

HUMAN RIGHTS

Judicial review of Canadian Human Rights Commission (CHRC) decision in which CHRC decided not to deal with applicant's complaint on grounds not within CHRC's jurisdiction — Applicant, Russian-born Canadian citizen living in Toronto, Ontario; respondent, business with head office in Burnaby, British Columbia, acting as retailer, "e-tailer" of products, services primarily within consumer electronics category — Applicant visiting respondent's retail store in Toronto, inquiring about purchasing electronic product but product not carrying manufacturer's warranty; applicant thus asking respondent for discount — After contacting respondent's customer service, which operates from Burnaby head office, applicant informed no further discount would be offered — Applicant further contacting customer service, raising concerns about this decision, even alleging discrimination, but respondent not changing its decision — Applicant filing complaint with British Columbia Human Rights Tribunal, (BCHRT) which advised applicant that not accepting complaint for filing, finding that events applicant describing showed no connection to protected personal characteristics; that BCHRT has previously held that internet commerce constituting telecommunications-type business which brings such complaint under federal jurisdiction; that, even if matter not under federal jurisdiction, would not be matter for BCHRT if sale or communication took place in Ontario — BCHRT stating that, since applicant's allegations not establishing that event in question took place in British Columbia, BCHRT not having jurisdiction over allegations — Applicant then filing complaint with CHRC — CHRC explaining cannot deal with complaint if respondent not falling under federal jurisdiction — Concluding that respondent, as retail store operator, falling under Property and Civil Rights pursuant to *Constitution Act, 1867*, s. 92(13), that its activities entirely within purview of provincial jurisdiction, not integral to operations or functioning of federal undertaking — Whether CHRC correct in concluding not having jurisdiction over respondent with respect to applicant's human rights complaint — CHRC declining to deal with applicant's complaint pursuant to *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s. 41(1) — CHRC correctly focusing upon respondent's regular day-to-day activities in assessing whether or not it falls within federal jurisdiction; CHRT's failure to note that *Constitution Act, 1867*, s. 92(13) including words "in the Province" not suggesting misunderstanding of scope of that provincial head of power — Furthermore, federal power to regulate trade, commerce not inconsistent with provincial jurisdiction over matters of private contract between parties — Decision demonstrating that CHRC considering whether nature of respondent's regular day-to-day activities being such that it can be characterized as federal undertaking, service or business; concluding that each sale between respondent, its customers constituting private contract, thus subject to provincial jurisdiction — CHRC also considering effect of sales stemming from Internet transactions, concluding that this would not change jurisdictional analysis — Impact of "e-commerce" aspect of respondent's business considered — Respondent's business in part "bricks and mortar" retailer — Fact respondent using its website as sales tool, or in present case used email as communications tool, could not be determinative of jurisdictional question — While communications between customer, respondent may take place across interprovincial boundaries, effect of resulting transaction is respondent providing customer with product at particular location in particular province — Fact product may have originated from another province is incidental to transaction between respondent, customer — Therefore, CHRC correct in constitutional analysis, leading to conclusion that respondent not falling within federal jurisdiction; that applicant's human rights complaint not within CHRC's jurisdiction — Applicant's argument BCHRT's jurisdictional conclusion, fact respondent not challenging conclusion before BCHRT giving rise to issue estoppel rejected — Clear that preconditions to operation of issue estoppel not applying in present case — BCHRT's decision in question could not be regarded as having decided question whether CHRC having jurisdiction over applicant's complaint — In conclusion, CHRC correct in concluding not having jurisdiction over applicant's human rights complaint — Application dismissed.

PAPOUCHINE V. BEST BUY CANADA (T-1857-17, 2018 FC 1236, Southcott J., judgment dated December 10, 2018, 15 pp.)