

NS Human Rights
Commission *Logged.*

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August 31, 2014

Ms. Tracey Williams
Director and CEO
Nova Scotia Human Rights Commission
1601 Lower Water Street, 6th Floor
PO Box 2221
Halifax, NS B3J 3C4

Dear Ms. Williams:

Re: In the Matter of a Human Rights Board of Inquiry Respecting Marjorie Pemberton v. Wal-Mart Canada Corp.

As per the Commission's Administrative & Procedural Matters for Boards of Inquiry, we are attaching a Word version of my decision as Board of Inquiry in the above-noted matter. A hard copy of my decision as Board of Inquiry will follow via mail.

Yours truly,

BOYNECLARKE LLP



Kathryn A. Raymond
Nova Scotia Human Rights Board of Inquiry
KAR/slp
Enclosure

cc: Ritchie Wheeler via email at wheeler@gov.ns.ca

NOVA SCOTIA HUMAN RIGHTS BOARD OF INQUIRY

BETWEEN:

Marjorie Pemberton

(the "Complainant")

-and-

Wal-Mart Canada Corp.

(the "Respondent")

-and-

The Nova Scotia Human Rights Commission

(the "Commission")

DECISION

Nova Scotia Human Rights Board of Inquiry:	Kathryn A. Raymond, Chair
Place of Hearing:	Dartmouth, Nova Scotia
Date of Hearing:	September 12 th & 18 th , 2013, adjourned with subsequent written proposals respecting settlement
Appearances:	Ms. Marjorie Pemberton, the Complainant Ms. Kelly Buffet, Counsel for the Commission Mr. Joel Thomas, Counsel for the Respondent
Date of Decision:	August 31, 2014

BACKGROUND

1. This matter concerns an inquiry into an allegation of discrimination under s. 5(1)(d) & (o) of the *Human Rights Act*, R.S.N.S., 1989, c.214, as amended, (the "*Act*") on the alleged grounds of the Complainant's physical disability in the context of her employment by the Respondent. The Board of Inquiry (the "Board") was appointed on nomination by the Chief Judge of the Nova Scotia Provincial Court to determine whether discrimination had occurred in this case pursuant to the *Act*. No issue was taken with respect to the jurisdiction of the Board to determine this matter.
2. The Board has been requested by the parties to approve a proposed settlement of the complaint, termed a "Resolution Plan" or "Resolution Agreement", as it was alternatively termed, (the "Plan") pursuant to section 34(5) of the *Act* and to issue an order reflecting the terms of the Plan, pursuant to section 34(8) of the *Act*. The primary issue is whether the proposed settlement is in the public interest, such that the Board ought not to proceed with the inquiry. This includes an assessment of whether the Plan's proposed terms are within the jurisdiction of this Board to make and are consistent with the *Act* and its purposes.
3. In the course of preparation of the Plan, issues arose with respect to whether certain of the proposed terms of settlement were consistent with the *Act* and in the public interest. These reasons highlight these issues and how they were resolved in this case. Matters not central to these issues are not addressed in these reasons.
4. The issues in question include how to ensure that the decision made by a Board of Inquiry pursuant to section 34(5) of the *Act* can be enforced. Section 34(5) governs settlements after a human rights complaint is referred to a Board of Inquiry. A related issue involves the authority of a Board of Inquiry to issue an order pursuant to section 34(5) of the *Act*. However, rather than seeking a formal ruling on this related issue, this case was resolved on the basis of the parties' agreement that an order should be issued pursuant to section 34(8) of the *Act*. The Board is prepared to grant the parties' requests that the Plan be approved pursuant to section 34(5) and that an order be issued pursuant to section 34(8) of the *Act* for the following reasons.

