SUPREME COURT OF YUKON

Citation: *Government of Yukon* v. *McBee, Yukon Human Rights Commission and Yukon Human Rights Board of Adjudication*, 2009 YKSC 73

Date: 20091113
Docket No.: 08-AP011
Registry: Whitehorse

In the Matter of the Yukon *Human Rights Act*,
R.S.Y. 2002, c. 116, section 28

And

In the Matter of an Appeal of the Decision of the Human Rights Board of Adjudication in the Complaint of *Donna McBee (Molloy)* v. *Government of Yukon*

BETWEEN:

GOVERNMENT OF YUKON

APPELLANT

AND:

DONNA McBEE a.k.a. DONNA MOLLOY, YUKON HUMAN RIGHTS COMMISSION and YUKON HUMAN RIGHTS BOARD OF ADJUDICATION

RESPONDENTS

Before: Ms. Justice R.E. Nation

Appearances:

Peter Csiszar	Appearing for the Appellant Government of Yukon
Susan Roothman	Appearing for the Respondent Donna McBee a.k.a. Donna Molloy
Kyle Carruthers	Appearing for the Respondent Yukon Human Rights Board of Adjudication

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] NATION J. (Oral): This is an appeal from a decision of the Human Rights Board of Adjudication in the matter of Donna McBee, now Ms. Molloy, and the Government of Yukon. The decision was issued December 5, 2008. A statutory appeal is allowed under s. 28 of the Yukon *Human Rights Act*, R.S.Y. 2002, c. 116. The appeal under that section may be made only on questions of law.

[2] The appellant, the Government of Yukon, advances four errors of law. Firstly, that the majority erred by finding that discrimination was a factor in the termination of Ms. Molloy's employment. The second and third grounds of appeal, together, are that the Board was in breach of principles of fundamental justice by considering the testimony of the complainant, Ms. Molloy, when she had failed to attend for the completion of her cross-examination, or, alternatively, the third ground of appeal, that the majority's failure to indicate what weight was given to the complainant's evidence was an error of law and a breach of fundamental justice. And the fourth ground is that the remedy ordered by the majority exceeded its jurisdiction.

[3] The respondent, Ms. Molloy, opposes the first three grounds of appeal, but filed a cross-appeal arguing that the Board erred in law in relation to the remedy granted. The three errors argued by Ms. Molloy's counsel were: firstly, considering remedies without hearing evidence about remedies or submissions from the parties about that; secondly, by granting a remedy outside its jurisdiction; and, thirdly, by penalizing Ms. Molloy for her non-attendance on August 21st, in failing to grant her personal remedy.

[4] The Commission takes no position on the appeal. Counsel for the Board appeared in terms of the jurisdictional remedy argument.

[5] First, I want to deal with some background law that is applicable. There is no issue among the parties arguing the appeal, set out in their factums, that the standard of review applicable to this appeal, which is limited to questions of law, is correctness. This is based on case law which has previously considered this *Act*. Those cases are, for instance, *Yukon (Human Rights Commission)* v. *Yukon (Human Rights Board of Adjudication)*, [2000] Y.J. No. 128, and *Gould* v. *Yukon Order of Pioneers*, [1996] S.C.J. No. 29.

[6] I agree with that comment, but I want to be careful to add this observation as the case of *Dunsmuir* v. *New Brunswick*, [2008] S.C.J. No. 9, has since been decided by the Supreme Court of Canada. The *Dunsmuir* case set out two levels of scrutiny: correctness and reasonableness. A court has to decide which level of scrutiny, either by applying the standard applied under former jurisprudence where the jurisprudence has already worked out the particular level of review to be applied to the decision in question, or there is to be an analysis based on four questions.

