

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

MICHEL BENOIT

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BELL CANADA (QUEBEC)

Respondent

REASONS FOR DECISION

MEMBER: Athanasios D. Hadjis

2004 CHRT 32
2004/10/05

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[1] The Complainant alleges that the Respondent (**Bell**) discriminated against him

on the basis of his disability (alcoholism) by terminating his employment, in violation of s. 7 of the *Canadian Human Rights Act*. The Complainant acted on his own behalf at the hearing. The Respondent was represented by legal counsel. The Canadian Human Rights Commission (**Commission**) opted to not appear at the hearing.

I. FACTS

[2] The Complainant began working for Bell in 1973, as a technician. By 1990, he held the position of Director - Installations and Repairs.

[3] In 1996, Bell established a division called "Gateways", which dealt exclusively with the company's largest clients. Gateways' mandate was to sell, install and maintain telecommunications equipment. Gateways operated as an autonomous enterprise within Bell. Its continued existence was, however, conditional on its generating a profit, failing which Bell intended to dismantle the project. To improve the venture's chances of success, Bell transferred in its top-rated or "elite" technicians and managers.

[4] The Complainant was transferred into the Gateways division in 1997. There were four levels of management employees within Gateways, ranging from "D", the lowest, up to "A". The Complainant was employed at Level D. His duties entailed the supervision of 10 to 15 technicians who installed or repaired customers' equipment. Level D directors worked independently and many, including the Complainant, worked remotely from home. Although the Complainant was assigned some office space within one of Bell's buildings, he only attended it occasionally. He was provided with a company vehicle with which he drove to the sites where his technicians were working. Level C and D managers held meetings periodically, either at Bell's offices or at outside locations such as restaurants.

[5] The Complainant stated at the hearing that he has had an alcohol dependency problem for most of his adult life. Bell maintains a program offering assistance to its employees facing any number of difficulties in their lives, including substance abuse. In 1990, under the auspices of this program, the Complainant received his first alcohol dependency treatment, which was paid for by Bell. He took a leave of absence from work for about three months and completed the treatment with success.

[6] By 1995, the Complainant began to consume alcohol again. He did not disclose the recurrence of his alcohol problem to Bell but somehow, in 1997, rumours of alcohol abuse reached senior management. The Complainant was

called to a meeting with a Level B senior executive, John Moon, regarding these reported suspicions. The Complainant convinced Mr. Moon that the allegations were false and unfounded.

[7] Shortly after this meeting, the Complainant was assigned to a team within Gateways that fell under the supervision of Garry Prévost, a Level C director. The Complainant informed Mr. Prévost that he had recently met with Mr. Moon about a "personal problem" without specifying to what it related. The Complainant suspects that Mr. Moon may have provided Mr. Prévost with all the details about the meeting but he does not have any direct evidence to support his contention. In fact, the Complainant acknowledges that the only personal problem he ever discussed with Mr. Prévost related to certain marital difficulties he was experiencing.

[8] Mr. Prévost eventually alluded to these personal problems in the Complainant's 1998 annual assessment, which was prepared in February 1999. Mr. Prévost noted that the Complainant had "achieved very good results in his sector despite a personally very disturbing period". Both the 1997 and 1998 evaluations were positive overall. Mr. Prévost commented that the Complainant was ready to be promoted to the next level.

[9] In 1999, the Complainant was transferred to a team headed by Jean-Guy Boucher, a Level C Director. Mr. Boucher testified that he spoke to Mr. Prévost about the Complainant on the occasion of the transfer, but all discussions related to performance. There was no mention made by Mr. Prévost of the Complainant's personal problems. All of Mr. Prévost's directors were eventually transferred to Mr. Boucher's team and personal matters were never discussed with respect to any of them, according to Mr. Boucher.

