notes were entered as Exhibit C-4 to the proceedings. At page 115 the transcript, Ms. Wilkie testified that Mr. Robert Hume told her that the company might have covered Mrs. MacGillivray if she had been a super worker or valued employee.

Mr. Juriansz asked Ms. Wilkie whether she asked Mr. Hume if Hume's Transport would pay the premium of Mrs. MacGillivray if her husband was working but not covered by his company? Ms. Wilkie replied (transcript page 114-115) that Mr. Hume said his understanding was that Mr. MacGillivray was working and in reply to the hypothetical, he said that it would depend on what Mr. MacGillivray's salary was. Ms. Wilkie recalled that Mr. Hume said, if a person were making \$500 weekly, he would expect that it would be the man's responsibility to pay the OHIP.

Exhibit C-5 was introduced, a copy of a letter from Hume's Transport dated May 5, 1980 to Donna Wilkie and signed by Robert Hume concerning the date that Mrs. MacGillivray had begun work on a full-time basis and further information on her OHIP payments. Exhibit C-6 was introduced, a copy of another letter from Robert Hume, Hume's Transport to Donna Wilkie dated February 1, 1980 concerning the dates of Mrs. MacGillivray's employment and outlining Hume's policy on OHIP and fringe benefits.

On cross-examination, Ms. Wilkie (transcript page 123) said that she was told in a letter from Mr. Hume that Hume's did not have a booklet or official guideline outlining the fringe benefits offered by the company.

Mr. M. Robert Hume, Vice-President, Hume's Transport, gave evidence that he was in charge of the office staff as well as sales, rates and operating authorities. He described the division of work within the company as primarily the office staff, of which Mrs. MacGillivray was one, and the dispatch staff, which involves management of the union staff and the picking up and delivery of freight. The union staff not only includes truck drivers but also maintenance and service functions. Mr. Hume gave evidence that the administration of the union staff and the office worker staff were kept separate.

Mr. Hume gave evidence that he had not been advised by Sherry MacGillivray that her husband was applying for a job as a driver. He also said that it was his responsibility to set salaries, to hire and fire office staff, and to determine the fringe benefit package that office workers would be entitled to. He indicated that Hume's had never had a written policy with respect to fringe benefits. The practice was to discuss it as a matter of compensation at the time a person applied for a job.

Mr. Hume gave evidence that when Mrs. MacGillivray was hired full-time, it was a peak period situation when the company needed extra help and that the discussion concerning salary had been with Bob Kristof. The decision was taken to compensate Mrs. MacGillivray up to the increased hours necessary for a full week but at the same rate of pay as her part-time employment.

Mr. Hume disclosed that the usual practice in hiring a person is to establish a price for the job, either run an ad in a paper or conduct interviews by a placement agency, advise candidates as to the functions of the job and what the company is willing to pay and what the benefits will be.

Mr. Hume admitted that Sherry MacGillivray's situation, that is, going from part-time to full-time employee, was an infrequent occurrence and that he had had no contact with her concerning her compensation when she became a full-time employee.

Counsel for the Respondent asked Mr. Hume about Mrs. MacGillivray's job performance. At page 142 of the transcript, Mr. Hume replied that Mr. Kristof had advised him that she was slow in learning the job and that she was late for work quite often. He said that his partners were unsatisfied because Mrs. MacGillivray brought her children into the switchboard area on occasion and left them there with their skating equipment.

Mr. Hume recalled a conversation in his office with Mrs. MacGillivray when she asked him whether the company would pick up the payment of her OHIP premiums. Mr. Hume recalled advising Mrs. MacGillivray he would have to talk

to his partners because, at the back of his mind, he knew that the company wasn't satisfied with her performance. Mr. Hume went on to say that he was considering letting Mrs. MacGillivray go and that he did not want to pick up the OHIP payments.

At page 145 of the transcript, Mr. Hume replied as to what happened next:

A. Well, I spoke to them (partners) and we decided that we wouldn't pay the OHIP premium because we were going to let her go and we didn't let her go right away. I left that up to Bob because if we had to let her go right then, we would have had to replace her and he was busy. We were in a busy period so we kept her on for a period of time.

At page 146 of the transcript, Mr. Hume gave evidence that, if a person was a desirable worker, somebody the company wanted to keep, the company would pick up the OHIP payment.

