File 02-10A

THE NORTHWEST TERRITORIES HUMAN RIGHTS ADJUDICATION PANEL

IN THE MATTER OF The Northwest Territories *Human Rights Act,* R.S.N.W.T, 1988. as amended,

BETWEEN:

CRAIG BATTAGLIA

Appellant

-and-

The Hay River Health and Social Services Authority
Respondent

Reasons for Decision

Before: James R. Posynick, Adjudicator

Place of Hearing: Via teleconference
Date of Hearing: March 11, 2013

Appearing:
Glenn Tait, Legal Counsel for the Respondent

Statutes considered:
Sections 5, 7, 30, 35, 44, 45, 57, 62 (5) of the *Human Rights Act* 2002 S.N.W.T. c. 18, as amended;

Background

[1] This is an appeal from the decision of the Director of Human Rights (the "Director") dated July 21st, 2010. The Director chose not to participate in this appeal.

[2] Mr. Battaglia filed a complaint with the N.W.T. Human Rights Commission (the "HRC") on or about September 16, 2009 (the "Complaint"). In it he alleged the Hay River Health and Social Services Authority (the "Authority") discriminated against him on the bases of religion, family affiliation, political belief and political association. He alleged the discriminatory conduct resulted in the termination of his employment.

[3] The Director conducted a review of Mr. Battaglia's Complaint and responded to him by letter on July 21st, 2010. The Director found his allegations were not within the scope of the Northwest Territories *Human Rights Act* (the "*Act"*) or lacked any reasonable evidence or information to support them and she dismissed his appeal.

[4] Mr. Battaglia filed an appeal of the Director's dismissal with the Adjudication Panel on or about August 12th, 2010.

[5] After many teleconferences dealing with hearing practice and procedure, on December 4th, 2012, this matter was set to be heard on March 11th, 2013 at 0900 hours. On February 26th, 2013, a Notice of Hearing was sent to both parties by Email (their chosen means of communication) confirming the hearing would take place via teleconference and drawing their attention to Section 57 of the *Act* which allows adjudicators to proceed with hearings, on proof of notice to the parties, in the absence of a party. On March 8th Mr. Battaglia replied by Email stating he wanted the hearing to proceed as scheduled although he would not be participating. The hearing proceeded in his absence.

Decision

[6] For the reasons set out below, I have decided to affirm the decision of the Director of Human Rights and dismiss Mr. Battaglia's appeal.

The N.W.T. *Human Rights Act*

[7] Section 5(1) of the *Act* prohibits discrimination based on (among other "grounds of discrimination" set out in the Section) religion, family affiliation, political belief and political association. Section 7(1)(a) prohibits the termination of employment for reasons, in whole or in part, based on any of the grounds mentioned in Section 5 of the Act.

[8] Section 30 (1) of the *Act* requires the Director conduct a review and inquiry into complaints to the extent that she determines such review and inquiry is warranted. Section 30 (3) requires the Director give notice of complaints to the party complained of unless she decides to dismiss the complaint under section 44. Section 35 gives the Director the *discretion* to further investigate complaints.

[9] Section 44 (1) allows the Director to dismiss complaints for several reasons including (a) where the *Act* does not provide the jurisdiction to deal with the complaint, (b) where the acts or omissions are not covered by the *Act* and, (c) where the complaint is determined to be trivial, frivolous, vexatious or made in bad faith. Section 44(2) requires the Director to give notice to the parties of any dismissal and the reasons for it. Section 45 allows the filing of an appeal of the Director's decision to dismiss a complaint.

[10] Section 62 (5) allows adjudicators to hear appeals and make orders affirming, reversing or modifying decisions of the Director.

Discrimination

[11] Discrimination is "a distinction, whether intentional or not but based on a prohibited ground which has the effect of imposing burdens, obligations or disadvantages on [a person which are] not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society" (*Andrews v. Law Society of B.C.* [1989] 1 S.C.R. 143).

Documentary Evidence

[12] The documentary evidence I considered in this appeal is as follows:

- Mr. Battaglia's Complaint Form dated September 8, 2009;
- Document entitled Background Information, submitted with the Complaint to the Director (22 pages);
- Termination letter from the Authority dated September 7, 2009;
- "Exhibits 1A thru 3D", annexed to Mr. Battaglia's Background Information document;
- Fax from Mr. Battaglia to Kim Harding, UNW Service Officer, dated September 7, 2009;
- Letter to Mr. Battaglia, dated December 18, 2009, from a Human Rights Officer;
- Letter from Mr. Battaglia to the Human Rights Officer, dated January 4, 2010;
- Letter from the Director to Mr. Battaglia dated July 10, 2010.

