2013-NSHRC No._____

IN THE MATTER OF: The *Human Rights Act*, R.S.N.S., 1989, c. 214, as amended

AND

IN THE MATTER OF: A Nova Scotia Human Rights Board of Inquiry

BETWEEN:

Joanne MacDonald

(the "Complainant")

-and-

Cambria Food Services Limited

(the "Respondent")

-and-

The Nova Scotia Human Rights Commission

(the "Commission")

DECISION

Nova Scotia Human Rights Board of Inquiry:	Kathryn A. Raymond, Chair
Case Management Conferences:	August 6, 2013 September 27, 2013, adjourned October 1, 2013, adjourned October 10, 2013, by telephone conference
Appearances:	Joanne MacDonald, Complainant Michelle Willette, Counsel on behalf of the Respondent Lisa Teryl, Counsel on behalf of the Commission
Date of Decision:	December 20, 2013

Introduction

1. I was appointed effective May 11, 2013 pursuant to section 32A of the *Human Rights Act*, R.S.N.S., 1989, c. 214, as amended (the "*Act*"), as a Nova Scotia Human Rights Board of Inquiry ("Board of Inquiry") by the Chief Judge of the Provincial Court of Nova Scotia to enquire into allegations of discrimination made on August 6, 2012 by Joanne MacDonald (the "Complainant") pursuant to Section 5(1)(d) and (m) of the *Act*. I was notified of this appointment by the Commission on July 4, 2013.

2. I was asked by the parties to approve a settlement agreement in September, 2013, as being in the public interest pursuant to section 34(5) of the *Act*. The request raised issues respecting the appropriate procedure to be followed where a settlement agreement is presented to a Board of Inquiry and to what extent the public interest is taken into account in such situations. As well, the content of the proposed Settlement Agreement was reviewed, leading to adjustments that were agreed to by the parties as being appropriate amendments.

Nature of Complaint

3. The Complainant alleged discrimination on the grounds of sex (pregnancy) in relation to her employment with the Respondent, Cambria Foods Services Limited (the "Respondent" or the "Employer"). Specifically, the Complainant alleged that she was terminated from her employment by the Employer on February 18, 2012 shortly after notifying her Employer of her pregnancy. Sections 3-7 of the Complainant's written complaint state as follows:

> 3. ...
>
> *On February 15, 2012 I received test results back from my doctor that advised me that I was pregnant. My doctor provided me with a note to give my employer letting them know that I was pregnant. I gave the note to my employer on February 17, 2012 and the next day I was terminated.*

4. Why do you believe the treatment you received is because of your protected characteristic?

I believe that it is due to my pregnancy because I had never been spoken to or written up for anything. It was after I disclosed to them that I was pregnant that I was terminated.

5. Do you believe you are the only person who has experienced this treatment? Please explain.

Yes.

...

7. How did you try to resolve the problem?

I tried to find out the reason for my termination, but was never given a response.

History of the Proceedings

4. A case management conference was convened on August 6, 2013 to address procedural issues. The parties were advised that directions made by the Board of Inquiry at such conferences were binding upon the parties. The case management conference was attended by counsel for the Commission. The Board of Inquiry did not have an opportunity to review procedural issues with the Complainant and the Respondent in person as they chose not to appear. Counsel for the Commission represented that she had the authority to speak to the matter on behalf of all parties.

5. The Board of Inquiry was informed that there were active discussions underway in an effort to resolve the complaint. Commission Counsel advised that the parties had reached a settlement save for approval by the Commission, which was expected to be forthcoming following the Commission's next scheduled meeting in September, 2013.

