

IN THE MATTER OF the Human Rights Act, S.N.W.T. 2002, c. 18, as amended;

**AND IN THE MATTER OF complaints filed by Roger Deranger against 994401 NWT Ltd.
Operating as “The Raven’s Pub”**

Appearances: Roger Deranger (“the Complainant”) for himself

Robert Kasting, legal counsel for The Raven’s Pub (“the Respondent”)

Date of hearing: 21 to 24 April 2008

Place of hearing: Yellowknife NT

Adjudicator: Adrian C. Wright

1. Introduction

My authority comes from Part 5 of the *Human Rights Act*; this authority is distinct from that of the Human Rights Commission (“the Commission”) and the Director of Human Rights (“the Director”). The Director or her staff investigates complaints and decides whether they should be adjudicated. I adjudicate complaints referred to me by the Director through the Chair of the Adjudication Panel. I determine whether the *Act* has been violated and, if it has been violated, the remedy.

2. Pre-hearing events

The Complainant made three complaints to the Human Rights Commission (“HRC”). These complaints arose from incidents identified in the complaints as on 17 March 2006, 15 December

2006, and 15 June 2007. All three incidents concerned the Respondent.

The parties agreed that I could review copies of the three complaints. One or more of these were investigated by the HRC. There was no agreement that I review either the investigator's report or the referral decision by the Human Rights Director. As a result, I did not see those documents before the hearing.

I convened three pre-hearing conferences. The parties agreed that I had no conflict of interest, and that I had jurisdiction to hear and decide the complaints. In the first conference, I directed that both parties provide a list of witnesses to the other party. I did not require that the parties provide statements or witness summaries to the other party. In the second and third pre-hearing conferences, I told the parties that all witnesses should be ready and available to give evidence at the beginning of the hearing. Unfortunately, the witnesses the Complainant wished to call were not available at the start of the hearing. As a result, the Complainant gave evidence, then the Respondents' witnesses testified. Three witnesses were then called by the Complainant.

As a result, I heard some of the witnesses called by the Respondent before the three witnesses called by the Complainant. The Respondent objected to the Complainant in effect "splitting his case". The Respondent did not, however, contend that this, in any way effected the evidence called by either party.

The complainant, Marlene Grooms, Emily Saunders, and Debbie Drybones gave evidence at the request of the Complainant; Jim Sturge, Mike Enns, Robin Sproule, Derek White, and Matthew Lafferty were called by the Respondent to give evidence.

3. *Law*

The *Human Rights Act* says:

“11. (1) No person shall, on the basis of a prohibited ground of discrimination and without a bona fide and reasonable justification,

- (a) deny to any individual or class of individuals any goods, services, accommodation or facilities that are customarily available to the public; or
- (b) discriminate against any individual or class of individuals with respect to any goods, services, accommodation or facilities that are customarily available to the public.

14. (1) No person shall, on the basis of a prohibited ground of discrimination, harass any individual or class of individuals

- (a) in the provision of goods, services, facilities or accommodation;
- (b) in the provision of commercial premises or residential accommodation; or
- (c) in matters related to employment.

(2) In subsection (1), "harass", in respect of an individual or class of individuals, means engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome by the individual or class. “

4. *Issues*

In this case, there is no issue that the Respondent denied the Complainant “goods, services, accommodation or facilities that are customarily available to the public”. The Respondent, on the three occasions mentioned in the complaints, refused the Complainant access to the Respondent’s premises, known as “The Raven Pub” (which I call “the Pub” in these reasons).

The issue under s. 11 in this case, is whether this was “on the basis of a prohibited ground of discrimination”. The Complainant contends that he was denied access as a result of his race or ethnicity – he is Dene Suline. He is therefore an aboriginal person. The Complainant says that he does not drink alcohol and, as a result was not intoxicated on any of the occasions in which he was refused access to the Pub. He says that aboriginal people are viewed as being intoxicated. His not being allowed to enter the Pub was therefore caused by his being an aboriginal person.

The Respondent’s position is that the Complainant has not proven this – that is, the Complainant has not established that he was denied access to the Pub because he is an aboriginal person.

As a result, the issue in this case is whether the Complainant proved a connection between his being an aboriginal person and not being allowed to enter the Pub. Put differently, the issue is did the Respondent refuse to allow the Complainant into the Pub because the Complainant was an aboriginal person?

