

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

and

**IN THE MATTER OF:** Board File No. 42000-30-H12-1111

**BETWEEN:**

**Nicole McDonald**

(“Complainant”)

- and -

**Nova Scotia Community College**

(“Respondent”)

- and -

**The Nova Scotia Human Rights Commission**

(“NSHRC”)

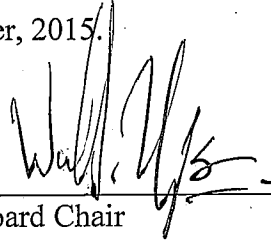
### **DECISION OF THE BOARD OF INQUIRY**

This is my decision for the Board of Inquiry concerning the above matter. This inquiry was mandated to enquire into allegation of discrimination under s. 5(1)(a)(o) of the Act on the grounds of mental disability. I have decided to conclude the inquiry after reviewing the settlement agreement presented by the parties and after considering the public interest.

The complaint was referred to me for conclusion by agreement among all parties pursuant to section 34(5) of the *Act*. I have reviewed the Settlement Agreement which is attached to this decision. It appears the settlement reflects the principal objectives of the *Human Rights Act* in educating persons about the fundamental importance of human rights, educating on the values and purposes of human rights, and finally, in settling complaints as the preferred means of resolving human rights disputes that occur from time to time. I commend the parties for their success in reaching the settlement.

Finally, the public interest has been considered and served by resolving this complaint in the manner settled by the parties. I see no further reason to continue the inquiry.

**Dated** at Halifax, Nova Scotia, this 7<sup>th</sup> day of December, 2015.



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Board Chair  
J. WALTER THOMPSON, Q.C.



**NOVA SCOTIA**  
Human Rights Commission

**RESTORATIVE AGREEMENT**

**(the "Agreement")**

**Between:**

**Nicole McDonald**

("Ms. McDonald")

**-and-**

**The Nova Scotia Community College**

("NSCC" or "the College")

**-and-**

**The Nova Scotia Human Rights Commission**

("Commission")

### **Background**

1. The parties have worked collaboratively to resolve the issues arising from the complaint of Nicole McDonald, filed under the Nova Scotia *Human Rights Act* against the NSCC, on August 22, 2012.
2. Ms. McDonald had concerns that she was not accommodated with respect to her learning disability as it related to the role of her Education Attendant ("EA") in the classroom. Ms. McDonald relies on her EA in the classroom to support her learning and to provide personal care.
3. The NSCC had concerns that the use of an EA to support learning could interfere with the independent demonstration of learning outcomes and impact the academic integrity of the program.
4. The parties have engaged in a collaborative, restorative process in an effort to arrive at a better understanding of the complexities of this kind of accommodation and to address both parties' needs.
5. The parties agree this plan allows Ms. McDonald to be supported in her learning and allows her to demonstrate learning outcomes in a manner that maintains the academic integrity of the program.
6. The Commission supports the Agreement as being in the public interest in the circumstances of this case because the parties have assessed and addressed the reasonable concerns raised by each and agreed on the resolutions found in this Agreement. The parties also indicated to the Commission that they prefer the outcomes they create over those imposed by a Board Chair at a Board of Inquiry.

### **Accommodations**

7. The parties agree on the importance of providing reasonable accommodations to students with disabilities. The College has a strong history of providing

accommodations to disabled students and is a leader of other provincial institutions of applied learning in this area.

8. The parties acknowledge the additional and substantial resources the NSCC provided to plan and implement accommodations for Ms. McDonald.
9. Both parties commit to continue to develop and follow a process to identify and implement academic accommodations specific to each learning context, activity, assessment, and evaluation during Ms. McDonald's program.
10. The parties agree to the use of an EA in the classroom to support Ms. McDonald's learning in a way that allows her to independently demonstrate learning outcomes.
11. The role of Ms. McDonald's EA is to support learning and participation in the classroom; the EA is not a member of the class, rather a present non-participant. This means the EA does not independently contribute to classroom discussions, ask questions or speak on behalf of Ms. McDonald. The EA may, for example, if appropriate, assist Ms. McDonald by re-structuring questions, providing additional questions to assist understanding, refreshing memory, or summarizing and organizing information in a manner conducive to the student's learning needs.
12. The parties agree the EA will provide personal care assistance, out of class tutoring, and learning support.
13. Both parties agree the academic integrity of the program must be maintained during evaluation and assessment. Testing accommodations will be provided, based on the above mentioned planning and may include extra time to complete tests, a quiet space to write tests, scheduling tests at a time of day appropriate for Ms. McDonald and the use of software and/or technology that may assist Ms. McDonald.

