



# INDEX

1. INTRODUCTION
2. BACKGROUND
3. EXHIBITS
4. EVIDENCE
5. THE LAW
6. DECISION

## 1. **INTRODUCTION**

This matter arises out of a formal complaint by Ms Susan Davis filed with the Nova Scotia Human Rights (Commission) dated May 26, 2004, alleging that TLC Animal Shelter and/or Dorothy Andrews and/or Preston Andrews discriminated against her in the matter of her employment because of her physical disability contrary to **Section 5(1)(d)(o)** and for an Act of retaliation against her contrary to **Section 11** of the **Nova Scotia Human Rights Act**, R.S.N.S. 1989, c.124, as amended 1991 c.12.

A single person Board of Inquiry (hereinafter referred to as the “**Board**”) was appointed pursuant to **Section 32(a)** of the **Act** by the Chief Judge of the Provincial Court of Nova Scotia.

The Parties to these proceedings are the Complainant, Ms Susan Davis, who is not independently represented. The Respondents, TLC Animal Shelter and/or Dorothy Andrews and/or Preston Andrews, who are represented by Ms Dorothy Andrews. The Commission is represented by Ms Ann E. Smith.

Notice of Hearing was properly given and advertising was placed in local papers. The hearing into the complaint was held at Cornwallis, Nova Scotia, on January 30, 31, and February 1, 2, 3, 2007, at the Annapolis Basin Conference Centre, Kespuwick Hall, Broadway Avenue, Cornwallis Park, Cornwallis, Nova Scotia.

## 2. **BACKGROUND**

The Complainant, Susan Davis, and her daughter, Kate Thomas (nee Davis), had initially been volunteering at the TLC Animal Shelter in Digby, Nova Scotia, in the late 1990s. In the summer of 2000 Susan Davis had been laid off from the School Board where she had been employed as a Program Assistant. She was hired by TLC Animal Shelter in October 2000. Susan Davis would be laid off during what were termed “**winter hours**” and collect EI; during which time she would continue either volunteering or working part-time at TLC Animal Shelter until her EI ran out or Shelter numbers were better.

In February 2002 Susan Davis’ daughter Kate Thomas (nee Davis) took over her mother’s position and Susan Davis looked for other work but continued to volunteer at TLC Animal Shelter and at some point became a member of the Board of Directors. Susan Davis returned to work for TLC Animal Shelter in the fall of 2002 until she was dismissed on December 13, 2002.

In her complaint filed with the Human Rights Commission, Susan Davis alleges that her employment was terminated because she was no longer able to do her job as a result of having “**macular/retinal degeneration**”.

TLC Animal Shelter is a non-profit agency incorporated as a Society by Preston Andrews and Dorothy Andrews in the early 1990s because they were concerned about stray and abused animals. Preston Andrews acted as President for a number of years and in fact was President in December 2002.

In Susan Davis' initial complaint to the Nova Scotia Human Rights Commission there was also an allegation that the Respondents committed an act of retaliation contrary to **Section 11** of the *Human Rights Act* by serving her and her daughter, Kate Thomas (nee Davis), with a Notice under the *Protection of Property Act*, R.S., 1989, c.363.

A second complaint of retaliation contrary to **Section 11** of the *Human Rights Act* was made in June 2005. In a separate Decision dated August 31, 2006, I ruled that Susan Davis' complaint could be amended and that she could bring forward evidence as to the alleged second act of retaliation contrary to **Section 11**.

The Commission called as witnesses the Complainant, Susan Davis, Jean Durham, Kate Thomas (nee Davis), Preston Andrews, Linda Chambers, Rebecca Longmire Ritchie, Dorothy Andrews, and Jo-Anne Vidito.

Susan Davis representing herself conducted a cross-examination of all of the witnesses.

Dorothy Andrews on behalf of the Respondents as well conducted a cross-examination of all of the witnesses.

Dorothy Andrews did not call any further evidence.

### 3. **EXHIBITS**

- 1 Complaint under the *Human Rights Act* completed by Susan Davis, dated June 21, 2003
- 2 Record of Employment for Susan Davis from TLC Animal Shelter, dated December 15, 2002
- 3 Interview with Susan Davis by Melanie MacNaughton, HRO, on January 11, 2005
- 4 Minutes of the TLC Meeting of December 10, 2002, prepared by Jean Durham, Acting Secretary
- 5 Letter dated April 1, 2003, from James L. Outhouse, Q.C., to Susan Davis, regarding the *Protection of Property Act*
- 6 Letter dated July 7, 2003, from Jo-Anne L. Vidito
- 7 First page of an Intake Questionnaire completed by Susan Davis dated, January 14, 2003
- 8 Letter dated September 14, 2006, from Ann E. Smith at Burchells, to Dorothy Andrews, Preston Andrews, TLC Animal Shelter, and Susan Davis, with attached documents obtained from Brock Smith, Service Canada
- 9 Record of Employment for Kate Davis from TLC Animal Shelter, dated November 15, 2002

- 10 Proposal Description for the Fundraising Coordinator at TLC Animal Shelter
- 11 Letter dated March 12, 2003, from TLC Board of Directors and signed by Preston Andrews to Kate
- 12 Letter dated March 14, 2003, from Preston Andrews, President, TLC Animal Shelter
- 13 Statement of Preston Douglas Andrews taken by Constable Smith on May 5, 2005, regarding missing donation cans
- 14 Response to Complaint completed by Dorothy Andrews, Preston Andrews, and TLC Animal Shelter dated August 29, 2003
- 15 Record of Employment for Kate Davis from TLC Animal Shelter, dated December 2 (year cannot be read)
- 16 Interview with Kate Davis by Melanie MacNaughton, HRO, on January 11, 2005
- 17 Blank copy of a Volunteer Sheet
- 18 Interview with Rebecca Ritchie by Melanie MacNaughton, HRO, on June 1, 2005
- 19 Intake Questionnaire completed by Susan Davis, signed January 14, 2003

#### 4. **EVIDENCE**

The Complainant, Susan Davis, testified that after initially working as a volunteer, in October of 2000 she started working part-time at TLC Animal Shelter as the Manager. She handled all public inquiries, the cleaning of the kennels and the cat room, animal adoptions, received donations, and was responsible for setting up the Volunteer Work Schedule for the bank of volunteers. She also continued to work as a shift volunteer on Saturday mornings. The only discussions about her limitations was in the beginning when she told them that she had Macular Degeneration and had to be careful. A fall could cause blindness or she could wake up one morning with limited vision.

Susan Davis was hired by Sonya Edwards who was President at that time. Dorothy Andrews was Treasurer and she would either phone in or drop in on a regular basis. The Board had monthly meetings that she could attend but did not.

There was no criticism of her work. At some point there was a shift to what was termed "**winter hours**". Susan Davis testified that she either volunteered or the Shelter laid her off so she could collect EI. This would be a financial benefit to the Shelter and she could still work part-time.

Susan Davis would return to full time employment when either her EI ran out or the Shelter numbers were better. This was the situation through the winter of 2000/2001, and the winter of 2001/2002.

Susan Davis identified the following Exhibits:-

- 1 Her Complaint under the *Human Rights Act* completed by Susan Davis, dated June 21, 2003
- 2 Her Record of Employment she received when dismissed from TLC Animal Shelter on December 10, 2002
- 3 Written Interview by investigator Melanie MacNaughton, HRO, dated January 11, 2005

During the winter of 2002 Susan Davis was not working but still attending the Shelter as a volunteer as well as doing fundraising and attending Board Meetings. She was not sure when she became a Board Member.

In February 2002 Susan Davis' daughter Kate Thomas (nee Davis) was hired with her agreement as the Manager in her place and she sought other work.

In the fall of 2002 Susan Davis was working as a clerk in a store in Digby, Nova Scotia, and was subsequently laid off. At the same time her daughter was becoming very ill and was having to take time off from work at the Shelter. In October/November 2002 Kate Thomas (nee Davis) would be off sick for a couple days, get better, then go back to the Shelter and get sick again. This was a reoccurring problem and she had to stop work until her health improved. Susan Davis then went back to work at the Shelter part-time with hours from 9:00 a.m. to 1:00 p.m. being paid minimum wage in Kate Thomas' (nee Davis) place.

In the summer of 2002 Susan Davis was aware of a job creation program through HRDC for assistance in hiring a Fundraising Coordinator for the Shelter. She herself was interested in this position but was ineligible because she was not on EI. In October 2002 Jo-Anne Vidito was hired for this job.

Susan Davis testified that when she took Kate Thomas' (nee Davis) place there was no discussion about her walking the dogs she just assumed she could do the job as before and that she was covering for her daughter's illness and when she got better Kate Thomas (nee Davis) would have her job back and there were no time limits.

When Susan Davis arrived at work she would walk the small dogs and clean out the kennels. She felt comfortable and confident. She was able to control the dogs and would walk the dogs when weather permitted. In November or December of 2002 she remembered there was snow and ice on the ground. She did not recall any positive or negative relationship with Jo-Anne Vidito because they did not interact very much.

After Susan Davis' initial discussions with Sonya Edwards in 2000 when she was first hired about her eye condition it was never brought up again and she was never asked about any medical information concerning it. If it was mentioned it was only in passing.

Susan Davis attended the Board Meeting on December 10, 2002. At some point the non-voting members were asked to leave the room as a sensitive issue was about to be discussed. Her daughter Kate Thomas (nee Davis) and Jo-Anne Vidito both left. Susan Davis was planning on raising the issue of Jo-Anne Vidito's fundraising performance, however Dorothy Andrews began speaking first and looked at Susan Davis and said, "**You know Sue you cannot do the job anymore**". Susan Davis testified that she responded, "**I think I can**". At some point Dorothy Andrews responded, "**You know you could fall and slip on the ice**".

Dorothy Andrews then raised the point of Susan Davis using too many towels. No one else said anything and Susan Davis was surprised it was her job performance that was being discussed. It was mentioned that the animals were not being cared for. At some point Preston Andrews interjected and said you cannot walk the dogs as you might fall and hold the Shelter liable. Susan Davis responded that, "**I wouldn't do that**".

