File Name: A complaint of discrimination by Dorothy Kateri Moore (Complainant) against PLAY IT AGAIN SPORTS LTD., and/or TREVOR MULLER and /or RONALD MULLER (Respondents)

Date of Decision: February 17, 2004
Area(s): Employment
Characteristic(s): Sex (gender), Aboriginal origin
Complaint: Dorothy Kateri Moore is Mi'kmaq woman. She worked as a sales clerk for Play It Again Sports Ltd. She alleged that Trevor Muller, general manager and part-owner of Play It Again Sports, and his father Ronald Muller, who helped out at the store, called her "Kemosabe". She felt this was a racial slur. She said she regularly endured comments from these men and her co-workers which she felt implied that Mi'kmaqs were likely to steal and bootleg, and Mi'kmaq women were "easy". Ms. Moore said she quit her job because of the poisonous work environment.

Decision: The Board dismissed Ms. Moore's complaint.

Comments about Women and Aboriginal Origin
An employer is responsible for providing a workplace free from harassment and discrimination. The law intends to protect against negative work environments, but does not intend to inhibit normal social interactions or free speech. Differences of opinion where matters of sex and Aboriginal origin are discussed at work are not prohibited but if they become a condition of employment, this can result in a poisoned work environment.

The Board found that Ms. Moore was inconsistent in her examples of comments relating to stereotypes about Mi'kmaqs and women, and found that the incidents were insufficient (both individually and when viewed altogether) to equal discrimination. The board found that the word "Kemosabe" was regularly used as a form of greeting among staff and towards customers, and was intended to mean something like "trusted friend" and Ms. Moore was not singled out with this term. While there was some evidence that the term would be offensive to the Mi'kmaq community generally, the Board found that Ms. Moore had been unfamiliar with the term before working there and therefore she was not offended to a level that would equal a poisoned work environment.

Duty to Inform Employer
An employee has a responsibility to tell their employer that they feel offended by language used in the workplace. The Board found that the employer could not have known the term "Kemosabe" would be offensive to Ms. Moore. There was conflicting evidence on whether she advised her employer that she found it offensive, but Board noted that, even by Ms. Moore's own account, she did not say she found it offensive but said she would prefer to be called "nitap" which means "friend".

Remedy: There was no discrimination and therefore no remedy was ordered.

Nova Scotia Court of Appeal, decision: October 29, 2004
Dorothy Kateri Moore and the Nova Scotia Human Rights Commission appealed this decision. The court held that "the Board's fact-finding processes were not tainted by any...errors of law. On the contrary, they were conclusions which the Board could reasonably arrive at on the basis of the evidence before it." The appeal was dismissed.

2004-NSHRC-2

IN THE MATTER OF: **THE *HUMAN RIGHTS ACT,* R.S.N.S., 1989**

as amended by 1991, c.12

and

IN THE MATTER OF: **A complaint of discrimination by DOROTHY KATERI MOORE (Complainant) against PLAY IT AGAIN SPORTS LTD., and/or TREVOR MULLER, and/or RONALD MULLER (Respondents)**

BEFORE: **BOARD OF INQUIRY**

CHAIR – DAVID J. MacDONALD

D E C I S I O N

APPEARING: ELIZABETH CUSACK, Q.C.

Counsel for the Complainant

ANN E. SMITH and

ANASTASIA MAKRIGIANNIS

Counsel for the Human Rights Commission

TREVOR MULLER

Counsel for himself/Ronald Muller and

Play It Again Sports Ltd.

DATES OF HEARINGS: **July 2, 3 & 4, 2003**

November 17, 18, 19, & 20, 2003

DATE OF DECISION: February 17, 2004

1. This Board of Inquiry was appointed by the Nova Scotia Human Rights Commission pursuant to Section 32A(1) of the Nova Scotia Human Rights Act, R.S.N.S. 1989, as amended by 1991, c. 12, to inquire into the formal complaint of Dorothy Kateri Moore dated March 23, 2000, against Play It Again Sports Ltd. and/or Trevor Muller and/or Ronald Muller.

2. The parties to the proceedings were the complainant, Dorothy Kateri Moore, who was represented by Elizabeth Cusack, Q.C.; the Human Rights Commission represented by Ann E. Smith and Anastasia Makrigiannis; Play It Again Sports Ltd. represented by Trevor Muller; Trevor Muller representing himself; and Ronald Muller represented by Trevor Muller.

3. The Board held hearings into this matter on July 2nd, 3rd, 4th and November 17th, 18th, 19th, and 20th of 2003. All parties were present and represented throughout each day of the hearings.

4. Ms. Moore is of Mi'kmaq descent. She commenced employment as a sales clerk at the respondent company Play It Again Sports Ltd. (the Company) in Sydney, Nova Scotia on September 12th, 1998. It was Ms. Moore's understanding that Trevor Muller is the owner/operator of the company and Ronald Muller (Trevor's father) is also employed there.

5. The evidence adduced at these hearings confirm that Trevor Muller is the general manager of the company's operations and part-owner, while Ronald Muller is not an employee of the company although he does spend considerable time there and helps out in whatever ways he feels needed.

The Formal Complaint:

6. In her formal complaint Ms. Moore states that on a number of occasions while she was at work she was greeted or referred to as "kemosobe" by Trevor and Ronald Muller. The word "kemosobe" is a reference to the old Lone Ranger/Tonto television series. Ms. Moore was offended by the term and found it demeaning and insulting to her aboriginal origin.

7. According to Ms. Moore she told both Trevor and Ronald Muller that they could refer to her as "nitap", the Mi'kmaq word for friend but that they could not refer to her as "kemosobe". Nonetheless the Mullers continued to refer to her as "kemosobe". As well, Ms. Moore states in her formal complaint that she believes Trevor Muller was seeking ways to terminate her employment or have her quit, partly because of her sex and partly because of her aboriginal origin. She states this was so because Trevor Muller wished to make room in the store to re-hire a friend.

8. According to Ms. Moore, on October 15, 1999, Trevor Muller accused her

of not providing service to customers. Although she made several attempts to explain the situation Mr. Muller refused to listen. Ms. Moore felt there was no option but to leave the employment.

