NOVA SCOTIA COURT OF APPEAL
Citation: ***Gavel v. Nova Scotia***, 2014 NSCA 34

Date: 20140404
Docket: CA 416163
Registry: Halifax

Between:

Marcy Gavel

v.

The Province of Nova Scotia and
The Nova Scotia Human Rights Commission and
Nova Scotia Human Rights Board of Inquiry and The
Attorney General of Nova Scotia representing Her Majesty the Queen
in Right of the Province of Nova Scotia

Respondents

Judges: Hamilton, Fichaud, and Scanlan, JJ.A.

Appeal Heard: January 27, 2014, in Halifax, Nova Scotia

Held: Appeal dismissed, per reasons for judgment of Hamilton J.A.; Fichaud and Scanlan, JJ.A. concurring.

Counsel: Marcy Gavel, appellant in person
Dorianne Mullin, for the respondent, Province of Nova Scotia
Lisa Teryl, for the respondent, The Nova Scotia Human Rights Commission
Marion Hill, for the respondent, The Nova Scotia Human Rights Board of Inquiry (not present)
Edward A. Gores, Q. C., for the respondent, The Attorney General of Nova Scotia (not present)

Reasons for judgment:

[1] Marcy Gavel appeals the May 6, 2013 order and decision of Marion Hill, acting as a board of inquiry under the **Human Rights Act**, 1989 RSNS c. 214, as amended. Ms. Hill ("the Chair") concluded the inquiry into Ms. Gavel's complaint of discrimination in her employment as a result of sexual harassment and disability, on finding that Ms. Gavel and her employer, the Province of Nova Scotia, had resolved the complaint by agreement on September 17, 2012. She found that Ms. Gavel had been advised early on, of her ability to engage independent counsel if she wished. She found the parties had agreed to follow the inquisitorial restorative board of inquiry model, rather than the traditional adversarial board of inquiry model, and that this restorative process had been followed. The Chair also found the agreement was in the public interest and that there was no factual basis to Ms. Gavel's argument that the Chair's actions gave rise to a reasonable apprehension of bias.

[2] Ms. Gavel argues the Chair erred in her findings and in concluding the inquiry as she did. She also argues she was deprived of procedural fairness. I disagree and, for the following reasons, would deny her appeal.

Background

[3] Ms. Gavel filed a complaint with the Nova Scotia Human Rights Commission (the "Commission") about a number of concerns related to her employment and co-workers. Her complaint against her employer was referred to a board of inquiry. Ms. Hill was appointed as the board of inquiry to inquire into her complaint. After the Chair's appointment, counsel for the Commission wrote to her on behalf of all parties inquiring about the possibility of the matter proceeding as a restorative board of inquiry.

[4] The Commission's restorative board of inquiry process is set out in an April 2012 protocol that was provided to the parties. It is on the Commission's website: www.humanrights.gov.ns.ca. It is a flexible process that anticipates two stages after a facilitator is appointed. Stage one commences with the facilitator conducting separate participation circles with the parties to explore what gave rise to the complaint, why the event complained of may have happened and how people were affected by it. Subsequent participation circles may be held including other stakeholders. Finally, a circle is held with all parties present. If an agreement, sometimes referred to as a plan, is reached at stage one for the resolution of all or

part of the issues raised by the complaint, affirmation of the plan is sought from the board of inquiry. If the agreement is approved, the Chair of the board concludes the inquiry with respect to these issues. If unresolved issues remain, the restorative board of inquiry proceeds to deal with them in stage two, with the board attempting to find a resolution to the remaining issues at participation circles, failing which it decides the unresolved issues.

[5] The restorative process was reviewed during an unrecorded teleconference on July 11, 2012 with the Chair and all parties. On July 12, the Chair outlined the agreed-upon process in a letter which each party signed, confirming their consent.

[6] In this case the facilitator appointed was Professor Jennifer Llewellyn. She met with the parties separately and together. The appellant's husband was present as a support person at all of these meetings and the appellant's mother and brother were present at one of them.

[7] On September 10, 2012 the parties, the facilitator and the Chair participated in another unrecorded teleconference. The Chair reviewed the issues dealt with at that teleconference in her September 10 letter. She set out the parties' consensus that they were at the end of stage one; that a meeting would be held on September 17; that the facilitator would meet with her in advance to arrange the meeting room and brief her; that the facilitator would facilitate the meeting; that the parties could make submissions on any agreement reached and on the status of the issues related to Ms. Gavel's complaint and that the Chair could seek any clarification required.

