## Case Law – Race, Colour, Ethnic Origin

## Example #1
## Abouchar v. Metropolitan Toronto School Board et al.

**Board of Inquiry Decisions - March 27, 1998; April 23, 1999; May 11, 1999**

**OHRC Counsel**. Catherine Osborne

**Key words:** Race; Ethnic Origin; Place of Origin; Remedy; Costs

In March 27, 1998 a Board of Inquiry found that the complainant, a francophone of Lebanese origin who emigrated to Canada from Egypt, had been subject to discrimination in two competitions for the position of Assistant Superintendent of Programs for the new French language public school board, le conseil des ecoles francaises de la communaute urbaine de Toronto ("CEFCUT"). The Board of Inquiry found that the first competition, held by Metropolitan Toronto School Board ("Metro Board") was tainted by the consideration of the complainant's prior human rights complaint, and that the second competition, conducted by CEFCUT, was tainted by consideration of the complainant's non franco-Ontarian heritage. In the first competition, the Board found that the complainant should have been appointed to the position, whereas in the second competition, the Board found that the selection of another candidate was appropriate, notwithstanding the failure to treat the complainant's application in a non-discriminatory manner.

The hearing reconvened to decide remedy issues and a further decision was released on April 23, 1999. The Board ordered Metro Board to reimburse the complainant for the differential in wages between the position he had competed for, and what he earned for one year after the competition, at which time the complainant accepted a position of Superintendent with the Ottawa-Carleton school board. The complainant was also awarded reasonable relocation expenses, as it was foreseeable that the complainant would seek comparable employment in Ottawa. The Board declined to order damages for the cost of maintaining two residences, as it was a personal decision for the complainant not to relocate his family to Ottawa.

Each Respondent was ordered to pay the complainant $6000 in general damages. In addition, damages for mental anguish of $8000 were ordered against Metro Board and damages of $10,000 were ordered to be paid by CEFCUT. Interest was awarded on the damages. CEFCUT was ordered to provide a written statement to the complainant acknowledging that it had infringed his rights and undertaking to comply with the orders of the Board of Inquiry and to publish a notice to that effect in its internal newsletter for senior staff. Both respondents were ordered to provide notice to the complainant of all vacancies for management positions above the level of principal, for a period of one year. The respondents were also ordered to post the Board of Inquiry decision in their administrative offices, to post a summary of the decision in the staff room of all schools in the Toronto area, and to publish a summary of the decision in their newsletter for senior staff. CEFCUT was also ordered to develop and file with the Commission recruitment policies to ensure that the profile of its senior staff reflected the diversity of its school communities and to develop and implement a policy acknowledging reprisal protection under the Human Rights Code.

On May 11, 1999 the Board of Inquiry released a further decision denying costs to the Respondent CEFCUT. Metro Board did not seek costs against the Commission. Although CEFCUT spent almost $1,000,000 in legal costs, the Board found it did not suffer undue hardship and that in any event, some of the costs claimed were unrecoverable. The Board of Inquiry held that raising the allegation of constructive discrimination which was dismissed at the end of the Commission's case, did not constitute "undue hardship" as the evidence relating to this allegation took approximately two and a half days out of a lengthy hearing, and that all parties contributed to the length and cost of the proceedings. The Board of Inquiry reasoned that the allegations that the complainant had been discriminated against in the competitions because of his race, place of origin, ethnic origin, association, and reprisal, were overlapping as they amounted to an allegation that the competition was tainted by discrimination. Although only the allegation of discrimination on the basis of place of origin was

upheld, the Board of Inquiry found that none of the allegations that were dismissed were trivial, frivolous or vexatious.

## Example #2

# Mike Naraine v. Ford Motor Company of Canada Ltd., et al.

Board Decisions - March 11, 1997; December 9, 1996; July 25 1996

**Key Words:** Race; Colour; Place of Origin; Ethnic Origin; Racism; Poisoned Work Environment; Termination of Employment; Delay; Expert Testimony; Racial Slurs; Damages; Costs

The Board's July 1996 decision in Naraine v. Ford Motor Co. Ltd. represented a significant step forward for cases involving race discrimination. The complainant, an East Indian man originally from Guyana, worked for the Ford Motor Company in Windsor for over nine years. He alleged that, during that time, his working environment was poisoned by racist graffiti and by racist verbal comments that were directed at him and, in some instances, directed at other visible minority employees. The complainant also alleged that he was given inferior work assignments and training, and that he was subject to a higher level of scrutiny and discipline than were other employees. In the later three years of his employment, Mr. Naraine was subject to progressive discipline, ultimately resulting in his termination for an alleged altercation with a co-worker. The Commission put forward the arguments that both Mr. Naraine's behaviour and his treatment by the company was, in part, a product of the poisoned environment.

The Board held that name-calling and graffiti should be recognized for their inherent destructive effect on racial equality in the workplace. The Board concluded that the respondent failed to take seriously or investigate the allegations of unfair treatment that were raised by the respondent. It further determined that there was sufficient evidence of direct supervisory involvement in, and knowledge of, the poisoned work environment to establish corporate liability. The Board held that a causal connection between the poisoned environment and the complainant's termination was established. However, the Board found that this was not an appropriate case for any findings of personal liability given the systemic nature of the racial discrimination.

