

2003/07/11

MEMBER: Anne Mactavish

[1] Micheline Montreuil filed a human rights complaint against the National Bank of Canada, alleging that the Bank refused to hire her because of her sex, contrary to section 7 of the *Canadian Human Rights Act*. Ms. Montreuil states that she is a transsexual.

[2] The Bank brought two preliminary motions in relation to Ms. Montreuil's complaint. The first motion sought to have Ms. Montreuil's complaint dismissed, on the basis that the Canadian Human Rights Tribunal lacked the requisite degree of institutional independence and impartiality, as a result of certain provisions in its enabling legislation. This motion has now been withdrawn, as a consequence of the recent decision of the Supreme Court of Canada in *Bell Canada v. Canadian Telephone Employees Association* [\(1\)](#).

[3] The Bank's second motion seeks the summary dismissal of Ms. Montreuil's complaint. The body of Ms. Montreuil's complaint elaborates on her assertion that she is a transsexual: Ms. Montreuil states that she dresses as a woman, and is currently in a period of transition in order to become female. ⁽²⁾ The Bank contends that in the course of a proceeding before the Quebec Court of Appeal ⁽³⁾, Ms. Montreuil acknowledged that she had no intention of proceeding with sex reassignment surgery. As a consequence, the Bank says that Ms. Montreuil, by her own admission, is not a transsexual person in a period of transition in order to become female. As a result, her complaint should be summarily dismissed.

[4] Ms. Montreuil submits that she has always maintained that she is transgendered ("une transgenre"), that is a person in transition between the male sex and the female sex. According to Ms. Montreuil, some people describe transgendered people as being like pre-operative transsexuals. Others would describe the transgendered as being "full-time" transvestites. Still others view the transgendered as part-male, part-female or "she-males". Whatever terminology is used, Ms. Montreuil says, it is evident that a transgendered person is a person in an evolutionary stage, who could one day become a transsexual. Ms. Montreuil submits that where she is in this evolutionary process should be of no concern to the Bank. This is a personal issue, Ms. Montreuil says, and the position taken by the Bank constitutes an intolerable intrusion into Ms. Montreuil's private life.

[5] Ms. Montreuil asks that the Tribunal dismiss the Bank's motion, with costs.

[6] The fundamental question for the Tribunal on this motion is whether Ms. Montreuil's complaint involves a proscribed ground of discrimination under the *Canadian Human Rights Act*. If the complaint does not engage one of these proscribed grounds, then no breach of the *Act* can be established, and the complaint should be dismissed.

[7] Ms. Montreuil describes herself in her complaint as a transsexual. There is a significant body of human rights jurisprudence that has found that discrimination on the basis of transsexualism constitutes sex discrimination.⁽⁴⁾

[8] As a result, I am satisfied that on its face, Ms. Montreuil's complaint appears to come within the four corners of the *Canadian Human Rights Act*, and should proceed to a hearing, in order to determine whether Ms. Montreuil's allegations can be proven.

[9] What the Bank appears to take issue with is the assertion in Ms. Montreuil's complaint that she is a transsexual person in a period of transition in order to become female. If the Bank is of the view that Ms. Montreuil has been inconsistent in her description of her condition, this is something that it may wish to explore in cross-examination.

[10] It seems to me that ultimately, the question of whether an individual who describes herself as a transsexual, but has no intention of undergoing sex reassignment surgery, is indeed a transsexual, is a question that requires an evidentiary foundation to answer. As such, the issue should be dealt with in the context of the hearing itself, rather than on a preliminary basis.

[11] Accordingly, the Bank's motion is dismissed, without prejudice to the Bank's right to pursue this argument at the hearing into the merits of Ms. Montreuil's complaint.

[12] Insofar as Ms. Montreuil's request for costs is concerned, I agree with the Bank's submission that there is no authority in the *Canadian Human Rights Act* which would permit the Tribunal to grant a party her costs in relation to a preliminary motion. Section 53 (2) (c) of the *Act* empowers the Tribunal to compensate a successful complainant for "any expenses incurred by the victim as a result of the discriminatory practice". This section has been interpreted to include the awarding of costs.⁽⁵⁾ However, the remedial jurisdiction of the Tribunal under section 53 of the *Act* is only engaged after there has been a finding that a respondent has committed a discriminatory practice. There has been no such finding in this case.

I. ORDER

[13] For these reasons, the Bank's motion is dismissed, without costs.

"Original signed by"

Anne L. Mactavish

OTTAWA, Ontario

July 11, 2003

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

TRIBUNAL FILE NO.: T795/4503

STYLE OF CAUSE: Micheline Montreuil v. National Bank of Canada

RULING OF THE TRIBUNAL DATED: July 11, 2003

APPEARANCES:

Micheline Montreuil On her own behalf

André Giroux For the Respondent (National Bank of Canada)

1. ¹ 2003 SCC 36

2. ² In the original French, Ms. Montreuil's complaint reads: "[Je] suis actuellement en période de transition pour devenir une femme".

3. ³ *Montreuil v. Directeur de l'état civil*, [2002] R.J.Q. 2911

4. ⁴ See, for example, *Kavanagh v. Correctional Service of Canada*, (2001) 41 C.H.R.R. D/119 (C.H.R.T.), *Sheridan v. Sanctuary Investments Ltd. (c.o.b. B.J.'s Lounge)*, (1999) C.H.R.R. D/467 (B.C.H.R.T.), *M.L. and Commission des droits de la personne et des droits de la jeunesse du Québec c. Maison des jeunes*, [1998] J.T.D.P.Q. No. 31 (Qué. H.R.T.), *Ferris v. Office and Technical Employees Union, Local 15*, [1999] B.C.H.R.T. No. 55, and *Mamela v. Vancouver Lesbian Connection*, (1999) 36 C.H.R.R. D/318 (B.C.H.R.T.).

5. ⁵ See, for example, *Canada (Attorney General) v. Stevenson*, 2003 FCT 341