

In the matter of: **The Human Rights Act, R.S.N.S. 1989, c. 214, as mended 1991, c. 12**

BETWEEN: **DAVID T. MATTHEWS**

- Complainant -

v.

**WESTPHAL MOBILE HOME COURT LIMITED (Carrying on
business as Woodbine Mobile Home Park)**

- Respondent -

File No.: 42000-30-030062

THE NOVA SCOTIA HUMAN RIGHTS COMMISSION

DECISION

BEFORE: **Board of Inquiry, Chair Darlene Jamieson**

DATE OF DECISION: **October 24, 2005**

COUNSEL: **Ms. Ann Smith
Counsel for Commission**

Mr. David T. Matthews - Self Represented

**Mr. N. Kent Clarke
Counsel for the Respondent**

COMPLAINT

1. The Complainant, Mr. Matthews, suffers from various conditions which have rendered him physically disabled. Mr. Matthews is unable to walk for distances greater than 25 feet and when traveling outside his home uses several motorized scooters and a wheelchair. Mr. Matthews decided to sell his home in or about early 2003 and subsequently decided that the property located at 1647 Frankie Drive was suitable for his needs. Mr. Matthews alleges he asked the Respondent Westphal for permission to build a larger shed on the Frankie Drive property and was advised this would not be possible. Mr. Matthews alleges the Respondent made no effort to accommodate his physical disability and has discriminated against him contrary to Section 5(1)(b)(o) of the Nova Scotia *Human Rights Act*.

THE EVIDENCE

2. At the hearing before the Board of Inquiry (June 8, 9 and 10, 2005), evidence was presented by the Commission, Mr. Matthews and the Respondent, Westphal Mobile Home Court Limited (carrying on business as Woodbine Mobile Home Park). The Commission's witnesses included Mr. David Matthews, Mr. David Grace, Mr. Brad Johns, Mr. Stan Havill and Ms. Heather Scott. Mr. Stan Havill and Ms. Heather Scott were called by the Respondent.
3. The facts giving rise to the complaint arise out of a sequence of discussions and in many respects are in dispute. I will therefore provide, in some detail, an overview of the evidence.

Summary of Evidence of David Matthews

4. Mr. Matthews was born October 25, 1941 and has resided at 16 Candlewood Lane, Lower Sackville, since June 7, 1987. His elderly mother lives with him and has lived with him since 1987.
5. From 1987 until 1992/93 Mr. Matthews retained his ability to walk. However, from this time period forward he has used a scooter to travel outside his home.
6. Gradually, he began to find it difficult to go up and down the stairs of his home at Candlewood Lane.
7. The scooter contained in the photograph at Exhibit 1 was purchased in 2001 or 2002. It is powered by an electric motor and has a range of approximately 60 miles. The scooter has a detachable trailer which hooks to the back.
8. When he purchased the scooter it was too large to bring into the home so Mr. Matthews had a 6' x 8' shed built on the patio which enabled him to put the large scooter in the shed (without the trailer). The scooter cannot be left outside in the elements. He also had an additional shed approximately 10' x 10' to store other items that were needed including a freezer, generator, snowblower, etc.

9. Mr. Matthews contacted real estate agent, Mr. David Grace of Exit Realty, who assisted him in looking at various mobile home parks in the Sackville area. Mr. Brad Johns, a Municipal Councillor, also assisted Mr. Matthews in his search.
10. Mr. Matthews' criteria when searching for a new home included two specific items:
 1. He needed a place to store the large scooter;
 2. He needed a large bedroom.
11. Mr. Matthews initially visited Woodbine Park with Mr. Brad Johns. The 1647 Frankie Drive property had a garage/shed. The trailer had two bedrooms with one being a large bedroom. It was an ideal situation. At this time the house was not listed but Mr. David Grace had an interested buyer. Mr. Matthews had received an offer on his home before he saw the trailer in Woodbine. He made a tentative verbal offer on the trailer and then signed the deal on his house the same day.
12. Mr. Matthews was confident the size of the shed would be appropriate since there was a car in the shed at the time he viewed the property. He was told this by the owner of the property. The next day he went to the mobile home park office to discuss getting the tenancy transferred over to him.
13. In relation to the sale of his property at Candlewood, Mr. Matthews was thinking of listing the property when Mr. Grace advised him he had a client who wished to move into the area and would he mind if she viewed the property. The woman and her son viewed the property and returned several hours later to view the property again. Mr. Grace came back and asked what he wanted for the property. An offer was made on March 26, 2003 (the property had been viewed March 24, 2003). At Exhibit 4 there is a counter offer signed by Mr. Matthews on March 25, 2003 and signed by the purchaser on April 2, 2003. The closing date is May 13, 2003. The transaction allowed Mr. Matthews to rent the property until June 13.
14. Mr. Matthews gave evidence that after the owner of the trailer verbally accepted his offer, the next day he visited the office of Woodbine Mobile Home Park and got the number for Heather Scott. When he went into the office he advised them that he needed the shed for his scooter. He was told it was up to Heather Scott as to when the pre-sale inspection would be done and whether he would qualify as a tenant. On the way back to his home he called Heather Scott on his cell phone. He identified himself as a prospective buyer of one of the trailers. She advised the lot had to be inspected. She said the shed may have to be torn down. He specifically advised Ms. Scott: "I am disabled and want the shed for my scooter." She advised they had a rule where sheds could only be 10' x 10'. Mr. Matthews advised her that was not large enough for his scooter and Ms. Scott responded to him, if you want more than 10' x 10' don't bother applying for this lot. She then advised that if they granted an exception to him for a 10' x 14' shed, they would have to do it for everyone. He initially

requested a 10' x 22' shed but when he found out that was out of the question he proposed a 10' x 14' which is the smallest he could manage with.

