

**IN THE MATTER OF a Complaint  
pursuant to section 14 of the  
*Human Rights Act, 2010*, SNL 2010,  
c. H-13.1**

**BETWEEN:**

**JOHN VINCENT**

**COMPLAINANT**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR AS  
REPRESENTED BY THE MINISTER FOR THE  
DEPARTMENT OF HUMAN RESOURCES, LABOUR  
AND EMPLOYMENT AND NEWFOUNDLAND  
AND LABRADOR HOUSING CORPORATION**

**RESPONDENT**

**AND:**

**NEWFOUNDLAND AND LABRADOR  
HUMAN RIGHTS COMMISSION**

**COMMISSION**

Adjudicator: Kimberley Horwood

Hearing Dates: January 16, 17, 18, 2017

Decision: August 22, 2017

Appearances:

On Behalf of the Complainant:  
On Behalf of the Respondent:  
On Behalf of the Commission:

John Vincent  
David Rodgers  
Donna Strong

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**DECISION OF THE ADJUDICATOR**

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**INTRODUCTION**

1. A complaint was filed by John Vincent on the 7<sup>th</sup> day of December, 2007, pursuant to section 14 of the *Human Rights Act, 2010* (formerly section 9 of the Human Rights Code), against the Newfoundland and Labrador Housing Corporation ["NLHC"] alleging discrimination on the basis of age.

## NATURE OF THE COMPLAINT

2. In the Complaint Form dated 7<sup>th</sup> December 2007, the Complainant's claim was set out as follows:

"Earlier this year, I applied for an advertised position with the Newfoundland and Labrador Housing Corporation (NLHC) as a Housing Administrative Officer. On or about June 4, 2007 I participated in an interview for this position. On or about July 17, 2007, I received a letter from NLHC advising that I was unsuccessful in acquiring the advertised position.

I made a telephone enquiry with NLHC regarding this outcome and I was advised that a degree in business was a requirement for the position and that it was an oversight that I had received an interview.

Several days later, I spoke with Glenn Goss who reiterated that a degree in business was a requirement of the position. Mr. Goss also advised that NLHC was hiring younger personnel because in the future NLHC wished to fill positions internally if and when older employees retired. Mr. Goss also advised that there was no point in me applying for future vacancies for this position. Since this position was advertised, there have been five other Housing Administrative Officer positions filled.

I worked with NLHC for the period of September 1982 until December, 1997. My duties and responsibilities during this period were exactly the same as what the Housing Administrative Officer position entailed. My employment terminated with NLHC in 1997 because one of the ten positions became redundant and I was the individual with the least seniority.

I am fifty-eight years of age and I believe that I have experienced discrimination on the grounds of age contrary to section 9 of the *Human Rights Code*."

Note: Section 9 of the *Human Rights Code* is now section 14 of the *Human Rights Act, 2010*, SNL 2010, c. H-13.1 ["Human Rights Act"].

3. The Respondent submitted throughout that Mr. Vincent was not chosen because he was not the best candidate for the job. In respect of the educational prerequisites, the Respondent states that although the Housing Administration Officer position required "completion of a business administration diploma program at an approved college or university and course work in the social sciences", the Complainant was interviewed primarily on the basis that he had an "equivalent combination of experience and training" as that required for the position. The interview panel, using the criteria for the position, recommended another applicant for the position. The Respondent submits that the failure of the Complainant to obtain employment was based on individual merit and not based on age.

## ISSUES

4. The issue to be decided in this hearing is whether there is sufficient evidence, on a balance of probabilities, that NLHC discriminated against John Vincent by not choosing him for a position of employment for which he had applied, based on his age.

## EVIDENCE AT THE HEARING

### Testimony of John Vincent

5. Mr. Vincent began his evidence by discussing his former employment with the NLHC. He stated he was employed by NLHC from 8<sup>th</sup> September 1982 until 17<sup>th</sup> December 1997, during which period he held various positions. He then went on to describe each of the positions in more detail.
6. In 1982, he held the position of “Rental Housing Officer”. His Supervisor at that time was Danny O’Neill. Mr. Vincent was responsible to collect rents and rent supplements, perform collections, and issue notices to vacate. He describes this position as having a high level of client interaction. He also would assist with annual inspections; there were about ten employees that were responsible for approximately 800 units. This required the employees to do lease renewals and income verification. He would also liaise with outside agencies, including the Royal Newfoundland Constabulary, Social Services, lawyers, etc. Additionally, when there were complaints, he would investigate those. He remained in that position, subject to two lateral transfers, for about 7 years.
7. On 17<sup>th</sup> May 1989, Mr. Vincent assumed a new position within NLHC, as “Loans Officer” which was posted, and subsequently filled, internally. His Supervisor in this position was Dave Halfyard. Mr. Vincent described that his responsibilities in this position included, for the most part, dealing with income issues. He would have quite a lot of interaction with senior citizens, along with the rural/remote program, for the purposes of income confirmation. He would visit NLHC properties and assess eligibility. He advised that his position was strictly income-related; that there were housing inspectors that would do structural or renovation/repair assessments or functions. Mr. Vincent stated that he served in that position for approximately 8 or 9 years, after which he moved into the “Housing Officer” position.
8. In or about 1995, Mr. Vincent began work with NLHC in the position of “Housing Officer”. This was the last position he held there, which position was the same as “Rental Housing Officer”, being the position he first had with NLHC. He was first supervised by John Kelly, and later his Supervisor was Kevin Williams, who was his last Supervisor at NLHC. While it was similar to his initial position at NLHC, Mr. Vincent agreed that there had been changes since he had first been there. For example, NLHC had implemented a computer system where they could access

addresses, accounts, make file notes, and where essentially everything was documented. Mr. Vincent stated that he did not have any trouble with the computer program. In respect of the circumstances surrounding his departure from NLHC, he states that the position was made redundant. Of the 10 employees in Housing Officer positions, one position was being terminated. Mr. Vincent had the least seniority, with 15 years, 3 months of employment. He states that the next newest hire to him had been employed only 3 months longer than him. Mr. Vincent confirmed that he was given an option to “bump” another employee, but he chose to take severance instead. At that time in his life, he explained, he was having some personal problems, largely related to medical and family issues. He denied that he resigned, though he did state that Human Resources did want a note in his own hand-writing. He further stated that if any of the other 10 individuals in that position were asked to resign, they would only have “bumped” him anyway.

