

**Anne Malone v. City Wide Taxi**  
(File # 13-7707)

**IN THE MATTER OF a complaint  
pursuant to Section 11 of the  
Human Rights Act, 2010  
S.N.L. 2010 c. H-13.1**

**BETWEEN**

**ANNE MALONE**

**COMPLAINANT**

**AND**

**DAVE GULLIVER'S CABS LIMITED  
(o/a CITY WIDE TAXI)**

**RESPONDENT**

**AND**

**NEWFOUNDLAND AND LABRADOR HUMAN RIGHTS COMMISSION**

**RESPONDENT**

**DECISION**

**Adjudicator**

Adjudicator: Brodie Gallant

**Dates**

Hearing Date: January 25, 2016  
Decision Date: February 8, 2016

**Complaint File:**

File: # 13-7707

**Appearances**

On Behalf of the Commission: Ms. Donna Strong  
On Behalf of the Complainant: Ms. Anne Malone  
On Behalf of the Respondent: (no appearance)

## Introduction & Procedural History of the Complaint

[1] On May 28, 2013, Ms. Malone filed a complaint with the Human Rights Commission. Her complaint alleges that she was denied a service customarily offered to the public on the basis that she has a disability contrary to section 11 of the *Human Rights Act, 2010*, SNL 2010 c H-13.1 (the "Act").

[2] The Complainant Ms. Anne Malone has a visual impairment and requires the use of a guide dog. She asserts that on April 3, 2013 she went to the City Wide Taxi stand, on Adelaide Street in St. John's to obtain a ride home in one of the taxis there. She was denied service by two, taxi drivers. A third taxi driver also abruptly drove away from the taxi stand when Ms. Anne Malone approached. Ms. Malone asserts that she was refused service because she has a disability and was traveling with her guide dog.

[3] The Respondent Dave Gulliver Cab Limited, is the operator of City Wide Taxi. The Respondent company filed a response on August 5, 2013. Although it appears the Respondent has had notice throughout the process, it was not represented at the hearing. The Response names the company president Peter Gulliver as its agent for the purposes of this litigation. I note that a summons was personally served upon Mr. Gulliver on January 21, 2016, (affidavit of service filed January 25, 2015) but he did not attend the hearing. As a result the hearing proceeded in the absence of the Respondent.

## Issues

- I. Did the Respondent discriminate against the Complainant contrary to section 11 of the Human Rights Act, 2010?
- II. If so, has the Respondent demonstrated that it accommodated the Complainant to the point of undue hardship?

## Facts

[4] Ms. Malone testified that she is a person with a disability, more specifically macular degeneration arising from acute myopia. She was born with the condition but symptoms did not manifest until 2005 when her vision began to deteriorate suddenly, to the point that she could not read print and it continued to deteriorate. The visual impairment is permanent.

[5] In November 2012 she received a guide dog, Cheryl (the "Guide Dog"). Her Guide Dog received training at Canadian Guide Dogs for the Blind, in Manotick, Ontario. She carries a photo ID from Canadian Guide Dogs for the Blind, the card identifies the Complainant, the Guide Dog, and states the bearer of the card is registered with Canadian Guide Dogs for the Blind. The card states the bearer and any guide dog are therefore to be accorded all rights and privileges under governing legislation.

[6] Ms. Malone testified that On April 3, 2013, while accompanied by her Guide Dog, she was running several errands in the Water Street area and was carrying her purchases in a large backpack, as she needed both hands free to correctly handle her Guide Dog. She decided to take a taxi home. It was rush hour, traffic was increasing, and she was concerned for herself and her Guide Dog. She walked to Adelaide Street where three City Wide Taxi cabs were parked.

[7] She approached the first cab and opened the rear passenger side door. As she opened the door, the driver reached back and grabbed hold of the door. He said something to the effect that he had allergies and that he did not want the dog in the car. Ms. Malone testified that the driver was

belligerent in his tone and he locked the door when it was closed. He did direct her to the car behind him.

[8] She approached the second taxi. She testified that the second driver stepped partially out of his vehicle and stated: "there's no dog getting in this fucking car". He also directed her to the car behind him. She recalls that she began to tell him he was obligated by law to admit the dog. It is unclear whether the driver heard this. The driver got back into his vehicle and drove away.

