

Human Rights Digest

February / March 2010



INSIDE...

Decisions Noted

Elections Canada Ordered to Guarantee Accessibility	1
Apartment Owner Failed to Accommodate	3
Whatcott Flyers Did Not Express Hatred Against Homosexuals	4
"No Drugs At Work" Policy Upheld	5
University Mandatory Retirement Policy Is Discriminatory	5
Trucking Company Terminates Employee on Medical Leave	6
Termination of Depressed Employee Not Discriminatory	6
Trucking Dispatcher Was Racially Harassed	7
Landlord Discriminates Against Tenant with FASD	8
Town Did Not Discriminate Against Aboriginal Candidate	8
Disability Complaint Filed Out of Time	9
Deaf Woman Evicted Because of Excitable Dog, Not Disability	9
Women's Organization Discriminates Against Immigrant Woman	10
Inside Page	2
Briefly Noted	11
Ordering	12

Elections Canada Ordered to Guarantee Accessibility

DISABILITY — VOTING RIGHTS — *barrier-free access to election polls for person who is mobility impaired — wheelchair access — standards for barrier-free access* — **PUBLIC SERVICES AND FACILITIES** — *election services*

BURDEN OF PROOF — *elements of a prima facie case* — **INTERPRETATION OF STATUTES** — *definition of "services"* — **LIABILITY** — *liability of government ministry* — **JURISDICTION** — *retained jurisdiction* — **CANADIAN CHARTER OF RIGHTS AND FREEDOMS** — *s. 3 (right to vote)*

REMEDIES — *consultation process — complaints procedure — human rights training — barrier-free access — provision in lease — monitoring of human rights program — signage — report on implementation of remedies — survey of the law — systemic remedies — cease discriminatory practice* — **DAMAGES** — *injury to dignity and self-respect*

The Canadian Human Rights Tribunal ruled that Elections Canada denied James Peter Hughes a public service and discriminated against him because of disability.

James Peter Hughes has post-polio syndrome and uses a wheelchair or walker. He lives in downtown Toronto and in March 2008 and in October 2008 he went out to vote, first in a by-election and then in a general election. His polling station was at St. Basil's Church, which has three entrances. In March 2008 Mr. Hughes went to entrance No. 1 at St. Basil's Church, which was supposed to be accessible, and found that it was locked. He then went to entrance No. 3. The polling station was at the bottom of a staircase, which Mr. Hughes had to go down on his bottom, as there was no elevator. Once he had voted, Mr. Hughes left by entrance No. 2, the

freight/emergency door, which had heavy doors, a long, steep ramp, and a narrow walk way at the top of the ramp, hardly wide enough for his walker, with unshovelled snow and ice. None of the three entrances was accessible to Mr. Hughes. Entrance No. 1 was closed; entrance No. 2 had many barriers; and entrance No. 3 had a flight of stairs.

While he was at the polling station, Mr. Hughes complained to an elections officer about the lack of accessibility and was told that it could not be helped because there was a lack of funds. Mr. Hughes subsequently complained in writing to Elections Canada, and received a reply in August 2008, which denied that there was a problem at St. Basil's Church.

In October 2008, Mr. Hughes went to vote in the general election. The polling station was, once more, at St. Basil's Church. Mr. Hughes found no changes had been made and his experience in October was identical to his experience in March. He filed a human rights complaint.

In this complaint, the Tribunal joined the Council of Canadians with Disabilities ("CCD") as an interested party to the complaint. CCD was permitted to make oral and written argument. CCD is a pan-Canadian not-for-profit organization whose members have a wide spectrum of disabilities. It has participated in many leading human rights cases, including before the Supreme Court of Canada. The Canadian Human Rights Commission did not participate in the hearing.

The Tribunal found that Elections Canada provides a public service within the meaning of the *Canadian Human Rights Act*, and that service was denied to Mr. Hughes. The Tribunal notes that Mr. Hughes faced a panoply of obstacles including: insufficient signage, a steep ramp,

continued on page 3

Inside Page

Is it time to go into worry mode about Canada's human rights commissions? The Canadian Human Rights Commission is closing three regional offices. Some fear that will mean that the Canadian Commission will withdraw even further from direct contact with the communities of people who need its protection. The Public Service Alliance attributes the closure of these offices to Stephen Harper, but the Secretary General has said that it was a decision of the Commission itself.

Accepting that this is case, there is still reason to worry about the attitude of the federal government towards human rights, and human rights institutions. In 1999 when Stephen Harper was the head of the Canadian Taxpayers Federation he told B.C. Report that "Human rights commissions, as they are evolving, are an attack on our fundamental freedoms and the basic existence of a democratic society... It is in fact totalitarianism. I find this is very scary stuff". He has done nothing in the last decade to indicate that he has recused himself from this position.

In another new development, the Government of Saskatchewan is considering closing down the Saskatchewan Human Rights Tribunal and sending human rights complaints to the provincial courts for adjudication, apparently with the blessing of Chief Commissioner David Arnot, who is a judge of the provincial court himself. The ostensible reason for scrapping the Tribunal is that, according to Justice Minister Don Morgan, "there are criticisms that the Saskatchewan Human Rights Tribunal may be seen as too close to the Saskatchewan Human Rights Commission".

"Too close" means biased; presumably the Tribunal is biased in favour of arguments made by the Commission. But what is the evidence that in Saskatchewan, or in any other jurisdiction, there is a bias in favour of Commissions on the part of human rights tribunals that can only be solved by sending complaints to the court.

Of course, the effect of sending complaints to the courts is to send them to bodies that, because the majority of their workload lies elsewhere, have little or no human rights expertise. But this is an old standard too. Ignorance of human rights is called "neutrality".

Human rights bodies have always been criticized for being biased. They are, necessarily, biased in favour of human rights. They cannot be neutral about human rights, except with respect to how any particular case will turn out. For those who are resistant to dealing with the transformation of society that human rights entails, dedication to the fulfillment of human rights commitments is called "bias".

That is why "worry mode" may be the right setting. This seems to be a time when criticism of human rights, or human rights institutions, need not be factual, reasonable, or constructive. The media likes emotional, angry claims, which depict human rights institutions as authoritarian, frightening, and intrusive, as Harper did more than a decade ago.

Unfortunately, human rights institutions, in an effort to counteract the perception that they are "biased" have become distanced from the organizations and leaders in the community who are also dedicated to the fulfillment of human rights. Nonetheless, those organizations and leaders probably need to speak up regularly now to protect Canada's human rights institutions.



Human Rights Digest

is a publication of the Canadian Human Rights Reporter, a non-profit organization established to provide access to human rights law in Canada, primarily through publications and research services of interest to professionals in the human rights, legal, human resources, and related fields, as well as to the general public.

Human Rights Digest provides summaries and digests of recent tribunal and court human rights decisions from all jurisdictions in Canada.

Access to printed and electronic versions of the full text of human rights decisions is available from the Canadian Human Rights Reporter.