THE ALLEGED ISSUES IN THE COMPLAINT

5. By way of background to the complaint, the Complainant began to work for the Respondent in 2002. She suffered an injury while in the employ of the Respondent in 2003 that resulted in her developing a physical disability. She alleges that this required her to request accommodation of her disability from the Respondent through modification of her duties.
6. The Complainant alleges that certain members of management and her co-workers resented her need for accommodation. She alleges that she experienced negative comments and incidents, discriminatory attitudes and differential treatment in the workplace, as a result. She also alleges that she was required by the Respondent to perform duties that were difficult for her to perform, given her physical limitations, and was threatened with discipline. The Complainant alleges that the Respondent's discrimination against her culminated in her termination on April 16, 2009.
7. The Respondent does not dispute that the Complainant suffers from a physical disability but asserts that, at all times, it offered the Complainant appropriate accommodation of her physical injury. The Respondent denies that the Complainant was subjected to differential or discriminatory treatment. The Respondent asserts that there were performance related issues with respect to the Complainant's behavior and attitude in the workplace. The Respondent alleges that the Complainant was terminated from her employment for reasons unrelated to her disability or need for accommodation, and, therefore, her termination occurred on purely non-discriminatory grounds. The Respondent's position is that the complaint should be dismissed.
8. It should be emphasized within these reasons that none of the Complainant's allegations or the Respondent's defences have been proven. Instead of proceeding with a hearing on the merits, the parties prefer to resolve their differences on terms acceptable to them.

HISTORY OF THE PROCEEDINGS

9. Following referral to the Board of Inquiry, this matter was the subject of case management conferences and mediation, the latter of which was held May 5, 2013 and May 18, 2013. The mediation proceeded on the basis of an agreement by the parties that the Board

could act as mediator and continue to hear and determine any remaining issues or the matter in its entirety, if the matter did not resolve completely.

10. The mediation did not resolve the complaint. However, the mediation and case management narrowed and focused the issues and led to a framework and schedule for continued negotiations among the parties. The schedule included a deadline for conclusion of the negotiations, followed by dates for pre-hearing steps to be completed and dates for the hearing itself, if the matter had not settled. A deadline for settlement was, in the view of the Board, required to enhance the possibility of settlement of all issues. If the matter was not settled by the deadline, the focus of the parties' efforts would change to preparation for the hearing. The dates for completion of these various steps were agreed to by all parties.
11. A benefit of the case management and mediation in this case was that it provided an opportunity for the Board of Inquiry to gain an understanding of the allegations and issues between the parties. This was helpful to the Board's consideration of the public interest component, as explained in the reasons which follow.
12. The hearing was scheduled for September, 2013. Shortly before the hearing was set to commence, the Commission requested an adjournment without the requirement of an appearance before the Board of Inquiry. The request was made on the basis that additional time was required to conclude the proposed agreement between the parties, given the meeting schedule of the Commission. For reasons given at the time, the hearing was convened, albeit over the objection of the Commission, to hear submissions respecting the request for adjournment.
13. It was confirmed at the outset of the hearing that the parties were not in a position to provide the Board of Inquiry with a signed, complete, proposal for settlement for review and approval. A draft settlement proposal was offered to the Board of Inquiry for review by the parties. The parties requested additional time for the negotiations to continue rather than proceeding with a hearing on the merits.
14. The draft proposal shared by the parties with the Board of Inquiry contained terms that raised legal issues related to their consistency with the *Act* and questions relevant to the public interest assessment. Notwithstanding these issues, the core of what was proposed by the parties was promising and warranted further negotiation efforts by the parties.

Accordingly, the parties were given an opportunity to address questions the Board of Inquiry had respecting the terms of settlement at the hearing, rather than proceeding with a hearing on the merits. As well, the Board received submissions from the parties respecting the issue of whether the settlement, as contemplated, would be in the public interest. Following this, the hearing was adjourned "without day" on the basis that the parties were to continue negotiations and were to submit a revised settlement proposal to the Board of Inquiry for its further review and approval, one that had been consented to by all parties.

