Date : 2006-06-06

Docket: T-679-05

Citation: 2006 FC 704

Ottawa, Ontario, June 6, 2006

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

CANADIAN MUSEUM OF CIVILIZATION CORPORATION

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA (LOCAL 70396) and CANADIAN HUMAN RIGHTS COMMISSION

Respondents

REASONS FOR ORDER AND ORDER

[1] This application for judicial review by the Canadian Museum of Civilization Corporation (CMCC) challenges a May 21, 2005 decision (Decision) of the Canadian Human Rights Tribunal (Tribunal). The Decision dismissed CMCC's motion to strike those portions of a complaint (Complaint) made by the Public Service Alliance of Canada (PSAC) that alleged a violation by CMCC of section 11 of the *Canadian Human Rights Act* R.S.C. 1985 H-6 (Act).

BACKGROUND

[2] On March 6, 2000, PSAC made the Complaint to the Canadian Human Rights Commission (Commission) alleging that CMCC's job evaluation plan (Plan) is gender-biased and contrary to sections 10 and 11 of the Act.

[3] The Plan has been implemented since April 1, 1997. PSAC claims that the Plan differentiates adversely against female jobs in comparison to male jobs of equal value. Certain factors that are known to measure aspects of jobs that are typically female are allegedly absent from the Plan and, conversely, other factors that typically favour predominantly male jobs are taken into consideration by the Plan.

[4] The Complaint alleges that a random mix of seven predominantly female and seven predominantly male jobs using a "gender-neutral" job evaluation plan jointly developed by PSAC and Deloite & Touche illustrates a gender bias in the Plan.

[5] It is important to note here that the Complaint did not specify which jobs were used for the random mix assessment. In addition, the Complaint did not indicate which predominantly female jobs are allegedly undervalued when compared to the predominantly male jobs.

[6] CMCC's employees were at one time classified according to the Treasury Board Standard, which sorted jobs into various occupational groups, including Clerical Regulatory (CR) and General Technical (GT). It is alleged in the Complaint that the CR group was composed of predominantly female jobs and that the GT group was made up predominantly of male jobs. CMCC points out that, although there is some reference in the Complaint to CR and GT jobs, these classifications ceased to exist on April 1, 1997. The alleged discriminatory practice relates to the new Plan under which there is no breakdown of occupational groups using the old Treasury Board designations.

[7] CMCC contends that without a particularization of the female complainant group and the male comparator counterpart, PSAC's claim of discrimination under section 11 of the Act cannot be substantiated, especially when the *Equal Wage Guidelines*, 1986, SOR/86-1082, (Guidelines) adopted pursuant to subsection 27(2) of the Act are taken into account. According to section 12 of the Guidelines, where a complaint alleging differences in wages is filed by or on behalf of an identifiable occupational group, the group must be predominantly of one sex and the group to which it is compared must be predominantly of the other sex. CMCC claims that in order to comply with sections 12 and 13 of the Guidelines both the complainant group and its male comparator group must be precisely identified.

[8] Over the years CMCC has repeatedly conveyed its concerns to PSAC and the Commission regarding the lack of particularization of the relevant occupational groups. A first reference appears in CMCC's initial response to the Complaint which was communicated to the other parties in June

2000. The same concerns were reiterated as recently as August 2004, in a Statement of Case filed by CMCC in preparation for a case management meeting. CMCC notes that at no time along the way did PSAC or the Commission provide it with the requested details until PSAC was told by the Chairman of the Tribunal to provide further particulars at a case conference held August 20, 2004.

[9] An expert's report obtained by the Commission (Haignière Report) and released in June 2003, studied whether the Plan tended to deprive women of employment opportunities in breach of section 10 of the Act. The findings were later incorporated into the Commission investigator's report. In PSAC's view, neither the Haignière Report nor the Commission investigator looked into or reported on any section 11 contravention. The Haignière Report did review several specific jobs, which were identified as either female or male, but no comparison was done of the relative rates of pay and values of the jobs. The Haignière Report recommended that a tribunal be appointed to inquire into the section 11 portion of the Complaint, but did not identify the complainant and comparator groups.

[10] In January 2004, the Commission referred the matter to conciliation. The conciliation failed and the Complaint was referred to the Tribunal for inquiry. CMCC had the opportunity, at that time, to seek judicial review of the Commission's decision to refer the Complaint to the Tribunal but declined to do so. CMCC now says that there was no reason to challenge the referral because the jurisdictional and amendment issues raised in this application did not arise until after the referral to the Tribunal.

[11] PSAC provided CMCC with its Statement of Case in July 2004, which contained further particulars of the Complaint. Then, or on October 15, 2004, PSAC provided more detailed particulars of the complainant and comparator groups for the purposes of the section 11 portion of the Complaint.

[12] In February 2005, CMCC brought a motion before the Tribunal to strike the allegations in the Complaint that the Plan violates section 11 of the Act. The motion was dismissed by the Tribunal and it is this interlocutory ruling that is the basis of the present application before the Court.

APPLICANT'S SUBMISSIONS

[13] Under the Guidelines, CMCC says that each complainant and its corresponding comparator group must be analyzed against specific criteria to determine if a discrete human rights violation has occurred. In pay equity cases the Guidelines have the force of a statute. In essence, the analysis of each complainant and its corresponding comparator group potentially yields a distinct human rights violation, just as if one were analyzing a series of separate causes of action. This is why the Guidelines make it obligatory for any complaint under section 11 of the Act to disclose the separate complainant and its corresponding comparator groups. The failure to properly identify the complainant and comparator groups amounts to a failure to properly lay a complaint.

[14] PSAC's original claim was asserted in March of 2000. Over the years that followed, CMCC repeatedly demanded that PSAC, and later the Commission, disclose the particulars of the section 11 aspects of the Complaint by identifying the complainant and comparator groups upon which PSAC relies. CMCC's many requests for such further details were ignored or refused.

[15] In the fall of 2004, following the referral of the Complaint to the Tribunal, CMCC told the Tribunal about its concerns and asked for an order specifically compelling PSAC to disclose the complainant and comparator groups upon which its section 11 case was founded. The Tribunal agreed that this information should be provided and accordingly ordered PSAC to disclose it to CMCC.