[7] The respondent's counsel is correct in her assertion that the Court has to be careful, in hearing a statutory appeal on an error of law only, to first identify if there is an error of law and then identify the nature of the inquiry, as there can be situations where the correct level of review may be reasonableness. This depends on the question under review. For example, where the issues become mixed fact with law or a question of law on which the tribunal has some expertise and the legal issue is not one of general

application, then *Dunsmuir* may indicate that the level of review is reasonableness, even despite earlier jurisprudence about the level of review.

[8] I agree with the respondent that the Court has to recognize that the decision here, discrimination on grounds of marital status, raises issues of mixed fact and law which are factually intensive. The role of this appeal court and the level of review have to be clearly understood. However, both the appellant and cross-appellant raise issues based on fundamental justice arguments. These are questions of procedural fairness and are questions that invite an inquiry as to the level of procedural fairness to be required.

[9] To decide issues about the level of procedural fairness and natural justice to be accorded a party, the inquiry is set out in *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39, and looks at five issues. One, the nature of the decision and the process followed in making it. Two, the nature of the statutory scheme and the terms on which the decision maker operated. Three, the importance of the decision to affected individuals. Four, did any affected individuals have legitimate expectations about the procedures to be followed. And five, has the tribunal itself made any choices concerning the procedures that normally will be followed in such circumstances. This analysis has to be done on a per issue basis.

[10] So I will deal firstly with the first three issues raised on appeal by the appellant as I find they raise issues of natural justice or procedural fairness that were argued as errors of law. These were the failure to give reasons to provide the nexus between any

findings of fact and the finding of discrimination by the majority, the decision not to strike the complainant's evidence despite the fact her cross-examination was not completed, and the majority's failure to indicate what, if any, weight was given to the complainant's evidence.

[11] Applying the *Baker* analysis to these three issues at the hearing. First, the nature of the decision here is closer to a judicial process because there has been a hearing with the calling of evidence. Two, the nature of the statutory scheme. Here a panel is to hear evidence and decide the issues with a statutory appeal on questions of law only. Three, the importance of the decision to the individual. Here it is not life or liberty, but an issue of employment and human rights, so fairly important. Four, the legitimate expectation of the person. This factor plays into the third grounds of appeal as, after finding the evidence of the complainant can be used, the Board invited submissions about weight, so something one would expect to be dealt with in the decision. And five, the choice of procedure given to the Board, which was, here, a hearing. When I consider the factors, I find there is a medium to high expectation of procedural fairness in the making of the decision by the Board.

[12] So on the first ground of appeal, that the majority erred in law by finding that discrimination was a factor in the termination of Ms. Molloy's employment, the argument of the appellant attacks the reasons provided by the majority. The appellant argues that the majority properly set out its task to determine if the Commission had established a *prima facie* case that there was credible evidence to support Ms. Molloy's claim of

discrimination, and, if that was made out, then the appellant/employer was required to reasonably explain that its conduct was not discriminatory within the meaning of the *Act*.

[13] The argument of the appellant is that there was not an analysis of the evidence or its application to the question of whether there was discrimination. The argument is the Board did not talk about credibility; it did not give clear findings of facts and indicate the nexus between them and the evidence it relied on and the finding of a *prima facie* case. Likewise, it is argued there is no analysis to indicate if and why the majority did not accept the explanation provided by the appellant for its conduct in the termination of employment, this being the conflict of interest policy and dishonesty. It is pointed out the majority does not discredit in any way the explanation provided by the appellant for the termination. The argument is that the Board did not disclose a logical nexus, or any nexus, between the facts, to link them to the finding of the Board, which was, despite the evidence of the witnesses who testified they terminated the complainant due to a conflict of interest, the breach of a government policy and her dishonesty, the Board found that discrimination was part of that decision. The appellant argues the inability to follow the reason and failure to clearly indicate findings and how the finding was made amounts to an error of law.

