TD 5/ 85 Decision rendered August 13, 1985

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 S. 39 of The Canadian Human Rights Act.

BETWEEN:

CHRISTINE MORRELL Complainant -

AND CANADA EMPLOYMENT AND IMMIGRATION COMMISSION Respondent

DECISION OF THE TRIBUNAL

BEFORE: Robert W. Kerr

APPEARANCES: Russell Juriansz assisted by James Hendry, Counsel for the Complainant and the Canadian Human Rights Commission Duff Friesen assisted by Steven Sharzer, Counsel for the Respondent

HEARD IN OTTAWA, ONTARIO ON JUNE 6, 1985 > 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 S. 39 of The Canadian Human Rights Act.

BETWEEN: CHRISTINE MORELL Complainant - AND CANADA EMPLOYMENT AND IMMIGRATION COMMISSION Respondent

THE FACTS In February of 1983 the Complainant registered for employment at the Canada Employment Centre in St. John's, Newfoundland, seeking employment as a police officer. She was employed at the time as a waitress and was, therefore, seeking to change her occupation. She had completed only grade 9 in her education. Openings for the position of police officer required a grade 11 education. Consequently, in early May officials at the Centre recommended her for a course to upgrade her education and she was placed on the waiting list for a course known as Basic Training for Skill Development. She was subsequently enrolled in the course on August 28, 1983. The course was to continue until June 8, 1984. If the Complainant had successfully completed the course, she would have received the equivalent of a grade 12 diploma.

> - 2 After a change of employment in mid- June, 1983, the Complainant was laid- off from her new job in mid- July. At that time she applied for and received unemployment insurance benefits. These benefits continued when she commenced the Basic Training for Skill

Development course under provisions for extension of benefits to recipients recommended for such a course by the appropriate authorities, as the Complainant had been.

The Complainant became pregnant between the time when she was recommended for the course and the commencement of the course. In early January, as a result of discussion with her husband, she became concerned as to whether her pregnancy would affect her unemployment insurance benefits. She reported her pregnancy to the Canada Employment Centre on January 10, 1984 and inquired as to whether this would affect her benefits. After review of the case, officials determined that her pregnancy disentitled her to continuation of regular benefits for the period from January 1, 1984 to April 22, 1984, and that in her circumstances she did not qualify for maternity benefits during this period. The Complainant had already received benefits for the first week of this period before she reported the pregnancy. Further benefits were immediately suspended pending the determination as to her entitlement. Following the determination that she was disentitled, the discontinuation of benefits remained in effect until after April 22. Payment of regular benefits then resumed, although the first week of such benefits was withheld to offset the overpayment for the first week of January.

> - 3 The Complainant stopped attending the Basic Training for Skill Development Course on February 3, 1984 and resumed attendance on April 2. She testified that the reason for non-attendance was the financial difficulties created by the cessation of unemployment insurance benefits, and not due to any physical incapacity related to her pregnancy.

The basis of the complaint is that the denial of regular unemployment insurance benefits during the period from January 1 to April 22,

1984 was a denial of a service customarily available to the public on the grounds of sex, contrary to s. 5 of the Canadian Human Rights Act, S. C. 1976- 77, c. 33 as amended. The Complainant relies further upon s. 3(2), enacted by S. C. 1980- 81- 82- 83, c. 143, s. 2, which provides that:

Where the ground of discrimination is pregnancy or child- birth, the discrimination shall be deemed to be on the ground of sex.

This latter provision took effect on July 1, 1983. The Respondent, on the other hand, relies on s. 46 of the Unemployment Insurance Act, 1971, S. C. 1970- 71- 72, c. 48, which provided that:

Subject to section 30, a claimant is not entitled to receive benefit during the period that commences eight weeks before the week in which her confinement for pregnancy is expected and terminates six weeks after the week in which her confinement occurs.

S. 30 is the provision for pregnancy benefits which did not apply in the Complainant's circumstances. S. 46 was repealed effective January 1,

> - 4 1984: S. C. 1980- 81- 82- 83, c. 150, s. 7, but remained in effect for purposes of claims for a benefit period which, like that of the Complainant, began prior to that date: id., s. 10.

