IN THE MATTER OF an adjudication pursuant to
section 46 of the *Human Rights Act*, S.N.W.T. 2002, c. 18 as amended

AND IN THE MATTER OF a complaint filed by Emily Lawson against
994486 N.W.T. Ltd. operating as Le Frolic Bistro Bar

INTRODUCTION

This is an adjudication following a complaint filed by Emily Lawson ("Lawson") against 994486 N.W.T. Ltd. operating as Le Frolic Bistro Bar ("Le Frolic").

The complaint was filed on August 2, 2006, and in it, Lawson alleges that Le Frolic denied her goods, services, accommodation or facilities that are customarily available to the public on the basis of her disability and contrary to sections 5 and 11 of the Northwest Territories *Human Rights Act* (the "Act"). By letter dated December 21, 2006, the Director of Human Rights (the "Director") referred the complaint to the Northwest Territories Human Rights Adjudication Panel pursuant to section 46 of the Act.

This matter was heard in Yellowknife, Northwest Territories, on May 26, 27 and 28, 2008. Lawson was represented by Ms. Caroline Wawzonek and Le Frolic was represented by Mr. Douglas McNiven. The Northwest Territories Human Rights Commission (the "Commission") did not participate in the hearing.

LEGISLATIVE SCHEME

The Act is intended to deter and eradicate unlawful discrimination in the workplace; in the provision of goods and services; and in the provision of accommodations.

The Act establishes the Commission, which has the role of promoting human rights throughout the Northwest Territories; developing educational materials on the issue of human rights; developing human rights policies; and creating the office of the Director.

Section 46 of the Act requires that the Director refer a complaint to the Adjudication Panel for adjudication if the Director is of the opinion that the parties to the complaint are unable to settle the complaint, and the complaint should not be deferred (s. 43) or dismissed (s. 44).

Section 62 of the Act sets out the decision making power of the adjudicator after the completion of a hearing. If the adjudicator finds the complaint is without merit, the complaint shall be dismissed [s. 62(2)]. If the adjudicator finds that the complaint has merit, the Act provides for a variety of remedies [s. 62(3)]. A decision of an adjudicator can be filed with the Clerk of the Supreme Court [s. 64(1)] and can be enforced in the same manner as an order of the Supreme Court [s. 64(2)].

BACKGROUND

The relevant testimony in this case is as follows:

Testimony of Lawson

Lawson testified that she injured her back many years ago. She gave a history of her medical condition and indicated that in 1999, and MRI and CT scan revealed that she had damage to her L4, L5, and S1 vertebrae with 80% loss of her quad muscles.

Lawson testified that she is trained as a Licensed Practical Nurse and currently provides home care for a gentleman from 11:00 a.m. to 4:00 p.m. each day. She stated that she can sit frequently while at work; can take breaks; and that the work requires little physical output.

Lawson indicated that she started looking for a special services dog in 1995, and that in 1997, her physician helped her with filling out forms for a special services dog. Lawson stated that she made private arrangements to obtain a special services dog named "Megamo". According to Lawson, Megamo developed stomach problems and was retired as a special services dog, but he continued to live with Lawson. Lawson stated that she then obtained "Paisley", another special services dog, through the Lions Club of Canada. It is clear that the Lions Club retrieved Paisley back from Lawson, although Lawson's testimony on this point is vague. Lawson stated that she then brought Megamo out of retirement, and that she is in the process of obtaining a new special services dog named "Nipan". Lawson stated that a special services dog assists her with gait correction and walking mobility.