At one point Rebecca Longmire Ritchie stood up and left the meeting. There was discussion that Susan Davis would finish working out the week. She did work until Friday, December 13, 2002, and subsequently resigned as a Board Member.

Exhibit 4, a copy of the Board Meeting of December 10, 2002, was introduced.

The Minutes spoke of Susan Davis working for three weeks for Kate Thomas (nee Davis) as of this date. Susan Davis did not recall that. She also testified that there was no motion made or voted on. She stated she was resigned to the fact that she was being fired in front of the Board and her poor job performance was then discussed.

After Susan Davis got her Record of Earnings she did not apply for EI as she did not have enough eligible hours of work. She was invited to work at the SPC in Yarmouth, Nova Scotia, along with her daughter Kate Thomas (nee Davis), however travel was difficult and she did not agree with their euthanasia program. She subsequently found work at the local Frenchie's store in March 2003 and in May 2003 she was hired by the Bayview Animal Hospital.

After being fired Susan Davis called Brock Smith at HRDC about Jo-Anne Vidito and when she did not receive a response she also wrote a letter to her MP, Robert Thibault, sending a copy to Brock Smith. Her concern was that Jo-Anne Vidito was doing her work at the Shelter and not doing any fundraising in accordance with her job description. She also contacted the Human Rights Commission in December 2002 after her firing because it was her feeling or belief that she had been fired because she could not walk the dogs, her age, plus her eye condition.

After December 10, 2002, Susan Davis testified that she did not stop volunteering at the Shelter, although she had not let it be known that she would do a shift as she did not feel welcome. She did tell another volunteer, Leslie Coolen, that she was interested. On at least two (2) occasions she went with Leslie Coolen on her shifts to help work in the cat room. The first visit was mid to late January 2003 when she stayed for an hour and the second was in February 2003.

In March 2003 Susan Davis was driving by the Shelter with her daughter Kate Thomas (nee Davis) and her boyfriend and they stopped and Kate Thomas (nee Davis) got out and patted the dog. They were only there for a few minutes. The next day she received a phone call from Dorothy Andrews telling her that she and Kate were no longer welcome on Shelter property and they would be getting a letter from a lawyer because of the troubles they had caused.

Susan Davis connected this to her complaint to the Human Rights Commission because that was the only trouble she caused to the Shelter. She believes the Board would have known about her complaint at that time because of the documents she received. Although she could not say which came first.

Exhibit 5, being a letter dated April 1, 2003, from James Outhouse, Q.C., was then entered. This was served on her on April 2, 2003, and Kate Thomas (nee Davis) received one as well.

Susan Davis stated she presumed that when she went to the Shelter with Leslie Coolen that the Shelter was aware of her visits. Susan Davis denied being involved in writing any anonymous letters nor was she aware of Kate Thomas (nee Davis) writing any such letters; although Rebecca Longmire Ritchie had written a letter and gave a copy of it to her. She considered the letter from James Outhouse, Q.C., under the ***Protection of Property Act***, as retaliation to her Human Rights complaint.

Susan Davis then went on to describe the issue of Donation Cans in June 2005. While at work she received a call from the RCMP who asked her to attend at the Detachment Office. When she attended she was told that she was named as someone who had taken Donation Cans from a store. She was shocked at this and subsequently gave a statement in which she denied taking any Cans. The Officer then advised her that Preston Andrews had given a statement stating she had taken the Cans and the store had named her as the one who had picked up the Can. It was her feeling that the Cans would go missing all the time and that fingers had never been pointed at anyone before.

When Linda Chambers, another volunteer, had attended at the store Susan Davis was identified as the person who had picked up the Cans. Susan Davis stated she knew Linda Chambers and felt she was a person of principle and had no idea why she would say anything like that.

Susan Davis stated she had not been in that particular store for a number of years and feels that if she had not complained to the Human Rights Commission she would not have been named to the RCMP.

When asked about her damages, Susan Davis advised that she was not seeking any loss of wages or out of pocket expenses, however she was looking for a claim for pain and suffering in the amount of Three Hundred Dollars (\$300.00) as well as out of pocket money for taking time off work to attend the Hearing. She is presently employed at Diamond Diversified Industries since October 2005 as an Accounting Clerk and Receptionist. Her hours are 9:00 a.m. to 5:00 p.m. at a salary of \$20,500.00 per year with two (2) weeks vacation.

When asked how she suffered, Susan Davis said that up until the evening of December 10, 2002, she had no idea her work was not up to everyone's satisfaction and then to have it brought up at the Board Meeting in front of people was humiliating. She did not know if the people at the Board Meeting knew of her eye condition. She agreed that most of the conversation was about the towels and cleaning up. While dog walking was raised it was not overly emphasized.

As well, she denied writing to any other Government Officials over this incident. She considers there were three (3) separate incidents and complaints.

If the issue of the Protection of Property Notice is found to be retaliation she wants the letter to her daughter Kate Thomas (nee Davis) rescinded and a letter of apology. She is basically looking for Four Hundred and Fifty Dollars (\$450.00) for six (6) days off work because of the Hearing as well as Three Hundred Dollars (\$300.00) for pain and suffering for wrongful dismissal and Three Hundred Dollars (\$300.00) for the alleged theft of the Donation Cans, for a total of One Thousand and Fifty Dollars (\$1,050.00).

On cross-examination by Dorothy Andrews, Susan Davis admitted that age was not mentioned at the December 10, 2002, Meeting, but she interpreted the conversation to refer to her age when Dorothy Andrews stated she could no longer do the work. She agreed that when she first approached the Human Rights Commission it was in relation to age discrimination. Exhibit 7 was part of the complaint relating to that. She did agree that others including Dorothy Andrews were much older than herself. She agreed she probably told Dorothy Andrews about her eye condition but did not recall Dorothy Andrews working a shift for her so she could attend an eye appointment. Nor did she recall any discussion with Dorothy Andrews about her (Dorothy Andrews) walking large dogs while Susan Davis walked the small ones. Nor did Susan Davis recall being interviewed or hired by Dorothy Andrews as she felt this was done solely initially by Sonya Edwards. She had no knowledge of Dorothy Andrews being the supervisor of the Shelter in charge of hiring; she knew her as Treasurer only. Susan Davis acknowledged that Dorothy Andrews knew about her eye condition when she was hired to fill in for Kate Thomas (nee Davis) in November 2002 and that her eye condition did not change over the three (3) weeks before she was let go. Susan Davis also acknowledged that the prior winter Dorothy Andrews voiced no concerns about her eyesight.

When questioned about the day she was hired to replace Kate Thomas (nee Davis), Susan Davis stated it was a casual conversation. She denied saying to Dorothy Andrews that she was desperate for money because she was leaving her husband and moving to another house. She did not recall using these words, nor did she recall Dorothy Andrews saying she was not doing the job properly and that she would hire her for three (3) weeks only and that if Kate Thomas (nee Davis) was not well at the end of three (3) weeks then she would post the job.

Susan Davis did acknowledge that Kate Thomas (nee Davis) got paid while she was off prior to her hiring but did not know who was working Kate Thomas' (nee Davis) shifts.

Susan Davis also acknowledged that Dorothy Andrews and Preston Andrews had treated her daughter well and herself well. She also agreed that she did not feel any animosity from them when she was hired.

When asked what affected the change she had no explanation. She said she felt betrayed and shocked to what came out of the blue at the meeting.

Previously if she herself took sick time or had a doctor appointment, Dorothy Andrews would fill in and still give her her regular pay.

In relation to complaints by Sonya Edwards about Susan Davis' work. Susan Davis recalled something about overfeeding the dogs and leaving the heat on in the kennels; but did not recall any mention about not keeping the Shelter clean.

She did acknowledge going to Dorothy Andrews about these complaints but could not recall what transpired. She also remembered Sonya Edwards putting a note on the bulletin board that the **"Shelter looks like shit"**. Susan Davis could not recall it looking that way as she only recalled the good things and did not recall any of the others complaining. She felt that Sonya Edwards' complaints were not founded.

On further cross-examination, Susan Davis acknowledged that on some days the cats were not done. She testified she worked from 9:00 a.m. to 5:00 p.m. at her own pace and would take as much time as necessary and felt comfortable with that. The aim was to have the cat room done before the public came in, although this would not happen until the afternoon.

Susan Davis was aware about other organizations getting the same funding from HRDC. Her complaint to HRDC was based on the fact that Jo-Anne Vidito was doing hands-on animal care and that was not the purpose of the program. She felt that HRDC would step in and make sure that fundraising was done in accordance with the proposal. She did feel some ownership to the job as Shelter Manager. Her concern was that Jo-Anne Vidito was walking dogs when she should have been fundraising. Susan Davis was unaware of Jo-Anne Vidito going to work an hour early to walk the dogs or walking dogs on her lunch hour.

Susan Davis acknowledged that the Board Meetings were not formal and that she had been treated with respect and felt included as part of the Board.

Susan Davis did not recall being nasty to Jo-Anne Vidito, but did recall a discussion with Dorothy Andrews where Jo-Anne Vidito had said that Susan Davis was rude. That discussion was about her answering the phone and she had told Jo-Anne Vidito that if the phone rang five (5) times that she should get the phone otherwise she (Susan Davis) would answer the phone. Susan Davis thought that answering the phone was part of her job. She did her work downstairs and Jo-Anne Vidito did her work upstairs. She did recall being upset when Jo-Anne Vidito answered the phone once and when the person had asked for Kate Thomas (nee Davis), Jo-Anne Vidito had stated that **"Kate did not work there anymore"**.

On re-direct Susan Davis acknowledged she wrote one (1) letter to Brock Smith on January 28, 2003. Jo-Anne Vidito was not mentioned by name in that letter, although she stated she had called the week before and mentioned her (Jo-Anne Vidito) as the person she was concerned about.

Susan Davis also acknowledged that her answer to Question 5 on Exhibit 3, her Statement, was incorrect and December 10, 2002, was not the first time someone was critical about that job or that she felt the issues before the Board were inconsequential.

