

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Keith Dawson

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Eskasoni Indian Band

Respondent

Decision

Member: J. Grant Sinclair

Date: June 17 2003

Citation: 2003 CHRT 22

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I. Facts

[1] Keith Dawson, the Complainant in this matter, filed a complaint with the Canadian Human Rights Commission dated February 27, 1996. In his complaint against the Eskasoni Indian Band, Mr. Dawson alleges that the Chief and Council of Eskasoni discriminated against him because of his race and colour (white) contrary to section 5 of the *Canadian Human Rights Act*, by denying him social assistance benefits because he is a non-Band member.

[2] At the beginning of the hearing, the parties filed an Agreed Statement of Facts with the Tribunal. According to this Statement, the following facts are agreed to:

- (i) Mr. Dawson is a white male, is not an Eskasoni Band member and is not eligible for membership because he is not a status Indian;
- (ii) Mr. Dawson lives on the Eskasoni Reserve with his wife, who is a status Indian and a Band member. He is entitled to live on the Reserve because of his marriage to his Indian spouse;
- (iii) Eskasoni administers a social assistance plan for eligible persons living on the Reserve under a DIAND/First Nations Funding Agreement covering the fiscal years 2003/2004 to 2007/2008. Similar funding agreements have been in place since 1987;
- (iv) Because he lives on the Reserve, Mr. Dawson is not eligible for provincial social assistance benefits;
- (v) In 1988, Mr. Dawson applied for social assistance benefits from Eskasoni. He was denied such benefits, because, as a matter of policy, Eskasoni does not give social assistance benefits to non-Band members;
- (vi) In 1996, Mr. Dawson again applied to Eskasoni for social assistance benefits following this Tribunal's decision in *MacNutt v. Shubenacadie Band*, [1995] C.H.R.D. No. 14, in which the Tribunal, dealing with a similar fact situation, decided that the denial of social assistance benefits to a non-status person contravened section 5 of the *Act*;
- (vii) Again Eskasoni denied his request because he was a non-Band member.

[3] At the hearing, Eskasoni conceded that Mr. Dawson is entitled to receive social assistance benefits. Eskasoni agreed to pay Mr. Dawson a lump sum, being the total amount of the social assistance benefits that he is entitled to from July 1998 to June 2, 2003, the date of the hearing, minus \$100 per month, for each month during this period, which Mr. Dawson estimated to be his earnings from various part time jobs. Eskasoni agreed to pay interest on this net amount for the same time period. Eskasoni also agreed to place Mr. Dawson on its list of those persons on the Reserve who receive social assistance benefits as of June 2, 2003.

[4] Finally, Eskasoni agreed to cease and desist its discriminatory practice of denying social assistance benefits to otherwise eligible persons, but who are non-Band members.

II. Decision

[5] The Commission and Mr. Dawson also asked, by way of remedy, that he be awarded \$20,000 for pain and suffering under section 53(2)(e) of the Act and \$20,000 for special compensation under section 53(3) of the Act, because of Eskasoni's alleged wilful and reckless actions.

[6] Prior to June 30, 1998, the maximum amount that the Tribunal could award for reckless or wilful conduct or hurt feelings or loss of self-respect was \$5,000. With the Bill S-5 amendments, effective June 30, 1998, the *Act* now provides a maximum of \$20,000 for pain and suffering and \$20,000 for reckless or wilful behaviour.

[7] Mr. Dawson filed his complaint in 1996. Nonetheless the Commission argues that the Bill S-5 amendments apply. Its submission is simply that the denial of the benefits by Eskasoni is a continuing and ongoing discriminatory practice. No other basis or legal authority was offered beyond this.

[8] I can not accept this argument. To do so would result in every legislative amendment automatically having retrospective effect so long as a complainant continues to suffer from a long past event. The analysis must be and is much more complex, as demonstrated in the

Tribunal's decision in *Nkwazi v. Correctional Service of Canada*, (2001) 39 C.H.R.R. D/237, at D/288-290. In this case, for the reasons set out therein, the Tribunal concluded that s. 53 as amended in 1998 has prospective application only. I agree with the Tribunal's reasons and in the result, the maximum that this Tribunal can award Mr. Dawson in this case is \$5,000 for special compensation.