THE PRIMA FACIE CASE The facts of this case show a prima facie discriminatory practice contrary to s. 5 of the Canadian Human Rights Act. S. 63(1) of the Act makes it binding upon the federal Crown. Unemployment insurance is a service provided by the Respondent. Not only is it generally available to the public, but indeed it is a service which most employed members of the public are legally required to participate in. The regular benefits which were denied the Complainant from January 1 to April 22, 1984 are a primary part of this service. It is clear that these benefits were denied due to the pregnancy and child- birth experienced by the Complainant. S. 3(2), which was in effect at the relevant time, deems this to constitute sex discrimination, which brings it within a prohibited ground of discrimination under s. 3(1). Thus, the Complaint was denied a service customarily available to the public on a prohibited ground of discrimination.

CONFLICT WITH UNEMPLOYMENT INSURANCE ACT The denial of regular benefits to the Complainant during the period from January 1 to April 22, 1984 was, however, mandated by s. 46 of the Unemployment Insurance Act, as continued in effect at the relevant time by S. C. 1980- 81- 82- 83, c. 150, s. 10. This raises the question whether discrimination which is required by another federal statute

> - 5 constitutes a discriminatory practice contrary to the Canadian Human Rights Act.

There is no express provision in either the Human Rights Act or the Unemployment Insurance Act to indicate that one statute is to be given precedence over the other. It is arguable that precedence over other legislation generally is indirectly expressed in the Human Rights Code since a number of provisions stipulate that Act is not to effect other specified legislation. S. 14(b) exempts from the Act minimum and maximum age requirements applicable to employment "by law", as well as regulations made for this purpose by the Governor in Council. S. 14(d) exempts terms of pension plans which vest or lock- in contributions on the basis of age under the Pension Benefits Standards Act. S. 48 exempts pension plans established by Act of Parliament prior to the enactment of the Human Rights Act. S. 63(2) protects the Indian Act from being affected by the Human Rights Act. The existence of such provisions suggests that otherwise any discrimination under such legislation would in fact be subject to the Human Rights Act. This leads to the inference that legislative provisions which are not specifically exempted are overridden by the Act.

I am not satisfied that this implication follows from the express exemptions of other legislation contained in the Canadian Human Rights Act. There are three ways in which provisions in one statute may affect conflicting legislative provisions under another statute. First, the conflicting provision in one statute may impliedly repeal, and

> - 6 thereby render inoperative, the provision under the other statute. Secondly, the conflicting provision under one statute may alter the interpretation that would otherwise be given to the provision in the other statute. Thirdly, the conflict may arise, not directly from the provisions of the two statutes, but from subordinate legislation or other action under one or the other of the statutes. Since any statute takes precedence over delegated legislation and other activities unless there is a clear statutory provision to the contrary, a provision in one statute may nullify a provision in subordinate legislation or other action taken under other legislation.

Since minimum and maximum age requirements and pension plan provisions will often involve delegated legislation or contractual arrangements, rather than actual statutory provisions, most of the express exemptions of other legislation in the Canadian Human Rights Act may have been intended merely to protect subordinate legislation or contractual arrangements from the effect of the Act. While the exemption the Indian Act is clearly broader than this, this may have been intended merely to prevent interpretive modifications of the Indian Act on the basis of the Human Rights Act. Since the Indian Act by its nature discriminates widely on the ground of race, there was a large potential for such reinterpretation in the absence of s. 63(2) of the Human Rights Act. Consequently, the express exemptions of other legislation from the effect of the Human Rights Act may have been intended to protect subordinate legislation or other actions under such legislation or, in the case of the Indian Act, to prevent reinterpretation of the other

> - 7 statute, rather than to suggest that express provisions of other statutes would be overridden by the Human Rights Act.