[14] The respondent concedes only, on page 15 of their factum, that the majority is not particularly clear as to how it applied the law to the finding of facts (and I refer to para. 30 of the factum). But the respondent argues that it is the finding of fact that discrimination is a factor in the termination that is important. This involves mixed law and fact, and thus deference is required. The respondent argues the Board is not

required to provide reasons to the level the appellant asks. On review, the respondent argues the only question is whether there is evidence that could support the findings of the Board, and the respondent argues that that evidence is there, although admittedly some inferences have to be made in reading the decision.

[15] When I read the decision of the majority, I have to agree with the analysis of the decision set out by the appellant in some detail on pages 10 to 13 of its factum. The first sections of the decision - one, the introduction; two, entitled “What is this Complainant about?”; three, “Who are the parties?”; four, “What are the circumstances giving rise to the Complaint?”; and, five, “The Parties’ Positions” - are all provided in detail and are easy to follow, and they provide summaries of that issue, as is the case with Part VI, “What are the Issues to be determined?”. It is somewhat confusing as to whether these sections include findings of fact by the Board or whether they are merely a recitation of a background summary. However, in dealing with the reasoning and consideration of the issues, once the determination of the issues occurs, there is no discussion of credibility, nor any discussion of the weight to be given to Ms. Molloy’s evidence in the face of conflicting evidence on material points. In fact, there is no acknowledgement of conflicting perceptions or stories.

[16] The decision on page 8, under “VII. Finding of Discrimination”, indicated a number of what can be termed findings of fact, each assigned a bullet. Then, with no analysis, the decision states:

> Based on the sum of the evidence, the majority of the Panel believes that Ms. Molloy was subject to discrimination ….

[17] There is no indication of how the majority came to that conclusion. None of the bullet points indicate any form of discrimination per se. The paragraph that follows seems to discuss that safety concerns of the workplace meant Ms. Molloy was more likely than not ostracized by her co-workers, but there is nothing to link that ostracism to a particular act by her employer that was discriminatory.

[18] There is, following, a paragraph that suggests findings that Ms. Van Blaricom was aware that Ms. Molloy was entranced by Mr. Molloy, that he wanted contracts that she was arranging for facilitators, but the superior did not address the risk of succumbing to the pressure from Mr. Molloy; presumably an excuse for Ms. Molloy recommending him.

[19] There are no facts found as to the policy of the Government or their justification of dismissal, either the breach of the conflict of interest alleged or the alleged dishonesty, when Ms. Molloy was confronted with questions about her recommendation of Mr. Molloy, or a link of that failure to address the pressures of Mr. Molloy to the act of discrimination, which was the termination.

[20] The difficulty with the reasons continue under B, when the majority turns its attention to whether discrimination was a factor in determining whether to terminate Ms. Molloy's employment. All parties agree the termination here was the discriminatory action alleged by the complainant. The decision alludes to the submission of the respondent that the evidence reveals a full and complete non-discriminatory explanation for the termination, but there is no analysis of how or on what basis the Board goes on

to make its next statement, a double-negative which, in essence, finds the Board was satisfied that the termination was in part motivated by discrimination based on the marital status, including the identity of the common-law spouse.

[21] The Board goes on to make observations, or perhaps findings, about the facts around the termination, underlining some parts of the decision, presumably for emphasis, making statements, “All the problems linked to Thomas Molloy would go away upon her termination,” but not engaging in any finding or discussion that this was in the mind of the employer or how those findings could be reconciled with the evidence given by the individuals who denied those considerations in the termination.

[22] The Supreme Court of Canada in *R.* v. *Shepherd*, [2009] S.C.J. No. 35, makes comments about a trial judge giving reasons for decisions. Although not expressly talking about tribunals, the case illustrated the difficulty that can occur if those affected by decisions are left in doubt about why a decision was made. The case acknowledges that where there is contradictory evidence on key issues, reasons acquire a particular importance. Mostly, though, the absence of reasons may prevent an appellant court from properly reviewing the correctness of an unknown, unexpressed pathway taken to reach a conclusion and properly addressing whether the principle issues of the case were properly addressed.