EDITORIAL BOARD:

Shelagh Day, M.A.
Gwen Brodsky, D. Jur.
Ken Norman, B.C.L.
Béatrice Vizkelety, LL.M.
Nitya Iyer, LL.M.

EDITORS:

Barbara Hopkins, M.L.S.
Gaylyn Young, LL.B.

Canadian Human Rights Reporter

1662 West 75th Ave.
Vancouver, B.C. V6P 6G2
Phone (604) 266-5322
Fax (604) 266-4475
E-Mail editor@cdn-hr-reporter.ca
Web site www.cdn-hr-reporter.ca

ISSN 1492-0719

Written, typeset and printed in Canada

continued from page 1

a locked accessible entrance, heavy doors, narrow doors, a staircase, an unshovelled walkway, inadequate spacing between the tables in the polling station for a person using a walker or a wheelchair to get through. He was also treated dismissively by Elections Canada officials both on site and later. The Tribunal ordered Elections Canada to pay Mr. Hughes \$10,000 as compensation for the injury to his dignity caused by the discrimination.

In light of the importance to Canadians with disabilities of the opportunity to cast

In light of the importance to Canadians with disabilities of the opportunity to cast their votes as equals in their society, the Tribunal concluded that a systemic remedy was appropriate.

their votes as equals in their society, the Tribunal concluded that a systemic remedy was appropriate. The Commission was directed to monitor the implementation of the remedy, and Elections Canada was directed to consult with CCD, and to pay the reasonable expenses of CCD and the complainant for their participation in the implementation phase.

The Tribunal ordered Elections Canada to: cease from situating polling stations in locations that do not provide barrier-free access in any electoral district in Canada; implement a procedure within six months for verifying the accessibility of facilities on the

day of an electoral event; review its Accessible Facilities Guide and Checklist; revise its standard lease for polling locations to include the requirement that the leased premises provide level access and are barrier-free; provide sufficient and appropriate signage at elections; revise training materials concerning accessibility issues; implement a procedure for receiving, recording, and processing verbal and written complaints about lack of accessibility; report to the Tribunal at least once every three months on its progress in implementing the order.

The Tribunal remained seized of the matter.



Hughes v. Canada (Elections Canada) (Feb. 12, 2010), CHRR Doc. 10-0379, 2010 CHRT 4 (Garfield)

Apartment Owner Failed to Accommodate

HOUSING ACCOMMODATION — DISABILITY — FAMILY STATUS — SOURCE OF INCOME — *tenancy condition discriminates on the basis of disability and source of income — discriminatory access to housing for wheelchair user and spouse — stereotypes of the disabled — tenancy discriminatory for wheelchair user — family status definition includes relationship with a particular person — definition of public assistance* — **DISCRIMINATION — multiple grounds** — **REASONABLE ACCOMMODATION** — *duty to accommodate short of undue hardship*

DAMAGES — *rent differential — injury to dignity and self-respect* — **REMEDIES** — *renovations to building for barrier-free access — rent reduction — offer of suitable housing — human rights training*

The Human Rights Tribunal of Ontario ruled that 930187 Ontario Ltd. discriminated against Louise Dixon on the basis of marital and family status, disability, and receipt of social assistance.

Ms. Dixon is married to Peter Dixon, who is a diabetic and a bilateral amputee. Mr. Dixon uses a wheelchair, and his medical problems include kidney failure. Ms. Dixon and her spouse receive income support from the Ontario Disability Support Plan.

Ms. Dixon rented an apartment from the respondent in September 2007. At the time, she and her husband wanted a ground-floor apartment, but there were none available. They rented a fifth-floor apartment. After about six months, they requested to move to a ground-floor apartment. This was a matter of urgency, in part because the elevator was unreliable. On one occasion, Mr. Dixon could not get to his appointment for dialysis because the elevator was not working.

However, the Dixons were refused a transfer, despite repeated requests. A smaller, cheaper apartment became available on the ground floor, but the Dixons were not allowed to transfer to it. Other tenants, including one who used a wheelchair, were permitted to transfer to other apartments. The respondent refused a transfer for the Dixons, apparently because they were social assistance recipients and the landlord assumed that, if they moved, they would not

pay for repairs, which he thought were needed, to the apartment they were already in.

Ms. Dixon also complained that the entrance to the apartment building was not accessible. This meant that Mr. Dixon could not go in and out by himself. He was house-bound unless Ms. Dixon was with him. This affected their independence and quality of life.

The Tribunal found that the respondent

“ Key Words ”

... the intersecting grounds of discrimination affected both the way in which the applicant was discriminated against and the way in which she experienced the discrimination. The applicant's status as a recipient of public assistance was used by the respondent as an excuse for failing to accommodate her partner's disability-related needs, and that same status significantly reduced the applicant's ability to escape discriminatory treatment by moving elsewhere.

Dixon v. 930187 Ontario Ltd. (2010), CHRR Doc. 10-0283, 2009 HRT0 4 at §. 66

discriminated against Ms. Dixon on the grounds of family status, disability and receipt of social assistance. The respondent did not recognize that he had any duty to accommodate Ms. Dixon and her husband, and made no effort to do so. Because he did not recognize that he had an obligation, the respondent did not produce any evidence to show that accommodating Ms.

Dixon and her husband would have caused undue hardship.

The Tribunal ordered the respondent to pay \$2,595 to compensate for the extra rent that Ms. Dixon has had to pay because of the refusal to permit her to transfer, and to reduce Ms. Dixon's rent by \$136.61 per month until she is offered a one-bedroom apartment on the ground floor. The Tri-

bunal ordered the respondent to pay \$10,000 as compensation for injury to dignity, and to make the entrances to the apartment building accessible to people in wheelchairs within six months.



Dixon v. 930187 Ontario Ltd.

(Feb. 4, 2010), CHRR Doc.

10-0283, 2010 HRT0 256 (Keene)

Whatcott Flyers Did Not Express Hatred Against Homosexuals

COMMUNICATIONS — *flyer discriminates on the basis of sexual orientation* — **HATE PROPAGANDA** — **SEXUAL ORIENTATION** — *exposure to hatred on the basis of sexual orientation* — **APPEALS AND JUDICIAL REVIEW** — *error of law in findings on the evidence and in interpreting legislation* — **INTERPRETATION OF STATUTES** — *case law and legislative history as aids to interpretation* — *definition of "contempt" and "hatred"*

CANADIAN CHARTER OF RIGHTS AND FREEDOMS — *s. 1 (reasonable limits) and application of Oakes test* — *s. 2 (freedom of conscience and religion)* — **CONSTITUTIONAL LAW** — *constitutional validity of human rights legislation* — **FREEDOM OF EXPRESSION** — *freedom of speech and the right to freely express opinion on any subject* — *human rights legislation provides for reasonable limits to freedom of expression* — **FUNDAMENTAL FREEDOMS** — **RELIGION AND CREED** — *conflict between religious beliefs and other freedoms*

The Saskatchewan Court of Appeal overturned a decision of the Saskatchewan Court of Queen's Bench (61 C.H.R.R. D/401), which upheld a ruling of the Saskatchewan Human Rights Tribunal (52 C.H.R.R. D/264) that four flyers written and circulated by William Whatcott contravened s. 14 of *The Saskatchewan Human Rights Code*. Section 14 prohibits publication or distribution of material that is likely to expose groups to hatred or contempt because of their race, sex, sexual orientation, or other protected grounds.