In regard to the night in question, Lawson testified that she went to LeFrolic with her boyfriend to listen to music and that she had Megamo with her. According to

Lawson, Megamo had on a Bridgeport harness - he did not have on a special services dog harness or a special service dog coat. According to Lawson, the waitress stated that Megamo could not stay at the restaurant and told Lawson that she did not look blind. According to Lawson, she advised the waitress that the dog was a special services dog. Lawson stated that the waitress went to see Pierre LePage, the owner of LeFrolic. According to Lawson, when the waitress came back to her table, she reiterated that the dog could not stay. According to Lawson, an argument ensued between her and the waitress, and that the waitress left again. Lawson testified that the waitress came back a third time and insisted that Lawson leave. Lawson stated that she left the restaurant crying and embarrassed, and that she just wanted the restaurant to treat her like everyone else. On cross-examination, Lawson agreed that an offer was made that the dog could go out back behind the restaurant while Lawson was served. Lawson stated that the restaurant was not crowded on the night in question; that Megamo was right under the table; that he did not make any noise; and that he did not move.

Much of the rest of Lawson's testimony was either very vague, inconsistent, or incredible:

- When Lawson was asked if Megamo was certified as a special services dog, she gave a vague answer to the effect that she did not have a certification card with respect to Megamo but that she had some sort of identification from a "Westcoast" agency. Lawson said she was told by someone that she did not need to carry the identification with her but should have it on her file. When asked a second time about whether Megamo was certified as a special services dog, Lawson again gave a vague response about being "adamant" that certification cards were important because she did not want problems with the dog out in the public. Finally, Lawson answered that Megamo was not certified.

- Lawson spoke about how important it was to have a special skills dog trained and certified. She briefly reviewed the type of training that special service dogs go through; their special skill set; and their special diet. She also testified that a special skills dogs are not allowed to run and play like a "normal" dogs - they are working animals. She also stated that Paisley was certified and she could show Paisley's card when she needed to. She also said that her new dog will be certified. Lawson also testified that some jurisdictions have implemented legislation to deal with identification of special service

dogs. She also stated that she thought it was reasonable for someone like the waitress at LeFrolic to ask for some type of identification for the dog. She stated that certification allowed a business owners to feel comfortable that the dog would not have an accident in their premises. It was only on redirect that Lawson seemed to downplay the importance of certification and stated that only British Columbia has a standard skill set base.

- Lawson stated that some "person" in British Columbia, who had done research on the Northwest Territories and human rights legislation, told her that a Bridgeport harness was sufficient to identify a dog as a special service dog - a Bridgeport harness being a hard harness with a raised handle. On cross-examination, she testified that she had never had any problems with just using the Bridgeport harness as a means of identifying her service dog. However, Lawson had earlier testified, on direct examination, that there were times when she would have problems with an establishment, and she would try and use the opportunity to educate people about special service dogs and disabilities. In such cases, she indicated that she would leave the establishment when asked, and follow-up later. It is also important to note that Lawson provided evidence, in the form of pictures, of her with Megamo and of her with Paisley. In one picture, the harness on Paisley has the initials "SSD", indicating that Paisley was a special services dog. The picture with Megamo shows him in a coat indicating that he is being trained as a special services dog. In her testimony, Lawson also emphasized the importance of a special services dog not looking like a regular dog. She also stated that her new dog, Nipan, will have a coat that states, "Don't pet me, I'm working.". When questioned about why Megamo did not have an SSD harness nor was wearing a coat on the night in question, Lawson suggested that there were "politics" around the use of an SSD harness; suggested that she never received one; and that she was told to use a Bridgeport harness. She also stated that Megamo never came with a coat. I find both these suggestions weak and incredible, particularly given the pictures presented in evidence.

Testimony of Karla Loeppky

Karla Loeppky ("Loeppky") was a waitress at LeFrolic on the night in question.

Loeppky testified that she saw Lawson come into the restaurant and that she did not notice anything unusual about the way Lawson was walking. Loeppky testified that she next saw Lawson at a table with a dog and she asked Lawson to take the dog outside. Loeppky stated that Lawson replied that the dog was a service dog Loeppky stated that she then spoke to LePage about the matter, and Lepage asked Loeppky to ask for paperwork or other information that would identify the dog as a service dog. Loeppky stated that when she asked Lawson to provide this information, Lawson again advised her that the dog was a service dog and that it helped her to walk better than a friend. According to Loeppky, Lawson did not provide her with any documentation with respect to the dog. Loeppky testified that she spoke to LePage again, and LePage advised that the dog would have to be removed before Lawson would be given service. According to Loeppky, LePage also made an offer to have the dog stay outside behind the restaurant. According to Loeppky, when she told Lawson of the decision, Lawson was upset and said she would leave and take her friends.

