

PROVINCE OF NEW BRUNSWICK



Labour and Employment Board

HR-003-07

IN THE MATTER OF THE *HUMAN RIGHTS ACT*, R.S.N.B., 1973, c. H-11

AND IN THE MATTER OF A COMPLAINT

BETWEEN:

Rhonda Amy Sock
Elsipogtog, New Brunswick

Complainant

- and -

Legal Aid New Brunswick
Fredericton, New Brunswick

Respondent

BEFORE: Robert L. Kenny, Q.C.
Vice-Chairperson

APPEARANCES:

For the Human Rights Commission: *Chantal L. Gauthier, Esq*
For Rhonda Amy Sock: *per se*
For Legal Aid New Brunswick: *Eugene Mockler, Q.C.*

DATES OF HEARING: November 29 and 30, 2007

DATE OF DECISION: January 7, 2008

DECISION

I. INTRODUCTION

1. The Complainant alleges discrimination on the basis of race and ancestry in her employment with Legal Aid New Brunswick between the period of May 1, 2004, and November 9, 2004, in violation of Section 3 of the *Human Rights Act* of New Brunswick. The Minister responsible for the Human Rights Commission appointed a Board of Inquiry to hear this matter.

II. ISSUE

2. The issue is whether or not the Respondent contravened Section 3 of the *Act* during the period in question.

III. DID THE RESPONDENT VIOLATE SECTION 3 OF THE *HUMAN RIGHTS ACT*?

I. Relevant factual background.

3. Amy Sock is a lawyer, having been admitted to the New Brunswick Bar in June, 1998. She is of Mi'kmaq ancestry and is registered under the Elsipogtog Band near Richibucto, New Brunswick. Following her admittance, she was recommended to Mr. David Potter, the Provincial Director of Legal Aid New Brunswick, to serve Aboriginal people in their own mother tongue as Duty Counsel in Richibucto Provincial Court.

4. Mr. Potter obtained government funding for this trial project and Ms. Sock worked as Duty Counsel until January, 2003, at which time she was granted pregnancy leave. She proved herself to be a hard-working and capable Counsel and Mr. Potter was pleased with her services.

5. In early February, 2004, Ms. Sock and Mr. Potter discussed employment with Legal Aid New

Brunswick and an Employment Contract was concluded. This Contract was only for approximately six (6) weeks to coincide with the ending of the fiscal year of Legal Aid New Brunswick on March 31, 2004.

6. Another Employment Contract between Ms. Sock and Legal Aid New Brunswick was entered into on March 29, 2004, for the period from April 1, 2004, to March 31, 2005. Evidence was offered by both parties as to a difference of interpretation of the services to be provided by Ms. Sock under this agreement.

7. This inquiry is not to determine which interpretation is correct but this difference of interpretation lead to an exchange of telephone calls, e-mails and face-to-face meetings between Ms. Sock and Mr. Potter. These exchanges focused mainly as to whom Ms. Sock should serve as Duty Counsel in Courts in Miramichi, Richibucto and Neguac, New Brunswick. Ms. Sock also requested a review of her salary on several occasions.

8. The so-called “triggering” event of this difference of opinion was a withdrawal of services by private practicing lawyers of their services to Legal Aid clients to support demands for an increase in the hourly rate paid for doing Legal Aid work. This withdrawal of services commenced in early May, 2004, and continued into the late fall of 2004.

9. This increased the normal workload of Ms. Sock and other full-time Legal Aid New Brunswick lawyers. Such lawyers became extremely busy with attempting to maintain services in the various Courts and receive after hours “Brydges” calls and “weekend and remand” duties.

10. Ms. Sock, unlike her colleagues in the same situation, questioned her obligations to perform these increased duties without a review of her salary and made it clear she would not assist any clients except Aboriginal offenders.

11. Mr. Potter, in his position as Provincial Director of Legal Aid New Brunswick, kept abreast

of the situation and became aware through a newspaper report that Ms. Sock refused a Provincial Court Judge's request to assist a non-aboriginal offender at a bail hearing. This news report appeared in mid-May, 2004. Mr. Potter continued to receive comments from other Judges and Court staff about Ms. Sock's performance.

12. Ms. Sock continued to assert her position at a meeting in July, 2004, with Mr. Potter and throughout the summer and fall of 2004. A series of e-mails, faxes and correspondence to Mr. Potter outlines her view as to her interpretation of her Employment Contract and duties. She felt she was justified in her actions, again relying on her interpretation of the Employment Contract.

13. Mr. Potter, in his position as then Executive Director of Legal Aid, was constantly monitoring all his staff and how the Legal Aid system was functioning throughout these unusual circumstances. In his contact with Court officials, he became aware of their dissatisfaction with Ms. Sock's services while acting as Duty Counsel.

14. On October 21, 2004, Ms. Sock wrote a detailed letter to Mr. Potter which outlines the history of her hiring and her workload as Aboriginal Duty Counsel. She emphasizes that additional duties justify a salary increase and raises other issues which resulted in her ongoing disagreement with Mr. Potter as to her Employment Contract. A copy of this correspondence was also forwarded by Ms. Sock to Elsipogtog officials and to the Aboriginal Affairs Minister/Justice Minister for New Brunswick, the Honourable T. J. Burke.

