

**THE NOVA SCOTIA HUMAN RIGHTS COMMISSION
BOARD OF INQUIRY**

BETWEEN:

Rita Eblie-Corrigan
-and-
Credit Union Atlantic Limited
-and-
Nova Scotia Human Rights Commission

Decision Reporting Settlement Agreement

Case Number:51000-30-H11-0568

History of the Proceedings

This board of inquiry was appointed by Order of the Chief Judge of the Provincial Court on October 19, 2012. The complaint itself was filed with the Nova Scotia Human Rights Commission on January 4, 2012, alleging employment discrimination based on mental disability: s.5(1)(d) and (o) contrary to the *Human Rights Act*, R.S.N.S.1989, c.214.

On January 29, 2013, a teleconference was held among all parties, and three days were scheduled for hearing: July 17 – 19, 2013. Expert evidence was anticipated, and dates were scheduled for filing of materials that would fairly give notice of the positions to be taken by the expert witnesses. Those dates passed without any contact with the board of inquiry.

On July 10, 2013, this board of inquiry was advised by letter from counsel on behalf of Ms Eblie-Corrigan that the complaint had been settled, subject to approval by the Commission in September. Apparently that settlement had been made the previous week, but without advice to the board. I therefore agreed to adjourn the scheduled hearing dates, anticipating that we would resume by teleconference at some point after the Commission had become a signatory to the agreement.

This board of inquiry received a copy of the "settlement" by email on September 30, 2013. I convened a teleconference among the parties which, because of counsel's availability, did not occur until October 24, 2013. At that time I had representations from Mr Barry Mason on behalf of Ms Eblie-Corrigan, from James MacNeil on behalf of Credit Union Atlantic Limited, and from Lisa Teryl on behalf of the Nova Scotia Human Rights Commission - all in support of the settlement.

My appointment as a board of inquiry was made pursuant to s.32A of the *Act*. Pursuant to s.34(1) of the *Act*, I am required to conduct a public hearing. However, 34(5) of the *Act* also provides that:

Where the complaint referred to a board of inquiry is settled by agreement among all parties, the board shall report the terms of settlement in its decision with any comment the board deems appropriate.

This provision of the *Act* permits the parties to maintain control and responsibility for the resolution of a matter of concern, so long as that resolution is recognized by the board of inquiry to be in the public interest.

Submissions Received

As stated earlier, the specific wording of the settlement agreement was provided to the board of inquiry on September 30, 2013. A review of its terms caused several concerns, which I had the opportunity to raise with the parties on October 24. These issues included:

- a) the absence of an admission of any liability by Credit Union Atlantic Limited (Clause 3) despite a payment characterized as “general damages” (Clause 5);
- b) an acknowledgement by the parties of an “understanding” that “the NSHRC does not approve or certify policies and also that having a policy does not necessarily stop potential human rights complaints” (Clause 6); and,
- c) Clause 7 of the Agreement which read: “Failure to comply with the terms of this Settlement Agreement will result in the case being forwarded to the NSHRC for further action.”

Incidentally, the Agreement (Clause 5) contains wording that expresses the Commission’s lack of agreement to “the characterization of the general damages amount”.

Upon inquiries by myself, the parties quickly indicated that Clause 7 could be removed or severed from the Settlement Agreement. The parties also indicated that the two individuals apparently responsible for the behaviour that grounded the complaint were no longer with Credit Union Atlantic Limited. I could, therefore, infer that there was no persisting issue or risk of repetition of the alleged discriminatory behaviour. The parties also asserted that the cash payment that formed part of the settlement was a reasonable amount in the context of what might have been gained after a full hearing considering the costs and risks of proceeding to a full hearing.

Counsel for the individual parties pointed out that all parties were represented by counsel – which speaks to the public interest to the extent that the process which arrived at the resolution was balanced, and not reached by any inappropriate advantage being taken. That also supports the value of the exercise of autonomy, and the taking of personal and institutional responsibility, that I mentioned earlier. Counsel for Ms Eblie-Corrigan and Credit Union Atlantic Limited both suggested that I should also acknowledge the interest of the parties in avoiding contested hearings, and their concurrent interests in obtaining finality through this process.

Counsel for the Commission further suggested that I should recognize that unlike some complaints, this allegation of discrimination represented a relatively private interest rather than a larger, public interest.

Decision

Parties to a discrimination allegation should always be commended and respected for bringing themselves to a resolution by agreement rather than through a litigated process. This can demonstrate the exercise of autonomy, personal and institutional responsibility, and a willingness to respect difference. Other than those values, I really do not have any way to evaluate whether or not this settlement is actually in the public interest.

I have nothing by way of submissions or evidence which would inform me about the true factual context of Ms Eblie-Corrigan's employment relationship with Credit Union Atlantic Limited. The parties did not feel it to be of value to provide that background to me, nor any background in terms of Ms Eblie-Corrigan's alleged mental disability.

In fact, by its terms, the "settlement agreement" presented to me could be better characterized as a withdrawal of the complaint upon certain stated conditions. One could infer that that was the real conceptual basis for Clause 7. I indicated to the parties that this "agreement" was either a final settlement or it wasn't, at which point all parties echoed the view that Clause 7 could be removed. In addition, counsel for Credit Union Atlantic Limited indicated that it was prepared to complete its part of the settlement as soon as the decision approving the settlement was received. There would be no lingering enforcement issue needing Clause 7.