[9] Mr. Dawson testified that in the period 1988 to 1996, he had only been able to find occasional part-time work. When his employment insurance benefits ran out, because he was not eligible for provincial social assistance, he applied to Eskasoni. In his evidence he said the denial by Eskasoni was devastating. He believed that he had been paying into the system for twenty years when he was working and he did not mind doing so because some day he may need social assistance. But when that day came, he was denied the benefits. In his view he was denied the "same basic rights as the rest of the citizens of this country are entitled to – why?" Mr. Dawson expressed these same sentiments in a letter he wrote to the Commission on October 8, 1996.

[10] According to the DIAND/First Nations Funding Agreement, in particular, Chapter 3, paragraph 3.01(e) of *the Native Community Services Guidelines, Policies and Procedures*, Mr. Dawson was clearly entitled to receive social assistance benefits from Eskasoni. Yet in 1988, the Band refused his application because he was a non-Band member. In 1996, even after the Tribunal had decided in the *MacNutt* case, that such a policy or practice was discriminatory, Eskasoni still refused him social assistance benefits.

[11] Eskasoni argued that it was awaiting the final appeal decision in *MacNutt* before reconsidering its policy of not giving social assistance to non-Band members. In my opinion, Eskasoni acted recklessly in continuing its practice in the face of a clear legal determination that such a practice was discriminatory. On the basis of all of the above evidence, I conclude that Mr. Dawson should be awarded the maximum of \$5,000 under section 53(3) of the pre-amendment *Act*.

III. Interest

[12] There remains only the question of the rate of interest payable on the net amount of the social assistance benefits. The Commission argued that interest should be payable at the Canada Savings Bond rate, in this case at the rate of 5%. Eskasoni argued for an interest rate of 2%. Neither party offered any evidence in support of their position.

[13] Under Rule 9(12) of the Tribunal *Interim Rules of Procedure*, unless ordered otherwise, interest is to be calculated according to the formula set out in the Rule. No submissions were made by either party that this Tribunal should order otherwise. Accordingly, interest shall be payable by Eskasoni on the net amount of social assistance payments to which Mr. Dawson is entitled to from July 1988 to June 2, 2003, in accordance with Rule 9(12).

IV. Order

[14] The Tribunal orders that:

1. Eskasoni cease and desist its discriminatory practice of denying social assistance benefits to otherwise eligible persons who reside on the Eskasoni Reserve, because they are non-Band members;
2. Eskasoni pay to Mr. Dawson a lump sum amount being the social assistance benefits he was entitled to from July 1988 to June 2, 2003, less \$100 per month for each month during that period, plus interest on this amount from July 1988 to June 2, 2003. Interest is to be calculated in accordance with Rule 9(12) of the Tribunal's *Interim Rules of Procedure*;
3. Eskasoni is to place Mr. Dawson on its list of social assistance recipients as of June 2, 2003, so that he will receive the social assistance payments that he is entitled to from that date forward;
4. Eskasoni shall pay Mr. Dawson the sum of \$5,000 as special compensation pursuant to s. 53(3) of the pre-amendment *Act*. No interest is payable on this award.

[15] If the parties are unable to agree as to the amount of the social assistance benefits payable to Mr. Dawson or the amount of interest thereon, they shall so advise the Tribunal no later than July 15, 2003. I retain jurisdiction to deal with these matters in the event of a failure of the parties to so agree.

Signed by

J. Grant Sinclair
Tribunal Member

Ottawa, Ontario
June 17, 2003

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T756/0603

Style of Cause: Keith Dawson v. Eskasoni Indian Band

Decision of the Tribunal Dated: June 17, 2003

Date and Place of Hearing: Sydney, Nova Scotia

Appearances:

Keith Dawson, for himself

Ikram Warsame, for the Canadian Human Rights Commission

Charles Broderick, for the Respondent