Federal Court  Cour fédérale

Date: 20101112

Dockets: T-1016-09, T-1025-09

Citation: 2010 FC 1135

Ottawa, Ontario, November 12, 2010

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

T-1016-09

CANADIAN HUMAN RIGHTS COMMISSION

Applicant

and

**ATTORNEY GENERAL OF CANADA
(REPRESENTING SOCIAL DEVELOPMENT CANADA,
TREASURY BOARD OF CANADA, AND PUBLIC SERVICE
HUMAN RESOURCES MANAGEMENT AGENCY OF CANADA),
AND RUTH WALDEN ET AL.**

Respondents

AND BETWEEN:

T-1025-09

RUTH WALDEN et al.

Applicants

and

**ATTORNEY GENERAL OF CANADA,
CANADIAN HUMAN RIGHTS COMMISSION,
ANN BOYLAN CURRIE LOUISE DUNCAN,
CHARLENE DYKSTRA, DZIDRA GOOR (Deceased), CARRIE GRONAU,
JEAN HALPENNY, MARLENE HARRISON, MARY LOU KIGHTLEY, SUZANNE
MATAIS, MARGARET MEESTER, ANNE NOLET, SUSAN PETTERSONE, JAMES
(JIM) ROBERTS, ANDREA TAYLOR, MICHELLE WATSON, ANNETTE WETHERLY**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] These two applications for judicial review are of a decision dated May 25, 2009, of the Canadian Human Rights Tribunal (the Tribunal) regarding the appropriate remedies under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act) payable to a group of approximately 413[1] medical adjudicators in the Canada Pension Plan (CPP) Disability Benefits Program. The medical adjudicators are a group of predominantly female nurses who work with medical advisors, a group of predominantly male doctors, to determine eligibility for CPP disability benefits.

[2] The Tribunal had concluded in an earlier decision dated December 13, 2007, which was upheld by the Federal Court on judicial review per Justice Mactavish on May 4, 2010, that the 413 medical adjudicators (the Complainants) had been discriminated against with respect to their job classification on the basis of their gender, contrary to sections 7 and 10 of the Act.

[3] In the decision under review, the Tribunal concluded that despite the discrimination suffered by the 413 medical adjudicators, the Complainants had failed to prove lost wages on the balance of probabilities or to provide evidence of pain and suffering among the majority of the complainants.

[1] The exact number of medical adjudicators has been an issue of much contention. Before this Court, the parties agreed that the number as it currently stands is 417. The decisions discussed herein mostly refer to 413. The precise number is the subject of a separate application before this court, in File T-1248-10.

Accordingly, the Tribunal denied compensation for lost wages as a result of the discrimination and awarded pain and suffering to only two of the 413 complainants.

[4] The Tribunal also made an award of legal costs which is the subject of a separate application for judicial review by the Attorney General of Canada. That application has been stayed by Prothonotary Aronovitch on the consent of the parties pending the outcome of a relevant case at the Supreme Court of Canada, an appeal from *Canada (Attorney General) v. Mowat*, 2009 FCA 309 (leave to appeal to SCC granted, April 22, 2010).

[5] The applications forming the basis of this judicial review are an application by the Complainants and a separate application by the Canadian Human Rights Commission (the Commission), which were consolidated (together with the third application by the Government that has since been stayed) by an order dated December 17, 2009, rendered by Prothonotary Aronovitch. Before this Court, both the Commission and the Complainants have advocated essentially the same position.

FACTS

Prior Proceedings

[6] The Tribunal's decision on the remedies at issue here follows a previous relevant decision on liability, an interim ruling by the Tribunal, and a Judgment by this Court.

1) On December 13, 2007, in *Walden v. Canada (Social Development)*, 2007 CHRT 56 (the Tribunal's Liability Decision), the Tribunal found that Social Development Canada, the Treasury Board of Canada, and the Public Service

Human Resources Management Agency (together, the Government) had discriminated against the Complainants on the basis of their gender, contrary to sections 7 and 10 of the Act. The Tribunal reserved the issue of remedies to be determined at another date.

2) On June 6, 2008, in *Walden v. Canada (Social Development)*, 2008 CHRT 21 (the Tribunal's Interim Ruling), the Tribunal issued an interim ruling on a motion by the Attorney General of Canada, which permitted the parties to adduce evidence with regard to proposals for redressing the discriminatory practice and with regard to the quanta of wage loss and of pain and suffering suffered by the Complainants.

3) On May 4, 2010, in *Canada (Attorney General) v. Walden*, 2010 FC 490, the Tribunal's Liability Decision was upheld on judicial review by a Judgment of this Court per Justice Mactavish.

[7] Before discussing the merits of this application, the Court will describe the Tribunal's Liability Decision and the Judgment of Justice Mactavish on judicial review of that decision.

The Tribunal's Liability Decision

[8] The Tribunal's Liability Decision found that the Complainants had been discriminated against on the basis of their gender contrary to sections 7 and 10 of the Act. Section 7 of the Act states:

7. It is a discriminatory practice, directly or indirectly,	7. Constitue un acte discriminatoire, s'il est fondé

. . .	sur un motif de distinction illicite, le fait, par des moyens
(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.	directs ou indirects : . . . b) de le défavoriser en cours d'emploi.

[9] Section 10 of the Act provides:

10. It is a discriminatory practice for an 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.	10. Constitue un acte discriminatoire, s'il est 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.

[10] The Complainants are a group of registered nurses who work as "medical adjudicators" in the Canada Pension Plan Disability Benefits Program. "Medical adjudicators" are classified in the Public Service of Canada's classification system as "program administrators" within the Program and Administrative Services Group.