The jurisprudence leaves open the question of whether conflicting

provisions in other legislation take precedence over or are subject to the provisions of the Canadian Human Rights Code. The issue arose before a Human Rights Tribunal in Bailey et al. v. Minister of National Revenue (1980), 1 C. H. R. R. D/ 193 (Cumming). The case involved provisions in the Income Tax Act which discriminate, when allowing deductions for dependents, on the basis of marital status and provisions which discriminate, when allowing deductions for child care expenses, on the basis of sex. Professor Cumming found these provisions were unreasonable violations of the rights set out in the Human Rights Act, but concluded that the Act did not render these provisions inoperative.

Reasoning by analogy to the "valid federal objective" standard used to determine whether legislation violated the right to equality under the Canadian Bill of Rights, Professor Cumming concluded that other legislation in conflict with the Canadian Human Rights Act remained operative as long as it was based on considerations perceived by Parliament as relevant to the fundamental purpose of the other legislation: at D/ 221- 2. Mere unreasonableness of the provision in relation to the purpose of the other legislation did not render it inoperative. Moreover, even if such a provision were inoperative, the remedial authority of the Tribunal under s. 41(2) of the Act did not extend to amending the legislation or even declaring it inoperative: at

> - 8 D/ 223- 4. At most the Tribunal could merely report the discriminatory practice to the Minister of Justice under s. 22(1)(e) of the Act.

At about the same time the issue of conflict between human rights and other legislation also arose before Boards of Inquiry under the human rights statutes in British Columbia and Manitoba. The British Columbia Board of Inquiry held that the human rights statute overrode another statute, while the Manitoba Board of Inquiry held that another statute overrode the human rights statute. Both decisions were reviewed by the courts which in the end upheld the British Columbia Board and overruled the Manitoba Board, with the result that in both cases the human rights statute was ultimately given precedence: Insurance Corporation of British

Columbia v. Heerspink et al., [1982] S. C. R. 145, [1982] I. L. R. 1- 1555, 43 N. R. 168, 137 D. L. R. (3d) 219; affirming, [1981] 4 W. W. R. 103, 27 B. C. L. R. 1, [1981] I. L. R. 1- 1368, 2 C. H. R. R. D/ 355, 121 D. L. R. (3d) 464 (C. A.); reversing (1979), 18 B. C. L. R. 91, [1980] I. L. R. 1- 1208, 108 D. L. R. (3d) 123 (S. C.), which set aside the Board of Inquiry decision; Newport v. Manitoba, [1982] 2 W. W. R. 254, 13 Man. R. (2d) 292, 3 C. H. R. R. D/ 721, 131 D. L. R. (3d) 564 (C. A.); reversing [1981] 5 W. W. R. 765, 12 Man. R. (2d) 443, 2 C. H. R. R. D/ 528, 81 C. L. L. C. 14,134, 126 D. L. R. (3d) 563 (Q. B.), which set aside the Board of Inquiry decision. However, the final court decisions were reached on a number of disparate bases which leave the state of the law uncertain.

The majority of the Manitoba Court of Appeal proceeded on the > - 9 basis of the rule that, where a conflict between statutory provisions cannot be otherwise resolved, the later provision must be taken to impliedly repeal the earlier one. In the British Columbia case, the Supreme Court delivered three judgments, each representing the views of three judges, and one of

these judgments was in dissent. The six majority judges did concur in the opinion of Mr. Justice Ritchie which was ultimately based on a procedural issue. The court proceedings had been taken by way of a stated case. Since issues of fact, as well as law, were involved, the courts had no jurisdiction to proceed by way of a stated case: at 152 S. C. R. Mr. Justice Ritchie did also express his views on the question of conflict between the human rights statute and the provision of the provincial Insurance Act that was at issue. He concluded that the two could be reconciled by interpreting the human rights statute as a qualification upon the Insurance Act provision: at 153 S. C. R. This avoided the question of which statute should prevail in a case of irreconcilable conflict. The concurring judgment of Mr. Justice Lamer and the dissent of Mr. Justice Martland split on this issue. Mr. Justice Martland indicated that in his view it would take express wording for the human rights statute to interfere with provisions laid down by another statute: at 157 S. C. R. Mr. Justice Lamer, on the other hand, was of the view that human rights legislation establishes fundamental law which should govern in the event of conflict with other legislation: at 157- 8 S. C. R.

