

2002 Decisions — Daniels

1. This is a complaint by Brenda Daniels against the Annapolis Valley Regional School Board that she was discriminated against on the basis of sex contrary to section 5 (1) (d) (m) of the Nova Scotia Human Rights Act, R.S.N.S. 1989, c. 214. She applied for a position of Maintenance Foreman (Western Region) and was not interviewed. The School Board's position is that the failure to interview her was not motivated by her sex, but because she lacked the qualifications for the position.

2. The Human Rights Commission called Ms. Daniels as a witness. The School Board presented evidence from Arthur Marshall, the Board's Coordinator of Employee and Labour Relations; David Floyd, the Board's Coordinator of Property Services; and Wayne MacDonald, the Board's Director of Human Resources. Ms. Daniels was advised of her right to call and examine witnesses and to present argument, but she did not do so.

3. Ms. Daniels responded to a newspaper advertisement for the Maintenance Foreman position. The job posting, which indicated that the Employer was "An Equal Opportunity Employer" noted the following:

The successful candidate must have a journeymen's license in a trade and have general knowledge of building systems and custodial procedures. The individual must also have strong communication skills and be capable of organizing and supervising a team of workers and contractors to maintain and upgrade facilities. A valid driver's license is required. Computer knowledge would be an asset.

4. The Complainant submitted a cover letter and resume on July 20, 1999. The competition closed on July 21. On September 9, 1999, she received a letter from Wayne MacDonald indicating that her application had been screened out and that she would not be granted an interview. She contacted Mr. MacDonald to ask why she was not considered, and was told that she did not have the required supervisory skills or experience.

5. Ms. Daniels is forty-seven (47) years old. Since November 1999 she has held the position of Industrial Training and Certification Officer for the Apprenticeship Training Division of the Department of Education. She is currently responsible for supervising all fifty-three (53) trades in Kings County. She has been a journeyed plumber since 1993. She was the first and remains the only female journeyed plumber in the province. She received a diploma in plumbing from Kingstec in 1987 and obtained her ticket through the apprenticeship program. She has been involved in Women in Trades and Technology (WITT), a national organization, since 1993.

6. The Complainant tried unsuccessfully to find work in her trade in her home area to complete her apprenticeship. She commenced employment at the Halifax International Airport as a plumber in 1991. She described her work as involving all aspects of plumbing, as well as maintenance. Her duties included heating and ventilation systems, fire protection, baggage belts, walkways and heating systems. She left the Airport in March 1997, and took a year off. She started looking for another job in April 1998.

7. She testified that she was excited to see the ad in the paper for the Maintenance Foreman position and felt herself more than qualified for the position. She noted that the School Board had indicated in the advertisement that it was an "equal opportunity employer". That designation indicated to her that the Employer would be open to hiring a woman in a non-traditional position

and that it would be a good place to work. She knew that she would be working in a shop of men, and felt that would not present a problem. She felt it would be good for the children to see a woman getting respect from male workers in that environment. She felt there was a lot of potential in the job.

8. Her application for the position consisted of a cover letter and attached resume. The cover letter stated the following:

"I have all the skills necessary for fulfilling this position.

I am a journeyed plumber with 13 years experience. My employment with Transport Canada at the Halifax International Airport has given me an in depth knowledge of building systems and custodial procedures. I have strong communication skills and have a great deal of experience in supervising teams of tradesmen. I also have initiated and overseen the implementation of building upgrades and maintenance carried out by outside contractors. My computer skills are very comprehensive and I have a valid driver's license.

Upon meeting with you to discuss my qualifications for this position, I will offer my portfolio, which will convince you that I am the person for the job."

9. Her resume lists her employment history (1991-1998 Journeyman Plumber, Transport Canada; 1990 Oil Burner Trades Helper, Greenwood; 1987 -1990 Plumbing Apprenticeship, indicating the particular jobs held). The resume does not describe the job duties of each position, but simply gives the job titles. The resume indicates that between 1975 and 1987 she worked a variety of part time and full time blue collar jobs. It also includes educational information, as well as a listing of job-related courses taken, such as adult education, basic welding, fire protection systems, financial administration, and HVAC systems control.

