T-1200-01

2003 FC 1280

Canadian Human Rights Commission (*Applicant*)

v.

Minister of National Revenue and **Scott Wignall** (*Respondents*)

and

Council of Canadians with Disabilities (*Intervener*)

Indexed as: Canada (Human Rights Commission)v. M.N.R. (F.C.)

Federal Court, O'Reilly J.--Ottawa, June 2 and November 4, 2003.

Human Rights -- Judicial review of CHRT decision denying discrimination complaint -- Deaf student receiving $3,000 government grant towards cost of sign language interpretation -- M.N.R. including $2,500 in taxable income -- Result: provincial tax credit reduced by $25 -- Application dismissed -- Whether CHRT confused test for discrimination under CHRA with that under Charter, s. 15(1) -- Higher test to be met in Charter cases -- Charter definition of "discrimination" inapplicable to human rights legislation -- CHRT erred in indicating convergence in approaches under Charter, human rights legislation -- But asked itself right question in end -- Tribunal's discussion of "comparator group" innocuous as comparisons inevitable in discrimination cases -- Conclusion not unreasonable -- Student treated same as any other grant recipient -- Disability task force advocating exemption of such grants from treatment as income.

Income tax -- Income Calculation -- Deaf student receiving $3,000 government grant towards sign language costs -- $2,500 included in taxable income -- Whether student discrimination victim under Canadian Human Rights Act, s. 5 -- M.N.R.'s ruling based on Income Tax Act, s. 56(1)(n), Interpretation Bulletin IT-75R3 -- Result: provincial tax credit reduced by $25 -- Canadian Human Rights Tribunal correctly concluded student treated same as other grant recipients, taxpayers -- Tax system policy: most revenue sources treated as income -- Tax exemption for first $500 of grant reveals intention to mitigate tax burden of grants being treated as income -- Parliament could, as recommended by federal disability task force, amend Act to entirely exempt such grants.

This was an application by the Canadian Human Rights Commission to set aside a Canadian Human Rights Tribunal decision rejecting a complaint of discrimination, contrary to section 5 of the *Canadian Human Rights Act*.

A deaf university student, respondent required sign language interpretation, which cost $12,000 per term. The University agreed to provide this but asked him to seek outside funding. He did secure a federal government special opportunities grant of $3,000 which he turned over to the University only to have the Department of National Revenue add $2,500 to his 1995 taxable income. This ruling was based on *Income Tax Act*, paragraph 56(1)(*n*) and *Interpretation Bulletin* IT-75R3. In fact, the student's income was such that he did not have to pay any taxes that year, but it did reduce his provincial tax credit by $25. The student's position was that he was a victim of discrimination based on disability. He lost his case before the Tribunal and then this judicial review application was brought.

Held, the application should be denied.

The first question was whether the Tribunal had erred in its interpretation of "discrimination" under the Act. It was argued that the Tribunal had confused the test for discrimination under Charter, subsection 15(1) with that under the *Canadian Human Rights Act*. The Charter standard is higher, as it involves the three distinct elements identified by the Supreme Court of Canada in *Law v. Canada (Minister of Employment and Immigration). Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd. et al.*, was cited as authority for the proposition that, under the Act, a complainant need only prove that a distinction has been made on a prohibited ground. The Commission later resiled from its position before the Tribunal, that the *Law* case applied herein.

The Charter definition of "discrimination" does not apply to human rights legislation. In *Law*, the Court was concerned with the constitutional standard of equality set out in the Charter and it did not suggest that the reasoning in that case extended to either federal or provincial human rights legislation. It was neither espousing a definition of discrimination for all purposes nor addressing the entire range of discriminatory acts contemplated by human rights codes. In *Andrews v. Law Society of British Columbia*, McIntyre J. explicitly distinguished between human rights codes and Charter, subsection 15(1). Nor do recent Supreme Court of Canada decisions indicate that Charter principles are to be incorporated into human rights statutes. Actually, *O'Malley* did not provide a definition of discrimination but a general definition was to be found in *Andrews*: "discrimination may be described as a distinction . . . which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society".

In fact, in deciding complaints under human rights statutes, tribunals normally do not find it necessary to resort to some elaborate definition of discrimination, merely requiring that the complainant establish having been treated differentially on a prohibited ground of discrimination. The Commission was correct in taking the position, that a complainant's burden under the CHRA is

discharged if it is established that he has been subjected to adverse treatment on a prohibited ground for which respondent is responsible.