Loeppky stated that she was uncertain about whether the dog was a service dog. She stated that the dog was not wearing a service dog coat but that he did have a harness with a metal handle. However, she stated that she had seen other people use that type of harness, including elderly persons. She stated that if she had known the dog was a service dog, there would not have been any advantage in not serving Lawson, and potential consequences for not serving her.

Loeppky testified that she was worried about health and safety in the restaurant and that the restaurant was very crowded on the night in question. She indicated that the dog was "somewhat" under the table, and could have been kicked while under the table. In cross-examination, she conceded that she did not think the dog had been kicked. She also testified that no patrons were complaining; that the dog was not barking; and that the dog was not moving.

Loeppky testified that the incident with Lawson was the first time in her serving career that she had to deal with the issue of a dog in the restaurant. She stated that she was not aware of any policies or procedures on dealing with persons with disabilities. When asked what she would do if someone came into a restaurant with a dog, she stated that she would ask him or her to remove the dog or, if he or she stated that it was a service dog, she would ask for paperwork. Loeppky also stated that if Lawson had phoned in advance, arrangements may have been made for her to have easier access to the restaurant. However, on cross-examination, she indicated that the result may not have been any different even if Lawson had

phoned in advance.

Testimony of Pierre LePage

Pierre LePage ("LePage") is the owner of LeFrolic Restaurant.

LePage stated that he saw Lawson come into the restaurant on the night in question. He stated that she looked "normal" and didn't notice anything unusual about her appearance. He also stated that she was holding onto the dog's leash, and that the dog did not look like a service dog. He stated that the situation "didn't look legitimate", but admitted that he did not make personal inquiries of Lawson. He testified that he asked Loeppky to tell Lawson that she would have to leave the dog outside or she would not be served. He stated that he also told Loeppky to offer to Lawson that the dog could stay outside in the back of the restaurant while she was served.

LePage testified that he was concerned about the health and safety of his patrons. He stated that he believed that there were health regulations and liquour regulations that prohibited a dog being present in a public place where food was being served. He also stated that he had a "perfect record" with the health inspector. LePage also stated that he was concerned about the safety of patrons and that the restaurant was crowded on the night in question.

LePage stated that he has tried to maintain the reputation of the establishment as being "the place" to go in Yellowknife. He stated that he trains staff to assist patrons and that he has dealt with persons with disabilities, including persons in wheelchairs and on crutches.

LePage stated that he had seen Lawson walking in downtown Yellowknife on a number of occasions before the incident, and that she did not have a dog with her on those occasions. He stated that it was possible that she had some other form of assistance on those occasions.

Testimony of Don Finnamore

Don Finnamore ("Finnamore") is the President of the Lions Club of Yellowknife.

Finnamore testified that one of the projects worked on by the Lions Club is to provide guide dogs and "helper dogs" to citizens in need. He indicated that these special skills dogs wear a blue coat with the Lions' emblem and the Canadian flag

on it. He also indicated that a Special Skills Dog harness identifies the dog as a special skills dog, and that the harness is loose with a nylon strap. He did not know if a harder harness would be used in certain circumstances.

Finnamore stated that he received a call from Lawson in September 2005. According to Finnamore, she had just moved back to Yellowknife and had an outstanding veterinary bill in regard to a Lions Club dog. Finnamore stated that the Yellowknife Lions Club agreed to pay the bill and that he supported the motion.

Finnamore stated that in order to obtain a special services dog from the Lions Club, a person must show a need; must agree that the dog is retained as the property of the Lions Club; and the person must agree to take responsibility for veterinary visits, grooming, etc.. Finnamore stated that he understood that the Lions Club of Canada came and took back the dog from Lawson. Further he stated that when the dog was taken back, the dog's blue coat was missing. He indicated that this was a concern.