6. The Board of Inquiry advised that it would require sufficient information from the parties to be in a position to approve the settlement pursuant to section 34(5) of the *Act*. This direction

was confirmed to all parties by letter from the Board of Inquiry dated August 7, 2013. Specifically, the Board of Inquiry advised the parties of the following:

> *Once appointed, the Board of Inquiry is seized with the matter and is required to hold a hearing and issue a decision and Order pursuant to Section 34 of the Human Rights Act. To assist Ms. MacDonald who is self-represented, Section 34 states in part:*
>
> > ***Public Hearing***
> >
> > *S. 34(1) A board of inquiry shall conduct a public hearing and has all the powers and privileges of a commissioner under the Public Inquiries Act.*
> >
> > *...*
> >
> > *(3) A board of inquiry shall give full opportunity to all parties to present evidence and make representations.*
> >
> > *..*
> >
> > *(5) 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.*
> >
> > *(6) Where the complaint referred to a board of inquiry is not settled by agreement among all parties the board shall continue its inquiry.*
> >
> > *(7) A board of inquiry has jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this Act or for the making of any order pursuant to such decision.*
> >
> > *(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 ...*
>
> *Any proposed settlement that is agreed to in principle amongst the parties must be appropriate as a decision of the Board under the Human Rights Act, which includes being in the public interest. We will determine an expeditious means for the Board to obtain background information respecting the proposed terms of settlement to permit this assessment. Please also note that the Board is required to report the terms of settlement in its decision.*

> *Accordingly, there will be a case management conference on Friday, September 27, 2013 by telephone to discuss process in the event of settlement among the parties or to otherwise make agreements for a full hearing should settlement efforts fail. (emphasis added)*

7. None of the parties raised a concern or objection to the procedure outlined in the Board's correspondence of August 7, 2013. The case management conference on September 27, 2013 was adjourned and was rescheduled for October 1, 2013 to accommodate a scheduling difficulty encountered by Counsel for the Commission.

8. On September 26, 2013 the Board of Inquiry was provided with a document entitled "Settlement Agreement" signed by the parties, which had been approved by the Commission on September 20, 2013. The Settlement Agreement was accompanied by a draft decision for issuance by the Board of Inquiry pursuant to section 34(5) of the *Act*. The Settlement Agreement included a proposed payment of general damages and damages for lost wages to the Complainant by the Respondent on a "without prejudice" basis. The Board of Inquiry was asked to confirm that the case management conference was no longer required, notwithstanding the Board of Inquiry's direction in its letter of August 7, 2013 respecting its need for background information.

9. The case management conference scheduled for October 1, 2013 was adjourned to allow the Board of Inquiry an opportunity to review the documentation provided by the parties. The case management conference was subsequently reconvened on October 10, 2013 by telephone conference. In the course of making arrangements for the participation of the parties in the teleconference, the Complainant, who was self-represented, left a message for the Board of Inquiry questioning the need for a case management conference. She was referred to Commission Counsel for an explanation of the process.

10. To help facilitate the case management conference, the Board of Inquiry identified several issues respecting the proposed settlement for advance consideration by the parties:

    1) The proposed settlement contained terms mandating the confidentiality of the terms of settlement in paragraphs 10, 11 and 12. Section 34(5) of the *Act* requires that the Board of Inquiry report the terms of settlement in its decision. The decision of the Board of Inquiry is a public document. Accordingly, the Board of Inquiry asked the parties to speak to how a settlement agreement could be confidential.

    2) No agreement respecting the facts or other background information accompanied the proposed Settlement Agreement. The parties were reminded that no information had been provided to the Board of Inquiry to enable it to make any comments in its decision respecting the appropriateness of the Settlement Agreement, as required of the Board of Inquiry by section 34(5) of the *Act*. The draft decision which accompanied the Settlement Agreement, apparently agreed to by the parties, contained wording which presumed that the Board of Inquiry had sufficient familiarity with the background to offer comment. For clarity, that document does not form part of this decision.