Witness Evidence

[13] The Authority called one witness who gave testimony by way of solemn affirmation. From August of 2009 and during 2010 she was the Human Resources Manager for the Authority.

[14] The witness confirmed Mr. Battaglia was hired as "Personal Outcomes Support Worker" in April, 2009. His role was to provide daily-living assistance to residents with cognitive disabilities at their 'supportive living site'. He became a Union of Northern Workers ("UNW") member and his employment was subject to a probationary period of 6 months. He was terminated within the probationary period. She confirmed he chose not to file a grievance via the UNW and, instead, decided to "appeal" his termination to the Authority's CEO. The appeal was denied on September 17, 2009.

[15] She testified the UNW subsequently informed the Authority that Mr. Battaglia needed assistance to relocate his family to the Yukon. Negotiations between the UNW and THE AUTHORITY ensued to facilitate Mr. Battaglia's relocation. The result was a Memorandum of Understanding ("MOS"), the final draft of which was created by the UNW.

[16] Under the terms of the MOS, the Authority agreed to "forgive" money owed to it for unearned leave taken by Mr. Battaglia. The Authority also agreed to pay Mr. Battaglia $3,000.00 for relocation expenses. In exchange, the Authority required Mr. Battaglia release it from all future claims relating to his employment and the termination of his employment.

[17] During negotiations, Mr. Battaglia sent an Email to the CEO stating that he was going to file a human rights complaint and that resulted in the inclusion of another paragraph releasing the Authority from any existing and future actions or claims relating to "the facts surrounding this matter".

[18] The witness confirmed the UNW "coordinated" the signing of the MOS by Mr. Battaglia. She confirmed the monies were paid to him. She said the first time she and the Authority became aware of Mr. Battaglia's Complaint was when notice of his Appeal to the adjudication panel was received.

Credibility and Reliability

[19] I heard no contrary testimony nor was any of the evidence given by the witness contradicted by documentary evidence. Taking into account the whole of the evidence in this case, I find her testimony credible and reliable.

Findings of Fact

[20] In August of 2009 the Authority made allegations of employee misconduct against Mr. Battaglia. He denied the misconduct. He had the assistance of the UNW in responding to the allegations. His employment was terminated on September 7, 2009. A subsequent 'appeal' to the Authority's Chief Executive Officer was denied.

[21] On September 16th, 2009, the Director received Mr. Battaglia's Complaint with several pages of attachments. He complained that false allegations were brought against him by his Supervisor and he was dismissed unfairly. He accused her of "violating" his religious and cultural beliefs and said when he reported that violation to the CEO, she fabricated the allegations against him. He also said that when he raised workplace concerns in his role as shop steward and complained

about the Supervisor to the CEO, he was subjected to "intense scrutiny" unlike other employees. He was denied parental leave when others were granted it. He said he witnessed the Supervisor "harassing" another employee "based on race".

[22] On October 2nd, 2009, Mr. Battaglia signed the MOS negotiated by the UNW. In exchange, a debt of $1,353.81 was forgiven and he received $3,000.00 in relocation expenses. The UNW president signed the MOS on October 15th, 2009 and the Authority CEO signed it on October 30, 2009.

[23] On December 18, 2009, a Human Rights Officer sent Mr. Battaglia a letter advising him that, in her opinion, his Complaint was not "covered by [the *Act*] and deals with issues that are outside the jurisdiction of the *Act*".

[24] On December 31, 2009, Mr. Battaglia responded to the Human Rights Officer's letter. His response was that the allegations of his misconduct occurred after the Supervisor emailed him suggesting "somehow [his] bathing and feeding [the Authority's] clients with brain injuries … was the same or "no different than" him feeding and bathing his own daughter. She knew he was a Buddhist and his wife was Thai and so what she said "in the eyes of his religious and cultural beliefs would mean [his] wife is incapable and/or unworthy of properly caring for" their daughter and he "the male spouse has to do it".