[11] The Complainants submitted that their work was the same as the work performed by "medical advisors" in the Canada Pension Plan Disability Benefits Program. The Tribunal was

satisfied that, although there are some differences in responsibilities, the work of the two groups is substantially similar. The Tribunal held at para. 11 of the Tribunal's Liability Decision as follows:

> ¶ 11. However, the differences are not significant enough to explain the wide disparity in treatment and, more particularly, they do not explain why the advisors are recognized as health professionals and the adjudicators are not. The core function of both positions is applying professional knowledge to determine eligibility for CPP disability benefits. . . .

[12] "Medical advisors," however, are classified as "health professionals" within the Health Services Group of the Public Service of Canada's classification scheme. Whereas medical adjudicators are registered nurses, medical advisors are medical doctors. The evidence established that 95% of medical adjudicators are women, while 80% of medical advisors are men.

[13] Because the core of the work performed by the two groups is substantially the same – the application of their medical knowledge to determinations of eligibility for CPP disability benefits – the Tribunal found that the difference in classification between the two positions results in discrimination contrary to sections 7 and 10 of the Act. Under both sections, the relevant comparison was between medical adjudicators and medical advisors. The Tribunal found discriminatory treatment with regard to (1) the lack of professional recognition given to medical adjudicators as health professionals; (2) the lower salary and benefits paid to medical adjudicators; (3) the failure to pay for professional fees and educational training opportunities for medical adjudicators; and (4) the denial to medical adjudicators of career advancement opportunities that require health services experience.

[14] Having made the finding of discriminatory treatment contrary to the Act, the Tribunal ordered, pursuant to section 53(2)(a) of the Act, that the discriminatory practice cease. The Tribunal refrained, however, from specifying the measures that should be taken to redress the discriminatory practice, in order to allow the parties to negotiate on that matter. The Tribunal retained jurisdiction over that question and determined that if the parties failed to reach a resolution they could return to the Tribunal to present evidence and argument, if necessary, on it.

[15] In particular, the Tribunal reserved jurisdiction in three areas:

1) the measures to be taken pursuant to section 53(2)(a) to redress the discriminatory practice;
2) relief under section 53(2)(c) of the Act for compensation to victims for past wages lost as a result of the discriminatory practice; and
3) the determination of the quantum of compensation for pain and suffering under section 53(2)(e) of the Act.

[16] The Tribunal found that the discrimination was unintended and refused to award damages against the Government under section 53(3) of the Act, which provides for damages where the Government has engaged wilfully or recklessly in the discriminatory practice.

The Court's Judgment on Judicial Review of the Tribunal's Liability Decision

[17] On May 4, 2010, this Court dismissed the Government's application for judicial review of the Tribunal's Liability Decision. Justice Mactavish upheld the Tribunal's choice of medical advisors as the appropriate comparator group vis-à-vis the medical adjudicators. In her Judgment at paras. 83-85, Justice Mactavish held as follows:

> ¶83. I do not agree with the Government that the fact that there may be differences in some of the day-to-day duties and responsibilities of Medical Advisors and Medical Adjudicators necessarily means that Medical Advisors cannot be the appropriate comparator group for the purposes of the Tribunal's discrimination analysis.
>
> ¶84. The evidence before the Tribunal was that positions are allocated to an Occupational Group having regard to the primary function of the position in question. According to Ms. Power, positions within the Health Services Group involve the application of a comprehensive knowledge of professional specialties in the fields of medicine or nursing to the safety and physical and mental well-being of people. As a result, an examination of the fundamental nature or primary or "core" function of the work performed by Medical Adjudicators and Medical Advisors was appropriate.
>
> ¶85. It was open to the Government to adduce evidence before the Tribunal as to the differences between the work performed by Medical Adjudicators and that carried out by Medical Advisors, as it in fact did. Evidence of this nature could, if accepted by the Tribunal, potentially provide a reasonable and non-discriminatory explanation for the differences in treatment between the two groups. It does not, however, mean that Medical Advisors could not be the appropriate comparator group for the purposes of the Tribunal's discrimination analysis.

[18] Although Justice Mactavish recognized that statistical evidence of professional occupational segregation (as, for example, in this case, where the evidence demonstrated that the vast majority of registered nurses are women) is not sufficient to establish a *prima facie* case of discrimination under either sections 7 or 10 of the Act, Justice Mactavish affirmed the value of statistical evidence in

uncovering adverse discrimination. In this case, Justice Mactavish found that there was considerable additional evidence relied upon by the Tribunal in finding the employment classification practice discriminatory, including "considerable evidence put before the Tribunal by the complainants with respect to the similarities in the nature of the work performed by Medical Adjudicators and Medical Advisors": Judicial Review at para. 118.

[19] The Court also recognized that the Government had not challenged the Tribunal's finding that the "core function" performed by both groups was the same, that one group was recognized as health professionals while the other was not, that the benefits and remuneration received by one are far superior to the other, and that all of this evidence was used by the Tribunal in finding that the classification practice was discriminatory. The Court provided a useful description of the discriminatory practice at paras. 146-147:

> ¶146. Medical Adjudicators are classified as Program Managers/Program Administrators, a classification that does not recognize their status as registered nurses. This results in Medical Adjudicators receiving less in the way of pay and benefits than that received by other nurses working for the federal government, and also gives them less in the way of professional development opportunities. Indeed, the evidence before the Tribunal indicated that Medical Adjudicators earn between $10,000 and $13,000 less than clinical nurses employed by the Government, and approximately half of what Medical Advisors are paid. The classification of Medical Adjudicators as Program Managers/Program Administrators also means that they are denied employment benefits that are available to Medical Advisors.
>
> ¶147. According to the evidence before the Tribunal positions are categorized within Occupational Groups having regard to the primary function of the position, rather than the professional qualifications of the incumbents. The Health Services Group is comprised of positions that are primarily involved in the application of a comprehensive knowledge of professional specialties in the fields of medicine and nursing (among others) to the safety and physical and mental well-being of people. Neither Medical Advisors

> nor Medical Adjudicators provide care directly to patients. Nevertheless, Medical Advisors are included within the Health Services Group and Medical Adjudicators are not.