9. Ms. Moore alleges in the formal complaint that she was discriminated against because of her sex and that the actions of Trevor Muller are in violation of Section 5(1)(d)(m) of the Nova Scotia Human Rights Act. This allegation was withdrawn prior to the commencement of the hearings into this matter and consequently there is no need to address it further (nor reference the incidents recited in the formal complaint).

10. Ms. Moore further alleges that she was discriminated against because of her aboriginal origin and that the actions of Ronald Muller and Trevor Muller are in violation of Section 5(1)(d)(q) of the Nova Scotia Human Rights Act.

Standard of Proof:

11. The standard for assessing the evidence before a Board of Inquiry is on the civil balance of probabilities. If the Board is satisfied on balance that the complainant has proved the discrimination alleged and there is no justification or defense available to the Respondent(s), then the Board may fashion a remedy. If the Board is not so satisfied, then it may dismiss the complaint. It is the complainant who bears the initial onus to establish a *prima facie* case, that is, one which covers the allegations made and which, if believed, is complete and sufficient to justify a verdict in her favour in the absence of an answer from the respondent/employer that is not pretextual. (See *Ontario/Human Rights Commission) v. Etobicoke (Borough)* [1982] 1 S.C.R. 202 at 208). The burden of proof that must be met by a complainant in matters of this nature was summed up by

12. Board Chair David Bright in *McLellan v. Mentor Investments Ltd.* (1991), 15 C.H.R.R. D/134 para. [15] (N.S. Bd. Inq.):

> **…**
>
> **The civil burden or "preponderance of evidence", or proof of a fact on a balance of probabilities has been described as, It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If this evidence is such that the tribunal can say, "we think it more probable than not," the burden is discharged, but, if the probabilities are equal, it is not."**

13. Counsel for the Commission and Ms. Moore have directed my attention to amultitude of cases involving human rights adjudications. Particular emphasis was placed on the role of circumstantial evidence when inquiring into a complaint of discrimination. In *Fortune v. Annapolis District School Board* (1992), 20 C.H.R.R. D/100 (N.S. Bd.Inq.) the Board stated as follows in regard to relying on circumstantial evidence regarding discrimination (at para.25):

> **…However, if circumstantial evidence reasonably leads to the**

conclusion that gender was the most probable 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.**

14. And at paragraph 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.

***Vizkelety, Proving Discrimination in Canada* is helpful on this point. She says at pp. 142 to 143**

> **…At the very least, a decision on relevance should take into account the fact that the evidence being tendered is <u>but part of an aggregate</u> from which the fact finder will ultimately be asked to infer the existence of a fact in issue. [Emphasis in hearing decision].**

15. Also in *Basi v. Canadian National Railway Co. (No. 1)* (1998), 9 C.H.R.R. D/5029 (Can.Trib.) at paras. 38482 and 38486, and at para. 38497 the tribunal made the following observation:

> **Faced with the employer's response [to the complaint of discrimination], the final evidentiary burden returns to the complainant to show that the explanation provided is pretextual and that the true motivation for the employer's actions was in fact discriminatory.**

> **To accomplish that end the complainant would have a herculean task were it necessary for him to prove, by direct evidence, that discrimination was the motivating factor. Discrimination is not a practice which one would expect to see displayed overtly. In fact, rarely are there cases where one can show by direct evidence that direct discrimination is purposely practiced.**
>
> **Since direct evidence is rarely available to a complainant in cases such as the present it is left to the Board to determine whether or not the complainant has been able to prove that the explanation is pretextual by inference from what is, in most cases, circumstantial evidence:**
>
> > **Discrimination on the grounds of race or colour are [sic] frequently practiced in a very subtle manner. Overt discrimination on these grounds is not present in every discrimination situation or occurrence. In a case where direct evidence of discrimination is absent, it becomes necessary for the Board to infer discrimination from the conduct of the individual or individuals whose conduct is at issue. This is not always an easy task to carry out. The conduct alleged to be discriminatory must be carefully analyzed and scrutinized in the context of the situation in which it arises. [Kennedy v. Mohawk College (1973) (Ont. Bd. Inq.) (Borons) [unreported].]**

16. In line therewith it is contended by counsel for the Commission and Ms. Moore that even if there is no direct evidence of discrimination against Ms. Moore, the Board can still infer iscrimination from circumstantial evidence.

17. A number of the cases submitted for the Board's consideration deal with discrimination based on ethnic, racial and aboriginal ancestry. In situations where racial epithets or comments are repeated, there can be what is described as a poisoned workplace or poisoned work environment. In *Reti v. Gibbs* (1999), 43 C.H.R.R. D/233 (Y.T. Bd. Adj.) a case involving an aboriginal complainant, the Board concluded as follows commencing at para.46:

> **[46] After hearing the evidence given by the many witnesses and assessing the credibility of each witness, the Board finds that the poisoned work environment resulted from several examples of direct discriminatory**

comments made to the complainant, a general acceptance of inappropriate comments by staff and management, and a reluctance by management to address the issue.

[48]…As stated in *Naraine v. Ford Motor Co. of Canada* (No. 4) (1996), 27 C.H.R.R. D/230, at ss.44 [D./238]:

> **…The harm which arises from name-calling and racial jokes occurs because the group class which is targeted is one which is seriously disadvantaged compared to the dominant group. The jokes and epithets combine insidiously with patterns of economic and social discrimination and subordinate the individuals identified.**

[50] The Board also finds that the general acceptance of inappropriate comments by staff and management also contributed to a poisoned work environment. Even though these comments were not made directly to the complainant, the Board finds that derogatory comments against First Nation ancestry contributes to a poisoned work environment for the complainant.

[52] …An employee has a right to work in an environment free of harassment discrimination, and indirect comments made against the very fabric of self-identity should not have to be tolerated. To hold otherwise would be [to] condone derogatory remarks, as long as they are not directed to a complainant.

18. However, that Board also cautioned in para. 54 and 55:

[54] … that indirect comments alone will usually fall within the "less severe" end of the spectrum: Dhanjal, supra, at 209 [D/44]:

> **In short, the more serious the conduct the less need there is for it to be repeated, and, conversely, the less serious it is, the greater need to demonstrate its persistence in order to create a hostile work environment and constitute racial harassment .**

[55] Dhanjal, supra, at 212 [D/414], goes on to point out that it is important to assess the perception of the harassment from [the] "perspective of a reasonable person belonging to a racial minority, putting aside the stereotypes entertained in good faith by the majority."