9. Once he left the employ of NLHC, when asked whether he had any interaction with anyone at NLHC between 1997 – 2007, Mr. Vincent responded that he hadn't, unless it was a random social occurrence at “the Mall or wherever”.
10. He was then asked how he came to apply for the job of Housing Administration Officer in 2007, and he was directed to Consent Exhibit #1 – Tab 2 – Appendix 1, being the job posting for this position. Mr. Vincent stated that this was indeed the posting he had seen online and that he applied in person. He gave his application to the receptionist and that later, Elizabeth Rideout called him for an interview.
11. He confirmed that it was a three-person panel who interviewed him: comprised of Paul Abbott, Heather Harding, and Elizabeth Rideout.
12. Mr. Vincent explained that he knew Heather Harding from before; she had been in Client Services when he was a Rental Officer, but that they'd not had any reason for interaction, he only knew her enough to say hello. He knew Paul Abbott was a Director, but otherwise didn't really know him. Elizabeth Rideout was also employed with NLHC when he'd worked there before, but he didn't know her well.
13. There seemed to be some confusion about whether this was an internal or external job competition. Mr. Vincent stated that this was not an Internal Position. He saw it on an external posting on a website. To clarify this, Mr. Rodgers stated that contemporaneous to this job posting, there were actually two positions: one was filled internally and one went external.
14. In respect of the requisite qualifications, Mr. Vincent acknowledged that he did not have a business degree but asserted that he did have some courses. He said he always tried to improve his position and did workshops and courses that would benefit him. Specifically, he stated that he completed Accounting 1000 and 2100 at Memorial University, among other training and courses as set out on his resume at Consent Exhibit #1 – Tab 1.

15. Mr. Vincent stated that he felt he was “up to date” regarding the qualifications in the job posting for Housing Administration Officer, with the exception of any training or education in the “social sciences”. He felt he met all other qualifications. He put specific emphasis on “equivalent combination of experience and training”. He stated that he couldn’t “for the life of me”, figure out why he didn’t get it.
16. He was asked then about the interview itself, and whether there was anything from the interview that would have suggested to him an unfavourable outcome. Mr. Vincent stated no, that he felt good about the interview and furthermore, that he was “shocked” when he didn’t get it.
17. Regarding what happened next, Mr. Vincent stated that he called NLHC after receiving his letter of denial, and said that “they harped on education level and degree in business”.
18. Mr. Vincent explained that he went so far as to call the Chairman of NLHC, Len Simms, but that it was Glenn Goss who returned that phone call. Mr. Vincent said that Mr. Goss explained that they were only hiring younger people with business degrees and that the reason was the aging population and early retirement. Mr. Vincent claims that Mr. Goss went on to say that “you shouldn’t even have gotten an interview” and that there was no need for him to even apply for any other positions unless he were to get more education. Mr. Vincent stated that he was not sure why Mr. Goss would have said that, given that Mr. Vincent felt he was qualified, and Elizabeth Rideout had even encouraged him to apply again.
19. When asked how close that is to what Mr. Goss actually said, Mr. Vincent responded that he wouldn’t forget it. He said that the woman with whom he was in a relationship at the time said he should take legal action, but he did not have any money to pursue legal action, so he instead came to the Human Rights Commission.
20. Mr. Vincent was then asked how he responded to those comments made by Mr. Goss. Mr. Vincent said that he told Mr. Goss that he felt he should’ve gotten the job, and thanked for calling him back.
21. Mr. Vincent then referred to Consent Exhibit #1 – Tab 7, being a letter dated 21<sup>st</sup> May 2007, and which was Mr. Vincent’s cover letter when he applied for the Housing Administration Officer position in 2007. He pointed to the fact that it had some notes on it that seem to be made by Glenn Goss.
22. Mr. Vincent’s letter was addressed to Rowena Kelloway, who, Mr. Vincent explained, was the head of Human Resources at that time. He also offered that Elizabeth Rideout, from the interview panel, was supervised by Rowena Kelloway.
23. Mr. Vincent confirmed that Mr. Goss said the things that are in hand-writing on the letter in the upper right corner. Specifically, he stated that he said what was written

at #1; that about #2, Mr. Vincent recalls that the words Mr. Goss used were that he “should not have even gotten an interview”; and about #3, Mr. Vincent claims that Mr. Goss did not say this.

24. Generally, Mr. Vincent stated that what was hand-written on that letter is mostly accurate to what he said in their phone conversation. Mr. Vincent stated that there was also a comment about hiring “younger people” that formed part of the conversation. Mr. Vincent stated that “he wouldn’t write it down, of course” but he insists that Mr. Goss said they were looking for younger people, and more educated.
25. Mr. Vincent stated that he denied acquiescing to Mr. Goss that he understood the rationale for the hiring decision, but that he did, in fact, thank him for calling.
26. In respect of the aftermath, Mr. Vincent was asked what impact this conversation had upon him. Mr. Vincent explained that he was shocked; that he thought he should’ve gotten the job. He hadn’t been working at the time and he needed work. He stated that he had to then take a job in Nunavut. He had been in Nunavut the year before and came home. Thereafter he had been in receipt of EI which had just run out. His words were that he was “devastated” to not get this job.
27. In respect of what transpired, employment-wise between 1997 when he left NLHC, and 2007, when he attempted to return to NLHC, he recounted that he had done all sorts of jobs, from painting/plastering, custodial work, that he’d gone to Nunavut in 2004 for seasonal work and came back in 2006 but then his EI ran out in about April or May 2007, and his relationship ended. He explained that the job he held in Nunavut was essentially the same job as that for which he’d applied at NLHC. He’d done that job for about 18 months in Cape Dorset. Mr. Vincent relied on his work at Nunavut as evidence for his ability to do the NLHC job. He stated that he was on a 3-month contract in Nunavut at first, which was extended 6 times, such that it ended up being 18 months of work. He says that this goes to show he was obviously performing the job well.
28. When asked about his job-seeking efforts between July 2007 (after the unsuccessful NLHC job competition) and January 2008 when he returned to Nunavut, he stated that he applied for many jobs, that he did hear from camp jobs in Alberta, but there were no accommodations offered with those jobs so he would not be able to accept them. Mr. Vincent was not able to provide any documentary support for any of these applications or offers.
29. When asked if he was angry at NLHC, he answered that he was not angry, but rather in disbelief or shock.
30. Mr. Rodgers then began his cross-examination of Mr. Vincent. He asked what remedy he was seeking in respect of his complaint. Mr. Vincent answered that he is looking for his lost income for the 6 month period from July 2007 until December

2007. He confirmed that he was not looking to be reinstated, stating that he is “too old for that now”. He also said that he would like to be repaid his expenses related to the Human Rights complaint, such as for travel to and from the hearing.