The Tribunal erred herein in indicating that there had been a convergence in the approaches under human rights legislation and Charter, subsection 15(1). Even so, it appeared that, in the end, the Tribunal had asked itself the right question even though considering the three branches of the *Law* test. It applied the correct test in its finding that it was "unable to conclude that the Complainant has established a *prima facie* case that he has been discriminated against by Revenue Canada on account of his disability". At least in the circumstances of the case at bar, the first of the three inquiries under the *Law* test involved exactly the same analysis that decision-makers must undertake under human rights statutes. While the Tribunal did err in going on to consider the other elements of the *Law* test, that did not contaminate its overall conclusion. Its discussion of a "comparator group" was completely innocuous. It is inevitable that comparisons be drawn in discrimination cases.

Turning to the question as to whether the Tribunal's finding, that the student had not been discriminated against, was reasonable, the appropriate standard of review was reasonableness. There was nothing unreasonable about the Tribunal's conclusion, that the student had been treated no differently than any other grant recipient or, indeed, other taxpayers.

The policy of our taxation system is that most revenue sources are treated as income. The same rules apply to all. That is the theory. Appropriate measures are, however, adopted to promote certain social policies. While the student's tax credit was reduced by $25 due to receiving the grant, he was still $2,975 better off. That he was allowed a tax exemption for the first $500 of the grant indicated an intention to mitigate the tax consequences of grants being treated as income. Only a constitutional challenge to the Act could possibly yield the remedy here sought. It was, however, to be noted that such a challenge was rejected by the Tax Court of Canada in *Simser v. Canada*. The alternative would be for Parliament to amend the legislation so as to entirely exempt such grants from being treated as income. This had been advocated in the 1996 report of the Federal Task Force on Disability Issues.

statutes and regulations judicially

considered

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 15(1).

Canadian Human Rights Act, R.S.C., 1985, c. H-6 , s. 5.

Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1, s. 56(1)(*n*) (as am. by S.C. 2001, c. 17, s. 39).

cases judicially considered

applied:

Andrews v. Law Society of British Columbia, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143; (1989), 56 D.L.R. (4th) 1; [1989] 2 W.W.R. 289; 34 B.C.L.R. (2d) 273; 25 C.C.E.L. 255; 10 C.H.R.R. D/5719; 36 C.R.R. 193; 91 N.R. 255; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3; (1999), 176 D.L.R. (4th) 1; [1999] 10 W.W.R. 1; 66 B.C.L.R. (3d) 253; 127 B.C.A.C. 161; 46 C.C.E.L. (2d) 206; 244 N.R. 145; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (SCC), [1999] 3 S.C.R. 868; (1999), 181 D.L.R. (4th) 385; [2000] 1 W.W.R. 565; 131 B.C.A.C. 280; 70 B.C.L.R. (3d) 215; 47 M.V.R. (3d) 167; 249 N.R. 45; *Battlefords and District Co-operative Ltd. v. Gibbs*, 1996 CanLII 187 (SCC), [1996] 3 S.C.R. 566; (1996), 140 D.L.R. (4th) 1; [1997] 1 W.W.R. 1; 24 C.C.E.L. (2d) 167; 40 C.C.L.I. (2d) 1; 1997 CanLII 765 (ON CA), [1997] I.L.R. 1-3432; 203 N.R. 131; *Barrett v. Cominco Ltd.* (2001), 41 C.H.R.R. D/367 (B.C.); *Nixon v. Vancouver Rape Relief Society (No. 2)*(2002), 42 C.H.R.R. D/20 (B.C.); *Dame v. South Fraser Health Region* (2002), 43 C.H.R.R. D/251 (B.C.); *Simser v. Canada* (2003), 2003 TCC 366 (CanLII), 106 C.R.R. (2d) 189; [2003] 4 C.T.C. 2378; 2003 DTC 617 (T.C.C.).

distinguished:

Law v. Canada (Minister of Employment and Immigration), 1999 CanLII 675 (SCC), [1999] 1 S.C.R. 497; (1999), 170 D.L.R. (4th) 1; 43 C.C.E.L. (2d) 49; 236 N.R. 1.

considered:

Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd. et al., 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536; (1985), 52 O.R. (2d) 799; 23 D.L.R. (4th) 321; 17 Admin. L.R. 89; 9 C.C.E.L. 185; 7 C.H.R.R. D/3102; 64 N.R. 161; 12 O.A.C. 241.

referred to:

Eldridge v. British Columbia (Attorney General), 1997 CanLII 327 (SCC), [1997] 3 S.C.R. 624; (1997), 151 D.L.R. (4th) 577; [1998] 1 W.W.R. 50; 38 B.C.L.R. (3d) 1; 96 B.C.A.C. 81; 218 N.R. 161; *International Longshore & Warehouse Union (Marine Section), Local 400 v. Oster*, 2001 FCT 1115 (CanLII), [2002] 2 F.C. 430; (2001), 212 F.T.R. 111 (T.D.).