The Manitoba Court of Appeal has subsequently again faced this issue in a context similar to the Newport case, but involving a

> - 10 legislative provision enacted after the human rights statute. The majority adopted the rationale of Mr. Justice Lamer by deciding that the human rights statute was fundamental law and still took precedence over the other legislation: Craton v. Winnipeg School Division No. 1 et al., [1983] 6 W. W. R. 87, 21 Man. R. (2d) 315, 149 D. L. R. (3d) 542 (C. A.); appeal to S. C. C. pending.

Other decisions were cited to me which have some bearing on the issue. In Attorney General of Canada v. Cumming et al., [1980] 2 F. C. 122, 1 C. H. R. R. D/ 91, 79 D. T. C. 5303, 102 D. L. R. (3d) 151 (T. D.), the Court rejected a preliminary challenge to Professor Cumming's jurisdiction to rule upon the validity of Income Tax Act provisions in the Bailey case. The upholding of such jurisdiction suggests that the Canadian Human Rights Act may prevail over other legislation, but the case really decided no more than that it was premature for the court to interfere in proceedings properly commenced under the Act.

In Re Canadian National Railway Co. and Canadian Human Rights Commission (1983), 4 C. H. R. R. D/ 1404, 48 N. R. 81, 147 D. L. R. (3d) 312; appeal to S. C. C. pending, the Federal Court of Appeal used a regulation under the Canada Labour Code to justify a job requirement that a Human Rights Tribunal had held to be discriminatory. This suggests that other legislative provisions may take precedence over the Human Rights Act. However, Mr. Justice Heald of the two- member majority did not proceed on the basis of a direct conflict between the Human Rights Act and the regulation. Instead he held that the regulation supported a conclusion

> - 11 that the requirement was a bona fide occupational requirement: at 319- 20 D. L. R. S. 14(a) of the Code exempts such requirements so that this reasoning reconciled the two conflicting provisions. Mr. Justice Le Dain in dissent adopted the view of Mr. Justice Lamer from the Heerspink case as to the

primacy of human rights legislation: at 339- 40 D. L. R. Mr. Justice Kelly was of the view that human rights legislation is not supreme over other laws in the absence of express provision to that effect: at 342 D. L. R. Consequently, the decision is as inconclusive as that of the Supreme Court in the Heerspink case.

Ordinarily I would be inclined to follow the decision of Professor Cumming in the Bailey case, in the absence of a definitive subsequent decision to the contrary. Tribunals, like courts, should pursue a consistent interpretation of the governing legislation. However, quite apart from the uncertainty created by the subsequent court decisions, I have difficulty with the rationale underlying the decision in the Bailey case.

In the first place, I have some problem accepting that Parliament would have conferred any power on Tribunals to review other statutes with respect to discriminatory practices if this power is as limited as Professor Cumming conceives it. By adopting a standard similar to that used by the courts in applying the equality provision of the Canadian Bill of Rights, Professor Cumming's approach would make the effect of Canadian Human Rights Act on other legislation duplicate the effect of the equality provision of the Bill of Rights. Since he

> - 12 proceeds to find that a Human Rights Tribunal has little or no remedial power, even if another statute is found in conflict with the Human Rights Act, there would appear to be little purpose served in making such discrimination subject to the Act at all.

In any event, as a matter of interpretation, I have some difficulty reading something like the "valid federal objective" standard into the Canadian Human Rights Act. The development of this standard under the Canadian Bill of Rights is understandable. The Bill of Rights enunciates vague general principles and leaves the courts with a wide range of possible interpretation. The courts have opted for a narrow interpretation for the equality provision, as well as for other provisions, of the Bill of Rights. The "valid federal objective" standard is one of the ways in which this narrow interpretation has been implemented.