31. Mr. Vincent then was asked to provide his employment history since he left NLHC in 1997. He said he was unemployed for a while, having received severance pay for one year upon his departure from NLHC in 1997. He says he then was in receipt of EI during 1998. In or about 1999 he did some painting and plastering for a friend. At the end of that year, so in about 2000, he worked with a couple of collection agencies. He estimated about one year with each of them up until about 2002. He then worked in property management until he went to Nunavut in 2004 as Custodian with Arctic Ventures. He was making \$17.00 per hour and worked about 45 hours per week. He did that until he came home until 2006, at which time he claimed EI until it ran out in April or May 2007, just prior to when he applied for the Housing Administration Officer position that forms the subject of the within complaint.
32. He was asked why he came home from Nunavut, and stated that his family was what brought him to Nunavut and it was his family who wanted to come home, his girlfriend's son having received a job offer back here in Newfoundland and Labrador. So they all came back. He explained that they were all sharing expenses in Nunavut and he would not have been able to afford to stay up there alone.
33. After everything happened with NLHC and after having made this complaint, he did ultimately go back to Nunavut in January 2008, having accepted a job with the government. He then came back to Newfoundland and Labrador in 2009 and worked with Island Property Management until 2010 at which time he retired.
34. In respect of his current income, Mr. Vincent confirmed that he receives CPP, OAS, and a small amount from his NLHC pension.
35. There was one last question regarding damages. The Commission asked whether he was seeking general damages. Mr. Vincent wasn't exactly sure what that meant, so upon hearing an explanation, he advised that yes, he would like to pursue that, only he hadn't considered it. His explanation was that being denied this job hurt his dignity because, as he stated “I thought I had it sewn up”.

#### Testimony of Kevin Williams

36. Mr. Williams began his testimony with a review of his employment history with NLHC. He is currently retired from NLHC, having worked there for 35 years. He began his employment there in 1977 and retired in about 2012.
37. In respect of what positions he held at NLHC, he advised that his first position in 1977 was as RAP Clerk (Residential), which was later expanded to St. John's and

he became a Senior RAP Clerk. This was followed by a period when he served as Loans Officer, then Manager – Client Services from about 1980 until the late 1980s. He then went to the Avalon Regional Office until about 2000 and then took the position of Program Director, Head Office. He described that last going off, at Head Office, he was responsible for the 7 regional offices, his mandate was province-wide, and he was largely tasked with program development.

38. He recalled that he became aware of Mr. Vincent's human rights complaint back in 2007. In respect of his working relationship with Mr. Vincent, he advised that Mr. Vincent reported to him back in the early 1990s, when Mr. Williams was in the position of Manager – Client Services. At that point, he said, Mr. Vincent would've been in the position of Housing Officer. He couldn't specifically recall how long they maintained that employment relationship, though he estimated it was likely 3-4 years. At that time, he advised there were 4 Housing Officers and possibly 3 Tenant Relations Officers. In respect of how much interaction he had with these individuals, he stated that his door was always open. The Tenant Relations Officer, in particular, would come in a lot when they would be dealing with issues such as family violence.
39. In respect of Mr. Vincent specifically, Mr. Williams recounted that he would speak to him on an almost-daily basis. He explained that there were many issues in a lot of their units; that Housing Officers were engaged in many and various issues relating to their clients, and that they would often need guidance on these issues.
40. Mr. Williams then went on to discuss Mr. Vincent's performance. He stated that there were a couple of occasions when there were issues. He recounted one specific incident where there was a conference call scheduled with the Canada Mortgage and Housing Corporation ["CMHC"] and Mr. Vincent simply didn't show up. When Mr. Williams asked John Kelly where Mr. Vincent was, Mr. Kelly stated that he had no idea. He confirmed that Mr. Vincent had discipline noted in his personnel file.
41. Mr. Williams was then directed to Consent Exhibit #2, which is the personnel file of John Vincent. He was directed to an entry, 3 pages into the exhibit and being a letter dated 27<sup>th</sup> May 1993, and asked whether this was the incident to which he had referred, and he confirmed that it was. Mr. Williams noted that there was a discussion at the time about whether they should put a letter in his file, or whether he should receive a suspension. They settled on a letter, and Mr. Vincent did not lose any pay.
42. In response to whether there were any other specific incidents he could recall, he stated that he could not; that during that period in his career he was extremely busy and many of them were often out of the office conducting "road work", meaning visiting tenants and units, so it was a difficult time to monitor performance.