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Canada. Department of National Revenue. Taxation. *Interpretation Bulletin*, IT-75R3, October 4, 1993.

Canada. Federal Task Force on Disability Issues. *Equal Citizenship for Canadians with Disabilities: The Will to Act*. Ottawa: The Task Force, 1996.

APPLICATION for judicial review of a decision of the Canadian Human Rights Tribunal (*Wignall v. Canada (Department of National Revenue*

(Taxation)), [2001] C.H.R.C. No. 9 (QL)) dismissing a complaint of discrimination under *Canadian Human Rights Act*, section 5. Application dismissed.

appearances:

Leslie A. Reaume for applicant.

Tracy M. Telford for respondent Minister of National Revenue.

Scott Wignall on his own behalf.

William R. Holder for intervener.

solicitors of record:

Canadian Human Rights Commission, Ottawa, for applicant.

Deputy Attorney General of Canada for respondent Minister of National Revenue.

ARCH, A Legal Resource Centre for Persons with Disabilities, Toronto, for intervener.

The following are the reasons for judgment and judgment rendered in English by

[1]O'Reilly J.: The Canadian Human Rights Commission has asked me to set aside a decision of the Canadian Human Rights Tribunal [*Wignall v. Canada (Department of National revenue (Taxation)*, [2001] C.H.R.D. No. 9 (QL)]. The Tribunal had dismissed Mr. Scott Wignall's complaint of discrimination under section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (relevant enactments are set out in the attached Annex).

[2]Mr. Wignall is permanently deaf. While a student at the University of Manitoba, he required sign language interpretation to assist him with his studies. Those services are expensive--about $12,000 per term. The University agreed to provide him the services he required in keeping with the spirit of the Supreme Court of Canada's decision in *Eldridge v. British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 S.C.R. 624. However, in an effort to recover some of its costs, the University asked Mr. Wignall to try to find outside sources of funding. In due course, he obtained a special opportunities grant for students with permanent disabilities from the Government of Canada in the amount of $3,000. He passed the entire amount of his grant along to the University, as it had requested.

[3]The Department of National Revenue required Mr. Wignall to add $2,500 to his taxable income for the year 1995 to reflect the amount of the grant (exempting the first $500 of it). The Department classified the grant as income, relying on paragraph 56(1)(*n*) [as am. by S.C. 2001, c. 17, s. 39] of the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 and its own *Interpretation Bulletin* (IT-75R3). While Mr. Wignall was not liable to pay income tax that year, when he

included the extra $2500 in his income, it reduced his refundable provincial tax credit by $25.

[4]Mr. Wignall, assisted by the Commission, argued that the tax treatment of his grant, to the extent it had an adverse financial impact on him, amounted to discrimination on the basis of disability. The Tribunal dismissed his complaint. The Commission, joined by the intervener, the Council of Canadians with Disabilities, now argues that the Tribunal made errors in its analysis of Mr. Wignall's complaint. It asks me to overturn the Tribunal's decision and order a new hearing.

[5]I agree with the Commission that the Tribunal made an error. Nevertheless, that error did not affect the outcome. Further, the Tribunal's conclusion was reasonable. Therefore, I must deny the Commission's application for judicial review.

I. Issues

1. Did the Tribunal err in its analysis of the meaning of "discrimination" under the *Canadian Human Rights Act*?

2. Did the Tribunal err in its finding that the Department of National Revenue did not discriminate against Mr. Wignall?

1. Did the Tribunal err in its analysis of the meaning of "discrimination" under the *Canadian Human Rights Act*?

[6]The Commission argues that the Tribunal confused the test for discrimination under subsection 15(1) of the *Canadian Charter of Rights and Freedoms* [being Part I of the *Consittution Act, 1982*, Schedule B, *Canada Act 1982*, 1982. c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]] with the proper test under the *Canadian Human Rights Act*. The former is a harder standard to meet as it involves three distinct elements, according to the Supreme Court of Canada's decision in *Law v. Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (SCC), [1999] 1 S.C.R. 497. By contrast, the Commission contends, the test under the *Canadian Human Rights Act* merely requires a complainant to prove that the respondent made a distinction on a prohibited ground. It relies on *Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd. et al.*, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, commonly referred to as the *O'Malley* case.