[8] The meeting proceeded on September 17. During that meeting, the facilitator confirmed that the restorative board of inquiry process had been followed and that an agreement had been reached on all issues. For the purpose of obtaining the Chair's approval of the settlement, some participants pointed out how the agreement met the public interest. The Chair asked if the parties were satisfied with the reparations provided for in the agreement. She made it clear to the parties that they should feel ownership of the restorative process and that they had the right to discuss the issues raised by the complaint and any proposed resolution:

> **THE CHAIR**: Yeah. I'd like them to speak to that and I think it's really important, the restorative model for No. 1, the parties feel ownership within the process and especially in the stage 1 process to feel free to have open dialogue and discussion about tentative resolutions or personal issues that -- or personal feelings or impact that the complaint has arisen or has arisen in the course of the complaint.

> And it's important that people feel that they're part of the process and were heard in the process. So I think that's a part of the model and it's important that I understand it or ensure that the parties feel that they have been heard and that they have been □ they're satisfied with the agreement and the terms and conditions arrived at within the stage 1 process.

[9] The facilitator then asked the parties if they agreed with the settlement:

> **MS. LLEWELLYN**: So then with your permission I'll invite the parties to □
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> **THE CHAIR**: Yes, please do.
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> **MS. LLEWELLYN**: So the question is have you felt heard in the process, are you in agreement with the agreement and I might add that given that as we've discussed it, it reflects a plan forward, are you committed to supporting that plan forward and playing a constructive role in seeing it implemented in a good way?
>
> And you can make comment on that or just indicate how you're in agreement by saying yes.

[10] Everyone present indicated they were in agreement, including Ms. Gavel and her husband, Mr. Cooper:

> **MR. COOPER**: Yes, I'm in agreement.
>
> **MS. GAVEL**: And I think this is a plan to move forward.

[11] Ms. Gavel and the Province signed the written Restorative Agreement on September 17. The Commission also signed it.

[12] Two months later, on November 21, 2012, in response to an email from Commission counsel seeking her consent to a draft order to be issued by the Chair, as part of the Chair's obligation under s. 34(5) of the **Act** to report the settlement to the Commission, Ms. Gavel indicated for the first time that she was concerned with the restorative process followed, she was "not prepared to agree" to the settlement and wanted to proceed with a traditional board of inquiry unless her concerns were met.

[13] The Chair responded on November 22, 2012 stating: her understanding that Ms. Gavel was aware of her ability to engage independent legal counsel throughout as a result of their teleconference of July 11; that the parties had agreed in writing to follow the restorative board of inquiry model and that it had been followed; that an agreement had been reached at the September 17 meeting; that the only

remaining issue was for her to fulfill her reporting obligation to the Commission and that, therefore, it was not appropriate that a formal hearing be held.

[14] Emails were exchanged among the parties and the Chair. On December 11, 2012, a lengthy email was sent by Ms. Gavel providing details of her concerns. She stated she felt the agreement was unfair because: her disability was not accommodated as her clinical psychologist was not present during the circles once a scheduling problem prevented her from attending the first circle; the restorative agreement was drafted by the facilitator shortly before the September 17 meeting rather than in a circle; she felt pressured to sign the agreement because the others were in favour of it and she didn't know what her alternatives were and she had no opportunity in advance of the September 17 meeting to prepare and provide written materials and evidence indicating she was not in agreement. She also indicated she could not afford a lawyer and that she had been told that Commission counsel was her lawyer.

[15] On January 2, 2013 the Chair sent a letter to the parties indicating she would fully consider their arguments before making her decision.

[16] Further emails followed. By email dated February 21, 2013 the Chair indicated she did not think there should be a formal board of inquiry because of the agreement the parties reached on September 17 and that this agreement was in the public interest. Despite these comments, she stated that she was open to hearing final oral submissions from the parties before making her decision and asked that a teleconference be arranged for this purpose.

[17] On March 7, 2013 the Chair again indicated that she would permit further oral submissions by the parties at the teleconference.

[18] The teleconference was scheduled for April 24, 2013. On April 19 Ms. Gavel wrote the Chair asking that she recuse herself on the basis that there was a reasonable apprehension of bias.