[16] On October 15, 2004 PSAC sent a letter to CMCC purporting to comply with the Tribunal's order requiring the identification of the complainant and comparator groups. However, CMCC says that PSAC's letter asserted what amounted to a brand new complaint. In the letter, PSAC claimed for the first time that a whole series of new job titles represented the complainant and comparator groups upon which PSAC now wishes to rely. Those groups did not match the CR or GT groups set forth in the original Complaint and, as such, were not the subject of an investigation by the Commission or the independent expert the Commission hired to review the allegations contained in the Complaint. Nor had the Commission referred anything to the Tribunal which had been constructed in the way PSAC asserted its claim in its October 15, 2004 letter.

[17] In other words, CMCC says that on October 15, 2004, PSAC asserted what amounted to a brand new section 11 case which had not been the subject of an investigation by the Commission or the expert, and had not been part of the referral to the Tribunal. As such, the Tribunal had no jurisdiction to hear it. The Tribunal should have dismissed the section 11 aspect of the Complaint and granted CMCC's motion. The Tribunal's failure to do so was an error in law.

RESPONDENT PSAC'S SUBMISSIONS

[18] PSAC says that CMCC's application for judicial review is premature. The interim procedural ruling should not be reviewed by this Court as the Tribunal has not had an opportunity to adjudicate the merits of the case at a full hearing.

[19] PSAC also says that the identification of occupational groups by PSAC following the referral of the Complaint to the Tribunal was simply the provision of further details regarding the nature of the Complaint, which did not alter the initial Complaint in any real or significant manner.

[20] PSAC points out that the precise wording of the Complaint is not determinative of what the Tribunal may be required to examine and assess. In the present case, reliance upon section 11 of the Act was known to CMCC from the outset and, accordingly, the steps taken by PSAC to specify occupational groups was simply the provision of further particulars with respect to the existing Complaint.

RESPONDENT COMMISSION'S SUBMISSIONS

[21] The Commission is not satisfied that this judicial review application satisfies the test for being premature. However, the Commission does take the position that this application should be dismissed as it is, in essence, a belated attempt to challenge the Commission's decision to refer the Complaint to the Tribunal.

[22] The Tribunal has jurisdiction under the Act to conduct an inquiry into complaints referred to it by the Commission. The Tribunal does not have the authority to choose to accept complaints for inquiry. This is the role of the Commission.

[23] If CMCC had wished to argue that the Commission did not have the jurisdiction to refer the Complaint to the Tribunal, or that the referral of the Complaint to the Tribunal was otherwise improper, it should have commenced a judicial review application of the Commission's decision to refer. CMCC failed to do this. As such, the Commission's decision to refer the Complaint to the Tribunal cannot be the subject of review within these proceedings.

ISSUES

1. **Is CMCC's application to judicially review the Tribunal's interlocutory ruling on the section 11 motion premature?**
2. **What is the appropriate standard of review?**

3. **Did the Tribunal commit a reviewable error when it dismissed CMCC's motion to strike?**

ANALYSIS

1. **Is CMCC's application to judicially review the Tribunal's interlocutory ruling on the section 11 motion premature?**

[24] Interlocutory rulings are not ordinarily open to judicial review. In *Zündel v. Canada (Human Rights Commission*), [2000] 4 F.C. 255 at para. 10 (C.A.), Justice Sexton stated as follows:

> [...] As a general rule, absent jurisdictional issues, rulings made during the course of a tribunal's proceeding should not be challenged until the tribunal's proceedings have been completed. The rationale for this rule is that such applications for judicial review may ultimately be totally unnecessary: a complaining party may be successful in the end result, making the applications for judicial review of no value. Also, the unnecessary delays and expenses associated with such appeals can bring the administration of justice into disrepute. [...]

[25] The general position regarding interlocutory rulings, as expressed by Justice Létourneau in *Szczecka v. Canada (Minister of Employment and Immigration)* (1993), 116 D.L.R. (4th) 333, was reiterated and confirmed by Justice Sexton in *Zündel* at paragraph 12:

> …unless there are special circumstances there should not be any appeal or immediate judicial review of an interlocutory judgment. Similarly, there will not be any basis for judicial review, especially immediate review, when at the end of the proceedings some other appropriate remedy exists. These rules have been applied in several

> court decisions specifically in order to avoid breaking up cases and the resulting delays and expenses which interfere with the sound administration of justice and ultimately bring it into disrepute.

[26] Special circumstances can arise, for example, where a tribunal's jurisdiction is at issue or where the impugned decision is "finally dispositive" of a "substantive right" (see *Bell Canada v. Canadian Telephone Employees Assn.*, [2000] F.C.J. No. 1094). Otherwise, an application to quash or vary an interlocutory decision will be considered premature.

[27] CMCC argues that PSAC's October 15, 2004 letter amounted to an amendment to the Complaint, as opposed to further particulars, that substantially altered the scope and nature of the inquiry before the Tribunal. This had a significant effect on the rights of the parties. CMCC further argues that the Tribunal's refusal to dismiss the section 11 aspects of the Complaint clearly involved an analysis of its own jurisdictional authority to entertain the Complaint at all. As such, CMCC asserts that special circumstances exist to warrant judicial review of the Tribunal's interlocutory Decision.

[28] In *Cook v. Onion Lake First Nation*, [2002] C.H.R.D. No. 12, the Tribunal entertained and decided a jurisdictional argument of the kind put forward by CMCC in the present case:

> …
>
> 11. The case law focuses on the facts of individual cases, rather than the law. It establishes that the word "complaint" must be interpreted broadly, in a manner that captures the full extent of the complainant's allegations. There is a point, however, where an

amendment of a complaint can no longer be considered a "mere amendment" and becomes a substantially new complaint. [See Note 1 below] In such a situation, the Commission cannot be said to have requested an inquiry and the Tribunal has no jurisdiction to proceed.

Note 1: As the words were used by Muldoon J. in *Canada (A.G.) v. Canada (C.H.R.C.)*, infra, at page 99.

12. The Federal Court has dealt with the jurisdiction of the Commission to amend a complaint. Most recently, in *Bell Canada v. C.E.P.U.*, [1998] F.C.J. No. 1609 (Q.L.), at paragraph 45, the Federal Court of Appeal stated that an investigator may have a duty to suggest that a complaint be amended to conform with the evidence.

> To require the investigator in such a case to recommend the dismissal of the complaint for being flawed and to force the filing of a new complaint by the complainant or the initiating of a complaint by the Commission itself under subsection 40(3) of the Act, would serve no practical purpose. It would be tantamount to importing into human rights legislation the type of procedural barriers that the Supreme Court of Canada has urged not be imported.