The intent of the agreement as presented to me then is to conclude the litigation of the complaint made by Ms Eblie-Corrigan about Credit Union Atlantic Limited. There is no reasonable or continuing expectation that the Commission could return to this complaint again in the future. The agreement should therefore, in my view, be regarded as a withdrawal rather than a settlement of a provable complaint of discrimination. There is no finding nor any admission of discrimination. The Commission has not taken any position with respect to the nature of the mental

disability alleged, nor with respect to any policies that Ms Eblie-Corrigan's employer may or may not have had in place. The Commission does not endorse anything that Credit Union Atlantic Limited does now.

Counsel for the Commission suggested that the public interest that I should consider under s.34(5) is something like a sliding scale. At one end, where there is a significant, institutional experience of discrimination, or systemic discrimination, my scrutiny of a settlement agreement for "public interest" would be justifiably stringent. At the other end of the scale, where there is an individual or unique experience of discrimination, the public interest might dim to the point where private interests become more obvious and prominent. It was argued that a less stringent evaluation of the public interest might be justified at this more private end of the scale.


I can understand how there might be some attractiveness to this argument – which supposes that some human rights violations might command a lesser public interest than others. However, I am not prepared to adopt that argument in this case. All discriminatory acts impact at some point on individuals. That is a matter of significant public concern. The *Human Rights Act* is the legislative embodiment of the purposefully remedial social policy to protect individuals from the effects of the experience of discrimination. The *Act's* inquiry provisions are part of a method of protecting the status of "all members of the human family", "all Nova Scotians", and "all persons": s.2(a), (b), and (e). I am not prepared to endorse the idea that the satisfaction of Ms Eblie-Corrigan's private interests are a sufficient response to the perceived discrimination that prompted her complaint. I simply do not know.

Instead, this is a resolution reached by the parties. It is not unfair on its face. It allows the parties who started the process under the *Human Rights Act* to agree to end it. Beyond that there is really no other comment that it is possible to make.

Conclusion

With those comments, I attach the settlement agreement as Appendix "A". Pursuant to s.34(5) of the *Human Rights Act*, I hereby conclude my inquiry into this complaint.

Dated this 9th day of November, 2013



Donald C. Murray, Q.C.
Board of Inquiry

APPENDIX "A"

NOVA SCOTIA HUMAN RIGHTS COMMISSION

SETTLEMENT AGREEMENT

This settlement agreement ("Settlement Agreement") dated the day of July, 2013, is

BETWEEN:

RITA EBLIE-CORRIGAN

("COMPLAINANT")

- AND -

CREDIT UNION ATLANTIC LIMITED

("RESPONDENT")

- AND -

THE NOVA SCOTIA HUMAN RIGHTS COMMISSION

("NSHRC")

BACKGROUND INFORMATION:

1. The Complainant made a complaint under the Human Rights Act on January 4, 2012 against the Respondent alleging discrimination.
2. The Complainant and the Respondent have settled the complaint by this Settlement Agreement and agree to the terms below.

TERMS OF THE AGREEMENT:

3. The Complainant and the NSHRC understand and accept that the Respondent does not, by this Settlement Agreement, admit any liability.
4. The Respondent understands and accepts that this release of liability does not take away from the significance of the complaint for the Complainant and acknowledges the hurt feelings of the Complainant.
5. The Complainant will receive from the Respondent, the sum of \$15,000.00 as general damages and contribution to legal costs, within seven (7) days of receipt of written notification of the Board Chair's approval of this Settlement Agreement. Approval of this agreement by the Commission is not intended to comment on the characterization of the general damages amount.
6. It must be understood by all parties that the NSHRC does not approve or certify policies and also that having a policy does not necessarily stop potential human rights complaints.
7. Failure to comply with the terms of this Settlement Agreement will result in the case being forwarded to the NSHRC for further action.
8. The Complainant further releases the parties as follows:
 - (a) The Complainant, or anyone representing the Complainant or their estate, will not make any further claims or legal actions against the Respondent, or anyone associated with them, on the facts arising from this complaint, or with respect to any aspect of her employment with the Respondent.
 - (b) The Complainant further agrees there are no other side agreements and that the settlement terms in this Settlement Agreement are the only terms.

The NSHRC may report publicly the fact of settlement and its terms.

9. All parties understand and agree that the terms of this Settlement Agreement may be subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, and as otherwise required by law.

- 10. The Complainant and Respondent understand and agree that neither of them has received advice from staff, officers, mediators or the lawyer of the NSHRC, with respect to the terms of this settlement agreement; including but not limited to implications regarding taxation liability under the *Income Tax Act*, employment insurance benefit repayment, or insurance policy repayments.

SIGNED BY:

Rita Eblie-Corrigan

 RITA EBLIE-CORRIGAN, Complainant

CREDIT UNION ATLANTIC LIMITED (Respondent)

Per: *M. Muller*

By the signature of its authorized agent under Section 32(1) of the Act, the NSHRC gives its approval to the terms of this Settlement Agreement.

DATED at Halifax, Nova Scotia this *20th* day of July, 2013. *September*

NOVA SCOTIA HUMAN RIGHTS COMMISSION

[Signature]