19. Along similar lines it was concluded in *Swan v. Canada (Armed Forces*) (1994), 25 C.H.R.R. D/312 (Can. Trib.) that it is the perception of the complainant which is important and an intention to discriminate is not a necessary prerequisite to a finding of liability. However that tribunal went on to find that there was an onus on the complainant to make his/her objection known to the employer. At para. 44 it states:

[44] The question the Tribunal is then left with is what obligation is there on the CAF to proscribe behaviour when they do not know what is or is not acceptable to the individual. We think that this places an unreasonable burden upon an employer. There must be some indication from the individual that the conduct, etc., is not acceptable when the Act places the onus on the employer to provide a workplace free from harassment or discrimination and places no onus on the victim to do anything but lay a complaint under the Act.

20. Similarly in *Robichaud v. Canada (Treasury Board*) (1987), 8 C.H.R.R. D/4326 (s.c.c.) the Supreme Court of Canada stated as follows in 33937:

21.

> **Since the Act is essentially concerned with the removal of discrimination, as opposed to punishing anti-social behaviour, it follows that the motives or intention of those who discriminate are not central to its concerns. Rather, the Act is directed to redressing socially undesirable conditions quite apart from the reasons for their existence. O'Malley makes it clear that "an intention to discriminate is not a necessary element of the discrimination generally forbidden in Canadian human rights legislation" …**

22. The Interpretation Act of Nova Scotia, R.S.N.S. 1989, c.235 directs an interpretation of every statute in line with its objectives, its spirit, true intent and meaning. The purpose of the Nova Scotia Human Rights Act is stated in s.2 thereof, and includes a recognition of the inherent dignity and the equal and inalienable rights of all members of the human family; a recognition that human rights must be protected by the rule of law; and an affirmation that everyone is free and equal in dignity and rights.

The Issue:

23. Ms. Moore alleges that she has been discriminated against in the matter of her employment because of her aboriginal origin. The relevant prohibition against discrimination in
the Act is as follows:

> **Section 5: (1) No person shall in respect of …**
>
> > **d. employment … discriminate against an individual or class of individuals on account of …**
> >
> > **q. ethnic, national or aboriginal origin**

24. Discrimination is defined in section 4 of the Act as follows:

> **Section 4: For the purpose of this Act, a person discriminates where the person**

makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

25. Ms. Moore is a Mi'kmaq and therefore of aboriginal origin. She worked as a sales clerk for the respondent, Play It Again Sports Ltd. for approximately thirteen (13) months from mid September 1998 to mid-October 1999. The issue to be determined by this Board is whether or not Ms. Moore was discriminated against on the basis of her aboriginal origin. Specifically, did the respondent(s) contravene section 5(1)(d)(q) of the Human Rights Act by subjecting Ms. Moore to discrimination as defined in section 4 of that Act? That definition requires that in order to constitute discrimination the Respondent(s) must have made a distinction whether intended or not based on Ms. Moore's aboriginal origin that has the effect of:

> imposing burdens, obligations or disadvantages on her not imposed on others; or which withholds or limits access to opportunities, benefits and advantages available to other employees.

The October 15th, 1999 incident: *

26. The morning of October 15th, 1999 was a very busy one at Play It Again Sports' place of business. According to Ms. Moore she had been servicing a family who were looking to upgrade the skates for their son and trade old ones. Ms. Moore had spent over an hour with these people and had found what they wanted but the deal was hung up on the maximum $35.00 she was allowing them for the old skates. She advised the family that they would have to speak to Trevor Muller about getting a higher trade-in value, pointed him out and led them over to him. She checked to see if there were any other customers who needed attention, determined that there was not, then proceeded to the rear part of the store to pick up kneepads which had been spilled on the floor and which she considered a hazard to customers.

* The date may actually have been Saturday, October 16th, 1999. Regardless thereof, it does not affect what happened.

27. There ensued what can best be described as a confrontation between Ms. Moore and Trevor Muller, which led eventually to her quitting. While there is agreement in general as to what took place, their perspectives are very different.

28. Ms. Moore recalls that the empty bag of kneepads was in the main customer part of the store towards the left rear side. Trevor Muller and Ronald Muller recall the bag as being in the back room where the skate sharpening takes place. If it was in the customer portion of the store it gives more credence to Ms. Moore's concern that it posed a hazard to customers. On the other hand, the back left side of the store was where the skates were kept and as Ms. Moore acknowledged, most of the miscellaneous stuff was kept in the backroom or upstairs. But nothing of significance hinges on this fact one way or the other in regard to what happened next. According to Ms. Moore she was just about to start putting the pads in the bag when she was startled by the sudden appearance of Trevor Muller who was repeatedly yelling "What are you

doing?" He also accused her of losing a sale as customers who she had been waiting on, had left the store complaining about the service. Ms. Moore responded "What does it look like I'm doing?" When she tried to explain about the customers Trevor Muller said he didn't want to hear it, customers were more important than cleaning up. She continued trying to explain about the customers but Trevor Muller kept saying he didn't want to hear it. Then Trevor Muller invited her to go outside. They did and Ms. Moore kept trying to explain what had happened with the customers but Trevor Muller wouldn't listen and kept cutting her off. Ms. Moore was getting upset and started to shake. Trevor Muller's voice was raised. He told her to get back to work and went back inside. She followed him and when they got near the back of the store she once again tried to explain what had happened. Trevor Muller said he didn't want to hear it so Ms. Moore stated she had no choice but to quit. Trevor Muller told her to do what she wanted. Ms. Moore began crying, got her coat and left. Ms. Moore recalls this as occurring in the late afternoon.

29. According to Trevor Muller, he had been helping several customers when he noticed some others that Ms. Moore had been servicing pick up their skates and leave the store complaining about the service. When he had finished what he was doing he looked around the store, couldn't see Ms. Moore, so went to find out what she was doing and ask her about the disgruntled customers. When he located her in the backroom she was putting kneepads in a bag, swiping them out and putting them back in again. He asked what she was doing and then he asked about the customers who had left. She stated it wasn't her fault. She was annoyed so Trevor Muller took her outside where they would not be heard by customers. Trevor Muller acknowledges that his memory of exactly what was said between them has suffered in the time since the incident but he does recall that she got very upset, was crying and started to yell at him. He states that she appeared to be experiencing some sort of breakdown.

