Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2021 CHRT 42
Date: December 1, 2021
File No.: T2448/0520

Between:

Robert McIlvenna

Complainant

- and -

Bank of Nova Scotia

Respondent

Ruling

Member(s): Edward P. Lustig

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I. Background:

[1] This is a ruling on a preliminary motion by the Respondent, Bank of Nova Scotia ("BNS") that the Tribunal lacks jurisdiction to hear the complaint in this matter. The Complainant Robert McIlvenna ("Robert") and his spouse Jocelyn McIlvenna ("Jocelyn") had a banking relationship with BNS, through a line of credit and a loan secured by a mortgage on a house owned jointly by them at 4032 Noel Street Val Therese, Ontario (the "home"). BNS submits that Robert lacks standing to commence the complaint on behalf of his son Ryan McIlvenna ("Ryan") and his daughter in law Stacey McIlvenna ("Stacey") who with their children were the occupants of the home but had no banking or other relationship with BNS and hence were not victims of discrimination by BNS when it denied a request by Robert for an increase in the line of credit to provide for renovations to the home and called in the existing loan.

[2] The complaint was filed on August 23, 2010 by Robert in his name and seeks remedies on behalf of himself, Jocelyn, Ryan and Stacey. It alleges that BNS engaged in a discriminatory practice, contrary to section 5 of the *Canadian Human Rights Act* (CHRA), by treating the McIlvennas in an adverse differential manner in the provision of services customarily available to the general public, on the ground of disability, when it denied Robert's request for an increase in his line of credit and demanded immediate repayment of Robert and Jocelyn's mortgage. The complaint alleges that BNS knew that Ryan and Stacey were the occupants of the home and that the denial of Robert's request took place after BNS became aware that the renovations to the home, requiring the increase to the line of credit, were being done by Ryan to grow and store cannabis there for personal consumption by him and Stacey for medicinal purposes to treat their medical conditions, under legal licenses issued by Health Canada. The complaint does not allege that Robert or Jocelyn had a disability or any other protected characteristic.

[3] BNS admits that providing financing through lines of credit and loans to customers for building renovations secured by mortgages is a service under section 5 of the CHRA. It also admits that it denied the request for the increase to the line of credit from $10,800 to $75,000 and that it called in the existing loan and commenced power of sale proceedings

under the mortgage. However, it denies the allegation that its decision to deny Robert's request was because of the growing or storing of cannabis by Ryan at the home for medicinal purposes to treat his and Stacey's alleged medical conditions or that their alleged disabilities were a factor in its decision. Instead, it contends that its decision was made because Robert, as the owner of the home and its customer, caused or allowed the home to depreciate in value such that its "as is" value, as established by an independent appraisal, indicated that it was worth $130,000 which was less than the outstanding balance of the mortgage and line of credit which was $138,000 and that Robert was in breach of the terms of the mortgage. Further, BNS says that the exterior façade of the home had been removed exposing the home to potential further deterioration by the elements and that Robert had run out of money with only 40% of the renovations complete.

[4] The Federal Court referred this case directly to the Tribunal on December 17, 2019 in its decision in 2019 FC 1610. In that decision the Federal Court allowed the judicial review application of Robert after the Commission, contrary to its own investigator's recommendation that the complaint be referred to the Tribunal for an inquiry, dismissed the complaint on the basis that the evidence did not establish that the cultivation of cannabis was the reason for BNS calling in the loan.

II. Issue:

[5] The sole issue in this preliminary motion is whether the Tribunal has jurisdiction to hear the complaint in this matter.

III. Legal Framework:

[6] Sections 3(1), 5, 40(1) and (2), 50(2) and 53(2)(b)-(e) and 53(3) of the CHRA are relevant to this matter and are reproduced with headings below as follows:

> Prohibited grounds of discrimination
>
> 3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic

characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Denial of good, service, facility or accommodation

5 It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual,

on a prohibited ground of discrimination.

Complaints

40 (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.

Consent of victim

40 (2) If a complaint is made by someone other than the individual who is alleged to be the victim of the discriminatory practice to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents thereto.

Power to determine questions of law or fact

50 (2) In the course of hearing and determining any matter under inquiry, the member or panel may decide all questions of law or fact necessary to determining the matter.

