

Court cases -
Roberta K. Ryan vs. Town of North Spny

FOLDER NO. 3-14

W.S. 24

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PLEASE RETAIN ORIGINAL ORDER

IN THE MATTER of a Complaint
under the Human Rights Act by

ROBERTA R. RYAN

Complainant,

against

1. Chief of Police, Town of North Sydney
2. Police Committee, Town of North Sydney
3. Town of North Sydney

Respondents.

Finding

Pursuant to my appointment as a board of inquiry under section 25 of the Human Rights Act, I conducted a public inquiry into the above Complaint on September 3, 4 and 5, 1975 at Sydney, when all parties were given a full opportunity to present evidence and make representations.

T. R. Cooper appeared for the Nova Scotia Human Rights Commission, F. L. Elman for the North Sydney Chief of Police, and M. J. Ryan, Q. C. for the other Respondents named in the amended Complaint dated April 26, 1974. The Complainant was not represented by counsel but was personally present throughout the inquiry.

I raised a question at the outset of the inquiry regarding the status of the second Respondent, which I was informed is not a legal entity but comprises all of the members of the North Sydney Town Council and the Police Commission. Following

discussion with counsel on this matter, the inquiry proceeded on the understanding that no recommendation would be sought based on any individual legal responsibility on the part of the members of the Police Committee.

The amended Complaint alleged that on or about December 20, 1973, the Respondents discriminated against the Complainant in employment on the basis of sex, in violation of section 11A(1)(d) of the Human Rights Act, which reads in part as follows:

"11A(1) No person shall deny to, or discriminate against, an individual or class of individuals, because of the sex of the individual or class of individuals, in providing or refusing to provide any of the following:

* * *

(d) employment, conditions of employment or continuing employment, or the use of application forms or advertising for employment, unless there is a bona fide occupational qualification based on sex."

It was not suggested that any issue as to conditions of employment, use of application forms, advertising for employment, or occupational qualification based on sex was raised by the Complaint.

I was satisfied, based on discussion with counsel, that settlement of the Complaint could not be effected.

The issue for determination under section 26 of the Act, therefore, is whether a reasonable preponderance of the evidence supports the complaint that, as restated in the only relevant wording of section 11A(1)(d), the Respondents did

"discriminate against an individual...because of the sex of the individual...

in providing or refusing to provide...employment."

According to her birth certificate, the Complainant is a female who was born on April 10, 1953.

She enrolled for a police technology course at the Atlantic Police Academy, Charlottetown, on January 4, 1973, and graduated on December 14, 1973.

As part of her police course training, the Complainant was employed by the North Sydney Police Department during the months of June, July and August, 1973. She was engaged for this work by the Respondent Ronald Parsons, Chief of Police for the Town of North Sydney, under a general authorization from the Town Council to hire temporary additional constables.

Chief Parsons said that he found the Complainant's work satisfactory during her summer employment and he encouraged her to apply for permanent employment if the Town should call for applications in the future.

On November 1, 1973 the Complainant completed a printed application for employment form, indicating that she would work full time or part time, and mailed this form to Chief Parsons.

The Cape Breton Post edition of November 23, 1973 contained an advertisement that read as follows:

"TOWN OF NORTH SYDNEY

APPLICATIONS FOR TWO POLICEMEN

Will be received by the undersigned until 5 p.m.
Monday, December 10th, 1973.

Application forms may be obtained from the Chief
of Police Ron Parsons.

NECESSARY QUALIFICATIONS

- (a) Height 5'8"
- (b) Weight 160 pounds minimum
- (c) Grade 10 Pass Certificate
- (d) Age: Minimum 21 years, maximum 35 years
- (e) Remuneration - in accordance with
Police union contract
- (f) Successful candidate to provide Certificate
of Health

Clinton MacNeil, Town Clerk-Treasurer,
P. O. Box 370, North Sydney, N. S."

The height, weight, education and age qualifications shown in this advertisement corresponded with those set forth in North Sydney Police Regulations previously approved by the Town Council.

The Complainant was 20 years of age at all times material to her application and her application form showed her height as 5 feet, 6½ inches and her weight as 125 pounds.