15. Mr. Matthews did some research regarding accommodation of disabled persons that evening and called Ms. Scott the next day. He says she advised him there is no way a 10' x 14' shed would be allowed. He asked if he could have someone speak on his behalf, John Holmes or Brad Johns. Mr. Matthews indicated that she then became upset and stated she did not want to be intimidated and ended the call. Mr. Matthews was never provided with any of the documents concerning the covenants of the mobile home park or even an application form for tenancy.
16. Mr. Matthews indicated he understood there was a by-law or restriction of no pets in the park but it was common knowledge that there were pets in the park.
17. Exhibit 5 is an Assignment of Sale Proceeds for a loan of \$3,015.00. Mr. Matthews says he gave a final okay on the day he signed the papers for the sale of the house. Mr. Matthews says he spent money on packing, hired several people to do this hoping the issue of the shed size would be worked out. He also hired someone to paint the kitchen and do some repairs concerning a line to the oil tank. Approximately \$1,000.00 was spent by the time he had his last dealing with Ms. Scott and then he did not have the \$1,000.00 in cash to repay the loan.
18. Mr. Matthews had bridge financing in place before the Frankie Drive deal.
19. It was Mr. Matthews' impression that Ms. Scott called the shots at Woodbine Mobile Home Park.
20. Mr. Matthews did not consider going back and looking at other mobile homes that were for sale because the Havills' own a vast number of parks in Sackville. He had already spoken with the Manor Park people.
21. He feels this is affordable housing and disabled individuals need access to such housing.
22. Mr. Matthews feels this matter has resulted in the following damages:
 1. He has had to refinance his house and now has a line of credit of \$40,000.00.
 2. He has redone the floors, built another shed and feels he will never get back this investment in the property.
 3. This matter caused significant worry and stress. He says his blood pressure elevated as a result.
 4. He spent approximately \$1,000 in painting, packing, etc., as set out above.
23. Mr. Matthews acknowledged he can park the large scooter in a 10' x 10' shed but not with the trailer. Exhibit 13 indicates the scooter is 9' x 5'.

24. Mr. Matthews gave evidence that if he was to live in Woodbine he needed the trailer attachment for the scooter. It was not as necessary at the Candlewood property, given the distance traveling from Woodbine to local stores versus Candlewood to local stores. Where he presently lives, he can make a number of trips per day.
25. On June 18, 2003 the Respondent offered a 10' x 14' shed. He refused because at this time the bridge financing had fallen through and he had refinanced his house. He had started a process he thought was irreversible and had made arrangements to organize his life to renovate the existing property.
26. Mr. Matthews clarified his prior evidence saying he made the verbal offer on the trailer after his house was sold, "yes it came after". In addition, he had agreed to paint his home for the new owner prior to the deal on Frankie Drive.
27. Mr. Matthews says the first call with Ms. Scott was pleasant and during the second call she became upset when he mentioned John Holmes and Brad Johns. He indicated he was agitated but was not angry. At no point did he threaten Ms. Scott.
28. At no point during discussions with Ms. Scott did she ever indicate let's see if you can manage with a 10' x 10' shed or make suggestions on how a 10' x 10' shed could be set up to accommodate the scooter; with sawhorses, shelves for the charger, etc.

Summary of Evidence of Mr. David Grace

29. Mr. Grace has worked as a realtor with Exit Realty for twelve years and has taken over ownership of the local office. He met Mr. Matthews while working at a kiosk at the Atlantic Superstore. At some point in 2003 while at the kiosk Mr. Matthews asked him if he knew of any mobile homes for sale as he was considering selling his house. Mr. Grace listed the Matthews' property for sale and his colleague, Wayne Cochrane, mentioned someone might be interested in the property. An offer was made to Mr. Matthews (Exhibit 3) on March 25 which was open for acceptance until March 26. There was a counter offer made by Mr. Matthews (Exhibit 4) dated March 25, 2003. The offer was accepted on April 2. The agreement was in place on April 2 subject to the conditions.
30. He recalls there being a number of criteria for the purchase of a mobile home by Mr. Matthews. He needed to accommodate his mother whom he cared for. He needed a shed to hold the freezer for the home plus the scooter he used in the community. He specifically recalls discussing the need for a shed to house both the scooter and a freezer. They began looking at mobile homes in late March. They looked over a week or two for a trailer.
31. 1647 Frankie Drive was listed with Exit Realty. In fact Mr. Grace's brother had listed it. The list date is March 27, 2003. The property was ultimately sold in December of 2003.