Complaint substantiated

53 (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:

…

(b) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;

> (c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;
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> (d) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and
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> (e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.
>
> Special compensation
>
> 53 (3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

IV. Parties' positions:

A. BNS' position:

[7] In addition to the information in paragraphs 1 and 3 above, BNS submits that the Tribunal has jurisdiction to dismiss the complaint on a preliminary motion such as this, pursuant to section 50(2) of the CHRA, subject to the rules of natural justice and procedural fairness. It cites *Canada (Human Rights Commission) v. Canada (AG)*, 2012 FC 445 in support of this position. It argues that the right to dismiss a human rights complaint without a full hearing on the merits is not limited to cases involving abuse of process and that there is no exhaustive list of circumstances where it may be appropriate to do so. As the Federal Court stated: "In every case the Tribunal will have to consider the facts and issues raised by the complaint before it, and will have to identify the appropriate procedure to be followed so as to secure as informal and expeditious a hearing process as the requirements of natural justice and the rules of procedure allow."

[8] BNS submits that there was no adverse differentiation in relation to banking services to Ryan or Stacey under section 5 of the CHRA as Robert and Jocelyn were the owners of the home who were denied the banking services, not Ryan or Stacey, who had no banking

or other relationship with BNS. As such, it argues that even if there was consent to commence the complaint on their behalf under section 40(2) of the CHRA as alleged, neither Ryan or Stacey was a victim of discrimination within the meaning of that section in the absence of a relationship with the bank, despite allegedly having disabilities.

[9] BNS argues that by complaining that he has been discriminated as a result of the disability of Ryan and Stacey rather than himself, Robert is attempting to establish discrimination by association by asserting the rights of third parties who had no relationship with BNS and were not the targets of the decision of BNS to refuse to increase the line of credit and call in the loan. BNS contends that it is not reasonable to conclude that Ryan and Stacey were within the contemplation of the decision of the Bank and any alleged impact on them is not sufficiently direct and immediate to justify their qualification as victims.

[10] BNS cites *Benner v. Canada (Secretary of State)*, [1997] 1 SCR 358 ("*Benner*") at paras 77,78 and 79 for the proposition that that there is no general doctrine of "discrimination by association". *Benner* was a case involving a challenge of the *Citizenship Act* under section 15 of the *Canadian Charter of* Rights *and Freedoms* ("the *Charter*") on the basis of sex by an applicant born outside of Canada who claimed his rights were infringed by the legislation requiring him to apply for citizenship if his mother was a Canadian citizen but would be entitled automatically to citizenship at birth if his father was a Canadian citizen. In that case the Supreme Court held that Benner was the "primary target" of the sex-based discrimination mandated by the impugned legislation, which resulted in him having the requisite standing to challenge it as it was his rights that were being infringed not his mother's. BNS says that this and other subsequent cases that have applied the reasons in *Benner* support BNS' contention that Robert and Jocelyn are the "primary targets" of its provision or denial of a service. However, in this case BNS says that they are raising the alleged infringement of the rights of third parties (Ryan and Stacey) for their own benefit as the recipients of these services, which is contrary to *Benner*.

[11] BNS argues that while it provided and then denied banking services to Robert who had a contractual relationship with BNS as a customer but had no disability or other protected characteristic, there are no grounds for finding that BNS discriminated against Robert. Even if Ryan and Stacey had disabilities as alleged, the denial of the banking service

to Robert was not discriminatory to them as they were not denied a service in that they were not the customers of the bank and hence not the "primary targets" or victims of the denial of a service to Robert.

[12] BNS also cites the decision of the former Chair of the Tribunal Grant Sinclair in *Forward v. Canada (Minister of Citizenship and Immigration)*, 2008 CHRT 5 ("*Forward*") at paras 57-71. In *Forward* the Tribunal considered the principle in *Benner* under the context of the CHRA rather than the *Charter*. *Forward* involved the same provisions of the immigration statute that were in play in *Benner*, however, the complainants were two brothers who had applied for and been denied citizenship through their mother who was in the same situation as Mr. Benner but had been granted Canadian citizenship through her mother (their grand mother) only after her sons' birth and she was not the complainant in the case. The brothers application for citizenship was denied because even though by the time of their application their mother had become a Canadian citizen she was not a citizen at the time of their birth. The brothers argued that the provision of the immigration statute was discriminatory since had their mother not been subject to discrimination based on the sex of her Canadian mother she would have had citizenship automatically at birth rather than having to apply.

