Date: 20091105

Docket: T-1634-07

Citation: 2009 FC 1134

Ottawa, Ontario, November 5, 2009

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

AZ BUS TOURS INC.

Applicant

and

BARBARA TANZOS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This case concerns the judicial review of a decision of the Canadian Human Rights Tribunal (the "Tribunal") dated August 8, 2007 by which the Tribunal found that AZ Bus Tours Inc., ("the Applicant") had discriminated against Barbara Tanzos ("the Respondent") on the basis of disability contrary to section 7 of the *Canadian Human Rights Act* ("the Act"). The Tribunal awarded the Respondent $12,035 for loss of salary and $3,000 for pain and suffering, as a result thereof.

[2] The Applicant's judicial review proceedings are essentially based on the argument that the Tribunal erred in finding that the Applicant had not sufficiently accommodated the Respondent for her disability.

Background

[3] The Applicant is a bus company primarily providing charter services on a regular basis from Toronto to the Casino Rama, in Orillia, Ontario, and also providing charter services, when required, to other service points in Ontario, in other Canadian provinces and in the USA.

[4] The Respondent commenced employment with the Applicant as a full time bus driver on May 21, 2000. Her principal task was to drive passengers from Toronto to the Casino Rama in Orillia.

[5] Approximately five months after she began working full-time for the Applicant, the Respondent took sick leave. She returned to work on March 7, 2001 under medical restrictions which precluded her from working night shifts and more than three days a week. The Respondent's disability was never challenged by the Applicant and was not questioned before the Tribunal or in these proceedings.

[6] Upon her return to work, the Applicant treated the Respondent as a part-time driver and did not provide her any of the rights or benefits of a full-time driver, including seniority rights, priority on selection of routes, or payment of a daily bonus of $10 after one year of employment.

[7] The Applicant applied to the Respondent what it called a "common sense" approach in order to accommodate her disability. Under this "common sense" approach, the Respondent was treated

as a part-time employee and was assigned on an "on-call" basis various bus routes in order to attempt to provide her three days of work per week.

[8] On September 21, 2001, the Applicant wrote to the Respondent stating that "[d]ue to your overall concerns about the amount of work you have been receiving and given the fact that we are heading into our slow season combined with the reduction of outside work as a result of the American tragedy [the attacks on the New York City World Trade Center of September 11, 2001], I am open to considering a mutually agreed lay-off to give you the needed time to rehabilitate yourself".

[9] At the end of September of 2001, the Respondent's physician informed the Applicant that the Respondent's condition allowed her to work five days a week but without any night shifts. The Respondent also wrote to the Applicant on October 1, 2001 to state that she did not consent to a lay-off on a consensual basis.

[10] On October 16, 2001, the Applicant informed the Respondent as follows:

> "[…] I understand you are not interested in a mutually agreed lay off. Contrary to your latest doctors note, it still requests restrictions and as I indicated to you in earlier correspondence, until your doctor gives you a clean bill of health without restrictions your current status will remain as a part time driver. Given the extended time off from full time duties it will be necessary for safety reasons to get doctor clarification in addition to a note before restoring you to full time duties. Therefore until you sign up and are available for 5 days work per week without any restrictions you will as all part time drivers be detailed by dispatch subject to work availability." [Emphasis in original)

[11] The Respondent's employment with the Applicant ended a few days after this letter was sent to her.

[12] On December 8, 2001 the Respondent submitted her complaint under the *Act*.

[13] This complaint took a long time to be adjudicated in light of various preliminary jurisdictional and constitutional issues which were raised by the Applicant. In any event, the Canadian Human Rights Tribunal eventually heard evidence in regard to the complaint and ruled in favour of the Respondent.

The decision of the Human Rights Tribunal

[14] The principal issue before the Tribunal revolved around the extent of the Applicant's duty to accommodate the Respondent.

[15] In this matter the Tribunal applied the three step justification test set out in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 (the *Meiorin* case) and *British Columbia (Superintendent of Motor Vehicles v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (the *Grismer* case).

[16] The Tribunal was not convinced that the Applicant had made a reasonable effort to accommodate the Respondent, or that its employee availability policy could not be reasonably adapted to accommodate the Respondent's disability:

[38] Counsel for the respondent argued that it was essential for the respondent to have a business operation that operates safely and securely seven days a week, twenty-four hours a day. She stated that, to do this, the respondent needed full-time employees who could work five days a week and who were available for night shifts. Counsel added that the only choice left in a case such as the present was to consider the complainant as a part-time employee and allocate work to her on an availability basis.