32. Mr. Grace recalls viewing the home with the owner of the property whose husband was in Calgary. Mr. Matthews liked the property. He felt he could build a shed on the property and there was also an existing garage on the property. There was a discussion with the owner whereby Mr. Matthews offered to buy the property. He gave a price of \$50,000.00. The two agreed. Based on Mr. Grace's experience, he knew there were restrictions in the park and suggested they speak to the park management. Mr. Grace attended the office with Mr. Matthews. They spoke to two women at the office, Ms. Keating and Ms. Stephen. They advised the women Mr. Matthews was interested in buying and wanted to make an application. He brought up the need for a shed for the freezer and the scooter. They were told the restriction was 10' x 10'. Mr. Matthews said due to his disability he needed a 10' x 14'. They said well you will have to call Heather Scott. They advised the women of the specific trailer on Frankie Drive he wanted to buy. Mr. Matthews gave Ms. Keating his cell number and advised her he wanted Heather Scott to call.
33. While they were in the car the cell phone rang and Ms. Scott was on the line. He recalls overhearing a discussing indicating there was an issue around the shed. Mr. Matthews said he needed the shed on the deck to house his electric chair and freezer. It appeared Ms. Scott was sticking to the 10' x 10' shed. At that time Mr. Matthews was suggesting either a 10' or a 12' x 20' and may have come down to a 10' x 16'. He indicated in the telephone call he was handicapped and there should be provision for this.
34. He recalls the discussion was heated. Heather Scott may have felt threatened. The call ended quickly. Mr. Grace recalls an existing large garage being discussed. Ms. Scott said it would have to be torn down. This put Mr. Matthews in a difficult position. He had an offer on his property and the lady buying had an offer on hers.
35. Mr. Grace had no direct dealings with Ms. Scott. Mr. Matthews made no other offers on other trailers. Mr. Grace met with the purchaser and the other agent and they agreed to let him out of the deal. The whole thing fell at once. Mr. Grace waived the commission on all three properties. The total would be \$14,000.00 to \$15,000.00. He believes it was April 12 when the Frankie Drive property deal was called off.
36. Mr. Grace indicated to his knowledge there were all kinds of exceptions to the rules in the trailer park. He noticed there were two large rottweilers across the street from the Frankie Drive property. He showed the property to others and the dogs were an issue with some people. He believes his brother actually complained about the dogs.
37. Mr. Grace confirmed Mr. Matthews already had an offer for the sale of his house which he had accepted without knowing where he was moving. He knew he wanted a trailer but accepted the offer on his house without having anything set up.

38. The sale of Mr. Matthews' house was independent of what happened at 1647 Frankie Drive. Mr. Grace indicated that during the telephone discussion with Heather Scott he had only heard one side, but at the end of it he would describe Mr. Matthews as angry but not at the beginning. He believes he may have said he would take her to the Human Rights Commission. He does not believe there was any option for a 10' x 14' shed in the call. Mr. Matthews explained the nature of his disability, he said he was handicapped and required an electric wheelchair. He believed that the Frankie Drive deal was dead after this discussion in the car. The discussion with Mr. Scott was four to five minutes. They made no other efforts to find other mobile homes. The only other park available was Manor Park and Mr. Matthews did not want to be there. Mr. Grace cannot recall the exact date of the meetings at Woodbine but it was after April 2 and probably before April 11.

Summary of Evidence of Mr. Brad Johns

39. Mr. Johns is a Municipal Councillor. He met Mr. Matthews after becoming Councillor when he had issues around his property on Candlewood.
40. He knew Mr. Matthews was downsizing as he takes care of his elderly mother and was looking at different options. Mr. Matthews advised Mr. Johns he wanted to go into a mobile home and this would have been about two years ago. Mr. Johns drove Mr. Matthews around looking at properties and they went to the Frankie Drive property in Woodbine. They drove to Sackville Estates as well. Mr. Johns indicated he had concerns about the Woodbine location due to there being no sidewalk connecting Lower Sackville so suggested Sackville Estates. However there were reasons Mr. Matthews thought the Woodbine site was better for him. It was at the end of the street and he found it desirable to have the wood lot adjacent. There was a garage for storage and believes when they viewed the Frankie Drive property there was an old car in it. They did not look in the garage but spoke to the woman who owned the property and understood the car to be in the garage. Between the garage and the mobile there was an 8' x 10' shed as well. Mr. Matthews had hoped to put the scooter in the garage. An 8' x 10' shed would be used for storage of garden tools, etc. He hoped to make a small addition to the deck.
41. Mr. Johns was surprised when Mr. Matthews called him a week later. Mr. Matthews advised him that he had to remove the garage. At the end of the day he said the mobile at Woodbine was the one he wanted. He did not meet Ms. Scott in relation to Mr. Matthews but had met her previously. He had attended two hearings at the Tenancy Board where she was present and he believes he met Mr. Havill as well. Mr. Johns recalls being at a Residential Tenancy Board Meeting and having words in the hall with Mr. Havill, who indicated to him that he was simply a politician trying to score points and this was the only time he came around was to score points. He said at the time Mr. Matthews was unaware of his dealings with the Havills but was told by Mr. Matthews that Ms. Scott said if you bring in Brad Johns it's a deal breaker. He understood Ms. Scott then said to Mr. Matthews "Get out of my office."

42. Mr. Johns has never known Mr. Matthews to be belligerent or threatening. He gave evidence Mr. Matthews is always calm, cool and collected, well educated and in every way a gentleman. Mr. Johns remembers there being two separate buildings at the Frankie Drive property. He believes the garage was separate and it was 16' x 16' or 20' x 20'.

Summary of Evidence of Mr. Stan Havill

43. Mr. Havill has been in the mobile home park business for about 22 years. He solely owns four parks and each of these parks have the same rules and the same stipulation concerning shed size. His daughter, Heather Scott, is responsible to try to ensure the rules are consistent in all the parks. His parks contain approximately 1,100 homes with more than 2,500 people. Ms. Scott deals with the day to day issues.
44. The rule concerning shed size has only been enforced for new tenants after 2000. New tenants are expected to abide by the rules. In order to be checked out of the park a tenant must be in compliance with the rules unless the purchaser agrees to assume repair issues, etc. Mr. Havill indicated a 10' x 10' shed is an average personalized shed. However, there is always leeway. It is his prerogative to change and allow exceptions. He says it would not be reasonable for there to be a 10' x 20' shed. He said if it was prudent he might allow a 10' x 12' shed. He says Ms. Scott did not have to go to him for a variation. He did not get involved. He leaves most day-to-day things to Ms. Scott.
45. Mr. Havill assisted Ms. Scott with the sketch that was drawn of Frankie Drive (Exhibit 15). Mr. Havill agreed there is lots of room on the lot of 1647 Frankie to put a longer shed. Mr. Havill is not sure whether he had any discussion around the time of April 2003 concerning Mr. Matthews. He knows he became aware of the matter later on.
46. Mr. Havill stated he does not know Mr. Brad Johns and never had any dealings with him.