At page 147 of the transcript, Mr. Hume recalled the case of Mrs. Pat Davis. He gave evidence that, after Mrs. Davis had been employed with the company for some time, her husband had been laid off. She went to Mr. Kristof and asked to have the OHIP premiums paid through Hume's. She paid it personally for the first several months and then came to the company officials and asked if they would assume her premium payments because her husband had been laid off. The company officials had a meeting and decided to make the premium payments on behalf of Mrs. Davis because she was a good worker. At page 148 of the transcript, Mr. Hume recalled that Evelyn Popowich came to the management of the company and asked if they would pay her OHIP premium payments. Mr. Hume testified she was a very good worker and the company paid her premium payments immediately.

Mr. Hume gave evidence that, after the decision was made not to pay Sherry MacGillivray's OHIP premiums, Bob Kristof was asked to tell her. He also stated that the decision to let Mrs. MacGillivray go was made in the spring but not actually acted upon until the fall. The reasons for this were that the company was busy, and that in the fall they were less busy and, by then involved in bringing in a computer which would have eliminated the position once it was fully installed. He gave further evidence that her performance was poor throughout the whole period of her full-time employment. Mr. Hume gave evidence that the extra \$322 Mrs. MacGillivray was paid at termination was to compensate for the fact that when they let her go she was ill for a period of approximately two weeks.

During cross-examination, Mr. Juriansz introduced Exhibit C-8 which was a copy of a letter written by Mr. Robert Hume re Mrs. MacGillivray. Mr. Robert Hume identified the letter and said he gave it to Mrs. MacGillivray when she left. Mr. Hume noted that it stated:

"Sherry was a conscientious worker during the time she was with our

company."

Mr. Juriansz at page 158 of the transcript asked:

Q. Can you name somebody who wasn't a good worker?

A. The army chap that we dismissed that you brought up earlier.

Q. What was his name?

A. Donald Kramer, I believe it was.

Q. Was his OHIP paid?

A. Yes, it was, I think.

The cross-examination reviewed the matter of the conversations with Ms. Donna Wilkie in connection with the investigation of the complaint. Counsel for the Complainant reviewed the matter of hypotheticals with Mr. Hume. At page 161 of the transcript, Mr. Juriansz asked:

Q. Did you tell Ms. Wilkie that Hume's' policy was that they couldn't switch their coverage from one name to another?

A. No, sir, we did not.

Q. You did not say that?

A. I told her in answer to that question that we had no policy and I told her on many occasions that we had no policy and I said that - when she asked that question I said, "There 's no way I'm going to allow everybody, just because we pay the whole shot, I'm not going to allow everybody, all of a sudden, to switch over to our plan." That's how I answered that question.

Q. And your position is as stated in your letter that OHIP coverage is part of the compensation that is negotiated individually?

A. Well, it certainly is. I don't think that there is any question about that. Hidden costs are in some cases now 50% of a wage package.

Further, Mr. Hume gave evidence that Mrs. MacGillivray did not tell him explicitly that her husband was unemployed but he agreed that, if she was asking for OHIP coverage, it could only mean that either her husband was not employed or was not covered by OHIP somewhere else.

Mrs. Evelyn Popowich, married in 1965, gave evidence that she was once employed at Hume's Transport Ltd. She began working there in January of 1973

and was married at that time. Mrs. Popowich gave evidence that John Glover, the office manager at the time, interviewed her, that salary was discussed then as well as OHIP coverage. When asked whether she was covered, she

indicated she was through her husband. Her husband was self-employed and consequently paying directly. Mrs. Popowich stated she was employed with Hume's Transport for approximately five years.

When asked what her memory was of when Hume's began to pay her premium payments for her, she indicated that she thought it was at the time that she received a promotion to paymaster, about two years after she started work.

However, Mrs. Popowich refreshed her memory by checking the payroll records at Hume's. The facts are, that several months after she began her employ, Hume's began paying her premium payments. Mrs. Popowich did not recall any discussions with her employers before the OHIP premiums were paid by them.

When asked whether, in a telephone conversation with the associate counsel for the Complainant (Mr. Mark Charron) Mrs. Popowich recalled telling him that the office manager made it clear that her case was an exceptional case, Mrs. Popowich stated that she could not actually remember saying that, but that she understood that to be the case. She went on to say she had assumed that it was instead of a raise that she was going to have her premiums paid (transcript page 179). At page 180 of the transcript, Mrs. Popowich states:

A. I think what happened was the office manager came to me with the announcement that I was going to be covered from that time on by OHIP, the office was going to pay for it. Up until that time, I was paying directly. I had joined the group. One of the girls in the office suggested that since our family was paying directly to OHIP, that it would be more convenient for me to join the office group and have it deducted off my pay, so that is what happened and for two weeks, evidently according to the record, I had it deducted off my pay. And then, from that time on, the office decided that they would take - take that over and pay it as a benefit, but I can't remember actually the office manager coming to me but he must have.