[20] Justice Mactavish held that the discriminatory classification of the medical adjudicators as program managers, rather than as nurses, resulted in the medical adjudicators receiving less pay and benefits than they would otherwise have received. Justice Mactavish held at paragraph 146 of her Judgment that:

> 1. Medical Adjudicators earn between $10,000 and $13,000 less than clinical nurses employed by the Government, and approximately half of what Medical Advisors are paid; and
> 2. The classification of Medical Adjudicators as Program Managers …. also means that they are denied employment benefits that are available to Medical Advisors.

[21] In my view, Justice Mactavish implicitly found that the Medical Adjudicators had suffered loss of income and benefits as a result of the discriminatory practice.

[22] The Court upheld the Tribunal's finding that despite certain differences in their jobs the work performed by medical advisors and medical adjudicators was similar enough that the differences could not explain the wide disparity in treatment between them, and that this properly fell under the ambit of sections 7 and 10, as opposed to section 11, of the Act. The crux of the issue was not disproportionate salaries between the two groups but, rather, discriminatory treatment more broadly that resulted from the medical adjudicators not receiving recognition for their work as health professionals. At paras. 153-155 Justice Mactavish explained that it was reasonable for the Tribunal to find that the positions of medical adjudicators and medical advisors are different, while still finding that the classification practice was discriminatory:

> ¶ 153. Nor is there any inconsistency between the Tribunal's finding that the essential nature and character of the work performed by both groups was the same, and its finding that the differences in the responsibilities and duties of the two groups could nonetheless justify some of the differences in salary and benefits, and could also explain why Medical Advisor and Medical Adjudicator positions might occupy different levels within a classification standard within the Health Services Group.
>
> ¶ 154 That is, the Tribunal found that the fact that Medical Advisors may fulfill an oversight and advisory role could potentially justify a higher level of pay and benefits than that accorded to Medical Adjudicators. This does not, however, take away from the Tribunal's finding that the essential nature and character of the work performed by both groups was the same.
>
> ¶ 155. Nor do the differences in the day-to-day responsibilities and duties of each group explain why it is that, to quote Ms. Walden's human rights complaint, "… when a CPP doctor makes a determination of disability, he is practicing medicine, but when a CPP nurse makes a determination of disability, she is delivering a program".

[23] Thus, the Court noted at para. 163 that the Tribunal was not imposing an obligation to pay proportionate compensation for proportionate work, but rather was concerned with the "denial of professional recognition through the classification process for positions performing the same "core function" (and many of the same duties). . . ." The Court recognized, however, that the issue of classification would necessarily be closely related to the issue of compensation:

> ¶ 164. It is true that pay levels within the Federal Public Service are largely determined by the classification of positions within an Occupational Group and sub-group, and by the level of positions within the relevant sub-group. As the Government conceded in the hearing before me, the issues of compensation and classification are closely intertwined and it is difficult to disengage one from the other.

[24] Finally, the Court upheld the Tribunal's decision to consider the Government's potential liability for the discriminatory practice beginning from the coming into force of the Act in March of 1978. The Court recognized that the one-year limitation period in section 41(1)(e) of the Act is not absolute, and that in this case the Commission used its discretionary power to accept allegations of discriminatory practices occurring more than one year prior to the filing of the complaint. That being said, the Court recognized that the Tribunal had retained jurisdiction to consider the Government's arguments regarding why it should not be liable for paying lost wages back to 1978, including its lack of knowledge regarding the discrimination, in determining the appropriate remedy.

The Tribunal's Remedies Decision under review

[25] On May 25, 2009, the Tribunal issued its decision on the remedies for the discriminatory practice found in the Tribunal's Liability Decision. It is this Remedies Decision that is the subject of these judicial review applications.

[26] In the Remedies Decision, the Tribunal looked at four issues:

> (1) the appropriate manner to redress the discriminatory practice through a proper classification;
> (2) an award of compensation for lost wages;
> (3) an award of compensation for pain and suffering; and
> (4) legal expenses.

The second and third issues have been raised by the parties before this Court. As noted above, judicial review of the question of an award of legal costs has been stayed pending the outcome of an appeal before the Supreme Court of Canada of the Federal Court of Appeal's decision, *Mowat*,

supra. The Tribunal's determination of the first issue, the appropriate manner to redress the discriminatory practice through a proper classification, was not challenged by the parties.

[27] With regard to the first issue, the appropriate manner to redress the discriminatory practice, the Tribunal conducted a detailed review of possible classification schemes suggested by the parties. The Tribunal noted that the Complainants ultimately were ambivalent with regard to the means of redressing the discriminatory practice. Historically medical adjudicators had sought to be classified in the same Occupational Group as medical advisors - namely, in the Health Services Group - but under a different Classification – namely, in the Nursing Classification as opposed to the Medicine Classification. Before the Tribunal, however, the Complainants originally advocated the creation of a new Classification to encompass both medical advisors and medical adjudicators. By the time of the Remedies Decision, the Complainants had returned to advocating for classification in an existing subgroup within the Nursing Classification within the Health Services Group, because they felt that it would avoid delays and administrative inefficiencies that would likely arise should an entirely new Classification need to be developed. In contrast to the Complainants, the Commission consistently submitted that the only appropriate redress would be the creation of a new Classification or Occupational Group for both medical advisors and medical adjudicators. The Commission maintained that because the public service classifies positions on the basis of the primary function of the position as opposed to based on the qualifications of the person holding the job, once it is accepted that the primary function of medical adjudicators and medical advisors is the same they should be classified the same, regardless of their different qualifications as nurses and doctors.

