

IN THE MATTER OF: *The Human Rights Act*, R.S.N.S., 1989, c.214,
Amended 1991 c. 12

-and-

IN THE MATTER OF: Section 5(1)(b)(r)

-and-

IN THE MATTER OF: a Complaint under the *Human Rights Act*
by Janet Lee Leadley, Complainant, against
Oakland Developments Ltd. and/or Laraine
Robichaud, Respondent (s)

BEFORE: Kenneth D. Crawford, Q.C., Chair

DATE OF DECISION: 15 December, 2004

PLACE: Halifax, Nova Scotia

APPEARANCES BY: Ann Smith, Counsel for the Nova Scotia
Human Rights Commission

Janet Lee Leadley, on her own behalf

Oakland Developments Ltd., represented by
John Renouf, President

Laraine Robichaud, on her own behalf

NOVA SCOTIA HUMAN RIGHTS COMMISSION

**Complaint under the *Human Rights Act*
R.S.N.S., 1989, c. 214, as Amended 1991 c. 12**

Complainant

Janet Lee Leadley
226 Stokil Drive
Lower Sackville, N.S.
B4C 3C3

Respondents

Laraine Robichaud
23 Birch Street, Apt 15
Bedford, Nova Scotia
B4A 2W7

Oakland Developments Ltd.
110 Chain Lake Drive
Halifax, N.S.
B3S 1A9

Nature of Complaint:

Case Number: 00.0025

Accommodation/Family Status
Section 5 (1)(b)(r)

DECISION OF THE BOARD OF INQUIRY

BACKGROUND

On 14 July, 2003, I was appointed as a Board of Inquiry under the *Nova Scotia Human Rights Act*, R.S.N.S., 1989, c. 214, amended 1991 c. 12, to investigate, seek settlement and decide the complaint of Janet Lee Leadley alleging discrimination against her because of “accommodation” / “family status” contrary to section 5 (1)(b)(r) of the *Nova Scotia Human Rights Act*, (hereinafter referred to as the “Act”).

THE COMPLAINT

At the time of the complaint, Janet Lee Leadley was a separated mother with two sons, ages eight and eleven.

On 1 February, 2000, the complainant contacted Laraine Robichaud, the superintendent of an apartment building at 23 Birch Street, Bedford Nova Scotia inquiring into renting an apartment which was advertised in the Chronicle Herald/Mail Star on 1 February, 2000. The owner of the building was Oakland Developments Ltd.

The location of the building and rent were suitable for the complainant and her children. She had just recently separated from her husband and was in dire need of an affordable place to live in the Bedford area where her sons could have access to their father and moreover, there would be no necessity to change the two schools the children were attending at that time.

The complainant attended at the building with her two children to discuss with Ms. Robichaud the possibility of renting a two-bedroom apartment. Ms. Robichaud appeared to be somewhat surprised when she noticed the children with Ms. Leadley and inquired if Ms. Leadley had children, to which the complainant replied that the two boys were her sons.

The respondent, Ms. Robichaud told the complainant that the building was an adult only building and that children were not permitted to reside on the premises. On the complainant informing the respondent that adult only buildings were illegal, the respondent advised that there were a great number of adult buildings in the area.

The complainant persisted in her request to view the apartment but the respondent told her it was too dark and that in any event, a viewing would be pointless, as children were not permitted in the building. Ms. Robichaud further asserted that in the event children were permitted in the building, there were no available basement apartments. Finally, the respondent indicated that if children were to live on an upper floor, there could be possible complaints from other tenants.

The complainant left the apartment building in frustration and in tears. Her children were also quite upset after the confrontation between their mother and Ms. Robichaud.

Although the complainant subsequently located another place to live, it was in a less convenient location which precipitated more travel for the complainant and her children.

It is the complainant's position that she was discriminated against and refused accommodation because of her family status in violation of section 5(1)(b)(r) of the Nova Scotia Human Rights Act.

LEGISLATION

The **Nova Scotia Human Rights Act**, as amended, reads:

Section 2 – The purpose of this Act is to

- (a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;
- (b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;
- (c) recognize that human rights must be protected by the rule of law;
- (d) affirm the principle that every person is free and equal in dignity and rights;
- (e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons and;

- (f) extend the statute law relating to human rights and to provide for its effective administration.

The foregoing section enables us to interpret and explain the prohibition contained in section 5 (1)(b)(r).

Section 3 (e) – In this Act, “employer” includes a person who contracts with a person for services to be performed by that person or wholly or partly by another person.

Section 3(h) – In this Act, “family status” means the status of being in a parent-child relationship.

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.

Section 5 (1)(b)(r) – No person shall in respect of accommodation discriminate against an individual or class of individuals on account of family status.

Section 34 (7) – 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.

Section 34 (8) – 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 therefore.

Section 7 of the Regulations under the Act reads:

In relation to a hearing before a Board of Inquiry, a Board of Inquiry may receive and accept such evidence and other information, whether on oath or affidavit or otherwise, as the Board of Inquiry sees fit, whether or not such evidence or information is or would be admissible in a court of law; notwithstanding, however, a Board of Inquiry may not receive or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

THE EVIDENCE

1. THE COMMISSION'S AND COMPLAINANT'S SIDE

(a) Janet Lee Leadley, Complainant

Janet Lee Leadley testified that prior to her separation from her husband on 23 January, 2000, she was the residential property manager of an apartment building at River Lane, Bedford, Nova Scotia. She had lived in the building with her husband and two boys, Andrew and Matthew who were respectively eight and eleven, at the time the complaint was filed on 24 April, 2000.

After the separation, Ms. Leadley briefly resided at her sister's home in Eastern Passage, Nova Scotia and at her father's home in Lower Sackville, Nova Scotia. The boys continued to live at the River Lane address with their father. Both boys attended at different schools in Bedford.

Ms. Leadley's plan was to obtain a two-bedroom apartment in Bedford as quickly as possible and upon so doing, the boys would live with her. It was

extremely important to Ms. Leadley that she maintain a residence in Bedford to enable the boys to continue to attend the same schools. Moreover, she wanted to live as close as possible to the children's father to enable the children to easily visit him as often as possible.

On 1 February, 2000, Ms. Leadley saw an insertion in the Chronicle Herald newspaper advertising a two-bedroom heated apartment at a monthly rent of \$525.00 in Bedford. The building was at 23 Birch Street which was and continues to be owned by the respondent, Oakland Developments Ltd. She attended at the building and rang the superintendent's apartment but did not receive a response.

However, Ms. Leadley was able to contact the assistant superintendent who indicated that there was a vacant apartment on the third floor. The superintendent stated that renovations had been completed on the apartment a week prior and that "the apartment was beautiful". The door to the apartment was locked and as a result, the assistant superintendent was unable to show the apartment. She told the complainant that the apartment was not rented.

When Ms. Leadley inquired as to whether children were permitted to live in the building, the assistant superintendent said that teenagers were living in the building, but there were not any young children living there. She told the complainant that to the best of her knowledge, she did not believe that children living in the building would be a problem.