The Canadian Human Rights Act, on the other hand, contains fairly specific provisions. Although certain provisions involve some ambiguity, there is by no means the same scope for interpretation as under the Bill of Rights. With legislation of this type, I think that, if Parliament

had intended to qualify the specific rights set out by Professor Cumming's standard for upholding conflicting legislation, such a qualification would have been expressed in the legislation.

In my view it is more likely that, if Parliament had any thoughts on the matter, it assumed straightforwardly either that the

> - 13 Human Rights Act would take precedence over other statutes or that the Human Rights Act would be read as subject to other statutes. This leaves the question which of these assumptions represents the intention of Parliament.

To a Tribunal charged with the enforcement of the Human Rights Act, Mr. Justice Lamer's view that human rights legislation should be treated as fundamental law is an attractive one. Taking into account the elaborate preambles of many of the provincial human rights statutes, it may also accurately represent the legislative intent underlying such statutes. However, I have difficulty finding an indication of such intent in the Canadian Human Rights Act.

The statement of purpose in s. 2 of the Act speaks, not in terms of fundamental law respecting human rights, but merely in terms of extending present laws to give effect to the principle of equal opportunity. Since the previous federal law respecting human rights was quite limited in scope, this seems more a simple description of the broad- ranging expansion of the scope of this law under the Act, than a statement of intent to create a body of fundamental law.

The nature of the rights created by the Act also fails to suggest the creation of a body of fundamental law. Unlike human rights legislation which makes affirmative declarations as to the rights of individuals or which creates a legislative injunction by expressly prohibiting certain conduct, the Canadian Human Rights Act merely defines

> - 14 discriminatory practices and sets up a quasi- civil procedure for remedying such practices. This is not ordinarily the way in which fundamental law is expressed.

With more specific reference to the relationship between the Human Rights Act and other legislation, s. 22(1)(f) authorizes the Canadian Human Rights Commission to review subordinate legislation and to comment on any provision thereof found inconsistent with the principle of equal opportunity. If the Act itself was conceived as overriding other legislation, it is very strange that this provision does not provide for review of other statutes. The obvious implication is that Parliament has reserved to itself the question of whether other statutes are in conflict with the Human Rights Act and whether it is appropriate to enact such conflicting legislation. This is inconsistent with any intent that the Human Rights Act prevail over other statutes. The Commission is authorized by s. 48(2) of the Human Rights Act to review Acts of Parliament passed prior to the Human Rights Act which establish pension funds. This reinforces the implication that other statutes are not the Commission's concern.

As noted above the Human Rights Act creates a quasi- civil remedy for practices defined as discriminatory. As a matter of general principle, it is ordinarily an adequate defence to a civil cause of action that the injurious conduct involved is expressly authorized by statute. It is

certainly arguable that discrimination mandated by statute is similarly a defence to a complaint under the Human Rights Act.

> - 15 If it were necessary for me to decide, therefore, I would be inclined to the view that the Canadian Human Rights Act was not intended to override conflicting statutory provisions. This would be consistent with the result reached by Professor Cumming in the Bailey case, although my reasoning

differs. The only practical difference is that I would not hold out the remote possibility recognized by Professor Cumming that in some extraordinary case another statute might be overriden by the Human Rights Act.

I find it unnecessary to decide this issue as a general matter, however, since rather more direct evidence exists as to the intent of Parliament respecting the specific conflict between s. 3(2) of the Human Rights Act and s. 46 of the Unemployment Insurance Act. The amendment bringing pregnancy and child- birth under the Human Rights Act was assented to on March 30, 1983, and was to come into force on proclamation: S. C. 1980- 81- 82- 83, c. 143, s. 29(1). The amendment repealing s. 46 of the Unemployment Insurance Act was assented to on June 3, 1983, and was to come into force on proclamation: S. C. 1980- 81- 82- 83, c. 150, s. 11. The proclamation bringing the Human Rights Act amendments into force had not yet been issued on June 3.