Jean Durham testified that she had been a volunteer for two (2) mornings a week for the last two (2) years and also a Board Member. She recalled the meeting of December 10, 2002, when she acted as Secretary. Her job as such was to write down the Minutes as the meeting progressed. If she did not hear something because of her hearing problem she would ask someone else. If she had heard it correctly she would do all of her writing directly into the Minute Book and at the end of the meeting the Treasurer would take the Minute Book home.

She identified Exhibit 4 as being her writing and the Minutes of the December 10, 2002, Board Meeting.

When asked about the correction on the first paragraph on page 2, Jean Durham stated she thought she misunderstood what was said at the time and others were not satisfied with it.

Jean Durham identified Dorothy Andrews as the person who did the hiring and the person in control of the Shelter. She recalled Susan Davis sitting right behind her at the meeting. Jean Durham was confused as to whether or not this was a regular meeting or a special meeting of the Board, and kept saying that the purpose of the meeting was to give Susan Davis her notice and that she agreed to the Motion of the layoff. She believed Dorothy Andrews made the Motion. She could not remember who the seconder was and the Motion was unanimous. She believed that she recalled Susan Davis saying, ***"I will accept the layoff"***.

Jean Durham testified that she had not been aware prior to the meeting that Susan Davis was filling in for Kate Thomas (nee Davis). She was also unaware of any concern of how Susan Davis was doing her job prior to the meeting; although she was aware of Dorothy Andrews going to the Shelter and things not being done and Dorothy Andrews would have to do them.

Jean Durham was unaware of Susan Davis' eye condition or of any vision problems or chance of falling. There was no discussion of walking the dogs.

Jean Durham spoke of Rebecca Longmire Ritchie standing at the top of the stairs and being rude to Dorothy Andrews and Preston Andrews and then leaving. This made Jean Durham uncomfortable.

When Jean Durham's attention was drawn to the Minutes which stated Rebecca Longmire Ritchie had resigned as a Board Member, Jean Durham stated she did not realize that she (Rebecca Longmire Ritchie) had been a Board Member to start with. She did not know why she wrote it but it was an unsettling meeting. She felt that Dorothy Andrews asked the others to leave so as not to embarrass Susan Davis in front of them.

Jean Durham was unaware of any issue relating to the Donation Cans.

When asked about the decision to prohibit Susan Davis and Kate Thomas (nee Davis) from the property, Jean Durham said she heard at the Shelter, not at a Board Meeting, that Dorothy Andrews was concerned that people were around the Shelter that she did not know and that Dorothy Andrews felt that Susan Davis should not be there. Jean Durham had not had any problems with Dorothy Andrews. She (Jean Durham) did her work and when she volunteered she looked after the upstairs cat room and had nothing to do with the dogs. Dorothy Andrews did them by herself.

On cross-examination, Jean Durham could not recall Susan Davis and Kate Thomas (nee Davis) being given a card by the Board for their good work.

Jean Durham told Dorothy Andrews that she had been associated with the Shelter since 1992. She always got along with Dorothy Andrews and had no complaints as to how she was treated by Dorothy Andrews.

Kate Thomas (nee Davis), daughter of the Complainant, Susan Davis, testified. She is now twenty-four (24) years of age and first became involved at the Shelter when she was thirteen (13) or fourteen (14) volunteering with her mother. She had stopped going to school in Grade 6 and was home schooled after that. Her mother did talk about her eye condition a lot.

When she started to work in February 2002 Kate Thomas (nee Davis) just wanted to work at the Shelter and minimum wage was alright for her. She knew the job pretty well from going there to work with her mother. She had no boss and had been told that when she was at the Shelter, ***"It is your call"***. If she had any concerns she would have called Dorothy Andrews or Preston Andrews. She believed all hiring went through the Board.

Kate Thomas (nee Davis) stated she did not know how much time she was off work due to her health nor the dates. At one point it got more frequent and she needed more time to get better. She was not sure if she received a Record of Earnings.

When shown Exhibit 9, Record of Earnings, dated November 15, 2002, she acknowledged it as hers, but thought she got another one which had been marked that she was off due to illness. These were marked as ***"Winter Hours"***.

Jo-Anne Vidito was working at the Shelter when she was there. She did not see her much as Kate Thomas (nee Davis) started work around 8:30 a.m. or 9:00 a.m. and finished around 1:00 p.m. or 1:30 p.m. She did not know what Jo-Anne Vidito did after she left. She did not know Jo-Anne Vidito's job description but acknowledged she was unhappy when Jo-Anne Vidito walked the dogs because she used a choke chain. She had raised this issue with Dorothy Andrews and was planning on raising it at the next Board Meeting.

Kate Thomas (nee Davis) did attend the Board Meeting on December 10, 2002, although she was not a Board Member. She went with her mother. When she first went in everything seemed tense and there was not a lot of talking or joking around. Her mother seemed tense. At one point the non-voting Members were asked to leave by Dorothy Andrews or Preston Andrews. She believes some sensitive issues were being raised. Jo-

Anne Vidito left at the same time as her. She went downstairs and started walking the dogs and had some conversations with Jo-Anne Vidito but not much.

At one point she saw Rebecca Longmire Ritchie leaving upset and wondered what happened. Rebecca Longmire Ritchie told her to go upstairs because her and her mother were being raked over the coals. When she went upstairs no one was talking. She asked what had happened and she believed Dorothy Andrews replied something about Rebecca overreacting. She did not remember much else; although she testified that Dorothy Andrews had said, ***“You know your mother can’t do the job anymore, and that there was a concern that if her mother slipped and fell on the ice”***.

Kate Thomas (nee Davis) did not know what had happened and she just wanted to go back down and walk the dogs. She agreed that prior to the December 10, 2002, Board Meeting her relationship with Dorothy Andrews was fairly good. Dorothy Andrews talked to her and was helpful. Changes occurred when Jo-Anne Vidito was hired although she was unable to give any examples.

Kate Thomas (nee Davis) did not know about anyone putting letters in Dorothy Andrews’ or Preston Andrews’ mailbox, or letters to Revenue Canada or to the Registry of Joint Stock Companies. The only letter she was aware of was Rebecca Longmire Ritchie’s letter of resignation.

Kate Thomas (nee Davis) identified Exhibit 16 as her Statement to the Commission dated February 2005. At some point she thought she wrote a letter to Brock Smith at HRDC regarding Jo-Anne Vidito not doing a good job and doing more of her work, but she could not remember when she wrote that letter. She believes her mother wrote a similar letter but she did not see it. She could not remember if she was asked to write the letter by anyone or if she heard back from it. She stated her mother wrote lots of letters. It was her opinion that Jo-Anne Vidito had no idea what to do about fundraising.

Kate Thomas (nee Davis) did not remember the locks at the Shelter being changed. She felt that there were personality differences between Dorothy Andrews, Jo-Anne Vidito, and her mother. She did not recall Dorothy Andrews telling her mother that she was too old to do the job.

On cross-examination by Dorothy Andrews, Kate Thomas (nee Davis) testified that no one had treated her or her mother as good as Dorothy Andrews had until the end. She thought Dorothy Andrews’ attitude changed a week or so before the Board Meeting. Dorothy Andrews was less friendly and more businesslike.

Kate Thomas (nee Davis) acknowledged that either Dorothy Andrews or her mother filled in when she was sick, although she still received her full pay cheque. Kate Thomas (nee Davis) stated she did not know Dorothy Andrews was the Shelter supervisor but acknowledged she (Dorothy Andrews) was involved on a daily basis.

When asked about attending at the Shelter after the meeting with Leslie Coolen, Kate Thomas (nee Davis) said she had no idea if Dorothy Andrews knew they were going in. On one (1) of these occasions she gave the dogs worm medicine.

Kate Thomas (nee Davis) spoke about the missing Day Book. Its' purpose was to let the following shift know what had gone on before they got there. It was used by Board Members, her mother, and volunteers. In addition, there were also volunteer sheets for writeups. She identified Exhibit 17 as being a Volunteer Report form which would be completed by volunteers.

Kate Thomas (nee Davis) felt that their relationship changed greatly when Jo-Anne Vidito got involved. She did write to all the Board Members in the winter of 2003 requesting her job back. Ultimately she felt the real reason for her mother's dismissal was the business with Jo-Anne Vidito and the towels and vision problems were brought up to hide the real facts.

Preston Andrews was called by the Commission. He has been married to Dorothy Andrews for twenty (20) years and is also named as a Respondent. His current position with TLC Animal Shelter is as President or Chairperson which he has held for the last eight (8) to ten (10) years except for a brief period when he sat out because he had underwent a triple bypass.

TLC Animal Shelter was started when he and Dorothy Andrews became concerned about stray and abused animals. The Shelter has been there for fifteen (15) or sixteen (16) years. Before that they started having meetings with a number of people who were interested and there was no local SPCA at that time. The building was built through donations and volunteers. He and Dorothy Andrews also made donations on their own. A loan was taken out at the bank. TLC Animal Shelter was incorporated as a Society.

After the Shelter was built the SPCA came in but only for a short period of time as they supported euthanasia and their group was a **"no kill group"**.

It was on a trip to Halifax that he and Dorothy Andrews came up with the name TLC for **"Tender Love and Care"**. He was not involved in the hiring of Susan Davis. It was his understanding that the Board gave Dorothy Andrews the authority to do so. Dorothy Andrews' position was first as Shelter Manager then as Treasurer. Susan Davis was never the Shelter Manager but had been hired to be a Shelter worker.

Different people were hired from time to time and Preston Andrews was always actively seeking resources and programs available through HRDC to help the Shelter.

Susan Davis had started about October 2000, and laid off around February 2002. When Kate Thomas (nee Davis) was hired Dorothy Andrews handled that. Neither him nor the Board had any decision about the pay, nor did he have anything to do with the day to day running of the Shelter other than doing things that needed to be done such as plow snow or shovel the walks. Preston Andrews never collected a salary. He was on the Board. His wife (Dorothy Andrews) went there everyday, he was just there to help fill in.