Later that evening, the complainant returned to the building with her two children and was able to make contact with the respondent, Laraine Robichaud, who was the new superintendent of the building. I quote from the examination-in-chief (pp. 61-66) the following exchange which took place between Ann Smith, Solicitor for the Nova Scotia Human Rights Commission and Janet

Leadley. Ms. Smith is questioning the complainant concerning the conversation she had with Ms. Robichaud in the presence of the complainant's children:

- Q. And was the woman who opened the door, Ms. Robichaud?
- A. Yes, it was.
- Q. OK.
- A. She opened her door and at first she just kind of stood staring at my children. And I said...I noticed that was odd.
- Q. Yes.
- A. She didn't say anything; she just kept staring at them and, I'm thinking, OK. And I said, my name is Janet Leadley, did you receive my note? I was here earlier today to see your apartment...
- Q. Alright.
- A. Then she went...What are those?
- Q. And you're pointing.
- A. I'm pointing and she's pointing at my children and we kind of went...because we...(sic)
- Q. Alright.
- A. ...didn't know what she meant.
- Q. Just for the record, you're turning behind you...
- A. We turned behind and looked over.
- Q. ..and looking (sic) over your shoulder.
- A. We thought maybe there was something on the floor or we dropped something. And she said....I said, pardon me? And she said, those kids. Whose are they? And I said, well those boys are mine. They're my sons. And she said will they be living with you? And I said, yes, fifty percent of the time. Well she said, no, this is an adults-only building. And I said, I can assure you there is no such thing as an adults-only building anymore. She said, yes, there is. There's all kinds. You just have to look around. And I

said, I'm warning you. I have been a residential property manager for almost ten years. There is no such thing as an adult building. It's against the law. And she said, no, it's not. I said, anyway, could you show me your apartment? She said, no, I can't. There's no power. I said, there's no power? And I say it sarcastically. I was getting a little cheesed. She said, yeah, there's no power and she said, anyway, she said, we don't allow kids. I said, anyway, why don't you show me your apartment I kept persisting. I was not going to take no for an answer. And I wasn't taking that you wouldn't accept my children. In my mind, I wanted to know who the property management company was and I would have phoned them.

Q. Did you ask who the property management company was?

A. In the end I did. She wouldn't tell me. I asked her for an application.....

Q. Did she tell you that it was rented?

A. No she did not. She did not state to me whatsoever that the apartment had been rented. She did, at one point, state to me that she had applications. At that time I asked her for an application and she said, there would be no point as she doesn't allow children.

Q. Alright how did the conversation end?

A. It got on to she was talking about children being in the building and she said, anyway if we did allow children, your boys would have difficulty going up the third floor. And I said well, I would think a senior would have a little more difficulty going up a third floor than two young strapping boys. And she said, and I'm not going to put up with the complaints from the tenant below from having your boys there 24/7. At that time I could see my kids were getting upset. I was just devastated for them....devastated for myself, humiliated....

- Q. What made you to conclude the boys were getting upset?
- A. They were getting antsy and looking up at me. Their eyes were filling up and their faces were turning red and their ears (sic). My boys have telltale signs; their ears burn red when they're upset about something, and they were holding something in, as if they wanted to say something. And they could see me getting upset which was upsetting them more. So I thought, no more of this. And we left.
- Q. Now did I understand from you what you said that the apartment you were interested in was next door to Ms. Robichaud's?
- A. Yes.
- Q. Did Ms. Robichaud ask you whether you were employed?
- A. No.
- Q. Did she ask you your salary?
- A. No.
- Q. Your credit rating?
- A. No.
- Q. Now what happens next? You left the building, I take it?
- A. Yes. We went down to my car and I cried. They started crying. They were quite upset and at that point I almost took them back to their dad's to soothe them down, get them on home ground, but we went up to my dad's.
- Q. Did the boys...either of the boy's tell you why they were upset?
- A. ...They felt that they were...I think they were embarrassed. Then there was talk they didn't get the apartment and it was their fault because they were kids.
- Q. Who said that?
- A. Matthew did.

Ms. Leadley was not successful in locating accommodation in Bedford and as a result, began to look at other locations. She was able to locate a home to rent which was completely furnished. It was a kind of "look after home" while

the owners were out of Province. The rent was to be \$250.00 per month and the power and electric heat would cost \$360.00 per month on a so-called budget period. If the heat and power used for a year exceeded the budget, the excess amount would be added to the following years rent. In essence, the monthly rent was to be \$610.00 inclusive of power and heat.

The boys were to remain at their respective schools in Bedford and the parents agreed to a joint custody arrangement meaning that Ms. Leadley would have the children every Tuesday and Thursday nights and every second weekend. The boys would be with their father on Monday and Wednesday night and every second weekend.

It was necessary for Ms. Leadley to drive the children to and from school on the days she had custody. The following school year, the boys went to the same school in Windsor Junction.

Ms. Leadley calculated the monthly rent differential between the Windsor Junction property and the Bedford apartment to be \$85.00. She also indicated that she felt she should be compensated for mileage for some six months from February to July of 2000, the mileage being incurred in travelling to pick up her children at school and at their father's apartment. Her calculation for gasoline compensation was based on information given by acquaintances who were accustomed to charging mileage. Also taken into account was the approximate number of times she had to drive the children. She arrived at a figure of \$800.00.

John Renouf, President of Oakland Developments Ltd. cross-examined Ms. Leadley and pointed out that she had incorrectly calculated the rent differential. He clarified that the apartment he was advertising for rent on 1 February, 2000 did not include electricity. He estimated that monthly electricity for a two-bedroom apartment would be \$35.00. Thus, the monthly rent differential would be \$50.00. This would be broken down as follows:

Monthly rent including power and heat at Windsor Junction Ppty.	\$610.00
Monthly rent at 23 Birch Street, Bedford	<u>560.00</u>
Monthly differential	\$ 50.00

The foregoing rent at the Bedford apartment includes an estimated monthly charge of \$35.00 for electricity. I accept the evidence of Mr. Renouf on this point.

(r) The Commission's Side

The Commission offered no evidence.

2. THE RESPONDENTS' SIDE

(a) Laraine Robichaud

The respondent, Laraine Robichaud became the superintendent of 23 Birch Street in October of 1999. She occupied a two-bedroom apartment on the third floor of the building. She began her testimony by mentioning a series of people who lived in apartment 17, it being the apartment the complainant was interested in renting. Her evidence was so convoluted on this point that it was extremely difficult to ascertain if the apartment was vacant and being repaired or if there was an existing tenancy at the time Ms. Leadley wished to view the apartment. What also was extremely confusing was her evidence that repairs were taking place at the time she had contact with Ms. Leadley.

