

**NOVA SCOTIA BOARD OF INQUIRY UNDER
THE *HUMAN RIGHTS ACT***

Case No: 04-02-0034

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

BETWEEN:

REVEREND KENNETH GILLIARD

COMPLAINANT

- and -

THE TOWN OF PICTOU

RESPONDENT

DECISION
Pre-Hearing Motion on Jurisdiction

Chair: Cheryl L. Hodder

Hearing Dates: October 19-22, 2004
Decision Date: January 31, 2005

Appearances:

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For the NSHRC

For Reverend Kenneth Gilliard

For the Town of Pictou

INTRODUCTION:

1. On April 23, 2003, the Complainant, Reverend Kenneth Gilliard, signed a complaint to the Nova Scotia Human Rights Commission ("Commission") alleging discrimination on the basis of religion in relation to the provision of, or access to, services or facilities of the Town of Pictou.
2. On April 5, 2004, I was appointed as the Chair of the Board of Inquiry to hear Reverend Gilliard's Complaint. At a Pre-Hearing Conference on October 15, 2004, I was advised that the Town of Pictou intended to bring, as a Preliminary Motion, a challenge to the jurisdiction of the Board of Inquiry on the basis that the Town of Pictou was not a "person" within the meaning of Sections 3, 4, & 5 of the *Human Rights Act*, R.S.N.S. 1989, c. 214 ("*Human Rights Act*").
3. The Town submits that it does not fall under the definition of "person" as set out in the *Human Rights Act*, and therefore the Complaint of Reverend Kenneth Gilliard was improperly brought against the Town.
4. It is the argument of the Commission that the Town falls within the definition of "person" and that the Complaint brought by Reverend Gilliard against the Town is proper. The Commission states that the Town, as an incorporated body, falls under the definition of "person" in the *Human Rights Act*. The Commission further argues that this interpretation of the term "person" is consistent with the *Interpretation Act* R.S.N.S. 1989, c. 235 ("*Interpretation Act*") and the general intent of Human Rights legislation.
5. Under subsection 3(k) of the *Human Rights Act*, "person" is defined as follows:
 - 3 In this Act,
 - (k) "person" includes employer, employers organization, employees organization, professional association, business or trade association, whether acting directly or indirectly, alone or with another, or by the interposition of another;
6. Counsel for the Commission argues that the entities listed in subsection 3(k) represent a list that is not meant to be exhaustive and that by using the word "includes", the *Human Rights Act* is clear that these entities are not meant to be restricted to only those listed in the subsection.

7. The Commission submits that Section 7(1)(s) of the *Interpretation Act*, provides a definition of "person" for both the *Interpretation Act* and any other enactment. Section 7(1)(s) states:

7(1) In this Act, and in any other enactment,

(s) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;

8. The Town of Pictou was originally incorporated under the *Statutes of Nova Scotia* 1873, c. 30, under *An Act to Incorporate the Town of Pictou*. The Town's incorporation was continued under Section 8 of the *Municipal Government Act*, R.S.N.S. 1998, c. 18 which states:

8. The inhabitants of an incorporated town are and continue to be a body corporate under the name of the "Town of ...". 1998, c. 18, s.8.

9. As such, the Commission submits that the Town is an incorporated body which is subject to the definition of "person" under the *Human Rights Act*.

10. Counsel for the Commission cited case law to support the proposition that the Town is subject to Human Rights legislation including *Canadian National Railway Co., v. Canada (Canadian Human Rights Commission)* (1987), 8 C.H.R.R. D/4210 (SCC), wherein Chief Justice Dickson held that Human Rights legislation was intended to be interpreted to give the rights enunciated therein their full recognition and effect, such that the objects of the legislation are obtained. At paragraph 33238 Chief Justice Dickson stated:

33238 Human Rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis, in a Court of law. I recognize that in the construction of such legislation the words of the Act must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways and means to minimize those rights and to enfeeble their proper impact. Although it may be commonplace, it may be wise to remind ourselves of the statutory guidance given by the *Federal Interpretation Act* which asserts that statutes are deemed to be remedial and are thus to be given such fair, large and liberal interpretation as will best ensure that their objects are

attained. See Section 11 of the *Interpretation Act*, R.S.C. 1970, c. I-23 as amended.