Summary of Evidence of Ms. Heather Scott

47. Ms. Scott is the Property Manager for the Respondent. She has been employed with them for 15 years and specifically with Woodbine for 10 years. In 1990 she became the bookkeeper for the Sackville Estates and Westphal Mobile Home Parks and then expanded to other parks. Her job responsibilities are to make sure the tenants are happy, look after day-to-day things including overseeing the maintenance manager, work with Mr. Havill, etc. They have approximately six employees in the winter and up to 11 to 12 in the summer. They have approximately 1,100 units in the various parks. Ms. Scott is a nurse by training. Mr. Stan Havill is her father.
48. The normal process at the sale of a mobile home is to contact the office, let them know it is for sale so an inspection can be completed. They then review the application and interview

the potential new tenant. The inspection is supposed to be done prior to listing but it is not always the case. They want to know that the home has been maintained up to the park standards. Ms. Scott is usually not involved unless there are difficulties in the application.

49. There have been rules and regulations in place for the park since the Havills have owned it but they were old and vague. In 1999 they revised their rules. The new rules were put in place to ensure tenants and homeowners are living in a manner positive for all. The average size lot at Woodbine is 4,000 square feet. They chose the guideline of 10' x 10' for tenant sheds. Any requests for construction of a shed must meet municipal by-laws, have vinyl siding and asphalt roofing.
50. Exhibit 15 is a drawing of the 1647 Frankie Drive. This was based on what is there today not in 2003. The owners were required to remove the addition on the shed. The shed had never been properly constructed to start with and was an eyesore.
51. Ms. Scott does not recall the exact date she first heard from Mr. Matthews but would accept Mr. Grace's evidence that it was somewhere between April 2 and April 10. She recalls speaking with Mr. Matthews and that he said he had a disability that required him to use a scooter. She stated: "I didn't question this." The first issue regarding ramps to the trailer was no problem and she had no problem with the deck being attached to the shed as long as municipal by-laws were met. Mr. Matthews advised her he needed a 10' x 20' shed and stated he had an 8' scooter and a freezer. Her response was that under municipal by-laws it could not be approved. The mobile home park guidelines said 10' x 10'. He was adamant he wanted a 10' x 20' shed. She stated they did not get further into the call. The call started friendly and turned negative, threatening and at the end aggressive. Mr. Matthews said he would take it further and she didn't know who she was dealing with.
52. They did discuss storing the freezer inside the trailer and he said he didn't feel he could do this. He did not mention there was another person in the home. She believes the first call lasted around eight minutes. She stated she wasn't comfortable with the reaction from Mr. Matthews and was feeling quite threatened. A day or two later he called back and said he would be prepared to build a 10' x 16' shed. Ms. Scott told him they couldn't accept it due to the municipal guidelines. He didn't advise of any further things to go in the shed.
53. Mr. Matthews became threatening, saying Ms. Scott didn't know who he was, what he could do and mentioned Brad Johns. She hadn't had any personal dealings with Mr. Johns but knew his name. After the second discussion they had no further contact.
54. Ms. Scott offered a 10' x 14' shed in June of 2003 after she learned Mr. Matthews had complained to the Nova Scotia Human Rights Commission.
55. Ms. Scott indicated there were a small percentage of tenants prior to 2000 who had larger sheds and a few (she believes two sheds) the size of 10' x 12' have been approved since the

guidelines were put in place. She stated she never told Mr. Matthews he need not apply to be a tenant if he needed a larger shed.

56. Exhibit 16 is a package of documents relating to the Respondent's mobile home parks. Document 4 is the Community Guidelines and document 5 Community Standards for the Havill Mobile Home parks. Both documents 4 and 5 are in place at Woodbine. The owners of Frankie Drive in 2003 had not signed off on the new rules as they were existing tenants at the time. The mobile home park guidelines allow 10' x 10' sheds. However, the municipal by-laws allow 10' x 14' sheds. She stated there has been nothing larger than a 10' x 10' shed allowed at the mobile home parks since 2000.
57. She agrees that the presence of pets is a violation of their rules. She stated their practice was to provide letters of warning and then a notice to vacate.
58. She indicated in her first discussion with Mr. Matthews, he wanted a 10' x 20' shed and in the second conversation it was a 10' x 16', however, the municipal by-law did not allow for a 10' x 16' shed. She knew Mr. Matthews was disabled and knew as a landlord that she was required to accommodate his disability. She stated she was prepared to work to find solutions. At no time did she offer any shed larger than 10' x 10'.
59. Mr. Havill owns Woodbine, Westphal, Sackville Estates and Springfield Mobile Home Parks. Century Park, Alderwood, Woodlawn and Old Century Park are owned by Mr. Havill with his siblings. The guidelines that became effective in January 2000 were developed with Ms. Scott's brother, Alan Havill, and are intended to be used in all of the mobile home parks. The rules are mandatory. The Community Standards are also mandatory including the provisions dealing with no animals, only two vehicles, unsightly conditions, etc. The Community Standards include the provision for one shed per home location. Ms. Scott indicated this was a very important rule. The Community Standards also include Section 3.4 which states deck size is not to exceed 8' x 12'.
60. They gave the existing tenants a one year grace period because of the expense involved in meeting the new rules. They have been gradually trying to bring everyone forward to be consistent with the rules. For those who are coming into the park, the rules are enforced. When a tenant receives the inspection report prior to selling, is usually the first time existing tenants learn of their requirements under the Community Guidelines and Standards in writing. This is the first time an existing owner would have knowledge of the need for a pitched roof, siding, etc. To date, existing tenants, as of January 2000, have not signed off on the rules.
61. The Respondent does not give tenants a copy of the municipal by-law (Exhibit 14). Since January of 2000 decks larger than 10' x 10' have been denied. A small percentage will readdress with Stan Havill who has allowed 10' x 12' but only pre-2000, nothing since. She agrees the shed that was on the 1647 Frankie Drive property had been there quite a while.