During direct examination of Ms. Robichaud, Ann Smith was attempting to determine if the apartment Ms. Leadley was interested in renting was vacant or occupied. Ms. Robichaud's evidence, to say the least, was quite confusing. I quote from pp. 130-132 of the evidence Ms. Robichaud provided:

- Q. ...Well let me ask you this, when you spoke to Ms. Leadley on 1 February, 2000, was there anybody living in apartment 17?
- A. No, there was not.
- Q. And at that point, were there renovations being carried out?
- A. Yes, there was.
- Q. OK. When did the renovations start?
- A. Year, month, day? I do not know. They started before the next tenants moved in.
- Q. OK.
- A. They started almost immediately after the tenant moved...when Richard moved out. When Mr. Weagle out (sic), then we did the renovations.
- Q. So Mr. Weagle had moved out at least by February 1 of 2000?
- A. Not sure. He moved out then we had renovations...
- Q. Well...
- A. ...done to the apartment because the roof fell in.
- Q. But you've just told me that apartment 17 was vacant in February and March because renovations were going on.
- A. All right. Fine.
- Q. So..
- A. Possibility back then. Those were the dates.
- Q. All right. So if the roof caved in when Mr. Weagle was in the apartment then he must have been in the apartment prior to February 1 of 2000.
- A. I'm not sure. It's a possibility.
- Q. Well...
- A. Can't swear to that.
- Q. OK.
- A. I'm just saying he lived there.
- Q. You lived next door to apartment 17 (My emphasis)?

- A. Yes.
- Q. OK. Do you recall how long the renovations took?
- A. It took a long time. Not a month: weeks, days and hours. It took a long time to get it done. I wasn't...there was, you know, we had people in the building doing it at the time. They did it when they could do it. So it took...whenever they renovated that place, it was already rented. I had it already rented out.

Ms. Smith referred the respondent to exhibit 1, tab 2 which purported to be Ms. Robichaud's response to Janet Leadley's complaint. This response was forwarded to the Human Rights Commission on 29 May, 2000. I quote from the last paragraph of p.2 of Ms. Robichaud's response:

“...I assure you that if Ms. Leadley were to re-apply at any time in the future she and her children would be given the same consideration as other people. I have had several people come before her to inquire about the apartment, and I did decide on a couple with a young child long before Ms. Leadley approached me about renting it and before I was given this complaint.”

I note with great interest that during Ms. Leadley's evidence, the respondent at no time indicated to Ms. Leadley that the apartment was already rented.

Indeed, Ms. Robichaud's evidence was that the couple and child to whom she intended to rent apartment 17 was a Jesso family. Later in her evidence, she indicated that the apartment was to be rented to Jen Hebb and Michael White who, incidentally, did not have a child.

Ms. Robichaud's explanation of the conversation with Janet Leadley at the respondent's apartment was in complete contradiction to the evidence Ms.

Leadley presented. I quote from the direct evidence of Ms. Robichaud at pp. 165-167:

Q. All right. And what did she say?

A. It's not what she said, I had asked her, I said, you know, can I help you? And she said, I'm here looking for an apartment. I said, well, I don't have an apartment. And I said, the only apartment we have here is a vacant one that's being renovated and that's already spoken for. And I said you're more than... I...(sic) she wanted to go in and see the apartment. And I said, I'm sorry, but I'm not letting you in to see the apartment because it's not safe. Then I asked about who are the two boys, and she said those are her children. And so I am not letting you and the two kids and myself into that apartment, under any circumstances, because there's no ceiling and there was no floor boards. Then I continued...and then she just continued, well could I see another apartment? And I said, no, there's no other apartments to be seen, but you're more than welcome to come into my apartment. And I was a little ticked off because I had just come home from work. She came unannounced. No appointment and...but I was willing to let her in to see my apartment at the time. She didn't want to see my apartment...she refused. So I asked her to take an application and to fill it out at a further date and if something comes up I'll give her a call. But, then again, she insisted that she wanted to see the apartment. And I had said, no, you're not going to see the apartment at all. And she got a little huffy under the collar, a little hot under the collar.

Q. How did you..why did you conclude that?

A. Because she got loud; she got very loud with me. And she said, I'm a residential, something or other. And she said, I want...I have a right to see this apartment and I said, well, I'm sorry but I said, that apartment is under renovations and we don't have any

more in the building. But again, I said you can see my apartment. Take an application, fill it out, and I told her also that it wasn't safe, again, well about two or three times I told her it wasn't safe to go in that apartment. And that when one became available she was more...(sic) and there was nothing against her children. And if anybody got huff and a puff and got her kids excited, it was Mrs. Leadley when she told them, come on, let's get out of here. She said, and I'll fix her.

Q. Did you raise your voice?

A. Yes I did. I was quite angry at the woman for being at my door, unannounced no appointment, didn't know her from Adam, and she kept standing there wanting to see an apartment which I could not show.

Q. Now you said you told her the apartment had already been spoken for?

A. Yes, it was.

Q. And the people that had been spoken for were the Weagles?

A. No. The Weagles had moved out because of renovations. That's what happened with the renovations, they moved out.

Q. So who was it spoken for then?

A. It was for Jen Hebb and Mike..I think his name was Michael White....

The respondent admitted that she was unaware that adult-only buildings were illegal but was quick to point out that 23 Birch Street was not an adult building.

When the solicitor for the Human Rights Commission asked the respondent whether the ad of 1 February, 2000 placed in the Chronicle Herald referred to apartment 17 (i.e., the apartment Ms. Leadley wanted to view), Ms. Robichaud replied that the ad must have been referring to another two-bedroom

apartment in the building. She further stated that at times, ads continue to run notwithstanding apartments may have already rented.

Ms. Smith meticulously proceeded to examine the rent roll with Ms. Robichaud of two-bedroom apartments in the building and it was determined that all of the two-bedroom apartments were occupied prior to the placement of the 1 February, 2000 ad in the newspaper. Moreover, many of the two-bedroom apartments had been continuously occupied prior to the ad placement. Based on the foregoing, it is patently obvious that the ad referred to apartment 17. Throughout her evidence, Ms. Robichaud adamantly insisted that the ad did not refer to apartment 17.

At the hearing, Ms. Robichaud requested that I admit into evidence seven letters from seven tenants, all with children and all attesting, amongst other things, to Ms. Robichaud's friendliness toward the children. I admitted the letters but attach no weight to their importance for the following reasons:

1. The solicitor for the Human Rights Commission, and Janet Leadley did not have the opportunity to cross-examine the particular tenants;
2. The seven tenants took occupancy of their apartments at 23 Birch Street after Ms. Leadley filed her complaint in April of 2000.

(c) Oakland Developments Ltd.

John Renouf is the President, Secretary and sole Director of Oakland Developments Ltd. He testified that the Company owns 23 Birch Street, Bedford.

Mr. Renouf told the Board of Inquiry that he did not consider the co-respondent, Laraine Robichaud, to be an employee of Oakland Developments

Ltd. She performed the function of superintendent of the building and received a reduction in her monthly rent.

The respondent's evidence was that apartment 17 was vacant from September of 1999 until April 1, 2000 when, at that time, he began to receive rent. He refuted Ms. Robichaud's evidence that there were other people residing in the apartment during that time frame.