[19] The teleconference proceeded on April 24 with all parties participating. Ms. Gavel's lawyer also participated. On May 6, 2013 the Chair issued the order and decision under appeal. Her decision states in part:

> …I have decided to conclude the inquiry after reviewing the Restorative Agreement dated September 17, 2012 (hereinafter "Restorative Agreement"), presented by the parties and after considering the public interest. And upon consideration of further written and verbal submissions by Ms. Gavel, represented

> by Claire Milton, Solicitor for Ms. Gavel for the purpose of the teleconference only, and all parties to the Restorative Agreement in the teleconference held on Wednesday, April 24, 2013, as requested by Ms. Gavel. During such teleconference and by written submissions from Ms. Gavel and her counsel Claire Milton in the course of the teleconference, Ms. Gavel raised issues of bias on behalf of the Restorative Board of Inquiry Chair, Ms. Gavel's misunderstanding that Lisa Teryl on behalf of the Human Rights Commission was representing the Human Rights Commission in presenting the case of alleged discrimination and not Ms. Gavel's independent legal interests. Additionally, Ms. Gavel indicated her disagreement with the Restorative Process and Restorative Agreement duly previously consented to by Ms. Gavel and all parties in writing and on record at the end of the Stage 1 process and the beginning of the Stage 2 process.
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> **Upon it being clear that Ms. Gavel was advised of her right to be represented by independent counsel during the course of this proceeding, and there being no prima facie evidence of apprehension of bias on behalf of the Board of Inquiry Chair by representation or otherwise, and the matter proceeding by agreed upon Restorative Board of Inquiry protocol related to resolving this matter by Restorative Board of Inquiry, and such terms of agreement being duly recorded at the end of the Stage 1 of the proceeding held in [sic] Monday, September 17, 2012** and duly affirmed at the beginning of the Stage 2 of the Restorative process.
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> ...
>
> …It appears the settlement reflects the principal objectives of the *Human Rights Act* in educating persons about the fundamental importance of human rights, educating on the values and purposes of human rights, and finally, in settling complaints as the preferred means of resolving human rights disputes that occur from time to time.
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> …
>
> Finally, the public interest has been considered and served by resolving this complaint in the manner settled by the parties. I see no further reason to continue the inquiry. [emphasis added]

Issues

[20] Ms. Gavel sets out thirteen grounds of appeal in her factum. In my opinion, her appeal can be dealt with by deciding the following issues:

1. Assuming Ms. Gavel was not denied procedural fairness, did the Chair err in finding the parties settled Ms. Gavel's complaint on September 17 and that she was bound by it?
2. Assuming procedural fairness, did the Chair err in concluding the settlement reached was in the public interest?

3. Assuming procedural fairness, did the Chair err in the manner in which she "reported" the terms of settlement pursuant to s. 34(5) of the **Act**?

4. Was Ms. Gavel denied procedural fairness in the way the Chair conducted the board of inquiry?

Standard of Review

[21] Section 36(1) of the **Nova Scotia Human Rights Act**, R.S.N.S. 1989, c. 214 ("the **Act**") provides for an appeal to this Court only on a question of law:

> 36 (1) Any party to a hearing before a board of inquiry may appeal from the decision or order of the board to the Nova Scotia Court of Appeal **on a question of law** in accordance with the rules of court. [emphasis added]

[22] Taking this into account, this Court previously determined the standard of review to be applied to appeals from Boards of Inquiry appointed under the **Act**. In **The Nova Scotia Construction Safety Association v. Nova Scotia (Human Rights Commission)**, 2006 NSCA 63, the Court states:

> 49 Applying a pragmatic and functional approach to these four factors leads me to conclude that the legislature intended substantial deference be accorded to the Board's findings on questions of fact. However, the legislature has demonstrated an equally clear intent not to insulate the Board's decisions on legal issues, or other such matters concerning statutory interpretation from judicial review. As already seen, s. 36(1) explicitly permits appeals to this court on questions of law.
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> 50 Accordingly, different aspects of the Board's decision in this case will be subject to different standards of review. If the nature of the problem is a strict matter of law, or statutory interpretation, the standard of review will be one of correctness. If, on the other hand, the issue arises as a result of the Board's findings of fact, I will apply a standard of review of reasonableness. If the issue triggers a question of mixed fact and law, my analysis will call for greater deference if the question is fact-intensive, and less deference if it is law-intensive. Finally, if the issue concerns the Board's application of law to its findings of fact, I will apply a reasonableness standard of review. **University of British Columbia v. Berg**, [1993] 2 S.C.R. 353; and **Mossop**, *supra*.