[13] The Tribunal in *Forward* held that the complainants were not the "primary targets" of the impugned legislation as they were essentially invoking the rights of their grandmother. The complainants raised the issue of the more expansive definition of "victim" set out in section 40(2) of the CHRA, than provided for by the *Charter*, which the Tribunal rejected. The Tribunal held that the brothers lacked standing even though that section allowed complainants to pursue remedies on behalf of other victimized persons since the brothers could not be said to be the "primary targets…nor the ones having the most direct interest" as that claim belonged to their mother who was not a complainant. The Tribunal held that unlike their mother the brothers "…were not directly affected by the impugned legislation, and since they do not claim a remedy for the benefit of an individual who is, the complainants do not possess the requisite standing to obtain relief under the CHRA".

[14] Following this rationale, BNS argues that the persons with the alleged disabilities, Ryan and Stacey, on whose behalf the complaint is brought by Robert are not the "primary

targets" of the services. Rather, Robert and Jocelyn are, as Ryan and Stacey have no direct nexus with the mortgage and BNS has no recourse against them in the case of breach of the terms of the mortgage. As such, there is no standing for Robert to bring the complaint on their behalf and no standing for himself as he has no disability or other protected characteristic.

B. Robert's position:

[15] Contrary to BNS' contention, Robert submits that the facts are that the cultivation of cannabis in the home, which was required to treat Ryan and Stacey's medical conditions under a legal licence issued by Health Canada, was a factor in BNS' decision to deny the increase in the line of credit and to call in the loan, thereby causing the McIlvenna family significant financial, emotional and social impacts as a result of this discriminatory practice by the Bank. Further, Robert claims that BNS was fully aware of the fact that the home was occupied by Ryan and Stacey who were making the renovations for the growing and storing of cannabis under the licence for medicinal purposes to treat their disabilities. As such, all of the family named in the complaint were victims and Robert has standing to bring the complaint in his own name and on behalf of the others, including Ryan and Stacey.

[16] Robert argues that standing under the CHRA is very broad and an individual's right to proceed with a complaint on behalf of other individuals who are victims of discrimination is expressly contemplated under section 40.

[17] Robert says that the question of who is a victim of discrimination entitled to compensation under the CHRA is fact-dependent and requires an assessment of evidence, particularly evidence in dispute, and thus should not be raised by way of this preliminary motion but should be determined at a hearing. The Tribunal has very limited authority to dismiss a complaint prior to a full hearing on a preliminary basis and this is not one of the cases where it should be done. Robert cites the same case as BNS in paragraph 7 above at paragraph 139 of the Federal Court decision to support the proposition that the power of the Tribunal to dismiss a case on a preliminary basis "must be exercised cautiously and then only in the clearest of cases".

[18] Robert submits that once a complaint is substantiated the remedial provisions of the CHRA at sections 53(2)(b)-(e) and 53(3) allow the Tribunal to award various forms of compensation to any "victim" of a discriminatory practice. It is trite that the CHRA is quasi-constitutional law that requires a broad, flexible and purposive interpretation. This interpretive approach must be applied when determining who may, on the facts of any given case, constitute a victim of discrimination under the CHRA. Accordingly, the Tribunal and the Federal Courts have taken a broad and remedial approach to who may constitute a victim under the Act as per *Canada (Attorney General) v. McKenna,* [1999] 1 FC 401 (FCA) at para 65.

[19] Robert cites several cases to illustrate his submission that by adopting this broad, interpretive approach a "victim" under the CHRA need not be the direct or intended "target" of a discriminatory rule or practice. In particular Robert cites the Federal Court of Appeal decision in *Singh (Re),* 1988 CanLII 8967, [1989] 1 FC 430 (FCA) [*"Singh"*] at paras 16, 17 and 20-22. In this case, involving a group of references to the Federal Court of Appeal, the complainants alleged that they had been denied the opportunity to obtain visitors' visas for or for the opportunity to sponsor relatives outside of Canada, because of national or ethnic origin, family status, marital status or age. The government refused to recognize the Canadian Human Rights Commission's jurisdiction to investigate complaints on the basis that the complainants were not victims of any discriminatory practice as opposed to the relatives unable to enter Canada on whose behalf the complainants brought the complaint. The Federal Court of Appeal noted that section 5(b) of the CHRA "seems to approach matters…without regard to the person to whom the services are or might be rendered." The Court went on to find that the complainants could constitute victims under the CHRA, notwithstanding the fact that they had not been prevented from entering Canada and were not the primary targets of an government decision. The Court found that a "victim" can be anyone sufficiently affected by the discriminatory practice.