[9] She turned to approach the third taxi. It drove away. Ms. Malone admits that she had no interaction with this driver. She speculates that he also drove away because she was traveling with her Guide Dog. She admits that she could not see the driver of this car or whether another person had entered the vehicle to hire that car. She did recall the sound of the vehicle driving away and that it sounded like it was driving away more quickly than a vehicle would ordinarily leave a parking space. I note that in the Response filed by the company states that this may have been a new driver, unfamiliar with the laws. The Response also suggests this driver may have been dispatched to a call. The Response states that the dispatcher recalled having issued a dispatch to a driver at the stand. The evidence is not sufficient to determine why this driver drove away.

[10] Ms. Malone then called and spoke with the dispatcher. He offered to find her another cab. She declined and walked home.

[11] When she arrived home she called City Wide Taxi and spoke with the same dispatcher. He was apologetic, and offered her the number of the company's administrative office. The following day she called and spoke with the office manager. She relayed what had happened. He told her he would relay what happened to Mr. Peter Gulliver and he took her contact information. She did not hear from Mr. Gulliver, and she filed her complaint with the Human Rights Commission a few days later.

[12] Ms. Malone's evidence generally was not contradicted, and the Response filed by the company does not deny the events occurred.

### Law & Analysis

[13] Ms. Malone alleges she was discriminated against in respect of taxi services, or denied service, on the basis of a disability contrary to section 11 of the *Human Rights Act, 2010* SNL 2010, C-13.1 (the "Act"). This is prohibited by section 11 of the Act which states:

#### **Goods, services, accommodation, and facilities**

11. (1) A person shall not, on the basis of a prohibited ground of discrimination,
  - (a) deny to a person or class of persons goods, services, accommodation or facilities that are customarily offered to the public; or
  - (b) discriminate against a person or class of persons with respect to goods, services, accommodation or facilities that are customarily offered to the public.
- (2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of a disability shall be permitted where that limitation,

specification, exclusion, denial or preference is based upon a good faith qualification.

[14] Pursuant to section 9 (1) of the Act, disability is a prohibited ground of discrimination. Ms. Malone's visual impairment is a physical disability within the meaning of "disability" as defined at section 2(c) of the Act:

**Definitions**

2. In this Act

(c) "disability" means one or more of the following conditions:

- (i) a degree of physical disability,
- (ii) a condition of mental impairment or a developmental disability,
- (iii) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language, and
- (iv) a mental disorder;

[15] Although the term discrimination is not defined in the Act; the definition discrimination from the decision of Supreme Court of Canada in *Andrews v. Law Society of British Columbia* 1989 Canlii 2(SCC), has been widely accepted and applied in this province and others:

*... a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.*

[16] The burden is on the Complainant to establish a *prima facie* case of discrimination. Once discrimination is established, the burden shifts to the Respondent to show it could not accommodate the Complainant without undue hardship (see *O'Malley v. Simpson-Sears Ltd.*, 1985 Canlii 18, p. 17-18):

*A prima facie case in this context is one which covers the allegations made in which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent/employer.*

*...once the prima facie proof of discriminatory effect is made it will remain for the employer to show undue hardship.*

[17] The present case involves an allegation of discrimination in the context of a denial of transportation by taxi, because the complainant has a disability and requires the services of a guide dog. I was referred to the decisions in *Martyn v. Laidlaw Transit Ltd.* 2005 AHRC 12 (Canlii) ("*Martyn*"), *Scott v. Sahota (No. 2)* 2006 Canlii 84482 (SK HRT) ("*Scott*") and *McCreath v. Victoria Taxi*, 2015 BCHRT 153

(Canlii) ("*McCreath*"). These cases also involved complaints of discrimination in the context of taxi services.

[18] In *Martyn* the Alberta Human Rights Panel found that the Complainant established a *prima facie* discrimination in the provision of taxi services by the city and two taxi companies. The Panel stated in its decision that "*taxi service is clearly a service customarily offered to the public*". The Complainant in that case was denied the benefit of the service on the basis that she had a physical disability and discrimination had been proven.

[19] In *Scott* the complainant established that he was discriminated against when he was denied access to a regular taxi van at the airport because he was in a wheelchair. The respondent instead insisted that he take a wheel-chair accessible taxi without giving the complainant an opportunity to demonstrate that he could access a regular taxi. The respondent lead no evidence as to whether accommodating the complainant would constitute undue hardship and therefore a case of discrimination had been made out.