This was followed by the Trial Division in *Tiwana v. Canada (C.H.R.C.)*, [2000] F.C.J. No. 1955 (F.C.T.D.), at paragraph 32, where the court allowed a complainant to amend a complaint of discrimination on the basis of age.

13. These cases deal with amendments during the course of an investigation, however. The situation changes once a complaint has been referred to the Tribunal. In *I.M.P. Group Limited v. Dillman* (1995), 24 C.H.R.R. D/529, for example, the Nova Scotia Court of Appeal criticized a Board of Inquiry for allowing an amendment that went beyond the facts of the original complaint. In paragraph 35, at page 332, the court stated as follows:

> As counsel for the company says, it was not merely an extension, elaboration or clarification of the sexual harassment complaint already before the Board. To raise a new complaint at the hearing stage would circumvent the whole legislative process that is

> designed to provide for attempts at conciliation and settlement. This matter did not go through the preliminary stages of investigation, conciliation and referral by the Commission to an inquiry pursuant to s. 32(a) of the Act. The Board dealt with a matter which had never been referred to it.

The Commission would be the last to suggest that the Tribunal is entitled to enter into an inquiry without a referral from the Commission.

…

20. The rule regarding allegations of retaliation can probably be seen as an exception to the general practice regarding amendments. That practice appears to be that amendments will normally be allowed if they do not alter the substance of the complaint, as reflected in the material facts of the case. If the amendment prejudices the case for the respondent, on the other hand, it should not be allowed. The case law does not discuss how much prejudice is sufficient, but it must be real and significant. There must be "actual prejudice". There may also be factors such as delay, which are implicitly prejudicial. This might include the loss of the investigation and conciliation processes.

…

22. This brings me to the present case. The first issue is whether the Tribunal has the jurisdiction to entertain the proposed amendment. The Respondent essentially argues that the amended complaint is based on allegations that were never considered by the Commission. The amendment accordingly introduces a new complaint, which was never referred to the Tribunal. The question in the case law is whether the amendment would alter the allegations of fact set out in the complaint. The simple answer appears to be yes.

23. The case put forward by the Complainant and Commission alleges that the decision as to who should be enrolled in the programme was tainted by some form of prejudice. Ms. Cook apparently feels that she was the victim of unfairness. The complaint relates to her treatment as an individual and states that she has been discriminated against personally. It does not question the design of the programme or the admission criteria.

> 24. The question whether the Life Skills Programme is inherently discriminatory is a separate issue. It was never part of the original complaint. The complaint and the particulars do not suggest that the programme's admission criteria discriminate against applicants with alcoholism, in requiring that applicants be free of alcohol. Ms. Cook merely alleged that she was not allowed to enrol in the programme because she had hepatitis C. She did not question the requirement that the applicant "be drug and alcohol free for a minimum of six weeks". In point of fact, Ms. Cook stated that she met this criteria.
>
> 25. The Respondent feels that it is now facing a new attack on a broader front, which calls the entire Life Skills Programme into question. This raises deep issues for Onion Lake, which requires that all employees refrain from the use of drugs and alcohol. The concern is that any attack on this aspect of the programme undermines one of the fundamental policies on which the reserve operates. This is a systemic issue that does not appear to have been canvassed in the investigation. It follows that the issue was never referred to the Tribunal and cannot be incorporated into the complaint. In my view, the Tribunal has no jurisdiction to deal with it.

[29] There are also some helpful words on the issue of amendments and jurisdiction from Justice Muldoon in *Canada (A.G.) v. Canada (Canadian Human Rights Commission)*, [1991] F.C.J. No. 334 at p. 10:

> Therefore, insofar as the report related to a matter, alleged sexual harassment, which was extraneous to the complaint - any complaint - upon which the investigator was required to make a report, the Commission had no statutory authority under subparagraph 44(3)(*a*)(*i*) to make the request of the President of the Human Rights Tribunal Panel to do anything whatever. Why? It is because the Tribunal might lawfully enquire into the complaint to which the report relates, all right, but only such a complaint, and not some extraneous complaint (even although its factual allegations are mentioned in the report) which complaint came into existence only after the report was completed. The complaint, all of whose

> circumstances the Commission regarded warranting an enquiry, in subparagraph (*a*)(*i*), is the original complaint to which the investigator's report relates. It would be otherwise of course if the statutory provision related to "any additional but subsequently formulated complaint based on allegations or facts roughly contemporaneous with those incorporated into the complaint to which the report relates", for that indeed is what the sexual harassment complaint is. It is not a mere amendment like that of April 25, 1988. It cannot lawfully be invoked as a subject of a Tribunal's enquiry in contemplation of subparagraph 44(3) (*a*)(*i*) of the C.H.R.A.

[30] Clearly, then, at the Tribunal stage an amendment could alter the allegations set out in the Complaint to such a degree that it amounts to a new subject of inquiry that has not been referred to the Tribunal by the Commission. I agree with CMCC that the Tribunal's Decision raises an important jurisdictional issue that should be dealt with at this stage. Consequently I do not believe this application is premature.

2. What is the appropriate standard of review?

[31] In *Brown v. Royal Canadian Mounted Police*, 2005 FC 1683, [2005] F.C.J. No. 2124, Justice Hansen stated the following, at paragraph 17, regarding the standard of review as it relates to decisions of the Tribunal:

> I am in agreement with the conclusion reached by Justice Gibson in *International Longshore & Warehouse Union (Marine Section) Local 400 v. Oster*, [2002] 2 F.C. 430 that the standard of review of decisions of the Tribunal regarding questions of law is correctness and with respect to questions of mixed fact and law is reasonableness simpliciter. As the determinative issue raises a question of mixed fact

> and law, the decision will be reviewed on a standard of reasonableness.

[32] I agree with the PSAC's submission that in the present matter the Tribunal's Decision is one of mixed fact and law and that the standard of review is reasonableness simpliciter. The Tribunal made findings of fact with respect to the content of PSAC's Complaint and then applied the appropriate legal tests to determine whether the information provided to CMCC was sufficient for it to know the case it must meet in the section 11 portion of the Complaint. The Tribunal applied the law to its findings of fact and determined that the additional information provided to CMCC with respect to the section 11 aspects constituted further particulars to the existing Complaint and that the Complaint was properly before the Tribunal for a full hearing on the merits. However, even if a correctness standard is applied, I believe the Tribunal Decision on this issue was correct for reasons that I will now explain.