[20] Robert also cites *Menghani v. Canada (Employment and Immigration Commission)*, 1992 CanLII 313 (CHRT) [*"Menghani"*] where the Tribunal affirmed and elaborated on the Court's ruling in *Singh*. Mr. Menghani was a Canadian citizen who filed a complaint concerning how his brother was treated during an application process for permanent

residency. At p 22 of the decision the Tribunal, following the Court's guidance in *Singh,* held that "…there may be more than one victim of a discriminatory practice…there may well be other persons who have been adversely affected or suffered consequences as a result of discriminatory acts directed against third parties and are entitled to seek relief under human rights legislation…Victim, therefore, simply means someone who has suffered the consequences of adverse differentiation whether direct or indirect".

[21] Robert argues that BNS has misconstrued *Benner* which is a *Charter* case not a CHRA case. Unlike the CHRA the *Charter* does not contain specific provisions allowing for a complaint to be presented by "any individual" and to compensate a "victim". Despite the difference, the analysis when properly understood actually supports Robert's position as the Court accepted that there was a sufficient nexus between the loss of benefit to Mr. Benner, and the prohibited ground of discrimination. The Court held that although the appellant was not the individual who possessed the protected characteristic, he was nonetheless most directly impacted by the discriminatory rule. Robert says that this is the same situation faced by himself and Jocelyn, who despite not being the individuals with a disability, were the "real target" of the denial of credit by BNS' policy, and the ones with the most direct interest in bringing the complaint of discrimination.

[22] Robert also distinguishes *Forward* from the case at hand and argues that the Tribunal simply found the connection between the grandsons and their grandmother was too remote, rather than requiring that complainants to identify one "primary target" of the discriminatory practice. The Tribunal found on the facts of that case that the complainants were not the ones directly impacted by the discriminatory rule and that their mother, who was not a complainant, would have had standing had she brought the complaint.

[23] Finally, Robert again refers to the emphasis of the Federal Court of Appeal in *Singh* that section 5 of the CHRA is "drafted without regard to the person to whom the services are or might be rendered." In other words, a respondent may be found to have engaged in adverse differential treatment of an individual even if it has not directly denied that individual a service. Section 5 is thus broad enough to contemplate that individuals in Ryan and Stacey's position may be victims under the CHRA. The absence of a formal contractual relationship between BNS and Ryan and Stacey does not mean that they could not have

been subjected to adverse differential treatment by BNS on the basis of their disabilities and there is no authority for the proposition that such a contractual relationship is necessary for standing. Ultimately, Robert argues that the question of whether any or all of the McIlvennas are victims of discrimination and entitled to compensation under the CHRA is “almost wholly one of fact” that needs to be determined only after a full hearing and assessment of all the evidence presented by the parties.

V. Decision:

[24] For the reasons that follow, I have decided that the Tribunal has the jurisdiction to hear the complaint and to decide the case based on the evidence adduced at a hearing on the merits.

VI. Analysis:

[25] It is noteworthy that, as mentioned above, the Federal Court in 2019 FC 1610 referred this case directly to the Tribunal for an inquiry. That decision followed two previous decisions in this case, first by the Federal Court of Appeal in 2014 FCA 203 and then by the Federal Court in 2017 FC 699. In both of those cases the Courts remitted the case back to the Commission for reconsideration after the Commission had twice previously dismissed the complaint. Although the Courts were not in any of the cases asked to consider the question of standing raised in this motion, given this history of the case I think it is important following the most recent decision of the Federal Court to refer the case to the Tribunal, to hold a hearing on the merits so that evidence can be presented and assessed by me, rather than by dismissing the case at this point on this preliminary motion.

[26] In reaching this conclusion, while I agree with BNS that I have the discretion to dismiss the case at this stage, I am choosing to exercise my discretion cautiously and not dismiss it at this stage as this is not, in my opinion, a clear case to do so. In particular, I feel that the key question in this motion is who, on the facts and pursuant to the law, is a victim of discrimination and entitled to compensation under the CHRA. In this regard, I am mindful that despite the filing of the Complaint, the Statements of Particulars and a Reply and the

submissions of the parties in this motion, there are critical facts related to this question that are in dispute and no affidavits were filed in this motion that would resolve the disputed facts at this stage. As such, I need to receive and assess the evidence at a hearing where I can make findings on the disputed facts and determine this question properly and fairly for both parties in accordance with the applicable law.