[10] Gateways' unionized technicians went on strike in 1999 and Level D directors took over their tasks. They worked in teams of two, driving out to customers' locations to install and repair equipment. One of the directors complained to Mr. Boucher that the Complainant smelled of alcohol and asked that she no longer be assigned to work with him. The possibility that a member of his team was driving while on the job in an intoxicated state was of great concern to Mr. Boucher. Instead of confronting the Complainant with the complaint, Mr. Boucher opted to instruct Bell's internal security team to investigate. The Complainant was observed undercover over several days and a report was provided to Mr. Boucher stating that no significant drinking had been detected. The Complainant was viewed having an occasional beer or two at lunch, nothing out of the ordinary. Consequently, Mr. Boucher considered the matter closed.

[11] The Complainant confirmed in this testimony that he was by this time going to great pains to conceal his drinking habit. He was consuming excessively only

when at home, not while at work. Prior to any scheduled meetings with other directors, he refrained from drinking and he took special medication to suppress any bodily shakes. He acknowledges that he did not show up at work glassy-eyed and that he walked at a normal gait. He spoke coherently. Basically, he never showed up drunk at work. However, although he may not have been drinking while on the job, there may have remained a residual odour on him from his previous night's consumption of alcohol, which was probably what his colleague had detected during the strike period.

[12] Through the course of 1999, certain deficiencies in the manner with which the Complainant managed his crew began to emerge. He was not doing on-site supervision on a daily basis and generally, his management style was not being executed in a "tight" fashion, according to Mr. Boucher. He was arriving late to scheduled meetings with other directors or failing to attend altogether. The Complainant explained in his testimony that he tried to steer clear of meetings that were conducted in restaurants or brasseries in order to avoid the temptation to drink in the presence of his colleagues.

[13] Early in 2000, Mr. Boucher met with the Complainant to discuss his 1999 assessment, which was being prepared at that time. Mr. Boucher raised these performance issues with the Complainant. He also confided to the Complainant that during the strike, security agents had been assigned to investigate into his possible alcohol abuse, but their report proved negative. The Complainant assured Mr. Boucher that this finding was correct and that he did not have an alcohol problem. The Complainant explained in his testimony that his response was typical of an alcoholic who refuses to recognize that he has an addiction.

[14] The Complainant's situation worsened over the summer of 2000. He had undertaken the sole care of his daughter while his spouse was away for about two weeks, and had therefore decided to stop drinking entirely during this period. By August 9th, he was in terrible shape due to the withdrawal symptoms he was experiencing. He realized that he needed help and decided to turn to Mr. Boucher for assistance. Early that morning, the Complainant telephoned him at his home. Mr. Boucher could tell from the Complainant's voice that he was in crisis. The Complainant told Mr. Boucher that he had an alcohol problem and wanted Bell's assistance to free himself of it. Mr. Boucher met up with the Complainant and drove him directly to Bell's Disability Management Group (**DMG**) facility situated within Bell's downtown Montreal offices. The DMG was responsible for the management of the health-related benefits to which Bell employees were entitled, including the treatment of substance abuse.

[15] While being driven in, the Complainant told Mr. Boucher that he was an alcoholic and that he needed help. The Complainant explained that it was his fear of revealing his drinking problem that had prevented him from attending meetings

with colleagues. Mr. Boucher testified that the Complainant also admitted that he encountered certain financial difficulties on account of his alcoholism, which he tried to resolve by filing a false expense claim. The Complainant adamantly denied this allegation in his testimony at the hearing.

[16] The Complainant met with a physician on staff with the DMG, and was immediately referred to and placed in a treatment program. It consisted of three weeks of closed treatment during which he resided in the clinic full-time, followed by a four-week period of half-day treatments for which he travelled in from home, and a series of group therapy sessions for three months thereafter. The treatment was successful and the Complainant has managed to keep his alcohol problem under control to this day. The cost of the treatment was paid for by Bell.