43. Mr. Williams could not otherwise find any complaint with Mr. Vincent's work in the office, though he could not comment on his road work, which was a significant part of his job.
44. In terms of what work could be measured, Mr. Williams could not say that any of Mr. Vincent's reporting caused any red flags in respect of his performance. In terms of whether there were any other expectations such as quotas or other benchmarks that could be measured, other than the annual visits, Mr. Williams couldn't think of any, and he went on to explain that they could not easily set quotas for complaints because each one would be so different and some might be easily resolved, while others might take many hours or more.
45. On occasion, they would investigate an employee's road work. The process would be that someone would have to follow the employee and if the reported work was not supported, disciplinary action would be taken.
46. Regarding Mr. Vincent's departure from NLHC, Mr. Williams could recall only that he had a conversation with John Kelly where he remembers that they were both perplexed that he would be leaving. Mr. Williams couldn't say today that he could recall whether it was an incident of a redundant position, but he does remember thinking that if it was, that Mr. Williams would've thought Mr. Vincent would bump.
47. In response to a question whether he knew why Mr. Vincent left NLHC, Mr. Williams said that he could surmise, but he didn't know the real reason.
48. Mr. Williams was then directed to Consent Exhibit #1 – Tab 2 – Appendix 4, which was a letter dated 11<sup>th</sup> December 1997 regarding the Workforce Reduction program, and upon review, Mr. Williams stated that he'd forgotten all about that. When asked about it, he could not specifically recall any details of the program.
49. Two more pages over, he was directed to a memo dated 11<sup>th</sup> December 1997 which was copied to Kevin Williams, and which was Mr. Vincent's resignation. And also to Consent Exhibit #3 which was an email from Kevin Williams to Glenn Goss dated 26<sup>th</sup> July 2007. Mr. Williams read the email document and when asked whether he recalled writing it, he stated that he could not. He said he didn't dispute the email, rather that he simply could not recall anything about it. It was put to him that the email refers to Mr. Vincent requiring a "closer level of supervision than was available through management at that time". Regarding the meaning of this email, Mr. Williams explained that it was difficult for managers to monitor road work, though he seemed to be talking around this touchy subject.
50. This prompted Mr. Williams to offer that he thinks he can remember having to talk to Mr. Vincent about his travel claims.
51. Mr. Williams went on to say that he thinks the focus of the email was regarding Mr. Vincent going "AWOL", referencing the conference call with CMHC, and that it

raised concerns about his reliability. He said that if someone doesn't show up just thinking you won't be missed, that raises some serious concerns, particularly given that this position requires quite a lot of outside, unsupervised, work.

52. In respect of the comparison between the position of Housing Administrative Officer which Mr. Vincent had held, and the position of Housing Officer for which he was not chosen, and which forms the basis of the within complaint, Mr. Williams was directed to Consent Exhibit #1 – Tab 2 – Appendix 1, being the 2007 Housing Administration Officer job posting. Mr. Williams reviewed it and stated that this position was more “all-encompassing” than the position previously held by Mr. Vincent. He said that this one was not only income-related, whereas most of Mr. Vincent’s experience would have been income-related. Mr. Williams felt that the new position “required a different skill set”.
53. Mr. Williams was then questioned regarding the changes in the position, and whether there were any employees that were still in the Housing Administration Officer position from when Mr. Vincent was there, and whether they were able to keep up with the changes in the job. Mr. Williams advised he wasn't sure, that it would likely have been a gradual change, and that the existing employees would have been allowed to “grandfather in”, whereas if they were hiring new employees, that they would likely want the required skill set. He figured that the existing employees probably acquired equivalent training or experience to ensure they could manage the changes adequately.
54. As it relates to the climate at the provincial government during that time, Mr. Williams stated that the overarching proposition was that if they were going to lose people, through retirement or otherwise, then they would have a mandate to fill the open positions with more highly qualified people.
55. In respect of whether Mr. Vincent had the specific qualifications necessary for the 2007 job, Mr. Williams stated that he wouldn't be in a position to comment on that; that this would have been the task of the 3-person interview panel.
56. It was pointed out to Mr. Williams that, in his email, he recommended not hiring Mr. Vincent. Mr. Williams said that this was correct.
57. During cross-examination by Mr. Vincent, he wanted to know why Mr. Williams felt he needed close supervision. Mr. Williams said that NLHC had a very lenient Human Resources department, and that his supervisor at the time, John Kelly, was a friend of Mr. Vincent. So he felt as though many of Mr. Vincent’s misgivings were ignored, or that he was often allowed another chance.
58. Regarding specific reasons why Mr. Vincent was unsuccessful in the 2007 job competition, Mr. Williams said that he did not know how the panel evaluated Mr. Vincent.

59. Under cross-examination by Mr. Rodgers for NLHC, he wished to confirm that Mr. Vincent had been disciplined for “that time he went AWOL” being the conference call with CMHC, and the travel claims to/from Brophy Place. Mr. Williams confirmed this.
60. Regarding the interpretation of the email to Glenn Goss, Mr. Rodger’s put to Mr. Williams that he essentially noted three things: 1) that Mr. Williams would not recommend hiring Mr. Vincent for this job; 2) that Mr. Vincent required a higher level of supervision than the ideal candidate; 3) that the job had changed dramatically over the course of the 10 years since Mr. Vincent was in it. Mr. Williams also confirmed this to be correct.
61. Mr. Williams also stated that, though he could not recall the specifics of his conversation with Glenn Goss, he was adamant when he said that “in 35 years, I never had any discussions with anyone about age, ever”.
62. Mr. Rodgers asked whether Mr. Williams had ever been involved in hiring during his employment with NLHC, to which he responded that he had. When asked if he ever used age to decide upon a prospective job applicant, Mr. Williams stated “never”.

#### Testimony of Glenn Goss

63. At the time of the hearing, Glenn Goss was employed by NLHC, as he had been since 1985. He currently is in the position of Executive Director, Human Resources & Engineering, which he has held since 2006. In his role he oversees the Human Resources Department and the Engineering Department.
64. In explaining the NLHC generally, he noted that they are a Crown agency charged with providing safe and affordable housing to residents of Newfoundland and Labrador. Essentially, he explained, they are the landlord to said residents.
65. In 2007 he was in the Executive Director position. In respect of what role he would have had in the hiring process, Mr. Goss stated that he would not participate directly in interviewing and in selection committees, though he would sign off on the competition report. He advised that the 3-person interview panel would conduct an interview, then following deliberations, the HR representative on the panel would write the competition report to provide analysis and rank candidates. Mr. Goss would then review the entire report to ensure the analysis matched the recommendations, and if there were no issues arising from the competition report, he would sign it. If there are issues or questions arising from the competition report, he would go back to the panel for further clarification. He says that the CEO now signs the competition reports as well, though he does not believe that practice was in place in 2007 when Mr. Vincent applied and went through this process. Mr. Goss confirmed that there have indeed been occasions when he has not signed the competition report the first time it was presented.