[27] Clearly, section 40 of the CHRA is drafted broadly and provides any individual or group of individuals who have reasonable grounds to believe that a discriminatory practice has occurred with the express right to file a complaint on their own behalf and or on behalf of other alleged victims, subject to obtaining the consent of the alleged other victims. Given the broad drafting of this section it would appear, subject to a determination of the facts in dispute, that Robert has the standing to initially file his complaint containing allegations of the occurrence of a discriminatory practice by BNS under section 5 of the CHRA on his own behalf and on behalf of his family members named. If the complaint is substantiated the Tribunal is empowered by sections 53(2)(b)-(e) and 53(3) to award various forms of compensation to any "victim" of the discriminatory practice.

[28] Further, section 5(b) of the CHRA has also been broadly worded and in the words of the Federal Court of Appeal in *Singh* "seems to approach matters…without regard to the person to whom the services are or might be rendered." There is no definition of who is the "victim" or "target" of a discriminatory practice under the CHRA. Nor does the CHRA prescribe, with any particularity, the requirements for a sufficient nexus or the boundaries thereof (such as by way of a contract) that must exist between a Respondent and a victim on behalf of whom a complaint is filed. The Federal Courts and the Tribunal have taken a broad and remedial view, based upon the facts of the particular case, of who may be a "victim" under the CHRA, which may not necessarily be the target of the impugned actions or the person directly impacted or within the contemplation of the party whose alleged discriminatory actions are the subject of the complaint.

[29] *Singh* and *Menghani* are both cases involving the CHRA and its more generous provisions in this regard than the *Charter,* under which *Benner* was decided, as there is nothing in the *Charter* that explicitly provides for the kind of representative proceeding on behalf of a third party victim as section 40 of the CHRA does.

[30] In *Singh* the Federal Court of Appeal held at paragraphs 16, 17, 20, 21 and 22 as follows:

> [16] The wording of our section 5 is also instructive. While paragraph (a) makes it a discriminatory practice to deny services, etc. to an individual on prohibited grounds, paragraph (b) seems to approach matters from the opposite direction, as it were, and without regard to the person to whom the services are or might be rendered. Thus it is a discriminatory practice
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> in the provision of . . . services . . . customarily available to the general public . . . to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.
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> [17] Restated in algebraic terms, it is a discriminatory practice for A, in providing services to B, to differentiate on prohibited grounds in relation to C. Or, in concrete terms, it would be a discriminatory practice for a policeman who, in providing traffic control services to the general public, treated one violator more harshly than another because of his national or racial origins. [See Gomez v. City of Edmonton (1982), 1982 CanLII 4845 (AB HRC), 3 C.H.R.R. 882.]
>
> [20] In my view, this argument is wholly untenable with regard to the complaints arising out of the refusal to accept sponsored applications for landing. Whatever may be the nature of a sponsor's interest, it is one which is expressly recognised in section 79 of the Immigration Act, 1976 and sections 4, 5 and 6 of the Immigration Regulations, 1978, SOR/78-172. It is furthermore an interest consistent with the objective stated in paragraph 3(c) of the Act:
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> (c) to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad.
>
> [21] The complaints allege a denial, on prohibited grounds, of the right of Canadian citizens and permanent residents of Canada to sponsor their relatives from abroad. The express principle underlying the Canadian Human Rights Act is stated in section 2 to be
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> . . . that every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have. . . .
>
> In my view, a person who, on prohibited grounds, is denied the opportunity to sponsor an application for landing is a "victim" within the meaning of the Act whether or not others may also be such victims.
>
> [22] I would, however, go a great deal further. The question as to who is the "victim" of an alleged discriminatory practice is almost wholly one of fact. Human rights legislation does not look so much to the intent of discriminatory

> practices as to their effect. [See Ontario Human Rights Commission v. Simpsons-Sears Ltd., 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, 64 N.R. 161, 23 D.L.R. (4th) 321, (sub nom. Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.) 7 C.H.R.R. D/3102.] That effect is by no means limited to the alleged "target" of the discrimination and it is entirely conceivable that a discriminatory practice may have consequences which are sufficiently direct and immediate to justify qualifying as a "victim" thereof persons who were never within the contemplation or intent of its author. Thus, even in the case of the denial of visitors' visas, it is by no means impossible that the complainants in Canada who were seeking to be visited by relatives from abroad should themselves be victims of discriminatory practices directed against such relatives. A simple example will illustrate the point: could it seriously be argued that a Canadian citizen who required a visit from a sibling for the purposes of obtaining a lifesaving organ transplant was not victimized by the refusal, on prohibited grounds, of a visitors' visa to that sibling?

