

**IN THE MATTER OF: THE NOVA SCOTIA HUMAN RIGHTS ACT
("Act")**

- and -

IN THE MATTER OF: BOARD FILE NO. 51000-30-H12-1179

BETWEEN:

WESLEY WOODWORTH

COMPLAINANT

- and -

SOBEYS GROUP INC.

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-noted matter. This inquiry is mandated to consider an allegation of discrimination under Section 5(1)(o), the allegation of discrimination in employment due to disability. I decided to conclude the inquiry after reviewing the Settlement Agreement presented by the parties and after affirmation by the Human Rights Commission that it considered the public interest in agreeing to enter the resolution plan.

The matter 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. I note that the parties have put their mind to issues concerning compensation, the importance of education on the values and purposes of human rights and the parties' interest in choosing to resolve this matter through negotiations.

Based on the recommendation of the three parties I see no further reason to continue the inquiry.

DATED at Truro, Nova Scotia, this 3 day of December, 2014.



DENNIS J. JAMES
Board Chair


NOVA SCOTIA
Human Rights Commission

RESOLUTION PLAN

This Resolution Plan ("Resolution Plan") dated October 9, 2014 is

BETWEEN:

WESLEY WOODWORTH
("Complainant")

- and -

SOBEYS GROUP INC.
("Respondent")

- and -

THE NOVA SCOTIA HUMAN RIGHTS COMMISSION
("NSHRC")

Background Information

1. The Complainant made a complaint under the *Human Rights Act* on February 26, 2013 against the Respondent alleging discrimination.
2. The parties recognize that the Complainant believes that he was discriminated against and the Respondent denies it discriminated against the Complainant.
3. The Complainant had concerns that his employment was terminated based on his inability to work in a specific area of the workplace, due to his physical disability.
4. The Respondent maintains that they had accommodated the Complainant to the best of their ability.
5. The Complainant and the Respondent have settled the complaint by this Resolution Plan and agree to the terms below.
6. The NSHRC supports the Resolution Plan as being in the public interest in the circumstances of this case because the parties have assessed and addressed the concerns

raised by each other which is represented by the resolutions found in this agreement. The parties also indicate to the NSHRC that they wish to avoid the uncertainties associated with a Board Chair ordering an outcome and also wish to avoid the resource, time and legal costs associated with a traditional Board of Inquiry.

7. The Complainant and the NSHRC understand and accept that the Respondent does not, by this Resolution Plan, admit any liability.
8. The Respondent understands and accepts that this release of liability does not take away from the significance of the complaint for the Complainant and acknowledges the hurt feelings of the Complainant.

Terms of the Proposed Resolution Plan

9. The Respondent agrees that the letter from Sobeys to the Complainant dated April 2, 2012 will be revised to delete reference to "frustration of the employment relationship" and to state that the Respondent accommodated the Complainant to the point of undue hardship and accordingly could not continue the employment relationship. A revised letter is attached as Schedule "B".
10. The Respondent agrees to provide confirmation to the NSHRC, by way of correspondence from legal counsel for the Respondent, that the Human Resources designate(s) and the Manager of the Respondent's Retail Support Centre located in Debert, Nova Scotia where the Complainant was employed have received training in relation to discrimination and accommodation. The respondent agrees to provide this confirmation to the NSHRC within 90 days of receipt of written notification of the Board Chair's approval of this Resolution Plan and Consent Order
11. The Complainant will receive from the Respondent, the sum of \$3,000.00 as special damages for wage loss with a 10% lump sum withholding. These funds shall be made payable to the Complainant and forwarded to the Complainant within 14 days of the receipt of written notification of the Board of Inquiry's approval of this Resolution Plan

and Consent Order. The Complainant will be responsible for any EI repayment and will provide confirmation of such repayment to the Respondent.

12. This Agreement will be final and binding on the parties upon approval of the Board of Inquiry. The Board of Inquiry will report the Resolution terms in its Decision pursuant to section 34 (5) of the *Human Rights Act* and therefore the parties understand this Resolution Plan is a public document.
13. The Complainant, the Respondent and NSHRC understand and agree that the terms of this Resolution Plan may be subject to disclosure under the *Nova Scotia Freedom of Information and Protection of Privacy Act*, and as otherwise required by law.
14. The Complainant or anyone representing the Complainant or their estate cannot make any further claims or legal actions against the Respondent, or anyone associated with them, on the facts arising from this complaint.
15. The Complainant and Respondent understand and agree that, while they have received much information about human rights, neither of them has received directive or legal advice from staff, officers, mediators or the lawyer of the NSHRC, with respect to the terms of this Resolution Plan and Consent Order; including but not limited to implications regarding taxation liability under the *Income Tax Act*, employment insurance benefit repayment, or insurance policy repayments.

16. In this regard, the parties acknowledge they were advised to review this resolution with legal counsel of their choice and at their expense. The parties agree and understand that Kimberly Franklin, Legal Counsel, represents the Commission and none of the parties.

Signed by:



Wesley Woodworth, Complainant



Per:
Sobeys Group Inc., Respondent

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

DATED at Halifax, Nova Scotia this 21st day of November 2014.



THE NOVA SCOTIA HUMAN RIGHTS COMMISSION

SCHEDULE "A"

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

Wesley Woodworth

Complainant

and

Sobeys Group Inc.

Respondent

and

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 February 26, 2013;

AND WHEREAS the parties have agreed to the following terms of settlement;

AND WHEREAS the Board Chair has reviewed this Resolution Plan and finds it in the public interest;

It is hereby ordered that:

1. Sobeys Group Inc. shall remit to Wesley Woodworth a total amount of \$3,000.00, less a 10% lump sum withholding, to be classified as special damages.
2. Sobeys Group Inc. will make this payment within 14 days of receipt of written notification of the Board Chair's approval of this settlement.
3. Failure to abide by this 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*.

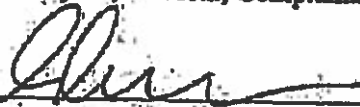
Issued this ___ day of October 2014.

Dennis James
Inquiry Board Chair

Consented as to form and content:



Wesley Woodworth, Complainant



Per:
Sobeys Group Inc., Respondent

Schedule "B"

[Letterhead of Sobeys]

April 2, 2012 (Amended September 22, 2014)

PERSONAL & CONFIDENTIAL

Wesley Woodworth

Dear Wesley:

This letter is written to inform you that your treating physician, Dr. J. Muggah, provided Sobeys with a medical opinion dated March 15, 2012 indicating you cannot continue in your position of Selector in the freezer chamber of the warehouse due to your medical condition.

At this time, we have no other positions available in the warehouse other than freezer Selectors, of which you are unable to perform as a result of your medical condition.

Sobeys has accommodated your medical condition to the point of undue hardship and unfortunately cannot continue the employment relationship. We will be ending the employment relationship as of April 2, 2012. To assist you in your transition, Sobeys is prepared to offer you a gratuitous payment of two weeks pay on the condition you execute and return to Sobeys the release attached to this letter no later than April 6, 2012.

Any outstanding regular pay and/or vacation pay will be provided to you and your record of employment will be sent to HRSDC electronically.

Yours truly,



Dan MacDonald

HR Specialist, Stellarton & Debert RSC