[20] In *McCreath*, the Complainant was legally blind and required a guide dog to assist him with his mobility. On the evening of July 15, 2014, Mr. McCreath, who was accompanied by his guide dog, required a taxi in downtown Victoria. The taxi driver ("Taxi Driver") who was dispatched refused Mr. McCreath service on the basis that he was allergic to dogs. The British Columbia Human Rights Tribunal found Mr. McCreath had "*established a prima facie case of discrimination. He has a physical disability, he suffered an adverse impact when he was denied a ride by the Taxi Driver, and he was denied the ride because he was accompanied by his guide dog.*" The driver had an allergy to cats and dogs and had filed a doctor's note with the taxi company. The company had a policy in place which permitted drivers to operate animal free taxis if a doctor's note was provided. When the driver denied service he immediately arranged for another taxi, and the replacement taxi arrived with minimal delay. The Tribunal held the company had discharged its duty to accommodate "*Victoria Taxi has demonstrated a bona fide reasonable justification for its, albeit very brief, denial of service to Mr. McCreath... the Exception Policy, and its application to Mr. McCreath on the night in question, strikes a balance between the rights of the physically disabled employees to a safe and healthy working environment, with the rights of other physically disabled persons to have access to services customarily available to the public.*" *McCreath* is particularly instructive, and the facts of that case have many similarities to the facts of the present case. I find that like the complainant in *McCreath*, Ms. Malone has established a *prima facie* case of discrimination. She has established that she has denied service by two taxi drivers because she has a visual impairment and was travelling with her Guide Dog.

[21] This case differs from *McCreath* in that the Respondent company has failed to show that it discharged its duty to accommodate. If the Respondent's drivers had addressed Ms. Malone's request for service in the same manner as the driver in *McCreath* there would be no liability. However, I find that both the first and second driver simply denied her service and left Ms. Malone to find another ride. The drivers were curt, if not rude, and one of the drivers addressed Ms. Malone with vulgar language. More to the point, I find that merely directing her to another cab without ensuring that the next driver would provide transportation is not acceptable and not reasonable accommodation.

[22] Before proceeding to discuss the appropriate remedy, I will address the question whether the Respondent company in this case can be held liable for the discriminatory acts of its individual taxi cab drivers. This issue is raised by Response document on file. The Response states:

My company is a brokerage firm, meaning the cars are privately owned and the owners use the companies [sic] name and services for a weekly rent. Drivers are not employed by City Wide. They are self employed or work for a broker (the person who owns the taxi... Had I been able to find out [the drivers' identities], they would certainly have been dealt with... This is not how I want my company represented.

[23] The issue of a taxi company's vicarious liability in the human rights context has been considered before. In *House-Borden v. Corner Taxi Ltd.* (2002) 44 CHRR D/240 paras 57-64 ("*House-Borden*"), a case involving a human rights complaint against a taxi company, the Newfoundland Board of Inquiry found that the taxi company was liable for the discriminatory acts of its employees. It applied a broad and purposive interpretation to the meaning of employment and found that the requisite elements of control, remuneration and benefits were present to support a finding that an employment relationship existed in the context of an otherwise non-traditional relationship. Similarly in *Borden v. Bob's Taxi and Nova Scotia Human Rights Commission*, 020150 CHRR Doc. 15-3018 at paras 127-135 ("*Borden*"), a Nova Scotia human rights tribunal found the respondent taxi company exercised control over its drivers sufficient to establish an employment relationship and thus vicarious liability for the discriminatory conduct of one of its drivers.

[24] The Response filed in this case indicates the Respondent company exercises control over its drivers. In particular there appears to be a contractual relationship by which the Respondent permits the drivers to use the Respondents' company name in exchange for a fee. The Respondent controls the dispatch of calls to the various drivers, and the respondent has the power to discipline the drivers. To use the Respondents words, if the drivers in this case had been identified they "would certainly have been dealt with". The Respondent also acknowledges its role in ensuring the drivers comply with human rights legislation. In my view there is nothing in the evidence which distinguishes the Respondent's corporate structure from any other taxi company considered in the jurisprudence referred to me. In this case, as was the case in *McCreath*, *House-Borden*, and *Borden*, there is sufficient control between the Respondent and its drivers to ground an employment relationship and thus vicarious liability for the purposes of a human rights complaint.

