

NOVA SCOTIA COURT OF APPEAL

Citation: *Foster v. Nova Scotia (Human Rights Commission)*, 2015 NSCA 66

Date: 20150625

Docket: CA 427966

Registry: Halifax

Between:

Douglas Foster

Appellant

v.

Dennis A. James sitting as a Nova Scotia Human Rights Board of Inquiry,
Cape Breton Regional Municipality, The Nova Scotia Human Rights Commission,
and The Attorney General of Nova Scotia representing Her Majesty the Queen,
in Right of the Province of Nova Scotia

Respondents

Judge: The Honourable Justice M. Jill Hamilton

Appeal Heard: February 5, 2015, in Halifax, Nova Scotia

Subject: *Bona fide* pension plan within the meaning of s. 6(g) of the
Human Rights Act (HRA), R.S.N.S. 1989, c. 214

Summary: In anticipation of the implementation of changes to s. 6 of the **HRA**, narrowing the exceptions to the age discrimination provisions of s. 5(1), the Cape Breton Regional Municipality (CBRM) amended its defined contribution pension plan, DCP, to require employees who were members of that plan to retire at age 65, as had been the practice policy up until that time for all employees. The motivation for the amendment to the DCP was to maintain equal treatment for all CBRM employees. The appellant, a member of the DCP, was mandatorily retired at age 65. He complained that he was discriminated against on the basis of age. A Human Rights Board (Board) dismissed his complaint.

Issues: Did the Board apply the correct legal principles and reasonably interpret s. 6(g) of the **HRA**, in determining that the DCP was a *bona fide* pension plan, exempt from the age discrimination provisions in s. 5(1) of the **HRA**?

Result: Appeal dismissed. The Board applied the legal principles set out in **New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc.**, 2008 SCC 45 and reasonably interpreted s. 6(g) of the **HRA**. Its decision has a reasoning path that is intelligible and transparent and its conclusion is within the range of possible, accountable outcomes given the facts and the law.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 13 pages.