[7]The Tribunal clearly discussed and applied the test from the *Law* case. Indeed, the Commission urged it to do so. The Commission now resiles from its earlier position and argues that the Tribunal made a legal error.

(a) The proper approach under human rights legislation

[8]The definition of "discrimination" under subsection 15(1) of the Charter, and outlined in the *Law* case, does not apply to human rights legislation. The Supreme Court of Canada was clearly concerned in *Law* with the meaning to be given to the constitutional standard of equality set out in the Charter. It gave no indication that its approach should apply more broadly to human rights codes or statutes, whether in provincial or federal law.

[9]In *Law*, the Supreme Court set out the "proper approach to analyzing a claim of discrimination under s. 15(1) of the *Charter*" (at paragraph 39). Iacobucci J., for a unanimous Court, outlined the three inquiries that should be made under that provision [at paragraph 39]:

First, does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics? If so, there is differential treatment for the purpose of s. 15(1). Second, was the claimant subject to differential treatment on the basis of one or more of the enumerated and analogous grounds? And third, does the differential treatment discriminate in a substantive sense, bringing into play the purpose of s. 15(1) of the *Charter*in remedying such ills as prejudice, stereotyping, and historical disadvantage?

[10]In my view, for a number of reasons, it is very clear that the Court was dealing solely with the various elements of the constitutional guarantee of equality under the Charter, and not espousing a definition of discrimination for all purposes. First, the Court was talking about discriminatory distinctions that are set out in statutes, not the full breadth of discriminatory acts that are addressed by human rights codes. Further, the Court makes repeated reference to the purpose of subsection 15(1) as a guide to its interpretation. Obviously, the purpose of subsection 15(1) is not directly relevant to the interpretation of provisions in other human rights instruments. Finally, after setting out the above three-part test, Iacobucci J. says that "[t]he second an d third inquiries are concerned with whether the differential treatment constitutes discrimination in the substantive sense intended by s. 15(1)" (at paragraph 39). Again, he is talking specifically and exclusively about constitutionally impermissible disc rimination--not discrimination in the wider sense of the term.

[11]I would also note that in the seminal equality case of *Andrews*, McIntyre J. explicitly distinguished between human rights codes and subsection 15(1) of the Charter: *Andrews v. Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143, at pages 175-176. He found that the two contexts were similar, but concluded that subsection 15(1) required a special approach.

[12]Indeed, the Supreme Court's recent decisions dealing w ith statutory human rights codes do not display any desire to incorporate the principles developed

under subsection 15(1) of the Charter into human rights statutes: *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, 1999 CanLII 646 (SCC), [1999] 3 S.C.R. 868.

[13]Turning to the meaning of "discrimination" under human rights legislation, McIntyre J. stated in *O'Malley,* above, that the burden of proving discrimination lies on the complainant. The complainant must make out a *prima facie* case, which is one that "covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the com plainant's favour in the absence of an answer from the respondent" (at page 558). While this passage is widely cited as a definition of discrimination, it is really a rule of evidence and procedure. It does not actually state what discrimination is.

[14]However, a general definition of discrimination appears in the judgment of McIntyre J. in the *Andrews* case, above. He said that "discrimination may be described as a distinction . . . which has the effect of imposing burdens, obligations, or d isadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society", at page 174. The Court affirmed this definition in *Battlefords and District Co-operative Ltd. v . Gibbs*, 1996 CanLII 187 (SCC), [1996] 3 S.C.R. 566.

[15]In fact, decision-makers under human rights statutes do not generally invoke any elaborate definition of discrimination. They accept that complainants merely have to show that they have been treated differentially on the basis of a prohibited ground of discrimination. For example, the Supreme Court of Canada held that a complainant had proved discrimination when she showed that an aerobic fitness standard applicable to all prospective firefighters had an adverse effect on female candidates because it was harder for women to meet that standard: *BCGSEU*, above, at page 39. Similarly, it found that a complainant had proved discrimination when he established that he was denied a driver's lic ense because of his physical disability: *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, above, at page 883.