After seeing the advertisement the Complainant called Chief Parsons, who acknowledged that he had received her application form dated November 1, 1973, and indicated that it would not be necessary for her to make a further application in response to the subsequent advertisement.

However, after returning to North Sydney following her graduation from the Police Academy on December 14, 1973, the Complainant filled out another application form at the Police Department in order to make sure it was on file and to show that she graduated.

A section headed "POLICE APPLICATIONS" appearing in the Minutes of a Special Town Council Meeting held on December 20, 1973, reads as follows:

"The discussion opened with Councillor Thomas Lee calling upon the Chief of Police for his recommendations. Ron Parsons, Chief of Police, explained that his first recommendation to Council with respect to the hiring of the new police officers would be Richard Barnes, second choice Adrian McLeod, and third choice Vincent Penny.

Councillor Duncan Winfield asked the Chief of Police why Miss Roberta Ryan was not considered due to the excellent job she performed this summer. Ron Parsons, Chief of Police, explained that we have a Union and he wouldn't feel like putting her on back shift where she would have to work patrol and for that reason he didn't consider her but if she would could be put on days he would certainly have recommended her.

He feels with the Union we will run into problems because some of the men have been on night shift for a number of years and if there is day shift available they will want it.

Councillor Collins expressed that he would like to see the schedule that would provide the coverage that Council has asked for and to ascertain how many men are required before he makes a decision.

MOVED- COUNCILLOR JOSPEH KEEPING
SECONDED: COUNCILLOR DUNCAN WINFIELD
MOTION: THAT WE HIRE PENNY, BARNES AND RYAN IN THAT ORDER

MOVED: COUNCILLOR CECIL BRAGG
SECONDED: COUNCILLOR WILFRED ORAM
AMENDMENT: THAT WE HIRE RYAN AND BARNES.

Councillor Astephen stressed that he would like to see a schedule that would give the needed coverage especially on Thursday, Friday and Saturday nights and also so we can determine how many men we should hire.

The Town Clerk passed out copies of the schedule as presented by the Chief of Police, Ron Parsons. On reviewing the schedule Deputy Mayor Roy Murray asked if the Chief of Police has taken into consideration that people will be of sick and on vacations. The Chief of Police informed the meeting that two spare policemen will have to be hired.

Councillor Collins asked Councillor Joseph Keeping is your meaning on your motion that we go along with what the Chief recommends and hire two people and third one on your motion would be the spare.

Councillor Keeping replied that is correct, that is why I named three - third one named. We have to have the third in order for it to work.'

Councillor Thomas Lee made an amendment to the amendment "That we hire Barnes and Penny.

A discussion took place on the wording of the Ad for the Cape Brecon Post. All agreed to accept that the term "policemen" would include Miss Ryan.

VOTING FOR THE AMENDMENT

Councillor Wilfred Oram
Councillor Martin Collins
Councillor Cecil Bragg

AGAINST THE AMENDMENT

Councillor Duncan Winfield
Councillor Thomas Lee
Councillor Joseph Keeping
Deputy Mayor Roy Murray

Councillor Stephen Astephen did not vote.

The Mayor ruled that everything be thrown out because there was confusion on how many men to hire and if the schedule presented would give adequate coverage and that we go back to the beginning and take it to the Police Committee to work out a schedule and then bring back to Council. All agreed to the Mayor's ruling."

Evidence was given at the hearing by Martin Collins who, as a member of the Police Committee and Council, was present at the meeting on December 20, 1973.

After reading the above-quoted portion of the minutes of that meeting, Mr. Collins agreed that they were an accurate account of the highlights of the meeting but indicated that not all of the discussion was recorded in the minutes.

When questioned further regarding what happened at the meeting, Mr. Collins said:

"At the meeting, when the Chief was called to give us the names of the three applicants, I was expecting to hear the names of Richard Barnes, Miss Ryan and Vincent Penny. When the names were called off, I was quite surprised that the name MacLeod, who was from Glace Bay, was included in the three, and Miss Ryan was not. The minutes go on to state pretty well what transpired after that; but there was a lot of questions and talk from the councillors that are not included in those minutes. I can't recall it verbatim....I recall that I, myself, questioned the

Chief, and that's not in the minutes."