Finnamore testified that he has seen Lawson at Centre Square Mall in Yellowknife a number of times, mostly in the summer. He described her as having a quick pace; that she sometimes used a crutch; that her mobility appeared to be fine going up and down stairs; and that he had never seen her with a dog. He stated that he did not know Lawson's medical needs.

Testimony of Jeannie Rocher

Jeannie Rocher ("Rocher") testified that Lawson looks after her father who has mobility issues.

Rocher testified that part of Lawson's job would be to assist her father with daily activities such as getting out of bed, going to the washroom, showering and feeding. Further, Lawson also took her father on outings and that this would necessitate getting a wheelchair in and out of a vehicle and helping her father in and out of the chair.

Rocher testified that she (Rocher) has jarred her back while assisting her father with activities.

ANALYSIS

This case surrounds the issue of whether an individual, Lawson, was discriminated

against on the basis of disability by being denied goods, services, accommodations or facilities when she was advised that she would have to leave Le Frolic unless she removed her service dog from the premises.

Section 11(1) of the *Human Rights Act* states:

> "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."

Section 5(1) of the Act includes "disability" as a prohibited ground of discrimination. Section 1(1) of the Act defines "disability" as:

> "1. "disability" means any of the following conditions:
>
> (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness,
>
> (b) a condition of mental impairment or a developmental disability,
>
> (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language,
>
> (d) a mental disorder."

The Supreme Court of Canada has made it clear that every person with a disability is unique and should be considered individually rather than considering persons with disabilities as a homogenous group with set needs. In the case of *B.C. (Superintendent of Motor Vehicles)* v. *B.C. (Council of Human Rights)* [1999] , 3 S.C.R. 868 (hereinafter referred to as "*Grismer*" case), the Supreme Court of Canada stated:

> "... each person is assessed according to his or her own personal abilities, instead of being judged against presumed group characteristics. ..."

I am satisfied, based on the evidence, that Lawson does have a back injury and it does fall within the definition of "disability" under the Act. The extent of that disability may be in question, but that is irrelevant. The definition of "disability" is broad and quite encompassing of a variety of diseases and conditions and is not dependent on the severity of the disease or condition.

Duty to Accommodate

Having fallen within the definition of "disability" in the Act, the issue for me to consider is whether Le Frolic had to accommodate Lawson or whether it had some bona fide and reasonable excuse why it could not accommodate her needs. Section 11(2) of the Act states:

> "11. (2) In order for the justification referred to in subsection (1) to be considered *bona fide* and reasonable, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs."

I agree with counsel for Lawson that the duty to accommodate is strict, and that LeFrolic must demonstrate that the accommodation required by Lawson would impose undue hardship. Lawson's counsel cited three cases where a court or tribunal found no reasonable excuse existed that justified the failure to accommodate a service dog. In the case of *Parisian* v. *Hermes Restaurant Ltd.* (1987), 9 C.H.R.R. D/4756, the Manitoba Court of Appeal stated:

> "In the end, what was the effect of Voulgaris's conduct in refusing services to Parisian unless he left his guide dog elsewhere? The result was that it took away from him the right and privilege to have access to a booth in the restaurant that would be available to anyone else who was not blind and was accompanied by a dog guide. Parisian had the right to have his dog guide with him at all times in the restaurant and in my opinion he was discriminated against by such objection and refusal."