62. Ms. Scott stated that an owner prior to January 2000 who had a shed larger than 10' x 10' would be free to use it until they sold. It would be grandfathered in and could still be present today.
63. Exhibit 9 is a copy of the MLS listing for 1674 Frankie Drive that contains references to decks larger than the rules allow. It states "a new 10' x 14' deck was installed last year." In response, Ms. Scott indicated that if someone exceeded the guidelines as long as it did not exceed the municipal by-law the owners or Respondent would use their discretion.
64. Exhibit 10, also an MLS listing for Frankie Drive, refers to a new 10' x 14' deck plus a large shed as of September 5, 2003.
65. Exhibit 8 contains various MLS listings, including for leased properties owned by the Respondent. These listings refer to various violations. For example, the listed property at 858 Duggan contains a 12' x 10' shed.
66. Exhibit 12, contains further MLS listings including a listed property at 341 Ioney Hill which contains a large wraparound deck and shed. The property at 834 Duggan Drive contains a 12' x 12' shed. The property at 105 Milo Terrace has a front deck 10' x 13', back deck 12' x 12' and 9' x 12' shed. 1519 Woodbine Avenue has a metal roof which is a violation. It also has two decks 8.6' x 9.6' and 7.10' x 14'. The property at 310 Ioney Hill has a 20' x 8' deck. The MLS listings referenced and located on the Respondent's property are all subject to Community Standards and Guidelines established by the Respondent.
67. Ms. Scott stated they wait until the property is for sale to enforce the guidelines regarding deck size and shed size. For pre-2000 tenants, they are prepared to wait however long it will take, and usually until the point of sale before they address any of the violations. Ms. Scott stated there would be no hardship to Woodbine to allow Mr. Matthews a 10' x 14' shed. She doesn't believe she ever suggested they would allow a shed larger than 10' x 10'. The only size she mentioned was 10' x 10'. She does not recall telling Mr. Matthews the existing shed had to be torn down, but she may have.
68. Ms. Scott knew from the first call she had with Mr. Matthews that he was disabled. She knew he connected his disability with the scooter and she knew the need for the shed size was connected to the scooter. She confirmed all of these were accurate. At no point did she discuss with Mr. Matthews other options for a 10' x 10' shed such as using a sawhorse or angling the scooter or increasing the size of the doors, etc.
69. She never gave any indication to Mr. Matthews they were prepared to make any exceptions. She recalls both calls being initiated by Mr. Matthews.

LAW

70. Mr. Matthews alleges the Respondent made no effort to accommodate his physical disability and has discriminated against him contrary to Section 5(1)(b)(o) of the Nova Scotia *Human Rights Act*. The following sections relate to this complaint.

5(1) No person shall in respect of

(b) accommodation

discriminate against an individual or class of individuals on account of

(o) physical disability or mental disability

68. Physical disability is defined pursuant to the *Act* as follows:

(3) In this Act

(1) “physical disability or mental disability” means an actual or perceived

- (i) loss or abnormality of psychological, physiological or anatomical structure or function,
- (ii) restriction or lack of ability to perform an activity,
- (iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a hearing-ear dog, a guide dog, a wheelchair or a remedial appliance or device,

69. There is no real dispute as to the law in this case. The burden of proof is on Mr. Matthews to establish a *prima facie* case on the civil balance of probabilities of discrimination in failing to accommodate because of his disability. The Supreme Court of Canada case of *O’Malley v. Simpson Sears Limited* (1985), 7 C.H.R.R. D/3102 at D/3108 states:

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.

70. The Nova Scotia *Humans Right Act* is to be interpreted in a broad and liberal fashion. *O'Malley v. Simpson Sears*, supra. The Supreme Court at Page 6 stated:

. . . The accepted rules of construction are flexible enough to enable the court to recognize in the construction of a human rights code the special nature and purpose of the enactment (see Lamer, J. in *Insurance Corporation of British Columbia v. Heerspink and Director, Human Rights Code*, [1982] 2 S.C.R. 145 at pp. 157-8 (1982) 3 C.H.R.R. D/1163), and give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitutional but certainly more than the ordinary – and it is for the courts to seek out its purpose and give it effect. The code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discrimination, but rather to provide relief for the victims of discrimination.

71. In this case which involves disability, the onus is on Mr. Matthews to show firstly that he had a disability (this is admitted by all parties), was adversely treated by the Respondent and that there is evidence upon which it is reasonable to infer the disability was a factor in this adverse treatment.
72. I find the Complainant has established a *prima facie* case of discrimination.
73. There were some discrepancies between the evidence of the witnesses as to dates, size of the shed and sequence of events. This is not unusual given that the events happened more than two years ago. However, the evidence was clear on a number of points.
74. Mr. Matthews suffers from a disability which is linked to his need for the large scooter and which is linked to the need to have the large scooter stored inside. Mr. Matthews requested a shed larger than the Respondent's rules allowed, being 10' x 10', and was denied a shed any larger.
75. There was a large garage existing at the 1647 Frankie Drive property sufficient for storage of the scooter. In relation to the existing garage, if its condition was a problem, could it be repaired to a satisfactory condition? Why was possible repair not even discussed with Mr. Matthews? Why did Ms. Scott not offer this as an alternative to tearing down the garage? No evidence was offered as to why this was not a possibility.
76. There were many ignored infractions of the Community Standards and Guidelines at the Woodbine Mobile Home Park when Mr. Matthews asked to build a larger shed to accommodate his scooter.