Mr. Collins went on to indicate that, when questioned as to why he recommended a person from out of town instead of the Complainant, Chief Parsons gave the answer shown in the minutes.

Asked to explain his statement as to the recommendations that he was expecting, Mr. Collins said:

"Well, we needed three policemen. It was a good opportunity to hire at least a couple of trained people. Vince Penny was known by everybody, every councillor, and he was a fine young man. We felt that if we were going to hire three I shouldn't say we felt, I should say that I felt, that the first two should be the trained police officers, and Penny should be the third. There wasn't I don't think, any great preference one over the other, but, in my mind, I felt the trained police officers should be the first named."

It appears from other evidence of Mr. Collins that, when referring to "trained police officers", he had in mind Mr. Barnes and Miss Ryan as graduates of the Atlantic Police Academy, which Mr. Penny did not attend.

In further reference to discussion not recorded in the Minutes of the December 20, 1973 Council meeting, Mr. Collins stated:

"...when this thing became so confused, another thing that happened was that the Chief at that time stated, and it's not in the minutes, that he felt that he could get along with two. This is the reason, I think, that the amendment to the amendment came in, where Councillor Lee said that we would hire Barnes and Ryan, or Councillor Bragg."

It is not clear from this evidence whether Mr. Collins was referring here to the amendment in favour of hiring of Ryan and Barnes or to the further amendment in favour of hiring Barnes and Penny. Nor is it clear either from Mr. Collins' evidence, or from the minutes, which of the two amendments was put to a vote. If usual motion voting procedure was followed, the second amendment was the one which, according to the Minutes, 3 Councillors voted for, and 4 voted against, although Mr. Collins thought that he had "voted on the amendment, and not the amendment to the amendment", and the minutes do not show that the second amendment was seconded.

In any event, it would appear that the vote that was taken became completely ineffective by virtue of the accepted ruling of the Mayor "that everything be thrown out."

Asked why the original motion, which referred to the names Penny, Barnes and Ryan, was never voted on, Mr. Collins replied:

"It became obvious...to me...that the Chief didn't want to hire Miss Ryan. There was a considerable amount of discussion went on. I would say that most of the Council was upset. Then it became a preference between which Councillors would want which people hired. It was then that the Chief said that he felt that he could get along with twelve, or two men, rather than three."

Questioned concerning the basis for his feeling that Chief Parsons did not want the Complainant on the Force, Mr. Collins said:

"Well, it was quite obvious to me when he brought in an application from a person from Glace Bay because he had police training. Miss Ryan had the training that he had, and she wasn't on it. It became obvious to me that he didn't want Miss Ryan."

There was no other explanation given by Mr. Collins for this impression and there is no indication in the evidence that other Councillors present at the December 20, 1973 meeting had a similar impression.

The above-quoted extract from the minutes of that meeting records the following explanation by Chief Parsons of his failure to recommend the Complainant:

"Ron Parsons, Chief of Police, explained that we have a Union and he wouldn't feel like putting her on back shift where she would have to work patrol and for that reason he didn't consider her but if she could be put on days he would certainly have recommended her. He feels with the Union we will run into problems because some of the men have been on night shift for a number of years and if there is day shift available they will want it."

In his evidence at the inquiry, Chief Parsons expressed concern over the safety of the Complainant as well as the safety of the general public if she should work on the back shift (from midnight to 8 a.m.) alone, and it would appear from the minutes that he was concerned about seniority problems with the Union if the Complainant had been employed on day shift.

At the inquiry, Chief Parsons, after his attention had been drawn to his previous explanation, recorded in the Minutes as given in response to Councillor Winfield's question, stated:

"Yes, this was an answer to Mr. Winfield's question, I guess....I would have liked to have hired Roberta Ryan. I found her...a good worker. However, I also felt that she didn't meet the qualifications."

Chief Parsons was referring here to the qualifications set forth in the North Sydney Police Regulations and in the advertisement in the Cape Breton Post.

In her evidence, the Complainant had said at first that she did not know why she was not recommended by Chief Parsons, and that "no one seems to want to tell me why", but, on further questioning, stated that he had told her "we don't need a woman."