[28] At the hearing for the Remedies Decision, the Government proposed classifying medical adjudicators under a new subgroup within the Nursing Classification of the Health Services Group. The Government submitted that there were three advantages to this manner of redress. First, it would address the concerns regarding discriminatory classification that had been found in the Tribunal's Liability Decision. In particular, it would

1) give medical adjudicators professional recognition as members of the Health Services Occupational Group, who apply their nursing knowledge to their work;
2) likely give them the same bargaining agent as used by all other specialties, including medical advisors, within the Health Services Group, and thereby put them in a position to bargain for compensation commensurate with their classification as nurses;
3) provide a separate line item in the budget for the payment of licensing fees, like medical advisors;
4) recognize training and career development in the same way as it is recognized in for other health professionals.

[29] Second, the Government submitted that the new subgroup would avoid creating a new classification standard, which takes considerable time and extensive consultation. In contrast, a new subgroup could be created "almost immediately."

[30] Finally, the Government explained creating a new subgroup was preferable because it would not affect the medical advisors' classification within the Medicine Classification.

[31] In contrast, the Government submitted that the Commission's proposal of a new classification group would

1) not necessarily result in any different compensation, because there would remain the differences between the positions of medical advisors and medical adjudicators for which the classification would need to account;

2) delay the re-classification; and

3) interfere with the Government's carefully-crafted classification practices with regard to recruitment and retention of medical doctors.

[32] The Tribunal reviewed each of these proposals and ultimately determined that the Government's proposed method of reclassification would best redress the discriminatory practice. The Tribunal held as follows, at para. 60:

> ¶60. For these reasons and based on the evidence that was presented to me I find, on a balance of probabilities, that the most appropriate way to redress the discriminatory practice identified in the Tribunal's December 2007 decision is to create a new Nursing subgroup for the medical adjudication position(s). I order that such a subgroup be created and that the adjudicator work be placed in this subgroup. I further order that work on the creation of the new NU subgroup commence within 60 days of the date of this decision.

[33] With regard to the second issue, compensation for wage loss, the Tribunal built upon its finding that the appropriate manner of redress was to create a new subgroup within the Nursing

Classification. Having found that a new subgroup would effectively redress the discriminatory practice, the Tribunal stated that it was difficult to determine the amount of lost wages because no such group had previously existed:

> ¶63 . . . The problem, of course, is that the Nursing subgroup did not exist in the past. Therefore, it is difficult to determine if there was any wage loss when there is no past salary line for that subgroup to compare with the adjudicators' past compensation. One way of dealing with this problem is to determine the value of the adjudicator position relative to the value of other positions performing similar work. A comparison would then be made between the adjudicators' past remuneration and the past remuneration of positions that are of comparable value.

The evidence for this comparison was submitted pursuant to the Interim Ruling, which allowed the parties to make submissions and call evidence regarding the value of work performed by the adjudicators relative to that performed by other subgroups within the Nursing Classification, or the medical advisors.

[34] The Tribunal found that the Complainants had the burden of satisfying the Tribunal regarding the amount of compensation owed for wage loss on the balance of probabilities. The Tribunal noted at para. 72 that "it is well settled law that once it is known that a plaintiff has suffered a loss, a court cannot refuse to make an award simply because the proof of the precise amount of the loss is difficult or impossible."

[35] The Tribunal reviewed the evidence submitted by the parties. The Complainants had submitted a report by Mr. Scott MacCrimmon, a consultant with decades of experience in

conducting job evaluation, classification and compensation system reviews. Mr. MacCrimmon's report compared the positions of medical adjudicator and medical advisor based upon their job descriptions and the findings in the Tribunal's Liability Decision and the Interim Ruling. Based on this information, Mr. MacCrimmon found that the only difference in value of the two positions arose from the additional decision-making role and educational requirements of the medical advisor position. He concluded that jobs that differed in these ways would typically be approximately one or two "pay grades" apart, which would translate into a salary differential of between 15 and 25 per cent.

[36] The Tribunal also heard the evidence of Ms. Mary Daly, a Government witness, who was accepted as an expert in classification, compensation and organizational design. Ms. Daly stated that the industry standard for conducting job evaluations requires interviewing managers and employees to understand their work, and comparing jobs within particular work classification groups. Based upon Ms. Daly's critiques, the Tribunal concluded that Mr. MacCrimmon's report was unreliable:

> ¶136 . . . Without additional job information than what was provided to Mr. MacCrimmon and with only two jobs being compared using a generic job evaluation tool, the Tribunal is simply not getting a reasonably reliable estimate of the relative value of the relevant positions.
>
> ¶ 137 Moreover, Mr. MacCrimmon did not provide the Tribunal with sufficient information as to how he used the data from the Tribunal decisions and the job descriptions to arrive at his conclusions.
> . . .

> ¶142 I am persuaded by the logic and detailed explanation provided by Ms. Daly as to why it is inappropriate to make a generalized assumption about the point banding structure and the corresponding salary structure. Each organization has its own approach to point banding. Therefore, it is inappropriate to use generalities on the job evaluation landscape to arrive at a relatively precise conclusion.
>
> ¶143 Mr. MacCrimmon was not able to provide any assurances that his conclusion was based on an understanding of the public service's point banding and salary structures.
>
> . . .
>
> ¶ 146 On the basis of the evidence, I find that the Complainants have not established, on a balance of probabilities, that Mr. MacCrimmon's assessment of the wage differential was reasonably accurate. It was speculative and based on job evaluation results that were not reasonably accurate.

[37] The Government's own report on wage comparisons was withdrawn as evidence. As a result, the only evidence that the Tribunal had on the wage differentials was that of Mr. MacCrimmon, which the Tribunal rejected. The Tribunal also rejected the Commission's request to permit another job evaluation report to be concluded. The Tribunal concluded that the Complainants had failed to show any wage loss, and, therefore, received no compensation under this head.

