

***Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14
(Note prepared on July 12, 2006)**

General

Brief commentary: *Tranchemontagne* holds that human rights codes are part of the general law. Tribunals that have a jurisdiction to consider questions of law must consider the general law if it is relevant to a case before them. Therefore, tribunals must consider human rights codes if they are relevant to a case before them.

Human Rights Code, R.S.O. 1990, c. H.19 -- [link](#)

Tranchemontagne v. Ontario (Director, Disability Support Program), 2006 SCC 14 (the key case on the jurisdiction of tribunals to consider issues arising under human rights codes) -- [link](#)

Nova Scotia (Workers' Compensation Board) v. Martin, [2003] 2 S.C.R. 504 (the leading case, adopted in *Tranchemontagne*, on the "question of law" test for determining whether tribunals can consider constitutional issues [and now *Human Rights Code* issues]) - [link](#)

"Implied" or "Necessarily Incidental" Powers of Tribunals

Brief commentary: *Tranchemontagne* holds that whether or not a tribunal has the jurisdiction to decline to deal with a case raising a human rights code issue and refer it elsewhere depends on whether it has a statutory jurisdiction to do that. Query whether in some statutory regimes a tribunal that does not have an express power to decline a case nevertheless has the implicit or necessarily incidental power to do that.

Global Securities Corp. v. British Columbia (Securities Commission), [2000] 1 S.C.R. 494 -- [link](#)

Canada (Human Rights Commission) v. Canadian Liberty Net, [1998] 1 S.C.R. 626 -- [link](#)

See discussion in at pp. 3-4 of my paper, "Regulatory Cooperation: Some Constitutional Considerations" -- [link](#)

Note that the S.C.C. in *Tranchemontagne* ([link](#)) seemed to adopt a literal approach; it made no attempt to find an incidental power of the SBT to decline to deal with a case and direct it elsewhere.

Tribunals as "Masters of Their Own Procedures"

Brief commentary: a tribunal, as master of its own procedure, may be able to fashion standard procedures in order to ensure that human rights and constitutional claims are determined effectively. For example, it may be possible to require that the allegations and arguments behind such claims be detailed in a document within a certain period of time before hearing, with advance filing of evidence. This may act as a practical screen to truly frivolous claims - in effect, claimants would be required to advance only those claims that have evidence and arguments in support of them.

Knight v. Indian Head School Division No. 19, [1990] 1 S.C.R. 653 -- [link](#)

Meaning of discrimination under the Ontario Human Rights Code

Brief commentary: The current law in Ontario is that the test for "discrimination" under the *Human Rights Code* is governed by the *Law* test.

Ontario Secondary School Teachers' Federation v. Upper Canada District School Board (see discussion at paras. 18 and following on the applicability of the *Law* test to the meaning of "discrimination" under the *Human Rights Code*; note that the case is under appeal to the Ontario Court of Appeal) -- [link](#)

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497 (the test that is now to be used to determine "discrimination" under the *Human Rights Code*, in light of *OSSTF v. Upper Canada*) -- [link](#)

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 (good summary of the principles for determining "discrimination" under human rights codes - before *OSSTF v. Upper Canada* made the *Law* test applicable in Ontario to cases arising under the *Ontario Human Rights Code*; this will again become relevant if *OSSTF v. Upper Canada* is overturned on appeal) -- [link](#)

Possible exemptions under the Code

Brief commentary: Section 1 is the primary anti-discriminatory provision, but be sure to examine all of the provisions in Part I of the *Code*. There are particular provisions that amplify, qualify or define the scope of the *Code*'s anti-discrimination protections.

O.H.R.C. v. Ontario (1994) 19 O.R. (3d) (C.A.) (leading decision on the exemption under s. 14 of the Ontario *Human Rights Code* for "special programs") -- [link](#)

The latest on standard of review of tribunal decisions that raise constitutional issues

Brief commentary: Orders of tribunals that offend the constitution are reviewable on the basis of a correctness standard. Note that there is case law such as *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 ([link](#)) that state that deference is owed to factual findings of human rights tribunals and other tribunals, even where constitutional law issues are concerned.

Multani v. Commission Scolaire Marguerite-Bourgeoys, 2006 SCC 6 -- [link](#)