The Saskatchewan Human Rights Tribunal found that Mr. Whatcott's flyers, which were widely distributed in Regina and Saskatoon, exposed gay men and lesbians to hatred and ridicule by characterizing them

as sodomites and pedophiles who prey on children; as men and women engaged in sinful and dangerous behaviour; and as proselytizers for their lifestyle.

Relying on the reasoning in *Saskatchewan (Human Rights Comm.) v. Bell* (21 C.H.R.R. D/147) and *Owens v. Saskatchewan (Human Rights Comm.)* (45 C.H.R.R. D/272) the Tribunal found that s. 14 infringed s. 2 of the *Canadian Charter of Rights and Freedoms*, but was a reasonable and permissible restriction on freedom of expression and religion.

After the Tribunal's decision in *Whatcott* was released, the Saskatchewan Court of Appeal issued its decision in *Owens* (56 C.H.R.R. D/51), confirming the ruling that s. 14 of the *Code* is a justifiable limit on religious speech.

Reviewing the Tribunal decision, the Saskatchewan Court of Queen's Bench noted that it was clear from the Saskatchewan Court of Appeal's decision in *Owens* that for the Whatcott flyers to contravene s. 14(1)(b) they must be the sort of communication that involves extreme feelings and strong emotions of "detestation, calumny and vilification". The Court found that all of the Whatcott flyers expressed extreme feelings and strong emotions when they referred repeatedly to homosexuals sexually molesting children. It ruled that the Tribunal was correct when it concluded that the flyers contravened s. 14.

The Saskatchewan Court of Appeal, in two concurring decisions, reversed the rulings of the Tribunal and Court of Queen's Bench. It found that the Whatcott flyers did not contravene s. 14(1)(b).

The Court of Appeal found that context is of particular importance when consider-

ing complaints based on sexual orientation. Publications that are complained about because they express hatred on the basis of sexual orientation usually deal with issues relating to matters of morality. It is acceptable, in a democracy, for individuals to comment on the morality of another's behaviour. For this reason, there will be a relatively high degree of tolerance for the language used in debates about moral issues. The Court determined that anything that limits debate on the morality of behaviour is an intrusion on the right to freedom of expression.

In this case, the Court found that the context was important, and it had not been sufficiently taken into account by the Tribunal and the Court of Queen's Bench. The context for two of the flyers was the consideration being given by the Saskatoon Public School Board to include information on homosexuality in the curriculum and school libraries. The context for the other two flyers was the alleged advertising policy of a gay magazine to allow solicitation of underage partners for same-sex activity. The Court of Appeal ruled that critical commentary on these issues and policies must be permitted. The Tribunal erred by focusing on certain phrases and words used by Whatcott in isolation and finding that those phrases and words conveyed hatred or contempt for homosexuals.

The Court concluded that the four flyers distributed by Whatcott did not offend s. 14(1)(b) of the *Code*. Accordingly the appeal was allowed.



Whatcott v. Saskatchewan (Human Rights Tribunal)

(Feb. 25, 2010), CHRR Doc. 10-0523, 2010

SKCA 26 (Sherstobitoff, Smith and Hunter J.J.A.)

Context is of particular importance when considering complaints based on sexual orientation.

“No Drugs At Work” Policy Upheld

DISABILITY — recreational drug use — perceived disability — stereotypes — definition of disability — **EMPLOYMENT EVALUATION AND TESTING** — discriminatory application of drug testing — evaluation procedures to determine safety risk — **OCCUPATIONAL HEALTH AND SAFETY** — drug-testing policy — drug use and potential impairment — safety orders and regulations — safety risk to self and others — sufficient risk to safety and drug use — **INTERPRETATION OF STATUTES** — definition of “disability” and “handicap” — purposive approach

The Newfoundland and Labrador Human Rights Board of Inquiry ruled that Al Leonard was not discriminated against by Noble Drilling (Canada) Ltd. because of a disability.

Mr. Leonard was employed by Noble

Drilling as an Assistant Rig Manager on one of the Hibernia offshore drilling rigs. Noble Drilling had a drug policy that prohibited any drugs at the work site. On a rotating basis, employees were transferred from shore to the Hibernia site by helicopter.

On July 25, 2002, Mr. Leonard was tested for drugs along with all other employees who transferred by helicopter that day from shore to the Hibernia site. The employees were tested because the end of a marijuana cigarette was found at the heliport. Mr. Leonard tested positive for cannabis and was terminated from his position.

Mr. Leonard testified that he knew nothing about the marijuana at the heliport. He had had a toké from a marijuana cigarette the previous night at a party. He was not a recreational user of drugs nor an addict.

The Board of Inquiry found that Noble Drilling investigated Mr. Leonard’s drug habits and found that he was not an addict. The Board accepted that Mr. Leonard was not an addict, nor was he perceived to be one by Noble Drilling. Noble Drilling terminated his employment because he contravened the company’s policy, which required termination of employees who test positive for drugs at work.

The Board of Inquiry determined that Mr. Leonard did not have a disability, nor was he perceived to have a disability. The complaint was dismissed.



Leonard v. Noble Drilling (Canada) Ltd. (Jan. 29, 2010), CHRR Doc. 10-0275 (N.L. Bd. Inq.; Burrige)

University Mandatory Retirement Policy Is Discriminatory

RETIREMENT — human rights legislation contravened — mandatory retirement required by pension plan — **BENEFITS** — retirement plan discriminatory — **DISCRIMINATION** — bona fide justification

HUMAN RIGHTS — jurisdictional comparison of human rights legislation — **EXEMPTIONS** — pension plan — age — **INTERPRETATION OF STATUTES** — case law and legislative intent as aids to interpretation — **TRADE UNIONS** — union as respondent — **LIABILITY** — liability of union

The Prince Edward Island Human Rights Panel ruled that the University of Prince Edward Island discriminated against Thomy Nilsson, Richard Wills and Yogi Fells by forcing them to retire at age 65.

Thomy Nilsson and Richard Wills are long-time and tenured faculty members. In 2006 they were forced to retire at age 65, because of the University’s mandatory retirement policy, despite their requests to continue working. Both are members of the University of Prince Edward Island Faculty Association. Yogi Fells worked in the shipping and receiving department of the Atlantic Veterinary College. She was a mem-

ber of C.U.P.E., Local 1870. In 2006, she too was forced to retire at age 65 because of the University’s mandatory retirement policy, although she wished to continue working, and needed to for economic reasons.