Reasonable Justification

Through its counsel, LeFrolic raised a number of excuses that might result in a reasonable justification for the failure to accommodate Lawson. These excuses should be considered separately:

Need to Show Disability

In his testimony, LePage suggested that he did not believe that Lawson was disabled or, at a minimum, the extent of her disability was less than she suggested. In particular, he gave evidence that he had seen Lawson walking in the mall and on the street without a service dog. He also presented evidence that suggested that Lawson's employment was likely more physically demanding than she alluded to. He indicated that this all formed the basis upon which he questioned whether she needed the service dog. In the end, this is inconsequential. The *Grismer* case makes it clear that it is up to the disabled person to determine what he or she can or can't do; to determine his or her needs in any particular situation; and how he or

she chooses to manage the disability in any particular situation. Further, the *Parisian* case specifically dealt with the issue of whether or not disabled persons must prove their disability in order to obtain the protection of human rights legislation. The court clearly answered this in the negative and stated:

> "With respect, I am of the opinion that the Adjudicator erred in law in holding that there was a condition precedent to have taken place at the time of the incident; namely, that it was incumbent upon Parisian to have produced to Voulgaris proof that he was a blind person as so defined in s. 1(a) of the Act. Leaving aside the fact that he was not so requested by Voulgaris to produce proof, I have great difficulty in reading into the Act such an obligation by Parisian on his own at the time in question and particularly as a condition precedent on his part.
>
> Any obligation in this case on the part of Parisian only arose where in order to establish that he had been discriminated by a breach on the part of the respondent (through the actions of Voulgaris), it was then incumbent at the hearing before the Adjudicator that it be established that he was at all material times within the definition of a blind person as so defined in s. 1(a) of the Act and that was done. ...
>
> ... There is no suggestion that the owner has to know that the person in question meets the restrictive definition in the Act, nor is there any suggestion that the person has to then and there self identify himself as coming within the definition before he can claim protections. ...
>
> ... To contend that in this case there had to have been self-identification by Parisian in order to receive the benefits under s. 7.1(2) of the Act undermines or derogates from the rights otherwise accorded to blind persons and is inappropriate in the context of the Act itself."

Other Options Available

LePage testified that Lawson was presented with an option that Megamo could stay outside behind the restaurant while Lawson was served. This type of "ultimatum" results in taking away the independence of the person with a disability by failing to allow them to access services ordinarily available to the public in a way that allows the disabled person to determine his or her needs in that particular situation. This exact point was canvassed in the case of *Arsenault and Quebec Human Rights Commission* v. *2858029 Canada Inc.* (1995), 9 C.H.R.R. Doc. 95 - 156, wherein the Quebec Human Rights Tribunal stated:

> "... The choice of the means to palliate a handicap belongs to the person affected by the handicap, and that person alone. This right would be rendered ineffectual if the choice it involved were questioned by those who do not share, and have no interest in the handicap, but nevertheless erroneously believe they have more practical and less bothersome solutions."

Need to Show Certification of Dog

Counsel for LeFrolic also argued that there was nothing that identified Megamo as a guide dog. Further, counsel argued that if Lawson did not have any certification papers or other documents showing that it was a service dog, LePage was entitled to request that Lawson either remove the dog or leave the restaurant. I agree that nothing LePage or Loeppky saw clearly identified Megamo as a service dog. There was no "Special Service Dog" harness; no coat; and no papers. Finnamore testified as to what would normally be seen on a service dog, and Lawson herself testified as to the importance of ensuring that service dogs were seen by the public as service dogs and not treated like regular dogs. Despite this, I do not find that Lawson needed to show certification of Megamo. In the case of *Feldman* v. *Westfair Foods Ltd. (c.o.b. Real Canadian Superstore)* (1998), 34 C.H.R.R. D/394, the British Columbia Supreme Court upheld the decision of the British Columbia Human Rights Tribunal that a blind person did not need to prove that her dog was a guide dog. The Tribunal stated:

> "... I find that the Complainant need not prove that her dog was a guide dog to receive the protection of the B.C. Human Rights Code. I find that it was eminently obvious that the Complainant was a blind person accompanied by her guide dog. ...
>
> ... I find that Mr. Loo's request that the Complainant provide identification for her dog before she would be permitted to enter the store constitutes discrimination regarding a service customarily available to the public because of a physical disability contrary to Section 8 of the Code."