[17] The clinic had instructed the Complainant to not enter into any contact with his employer, including Mr. Boucher, during the course of the treatment. At the close of the initial stage, on September 26, 2000, the Complainant's physician issued a certificate authorizing his return to work on October 2, 2000. The same day, the Complainant picked up a voice-mail message from Rachel Turcotte, a representative of Bell's Employee Development Centre (**EDC**) otherwise known as "Carrefour Carrière". The EDC provided training and counselling to Bell employees who had lost their positions and served as a referral service for other positions within the company. Ms. Turcotte advised the Complainant that he could begin using the services of the EDC starting October 10, 2000. He was shocked at the implication of this news and contacted Mr. Boucher immediately. Mr. Boucher met the Complainant and confirmed that he had been selected for a "voluntary departure" from his employment. The Complainant would be reassigned to Carrefour Carrière for a duration of three months. If at the end of this period the Complainant had not managed to find other employment within Bell, he would have no effective choice but to take early retirement. A special enhanced early retirement package was presented to him, one that would significantly increase the pension from what he would have ordinarily been entitled to, as well as provide him with a lump sum payment equivalent to four months' pay. This news was obviously most upsetting to the Complainant, particularly as it came just after completing the clinical portion of his alcohol dependency treatment.

[18] Mr. Boucher testified as to the circumstances that led to the Complainant's dismissal from his position at Gateways. In 1996, there were between 550 and 600 Bell employees working within Gateways' Quebec division. The Gateways venture did not prove viable and by 2003, when the division was dismantled entirely, the number had been reduced to about 300. Mr. Boucher's team dropped from about 19 directors and 250 technicians to 11 directors and 125 technicians. Overall, Mr. Boucher estimates conservatively that more than 20,000 employees have left Bell since 1995. The company had determined that it had a surplus of

management personnel and initially, it tried to reduce their numbers by offering them voluntary departure packages that included early retirement benefits with substantial bonuses. However, not enough directors opted to accept these offers and as a result, the company determined that some of its management staff would have to be released. Employees who were "targeted" for release were entitled to receive similar packages, which curiously continued to be referred to as "voluntary" in the documentation submitted to the departing employees.

[19] It was in this context that during his summer holidays in July 2000, Mr. Boucher received a call at home from his own supervisor, a Level B director named Pierre Moody. Mr. Moody explained to him that five management positions had to be eliminated within the Quebec region, including two from Mr. Boucher's own team and two more from another team that he was temporarily managing. Mr. Moody and Mr. Boucher testified that they quickly passed through the list of directors and, within a matter of five minutes, had agreed upon the first choice for dismissal of the Complainant. They were both of the view that all of the directors, including the Complainant, were outstanding performers, Gateways was after all composed of Bell's elite employees. However, they also concurred that the Complainant was unquestionably the weakest candidate amongst the strong group. Mr. Boucher and Mr. Moody had spoken to each other in the past with respect to the Complainant's failure to supervise his team as "tightly" as the other directors.

[20] The two managers were unable to agree, however, on who should be the second director to be released. Mr. Boucher eventually convinced senior management to take into account that another Level D director had been dismissed several months earlier. In addition, Mr. Moody released Mr. Prévost (Level C) and two acting Level D directors were returned to their lower level permanent positions. Consequently, Mr. Moody's target of five employees was met. No one other than the Complainant was let go from Mr. Boucher's own team.

[21] These departures were scheduled to be announced simultaneously in the second week of August 2000. However, Mr. Boucher informed Mr. Moody that the Complainant was being treated for a "serious personal problem" and they therefore decided it would not be appropriate to make the announcement to him at that time. He would be informed of the decision upon his return to work. Mr. Moody and Mr. Boucher both expressed regret at the hearing for the sudden manner with which the Complainant was notified of his release. Mr. Boucher had intended to meet the Complainant face to face upon his return to work and inform him of the decision. Unfortunately, Ms. Turcotte, who had been advised in advance of the Complainant's impending referral to Carrefour Carrière, chose to call and welcome him to the centre. She was unaware that he had yet to be notified of his release.