30. According to Trevor Muller, Ms. Moore's breakdown started inside and escalated when they got outside. She was getting too upset to talk but did say she couldn't take it anymore, was quitting and went back to the store to get her jacket, then she left. Trevor Muller recalls this happening just before lunch between 11:30 a.m. and noon.
In my assessment of the evidence which surrounds this incident I am mindful of what was stated in McNulty v. GNF Holdings Ltd. (1992), 16 C.H.R.R. D/418 (B.C.C.H.R.) and Farnya v. Chrony, [1952] 2 D.L.R. 354 (B.C.C.A.) at 356-58:

> "The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the persona demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. …"

31. I also find myself in agreement with Inquiry Chair David Bright in McLellan v. Mentor Investments Ltd. (1991), 15 C.H.R.R. D/134, para. [20] (N.S. Bd.Inq.) wherein he states:

> There is no machine that an adjudicator can use to discovery (sic) if a witness is being truthful or less than candid. Therefore, an

> adjudicator, including myself, is left with our own personal background, and reaction to evidence given. …

32. That said, it is my conclusion that Trevor Muller's version of what took place that day is the more probable. The store was very busy – 25/30 customers at the time – and only four (4) people including Ms. Moore to provide service. Trevor Muller, who the evidence shows to be a keen and somewhat astute business manager, would undoubtedly be concerned about the level of service, having just witnessed customers leave who were not happy; seeing so many people in the store; and noting that Ms. Moore was not around. It is evident that his reasons for seeking her out were bona fide business concerns, specifically customer service. He was aware that she had been waiting on the customers who left complaining about the service and wanted to find out what had happened and what had happened to her.

33. That Ms. Moore would decide to tidy the kneepads when there were so many customers in the store lends support to Trevor Muller's assessment that something was wrong. Whether these pads posed a hazard or not (depending on location) tidying up would not take precedence over attending to the many customers in the store. Ms. Moore said she checked to see if anyone needed service before going into the back area, but her assessment in that regard would seem somewhat wanting given the fact that there were 25/30 customers and without her only three people to provide service. According to her own testimony her customers had waited quite a lengthy period of time to speak to Trevor Muller before leaving in frustration. Yet there is no explanation of what Ms. Moore was doing during this lengthy wait. She could not have gone to pick up the knee pads before they left because - according to her own testimony - she had just bent over to start when Trevor Muller suddenly appeared in front of her. Nor had she bothered to tell him they were waiting to speak to him. If Trevor Muller's testimony is accepted that she was putting the pads in the basket and sweeping them out again, it lends even further support to his assessment of her emotional condition.

34. It is more likely than not that as manager, Trevor Muller's primary concern would be to get her, and himself, back to the task of servicing customers and consequently his attempts to cut off her protestations with "I don't want to hear it." This is supported by Ms. Moore herself, who stated that Trevor Muller had stated (in effect) "What do you think you're doing? Customers are more important than cleaning up." and "Get back to work."

35. Going outside was Trevor Muller's idea and I find that more supportive of a concern for her emotional state, than a desire to subject her to verbal abuse away from customer earshot. It seems unlikely, given the pressures of a crowded store with 25/30 customers to be serviced that he would want to take half the available staff (himself and Ms. Moore) outside so he could continue cutting off her attempts to explain about the disgruntled customers. That she failed to recognize Trevor Muller's priority – at that moment – was customers and not explanations, despite his instructions to get back to work, further supports his assessment that something was wrong, because ordinarily she was a very good employee.

36. There is also the testimony of Mr. And Mrs. Cullen. While there is some question as to whether they were the couple who stormed out that day they did say that when they asked Ms. Moore for assistance she replied to the effect that she didn't have time for them in a manner they took to be rude. According to Mrs. Cullen, Ms. Moore seemed to be angry or upset, frazzled. While this seems out of character with the good, hard working employee the Mullers'

describe Ms. Moore as being, it does support a view that she was experiencing some anxiety that day and seemed to be suffering some sort of breakdown.

37. Ronald Muller testified that he too thought there was something unusual in Ms. Moore's behaviour that day. He did however confirm that she was very concerned about the pads on the floor being a hazard to customers. Ronald Muller stated that he told her not to be concerned about that as they were too busy with customers.

38. Finally on this point, Ms. Moore had a history of being susceptible to panic attacks which had started several years prior thereto. Ms. Moore herself stated that she felt threatened and concerned that day. Yet it was Trevor Muller who took the matter outside and it was Ms. Moore who followed him back into the store still trying to explain after Trevor Muller had attempted to drop the dispute and get back to work. Ms. Moore states that she wanted Trevor Muller to hear her explanation in full but he never gave her the opportunity and kept cutting her off. She had never been treated so rudely and with such disrespect by anybody before this. She was totally humiliated.

39. Nonetheless, while their perceptions differ, I can find nothing that was said or done by Trevor Muller on that occasion to indicate that his interaction with Ms. Moore throughout the entire incident had anything whatever to do with her aboriginal origin. Ms. Moore was not fired on that day, she quit. Based on the circumstances I find it more probable that Ms. Moore was suffering some form of breakdown prior to the altercation with Trevor Muller than as a result of it. It is certainly not unusual for an employer to want an answer from an employee as to why customers she had been tending to had left the store so obviously dissatisfied with the service. Nor to wonder what had happed to one of his staff when the store was so busy. The circumstances lead me to conclude that Ms. Moore grossly over reacted to the situation. Whether or not Trevor Muller could have better handled the matter is not the issue; this inquiry is concerned with discrimination not professionalism.

40. But this matter does not end with that conclusion. It is the position of Ms. Moore that she was subjected to a 'poisoned work environment' during her time at Play It Again Sports Ltd. and this incident was merely the proverbial 'straw that broke the camel's back'.

