

NOVA SCOTIA COURT OF APPEAL

Citation: *Smith v. Nova Scotia (Human Rights Board of Inquiry)*, 2017 NSCA 27

Date: 20170411

Docket: CA 446226

Registry: Halifax

Between:

Tony Smith

Appellant

v.

Nova Scotia Board of Inquiry, under
the Human Rights Act, RSNS 1989, c. 214;
The Nova Scotia Human Rights Commission,
Capital District Health Authority and the
Attorney General of Nova Scotia

Respondents

Judge: The Honourable Justice Jamie W.S. Saunders

Appeal Heard: January 31, 2017, in Halifax, Nova Scotia

Subject: **Human Rights Complaint. Limitation Periods. Human Rights Act, R.S.N.S. 1989, c. 214. Allegations of Discrimination Based on Race and Retaliation. Board of Inquiry. Standard of Review. Awarding Costs Following Tribunal Appeals. Civil Procedure Rule 90.51.**

Summary: The appellant had been an employee of the CDHA or its previous governmental iterations since 1990. From 2005 until he chose to retire in 2012, he was employed as an occupational therapy assistant, part of a team offering mental health services to a particular patient population.

A Board of Inquiry was appointed to adjudicate a complaint initiated by the appellant in which he identified 2005 as being the year the alleged discrimination/retaliation (claimed to be

based on his race and colour) began. The appellant said he was the victim of repeated acts of discrimination by his employer which culminated in an eventual “wrongful” transfer to a location, not of his choosing.

After a hearing lasting 17 days the Board dismissed the complaint concluding that the dispute was not about “racism” and that the appellant was not chosen to move because of the color of his skin. Rather, he was relocated (along with two others) because his client-base comprised a different mentally ill population, which needed the kind of community support provided at the location to which the appellant had been transferred. The move was concurrent with other decisions involving a global re-organization by the CDHA of the various mental health services it offered. The Board found that employees, management, the unions, as well as the appellant himself were involved in and privy to these changes while still in the planning phase. The Board ultimately determined that the appellant’s transfer was a health care decision and not the result of any discrimination or retaliation on the part of the CDHA.

The appellant appealed saying the Board erred in refusing to inquire into evidence of racism/retaliation from before 2005.

Held:

Appeal dismissed. The appellant’s submissions ignored or misstated the Board’s strong findings and meticulous analysis. The appellant’s arguments concerning the interpretation and application of the law had previously been rejected by this Court. The jurisprudence of this Court was clear, current, unambiguous and binding upon the Board in its adjudication of the appellant’s complaint. The Board was correct in limiting itself to the parameters defined by its Chair.

To have permitted the appellant to reconfigure his complaint into a broad, sweeping allegation of “racism” said to have virtually permeated his entire working career, would be to turn the objective of Nova Scotia’s human rights legislation

on its head. Were the Board Chair to have permitted such an inquiry, he would have clearly erred and been reversed on appeal.

The appellant failed to appreciate that his appeal had no realistic chance of success and would put all parties to a completely unjustified expenditure of time, resources and money.

Given the particular circumstances of this dispute (described in detail in the Court's analysis), this was a case where an award of costs against the appellant was merited. The Court's reasons went on to consider the principled basis upon which the discretion to impose costs might be exercised.

In dismissing the appeal, costs of \$3,000 inclusive of disbursements, were imposed against the appellant, in favour of the CDHA.

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 26 pages.