I will also address whether there is a possible violation of s. 14. “Harass” (s. 14 (2)) means,

- a course of
- vexatious comment or conduct
- that is known or ought reasonably to be known
- to be unwelcome by the individual or class

Only vexatious comment or conduct may be harassment. Comment or conduct is “vexatious” if it is hard to manage or hard to treat.

Either the Respondent knew that its actions were unwelcome to the Complainant or other Dene Suline or it ought to have known this. “Should have known” implies an objective standard – would a reasonable person have known that the Respondent’s actions or comments were unwelcome either to the Complainant or to other Dene Suline?

If the Respondent's comment or conduct would have either affected the self-esteem of a reasonable Dene Suline person or caused harm to such a person, they would be "unwelcome". (*Dhanjal v. Air Canada*, [1996] C.H.R.D. No. 4 (Can. H.R.T.), at para 218).

Finally, s. 14 is violated only if any "harassment" was "on the basis of a prohibited ground of discrimination": there must be a connection between the harassment and the prohibited ground of discrimination. The Complainant has to prove harassment; and that the harassment, in some way, resulted from the prohibited ground of discrimination.

5. *Facts*

The Complainant testified about three separate incidents. Each resulted in him being denied access to the Pub. I deal with each incident separately. The witnesses' evidence appears in the order in which the witnesses testified.

First incident

Complainant's evidence:

- In March 2006 (he could not remember the exact date), he was at the Gold Range , a drinking establishment in Yellowknife and was down the street from the Pub. He walked to the Pub.
- The bouncer at the Pub said that he (that is, the Complainant) had too much to drink.
- He had not had any alcoholic beverage to drink. As a result, he should not have had to leave.
- The bouncer said that the Pub is a place where people drink alcohol and that it (that is, the Pub) would not make money if people drank water.
- A person who knew him (and who was present outside the Pub) said that he (that is, the Complainant) did not drink alcohol.
- He told the bouncer that "this is our land – if you don't like it, you can go to where you came from". The bouncer responded that this was his property.
- The bouncer grabbed him (that is, the Complainant) by the throat and forced him out of the bar.

- On cross examination, he did not remember playing pool earlier in the day in which the first incident occurred.
- The first incident occurred in the evening.
- He did not respond to the bouncer's statement that he (that is, the Complainant) had too much to drink – his view was that he did not have to say anything.
- He grabbed the door-handle and refused to let go.
- The bouncer peeled his (that is, the Complainant's) hand off the door knob. As a result, he (that is, the Complainant) fell into the street.

Evidence of Mike Enns (called by the Respondent):

- He knew the Complainant by face, not name. He knew that the Complainant purchased Molson Dry. Describing patrons by the beverage they drank was a common means of distinguishing patrons who were not known by name.
- The first incident occurred on 17 March 2006. He passed through the Pub that afternoon. He noticed a person he recognized as the Complainant, who was playing pool. The Complainant held a bottle of Molson Dry.
- He left the Pub and returned at 9:00 pm.
- The Complainant left the Pub. The Complainant staggered.
- He concluded that the Complainant was clearly intoxicated and had enough to drink.
- Derek White, the floor person working the door, called him (that is, Enns) to the door.
- White asked him for help with a person who was trying to get in. The Complainant held the door handle and wanted to know why he was not being let in. The Complainant blocked the door so that others could not come in.
- He and White both concluded that the Complainant had enough to drink so they would not let him in.
- After ten minutes of discussion, the Complainant told Enns that he (that is, the Complainant) did not drink. He told the Complainant that intoxicated persons were not permitted in the Pub.
- The Pub then reached capacity. He then advised the Complainant that the Pub was full so, for that reason as well, the Complainant could not enter the Pub.
- The Complainant then said, "you're on our fucking land, whitey." He (that is Enns) responded,

“It may be your land but, I’m the person that holds the title to this piece of property so we’ll just leave it at that.”

– He then grabbed the Complainant by the shoulders, forced him to let go of the door and placed him around the corner of the building.

Derek White (called by the Respondent):

– He was a bouncer at the Pub at the time of the first incident.

– He saw the Complainant walking from the Gold Range. He determined that the Complainant was intoxicated.

– He determined this from the way the Complainant moved. As a result, he told the Complainant that he (that is, the Complainant) would not be allowed in the Pub.

– The Complainant would not leave. He grabbed the handle on the door to the Pub.

– Enns came over. White walked away and did not deal further with the Complainant.