10. The resume then lists the Complainant's professional and management skills. It does not specifically state that these skills were used or obtained on the job, although the Complainant testified that all of these skills were used in the workplace. This part of her resume reads as follows:

**PROFESSIONAL
SKILLS/KNOWLEDGE**

Plumbing Systems
Heating Systems
Cooling Systems
HVAC Systems
Fire Protection Systems
Blueprint
Welding
Occupational Health and
Safety
Conveyor Systems
Computer
Facilitation

**MANAGEMENT
SKILLS/KNOWLEDGE**

Technical Advisory
Supervisory
Personnel Management
Budget Management
Policy Development
Contract Negotiations
Contract Management
Conflict Resolution
Leadership

11. The Complainant testified that at the Airport she acted as mechanical shop supervisor in the absence of the regular supervisor. Initially, she was one of three employees who would do this, on rotation. In the last three years of her employment at the Airport she was the only one who would do this fill-in supervisory work. She testified that it happened at least once a month, and sometimes it was for months at a time.

12. While doing these supervisory duties she did not work with the tools, but managed the budget, the maintenance program, staff, shutdowns, responded to emergencies, and made sure the Airport ran smoothly. She was involved in subcontracting different contracts, and has strong computer skills. She had occasion to look at preliminary plans, meet with contractors, advise the department head and other departments. Several times she had to inspect plumbing in new construction. She testified that she also had experience supervising teams of workers in her work with WITT, and in her prior work in waitressing.

13. The Complainant testified further that she was the workers representative on the occupational health and safety committee at the Airport. She obtained certification in facilitation through her work with WITT, and also gained experience in policy development at that level, being on the national executive committee. As a Union member she was involved in contract negotiation. She managed small contracts for construction work. She took training in conflict resolution through the Union. She also testified that during her apprenticeship period she worked in a variety of jobs in the construction industry, doing plumbing as well as sheet metal work.

14. The Area Foreman West position was advertised in July 1999, on the retirement of Lloyd Newcomb. There were twenty-two (22) applications for the position. Ms. Daniels was the only woman. There was no specific number of candidates to be short listed or interviewed and nine (9) candidates were eventually interviewed.

15. The short list and interviews were done by David Floyd and Wayne MacDonald. Mr. Floyd has been Coordinator of Property Services for the School Board since 1996, and held that position at the period relevant to this complaint. He is a civil engineer by profession. He testified that there are three (3) Area Foremen, of which the position under consideration is one. There is also a separate Mechanical Foreman as well as an Electrical Foreman. He explained the duties of the Area Foreman as looking after the building needs in the area (roofs, windows, floors, custodial, lawn, snow, and general maintenance). The Area Foremen are limited to the geographical area indicated in their position title. Two to five carpenters/jacks of all trades work under the Area Foreman. The Mechanical Foreman looks after heating, plumbing, wells, sewage and ventilation and has three burner technicians and a plumber working under him. The Electrical Foreman looks after fuses, wiring, internet wiring, phone wiring, public address systems and fire alarm, and has two electricians working under him. The Mechanical and Electrical Foreman are not limited to a particular area, but work in all the schools. Mr. Floyd would deal with the foremen on a daily basis.

16. Wayne MacDonald has been the Director of Human Resources for the School Board since 1996, and with Mr. Floyd considered the applicants for the disputed position. His method of assessing job applications is to "be thorough, read everything, be fair". He also felt one should be cautious in considering resumes.

17. The job posting for the Area Foreman position was drafted in Mr. MacDonald's office. Mr. MacDonald recalled reviewing it with Mr. Floyd, although Mr. Floyd did not recall that. Apparently there was no job description for the position at the time. Mr. MacDonald and Mr. Floyd had a brief discussion about criteria for short listing. They decided that no one would be included on the short list unless they had their journeymen's papers, that they would look at work experience and supervisory experience, and that it would be an asset if they worked for the School Board.

Mr. MacDonald and Mr. Floyd each short listed the candidates independent of the other, and did not discuss the applications until both had done their short list.

18. Both Mr. Floyd and Mr. MacDonald noticed immediately that there was a female applicant. They discussed it as they reviewed the resumes together. Mr. MacDonald felt they should be careful to see that the Complainant got fair consideration, so there would be no claim of discrimination.