[23] The reasonableness standard of review requires us to read the Chair's reasons together with the outcome to determine whether the result falls within a

range of possible acceptable outcomes; **Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)**, 2011 SCC 62.

[24] With respect to procedural fairness, this Court gives no deference. We make our own assessment of whether the Chair acted fairly taking into account the provisions of the **Act**, the nature of the decision she was called upon to make and the importance of the decision to the parties; **Communications, Energy and Paperworkers Union of Canada, Local 141 v. Bowater Mersey Paper Co. Ltd.**, 2010 NSCA 19.

[25] Ms. Gavel's factum contains a number of factual assertions that are not contained in the Record. I have not considered these assertions in reaching my decision. Her factum also treats some statements contained in the Record as if they were facts found by the tribunal. Many of these statements were untested allegations that were not found to be facts by the Chair. I have considered them in this light.

Analysis

Assuming Ms. Gavel was not denied procedural fairness, did the Chair err in finding the parties settled Ms. Gavel's complaint on September 17 and that she was bound by it?

[26] The first issue is whether, assuming procedural fairness, the Chair erred in finding the parties settled Ms. Gavel's complaint on September 17 and that she was bound by it?

[27] What constitutes a binding agreement is a question of law. However, the Chair had to apply that law to the particular facts before her. This exercise was a question of mixed fact and law which was fact-intensive. I will review her decision on a standard of reasonableness. Her findings of fact are not appealable unless they amount to an error of law, for instance if there was no evidence to support her findings or if she disregarded, overlooked or misunderstood the relevant evidence: **P.S.S. Professional Salon Services Inc. v. Saskatchewan (Human Rights Commission**, 2007 SKCA 149, ¶68, 70.

[28] Ms. Gavel's first argument is that the Chair erred in finding there was an agreement reached on September 17 because she did not agree to anything.

[29] The transcript of the September 17 meeting indicates otherwise. It shows that Ms. Gavel and her husband agreed a settlement had been reached (see ¶ 10 above). They indicated this after the Chair made it clear she wanted the parties "to feel free to have open dialogue and discussion about tentative resolutions" and that she wanted to ensure "that the parties feel that they have been heard and that … they're satisfied with the agreement and the terms and conditions arrived at within the stage 1 process" (see ¶ 8 above). Ms. Gavel also signed the written Restorative Agreement on the same date. The Chair was entitled to rely on Ms. Gavel's verbal indication that a settlement had been reached and on the signed agreement.

[30] In light of this, the Chair's conclusion that an agreement was reached on September 17 was reasonable.

[31] Ms. Gavel's alternative argument is that the Chair erred in finding the agreement reached on September 17 was binding on her after she made her concerns known in December that she was not aware of her ability to retain counsel and that the restorative board of inquiry process was not followed. She does not argue that the agreement was invalid due to mistake, misrepresentation, fraud or illegality.

[32] The Chair dealt with Ms. Gavel's concerns in her emails and in her final decision. In her final decision she indicates she considered the parties' written and verbal submissions that were provided to her between November and the final April 24 teleconference.

[33] After considering these arguments, she found as a fact that Ms. Gavel was "advised of her right to be represented by independent counsel during the course of this proceeding". The Chair had participated in the July 11 teleconference where she indicated this was made clear. Ms. Gavel's knowledge of this right is supported by her own admission that she attempted to engage a lawyer shortly before the September 17 meeting and by Commission counsel's December 13, 2012 letter.

[34] The Chair also found as a fact that the restorative board of inquiry process the parties had agreed to in writing was followed. She had participated in several steps of that process and the facilitator had confirmed at the commencement of the September 17 meeting that the process was followed, which Ms. Gavel did not deny at that time.

[35] These findings of facts do not amount to errors of law. There was evidence supporting them and the Chair did not disregard, overlook or misunderstand the evidence.

[36] There are strong public policy reasons for giving effect to settlement agreements signed by the parties. Not only the respondents, but the administration of justice in general would be prejudiced by disregard of settlement agreements absent compelling reasons; **King v. Ontario (Minister of Health and Long-Term Care)**, [2011] OHRTD No. 2227.

