



VIA FAX: 613-992-1920

January 12, 2009

The Honourable Jason Kenney  
Minister of Citizenship, Immigration and Multiculturalism  
House of Commons  
Ottawa, Ontario K1A 0A6

Dear Minister Kenney:

On behalf of the Canadian Labour Congress which represents over 3 million unionized workers in Canada, I am writing in response to your recent public statement attached (<http://news.gc.ca/web/article-eng.do?m=/index&nid=427779>) concerning the December 2008 ruling of the B.C. Human Rights Tribunal (HRT) that investigated the complaint of discriminatory treatment of more than thirty temporary foreign workers involved in the RAV line project.

In your statement you erroneously state, "...these workers were being compensated at the same level as Canadian workers..."

The Tribunal's ruling, which is publicly available, goes to considerable length documenting their human rights investigation.

After twenty-four days of hearings spread over eight months, the B.C. HRT concluded these workers faced discriminatory and adverse treatment from members of the European comparator group in terms of salary, accommodation, meals and expenses.

The 177 page ruling is quite detailed. Here are just a few important paragraphs of findings from the HRT ruling that contradict your public statement:

*[301] Although the parties calculated and compared the salaries paid to employees in the Complainant and comparator groups somewhat differently, the evidence is clear and undisputed that members of the comparator group were paid more than members of the Complainant Group.*



[302] In terms of base salary, the majority of the Costa Ricans were paid a net salary of \$20,000 or \$20,500 US. The only exceptions are German Dario Caro Fonseca, who is from Columbia but lives in Costa Rica, and Elian Duran Aguilar, who were each paid more, at \$21,500 US net. The Columbians and Ecuadorians were paid base net salaries of \$21,000 to \$27,225 US net. Depending on the applicable exchange rate, these base net salaries are the equivalent of between about \$23,000 and \$31,000 Canadian.

[303] Still speaking in terms of base salary, the vast majority of the members of the comparator group were paid in net Euros, plus bonuses. The base pay ranged from €33,600 to €39,000. Again depending on the applicable exchange rate, these base net salaries are the equivalent of between about \$56,000 and \$62,000 Canadian.

[304] The Europeans were therefore paid on average roughly twice the base net salary of the Latin Americans.

[451] Nevertheless, Mr. Cortes Huertas and Mr. Sanchez Mahecha were paid far less than Europeans who had worked for SELI for much shorter periods of time, and on fewer projects. Mr. Cortes Huertas' Letter of Assignment indicated he was to be paid \$24,625 US net; Mr. Sanchez Mahecha, \$26,575 US net. Mr. Cortes Huertas' gross income in 2007 was \$58,452.08; Mr. Sanchez Mahecha's was \$60,910.38, the most of any Latin American. By way of contrast, Wilson De Carvalho, the comparator group Shift Foreman, who had worked with SELI on four projects, starting in 2001, had a gross income of \$93,257.60 in 2007.

[453] Mr. Sanchez Mahecha's and Mr. Cortes Huertas' salaries on the Canada Line project were not consistent with what the Respondents said constituted SELI's international compensation practices. Having worked in Europe alongside Europeans, they should have received raises bringing them up to a European rate and, having done so, should have taken those European salaries with them as they moved elsewhere. It is clear that did not happen. No witness for the Respondents was able to explain why the salaries of workers such as Mr. Cortes Huertas and Mr. Sanchez Mahecha on the Canada Line project did not reflect SELI's alleged practices. Nor were any documents introduced by the Respondents which would show the salaries paid to Mr. Cortes and Mr. Sanchez, or any other Latin American worker on their previous projects, documents which would likely have assisted us in determining the veracity of the Respondents' claims about their compensation practices.

[454] Immigration documents also show that other long-term Ecuadorian and Columbian workers had worked on a number of projects, including, in some cases, ones in Europe and Hong Kong, but their rates of pay on the Canada Line project did not reflect the high rates of pay working on those projects ought to have produced, according to SELI's alleged international compensation practices.

[470] The complaint before us is not that the Latin Americans were discriminated against by being paid less than the Canadian market rate. But evidence about the Respondents' efforts to establish the Canadian market rate is relevant, as they led

*evidence about those efforts, and submitted that the determination of the local market rate is an integral part of SELI's international compensation practices. Specifically, they argued that the compensation paid to members of SELI's "mobile internationally-based labour force" on a given project is a function of three elements, one of which is "the labour market rates for roughly comparable work at the location of the project for which the compensation package is being developed ('Next Project')", with employees being offered compensation "at least equivalent to the applicable labour market rates at the location of the Next Project".*

*[471] Thus, the Respondents have squarely put in issue their efforts to determine the Canadian market rate, and the extent of those efforts goes to whether SELI's international compensation practices constitute a BFOR to justify the prima facie discriminatory compensation paid to the Latin American workers on the Canada Line project.*

*[474] That the Canadian market rates the Respondents arrived at were likely not accurate is reflected in the fact that they did not receive a single résumé in response to the newspaper ads they placed in December 2005 and February 2006. It is also noteworthy that they were required to pay Mr. Zhang \$28 an hour as a maintenance electrician, work that Mr. Ciamei acknowledged was less complicated than the work of a TBM Electrician which they had advertised at \$18-21 an hour.*

*[475] On all of the evidence, we conclude that the Respondents did not conduct any reasonable assessment of Canadian market rates for specialized tunnelling work. Their evidence about the steps they took to determine Canadian market rates was very limited, and did not establish that they conducted a reasonably diligent assessment of those rates.*

Minister, your statement and its bold presence on the Government of Canada news website are misinformed and we believe, warrant an investigation by the Ethics Commissioner for the House of Commons.

As you know, these specialized construction workers came to Canada under the Temporary Foreign Worker Program which falls under the aegis of the Immigration and Refugee Protection Act.

It is your job as Minister to ensure that individuals entering Canada under IRPA and its temporary labour market programs can rely on fair and just treatment if they enter a Canadian workplace. The B.C. HRT investigation and ruling has found the specialized temporary foreign construction workers salary, accommodation, meals and expenses were arrived at with "characteristics of direct and systemic discrimination."

Your public statement relies on incorrect information of the case and sends a message that indicates an absence of impartiality. In addition, we understand this case is being appealed to the B.C. Supreme Court by legal counsel representing the employer.

In light of this judicial context, we do not believe it is appropriate or in keeping with the parliamentary ethical standards for a Minister to make a public comment, much less the biased and inaccurate comment you have made on this case.

By copy of this letter we are requesting the Ethics Commissioner investigate your comments on this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Yussuff', written in a cursive style.

Hassan Yussuff  
Secretary-Treasurer

cc: Gilles Duceppe, Leader of the Bloc Quebecois Party  
Michael Ignatieff, Leader Liberal Party of Canada  
Jack Layton, Leader of the New Democratic Party