[23] The Supreme Court of Canada in *Baker*, *supra*, dealing with procedural fairness, indicated that in certain circumstances, including when the decision has important significance for the individual or where there is a statutory right of appeal, which is the

case here, the duty of procedural fairness will require a written explanation for the decision. Courts have been careful to point out that detailed reasons may not always be required, and, notably, even in *Baker* the provision of the adjudicator's notes were sufficient.

[24] The Ontario Court of Appeal, in *Clifford* v. *Ontario Municipal Employees Retirement System*, [2009] O.J. No. 3900, expresses this well by stating that in the context of administrative law, reasons must let those affected know why the decision was made and permit effective judicial review. The basis of the decision must be explained, and the explanation logically linked to the decision made. There is not a requirement that every piece of evidence is discussed; it is in the context of the record and the issues in the proceedings. The question is, do the reasons show the tribunal grappled with the substance of the matter?

[25] So here, in the circumstances, I find the reasons do not clearly find facts; they do not even allude to credibility or conflicting evidence and they do not include any discussion of the path or a nexus or a linking from the facts to the finding of discrimination, and, as such, they are deficient. A general statement such as "Based on the sum of the evidence" and then a finding of discrimination, is not acceptable in the particular circumstances of this case, in light of the conflicts of the evidence and the issues.

[26] A way to demonstrate the difficulty with the reasons is to ask, for instance, the question: Did the Board find Ms. Molloy breached the employer's conflict of interest

policy? This is important in determining whether the Government was being genuine in terminating her on that basis. Looking at page 31 (sic), the decision refers to what they call "the Complainant's inevitable breach of the … Conflict of Interest Policy." However, higher up on that page there is a discussion, saying that, "On paper, there appears to be no breach of conflict of interest by Ms. Molloy," as she attempted to prevent direct conflict of interest.

[27] How is one reading the decision to understand or reconcile the suggestion that it is inevitable that Ms. Molloy would breach the policy, and why the emphasis on safety in the workplace and the remedy ordered by the tribunal when the complaint in the analysis is about the termination? This demonstrates the problem with the reasons in this case, which, taken together, amount to an error of law and mean that the decision of the majority must be set aside. The problem with the reasons will also be illustrated in the analysis on the second ground of the appeal.

[28] The second ground of the appeal is that the Board was in breach of the principles of the fundamentals of natural justice by considering the testimony of the complainant, Ms. Molloy, when she failed to attend for the completion of her cross-examination; or, alternatively, the majority's failure to indicate what weight was given to the complainant's evidence. It is argued this amounted to an error of law.

[29] The argument of the appellant here is that it was a breach of the rules of fundamental justice that Ms. Molloy's evidence would even be considered when her cross-examination was not complete. The appellant, on pages 21 to 24 of its factum,

outlines its grounds of appeal. It is largely an attack on the written decision of the Board, which was made in response to an application partway through the hearing.

[30] Ms. Molloy, for whatever reason, did not re-attend the hearing after an adjournment for a period, and thus her cross-examination could not be completed at that time. An application was brought to exclude her evidence, as a result, and a written decision was given by the Board, indicating that, as there was some cross-examination, her evidence would be allowed to remain on the record. The decision went on to say:

> The parties may make submissions on the weight to be accorded to her evidence with their final submissions.

[31] In their decision to allow the evidence to stand, the Board did carefully reason and distinguish between someone, who faced no cross-examination, with the situation here, where there was substantial cross-examination but it was not completed. That decision, in itself, to allow the evidence to remain, is not an error of law, and I would not allow any appeal on a review at the level of correctness.

[32] However, in light of the decision, there would be a heightened awareness of the Board, or should be a heightened awareness, that it would expect argument and would have to deal with the weight it decided to give Ms. Molloy's evidence. Having made this interim decision, and setting up the expectation that the Board would be alive to the issue and decide the weight of this witness's evidence, one would expect that it would be addressed in the decision.