11. Commission Counsel provided a revised "Settlement Agreement" on October 9, 2013 and indicated that the parties understood that confidentiality is not an appropriate component of a settlement agreement. Commission Counsel suggested that paragraph 10 could be amended to state, "The NSHRC may report publically the fact of settlement and its terms". Commission Counsel also advised the Board of Inquiry on behalf of all the parties that the parties were hoping that a decision could be made pursuant to section 34(5) of the *Act* without the necessity of a case management conference by telephone. Counsel for the Commission made the following submission by email dated October 9, 2013:

> *In terms of the public interest, the parties are pleased that they were able to resolve this matter by settlement rather than adjudication. Liability under the Act was significantly disputed yet the parties have decided to move forward in a way that they consider is reasonable. The Commission is satisfied with the outcome given these circumstances and does not consider there to be any larger systemic issues to be addressed. The parties are hoping that after reviewing the revised agreement and this email, that it will not be necessary to have a final tel conference [sic].*

12. The Board of Inquiry declined to proceed on this basis and the case management conference proceeded by telephone on October 10, 2013.

13. To provide a framework for the case management conference, the first issue addressed at the case management conference was whether it is an implied requirement of section 34(5) of the *Human Rights Act* that the Board of Inquiry be satisfied that the proposed resolution is in the public interest. The parties took the position that it was.

14. The parties' agreement on this point is consistent with the finding in *Eblie-Corrigan and Credit Union Atlantic and Nova Scotia Human Rights* Commission (November 9, 2013), Nova Scotia Human Rights Board of Inquiry, (*"Eblie-Corrigan"*), where the Board of Inquiry Chair, Donald C. Murray. Q.C., held with respect to section 34(5) that: "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." A similar finding was made in *Halifax Association of Black Firefighters and Halifax Regional Municipality and Nova Scotia Human Rights Commission* (April 29, 2013), Nova Scotia Human Rights Board of Inquiry, (*"Halifax Association of Black Firefighters"*).

15. It was clarified for the parties that when a Board of Inquiry is appointed, the only information provided to the Board of Inquiry is a copy of the original complaint. This provides basic information respecting the allegations of one party and is not evidence of the facts alleged.

It was confirmed to the parties that the Board of Inquiry would require factual information and submissions from the parties respecting the public interest component.

Submissions of the Parties

16. Counsel for the Commission advised that liability had been fully contested, that the outcome was not intended to be predicated on the existence of discrimination, and that the public interest assessment could be based upon the parties being satisfied with the settlement terms, there being no larger systemic issues that were required to be addressed from the Commission's perspective. Counsel for the Commission suggested that this complaint could be distinguished from cases where a larger systemic issue was involved, which would require a broader analysis of the public interest. Commission Counsel also suggested that there was nothing unseemly within the terms of the settlement itself and that no rights of other parties were impacted. In effect, the Commission submitted there was an inherent public interest if the parties can reach their own settlement. Notably, Counsel for the Commission acknowledged that the public interest could not be determined on the basis of the amount of damages referenced in the settlement.

17. The Complainant indicated a strong preference that the complaint not proceed to be addressed on the merits. She wished to accept the monetary compensation offered by the Respondent. She appeared to understand that if the merits of the matter were determined by the Board, she may, in theory, be entitled to additional compensation and other remedies, or, she may not be entitled to any remedy at all, if there is no finding of discrimination.

18. Counsel for the Respondent indicated that the Respondent was prepared to provide factual background information respecting its position in relation to the complaint. Counsel indicated that the decision to terminate the Complainant's employment had already been made prior to the Respondent being notified of the pregnancy. Implementation of the

decision was to occur two days following the Respondent's receipt of notice that the Complainant was pregnant. The Respondent says that the Complainant's termination occurred in the context of the lay-off of four employees, which included the Complainant's supervisor, to whom the Complainant had provided notice of her pregnancy. The Respondent alleges that there was no intent to discriminate, as it had made the decision to terminate the Complainant prior to having knowledge of her pregnancy.

19. Given the definition of discrimination in section 4 of the *Act*, it is not necessary that discrimination be intentional for there to be a finding of discrimination under the *Act*. However, this is not a case where the discrimination was alleged to be unintentional. If proven, the factual representations offered by the Respondent could provide a defence to the Complainant's allegation of intentional discrimination in relation to her pregnancy.