[38] With regard to the third issue, compensation for pain and suffering, the Tribunal accepted the Government's argument that based upon *Public Service Alliance of Canada v. Canada (Treasury Board)*, [1998] C.H.R.D. No. 6, (aff'd: *Canada (Attorney General) v. Public Service Alliance of Canada* [2000] 1 F.C. 146, 180 D.L.R. (4th) 95 (F.C.), the Tribunal could not order compensation for any individuals who had not themselves provided evidence on the question to the Tribunal:

> ¶160 I agree with the Tribunal's reasoning in *PSAC v. Treasury Board*. The evidence that I heard from some of the Complainants convinced me that some, but not all of the Complainants, should be compensated for the pain and suffering they experienced. Ms. Walden testified generally that the adjudicators felt angry, demoralized and humiliated as a result of the discriminatory practice. However, I am not able to say, on the basis of these statements, that each and every adjudicator experienced the same degree of pain and suffering, or indeed any suffering at all. I cannot attribute Ms. Walden's statements to each and every complainant.

Four complainants provided evidence regarding their pain and suffering to the Tribunal. The Tribunal awarded compensation for pain and suffering to two individuals.

[39] As mentioned above, the Tribunal also made a cost award, which is the subject of a separate application for judicial review.

ISSUES

[40] In this application, the arguments made by the parties raise the following five legal issues:

1) Did the Tribunal err in its consideration of the question of compensation for lost wages because it made determinations over which it was *functus officio*?
2) Did the Tribunal err in its consideration of the question of compensation for lost wages because it imposed an incorrect standard of proof upon the Complainants?
3) Did the Tribunal err in its consideration of the evidence of lost wages and other compensation that was before it?
4) Did the Tribunal breach natural justice by dissuading the Complainants from adducing evidence regarding individual Claimant’s pain and suffering and then finding against the Complainants on that basis?
5) Did the Tribunal err by improperly assessing the evidence regarding the Complainants’ damages for pain and suffering?

[41] Upon considering the facts and the law in this case, the court only needs to consider issues Nos. 2 and 4 to resolve these applications.

RELEVANT LEGISLATION

[42] Section 53(2) of the Act establishes the remedies that a Tribunal may order if it finds a complaint to be substantiated:

53(2). If at the conclusion of the inquiry the member or panel	53(2). À l'issue de l'instruction, le membre instructeur qui juge
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:	la plainte fondée, peut, sous réserve de l'article 54, ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :
(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 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;	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 : (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;

(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) d'indemniser la victime de la totalité, ou de la fraction des pertes de salaire et des dépenses entraînées par l'acte;
(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) 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;
(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) d'indemniser jusqu'à concurrence de 20 000 $ la victime qui a souffert un préjudice moral.
(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.	

STANDARD OF REVIEW

[43] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*], the Supreme Court held that there are now only two standards of review: correctness and reasonableness. At

paragraph 62 of that decision, the Supreme Court stated there are two steps to determining the appropriate standard of review to apply:

> First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[44] The standard to be applied when reviewing decisions of the Canadian Human Rights Tribunal will depend upon the nature of the question at issue. As the Federal Court of Appeal stated recently in *Royal Canadian Mounted Police v. Tahmourpour*, 2010 FCA 192, at para. 8, the standard will most often be reasonableness:

> Most elements of a decision of the Tribunal are reviewed on the standard of reasonableness, including questions of law involving the Tribunal's interpretation of its own statute or questions of general law with respect to which the Tribunal has developed a particular expertise (see *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77, 2003 SCC 63 (S.C.C.), *Chopra v. Canada (Attorney General)* (2007), [2008] 2 F.C.R. 393, 2007 FCA 268 (F.C.A.), and *Brown v. Canada (National Capital Commission)*, 2009 FCA 273 (F.C.A.)).

[45] That being said, when the question at issue is a question of law that does not involve an interpretation of the Tribunal's own statute or an area of law within which the Tribunal has developed a particular expertise, the proper standard of review is correctness. As the Federal Court of Appeal recognized in *Mowat*, *supra*, at para. 50, after conducting an extensive analysis of the case law applicable to the question of the appropriate standard of review to apply to decisions of the Tribunal:

> ¶ 50. There is binding authority to the effect that different standards of review can apply to different legal questions depending

> on the nature of the question and the relative expertise of the tribunal in those particular matters: *Deputy Minister of National Revenue v. Mattel Canada Inc.*, [2001] 2 S.C.R. 100 (S.C.C.) (*Mattel*) (para. 27); *VIA Rail Canada Inc. v. Canadian Transportation Agency*, [2007] 1 S.C.R. 650 (S.C.C.) (*VIA Rail*) (para. 278).

[46] In *Mowat* itself, the Federal Court Appeal was dealing with the question of whether the Tribunal had the authority to award legal costs. At para. 51, the Court determined that the appropriate standard of review to apply to that question was one of correctness:

> ¶ 51. Having regard to the purpose of the Tribunal, the nature of the question and the expertise of the Tribunal, the applicable standard of review is correctness. It follows that the application judge erred in concluding that the standard of review is reasonableness.

[47] With respect to the second issue, the correct standard of review for the onus of proof for damages is a question of law and the standard of review is correctness.

[48] The fourth issue deals with an alleged breach of natural justice and this is a question of law subject to the correctness standard of review.

ANALYSIS

[49] Before dealing with the two issues the Court has two preliminary observations. The first observation is that the Tribunal's Remedies Decision held that the most appropriate way to address the discriminary practice against the medical adjudicators is for the government to create a new Nursing subgroup in the Health Services Occupational Group for the medical adjudicators. This part of the Tribunal's Remedies Decision was not challenged by any of the parties.

[50] The second observation is that the Tribunal's Liability Decision, and the Federal Court Judgment of Justice Mactavish upholding the Tribunal's Liability Decision, held that the discriminatory classification of the medical adjudicators as Program Managers resulted in the medical adjudicators receiving less pay fewer professional development opportunities and fewer employment benefits than available to nurses and doctors classified within the Health Services Occupational Group. Accordingly, there can be no dispute that the medical adjudicators did suffer a loss of income and benefits due to the discriminatory job classification. Accordingly, the issue for the Tribunal regarding appropriate remedies was the quantification of the loss of wages and benefits. (See also Justice Mactavish's Judgment at paragraph 146 confirming loss of income due to the discriminatory practice.)