66. Mr. Goss was directed to Consent Exhibit #1 – Tab 2 – Appendix 1, being the job posting for the Housing Administration Officer position. He was asked about the fact that this posting stated “Internal” and “Temporary”. Mr. Goss replied that the job for which Mr. Vincent applied was indeed this same job description. Mr. Goss explained that this job was posted internally, but there was no selection internally, so the unsolicited applications were then reviewed.
67. His explanation of the Housing Administration Officer position was that it was a front line position, dealing directly with clients. When asked whether this job had changed over the years, Mr. Goss answered that it had. He said that the primary focus initially was on collections, but over time things at NLHC changed such that they found they were dealing with many more social issues related to their clients. The residents had more complex needs and many of them had justice system experience. This created an environment where specialized knowledge of how to administer such programs in that context was vital.
68. He confirmed that the collections aspect was still required, but that this was not so much a problem anymore, that the rents aren’t in arrears like they once were. Mr. Goss went on to say that it was the recognition of current social issues, such as mental health issues, and aggression, are now forefront in this role, that it was no longer a mechanical type of job.
69. With regard to Mr. Vincent, Mr. Goss’s evidence was that he believed they had his resume on file. He confirmed that he knew him from before, that NLHC wasn’t so big that you wouldn’t know someone who worked there for many years.
70. Mr. Goss stated that Mr. Vincent wasn’t initially selected for an interview. Rowena Kelloway inquired why he wasn’t selected, after which they decided to grant him an interview. It was an unusual course of events, given that Mr. Goss would not normally have any involvement in the selection/interview process until the competition report, but given his history, Ms. Kelloway thought an interview was appropriate, and one was offered. While he acknowledged that this was uncommon, Mr. Goss stated that on occasion they will do this.
71. Following the interviews, upon reviewing the competition report, Mr. Goss discovered that Mr. Vincent had not been recommended for the position. He stated that he called two individuals in management positions, being John Halliday and Kevin Williams. Mr. Goss stated that his intention in doing this was to ensure the interview panel did not miss anything. He was aware that Mr. Vincent had been in a similar job for about 15 years, so he wanted to investigate whether the interview panel might’ve missed something. Mr. Goss felt that these two individuals would have known Mr. Vincent and would also know the requirements of this position, and would be in a good position to comment on it.

72. Mr. Goss was then referred to Consent Exhibit #3, being the email to him from Kevin Williams. He confirmed that the contents of the email accurately described, no more and no less, the telephone conversation that he had with Kevin Williams.
73. When asked whether he ought to have reached out to Mr. Vincent's former supervisors, Mr. Goss acknowledged that it was a mistake to have done that. He did say, however, that he thought that it might actually benefit Mr. Vincent to do so.
74. As it relates to the composition of the interview panel, Mr. Goss advised that within the 3-person panel, each individual carries equal weight in assessing candidates. There is no hierarchy, though they have different roles within the interview.
75. He was then directed to the Competition Report at Consent Exhibit #1 – Tab 6 – page 2. This is a summary of the qualifications, which he acknowledged.
76. The Competition Report was dated 3<sup>rd</sup> July 2007, whereas the email from Kevin Williams was dated 26<sup>th</sup> July 2007. Mr. Goss suggested, however, that the conversation referenced in the email happened long before the email was sent.
77. When asked to explain this further, Mr. Goss stated that, as Mr. Vincent has already testified, Mr. Vincent called the CEO at the time, and Mr. Goss confirmed that the CEO asked Mr. Goss to call Mr. Vincent, which he did. He also says that he offered to meet with Mr. Vincent, but he declined.
78. When asked about his hand-written notes on Consent Exhibit #1 – Tab 7 – page 1, and with particular reference to the meaning of "succession planning" as he wrote it, Mr. Goss explained that they were looking for people with transferrable skills, particularly in the case of external positions and new hires, where it would be beneficial to have employees who had broad skills that might be able to be used in other areas. Mr. Goss maintained that this was not any sort of formal policy.
79. Mr. Goss was outright asked whether the decision to not hire Mr. Vincent was based on age in any way. His answer was "No, never is."
80. In respect of their efforts to hire employees of varying skill sets, Mr. Goss stated that it has been working, in the sense that they have had people come on board in one department, and be able to transfer to other positions quite seamlessly.
81. When asked how Mr. Vincent did not meet the qualifications of the Housing Administration Position, Mr. Goss stated that his educational background hadn't changed, together with his computer abilities, and lack of related social skill set.
82. Mr. Goss states that he explained the rationale for the hiring decision to Mr. Vincent and that he accepted it. He denies making any comments whatsoever about age. When pressed about whether he said NLHC is only hiring younger candidates, Mr.

Goss responded that he believes that Mr. Vincent thinks he heard that, but that he did not say it. His response to why he can be so sure that he didn't say that, Mr. Goss answered that "I don't believe it, so I wouldn't have said it."

83. Mr. Goss also denied that he discussed age with any of the 3-person interview panel.
84. Consent Exhibit #1 – Tab 3 was then presented to Mr. Goss. It purports to be a summary of people hired at NLHC and their ages at date of hire. This lists that there was at least one person older than Mr. Vincent that was hired between 2000 and 2010, and possibly as many as 4 people hired who were older than Mr. Vincent.
85. When asked to explain why there are so many more hires at younger ages than at older ages, Mr. Goss responded that, because most of those positions are entry-level positions, it is only natural to find that, more often than not, lower level positions correlate to younger age. Conversely, more senior or executive positions are typically older employees simply due to the requisite experience level.
86. Mr. Goss was then shown Consent Exhibit #4, being a list of Housing Administration Officers as at 31<sup>st</sup> July 2016. Of those 29 Housing Administration Officers, 21 of them have a degree, whereas 8 do not.
87. There were 19 people hired since 2005 and of those 19, 18 of them have a degree. The only one who didn't was an existing employee who was in another position who was transferred into the Housing Administration Officer position as a result of a Collective Agreement-based change in position.
88. There was also particular reference to a 56-year-old male employee who was hired in 2014.
89. Regarding the interview process as a whole, Mr. Goss stated that Mr. Vincent was given an interview based on him having what could be considered to be an equivalent combination of training and experience; that was the basis for him being granted an interview. This was in no way a promise of him getting the job. Mr. Vincent's 15 years of experience means something, certainly, but it was up to the interview panel to determine the results of the interview process.
90. The Commission questioned Mr. Goss regarding the interview process itself. There was a lengthy discussion about how, precisely, certain criteria were analyzed. He explained it was not a mathematical calculation, but rather a subjective analysis conducted by the interview panel about which candidate was preferable. Mr. Goss repeated that just because a candidate has some qualifications and some experience, doesn't entitle him to the job; there might well be a candidate with better qualifications and better experience.

