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

#### PUBLIC SERVICE ALLIANCE OF CANADA AND CATHY MURPHY

**Complainants** 

## - and -CANADIAN HUMAN RIGHTS COMMISSION

Commission

#### - and -CANADA REVENUE AGENCY

Respondent

### **RULING**

MEMBER: Karen A. Jensen 2008 CHRT 31 2008/07/14

[1] This is a ruling on a motion by the Complainants, Cathy Murphy and the Public Service Alliance of Canada (PSAC). The Complaint involves allegations that the Respondent maintains a discriminatory policy of charging compounded interest at high rates on notional tax arrears on income received as a result of an order of this Tribunal in a pay equity case. Approximately 250,000 people received payments as a result of an order of this Tribunal on October 29, 1999.

[2] The motion is for an order bifurcating the hearing into this matter so that the liability portion of the inquiry may be heard and determined first leaving the remedy to be heard at another hearing, if necessary. The principal reason for the request is that if the complaint is substantiated, evidence would have to be gathered from thousands of people in order to calculate the precise amount owing to the approximately 250,000 people affected by the complaint. This would require a significant amount of time and would unduly delay the hearing on liability, according to the Complainants.

[3] The Commission supports the Complainants' request to bifurcate the hearing.

[4] The Respondent opposes this request on the basis that it is unnecessary. In the Respondent's view, the principles governing remedy may be established at the hearing without the need to calculate the individual damages of every potential recipient. The Tribunal may address the issue of remedy by providing the framework necessary to calculate the damages for each individual. In the Respondent's view, the Tribunal could remain seized of the matter of individual damages to permit the parties to come back before the Tribunal if necessary.

[5] The Complainants have proposed an alternative to bifurcating the hearing: instead of reserving all of the issue of remedy to a second stage, the parties would address the issue of

remedy in the main part of the hearing and leave the individual calculations to be determined later, if necessary.

[6] The Respondent consents to the alternative request. However, it says that Ms. Murphy should be required to prove her damages in the main hearing rather than revisit this issue at another hearing.

[7] In my view, the Complainants' second request need not, and should not require a bifurcation of the hearing. The Complainants' submissions on this motion clearly indicate that although the precise quantum of damages for each individual affected by the decision would vary, the formula or calculation required to arrive at the quantum would be ascertainable and would apply to all of the approximately 250,000 individuals.

[8] Therefore, the Respondent is correct in saying that if evidence is led about the method of calculating the individual damages, the Tribunal could make a determination on that issue and leave it to the parties to do the individual calculations. In that way, liability and remedy would be dealt with in one hearing with the Tribunal retaining jurisdiction over the issue of individual damages, should a need arise for further determination. Ms. Murphy's case may provide a useful example of how to calculate individual damages.

[9] Complainants' counsel has indicated that although he cannot conceive of any remedy at this stage which would require a separate, individual assessment, he reserves the right, in the event that such a remedy is identified, the request that that aspect of the remedy stage be bifurcated as well. I am not sure that I understand what is meant here. However, I would reiterate that I do not see a need, based on the material that has been presented to date, to bifurcate the hearing. As I see it now, a single hearing is the most expeditious and fair means of resolving this matter.

Signed by Karen A. Jensen

OTTAWA, Ontario July 14, 2008

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STYLE OF CAUSE:	Public Service Allinace of Canada and Cathy Murphy v. Canada Revenue Agency
RULING OF THE TRIBUNAL DATED:	July 14, 2008
APPEARANCES:	

#### PARTIES OF RECORD

David Yazbeck	For the Complainants
K.E. Ceilidh Snider	For the Canadian Human Rights Commission
Catherine A. Lawrence	For the Respondent