19. Both Mr. Floyd and Mr. MacDonald reviewed all the applications, and came up with their own short list before comparing notes with the other. Ms. Daniels did not make either short list. No calls were made to verify her credentials and no further information was requested. Both Mr. Floyd and Mr. MacDonald agreed that Ms. Daniels should not be interviewed. Mr. MacDonald had indicated on his notes that the Daniels application was from a woman, to remember that if she was interviewed a woman interviewer should be involved. Mr. MacDonald testified that if Ms. Daniels' resume had clearly reflected the supervisory experience that she had spoken of in her evidence, he would have agreed to short list her. They did not discuss whether a woman would have problems supervising men.

20. Mr. Floyd testified that he was looking for someone with strong knowledge of buildings and building systems. He wanted that strength in the general contracting sense (carpentry, roofing, windows etc.) as opposed to electrical or mechanical experience, as the School Board already had Electrical and Mechanical Foremen. He also wanted someone with supervisory experience, and School Board experience would be considered an asset.

21. Mr. MacDonald was looking primarily for the trade qualification, relevant work experience, with supervisory experience being the most important, and School Board experience. Once he saw the qualifications of the applicant pool, he was looking for people in the building trades and with supervisory experience.

22. In reviewing the Complainant's cover letter and resume, Mr. MacDonald and Mr. Floyd made little of her list of skills and management experience, because they were not explained or listed as job experience. Mr. MacDonald gave no weight to the cover letter which indicated that she "supervised teams of tradesmen" and "outside contractors". He felt there was nothing from the job titles indicating that these were job duties assigned to her.

23. Mr. Floyd and Mr. MacDonald both determined whether applicants had the experience they were seeking on the basis of their job titles. Mr. Floyd testified that for example, if someone had been a "foreman", he would assume that they had supervised projects and people and laid the work out. "Supervisor" would mean that the applicant had looked after one or a number of people. "Contractor" means that the applicant ran a business that employed people, bid on jobs, and completed projects.

24. Mr. Floyd felt that the Complainant did not have what he was looking for, as her employment history did not appear to include foreman or supervisory positions. He testified that the skills and experience listed on her resume did not count for a lot for him, because the resume did not indicate that the skills were obtained on the job. Also, he was looking for construction/carpentry experience, and her experience was on the mechanical side. He could not explain why the job advertisement did not indicate that construction or carpentry experience was required, if those were the qualifications he was looking for. He agreed that School board experience would be an asset.

25. Experience with this or another School Board was not noted in the job advertisement either as a requirement or as an asset. Mr. MacDonald explained that this was not done because they did not want to limit the competition to people with School Board experience, but wanted to give

outside applicants a chance. The position had previously been advertised 'inside' the School Board but there were no applicants.

26. Mr. Floyd testified that he made calls during the short listing process about two people who were under consideration. One concerned a Mr. Bent, who was employed by another School Board. Mr. Floyd called his counterpart at that School Board for an assessment of the candidate. Mr. Bent was put on the short list. The other candidate about whom Mr. Floyd made preliminary inquiries was not interviewed. Mr. Floyd felt these were not reference checks, but "off the record conversations".

27. Norman Sanford was awarded the position. He is a journeyed carpenter. He had operated a construction business for fifteen (15) years doing a variety of work. He had also worked as a foreman for a large construction company. He had no School Board experience

28. The other short listed candidates and their experience (much summarized) are as follows: **D. Palmer** was a stationary engineer employed at Eastern Kings Memorial Community Health Centre from 1997 to present. His resume notes that in that job he "orientates and instructs other maintenance personnel and/or contractors, collects quotes, reviews resumes and hires". Mr. Floyd felt Mr. Palmer should be interviewed because he would have done similar jobs at the hospital as would be required at the schools.

K. Winter was a former building inspector, owner of a wood working business, and held construction supervisor and foreman positions. Mr. Floyd felt his experience showed he had managed people and projects.

B. Streeter was journeyed carpenter, employed as site and project foreman for a construction company from February – July 1999. He had previously done carpentry work in Northern Canada. Mr. Floyd felt his history indicated experience managing and supervising people.

G. Sabean was employed for twenty-seven (27) years with large construction company as carpenter and job site foreman. While Mr. Sabean's resume does not describe his skills and experience, Mr. Floyd was aware of what the duties of the position entailed.

G. Hannam was an oil burner mechanic employed by the School Board. Mr. Floyd felt that the applicant had some experience with the old Annapolis Board filling in for the foreman during vacations, and had an advantage because he was a Board employee.