[39] In their evidence and final arguments, the parties did not see fit to address the first two requirements of *Grismer*. We can infer from this that they acknowledged that the standard adopted by the respondent had a purpose rationally connected to the performance of the job at issue.

[40] We can also infer that the respondent adopted this standard in good faith, believing that it was necessary to ensure the operation of its business.

[…]

[43] To establish that a standard is reasonably necessary an employer must demonstrate that it is impossible to accommodate the complainant without imposing an undue hardship. Therefore the onus is on the respondent to show that it made efforts to accommodate the complainant's disability up to the point of undue hardship. (See *Alberta Dairy Pool v. Alberta (Human Rights Commission* (1990), 72 D.L.R. (4th) 417, at p. 439).

[44] The Supreme Court in *Meiorin* at paragraph 64, advises courts of law and administrative tribunals to consider various ways in which individual capabilities may be accommodated. The employer should determine whether there are different ways to perform the work while still accomplishing the employer's legitimate work-related purpose. The skills, capabilities and potential contributions of the individual complainant and others like him or her must be respected as much as possible.

[45] In this case, the standard emphasizes the need to have employees available to work five days a week and, if necessary, for night shifts. The fact that this standard excludes certain classes of persons is not discrimination if the respondent can establish that it is reasonably necessary to meet the appropriate objective and if the accommodation was incorporated in the standard. Exclusion is only

justifiable where the employer has made every possible accommodation short of undue hardship. (See *Grismer*, at paragraph 21).

[…]

[48] The use of the adjective "undue" indicates that some degree of "hardship" is acceptable; it is only the hardship that is "undue" that can excuse the employer from its duty. The respondent did not persuade me that respecting the complainant's medical limitations would require a substantial reorganization of all of the duties to the point where it would cause "undue" hardship. The respondent alleges, without persuasive evidence to support its argument, that the accommodation requested by the complainant would negatively affect its operations. No persuasive evidence supports this conclusion.

[49] On at least two occasions, the complainant met with representatives of management to express her concern about her working hours and to see how a solution could be found. What she was seeking was the opportunity to show that she could, with accommodation, perform the tasks of bus driver. She had requested, on her doctor's recommendation, to work three days a week. In response, the respondent put her in a part-time position with work being assigned to her on an availability basis. In September 2001, she indicated that her doctor had authorized her to return to work five days a week but had kept the restriction on her availability for night work. The respondent still refused to return her to her full-time status, indicating that it would not do so as long as the limitations on her working hours were not lifted. Again no evidence was given to indicate what "undue hardship" was caused to the respondent if it accepted to accommodate the needs of the complainant.

[…]

[51] It follows from the evidence that the respondent has failed to discharge the onus imposed on it to demonstrate that it was unable to accommodate the complainant's disability without undue hardship. An uncompromisingly stringent standard, as the one put forward by the respondent, may be ideal from an employer's perspective. Yet, if it is to be justified under human rights legislation, the standard must accommodate factors relating to the unique capabilities and inherent worth and dignity of every individual, up to the point of undue hardship

> [52] The respondent was aware of the complainant's disability. It was on notice that accommodation was required. It led no evidence with respect to its efforts to try to accommodate the complainant other than to treat her as a part-time employee. This was not sufficient to meet its burden.

Position of the parties

[17] The Applicant essentially reiterated the same argument it had made before the Tribunal stating that its policy of requiring 24 hours a day and seven days a week availability from its drivers with a minimum commitment of five days work per week and no restrictions on night shifts, precluded any accommodation of the Respondent's disability other than treating her as a part time employee assigned work on a job availability basis.

[18] The Applicant conceded that the applicable standard of review of the Tribunal's decision in this case was one of reasonableness and argued that the Tribunal's decision concerning accommodation was not reasonable.

[19] The Respondent, who was self-represented, argued that the decision of the Tribunal was fair and that it should be upheld. She further provided numerous cogent examples of how the Respondent could have accommodated her without affecting its business.

[20] The Respondent noted that the Toronto-Casino Rama bus routes ran for the most part during the daytime, and that she could have easily been provided with these routes. Rather than accommodating her, she stated that the Applicant preferred providing the routes to part time

employees. She also noted that she was a driver with high seniority with the Applicant (out of more than 120 full-time, part-time and occasional drivers), yet she was provided with no preference in regard to route selections and was continuously on "stand-by" in regard to work assignments.