The provisions of the Prince Edward Island *Human Rights Act* prohibit discrimination in employment on the basis of any age, except when a specified age is a *bona fide* occupation qualification, or where differentiation based on age is necessary for the operation of a genuine retirement or pension plan.

The Panel found that there were no issues about the capacity of the complainants to continue performing their jobs. Nor was being an age less than 65 a *bona fide* occupational qualification for their positions.

The Panel accepted expert evidence that mandatory retirement was not necessary to the operation of the University’s pension plan. Some age differentiation is necessary for the operation of the plan. For example, a normal retirement date needs to be specified to determine when an employee is entitled to retirement without a reduction in benefits. Also, a minimum age

at which a person is entitled to join the pension plan is necessary. But mandatory retirement at age 65, or any other age, is not necessary even to a defined benefit plan, such as that of the University of Prince Edward Island.

The Panel concluded that the complainants were discriminated against because of their age by being forced to retire at age 65.

The Panel also found that neither the Faculty Association nor C.U.P.E., Local 1870 had negotiated the mandatory retirement policy with the University or agreed to it

through collective bargaining. In light of that evidence the Panel found that the University is solely liable for the discrimination.

The complainants seek reinstatement and compensation for lost wages and benefits. The Panel reserved judgment on the remedy and asked the parties to prepare further submissions.



Nilsson v. University of Prince Edward Island (No. 2) (Feb. 18, 2010), CHRR Doc. 10-0471 (P.E.I.H.R.P.; Thomson, Lyle and Currie)

Mandatory retirement was not necessary to the operation of the University’s pension plan.

Trucking Company Terminates Employee on Medical Leave

DISABILITY — *employment terminated on the basis of knee injury* — **REASONABLE ACCOMMODATION** — *duty to accommodate short of undue hardship* — **BURDEN OF PROOF** — *elements of a prima facie case* — **HUMAN RIGHTS** — *nature and purpose of human rights legislation* — **DAMAGES** — *wilful or reckless discrimination — injury to dignity and self-respect*

The Canadian Human Rights Tribunal ruled that SLH Transport Inc. discriminated against Wayne Douglas when it fired him from his job as a truck driver.

Mr. Douglas worked for SLH Transport in Nova Scotia as a “peddle run” driver. His run was about 700 km, round trip, from Bedford to Yarmouth. He delivered Sears catalogue goods, from light items like jewelry and bedding to heavy items like snow blowers and lawn tractors. A “peddle run” has a driver and an assistant and it regularly

involves heavy lifting when picking up goods and delivering them.

Mr. Douglas began to have trouble with his right knee in the fall of 2006. In December 2006, he saw a surgeon, Dr. Gross, who told him that he needed surgery for a medial meniscus tear and cyst in his right knee. Mr. Douglas went off work on medical leave, and waited for surgery. His employment was terminated in the sixth month of his leave before he had the needed surgery, on the grounds that his absence from work was causing operational difficulties to SLH and Mr. Douglas was unable to supply a definitive date for surgery or his return to work.

The Tribunal found that Mr. Douglas did everything he could to get a surgery date, and had no control over the scheduling of his surgery. There was no cost to the respondent of Mr. Douglas being on medical leave because he was receiving long-term disability benefits.

Although there was evidence that after Mr. Douglas had the knee surgery he could not have resumed his former job, because of the heavy lifting involved, the Tribunal found that at the time of the termination, the respondent did not have that information and did not consider whether he could return to work after his surgery, as other employees had been permitted to do without being terminated and replaced. The Tribunal concluded that SLH discriminated against Mr. Douglas on the basis of disability, and did not consider whether it could accommodate him.

The Tribunal ordered SLH to pay Mr. Douglas \$15,000 for injury to dignity, and \$10,000 as compensation for willfully terminating him while he was on medical leave.



Douglas v. SLH Transport Inc. (Jan. 27, 2010), CHRR Doc. 10-0213, 2010 CHRT 1 (Lustig)

Termination of Depressed Employee Not Discriminatory

DISABILITY — *discriminatory treatment and employment terminated on the basis of depression — degree of disability* — **DISCRIMINATION** — *job performance as reasonable cause for discrimination* — **REASONABLE ACCOMMODATION** — *duty to accommodate short of undue hardship — work duties* — **BURDEN OF PROOF** — *elements of a prima facie case*

COMPLAINTS — *adequacy of complaint — limitation of action legislation applied to human rights complaint — limitation of action provision in human rights legislation* — **JURISDICTION** — *timeliness of complaint* — **HUMAN RIGHTS TRIBUNALS** — *rule in the first instance on questions within its jurisdiction — authority to order costs*

DAMAGES — *damages assessed for employment termination and injury to dignity and self-respect — determining quantum by considering duration of award — benefits — medical expenses — wages* — **REMEDIES** — *apology* — **COSTS** — *complainant's hiring own counsel — jurisdic-*

tional comparison — tribunal's authority to award — **INTERPRETATION OF STATUTES** — *definition of “consequent expenditure”*

The New Brunswick Labour and Employment Board of Inquiry ruled that Brunswick News Inc. did not discriminate against A.B. on the grounds of disability when it terminated his employment.

A.B. began working for *The Daily Gleaner* in 1965 when he was 11 years old and delivered newspapers. He had a difficult childhood, left home at a young age and by 1970 was working full-time in the mailroom and as night watch supervisor. Over the years A.B. worked his way up to Circulation Supervisor.

In 1997, *The Daily Gleaner* took over the circulation of ad mail, which increased A.B.'s already heavy workload. He became exhausted and depressed. In December 1997, he attempted suicide. After treatment, he returned to work in April 1998 to

his position as Circulation Supervisor.

On January 3, 2000, A.B. made a second suicide attempt. He was discharged from hospital in April 2000. While A.B. was on medical leave his Circulation Supervisor position was eliminated and his duties dispersed among other employees. When he returned to work in July 2000 he was assigned to the position of Assistant Mailroom Supervisor. In essence, this was a job that he had held 30 years earlier, which included sweeping floors. He was working under the supervision of a person he had trained.

While A.B. may have agreed to accept this position, he testified that he really wanted to return to work in July 2000 and felt he had no alternative. Subsequently, he was humili-

ated and depressed by the demotion and by the menial nature of the position.

A.B. made a third suicide attempt in September 2000. He was hospitalized and did not return to work until June 2001. This time he returned to a new position as Tele-

A.B. had a negative attitude and was not meeting reasonable performance expectations.

marketing Sales Supervisor. *The Daily Gleaner* hoped to increase its circulation through telemarketing. A.B. received the same pay as when he was Circulation Supervisor, with the proviso that his pay would convert to a base salary of \$20,000 plus a commission on telemarketing sales in six months.

A.B. did not like the telemarketing job, did not believe in it, and did not perform well. In 2002 his employment with *The Daily Gleaner* was terminated.