[31] In Menghani the Tribunal, in commenting on the last quoted paragraph above from *Singh* held in part of paragraph 22 as follows:

> This decision makes it clear that there may be more than one victim of a discriminatory practice. The analysis is also in keeping with decisions in other human rights cases acknowledging that there may well be other persons who have been adversely affected or suffered consequences as a result of discriminatory acts directed against third parties and are entitled to seek relief under human rights legislation: see, for example, Tabar v. West End Construction (1984) 1984 CanLII 5080 (ON HRT), 6 C.H.R.R. D/2471 (Ontario Board of Inquiry); New Brunswick School District (No. 15) v. New Brunswick (1989) 1989 CanLII 208 (NB CA), 10 C.H.R.R. D/6426 (N.B.C.A.). Victim, therefore, simply means someone who has suffered the consequences of adverse differentiation whether direct or indirect. On this meaning, Jawahar may be the direct victim because of his status under the Immigration Act, or a victim indirectly because he suffered the consequences of an adverse discriminatory practice against his brother.
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> The passage from Singh case quoted above also suggests, however, that the alleged discrimination must have consequences which are sufficiently direct and immediate to justify qualifying as victims thereof persons who were never within the contemplation or intent of its author. This passage seems to put some boundaries on the limits of who can claim under human rights legislation that a discriminatory practice had an adverse effect upon them. This is crucial given the uncertainty of the Complainant's technical status as a sponsor within the meaning of the Immigration Act.

[32] It is admitted by BNS that Robert the bank’s customer was denied a service customarily available to the general public within the meaning of section 5 of the CHRA

when it decided to refuse the application for an increase in the line of credit to facilitate the renovations to the home occupied by his son Ryan and his daughter in law Stacey and their children and to call in the existing loan. It is common ground that neither Robert or Jocelyn had a disability or any other protected characteristic, but it is alleged by Robert that Ryan and Stacey had disabilities that necessitated them growing and storing cannabis for their personal use for their medical conditions under licence for these purposes issued by Health Canada. The key question is whether on the facts there is a sufficient nexus between Ryan and Stacey, and BNS to consider them to be victims of discrimination by BNS on the basis of its alleged adverse differentiation on the ground of disability caused by its decision to refuse the line of credit increase application of Robert and call in the loan, thereby entitling them to compensation as victims under the CHRA? In my opinion, this question about who is a victim under the CHRA is fact driven and, as mentioned above, at this point I don't have the facts to answer the question as there are critical facts that are in dispute between the parties that will require me to make findings on after first assessing the evidence presented at a hearing.

[33] Some, but not necessarily all of the facts that seem to be in dispute between the parties or require clarification for me to make findings that bear on the key question in this motion, include but may not be limited to the ones set out below in paragraph 34.

[34] The medical conditions of Ryan and Stacey that give rise to the allegations that they had disabilities; the relationship of Ryan and Stacey, as occupants of the home, with BNS at the time of the decision by BNS to refuse the request of Robert for an increase in the line of credit and to call in the existing loan; the knowledge of BNS about Ryan and Stacey's medical conditions at the time of its decision; the relationship between the renovations to the home and the alleged disabilities of Ryan and Stacey; the terms of the mortgage that were allegedly breached by Robert; the conditions at the home giving rise to the allegation that the value of the home was diminished; the policies of BNS at the time of the decision respecting financing homes where cannabis is grown and stored for use by occupants for medicinal purposes under a Health Canada licence; the impact on Ryan and Stacey of the decision of BNS.

VII. Order:

[35] The motion of BNS is dismissed.

Signed by

Edward P. Lustig
Tribunal Member(s)

Ottawa, Ontario
December 1, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2448/0520

Style of Cause: Robert McIlvenna v. Bank of Nova Scotia

Ruling of the Tribunal Dated: December 1, 2021

Date and Place of Hearing: October 27, 2021

By Zoom Videoconferencing

Appearances:

Andrew Astritis and Geoff Dunlop, for the Complainant

Anne K. Gallop and Travis Bertrand, for the Respondent