15. Subsequent discussions between the parties led to two further case management conferences by telephone conference respecting the proposed settlement. This was made necessary by the Complainant's failure to appear for the first case management session following the adjourned hearing. Ultimately, a proposed Resolution Plan was submitted to the Board of Inquiry in March, 2014 that was agreeable to all parties.
16. Upon review of the proposal, it became apparent that the Respondent had proceeded to implement the terms of the Plan during negotiations, without awaiting approval of the Plan by the Board of Inquiry pursuant to section 34(5) of the *Act*, without objection by the other parties. In doing so, the Respondent took a risk that no new issues would arise from the amendments, or otherwise, and that the Plan would be accepted "as is" by the Board. The Respondent's action was outside the process set by direction of the Board of Inquiry for approval of the Plan and outside the terms of the Plan to which the Respondent agreed. (The Plan contained a provision respecting the timing of implementation of the Plan following approval by the Board of Inquiry.)
17. Irrespective of concerns related to this development, the Plan was determined by the Board to be acceptable as a resolution of this matter. However, the terms of a potential Plan should not be implemented until approved, as the Plan approved by the Board could vary from what is proposed. Further, the parties are not in a position to assume that their proposal will be determined to be in the public interest, such that the inquiry will be concluded.

ADDITIONAL ISSUES IN THE NEGOTIATIONS

18. One of the complicating factors during the mediation and subsequent negotiations arose from the Complainant's self-represented status. The Complainant had various concerns

and appeared to have difficulty determining what her position respecting the proposed terms of settlement should be. The Complainant was initially unwilling or unable to access independent legal counsel for advice.

19. In addition to her human rights complaint, the Complainant had pursued her entitlements under the *Workers' Compensation Act*, SNS 1994-5, c.10, as the injury giving rise to her disability occurred at work. She was involved in legal proceedings related to those issues at the time this matter came before the Board of Inquiry. In part, the Complainant perceived that the Respondent would oppose her interests in ongoing hearings and appeals related to her *Workers' Compensation* claims, although the Respondent's position was that it had not opposed any entitlements she had to compensation under that legislation. These issues were outside the jurisdiction of the Board of Inquiry but, nonetheless, presented an added complexity to obtaining agreement among the parties from a practical perspective.
20. Ultimately, the difficulties associated with the Complainant's uncertainties about settlement were resolved by the Respondent making a contributory payment towards the costs of a legal consultation for the Complainant. Payment of these costs became a term of the Plan. In the circumstances, the Board of Inquiry is appreciative for the willingness of counsel for the Respondent to take this step, which went beyond any theoretical statutory obligation the Respondent owed to the Complainant. The Complainant's access to legal counsel provided assurance to the Board of Inquiry that the Complainant understood the terms of the Plan.

THE LAW RESPECTING APPROVAL OF SETTLEMENTS

21. A Board of Inquiry is appointed to "inquire into the complaint" pursuant to section 32A(1) of the *Act*. The purpose of the appointment, as described in the appointment letter to the Board of Inquiry, is to "determine whether discrimination occurred". A Board of Inquiry has the jurisdiction pursuant to section 34(7) to determine "any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this Act". In my view, a Board of Inquiry has an obligation to consider the broader public interest in ensuring that, where contraventions of the *Act* have occurred, they are addressed. This is, in part, in keeping with one of the purposes of the *Act*, which is to prevent further occurrences of discrimination.

22. The Court of Appeal in *Dillman v. IMP Group Ltd.*, 1995 Can LII 4254 (NS CA), emphasized the interest of the state in human rights matters, albeit in the context of the role of the Commission as prosecutor, when the Court held:

Human rights legislation and its enforcement is a very important and sensitive area. The processing of a human rights complaint and the conduct of an inquiry under the Act are public duties of great importance....The proper execution of these functions vitally affects not only the immediate parties to the dispute, but the public at large.... ...the state has an interest in the proper conduct of such matters.

23. In *Dalhousie University v. Aylward*, 2001 NSSC 51 (Can LII), the Supreme Court similarly held, at para. 21:

The public has a vested interest in making sure that individual rights are protected. Protection of individual rights is one of the fundamental purposes for bodies such as the Human Rights Commission to exist.

In the Board's view, once a complaint has been referred by the Commission to a Board of Inquiry, this principle applies equally to the Board of Inquiry's role.

24. Pursuant to section 34(5) of the *Act*, any proposed settlement of the complaint is required to be submitted to a Board of Inquiry for decision. Section 34(5) states:

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.

