

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

**FRANCINE LAURENDEAU**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**CANADIAN BROADCASTING CORPORATION**

**Respondent**

**RULING ON THE RESPONDENT'S  
REQUEST FOR ADJOURNMENT**

2004 CHRT 11

2004/03/03

MEMBER: Michel Doucet

(TRANSLATION)

**I. FACTS**

[1] On January 21, 2004, the Canadian Broadcasting Corporation, the respondent, requested an adjournment of these proceedings until the Federal Court of Canada could render a decision addressing the application for judicial review that the respondent had made opposing a decision on a preliminary objection rendered by the Tribunal on December 9, 2003.

[2] The facts in this inquiry are as follows. Francine Laurendeau (the "complainant") was employed at the Canadian Broadcasting Corporation (the "respondent") starting in 1973, first as a producer and from 1989 as a producer and host of the respondent's Chaîne culturelle.

[3] On July 12, 2001, the respondent retired the complainant. This decision was made under a policy in effect with the respondent since 1978 and entitled Human Resource Policy No.10.0, which states: "Retirement is based on age and is set as the last working day of the month in which the employee turns 65 years old."

[4] In anticipation of being retired, the complainant filed a complaint on June 6, 2001, with the Canadian Human Rights Commission (the "Commission") to contest the respondent's decision. In her complaint, she alleged that the respondent "acted in a discriminatory manner towards [her] by maintaining a mandatory retirement policy, because of [her] age (65), contrary to sections 7 and 10 of the *Canadian Human Rights Act*."

[5] On February 27, 2003, the Commission asked the Chairperson of the Canadian Human Rights Tribunal to appoint a member to inquire into the complaint because it was satisfied that, under the circumstances, an inquiry was warranted.

[6] On April 1, 2003, the Tribunal Registrar informed the parties of their right under section 50(1) of the *Act* to present evidence and legal representations to the Tribunal to support their position in this case. In accordance with the Tribunal's Interim Rules of Procedure, the Registrar also asked the parties to submit short written statements listing the issues and the evidence that would be submitted to the Tribunal.

[7] In her disclosure of evidence filed on August 20, 2003, the complainant stated the issues as follows:

- (1) Did the CBC commit an age-related discriminatory practice in violation of section 7 of the *Canadian Human Rights Act* by terminating Ms. Laurendeau's employment solely on the basis that she had reached 65 years of age?
- (2) Alternatively, and if the Tribunal finds that the CBC's discriminatory practice falls within the exception of paragraph 15(1)(c), is this paragraph of the *Canadian Human Rights Act* unconstitutional by being contrary to section 15 of the *Canadian Charter of Rights and Freedoms*?

[8] On August 27, 2003, the respondent informed the Canadian Human Rights Tribunal (the "Tribunal") that it intended to raise a preliminary objection and argue that the Tribunal does not have jurisdiction to answer the complainant's question on the constitutionality of paragraph 15(1)(c) of the *Act*.

[9] On December 9, 2003, after hearing the parties, the Tribunal issued the decision to dismiss the respondent's preliminary objection. In its decision, the Tribunal indicated that it believes it has the jurisdiction to proceed with the inquiry into all aspects of the case, including the constitutional validity of paragraph 15(1)(c) of the *Canadian Human Rights Act* with respect to section 15 of the *Canadian Charter of Rights and Freedoms*.

[10] On January 7, 2004, the respondent received from the Federal Court of Canada a notice of application for judicial review of the Tribunal's decision.

[11] During a teleconference held on January 21, 2004, the Tribunal, among other things, set the following schedule for the remaining proceedings:

complainant's disclosure: no later than February 6, 2004.

respondent's disclosure: no later than February 23, 2004.

[12] At the respondent's request, the Tribunal agreed to extend the respondent's disclosure deadline to March 26, 2004.

[13] Taking the parties' and the Tribunal's availability into account, the hearing dates were set for September 14 to 17 and 21 and 22, 2004.

## **II. REQUEST FOR ADJOURNMENT**

[14] The respondent's request sought the adjournment of proceedings in this matter until the Federal Court could deal with the application for judicial review. To be granted an adjournment, the respondent had to demonstrate that its application met the three criteria

affirmed in *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*<sup>1</sup> and in *RJR-MacDonald Inc. v. Canada (A.G.)*<sup>2</sup>, as follows:

- a) First, the respondent must establish that there is a serious question to be tried.
- b) Second, the respondent must convince the Tribunal that it would suffer irreparable harm if the remedy were refused. The term "irreparable" refers to the nature of the harm rather than the extent.
- c) Third, which is the balance of convenience, involves determining which party would suffer greater harm from the granting or refusal of the adjournment.