Asked whether he had ever said that to the Complainant or to anybody else, Chief Parsons testified:

"Under no circumstances could I possibly say that. As I said before, I had Roberta Ryan there regardless of what you think of me. I kind of admired her when she was there. Had she met the qualifications, as I said earlier, I would have recommended she come on the job."

Under cross-examination as to why he did not answer Councillor Winfield's question by indicating that the Complainant did not meet the qualifications, Chief Parsons said:

"Well, I had to give the Councillor an answer. I suppose that thought crossed my mind at the time, although I don't regret anything I said there. I feel that if I could have put her up, and then again, it would have been up to the Councillors to decide whether or not they would go along with my recommendations. I was about the only one recommending. Again, I would be going over and above the Council's Regulations that they had made up a few years earlier. As I said to Councillor Duncan Winfield, could I put her on day shift, I would have gladly recommended her. But this would only be a recommendation by me. This doesn't mean she would be accepted by Council."

Later in his evidence Chief Parsons said:

"I analyzed the situation to the best of my ability. Of course, I could see no way, could I recommend her. Had she met the qualifications, I would have gladly recommended her."

On further questioning by the board as to his reasons for not recommending the Complainant, Chief Parsons stated:

"My reason for not recommending her was because of qualifications. As I said before, I went as far as to say I would recommend her if I could put her up on day shift. Then, what I was really doing was just putting this out on a limb. Whether the Council would accept this or not I wouldn't know."

Questioned as to whether members of Council were interested in knowing whether or not the Complainant met the qualifications, he said:

"Well, I think it was obvious, of course, that Miss Ryan, you know, did not meet the qualifications by nor size and her height."

I have quoted extensively from the evidence of Chief Parsons regarding his reasons for not recommending the Complainant for permanent employment because of the importance of his recommendation in the hiring procedure and because of what may appear to be an inconsistency between the reason given at the meeting on December 20, 1973 and the chief reason emphasized by him at the inquiry.

However, after careful consideration of all of his evidence, I have concluded that there is no real inconsistency as to his reasons for not recommending the Complainant. It seems to me that the net effect of his evidence is that there were two obstacles in the way of her employment, namely:

- (1) difficulty in administering shift work consistent with union seniority requirements; and
- (2) failure to meet the requirements of the Police Regulations' qualifications, particularly those relating to minimum height and weight.

Since any departure from these requirements of the Regulations would have to be approved by Council, which had made such Regulations, Chief Parsons felt that it was beyond his authority to disregard them when making his recommendation to

Council, but felt that, apart from this obstacle, he would have recommended the Complainant if he had been able to use her on day shift.

Chief Parsons made it clear in his evidence that he had no objection to having a female officer on police duty. He said that he did not receive any pressure or complaints from the men on his Force, their wives or the union with respect to hiring a female officer. I accept his evidence to the effect that he didn't tell the Complainant that "we don't need a woman", and I can only conclude that she was mistaken in her rather vague recollection about that being said.

The Complainant also suggested that Mayor T. R. Young had made a similar statement sometime after the December 20 meeting and after she had found out that Penny and Barnes had been hired. Mayor Young, who did not take office until January 1, 1974, gave evidence concerning some discussions with the Complainant but denied making any such statement.

Following the December 20, 1973 meeting of Council, Chief Parsons worked out a new schedule but nothing further was done with respect to hiring additional police officers until a Town Council meeting held on January 24, 1974.

Counsel for the Respondents objected to the reception in evidence of the Minutes of that meeting on the ground that,

since the allegation of discrimination in the Complaint was directed to December 20, 1973, what transpired at a subsequent meeting of Council, which was attended by a different Mayor and different Council members, was not relevant.

Counsel for the Commission took the position that the alleged discrimination occurred on December 20, 1973 but that, in order to establish intention, it was necessary to go beyond that date.

I received the Minutes of the January 24, 1974 meeting subject to the objection on the understanding that I would rule later on relevancy and that counsel agreed that those minutes accurately reflected what took place at that meeting.

After consideration, I have concluded that those Minutes are sufficiently related to the subject matter of the Complaint to be relevant to my inquiry.