Preston Andrews was involved with the Application to hire Jo-Anne Vidito and had to write letters to Robert Thibault's office. He was not aware of Susan Davis' involvement in that application process, although she wanted the job she did not qualify because it had to be a person collecting EI and someone not previously employed at the Shelter. However,

Susan Davis was persistent about the job and she would drop by the house and tell him what to tell Brock Smith at HRDC. Susan Davis also told him, ***“Don’t take no for an answer”*** in response to Brock Smith saying that she did not qualify. This happened on more than one occasion. In fact he was getting ready to pull his hair out on a daily basis. However, time was running out for the program and Brock Smith said they had to get going to get the job there.

Brock Smith interviewed to see if they qualified and then sent the Applicants to Dorothy Andrews to see if she approved. Jo-Anne Vidito got the job.

Preston Andrews identified Exhibit 10 as the Proposal to HRDC. This is the original letter sent by him. He had no role in interviewing or hiring.

When Susan Davis was first hired he only knew she had a problem with her vision after Dorothy Andrews had told him when she (Dorothy Andrews) was going to cover a shift for her (Susan Davis). He was unaware of Susan Davis having any limitations and felt she was still capable of doing everything. One of her duties was to walk the dogs.

Many of the abused animals are dogs who have been tied and have had no interaction with people until they came to the Shelter. Before they are adopted they have to learn how to walk on a leash and interact with people. In the winter months Notices are posted for all volunteers to be careful when walking large dogs on the ice. This was not special for Susan Davis. She was only expected to walk the dogs when she could handle them, depending on the weather conditions. If she felt it was unsafe then Susan David did not have to walk the dogs.

Preston Andrews noted that when Kate Thomas (nee Davis) started working she did not have much experience and needed to be helped, but there were no serious problems. When she got ill Dorothy Andrews worked with her for three (3) weeks and continued to pay Kate Thomas (nee Davis). After three (3) weeks Dorothy Andrews had come to him and said that Susan Davis had stated she wanted to fill in for Kate Thomas (nee Davis) while she was recovering. Dorothy Andrews told him she was going to hire her (Susan Davis) for three (3) weeks against her better judgement, but that Susan Davis was in a financial bind as she had been laid off her job, her husband was leaving and Dorothy Andrews wanted to help her out. Dorothy Andrews had mentioned to her that her job performance was not up to the expected standards. He had no dealings with Susan Davis during that three (3) weeks but he used to go over in the evenings to help Dorothy Andrews finish up the work that was not completed by Susan Davis.

Preston Andrews stated that Dorothy Andrews wanted to have a meeting on Tuesday so he called the Board Members. He was in attendance but had not been feeling well. He identified Exhibit 4 as the Minutes from the meeting. He does not have much memory about it. He does not recall discussions at the meeting about Susan Davis’ work performance, just the Motion. Non-Board Members had been asked to leave. Rebecca Longmire Ritchie left only after the vote was made. Dorothy Andrews was tired of having to go there in the evenings to finish Susan Davis’ work. A discussion was not very long, five (5) to ten (10) minutes at the most. He did recall Rebecca Longmire Ritchie being rude and leaving. She had asked where the money was coming from to hire someone and

Dorothy Andrews told her that she would pay it herself if she had to. Rebecca Longmire Ritchie threw a fit and took off. There was no mention at the Meeting of Susan Davis' disability or of not walking the dogs. There was no discussion on her eyesight or of her health.

With regard to the letter from James Outhouse, Q.C., Jo-Anne Vidito went to Dorothy Andrews and told her that people were coming in while she was at work, or a carload of people would stop in the driveway, or be parked on the adjacent Woods Road. Jo-Anne Vidito felt nervous and scared. He mentioned this to James Outhouse, Q.C., who suggested the **Protection of Property Act** and he handled the service of that. This was done for the protection of their workers, as far as he was concerned, nothing about any retaliation entered his mind. He was uncertain if he had been notified by Human Rights at that time. He did not recall receiving an anonymous letter or any Board Members receiving any anonymous letters. He did recall one from Kate Thomas (nee Davis) asking for her job back. Dorothy Andrews had told him about Kate Thomas (nee Davis) being at the Shelter after the meeting and before the **Protection of Property Act** letter. Dorothy Andrews was upset about this because Kate Thomas (nee Davis) and Susan Davis were no longer working there and Dorothy Andrews felt they should not be there.

Preston Andrews spoke of returning home after the meeting of December 10, 2002, hearing a car in the driveway, looking out, it looked like Susan Davis' car driving away, an older model Ford. When he went out to investigate he found the paper tube full of a number of letters, one addressed to himself and the others to Revenue Canada and the Registry of Joint Stock Companies. There was also a letter from Rebecca Longmire Ritchie telling him what to do and mail the letters to the addressees on the other envelopes. He opened them up and there was a lot of what he felt were slanderous comments on how they were running the Shelter. Susan Davis' name was not mentioned on any of the letters and he could not remember if they were signed. He showed them to Dorothy Andrews and her son and then threw them in the garbage. He never talked to Rebecca Longmire Ritchie or any other Board Members about the letters.

When questioned about changing the locks, Preston Andrews noted that on one Saturday morning Leslie Coolen came to the Shelter and could not get in. He went over and there was something wrong with the lock. He had to replace it. The only other times he had changed the locks was when one broke.

Preston Andrews identified Exhibit 11 and Exhibit 12 as letters written by him with his signature. Exhibit 11 was the one to Kate Thomas (nee Davis) on her seeking employment. He could not remember what the issues were regarding her past employment. Exhibit 12 was responding to something, he did not know what. He did not know if it was in relation to the Human Rights complaint.

When referred to Exhibit 1, Susan Davis' Complaint dated June 2003, Preston Andrews was unable to say when he was first aware of the complaint, and if it was by letter or phone.

With regard to identifying Susan Davis to the RCMP on the theft of the Donation Cans, Preston Andrews stated he received a call from Linda Chambers, who was a volunteer and

fundraiser, whose duty it was to place and pick up the Donation Cans. Quite a while after Susan Davis had left the Shelter Linda Chambers went first to the Lequille Country Store and the Can was missing. She was told that someone from the Shelter had already been there and picked it up. Then at the House of Wong in Digby, Nova Scotia, their Can was missing and again she had been told that someone had been in from the Shelter to pick it up. On her third stop at the Marshalls Store in Digby, Nova Scotia, she was told that the Can was again missing and that someone from the Shelter had picked it up. When questioning the person the name of Susan Davis was brought up as the person who had picked up the Can.

Preston Andrews went on to state that over the years a number of Cans had gone missing but this was the first time a name had been placed on one and he felt it was his responsibility to report it as a theft and therefore called the RCMP. Constable Smith attended at his house. Preston Andrews went out to the RCMP car and gave a Statement to him while Linda Chambers gave a statement to the lady police officer in the house. He did not know what Linda Chambers said to the RCMP. Exhibit 13 that was introduced was his statement to the RCMP with his signature on it. Preston Andrews stated that Susan Davis' complaint to the Human Rights Counsel had nothing to do with his call to the Police. Even if it was a family member he would have done the same.

Preston Andrews identified Exhibit 14 as his response to the Complaint, although he could not recall details.

With regard to walking the dogs he noted, ***"The essential part of walking dogs is not done"***. Preston Andrews noted there are signs posted not to walk the dogs in icy weather. He acknowledged that if someone chose not to walk the dogs and put them in the kennel to run that was okay.

When asked about the conditions of the Shelter, Preston Andrews noted he had gone there on one morning, blankets were everywhere, dishes were in the tub, and the place was a mess. What he saw was what he considered was the place in disarray.

Linda Chambers testified that she had been associated with the TLC Animal Shelter as a volunteer for about four and half (4 ½) years. She has not seen Susan Davis since the summer of 2002. Her responsibilities are to distribute and pick up Donation Cans and roll the coins for banking. She also volunteered to look after the animals. She is not a Board Member, strictly a volunteer.

With regard to the Cans, she recalls she made three (3) stops and on each occasion she was told that someone from the Shelter was already there and picked up the Can. She identified the stores as, Lequille Country Store, in Annapolis, House of Wong in Digby, and Marshalls Store in Digby, where she spoke to Sharon Marshall, wife of the owner, and was again told that the Can had been picked up by someone from the Shelter. Then she asked for a description thinking Preston Andrews may have picked up the Cans, after hearing the descriptions she said it sounded like Susan Davis but stated she does not work at the Shelter anymore. She was told, ***"That's who it was"***. She reported this to Preston Andrews and was then subsequently interviewed by the RCMP and provided them with a statement. This was the end of the matter as far as she would be concerned. Each Can

would usually contain about Thirty Dollars (\$30.00). She stated that Sharon Marshall described the person that picked up the Cans as being of short stature, fair hair, and glasses.

Rebecca Longmire Ritchie was called on behalf of the Commission. She stated she started as a volunteer at the Shelter in the fall of 2000. Susan Davis was working there at that time. She came every Sunday morning and cleaned the dog kennels and made sure the dogs got out. When she started she understood that Susan Davis was in charge and the Shelter Manager. She understood Dorothy Andrews' role was as Treasurer. It was only in the last six (6) months that she saw Dorothy Andrews at the Shelter on a regular basis. She became a Board Member but was not sure when. She had attended an Annual General Meeting and believes she was nominated by Susan Davis. The President at the time was Preston Andrews. She was not sure if he was acting or the real President. She was on the Board less than a year. She left the December Board Meeting. She felt it was a really crappy meeting.

Rebecca Longmire Ritchie had never met Jo-Anne Vidito. She was never at the Shelter when she was there. She understood she was hired to be a fundraiser. However, she felt it should have been a Board decision and not the decision of one (1) individual. She believes she was hired shortly before the December meeting.

Rebecca Longmire Ritchie was aware that Susan Davis was interested in the Fundraising job as she had told her that. It was her understanding that everyone else on the Board wanted her to have that job. She believed that Kate Thomas (nee Davis) told her that Susan Davis did not get the job. Rebecca Longmire Ritchie was not sure of the criteria.