S. Stewart was journeyed electrician, employed by the School Board. Mr. Floyd felt that the applicant may have had experience supervising projects, and that "he should at least have an interview". **T. Llewelyn** was a journeyed carpenter, previously employed by the Kings School Board. He had run his own business at one time. Mr. Floyd felt he had shown initiative by learning locksmithing, and that he should have an interview.

J. Bent was journeyed bricklayer, employed with another School Board, with some experience in construction. Mr. Bent was not on Mr. Floyd's short list but was on Mr. MacDonald's. Mr. Bent had no supervisory experience. He was interviewed following Mr. Floyd's phone call to his colleague at the other School Board. Mr. MacDonald said that if Mr. Stewart was interviewed, "in fairness" they had to interview Mr. Bent as well.

29. The School Board had policies and procedures dealing with race relations, cross-cultural understanding, and human rights issues in place at the time of competition. These policies included statements on hiring, and affirmative action/employment equity, with administrative policies describing the steps to be taken to achieve the stated goals. For example, Administrative Procedure – AP 102.1 – RCH – Foundation Statements indicates the following in relation to hiring practices:

(v) Hiring/Promotion Practices

The Board has obligations under the Human Rights Act to ensure its hiring/promotion practices consider all candidates for employment/promotion without prejudice or discrimination with the

exception as per section (vi) Affirmative Action/Employment Equity, Page 4/6 and 5/6. The following are the administrative procedures for (v) Hiring/Promotion Practices: -

1. Work towards a qualified labour pool which reflects the diversity in society ('labour pool' comprising potential candidates for employment positions with the Board who reflect the racial, ethnic, ability/disability and gender composition of the region.
 2. Give serious consideration to applicants from the following groups: First Nations peoples, people of African descent, racially visible minorities, women, and persons with disabilities.
30. While apparently there had been a one day training session on these issues, Mr. Floyd had not attended, and had no training in employment equity or affirmative action in the workplace prior to this hiring. He was not aware of these or other such policies.

Argument

31. Counsel for the Human Rights Commission argued that it is not necessary that conduct be overt and intentional to be considered discriminatory. Further, he stated that an inference of discrimination may be drawn where the supporting evidence renders such an inference more probable than the other possible inferences (**Re Fortune and Annapolis District School Board** (1992), 20 C.H.R.R. D/100 (N.S. Bd. of Inquiry)).

32. The evidence of the Board witnesses was that Ms. Daniels' application was subject to scrutiny separately by Mr. Floyd and Mr. MacDonald, and then by them together. The Board argues that her cover letter and resume do not show supervisory experience. However, the cover letter is completely clear. The Board's suggestion that the job title 'plumber' does not carry with it supervisory experience subjects her qualifications to different scrutiny than other candidates.

33. Counsel for the Commission suggested that wherever the Board could draw an inference in her favour, they chose not to do so. On the other hand, they made inferences in favour of other candidates in relation to their supervisory experience (Sabeen, Hannam, Llewelyn) or their experience with another school board (Bent) even though they had little or no apparent supervisory experience. A fair interpretation of the Complainant's application documents indicates that she had supervisory experience. If the School Board had doubts, they could have made inquiries, as was done with other applicants, or interviewed her to get more complete information. There was no predetermined limit to the number of interviews to be conducted. They could have interviewed the Complainant to determine whether her supervisory experience was sufficient. No fair consideration was given to her application, even though the School Board's policies and procedures required it.

34. Counsel for the Commission argued that the legal test is found in **Re Basi and Canadian National Railway Co. (No. 1)** (1988), 9 C.H.R.R.D/5029 (Can. Trib.). According to the test in **Basi** the Complainant/Commission has established a prima facie case that the Complainant was qualified for the position, and that she was not hired. The evidence has also established that others no better qualified but lacking the human rights attribute were interviewed for the position. Once these elements are proved, there is an evidentiary onus on the Respondent to provide an explanation of events equally consistent with the conclusion that discrimination is not the correct explanation for the events. The Board's explanation that the Complainant's resume did not properly reflect her qualifications flies in the face of documents which are clear. It may suggest that the explanation is a pretext for a different motive.