[25] He also stated the allegations against him arose only after he reported what she said to the Authority's CEO. He said his employment was terminated because the Supervisor was angry at "being accused of violating [his] religious and cultural beliefs".

[26] On July 21, 2010, the Director sent a letter to Mr. Battaglia analyzing the facts and circumstances revealed by his Complaint and accompanying documents and explaining her reasons for deciding to dismiss his Complaint.

[27] The Director concluded the termination process disclosed no link to any of the grounds of discrimination in Section 5 of the *Act.* She concluded there was no evidence of discrimination based on family affiliation and family status because his request for parental leave was not denied, it was deferred as a consequence of the disciplinary action by his employer.

[28] The Director dismissed his allegation of discrimination based on "cultural beliefs" because "culture" is not a ground listed in Section 5 of the *Act.* Mr. Battaglia's allegation that he was terminated because he is a Buddhist was found to be purely speculative and unsupported by the documentation he provided. The Director noted when he complained to the CEO about his Supervisor, Mr. Battaglia did not mention discrimination of any kind.

[29] Finally, the Director could find no basis for the claim he was discriminated against on the basis of political beliefs or association because any dispute with his employer about workplace conditions and allegations of harassment are not based on "political beliefs" and, in any event, he repeatedly claimed he was terminated because he complained about his Supervisor, not because of his political beliefs. She dismissed his Complaint.

[30] Mr. Battaglia did not disclose the MOS to the Director. He did not disclose he received money and other consideration for signing it. He did not disclose the terms under the MOS releasing the Authority from all existing and future liability arising out of the termination of his employment.

Issues to be Decided

[31] Preliminary Issues:

1. Is the MOS admissable as evidence on this appeal?
2. If the answer to 1. is "yes", what, if any, impact does it have on this appeal?

Other Issues:

3. What is the standard of review applicable by adjudicators under s. 45 of the *Act*?
4. Applying the standard of review, should the Director's decision be set aside?

Issue 1. Is the MOS admissable?

Positions of the Parties

Mr. Battaglia

[32] In an addendum to his written submission sent to this tribunal on September 10, 2010, Mr. Battaglia stated there is a confidentiality clause in the MOS that should have prevented the Authority from disclosing its terms "except as required by law". It states:

> 3. The Employee, the Employer and the Union agree to keep confidential the terms of this Memorandum of Settlement and not to disclose the terms of this Memorandum of Settlement to anyone, except as required by law.

He says this hearing is not a "legal proceeding" nor has the Authority been required to produce the MOS. The only reason it is being produced is to "discredit" him.

[33] He also asks for a ruling on its "validity", i.e. whether it was "made under duress or threat". He says the MOS is "invalid and void". He refers to a copy of an "Information Sheet" from the Alberta Human Rights Commission which sets out how "severance agreements" are treated in that province.

[34] During a prehearing teleconference on October 14th, 2011, he submitted the MOS is not "valid" because he received inadequate representation from the UNW and he was "under duress" when he signed it. He said he was going to call witnesses to testify at the hearing, via teleconference, to prove he was under duress when he signed the MOS.

The Authority

[35] Legal counsel for the Authority provided written submissions in December, 2010, and, at the hearing, made oral submissions. He referred me to paragraph 6 of the MOS which states:

> 6. The Employee does hereby remise, release and forever discharge the Employer, its successors, affiliates, subsidiaries, related entities, agencies, employees and agents from any action, claim or demand of whatever kind or nature they ever had, now have, or

> can, shall or may thereafter have, with respect to, by reason of, as a result of , or in any way arising out of, any action of the Employer, employees and agents in relation to the facts surrounding this matter.

He submits paragraph 6 is a full, complete and binding release given by Mr. Battaglia in return for the forgiveness of debt to, and the payment of money by, the Authority.

[36] The Authority also says other human rights tribunals have recognized there is an important public interest in finding proceedings are ended when parties enter into agreements to resolve human rights disputes "…to do otherwise could make the finality of settlements highly uncertain". The cases recognize settlements are different from tribunal decisions. They are voluntary and allow parties to reach mutually acceptable solutions for reasons of their own.[1]

[37] It is submitted the cases also show that holding a hearing after the execution of a severance agreement is an "abuse of [tribunal] process".[2] They say that mere emotional or financial pressures on a party to an agreement do not amount to "duress"[3]. The Authority's legal counsel says Mr. Battaglia had, at the very least, the opportunity to consult with the UNW. Absent testimony or evidence from him demonstrating duress or some reason the UNW's involvement was prejudicial to him, I ought to find the MOS valid.