11. The Commission also relies on *B.A.O. v. New Westminster (City)* (1989), 11 C.H.R.R. D/400 (B.C. H.R.C.), a case of the British Columbia Human Rights Council which dismissed a complaint wherein the Complainant alleged he was denied a taxi permit because of previous criminal convictions and charges that were unrelated to his employment. The Council held that because of the Complainant's propensity for violence, volatile personality, and unsatisfactory driving record, the refusal to issue a permit by the Respondent City of New Westminster and its police department did not contravene the *Human Rights Act*.
12. In its decision, the Council examined the definition of the word "person" in the Province's *Human Rights Act*. The Council clearly stated that the definition of "person", which mirrors the language of Nova Scotia's *Human Rights Act*, was not intended to be an exhaustive definition. The Council stated at paragraphs 11-12:

[11] With these precedents in mind, I turn to the Respondent's suggested interpretation of the word "person" in s. 8(1) of the Human Rights Act. The Respondent contends that "person" must mean "employer", which is restricted to someone with a degree of control over the Complainant.

[12] In addition to "employment", the Act defines "person" as "includes an employer, an employment agency, an employers' organization, an occupational association and a trade union". Counsel provided me no authorities in support of that restrictive interpretation which, in effect, makes exhaustive a definition, even though the definition uses the term "includes". In my view, the suggested interpretation would be contrary to not only the ordinary rules of statutory interpretation, but also to the principles announced above. [Emphasis added by the British Columbia Human Rights Council]

13. In further support of its position that the Town of Pictou is subject to the definition of "person" under the *Human Rights Act*, the Commission relies on the following from *Re Saskatchewan Human Rights Commission v. Canadian Odeon Theatres Limited* (1985), 18 D.L.R. (4th) 93 at 108 - 109:

The interpretation of a statu[t]e which guarantees fundamental rights and freedoms and which prohibits discrimination to ensure the obtainment of human dignity should be given the widest interpretation possible: see *Smart et al v. Livitt* [1951] 2 D.L.R. 47 at

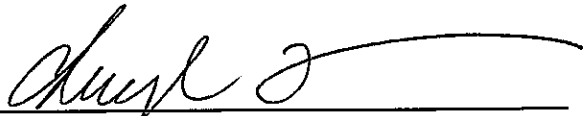
pp 61-2, 1 W.W.R. (NS) 49 at p. 65 (Sask.C.A.). The intention of the legislature must be gathered from the words of the Act when read in context, but context also includes facts known to the Legislature when the Act was passed. The Act should be interpreted in light of the social milieu or context existing at the time and the mischief to be remedied: see E.A. Dreidger, *Construction of Statutes*, 2nd ed. (1983), p 243. Generally, Human Rights legislation has been given a broad interpretation to ensure that the stated objects and purposes are fulfilled. A narrow restrictive interpretation which would defeat the purpose of legislation, that is the elimination of discrimination, should be avoided. That approach has been followed by many Courts, including this one, in interpreting Human Rights legislation; see *A.G. Can. v. Canadian Human Rights Commission* (1979), 102 D.L.R. (3d) 727, [1980] 1 F.C. 569, 1 C.H.R.R. D/91; *Bailey et al v. M.M.R.* (1980), 1 C.H.R.R. D/193; re *A-G Alta and Gares* (1976), 67 D.L.R. (3d) 635, 76 C.L.L.C. 14, 016; *Insurance Corp. of B.C. v. Heerspink et al* (1982), 2 S.C.R. 145 at p 157, 30 B.C.L.R. 145.

The purpose and object of *THE SASKATCHEWAN HUMAN RIGHTS CODE*, as stated in s.3, is as follows:

- (a) to promote recognition of the inherent dignity and the equal inalienable rights of all members of the human family; and
- (b) to further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination.

Those are broad social goals and purposes which the Legislature of this Province has deemed to be worthy of emphasizing and achieving. It has, by virtue of s.44, made the *Code* paramount to all other legislation unless expressly excepted by statute or an exception in the *Code*. The protection and enforcement of human rights has increasingly become an important national and international goal. Indeed, the Province of Saskatchewan has for many years been in the forefront of the protection of human rights and dignity.

14. The Town of Pictou is an incorporated body; a legal person. The definition of the word "person" in the *Human Rights Act* is not meant to be exhaustive. This is consistent with the case law and is also in accordance with the guiding principles of interpretation of Human Rights legislation. I therefore find that the Town is subject to the definition of "person" under the *Human Rights Act*. To find otherwise would be to defeat the purpose of the legislation. I therefore dismiss the Preliminary Motion by the Respondent, The Town of Pictou, and find that I do have jurisdiction to hear Reverend Gilliard's complaint.



CHERYL HODDER
CHAIR, BOARD OF INQUIRY

(736439.1)