A decision by a Board of Inquiry pursuant to section 34(5) of the *Act* includes a consideration of whether the proposed resolution of a complaint, without a hearing, is nonetheless in the public interest, such that the Board of Inquiry ought not to proceed with the inquiry it has been statutorily mandated to make. This includes a determination of whether the public interest is served by substituting the settlement, here a "Resolution Plan", for the outcome to be achieved by the inquiry.

25. In general, the settlement of disputes under the *Act* is, in itself, in the public interest. However, whether a particular settlement is in the public interest is dependent on the facts

and issues that frame the complaint. It is for this reason that terms of settlement reported in a decision are subject to an analysis in the decision respecting the public interest issue: *Halifax Association of Black Firefighters v. Halifax Regional Municipality and the Nova Scotia Human Rights Commission* (April 29, 2013) and *MacDonald v Cambria Food Services Limited*, 2013 CanLII 85719 (NS HRC). Terms of settlement should also be consistent with the purposes of the *Act* and fall within the jurisdiction of the Board of Inquiry to approve.

WHETHER THE TERMS OF SETTLEMENT ARE ACCEPTABLE

a) The Enforcement Issue

26. The original settlement proposal shared by the parties with the Board did not request an order to give effect to the settlement terms, which were both monetary and non-monetary in nature. Had there been such a request, section 37 of the *Act* states:

Every person in respect of whom an order is made under this Act shall comply with the order.

Section 38 of the *Act* makes it a summary conviction offence to not comply with an order made pursuant to the *Act*. The *Human Rights Board of Inquiry Monetary Orders for Compensation Regulations*, N.S. 98/98 permit enforcement of an order for compensation issued by a Board of Inquiry as an order of the court.

27. However, these provisions do not provide a complete answer to the question of implementation and enforcement. Often Boards of Inquiry issue orders containing non-monetary remedies. In this case, the Resolution Plan contained terms that included both payment of compensation and a number of other non-monetary remedies. Section 34(8) provides a Board of Inquiry with broad remedial powers to order any party “to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons....” The *Regulations* do not address these other types of orders that may be granted pursuant to section 34(8) of the *Act*.
28. While no order was requested, the original settlement proposal did contain a provision which was intended to address enforcement of the terms of settlement. In the Board's view, settlement agreements should address the issue of compliance with implementation

of terms of settlement and enforcement: *MacDonald v. Cambria Food Services Limited*, 2013 Can LII 85719 (NS HRC). It is in the interests of the administration of justice in the context of proceedings under the *Act*, and, therefore, in the public interest, to ensure that decisions of a Board of Inquiry are final and that there is an identifiable and ready means of enforcement of any resulting decision. This is all the more so in human rights proceedings, where so many complainants are self-represented and may not be fully apprised of the issues that can arise once a complaint is resolved in principle. Self-represented litigants may also hesitate to reach an agreement, as was the case here, given the breakdown in trust between the parties and their lack of familiarity with the law. Inclusion of a provision designed to ensure enforcement, particularly one which includes an identified process and remedy in the event of non-compliance with settlement terms, fosters confidence in settlements. Such an approach provides unrepresented complainants with a sense of security that settlements will be implemented, as agreed, and recourse if they are not.

29. The settlement proposal originally presented to the Board of Inquiry addressed enforcement of the settlement via a provision which stated:

Failure to comply with the terms of this Resolution Agreement will result in the complaint being forwarded to the NSHRC [the Commission] for further action.

It is not in dispute that it was the practice of Commission counsel, at that time, to offer guidance to the parties during negotiations based on a standardized template form, used for purposes of creating a written settlement agreement, which contained this wording.

30. When the original settlement proposal was presented by the parties, the above provision, intended to address enforcement, raised questions for the Board of Inquiry. It was not immediately apparent that the Commission had jurisdiction to take further action respecting the same complaint after a decision is issued by the Board of Inquiry respecting that complaint. The Board was not immediately persuaded, upon reading this provision, that it would be in the public interest to approve a settlement, as being in the public interest, which contained a provision that raised questions of a jurisdictional nature, particularly, a provision as non-specific as “take further action.” This issue was of some

importance, given the inclusion of this wording in the standard form template agreement in use by the Commission.