Rebecca Longmire Ritchie felt that Jo-Anne Vidito was not doing a good job that she could remember. After she was hired nothing was done. The only Board meeting she attended that Jo-Anne Vidito was at as an employee was the December meeting.

Rebecca Longmire Ritchie was friendly with Kate Thomas (nee Davis) and Susan Davis. In fact, Kate Thomas (nee Davis) stayed with her off and on. Susan Davis felt that Jo-Anne Vidito was not doing any real fundraising work or making efforts to put programs in place. She spent most of her time on the phone, talking to friends or Dorothy Andrews.

At the December 10, 2002, meeting Jean Durham took the Minutes. At previous meetings the practice of recording the Minutes was done by Susan Davis. She did not recall why Kate Thomas (nee Davis) and Jo-Anne Vidito were asked to leave. But thought Kate Thomas (nee Davis) because she was not a Board Member and that Susan Davis wanted to bring up Jo-Anne Vidito's job performance but not in front of her.

Rebecca Longmire Ritchie recalled Susan Davis' name was brought up by Dorothy Andrews as no longer doing the job properly and that Dorothy Andrews also attacked her. That she (Susan Davis) was not there to help out or for the animals or for the Shelter. A complaint was raised about a lot of other volunteers. Rebecca Longmire Ritchie stated this was because they could not stand being called. There was talk about her specifically as well as Leslie Coolen and volunteers as a group. She stated Susan Davis' age and eye condition were mentioned. Her eye condition being brought up several times by Dorothy Andrews. Susan Davis did not say anything, she just sat there. She remembered thinking,

***“Are you going to stand up for yourself?”***. She (Rebecca Longmire Ritchie) was the only one to speak for the volunteers and Dorothy Andrews had no right to criticize the volunteers. She felt Dorothy Andrews had way too much control and that Dorothy Andrews was the only one who spoke.

When Preston Andrews was asked a question he would go blank and say, ***“Ask Dorothy”***. Several other Board Members had left before for these reasons.

She was not aware of anything that Susan Davis could not do because of her eye condition nor of any other limitations on her duties.

When Rebecca Longmire Ritchie left the building she went home. She was upset and crying. When she left she did not recall telling Kate Thomas (nee Davis), ***“Your mother just lost her job”***. Kate Thomas (nee Davis) was not staying at her house at that time. She did talk to Kate Thomas (nee Davis) probably a couple days later.

When referred to Exhibit 4, the Minutes of the Meeting, Rebecca Longmire Ritchie recalled Dorothy Andrews saying that she was coming to the Shelter too many evenings. As well, she recalled Dorothy Andrews saying that she would pay a worker out of her own pocket. She did not know that Susan Davis had a three (3) week term position. She just remembered the comments regarding her poor job performance. She agreed that she was probably rude to Dorothy Andrews as she was rude to her and others. She left before the meeting was concluded.

Rebecca Longmire Ritchie stated after she resigned she wrote a letter to Preston Andrews asking him to pass it along to other Board Members. She put the letters in his mail box. This was approximately one (1) month after she resigned. She was very emotional at that time and probably said things in the letter that were not nice but felt all the Board should know why she resigned.

Rebecca Longmire Ritchie did not know if Dorothy Andrews wanted Jo-Anne Vidito to take over as Shelter Manager, but really wanted Susan Davis gone. She understood that Jo-Anne Vidito was doing laundry and taking dogs for walks. Nit-picky things were brought up at the meeting.

She knew there was tension between Susan Davis, Jo-Anne Vidito and Dorothy Andrews.

When questioned about Preston Andrews’ testimony that on the night of the Board Meeting he had seen a car at the end of his driveway that he identified as Susan Davis’ and when he went out to investigate he found a letter from Rebecca Longmire Ritchie in the Chronicle Herald Tube, Rebecca Longmire Ritchie recalled putting the letter in the tube but stated it was not that night. She did it in her own car during daytime hours. She recalled she may have told him she was sending letters to Revenue Canada and the Registry of Joint Stock Companies, but did not remember doing so.

Rebecca Longmire Ritchie did not recall any sign at the Shelter suggesting volunteers not walk dogs if it was icy, but, did recall being told that if volunteers did not feel safe they did not have to walk the dogs.

She recalled the Day Book in the office of the Shelter. It was left on the desk and you always had to look for a pen.

Rebecca Longmire Ritchie admitted she did not know Dorothy Andrews personally; although they did a few shifts at the Shelter together at which they did get along.

Rebecca Longmire Ritchie admitted she had no information on how Dorothy Andrews conducted herself over fifteen (15) years at the Shelter, or how the Shelter had started. She had never been told that Dorothy Andrews was the supervisor, and therefore she had no authority to make any decisions. She was not aware that there were no adoptions unless Dorothy Andrews approved. She thought this was the Shelter Manager's job. She thought that the Susan Davis nominated her as a Board Member, but acknowledged it could have been Dorothy Andrews. Her concern was that Dorothy Andrews was making too many of the decisions.

Rebecca Longmire Ritchie recalled one (1) volunteer not coming back because Dorothy Andrews had left a nasty note in the Day Book. Dorothy Andrews did not have anything nice to say about anyone, although she did admit that there was nothing in the Day Book about Susan Davis. In fact, she never saw the Day Book after Jo-Anne Vidito was there.

When Rebecca Longmire Ritchie first started Sonya Edwards was the Shelter Manager, although she never had any dealings with Sonya Edwards personally. She did not know who put notes up on the Board but one had been put up there by Sonya Edwards.

Dorothy Andrews, one of the Respondents, was called by the Commission. The Shelter was started by herself and her husband around 1988. They got together a Petition of over Two Thousand (2,000) names and ultimately acquired a piece of land for the Shelter. Susan Davis was not involved at that time but much later. She believes that October 2000 could be right as to when Susan Davis was hired. Previous to that Sonya Edwards had been a paid employee for about a year. When her (Dorothy Andrews) husband (Preston Andrews) became ill Sonya Edwards was asked to fill in as President, which she did.

When Sonya Edwards was working as President she was not paid as she was working at a Veterinarians. Dorothy Andrews role was as volunteer, Treasurer, Board Member, and Shelter Supervisor. As such, she was charged with the daily operating of the Shelter and making sure that it ran smoothly.

When the Shelter first opened in 1994 it was a branch of the SPCA who had an employee but not the Board. TLC at that time became a branch of the SPCA. For the first six (6) months the Shelter was open there were no employees and she, Dorothy Andrews, did all the work. Then Mrs Alcock was hired and was at the Shelter for about three (3) years. Although she was not always on the payroll during that time. No one else has ever held the position of Supervisor other than herself.

Dorothy Andrews spoke of when she first hired Susan Davis in October 2000. She met with her at the Shelter, and discussed the position. She (Susan Davis) knew about the work as she had been there before as a volunteer. They discussed pay and hours of work. Dorothy Andrews believed at the time the work would be full time. Sonya Edwards had no authority at that time to hire. While she would interview and hire it would have to be

approved at the following Board Meeting where she would introduce the person hired to the Board. She had never fired anyone before.

Susan Davis did tell her about her eye condition, however she said it should not be a problem with the job. She in fact told Susan Davis that if she had a problem managing the dogs she herself would do it.

The duties of the Shelter worker were to keep the Shelter and animals clean, the animals fed, set up Vet appointments, and the like.

The terms of employment only changed when at some point Susan Davis asked to be laid off as her daughter was interested in working there. Since funds were low, Dorothy Andrews had planned on reducing hours. She knew Kate Thomas (nee Davis) as she had been coming to the Shelter quite often with her mother (Susan Davis).

When asked if there were any problems with Susan Davis' work, Dorothy Andrews stated that if things were untidy she would mention it to Susan Davis. Susan Davis was also slow in getting things done. But that was not really important, what was, was being kind to the animals.

Dorothy Andrews does not remember Susan Davis' eye condition being a problem, and in the winter told her to walk the small dogs and that she herself or a volunteer would walk the big dogs. Once they built a yard the conditions were much better.

When Kate Thomas (nee Davis) was hired as a Shelter worker she reported to Dorothy Andrews. Kate Thomas (nee Davis) was putting all her efforts into the job as this was the first job she had ever had. She was kind to animals and happy to be there. She had no difficulties with Kate Thomas (nee Davis).

Dorothy Andrews was involved in the hiring of Jo-Anne Vidito. Her husband, Preston Andrews, was always looking for any program available through HRDC. When he found out about the program, Susan Davis had come to her and offered to assist in any correspondence with Brock Smith at HRDC. This position was as **"Fundraising Coordinator"**.

Dorothy Andrews stated that the Shelter did not have any say as to who qualified. However, she was informed by Brock Smith that because Susan Davis had worked at the Shelter before she did not qualify. She then called Susan Davis and told her but she already knew.

She met with Jo-Anne Vidito for an interview, whom she had not met before. She believed that Susan Davis knew it was up to Brock Smith as to who qualified while the Shelter's job was to interview those qualified and pick from them.

When told she did not qualify, Susan Davis was very upset and not happy about it. Jo-Anne Vidito had no association with the Shelter before she met her. After being hired Jo-Anne Vidito volunteered on the weekends and as well helped out. She would come to work an hour early and walk the dogs.

When Jo-Anne Vidito started, Kate Thomas (nee Davis) was the Shelter worker, although she was not there for a long period of time because she was ill and just in off and on.

Dorothy Andrews had no difficulties with Jo-Anne Vidito. Nor was she aware of Kate Thomas (nee Davis) having any concerns, although Kate Thomas (nee Davis) did mention that she did not like Jo-Anne Vidito walking the dogs with the choke chain.

Dorothy Andrews stated that she uses the choke chain lots of time in handling the training of large dogs and if used properly there are no problems. Kate Thomas (nee Davis) seemed satisfied with that explanation at the time.

Dorothy Andrews had no difficulties with Jo-Anne Vidito's work, they discussed different projects and felt she was getting good effect.