A.B. alleged that his employer discriminated against him by continually failing to accommodate his disability from June 2000 through to June 2002. The respondent failed to return him to his position as Circulation Supervisor after his second suicide attempt, assigned him to the mailroom, assigned him to the Telemarketing Sales Supervisor posi-

tion with a related reduction in salary, and failed to consider him for other more appropriate positions. A.B. also alleged that his termination was discriminatory.

The Board of Inquiry found that A.B.'s complaints regarding the respondent's failure to accommodate him between 2000 and 2002 were barred by the limitation in s. 17.1 of the *Act*. Section 17.1 requires that complaints be filed within one year of the alleged violation. A.B. filed his complaint on December 4, 2002. The Board of Inquiry concluded that only A.B.'s complaint regarding his termination on June 10, 2002 was not barred by s. 17.1.

Even if the allegations regarding failure to accommodate were not time barred, the Board concluded that the respondent did accommodate A.B. reasonably given the information that was available at the time.

When A.B. was assigned to the mail room, the respondent had been informed by A.B.'s psychiatrist that he should have "light duties". When he was assigned to the telemarketing position, his psychologist gave tacit approval, indicating that this was a reasonable position for him to return to.

Regarding A.B.'s termination, the Board of Inquiry concluded that A.B. had a negative attitude and was not meeting reasonable performance expectations. There was no evidence to connect his disability to his unsatisfactory productivity.

The complaint was dismissed.



A.B. v. Brunswick News Inc.
(No. 4) (Dec. 4, 2009), CHRR Doc. 09-2976 (N.B. Bd.Inq.; Bladon)

Trucking Dispatcher Was Racially Harassed

RACE, COLOUR AND PLACE OF ORIGIN — *discriminatory treatment and employment terminated on the basis of race — poisoned environment — racial slurs and harassment by employer* — **FAMILY STATUS** — *employment terminated for mother* — **DISCRIMINATION** — *job performance as reasonable cause for discrimination* — **EVIDENCE** — *credibility*

DAMAGES — *injury to dignity and self-respect — wages* — **REMEDIES** — *human rights training — anti-harassment and anti-racism*

The Human Rights Tribunal of Ontario ruled that Lynx Trucking discriminated against Cheryl Khan and terminated her employment because of her race, ethnicity and place of origin.

Ms. Khan was hired to be the dispatcher for Lynx Trucking in September 2007. She is a Canadian of East Indian or Pakistani origin. As dispatcher she was responsible for assigning drivers to pick up and deliver loads. This was a challenging job requiring an understanding of the logistics of moving freight, particular knowledge of the container business, an understanding of the needs of customers, and an ability to deploy the company's trucks and drivers efficiently. The truck drivers at Lynx were a racially diverse group, with a concentration

of drivers of South Asian origin.

Ms. Khan testified that the owner of Lynx Trucking, Lynn Tompkins, on a daily basis swore and yelled at her, calling her stupid, ignorant or uneducated. He routinely called her "Paki" or referred to her as "that Indian". Mr. Tompkins was aware that Ms. Khan had two children by a black father, and he referred to her "half-Nigger babies" and told her "that's what you get for sleeping with a Nigger". He also yelled at and made derogatory remarks about the drivers who were of East Indian ancestry, often telling another White employee to remind him never to hire those Indians again.

Ms. Khan's attempts to protest Mr. Tompkins treatment were unsuccessful. Mr. Tompkins simply told her that Lynx Trucking was his business and he could do as he liked. As a consequence, she had to face recurring racially abusive treatment, which created a poisoned work environment.

Ms. Khan's employment was terminated on January 30, 2008, after she had been away for a couple of days tending to a very sick child. The Tribunal rejected the respondents' claim that the decision to terminate the complainant was strictly perfor-

mance-related. Mr. Tompkins testified that she would not listen to his directions.

The Tribunal found, however, that one of the reasons Ms. Khan was unwilling to accept directions was because Mr. Tompkins was abusive of her, and made racialized comments about her ability. The conflict in the workplace between Mr. Tompkins and Ms. Khan cannot be separated from Mr. Tompkins' racially discriminatory views of her and her efforts to respond to his demeaning treatment. The Tribunal concluded that the claim that Ms. Khan was a poor performer who would not follow his directions was inextricably linked to Mr. Tompkins' racist treatment of her. The complainant's race, colour and ethnic origin were factors in her termination.

The Tribunal ordered the respondents to pay Ms. Khan \$6,750 as compensation for lost wages, and \$25,000 as compensation for injury to dignity.

The employer's treatment of the complainant was racially abusive and created a poisoned work environment.



Khan v. 820302 Ontario Inc. (Feb. 5, 2010), CHRR Doc. 10-0302, 2010 HRT0 265 (Whist)

Landlord Discriminates Against Tenant with FASD

DISABILITY — fetal alcohol spectrum disorder — **HOUSING ACCOMMODATION** — tenancy condition discriminates on the basis of disability — **REASONABLE ACCOMMODATION** — duty to accommodate short of undue hardship — definition of undue hardship — rational connection test — Meiorin test for reasonable accommodation — **BURDEN OF PROOF** — elements of a prima facie case — **DAMAGES** — damage deposit

The Yukon Human Rights Board of Adjudication ruled that Sternwheeler Holdings Ltd. discriminated against Robin Friesen because of a disability.

Robin Friesen is an adult who has Fetal Alcohol Spectrum Disorder ("FASD"). In December 2005 Ms. Friesen and her common-law partner, Justin Charlie, rented an apartment from Sternwheeler Holdings. Ms. Barbara LaChapelle was the manager

of the apartment building and she was contacted by Ms. Friesen's support worker at the Fetal Alcohol Syndrome Society of the Yukon ("FASSY") to secure the tenancy for Ms. Friesen and Mr. Charlie.

Ms. LaChapelle understood when she rented the apartment to Ms. Friesen that she had FASD and that FASSY provided support to her. Ms. LaChapelle agreed to co-operate with FASSY workers in order to facilitate the landlord-tenant relationship.

In August 2006 Ms. Friesen and Mr. Charlie were evicted on the grounds that lease documents had not been completed, they had not paid \$60 for a window that was broken while Ms. Friesen was away visiting her family, and they had not dealt with creditors who made multiple calls to Ms. LaChapelle while trying to reach Ms. Friesen and Mr. Charlie.

The Board of Adjudication decided that Ms. Friesen was evicted for reasons related

to her disability. It found that Ms. LaChapelle had not made adequate efforts to resolve the outstanding — and relatively minor — problems through FASSY workers. She complained that she phoned FASSY workers but they never returned her calls. However, this testimony was contradicted by evidence from FASSY about its regular procedures.

The Board of Adjudication ruled that Ms. Friesen was discriminated against and ordered the respondent to fulfill Ms. Friesen's modest remedial requests for an apology and repayment of the balance of her damage deposit.