35. Commission Counsel argued that the Complainant possessed the qualifications listed in the job advertisement which appeared in the newspaper. After the ad was placed and the applications were received, the new criteria of 'School Board experience' appeared. Further, it became necessary not only that the candidate have a journeyed trade, but that it be a building trade, with construction experience. Introducing these criteria made it even more unlikely that a

woman candidate would be interviewed. As a result, the Complainant was not even considered. It is not necessary that gender be the only reason that she was not considered, but that it be one of the factors.

36. Counsel for the School Board did not disagree with the Commission's statement of the legal test to be applied. However, the School Board's position is that the Complainant has not shown a prima facie case that she is qualified for the position, or that less qualified male applicants were on the short list.

37. The School Board argues that the Complainant's qualifications must be determined based on the paper qualifications that were submitted with the application, rather than on her testimony before this Inquiry. The Employer was entitled to determine that certain experience, such as construction and knowledge of the 'building envelope' was more of an asset than knowledge of mechanical systems. The job titles indicated in her resume do not indicate supervision of other workers. The question was not whether the Complainant had better qualifications in hindsight, but whether the qualifications in her application were better than males who were short listed. It is not unreasonable for the School Board to consider School Board experience as an asset.

38. Counsel for the School Board argued that based on the paper qualifications alone, the Complainant did not meet the job criteria. While she had the trade, her resume did not show the supervisory experience that was necessary to make the short list, and she was not a School Board employee.

39. He argued that in the alternative, if I find that a prima facie case has been proved, the Board's explanation for failing to interview the Complainant must be considered. The School Board was looking for the necessary experience from the work history presented on the resume, preferably not in the mechanical/electrical trades. The Complainant was one of thirteen (13) applicants who did not make the short list on the basis of a bona fide screening process. The onus is on the applicant to make her application documents readable and responsive to the position being sought.

40. Counsel for the School Board argued that the question is not whether I agree with the Board's decision not to short list the Complainant, but whether it was done for a discriminatory reason (Re Wood and Hants West School District (1996), 25 C.H.R.R. D/447 (N.S. Bd. of Inquiry)). The School Board may have made the wrong choice, but it cannot be considered discriminatory so long as the motivation was genuine.

Decision

41. The Complainant alleges that she was discriminated against on the basis of her gender, contrary to s. 5(1)(d)(m) of the Human Rights Act, which states as follows:

5(1) No person shall in respect of

(d) employment;

discriminate against an individual or class of individuals on account of ...

(m) sex.

The Annapolis Valley Regional School Board is a "person" within the meaning of s. 3(k) of the Act.

42. The parties agree that the test to be applied to determine if there has been discrimination in employment is that stated in **Re Basi and Canadian National Railway Co. (No. 1)** (*supra*) at paras. 38474-5:

The burden and order of proof in discrimination cases involving refusal of employment appears clear and constant through all Canadian jurisdictions: a complainant must first establish a *prima facie* case of discrimination; once that is done, the burden shifts to the respondent to provide a reasonable explanation for the otherwise discriminatory behaviour. Thereafter, assuming the employer has provided an explanation, the complainant has the eventual burden of showing that the explanation was merely a "pretext" and that the true motivation behind the employer's actions was in fact discriminatory.

It is therefore incumbent on the complainant, in this case, to first establish a *prima facie* case: **Shakes v. Rex Pak Ltd.** (1982), 3 C.H.R.R. D/1001 at 1002:

In an employment complaint, the Commission usually establishes a *prima facie* case by proving:

- (a) that the complainant was qualified for the particular employment;
- (b) that the complainant was not hired; and,
- (c) that someone no better qualified but lacking the distinguishing feature which is the gravamen of the human rights complaint subsequently obtained the position.

If these elements are proved, there is an evidentiary onus on the Respondent to provide an explanation of events equally consistent with the conclusion that discrimination on the basis prohibited by the Code is not the correct explanation for what occurred.

43. This test has been adopted by Boards of Inquiry in Nova Scotia (**Wood v. Hants West District School Board** (1996), 25 C.H.R.R. D/447; **Vickers v. Pictou-Antigonish Regional Library** (1994), 22 C.H.R.R. D/287; **McCara v. Nova Scotia (Department of Fisheries)** (1993), 26 C.H.R.R. D/87).