91. It is obviously difficult, not having participated in the process directly, for Mr. Goss to extrapolate precisely what criteria were used or how the questions were weighted, in order to get to the result that the interview panel reached, however Mr. Goss has full confidence that that interview panel conducted the competition without bias and on the merits of the interviews.
92. Mr. Goss stated that in every interview, interviewers make assessments based on the individual characteristics of a person. It is difficult to “score” this type of interview where there are so many situational components, and where the assessments are largely subjective.

#### Testimony of Paul Abbott

93. At the date of the hearing, Mr. Abbott was employed by NLHC, and had been for the past 16 years. He had spent 10 years as Regional Director, Eastern, and is currently the Regional Director for Avalon and Burin.
94. Mr. Abbott stated that he does recall the interview with Mr. Vincent from 2007. He was the Manager representative on the interview panel at that time. He noted that Heather Harding and Elizabeth Rideout were also on the panel.
95. He advised that he has conducted “dozens” of panels during his tenure at NLHC.
96. When directed to the qualifications of the Housing Administration Officer position, and asked to explain them, he offered that in dealing with tenants, they were seeing more and more drug activity and mental health issues, and the existing staff were having difficulty. They were finding that they were dealing with lives now, far more than property. The role therefore changed because of this. Mr. Abbott stated that most of the Housing Administration Officers now have Social Work degrees or experience.
97. The process as it relates to a panelist, he described, would be that Human Resources would send him a posting and he would have put forward some suggestions about what considerations he felt were pertinent.
98. He recalls that Mr. Vincent applied, and confirmed that he did not know him otherwise.
99. Mr. Abbott stated that they had looked at his resume and it wasn't what they wanted. He felt that Mr. Vincent's experience was focus more on the financial side of the job, so, based on the screening criteria, his resume was screened out. They were looking for more experience around the social factors.
100. When asked whether Mr. Vincent's age was a factor in screening him out, Mr. Abbott said “absolutely not”.

101. In respect of the subsequent directive to give Mr. Vincent an interview, did he find anything unusual about this? Mr. Abbott admitted that it was not the rule, though also not uncommon.
102. He explained the interview process generally, which is that each candidate would be asked the same questions as the other candidates. During the interview, the panel members would make their own notes. They would each rate the candidates against the selection criteria. The 3-person panel would then meet and discuss and compare notes. Usually they would want to achieve agreement. They will always start with no bias in favour of any candidate, and their questions would be developed from the criteria.
103. In response to why Mr. Vincent wasn't recommended, Mr. Abbott stated that his responses to a number of questions weren't up to par. His responses to questions that related to the parts of the current position that were similar to his past experience were fine, but his answers to the situational questions were weak, and it was that social and situational element that they were keen on having, even moreso than the financial aspects.
104. There was no discussion of age, either generally in the position, or as it related to Mr. Vincent. It was neither discussed, nor contemplated at all.
105. Mr. Abbott advised that it was a unanimous decision of the panel.
106. When asked why his was the only set of notes from the interview that weren't provided, Mr. Abbott could not explain this. He stated that he had given the notes to the HR representative following the process, and that he did not know why they weren't in the file.
107. He did acknowledge seeing the Competition Report. He was then directed to Consent Exhibit #1 – Tab 6 and confirmed that this was the Competition Report for this competition.
108. He admitted that he reviewed the Competition Report in preparation for this hearing and was familiar with it. He was then asked how they came to the conclusion that Mr. Vincent was weak on the situational questions, to which he responded that he had been trying to reflect on this process since this matter began, and that perhaps their reasons weren't as detailed and they could, or should, have been. However, there was unanimity in the decision, so perhaps they didn't elaborate as they might have otherwise. He did say that he does not sign things lightly.
109. When asked about how the panel comes to the decision of who will be recommended, Mr. Abbott said that they each draw on their own knowledge and experience, along with the performance and answers in the interview.

110. Mr. Abbott went on to explain that the situational questions would have been weighted differently. The situational questions were designed to subtly test the analytical criteria required for the position.

#### Testimony of Heather Harding

111. At the date of the hearing, Ms. Harding was employed by the NLHC. She began her employ there in 1988 and with the exception of maternity leaves and a stint of part-time employment related to her children, she has been continuously employed with the NLHC. Her position now is Director, Program Delivery, which she has held for about 5 years. Prior to that she was Manager, Rental Housing, which she held for about 5 years.
112. In respect of this matter, she advised that she recalls the job competition in 2007, as she would've been the supervisor for the employees in the position of Housing Administration Officer.
113. She advised she has done approximately 10-12 job competition panels, though more in her previous Manager role.
114. Ms. Harding was directed to Consent Exhibit #1 – Tab 1 – Appendix 1, being the job posting for the Housing Administration Officer, and she acknowledged that it appeared to be the posting for the position that Mr. Vincent sought.
115. She then discussed the qualifications element of the position. She stated that, at one time, the position was more of a financial position. However, the lay of the land was changing and they needed a corresponding change in the skill set required for this position.
116. She had good insight into what was involved and she was finding that current Housing Administration Officers were having more and more difficulty doing their work. She is a Social Worker, and stated that employees were coming to her more and more with social issues that they didn't know how to address.
117. The job had changed dramatically since she has been there; more recently a number of the Housing Administration Officers were social workers.
118. She acknowledged that she knew Mr. Vincent, but not well, that they'd worked at NLHC during the same period, but that they were in different departments, so there was no direct working relationship.
119. About Mr. Vincent's application, she, too, stated that he had been screened out at the resume stage due to his lack of business experience and study/experience in social sciences.

