

Board No.: 2008-03

Decision: October 9, 2009

IN THE MATTER OF THE YUKON *HUMAN RIGHTS ACT*

AND IN THE MATTER OF

Les Carpenter v Town of Faro

INTERIM BOARD DECISION

Appearances

Les Carpenter

Complainant

Susan Roothman

Counsel for the Yukon Human
Rights Commission

Garry Whittle

Counsel for the Respondent
Town of Faro

Panel Members

Michael Dougherty, Acting Chief Adjudicator

Donna Mercier, Adjudicator

Laura MacFeeters, Adjudicator

Heard: Whitehorse, Yukon

INTRODUCTION

Because of the nature of this case, *Les Carpenter & Yukon Human Rights Commission v. Town of Faro*, the Yukon Human Rights Board of Adjudication will take the full time allotted to it to release its final Decision with Reasons and Remedy. Therefore, the Board thinks that in the meantime it would be in the interests of all parties to issue an Interim Decision focussed on the merits of the case with reasons and remedy to follow.

Mr. Les Carpenter (the "Complainant") filed a complaint with the Yukon Human Rights Commission on June 22, 2004. In it, he alleged that the Town of Faro (the "Respondent") discriminated against him by failing to consider him for the position of Chief Administrative Officer for the Town of Faro.

The Complainant relied on section 7(a), i.e. ancestry, including colour and race as prohibited ground, and section 9(b), i.e. no person shall discriminate in connection with any aspect of employment or application for employment as prohibited discrimination under the *Human Rights Act*, R.S.Y., 2002, c.116 ("Act").

DECISION

The Board of Adjudication held a hearing on the merits of the Complaint. The Board has heard oral evidence and received written submissions from all parties. Further, the Board has considered the issues raised by all parties within the context of the evidence and the relevant provisions of the Act. As well, the Board thoroughly reviewed the evidence presented and applied evidentiary tests (primarily the tests referred to as *Radek* and *Shakes*) pointed out to it by the Commission as well as the Respondent.

On a balance of probabilities, this Yukon Human Rights Board of Adjudication finds in the case of *Les Carpenter & Yukon Human Rights Commission v. the Town of Faro* that no discrimination occurred in "connection with any aspect of employment or application for employment". This Board dismisses the Complaint.

BRIEF REASONS

When discrimination is alleged, the complainant must first establish a *prima facie* case of discrimination. A *prima facie* case is made when the complainant presents evidence that covers the allegations made and which, if believed, is complete and sufficient for a decision in favour of the Complainant. Further, in *Lincoln v. Bay Ferries Ltd.*, 2004 F.C.A. 204, the Federal Court of Appeal provided additional guidance as to the approach to be taken by the Board. The Court noted that the deliberative body should not take into account the Respondent's answer before deciding whether the Complainant has established a *prima facie* case.

The Yukon Human Rights Commission carrying the case for the Complainant identified two issues as contributing to the alleged discrimination: a tainted hiring process marked by stereotyping, and the screening out of the Complainant before he actually applied for the job in question.

The Board finds that negative racial stereotypes were held by some elected members of the Town of Faro Council. The degree held and the impact of the stereotypes were contested. The key question for the Board is, Did these stereotypes taint the hiring process? The Board on a balance of probabilities cannot sustain this allegation.

Can the résumé handed to Councillor Michelle Vainio by Les Carpenter on March 20, 2004 be considered an application in the hiring process? If not, was the Complainant effectively screened out during a pre-application period because of his ancestry? And if so, was that application then dealt with in the hiring process in an inequitable fashion because of Mr. Carpenter's ancestry?

The Board concludes that the evidence before it leads to the finding that the clearly worded letter and attached abbreviated résumé from Mr. Carpenter do constitute an application.

The Board accepts evidence that the pre-meetings between Mr. Carpenter and various members of the Town Council cannot be deemed as an organized effort to screen him out of the competition for the Chief Administrative Officer position. It finds that indeed Jeanne Clarke, acting for the Complainant, was instrumental in organizing the meetings in question.

As well, the Board finds that evidence on the transparency of the actual selection process presented to it allows little or no room in for a finding of discrimination. The Board can only conclude that Les Carpenter was not discriminated against in his failure to be considered for the position of Chief Administrative Officer for the Town of Faro.

FURTHER NOTE

Full reasons for this decision and this Board's findings on the argument for remedy placed before it by the Respondent, the Town of Faro, and the Yukon Human Rights Commission will follow.

Decided this 9th day of October 2009 at the City of Whitehorse in the Yukon



Michael Dougherty
Acting Chief Adjudicator
For the Yukon Human Rights Board of Adjudication