20. In reply, the Commission agreed that it was appropriate to proceed on the basis of the factual information provided by the Respondent, rather than solely on the basis of an inference that the public interest was served, based solely upon the fact of settlement.

21. The Complainant stated her continued belief, notwithstanding the Respondent's explanation, that she was discriminated against. However, she took no issue with the description of the Respondent's position. She offered no additional facts in reply to the Respondent's position.

22. The Board of Inquiry also requested comments from the parties respecting additional issues arising from the wording of the proposed agreement. As a result, the parties agreed to amend paragraphs 4 and 6 and to delete paragraph 7 of the Settlement Agreement.

23. The amendment the parties agreed to make to paragraph 4 is as follows:

> *4. The parties recognize that the Complainant believes that she was discriminated against and the Respondent denies it discriminated against the Complainant. The Complainant and the NSHRC understand and accept*

that the Respondent does not, by this Settlement Agreement, admit any liability. The NSHRC supports the settlement as being in the public interest in the circumstances of this case.

The original paragraph referred only to the Respondent's denial of liability. The amendment to this paragraph was intended to acknowledge and encompass the positions of all parties. The wording of this amendment, which was not entirely resolved during the case management conference, was subsequently approved by the parties.

24. The parties agreed to amend paragraph 6 to refer to implementation of the settlement upon approval of the Board of Inquiry. The original paragraph erroneously stated that implementation would occur upon approval by the Commission. Accordingly, the paragraph was amended to read as follows:

> *... These funds shall be made payable to the Complainant and forwarded to the Complainant (in care of the Commission) within 10 days of the receipt of written notification of the Board of Inquiry's approval of this Settlement Agreement.*

25. Paragraph 7 related to the issue of the enforcement of the settlement. Paragraph 7 stated that, "failure to comply with the terms of this Settlement Agreement will result in the case being forwarded to the Nova Scotia Human Rights Commission for further action". The Board of Inquiry identified a potential ambiguity respecting the interpretation of this provision. It was not clear to the Board of Inquiry whether the parties intended that there would be a new complaint of non-compliance with the settlement or a continuation of this complaint. Discussions disclosed that this provision was, indeed, ambiguous. The parties had interpreted the paragraph's meaning differently.

26. The Board of Inquiry also asked the parties to address whether authority exists in the *Act* to give the Commission the jurisdiction to proceed with the existing complaint, or a new complaint, based on non-compliance with a settlement agreement, after a decision by the

Board of Inquiry is issued pursuant to section 34(5) of the *Act*. The parties responded by suggesting that paragraph 7 be deleted.

27. The discussion concerning paragraph 7 also included the issue of whether the Settlement Agreement required an enforcement provision, in any event. As the Board of Inquiry was being asked to approve the Settlement Agreement pursuant to section 34(5) of the *Act,* the Board of Inquiry understood that it was being asked to approve and adopt the operative terms of the Settlement Agreement as an order within the Board of Inquiry's decision pursuant to section 34(5) of the *Act*. That order would be capable of being enforced pursuant to sections 37 and 38 of the *Act*.

28. The parties then advised that they were not requesting that the terms of the Settlement Agreement be specifically ordered by the Board as part of its decision. It became apparent that the parties were instead requesting that, in effect, the complaint be permitted to be withdrawn.

29. With this clarification, the parties were asked to address how the Settlement Agreement could be enforced if the complaint was being withdrawn and the outcome agreed to by the parties was not made the subject of an order. The Board of Inquiry was concerned, in part, by the fact that the Complainant was not represented by counsel, while the other parties had legal representation. There was concern that the Complainant may not appreciate the technical implications of there being a decision without an operative order, and, with the removal of paragraph 7, the enforcement issue would not be addressed by the agreement.

30. The Board of Inquiry offered to make an order and to retain jurisdiction for purposes of addressing the implementation of remedy. The parties voiced objection to the Board of Inquiry retaining jurisdiction for this purpose.