With respect to renovations which occurred in apartment 17, Mr Renouf indicated a hole in the roof developed which affected apartment 17 sometime after 1 September, 1999 and the repair was completed some time prior to early March, 2000. Additional repairs were also completed. Thus, at the time Ms. Leadley applied to rent apartment 17, the repairs which needed to be completed or were completed on 1 February, 2000 consisted of repairing the carpeting, replacing the fridge and stove and patching a hole in the roof. The repairs sporadically took place between November of 1999. The date of completion in Mr. Renouf's mind was somewhat vague.

The following exchange took place in the examination-in-chief between Mr. Renouf and Ann Smith at pp. 292-293:

Q. And where are the invoices that show there was damage to apartment 17?

A. I do not have them. I'm just swearing that there was damage to that apartment, in apartment 17.

Q. And why haven't you produced them?

A. I haven't got...I don't...

Q. You don't know. OK...

- R. But you haven't produced anything which shows that there was any work done to apartment 17 prior to some point before February 11, 2000. Correct?
- A. Could you say that again, I'm sorry?
- Q. The only invoice that you've produced relating to repairs to apartment 17 is dated February 11, 2000. And the work was completed at some point prior to that.
- A. That's correct.
- Q. That's right. So the work could have been completed on February 1, 2000. You don't know.
- A. I don't know.

Given the above exchange and on a balance of probabilities, I find that the work on apartment 17 was completed on or before February 1, 2000.

Mr. Renouf specifically stated that he did not instruct Ms. Robichaud to operate the building as an adults-only building. His evidence was that children had lived in the building for twenty-five years.

In 1999, Oakland Developments Ltd. was struck from the roll of the Registrar of Joint Stock Companies for failure to pay its annual fees. This will be commented on in the "Evaluation of Evidence and Decision" portion of the decision.

In his summation, Mr. Renouf referred to the conversation between Leadley and Robichaud as an argument or as he called it, "a fight with no discrimination involved".

Also in summation, Mr. Renouf argued that Ms. Leadley ended up in a better situation by moving to Windsor Junction than the situation she would have been in had she taken the apartment at 23 Birch Street.

Mr. Renouf further argued that he has more tenants with children in his building in a greater proportion than the number of families with children in apartment buildings in the city of Halifax.

(a) Glen Goodin

Mr. Goodin began his tenancy at 23 Birch Street in 1996 or 1997 and moved in 2000. He remembers young children and teenagers residing in the building during his tenancy.

(b) Grant Andrews

Grant Andrews lived in the building from June, 1997 to August, 2000. He recalled that two teenagers lived in the building and also two children (one in each apartment).

LEGAL PRINCIPLES

1. Discrimination

The problem confronting this Board of Inquiry involves a consideration of discrimination based on family status in the attempted rental of a two-bedroom apartment. Section 4 of the Act previously defined discrimination.

The purpose of the Act is to eliminate discrimination in this Province. As was stated in O'Malley v. Simpsons-Sears Ltd. (1985), 7 C.H.R.R. D/3102 (at S.C.C.) at para. 24766:

...The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator but rather to provide relief for the victims of discrimination. It is the result or the effect of the action complained of which is significant. If it does, in fact, cause discrimination; if its effect is to impose on one person or group of persons obligations, penalties or restrictive conditions not imposed on other members of the community, it is discriminatory.

As stated in section 4 of the Act, discrimination is made out “where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic.....” In the case of Britnell et al. v. Brent Personnel Placement Services Ont. (1968), the Board Chairman made the following references to proof of intent or motive (p. 4):

Sometimes one can be compelled to the conclusion that discrimination was the motive only after observing a series of similar activities. Sometimes the conclusion that discrimination was the motive can be determined on the basis of one act of denial in the light of the surrounding circumstances.

On the issue of intent, the statement enunciated by Board Chair Harry Arthurs is pertinent (Ruest v. International Brotherhood of Electrical Workers and Nicholls (Ont., 1968)(pp. 2-3). He stated:

Seldom will those who act for motives which are forbidden by the law and held in disrepute by the community announce in clear and unmistakable terms that they are acting for illicit motives. As experience under the *Labour Relations Act* has indicated, much depends upon the ability of a Tribunal to draw inferences from conduct which (at least in the eyes of a person familiar with employment relations) are reasonable if not

compelling. Once these inferences are raised by the conduct of the respondent, an onus shifts to him of explaining to the Tribunal that his motives were other than what they appeared to be.

2. Circumstantial Evidence

Very seldom in discrimination matters does a respondent admit to discrimination. Thus it is necessary for a complainant to rely on evidence of a circumstantial nature to negative an explanation of the respondent explaining and asserting why he/she reacted in the way he or she did. The comment at para. 3842 in Basi v. C.N.R., (1988), 9 C.H.R.R. D/5029 (C.H.R.T.) is most helpful in explaining whether a complainant has been able to prove that an explanation is pretextual by inference from what is, in most cases, circumstantial evidence:

Discrimination on the grounds of race or colour are frequently practised in a very subtle manner. Overt discrimination on these grounds is not present in every discriminatory situation or occurrence. In a case where direct evidence 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].]

Still on the Basi case, Richard Hornung, Q.C., Chair, stated at para. 38491:

The respondent does not sufficiently refute any inference of discrimination by being able to suggest any rational alternative explanation; it must offer an explanation which is credible on all the evidence; see Fuller v. Candur Plastics Ltd. (1981), 2 C.H.R.R. D/419.

The use of circumstantial evidence was considered by a Nova Scotia Board of Inquiry in Fortune v. Annapolis District School Board (1992) 20 C.H.R.R. D/100 (N.S. Bd. Inq.). In that case, the complainant was a female school bus driver whose application

to work for the respondent school board was passed over in favour of male applicants who had no experience and who were less qualified. The complaint was based on sex discrimination. However, there was no direct evidence of discrimination. The Board of Inquiry at para. 25 discussed the use of circumstantial evidence and stated:

Do these events establish a breach of s. 12 (1)(d) by the School Board and Mr. West in respect of Mrs. Fortune? Mrs. Fortune was not given consideration by the school board for the position awarded to Mr. Robinson. There is no direct reference to the reason for this being the gender of Mrs. Fortune. 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.

And at paras. 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.

Vizkelely, Proving Discrimination in Canada, is helpful on this point. She says at pp. 142 – 143:

“Where there is an undertaking to proceed by way of circumstantial evidence, to prove a fact at issue piece by piece, bit by bit, the probative value of each item, when taken singly, will not always be apparent...But in many circumstances it may well be impossible to prove the discrimination otherwise. At the very least, a decision on relevance should take into account the fact that the evidence being tendered is but part of an aggregate from which the fact finder will ultimately be asked to infer the existence of a fact in issue [Emphasis in hearing decision].