31. The authority of the Commission respecting settlements was confirmed by the Nova Scotia Court of Appeal in *Alyward v. Dalhousie University*, 2002 NSCA 76, at paras. 34 and 40, in the context of the role of the Commission in approving or rejecting settlements that are agreed to prior to a hearing before a Board of Inquiry. The Commission's role in screening complaints was also subject to comment in *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)* ("*Halifax*"), 2012 SCC 10, at paras 19- 25. As held in *Halifax*, the Commission makes no decision regarding the merits of the complaint. Once the Commission refers a complaint to a Board of Inquiry, the Commission becomes a party to the complaint pursuant to section 33 of the *Act*. Section 33 provides as follows:

33 The parties to a proceeding before a board of inquiry with respect to any complaint are

a) the Commission....

32. As indicated, the role of the Commission as a party has been the subject of decisions such as *Dillman v. IMP Group Ltd.*, 1995 Can LII 4254 (NS CA), and, as well, *Cromwell v. Leon's Furniture Limited*, 2014 Can LII 16399 (NS HRC). Once the Commission becomes a party to the proceeding, jurisdiction over the outcome of the complaint passes from the Commission to the Board of Inquiry.
33. As a matter of general law, the Commission is created by statute and must act within its authority as prescribed by the *Act*. *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9, at para. 28. There is no express provision in the *Act* or *Regulations* that returns jurisdiction over the complaint to the Commission after a referral to and decision by a Board of Inquiry. There is nothing in the *Act* that expressly permits the Commission to revive an existing complaint that has been the subject of a decision by a Board of Inquiry, nor is there an express provision in the *Act* that permits a complainant or the Commission to file a new complaint alleging non-compliance with a settlement agreement that has been made the subject of a Board of Inquiry decision pursuant to section 34(5). These concerns led the Board of Inquiry to raise the issue of enforcement and the wording of the proffered provision with the parties. Discussions with the parties led to a

consideration of whether the Board of Inquiry should issue an order, as an alternative to the proposed wording, which could be enforced.

34. This led to a discussion of whether the Board of Inquiry had the statutory authority to issue an order pursuant to section 34(5). The Board of Inquiry makes "a decision" pursuant to section 34(5) of the *Act* in the context of approving a settlement. However, there is no express authority in section 34(5) for the Board of Inquiry to make an order. Section 34(5) sits in potential contrast to the Board's express authorization to issue an order pursuant to section 34(7) and (8) of the *Act*. Section 34(7) states:

A board of inquiry has jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this Act or for the making of any order pursuant to such decision.

(emphasis added)

35. Section 34(8) provides:

A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor....

(emphasis added)

36. It may be that the authority to make a decision respecting a proposed settlement includes the ability to make an order. I have made no formal ruling on this point and would not do so without submissions from the parties on this issue of statutory interpretation. The parties wished to proceed without a ruling on this point.
37. There was no dispute that section 34(7) and (8) of the *Act* provide statutory authorization to a Board of Inquiry to issue orders capable of enforcement pursuant to the *Regulations*, subject to the issue noted by the Board respecting non-compensatory orders. However, section 34(7) and (8) require there to be a finding that the *Act* has been contravened, resulting in a finding of liability for discrimination. In this case, the requirement for a finding of liability to provide a foundation for an order pursuant to section 34(7) or (8)

proved to be problematic to the negotiations, as it was important to the parties to conclude this proceeding on the basis that there was no admission of liability.

38. To address this matter without the need for a ruling on this issue, and to thereby address the issue of enforcement of the settlement, the parties agreed to a jurisdictional finding of discrimination for purposes of issuance of an order by the Board of Inquiry pursuant to section 34(8). The wording the parties included in the Resolution Plan is as follows:

Mrs. Pemberton and the NSHRC understand and accept that Walmart does not, by this Resolution agreement, admit any liability, although it has expressed regret for the events happening and acknowledges the legitimacy of Ms. Pemberton's position regarding the discriminatory impact felt by her in this matter. The parties therefore request that the Board of inquiry make a finding of jurisdictional discrimination in order to bring the Resolution Agreement into effect.

