

IN THE MATTER OF: A complaint under the Nova Scotia *Human Rights Act*, R.S.N.S. 1989,
c. 214

AND

IN THE MATTER OF: Board File No. H17-0931

BETWEEN:

MELODY HARDING

Complainant

AND

PROVINCE OF NOVA SCOTIA (DEPARTMENT OF HEALTH AND WELLNESS)

Respondent

AND

NOVA SCOTIA HUMAN RIGHTS COMMISSION

Commission

DECISION RE: SETTLEMENT

Nova Scotia Board of Inquiry Chair: Gail L. Gatchalian, Q.C.

Complainant: Melody Harding, unrepresented

Counsel for the Respondent: Dorianne Mullin

Counsel for the Commission: Kymerly Franklin

Date of Decision reporting settlement: May 21, 2019

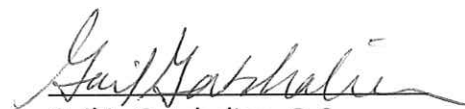
1. The Complainant made a complaint under the *Human Rights Act* on August 11, 2017 against the Respondent alleging discrimination based on physical disability.
2. The Complainant had concerns that the Respondent's policy and criteria for patients seeking breast reduction surgery are discriminatory.
3. The complaint was referred to a Board of Inquiry by the Commissioners of the Human Rights Commission, and I was appointed as the Board of Inquiry to inquire into the complaint.
4. Before the hearing of the complaint, the Complainant and the Respondent settled the complaint, and have incorporated their settlement into a written settlement agreement.
5. In this decision, I am simply reporting the terms of settlement pursuant to s.34(5) of the *Human Rights Act*, which provides as follows:

34(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. The Commission supports the settlement as being in the public interest in the circumstances of this case.
7. The Complainant and the Commission understand and accept that the Respondent does not, by the settlement agreement, admit any legal 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.
9. Pursuant to the terms of the settlement agreement, the parties agreed in part as follows:
 - (a) The Respondent will remove the criterion for a person to be considered for a breast reduction surgery that requires the person must have a body mass index ("BMI") of 27 or less. The Department will draft appropriate correspondence advising Nova Scotia physicians of same.
 - (b) To clarify and confirm, the assessment of medical necessity on a case by case basis using the following remaining and current criteria shall remain in place:
 - (i) 400 grams or more of tissue needs to be removed from each breast; and
 - (ii) there are documented physical symptoms attributed to the size of the breast. This may include neck/back pain or other symptoms.

10. The parties have agreed that other terms of the settlement agreement remain confidential.
11. The parties are to be commended for their efforts in resolving this matter.

Dated at Halifax this 21st day of May, 2019



Gail L. Gatchalian, Q.C.
Board of Inquiry Chair