3. Credibility

Given the nature of discrimination complaints, credibility issues frequently arise at board of inquiry hearings. The case of Faryna v Chorny, [1952] 1 D.L.R. 354 (B.C.C.A.) at paras. 9-11 is illustrative of this point:

If a trial judge’s finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, see Raymond v. Bosanquet Tp. (1919) 59 S.C.R. 452, at 460. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial judge and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually

telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour 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. Only thus can a court satisfactorily appraise the testimony of quick-minded experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again, a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth, it may easily be self-direction of a dangerous kind.

The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

4. Burden of Proof

The burden of proof is on the complainant to establish on a balance of probabilities that she was denied rental accommodations because of her family status. Upon the Commission and the complainant having established a *prima facie* case of

discrimination, the onus falls on the respondent (s) to establish that there was no unlawful discrimination.

What consists of a *prima facie* case of discrimination was stated in the Supreme Court of Canada case of O'Malley v. Simpsons-Sears Ltd. *supra* at D/3108:

A *prima facie* case of discrimination...is one which covers the allegations made and which if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent employer.

5. Family Status

As s. 51(b)(r) of the Act states, no individual or class of individuals can be discriminated against with respect to accommodation on the basis of their family status. In cases dealing with family status, the onus is on the complainant to demonstrate that s/he was adversely treated by the respondent and that from the evidence, it was reasonable to infer that the reason for the adverse treatment was because of the family status of an individual or class of individuals.

It is well established that the prohibited ground need only be a factor in the discriminatory conduct in order to constitute discrimination under the Act. This was well set out in Cunanan v. Boolean Developments Ltd. (2003), C.H.R.R. Doc. 03-200, 2003 H.R.T.O. 17 (Ont. Bd. Inq.) at para. 47 as "the test for finding a breach of the *Code* is whether it is more probable than not that discrimination was among factors that contributed to a respondent's course of conduct." Reference can also be made to this point in Booker v. Floriri Village Investments Inc. (1989), 11 C.H.R.R. D/44 (Ont. Bd. Inq.) at para. 34 where Board Chair W. Gunther Plaut stated:

The question remains, however, whether the complainant was indeed denied accommodation because she and her child did not constitute a "family" for a "family building". An analysis of legal precedents will show that even if a discriminatory practise was only part of the consideration, then the whole action is tainted and discrimination is judged to have taken place (emphasis added). Therefore, it was necessary to determine whether [the respondents] did in fact make the restrictive statements which the complainant has attributed to them.

There have been numerous decisions in which human rights boards of inquiry have ruled on the matter of refusal of rental accommodations based on family status. Indeed, I sat as Chair in the first case interpreting s. 5(1)(b)(r) of the Act in 1994. In Gloria Grant v.

Morris Strug, 28 February, 1994 (N.S. Bd. Inq.) (unreported), the complainant signed a one year lease with the respondent on 6 March, 1990, for a two-bedroom apartment. She was pregnant at the time the tenancy commenced and had not been informed by the landlord or his agent that the building was for adults only.

The complainant was given a Notice to Terminate in November of 1990 but same was deemed to be invalid because it was not given to the complainant on the proper date. It was the complainant's contention that notice was given because her child had been born and was living in the apartment with the complainant. It was obvious to the complainant that the landlord wished to maintain the building as an adult building.

In October of 1991, the complainant received another Notice to Terminate and to her knowledge, circumstances surrounding her tenancy had not changed since she received the prior notice in November of 1990. Moreover, she had never received any warnings or complaints from any other tenant or the landlord on any other matter concerning her tenancy.

I found that the landlord terminated the complainant's tenancy and discriminated against her because of her family status.

In Cunanan v. Boolean Developments Ltd., *supra*, a fifty-four year old single mother of three sons applied to rent an apartment and the superintendent of the building told her that her application would likely be rejected because she had three teenaged children. After hearing nothing from the superintendent for six weeks, the complainant went to see the owner of the building and was told that her application had been misplaced. The complainant inferred from the lost application that her family status was the actual reason as to why she had not received a response from the respondent.

The complainant told the respondent that she would obtain legal advice and subsequently did so. However, the respondent was steadfast in asserting that he did not provide the complainant with another application because she intended to obtain a lawyer and that he was awaiting contact from the complainant's lawyer.

The Board of Inquiry decided that the respondents discriminated against the complainant on the basis of her family status. The Board set out the purpose of prohibiting discrimination on the basis of family status at para. 77:

The purpose of prohibiting discrimination on the basis of family status with respect to the occupancy of accommodation is to remedy the hardship experienced by families with children, who have traditionally experienced difficulty in obtaining equal access to the rental of living accommodation, particularly in high-density urban areas. The importance of enforcing the prohibition reflects the reality that: (i) the family is the natural and fundamental

group unit of society; and (ii) housing represents a basic need of every individual in our society.

In Watkins v. Cypihot (2000), C.H.R.R. Doc. 00-036, 2000 B.C.H.R.T. 13 (B.C.H.R.T.), the landlord refused the complainant's request to renew her lease when she told the landlord that two stepsons would be living with her and her husband. The Board found the landlord did not provide a non-discriminatory reason for the refusal to extend the lease and that it was reasonable after closely looking at the facts to infer that the presence of the stepsons was a factor in the refusal to renew the lease.

At para. 26, the Board stated that it was sufficient that the presence of the boys was a factor (my emphasis) in the respondent's refusal to renew the lease; it did not need to be the sole or overriding factor.

See also Finch v. Lischynski (1998), C.H.R.R. Doc. 98-129 (Sask. Bd. Inq.), where a woman attempted to rent half a duplex from the respondent. The respondent stated that they did not "rent to kids". The complainant and her husband had an eleven-year old child. It was the Board's contention that the respondent created an environment in the conversation which effectively discriminated against the complainant.

For additional cases dealing with family status, see: Westbury v. Trump Investments Ltd. (1992), 17C.H.R.R. D/516 (B.C.C.H.R.); Thurston v. Lu (1993), 23 C.H.R.R. D/253 (Ont. Bd. Inq.); Huot v. Chow (1996), C.H.R.R. Doc. 96-178 (B.C.C.H.R.) and Fakhoury v. Las Brisas Ltd. (1987), 8 C.H.R.R. D/4028 (Ont. Bd. Inq.).

6. Liability of the Parties

Janet Leadley has asserted that she was discriminated against by Lariane Robichaud and/or Oakland Developments Ltd. If I accept the complainant's evidence and find that the respondent, Robichaud represented that the apartment building was an adult only building, Robichaud would have discriminated against the complainant on the basis of her family status and thus, would be liable for any resulting damages.

Oakland Developments Ltd., as owner of the building, would also be found liable for discriminating against the complainant on the basis of her family status. This determination, obviously would be made assuming that liability was determined on the part of the respondent, Laraine Robichaud.

