



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

Human Rights Legal Update Selected Cases

CASHRA Meeting
June 22, 2015

Canada 

Outline

1. Family Status

- *Canada (Attorney General) v Hicks*, 2015 FC 599. (*Hicks*)

2. Service Complaints based on Legislation

- *Canada (Human Rights Commission) v Canada (Attorney General)*, 2015 FC 398. (*Matson & Andrews*)

3. Aboriginal Issues in Human Rights

- *Davis v Canada Border Services Agency*, 2014 CHRT 34. (*Davis*)
- *Tabor v Millbrook First Nation*, 2015 CHRT 9. (*Tabor*)

4. Notable Decisions

- *Ishaq v Canada (Citizenship and Immigration)*, 2015 FC 156. (*Ishaq*)
- *Thibodeau v Air Canada*, 2014 SCC 67. (*Thibodeau*)



Family Status

Hicks (FC)

- The Complainant, who was starting a job in a new city, was denied a re-location benefit which would allow him to maintain two residences temporarily so that his wife could continue providing care for her ailing mother
- The benefit was denied because the mother-in-law was not considered a “dependent” as she lived outside of the Complainant’s home
- Tribunal found that the respondent’s actions were discriminatory contrary to s. 7 of the CHRA on the grounds of family status
- On judicial review, the Federal Court found that the Tribunal was correct to find that the ground of family status includes eldercare obligations whose non-fulfillment can attract both civil and criminal responsibility, stating that eldercare obligations are “entrenched in Canadian societal values”.



Service Complaints based on Legislation: *Matson & Andrews (FC)*

- Two similar complaints alleging discrimination in registration for Indian status
- Tribunal dismissed for lack of jurisdiction, found complaints were really a challenge to legislation
- Commission applied for judicial review, FC dismissed with costs
- Key points from FC decision:
 - Registration for Indian status not a service within meaning of *CHRA*
 - Tribunal properly followed *Murphy*, prior decisions relied on by Commission do not confer jurisdiction to take complaints about legislation
 - Tribunal did not undermine primacy of human rights law
 - S. 67 repeal does not suggest Commission has jurisdiction over *Indian Act* registration



Aboriginal Issues in Human Rights: *Davis (CHRT)*

- The Complainant , an Akwesasne Mohawk, alleged discriminatory treatment by Canada Border Services Agency when crossing border between Canada and US
- Earlier Tribunal ruling found that the respondent was providing a service within the meaning of *CHRA*, upheld by FC
- Tribunal found no evidence that the complainant was targeted and several exaggerations/implausibilities in her testimony
- Tribunal also found that one CBSA officer aggravated situation, inferred that it was based on unconscious racial stereotyping

Aboriginal Issues in Human Rights: *Tabor* (CHRT)

- Complainant alleged First Nation refused to consider her for fishing captain because of sex and family status and retaliated against her
- Allegations included both individual adverse differential treatment and systemic discrimination
- Personal discrimination: derogatory comments about women; difficulty in receiving funding for training that is regularly provided to men and denial of work opportunities; denial of captain's licence
- Systemic – women are deprived of employment in Millbrook Fishery
- Case largely turned on credibility of the parties



Notable Decision:

Ishaq (FC)

- Citizenship applicant challenged government policy that requires removal of face covering while swearing citizenship oath
- Applicant alleged policy was contrary to *Citizenship Regulations*, breached *Canadian Charter of Rights and Freedoms* and fettered discretion of citizenship judges
- Crown argued application was premature, policy was discretionary, and no breach of *Charter*
- FC allowed application without deciding *Charter* issues:
 - *Regulations* require greatest possible religious freedom in taking oath
 - Policy conflicted with *Regulations* and *Regulations* prevail
- Notice of Appeal has been filed



Notable Decision: *Thibodeau* (SCC)

- Claim for damages under *Official Languages Act* (OLA) following English only service during several flights to/from USA
- Complaints had been investigated and substantiated by Commissioner of Official Languages
- SCC ruled damages not available because of *Montreal Convention*, which bars any claim for damages from international air travel not made under the *Convention*



Comments?
Questions?



Canadian
human rights
commission

Commission
canadienne des
droits de la personne