The obvious conclusion is that Parliament perceived the conflict between s. 3(2) of the Human Rights Act and s. 46 of the Unemployment Insurance Act and took timely action to avoid such a conflict. Except for the transitional provision in s. 10 of the amendments continuing the application of s. 46 to benefit periods that had already commenced, there

> - 16 would have been no conflict between the Human Rights Act and the Unemployment Insurance Act if both amendments had been proclaimed simultaneously. Whatever administrative reasons may have existed for deferring the repeal of s. 46 until January 1, 1984 when s. 3(2) was brought into effect on July 1, 1983, there was no legal reason why they could not have been proclaimed at the same time.

It may be asked why, if Parliament intended these two things to be tied together, it did not include the repeal of s. 46 of the Unemployment Insurance Act among the consequential amendments to the Human Rights Act. Other amendments to the Unemployment Insurance Act were made as such consequential amendments: S. C. 1980- 81- 82- 83, c. 143, s. 27. However, these amendments were of a truly minor and incidental nature. The repeal of s. 46 was, on the other hand, a major program change. It is not surprising that it was instead included with a number of other major program changes that were planned for the Unemployment Insurance Act at the time. What is significant is the timing of the legislation making these program changes. Parliament saw to it that this legislation was adopted before the amendments to the Human Rights Act to cover discrimination based on pregnancy and child- birth were proclaimed.

Whatever is the applicable rule for resolving conflict between irreoncilable statutory provisions, it is a settled rule of legislative interpretation that provisions should be reconciled wherever

possible. This may involve reinterpretation of an existing provision when a conflicting provision is enacted. Moreover, in the absence of

> - 17 clear statutory provision to the contrary, subordinate legislation is overriden by statutory provisions. I think the intention of Parliament was to avoid the obvious conflict between s. 3(2) of the Human Rights Act and s. 46 of the Unemployment Insurance Act, except in the transitional cases where

benefit periods had already begun, by providing for the repeal of s. 46 when s. 3(2) was proclaimed. This would reconcile the two provisions. The frustration of this intent by the Governor in Council's decision to defer proclamation of the repeal of s. 46 for six months after s. 3(2) had been proclaimed involves subordinate legislative action which is subject to be overridden by statutory provisions. I conclude that the intention of Parliament was that s. 46 of the Unemployment Insurance Act was to cease to operate upon the proclamation of s. 3(2) of the Human Rights Act. Effect is to be given to this intent by deeming s. 46 to have been impliedly repealed by the proclamation of s. 3(2), on July 1, 1983, thereby overriding the subordinate legislative determination of the Governor in Council to defer that repeal until January 1, 1984. Since the claim period of the Complainant began on July 17, 1983, it was not subject to the provision of s. 46 of the Unemployment Insurance Act. Consequently, the discontinuance of benefits from January 1 to April 22, 1984 because of the Complainant's pregnancy and child-birth was a discriminatory practice contrary to s. 5 of the Canadian Human Rights Act.

REMEDY Council for the Respondents argued that, in the event the complaint was found to be substantiated, the appropriate remedy was the payment of the benefits that would have been received if they had not

> - 18 been discontinued due to pregnancy during the period from January 1 to April 22, 1983. Council for the Human Rights Commission agreed that this was the appropriate remedy for the actual loss of benefits, but also argued for compensation for the injury to feelings and self-respect of the Complainant. Counsel for the Respondent argued that the injured feelings of the Complainant were entirely the consequence of her financial loss, as distinct from the sense of belittlement that discrimination commonly involves, and as a result compensation for the financial loss would fully restore the Complainant.