3. Did the Tribunal commit a reviewable error when it dismissed CMCC's motion to strike?

[33] The fundamental issue here is to decide, first of all, the nature and scope of the Complaint that was referred to the Tribunal by the Commission. The Complaint itself reads as follows:

> ALLEGATION
>
> The Canadian Museum of Civilization uses a new job evaluation plan which is flawed and results in the underpayment of female jobs

in relation to male jobs of comparable value in contravention of sections 10 and 11 of *The Canadian Human Rights Act*.

PARTICULARS

In terms of both design and application, the respondent's job evaluation plan differentiates adversely against predominantly-female jobs in comparison to predominantly-male jobs of equal value, by virtue of the absence of certain factors which are known to measure aspects of jobs which are typically female as well as the presence of factors which typically favour predominantly-male jobs.

For example, the measurement of Knowledge though the quantification of required levels of education and experience and the absence of any measure of the responsibility for information resources or of the exposure to psychological and emotional risks or hazards leads to systemic bias in the evaluation of predominantly-female jobs. Moreover, the Effort factor is biased in favour of predominantly-male jobs by virtue of its definition, several factors favour hierarchy, and most degree definitions are vague.

Prior to converting to the new job evaluation plan, employees were classified in a number of occupational groups, including CR and GT. These two groups are predominantly-female and –male jobs, respectively. Both jobs provide "support" services for more senior level jobs and are comparable in terms of the overall role which they are assigned within the organization.

Following conversion to the new job evaluation system the results favoured the predominantly-male GT, although the predominantly-female CR group was performing work of comparable value to the organization. The conversion results for each group are as follows:

Level	CR		GT		Wages (maximum salary)
	#	%	#	%	
2	22	34.9			$28,530.23
3	32	50.8	1	2.4	$35,072.00
4	9	14.3	6	14.3	$37,737.82
5			7	16.7	$43,418.18
6			18	42.9	$49,111.11
7			8	19.0	$56,666.67
8			2	4.8	$66,880.70

> While half of the CR group was converted to level 3, only 1 GT employee was converted to this level. All other GT employees were classified at levels 4 through 8, with fully 43% classified at Level 6.
>
> The "male" bias illustrated in the post-conversion results of the new job evaluation plan used by the Canadian Museum of Civilization was confirmed by an evaluation of a random mix of predominantly-female – and –male jobs using a gender-neutral job evaluation plan jointly developed by the Public Service Alliance of Canada and Deloitte & Touche. This plan was used to rate 7 predominantly-female jobs matched against 7 predominantly-male jobs all representing a varied mix of administrative and technical work. Two predominantly-female and 2 predominantly-male jobs rated similarly under the job evaluation plan used by the Canadian Museum of Civilization were rated in favour of the predominantly-female jobs using the job evaluation plan developed jointly by the Public Service Alliance of Canada and Deloitte & Touche. In addition, 3 predominantly-male jobs rated higher than 3 predominantly-female jobs under the employer's plan were rated either similarly or in favour of the predominantly-female jobs under the joint plan.

[34] It is clear to me that the Complaint is to the effect that the Plan is flawed in a way that contravenes both sections 10 and 11 of the Act. In particular, we are told that "in terms of both design and application, the respondent's job evaluation plan differentiates adversely against predominantly-female jobs in comparison to predominantly-male jobs of equal value …." The balance of the Complaint goes on to demonstrate, by way of example and sampling, that there is some justification for this basic premise. There is no indication that the examples and details provided are meant to be exhaustive of the ways in which the Plan is flawed and contravenes sections 10 and 11. The particulars are provided to justify the initiation of the investigative process into the ways in which the Plan differentiates in an adverse fashion against predominantly-female

jobs in comparison to predominantly-male of equal character. CMCC did not allege that there was anything wrong with the Commission considering a complaint formulated in this way, even though it has repeatedly asked for more details on the section 11 aspects. The Complaint itself anticipates that more details will be provided because it merely seeks to justify its basic premise by way of example and sample.

[35] The Haignière Report studied whether the Plan tended to deprive women of employment under section 10 of the Act and recommended that a tribunal be appointed to inquire into the section 11 portion of the Complaint. But the Haignière Report did not amend or modify the Complaint. It merely provided the Commission with the justification it needed to refer the full Complaint to the Tribunal. Once again, CMCC did not, at this stage, seek to have the form of the Complaint or any decision of the Commission based in the Haignière Report judicially reviewed. It merely required more details about the section 11 aspects of the Complaint.

[36] The investigator's report of September 15, 2003 identified the primary issue in the Complaint as "the existence of gender bias in the design and development of the respondent's job evaluation system (section 10). As a result, predominantly-female occupational groups are paid less than predominantly-male occupational groups performing work of equal value (section 11.)" The investigator then came to the following conclusions and recommendations based upon the findings in the Haignière Report:

> 46. Based on the consultant's findings and pursuant to section 10, a further inquiry by a Tribunal is required.
>
> 47. Depending upon Tribunal's decision and pursuant to section 11, a wage gap analysis can be undertaken, following a job evaluation, to determine if any adjustments are required in the pay structure to eliminate pay inequities that may exist.
>
> *Recommendation*
>
> 48. It is recommended, pursuant to section 44(3)(a) of the *Canadian Human Rights Act*, that the Commission request the appointment of a Human Rights Tribunal to inquire in to the complaint because,
>
> - Having regard to all the circumstances of the complaint, an inquiry into the respondent's job evaluation is warranted.

[37] So clearly what was anticipated at this stage was further inquiry by the Tribunal into the section 10 allegations and, depending upon the outcome of that process, a possible wage gap analysis under section 11. The whole matter was referred to the Tribunal on this basis. CMCC did not seek to judicially review the form of the Complaint, the decision to refer, or the process of inquiry recommended by the investigator. All CMCC required was more detail about the section 11 basis of the Complaint.

[38] It is true, of course, that the Complaint did not give CMCC the particulars it needed to deal fully with the general accusation that the Plan was flawed because it was in breach of both section 10 and section 11 of the Act. But those particulars have now been provided.

[39] CMCC says that, on a factual basis, what the Commission referred to the Tribunal was not what CMCC now finds itself having to address after the particulars were provided. Hence, the Tribunal has no jurisdiction to deal with matters that were not referred to it by the Commission.