120. She was asked outright whether age was a factor and she said “absolutely not”. She went on to say that she’s not even sure she would have known his age at the time.
121. How he came to have an interview was that HR directed them. She stated this to be unusual but that it has happened before.
122. She stated that Mr. Vincent’s interview was complementary to his resume; nothing extra came up. There was nothing in the interview itself that persuaded them that he could meet the requirements of the position given the current climate.
123. She stated that the situational questions and the computer section were the weakest for Mr. Vincent. She saw these as being the most vital to the position at this time.
124. About the scoring, Ms. Harding stated that if there was any one area where a candidate scored “0”, then he or she would be screened out of the competition.
125. Ms. Harding was then directed to Consent Exhibit #1 – Tab 6, being her notes from Mr. Vincent’s interview. She was asked about her handwritten notes pertaining to the “scale” at the top.
126. In respect of the collaboration among the interview panel, she advised that they would seek to come to a consensus on the ranking of each question. She went on to say that HR would normally now have a grid, and once they have a consensus, they would note the number and if there were any “0”s, the total score would be “0”.
127. She recalled Mr. Vincent, and said that she felt his skills wouldn’t been closer to a Loans Officer, and not what they needed at that time in the Housing Administration Officer position.
128. Regarding whether she spoke to anyone after the interview, or whether her opinion was swayed but any other outside factors or individuals, she said that the panel’s decision was made right after the interview. Regarding Glenn Goss calling the two managers, she was unaware about that.
129. In relation to Mr. Vincent’s claim generally, she wanted to make particular note that they have a recent hire who was hired at age 50, and who has been with them for 4 years, making them currently 54. She takes great issue with the notion that Mr. Vincent would have been declined for any other reason than there was a more suitable candidate.
130. When asked to give specific examples from Mr. Vincent’s interview that showed poor performance on the situational questions, Ms. Harding selected question #10 from the Interview Questions, found at the very last document of Consent Exhibit

#1 – Tab 6. She recounted that the question was asking the candidate to diffuse a confrontation between NLHC clients. She advised that a good answer would have included that the Housing Administration Officer should assess whether there might be some underlying issue for the aggression, and what they would talk to them about in an effort to resolve the dispute, but Mr. Vincent said, very frankly, he would explain that they needed to sort it out and if no result, he would threaten that they would lose their apartment. Ms. Harding said that they were moving away from that hard-line approach, toward more collaborative dispute resolution efforts. Generally, she said, his answers were very black and white, and that would not work in the current climate.

131. Similarly, in response to question #11, where they were looking for some compassion and understanding in efforts toward dispute resolution, Mr. Vincent said he would threaten for them to lose their apartment, following which he would call the police.
132. Regarding question #12, Mr. Vincent's answer was that he would simply go confront an angry tenant who was "hopping mad" and "demanding to see you". Mr. Vincent said he would confront the tenant. Ms. Harding was explaining that ideally they would like to have heard that he would have a third party with him when he saw the tenant, who could hopefully mediate the situation.
133. These examples, in particular, were ones where Mr. Vincent was deficient in his answers. Ms. Harding explained that Mr. Vincent went straight to "evict" in one of his answers, and his responses suggest he would have confronted an angry client, when they have a policy now of safety first. She would have preferred to hear more considered answers, rather than rash responses. She referred to the many mental health and Child, Youth, and Family Services issues that the Housing Administration Officers deal with on a daily basis that are not black and white, and that require sensitivity, and creative problem-solving.
134. She acknowledged that neither of the candidates were strong, but that there was one that demonstrated more empathy and could diffuse a situation more calmly than Mr. Vincent, which Ms. Harding felt was a stronger attribute in this position.
135. Ms. Harding noted that the successful candidate was not ideal, and was recommended only for a trial.
136. She also explained that people who were stronger on the social skills could learn the other stuff, presumably the financial component, more easily than the other way around.
137. While acknowledging that training might be able to be provided, she added that even with training, some employees still are finding it difficult in this new environment.

## THE LAW

### Sections of the Human Rights Code and Human Rights Act, 2010

138. Section 9 of the *Human Rights Code* states:

9. (1) An employer, or a person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment because of

(a) that person's race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, family status, physical disability or mental disability; or

(b) that person's age, if that person has reached the age of 19 years,

But this subsection does not apply to the extension of a limitation, specification or preference based on a good faith occupational qualification.

139. Section 14 of the *Human Rights Act, 2010* states:

14. (1) An employer, or a person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment on the basis of a prohibited ground of discrimination or because of the conviction for an offence that is unrelated to the employment of the person.

(2) Subsection (1) does not apply to the expression of a limitation, specification or preference based on a good faith occupational qualification.

140. The burden of establishing a *prima facie* case of discrimination is on the Complainant. If met, the onus then shifts to the Respondent to prove otherwise, as stated by the Supreme Court of Canada.

141. A *prima facie* case of discrimination has been described by the Supreme Court of Canada in *Human Rights Commission of Ontario and O'Malley v. Simpsons – Sears* [1985] 2 SCR 536 at page 558, where it was held that:

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

142. The standard of proof in a Human Rights complaint is on the balance of probabilities.
143. As set out in *Andrews v. Law Society of British Columbia* [1989] 1 SCR 143, the meaning of discrimination has been widely recognized to mean the following:

Discrimination is a distinction which, whether intentional or not, 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.

## ANALYSIS

144. Has the Complainant established, on a balance of probabilities, that NLHC discriminated against him on the basis of age, contrary to section 14 of the *Human Rights Act, 2001* (formerly section 9 of the *Human Rights Code*)?
145. In *Gazankas v. Municipality of Red Lake*, 2013 HRTO 198 (CanLII), a 2013 decision of the Human Rights Tribunal of Ontario wherein it was alleged that there was discrimination based on age, the Adjudicator articulated the task before him at paragraph 40 when he stated "...the issue before me is not to determine whether the Municipality adhered to any requirements set out in a job advertisement or position description, but rather to determine whether the applicant's age was a factor in the Municipality's decision." Similarly, my task is not to determine whether the best candidate was selected for the job, but rather whether Mr. Vincent's age was considered in the course of the job selection process. That is, assuming Mr. Vincent establishes his *prima facie* case, it must be established that there were credible, non-discriminatory reasons for preferring the successful candidate over Mr. Vincent.
146. The Commission argued that even if there is evidence of non-discriminatory practices, if there is any evidence of discrimination, then there is discrimination; it need not be a dominant factor. In *Quereshi v. Central High School of Commerce* (1989), 12 CHRR D/394, the Board noted that the prohibited ground need not be the only factor and at paragraph 11, noted that:

...in human rights cases the presence of such a motivating factor often will be inferred from circumstantial evidence, since the discrimination is seldom practiced openly. Indeed, discrimination may occur in contravention of the Ontario *Human Rights Code* even where it is

unintentional. In other words, that a prohibited motivating factor was present in the decision [in that case] not to hire him. If it is a reasonable inference from the circumstances established by the evidence, a contravention of the *Code* will be established.