44. There is not always direct evidence that a discriminatory motive was present in the impugned decision. There is not usually a "smoking gun". A Complainant may have to rely on circumstantial evidence in order to rebut an employer's explanation of its conduct. This was the situation in **Fortune v. Annapolis District School Board** (1992), 20 C.H.R.R. D/100, where a female school bus driver whose application to work for the School Board was passed over in favour of male applicants who had no experience and who were less qualified. The Board of Inquiry in that case made the following comments regarding the use of circumstantial evidence in such situations, at page 25:

Do these events establish a breach of s. 12(1)(d) by the School Board and Mr. West in respect of Mrs. Fortune? Mrs. Fortune was not given consideration by the School Board for the position awarded to Mr. Robinson. There is no direct reference to the reason for this being the gender of Mrs. Fortune. However, if circumstantial evidence reasonably leads to the conclusion that gender was the most probably reason, the case has been made out. As is stated in Beatrice Vizkelety, *Proving Discrimination in Canada* (Toronto: Carswell, 1987) at p. 142:

The appropriate test in matters involving circumstantial evidence...may therefore be formulated in this manner: an inference of discrimination may be drawn where the evidence offered in

support of it renders such an inference more probable than the other possible inferences or hypotheses.

And at paragraphs 32-33:

...While the Act does not make disrespectful conduct illegal per se, such a course of conduct is relevant in assessing whether an inference of discrimination on the basis of sex is appropriate. In other words, if an applicant who obviously possesses a characteristic that is a prohibited ground under the Act is not treated with the respect and dignity one expects all applicants to be accorded, an inference may be drawn that the characteristic in question is the reason for the poor treatment. If other circumstances support the inference then the case becomes clearer.

45. The most significant factual question to be decided here is whether the Complainant was qualified for the position. The School Board argues that she was not. Since there was no job description, one is entitled to look at what appeared in the job advertisement which triggered the Complainant's application, as a starting point.

46. The job advertisement sought someone with a journeymen's license in a trade, which she clearly had. She had a valid driver's license, which was required for the position. She had computer knowledge, which was described as an "asset". She has strong communication skills. (These last three requirements appear to have been given little weight.) The advertisement also referred to "general knowledge of building systems and custodial procedures" and that the applicants "be capable of organizing and supervising a team of workers and contractors to maintain and upgrade facilities".

47. While the Complainant's evidence at the hearing satisfied me that she had the basic qualifications for the position as stated in the advertisement, I agree with the School Board that her cover letter and resume do not give detail as to the functions of the jobs she performed. I also agree that there is an onus on an applicant to ensure that the application documents give sufficient information to the employer so that they may reasonably determine the candidate's qualifications.

48. Even accepting that the Complainant may have benefited from a more detailed resume, her cover letter does clearly indicate that she has "a great deal of experience in supervising teams of tradesmen" and that she has "initiated and overseen the implementation of building upgrades and maintenance carried out by outside contractors". The School Board witnesses gave little or no weight to this information, for a number of reasons.

49. First, they were looking to the job titles of the positions held for the required information as to supervisory experience. They assumed that if a person was employed as a "foreman" he would have supervisory experience, and that if the Complainant was employed as a "plumber" she would not. While the Complainant's job title indicated "plumber", her testimony explained clearly the context and extent of her supervisory responsibilities, which were referred to in the covering letter.

50. Mr. Floyd and Mr. MacDonald discounted the Complainant's statements about her qualifications in her covering letter because they could not see the correlation between the statements in her materials and her job title. They assumed they knew what she did as a plumber, and they assumed it would not have included supervisory work.

51. They similarly discounted the description in her resume of professional and management skills and knowledge, because they could not see how these responsibilities related to her job title. Her evidence was that these skill sets and knowledge were obtained through job-related

courses, through her work with the Union, on the job, or through her involvement with the national organization Women in Trades and Technology, and that they were used on the job.

52. Mr. MacDonald and Mr. Floyd apparently did not discuss the criteria they were looking for in the position until the applications were received. I take from the evidence that it was only at that point that they determined that they would prefer that the trade qualification be on the construction/carpentry side (at least in Mr. Floyd's view), and that School Board experience would be an asset.