[21] The Respondent argued that she had been hired as a full-time driver but had been reduced to part-time status by the Applicant because of her disability, thus loosing the benefit of a $10 a day bonus and being left with an "on-call" status in regard to work assignments. She was of the view that the Applicant made no effort whatsoever to accommodate her disability.

The standard of review

[22] *Dunsmuir v. New Brunswic*k, [2008] 1 S.C.R. 190 [*Dunsmui*r] at para. 62 established a two-step process for determining the standard of review: "[f]irst, 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".

[23] The Supreme Court of Canada has generally held that when a human rights tribunal deals with general questions of law, including questions of statutory interpretation, its decision on this question is to be reviewed on a standard of correctness : *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554 at p. 585; *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353; *Penzim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at pp. 590-591; *Gould v.*

Yukon Order of Pioneers, [1996] 1 S.C.R. 571 at paras. 3-4 and 46-48; *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 [*Ross*] at para. 28.

[24] However, in *Ross*, *supra* at para. 29, the Supreme Court added the following concerning fact finding by a human rights tribunal:

> That having been said, I do not think the fact-finding expertise of human rights tribunals should be restrictively interpreted, and it must be assessed against the backdrop of the particular decision the tribunal is called upon to make. Here, inquiry into the appropriate standard of review is largely governed by the fact that the administrative law issue raised calls upon this Court to consider whether the finding of discrimination by the Board of Inquiry was beyond its jurisdiction. A finding of discrimination is impregnated with facts, facts which the Board of Inquiry is in the best position to evaluate. The Board heard considerable evidence relating to the allegation of discrimination and was required to assess the credibility of the witnesses' evidence and draw inferences from the factual evidence presented to it in making a determination as to the existence of discrimination. Given the complexity of the evidentiary inferences made on the basis of the facts before the Board, it is appropriate to exercise a relative degree of deference to the finding of discrimination, in light of the Board's superior expertise in fact-finding, a conclusion supported by the existence of words importing a limited privative effect into the constituent legislation.

[25] The Federal Court of Appeal in *Chopra v. Canada (Attorney General)*, 2007 FCA 268, [2007] F.C.J. No. 1134 (QL), (2007) 283 D.L.R. (4th) 634 concluded that the standard of review of a decision of the Tribunal on questions of law will not always be correctness, rather "[t]he standard varies with the nature of the legal question in issue." (at para. 17).

[26] This was recently reiterated by the Federal Court of Appeal in *Brown v. Canada (National Capital Commission)*, 2009 FCA 273, [2009] 2 F.C.J. No. 1196 (QL), where a finding by the Tribunal on a question of mixed fact and law was found to be subject to review on the standard of reasonableness.

[27] Likewise in *Attorney-General of Canada v. Mowat*, 2009 FCA 309 at para. 50, the Federal Court of Appeal also stated that "different standards of review can apply to different questions depending on the nature of the question and the relative expertise of the tribunal in those particular matters". However, in this last case, the Federal Court of Appeal found that a standard of correctness applied to a decision of the Tribunal interpreting its constitutive legislation to determine if it had the authority to award legal costs to a successful complainant.

[28] Given the current state of the case law, a standard of review analysis is therefore required.

[29] The factors to take into account in a standard of review analysis include the presence or absence of a privative clause, the purpose of the tribunal as determined by its enabling legislation, the nature of the question at issue and the expertise of the concerned tribunal (*Dunsmuir*, *supra* at para.64, *Khosa*, *supra* at para. 54).

[30] The Act contains no privative clause, nor is there any statutory right of appeal from a decision of the Tribunal.

[31] However, the purpose of the Act is remedial and it seeks to prevent discriminatory practices. The Tribunal's specific purpose is to inquire into complaints made pursuant to the Act which are referred to it by the Canadian Human Rights Commission. In carrying out this purpose, the Tribunal may "decide all questions of law or fact necessary to determining the matter" (subsection 50(2) of the Act), and may summon and hear witnesses and compel them to testify (subsections 50(3) and (4) of the Act). Its purpose is remedial in that if, after an inquiry, it finds that the complaint is substantiated, it can make various binding orders, including orders to cease a practice found discriminatory and for compensation (subsections 53 (2) to (4) and section 57 of the Act).