[38] Finally, legal counsel says an appeal before this tribunal is an "appeal by way of rehearing"[4] which means "there is no difficulty bringing forward new evidence" and, when the Authority became aware of the appeal, it properly produced the MOS as a defense to any further claims. Further, in the circumstances of this case, the MOS is admissible because it was not before the decision-maker below and, had it been produced, the Director would have dismissed the Complaint under Section 44(1)(d) of the *Act.*

[1] *Dunn v. City of Sault Ste. Marie (City)* 2009 HRTO 149 @ para. 35
[2] *Virgin v. Dollar* 2009 HRTO 899 para. 16.
[3] *Ibid*, para. 15.
[4] *Niziol v. Aurora College et al* 2007 NWTSC 34 @ para. 30.

Analysis and decision on the admissability of the MOS

[39] This tribunal is properly constituted under the laws of the Northwest Territories. It is given the power to decide appeals of Director's decisions affecting the rights of Complainants under the *Act*. I conclude an appeal is a "legal proceeding". Adjudicators have the power to require the production of documents via s. 59 of the *Human Rights Act* and s. 3(2)(c) of the *Public Inquiries Act*. Were it necessary to do so, an adjudicator could have required the production of the MOS and very likely would have done so had it not been produced by the Authority because the Authority says it is valid and settles any question of liability under the *Act* between the parties. I conclude the MOS is properly produced. The question is whether it ought to be admitted into the evidence.

[40] I do not agree entirely with the Authority's position that because this is an appeal by way of rehearing any new evidence may be brought forward on appeal. The N.W.T. decisions he refers me to are premised on a Supreme Court of Canada decision which decided that such appeals are *not* completely fresh hearings rather the court "proceeds on the basis of the record and any fresh evidence that, exceptionally, it admits"[5] (underlining added). This approach makes sense. It allows the appellate tribunal to receive new or fresh evidence in a principled way to avoid unnecessarily lengthy appeal hearings dealing with new evidence that may be relevant to an issue to be decided, but unlikely to affect the outcome.

[41] This become apparent when one examines the criteria for the receipt of fresh evidence:

- It should not be admitted if by due diligence it could have been admitted in the first instance;
- It should bear upon a decisive or potentially decisive issue;
- It must be credible;
- It must be such that, when considered with the other evidence, it could have affected the outcome of the decision-maker below.[6]

[5] *H.L. v. Canada* [2005] S.C.J. No. 24, para 176 cited in *Inuvik Housing Authority v. Kendi* 2005 nwtsc 46 @ para 19.
[6] *Palmer v. The Queen* [1980] 1 S.C.R. 759

[42] The criteria are usually applied after hearing all of the evidence (without ruling on admissibility) so that the decision on the ability of the fresh evidence to affect the outcome can be fully informed.[7] That is the approach that I have taken in this case.

[43] Apart from the MOS, the evidence consists of the testimony of one witness and documents that were before or created by the Director. The written and oral arguments and submissions of both parties are *not* evidence but, where they are properly before me (in compliance with the Rules of Procedure and Practice and Directions given to the parties), I have considered them.

[44] The former Human Resources Manager testified the Authority had no notice of Mr. Battaglia's Complaint until this proceeding was commenced. I note Section 44 (2) of the *Act* requires the Director to give notice of decisions to dismiss complaints, along with her reasons, to "the parties". In other words, although Section 30(3) of the *Act* contemplates no notice being given to Respondents when a complaint is dismissed under Section 44(1), the Director must give her reasons for dismissal to Respondents as well as Complainants.

[45] The Director's letter of July 21, 2010 dismissing Mr. Battaglia's Complaint does not indicate a copy was sent to the Authority. The Human Resources Manager gave testimony under solemn affirmation that the first time the Authority learned of Mr. Battaglia's Complaint was when it received notice of this appeal. She was in a position to know if the Director gave the Authority notice under Section 44(1) but she had no knowledge of it. I conclude the Director failed to give notice under Section 44 (2) but that omission is not determinative of this appeal.