53. These two additional requirements made it even more unlikely that the Complainant's application would be considered positively. Mr. Floyd, who had experience in the construction trades, testified that he could count on the fingers of one hand the number of women he had worked with as tradespeople in the construction industry. It was also noted in evidence that, while the workforce of the School Board generally is female-dominated, there are not and have never been any women employed on the maintenance/trade side (other than custodial). Mr. MacDonald noted that the situation was similar in other School Boards. Therefore, with School Board experience being considered an "asset", this tends to automatically exclude female applicants.

54. In this context, having a female apply for this Area Foreman position was quite unusual. There were few if any women working in the construction industry. There were no women working in the trades in School Boards. The Complainant herself obtained her journey papers in 1993 and was the first female journeyed plumber in Nova Scotia. She still held that distinction in August 2002. Mr. MacDonald and Mr. Floyd seemed oblivious to this context when considering the Complainant's application. Had they interviewed her they would have learned of the amount of responsibility she had on the job, and could not have failed to be impressed by her job history and related pursuits.

55. Several applicants with the same or fewer qualifications than the Complainant were interviewed while the Complainant was not. Mr. Stewart's resume does not indicate jobs other than as "construction electrician" (except in one position where the word "supervisor" is indicated), but he was working at the School Board at the time he applied for the foreman position. The interviewers inferred, despite his job title, that he had the required supervisory experience. Mr. Floyd admitted in his evidence that Mr. Stewart was not as qualified as other applicants, but was given an interview because he was a School Board employee. In Mr. Floyd's words, he felt that he "should at least have an interview".

56. Mr. Llewellyn was working as a locksmith at the time of his application, but had worked for the School Board as a carpenter from 1989 to 1997. His resume indicated that he was self-employed from 1984-9 doing "renovations and new home construction". Mr. MacDonald and Mr. Floyd inferred from this that he had supervisory experience.

57. Mr. Floyd described Mr. Hannam's qualifications as similar to the Complainant's, and explained that he obtained a place on the short list because of his School Board experience.

58. Mr. Bent's resume and covering letter disclose no supervisory experience. He worked at the Halifax Regional School Board from 1980 to the time of the application. Prior to that, he had worked as a carpenter. Mr. Bent was interviewed after Mr. Floyd called a colleague at the Halifax School Board. Mr. Bent was interviewed because of his School Board experience even though he had no supervisory experience at all.

59. Mr. Palmer at the time of his application worked at the Eastern Kings Memorial Community Health Centre as a stationary engineer, and all of his other employment was at that level. The interviewers assumed that Mr. Palmer's experience at the health center would be similar to the

School Board environment, but made no similar inference in relation to the Complainant's work at the Airport.

60. Despite the fact that Mr. Palmer's job title was "stationary engineer/building maintenance" which would indicate no supervisory responsibilities, he included in his job duties the comment that he "orientates and instructs other maintenance personnel and/or contractors, collects quotes, reviews resumes and hires". The interviewers accepted this statement at face value as indicating that he had supervisory responsibilities. They did not consider similar comments in the Complainant's cover letter that they felt appeared at face value to be inconsistent with the job title.

61. The information in the Complainant's covering letter and resume together would show that she was qualified for the position. I agree that the information could have been presented better, but the same could be said for the applications of other candidates who did obtain an interview. Mr. Sabeau's application materials were very sparse, but he was interviewed because he was known as a School Board employee. Other candidates were given the benefit of the doubt at various stages in the consideration process. Any inferences made in relation to the Complainant appear to have been to her detriment.

62. I am satisfied that candidates with the same or fewer qualifications than the Complainant were short listed and interviewed for the position. All of the applicants for the position other than the Complainant were male, so all lacked the human rights characteristic underlying the complaint.

63. It is troubling that the job qualifications for the position presented something of a moving target. The qualifications listed in the job advertisement are different from those used to screen the candidates. While School Board experience was not required to get a place on the short list, it was sufficiently important to give Mr. Bent an interview, even though he was apparently otherwise unqualified. In the School Board's view, Mr. Bent and the Complainant both lacked supervisory experience. However, Mr. Bent was granted an interview and the Complainant was not. One can speculate that even if the Complainant's statement of paper qualifications more adequately reflected her actual supervisory experience, she may still not have been granted an interview because she did not have experience working with a School Board. School Board experience would appear to have been an important factor in the minds of the interviewers, one which appears to have eliminated the only female candidate from the pool of applicants who would be interviewed.