[32] The dispute at issue here involves a question of law, namely the legal approach under which an employer may justify an employment standard which restricts accommodation for an employee with a disability. The legal approach applicable in such circumstances has generally been dealt with in the past by the Supreme Court of Canada as a legal issue to be determined on a standard of correctness : *Meiorin, Grismer, supra,* and *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ),* [2008] 2 S.C.R. 561.

[33] However, this legal approach also requires a factual context in order to make a proper determination. As a general rule, determinations of facts and of mixed questions of facts and law by administrative tribunals are to be reviewed on a standard of reasonableness: *Dunsmuir, supra* at para. 53, *Khosa, supra* at para. 46.

[34] Finally, the Tribunal is a specialized body whose members, pursuant to subsection 48.1(2) of the Act "must have experience, expertise and interest in, and sensitivity to, human rights".

[35] This standard of review analysis leads me to conclude in light of *Meiorin, Grismer* and *Hydro-Quebec*, *supra*, that the legal approach used by the Tribunal to decide if the Applicant justified its employment availability policy restricting the accommodation of the Respondent's disability should be reviewed on a standard of correctness.

[36] However, insofar as the legal approach to this issue was the correct one, the findings of the Tribunal in applying this approach should be reviewed on a standard of reasonableness.

[37] It is with these considerations in mind that I now proceed with the analysis of the Tribunal's decision.

Analysis of the Tribunal's decision

[38] In a nutshell, the Applicant's position before the Tribunal and this Court was that twenty-four hours a day and seven days a week availability for all its full-time employees was its policy, and that all full-time employees had to commit to work at least five days a week and for night shifts as part of this policy. The Applicant claims that there was no way to accommodate the Respondent within this policy. Consequently, the only accommodation which could be offered that complied with the policy was to provide a part-time on-call status to the Respondent.

[39] The Supreme Court of Canada has stated that an employer may justify a workplace standard by establishing on the balance of probabilities (*Meiorin, supra* at para. 54):

> (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;
>
> (2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
>
> (3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

[40] In regard to the third step of the *Meiorin* test, the following words of the Supreme Court of Canada are particularly apposite to the circumstances of the present case (*Meiorin, supra*, at para. 62 and 65):

> The employer's third and final hurdle is to demonstrate that the impugned standard is reasonably necessary for the employer to accomplish its purpose, which by this point has been demonstrated to be rationally connected to the performance of the job. The employer must establish that it cannot accommodate the claimant and others adversely affected by the standard without experiencing undue hardship. When referring to the concept of "undue hardship", it is important to recall the words of Sopinka J. who observed in *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, at p. 984, that "[t]he use of the term 'undue' infers that some hardship is acceptable; it is only 'undue' hardship that satisfies this test". <u>It may be ideal from the employer's perspective to choose a standard that is uncompromisingly stringent. Yet the standard, if it is to be justified under the human rights legislation, must accommodate factors relating to the unique capabilities and inherent worth and dignity of every individual, up to the point of undue hardship. [Emphasis added]</u>

Courts and tribunals should be sensitive to the various ways in which individual capabilities may be accommodated. Apart from individual testing to determine whether the person has the aptitude or qualification that is necessary to perform the work, the possibility that there may be different ways to perform the job while still accomplishing the employer's legitimate work-related purpose should be considered in appropriate cases. The skills, capabilities and potential contributions of the individual claimant and others like him or her must be respected as much as possible. Employers, courts and tribunals should be innovative yet practical when considering how this may best be done in particular circumstances. [Emphasis added]

Some of the important questions that may be asked in the course of the analysis include:

(a) Has the employer investigated alternative approaches that do not have a discriminatory effect, such as individual testing against a more individually sensitive standard?

(b) If alternative standards were investigated and found to be capable of fulfilling the employer's purpose, why were they not implemented?

(c) Is it necessary to have all employees meet the single standard for the employer to accomplish its legitimate purpose or could standards reflective of group or individual differences and capabilities be established?

(d) Is there a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose?

(e) Is the standard properly designed to ensure that the desired qualification is met without placing an undue burden on those to whom the standard applies?

(f) Have other parties who are obliged to assist in the search for possible accommodation fulfilled their roles? As Sopinka J. noted in *Renaud*, *supra*, at pp. 992-96, the task of determining how to accommodate individual differences may also place burdens on the employee and, if there is a collective agreement, a union.