Friesen v. Sternwheeler Holdings Ltd. (Sept. 28, 2009), CHRR Doc. 09-2972 (Yn. Bd. Adj.; Evans, Mercier and Dougherty)

Town Did Not Discriminate Against Aboriginal Candidate

ABORIGINAL PEOPLES — RACE, COLOUR AND PLACE OF ORIGIN — employment denied on the basis of race — discrimination based on stereotype — **DISABILITY** — discriminatory treatment and employment terminated on the basis of depression — **EMPLOYMENT EVALUATION AND TESTING** — evaluation procedures free from racial bias — fairness in selection process

BURDEN OF PROOF — elements of a prima facie case — **EVIDENCE** — availability and admissibility of evidence — circumstantial evidence — **INTERPRETATION OF STATUTES** — definition of "frivolous", "proceedings" and "vexatious"

COSTS — award of costs where complaint is trivial, frivolous, vexatious or made in bad faith — delay caused by human rights commission — tribunal's authority to award — **HUMAN RIGHTS TRIBUNALS** — authority of tribunal to inquire into limits of its own jurisdiction — investigate human rights commission's behavior — order costs

The Yukon Human Rights Board of Adjudication ruled that the Town of Faro did not discriminate against Les Carpenter because of his Aboriginal ancestry.

In December 2003, the town of Faro advertised for a Chief Administrative Officer ("CAO"). Jeanne Clarke, a nurse at the Faro Nursing Station learned from her neighbour, Councillor Val Benoit, that the job was open. She informed Councillor Benoit that her boyfriend, Les Carpenter, who is of Aboriginal ancestry, was probably going to apply for the job. The application process closed and Mr. Carpenter did not apply. The Town was not successful in hiring a CAO, and decided to re-advertise in March 2004.

This time, Ms. Clarke called Mayor Forbes and informed her of Mr. Carpenter's interest in the position and the Mayor agreed to meet with him when she was in Whitehorse. They met informally and talked about the position, and Mr. Carpenter also subsequently met with three other

councillors on an informal basis. He gave a resumé to Councillor Vainio and informed her that he had a full resumé that was available on request.

In January and again in March 2004, two different Faro residents, Bonnie Neumann and Dora McLachlan reported that they heard Councillor Benoit make derogatory remarks apparently

Some town councillors had negative views about First Nations people, but there was no evidence to show that these views affected the job competition.

about Mr. Carpenter. The remarks were reported as "We don't need his kind representing the Town of Faro" and "There is no fucking way we want an Indian with a braid down his back as our CAO".

In April, the Council members listed their top four choices from the new competition. No one listed Mr. Carpenter.

Ms. Clarke reported the comments that she had heard from Neumann and McLachlan to Mayor Forbes, and told another Councillor that she thought the Council was racist, because of the comments that she had heard Councillor Benoit had made.

The Council proceeded to hire a non-Aboriginal person as CAO.

The Yukon Human Rights Board of Adjudication found that the informal meetings between the Mayor and councillors and Mr. Carpenter were irregular, but they were not discriminatory. They occurred at the instigation of the complainant, or Ms. Clarke acting on his behalf, and had no adverse effect on the formal screening process.

The Board found that Mr. Carpenter did apply for the position of CAO by handing

over his preliminary resume to Councillor Vainio. He had two weeks until the competition closed to submit further documentation, but did not do so.

The Board accepted that Councillor Benoit did make stereotypical statements about First Nations people, and did say that an Aboriginal person would not be appropriate for the CAO position. Some other councillors also had negative views about First Nations people.

But the Board found that there is no evidence that these views affected the out-

come of the job competition for the CAO position. The decision to screen out Mr. Carpenter was based on non-racial criteria. The candidates who were short-listed were more qualified than Mr. Carpenter.

The complaint was dismissed.



Carpenter v. Faro (Town) (No. 3)
(Jan. 15, 2010), CHRR Doc.
10-0276 (Yn. Bd. Adj.; Dougherty,
Mercier and MacFeeters)

Disability Complaint Filed Out of Time

DISABILITY — *chronic illness — degree of disability — temporary disability — definition of physical disability* — **COMPLAINTS** — *timeliness in filing complaint — continuing contravention* — **DISCRIMINATION** — *job performance as reasonable cause for discrimination* — **INTERPRETATION OF STATUTES** — *definition of “physical disability”*

The Newfoundland and Labrador Human Rights Board of Inquiry ruled that the complaint of Aubrey Lynch against Go-Getter Courier Service and Ken Ploughman must be dismissed because the alleged discrimination did not occur within the statutory limitation period set out in s. 20(2) of the *Human Rights Code*.

Mr. Lynch had his spleen removed as a child. Bacterial and viral infections are likely to make him sicker than other people because his immune system is compromised.

He first worked as a courier for the respondents from March 2001 to March 2002. He was sometimes ill during this time, and the respondents expressed concerns about his reliability and about the inconvenience caused to them when he was

not at work. However, Mr. Lynch did not explain his condition to Mr. Ploughman at that time.

He worked again for Mr. Ploughman from March 2004 to January 2006 when he left his employment. In July 2004 Mr. Lynch was hospitalized because of illness. This was the first time Mr. Ploughman was fully informed of Mr. Lynch's medical status. Various complaints and sarcastic remarks were made by Mr. Ploughman at this time about Mr. Lynch's illness and absence from work.

It appeared from the evidence that the last time Mr. Lynch's illness and absence from work was an issue was in December 2004. Mr. Lynch's complaint was filed in 2006. It can only apply to discrimination that occurred within six months of the filing date, unless there is an ongoing pattern of discrimination that includes incidents reaching back farther than six months.

The Board found that no incidents of discrimination because of illness occurred

in the six months prior to the filing date, and there was no ongoing pattern of discrimination.

The Board found that Mr. Lynch's complaint had to be dismissed because the alleged incidents of discrimination did not occur within the statutorily allowed period. In addition, the Board found that Mr. Lynch did not lose his employment because of his illness and his absence from work. Rather, he quit his job, refused to discuss concerns about his performance, and declined an invitation to discuss the concerns and a possible return to work. Finally, the Board found that Mr. Lynch did not have a disability within the meaning of the *Code*, since his condition did not interfere with normal performance of his job.

The complaint was dismissed.

No incidents of discrimination because of illness occurred in the six months prior to the filing date, and there was no ongoing pattern of discrimination.



Lynch v. Go-Getters Courier Service (Dec. 17, 2009), CHRR Doc.
09-2973 (N.L. Bd. Inq., Power)

Deaf Woman Evicted Because of Excitable Dog, Not Disability

DISABILITY — *discriminatory treatment of hearing impaired person with service animal* — **HOUSING ACCOMMODATION** — *tenancy condition discriminates on the basis of disability* — **COMMUNICATIONS** — *notice affronting the dignity of disabled persons — eviction of tenant* — **REASONABLE ACCOMMODATION**

— *duty to accommodate short of undue hardship*

The B.C. Human Rights Tribunal dismissed a complaint filed by Joan Devine against David Burr Ltd., David Burr, and La Suerte Enterprises Ltd.