Poisoned Work Environment:

41. There were a number of incidents which Ms. Moore states contributed to a poisoned work environment. She states she had some concerns at the initial point of her hiring, when Ronald Muller said to Trevor Muller words to the effect that "We could use a person like her. She'd be a benefit because of her Mi'kmaq background." Both the Muller's deny that this was said or that Ms. Moore's Mi'kmaq heritage had anything to do with her hiring. (This was but one of several oddities in the presentation and development of this case from the more usual complaint that the person has not been hired, because they are in one of the prohibited categories.) Nevertheless there is no doubt that, if not at the time of hiring, then very shortly thereafter the Muller's were aware that Ms. Moore was a Mi'kmaq person.

42. Ms. Moore states that the first few months were not too bad although she found some employees' behaviour to be immature and all employees were not very professional. The Tribunal gives no weight whatever to this point-of-view, even if well founded, as contributing to a poisoned work environment.

43. Ms. Moore also alleges that she was not given an opportunity to do all the tasks of the other male employees and that others were continually taking over her work. The evidence however does not support this allegation. To the contrary, it shows that she was given as broad a range of duties as most other employees, and they would often assist her in situations with which she was unfamiliar, particularly during the first months of her employment when she was going through the necessary learning curve. Ms. Moore acknowledges that her training went on for quite a while because she wasn't experienced in sporting goods while other employees knew more about the items than she did. She concedes that after the first seven months she was pretty much left to her own.

44. There was one occasion when Trevor Muller and several friends, some of whom worked at Play It Again Sports, came to Ms. Moore's residence late one evening from a bachelor party. Trevor Muller asked Ms. Moore if she could get him some booze from a bootlegger. She did. Trevor Muller was the only one who came into the home and remained there talking to Ms. Moore's boyfriend while she went to the bootleggers. The next day, a fellow employee said to Ms. Moore "Dorothy, you could have made $200.00 last night." When she asked how, he stated that they were looking for a stripper.

45. According to Trevor Muller, Ms. Moore had told him on a previous occasion that she knew a guy close to her home who sold beer for $2.00 a bottle. This was not denied. There is no suggestion or inference that because Ms. Moore is of Mi'kmaq heritage she must know a bootlegger. This incident happened away from the workplace and outside of working hours. It was an isolated incident unrelated to her employment. If Ms. Moore thought there was anything improper in this circumstance she did not mention it to Trevor Muller.

46. In regard to the comment from a fellow employee, it was a one-time casual comment which, although inappropriate, was part of the normal discussion between employees. If Ms. Moore was offended she did not complain or raise the issue with Trevor Muller. There is no evidence that he was ever made aware of the comment or that he would have condoned it. Ms. Moore alleges that she was forced out to make room for Trevor Muller's friend Jamie Nicholson. The evidence does not support any such allegation and it was not seriously pursued.

47. Moore describes an incident which occurred when Ronald Muller was driving her home. They stopped at the gas station at Membertou and Ronald Muller asked the service attendant, who was a member of the Mi'kmaq community, if he knew of anyone who was trying to sell some gloves. Apparently some had been stolen from the store. Ms. Moore took this as an insult to her community. But it was simply an inquiry, not an accusation, and there is nothing whatever to suggest that anything more was intended. Again this is an isolated incident that happened away from the workplace.

48. Ms. Moore states that about six (6) months into her employment at Play It Again Sports she had a discussion with Trevor Muller wherein he told her that an Indian woman had tried to pick him up at a local bar. It was her impression that he was trying to say that Indian women were easy. She states that it just seemed like he was against Mi'kmaqs. In her rebuttle evidence (some four and one-half (4 ½) months later) this impression changes to fact in Ms. Moore's mind and she asserts that Trevor Muller had asked her on different occasions why Mi'kmaq women were so easy.

49. In Re Bell and Koryak (1980) 27 L.A.C. (2d) 227 (O.B. Shime, Q.C.) a Board of Inquiry established under the Ontario Human Rights Code identified principles which it considered fundamental to an understanding of the type of specific actions that human rights legislation intends to prohibit. That board states at pp. 229-230:

> **… The forms of prohibited conduct that, in my view, are discriminatory run the gamut from overt gender-based activity, such as coerced intercourse to unsolicited physical contact to persistent propositions to more subtle conduct such as gender-based insults and taunting, which may reasonably be perceived to create a negative psychological and emotional work environment. There is no reason why the law, which reaches into the work place so as to protect the work environment from physical or chemical pollution or extremes of temperature, ought not to protect employees as well from negative, psychological and mental effects where adverse and gender-directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment.**
>
> **The prohibition of such conduct is not without its dangers. One must be cautious that the law not inhibit normal social contact between management and employees or normal discussion between management and employees. It is not abnormal, nor should it be prohibited activity for a supervisor to become socially involved with an employee. An invitation to dinner is not an invitation to a complaint. The danger or the evil that is to be avoided is coerced or compelled social contact where the employee's refusal to participate may result in a loss of employment benefits. Such coercion or compulsion may be overt or subtle but if any feature of employment becomes reasonably dependent on reciprocating a social relationship proffered by a member of management, then the overture becomes a condition of employment and may be considered to be discriminatory.**
>
> **Again, The Code ought not to be seen or perceived as inhibiting free speech. If sex cannot be discussed between supervisor and employee neither can other values such as race, colour or creed, which are contained in The Code, be discussed. Thus, differences of opinion by an employee where sexual matters are discussed may not involve a violation of The Code; it is only when the language or words may be reasonably construed to form a condition of employment that The Code provides a remedy. Thus, the frequent and persistent taunting by a Supervisor of an employee because of his or her colour is discriminatory activity under The Code and, similarly, the frequent and persistent taunting of an employee by a supervisor because of his or her sex is discriminatory activity under the Code.**

50. Accordingly differences of opinion where sexual matters are discussed by an employee and his/her boss are not necessarily violations of The Code (or Act). The Act does not make disrespectful conduct illegal *per se.* It is only where the language, words or implications thereof may reasonably be construed as forming a condition of employment that the Act intends to intervene. There is no suggestion that such was the case herein.

51. The question becomes where does this comment and impression fit in regard to the allegation of a poisoned work environment? Admittedly, I found this point troubling. I would have preferred more elaboration on the circumstances, without which I can only conclude that the remark was part of a casual conversation wherein Trevor Muller related an experience he had in a bar. Without further details I am unable to conclude that the discussion was anything more than benign in nature: or that it was anything more than part of the normal interaction/discussion between the manager and employee.