[41] The recent Supreme Court of Canada decision in the *Hydro-Québec* case, *supra,* has not changed this approach: “The relevance of the [*Meiorin*] approach is not in issue.” (*Hydro-Québec* at para. 12). As further noted in the *Hydro-Québec* case, *supra* at para. 17: “[b]ecause of the individualized nature of the duty to accommodate and the variety of circumstances that may arise, rigid rules must be avoided. If a business can, without undue hardship, offer the employee a variable work schedule or lighten his or her duties - or even authorize staff transfers - to ensure that the employee can do his or her work, it must do so to accommodate the employee”.

[42] In this case, the Tribunal applied correctly the legal principles set out under *Meiorin, supra,* and examined the case from the perspective of whether or not the requested accommodation would cause the Applicant undue hardship. As the Tribunal noted at paragraph 48 of its reasons: “[t]he use of the adjective “undue” indicates that some degree of “hardship” is acceptable. It is only hardship that is “undue” that can excuse the employer from its duty”. I find this approach entirely compatible with both the *Meiorin* and *Hydro-Quebec* decisions of the Supreme Court of Canada.

[43] I consequently find that the Tribunal used the correct legal approach in order to decide whether or not the Applicant had justified its employment availability policy which restricted the accommodation of the Respondent’s disability.

[44] At no time did the Applicant question its employee availability policy or justify it for its continued business operations. At best, the Applicant explained its policy and why it was useful to it, but it never really proceeded to any justification. The Applicant stated that anything less than its

employee availability policy would be an undue burden on its business. The Applicant's position in this matter is clearly not one favouring accommodation.

[45] The Applicant therefore did not succeed to justify its policy or its actions before the Tribunal. The Tribunal found no cogent reason for which the Applicant could not have accommodated the Respondent. The Applicant's position that "this is its policy" is simply not a good enough response for it to justify its refusal to accommodate, to a reasonable extent, the Respondent, particularly in light of evidence from the Respondent which showed that such accommodation could have easily been provided with no or very little impact on the Applicant's business.

[46] As noted by the Tribunal at paragraph 52 of its reasons, the Appellant was aware of the disability of the Respondent and it was on notice that accommodation was required. It however led no evidence with respect to its efforts to accommodate the Respondent other than to treat her as a part-time employee. Clearly, it was reasonable for the Tribunal to find in such circumstances that the Applicant had failed to discharge its evidentiary burden.

[47] I therefore find the Tribunal's findings of facts and of questions of mixed facts and law in this case to be reasonable.

[48] For these reasons the judicial review Application shall be dismissed.

[49] The Respondent has sought costs against the Applicant should she be successful. In light of the results of this proceeding, an order for costs is appropriate in this case taking into account the principles set out by the Federal Court of Appeal in *Sherman v. Canada (Minister of National Revenue)*, [2003] F.C.J. No. 710, 2003 FCA 202, at para. 46 and in *Thibodeau v. Air Canada*, [2007] F.C.J. No. 404; 2007 FCA 115 at para. 24. I set these costs pursuant to subsections 400(1) and (4) of the *Federal Courts Rules* at a lump sum amount of $500 including disbursements and in lieu of any other costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. Costs in a lump-sum amount of $500 including disbursements are awarded to the Respondent.

"Robert M. Mainville"
Judge

SCHEDULE

Canadian Human Rights Act

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.	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.
4. A discriminatory practice, as described in sections 5 to 14.1, may be the subject of a complaint under Part III and anyone found to be engaging or to have engaged in a discriminatory practice may be made subject to an order as provided in sections 53 and 54.	4. Les actes discriminatoires prévus aux articles 5 à 14.1 peuvent faire l'objet d'une plainte en vertu de la partie III et toute personne reconnue coupable de ces actes peut faire l'objet des ordonnances prévues aux articles 53 et 54.
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 directs ou indirects :
(*a*) to refuse to employ or continue to employ any individual, or	*a*) de refuser d'employer ou de continuer d'employer un individu;
(*b*) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.	*b*) de le défavoriser en cours d'emploi.
10. It is a discriminatory practice for an employer, employee organization or employer organization	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*) to establish or pursue a policy or practice, or	*a*) de fixer ou d'appliquer des lignes de conduite;
(*b*) to enter into an agreement affecting	*b*) de conclure des ententes touchant le

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.

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.