Ms. Devine is deaf and she lives alone.

She keeps a dog to provide her with personal assistance. Ms. Devine moved into a ground floor apartment at the Craigflower in Victoria in May 2001. At that time, she had a dog named Bowser, who helped her by alerting her when someone was at the door or the telephone was ringing, or by drawing her attention to things when she

dropped them.

She lived at the Craigflower for about eight years until she was evicted. Sometime in 2001 or 2002 Ms. Devine decided that because Bowser was getting old, she should get a puppy, which Bowser could train to assist her. She got a puppy which she named Max. At about the same time, the Craigflower adopted a no-dog policy. The respondents did not apply this policy to Ms. Devine as they understood that she needed a dog to assist her because of her profound hearing loss. But they informed her that she could have one dog, not two, and within a reasonable time they expected her to find another place for one of the dogs.

Max grew into a large, strong excitable

dog. The Tribunal found that Ms. Devine did not always have Max under control. He barked and lunged at tenants coming into the building; he bothered some of the tenants and frightened others.

Some tenants also complained that Ms. Devine did not always clean up after her dogs promptly and that there was a foul dog odour coming from her apartment.

In February 2008, someone put an anonymous notice on the Bulletin Board in the front lobby stating that Max was not a proper working dog, and should be controlled better because he was bothering the tenants. Ms. Devine was very hurt and upset by this notice.

Shortly afterwards, Ms. Devine was evicted.

The Tribunal found that Ms. Devine was evicted because Max was a large strong and excitable dog and she could not control him. The respondents had accepted that she was entitled to have a dog to assist her because of her disability, and had let her keep two dogs for a while. They had informed her when there were complaints and given her opportunities to improve.

The Tribunal concluded that Ms. Devine's eviction was not due to her disability. The Tribunal also concluded that the notice on the Bulletin Board was not posted by the respondents, but by an unknown tenant. The notice did not amount to discrimination.

The complaint was dismissed.



Devine v. David Burr Ltd. (No. 2)
(Feb. 8, 2010), CHRR Doc. 10-0324, 2010 BCHRT 37
(Tyshynski)

The complainant was evicted because her personal assistance dog was large, excitable and not well-controlled.

Women's Organization Discriminates Against Immigrant Woman

RACE, COLOUR AND PLACE OF ORIGIN — *discriminatory treatment and employment terminated on the basis of place of origin* — *discrimination based on cultural bias* — **LANGUAGE** — *specific language proficiency* — **DAMAGES** — *determining quantum by considering previous awards* — *injury to dignity and self-respect* — *wages* — **MITIGATION** — *reasonable amount of time to mitigate*

The Human Rights Tribunal of Ontario ruled that Women's Support Network of York Region ("WSNYR") discriminated against Shahrzad Nemati because of her ethnicity and place of origin. Ms. Nemati is a non-White Persian woman who came to Canada from Iran in 1998. Her first language is Farsi. She has a Bachelors' degree in psychology and certificates in counseling. She has studied in Arabic as well as English.

From September 2005 to January 2008 she worked for WSNYR as a part-time counselor. Ms. Nemati alleged that WSNYR discriminated against her by undervaluing her work, not giving her adequate supervision, denying her a schedule change, allowing her to be isolated in the workplace, and providing her with little support when she was dealing with a diffi-

cult co-worker. Ms. Nemati was fired in 2008 because of a failure to report the sexual abuse of a girl under 16 years of age to the child welfare authorities.

The Tribunal dismissed most of Ms. Nemati's allegations. WSNYR was a small non-governmental organization with scant resources. Some of the decisions made by supervisory staff may not have been as supportive as Ms. Nemati would have liked, but they were not discriminatory.

However, on two issues the Tribunal found that Ms. Nemati was treated in a discriminatory manner. The fact that she was the only recent immigrant in the society's employ with English as a second language played a role in that treatment.

Ms. Nemati was given no support to deal with R.F., a difficult co-worker. R.F. was recognized by senior staff as a person who was creating problems in the workplace. When other employees were involved, R.F. was subjected to discipline for her behaviour. But Ms. Nemati was directed to deal with R.F. on her own, even though she indicated that her English was

not up to negotiating a hostile personal conflict.

Secondly, Ms. Nemati was fired for failing to report to child welfare authorities sexual abuse revealed by one of her clients. Ms. Nemati testified that she did not know that her client was under 16 years of age

when she first heard the sexual abuse story. She went to her supervisor as soon as she realized that her client was under age. The Tribunal found that there was no inquiry by WSNYR senior staff as to the actual legal reporting requirements and the best course of action in this

case. Ms. Nemati was simply fired, even though her co-worker R.F. was only suspended for one day for a similar breach of rules.

The Tribunal awarded Ms. Nemati compensation for lost wages in the amount of \$12,012 and \$10,000 for injury to dignity.

Ms. Nemati was fired for a breach of rules, when a non-immigrant co-worker was merely suspended for one day for a similar breach.



Nemati v. Women's Support Network of York Region (Feb. 11, 2010), CHRR Doc. 10-0386, 2010 HRTO 327 (Keene)

Briefly Noted

FEDERAL

Gravel v. Canada (Public Service Comm.) (2010), CHRR Doc. 10-0378, 2010 CHRT 3 (Bélanger)

AGE DISCRIMINATION — DISABILITY / Decision on a complaint of discrimination in employment on the basis of age and disability. The Tribunal found that although the complainant was treated badly by the respondent, it cannot be determined that it was because of her age. The Tribunal found that the complainant did not inform the respondent that she could not fulfill her duties because of a disability. Dismissed: Feb. 3, 2010.

BRITISH COLUMBIA

F. v. British Columbia (Children and Family Development) (No. 2) (2010), CHRR Doc. 10-0333, 2010 BCHRT 46 (Humphreys)

RACE, COLOUR AND PLACE OF ORIGIN — PUBLIC SERVICES AND FACILITIES — EVIDENCE — PARTIES / Decision on a complaint of discrimination in services on the basis of race and ancestry. The Tribunal anonymized the name of the intake social worker who initially dealt with the family in the removal of children from their family home. The Tribunal found that comments made by the social worker did not constitute discrimination. Dismissed: Feb. 17, 2010.

Kung v. Peak Potentials Training Inc. (No. 3) (2010), CHRR Doc. 10-0328, 2010 BCHRT 41 (Beharrell)

PREGNANCY / Decision on a complaint of discrimination in employment on the basis of pregnancy. The Tribunal found that the changes to the workplace did not have a differential impact on the complainant as a result of her pregnancy leave. Dismissed: Feb. 16, 2010.

Ratzlaff v. Marpaul Construction Ltd. (2010), CHRR Doc. 10-0074, 2010 BCHRT 13 (MacNaughton)

SEXUAL HARASSMENT / Decision on a complaint of discrimination in employment on the basis of sexual harassment. The Tribunal concluded that the complainant experienced unwelcome conduct of a sexual nature which detrimentally affected her work environment and led to her resignation from her employment. The Tribunal awarded \$47,000 in compensation for injury to dignity and self-respect and lost wages. Allowed: Jan. 14, 2010.