[33] Here, in light of directly contradictory evidence on very essential matters that were material to the issue before the Board around the time of termination, it becomes incumbent on the Board to address this issue and the weight it gives to that evidence, in the context of the conflicting evidence it heard.

[34] I want to just demonstrate the conflict in the evidence between the complainant and the two key witnesses of the employer, as they were many and substantial. To reference just a few for this decision. Ms. Van Blaricom, on page 484 and 485, is directly denying some of Ms. Molloy's evidence, in fact calling some aspects of it incredulous. Ms. Molloy, at page 188 and page 72 and 73, was directly denying that things happened as reported by her superiors. In fact, their statements of evidence were being put to her directly. Her evidence is quite different than that of Ms. Doerksen as it relates to if, and in what way, she recommended Mr. Molloy as a facilitator. These are not immaterial matters. A simple statement about credibility could have been made by the Board, and it then would have been clear as to which direction they went in their finding of facts and how they viewed this evidence, but nothing was said in the decision.

[35] The decision to allow the evidence to stand, and the ultimately conflicting evidence before the Board, would suggest a higher duty to deal with the issue of credibility and to discuss the weight given to evidence. Not even the fact of conflicting evidence was acknowledged in the majority decision.

[36] The respondent/cross-appellant invited this Court in the appeal to address various e-mails that were not in the filed appeal record to reach the conclusion that the

Board erred that Ms. Molloy refused to attend, arguing that it was rather a misunderstanding and the Board proceeded unfairly. However, the respondent did not cross-appeal the decision on this basis and the e-mails are not properly part of the appeal record. This issue was raised at a late date and it is not properly before me on appeal.

[37] I now turn to the issues in relation to remedy. The following arguments were raised in the appeal and the cross-appeal in relation to the remedies: one, that the Board considered remedies without having evidence or submission from the parties about the alternatives; two, that the Board granted a remedy outside its jurisdiction; and, three, that the Board penalized Ms. Molloy for her non-attendance on August 21st.

[38] The majority, after they found discrimination was a factor in the termination of Ms. Molloy's employment, turned to the question of remedies. They noted that the impact of spousal abuse on an employee at the workplace is a situation that cannot be ignored by the employer. The panel ordered that the Government of Yukon investigate its role and ability to ensure that no employee is put at risk of personal safety, co-worker safety and the potential for further spousal abuse arising from an employment situation. It was then directed that the finding of this investigation and planned prevention strategy be reviewed by the Commission within six months.

[39] The majority then went on to observe: one, Ms. Molloy did not fully cooperate with the adjudication of her complaint; two, Ms. Molloy refused to return for her cross-examination and was unwilling to return for the remainder of the hearing; and, three,

she advised she was employed in Alberta. After making these three observations, the decision merely indicates “The Panel makes no award to the Complainant.”

[40] The first ground of appeal related to the lack of submissions about remedies. It was argued the Board should not have considered remedies in absence of evidence and without submission of the parties on this point, and to do so was procedurally unfair. In the written complaint filed by the complainant before the Board, the complainant sought reinstatement with the Government of Yukon in an equivalent position and compensation for loss of wages and for injury to her dignity and self-worth. There was no issue in terms of the remedies that she was requesting when the claim commenced.

[41] Generally, a hearing of this type would not be divided into parts, as to whether there was discrimination and then a subsequent session about remedy. The Board hearing the dispute would generally decide the discrimination issue, and if that is found, then prescribe a reasonable remedy. However, specific to this hearing, the question of remedy was broached between the Board and the complainant herself and counsel, at page 129 of Volume 1 of the transcript when counsel suggested that the Board deal with the issues of whether there was discrimination, and then evidence and argument on remedy could be heard later.

[42] Although the discussion was that this would not be the usual practice before the Board, the impression was left that this would be allowed in this case. Although the

interchange on the transcript is far from perfect, the intent would seem to be that remedy could be addressed in some form later.