64. It is significant, however, that the successful candidate for the position, Mr. Sanford, was not and has never been a School Board employee. School Board experience was sufficiently important to determine whether or not candidates would be given a place on the short list and interviewed, but at the end of the day it was apparently not a consideration in determining who the successful candidate would be. This raises a question about the validity of using School Board experience as a factor in screening the candidates.

65. There is no evidence that the School Board went into this hiring process with the intent to hire a man and not a woman. There is no direct evidence that those involved intended to discriminate against the Complainant on the basis of her gender. There is no evidence of bad faith on their part. However, there is evidence of the following:

- that the Complainant was the only female applicant in an otherwise male pool of applicants;
- that the Complainant was qualified for the position, based on the qualifications noted in the job advertisement;

- that the qualifications required for the position changed after the applications were received;
- that the School Board failed to give the Complainant's application fair consideration by discounting the statements in her letter and resume about her skills and knowledge and supervisory experience, while making positive inferences in relation to statements on the applications of other candidates;
- that telephone calls were made to get preliminary assessments of two candidates but not of the Complainant;
- and that similarly qualified applicants were given a place on the weight list either because they were known to the interviewers, or because they worked for the School Board, or both.

66. I am satisfied on these facts that a *prima facie* case of discrimination has been proven, on the **Basi** test. I am also satisfied that this discrimination was unintentional. However, the School Board's explanation that the Complainant was not hired because she lacked supervisory experience is not persuasive. Her paper qualifications, fairly read, indicate that she had the experience that was being sought in the job advertisement. In these circumstances that should have given her the opportunity to be interviewed, particularly in the face of evidence that applicants with similar or less qualifications were interviewed.

67. This is also in the face of School Board policies which appear to contemplate fair and equitable treatment of applicants possessing attributes covered by human rights legislation. I find that the School Board has discriminated against the Complainant because of her sex, contrary to section 5(1)(d)(m) of the *Human Rights Act*.

68. Having found that the Complainant was improperly denied an interview for the position, I cannot on the evidence find that, had she been granted an interview, she would necessarily have been successful in obtaining the position. There is no dispute that Mr. Sanford was qualified for the position. His resume discloses supervisory responsibility since at least 1994, that he has operated his own construction company since 1984, and that he has had his carpenter's papers since 1981. He has a university degree, and impressive outside involvements.

69. This raises the question of damages. The powers available to a Board of Inquiry are found in section 34(8) of the *Human Rights Act*:

34(8) A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor.

70. The Complainant was advised that she did not get an interview for the position on September 2. She obtained another position, at a better salary, on November 22 of the same year. She claims damages from September 1, 1999 to November 22, plus the appropriate benefit calculation. While she did not lose the position because of her gender (in that I am satisfied that a better qualified candidate was chosen), she did lose the opportunity to compete fairly (**Canada (Attorney General) v. Morgan** (1989), 10 C.H.R.R.D/6386 (Can. Rev. Trib.)). She also claims time spent in preparation for the hearing, based on an hourly rate.

71. I find no basis to award damages on the basis of lost wages, having found that a more qualified applicant obtained the position. In my view, damages in relation to the loss of opportunity to fairly compete are better considered as general damages than as a claim for lost

wages. Nor can I justify an award based on time spent preparing for this hearing, as the Complainant lost no time from her current position in preparation for the hearing.

72. Boards of Inquiry in Nova Scotia regularly award general damages to compensate for the harm and injury to a Complainant's dignity and self-respect, and to recognize the humiliation suffered as a result of discrimination. The legislation does not set out the amount of damages that can be awarded. The Complainant is a very well-qualified person and impressive person. She quickly found another position, although it is clear from her evidence that she was devastated by her rejection by the School Board. I find in these circumstances that an award of general damages of five thousand dollars (\$5000.00) is appropriate, with interest added as noted in **Hill v. Meisner** (1997, Nova Scotia Board of Inquiry, Supplementary Decision on Prejudgment Interest).

73. I also direct that the School Board engage in such sensitivity training for its staff and a policy review and update as required by the Human Rights Commission, to ensure that such a situation does not recur. Counsel for the Commission suggested that they and the School Board be left to negotiate the specific details of such programs, policies, and training, and I am happy to leave it to them.

74. I retain jurisdiction to deal with any matters which may arise from this decision.

Dated this day of September, 2002

Susan M. Ashley, Board of Inquiry