[51] The parties spent a considerable amount of time in their submissions to this Court disputing the nature of the Tribunal's finding regarding the discriminatory practice identified in the Tribunal's Liability Decision. Counsel for the Government submitted that the discriminatory practice that had been found was that the manner of classification of the medical adjudicators was discriminatory. The Government's position was that no particular finding regarding damages flowed from this finding regarding liability. As a result, the Government submitted that the burden on the medical adjudicators at the remedies stage of the hearing was to prove whatever damages they may have suffered, including, for example, damages for lost wages or other lost benefits.

[52] Counsel for the medical adjudicators and the Commission submitted that the Tribunal's finding that the medical adjudicators were being discriminated against was premised upon its acceptance of the evidence of, as the Tribunal itself noted, (1) the lack of professional recognition given to medical adjudicators as health professionals; (2) the lower salary and benefits paid to medical adjudicators; (3) the failure to pay for professional fees and professional development opportunities for medical adjudicators; and (4) the denial to medical adjudicators of career advancement opportunities by depriving them of health services experience.

[53] In reviewing the Tribunal's Liability Decision it seems clear that the Tribunal found that medical adjudicators were the victims of discriminatory treatment because it identified all four of those elements of discriminatory treatment. The Government's attempt to separate the question of lost wages or other lost benefits from the determination of liability is not consistent with the Tribunal's finding on that point.

[54] Other paragraphs of the Tribunal's Liability Decision also make this clear. For example, para. 121 of the Tribunal's Liability Decision states:

> ¶121 However, the differences in the work responsibilities of the respective positions are not extensive enough to explain the wide disparity in treatment between the advisors and the adjudicators. In particular, the Government has failed to provide a reasonable non-discriminatory response to the following question: why have the advisors been recognized as health professionals, and compensated accordingly, when their primary function is to make eligibility determinations, and yet, when the adjudicators perform the same primary function, they are designated as program administrators and are paid half the salary of the advisors? [Emphasis added]

[55] Similarly, at para. 143 the Tribunal states:

> . . . . The effects of the practice have been to deprive the adjudicators of professional recognition and remuneration commensurate with their qualifications and to deprive them of payment of their licensing

> fees, as well as training and career advancement opportunities on the same basis as the advisors. [Emphasis added]

[56] In the judicial review decision by Justice Mactavish, the Court repeatedly emphasized that the Government challenged neither the finding that the primary functions of medical adjudicators and medical advisors were the same, nor that medical adjudicators were classified differently and paid half the salary of medical advisors (see, e.g., paras. 136, 150). At para. 143 the Court also cited para. 121 of the Tribunal's Liability Decision cited above to describe the findings of the Tribunal on this question.

[57] It is not therefore open to the parties or to the Tribunal to revisit the question of whether there were lost wages or other lost benefits. This question was already decided and was upheld on judicial review. The question to be determined at this stage is the quantum of such losses.

Issue No. 2: Did the Tribunal err in its consideration of the question of compensation for lost wages because it imposed an incorrect standard of proof upon the Complainants?

[58] As discussed above, the Complainants presented evidence from Mr. Scott MacCrimmon, a consultant with decades of experience in conducting job evaluations, classifications and compensation system reviews. Based on his analysis, he concluded that the difference in value between the positions of medical advisors and medical adjudicators was approximately one or two "pay grades" apart, which would translate into a salary differential of between 15 and 25 percent. The Tribunal rejected Mr. MacCrimmon's evidence as unreliable for reasons which Mr. MacCrimmon conceded. Mr. MacCrimmon was not able to interview people occupying the actual jobs and he was not able to obtain more information about the positions and the amount of time

spent performing various tasks in those positions. He was not able to obtain up-to-date job descriptions. He admitted that his estimate of the approximate wage differential between the advisors and adjudicators was speculative. He admitted that he would have preferred to have more time and more information. The Tribunal concluded at paragraph 103 that Mr. MacCrimmon simply did not have enough information to perform an accurate and reliable job evaluation. Moreover, the Tribunal found that the relevant wage gap is between the wages paid medical adjudicators and what they would have been paid if they had been properly classified as nurses, not as medical advisors, i.e. doctors. For these reasons, the Tribunal held that Mr. MacCrimmon's assessment of the wage differential was speculative and not based on job evaluation results that were reasonably accurate. Accordingly, the Tribunal held, at paragraph 146 of its Remedies Decision, that the Complainants have not established, on a balance of probabilities, that Mr. MacCrimmon's assessment of the wage differential was reasonably accurate. Moreover, the Tribunal declined any further opportunity for the parties to present better evidence.

[59] In the Remedies Decision, at para. 151, the Tribunal concluded that the Complainants had failed to meet their burden of proof on the issue of wage loss:

> ¶151 The results of the Complainants' study were presented at the resumption of the hearing in December of 2008. As noted, they do not establish, on the balance of probabilities, that wage loss resulted from the discriminatory practice. . . .

[60] In making this finding, the Tribunal erred in law.

[61] Once the plaintiff has established that a loss has probably been suffered, the difficulty in determining the amount of the loss cannot be used as a reason to refuse to make an award. Instead,

the plaintiff must provide the court with as much evidence as possible to prove the extent of damage. As I stated in *P.S.A.C. v. Canada Post Corp.* 2010 FCA 56, quoting from S.M. Waddams, *The Law of Damages*, looseleaf (Toronto: Canada Law Book Inc., 1991) at 13-2, who, in turn, was quoting from a leading English case, *Ratcliffe v. Evans*, (1892) 2 Q.B. 524:

> In Anglo-Canadian law ... the courts have consistently held that if the plaintiff establishes that a loss has probably been suffered, the difficulty of determining the amount of it can never excuse the wrongdoer from paying damages. If the amount is difficult to estimate, the tribunal must simply do its best on the material available, though of course if the plaintiff has not adduced evidence that might have been expected to be adduced if the claim were sound, the omission will tell against the plaintiff. In *Ratcliffe v. Evans*, Bower L.J. said:
>
> > As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.