[40] But it appears to me from the evidence adduced, and in light of the way this matter has progressed, that both sides have been clear from the beginning that they are dealing with a Plan that PSAC says is generally flawed because it is gender biased and breaches section 10 and 11 of the Act. The full particulars were not provided in the Complaint and CMCC has had difficulties obtaining the particulars it needs. But I don't think it can be said that the Complaint itself was amended, or became a different Complaint, once the particulars contained in the October 15, 2004 letter from PSAC were provided. The provision of additional, elaborative details was contemplated by the initial Complaint (which merely provided an example to the Commission to justify investigation). The fact that changes in detail were expected is also confirmed by actions of all parties involved, including CMCC. In terms of the *Dillman* case, the way this matter has evolved over the years makes it clear to me that what PSAC provided in its October 15, 2004 letter were the comparator details that both sides knew would have to be provided before the Section 11 aspects of the Complaint (if the Tribunal should feel section 11 even comes into play) can be dealt with and, as such, this was merely an extension, elaboration and clarification of the basic gender-bias Complaint.

[41] Once the matter was placed in the hands of the Tribunal, a process was underway that would clarify the details of the positions taken by all parties involved. CMCC has been saying all along

that PSAC's approach to section 11 means that more detail is required on comparator groups. The Tribunal agreed and made sure that PSAC provided the relevant information.

[42] CMCC's actions throughout this process suggest that it knows the Complaint has not changed, but that it is entitled to receive the information required by Guidelines 12 and 13 before it is called upon to fully answer the Complaint. It has now been given that information.

[43] As part of the present application, CMCC is now insisting upon a degree of formality in the framing of the Complaint that is not required by the Act, the prevailing jurisprudence, or the way the Commission and the Tribunal have set up the inquiry process in this case. What is more, CMCC has not attacked the way this matter has been referred to the Tribunal and the two-step approach referred to in the investigator's report. That approach anticipates that any analysis under section 11 is dependant upon the outcome of the section 10 findings.

[44] CMCC has taken the Court to those provisions of the Act and the Guidelines that deal with comparator groups and has cited relevant case law. In relation to section 13 of the Guidelines and its relationship to section 11 of the Act, CMCC highlights the following from *Public Service Alliance Commission v. Canada (Treasury Board)*, [1998] C.H.R.D. No. 6 at para. 267:

> We find in a s. 11 complaint the discrimination claimed is made on the basis of gender. Therefore to be a valid complaint the complainant group and the comparator group must meet the qualifications set down in s. 13 of the Guidelines. Section 13 of the Guidelines lays out the requirement that the complainant group must

> be predominantly of one sex and the group that is identified in the complaint as the comparator group must be predominantly of the opposite sex. This is the essential element which must be achieved in order for the complaint to be viewed as valid and worthy of investigation by the Commission.

[45] But CMCC's argument in the present application is not that there was anything wrong with the Commission's decision to investigate the Complaint or its referral decision, or with the form of the Complaint when those decisions were made; the argument is that the information on comparators provided by PSAC on October 15, 2004 changed the nature of the Complaint and introduced an amendment that had not been referred to the Tribunal by the Commission. For the reasons stated above, I do not regard the provision of information by PSAC on the ways in which the Plan breaches section 11 of the Act as an amendment to the basic Complaint. CMCC did not challenge the referral decision, so it must be taken to have accepted that the Complaint qualified under section 11 and Guideline 12 and 13 at the time of referral. And the Complaint, from the way it is drafted and the way the parties have proceeded, obviously anticipated that the full details on section 11 would come later.

[46] In *Canada (A.G.) v. Canada (Canadian Human Rights Commission)* Justice Muldoon was dealing with a situation where the complainant filed a complaint alleging racial discrimination. Later a sexual harassment and sex discrimination allegation was added. He found that the Commission failed to consider that the sexual discrimination part of the complaint was new and

different from the original complaint that alleged racial discrimination. Hence, that aspect of the Commission's decision referring the sexual discrimination allegation to a tribunal was quashed.

[47] In my view, the facts in the present application present a very different situation. In this case, the general Complaint has not changed, but the Guideline 12 and 13 information has been elaborated and clarified. The full details have been provided and CMCC knows the case it has to meet in relation to the flawed Plan that PSAC alleges is in breach of section 10 and 11 of the Act.

[48] Nor does CMCC say that the new comparator information provided by PSAC render the Complaint invalid as being in non-compliance with the Act and the Guidelines. It merely says that the additional comparator information changes the Complaint so that it is not the same Complaint referred to the Tribunal by the Commission.

[49] But, as I have already set out, it was obvious in the Complaint itself that PSAC had not provided the full details because it only gave examples sufficient enough to begin the investigative process. CMCC did not seek judicial review of the Complaint as being in breach of Guideline 13, and it did not attack the referral decision that was made on the basis of the Complaint, even though further detail was obviously needed before the Complaint could be dealt with. It is too late to attack the process now that the details CMCC has been asking for all along have been provided. CMCC now knows the details of the case it has to meet. But it has always known the Complaint, which was that the Plan was flawed and breached section 10 and 11 of the Act because in terms of both design

and application the Plan differentiates adversely against predominantly female jobs in comparison to predominantly male jobs of equal value by virtue of the absence of certain factors which are known to measure aspects of jobs which are typically female as well as the presence of factors which typically favour predominantly male jobs.

[50] I do not believe that the additional information provided by PSAC changed the Complaint or amounted to an amendment that took the Complaint outside the scope of the referral. The Complaint began as a gender bias allegation aimed at the Plan and it remains a gender bias allegation aimed at the Plan. Nor do I see how CMCC has been prejudiced in any way by this process which it obviously tolerated and approved over the years during which it sought the further elaboration and clarification on the section 11 aspects of the Complaint.

[51] It follows from what I have said that I do not regard the Tribunal as having committed a reviewable error in its Decision.

[52] This conclusion is supported, I believe, by the reasoning of the Tribunal in *Gaucher v. Canada (Armed Forces)* 2005 CHRT 1:

> […]It is inevitable that new facts and circumstances will often come to light in the course of the investigation. It follows that complaints are open to refinement. As long as the substance of the original complaint is respected, I do not see why the Complainant and the Commission should not be allowed to clarify and elaborate upon the initial allegations before the matter goes to a hearing.

> I think that human rights tribunals have adopted a liberal approach to amendments. This is in keeping with the *Canadian Human Rights Act*, which is remedial legislation. It should not be interpreted in a narrow or technical manner. In *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.J. No. 75 (QL), at para. 50, for example, the Supreme Court approved of an amendment to a complaint that "simply brought the complaint into conformity with the proceedings". I think that I am presented with a similar situation. It is merely a matter of ensuring that the form of the complaint accurately reflects the substance of the allegations that were referred to the Tribunal.