[46] Applying the criteria for admissibility of fresh evidence, I conclude as follows:

- There was no need for due diligence since neither the notice of the Complaint nor its dismissal were given to the Authority by the Director;
- Since the MOS appears to finally conclude all liability between the parties arising from Mr. Battaglia's employment, receipt of it is

[7] *Ashby v. McDougall Estate* 2004 NSCA 50

potentially determinative of the issue of whether Mr. Battaglia is entitled to a hearing;
- Since the parties do not dispute the existence of the document nor what was agreed upon, I find it is credible;
- Since the MOS appears to conclude all liability between the parties it could have affected the outcome of the decision-maker below, albeit the same outcome may have resulted.

[47] I rule the MOS admissible as fresh evidence on this appeal.

Issue 2: What is the impact of the MOS on the appeal?

Positions of the Parties

Mr. Battaglia

[48] Mr. Battaglia does not dispute signing the MOS nor does he dispute the content of it. In his 2010 addendum to submission he stated he was "under duress" when it was signed. He repeated this during a prehearing teleconference in October 2011. He said he also had inadequate representation from the UNW at the time it was signed. He referred me to the Alberta Human Rights and Citizenship Commission's "information sheet" on "Releases, severance agreements and human rights law" and suggested that, applying the approach of that tribunal, the MOS was not valid.

The Authority

[49] The Authority says Mr. Battaglia entered into the MOS freely and with the help of the UNW. I am asked to accept the testimony of its witness who said the MOS was negotiated with the UNW on Mr. Battaglia's behalf. Further, because he told the Authority's CEO he was going to file a human rights complaint, the release in clause 6 was added. Clause 6 specifically prohibited him from pursuing any action "in relation to the facts surrounding this matter". The final draft was prepared by the UNW and Mr. Battaglia accepted its terms and conditions by signing it and accepting payment of the settlement proceeds.

[50] The Authority says the MOS is valid because it is not enough to say he suffered financial or emotional stress when he signed the MOS. He has not proven "duress".

Analysis and Decision on the Impact of the MOS

[51] Again: I have no reason not to accept the evidence of the Authority's witness. The weight of all of the evidence is that Mr. Battaglia had the benefit of UNW's help negotiating the MOS and I have no evidence that the UNW did anything to prejudice the outcome against him. I have nothing more than Mr. Battaglia's comments about "duress". As noted above, written arguments and unsworn statements are not "evidence".

[52] Mr. Battaglia's reference to the way Alberta deals with releases and severance agreements is helpful. It describes duress as "unlawful pressure to act against [a complainant's] will". It points out that "stress and unhappiness are not enough to prove duress". The latter statement is confirmed in the *Virgin* case provided by the Authority[8].

[53] The Supreme Court of the Northwest Territories has recognized the strong public interest in upholding contracts. It has stated those "entered into by sane and competent individuals will not be set aside no matter how foolish or improvident such an agreement may appear in hindsight, in the absence of fraud, duress, undue influence, misrepresentation or some other unconscionable conduct"[9]. I have no evidence of any facts or circumstances that might lead me to believe Mr. Battaglia was not sane or competent at the time he entered into the MOS. There is no evidence that any of the exceptions apply in this case. The MOS is valid.

[54] Section 62 (5)(a) allows me to affirm the Director's dismissal. Based on the fresh evidence admitted in this case and taking into account the important public interest principle of upholding settlement agreements that are not proven invalid and which finally settle human rights complaints, I dismiss Mr. Battaglia's appeal.

[88] *Virgin*, *infra* para. 15.
[9] *Valic v. Worker's Compensation Board* 2010 NWTSC 97

[55] If I am mistaken in relation to the impact of my finding that the MOS was valid, I also find the decision of the Director to dismiss is reasonable for the reasons that follow.

Issue 3. What is the standard of review applicable by adjudicators under s. 45 of the *Act*?

Positions of the Parties

Mr. Battaglia

[56] Mr. Battaglia argues his Complaint reveals a "*prima facie*" case, that the Director should have found that to be the case and therefore her decision is unreasonable.

The Authority

[57] The Authority says the legal test I must apply in deciding whether to set-aside the Director's decision is "reasonableness". Only if the Director's line of reasoning will not "stand up to a somewhat probing examination" or if the Director's decision is unsupported by a "tenable explanation", will the decision be "unreasonable"[10].