52. Counsel for Ms. Moore emphasized the consistency in her story going back to the initial filing of the complaint. However I could find no reference to this remark in any of the submitted documentation. It was first brought up by Ms. Moore in her direct examination by Ms. Cusack as being a one-time discussion. Yet in her rebuttal evidence she states Trevor Muller would try to put Mi'kmaq women down by asking the question "Why are they so easy?". I have trouble accepting the accuracy of the rebuttal testimony reference. That Trevor Muller holds the opinion of Mi'kmaqs that Ms. Moore asserts is reflected in that query is simply contrary to the weight of the surrounding evidence. Even if I accept that Trevor Muller did pose the question on occasion there is no reason to conclude that anything more was intended than a query on a misguided opinion. It would not be unreasonable to expect that Ms. Moore would use the opportunity in a casual discussion scenario to correct the misconception. There is nothing which prohibits a person's boss from having a misguided opinion provided it does not manifest itself into what could be categorized as a frequent and persistent taunting.

53. I do not find that an inference of discrimination is the more probable in these circumstances. The incidents are simply insufficiently compelling, both individually and in the aggregate, from which to conclude that Ms. Moore was treated with a lack of respect and dignity on account of her aboriginal origin. There is nothing in the other circumstances to support any such inference. To the contrary, the evidence shows that Ms. Moore was not only treated the same as any other employee but considered a friend and accommodated beyond the expectations of a strict employment relationship. She was often driven home by the Mullers' and Scott MacKay, particularly when she had to get groceries, and driven to work as well. Ronald Muller would never ask her to clean the toilets, even though he did it a lot himself; and there would be times when duties would be switched to accommodate her preference.

54. The testimony of all the other people who worked at Play It Again Sports was that everybody got along well, no one was treated any differently, and indications are there was a sense of camaraderie throughout the staff which included Ms. Moore, although, she certainly did not feel like she was 'one of the boys'. Without exception the feeling among the employees from Play It Again Sports who gave evidence in this matter was that Ms. Moore was a friend and treated no differently than anybody else.

Use of the word "kemosobe":

55. But while the above incidents are included in the complainant's description of a poisoned work environment, the crux of the matter lies in the use of the word *'kemosabe'*. The vast majority of evidence and time spent at this inquiry was directed at the meaning and implications of that expression. It is the position advanced on behalf of Ms. Moore that the word denotes a racial slur; and its frequent use both around and directed at Ms. Moore created a poisoned work environment.

56. The term *'kemosabe'* came into semi-popular slang through an early (40's and 50's) television show entitled "The Lone Ranger". The fundamental theme of that show has the Lone Ranger and his partner Tonto, a native American, riding together throughout the old west helping good people against bad, fighting lawlessness and generally bringing "bad guys" to justice.

57. When they first meet the Lone Ranger is the sole survivor of a group of Texas Rangers who had been ambushed by an outlaw gang. Tonto happens across the injured young ranger and aides his recovery. Tonto recognizes him as the same person who, years earlier, had saved his own life after his family had been massacred. During the course of their conversation Tonto refers to the young ranger by the appellation *'kemosabe'*. When asked what it meant, Tonto responded *'trusty friend'*. From that point on the appellation is used by one towards the other – although predominantly by Tonto – throughout future shows and subsequent movies. The following observations were made as a result of viewing several episodes of the TV series:

- **The Lone Ranger is definitely the star. He is the lead character who gets the accolades in both the opening and closing of each show. He is attributed a rather super hero type of recognition and is the dominant character in the show. He is the one who formulates the plans to catch the bad guys and is the one who gives the orders.**

- **Tonto, is the Lone Rangers partner and friend. He is clean cut, well groomed and although he speaks a form of broken English – attributable no doubt to the fact that it is not his first language – he is neither dumb nor stupid. To the contrary it is his role to uncover many of the clues upon which the Lone Ranger's strategy is developed.**

- **Both the Lone Ranger and Tonto treat one another with respect. While it is true that the Lone Ranger gives orders to Tonto, he does the same with Mayors, Sheriffs and whoever else may be in the episode.**

- **For the most part other native Americans in the series are treated in a demeaning and disrespectful manner. Sometimes this attitude is directed at Tonto as well but never by the Lone Ranger.**

- **At no time during the episodes reviewed by this inquiry, was the term *'kemosabe'* ever used in a demeaning or derogatory manner or in any way that might be construed as a racial slur.**

58. The Mullers', do not deny that they used the word *'kemosabe'* to greet Ms. Moore on occasion. In fact the evidence is that the term was used with regularity both amongst staff and towards customers in the store. According to Scott MacKay, who was employed as a clerk during Ms. Moore's tenure, it was a form of greeting that was used by everybody. While he could not recall specific incidents, his general recollection was that it was used by anybody to anybody.

59. The extent of general usage of the term *'kemosabe'* in that workplace, is perhaps best indicated in the response of Mr. MacKay to the question of whether Trevor or Ronald Muller used the term to greet Ms. Moore. He responded: "I imagine it was said to her, yes. I mean she was no different than anybody else."

60. There are two unavoidable conclusions that must be derived from the evidence in regard to the issue of the use of the term *'kemosabe'*. First is that the Mullers' never intended any other meaning than friend, trusted friend or some similar designation. It is an expression that had been used between the Mullers' throughout their mutual lives, in the home, the neighbourhood and at the store. It was never their intention to use it in a derogatory or demeaning fashion, nor in any way as a racial slur.

61. Secondly, while Ms. Moore was greeted on occasion with the appellation *'kemosabe'* she was not the only one. Everybody who worked there was, at times, greeted the same way. In that sense she most certainly was not singled out or treated differently. Fact is, in that particular work environment, not greeting her occasionally by the term would have amounted to treating her differently from everybody else. It was an appellation that was used at the store long before her arrival.

62. But section 4 of the Act does not require that the discriminatory distinction be intended. While Ms. Moore's subjection to the appellation was no different than everybody else, she was the only employee of aboriginal origin, and consequently the only employee who may have been adversely affected by the term.

63. The assessment by the Board of Adjudication in *Reti v. Gibbs* (supra) that **'… An employee has a right to work in an environment free of discrimination and indirect comments made against the very fabric of self-identity should not have to be tolerated.'** Is pertinent to the consideration of this issue.