Lawson's disability may be less obvious than in the *Feldman* case such that it is less obvious that she needed the assistance of a service dog. Nonetheless, Loeppky testified that Lawson told her that Megamo was a service dog. Upon Lawson stating this, LePage and Loeppky were not entitled to ask for further information with respect to the dog. To do so is as discriminatory as asking Lawson to prove her disability.

Health

LePage gave evidence that he was concerned about the health of Lawson and other patrons and advised that he thought it was against health regulations to allow a dog in the restaurant. Counsel on behalf of LePage cited the *Eating and Drinking Places Regulations* under the *Public Health Act* in support of this proposition. Of note is that the regulations are not directly applicable to the facts in this case - they only state that animals are not allowed where food is prepared, but do not deal with the issue of animals being present where food is served. Counsel also cited

some pending legislation in Alberta as well as some Ontario legislation in support of the proposition that other jurisdictions do have legislation regulating animals in restaurants. With respect, that legislation is not applicable to the Northwest Territories. Further, if Territorial or provincial legislation is contrary to applicable quasi-constitutional human rights legislation, then it would be subject to challenge. That is not the question before me, and this line of argument does not provide any reasonable justification for refusal to serve Lawson.

Safety

LePage and Loeppky also testified that the restaurant was noisy and crowded, and that that Megamo's body was sticking out from under the table. Lawson's version of events is different, in that she states the restaurant was not quite so crowded and that Megamo was completely under the table.

There is no indication in the evidence that Megamo was bothered by the noise in the restaurant; that he was moving around; that he as barking; or that he was causing a disturbance. In the case of *Thiffault* v. *Quebec-Air Quebec*, 1989 CanLII 143 (C.H.R.T.), the Canadian Human Rights Tribunal was clear when it stated:

> "... Despite the fact that such safety measures are essential and necessary, they should not be used as a pretext, excuse or bona fide justification for engaging in a discriminatory practice."

I am of the view that there were no serious safety considerations that existed that could constitute reasonable justification for disallowing Lawson in the restaurant with her dog.

Ulterior Motive

LePage suggested that Lawson had an ulterior motive in filing her complaint. In particular, he suggested that her motives may be financial.

In the case of *Stopps* v. *Just Ladies Fitness (Metrotown) and D. (*No. *2)*, 2005 BCHRT 359, the British Columbia Human Rights Tribunal stated:

> "... A complainant may be found to have filed a complaint for improper purpose or in bad faith where, for example, the complainant is motivated by a purpose not consistent with that of the *Code*, or the complainant was not prompted by an honest belief that a contravention of the *Code* has occurred, but by some ulterior, deceitful, vindictive or improper motive. The question of bad faith or improper motive must be judged by an objective standard, since it will seldom be possible to know the mind of the complainant.
> ...

> ... In *Nieuwkerk* v. *Cimex Industries Ltd.* , 2003 BCHRT 126, at para. 13, the Tribunal found that, in order to succeed in an application under s. 27(1)(e), a respondent must show that the complainant's allegations have no foundation in fact or reality, and are made for spurious reasons. Similarly, in *Hartley* v. *Glenlyon Norfolk School* , 2004 BCHRT 384, at para. 13, the Tribunal held that "[i]n order to dismiss a complaint on the basis of s. 27(1)(e), the Tribunal would need to be satisfied that the complaint was filed on the basis of something other than an honest belief that the allegations in it occurred and amounted to a breach of the *Code*" ..."

Lawson certainly testified that she was certainly looking for monetary compensation in regard to this matter. That is not a purpose inconsistent with the Act. There is also nothing in the evidence to suggest that Lawson did not have an honest belief that she was discriminated against.