### Remedy

[25] The Commission submitted the following remedies would be appropriate in this case:

(a) The Respondent make available to disabled people with service animals taxi services on demand comparable to non-disabled individuals. The respondents shall refrain in the future from failing to provide such service.

(b) General damages be awarded to the Complainant in line with decided tribunal and court decisions;

(c) The Respondent, its drivers and staff undergo training on the appropriate accommodation of persons with disabilities (particularly sight-related disabilities) and the application of the Service Animal Act;

(d) The Respondent develop a Policy on Accommodation of Persons with Disabilities for review by the Human Rights Commission and to be the subject of training provided in (c) above.

(e) The Respondent provide public access to the Policy on Accommodations of Persons with Disabilities on its website.

(f) Such other damages or award as may be proven at the hearing or deemed appropriate.

[26] I agree that the Respondent has a legal obligation to make available to all persons with visual impairment and travelling with a service animal, service comparable to that which is available to non-disabled individuals. I am of the view that this will be best accomplished by requiring the Respondent, to participate in training on the appropriate accommodation of persons with disabilities (particularly those with visual impairment). I would expect such training would include information on the development of a proper policy on accommodation of persons with disabilities. Counsel for the commission advises that such a training session can be provided through the Commission.

[27] Pursuant to the authority provided for under section 39(ii) and (v) of the *Act*, I order that the Respondent shall participate in training to be provided by the Commission, on the appropriate accommodation of persons with disabilities (particularly those with visual impairment).

[28] I also agree that the Complainant is entitled to monetary compensation in line with human rights jurisprudence. In *Borden*, an example of more egregious discrimination the complainant was denied taxi service on the basis of her race. General damages were awarded in the amount of \$7,500.00. In *Martyn* general damages in the amount of \$10,000.00 total were awarded to the four complainants. In *Scott*, the complainant was awarded \$2,500.00, however the complainant in *Scott* did not experience any belligerent treatment akin to what Ms. Malone has described, and Mr. Scott was provided alternate transportation.

[29] The Commission urges me to consider that Ms. Malone was the subject of three distinct acts of discrimination in this case ie. that she should be compensated separately for the denial of service by each of the three drivers. The Commission submits the sum of \$2,500.00 per denial of service is appropriate compensation ie. \$7,500.00. I disagree that attempting to divide the incident is the correct approach in this case. General damages in the human rights context compensate the complainant for the effect that infringement of the complainant's rights has upon his or her dignity, and self-respect (see R. Zinn, *Law of Human Rights in Canada*, (Toronto: Canada Law Book, 2009) at pp 16:40.5).

[30] Ms. Malone testified about the impact of this incident. She described the importance of access to safe and reliable transportation in her experience as a person with a visual impairment. She also testified about the events of April 3, 2013; how she was treated; and how that made her feel. She was shocked and offended, but what is more she felt vulnerable. She described that she worried the drivers could identify her but she could not identify them. She describes that although the dispatcher had offered to arrange another cab, she didn't feel comfortable placing herself in one of the Respondent's vehicles again. She also expressed a worry because she regularly relies upon taxi services and calls them to her home.

[31] As is noted above the evidence establishes that on April 3, 2013, Ms. Malone was denied service by 3 taxi drivers. Two of those drivers denied Ms. Malone service because she has a visual impairment and was travelling with her Guide Dog. The drivers were rude and they drove away without taking appropriate steps to ensure Ms. Malone had alternate transportation to her destination. Whether I

treat this as two or one incident the impact on Ms. Malone's dignity and self-respect is to be compensated.

[32] I will order that pursuant section 39(iv) of the *Act*, the Respondent shall pay to the Complainant compensation in the amount of \$5000.00.

**Order**

[33] It is hereby ordered that:

Pursuant section 39(ii) and (v) of the *Act*, the Respondent shall participate in training to be provided by the Commission, on the appropriate accommodation of persons with disabilities (particularly those with visual impairment).

Pursuant section 39(iv) of the *Act*, the Respondent shall pay to the Complainant compensation in the amount of \$5000.00.



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Brodie Gallant  
Adjudicator