64. Bernie Francis is a Mi'kmaq person with a Masters Degree from Memorial University, an Honorary Doctorate Degree from Dalhousie University, and works as a linguistic consultant for a number of native bands throughout the Atlantic Provinces and Quebec. Mr. Francis was asked to prepare a report on the word *'kemosabe'*. Following a morphological analyses of the word he concluded that it probably originated in the Qjibway or Potowatmi language and means someone looking on the sly, sly-looking or sneaky. According to Mr. Francis it is a derogatory term to a person of aboriginal origin.

65. Daniel Christmas is a high school graduate with two years university education, has served as Band Manager for Membertou and is presently a senior advisor with the Membertou Band Council. Mr. Christmas stated that the Lone Ranger series is generally perceived within the Membertou community as being one of master/servant wherein the Lone Ranger is the master and Tonto the servant. He further states that if someone were to address him as *'kemosabe'*, it would be 'offensive, very offensive'. He would perceive it as somebody mocking his aboriginal heritage. He explains his feelings result from old childhood memories when he would be taunted by white children in elementary school; tauntings he feels resulted from old television shows that portrayed aboriginal people as savages and hostiles. Mr. Christmas acknowledged that the use of the word *'kemosabe'* in early TV shows may have been well intended, but over the years it has become an expression of mockery. However, he did

concede that in the right context it would obviously be non-offensive.

66. Jane Meader is of Mi'kmaq heritage and a member of the Membertou Band. She is a teacher currently completing the B Ed. Program at St. Francis Xavier University and occupies a spiritual role within the community as a ceremonial leader. Ms. Meader states that the term *'kemosabe'* is a racial slur because in the old TV series native people were portrayed as being stupid, while the Lone Ranger, because he was white, was intelligent. Tonto was only a follower. She could not envision a situation where the term would not be offensive to aboriginals.

67. Daniel Paul is of aboriginal origin and a member of the Membertou community, employed as a carpenter. He has been a customer of Play It Again Sports on numerous occasions. Trevor Muller has at times greeted him by the appellation *'kemosabe'*. He was not offended because he understood the word to mean 'friend' and recognized that Trevor Muller was using it in a joking or non-derogatory manner. However, he does recall incidents in high school where a teacher would use the term to make him the object of a joke. This he did find offensive. He has also heard it from others, some aboriginal and some non-aboriginal. How he takes it depends on the context and how it is delivered. After a lifetime of dealing with racism Mr. Paul states he can tell the difference when somebody intends racism or not.

68. Nicholas Isaac is of aboriginal origin and a member of the Membertou community. He is nineteen (19) years old and for the past two years played on a minor hockey team coached by Trevor Muller. He had never heard the word *'kemosabe'* prior to this inquiry.

69. Nash Paul is of aboriginal origin and a member of the Eskasoni community. He has known Trevor Muller since their high school days. He has been called *'kemosabe'* by Trevor Muller on several occasions but was never offended by it. He had no idea what the term meant until he checked it on the internet several weeks before his testimony, and found it to mean 'faithful friend'. Mr. Paul has never been offended by anything Trevor Muller has ever said; he is rarely,if ever offended by anything anyone says; he is twenty-seven (27) years old.

70. The evidence before this inquiry is clearly contradictory on whether the use of the appellation '*kemosabe'* is in and of itself considered a racial slur by members of the Mi'kmaq nation. According to Ms. Meader she could not conceive a situation where the term would be inoffensive. On the other hand, Nash Paul has never been offended by the term.

71. I do not accept, as has been suggested, that if the word *'kemosabe'* has the capacity to hold a meaning which is offensive to Ms. Moore as an aboriginal person, then that is sufficient to support an allegation of discrimination. I do however accept that if that word does have the capacity to be offensive as a result of Ms. Moore's aboriginal heritage, and Ms. Moore was in fact offended, then that circumstance would support the allegation.

72. This I believe is more consistent with the position of the tribunal in *Cdn. Armed Forces v. Swan* (supra) who in reference to allegations of racial slurs state (at para. 24):

24 The Tribunal, however does not find that the context or intention of the perpetrator is the issue – the issue is the perception of the individual who is

victimized. …

73. In that setting, the perception of the individual victimized is the other half of the equation that makes the perpetrator's intention irrelevant to the determination of discrimination. So the onus of proving discrimination is not satisfied simply because a word – in this case *'kemosabe'* – is capable of being taken offensively by a member of the aboriginal community. The onus requires that the person so affected be in fact offended thereby creating an atmosphere which could be considered poisoned. This intention is clearly reflected in s.4 of the Act which states that a person discriminates by making a distinction '**that has the <u>effect</u> of imposing burdens …'** (emphasis mine).

74. So while intention may be irrelevant to a determination of discrimination, effect certainly is not. The fact that the Muller's did not intend any offense is not relevant. Nor is the fact that Jane Meader would have been offended or that Nash Paul would not. The issue resolves on whether, in fact, Ms. Moore was offended. If she considered the word to have negative implications on the very fabric of her self-identity as a Mi'kmaq person, then on the basis of its random and persistent use around the workplace, it would seem reasonable to conclude that Ms. Moore was indeed subjected to the burden of a poisoned work environment.

75. However, aside from Ms. Moore's own assertions there is little in the evidence that supports this position. She does reference two particular conversations which from her point of view represent manifestations of her discomfort with the word. The first one occurred about three weeks into her employment, when, upon arriving at work she was greeted by the Mullers' with 'Hi kemosabe'. She states she asked what the word meant and was told by Trevor Muller that it meant 'my friend'. Ms. Moore states that she then advised the Mullers' that if they wished to call her friend they could us the Mi'kmaq word "nitap".

76. Ms. Moore categorizes this incident as 'putting her foot down', but the Mullers deny that the conversation ever took place. Ms. Moore spoke in what she describes as a very discreet manner and although she assumed they understood they gave no response or indication thereof and everybody simply went on with what they were doing before the exchange. It's possible they simply did not hear her request, if in fact, it was given.