[22] While assigned to Carrefour Carrière, the Complainant attended all of the compulsory workshops and training sessions. He acknowledged, however, that he did not consult Carrefour Carrière's job referral service more often than perhaps once a week, and may have even skipped a week on occasion. He did not apply for any other position at Bell over the course of the three months that he was assigned to Carrefour Carrière. The Complainant testified that he was not qualified for any of the positions posted. Moreover, he was certain that no other manager would hire him since his personal file would have clearly indicated that he was returning from an extended medical leave. In any job interview, he would have been asked to give the reason for his absence, which would have obliged him to reveal his alcohol problem and the fact that he was just coming off of a recovery program. The hiring manager would also likely learn of the medical problem from the candidate's previous manager, who would be consulted before any hiring decision would be made. Under these circumstances, no one at Bell would ever have hired him again.

[23] The Respondent contends that the Complainant's concerns were unfounded and unjustified. Mr. Boucher testified that when applying for another position within the company, a director is only required to produce his *curriculum vitae*. The hiring manager could, at the interview stage, ask to view the candidate's prior annual performance assessments. The employee's absenteeism record would only warrant further inquiry in the case of a series of many recurring absences of short duration. A single absence of an extended period would likely be interpreted as being medically related and would not be a consideration in the hiring decision. The DMG never releases any details about an employee's medical file and according to company policy, even if a manager somehow learns of a candidate's medical condition, he or she is forbidden from treating it as a factor in the hiring decision.

[24] The Complainant claims that the Respondent chose to terminate him even though other staffing options were available. This indicates, he argues, that the principal factor in the decision to dismiss him was his alcohol dependency. The Complainant referred specifically to the case of his fellow Level D Gateways director, Michel Lecompte. At the same time as the employer was looking to eliminate five managerial positions within Gateways' Quebec division, Mr. Lecompte had applied to transfer out of Gateways to another branch of Bell known as Technology and Network (T & N). Mr. Lecompte's transfer was withheld, however, until December 2000. Had it been granted earlier, Mr. Boucher would have met his staff reduction target without dismissing the Complainant. Moreover, Mr. Lecompte's departure left an opening that could have been offered to the Complainant but no such offer was forthcoming.

[25] The Respondent disagrees with the Complainant's contention. Mr. Boucher noted that Mr. Lecompte managed the most elite team within the Gateways division, known informally as the SWAT team. Its crew was made up of the most

knowledgeable and specialized technicians, who dealt with the largest equipment installations. Mr. Lecompte's management of these individuals had to be very tight, calling for direct supervision in all respects. Furthermore, as the head of the SWAT team, Mr. Lecompte was required on a daily basis to deal directly with customers, a responsibility that the other directors did not have. Mr. Lecompte testified that in his opinion, any Level D director could have done his job, but Mr. Boucher disagreed, suggesting that perhaps Mr. Lecompte was simply unaware of his own special talents. Mr. Boucher claims that of the roughly fifteen directors in his team at the time, no more than three were qualified to run the SWAT team. The Complainant was not among them.

[26] Mr. Lecompte's request for a transfer came in late August or early September, well after the July date when the Respondent alleges the decision to release the Complainant was made. Mr. Boucher felt that Mr. Lecompte was too valuable to the team so the initial request for a transfer was turned down. Around the month of October 2000, a new Level C director, Christiane Fontaine, formally replaced Mr. Boucher. Mr. Lecompte took this opportunity to file a new request for a transfer, and it was approved on December 18, 2000. Mr. Boucher testified that although he was no longer managing this team, he actively assisted Ms. Fontaine during the period of transition. It was therefore he who in effect approved Mr. Lecompte's transfer. Mr. Boucher was also the person who decided to replace Mr. Lecompte with another director from within the team, Ronald Gagnon, one of the few Level D directors whom Mr. Boucher felt was able to lead the SWAT team. Mr. Boucher testified that there was no question of recalling the Complainant to take over Mr. Lecompte's position - the Complainant was simply not qualified.