Kate Thomas' (nee Davis) health was not good and her condition kept getting worse. For three (3) weeks Dorothy Andrews filled in her position every day while she continued to pay Kate Thomas (nee Davis). At the end of three (3) weeks she called Kate Thomas (nee Davis) at Rebecca Longmire Ritchie's and told her that she could no longer continue to pay her. The next day Susan Davis came to the Shelter and offered to fill in for Kate Thomas (nee Davis). She started off saying that she was desperate for money as she had left her husband, Kate Thomas (nee Davis) needed puffers, and she would like to fill her old position.

Dorothy Andrews told Susan Davis at that time that she was not interested in re-hiring her; as she had not been completing the job when she last worked, and things were not that tidy. After discussions it was agreed under the circumstances to hire her (Susan Davis) for three (3) weeks only and at the end of three (3) weeks they would post the job for competition. Susan Davis' comment was that Kate Thomas (nee Davis) may be back before that.

There was no discussion about her (Susan Davis) eyesight or her walking the dogs. However, during the three (3) weeks when Susan Davis did not even walk the small dogs Dorothy Andrews did. Susan Davis was not able to do get the Shelter job done. During this time Susan Davis also had difficulties with how Jo-Anne Vidito was doing. The first that Dorothy Andrews was aware of it was when Jo-Anne Vidito called and told her that Susan Davis had ordered her not to answer the phone unless it rang four (4) or five (5) times. On another occasion Susan Davis instructed Jo-Anne Vidito to go to the store and collect outdated greeting cards. Jo-Anne Vidito wanted to know if that was an ongoing program of which she was unaware.

Dorothy Andrews went to Susan Davis and told her Jo-Anne Vidito's concerns and stated if there was a problem Susan Davis was to go to her (Dorothy Andrews). Susan Davis did not think she had been rude.

When asked about Susan Davis' job performance, Dorothy Andrews said that it was not that good for the three (3) weeks. Laundry was not being done, half the things that she had accomplished before when she worked there she did not seem able to get done. Dorothy Andrews had to do the laundry in the evening.

With regard to the Day Book. There was in fact no such book. Workers and volunteers had sheets to be filled out before they left the Shelter. The so-called "**Day Book**" was her personal diary that she wrote in and no one else. This was her personal log book.

Dorothy Andrews was aware that while at the Shelter Jo-Anne Vidito received calls from Brock Smith about complaints about what she was doing. She believed these complaints had come from Susan Davis and Rebecca Longmire Ritchie.

Exhibit 4, the Minutes of the December 10, 2002, Board Meeting were identified as being an accurate account. Although she did not put any actual insults or things like that. Dorothy Andrews said she made the motion that Susan Davis be laid off as her three (3) weeks were up. She made it to get it in the Minutes and to give other Board Members a chance to discuss it. She had never ended anyone's employment before.

During the votes Susan Davis said, "**I'll take my layoff**". At that point Jo-Anne Vidito and Kate Thomas (nee Davis) were still present. Rebecca Longmire Ritchie then started attacking her husband and herself, and that if we were not there the Shelter would be run better. Jean Durham got quite upset. Rebecca Longmire Ritchie was the first person to leave the room all upset. Susan Davis questioned why post the job because she felt she had done a good job. Before that Dorothy Andrews did not recall anything having been said about her job. That is when Dorothy Andrews asked the non-Board Members to leave as she did not want to discuss it in front of Jo-Anne Vidito or Kate Thomas (nee Davis). She then told Susan Davis her job performance had gone downhill and that Dorothy Andrews had to spend two and a half (2 ½) days doing what she (Susan Davis) was supposed to do. She did not at any point bring up her eye condition and stated that Susan Davis' vision did not have anything to do with the meeting.

When the meeting adjourned Kate Thomas (nee Davis) had never come back upstairs and Susan Davis left first. The Board did not meet again until March. It was a most unpleasant meeting, she was upset herself, she could not understand how a young lady such as Rebecca Longmire Ritchie could be so rude and hostile to her.

Dorothy Andrews spoke of later that night seeing a car in front of their house. They knew it to be Susan Davis' car. Her husband went out and brought different envelopes in addressed to different Board Members, to himself, Revenue Canada, and the Registry of Joint Stock Companies. The letter was giving him orders to send it to Board Members. They were both still upset and destroyed the letters.

Approximately a month or so after the locks had to be changed at the Shelter because of some problem. Leslie Coolen had come in and could not get into the Shelter. Dorothy Andrews tried her key in it and it would not work either.

Dorothy Andrews is not sure exactly when she first heard or became aware of the Human Rights Complaint. It could have been in February or March. During the winter she had a lot of complaints from Jo-Anne Vidito that Susan Davis and family would drive by a lot when she was working days and they would come in the yard. Jo-Anne Vidito was also getting calls from Brock Smith saying that she had been reported for walking the dogs and was told by him that this was reported by Rebecca Longmire Ritchie and Susan Davis. Jo-

Anne Vidito was concerned that every time she went out with the dogs she saw them. On one occasion she saw them get out of the car. They did not know what to do so she called Susan Davis and told her that Jo-Anne Vidito was upset by them going by and would appreciate them not going to the Shelter when Jo-Anne Vidito was there. Susan Davis did not deny this but she felt they could go to the Shelter any time they wanted, while Dorothy Andrews only wanted to keep the peace. Dorothy Andrews told Susan Davis if they could not come to an agreement then she (Dorothy Andrews) would have to talk to a lawyer as this situation could not continue. They gave the information to the lawyer and left it in his hands.

She had been aware of Susan Davis and Kate Thomas (nee Davis) going to the Shelter through Leslie Coolen. This was not really a problem until Leslie Coolen mentioned that they had given worm medicine to the cats upstairs. She told Leslie Coolen not to allow anyone to treat the animals. With no records she could have treated the cats again and overdosed them.

Jo-Anne Vidito ultimately left the Shelter. Under that program the person had to be actively looking for other employment. The job of Shelter worker was never filled. With regard to the issue of the Donation Cans, she was not involved and just told of it by her husband. She never met Mrs Marshall.

Under cross-examination by Susan Davis, Dorothy Andrews said she would not have addressed the poor job performance if Susan Davis had not brought it up.

Dorothy Andrews testified that Jo-Anne Vidito had gone to Brock Smith at HRDC and he sent her to us to interview. He sent no one else. Time was running out on the program and according to Brock Smith they had to place positions quickly. After the interview she felt that Jo-Anne Vidito was a good person. There was no pressure on her to hire Jo-Anne Vidito. When Jo-Anne Vidito was working at the Shelter she would call when upset, she was concerned about her position, and that Dorothy Andrews or the Board was not happy about her job performance. Dorothy Andrews told her that she (Dorothy Andrews) had no concerns about how she (Jo-Anne Vidito) treated the animals and she (Jo-Anne Vidito) would come in early to walk the dogs and walk the dogs on her (Jo-Anne Vidito) lunch hour.

There was no log book set up for the Shelter, there were however the Volunteer Sheets to be completed by workers and volunteers.

She did not know anything about the ***Protection of Property Act*** or what should be done, she left that in the hands of the lawyer. This was something he did and they went along with. Dorothy Andrews described Susan Davis' actions as disrupting Jo-Anne Vidito and her job of raising funds by not allowing her to use the phone. In the mornings when she was there was when Jo-Anne Vidito set up the appointments.

Jo-Anne Vidito was called by the Commission. She is presently employed by Cosman and Associates, Insurance Brokers. She started in June 2003, before that she worked with TLC Animal Shelter.

Exhibit 6 is a letter written by Jo-Anne Vidito that she wrote and submitted to HRDC. Prior to October 2002 she was looking for work. She saw the job ad on a Government Work Site and sent in her Resume where she dealt with Brock Smith at HRDC. She met with Dorothy Andrews at the Shelter.

She started work at the Shelter she believed on October 22, 2002, her hours being 9:00 a.m. to 4:30 p.m. Her husband works so she was usually at the Shelter by 8:05 a.m. She also knew Dorothy Andrews as the Shelter Manager and she was the person that she dealt with.

She knew that Kate Thomas (nee Davis) was a Shelter worker and was often sick. She would work a day or two and then be off. She knew Dorothy Andrews was getting tired of being there every day and at night and that she was going to have to advertise the job as she could not continue. She was present when Susan Davis offered to fill in for her daughter Kate Thomas (nee Davis). She recalled Dorothy Andrews telling Susan Davis that she did not want to hire her back as an employee because she could not do the job.

Jo-Anne Vidito spoke of Susan Davis avoiding her at all costs and that she never spoke to her. She stayed downstairs. She only recalled two (2) conversations with Susan Davis. The first one she wanted her to go to the grocery store and ask for outdated greeting cards and one day someone called and asked for Kate Thomas (nee Davis) and she told them that, "**Kate was not there**". She did not know how Susan Davis knew but she came to Jo-Anne Vidito and told her (Jo-Anne Vidito) she did not like her (Jo-Anne Vidito) answering the phone and that she (Jo-Anne Vidito) could only answer if the phone rang more than five (5) times.

All her salary was paid through HRDC.

Jo-Anne Vidito stated the hostility of Susan Davis towards her made her uncomfortable. She stated, "**You can feel it when someone does not like you**". Susan Davis never spoke to her or had a kind word for her. She never said a nice thing to her.

Jo-Anne Vidito stated she was getting very confused as to who to answer to. She was only there for one (1) month and all the people were new to her. Susan Davis was not helping her, she set up an appointment for her on Saturday, but did not tell her. She was also told that Dorothy Andrews, Treasurer, was not the boss. It seemed like there was a personal vendetta being brought against her. She spoke of the calls from Brock Smith in January regarding complaints.

When she (Jo-Anne Vidito) first started she thought the Shelter was very dirty. She could not be in an environment where she was uncomfortable so she cleaned it on her own time. Brock Smith ended up coming to the Shelter on more than one occasion. She showed him the files on what she was doing. He did not name names as to who was complaining, however, she got the impression that Brock Smith was being harassed by Susan Davis. Susan Davis was relentless on what grounds she (Jo-Anne Vidito) qualified by HRDC rules and she (Susan Davis) did not. Susan Davis made it clear that she wanted the job.