[15] In this case, the respondent undeniably met the first criteria regarding the existence of a serious question.

[16] However, I am not satisfied that the respondent has met the second criteria regarding irreparable harm. The harm is irreparable if it cannot be remedied or monetarily quantified.<sup>3</sup>

[17] As the Federal Court of Appeal indicated in *Nature Co. v. Sci-Tech Educational*<sup>4</sup>, evidence of irreparable harm must be clear and not speculative. At this juncture, we do not know if the Federal Court will uphold the Tribunal's decision or overturn it. In my view, the evidence before me does not satisfy me that the respondent has met the burden on it of establishing that it would suffer irreparable harm if the adjournment were refused.

[18] The respondent's evidence regarding the issue of irreparable harm deals essentially with the costs and efforts that the parties would incur if the adjournment were refused. As such, the Canadian Broadcasting Corporation argued that, in the event that the Federal Court accepts its application for judicial review, all the time and money that it would have spent preparing this case would have been for nothing. To continue, the respondent submitting that it would be contrary to the interests of justice to make the parties incur such expenses before a definitive response is received from the Federal Court.

[19] The Tribunal wants to state that even if time and money were wasted if the proceedings went ahead and it were subsequently decided that the Tribunal does not have jurisdiction, it is more a question of inconvenience than irreparable harm.<sup>5</sup> The respondent did not refer to any jurisprudence to support its claims that time and money spent preparing a hearing before the Tribunal constitutes irreparable harm. In fact, there is settled jurisprudence indicating the opposite.<sup>6</sup>

[20] Finally, regarding the balance of convenience, the Tribunal can at this point consider the time and money that the parties would waste preparing the hearing if the adjournment were refused and if the application for judicial review were accepted. The Tribunal must also take the public interest into account, which is best served by the speedy resolution of human rights complaints.<sup>7</sup> In this case, the Tribunal is of the view that the public interest takes precedence over the monetary considerations raised by the parties.

[21] The request for adjournment is therefore dismissed since the respondent was unable to satisfy the Tribunal that it has met the criteria for irreparable harm and the balance of convenience. The parties are therefore instructed to comply with the schedule established during the teleconference on January 21, 2004.

[22] The Tribunal is aware that this request may be premature due to the long delay before the start of the hearing. The Federal Court could very well issue its decision on the application for judicial review by September 2004. However, due to the already long delays in this matter and the parties' difficulty of finding available dates for the hearing,

the Tribunal considers it preferable to decide on the adjournment issue right away so that the parties know what is expected and can therefore proceed with preparing their cases.

Michel Doucet

OTTAWA, Ontario

March 3, 2004

<sup>1</sup> [1987] 1 S.R.C. 110

<sup>2</sup> [1994] 1 S.R.C. 312

<sup>3</sup> *Northwest Territories v. Public Service Alliance of Canada*, [2001] F.C.J. No. 19, at para. 16.

<sup>4</sup> [1992] F.C.J. No. 266, at para. 20 (F.C.A.).

<sup>5</sup> *ICN Pharmaceuticals, Inc. v. Canada (Patented Medicine Prices Review Board)*, [1995] F.C.J. No. 1644, at para. 3.

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<sup>6</sup> *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1997] F.C.J. No. 207, at paras. 39 and 40 (T.D.); *Brocklebank v. Canada (Minister of National Defense)*, [1994] F.C.J. No. 1496, at para. 10 (T.D.); *Northwest Territories v. Public Service Alliance of Canada*, supra, at para. 19, (F.C.A.).

<sup>7</sup> *Canadian Telephone Employees' Association et al. v. Bell Canada*, T503/2098, March 4, 2002, Canadian Human Rights Tribunal, at para. 21.

#### PARTIES OF RECORD

TRIBUNAL FILE:	T758/3503
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DECISION OF THE TRIBUNAL DATED:	March 3, 2004
APPEARANCES:	
Mireille Bergeron	For the Complainant
Philippe Dufresne	For the Canadian Human Rights Commission
Robert Bonhomme	For the Respondent