[27] In the fall of 2000, Bell issued a new directive for 2001, mandating a reduction of five more managerial positions within Mr. Moody's section. For this reason, the official elimination of Mr. Gagnon's old position, which was based in Quebec City, was postponed until January 2001 so as to be tallied amongst those job reductions. This meant that there remained no vacancy within the division into which the Complainant could be reassigned. In accordance with the directive, four more Level D directors from Mr. Boucher's section were let go in 2001. He describes these individuals as experienced and outstanding managers. None of them were replaced after their forced departures.

[28] The Complainant's assignment to Carrefour Carrière came to an end on January 2, 2001. Since he had not obtained another position within Bell by then, his only option was to accept the enhanced retirement package. Between January and May 2001, he provided some services to Bell as a private contractor. In November 2001, the Casino de Montréal hired him as a slot machine attendant. He remains employed by the Casino but only on a casual basis. His twelve-hour shifts are longer than when he was employed at Bell, and he often works

overnight and weekends. According to the Complainant, Casino employees have few opportunities for advancement.

II. LEGAL FRAMEWORK

[29] It is a discriminatory practice, under s. 7 of the *Act*, to dismiss an employee on the basis of a prohibited ground of discrimination. Addiction to alcohol is considered a disability, which is a prohibited ground (see *Crouse v. Canadian Steamship Lines Inc.*, [2001] C.H.R.D. No.12 at para. 56 (C.H.R.T.) (QL).

[30] As the Supreme Court of Canada stated in *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 at para. 28, the burden of proof is on a complainant to establish a *prima facie* case of discrimination. A *prima facie* case in this context is one that covers the allegations made and which, if the allegations are believed, is complete and sufficient to justify a verdict in the complainant's favour, in the absence of an answer from the respondent. Once the *prima facie* case is established, the onus then shifts to the respondent to provide a reasonable explanation for the otherwise discriminatory behaviour. If a reasonable explanation is given, it is up to the complainant to demonstrate that the explanation is merely a pretext for discrimination (see *Basi v. Canadian National Railway Company (No. 1)* (1988), 9 C.H.R.R. D/5029 at para. 38474 (C.H.R.T.); *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204 at paras. 17-23).

[31] The Federal Court of Appeal noted, in *Holden v. Canadian National Railway Company* (1991), 14 C.H.R.R. D/12 at para. 7, that discriminatory considerations need not be the sole reason for the actions at issue in order for the complaint to be substantiated. It is sufficient that the discrimination be one of the factors in the employer's decision.

III. ANALYSIS

A. *Prima facie* case

[32] The Complainant has established, as alleged in his complaint, that he was told he would be removed from his position while still being treated for his alcohol dependency. Bell possessed information about the Complainant's alcohol-related problems going back to 1990, when he entered his first alcohol dependency treatment program. The Complainant was the only person from Mr. Boucher's team dismissed during the summer of 2000 round of job cutbacks. The dismissal came within weeks of the Complainant's open admission to Mr.

Boucher of his alcoholism. Mr. Lecompte testified that he asked to be transferred out of Gateways but was turned down just a few days before the Complainant was informed of the dismissal. The Complainant contends that Bell could have chosen to accept Mr. Lecompte's request and cancel the plan to dismiss the Complainant. The decision to do otherwise, argues the Complainant, demonstrates that Bell's motives for its actions were not really to reduce staff, but rather to release the Complainant due, at least in part, to his alcohol problem.

[33] I am satisfied that these allegations, if believed, would be complete and sufficient to justify a verdict in the Complainant's favour, in the absence of an answer from the Respondent. A *prima facie* case has been established.

B. Respondent's Explanation

[34] The Respondent contends that the Complainant was dismissed in the course of widespread job cutbacks throughout Bell. He was selected from amongst his colleagues because of certain deficiencies regarding his performance when compared to the others. Both Mr. Boucher and Mr. Moody testified that the decision to dismiss the Complainant was theirs alone and that the matter of his alcoholism was not a factor at all in their decision. I found these individuals credible and forthright, and for the reasons set out below, I have determined their explanation to be reasonable. This is not to say that the Complainant's evidence was false or misleading. To the contrary, I found him sincere and refreshingly candid. But simply put, the facts, as they were revealed in the hearing, served to substantiate the Respondent's explanation.