On many occasions, Mrs. Popowich remarked that her recollection was vague and that it had been eight years since she had been employed with Hume's.

Mr. Robert Hume was recalled in reply to Mrs. Popowich's evidence and Exhibit R-2 was introduced by Miss Gilmour which was a copy of earnings records, 1973 with respect to Evelyn Popowich, 614 Unions Drive. This record indicates that at January 2nd, 1973 Evelyn Popowich began work for Hume's Transport. There was a deduction made from her pay with respect to OHIP premiums for the months of January and February. In March of that year the company began to make these payments on behalf of Mrs. Popowich and consequently they were no longer deducted from her pay. The record goes on to indicate that in April of the same year Mrs. Popowich received an increase in pay which corresponded to the end of her three-month probationary period.

After carefully considering the foregoing evidence, I am drawn to

conclude that the usual practice at Hume's Transport was that the matter of OHIP was raised and decided when an interview was held with a prospective employee. Simply stated, the practice was to pay OHIP premiums for all employees except those who were covered by a spouse's plan. In the words of Mr. Hume himself, "just because we pay the whole shot". When situations arose where coverage on a spouse's plan ceased, in the case of females, coverage was provided by Hume's. In all cases of male employees, save those covered by a spouse, OHIP premiums were paid.

But when the evidence is considered and read as a whole, it is quite clear that the usual practice was totally ignored in the circumstances of Mrs. MacGillivray. Her situation has revealed numerous inconsistencies in the usual practice regarding OHIP benefits at Hume's. Mrs. MacGillivray stated a number of times she advised both Mr. Hume and Mr. Kristof of her husband's unemployment. Mr. Kristof does not recall this and Mr. Hume denies it. But even though he denies it, Mr. Hume suggests that there could have been only two reasons why Mrs. MacGillivray brought the matter up: that her husband was unemployed or not covered by OHIP somewhere else. Allowances for payment in these circumstances had been made in the past. And in the case of male employees, they never arose, as they were uniformly covered at the commencement of their employ.

It has been suggested that Mrs. MacGillivray was not a good employee and that, when the issue of her OHIP premium payment arose, it was determined that the company would not pay her premium because it would be tantamount to a raise when their intention was to let her go. In addition, almost nine months passed before Mrs. MacGillivray was told she was laid off, an unusually long period, I would suggest, to continue to employ an unsatisfactory worker. A further inconsistency was that Mrs. MacGillivray received a respectable letter of reference and good severance terms when she left the company. And finally, it was shown that the company paid OHIP premiums for an unsatisfactory male worker, from the beginning of his employ.

The evidence is clear from the testimony of Mr. Hume and Mr. Kristof that all employees had their OHIP premiums paid, even less valued ones like Donald Kramer, save for Mrs. MacGillivray, Mrs. Popowich, and Mrs. Davis.

It was suggested at length that there was no specific policy at the company with regard to OHIP premiums and that the practice was to discuss on an individual basis the payment of OHIP premiums as part of a general compensation package. And yet, when Mrs. MacGillivray became a full-time employee at Hume's, the matter was not discussed as part of the compensation package. She presumed her payment would be picked up by her employer and it was not. When she brought it up for discussion with the vice-president, Mr. Hume, he indicated that he would discuss it with his superiors and let her know. It was discussed but Mrs. MacGillivray was never informed of the result and continued to pay her premiums from her own remuneration.

The preponderance of evidence indicates that Hume's Transport paid the premiums of their married male employees but not their married female employees.

The transcript reveals that three employees, Mrs. MacGillivray, Mrs. Popovich and Mrs. Davis, had their premiums deducted from their remuneration initially. These three were married women and were the only three Hume's employees to have their premiums deducted. The premiums of both Mrs. Popowich and Mrs. Davis were subsequently paid by Hume's. The evidence demonstrates that married women commence their employment with Hume's at a disadvantage because their OHIP premiums are not paid. This practice at Hume's has the effect of denying women an equal employment opportunity.