Counsel for LeFrolic also suggested that Lawson was having trouble with her housing situation, and that another reason to file the complaint was in order to obtain money to pay rental arrears. I make no findings on that point, as that is not the case before me. However, in the case of *Foye and Foye* v. *Desroches and S & D Maintenance*, 2005 BCHRT 268, the Tribunal could not find any concrete evidence that a complaint had been filed for an improper purpose or in bad faith following an allegation that a human rights complaint was filed in response to a notice to vacate. In this case, we are not dealing with a complaint as between a tenant and landlord, but as between a restaurant owner and a patron. If the end result is a monetary gain for Lawson, as a result of a finding of discrimination, then she is free to use that money as she sees fit, including payment of any rental arrears.

DECISION

Based on all of the above, I find that Lawson was discriminated against by Le Frolic in the course of accessing facilities and services and on the basis of the prohibited ground of disability, and contrary to sections 5 and 11 of the Act.

Vicarious Liability

Section 71(2) of the Act states:

> " 71.(2) Any act or thing done or omitted by an officer, official or agent of an employees' organization or occupational organization within the scope of his or her authority to act on its behalf shall be deemed to be an act or thing done or omitted by the employees' organization, employer, employers' organization or occupational association, as the case may be."

Given this principle, LeFrolic is liable for the actions of its employees, including the actions of Loeppky in regard to the incident in question.

REMEDY

Section 62(3) of the Act outlines the powers of an adjudicator where a complaint is found to have merit. Section 62(3) states, in part:

> 62. (3) If the adjudicator finds, under subsection (1), that a complaint has merit in whole or in part, the adjudicator
>
> (a) may order a party against whom a finding was made to do one or more of the following:
>
> (i) to cease the contravention complained of,
>
> (ii) to refrain in the future from committing the same or any similar contravention,
>
> (iii) to make available to any party dealt with contrary to this Act the rights, opportunities or privileges that the person was denied contrary to this Act,
>
> (iv) to compensate any party dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act,
>
> (v) to pay to any party dealt with contrary to this Act an amount that the adjudicator considers appropriate to compensate that party for injury to dignity, feelings, and self respect,
>
> (vi) to reinstate in employment any party dealt with contrary to this Act,
>
> (vii) where the adjudicator finds that the party acted wilfully or maliciously, or has repeatedly contravened this Act, to pay to any party dealt with contrary to this Act an amount not exceeding $10,000.00 as exemplary or punitive damages,
>
> (viii) to take any other action that the adjudicator considers proper to place any party dealt with contrary to this Act in the position the person would have been in but for the contravention of this Act; and
>
> **(b)** may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Act."

I make a declaratory order that the conduct complained of is discriminatory under the Act.

While it is true that it is not an excuse under the Act to state that you did not intend to discriminate against an individual, intention can certainly be taken into consideration when it comes to the issue of damages. In this case, I believe that LePage and Loeppky were genuinely concerned about health and safety of staff and patrons in the restaurant, and LePage was trying to balance those considerations with the comfort of each individual patron. In this case, LePage felt his actions in insisting on some form of identification for the dog were warranted. While he was wrong in law, his actions were not malicious. They were based on what he thought were the restaurant standards required by Northwest Territories legislation; his previous knowledge of Lawson; and on looking at a crowded restaurant. Further, and as important, Lawson went on at great length in her testimony about the necessity for proper training of service dogs; the need for proper identification of service dogs; and the need to ensure that the public did not treat the service dog as a pet. She also stated that it was reasonable for Loeppky to

ask for documents with respect to Megamo and that such documents helped restaurant owners to be comfortable that the dog was well trained and would not have an accident in the restaurant. Yet, when asked, she did not have any papers on her respecting Megamo, though she suggested that she may have papers about Megamo and her condition at home. As well, in my view, the Bridgeport harness was not, in and of itself, enough to identify Megamo as a service dog. Given all of this, if Lawson suffered as a result of this incident, she must consider that she did not follow her own advice.

I am confident that Mr. LePage now has a better understanding of the law following this decision, and his obligations to disabled clientele, and I am confident that a similar incident will not happen again. Given all of the above, I decline to order any other remedy under the Act.

Dated this _____ day of _____, 2008.

_____
Shannon R. W. Gullberg
Human Rights Adjudicator