[35] The evidence is undisputed that Bell, in its attempt to deal with ever-increasing competition, has over the years significantly reduced the number of its employees. These cutbacks have extended to the managerial level. The Complainant was not alone in being targeted by this strategy of forced departures. A Level C director was also dismissed at the same time as him, and two acting Level D directors were returned to their lower level duties. More revealing is what transpired in the following months and years: five additional Gateways managerial positions were eliminated in 2001 and another five or six in 2002. In 2003, even Mr. Moody was affected by the employer's strategy. He was released from his Level B position and sent to Carrefour Carrière. It is clear that the Complainant was not alone in being terminated. He was one of many persons affected by widespread changes within the company.

[36] In any event, I accept the evidence of Mr. Boucher and Mr. Moody that they had no knowledge about the Complainant's alcohol dependence problem in advance of their decision to terminate him, which was made weeks before the Complainant called upon Mr. Boucher's assistance to get to a treatment centre. The Complainant himself testified that he explained to Mr. Boucher the nature

and extent of his alcoholism during his phone call of August 9, 2000, and their subsequent drive in Mr. Boucher's car. If Mr. Boucher knew of the problem, why was the explanation necessary?

[37] The Complainant referred back to the incident involving his colleague who refused to work with him during the strike on account of the scent of alcohol emanating from him. The Complainant argues that Mr. Boucher knew, or should have known, of the Complainant's problem at this point. Mr. Boucher, however, received independent information from Bell's security service that the Complainant was not drinking abusively. In fact, the Complainant made the same affirmation directly to Mr. Boucher during the performance assessment interview, and he testified that he was successfully hiding his dependency from everyone at work and even from his family at home. The evidence is that the Gateways directors worked independently and only met periodically. There was little opportunity for Mr. Boucher to personally draw any other conclusion than that the Complainant was in fine health.

[38] It may well be that as a corporation, Bell had knowledge about the Complainant's prior alcohol dependency treatment, which took place in 1990. However, aside from the fact that the company's Disability Management Group held this information in confidence and would not have revealed it to other Bell employees, almost a decade had passed and the Complainant had not made another formal request for additional assistance. Furthermore, by his own account the Complainant convinced Mr. Moon, during their meeting in 1997, that he did not have a drinking problem. The Complainant also acknowledged that he did not speak to his director, Mr. Prévost, about his alcoholism either. In sum, there is no evidence to demonstrate that either Mr. Boucher or Mr. Moody had any way of knowing about the Complainant's alcoholism.

[39] The Complainant produced a document at the hearing that appears to emanate from Bell, which the Commission communicated to the Complainant as part of its disclosure. No one at the hearing could definitively explain the origins of the document. The document was entitled "Log sheet". Directors ordinarily wrote down their working notes with respect to their staff's performance on log sheets. The document in question refers to the rumours of alcohol abuse that led to the Complainant's meeting with Mr. Moon. It also refers to some of the deficiencies in his work performance. Mr. Boucher acknowledged that he used to prepare log sheets with respect to his directors, but denies having been involved in the preparation of the document produced by the Complainant at the hearing. Indeed, the document appears to be a compilation of numerous log sheets, dating back to early 1998, at least a year before Mr. Boucher became the Complainant's supervising director. Mr. Boucher claims he never saw the document before the hearing and maintains that he had no knowledge of any alcohol-related incident in the past, involving the Complainant. Having examined the document closely and considered all of the evidence presented at the hearing, I am persuaded that Mr.

Boucher did not prepare the document. The format and syntax of the text suggests that it was written by a third party who compiled the information from numerous log sheets. This document cannot, therefore, be relied upon to advance the notion that Mr. Boucher was aware of the Complainant's alcoholism prior to the July 2000 decision to dismiss him.

[40] The Complainant contends that over the years, sufficient indicia of his disability came before the Respondent, which should have prompted it to intervene more actively in his case. He claims that had Bell referred him to treatment at an earlier stage, both his health and his work performance would not have deteriorated to the same extent. An improved work record would have in turn meant that he would not have been the first person selected for release in the summer of 2000.