***Agreement for Return to the NSCC***

14. Ms. McDonald expressed a desire to return to the NSCC in the Social Services Diploma program. Ms. McDonald was admitted to the Social Services Diploma program beginning in September 2014.
  
15. The College and Ms. McDonald agree that upon her successful completion of all of the learning outcomes of the Social Services Diploma program, the College will award Ms. McDonald a diploma. The College will recognize any courses successfully completed by Ms. McDonald while she previously attended the College, where they meet the learning outcomes of the Social Services Diploma program.
  
16. Ms. McDonald's first semester included the following courses:
  - Interpersonal Insights;
  - Personal Awareness and Growth; and
  - Introduction to Helping Applications Theory.

Ms. McDonald's second semester included the following courses:

- Helping Applications;
  - Writing Skills for Social Service Practice II;
  - Related Subjects; and
  - Beginning Helper.
17. It is understood by the parties that prerequisites and/or co-requisites are required for some courses throughout the program. For example, Introduction to Helping Applications Theory is a prerequisite to Helping Applications. Interpersonal Insights and Personal Awareness and Growth are prerequisites to Beginning Helper. Successful completion in first semester of Introduction to Helping Applications Theory, Interpersonal Insights, and Personal Awareness and Growth is necessary for second semester enrollment in Beginning Helper and Helping Applications.

18. Ms. McDonald and the NSCC agree that Ms. McDonald will be provided with accommodations in the Social Services Diploma program. The parties understand and agree that not all accommodations are required in every circumstance or in every course. Through the collaborative process outlined in this Agreement, accommodations already available at the NSCC will be made available to Ms. McDonald, as appropriate and when required.
19. Ms. McDonald and the NSCC agree that Ms. McDonald will be permitted an EA, at her own cost, to provide academic support in the classroom. Through practice and discussion, Ms. McDonald and the NSCC have established the role of the EA and agree it will be monitored. The role of the EA is defined in more detail in a separate Role Description for Nicole McDonald's Education Attendant document which will be kept in Ms. McDonald's academic file. The Role Description for Nicole McDonald's Education Attendant document will not change except with the agreement of both parties.
20. Ms. McDonald and the NSCC agree that the recommendations from the Neuropsychological Assessment dated August 22, 2011 will continue to be used where appropriate to guide accommodation planning.
21. The NSCC recognizes that one of the types of accommodation Ms. McDonald needs is short term memory triggers. This type of assistance does not necessarily impair the independent achievement of course outcomes in the Social Services Diploma program, as that will depend on the nature of the learning outcome. In the case of Ms. McDonald having to demonstrate a learning outcome that requires the use of short term memory, the parties acknowledge that Ms. McDonald is required to independently demonstrate the learning outcome. Ms. McDonald's demonstration of the learning outcome may take into consideration how Ms. McDonald learned (encoded) information and incorporate a decoding method that facilitates her memory recall.

22. As with all programs, the College retains full discretion to make changes to the Social Services Diploma program consistent with its academic goals.

***Contributions by the NSCC***

23. The College will assist Ms. McDonald in securing a suitable work placement.
24. The NSCC agrees to provide a Disability Resource Facilitator (DRF) to Ms. McDonald. The NSCC also agrees to appoint a Student Services representative to assist Ms. McDonald with her transition back to the NSCC and to periodically monitor her academic and non-academic progress.
25. The College agrees to assign the Dean of the School of Health and Human Services as the sponsor of this Restorative Agreement.

***Contributions by Ms. McDonald***

26. Ms. McDonald with the support of her EA and family, agrees to work collaboratively with the NSCC to determine appropriate accommodations that support independent demonstration of learning outcomes in the Social Services Diploma program.
27. Ms. McDonald agrees to instruct the EA in accordance with the Role Description for Nicole McDonald's Education Attendant document which outlines the role of the EA. This document is referred to in greater detail in paragraph 19 of this Agreement.

***Program Modification***

28. The parties agree that Ms. McDonald will transition to a modified Social Services program if she does not successfully achieve the learning outcomes of the Social Services Diploma program. Should the need to modify courses arise, it will be necessary to reconsider Ms. McDonald's course selection. If a decision is made



to modify courses, the number of courses which can be taken and when they are offered may be limited. Successful completion of modified courses will result in a Certificate of Accomplishment in Social Services.

29. The official transcript for a Certificate of Accomplishment lists all courses completed at NSCC and identifies which courses have been modified. A transcript attachment details the learning outcomes achieved for each modified course.
30. The parties agree that, if Ms. McDonald transitions to a modified Social Services program, she will be permitted to enroll in any course of the two year Social Services program for which she is eligible.
31. The parties agree that, if Ms. McDonald transitions to a modified Social Services program, Faculty and the Disability Resource Facilitator will consult with the McDonald family (Nicole, Ken and Mariette) to determine appropriate modifications to Ms. McDonald's program.
32. The College and Ms. McDonald agree to continue meeting regularly throughout the program. The purpose of these discussions is to consider Ms. McDonald's academic learning, her accommodations, her progress, and the role of the EA so that adjustments can be identified and implemented to resolve issues, if any should arise.