[16]In these cases, decided in the same year as *Law, supra*, the Supreme Court did not rely on or even refer to the definition of discrimination it had developed for purposes of subsection 15(1). Nor did it cite any other constitutional jurisprudence. In my view, tribunals that conclude that the *Law* analysis should be confined to its constitutional setting are correct: *Barrett v. Cominco Ltd.* (2001), 41 C.H.R.R. D/367 (B.C.); *Nixon v. Vancouver Rape Relief Society (No. 2)* (2002), 42 C.H.R.R. D/20 (B.C.); and *Dame v. South Fraser Health Region* (2002), 43 C.H.R.R. D/251 (B.C.). Accordingly, I agree with the Commission that complainants will satisfy the burden of proof under

the *Canadian Human Rights Act* if they establish that they have been subjected to adverse treatment on a prohibited ground for which the respondent is responsible. They need not meet all of the requirements set out in the *Law* case.

(b) The approach taken by the Tribunal in this case

[17]The Tribunal began with the *O'Malley* approach, stating that the burden [at paragraph 27] "falls firstly on the Complainant to establish a *prima facie* case that he has been discriminated against". It then stated [at paragrap h 30] that there had been a "convergence" between that standard and the requirements of subsection 15(1) of the Charter, according to recent constitutional jurisprudence. After summarizing some of the case law, including the *Law* case, the Tribunal asked itself whether [at paragraph 35] "the application of this particular tax policy creates a distinction, on the basis of one or more personal characteristics, between the Complainant and some other person or group of persons, resulting in unequal treatment or discrimination". Alternatively, if the complainant was treated the same as others, the Tribunal asked if that treatment had [at paragraph 35] "the effect of imposing a burden upon the Complainant or withholding a benefit available to others in society". Fi nally, the Tribunal asked [at paragraph 35]: "[I]n other words, has the Complainant established a *prima facie* case of discrimination?"

[18]It is clear to me that the Tribunal erred when it said that there has been a convergence in the approaches under human rights statutes and subsection 15(1) of the Charter. As discussed above, there is no evidence of convergence.

[19]Nevertheless, based on the passages from the Tribunal's decision quoted above, it appears that the Tribunal as ked itself the right questions. It certainly began with the proper approach.

[20]The Commission argues, however, that the Tribunal got off track later in its reasons when it analyzed all three branches of the test in *Law*. For its part, the respondent suggests that even though the Tribunal may have erred when it applied the *Law* case, it still found that Mr. Wignall had failed to establish discrimination in the relevant sense of the term. Therefore, its error was harmless. The respondent notes that the Tribunal stated that it was [at paragraph 54] "unable to conclude that the Complainant has established a *prima facie* case that he has been discriminated against by Revenue Canada on account of his disability". In other words, in the end, the Tribu nal applied the correct test.

[21]In my view, when the Tribunal embarked on the first of the three inquiries under the *Law* test, it engaged in exactly the same analysis that decision-makers must undertake under human rights statutes. The Tribunal asked whether the respondent's tax treatment of Mr. Wignall's grant drew a formal distinction between him and others on the basis of a personal characteristic, resulting in unequal treatment. This is no different, at least in the circumstances of thi s

case, from determining whether the respondent imposed a burden on the complainant, not demanded of others, on a prohibited ground (to paraphrase McIntyre J.'s definition of discrimination in *Andrews* , *supra*).

[22]True, the Tribunal did go on to consider the other elements of the *Law* test. It was wrong to do so, as explained above. However, I see nothing in the Tribunal's reasons indicating that its analysis in those areas contaminated its overall conclusion. The Co mmission argued that the Tribunal's discussion of a "comparator group", which derives from jurisprudence under subsection 15(1) of the Charter, was inappropriate and affected the Tribunal's conclusion. In my view, this discussion was completely innocuous. A court or tribunal cannot decide whether a person has been discriminated against without making comparisons to the treatment of other persons. Comparisons are inevitable.

[23]Therefore, while the Tribunal made an error when it analysed Mr. Wignall's complaint according to the full terms of the *Law* decision, it did address the essential legal question that arose in the case: whether the respondent had discriminated against Mr. Wignall by imposing on him a burden, in the form of a financial penalty, because of his disability. The Tribunal said no. The next issue, then, is whether that conclusion was reasonable.

2. Did the Tribunal err in its finding that the Department of National Revenue did not discriminate against Mr. Wignall?

[24]Because this issue involves the application of facts to a legal test, the standard of review of the Tribunal's decision is reasonableness. In other words, I may only intervene if I find that its conclusion was unreasonable: *International Longshore & Warehouse Union (Marine Section), Local 400 v. Oster* , 2001 FCT 1115 (CanLII), [2002] 2 F.C. 430 (T.D.).