They contained the following information under the heading "RECOMMENDATION FROM POLICE COMMITTEE":

"Councillor William Bungay explained that the recommendation of the Police Committee is that we hire full time Richard Barnes - Grade XI Thompson High School, a graduate of the Police

Academy, Prince Edward Island, as a third class constable with a probationary period of six months and it could be effective February 1, 1974 if Mr. Barnes is available. The second recommendation of the Police Committee is that we hire a spare Policeman, Vincent James Penny, a graduate of Thompson High School.

MOVED: COUNCILLOR WILLIAM BUNGAY
SECONDED: COUNCILLOR CECIL BRAGG
MOTION: THAT CONSTABLE RICHARD BARNES BE HIRED AS A THIRD CLASS CONSTABLE WITH SIX MONTHS PROBATIONARY PERIOD.

<u>FOR</u>	<u>AGAINST</u>
Councillor Stephen Astephen	Councillor Duncan Winfield
Councillor Wilfred Oram	Councillor Joseph Keeping
Councillor Cecil Bragg	Deputy Mayor Roy Murray
Mayor T. R. Young	
Councillor William Bungay	

Councillor Norman MacAulay abstained from voting.

MOVED: COUNCILLOR WILLIAM BUNGAY
SECONDED: COUNCILLOR DUNCAN WINFIELD
MOTION: THAT VINCENT JAMES PENNY BE HIRED AS THE SPARE POLICEMAN. MOTION CARRIED.
UNANIMOUS."

There was very little evidence as to what transpired between the Council Meeting on December 20, 1973 and January 24, 1974, or as to what occurred at the meeting held on that date, beyond what is recorded in the Minutes.

The December 20, 1973 Council meeting was the last one attended by Mr. Collins, whose term expired at the end of that year, and no other Councillor gave evidence.

There was introduced in evidence by agreement of counsel a document dated December 22, 1973, typewritten on the letter-head of the North Sydney Police Department and entitled "APPLICANTS".

This document contained a listing of the names, addresses, marital status, height, weight and education of 12 persons, including Edgar Alexander MacLeod, Roberta Raphael Ryan, Vincent James Penny, and Richard Barnes, the four persons whose names were mentioned in the December 20, 1973 Minutes.

Chief Parsons was not sure when this document was prepared, but said that "it was mailed out to the Councillors to the best of my ability."

When asked why two full time police officers were not appointed at the January meeting of Council, Mayor Young explained that, after taking office in 1974, he wanted to maintain a hold fast position on expenditures and the hiring of new staff until there was time to reassess the Town's financial situation, with the result that the Police Committee recommended only the hiring of one full time police officer and one spare. Chief Parsons said that he never did get the other full time officer that he had wanted.

After reviewing all of the oral testimony and exhibits, I find that the Complaint is not supported by a reasonable preponderance of the evidence, within the meaning of section 26 of the Human Rights Act.

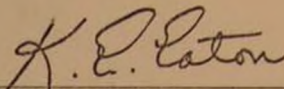
On my understanding of the evidence of the Respondent Parsons, I do not consider that, when making his recommendations, he discriminated against the Complainant because of her sex. In any event, any finding of discrimination associated with such recommendations, without any action having been taken pursuant to them, would not amount to a violation of section 11A(1)(d) of the Act. It is clear from the evidence, that the Respondent Parsons did not have authority as to "providing or refusing to provide... employment", within the meaning of that section, with respect to permanent police officers, since his authority was limited to making recommendations to Council.

With regard to the other Respondents, it seems to me that nothing was done by or on behalf of them either before or at the December 20, 1973 meeting of Council that could constitute discrimination on the part of any of them under that section, since no decisions on employment of police officers were taken at that meeting.

The Complaint did not allege any discrimination in respect of the January 24, 1974 meeting of Council, and there is no evidence to show that the decisions made at that meeting regarding the hiring of Mr. Barnes and Mr. Penny involved any discrimination against the Complainant.

In view of the finding that I have made, I have no recommendation to report to the Commission under subsection (3) of section 26 of the Act.

Dated at Halifax, Nova Scotia this 2nd day of December, 1975.



KEITH E. EATON
Board of Inquiry under
the Human Rights Act.

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F I N D I N G