The liability of corporations for its employees was discussed in Robichaud v. Brennan (sub nom, Canada (Treasury Bd.) v. Robichaud), [1987] 2 S.C.R. 84, 8 C.H.R.R. D/4326. The Supreme Court of Canada was asked to determine whether an employer was liable (vicariously or otherwise) for sexual harassment of an employee by a supervisor. The Court first examined the purpose of the Act, the wording and intent of

the remedies provided and concluded that it was unnecessary to decide whether liability was tort-based or otherwise. At p. 95 D/4335, LaForest, J. stated:

Hence, I would conclude that the statute contemplates the imposition of liability on employers for all acts of their employees “in the course of employment”, interpreted in the purposive fashion outlined earlier as being in some way related or associated with the employment. It is unnecessary to attach any label to this type of liability: it is purely statutory. However, it serves a purpose somewhat similar to that of vicarious liability in tort, by placing responsibility for an organization on those who control it and are in a position to take effective remedial action to remove undesirable conditions.

The matter of corporate liability was discussed by a Nova Scotia Board of Inquiry in Morrison v. O’Leary Associates (1990) 15 C.H.R.R. D/237. In that case, the complainant was discriminated against because of a physical disability and was dismissed from her job. The Board considered the issue of corporate liability at para. 70:

In Dudnik v. Yorke Condominium Corp. No. 216 [No. 1] (1988) 9 C.H.R.R. D/5080 [Ont. Bd. Inq.], the Board of Inquiry dealt with a preliminary motion to remove individual directors of the condominium from the complaint. In rejecting the motion....the Board made certain comments which I quote and adopt:

A complaint can, of course, be made against any offending person, including a corporate entity.....Thus, corporate entities can, of course, certainly be respondent parties. However, if they are, the complaint can still name as individual respondents directors and officers who caused the corporate entity to do the action that is alleged to offend the Code. By analogy, an agent is liable in tort for his negligence, even though his principal may also be liable due to the agent’s negligence.....If a director, as a participant in a board of directors’ decision, causes a corporation to unlawfully discriminate, then the director is himself in breach of the Code.

The Code is directed against unlawful discrimination by any and all persons (including individuals and artificial entities created by juristic construct) who cause that

discrimination. The impugned conduct need not be with evil intent, nor must it even be intentional. Unintentional or constructive discrimination can also be unlawful. The absence of evil intent, or the intention to discriminate, may well influence the nature of the remedies given. However, the legislative purpose of the Code is to eradicate unlawful discrimination and the infringement of basic human rights, and to effectuate this objective the Code allows a complainant to name as a respondent any person who has caused such infringement of rights. Thus, individual directors and officer of offending corporations can be named respondents.

Situations have arisen where superintendents of apartment buildings have declared buildings to be adult only without the express authority of the owner and as a result, owners have been held vicariously liable for the act of a superintendent in discriminating against individuals on the basis of their family status. See Booker v. Floriri Village Investments Inc., *supra*, at pp. 53-54:

There is no question that, in dealing with applicants for apartments, [the Superintendent] acted as an “employee or agent of the corporation,” which therefore must bear the consequences of his discriminatory action.

But can he also be said to have acted “in the course of his....employment” if management did not authorize him to do so? The answer is in the affirmative even if [the landlord] had given [the Superintendent] contrary instructions – a scenario dealt with expressly in the above-mentioned case of Cameron v. Nel-Gor at D/2195, para. 18515:

Suppose an employee for a landlord refuses to rent to a respective tenant, on a prohibited ground....The employee does this notwithstanding the express general direction of the employer to all of its employees not to discriminate unlawfully.

This is the principle of vicarious liability enshrined in the Code s. 44(1) and interpreted with regard to discrimination in housing in Jeffers v. Greenbrook Manor Ltd. (1981), 3 C.H.R.R. D/1038 (the decision deals with the old Code but is clearly applicable here). Chairman E. J. Ratushny enunciated the following guidelines [at D/1038, para. 9189]:

There was no significant evidence to indicate that the management of Greenbrook Manor Ltd. actively engaged in discriminatory practises....Thus, any contravention on the part of the Respondent company would have to be found in the vicarious acts of its agent Mr. Kostiauk.

To repeat: in respect to incident one, I hold Floriri, as the owner of 3131 Eglinton Ave. East, responsible for the discriminatory practise of it's superintendent, Sam Boiwssniot against Noolia Booker.

The case of Westbury v. Trump Investments Ltd. (1992), *supra*, is illustrative of an owner's corporate policy not to restrict tenancies to adults. Notwithstanding the policy, the superintendent discriminated against an individual on the basis of family status and as a result, the company was found liable for the actions of its employee. I quote from para. 17 of the decision:

The respondents also argued that there was a corporate policy not to restrict tenancies to adults. They produced evidence that there are children in other buildings. I have no reason to doubt their evidence. Craig was a credible witness. However, the presence of a corporate policy is of little significance if the respondents' employees are not aware of the policy or choose to disregard it. It is firmly established in human rights law that an employer is liable for the discriminatory actions of its employees where those actions are work-related.....

3. EVALUATION OF THE EVIDENCE AND DECISION

Where Laraine Robichaud's evidence conflicts or contradicts Janet Leadley's evidence, I accept the evidence of Janet Leadley. I found Ms. Robichaud's evidence to be contradictory, inconsistent, untruthful and at times, devious. She was combative, irritable during most of her testimony and at times, contumelious.

Taking into account all of the circumstances of the case and the entire context of the *Nova Scotia Human Rights Act*, I have concluded that the Commission has satisfied its onus of establishing that the respondent, Laraine Robichaud acted unreasonably toward the complainant and her children in refusing them accommodation in contravention of section 5(1)(b)(r) of the *Nova Scotia Human Rights Act*.

I find that Ms. Robichaud acted as alleged by the complainant and the commission and that therefore, the building owner, Oakland Developments Ltd, must be held responsible.

When Ms. Robichaud met with the complainant on the evening of 1 February, 2000, she was acting as an agent of the corporation (Oakland) and as a result, the corporation must bear the consequences of her discriminatory action.

Counsel for the Commission argued there was a contractual relationship between the landlord (Oakland) and Ms. Robichaud and referred to section 3(e) of the *Act, supra*, which deals with vicarious liability.

Ms. Robichaud and Mr. Renouf both denied that there was an employer/employee relationship. I disagree with their contention and accordingly find Oakland Developments vicariously liable for the unlawful act of Ms. Robichaud when she represented to Ms. Leadley that the building was an adults-only building.

As previously stated, Ms. Robichaud's evidence was replete with contradictions and inconsistencies. In Ms. Robichaud's response of 2 May, 2000 to Ms. Leadley's complaint, she indicated that she had decided to rent the apartment to "a couple with a young child long before Ms. Leadley approached me about renting it and before I was given this complaint". Yet, Ms. Leadley testified that the respondent did not divulge that the apartment was rented. I concur with Ms. Leadley.

Ms. Robichaud insisted that the newspaper advertisement of 1 February, 2000 did not apply to apartment 17 but rather, the ad must have been for another two-bedroom apartment in the building which had been subsequently rented. Her credibility suffered greatly when Commission Counsel presented her with the rent roll which ultimately determined that all two-bedroom apartments in the building were occupied prior to 1 February, 2000.