– On cross examination, the Complainant asked if he (that is, White) thought that all aboriginal people were intoxicated. He (that is, White) responded:

“My common-law wife is Metis and my one-and-a-half year old daughter is Metis. My one-and-a-half year old daughter is eighth-generation Metis to the Yellowknife area. I do not feel that you can tell me what my feelings are to aboriginal peoples when you do not know my family status.”

Robin Sproule (called by the Respondent):

– She used to go into the Pub every night after work

– On 17 March 2006, she saw the Complainant at the Pub. The Complainant was playing pool.

– She remembers the Complainant because he wore camouflage pants. She liked the pants and wanted to know where he got them

– She saw the Complainant take a drink from a beer (Molson Dry). The beer was on the bar.

Debbie Drybones (called by the Complainant) :

– On 17 March 2006, she was at the Gold Range. The Complainant was also there. She wanted to play pool.

- She went to the Pub with the Complainant. The two played pool.
- She had a few beers and went outside to smoke a cigarette.
- The Complainant followed her.
- The Complainant tried to go back inside but was not allowed back in.
- She saw the Complainant drinking only water, not an alcoholic beverage.

Second incident:

Complainant's evidence:

- Occurred after the first incident, sometime in winter 2006.
- Occurred when Deranger and a friend were playing pool at the Pub.
- His friend had been drinking; he was not. He was drinking water.
- A waitress came to their table and asked if they were drinking water. She told them they had to leave because the Pub was only for drinking alcohol. If they did not, she would call the bouncer. The two continued to drink water.
- A bouncer came and told them they had to leave because they had “pissed-off” the waitress. He did not move.
- Another bouncer came over.
- He thought they (that is, the staff at the Pub) would use force to take him out of the Pub.
- His friend started to leave so he decided to follow her.

Evidence of Enns:

- He observed the Complainant with a female. The Complainant was not intoxicated.
- A waitress reported that the Complainant and the other female had been taking drinks from other tables.
- He asked another bouncer, Matthew Lafferty to remove the Complainant and the other female from the Pub.
- He observed Lafferty approach the Complainant. An argument ensued.
- He went to the Complainant and said that he (that is, the Complainant) had been observed taking drinks from other tables.

– He asked the Complainant to leave. The Complainant resisted but eventually left.

Third incident:

Complainant's evidence:

- Occurred after the first two incidents. He was driving for a friend, Tina Crookedhand.
- Crookedhand was in the Pub . He went to pick her up so that he could take her to Dettah.
- The bouncer at the Pub would not let him in because he (that is, the bouncer) thought the Complainant had too much to drink.
- He saw the bouncer let other people in.
- It was apparent to him that the people being let in had been drinking.
- He had to wait outside until Ms Crookedhand and her friends left, then he took them to Dettah.

Two other witnesses, Marlene Grooms and Emily Saunders were called by the Complainant to give evidence. Over the previous ten years, neither had seen the Respondent drink an intoxicating beverage. Neither Marlene nor Emily Saunders saw any of the three incidents.

6. *Analysis*

Section 11

As indicated, the central issue in this case is, did the Respondent refuse to allow the Complainant into the Pub because the Complainant was an aboriginal person?

There is no question that, on three occasions, the Respondent did refuse to either allow the Complainant into the Pub or to remain in the Pub. There is also no question that the Complainant is an aboriginal person. The only question is whether these two facts are connected – did the Respondent not letting Complainant into the Pub or requiring the Complainant to leave the Pub, in some way result from the Complainant's being an aboriginal person?

First incident:

Both Michael Enns and Derek White refused to let the Complainant into the Pub. They both thought that the Complainant was intoxicated. The Complainant maintains that he was not intoxicated and that he has not consumed an alcoholic beverage in ten years.

The Complainant contends that the only reason he could have been refused entry to the Pub is that he is an aboriginal person. The Complainant's opinion about this is not evidence. There must be some evidence of a connection between the Complainant's being an aboriginal person and his exclusion from the Pub before I can reach that conclusion. I cannot speculate about this.

The Complainant asked both Michael Enns and Derek White whether they thought that all aboriginal people were intoxicated. They both denied this. They also both had no doubt that the Complainant was intoxicated at the time of the first incident.