ONTARIO

Alam v. Brimell Motors Ltd. (No. 2) (2010), CHRR Doc. 10-0311, 2010 HRTO 274 (Joachim)

DISABILITY / Decision on an application alleging discrimination in employment on the basis of disability. The Tribunal found that the applicant's hospitalization did not play any role in the work-related criticism and termination of the applicant's employment. Dismissed: Feb. 5, 2010.

Allarie v. Rouble (2010), CHRR Doc. 10-0082, 2010 HRTO 61 (Reaume)

DISABILITY — PUBLIC SERVICES AND FACILITIES / Decision on an application alleging discrimination in services on the basis of disability. The Tribunal found that the applicant did not establish that his disability and his use of a service animal were factors in the way he was treated in the respondents' store. Dismissed: Jan. 20, 2010.

Allen v. Lafarge Canada Inc. (No. 3) (2010), CHRR Doc. 10-0304, 2010 HRTO 267 (Hart)

SEX DISCRIMINATION / Decision on an application alleging discrimination in employment on the basis of sex and reprisal. The Tribunal found that one incident where the manager used inappropriate language was not sufficient to support a finding of discrimination on the basis of sex. The Tribunal determined that there was no evidence that the applicant made the respondents aware that she was seeking to claim and enforce her rights under the *Code* at the time of her termination. Dismissed: Feb. 5, 2010.

Aniol v. Lafontaine Resort Park Inc. (2010), CHRR Doc. 10-0313, 2010 HRTO 276 (Slotnick)

RACE, COLOUR AND PLACE OF ORIGIN — PUBLIC SERVICES AND FACILITIES / Decision on an application alleging discrimination in a campground on the basis of ethnic origin. The Tribunal concluded that the applicant did not establish that his ethnic origin was a factor in his eviction or in the treatment of him and his family prior to the eviction. Dismissed: Feb. 8, 2010.

Arnold v. Dunedin House Bed & Breakfast (2010), CHRR Doc. 10-0382, 2010 HRTO 323 (Rown)

SEXUAL ORIENTATION — FAMILY STATUS — HOUSING ACCOMMODATION / Decision on an application alleging discrimination in services on the basis of marital status and sexual orientation. The Tribunal found that the applicants' sexual orientation and/or marital status played a part in the respondent's decision to withdraw her offer of bed and breakfast accommodation. The Tribunal ordered the respondent to pay \$1500 to each of the applicants and to post "Code cards" inside the building. Allowed: Feb. 11, 2010.

Boukort v. Ottawa Community Housing Corp. (2010), CHRR Doc. 10-0238, 2010 HRTO 214 (Bhattacharjee)

SEXUAL HARASSMENT — EVIDENCE / Decision on an application alleging harassment and discrimination because of his race, ancestry, place of origin, citizenship, creed, sex, sexual orientation, family status, marital status, and age. The Tribunal found that the applicant's evidence was not credible. Dismissed: Jan. 29, 2010.

Hoekstra v. First Hamilton Christian Reformed Church and Zantingh (2010), CHRR Doc. 10-0269, 2010 HRTO 245 (Joachim)

FAMILY STATUS — RELIGION AND CREED — EMPLOYMENT EVALUATION AND TESTING / Decision on an application alleging discrimination in employment on the basis of marital status and creed. The Tribunal concluded that the applicant was not selected for an interview because there were other candidates more qualified for the position. The applicant's life situation played no role in the selection process. Dismissed: Feb. 2, 2010.

Kovacs v. Arcelor Mittal Montreal Inc. (No. 3) (2010), CHRR Doc. 10-0360, 2010 HRTO 303 (Sheehan)

RETIREMENT / Decision on an application alleging discrimination in employment on the basis of age. The Tribunal found that the early retirement program did not contravene the *Human Rights Code*. Dismissed: Feb. 9, 2010.

MacDonald v. Anishnawbe Health Toronto (2010), CHRR Doc. 10-0388, 2010 HRTO 329 (Joachim)

RELIGION AND CREED — DISABILITY / Decision on an application alleging discrimination in employment on the basis of religion. The Tribunal concluded that the applicant's religion did not play any role in the respondent's treatment of her during her employment or in the decision to terminate her employment. The Tribunal found that the respondents demonstrated that they terminated the applicant's employment because they perceived her to have engaged in misconduct, and not because of any past or anticipated health-related leave of absence. Dismissed: Feb. 12, 2010.

Taranco v. Michedes (No. 6) (2010), CHRR Doc. 10-0150, 2010 HRTO 128 (Price)

SEX DISCRIMINATION — AGE DISCRIMINATION — HOUSING ACCOMMODATION — REMEDIES / Decision on an application alleging discrimination in tenancy on the basis of sex and age. The Tribunal found that the evidence clearly establishes that the respondent refused to consider the complainant's application for tenancy because of his age and sex. The Tribunal awarded the complainant \$5,000 in compensation. The respondent was ordered to retain an independent expert in human rights to draft an anti-discrimination policy with an internal complaints mechanism which complies with the *Code* for the rental buildings he owns or manages and to post the policy in each of the rental buildings. Allowed: Jan. 28, 2010.

QUÉBEC

Québec (Comm. des droits de la personne et des droits de la jeunesse) c. Syndicat des copropriétaires "Les Condominiums Sainte-Marie" (2010), CHRR Doc. 10-0716, 2010 QCTDP 1 (Pauzé J.)

INCAPACITÉ — DOMMAGES / Plainte de discrimination basée sur le handicap et de l'utilisation d'un moyen pour y pallier. Le Tribunal condamne le Syndicat à verser à la victime 7 000\$ à titre de dommages moraux et de 3 000\$ à titre de dommages punitifs. Accueillie : 22 janv. 2010.

Québec (Comm. des droits de la personne et des droits de la jeunesse) c. A.B. (2010), CHRR Doc. 10-0717, 2010 QCTDP 2 (Rivet J.)

INJONCTION / Requête par la Commission en vue d'obtenir des mesures d'urgence interlocutoires pour assurer la sécurité d'une personne visée par un cas d'exploitation. Accueillie : 3 fév. 2010.



Human Rights Digest

ORDERING INFORMATION

CANADIAN HUMAN RIGHTS REPORTER

1662 West 75th Ave.
Vancouver, B.C.
Canada V6P 6G2

PHONE (604) 266-5322

FAX (604) 266-4475

E-MAIL accounts@cdn-hr-reporter.ca

WEB SITE www.cdn-hr-reporter.ca

Published 8x per year

Annual Subscription Rate: \$180

Included in a subscription to C.H.R.R.

Multiple copies at reduced rates.

Order full text of decisions:

MAIL \$.75 per page FAX \$3.00 per page

ELECTRONIC \$20 for first decision; \$10 for each additional decision

VISA and Mastercard accepted.