The December 10, 2002, meeting was the first Board Meeting that she attended. She was invited to come and give a Report as to what the plans were and to meet the Board Members. She recalled Rebecca Longmire Ritchie storming down the stairs and not coming back and she was asked to leave the meeting shortly after. She had recalled a motion being made to give Susan Davis one (1) weeks notice which she said she would accept. She was not present during any discussion about Susan Davis' job performance. Nor did she hear any discussion about her vision.

Jo-Anne Vidito had never been told about Susan Davis' condition before December 10, 2002, but she noted she held papers close to her face to read. She was not aware of any limitations on Susan Davis performing her duties.

After the meeting she saw Susan Davis drive past the Shelter. She felt she was being watched all the time. Plus the calls from Brock Smith about her walking the dogs. At some point she expressed concern to Dorothy Andrews. She felt harassed and it only stopped when she resigned the position and went to work someplace else in June 2003.

After the **Protection of Property Act** letter Jo-Anne Vidito did not see them come on the Shelter property but did see them drive by.

Jo-Anne Vidito also spoke of her files being disturbed over the weekend. She subsequently learned from Leslie Coolen that Susan Davis and Kate Thomas (nee Davis) were coming in on Sunday night with her. She did express concern about this to Dorothy Andrews who had no knowledge of it at the time.

On cross-examination by Susan Davis, Jo-Anne Vidito spoke of painting the upstairs, putting a border up, cleaning the walls, and washing the walls. She noted that looking after the animals was not her job.

## 5. **THE LAW**

In making my Decision I am guided by a number of well established Principles as set out in the case law. They are as follows:-

### **Burden of Proof**

It is well settled that the Burden is that of the Civil Standard which is being described as being on a balance of probabilities. This was defined by Adjudicator Bright in **McLellan v. Mentor Investments Limited** (1991) 15 CHRR D/134 (NS Board Inquiry Inq) at paragraph 16,

***“The civil burden or preponderance of evidence or proof of fact on a balance of probabilities has been described as follows: that degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal sense. If this evidence is such that the Tribunal can say we think it is more probable not the burden is***

**discharged, but, if the probabilities are equal, it is not. Milner v. Minister of Pensions [1947] 2 All E.R. 372 (CA) at 374 per Lord Denning".**

Thus the burden in the present case is on Susan Davis to establish a **prima facie** case on the civil balance of probabilities that her employment was terminated because of her disability.

The Supreme Court of Canada in **O'Malley v. Simpsons Sears Limited** (1985) 7 CHRR D/3102, at D/3108 [para. 24782] it is stated,

**"The Complainant in proceeding before Human Rights Tribunals must show a prima facie case of discrimination. A prima facie case in this context 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".**

The relevant prohibition against discrimination in the Human Rights Act is as follows:-

**"5 (1) No person shall in respect of  
(d) employment  
discriminate against an individual or class of  
individuals on account of  
(o) physical disability or mental disability".**

Physical disability or mental disability" is specifically defined in the Act as follows:-

**"3 In this Act,  
(l) 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  
coordination, 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,**

- (iv) **learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,**
- (v) **condition of being mentally handicapped or impaired,**
- (vi) **mental disorder, or**
- (vii) **previous dependency on drugs or alcohol”.**

Discrimination is defined at Section 4 of the Act as follows:-

**“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 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”.**

Thus the Complainant must first show that he or she had a disability or was perceived to have a disability within the meaning of the Legislation and that he or she was wrongly treated by his or her employer and that there was evidence from which it could be concluded that the disability was a factor in the adverse treatment.

In **Silvester v. British Columbia Society of Male Survivors of Sexual Abuse** (2002) 43 CHRR D/55, at paragraphs 30 and 31 it was stated,

**“To succeed the Complainant need only show that the ground alleged was a factor in the Respondent’s conduct. It does not need to be the sole or overriding factor”.**

And at paragraph 32,

**“Accordingly to establish a prima facie case the burden is on the Complainant to establish that she had a disability, the Respondent refused to continue her employment and it is reasonable to infer from the evidence that her disability was a factor in that refusal”.**

Thus once the Complainant has demonstrated that he or she was suffering from a disability within the meaning of the **Act** or is perceived to have a disability and that this disability was a factor in his or her termination he or she has made out a **prima facie** case and the burden then shifts on to the Employer to show that they were unable to accommodate the Complainant to the point of undue hardship.

## **Burden on the Employer**

The leading case in this area is that of the Supreme Court of Canada commonly referred to as the **“Meiorin Decision”**. **British Columbia Public Service Employee Relations Committee v. BCGEU** (1999) 35 CHRR D/255 SCC. This standard is now generally framed as to whether the Employer is able to demonstrate that the standard or freedom from a disability or particular characteristic is a bona fide occupational requirement and that it is impossible to accommodate individual Employees sharing the characteristics of the Claimant without imposing undue hardship upon the Employer.

This issue or defence has not in fact been raised in the present case.

In Nova Scotia the duty to accommodate has been considered in **McLellan v. McTarra** No 2 (2004) 51 CHRR D/103 (NS Board of Inquiry), at paragraph 34 where it was stated,

***“The extent of an Employer’s duty to accommodate physically disabled Employees under Section 6(e) of the Human Rights Act is to accommodate to the point of undue hardship”.***

And further on at paragraph 37, it was stated,

***“The duty to accommodate however does involve the Employer finding out what they can about the time and capacity dimensions of the physical restriction afflicting their Employee. Having informed themselves as much as possible the Employer must consider whether there is something that the Employee can do”.***

And at paragraph 46, a question was framed,

***“Is there something that could reasonably have been done that would have been less catastrophic than the termination of his employment?”***

This duty to accommodate also appears to place the burden on the Respondent Employers to make enquiries about the Complainant’s condition. See paragraph 57, **Hall v. Seetharamdoo** (2006) CHRR D/06-502 (NS Board of Inquiry).

**Section 11** states,

***“No person shall evict, discharge, suspend, expel, or otherwise retaliate against any person on account of a complaint or an expressed intention to complain or on account of evidence or assistance given in any way in respect of the initiation, inquiry or prosecution of a complaint or other proceeding under this Act”.***

The leading case on retaliation in connection with Human Rights actions is ***Entrop v. Imperial Oil Limited*** (No 7) (1995), 23 C.H.R.R. D/213 (Ont Board of Inquiry). In that case the Board of Inquiry found that there must be a linkage between an actual or threatened prejudicial act by a respondent and the enforcement of a complainant's rights under the ***Human Rights Code***. At paragraph 38, the Board found that the complainant's reasonable perception that the impugned act was in retaliation for a human rights complaint, that may constitute a sufficient link between the impugned act and the enforcement of the complainant's rights under Human Rights Legislation regardless of the respondent's intention. The Board of Inquiry in ***Entrop*** found that the standard for determining whether retaliation takes place is to be from the point of view of a "***reasonable human rights complainant***", which is separate from any proven intention on the part of the respondent.

At paragraph 39 it was stated,

***"Obviously, the matter of the 'reasonableness' of the complainant's perception must also be addressed. Respondents must not be held accountable for unreasonable anxiety or undue overreaction on the part of the complainant. But great care must be taken in assessing the proper standard of 'reasonableness' to apply to allegations under s.8 of the Code. There is a wealth of legal literature which documents the difficulty of constructing an objective definition of 'reasonableness'. The hypothetical reasonable man, which was ubiquitous in the legal texts a mere few decades ago, has given way to the 'reasonable person', the 'reasonable woman', the 'reasonable sexual harassment victim', and so on. Section 8 offers another critical juncture for reevaluating what tribunals and courts should define as reasonable in the context of reprisals taken against those seeking to enforce their rights under the Human Rights Code"***.

In any case, where there are two (2) Parties and two (2) different sides or viewpoints, witness credibility is also an issue.

A recent statement of the test for assessing witness credibility is found in ***Leach v. Canadian Blood Services***, 2001 ABQB 54, para 70, which states,

***"I adopt the test for assessing credibility set out by Foster J. In Sylvan Lake Golf & Tennis Club Ltd. V. Performance Industries Ltd. and O'Connor (1996), 190 A.R. 321 (Q.B.) at para 27:-***

***The tests for assessing credibility in this court are well-established and may be summarized as follows:-***

- 1. The witness's evidence should first be considered on a 'stand alone' basis. In this regard, [the trier of fact should consider] factors such as firmness, memory, accuracy, evasiveness, and whether the witness's story is inherently believable.***

2. ***If the witness's evidence survives the first test above, the assessment moves on to a comparison of that witness's evidence with the evidence of others and documentary evidence.***
3. ***Finally, the court must determine which version of events, if conflicting versions exist, is most consistent with 'the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions'.***

Additional factors to be considered in assessing witness credibility are listed by the tribunal in ***Hadzic v. Pizza Hut Canada*** (1999), 37 C.H.R.R. D/252 (B.C.H.R.T.) at para 36:-

***"Other factors that must be weighed include the witnesses' motives, their powers of observation, their relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradictions in relation to other witnesses' evidence".***

## 6. **DECISION**

In the present case Susan Davis testified that she was first diagnosed with Macular/Retinal Degeneration in the early 1990s, and that she was advised that a fall could lead to a sudden loss of vision, or she could wake up one morning with a loss of vision or with limited vision.

Taber's Cyclopedic Medical Dictionary, Edition 19, F.A. Davis, 2001, defines Macular Degeneration as follows:-

***"Loss of pigmentation in the macular region of the retina, usually affecting persons over age 50; a common disease of unknown etiology that produces central vision field loss and is the leading cause of permanent visual impairment in the US. Evidence suggests that key contributing factors to this disease may include sunlight exposure, smoking, alcohol use, and a diet low in carotenoids.***

***Symptoms: The Central visual loss that marks this illness can make reading, working with the hands (e.g., sewing), driving, or recognizing people's faces difficult. Peripheral vision is preserved in this disease".***

Certainly any loss or restriction of vision could be considered a physical disability within the meaning of the ***Human Rights Act***.