It is not necessary to repeat in detail the effect Ms. Robichaud's actions had on Ms. Leadley and her two young sons. Suffice it to say, whether intentional or not, Ms. Robichaud exhibited a total lack of respect for Ms. Leadley and her children's dignity as human beings.

The respondent told the complainant that apartment 17 was not suitable for viewing as there was a great deal of repairs remaining and that it would be dangerous for the complainant and her children to view the apartment at that time. However, John Renouf's evidence painted a completely different picture in that he thought the repairs had been effected in early February of 2000.

The assistant superintendent was prepared to show the apartment to Ms. Leadley but on arrival discovered that the door was locked. Prior to arriving at the apartment, the assistant superintendent remarked that the apartment was beautiful. Obviously, she must have previously seen the completed apartment to be able to render such a comment.

I found the respondent gave a direct reason why she did not intend to rent the apartment to the complainant because it was an adults-only building. If circumstantial evidence can point me in the direction that the presence of the two boys the evening the complainant visited the apartment building was a probable reason the respondent did not rent to her, then the complainant has proved there was discrimination on the basis of family status.

Still on the above statement, reference is made to Ms. Smith's submission at pp.305-306 where she states:

Then we look at the definition of family status in s. 3(h) of the *Act*, we know that family status means the status of being in a parent-child relationship. There is...the evidence is clear that Ms. Leadley on 1 February 2000, was in a parent-child relationship, that she applied, or attempted to apply for accommodation in an apartment building owned by Oakland Developments Ltd. whose principal is John Renouf and supervised at that time by the respondent Laraine Robichaud.

Now if you accept the evidence of Ms. Leadley that Ms. Robichaud told her that 23 Birch Street was an adult-building and that she was not going to rent to her and her two boys then I would suggest to you that discrimination on the basis of family status in contravention of the *Act* will have been made out.

And that is the case whether the discrimination on the basis of Ms. Leadley's family status formed the entire reason that Ms. Robichaud refused to rent to her or only part of the reason.

Again, if you accept Ms. Leadley's evidence that she was refused accommodation because of her status as being a parent of the two boys, that need not be the only reason or even the reason she was refused accommodation. As long as the discrimination forms some part of the decision, if you accept that there was a decision not to rent to Ms. Leadley because of her two boys, her family status, that will suffice to make out a case of discrimination.

Another example of Ms. Robichaud's contradiction when presenting her evidence was where she indicated she had promised the apartment to the Jessos who had a child. Then that same day (in the afternoon), Ms Robichaud told the Board that the apartment was promised to Jen Hebb and Michael White and that they were a couple who were willing to wait until the apartment renovations were completed.

What was so difficult to discern in Ms. Robichaud's evidence is when she indicated that the boy's would find it very difficult to live on the third floor of the apartment building. Throughout her evidence, she made representations that the apartment had already been rented. That being the case, it is a source of wonderment as to why she made reference to the the fact that the boys would find it difficult to navigate to the top floor of the building.

John Renouf told the Board that he did not instruct Ms. Robichaud to operate the building as an adults-only building. However, this does not enable Oakland Developments to escape liability. See the **Booker** case, *supra*.

Mr. Renouf stated in direct examination and in argument that children had lived in the building for many years. However, he cannot use this explanation as an answer to the complaint. See Peterson v. Anderson (1991), 15 C.H.R.R. D/1 (Ont. Bd. Inq.) where Board Chair Constance Backhouse stated at para. 31:

The evidence adduced by the respondents that there were some children (mostly teenagers) resident in the building does not defeat the complainant's case. It is not necessary to prove that a respondent discriminates against all of the members of a protected class in order to make out discrimination against one. Individuals do not always behave entirely consistently. Frequently those who discriminate make exceptions. Employers who hold biased perspectives about the abilities of women or certain races often employ a few token individuals from the maligned group. Persons who are guilty of sexual harassment, rarely harass all of the women under their supervision, selecting only a few. People who hold anti-Semitic views often maintain personal friendships with some Jews. Rarely are people thoroughly discriminatory in their beliefs and practices. Evidence that a respondent does not discriminate against the whole class cannot outweigh evidence that she or he discriminated in a particular case (My emphasis).

In argument, Mr. Renouf asserted that Ms. Leadley, by renting the property at Windsor Junction, was in a better position than she would have been in had she taken the

apartment at 23 Birch Street. I disagree. The expense and inconvenience of travelling from Windsor Junction to Bedford and return with the children would certainly not be an advantage to Ms. Leadley.

Mr. Renouf referred to the encounter between Ms. Leadley and Ms. Robichaud as “an argument” or “a fight” with no discrimination involved. Obviously, this comment was indicative of a lack of contriteness in that he failed to be sympathetic to the hurt feelings of Ms. Leadley and her two children. Nor was Ms. Robichaud contrite

In summation, Mr. Renouf argued he had more families with children in his apartment building in comparison to the number of families with children in apartment buildings in Halifax.

Firstly, he presented no evidence to support this contention. Secondly, the comment was totally irrelevant. Thirdly, Mr. Renouf failed to indicate that a large number of families with children became tenants in his building **after** Ms. Leadley’s complaint was filed in April of 2000.

Mr. Renouf’s evidence disclosed that his Company, Oakland Developments Ltd. was struck from the roll of the Registrar of Joint Stock Companies in 1999 for failure to pay its annual fees. Section 17(1) of the Corporations Registration Act, R.S.N.S. 1989:

Unless and until a corporation holds a certificate of registration that is in force, it shall not be capable of bringing or maintaining any action suit or other proceeding in any court in the Province in respect to any contract made in whole or in part in the Province in connection with any part of the business done or carried on in the Province while it did not hold a certificate of registration which was not in force....

The fact that the Company was struck from the roll of the Registrar of Joint Stock Companies prevents it from taking a legal action in contract. However, it does not prevent the Company from being sued or having an Order enforced against it.

3. REMEDIES

Counsel for the Human Rights Commission suggested compensation be awarded to the complainant in the form of general damages for hurt feelings and humiliation and special damages which represent out-of-pocket-expenses the complainant incurred.

In Jakob v. Mirkovich, (1992) 16 C.H.R.R. D/386 (B.C.H.R.C.), the Board Chair, at para. 22 stated:

The complainant is entitled to her actual loss subject to her duty to mitigate the loss. The burden is on the respondent to prove a failure to mitigate although I have the discretion to consider all the evidence when awarding damages.

Also See Rapson v. Stennis Restaurants Ltd (1991), 14 C.H.R.R. D/449 (Ont. Bd. Inq.)

The complainant mitigated her loss by immediately seeking out an apartment following the episode with the respondent. Although she would have preferred to remain in Bedford, the complainant was unable to find suitable accommodation for her and her children in the area. This necessitated her reluctant move to Windsor Junction.