[62] The Supreme Court of Canada has recognized the same principle on numerous occasions. In *Penvidic Contracting Co. v. International Nickel Co. of Canada* [1976] 1 S.C.R. 267 at 279-80, it quoted with approval from a 1915 Supreme Court decision, *Wood v. Grand Valley R. Co.*, 51 S.C.R. 283 at 289:

> It was clearly impossible under the facts of that case [*Chaplin v. Hicks* [1911] 2 K.B. 786 (C.A.)] to estimate with anything approaching to mathematical accuracy the damages sustained by the plaintiffs, but it seems to me to be clearly laid down there by the learned judges that such an impossibility cannot "relieve the wrongdoer of the necessity of paying damages for his breach of contract" and that on the other hand the tribunal to estimate them

> whether jury or judge must under such circumstances do "the best it can" and its conclusion will not be set aside even if the amount of the verdict is a matter of guess work.

[63] In this case, although the Tribunal correctly recognized as para. 72 that

> … it is well settled law that once it is known that a plaintiff has suffered a loss, a court cannot refuse to make an award simply because the proof of the precise amount of the loss is difficult or impossible. The judge must do the best he or she can with the evidence that is available …

The Tribunal applied a more onerous burden to the Complainants.

[64] At para. 74 the Tribunal explained the standard of proof that it was imposing upon the Complainants to prove the amount of lost compensation:

> The Tribunal must determine whether the Complainants have established on a balance of probabilities that had they been treated as though they were doing substantially similar work to that of the advisors and classified accordingly, they were have been paid more than they were as PM's. If the answer to this question is "yes", the Tribunal must then determine whether the Complainants have proved, on a balance of probabilities, the extent of the wage loss that they suffered as a result of the discriminatory practice.

[65] At paragraph 148 the Tribunal stated:

> . . . . The Complainants had the burden of establishing the existence and quantum of wage loss. They failed to do so.

[66] Similarly, at para. 151 the Tribunal repeated:

> The results of the Complainants' study were presented at the resumption of the hearing in December of 2008. As noted, they do not establish, on the balance of probabilities, that wage loss resulted from the discriminatory practice. . . .

[67] As discussed above, the Tribunal's Liability Decision, upheld by the Federal Court, determined the existence of wage loss, but left open the question of quantum. By requiring the Complainants to prove the quantum of wages lost on a balance of probabilities, the Tribunal therefore made an error of law. The Tribunal has the duty to assess the lost income or wage loss on the material before it, or refer the issue back to the parties to prepare better evidence on what the wage loss would have been but for the discriminatory practice, i.e. if the medical adjudicators had been properly classified as members of a Nursing subgroup in the Health Services Group.

<u>Issue No. 4</u>: Did the Tribunal breach natural justice by dissuading the Complainants from adducing evidence regarding individual Claimant's pain and suffering and then finding against the Complainants on that basis?

[68] The Tribunal's authority to award compensation for pain and suffering is found in section 53(2)(e) of the Act. At para. 147 of the Tribunal's Liability Decision, the Tribunal recognizes that some compensation should be provided to the Complainants:

> ¶147 . . . I heard evidence from Ms. Walden and the three other Complainants who testified in this case about the frustration, demoralization and loss of self-esteem that they experienced as a result of the Governments' refusal to recognize their professional expertise. On that basis, I am prepared to order that some compensation should be provided to the Complainants under s. 53(2)(e). However, I have some questions regarding *quantum* which were not addressed during the hearing. For example, should a Complainant who has only been employed in the Program since February of 2007 receive the same compensation for pain and suffering as a Complainant who has been employed since 1993? I will reserve jurisdiction on the issue of *quantum* in the same terms as set out above. I encourage the parties to come to an agreement on this issue failing which, as with the above-noted issues, I will conclusively determine the matter.

[69] In the Interim Ruling, the Tribunal expanded upon the type of evidence that it felt would be required in order to determine the question of quantum of compensation due for pain and suffering:

> ¶13 The Tribunal is in agreement with the parties that no further evidence is needed on this point. However, to assist in the determination of the *quantum*, it would be helpful to have a complete list of the Complainants (both unrepresented and represented by counsel) with the start and end dates (in the event that they are no longer employed there) of their employment with the CPP Disability Benefit Program.

[70] As discussed above, however, in the Remedies Decision the Tribunal found that because it lacked evidence of pain and suffering suffered by each individual it could not grant such compensation to most of the medical adjudicators. The Tribunal did, however, award pain and suffering to two of the witnesses who had appeared before it:

> ¶ 161 There may well be some adjudicators who did not feel aggrieved by the practice and therefore, should not receive an award. On the other hand, there may be individuals like Ms. Walden who experienced a great degree of pain and suffering, and should receive compensation for that. I simply do not have the evidentiary basis to make a determination as to the pain and suffering that may have been experienced by all the nurses.

[71] The Court finds that the Tribunal's apparent *post hoc* demand for individual evidence from each of the Complainants breached procedural fairness. Even if individual evidence would have been helpful or even legally required, by explicitly telling the parties that no additional evidence was required, the Tribunal breached the Complainants' right to natural justice and a fair hearing by then relying upon a lack of evidence to find against them on pain and suffering.

[72] The Attorney General argues that the Tribunal rightly concluded that awards of pain and suffering cannot be made *en masse* based on representative evidence, but, rather, must be made based on evidence of individual complainants.

[73] I disagree. The Tribunal held that it could not award pain and suffering damages without evidence that spoke to the pain and suffering of individual claimants. This does not, however, mean that it necessarily required direct evidence from each individual. As the Commission noted, the Tribunal is empowered to accept evidence of various forms, including hearsay. Therefore the Tribunal could find that evidence from some individuals could be used to determine pain and suffering of a group.