DISCRIMINATION UNDER SECTIONS 7(b) AND 10

I was referred to the case of Martha Taylor v. Franklin Draperie Company, Inc. et al, reported in the Employment Practices Decisions at paragraph 8202, Volume 16. It is an American decision of the U.S. District Court based on an allegation of sex discrimination under the Civil Rights Act of 1964 relating to medical and insurance payments. At issue was the fact that the company paid premiums for a valued female employee and did not pay premiums for a less valued female employee.

At p. 5044 of the decision, it states:

"Arguments for differences in fringe benefits based upon stereotyped

presumptions about the relative financial responsibilities of the sexes in their degree of career orientation have been uniformly rejected by the courts and by the EEOC."

In that case, the defendant's (the Franklin Company) testimony indicated that, because 80% of its female employees were covered by their husbands' medical insurance policy, the decision was taken not to offer insurance coverage generally to its female population. The court held that the decision-making was based on the stereotype generalities which federal law is meant to prohibit. The payment or raise to the employees on staff at the time may have been of some incentive, but the long-range effect of the decision reinforced the stereotype generalities.

The testimony of Mr. Kristof indicates disposition to a stereotypical attitude toward the position of women in the work force at Hume's. Mr. Kristof indicated that most married women were covered on their husbands' policies. It was the view of Mr. Kristof that it was Mr. MacGillivray's job to provide OHIP coverage for his wife. And Mr. Kristof did not deny the reference to the husband's earnings as a factor in the decision to pay OHIP premiums at Hume's. Mr. Hume's discussions with Ms. Wilkie on the subject of certain hypotheticals reveal he too had a disposition to the stereotypical attitude highlighted in the Martha Taylor case.

I was also referred to the case of Willey S. Griggs et al v. Duke Power

Company 401 U.S. 424. This was a decision the Supreme Court of the United States from a decision of the U.S. Court of Appeals, Fourth Circuit, from a decision of the District Court. In an opinion by the Chief Justice which expressed the unanimous view of the court, it was held that the Civil Rights Act prohibits an employer from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when a) neither standard is shown to be significantly related to successful job performance, b) both requirements operate to disqualify negroes at a substantially higher rate than white applicants and c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving

preference to whites. The Court reversed the decision of the Court of Appeals of the Fourth Circuit that residual discrimination arising from past employment practices was insulated from remedial action.

I was also referred to the matter of Jean Tharp and Lornex Mining Corporation Limited, a decision of the board of enquiry under the British Columbia Human Rights Code, in 1975. The issue in this case was employment opportunities for women in lumber and mining camps in remote areas and the necessary facilities to effect such equal opportunities. The complainant held the view that the provision of common facilities such as bunkhouse and washroom constituted a discriminatory practice. The board of enquiry held that this identical treatment of all employees which required them to use the same facilities was discriminatory in that it denied equal employment opportunities to these women because they had no private facilities free from intrusion from the opposite sex. At page 13 the Board said:

"It is a fundamentally important notion that identical treatment does not necessarily mean equal treatment or the absence of discrimination. We would add only that the circumstances of this complaint graphically illustrate the truth of this important notion."

I was referred to Foster v. British Columbia Forest Products Ltd., April 17, 1979, a decision of a British Columbia Board of Inquiry and also the matter of Colfer v. the Ottawa Board of Commissioners of Police (January 12, 1979), a decision of an Ontario Board of Inquiry. Both these matters relate to height and weight standards as applied to men and women. A neutral standard was applied in the second case which, though neutral on its face, had the effect of excluding women. The Board said at page 37:

"An employment regulation neutral on the face of it, i.e. one that applies to all prospective employees equally but has the effect of excluding women, is valid if it can be shown that the regulation is in good faith and is reasonably necessary to the employer's business operations."

In the first case, the Board said at page 28:

"I conclude, therefore, that the company's height and weight standard is unreasonable and has a disproportionate impact on women."

The evidence shows that the practice at Hume's was to pay OHIP premiums for all employees with the exception of the three married women, as shown.

There is no evidence to show that the practice was not "in good faith" but it is clear that the effect of this practice had a disproportionate impact on married women employees. Even less valued male employees had their premiums paid.

The Human Rights Act does not give the employer the freedom to negotiate terms and conditions of employment without regard to the provisions of the Act. Employment standards must conform to the requirements of the Act and the policies, practices and agreements reached by the employer are not only subject to scrutiny but to strict scrutiny in order to preserve the equal standards and opportunities set out in the Act.

