

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *Coates v. Northwoodcare Incorporated*, 2005 NSSC 119

Date: 20050518

Docket: S.H. 169512

Registry: Halifax

Between:

Kimberley Coates

Plaintiff

v.

Northwoodcare Incorporated

Defendant

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Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: April 26, 27, 2005, in Halifax, Nova Scotia

Subject: Wrongful Dismissal

Summary: Coates entered the employment of Northwood as Program Manager, Nursing Services, August 21, 2000 and dismissed November 30, 2000.

Issues: Coates motion to tender discovery evidence of Northwood Manager pursuant to CPR 18.14(1)(b).

On argument Manager out of jurisdiction unavailable to give evidence at trial not established (*Horne v. Industrial Estates Limited* (1996), 152 N.S.R. (2d) 380).

Second argument prerequisites of CPR met - accepted with reservations due to Court of Appeal decision in *M.A. Hanna Co. v. Sydney Steel Corp.* (N.S.C.A.) (1993), 126 N.S.R. (2d) 155.

Object of Rules better met by admitting all relevant evidence. No absolute or direct prohibition in C.P.R. 18 requiring manager to be in employ of corporation at time of discovery. Northwood Manager hired, determined terms of employment and fired Ms. Coates and restricting ability of plaintiff to utilize her discovery post her departure from employment at Northwood would confer a benefit on Northwood. The corporation retains the capacity to address authority issue.

Issues:

Issue 1 Was the contract between Ms. Coates and Northwood a fixed-term contract?

Result: Answered in the affirmative - three year fixed-term contract established.

Issue 2 Was Ms. Coates subject to a probationary period?

Result: Answered in the negative - no probationary period in contract.

Issue 3 If Ms. Coates' contract is not a fixed-term contract to what amount of reasonable notice would she be entitled if successful in her claim for wrongful dismissal?

Result: Addressed by determination of Issue 1.

Issue 4 Is Ms. Coates entitled to damages for bad faith conduct in the manner of termination of her employment?

Northwood dismissed Coates late in afternoon after fellow employees asked to leave early. Coates escorted by security on departure. Nothing in manner of dismissal warrants damages. Suggestion that Ms. Coates ought to have been escorted on departure by person who fired her not practical as such would more likely give rise to opportunity for embarrassment and possible confrontation.

Result: No damages established.

Issue 5 Is Ms. Coates entitled to any additional compensation for aggravated or punitive damages?

Result: Facts do not establish any entitlement.

Damages:

Ms. Coates claimed damages \$130,952.00 including maternity leave top-up from Northwood (\$11,068.00), one-half cost of Masters program (\$19,000.00) and punitive/aggravated damages of \$10,000.00.

Evidence reviewed - no entitlement for damages established under these headings.

Result: Damages allowed for wrongful dismissal in the amount of \$45,741.00 plus pre-judgment interest with counsel entitled to be heard on costs.