[53] In the present application, I believe that CMCC is seeking to have the section 11 aspects of the Complaint removed by recourse to an unnecessarily formal approach to the Act and the Guidelines; an approach that is not in accord with the way CMCC has allowed the investigation and referral of the Complaint to evolve since the time it was first made. What is important regarding the Complaint in this case is whether or not the facts brought before the Tribunal illustrate that a certain policy is discriminatory. As such, a too narrow or technical approach in analysing the Complaint should not be adopted (*Canada (Attorney General) v. Robinson*, [1994] 3 F.C. 228).

[54] I find no reviewable error with the Tribunal's Decision to reject CMCC's motion to strike. In my view, the Decision was correct; it certainly cannot be regarded as unreasonable.

ORDER

THIS COURT ORDERS that

1. The application for judicial review is dismissed with costs to PSAC and the Commission.

"James Russell"

Judge

SCHEDULE "A"

CANADIAN HUMAN RIGHT ACT
R.S. 1985, c. H-6

LOI CANADIENNE SUR LES DROITS DE LA PERSONNE
L.R. (1985), ch. H-6

PURPOSE
2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

OBJECT
2. La présente loi a pour objet de compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne graciée.

PROHIBITED GROUNDS
3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.
(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.

MOTIFS DE DISTINCTIONS ILLICITE
3. (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.
(2) Une distinction fondée sur la grossesse ou l'accouchement est réputée être fondée sur le sexe.

DICRIMINATORY PRACTICES

ACTES DISCRIMINATOIRES

Discriminatory Policy and Practices
10. It is a discriminatory practice for an

Lignes de conduites discriminatoires
10. Constitue un acte discriminatoire, s'il est

employer, employee organization or employer organization

(*a*) to establish or pursue a policy or practice, or

(*b*) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

Equal Wages

11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

(3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.

(4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the

fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

a) de fixer ou d'appliquer des lignes de conduite;

b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

Disparité salariale discriminatoire

11. (1) Constitue un acte discriminatoire le fait pour l’employeur d’instaurer ou de pratiquer la disparité salariale entre les hommes et les femmes qui exécutent, dans le même établissement, des fonctions équivalentes.

(2) Le critère permettant d’établir l’équivalence des fonctions exécutées par des salariés dans le même établissement est le dosage de qualifications, d’efforts et de responsabilités nécessaire pour leur exécution, compte tenu des conditions de travail.

(3) Les établissements distincts qu’un employeur aménage ou maintient dans le but principal de justifier une disparité salariale entre hommes et femmes sont réputés, pour l’application du présent article, ne constituer qu’un seul et même établissement.

(4) Ne constitue pas un acte discriminatoire au sens du paragraphe (1) la disparité salariale entre hommes et femmes fondée sur un facteur reconnu comme raisonnable par une ordonnance de la Commission canadienne des droits de la personne en vertu du paragraphe 27(2).

difference.
(5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.
(6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.
(7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes
(*a*) salaries, commissions, vacation pay, dismissal wages and bonuses;
(*b*) reasonable value for board, rent, housing and lodging;
(*c*) payments in kind;
(*d*) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and
(*e*) any other advantage received directly or indirectly from the individual's employer.

(5) Des considérations fondées sur le sexe ne sauraient motiver la disparité salariale.

(6) Il est interdit à l'employeur de procéder à des diminutions salariales pour mettre fin aux actes discriminatoires visés au présent article.
(7) Pour l'application du présent article, « salaire » s'entend de toute forme de rémunération payable à un individu en contrepartie de son travail et, notamment :
a) des traitements, commissions, indemnités de vacances ou de licenciement et des primes;
b) de la juste valeur des prestations en repas, loyers, logement et hébergement;
c) des rétributions en nature;
d) des cotisations de l'employeur aux caisses ou régimes de pension, aux régimes d'assurance contre l'invalidité prolongée et aux régimes d'assurance-maladie de toute nature;
e) des autres avantages reçus directement ou indirectement de l'employeur.

THE COMMISSION

LA COMMISSION

Complaints

40. (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.
(2) If a complaint is made by someone other than the individual who is alleged to be the victim of the discriminatory practice to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents thereto.
(3) Where the Commission has reasonable grounds for believing that a person is engaging

Plaintes

40. (1) Sous réserve des paragraphes (5) et (7), un individu ou un groupe d'individus ayant des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire peut déposer une plainte devant la Commission en la forme acceptable pour cette dernière.

(2) La Commission peut assujettir la recevabilité d'une plainte au consentement préalable de l'individu présenté comme la victime de l'acte discriminatoire.

(3) La Commission peut prendre l'initiative de la plainte dans les cas où elle a des motifs

or has engaged in a discriminatory practice, the Commission may initiate a complaint.
(3.1) No complaint may be initiated under subsection (3) as a result of information obtained by the Commission in the course of the administration of the *Employment Equity Act*.

(4) If complaints are filed jointly or separately by more than one individual or group alleging that a particular person is engaging or has engaged in a discriminatory practice or a series of similar discriminatory practices and the Commission is satisfied that the complaints involve substantially the same issues of fact and law, it may deal with the complaints together under this Part and may request the Chairperson of the Tribunal to institute a single inquiry into the complaints under section 49.
…

Commission to Deal with the Complaint
41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that
(*a*) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;

(*b*) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;
(*c*) the complaint is beyond the jurisdiction of the Commission;
(*d*) the complaint is trivial, frivolous, vexatious or made in bad faith; or
(*e*) the complaint is based on acts or omissions the last of which occurred more than one year,

raisonnables de croire qu'une personne a commis un acte discriminatoire.
(3.1) La Commission ne peut prendre l'initiative d'une plainte qui serait fondée sur des renseignements qu'elle aurait obtenus dans le cadre de l'application de la *Loi sur l'équité en matière d'emploi*.
(4) En cas de dépôt, conjoint ou distinct, par plusieurs individus ou groupes de plaintes dénonçant la perpétration par une personne donnée d'actes discriminatoires ou d'une série d'actes discriminatoires de même nature, la Commission peut, pour l'application de la présente partie, joindre celles qui, à son avis, soulèvent pour l'essentiel les mêmes questions de fait et de droit et demander au président du Tribunal d'ordonner, conformément à l'article 49, une instruction commune.
[…]

Irrecevabilité
41. (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :
a) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;
b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;

c) la plainte n'est pas de sa compétence;

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;
e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur

or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.
(2) The Commission may decline to deal with a complaint referred to in paragraph 10(*a*) in respect of an employer where it is of the opinion that the matter has been adequately dealt with in the employer's employment equity plan prepared pursuant to section 10 of the *Employment Equity Act*.