[37] In light of the Chair's participation in several steps in the process, her findings of fact and the arguments before her, I am satisfied her conclusion that the September 17 agreement was binding on Ms. Gavel was reasonable.

Assuming procedural fairness, did the Chair err in concluding that the settlement was in the public interest?

[38] The second issue, assuming procedural fairness, is whether the Chair erred in concluding that the settlement agreed to was in the public interest. The term "public interest" is an open-ended term. A decision maker has substantial discretion in determining what is in the public interest in any given context; **R. v. Morales**, [1992] 3 SCR 711.

[39] Ms. Gavel argues the Chair erred in concluding the settlement was in the public interest because it is not in the public interest to hold her to an agreement arrived at without procedural fairness. As I will discuss in relation to the last issue, I am satisfied the process followed was procedurally fair. Accordingly, this argument fails.

[40] The record indicates the Chair considered the public interest. Her determination that the agreement was in the public interest is reasonable. The agreement includes provisions for consultation, training and references for Ms. Gavel, an internal review of Ms. Gavel's employment concerns to see if improvement can be made, preparation of a training module for education purposes and preparation of an employee disability guide.

Assuming procedural fairness, did the Chair err in the manner in which she "reported" the terms of settlement pursuant to s. 34(5)?

[41] The third issue, again assuming procedural fairness, is whether the Chair erred in the manner in which she "reported" the terms of settlement pursuant to s. 34(5). Section 34(5) provides:

> (5) Where the complaint referred to a board of inquiry is settled by agreement among all parties, the board shall report the terms of settlement in its decision with any comment the board deems appropriate.

[42] This section gives significant leeway to the Chair in terms of how she reports the settlement. The manner in which the Chair reported the settlement in this case, by written decision, an order and a copy of the Restorative Agreement, falls well within what is reasonable, even though some aspects of the settlement were not released to the media at the time, in order to try to prevent certain aspects of the personal remedy being rendered potentially ineffective.

Procedural Fairness

[43] The final issue is whether Ms. Gavel was denied procedural fairness in the way the Chair conducted the board of inquiry. Ms. Gavel argues that she was denied procedural fairness in a number of ways.

1 Bias

[44] Ms. Gavel argues the Chair's actions give rise to a reasonable apprehension of bias. She argues this is evident from the Chair's reference to a tentative agreement and her request for comments on its terms at the September 17 meeting, prior to Ms. Gavel indicating she agreed with the settlement.

[45] She also argues the Chair's emails of November 22, February 21 and March 7 give rise to a reasonable apprehension of bias because they indicate she made up her mind that Ms. Gavel had been advised of her ability to engage independent legal counsel, that the restorative board of inquiry process the parties agreed to had been followed and that an agreement had been reached by the parties on September 17, without fully hearing from her.

[46] The test to be applied to determine whether there is a reasonable apprehension of bias is set out in **Miglin v. Miglin**, [2003] 1SCR 303:

> 26 The appropriate test for reasonable apprehension of bias is well established. The test, as cited by Abella J.A., is whether a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that the judge's conduct gives rise to a reasonable apprehension of bias: *R. v. S. (R.D.),* [1997] 3 S.C.R. 484, at para. 111, per Cory J.; *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at pp. 394-95, *per* de Grandpré J. A finding of real or perceived bias requires more than the allegation. The onus rests with the person who is alleging its existence (*S. (R.D.),* at para. 114). As stated by Abella J.A., the assessment is difficult and requires a careful and thorough examination of the proceeding. The record must be considered in its entirety to determine the cumulative effect of any transgressions or improprieties. …

[47] The Chair's questions about an agreement and its terms at the September 17 meeting do not give rise to a reasonable apprehension of bias. It was to be expected that she would ask whether the parties had reached an agreement given that this was discussed at the teleconference on September 10. The Chair was simply trying to determine the status of the issues related to the complaint in order to know how to proceed. She was not pressuring the parties to agree. The Chair made it clear at that meeting that the parties could discuss and be heard on the process and on their respective positions.

[48] There is no merit to Ms. Gavel's argument that the Chair's November 22, February 21 and March 7 emails give rise to a reasonable apprehension of bias. In the first two of those emails the Chair did express her thoughts on Ms. Gavel's concerns, but in her January 2 letter and in her February 21 and March 7 emails she indicated she would permit the parties to make further arguments that she would consider in reaching her final decision. Those submissions were made by the parties at the April 24 teleconference, in which Ms. Gavel's lawyer participated. Following this teleconference the Chair issued her decision in which she specifically states that she considered the further written and verbal submissions made on Ms. Gavel's behalf and refers to them (see ¶19).