39. A similar approach to granting a consent order was also taken by the Board of Inquiry in *Craig and Robertson v. Halifax Regional Municipality and Metro Transit*, June 30, 2011, Nova Scotia Human Rights Board of Inquiry (Chair, Don Murray, Q.C.) (unreported). There, the parties had structured a settlement proposal containing various terms and conditions and sought approval of the settlement by the Board of Inquiry. The Board had not determined, on the basis of the evidence, whether the *Act* had been contravened pursuant to section 34(7). There had been no admission of liability. The Board of Inquiry made a technical finding of discrimination pursuant to section 34(7) based on an acknowledgement of a contravention of the *Act* by the Respondent during submissions. The Board did so for the purpose of providing a legal basis for an order pursuant to section 34(8). The Board of Inquiry declined to make an order pursuant to section 34(8) on the basis of the proffered settlement alone.
40. In the circumstances, the Board is prepared to approve the wording proposed by the parties as a foundation for the settlement in this matter.
41. The final Plan includes other provisions which also address enforcement. Article 10 of the Plan asks the Board of Inquiry to retain jurisdiction for a period of time following the date the Plan is signed by the parties in order to address any issues that may arise in connection with the implementation of any of its terms. This would have provided a

means of recourse to the parties should any difficulty have arisen respecting implementation of the non-monetary terms of settlement.

42. The Board would have been prepared to reserve jurisdiction following approval of the settlement to allow a period of time for implementation of the decision and order and would have concluded the inquiry when the terms of settlement were satisfied. This is a practical means of addressing issues related to implementation and enforcement. However, this provision is no longer necessary, as the Respondent proceeded to implement the terms of the Plan immediately upon securing the agreement of the Complainant and the Commission. By way of comment, had the Board reserved jurisdiction for this limited purpose, the time period would have commenced from the issuance of the decision and order and not from the point in time when the parties signed the Plan. Accordingly, Article 10 is no longer necessary and will not be included in the order. The Plan is to be considered to be amended by its omission.
43. The parties also agreed that the Complainant will not make any further claims or take any further legal action against the Respondent, its officers, directors or employees, on the facts arising from the complaint. The Complainant further agreed that there are no side agreements and that the resolution terms in the Plan are the only terms of settlement in this matter. This provision, while perhaps not necessary given the order, confirms the finality of this proceeding.

b) The Workers' Compensation Issue

44. The Plan also contained a reassurance to the Complainant, intended to preserve the *status quo*, respecting the Respondent's continued non-involvement in the proceedings involving the Complainant under the *Workers' Compensation Act*. This reassurance was limited to matters related to shared facts in this proceeding, which had been a sticking point in the negotiations. The Respondent provided the Complainant with a letter confirming its position in this respect. I have considered whether it is appropriate to include this provision in the order. In my view, it is not within the jurisdiction of this Board to issue an order concerning proceedings outside the *Act*. Accordingly, the provision in the Plan respecting the Workers' Compensation proceedings will not form part of the order.

c) The Broader Public Interest

45. The remaining issue is whether the Plan is otherwise in the public interest. In this regard, I have no doubt. The Plan includes remedies that address both the private interests of the Complainant and the public interest in educating workplaces about the nature of discrimination and its harmful effects.
46. These remedies include a payment of general damages. In the original Resolution Plan, the Commission expressly made no comment upon the characterization of the general damages amount and took no position concerning the public interest. It was not clear to the Board on what basis the Commission would agree that a settlement should be presented to the Board of Inquiry if the Commission was not satisfied that the settlement was reasonable and was in the public interest. The Commission itself is required to consider the public interest in its role. As a result, the Commission was asked about its position by the Board of Inquiry. Upon further consideration, the Commission included its position within the Plan, as a party to the proceedings. The Plan states that the amount of general damages is endorsed by the Commission as being within the range of possible outcomes for this type of matter, with reference to the nature of the Complainant's allegations. Further, the Plan states the Commission's position that the settlement is in the public interest.
47. Other terms of the Plan include an apology, which the parties recognized in their discussions did not, on its own, constitute an admission of liability pursuant to the *Apology Act*, 2008, c.34. The Respondent agreed to provide a confirmation of employment letter to the Complainant that she may use to seek alternate employment. The Plan also includes provisions that provide further education respecting discrimination within the workplace and with respect to the obligation to accommodate. This will occur both within the Wal-Mart store involved in the complaint and within the Respondent's Human Resources Team across Canada, which the Respondent volunteered to do. These provisions advance the purposes of the *Act*, which is to promote knowledge and understanding of human rights. Regardless of whether discrimination occurred or not in this workplace, such training advances the awareness of these issues and fosters a respectful workplace.