77. Accepting that it was, I have difficulty categorizing it as a 'putting her foot down' type of exchange. By her own testimony Ms. Moore did not tell them she was offended by the word, or that she considered it in any way an insult to her heritage. Rather, she simply advised that she would prefer to be called 'nitap'. Given the Mullers' long standing use and understanding of the term as meaning 'friend', and its acceptance by some of their Mi'kmaq acquaintances as such, they could not be aware that Ms. Moore considered it a racial slur absent some clear and unequivocal indication thereof. I do not accept that any such indication was conveyed by Ms. Moore.

78. The second exchange took place on one of the occasions when Ronald Muller was driving her home from work. He stopped at the Membertou gas bar to buy cigarettes and greeted the clerk with 'Hey Kemosabe'. When they got outside Ms. Moore states she told Ronald Muller not to say that word to anybody around there. When Ronald Muller replied that there was nothing wrong with the word, she told him that someone might be offended.

79. I cannot ascribe more to this exchange than is apparent from Ms. Moore's own retelling. She did not tell Ronald Muller that she was offended by the word, only that someone around there – the Membertou community – might get offended by it. This exchange was completely outside the workplace environment and makes no reference thereto. Ronald Muller is not an officer of the Company, a director nor part of the management staff at Play It Again Sports. In fact he is not even an employee. He is Trevor Muller's father and as such spends considerable time in the store helping out however he can. In relation to Ms. Moore he is perhaps best described as an associate from work. Even if this exchange did take place it was never communicated to Trevor Muller.

80. There are however a number of circumstances that favour a conclusion that Ms. Moore was not, in fact, offended by the use of the term *'kemosabe'* in that workplace, and it did not create a poisoned work environment for her. Consider that:

- **Ms. Moore had never heard the word 'kemosabe' prior to her employment at Play It Again Sports. The only meaning she was aware of was the one given by Trevor Muller – friend.**

- **Although she states she did not believe it meant friend, she did not make any outside inquiries as to what the word meant prior to her leaving. I expect it would have been easy enough to ask any number of people in her community about the word if she was having discomfort with it. Yet she never did.**

- **Ms. Moore states that she liked and got along well with fellow employee Scott MacKay. In fact when she had a problem with something Ronald Muller was doing she complained about it to Scott MacKay and had it quickly resolved. This same avenue was open to her if she was truly bothered by the use of the term 'kemosabe'. Yet she at no time raised the issue with Scott MacKay;**

- **She gave no clear indication to anybody in the workplace during the term of her employment that she considered the term to be demeaning or a racial slur.**

81. As regards the suggestion that Ms. Moore's nature and background may have inhibited her from being more direct in expressing her displeasure, that characteristic was not present when she complained to Scott MacKay about Ronald Muller regarding a different matter.

82. I am convinced by the weight of the evidence that Trevor Muller and Play It Again Sports had no knowledge that Dorothy Moore, during her employment there, was offended by the use of the term 'kemosabe' or that she considered it a racial slur. It is my further conclusion that Dorothy Moore was not, in fact, offended by the term during the course of her employment.

83. All the witnesses who worked at Play It Again Sports with the exception of Ms. Moore testified that there was a good working relationship among employees. Scott MacKay

stated that there was a good working atmosphere there; never any hostilities or anything threatening – people got along. Mr. MacKay stated he had a good working relationship with Ms. Moore and that seems to have been Ms. Moore's feeling as well. As referenced earlier, Mr. MacKay did not feel that Ms. Moore was treated any differently then anybody else.

84. Then there is the testimony of Daniel Paul, Nicholas Isaac and Nash Paul, all of whom have known and associated with Trevor Muller over the years. According to them Trevor Muller has never shown any racist tendencies nor treated them disrespectfully. Nash Paul, who Trevor Muller coached as a young hockey player, states he treated the aboriginal players the same as everybody else. In fact Nash Paul would often go to Trevor Muller with his personal problems and was encouraged by him to get off drugs and stay in school. Accordingly I am inclined to accept Trevor Muller's statement that he would not disrespect Ms. Moore and, had she told him she was offended by the appellation 'kemosobe', he would not have used it further.

85. There were frequent occasions when Ms. Moore would be driven home from work by the Mullers', particularly Ronald. Although she claims never to have asked for these drives it seems to have been quite a common occurrence particularly on evenings when she was picking up groceries. It would be more consistent with the assertion of a poisoned work environment that the person so victimized would want to get clear of the perpetrators of that environment as quickly after work as was possible. Yet throughout the course of her employment Ms. Moore not only accepted but sought these drives.

86. While these general circumstances are not in and of themselves conclusive of the issue of a poisoned work environment, they are more favourable to the credibility of the Mullers' in that regard than to Ms. Moore. Ms. Moore's assertion that she considered the term 'kemosabe' to be an insult to her aboriginal origin and was exposed to a poisoned work environment is simply not consistent with the probabilities surrounding the circumstances. In fact, I find it out of harmony with the preponderance of probabilities that a practical and informed person would recognize as reasonable in the circumstances.

87. There is a caution registered by a Board of Inquiry in Willis v. David Anthony Philips Properties (1987), 8 C.H.R.R. D/3847 (Ont.) at para. 30441:

> **Allegations of discrimination in breach of the Human Rights Code are serious allegations which should not lightly be upheld. There is a clear obligation in boards of inquiry to scrutinize the evidence brought in support of such allegations with sufficient rigor to discourage the use of the Code to harass unpopular or controversial individuals. However the Code is not a criminal statute designed to punish but a remedial statute designed to prevent unjust discrimination. …**

88. I have weighed this entire matter very carefully and it is my conclusion that to allow the complaint would fly in the face of the above caveat. There is little of substance in Ms. Moore's actions during the term of her employment with this company that could be considered consistent with her post employment perspective. As Ms. Moore herself states in regard to the October 15th incident (I quote):

> **"…Never was I ever, ever treated that way by anyone, an employer, in a workplace, in public. I knew something was wrong with the … I knew I was, I was treated badly that day. That's why the following Monday when oh, you know the**

work day, I called up the Labour Board and I did explain my situation and some instances and they told me that it sounded like a good Human Rights case. …"

89. It is my conclusion that Ms. Moore's leaving was entirely related to the October 15th incident and had nothing whatever to do with discrimination or a poisoned work environment.

90. Accordingly, this complaint is dismissed.

February 17th, 2004 _____

David J. MacDonald
Board of Inquiry