The issue of damages was decided in the Board's December 1996 decision. Although rarely awarded at Boards of Inquiry, the board awarded reinstatement, in accordance with Mr. Naraine's wishes. Additionally, the board ordered the respondent to pay special damages, including seniority, pension benefits, employment benefits and vacation entitlement to Mr. Naraine for the amount that Mr. Naraine would have earned in his position from the date of discharge to the date he assumed employment with another company. The respondent was also ordered to pay $30,000 in general damages: $20,000 as compensation for the "intrinsic value of the infringement of his rights and as compensation for the experience of victimization", and $10,000 for "mental anguish caused by the respondent's recklessness in contravening the Code". The board also awarded pre-judgement interest. . The respondents have filed a notice of appeal of the Board's decisions to date.

The Respondents' cost application was decided in March 1997. The Board denied the application and held that this was not a case which meets the statutory requirements regarding cost orders under the Code.

## Example #3

## Segula v. Ferrante – Ontario Board of Inquiry, 1995.

**Key words:** ethnic origin, place of origin

In this case, it was found that denigrating comments about a person’s accent amount to direct discrimination on the basis of place of origin and ethnic origin.

## Example # 4

## Wong v. Ottawa Board of Education et al.

**Divisional Court Decision - November 25, 1996**

**Key Words:** Race; Ethnic Origin; Age

The Complainant, of Chinese descent, was a teacher for over two decades at Ottawa Technical High School. In 1989, after a "balance of staff" determination was made, the Complainant was placed on a "surplus to the needs of the school list" of teachers and transferred the next year to another school. The "balance of staff" decision took into account factors such as seniority, age, male-female ratio, teaching experience, specialization, and availability for extra-curricular activities. Wong's participation in extra-curricular activities associated with his curriculum was regarded by the Respondents as less important than what they considered to be more social extra-curricular activities. The Complainant alleged that in the context of being so treated, he was discriminated against and harassed on the basis of his race, ethnic origin, and age.

The Board found, in its 1994 decision, that the Respondents were making an "untenable" argument regarding their position that the Complainant was not participating in extra-curricular activities. The Board also made a finding of adverse effect discrimination, taking into account the fact that the Chinese ancestry of the Complainant played a role in his inhibition with respect to socializing and his preference for participating in extra-curricular activities associated with his curriculum. Culturally-judgmental criteria, such as eagerness to socialize and network, were found to have been inappropriately applied to the Complainant. Furthermore, the Board found that culturally-judgmental criteria were inappropriately used in determining that the Complainant's extra-curricular activities were not as valuable as the extra-curricular activities of other teachers.

The Respondents appealed this decision to the Divisional Court. The Respondents challenged, among other things, board's findings with respect to constructive and direct discrimination. In November 1996, the Divisional Court dismissed the Respondent's appeal with costs. The Court, in upholding the decision of the Board of Inquiry, held that although the evidence at the Board of Inquiry was entirely circumstantial, there was sufficient evidence to support the Board's finding of direct discrimination.

## Example #5

## Collins v. The Etobicoke Board of Education et al.

**Board Settlement - July 3, 1996**

**Key Words:** Race, Ethnic, Employment; Reprisal

The complainant Siu Collins, a school teacher with the respondent Board, contacted the Commission in January 1991 to complain about the treatment she was receiving at her school, West Humber Collegiate Institute. Her allegations included harassment and differential treatment on the basis of race and ethnic origin. The respondent Board was contacted in an attempt to bring about an early resolution of the verbal complaint, but this failed. Before the complainant was able to file a formal complaint, the Etobicoke Board had done its own internal investigation, and had determined that the complainant would have to be transferred out of West Humber because there was no possibility of her working harmoniously with the

other personnel in her department. The complainant only reluctantly agreed to this transfer. The day after she agreed to the transfer, she signed her formal complaint with Commission. The complaint included reprisal as one of the grounds. The personal respondent made it clear that he considered her verbal complaint to the Commission to be inappropriate and that he would be imposing a protocol on her because she had filed a complaint. The settlement agreement was as follows: the corporate respondent agreed to pay to the complainant $5,000.00 in general damages, and as well, agreed that the complainant take a leave of absence of one year. The corporate respondent agreed to remove certain reports and letters from the office and school re the complainant.

## Example #6

## Maxwell Nelson v. Durham Board of Education and Don Peel

**Board of Inquiry - August 28, 1998**

**Key Words:** race, colour

The complainant worked for the Durham Board of Education as a teacher and vice-principal. He was the first black vice-principal in the school board. He had aspirations to become a principal, but was unsuccessful in his attempts. At the time of Mr. Nelson’s attempts to become a principal, there were no black principals.

Mr. Nelson first worked at the Treatment Centre Schools. These facilities were originally associated with the Whitby Psychiatric Hospital, and were administered by the Ministry of Health. In 1975, the Treatment Centre Schools were transferred to the Durham Board of Education. Nelson alleged discriminatory treatment in his experiences between 1977 and 1989, when he resigned from the school board.

The board of inquiry found direct discrimination in the following:

- Delay in Nelson’s reclassification from vice principal "B" to vice principal "A"
- Delay in the granting of Nelson’s "release time" - time away from teaching duties, assigned to administrators to permit them to carry out administrative duties
- Treatment of Nelson in his unsuccessful applications for promotion (to principal of the Treatment Centre Schools)
- Treatment of Nelson in his unsuccessful applications for transfer (to position of vice principal at other schools of the Durham Board)
- Following Nelson’s transfer to a different school (after years of unsuccessful attempts to transfer), the differential allocation of release time; Nelson was given less than others were.

With respect to the issues of systemic discrimination, the board of inquiry found that the following elements:

- Informality of guidelines (up to 1987)
- Inconsistent application of criteria for advancement
- Subjective decisions with respect to approval for taking courses required for promotion
- Lack of clear or written policies with respect to promotion, rotation (transfer), and release time created the climate in which characteristics such as race and colour became factors in decisions made by the school board.