

IN THE MATTER OF: The Nova Scotia *Human Rights Act* (the “*Act*”)

And

IN THE MATTER OF: Board File No. #51000-30-S14-1440

BETWEEN:

Chantelle Anderson

-and-

Mi’Kmaq Family and Children’s Services of Nova Scotia

(“MFCS”)

-and-

The Nova Scotia Human Rights Commission

(“NSHRC”)

DECISION OF THE BOARD OF INQUIRY

This is my decision for the Board of Inquiry concerning the above matter.

This inquiry was mandated to inquire into allegations of discrimination under section 5(1)(d)(i)(j)(o) with respect to alleged discrimination in employment on the basis of race and/or colour and/or mental and/or physical disabilities.

I have decided to conclude the inquiry after reviewing the Restorative Agreement presented by the parties, and after considering the public interest.

History

I was appointed to hear this matter on October 5, 2015, and notified of same on December 3, 2015.

On December 18, 2015, I held a conference call with the complainant, Chantelle Anderson, who was self-represented, Kimberley Pochini, counsel for the Respondent, Mi’Kmaq Family and Children’s Services of Nova Scotia and Kymberly Franklin, counsel for the Nova Scotia Human Rights Commission.

In this initial call, Ms. Anderson confirmed that she understood that she had the right to retain legal counsel and that she understood that the role of the Commission was not to represent her. She confirmed at that time, and in subsequent telephone conferences that she was not intending to retain legal counsel to represent her in this process.

Initial dates for a hearing in the matter were set for May of 2016.

During this call, the parties advised me that they had not yet had an opportunity to discuss the possibility of using a restorative as opposed to a traditional hearing approach. At that time, this did not appear to be an option for the complainant.

In January 2016, I was advised that the parties were now agreeable to proceeding by way of a restorative approach. A subsequent telephone conference call on January 28, 2016, confirmed that the Human Rights Commission was facilitating this process with the hope that meetings would be held with the parties in February 2016.

On April 29, 2016, I was advised that as a result of these meetings between the parties, a settlement had been reached between the parties and the May hearing dates could be released. A signed copy of the Restorative Agreement was presented to me for signing by way of a letter dated July 19, 2016.

Prior to being able to sign a consent order in this matter, I received notification that an issue had arisen with respect to the interpretation of the agreement. In particular, there appeared to be a misunderstanding with respect to Ms. Anderson's obligation to provide proof of repayment of any determined EI overpayment which may result from the settlement.

At that point, an issue arose as to whether or not the misunderstanding went to the underlying existence of an agreement, or whether I as Chair had jurisdiction to interpret the settlement to assist the parties in reaching a final resolve.

An exchange of correspondence was followed by an October 18, 2016, conference call following which the parties agreed to make submissions with respect to my jurisdiction to render a decision regarding the interpretation of the agreement, with respect to the interpretation of section 16 of the Agreement (relating to the EI overpayment) and any other issues that they might identify as being in dispute.

Submissions were received from all three parties. In the course of making their submissions, and with additional correspondence, the parties were able to resolve the outstanding disputes with respect to the settlement. This was confirmed to me via e-mail on January 19, 2017, at which time I advised I would be concluding this decision and consent order.

The Agreement

I have reviewed the Order, and am satisfied that it appropriately addresses the issues between the parties and the public interest.

It includes a forward-looking plan that acknowledges and addresses the issues which form the basis of the complaint, addresses the needs of the complainant, while also addressing the broader public interest of promoting inclusive and non-discriminatory workplaces.

As the public interest has been considered and served by the attached Restorative Agreement, there is no further reason to continue this inquiry.

Dated at Halifax, Nova Scotia, this 15th day of February, 2017.

Kimberley H. W. Turner, QC
Board Chair