[25]The Tribunal held that the respondent taxed Mr. Wignall's grant in the same way as it would have taxed any other revenue from any source. Gran ts are given to students for various reasons--financial need, achievement, background, age, etc.--and all are taxed in the same way. Mr. Wignall was not treated differently from other grant recipients or, indeed, other taxpayers. Further, the tax consequence s flowing from the grant had nothing to do with his disability. The same conclusion was reached by the Tax Court of Canada in *Simser v. Canada* (2003), 2003 TCC 366 (CanLII), 106 C.R.R. (2d) 189 (T.C.C.). I see nothing unreasonable about the Tribunal's conclusions on these points .

[26]The Tribunal also acknowledged that the ultimate effect of the respondent's tax treatment of the grant--a grant awarded on the basis of physical disability--was a financial penalty to Mr. Wignall. In other words, Mr. Wignall paid a price that others did not have to pay and the only reason he had to pay it was because he is deaf. Does this mean that the respondent discriminated against

him? The Tribunal said no, and I cannot find that its conclusion was unreasonable.

[27]In general terms, our tax system is based on the idea that most sources of revenue are treated as income. In principle, all taxpayers are treated the same in the sense that the same rules apply to everyone. The practical consequence of this is that the spending power of taxpayers equals the amount of their income, less the amount of tax they owe. In addition, some measures designed to provide tax relief, or advance particular social policies, often form part of the overall tax calculation and take the taxpayer's income into account in order to ensure that the benefit goes to those who are most in need of it. That was the situation here: Mr. Wignall's tax credit was reduced by $25 as a result of the grant he had received. Because of the tax consequences of the g rant, he was really left with only $2,975 to spend on sign language interpretation, not the full $3,000 of the grant.

[28]But, to this point, I fail to see an adverse financial consequence to Mr. Wignall. He was still $2,975 ahead of where he was before receiving the grant. It seems to me that the financial cost to Mr. Wignall was a product of the University of Manitoba's request that he turn over the full amount of his grant. In effect, Mr. Wignall ended up paying the University $25 more than he had actually been given to spend on sign language interpretation. To its credit, of course, the University had voluntarily provided the services Mr. Wignall required and was probably unaware of the tax treatment of the grant.

[29]I would also note, in support of the conclusion that the respondent did not discriminate against Mr. Wignall, that he had been allowed a tax exemption for the first $500 of the grant. Presumably, that margin of forgiveness was motivated, at least in part, by a desire to alleviate the tax consequences of treating grants as income. This type of grant now amounts to $5,000 of which $3,000 is exempted from taxation.

[30]Finally, Mr. Wignall's complaint was bas ed on the respondent's conduct when it characterized his grant as income. He did not mount a direct attack on paragraph 56(1)(*n*) of the *Income Tax Act*, which specifically requires that scholarships, fellowships and bursaries be included in the calculation of a taxpayer's income. In my view, the respondent's conduct resulted from a reasonable interpretation of that provision. Accordingly, only a constitutional challenge to the Act could yield the remedy Mr. Wignall sought. Such a challenge failed in *Simser* , above. Alternatively, of course, the Act could be amended to exempt completely these kinds of grants from income, as recommended by the Federal Task Force on Disability Issues in its report: *Equal Citizenship for Canadians with Disabilities* (1996).

[31]In conclusion, there is no doubt that the Tribunal carefully considered the evidence before it, weighed the relevant factors, and arrived at a reasonable conclusion. I find no basis on which to intervene in its decision.

JUDGMENT

The Court's judgment is that:

1. The application for judicial review is dismissed with costs to the respondent.

Annex

Canadian Human Rights Act, R.S.C., c. H-6

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(*a*) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(*b*) to differentiate adversely in relation to any individual,

on a prohibited ground of discrimination.

Income Tax Act, R.S.C., 1985, (5th Supp.), c. 1

56.(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

. . .

(*n*) the amount, if any, by which

(i) the total of all amounts (other than amounts described in paragraph (*q*), amounts received in the course of business, and amounts received in respect of, in the course of or by virtue of an office or employment) received by the taxpayer in the year, each of which is an amount received by the taxpayer as or on account of a scholarship, fellowship or bursary, or a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer, other than a prescribed prize,

exceeds

(ii) the taxpayer's scholarship exemption for the year computed under subsection (3);

Canadian Charter of Rights and Freedoms, being Part 1 of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.