***Contributions by the Commission***

33. The Commission agrees to facilitate conversations during Ms. McDonald's program, until June 30, 2016, should the parties require assistance.
34. The Commission agrees to host a meeting with Nova Scotian post-secondary educational institutions to discuss and explore accommodation issues to allow discussion of best practices and a general sharing of knowledge.

35. The Commission agrees to invite the NSCC to this discussion. The NSCC has agreed to participate in the discussion.

***Contributions by the Board Chair***

36. The parties agree that the Board Chair will retain jurisdiction with regard to the sole issue of accommodation until June 30, 2016 or such earlier date agreed to by the parties. In that capacity, the Chair will oversee the process contemplated by this Agreement, and, if requested by the parties, will assist the parties in resolving any issues arising under this agreement for accommodation. The Parties agree not to contest the jurisdiction of the Board if exercised under this section.

***Other***

37. This Agreement will be final and binding on the parties. The Board of Inquiry will report the terms in its Decision pursuant to section 34 (5) of the *Human Rights Act* and therefore the parties understand this Settlement agreement is a public document. The section 34(5) report of the Chair will be issued on or before six months from the date this Agreement is signed.
38. Ms. McDonald, or anyone representing Ms. McDonald, or her estate, cannot make any further claims or legal actions against the College or anyone associated with the College, or any employee, officer or director of the College, on the facts giving rise to the original complaint or on the basis of this Restorative process and Agreement. This paragraph does not include any actions related to enforcement of this agreement.
39. Ms. McDonald and the College understand and agree that they have ***not received advice*** from staff, officers, the facilitator or legal counsel of the NSHRC, with respect to the terms of this Agreement; including but not limited to implications regarding taxation liability under the *Income Tax Act*, employment

insurance benefit repayment, or insurance policy repayments. Ms. McDonald acknowledges that neither Lisa Teryl or Ann Smith, Commission legal counsel, nor Lauren Jones, restorative facilitator, are representing her, or provided her with legal advice. Further, the parties agree and understand that Lisa Teryl and Ann Smith, legal counsel, only represent the Commission.

SIGNED in Halifax, Nova Scotia, this 4 day of ~~July~~ <sup>September</sup> 2015.  
JK



**Nicole McDonald,  
Complainant**


SIGNED in Halifax, Nova Scotia, this 28<sup>th</sup> day of July 2015.

Per: 

**Nova Scotia Community College,  
Respondent  
Cheryl Hodder, QC  
Legal Counsel**

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

SIGNED in Halifax, Nova Scotia, this 19<sup>th</sup> day of November 2015.



**NOVA SCOTIA HUMAN RIGHTS COMMISSION**

**SCHEDULE "A"**

In the matter of the Nova Scotia *Human Rights Act*, R.S., c. 214, s. 1

Nicole McDonald

Complainant

and

The Nova Scotia Community College

and

Respondent

The Nova Scotia Human Rights Commission

**CONSENT ORDER**

WHEREAS the parties have settled the matter prior to a Board of Inquiry;

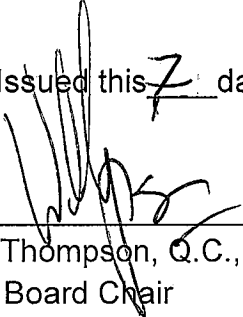
AND WHEREAS the parties have worked collaboratively with the Commission and each other to address and resolve the issues arising out of the complaint dated August 22, 2012;

AND WHEREAS the parties have agreed to the following terms of settlement and agree not to contest the jurisdiction of the Board Chair to issue this order;


It is hereby ordered that:

1. The terms of the Restorative Agreement attached are incorporated into this Order of the Board of Inquiry.
2. Failure to abide by the Restorative Agreement will result in the matter being referred to the Supreme Court for enforcement pursuant to the *Human Rights Board of Inquiry Monetary Orders for Compensation Regulations*.

Issued this 7 day of December 2015.

  
\_\_\_\_\_  
Walter Thompson, Q.C.,  
Inquiry Board Chair

**Consented as to form and content:**

  
\_\_\_\_\_  
Nicole McDonald, Complainant

  
\_\_\_\_\_  
Representative of the Nova Scotia Community College, Respondent

  
\_\_\_\_\_  
Ann Smith, Legal Counsel  
Nova Scotia Human Rights Commission