[49] In light of this, I am satisfied "a reasonable and an informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that" the Chair's conduct does not give rise to a reasonable apprehension of bias.

2 Right to be Heard

[50] Ms. Gavel also argues she was denied procedural fairness when the Chair failed to give her the right to be heard at the September 17 meeting and when the Chair failed to order the formal hearing she requested in November.

[51] There is no merit to this argument. The transcript of the September 17 meeting indicates the Chair made it clear she welcomed comments from all parties on the process followed, on their respective positions and on any agreement. Ms. Gavel had a responsibility to speak up at that time if there was something she did not agree with. She did not. The Chair is not responsible for Ms. Gavel's failure to seize that opportunity.

[52] With respect to the Chair's refusal to order a formal board of inquiry in November, once the Chair reasonably concluded, as she did, that the parties had reached a settlement that was binding on Ms. Gavel, there was nothing left to be referred to an inquiry. The complaint the Chair was appointed to investigate was resolved. Ms. Gavel was not entitled to be heard further.

3 Aware of Ability to Engage Independent Legal Counsel

[53] Ms. Gavel argues she was deprived of procedural fairness because she was not aware she could hire independent legal counsel to represent her. As set out earlier in ¶33, the Chair found as a fact that Ms. Gavel was aware throughout the process of her ability to engage independent counsel. In light of this finding of fact by the Chair, there is no merit to this argument.

4 Speaking to Other Parties in Her Absence

[54] Ms. Gavel argues the Chair denied her procedural fairness by not replying to her letter in which she asked the Chair if she had spoken with the other parties in her absence and by speaking to them in her absence. The Chair was under no obligation to reply to Ms. Gavel's letter asking if she had inappropriately spoken to the other parties in her absence. Ms. Gavel's suspicion that the Chair did speak with others is based on the Chair's comments concerning an agreement at the September 17 meeting. As indicated (¶47), the possibility of an agreement had been discussed during the September 10 teleconference. In addition, the facilitator indicated an agreement had been reached before the Chair mentioned it. In these circumstances the Chair's questions at the meeting about an agreement were to be

expected. Nothing in the transcript of the September 17 meeting supports Ms. Gavel's belief that the Chair spoke with some of the parties in her absence.

5 Reasons

[55] Ms. Gavel argues she was denied procedural fairness because the Chair failed to provide adequate reasons for her decisions. She argues the Chair should have provided detailed reasons as to: why she found Ms. Gavel was aware of her ability to hire her own lawyer; why she found the restorative board of inquiry process was followed; why she found an agreement was reached on September 17 and why she did not recuse herself.

[56] The purpose of reasons is to allow the parties and a reviewing court to understand the basis of a decision. Here the bases for the Chair's decisions are evident. She participated in the July 11 teleconference during which she indicated Ms. Gavel was told of her ability to engage her own lawyer. She participated in parts of the restorative board of inquiry process and had confirmation at the September 17 meeting that the process had been followed, which Ms. Gavel did not dispute at the time. She participated in the September 17 meeting and knew the parties confirmed that an agreement had been reached. She had a copy of the written Restorative Agreement, signed by the parties.

[57] The Chair stated there was no factual basis on which to ground a reasonable apprehension of bias.

[58] Given the nature of the inquiry, I am satisfied the appellant was not deprived of her right to procedural fairness by lack of reasons.

6 Function of Restorative Justice Facilitator

[59] Ms. Gavel also argues she was denied procedural fairness because of the manner in which the Chair allowed the restorative justice facilitator to participate in the process when she was not a party. She points to the facilitator's involvement at the September 17 meeting where she took the lead and indicated to the Chair that an agreement had been reached when she had no standing.

[60] The Record indicates the facilitator played the role anticipated by the process to which the parties agreed. There was nothing procedurally unfair in the role she played.

[61] None of Ms. Gavel's arguments indicate she was denied procedural fairness in the manner the board of inquiry was conducted.

[62] I would dismiss the appeal without costs. None were sought.

Hamilton, J.A.

Concurred in:

Fichaud, J.A.

Scanlan, J.A.