Analysis Decision on the Standard of Review

[58 I agree with the Authority's legal counsel. The Supreme Court of the Northwest Territories has determined the standard of review adjudicators must apply under s. 45 is one of "reasonableness.[11] I must consider whether the Director's decision is consistent with the relevant legal principles, is logical and makes sense. I do not have to decide whether the decision was "correct".[12]

[10] *Diavik Diamond Mines Inc. v. Boullard* 2007 NWTSC 83 para 60
[11] *Aurora College v. Niziol* 1007 NWTSC 34 @ para. 36
[12] *Dunsmuir v. New Brunswick* 2008 SCC 9 @ para. 47; Dalton v. THE AUTHORITY , HRAP Decision 07-08

Issue 4. Applying the standard of review, should the Director's decision be set aside?

The Positions of the Parties

Mr. Battaglia

[59] Mr. Battaglia's August, 2010 Notice of Appeal to the adjudication panel sets out the following reasons for his appeal:

- His Complaint was dismissed without notice of it being given to THE AUTHORITY;
- His employment was terminated because he complained to his employer of "harassment" by his Supervisor;
- He was terminated after applying for parental leave and was denied parental leave which was given to another employee prior to his request;
- The HRC failed to conduct an investigation into his complaint;
- His complaint is a "*prima facie*" case because it is the only information the Director received and it "must be given credence and accepted as factual and truthful";
- The dismissal of his Complaint because some of it was beyond the scope of the *Act* "violates the provisions" of the *Act.*
- The HRC has an "obligation" to all complainants to investigate all complaints;
- The decision of the Director was based upon "one written letter [from him]… and no other information";
- The Director must not have believed his case because she did not send his Complaint to the Authority;
- At least "parts" of his Complaint should have been investigated;
- The Director's decision that his request for parental leave was not denied but deferred while disciplinary measures were going-on was wrong because she never spoke to him about his conduct until he was terminated;
- The reasons for his termination were not valid;

- The Supervisor made the decision to terminate after he applied for parental leave and knew it would cause hardship for him and his family;
- It is "common sense" that the Supervisor terminated him out of retaliation for complaining to the CEO about her conduct.

[60] In written submissions dated November 29th, 2010, Mr. Battaglia made further arguments:

- The Director's decision failed to define what "reasonable evidence" means and, as such, made an arbitrary determination in this case;
- During the 7 months between the review of his Complaint by a Human Rights Officer and the Director's decision, she took no steps to investigate;
- He failed to mention a call from the CEO which apologized for his Supervisor's behavior and offered to "resolve" the matter but he was dismissed instead;
- The *Act* does not say what "burden of proof" applies to give reasonable grounds to cause an officer of Director to investigate a complaint. He is not a lawyer and did not know how to meet that burden. In any case, the Director has to prove that his evidence was not "reasonable" and she did not do so.
- The HRC's delay in processing his complaint prejudiced him because the CEO and his former Supervisor no longer work there. He has also been prejudiced because the Director did not investigate and so he received no response to his Complaint from the Authority.

[61] In his emailed "addendum" to submissions he states:

"I supplied what I thought was "reasonable" evidence and reasonable cause for an investigation into my complaint". He emphasized his own good character and that he made his complaint believing the Authority discriminated against him at the time.

The Authority

[62] The Authority submits the Director's decision to dismiss was reasonable because there was an absence of "reasonable evidence or information to support the allegations". There must be a "reasonable basis in the evidence for sending

the complaint to a hearing". [13] There "must be evidence which, if believed, could substantiate the complaint".[14] The Director was exercising a statutory discretion and is entitled to "considerable deference".[15]

[63] Further, there was no error by the Director in failing to require a response to Mr. Battaglia's Complaint. The *Act* does not require her to do so and her role was "to determine whether the complainant has presented sufficient evidence to warrant a hearing – a very low threshold…" Section 44(1) of the *Act* "is meant to screen out at a preliminary stage those complaints that are without any merit whatsoever".[16]

[64] The Authority says there was "insufficient evidence" of discrimination on the grounds of family affiliation or status in relation to Mr. Battaglia's request for parental leave.