31. It became unnecessary for the Board of Inquiry to make a ruling on this point, as Counsel for the Respondent offered a solicitor's undertaking in lieu of the Complainant seeking an order respecting remedy pursuant to the *Act*. Counsel for the Respondent made it clear that she was only prepared to offer a lawyer's undertaking as her firm was holding settlement funds in trust.

32. The differences between a solicitor's undertaking and an order being made pursuant to the *Act* was discussed, including the means of enforcement of both. Ms. MacDonald indicated that she understood the nature of the differences between these outcomes. Ms. MacDonald consented to accept the solicitor's undertaking in lieu of a consent order.

33. Had the solicitor's undertaking not been offered by Counsel for the Respondent and accepted by the Complainant, there would have been no simple and obvious means of recourse available to the Complainant pursuant to the *Act*, should the terms of settlement not have been satisfied. The complaint would have been withdrawn and there would be no enforceable order in the Board of Inquiry's decision. In the Board of Inquiry's view, it was not clear that it would be in the public interest for a complaint to be withdrawn on the basis of a settlement without an accompanying consent order that could be enforced pursuant to the *Act*. As indicated, this was of particular concern given that the Complainant was an unrepresented litigant.

34. With these issues respecting the content of the Settlement Agreement having been addressed, the overall issue remained respecting whether the parties' proposal was otherwise in the public interest.

Decision

35. The Legislature of the Province has determined that a Board of Inquiry is required to issue a decision where there is a settlement agreement and to offer comment upon the settlement. In doing so, the Board of Inquiry is required to consider the public interest.

36. In issuing a decision and assessing the public interest, the Board exercises an adjudicative and, therefore, discretionary function. The initial position taken by the parties was predicated upon the Board of Inquiry concluding that the public interest was served based solely on the fact that the parties had achieved a settlement. Arriving at a consensus respecting a potential settlement is a laudable achievement by the parties and is to be encouraged. However, it would be a fundamental error for a Board of Inquiry to delegate its assessment of the public interest to the parties, given the role of a Board of Inquiry and the overall scheme for the protection of human rights in the *Act*. The Board is obligated to meet its own statutory responsibilities in the adjudication of such matters in an independent manner and to make its own assessment of the public interest component.

37. This is the case even though the Commission specifically considers the public interest in determining its position in relation to the matter. The Commission has an obligation under section 29 (1) of the *Act* to "endeavor to effect a settlement of any complaint of an alleged violation of this *Act*". The Commission has broad powers to conduct an investigation into the complaint. The investigation process permits an opportunity for the Commission to access the information it requires in relation to its own role. The other parties, as well, have usually participated in an investigation process and should be in possession of a significant amount of information respecting the complaint. Similarly, the Board requires disclosure of relevant information to function as required by the *Act*.

38. Where, prior to the Board of Inquiry commencing its inquiry, the parties request that the Board of Inquiry base its decision upon a settlement agreement, the Board is obliged to determine a process to satisfy itself that the settlement is in the public interest. It requires sufficient information from the parties to permit this analysis to occur. In this case, prior to the case management conference held by telephone on October 10, 2013, there had been no opportunity for the Board of Inquiry to consult with the parties, to obtain representations respecting the facts, submissions respecting the law and to canvas the parties respecting their positions on various issues raised by the content of the proposed Settlement Agreement. The Settlement Agreement consisted of a "without prejudice" monetary payment and there was no means to assess whether the payment was reflective of the public interest on the face of the Settlement Agreement. In my view, it was necessary for the parties to provide a factual context and other relevant information to support their request of the Board of Inquiry.