DECISION AND ORDER

48. For these reasons, the Board of Inquiry makes a finding of jurisdictional discrimination so as to bring the Resolution Plan into effect. The Board of Inquiry accepts the Resolution Plan, as amended in this decision, as being in the public interest pursuant to section 34(5) of the *Act*. The Plan is consistent with the goals and purposes of the *Human Rights Act*. Accordingly, the Board is prepared to issue an order in the form set out below, reflecting the amendments noted above, pursuant to section 34(8) of the *Act* and to conclude this inquiry accordingly.
49. It is, therefore, ordered that the Resolution Plan be implemented as follows:
1. The Complainant, Ms. Pemberton and the Commission (the "NSHRC") understand and accept that the Respondent, Wal-Mart, does not, by the Resolution Agreement, admit any liability, although it has expressed regret for the events happening and acknowledges the legitimacy of Ms. Pemberton's position regarding the discriminatory impact felt by her in this matter. As requested by the parties, the Board of Inquiry makes a finding of jurisdictional discrimination in order to bring the Resolution Agreement into effect.
 2. Wal-Mart understands and accepts that resolution of the complaint does not take away from the significance of the complaint for Ms. Pemberton and acknowledges the hurt experienced by Ms. Pemberton. Wal-Mart apologizes to Ms. Pemberton, as confirmed in the letter of apology attached as Schedule A to the Resolution Plan.
 3. Wal-Mart will provide Ms. Pemberton with the employment confirmation letter signed by John Brea, VP Operations – Atlantic Canada attached as Schedule B to the Resolution Plan.
 4. Ms. Pemberton will receive from Wal-Mart the sum of \$18,000 as general damages. The NSHRC is satisfied that this amount is within the range of possible outcomes for this type of matter, considering the allegations made by Ms. Pemberton, and, combined with the other items being provided by Wal-Mart, is therefore in the public interest.
 5. Wal-Mart will provide the employment update attached as Schedule C to the Resolution Plan to its HR team across Canada and to the Wal-Mart store involved in this complaint. Within 20 days of provision, the store manager will read and review the update with the store's assistant managers and confirm with Wal-Mart's in-house legal counsel that this review has been completed.
 6. Wal-Mart will provide payment of \$500 to Burchells LLP for legal fees incurred by Ms. Pemberton in this complaint.

7. Ms. Pemberton agrees not to make any further claims or take any further legal action against Wal-Mart, or its officers, directors or employees, on the facts arising from this complaint. Ms. Pemberton further agrees there are no side agreements and that the resolution terms in the Resolution Plan are the only terms of settlement in this matter.

8. Ms. Pemberton and Wal-Mart understand and agree that neither of them has received advice from staff, officers, mediators or the lawyer of NSHRC, with respect to the terms of the Resolution Agreement; including by not limited to implications regarding taxation liability under the *Income Tax Act*, employment insurance benefit repayment, or insurance policy repayments. Ms. Pemberton understands that Lisa Teryl and Kelly Buffett are legal counsel for the NSHRC and that they did not represent Ms. Pemberton. Ms. Pemberton acknowledges that she received legal advice concerning resolution of the complaint and whether there were any implications in connection with the WCB or the WCAT proceedings. Ms. Pemberton received independent legal advice from Ann Smith of Burchells LLP.

Dated at Halifax, Nova Scotia, this 31th day of August, 2014.


Kathryn A. Raymond
Nova Scotia Human Rights Board of Inquiry Chair