(3) In this section, "employer" means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.
(2) La Commission peut refuser d'examiner une plainte de discrimination fondée sur l'alinéa 10*a*) et dirigée contre un employeur si elle estime que l'objet de la plainte est traité de façon adéquate dans le plan d'équité en matière d'emploi que l'employeur prépare en conformité avec l'article 10 de la *Loi sur l'équité en matière d'emploi*.
(3) Au présent article, « employeur » désigne toute personne ou organisation chargée de l'exécution des obligations de l'employeur prévues par la *Loi sur l'équité en matière d'emploi*.

Notice
42. (1) Subject to subsection (2), when the Commission decides not to deal with a complaint, it shall send a written notice of its decision to the complainant setting out the reason for its decision.
(2) Before deciding that a complaint will not be dealt with because a procedure referred to in paragraph 41(*a*) has not been exhausted, the Commission shall satisfy itself that the failure to exhaust the procedure was attributable to the complainant and not to another.

Avis
42. (1) Sous réserve du paragraphe (2), la Commission motive par écrit sa décision auprès du plaignant dans les cas où elle décide que la plainte est irrecevable.

(2) Avant de décider qu'une plainte est irrecevable pour le motif que les recours ou procédures mentionnés à l'alinéa 41*a*) n'ont pas été épuisés, la Commission s'assure que le défaut est exclusivement imputable au plaignant.

Investigation
43. (1) The Commission may designate a person, in this Part referred to as an "investigator", to investigate a complaint.
(2) An investigator shall investigate a complaint in a manner authorized by regulations made pursuant to subsection (4).
…

Enquête
43. (1) La Commission peut charger une personne, appelée, dans la présente loi, « l'enquêteur », d'enquêter sur une plainte.
(2) L'enquêteur doit respecter la procédure d'enquête prévue aux règlements pris en vertu du paragraphe (4).
[…]

Investigator's report
44. (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.
(2) If, on receipt of a report referred to in subsection (1), the Commission is satisfied

(*a*) that the complainant ought to exhaust grievance or review procedures otherwise reasonably available, or

(*b*) that the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under an Act of Parliament other than this Act,
it shall refer the complainant to the appropriate authority.
(3) On receipt of a report referred to in subsection (1), the Commission
(*a*) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and
(ii) that the complaint to which the report relates should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*); or
(*b*) shall dismiss the complaint to which the report relates if it is satisfied
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or
(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*).

Rapport de l'enquêteur
44. (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

(2) La Commission renvoie le plaignant à l'autorité compétente dans les cas où, sur réception du rapport, elle est convaincue, selon le cas :
a) que le plaignant devrait épuiser les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;
b) que la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale.

(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :
a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :
(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,
(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe (2) ni de la rejeter aux termes des alinéas 41*c*) à *e*);

b) rejette la plainte, si elle est convaincue :

(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,
(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41*c*) à *e*).

(4) After receipt of a report referred to in subsection (1), the Commission
(*a*) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3); and
(*b*) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under subsection (2) or (3).

Appointment of a Conciliator
47. (1) Subject to subsection (2), the Commission may, on the filing of a complaint, or if the complaint has not been

(*a*) settled in the course of investigation by an investigator,
(*b*) referred or dismissed under subsection 44(2) or (3) or paragraph 45(2)(*a*) or 46(2)(*a*), or

(*c*) settled after receipt by the parties of the notice referred to in subsection 44(4),
appoint a person, in this Part referred to as a "conciliator", for the purpose of attempting to bring about a settlement of the complaint.
(2) A person is not eligible to act as a conciliator in respect of a complaint if that person has already acted as an investigator in respect of that complaint.
(3) Any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed except with the consent of the person who gave the information.

THE TRIBUNAL

Request for an Inquiry
49. (1) At any stage after the filing of a complaint, the Commission may request the

(4) Après réception du rapport, la Commission :

a) informe par écrit les parties à la plainte de la décision qu'elle a prise en vertu des paragraphes (2) ou (3);

b) peut informer toute autre personne, de la manière qu'elle juge indiquée, de la décision qu'elle a prise en vertu des paragraphes (2) ou (3).

Nomination d'un conciliateur
47. (1) Sous réserve du paragraphe (2), la Commission peut charger un conciliateur d'en arriver à un règlement de la plainte, soit dès le dépôt de celle-ci, soit ultérieurement dans l'un des cas suivants :
a) l'enquête ne mène pas à un règlement;

b) la plainte n'est pas renvoyée ni rejetée en vertu des paragraphes 44(2) ou (3) ou des alinéas 45(2)*a*) ou 46(2)*a*);
c) la plainte n'est pas réglée après réception par les parties de l'avis prévu au paragraphe 44(4).

(2) Pour une plainte donnée, les fonctions d'enquêteur et de conciliateur sont incompatibles.

(3) Les renseignements recueillis par le conciliateur sont confidentiels et ne peuvent être divulgués sans le consentement de la personne qui les a fournis.

LA TRIBUNAL

Instructions des plaintes
49. (1) La Commission peut, à toute étape postérieure au dépôt de la plainte, demander au

Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.
(2) On receipt of a request, the Chairperson shall institute an inquiry by assigning a member of the Tribunal to inquire into the complaint, but the Chairperson may assign a panel of three members if he or she considers that the complexity of the complaint requires the inquiry to be conducted by three members.
…

Conduct of Inquiries
50. (1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.
(2) In the course of hearing and determining any matter under inquiry, the member or panel may decide all questions of law or fact necessary to determining the matter.
(3) In relation to a hearing of the inquiry, the member or panel may
(*a*) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the member or panel considers necessary for the full hearing and consideration of the complaint;
(*b*) administer oaths;
(*c*) subject to subsections (4) and (5), receive

président du Tribunal de désigner un membre pour instruire la plainte, si elle est convaincue, compte tenu des circonstances relatives à celle-ci, que l'instruction est justifiée.