39. This is to be contrasted with the decision in *Halifax Association of Black Firefighters,* where numerous consultations with the Board of Inquiry Chair had taken place before the settlement agreement was presented to the Board of Inquiry for approval pursuant to section 34(5) of the *Act.* As well, in *Halifax Association of Black Firefighters*, the terms of settlement more obviously addressed both individual and systemic allegations of discrimination. The terms of settlement included remedies such as a public apology by a representative of the Respondent and what was described by the Board of Inquiry as "an acceptance of both public and institutional accountability that obligates the parties to maintain their commitment to this resolution." The Board of Inquiry had no difficulty in that case in concluding that the settlement agreement could be approved as being in the public interest.

40. This settlement represents a compromise between the Complainant and the Respondent, rather than a finding of whether there was discrimination, and, if so, what would be an

appropriate remedy. No order is sought by the parties as part and parcel of the Board's decision pursuant to section 34(5). By agreeing to a "without fault" compromise, rather than securing a finding respecting whether discrimination occurred, the Complainant and Respondent are effectively asking that the complaint be withdrawn. By agreeing that a hearing or inquiry is no longer required, the Commission is agreeing to allow the complaint to be withdrawn. A similar characterization of a settlement agreement was made in the *Eblie-Corrigan* case.

41. In *Eblie-Corrigan,* the Board of Inquiry was presented with a settlement agreement by the parties. The parties did not consider it to be of value to provide the Board of Inquiry with factual information respecting the background of the complaint. The Board of Inquiry concluded that the agreement should be regarded as a withdrawal rather than a settlement of a proven complaint of discrimination. In hearing submissions from the parties respecting how a Board of Inquiry is to assess the public interest in these circumstances, the Board of Inquiry considered the submissions of Counsel for the Commission to the effect that the public interest assessment should be made on a sliding scale. It was submitted that the public interest might be appropriately assessed on a less stringent standard in favour of the private interests of the litigants where the experience of discrimination affected an individual. It was suggested that this could be contrasted with circumstances where the discrimination was systemic or involved an institutional experience of discrimination, in which case a more stringent standard should be applied. The Board of Inquiry rejected that argument in the *Eblie-Corrigan* case and held:

> *... 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 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 is a sufficient response to the perceived discrimination that prompted her complaint. I simply do not know.

42. The Board of Inquiry concluded that it had no means to evaluate whether the settlement was actually in the public interest on the face of the settlement agreement, beyond the values associated with the parties achieving a resolution themselves. All parties were represented by counsel, a fact which caused the Board of Inquiry to note, "...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."

43. The Board of Inquiry determined that it was not able to provide any specific comment in its decision as to whether the withdrawal of the complaint, based on the settlement agreement, was in the public interest, apart from noting that it was a resolution reached by the parties and did not appear to be unfair.

44. This case is to be distinguished from the decision in *Craig and Robertson and Halifax Regional Municipality and Metro Transit*, (June 30, 2011) Nova Scotia Human Rights Board of Inquiry, which also considered a negotiated settlement. In that case, the Board of Inquiry received a consent order, a memorandum of understanding between the parties and submissions related to the proposed resolution, including an explanation of the background to the complaints. The Board of Inquiry adopted the consent order reflecting the terms of settlement as the core of an interim order with some adjustments. The parties had asked the Board of Inquiry to exercise its authority pursuant to section 34(8) of the *Act* to endorse various remedies. That order was founded upon a technical finding of a discriminatory effect, based on an acknowledgement of a contravention of the *Act* by the Respondent in relation to the rights of the Complainants to access transportation services, although the consent order itself was silent on this aspect of the matter. The Board of Inquiry retained jurisdiction to hear from the parties respecting the extent of any contravention of the *Act* by

the Respondent and to address any issues respecting implementation, which provided a means of recourse to the parties if the terms of settlement were not met to the satisfaction of all the parties. In approving the consent order, as amended, the Board of Inquiry concluded that its terms were consistent with the principles in the *Act*.