[43] At the appeal hearing before me the cross-respondent conceded this point that was raised by the cross-appellant. The question is, then: is it procedurally unfair, after the Board decided there had been discrimination, to make a decision on remedy, granting an investigation but no remedy to the individual without hearing further evidence and submissions?

[44] Here the *Baker*, *supra*, test requires one look at the five components. They are all the same as in the earlier analysis except number four, the legitimate expectation of the person. Here the tribunal did set up some expectations, and I find that they were reasonable, that more evidence or submissions would be heard on remedy.

[45] Ms. Molloy should have been invited and able, if she wished, to give evidence or make submissions on remedy once the finding of discrimination was made. In the circumstances, and particularly when this had been addressed at the hearing and submissions and evidence were left until later, the Board should not have considered and decided a remedy in the complete absence of evidence or without submissions on this point by the affected parties.

[46] The second point deals with the powers of the Board to make remedial orders. Both the appellant and cross-appellant argue that the remedy granted for an inquiry is outside the express jurisdiction of the Board. The argument is that the Board has no inherent jurisdiction to make remedial orders. It is limited by s. 24(1) of the *Act*, which

allows it to: (a) stop the discrimination; (b) rectify the discrimination; (c) make an order for damages for any financial loss suffered as a result of the discrimination; (d) make an order to pay damages for injury to dignity, feelings, or self-respect; (e) to make an order to pay exemplary damages if the contravention is done maliciously; or, (f) to make an order to pay costs.

[47] All counsel agree that the order that was made by the Board here can only be justified under s. 24(1)(b), the power of the Board to rectify the discrimination. Both the appellants and cross-appellants argue the rectification order has to be related to the discrimination found and that an order for an investigation of the role of the Government to make sure employees are safe and not subject to further spousal abuse is not related to this discrimination here, which was that the marital status of Molloy or the criminal record of her common-law spouse had played a factor in her dismissal.

[48] It is argued that the remedy here would appear to be appropriate where the original complaint was made by a class or requested a general remedy. Ms. Molloy's complaint did not focus on her safety in the workplace, nor did she indicate she was fearful of spousal abuse. In fact, her evidence before the Board, if taken at face value, would indicate that she had no concerns about her safety in the workplace and that she did not consider herself a victim of spousal abuse. Further, her complaint was personal to herself, not about those generally in her workplace or their safety.

[49] The Board filed a written argument defending its jurisdiction, arguing the remedy ordered was within its jurisdiction. It argued the words to "rectify any condition that

causes the discrimination" allows the Board to attack the discrimination at its root, rather than simply focusing on the effects of discrimination. It argued that the order was crafted to address the underlying condition which caused the discrimination, the policies and procedures in place to deal with the impact of spousal abuse on the workplace. It argued such relief is proactive, aimed to ensure the conditions that cause the discrimination are fixed so that the discrimination does not continue to occur.

[50] It cites *Baczkowski* v. *Suffesick* and *Baczkowski* v. *Brown & Sign Post Corner Inc.*, April 28, 2000, Whitehorse, Yukon Territory, where the Board ordered the respondent to establish a policy that clearly lays out that, and relevant to that case, sexual harassment would not be tolerated on the premises. It points to the object of the *Act* "to discourage and eliminate discrimination."

[51] I agree that in certain circumstances the Board is given those powers by legislation, but here the nexus between the complaint, the evidence and the decision of the Board and the relief ordered is the problem. I am in agreement with the appellants and cross-appellants that any power given to the Board under s. 24(1)(b) is to rectify the condition that causes the discrimination in the case before it. The wide direction that there be an investigation into spousal safety in the workplace is not related to the complaint before the Board. The complaint before the Board was not about Ms. Molloy's safety or whether she was the victim of spousal abuse; it was whether Ms. Molloy's employment was terminated as a result of the perception of her common-law partner and his criminal background.