There is a clear conflict between the evidence of Michael Enns, Derek White and Robin Sproule, on the one hand, and the Complainant, on the other. Enns, White and Sproule all gave evidence that the Complainant had consumed alcohol before the first incident; the Complainant maintained that he had not. I need not resolve this conflict in order to decide this case. The issue is whether the Respondent did not let him in the Pub because he was an aboriginal person – not whether or not the Complainant was intoxicated. There may be many reasons that the evidence of the Complainant's witnesses differs from the evidence of the Respondent's witnesses. One possibility is that the Respondent's witnesses were honestly mistaken. If they were, they did not remove the Complainant from the Pub as a result of him being an aboriginal person.

As a result, there is no evidence that the Respondent did not let the Complainant in the Pub on 17 March 2006 because he was an aboriginal person.

I also cannot infer that the Respondent did not let the Complainant in the Pub on 17 March 2006 because he was an aboriginal person. In these reasons, when I say that I cannot "infer" something, I mean that there was no other evidence – nor anything in the circumstances – to

allow me to reach this conclusion. It is not evident to me that all aboriginal persons are intoxicated. It is also not evident to me that non-aboriginal persons generally regard aboriginal persons as being intoxicated.

As a result, the Complainant has not proved that the Respondent refused to let him into in the Pub on 17 March 2006 as the result of him being an aboriginal person.

Second incident:

Enns asked the Complainant to leave the Pub because he (and the other person at the Complainant's table) had been observed taking drinks from the tables of other patrons. The Complainant denies this. Again, I do not need to resolve this conflict. There is no evidence and I cannot infer that the Respondent asked the Complainant to leave the Pub at the time of the second incident, because he was an aboriginal person. Also, for the reasons I outlined above concerning the first incident, I cannot infer that the Respondent requested the Complainant to leave the Pub at the time of the second incident, as the result of him being an aboriginal person.

Third incident:

The Complainant gave the only evidence about the third incident. Again, the Complainant testified that he was not allowed into the Raven's Pub. He says he was told this was because he was intoxicated. Like the earlier incidents, he maintains that since he was not drinking, the only reason he could have been excluded was because he is an aboriginal person.

There is no other evidence about the third incident. Like the other incidents, there is also no evidence that the Complainant was not allowed in because he is an aboriginal person.

As a result, there is no evidence that the Respondent did not allow the Complainant to enter the Pub at the time of the third incident because he was an aboriginal person. Also, for the reasons I outlined above concerning the first incident, I cannot infer that the Respondent did not let the Complainant into the Pub at the time of the third incident, as the result of him being an aboriginal

person.

Section 14

First incident:

The comments or conduct of Michael Enns, and Derek White were not vexatious. At best (from the Complainant's point-of-view) Enns and White were mistaken that he was intoxicated. There is no evidence nor can I infer that this resulted from the Complainant being Dene Suline.

The Respondent denied the Complainant access to the Pub because Enns and White thought that the Complainant was intoxicated. The Complainant may not have been intoxicated. Enns and White, however, honestly reached this conclusion. If it was correct, they had to deny the Complainant access to the Pub. As a result, they neither knew nor should have known that this conclusion was unwelcome to the Complainant.

Finally, there is no evidence – nor can I infer – any connection between the Respondent's actions and the Complainant being Dene Suline.

Second incident

The Respondent's conduct – asking the Complainant to leave the Pub – was not vexatious. The Respondent saw the Complainant and his companion taking drinks from other tables. It therefore had the right to remove the Complainant from the Pub. For the same reason – that is, the Complainant had the right to remove the Complainant from the Pub – the Respondent neither knew nor should have known that this conclusion was unwelcome to the Complainant.

Finally, there is no evidence – nor can I infer – any connection between the Respondent's actions and the Complainant being Dene Suline.

Third incident

For the same reasons as are set out above regarding the first incident, the Complainant did not prove that the Respondent violated s. 14 of the *Act*.


The Complainant therefore did not prove that the Respondent breached either s. 11 or s. 14 of the *Act*.

7. *Conclusion*

The complaints are therefore dismissed.

Costs are not addressed in these reasons. Since the complaints are dismissed, the complainant is not entitled to costs. I remain seized of this matter solely to hear submissions from the Respondent (and the Complainant in response) pursuant to s. 63. The Respondent has thirty days from the date of these reasons to provide its submissions to the office of the Adjudication Panel.

DATED at the City of Yellowknife in the Northwest Territories this 26th day of June 2008.


Adrian C. Wright
Adjudicator