(2) Sur réception de la demande, le président désigne un membre pour instruire la plainte. Il peut, s'il estime que la difficulté de l'affaire le justifie, désigner trois membres, auxquels dès lors les articles 50 à 58 s'appliquent.
[…]

Conduite des instructions
50. (1) Le membre instructeur, après avis conforme à la Commission, aux parties et, à son appréciation, à tout intéressé, instruit la plainte pour laquelle il a été désigné; il donne à ceux-ci la possibilité pleine et entière de comparaître et de présenter, en personne ou par l'intermédiaire d'un avocat, des éléments de preuve ainsi que leurs observations.

(2) Il tranche les questions de droit et les questions de fait dans les affaires dont il est saisi en vertu de la présente partie.

(3) Pour la tenue de ses audiences, le membre instructeur a le pouvoir :
a) d'assigner et de contraindre les témoins à comparaître, à déposer verbalement ou par écrit sous la foi du serment et à produire les pièces qu'il juge indispensables à l'examen complet de la plainte, au même titre qu'une cour supérieure d'archives;

b) de faire prêter serment;
c) de recevoir, sous réserve des paragraphes

and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit, whether or not that evidence or information is or would be admissible in a court of law;
(*d*) lengthen or shorten any time limit established by the rules of procedure; and
(*e*) decide any procedural or evidentiary question arising during the hearing.
(4) The member or panel may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.
…

(4) et (5), des éléments de preuve ou des renseignements par déclaration verbale ou écrite sous serment ou par tout autre moyen qu'il estime indiqué, indépendamment de leur admissibilité devant un tribunal judiciaire;
d) de modifier les délais prévus par les règles de pratique;
e) de trancher toute question de procédure ou de preuve.
(4) Il ne peut admettre en preuve les éléments qui, dans le droit de la preuve, sont confidentiels devant les tribunaux judiciaires.
[…]

Duty of the Commission
51. In appearing at a hearing, presenting evidence and making representations, the Commission shall adopt such position as, in its opinion, is in the public interest having regard to the nature of the complaint.

Obligation de la Commission
51. En comparaissant devant le membre instructeur et en présentant ses éléments de preuve et ses observations, la Commission adopte l'attitude la plus proche, à son avis, de l'intérêt public, compte tenu de la nature de la plainte.

Determinations by the Tribunal
53. (1) At the conclusion of an inquiry, the member or panel conducting the inquiry shall dismiss the complaint if the member or panel finds that the complaint is not substantiated.
(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:
(*a*) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in

Décisions de la Tribunal
53. (1) À l'issue de l'instruction, le membre instructeur rejette la plainte qu'il juge non fondée.

(2) À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, sous réserve de l'article 54, ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :

a) de mettre fin à l'acte et de prendre, en consultation avec la Commission relativement à leurs objectifs généraux, des mesures de redressement ou des mesures destinées à prévenir des actes semblables, notamment :

future, including
(i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or
(ii) making an application for approval and implementing a plan under section 17;

(*b*) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;
(*c*) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;
(*d*) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and
(*e*) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.
…

(i) d'adopter un programme, un plan ou un arrangement visés au paragraphe 16(1),
(ii) de présenter une demande d'approbation et de mettre en oeuvre un programme prévus à l'article 17;
b) d'accorder à la victime, dès que les circonstances le permettent, les droits, chances ou avantages dont l'acte l'a privée;

c) d'indemniser la victime de la totalité, ou de la fraction des pertes de salaire et des dépenses entraînées par l'acte;

d) d'indemniser la victime de la totalité, ou de la fraction des frais supplémentaires occasionnés par le recours à d'autres biens, services, installations ou moyens d'hébergement, et des dépenses entraînées par l'acte;
e) d'indemniser jusqu'à concurrence de 20 000 $ la victime qui a souffert un préjudice moral.
[…]

FEDERAL COURTS ACT
R.S.C. 1985, c. F-7

LOI SUR LES COURS FÉDÉRALES
L.R.C. (1985), ch. F-7

2. "**federal board, commission or other tribunal**" means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its

2. « **office fédéral** » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour

judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*

canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la *Loi constitutionnelle de 1867*.

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(*a*) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and
(*b*) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (*a*), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

…

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :
a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa *a*), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.
[…]

(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.
(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.
(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

Federal Court may fix or allow before or after the end of those 30 days.

(3) On an application for judicial review, the Federal Court may

(*a*) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(*b*) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(*a*) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(*b*) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(*c*) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(*d*) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(*e*) acted, or failed to act, by reason of fraud or perjured evidence; or

(*f*) acted in any other way that was contrary to law.

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l’office fédéral en cause d’accomplir tout acte qu’il a illégalement omis ou refusé d’accomplir ou dont il a retardé l’exécution de manière déraisonnable;

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu’elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l’office fédéral.

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l’exercer;

b) n’a pas observé un principe de justice naturelle ou d’équité procédurale ou toute autre procédure qu’il était légalement tenu de respecter;

c) a rendu une décision ou une ordonnance entachée d’une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

e) a agi ou omis d’agir en raison d’une fraude ou de faux témoignages;

f) a agi de toute autre façon contraire à la loi.

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne

(*a*) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and
(*b*) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

Equal Wage Guidelines, 1986, SOR/86-1082

12. Where a complaint alleging different wages is filed by or on behalf of an identifiable occupational group, the group must be predominantly of one sex and the group to which the comparison is made must be predominantly of the other sex.

12. Lorsqu'une plainte dénonçant une situation de disparité salariale est déposée par un groupe professionnel identifiable ou en son nom, ce groupe doit être composé majoritairement de membres d'un sexe et le groupe auquel il est comparé doit être composé majoritairement de membres de l'autre sexe.

13. For the purpose of section 12, an occupational group is composed predominantly of one sex where the number of members of that sex constituted, for the year immediately preceding the day on which the complaint is filed, at least

(*a*) 70 per cent of the occupational group, if the group has less than 100 members;

(*b*) 60 per cent of the occupational group, if the group has from 100 to 500 members; and

(*c*) 55 per cent of the occupational group, if the group has more than 500 members.

13. Pour l'application de l'article 12, un groupe professionnel est composé majoritairement de membres d'un sexe si, dans l'année précédant la date du dépôt de la plainte, le nombre de membres de ce sexe représentait au moins :

a) 70 pour cent du groupe professionnel, dans le cas d'un groupe comptant moins de 100 membres;

b) 60 pour cent du groupe professionnel, dans le cas d'un groupe comptant de 100 à 500 membres;

c) 55 pour cent du groupe professionnel, dans le cas d'un groupe comptant plus de 500 membres.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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