77. Mr. Matthews (even if we accept Ms. Scott's evidence) offered to accept the tearing down of the garage and his building a 10' x 16' shed. Ms. Scott did not attempt to accommodate the 10' x 16' shed but simply maintained the position throughout that nothing larger than a 10' x 10' shed would be acceptable. She did not offer a 10' x 14' or even a 10' x 12' shed. The question remains, what did Ms. Scott offer Mr. Matthews as an accommodation? Unfortunately, the answer on the evidence is absolutely nothing.
78. Ms. Scott offered no variation from the Community Standards whatsoever. This is despite the fact that there were existing sheds significantly larger than 10' x 10' in the mobile home park, along with many other infractions of the Community Standards and Guidelines.
79. The Community Standards and Guidelines in these mobile home parks are not applied consistently, are confusing and appear to be entirely discretionary. It was clear from the evidence that sheds and decks that are in violation of these rules can exist indefinitely until the point where existing tenants sell their homes. Existing tenants do not even know of these guidelines and standards until they decide to sell their homes. Based on Ms. Scott's own evidence, the rules are contradictory and applied inconsistently.
80. If we ask the question whether allowing Mr. Matthews to construct a 10' x 16' shed would create hardship for the Respondents, the answer is clearly no. Ms. Scott gave evidence that a 10' x 14' shed would create no hardship for Woodbine. Mr. Havill indicated in his evidence there was lots of room on the lot at 1647 to put a larger shed and provided no evidence that a 10' x 14' or a 10' x 16' shed would create hardship. Given this evidence, there can be but one conclusion from the conduct of Ms. Scott, the Respondent's representative, and that is that it is discriminatory.
81. Accommodation has been described as follows by David Lepofsky in "The Duty to Accommodate: A Purposive Approach" (1992), 1 Can. Lab. L.J. 1 at Page 3:

At the core of any accommodation is the tailoring of a work rule, practice, condition or requirement to the specific needs of an individual or group. The need may be associated with the religion, gender, disability or other human attribute enumerated in human rights codes. An accommodation can include such steps as an exception of the worker from an existing work requirement or condition applicable to others, the provision to the worker of a benefit not ordinarily or routinely provided to others, and the provision of some kind of job support or assistance which is ordinarily or not routinely provided to others. At its core, it involves some degree of differential treatment. The litmus test of the accommodations necessity is whether such a measure is needed to ensure that the worker can fully and equally participate in the workplace.

82. Even where a *prima facie* case is made out, the Respondent can still rely on certain defences to justify or otherwise excuse their behaviour, including the defence of undue hardship
83. It is only where a Respondent can show that accommodation of an individual will result in undue hardship will the discriminatory standard be upheld. In order to prove undue hardship, the Respondent must provide objective evidence in support of its position that it cannot accommodate. In the present case, there was no evidence provided by the Respondent of undue hardship.
84. The Supreme Court of Canada in *Central Okanagan School District No. 23 v. Renault* (1992), 16 C.H.R.R. D/425 stated at para. 19:

. . . More than mere negligible effort is required to satisfy the duty to accommodate. The use of the term “undue” infers that some hardship is acceptable; it is only “undue” hardship that satisfies this test. The extent to which the discrimination must go to accommodate is limited by the words “reasonable” and “short of undue hardship.” These are not independent criteria but are alternate ways of expressing the same concept. What constitutes reasonable measures is a question of fact and will vary with the circumstances of the case. Wilson, J. in *Central Alberta Dairy Pool, supra*, listed factors that could be relevant to an appraisal of what amount of hardship was undue as (at Page 521 [D/438, para. 63]):

. . . financial costs, disruption of a collective agreement, problems of moral of other employees, interchangeability of workforce and facilities. The size of the employer’s operation may influence the assessment of whether of a given financial cost is undue or the ease with which the workforce and facilities can be adapted to the circumstances. Where safety is at issue, both the magnitude of the risk and the identity of those that bear it are relevant considerations.

85. The case of *Ganser v. Rosewood Estates Condominium Corp. (No. 1)* (2002), 42 C.H.R.R. D/264 (Alta. H.R.P.) involved a finding of discrimination against Rosewood Estates Condominium Corporation on the basis of disability when it reassigned Ms. Ganser’s parking stall to another condominium owner. The Condominium Corporation implemented a new by-law indicating to be eligible for a parking stall, a resident owner must hold a valid driver’s license, own a vehicle, have insurance and drive his/her vehicle regularly. The Panel found that the by-law was *prima facie* discriminatory, in that no person with a visual impairment like Ms. Ganser’s could qualify for a parking stall. Further, the Panel determined that no

efforts had been made to accommodate Ms. Ganser's needs. The tribunal stated at paras. 81 through 94:

On the face of the by-law, it does not appear to be discriminatory. However, to someone with the characteristics of the complainant, it reads, "Visually impaired persons cannot be assigned parking stalls." Anyone with the complainant's disability could not meet the conditions even though she is a resident owner in the condominium complex. This a benefit denied to this group and is therefore, *prima facie* discriminatory on the basis of disability.

The onus now falls on the respondent to prove on a balance of probabilities that the by-law is reasonable and justifiable. The three-part test set out in the *Grismer* analysis is: a) the standard was adopted for a purpose or goal that is rationally connected to the function being performed; b) the standard was adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; c) the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the complainant without incurring undue hardship.