[65] With respect to the alleged discrimination on cultural and religious grounds, the Authority says the comments made by Mr. Battaglia's Supervisor were innocuous and that is evidenced by Mr. Battaglia's response at the time: he took no offense nor issue with them. The Authority disagrees with Mr. Battaglia's comment that knowledge of his culture and religion was "inherent" in the Supervisor's position.

[66] Finally, the Authority says that the Director correctly decided she had no jurisdiction to deal with allegations of discrimination based on culture nor allegations arising from Mr. Battaglia's role as shop steward.

Analysis and Decision on the Reasonableness of the Director's Decision

[67] Section 44 of the *Act* allows for the dismissal of a complaint where the Director is satisfied:

- The complaint is not within the jurisdiction contained in the *Act*;
- The acts or omissions are not of the kind to which the *Act* applies;
- The complaint is trivial, frivolous, vexatious or made in bad faith;
- The substance of the complaint has been dealt with in another proceeding;

[13] Aurora College v. Niziol 1007 NWTSC 34 @ para. 34
[14] *Diavik Diamond Mines Inc. v. Boullard* et al, 2007 NWTSC 83.
[15] *Ibid*,para. 30
[16] *Ibid*, para. 10.

- The contravention occurred more than 2 years before the complaint was filed.

[68] Section 30(3) allows the Director to inquire into and dismiss a complaint without notifying the party complained of that a complaint was filed. Section 35 gives the director the *discretion* to further investigate a complaint. I find the Director acted within her statutory authority when she chose not to give notice of the Complaint to the Authority and in choosing not to investigate Mr. Battaglia's Complaint any further.

[69] I agree with the submission that the burden Mr. Battaglia had to discharge to proceed to a hearing has a low threshold, a *prima facie* case, i.e. there must be some reasonable basis in the evidence to proceed to a hearing.

[70] Mr. Battaglia sent an email to his Supervisor expressing several workplace concerns in his capacity as UNW shop steward. He referred to the possibility of "cross-contamination" occurring when staff have to deal with "toileting, then… food preparation". Part of the Supervisor's response was ""as for the cross contamination, we are a residential home, we are not a nursing healthcare facility. At your home, you assist your daughter to bathe and then make her dinner so please let's keep the concept of it being a regular home in mind…" In his own follow-up email to the Supervisor, Mr. Battaglia never took offense to the comment. I fail to see how drawing Mr. Battaglia's attention to the difference between a "residential" facility and a healthcare facility by noting how he treats his own family, demonstrates discrimination based on religion. To the extent that religion is an aspect of culture (which the Director decided was not a prohibited ground in the Act) the Director considered his Complaint and her conclusions are well reasoned, logical and reasonable.

[71] Mr. Battaglia's allegation that another employee suffered discrimination based on "race" in the workplace, is not borne out by any of the evidence.

[72] "Family status" discrimination occurs in the employment context when an employee's relationships, or lack of relationships, is taken into account by the employer in making a decision that has an adverse impact on the employee's employment. Here the Director reviewed the materials and concluded that the deferral of his leave request while disciplinary action was underway did not result

from his family status. The Director's decision there was no reasonable evidence supporting the denial of parental leave is borne out by what happened after he applied for leave, i.e. his employment was terminated. The Director's decision is based on undisputed facts and makes sense to me. It is not unreasonable.

[73] Labour union involvement in workplace issues like the ones Mr. Battaglia brought to his Supervisor's attention, e.g. payment of overtime, seniority, calling in-sick procedures, leave requests, eye protection and food preparation, are not issues arising from political beliefs according to the cases cited by the Director. I have read those cases and her reasoning is sound.

[74] The Director found the termination of Mr. Battaglia's employment was not linked to *any* ground of discrimination. By "linked" I mean a connection between the decision to terminate his employment and his family status, religion or political beliefs/association. Again: the Director's conclusion that no link is made is reasonable, in my view. While the burden of proving a complaint under the *Act* is a low one, complainants not only need to describe the facts and circumstances surrounding a complaint as thoroughly as possible, they need to link those facts and circumstances to one of the grounds in Section 5 in a coherent way. Making that link is the key to providing "reasonable evidence". Speculation and vague allegations will not suffice to get a complaint to a hearing and may very well result in a dismissal without further inquiry or investigation.

[75] The Director's decision to dismiss Mr. Battaglia's Complaint was reasonable and is affirmed.

Dated this 4th day of April, 2013.

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James Posynick, Adjudicator