[74] In the Interim Decision, the Tribunal indicated that the evidence that had been given was sufficient to demonstrate pain and suffering for all, and so asked for a list of complainants and their length of service. This implied that the Tribunal would calibrate the pain and suffering awards to the length of each complainant's service. In this case, there was evidence before the Tribunal from Ms. Walden regarding the pain and suffering that she and other medical adjudicators suffered, which Ms. Walden testified resulted from the workplace environment and feelings of mistrust and under-appreciation that stemmed from the discriminatory classification practice.

[75] It is for the Tribunal to weigh the evidence before it. It is open to the Tribunal to require more evidence from the applicants regarding their pain and suffering. It is not appropriate at this

point for this Court to pronounce on the evidence that ought to be demanded by the Tribunal – that is a matter falling squarely within the Tribunal's area of expertise. It is now incumbent upon a new panel of the Tribunal to indicate to the applicants the type of evidence that it requires in order to properly determine pain and suffering damages, bearing in mind issues such as fairness and allocation of court time and resources.

CONCLUSION

[76] For these reasons, the Court concludes:

1. The Tribunal Remedies Decision under review has not been challenged by the parties with respect to the Tribunal's finding that the most appropriate way to redress the discriminatory practice is to create a new Nursing sub-group in the Health Services Occupational Group for the medical adjudication positions. The Tribunal ordered that such a sub-group be created and that the medical adjudicators be placed in this subgroup. The Tribunal ordered the creation of this new subgroup commence within 60 days from the date of the decision, May 25, 2009. Accordingly, this Nursing subgroup should be created forthwith since none of the parties challenged this finding;

2. The Tribunal's Liability Decision, and the Federal Court Judgment of Justice Mactavish upholding the Tribunal's Liability Decision, held that the discriminatory classification of the medical adjudicators as Program Managers resulted in the medical adjudicators receiving less pay and benefits than they would have received if they had been properly classified in the Nursing subgroup for the Health Services Occupational Group;

3. The Tribunal Remedies Decision under review erred in law in finding that the Complainants are entitled to no compensation for wage losses as a result of the discrimination because they have not met their legal burden on the balance of probabilities

to establish the quantum of their loss. The Tribunal has the duty to assess the lost income or wage losses on the material before it, or refer the issue back to the parties to prepare better evidence on what the wage losses would have been but for the discriminatory practice. For this reason, the Court will set aside this part of the decision and remit the matter back to a new panel of the Tribunal for a redetermination of the lost income due to the discriminatory job classification of the medical adjudicators as Program Managers, rather than as members of a Nursing sub-group in the Health Services Group; and

4. The Tribunal Remedies Decision breached the Complainants' right to natural justice and a fair hearing by directing that no additional evidence was required from the Complainants on pain and suffering and then dismissing their claim for pain and suffering because they did not present any additional evidence. The Court will set aside the decision with respect to pain and suffering and refer this issue back to a new panel of the Tribunal for redetermination of this issue, including whether the panel needs to hear individualized evidence from each of the Complainants or whether the Tribunal can award a standard amount for pain and suffering depending upon the length of service of each Complainant.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. These applications for judicial review are allowed;
2. The Tribunal Remedies Decision dated June 25, 2009 is set aside with respect to its findings regarding compensation for lost wages as a result of the discriminatory classification and compensation for pain and suffering as a result of the discriminatory practice. These two issues are referred back to a new panel of the Tribunal for redetermination in accordance with these Reasons for Judgment; and
3. The Applicants Ruth Walden *et al.* are entitled to their legal costs recoverable from the Attorney General of Canada under Tariff B of the *Federal Courts Rules*, Column III at the high end of the range.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1016-09 & T-1025-09
STYLE OF CAUSE:	*T-1016-09, Canadian Human Rights Commission v. Attorney General of Canada and Ruth Walden et al.* *T-1025-09, Ruth Walden et al. v. Attorney General of Canada, Canadian Human Rights Commission and Ann Boylan Currie et al.*
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	November 1, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	KELEN J.
DATED:	November 12, 2010

APPEARANCES FOR T-1016-09:

Mr. Daniel Poulin	FOR THE APPLICANT (CANADIAN HUMAN RIGHTS COMMISSION)
Mr. Laurence Armstrong and Ms. Heather Wellman	FOR THE RESPONDENTS (RUTH WALDEN ET AL.)
Mr. Patrick Bendin	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)

SOLICITORS OF RECORD FOR T-1016-09:

Philippe Dufresne Director and Senior Counsel Canadian Human Rights Commission Ottawa, Ontario	FOR THE APPLICANT (CANADIAN HUMAN RIGHTS COMMISSION)
Armstrong Wellman Victoria, British Columbia	FOR THE RESPONDENT (RUTH WALDEN ET AL.)
Myles Kirvan, Deputy Attorney General of Canada	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)

Ottawa, Ontario

APPEARANCES FOR T-1025-09:

Mr. Laurence Armstrong and Ms. Heather Wellman	FOR THE APPLICANTS (RUTH WALDEN ET AL.)
Mr. Patrick Bendin	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)
Mr. Daniel Poulin	FOR THE RESPONDENTS (CANADIAN HUMAN RIGHTS COMMISSION and ANN BOYLAN CURRIE ET AL.)

SOLICITORS OF RECORD FOR T-1025-09:

Armstrong Wellman Victoria, British Columbia	FOR THE APPLICANTS (RUTH WALDEN ET AL.)
Myles Kirvan, Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPODENT (ATTORNEY GENERAL OF CANADA)
Philippe Dufresne Director and Senior Counsel Canadian Human Rights Commission Ottawa, Ontario	FOR THE RESPONDENTS (CANADIAN HUMAN RIGHTS COMMISSION and ANN BOYLAN CURRIE ET AL.)