Rational Connection – The evidence discloses that the purposes of the by-law included addressing a shortage of indoor parking . . . the Panel is satisfied that there is a rational connection between the purpose of the by-law and the function of the Board in managing the property for the benefit of the owners.

Good Faith – This is more difficult to assess since there is no evidence adduced regarding the process of how the by-law was developed, other than there had been some inquiries made as to how other corporations were dealing with parking . . . Despite these concerns, the Panel finds that the motivation of the Corporation was that of addressing parking concerns and was not to undermine the rights of the complainant and therefore was adopted honestly and in good faith.

The third part of the test requires the respondent to establish that the particular standard of policy, in this case the by-law, is reasonably necessary to accomplish its purpose having considered accommodation. Based on the Supreme Court of Canada analysis, there are a number of inquiries that can be made to assess whether the standard adopted meets this part of the test. Some of the questions to

be asked include . . . Is there evidence that the standard excludes members of a particular group based on impressionistic assumptions? – This by-law is not a “blanket exclusion” of disabled persons from being assigned parking stalls . . .

What other alternative approaches were investigated? – While there was some evidence of inquiring into what other corporations were doing about parking, there is no evidence of alternate forms of by-laws being evaluated . . .

Even if the Respondent establishes that this particular by-law was “reasonably necessary” to its purpose, this element requires that it show that the standard was adopted in such a way as to accommodate individual differences to the point of undue hardship.

On first blush, it would appear that on the basis of the offer of parking alternatives and additional keys, both which are available to the public, that there has been no accommodation at all provided to the complainant. These are all things that are available to the population at large. The concept of accommodation usually involves a notion that the respondent must expend some effort, incur costs, take an action or give something. However, upon reflection, there are circumstances in providing information of alternatives and resources that provide ways for the complainant to adjust and to a discriminatory standard could be appropriate and sufficient accommodation. However, in order for such accommodations to suffice under the law, the respondent must demonstrate that to do more would be undue hardship. The law requires not just that the complainant be accommodated, but that the respondent has accommodated to the point of undue hardship. This imports an element of near impossibility to do more the assessment of hardship is done on a case by case basis. This assessment can involve many factors . . . Having regard to all of this evidence, the case law submitted by counsel . . . the Panel finds that the by-law . . . discriminates against the complainant, Elizabeth Ganser. Rosewood Estates has failed to establish the reasonable necessity of the standard in that accommodating the complainant is impossible short of undue hardship.

86. Additional cases dealing with discrimination based on physical disability in the context of housing or tenancies include the following: *Ivison v. Bodner* (1994), 26 C.H.R.R. D/505 (B.C.C.H.R.); *Williams v. Strata Council No. 768* (2003), 46 C.H.R.R. D/326 (B.C.H.R.T.);

and *Konieczna v. Owner Strata Plan NW 2489* (No. 2) (2003), 47 C.H.R.R. D/144 (B.C.H.R.T.).

87. The duty to accommodate is present to the point of undue hardship (*Central Okanagan School District*, supra). In the present case, it can be said that the Community Standard clause 1.2

Size may be no larger than 10' x 10', 8' high plus peak, constructed of new lumber, pitched or barn style, shingled roof, vinyl siding only.
One shed per home location.

is rationally connected to the function being performed. In other words, the Respondent, through drafting the Guidelines and Standards, attempted to regulate its leased properties in a consistent manner for the betterment of the park for both its tenants and to preserve the Respondent's investment. It could also be said that the standard was adopted in good faith by the Respondent as they believed the standard was necessary for the fulfillment of their purpose. The difficulty with this aspect of the analysis is that the Community Standard was not applied consistently by the Respondent and its attempt to impose this Community Standard on Mr. Matthews in the face of the many infractions existing at Woodbine Mobile Home Park eliminates any basis for finding this by-law was reasonable and justifiable. In addition, the Board finds the evidence is clear from both Mr. Matthews and Ms. Scott that she was made aware of Mr. Matthews' need for accommodation in having a large shed to house his scooter.

88. The Respondent had a duty to take reasonable steps to accommodate Mr. Matthews so that he would have access to a tenancy at the mobile home park equivalent to that of other tenants. By failing to offer any type of accommodation to Mr. Matthews, the Board finds the Respondent has contravened the provisions of the *Nova Scotia Human Rights Act*. Not only was there no evidence of any attempt to accommodate Mr. Matthews' needs, there was significant evidence led that this Respondent allowed numerous infractions of the same Community Standard and other Standards and Guidelines while maintaining with Mr. Matthews a strict adherence to the 10' x 10' shed Standard. The Board finds that the actions of the Respondent have not been reasonable nor justifiable, nor is there any evidence to support a position of undue hardship.

89. Mr. Matthews indicated he was disabled, that he needed a scooter as a result of his disability and that he needed to house the scooter in a shed of sufficient size. The Respondents must take some action in order to accommodate this disability. What did the Respondent in the present case give or contribute? The clear answer is: Nothing. They did not allow Mr. Matthews to use the existing garage at the property or discuss possible repairs to allow for its use. They did not move from the position of the 10' x 10' shed contained in their community standards. They did not suggest to Mr. Matthews that he could contact the

municipality to determine if approval for a shed larger than 10' x 14' could be obtained. (A shed larger than the municipal by-law).