[41] This raises a related point. Mr. Boucher and Mr. Moody claim that they selected the Complainant for dismissal based on his weaker performance record, when compared with the other managerial employees. The Complainant appears to suggest in his submissions that the deficiencies in his performance were linked to his disability, alcoholism. In such circumstances, choosing to terminate an employee because of his poor performance may in fact be discriminatory. In effect, the disability becomes a factor in the decision to dismiss (see eg. *Desormeaux v. Ottawa-Carleton Regional Transit Commission* 2003 CHRT 2 at para. 72; *Parisien v. Ottawa-Carleton Regional Transit Commission* 2003 CHRT 10 at para. 46).

[42] However, in the present case, the Complainant, by his own admission, deliberately and successfully misled his supervising directors into sincerely believing that he was not an alcoholic. Although an employer has a duty to inform itself about an employee's disability and how the person can be accommodated, it seems only logical and fair that this duty should not be extended to situations where the employer does not in good faith have any knowledge whatsoever of the employee's disability.

[43] This is certainly the case before me. The Complainant performed an excellent job of negating the indicia that he claims were placed before his employer. His ability to conceal his secret was aided by the fact that the Complainant only occasionally met Mr. Boucher, thereby restricting the latter's opportunities to view any outward symptoms of the disability.

[44] The Complainant, in asserting that the Respondent should have compelled him to seek treatment years before he was dismissed, seems to be implying that the Respondent failed in its duty to accommodate him and his disability. It may well be, as the Complainant claimed in his testimony, that his denial of the existence of a problem was a symptom of the disease, and that he should not be

faulted for this. However, there must be a limit to this principle. The employer had put in place a mechanism to accommodate the Complainant's disability, which was quite effective as evidenced by the fact that the Complainant called upon the service twice during his career at Bell. But the accommodation remained contingent on one basic component - the employee's responsibility to take matters into his own hands and ask for help. As was pointed out by the Supreme Court of Canada in *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, the search for accommodation is a multi-party inquiry, that commands an active participation on the part of the complainant. In the present case, the Complainant did not make any such effort prior to his telephone call to Mr. Boucher on August 9, 2000. To the contrary, he deliberately misled the employer regarding his health. I am not, therefore, persuaded by this submission.

[45] The Complainant put forth the evidence of Mr. Lecompte's transfer to T & N to demonstrate that the Respondent's explanation was pretextual. If Bell's intention in dismissing the Complainant was merely to reduce by one the number of management employees within Mr. Boucher's team, this goal could have been achieved by granting Mr. Lecompte's first request to transfer out of Gateways. However, as I have already indicated, I accept the evidence of Mr. Boucher and Mr. Moody that their decision to dismiss the Complainant was made in July, a month or more prior to Mr. Lecompte's transfer request. It was entirely within their prerogatives, as senior managers, to deny Mr. Lecompte his transfer. I see no reason to impugn this decision in the context of this human rights inquiry. As for the Complainant's assertion that he should have been assigned to replace Mr. Lecompte, I find the Respondent's reply persuasive (the Complainant was not qualified to replace Mr. Lecompte. It is not in dispute that Mr. Lecompte headed the most elite of Gateways' teams. On the other hand, weaknesses had been identified with respect to the tightness of the Complainant's management style. It was reasonable for the Respondent to not have considered the Complainant as an appropriate replacement for Mr. Lecompte.

[46] For all of the above reasons, I am not convinced that the Complainant's alcoholism was a factor in the decision to terminate his employment and I find the explanation provided by the Respondent reasonable. I have not been persuaded that the explanation was pretextual.

[47] The complaint is therefore dismissed.

signed by

Athanasios D. Hadjis

OTTAWA, Ontario
October 5, 2004

PARTIES OF RECORD

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APPEARANCES:	
Michel Benoit	On his own behalf
Johanne Cavé	For the Respondent