

Federal Court



Cour fédérale

Date: 20120329

Docket: T-1160-11

Citation: 2012 FC 369

Ottawa, Ontario, March 29, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

AMIYA KHARE

Applicant

and

BELL CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Khare filed a complaint with the Canadian Human Rights Commission that Bell Canada had treated him adversely on the prohibited ground of religion.

[2] The basis is that over a short period of time two Bell technicians had come to his home to set up necessary equipment. Mr. Khare and his family are Hindu. They have a prayer room downstairs. The first technician was told to remove his shoes. He refused. Later another Bell technician came to the house while Mr. Khare was absent. However, both his wife and mother were

present. Oblivious to what had previously happened, they allowed the technician in. Despite being requested to remove his shoes, he went downstairs into the prayer room with his shoes on.

[3] A member of the Commission's Resolution Services Division was led to understand that Mr. Khare had first made a service request to Iristel Canada, a provider of Voice over Internet Protocol services. Iristel Canada forwarded the call to a Bell Canada subcontractor, Bell Technical Solutions Inc., whose technicians were dispatched.

[4] Iristel Canada is completely independent of Bell Canada. Although Bell Technical Solutions Inc. is a Bell subsidiary, it is an independent legal entity.

[5] The conclusion was that it was plain and obvious that Bell Canada was not the appropriate respondent as it was not the employer of the technicians who were alleged to have discriminated against Mr. Khare on the basis of his religion. He was informed he had the opportunity to file a complaint against Iristel Canada and Bell Technical Solutions Inc.

[6] Mr. Khare has refused to do so. Rather, he has sought a judicial review of the Commission's refusal to investigate.

[7] During the hearing, I explained to Mr. Khare, who was self-represented, that this is not a breach of contract case in which, barring clauses to the contrary, a contracting party is liable for the acts of subcontractors.

[8] Under the *Canadian Human Rights Act*, an individual who has reasonable grounds to believe that a “person” is engaged or has engaged in a discriminatory practice may file a complaint with the Commission. The case law is such that the Commission, at an early screening stage, may decide not to deal with the complaint if it is plain and obvious that there is not a *prima facie* case of discrimination. The question in this case is whether there was a *prima facie* case of discrimination by Bell Canada. The only basis on which there could be a case against Bell Canada is that it was the employer of the two technicians. The fact of the matter is that Bell Canada was not their employer.

[9] Mr. Khare, after receiving the decision of the Commission not to proceed with the complaint, wrote to say: “Your reasoning is equivalent to saying that the Federal Government is not responsible for Human Rights Commission”. That is quite correct. Although the Commission was established by Parliament, it is an independent body and is frequently called upon to investigate complaints of adverse discrimination by the Federal Government and, where the circumstances are justified, holds the government to account.

[10] In its written memoranda, Bell Canada sought costs, and repeated that request during the hearing. Costs are a matter of discretion, but usually follow the event. Mr. Khare had every opportunity to re-file against the technicians’ employers. He chose not to do so. Bell Canada has been put to trouble for no valid reason and is entitled to costs. A very quick calculation, at the conclusion of the hearing, based on Column 2 indicated fees of at least \$650, not counting disbursements. In my discretion, I shall fix costs at \$500, all inclusive.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. This application for judicial review is dismissed.
2. Costs are taxed in favour of the respondent, Bell Canada, in the amount of \$500.

“Sean Harrington”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1160-11

STYLE OF CAUSE: KHARE v BELL CANADA

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: MARCH 28, 2012

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: MARCH 29, 2012

APPEARANCES:

Amiya Khare

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Me Mireille Bergeron

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Attorney General of Canada
Montreal, Quebec

FOR THE APPLICANT
(ON HIS OWN BEHALF)

FOR THE RESPONDENT