25. In this Act,

25. Les définitions qui suivent s'appliquent à la présente loi.

"disability"
"disability" means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug;

« déficience »
« déficience » Déficience physique ou mentale, qu'elle soit présente ou passée, y compris le défigurement ainsi que la dépendance, présente ou passée, envers l'alcool ou la drogue.

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.

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.

48.1(1) There is hereby established a tribunal to be known as the Canadian Human Rights Tribunal consisting, subject to subsection (6), of a maximum of fifteen members, including a Chairperson and a Vice-chairperson, as may be appointed by the Governor in Council.

48.1 (1) Est constitué le Tribunal canadien des droits de la personne composé, sous réserve du paragraphe (6), d'au plus quinze membres, dont le président et le vice-président, nommés par le gouverneur en conseil.

(2) Persons appointed as members of the Tribunal must have experience, expertise and interest in, and sensitivity to, human rights.

(2) Les membres doivent avoir une expérience et des compétences dans le domaine des droits de la personne, y être sensibilisés et avoir un intérêt marqué pour ce domaine.

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

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

(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.

50.(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.

50. (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) In relation to a hearing of the inquiry, the member or panel may

(3) Pour la tenue de ses audiences, le membre instructeur a le pouvoir :

(*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;

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*) administer oaths;

b) de faire prêter serment;

(*c*) subject to subsections (4) and (5), receive 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;

c) de recevoir, sous réserve des paragraphes (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*) lengthen or shorten any time limit established by the rules of procedure; and

d) de modifier les délais prévus par les règles de pratique;

(*e*) decide any procedural or evidentiary question arising during the hearing.

e) de trancher toute question de procédure ou de preuve.

(4) The member or panel may not admit or accept as evidence anything that would be inadmissible in a court by reason of any

(4) Il ne peut admettre en preuve les éléments qui, dans le droit de la preuve, sont confidentiels devant les tribunaux

privilege under the law of evidence.

judiciaires.

53.(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:

53.(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*) 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

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) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or

(i) d'adopter un programme, un plan ou un arrangement visés au paragraphe 16(1),

(ii) making an application for approval and implementing a plan under section 17;

(ii) de présenter une demande d'approbation et de mettre en oeuvre un programme prévus à l'article 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;

b) d'accorder à la victime, dès que les circonstances le permettent, les droits, chances ou avantages dont l'acte l'a privée;

(*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;

c) d'indemniser la victime de la totalité, ou de la fraction des pertes de salaire 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

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*) 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.

e) d'indemniser jusqu'à concurrence de 20 000 $ la victime qui a souffert un préjudice moral.

(3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

(3) Outre les pouvoirs que lui confère le paragraphe (2), le membre instructeur peut ordonner à l'auteur d'un acte discriminatoire de payer à la victime une indemnité maximale de 20 000 $, s'il en vient à la conclusion que l'acte a été délibéré ou inconsidéré.

(4) Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

(4) Sous réserve des règles visées à l'article 48.9, le membre instructeur peut accorder des intérêts sur l'indemnité au taux et pour la période qu'il estime justifiés.

57. An order under section 53 or 54 may, for the purpose of enforcement, be made an order of the Federal Court by following the usual practice and procedure or by the Commission filing in the Registry of the Court a copy of the order certified to be a true copy.

57. Aux fins de leur exécution, les ordonnances rendues en vertu des articles 53 et 54 peuvent, selon la procédure habituelle ou dès que la Commission en dépose au greffe de la Cour fédérale une copie certifiée conforme, être assimilées aux ordonnances rendues par celle-ci.

Federal Courts Act

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 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;

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.

(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*) 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

(*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.

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 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.

Federal Courts Rules

400. (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.

(4) The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.

400. (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.

(4) La Cour peut fixer tout ou partie des dépens en se reportant au tarif B et adjuger une somme globale au lieu ou en sus des dépens taxés.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1634-07
STYLE OF CAUSE:	AZ BUS TOURS INC. v. BARBARA TANZOS
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 14, 2009
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APPEARANCES:

Ms. Natalia Chang	FOR THE APPLICANT
Ms. Barbara Tanzos	SELF-REPRESENTED RESPONDENT

SOLICITORS OF RECORD:

NATALIA CHANG LEGAL COUNSEL TAI PAN GROUP INTERNATIONAL INC. Toronto, Ontario	FOR THE APPLICANT
Nil	FOR THE RESPONDENT