15. Mr. Potter was upset about this approach and felt it was a dispute over employment contract issues that should have been discussed internally. He scheduled a "face-to-face" meeting with Ms. Sock over lunch in Richibucto, New Brunswick, on November 9, 2004. On the drive from Fredericton to Richibucto, he was accompanied by Ms. Candice Morrison, Director of Research at Legal Aid New Brunswick. Apparently, Ms. Morrison needed some information from Ms. Sock as to her workload and, for some reason, could not obtain this from her previous contacts and felt this presented an opportunity to meet with Ms. Sock about her prior requests.

16. At this luncheon meeting, all three were present, Ms. Sock, Mr. Potter and Ms. Morrison. The first item discussed was the correspondence of October 21, 2004, and the fact that Ms. Sock forwarded a copy directly to the Minister of Justice and Elsipogtog officials. Ms. Sock accepted Mr. Potter's comments that he felt her concerns should be limited to his attention and not involve these other officials.

17. The next portion of the conversation is the focal point of this complaint. Ms. Sock recalls Mr. Potter drawing to her attention that there were two complaints about her. One related to her refusal to provide Duty Counsel services to non-aboriginal offenders in Miramichi. Ms. Sock says Mr. Potter then commented, "A Judge in Miramichi called you a lazy Indian, he said that you were like the rest of them, never wanting to work, only wanting to do minimum".

18. Mr. Potter and Ms. Morrison disagree on this version of the conversation. Each are emphatic that Mr. Potter was relating a conversation from a Judge stating that after Ms. Sock represents an aboriginal offender, "She just sits there". Mr. Potter then continued and said, "I don't want stuff like 'lazy Indian' starting in this organization.". Ms. Sock became very upset and did not eat her lunch. In the words of Ms. Morrison, "Amy was hurt. She caved in on herself.". Ms. Sock then left.

19. Ms. Sock, by fax and an exchange of correspondence in late November, 2004, outlines her feelings and the effect whatever was said had on her personally. Specifically, by fax dated November 17, 2004, Ms. Sock wrote Mr. Potter and expressed her feelings. She stated:

"I am not going to let this rest and I believe that you owe me an apology. You have breached the trust that I had in you by lying to me and degrading me. You have unilaterally breached our contract on several occasions. I want you to pay me and Elizabeth to the end of our contract, March 31, 2005. I will reconsider working for you in the New Year and under a new contract but in the meantime, I am withdrawing my services."

20. On November 21, 2004, Mr. Potter wrote Ms. Sock and suggested a possible meeting to discuss outstanding issues and what he felt was a serious misunderstanding about the remarks made at the November 9, 2004, luncheon meeting. He offered the possible involvement of a mediator

versed in both cultures and a “Talking Circle”.

21. After several attempts, a meeting was held on January 31, 2005, at Elsipogtog. Mr. Potter, Ms. Sock, Mr. Dale Brooks (a mediator) and Mr. Ivan Augustine (Ms. Sock’s husband) were present. Nothing was resolved as to outstanding issues and Ms. Sock advised she was resigning from her position. The formal resignation was forwarded on January 31, 2005, and specified she would not be working “as of March 1, 2005”. Mr. Potter paid her to February 28, 2005.

IV. BASIS FOR DECISION AND DECISION

22. The first step is to determine what was said by Mr. Potter at lunch on November 9, 2004. Upon review of the evidence, I accept Mr. Potter’s version of the conversation and the context in which he made the remark. Mr. Potter was relating observations by court officials about Ms. Sock’s performance and described his concern by remarking, “I don’t want stuff like ‘lazy Indian’ starting in this organization.”. Ms. Morrison’s testimony supports Mr. Potter’s version of the conversation.

23. Ms. Sock, in her testimony at the hearing, stated that during her employment with Mr. Potter as Duty Counsel commencing in 1998 that “he always said nice things about me”. She goes on to state “he was supportive, encouraged me and was kind”. Mr. Potter’s attitude towards legal services to aboriginal clients was described as “he wanted to see the program maintained and enhanced”.

24. Ms. Sock’s conclusion, even though she felt he remarked “a Judge used the term ‘lazy Indian’” towards her, was emphatic in her testimony that “he (i.e. Mr. Potter) never said those words”. She further stated, “During my employment I have no reason to consider Mr. Potter a racist”.

25. Upon reflection, there may be a more appropriate utterance that Mr. Potter could have used to voice his concern; however, the evidence is clear it was not a racial slur that can be attributed to him nor was there any incident in his role as Ms. Sock’s employer that suggest any discriminatory actions or remarks.

26. The authorities submitted by Counsel for the respective parties to these proceedings deal with racial slurs made directly by colleagues or supervisors and were clearly in contravention of Human Rights legislation. As noted earlier, this is not the circumstance in this instance.

27. In *Pardo v. Coquitlam School District No. 43* [2003] B.C.H.R.T.D. No. 69, the Tribunal stated at paragraph 12:

“In my view, all of the circumstances must be taken into account when considering whether a single comment could constitute a contravention of the *Code*. Without suggesting that this is an exhaustive list, some of the relevant factors would be egregiousness or virulence of the comment, the nature of the relationship between the involved parties, the context in which the comment was made, whether an apology was offered and whether or not the recipient of the comment was a member of a group historically discriminated against.”

28. In consideration of all of the circumstances, I cannot find, on a balance of probabilities, that the complaint is justified and it is dismissed pursuant to Section 20 (6.1) of the *Act*.

Issued at Fredericton, New Brunswick, this 7th day of January, 2008.

ROBERT L. KENNY, Q.C.
VICE-CHAIRPERSON
LABOUR AND EMPLOYMENT BOARD