The fact that the testimony of Hume's indicates that they were concerned that the OHIP premium would be considered a pay raise is an explanation that must be ignored.

All married male employees of Hume's Transport were covered and the same premium benefits should have been applicable to married women employees.

The Tribunal is mindful that it should not interfere with reasonable and equitable employment practices. But it does have a duty to protect individuals who have been subject to unreasonable and unfair practices.

Therefore, on the balance of probabilities exhibited by the testimony and persuaded by the legal arguments as stated, I find that the complaint of Sherry MacGillivray is substantiated. Hume's refused to pay the OHIP premiums of Sherry MacGillivray while they uniformly paid the OHIP premiums of all male employees, even unsatisfactory or less valued ones which I find is a discriminatory practice. I find the company's practice with regard to OHIP premium payments was unreasonable and had a disproportionate impact, however temporary for some, on women. The effect of this practice was discriminatory and contrary to ss. 7(b) and 10 of the Canadian Human Rights Act.

I order that the Respondent cease the discriminatory practice. And, further, the order will require compensation for Mrs. MacGillivray under s. 41, subparagraph 2) for \$280.00, which is the amount of money which was

deducted from
her remuneration on account of the lack of OHIP premium payments by her
former employer, Hume's Transport Ltd.

DAMAGES

Counsel for the Complainant has asked me to consider compensation for

Mrs. MacGillivray under s. 41(3)(b) in the amount of \$500.00.
I have been asked to consider that Mrs. MacGillivray suffered some
shock
to her ego and suffered a diminished view of herself as a strong and
independent individual. At the time of the complaint, she was
supporting
herself, two sons and a husband who was experiencing some difficulties.
She
indeed suffered the financial loss because of the lack of premium
payment and
very likely emotional turmoil through the various procedures and
difficulties
associated with the complaint.

Counsel for the company indicates that Mrs. MacGillivray had been
generously provided for by the terms of her severance when she left the
employ of Hume's Transport. Hume's Transport paid her for an additional
two
weeks in addition to the terms of severance. Hume's indicated
they were sensitive to her particular situation in that they wrote
a positive letter of recommendation to assist her in gaining other
employment.

I don't believe these matters should be considered with respect to the
matter of emotional and financial damages. The transport company
treated Mrs.
MacGillivray throughout this matter unevenly and with considerable lack
of
respect. Mr. Hume himself testified that they decided to terminate her
employment in the spring but only terminated her employment late in the
fall,
because they were busy through the spring and summer and needed her to
help
out. This indicates a serious lack of regard for the employee in the
circumstances. Although Mr. Hume was supposed to report back on his
discussion with superiors, the decision was never communicated to Mrs.
MacGillivray. Throughout there was a lack of straightforward
communication
and respect.

I must be mindful in any award of the steps that Hume's took to reduce
the impact of the loss Mrs. MacGillivray's job. Hume's terminated Mrs.
MacGillivray at a time of illness. Her severance and week's payments
are
according to the provisions of the Employment Standards Act. The fact
that
they awarded her an additional two weeks' pay was, in the words of Mr.

Hume,
because they were terminating her employment at a time of illness. She
did
not find other work
until February of the following year. In view of all the circumstances
of the case, I have concluded that Mrs. MacGillivray is entitled to an
award
for special compensation because she was the victim of the
discriminatory
practice of Hume's Transport and has suffered in respect to this matter
a
certain loss of self-esteem and self-respect as a result of the
practice, in
the amount of \$250.00.

ORDER

WHEREAS Hume's Transport Ltd. has been found to have contravened ss.
7(b) and
10 of the Human Right Act of Canada and

WHEREAS Mrs. Sherry MacGillivray has been found to have incurred
expenses by
reason of this contravention; and

WHEREAS Sherry MacGillivray has been found to have suffered loss of
self-esteem and self-respect by reason of the said contravention;

IT IS THEREFORE HEREBY ORDERED that Hume's Transport Ltd. compensate
Sherry MacGillivray for expenses incurred by Sherry MacGillivray in the
amount of \$280.00;

AND IT IS FURTHER HEREBY ORDERED that Hume's Transport Ltd. pay to
Sherry MacGillivray a further sum of \$250.00;

AND IT IS FURTHER HEREBY ORDERED that Hume's Transport Ltd. refrain
from
committing the same or similar contravention of the Canadian Human
Rights Act in relation to discriminatory practices as described.

DATED at Ottawa, Ontario, this 27th day of January, 1982.

Mary Lois Dyer