While Susan Davis continues to drive, her vision appeared to be restricted. Witnesses spoke of her holding pieces of paper close to her face in order to read and she was in fact observed doing so during the course of the hearing.

It is therefore accepted that Susan Davis does in fact have a disability within the meaning of the ***Human Rights Act***.

The issue then is was she (Susan Davis) wrongly treated by the Respondents and is there evidence from which it could be concluded that the disability was a factor in that adverse treatment.

Thus, it really comes down to as to what was or was not said at the Board Meeting of December 10, 2002. There is no evidence before the Board that Susan Davis had been adversely treated prior to the Board Meeting because of her disability. In fact, on the evidence it would be difficult to even conclude that she was perceived to have a disability. Jean Durham said that she was unaware of Susan Davis' eye condition. The only limitation that Susan Davis spoke of concerning her eye condition was the danger of a fall on the ice when walking the dogs and the possibility of the resulting loss of vision.

This matter however was never raised until according to Susan Davis' evidence the Board Meeting of December 10, 2002.

Preston Andrews testified that he was unaware of Susan Davis having any limitations and felt that she was capable of doing everything. He also testified that during the winter Notices were posted for all volunteers to be careful when walking large dogs on the ice, this was not special for Susan Davis; and that she was only expected to walk the dogs when she could handle them depending on weather conditions.

There is no evidence Susan Davis' disability was an issue prior to the December 10, 2002, Board Meeting. Susan Davis has attempted to hang her hat on Dorothy Andrews' statement that, "***You know you could fall and slip on the ice***". Her testimony was supported by her daughter, Kate Thomas (nee Davis), and Rebecca Longmire Ritchie, who said that Susan Davis' age and eye condition were mentioned and brought up several times by Dorothy Andrews.

Jean Durham in her testimony said that there was no discussion about walking the dogs; however, Dorothy Andrews had raised other complaints about the laundry not being done, or other work around the Shelter not being done. In fact she thought Susan Davis was, "***A healthy, young woman***".

Preston Andrews had little or poor memory of the meeting itself. It was his understanding that Susan Davis had basically been hired for a three (3) week term position and that was up. There was however discussion regarding Susan Davis' work performance. While he could not recall exactly what was said he testified that Dorothy Andrews was tired of having to go to the Shelter every evening and finish the work that should have been done during the day.

Dorothy Andrews stated that Susan Davis' eye condition was not brought up, nor did she recall anything about Susan Davis' inability to walk the dogs and denied that Susan Davis' vision had anything to do with the meeting or her termination.

Obviously credibility of the witnesses is an issue. In order to attempt to determine what exactly was said at the meeting other evidence that was brought forward during the Hearing must be examined as well.

It was clear that Susan Davis felt that she **“owned the job as Shelter worker/Manager”**; and that she wanted the job as Fundraising Coordinator at the Shelter which was being funded through HRDC. When Jo-Anne Vidito was hired instead of her it is also clear from all of the evidence that Susan Davis reacted in a very negative manner. She attempted to make Jo-Anne Vidito’s job more difficult by restricting her use of the telephone which would be a very important tool for any Fundraiser to have. Jo-Anne Vidito testified that Susan Davis was hostile to her from the very beginning and that they had very little contact, even though they would be the only two (2) in the building for most of the time. Susan Davis also appears to have attempted to have set Jo-Anne Vidito up by making arrangements for her to have a table or a booth at a community event and not informing Jo-Anne Vidito or anyone else about the arrangements and then complaining when Jo-Anne Vidito did not attend or man the booth. As well, Susan Davis apparently started contacting Brock Smith at HRDC about Jo-Anne Vidito’s job performance, and was prepared to raise the issue of Jo-Anne Vidito’s job performance at the December 10, 2002, Board Meeting. From the evidence I suspect Susan Davis engaged Rebecca Longmire Ritchie to back her up at the Board Meeting in this regard.

Susan Davis’ unfounded hostility towards Jo-Anne Vidito continued well after the December 10, 2002, Board Meeting, however that will be discussed further on in this Decision.

Dorothy Andrews’ evidence was that she only reluctantly agreed to re-hire Susan Davis for a three (3) week term in the fall of 2002 in part because she needed to give herself a break because she had been filling in for Kate Thomas (nee Davis) when she was off ill. As Dorothy Andrews’ testified this was **“against her better judgement”** because she had had concerns about Susan Davis’ work performance when she had last worked at the Shelter. Concerns about Susan Davis’ work performance included, not properly cleaning the Shelter, not doing the laundry, basically leaving the Shelter in a mess to the extent that Dorothy Andrews ended up coming in every evening to finish the work that she believed Susan Davis should have done during the day. From her evidence I can only conclude that even if there had not been any mention of a three (3) week job hire that she would have wanted to have Susan Davis dismissed for her poor job performance.

At no time did Dorothy Andrews relate Susan Davis’ poor job performance to her eye condition. In fact, it does appear that Dorothy Andrews was prepared to accommodate any perceived disability in this regard by walking the large dogs and letting Susan Davis walk the small ones even though she was older than Susan Davis.

Wherever there is a conflict in the evidence as to the Board Meeting of December 10, 2002, I accept the evidence of Dorothy Andrews over that of the Complainant, Susan Davis, or any other witness.

Taking into account all of the evidence I am unable to conclude on the balance of probabilities that Susan Davis was dismissed because of any disability or perceived disability contrary to the **Human Rights Act**.

The other issue before the Board is whether or not there was retaliation committed by the Respondents against the Complainant, Susan Davis. Two (2) specific incidents of retaliation are alleged. These incidents can stand on their own even though the initial complaint under **Section 5(1)(d)(o)** of the **Human Rights Act** is dismissed.

The first incident of retaliation is based on the letter of James Outhouse, Q.C., Solicitor for the Respondent, TLC Animal Shelter, which was entered as Exhibit 5 at the Hearing. At that time James Outhouse purported to give Notice to Susan Davis under the **Protection of Property Act** that she was not to enter on the lands of the Respondent, TLC Animal Shelter.

At the Hearing, it was unclear whether or not the Respondents, either TLC Animal Shelter or Dorothy Andrews or Preston Andrews, had any knowledge of the initial complaint of Susan Davis under the **Human Rights Act** when James Outhouse's letter of April 1, 2003, was sent. There was no direct evidence to this effect although it was suggested that Exhibit 12, Preston Andrews' letter of March 13, 2003, had been written as a result of the complaint. While I suspect that they may very well at that point have been aware of the complaint to the **Human Rights Commission** I am not satisfied that on the balance of probabilities that they were so aware.

After the meeting of December 10, 2002, there were continued complaints to Brock Smith at HRDC regarding Jo-Anne Vidito's work at the Shelter from Susan Davis. In addition, there was also evidence of letters from Susan Davis to Robert Thibault, MP, and possibly others including Revenue Canada, and the Registry of Joint Stock Companies. Kate Thomas (nee Davis) testified that her mother "**wrote a lot of letters**".

There was also the evidence of Susan Davis and Kate Thomas (nee Davis) attending at the Shelter volunteering in the company of Leslie Coolen. It certainly did not appear on the evidence that this was with the knowledge of the Respondents, TLC Animal Shelter, or Dorothy Andrews, or Preston Andrews. It was only in the latter part of February or March that Dorothy Andrews learned of these attendances. During this same time period Brock Smith had also contacted Jo-Anne Vidito on more than one (1) occasion regarding complaints from Susan Davis. As well, Jo-Anne Vidito had noted on several occasions when she attended at work that papers in her office had been disturbed. It was certainly concluded after the fact that this was connected to the Complainant, Susan Davis, and her attendance at the Shelter with Leslie Coolen. While there is no direct evidence of any wrongdoing on Susan Davis' part in this connection, certainly it would be a reasonable conclusion to draw by the Respondents.

In addition, Jo-Anne Vidito had also complained to the Respondents that as a result of observing Susan Davis' car frequently driving past the Shelter, or parked very close to the Shelter, and the complaints to Brock Smith, she feared for her safety while she was alone at the Shelter.

All these factors certainly were taken into account by Dorothy Andrews in her discussions with her husband, Preston Andrews, and when he contacted the Shelter's Solicitor, James Outhouse. Both testified they were unaware of the availability of the **Protection of Property Act** provisions and left the matter in the hands of James Outhouse.

Certainly there were a number of other reasons for Dorothy Andrews, Preston Andrews, or TLC Animal Shelter to seek protection under the **Protection of Property Act** and I am therefore unable to conclude that James Outhouse's letter of April 1, 2003, is retaliation contrary to **Section 11** of the **Human Rights Act**.

The second act of retaliation complained of was the complaint to the RCMP by Preston Andrews about the theft of Donation Cans which had been left at various businesses. This occurred in June 2005, certainly well after the initial complaint under the **Human Rights Act** and the Respondents were well aware of it at that time. However, again it does not appear that the complaint to Human Rights prompted the complaint to the RCMP. Linda Chambers testified that part of her responsibilities as a volunteer to the Shelter was the placement and collection of the Donation Cans at various businesses. She testified in a very clear and coherent manner, and as Susan Davis noted in her testimony appeared to be a person of principle. It was she who first brought Susan Davis' name to the attention of Preston Andrews. As Preston Andrews noted Donation Cans had disappeared before but this was the first time they had ever had a name attached to the person who had collected the Cans. Preston Andrews also stated that he felt it was his duty to report the matter to the RCMP. He would have done this even if it would have been a member of his family. He was also satisfied with the investigation conducted by the RCMP even though no charges were laid. The circumstances under which it arose did not lead me to conclude that the complaint regarding this incident was in any way connected to Susan Davis' complaint to the Human Right Commission.

In conclusion, all complaints of Susan Davis under the **Human Rights Act** are therefore dismissed.

**DATED** at Berwick, Kings County, Nova Scotia, this 22<sup>nd</sup> day of November, A.D., 2007.

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**ROBERT C. STEWART, Q.C., Chair**  
Human Rights Board of Inquiry