45. In my view, "public interest" is capable of a fuller meaning than simply the fact of settlement. The public interest should be interpreted in accordance with the purpose of the legislation, including its remedial and educational aspects and the desirability of fostering awareness of the harmful effects of discrimination, assuming that discrimination has occurred. That purpose is expressly defined in section 2 of the *Act* as follows:

> 2 The purpose of this Act is to
> (a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;
> (b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;
> (c) recognize that human rights must be protected by the rule of law;
> (d) affirm the principle that every person is free and equal in dignity and rights;
> (e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and
> (f) extend the statute law relating to human rights and provide for its effective administration.

46. There is nothing in section 2 of the *Act* to suggest that the public interest analysis is dependent upon whether the allegation of discrimination involves an individual's single experience of discrimination or broader institutional or systemic issues of discrimination.

47. In this case, the Board of Inquiry is presented with a withdrawal of a complaint where no order is requested in its decision. The terms of settlement, as amended, are not contrary to the public interest on their face. However, without an admission or determination of whether

discrimination occurred and an understanding of the nature and extent of any discrimination and its effects, it is not possible to actually assess whether the terms of settlement adequately address the Complainant's initial perception that she had been discriminated against by the Respondent. Likewise, it is not possible to determine whether it is in the public interest for the Respondent to make any restitution, apart from the benefit of avoiding the costs and use of resources required for a hearing.

48. The Board of Inquiry is able to consider whether the withdrawal is appropriate and in keeping with the public interest in certain respects. In the circumstances, these include:

    a) Whether consent to the settlement is voluntary and informed;
    b) Whether the terms of settlement are clear and unambiguous;
    c) Whether the terms of settlement appear to be in the public interest; and
    d) Whether the settlement is capable of being implemented enforced and whether it will bring a final resolution to the complaint.

49. The parties have asked that this Board of Inquiry proceed on the basis of the factual representations made at the case management conference. It is apparent that there was a significant disagreement concerning whether discrimination took place. The Complainant believed that she was discriminated against. The Respondent's version of events, untested by a hearing and accepted on its face, could lead to a finding that there was no discrimination. The Complainant has not taken issue with the Respondent's explanation of events by offering additional facts. She does not dispute the Respondent's factual assertions that several employees were laid off and that the decision was made before she notified the Employer of her pregnancy. In other words, the Complainant is not taking serious issue with the Respondent's defence. Withdrawal of the complaint without a hearing on the merits in these circumstances does not appear to offend the public interest.

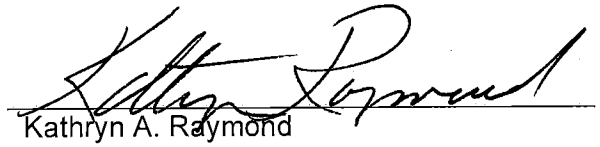
50. This is not a case where any unintentional discrimination is alleged. Allegations of that nature usually require a detailed factual analysis.

51. In the context of a negotiated settlement, the Board of Inquiry should be alert to the potential for undue advantage to be taken of an unrepresented party. The Complainant appeared to understand that the amounts involved are not a reflection of what her actual entitlements to remedy (in theory) may or may not be under the *Act.* Her priority was concluding the settlement.

52. As noted above, I was initially concerned that it may not be in the public interest for a complaint to be withdrawn on the basis of a settlement where there would be no means to enforce the settlement pursuant to the *Act*, particularly where the Complainant was unrepresented by counsel. However, the provision by Respondent's Counsel of a solicitor's undertaking mitigated that concern.

53. On this basis, I report that the complaint has been settled by agreement among all the parties and will be withdrawn on terms that are not subject to an order. I am, however, required to report the terms of the settlement in this decision by operation of section 34(5) of t*he Act.* Accordingly, a copy of the terms of settlement originally submitted by the parties on September 26, 2013 is attached. The attached terms of settlement are to be read as reflecting the amendments agreed to by the parties respecting the deletion of paragraphs 7, 11 and 12 and the amendments to paragraphs 4, 6 and 10 as described above.

54. This inquiry is hereby concluded pursuant to section 34(5) of the *Act.*



Kathryn A. Raymond

Nova Scotia Human Rights Board of Inquiry