[52] The general direction given by the Board is outside its jurisdiction in dealing with this case, as it is unrelated in law to the complaint. That is an error of law, and, as such, that direction must be set aside.

[53] The third ground relates to the Board's decision to make no award to the complainant. The cross-appellant argues that the Board erred in law by penalizing Ms. Molloy for her non-attendance on August 21st. In the preceding sentences to the statement that Ms. Molloy would receive no compensation, the majority pointed out her non-cooperation, her lack of representation and that she was employed in Alberta. The majority then stated "The Panel makes no award to the Complainant."

[54] For the reasons I have set out above, the Board should have heard evidence and/or submissions about the complainant's award in this situation, which they did not do, before they made any decision about remedy. That, for procedural fairness, they should have done before they made a decision about remedy or a refusal to grant a remedy based on conduct. To exclude a remedy to the complainant without submissions on that point was procedurally unfair in the circumstances of this case.

[55] So as a result, the appeal and counter-appeal are allowed, as I have identified a number of errors that amount to errors of law in the sufficiency of the reasons, in the application of the rules of natural justice and procedural issues, and the one jurisdictional issue relating to remedy.

[56] The appellant suggested that it is in the power of this Court to review the transcripts and substitute the Court's decision or to adopt the decision of the dissent.

This is wrong as a remedy. It is not a power of this Court, in the circumstances of this appeal, and specifically offends many of the principles of administrative law.

[57] The remedy for each error, in some circumstances, could be considered separately. For example, if the only error were in relation to remedy, it would be possible to send this matter back to the Board to hear evidence and submissions on remedy. However, the errors of law in relation to the failure of the majority to articulate or consider the weight given to the evidence and the failure to articulate reasons, when considered in circumstances here where there is a dissent, go to the essence of the decision and are substantial. The failure to give reasons in this case is not easily remedied; not only due to the passage of time, but also the pervasiveness of the problem that resulted.

[58] As a result, the decision of the majority should be set aside.

[59] It would generally follow that a re-hearing would occur. I am not specifically directing that in this case, as the parties will have to assess their position as a result of this appeal. The matter should return to the Commission, which shall make an assessment of the next steps in the circumstances. If it wishes to pursue the complaint before the Board, a new hearing will need to occur.

[60] So that is my decision. I do not know if the parties want to address costs at this time or if you wish to leave that?

[61] MR. CSISZAR: May I have one second? Your Ladyship, in light of the guidance provided by Your Ladyship's decision, it's the appellant's position that we're not seeking any costs.

[62] THE COURT: Okay.

[63] MR. CSISZAR: I think the guidance is appreciated.

[64] THE COURT: Does the respondent take any position?

[65] MS. ROOTHMAN: It's sort of a mixed result, and the complainant had to sort of incur a substantial cost in this matter to bring this back before the Court, and one can deduct from the decision that there's something in there for the complainant, depending on what the Commission is going to do. Under these circumstances, I would say that the complainant, or Ms. Molloy, respondent Ms. Molloy, is entitled to costs against the Board.

[66] THE COURT: Okay. And does the Board take any position?

[67] MR. CARRUTHERS: I would -- the Board would ask for more time to make submissions on costs, if that -- if there's actually seeking costs against the Board. The Board was only here on the jurisdictional issue, which was the fairly narrow part of these proceedings, and so I understand it to be a normal practice for an administrative board to pay the costs on an appeal. So if that would be the Court's order, we would ask for more time to make submissions on this issue.

[68] THE COURT: All right. Well, the one party that is asking that their costs be considered is the complaint, who was the respondent and cross-appellant. There is mixed results in this appeal, and I think it is appropriate that each party pay their own costs, that there be no specific order for costs in light of that result.

[69] Thank you all for your submissions. You canvassed in very much detail in your filed material, and I appreciate the benefit of that from all of you before coming up here to hear the oral argument. Thank you.

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NATION J.