The purpose of remedies and damage awards in human rights matters was well-expressed in Henwood v. Gerry VanWart Sales Inc. (1995), 24 C.H.R.R. D/244 (Ont. Bd. Inq.) at para. 33:

These remedial provisions should be construed liberally to achieve the purposes and policies of human rights legislation: Cameron v. Nel-Gor Castle Nursing Home (1984), 5 C.H.R.R. D/2170 (Ont. Bd. Inq.) at D/2196. It is a principle of human rights damage assessment that damage awards ought not to be minimal, but ought to provide true compensation. This is necessary in order to meet the objective of restitution and also to give true compensation to a complainant to meet the broader policy objectives of the Code. The objectives of the Code are to put the complainant in the same position she would have been in had her human rights not been infringed by the respondents: **Cameron** at p. D/2196, paras. 18526-27. The measure of monetary damages in a case such as this is the amount that the complainant would have earned had she not been denied the employment opportunity: **Cameron** at p. D/2197, para. 18532; Piazza v. Airport Taxicab (Malton) Assn. (1989), 69 O.R. (2d) 281 at 284 [10 C.H.R.R. D/6347] (C.A.). The complainant in this case had a duty to mitigate her damages; however, the onus of proving a failure to mitigate lies upon the respondents, as it does in other areas of the law: Gohm v. Domtar Inc. (No. 4) (1990), 12 C.H.R.R. D/161 at D/180 (Ont. Bd. Inq.), citing Red Deer College v. Michaels, [1976] 2 S.C.R. 324.

a. *General Damages*

This Board of Inquiry has the power to grant general damages to the complainant for humiliation, denigration of her dignity and self-respect, and embarrassment, suffered as a result of the discriminatory actions of Ms. Robichaud.

Some considerations in determining general damages in human rights cases are discussed at para. 38 in the **Henwood** case, *supra*:

Loss of dignity and self-respect are relevant considerations in assessing general damages for “loss arising from the infringement.” Damages for this loss should reflect the seriousness of the injury caused: **Cameron**, *supra*, at D/2198, para. 18538. An inherent but separate component of the damage award for “loss arising out of the infringement” in s. 41 (1)(b) reflects the loss of the human

right of equality of opportunity in employment. This is based upon the recognition that, independent of the actual monetary or personal losses suffered by the complainant, whose human rights are infringed, the very human right which has been contravened has intrinsic value. **The loss of this right is therefore an independent injury suffered by the complainant: Cameron, *supra*, at D/2198 para. 18539** (My emphasis).

In discussing mental harm to a complainant caused by a discriminatory act of a respondent, I refer to the unreported case of Hill v. Misener (No. 2), 9 June, 1997 (N.S. Bd. Inq.):

In a physical injury, damages in the range of \$2,000.00 to [sic] represent an extremely minor physical problem which resolves quickly. People who sustain minor physical injuries do not question who they are, they do not question their self-worth, they do not question their value as human beings. **An injury to one's self-respect, dignity and self-worth is an injury that is far more destructive and painful and takes a longer time to heal than a minor physical injury.**

General damage awards which have not properly applied the compensatory principles do not reflect the serious nature of discrimination and fail horribly to uphold the principles which have been established by human rights legislation (My emphasis).

It is abundantly clear from the evidence that Ms. Leadley suffered great injury to her self-respect and dignity. The complainant's children were equally hurt and saddened by the episode.

d. *Special Damages*

Special damages can also be awarded in human rights cases. See **Morrison v. O'Leary Associates**, *supra*, at para. 73 where the Board of Inquiry stated:

I quote with approval from the Board of Inquiry decision in Gohm v. Domtar Inc. (No. 4) (1990) 12 C.H.R.R. D/161 at D/179, D1/80 [paras. 126-127]:

With respect to the claim for lost wages, I find that the law has established as a general principle that human rights remedies are intended as full and complete compensation of the complainants' losses and harm suffered, and that liability under the Code is a unique form of statutory liability which is not governed by principles established in other areas of the law...Principles and concepts adopted in other areas of the law may be relevant as guidelines, but are not binding on a board of inquiry.

The purpose of a damage award under the Code is to put the complainant, so far as money can do so, in the position she would have been in had her human rights not been violated. An award of damages under the Code must reflect the social importance of the right which has been violated, and should not be so low as to create a licence to discriminate....[My emphasis].

I intend to award the complainant the differential between the rent she would have been paying at 23 Birch Street and the rent she paid at the Windsor Junction property. Reference is made to some cases dealing with the awarding of a rent differential to a complainant: **Huot v Chow**, *supra*, Day v. Cruickshank (1999), 35 C.H.R.R. D/503 (B.C.H.R.T.), Andrews v. Ptasznyk (1998), C.H.R.R. Doc. 98-064 (Ont. Bd. Inq.) and **Peterson v. Anderson**, *supra*.

e. Public Interest Remedies

There have been non-monetary awards made by boards of inquiry against respondents which aim was to discourage respondents from continuing discriminatory actions. For example, two remedies have included a written apology from the respondent to the complainant and a requirement that an owner of a building post copies of the *Nova Scotia Human Rights Act* in a conspicuous place in the building.

ORDER

This Board of Inquiry orders as follows:

6. The respondent, Oakland Developments Ltd., is to pay to the complainant within forty five days of the date of this Decision:
 - a) as general damages for humiliation, denigration of dignity, self respect and embarrassment, the sum of \$5,500.00;
 - b) as special damages for rent differential the sum of \$400.00 and \$800.00 for gasoline reimbursement;
 - c) as pre judgement interest on general and special damages, the sum of \$697.53;

For a total amount of \$7,397.53;

7.
 - a) The respondent, Laraine Robichaud is to provide a letter of apology to the complainant within forty five days of receipt of this Decision;
 - h) The respondent, Oakland Developments Ltd. is to post copies of the *Nova Scotia Human Rights Act* in a conspicuous place at 23 Birch Street.

Below is a breakdown of the computation of the rent differential and pre judgement interest calculations:

Rent Differential

The calculation of the rent differential is over a six month period from 1 February, 2000 to 1 September, 2000 inclusive.

Rent at Windsor Junction	\$610.00
Rent at 23 Birch Street (\$525.00 plus estimated \$35.00 for power)	<u>560.00</u>
Differential per month	\$
50.00	

Pre Judgement Interest

Four yrs (1460 days) plus 60 days = 1520 days/365 days x 2.5% (.025) x \$6700.00 = \$697.53

The four-year period represents the date of the incident (February 1, 2000) to February 1, 2004. The 60-day period represents February 1, 2004 to April 1, 2004. April 1 represents the day I received a transcript of the hearing from the transcriber. Since I was somewhat dilatory in writing the decision, it would have been unfair to request the respondent pay pre judgement interest to December 15, 2004.

The 2.5% interest rate for pre judgement interest is a rate that is accepted by the courts. The complainant is being compensated for pre judgement interest from 1 February, 2000 to 1 April, 2004.

I compliment Ann Smith, Solicitor for the Nova Scotia Human Rights Commission for her professionalism, preparation and presentation at the Hearing.

DATED at Halifax, Nova Scotia this 15th day of December, 2004

KENNETH D. CRAWFORD, Q.C.
CHAIR, BOARD OF INQUIRY