The primary remedy in a case such as this is under s. 41(2)(b) of the Canadian Human Rights Code. This provides for making available to the victim of discrimination the "rights, opportunities or privileges" that were denied. I have some doubt as to whether payment of the discontinued benefits is an adequate remedy under this provision. The benefits which the Complainant was receiving were tied to enrolment in the Basic Training for Skill Development course. They provided her with a source of income which permitted her to upgrade her education through the course. While she ultimately withdrew from the course of her own volition after the payment of benefits was resumed, the Complainant's evidence was convincing that she was forced into this decision by the financial difficulties created by the loss of benefits from January 1 to April 22, 1983. As already noted, these financial difficulties also forced her to withdraw during several weeks of the period during which benefits were discontinued. In other words, the discriminatory practice cost the Complainant the opportunity to successfully complete the

> - 19 course. It is probable that at this point in time it would take longer for the Complainant to complete the course than if she been able to continue in

it during the spring of 1983. There would likely be review work to be done to bring her education back to the point at which she left the course. A more appropriate remedy, therefore, might have been restoration of benefits for such period as would be required now for the Complainant to complete the course. Of course, payment of benefits in such a case would be contingent on the Complainant actually making use of the opportunity to enroll again in the course.

Since no such remedy was asked for, I accept the submission of counsel for both the Commission and the Respondents that the remedy should be payment of regular benefits for the period they were discontinued, except for any part thereof when the Complainant was actually incapacitated. Counsel were agreed that they could determine the appropriate amount and no evidence was led before me which would enable me to settle the amount. I think this is an appropriate case for me to reserve jurisdiction in the event that agreement cannot be reached on the amount of benefits owing. Any party may apply, upon reasonable notice to the other parties, to have the amount determined.

With respect to the claim for injury to feelings and self- respect under s. 41(3) of the Act, the evidence indicates that the Complainant suffered a sense of disillusionment and frustration with the system as a result of the treatment she received. This seems quite similar to the injury to feelings or self- respect generally experienced

> - 20 by victims of discrimination. At the same time, the Respondent believed that it was following the requirements of the law, and the discontinuance of benefits was explained to her on this basis. Since the award of compensation under s. 41(3) is discretionary, I think this ought to be taken into account in determining the amount to be awarded. Nonetheless, the Respondent is an agent of the government which was responsible for the discriminatory state of the legislation. Consequently, I do not think its reliance on the law should reduce the compensation as much as similar reliance might in the case of a private Respondent. On balance, I think an award of $1500 under s. 41(3) is appropriate.

Counsel for the Commission also requested payment of the wages lost by the Complainant while attending the hearing. S. 41(2)(d) allows for an award for expenses incurred as a result of the discriminatory practice. However, in my view, this is intended to cover expenses directly related to the discriminatory conduct, and not expenses related to legal proceedings under the Human Rights Act. The latter are more a question of costs, and there is no provision in the Act for recovery of costs. Consequently, I do not believe I have any authority to make an award for expenses related to the hearing. I would note that evidence respecting the lost wages was not led before me so that, even if I had the authority to include them in my award, I would not be able to determine the amount.

CONCLUSION The complaint is substantiated. The Complainant is entitled to > - 21 payment of the regular unemployment benefits she would have received if they

had not been discontinued for the period of January 1 to April 22, 1983, except for any part thereof when the Complainant was actually incapacitated. She is also entitled to $1500 for injury to feelings and self- respect. Jurisdiction is reserved for a period of two months in the event the parties are unable to agree on the amount of benefits to which the Complainant is entitled. Any party may apply within that period for a further hearing to determine the amount, upon notice to the other parties.

DATED this 13th day of August, 1985. Robert W. Kerr Human Rights Tribunal

> 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: CHRISTINE MORRELL

Complainant - and CANADA EMPLOYMENT AND IMMIGRATION COMMISSION

Respondent SUPPLEMENTARY ORDER Having heard the evidence and heard Counsel for the parties in this Complaint and having made an Order herein dated August 13, 1985 inter alia retaining jurisdiction to decide the benefits lost to the Complainant, and having read the Consent of the Parties to this Supplementary Order:

1. It is ordered that the Order of this Tribunal dated August 13, 1985 be amended to add an order that the Respondent, Canada Employment and Immigration Commission, is ordered to pay the sum of $931.00 to the Complainant, Christine Morrell, representing the regular unemployment benefits she would have received if they had not been discontinued for the period of January 1 to April 22, 1983, excepting the period she was actually incapacitated.

DATED this day of , 1985. Robert W. Kerr

Human Rights Tribunal