90. The Respondent is in the best position to determine how the Complainant can be accommodated. In this case the Respondent did nothing to accommodate Mr. Matthews.
91. Access to housing for disabled individuals is an important issue. Although Mr. Matthew was not a tenant of the Respondent, he advised them he intended to make application for tenancy in relation to the Frankie Drive property. As stated in *Iverson v. Bodner*, [1974] C.H.R.R.D. No. 7 (at para. 36):

Although not explicitly dealt with in the tenancy agreement, it is reasonable to assume that Iverson's rental of the mobile home lot entitled her to access to her home. The Respondents had a duty to take reasonable steps to accommodate her so that she had access equivalent to that of other tenants.

92. There is no need to find there is a tenancy in this situation in order to find a breach of the *Human Rights Act*. The Respondents raised the issue of whether the quest for accommodation with regard to a shed is something different than a fundamental issue such as access to a home. The evidence was clear that Mr. Matthews' scooter was necessary in order for him to transport himself from place to place and distances of greater than 25'. The evidence is clear that the Respondent knew Mr. Matthews was disabled, that the scooter was connected to his disability and that the shed was necessary for housing of the scooter.
93. There was undisputed evidence that given the location of the Frankie Drive property, Mr. Matthews would need to house the scooter and trailer together which would be a total length of 9 feet 5 inches. Inside the shed, Mr. Matthews also required space to shelve the charger for the scooter and space beside the scooter to use his wheelchair. Mr. Matthews needed this scooter to be independent, to access and enjoy the Frankie Drive property. Mr. Matthews' request for a shed in excess of 10' x 10' was certainly reasonable and should have been accommodated. The Respondent's position effectively barred Mr. Matthews access to a tenancy at the Woodbine Mobile Home Park.

REMEDY

94. The authority of a board of inquiry to order a remedy is found at s. 34(8) of the Nova Scotia *Human Rights Act*:

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 therefor.

95. The purpose of remedies and damage awards in human rights complaints was discussed in *Henwood v. Gerry Van Wart Sales Inc.* (1995), 24 C.H.R.R. D/244 (Ont. Bd. Inq.) where it was stated at para. 33:

“These remedial provisions should be construed liberally to achieve the purposes and policies of human rights legislation: *Cameron v. Nal-Gor Castle Nursing Home* (1984), 5 C.H.R.R. D/2170 (Ont. Bd. Inq.) at D/2196.”

It is the 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....

96. I am cognizant that some Nova Scotia boards of inquiry have found it necessary to comment on the relatively low general damage awards made in human rights cases (See for example, *Hill v. Misener (No. 2)*, June 9, 1997 unreported, N.S. Bd. Inq.; *Blanchard v. L.U.I. Local 1115* (2002), 43 C.H.R.R. D./265 N.S. Bd. Inq.). I endorse these views.
97. The Complainant has requested the following:
1. General damages.
 2. Costs associated with refinancing his home at Candlewood.
 3. Work Mr. Matthews felt had to be done to his home after the Frankie Drive property transaction fell through, including work to the floors, building of another shed which he feels he will never be able to recover on eventual sale of the Candlewood property.
 4. The cost of the work done to the home in relation to the Agreement of Purchase and Sale, including packing, painting and repairs to the oil tank for approximately \$1,000.
98. Mr. Matthews entered into an Agreement of Purchase and Sale to sell his home prior to reaching the agreement on 1647 Frankie Drive. Although it is clear Mr. Matthews incurred expenses, he did not do so in reliance on the deal at Frankie Drive but in relation to the sale of his home at Candlewood which was an agreement entered into prior to the Frankie Drive transaction. As a result, the Board cannot award any costs or expenses flowing from the failed Candlewood transaction. The Board further finds Mr. Matthews could have taken

steps to protect himself including not entering into the Agreement of Purchase and Sale for Candlewood until he had a firm agreement on an alternate home. The Board cannot find against the Respondents in relation to these losses.

99. The Board commends Mr. Grace for the efforts he expended in relation to this matter. It was at considerable expense to Mr. Grace that he arranged for all parties concerned to “unfold” the property transactions in an effort to assist Mr. Matthews in the circumstances.
100. The Board finds this situation created considerable stress and emotional turmoil for Mr. Matthews. The injurious effect on Mr. Matthews was ongoing at the date of the Board of Inquiry.
101. The Board finds that Mr. Matthews’ decision not to look for another mobile home after this transaction failed was reasonable in the circumstances. It would have been extremely difficult for Mr. Matthews to find an alternate location in another mobile home park given the number of parks owned by Mr. Havill both solely and with other family members in the Sackville area.
102. In relation to the Havills’ offer after the human rights complaint was made for Mr. Matthews to build a 10' x 14' shed - several months had passed by this time and Mr. Matthews had incurred expenses and made plans to move forward. There was no obligation in these circumstances on Mr. Matthews to accept this offer.
103. I have carefully reviewed the evidence, submissions of the parties and the caselaw and have reached the following conclusion as to remedy:
 1. The Respondent, Westphal Mobile Home Court Limited (carrying on business as Woodbine Mobile Home Park) shall pay to the Complainant, David T. Matthews, the sum of \$10,000 in general damages, plus interest at the rate of 2.5% from April 12, 2003.
 2. The Respondent shall be required to provide sensitivity training to all of its management and administrative employees, including Ms. Scott, as well as the owner, Mr. Havill. This sensitivity training will provide education as to what constitutes discrimination and why it is prohibited under our *Human Rights Act* and will specifically address the duty to accommodate. I encourage the Nova Scotia Human Rights Commission to assist with identifying appropriate individuals to provide this training. All such sensitivity training shall be completed within six months of the date of this decision.

3. The Respondent shall provide all of its tenants with a copy of the Nova Scotia *Human Rights Act* within two months of the date of this decision.

DATED at Halifax, Nova Scotia, this 24th day of October, 2005.

Darlene Jamieson
Chair, Board of Inquiry