147. The Commission pointed to paragraph 38 in *Quereshi* where there was discussion of the vice-president in that case making notes regarding what were preferred considerations in context of which employees to keep and which to terminate. In that case it was found that there was indeed discrimination, and when the vice-president made a note that they “hoped to keep people with career potential” that this meant those employees who were not on the verge of retirement. The adjudication panel went beyond the verbatim meaning of “career potential” and found it to be meaning “younger” employees had better career potential and therefore were preferable.
148. Similarly, in *Canada (Attorney General) v. Singh*, 2000 CanLII 15208 (FC), Teitelbaum J. held that, as in *McKee*, one may read behind the surface meaning of comments that don’t directly give rise to discrimination, to reasonably infer that the decision was motivated by consideration of a prohibited ground.
149. In considering whether age was a factor in the job selection, it is useful to examine whether someone who was no better qualified, but who was missing the distinguishing feature of age, was in fact successful.
150. The Commission submitted that one need not actually ask about age, or discuss age, to ground a claim for discrimination. Notions of retirement and other related considerations have been found to be enough.
151. In *McKee v. Hayes-Dana Inc.* (1992), 17 CHRR D/79, a 1992 human rights decision alleging age discrimination, at paragraph 4, it was held that:

For the complainant to be successful, the first requirement is that he must establish a *prima facie* case of discrimination on the basis of age. Upon establishing a *prima facie* case, the burden shifts to the employer to provide proof of a reasonable explanation. This might involve adducing evidence to show that the complainant was not as well qualified as the retained employees, i.e. that there is no discrimination on the factual evidence or alternatively, that “age is a *bona fide* occupational qualification and requirement for the position or employment (s. 4(6) of the *Code*).

152. In *Cowling v. Her Majesty the Queen in Right of Alberta as represented by Alberta Employment and Immigration*, 2012 AHRC 12 (CanLII), it was argued that just because there is an organizational mandate for succession planning, doesn’t automatically undervalue older employees. At paragraph 172, it was noted that:

Ms. Cowling was 59 years old when she was first hired by Alberta and 67 years old when she was denied ongoing employment in May 2007. As indicated above, she received strong performance assessments during all eight years of her employment with the respondent. Ms. Cowling was advised that her position was not being continued because the respondent was redefining her position with one what could apparently ensure services “over the long term” and that the position would be a “growth” or “developmental” position. Ms. Cowling was not advised at any time that she did not have qualifications or suitability for this position or that the position required mediation training, and no such requirement was noted in the job advertisement or departmental documents. In the absence of any contrary information as to why Ms. Cowling was not successful in the position, all of the above evidence supports a reasonable inference that Ms. Cowling’s age was a factor in her inability to secure this long-term “developmental” or “growth” position. *Prima facie* discrimination has been established.

The burden now shifts to the respondent to provide a reasonable or credible explanation on all the evidence, for the alleged discriminatory conduct.

153. We then turn to *Gregory v. Cambridge (City)*, 2010 HRTO 388 (CanLII), wherein the opposite result was found. In that case there was no finding of discrimination based on age, because even though the successful applicant was younger, the successful person was more qualified. In that case, as there is here, there was some consideration that the City was “rebuilding” and while the applicant interpreted this to be an age-based mandate, the adjudicator in *Gregory* would not make that leap. He did, however, suggest that the employer’s evidence was weak. While the applicant and the successful candidate had quite similar experience, certifications, and training, it was the educational background that set them apart. The adjudicator accepted the employer’s assertion that the person who acquired the job was a more favourable candidate due to his superior educational credentials.
154. In reviewing the evidence of the witnesses, John Vincent’s only basis for his allegation are the comments made to him by Glenn Goss during their telephone conversation following his notification that he had been unsuccessful in the job competition, together with the fact that the successful applicant was, in fact, younger than Mr. Vincent. There is conflicting testimony about what, precisely, was said. Mr. Vincent is adamant that Mr. Goss said they were looking for “younger people and more educated”, and that he referenced an “aging population” and “early retirement”. Mr. Goss stated that he did not say that, and despite that he doesn’t doubt that Mr. Vincent took that from their conversation, he denies saying anything of the sort. In respect of whether he met the requisite qualifications, Mr. Vincent said that he felt up to date regarding the qualifications, except the social sciences, and noted that he believed his experience satisfied the

qualifications, in that it comprised “equivalent combination of experience and training” which was also noted to be acceptable in the job posting.

155. Again, Mr. Vincent’s basis for alleging age discrimination are primarily the comments made to him by Glenn Goss, who did not form part of the interview panel, and who did not play a role in the job selection process.
156. NLHC did not have any obviously superior candidate in this job competition. Mr. Vincent certainly had some relevant job experience, and his evidence was that he felt he met the requirement for “equivalent combination of experience and training”. It was also the case that the successful candidate was younger than Mr. Vincent. I therefore find that there this establishes a *prima facie* case of discrimination that requires the Respondent to establish a rational explanation.
157. Given that the comments that were made by Glenn Goss to John Vincent give rise to a legitimate concern that such a mandate might ground a claim that the prohibited ground of age was the basis for his failure to acquire the position. We will want to examine whether those same factors were considered in the interview panel’s analysis of the candidates.
158. It is regrettable that Mr. Goss relayed his message to Mr. Vincent in the way that he did. He acknowledged that reaching out to Kevin Williams was a “mistake” but denied that there were any improper factors considered in assessing whether Mr. Vincent was the ideal candidate for the Housing Administration Officer position.
159. The evidence of Mr. Williams was not overly useful. He could speak about Mr. Vincent’s employment history from back in Mr. Vincent’s earlier days with NLHC, much of which is irrelevant to the current matter. Mr. Williams’s evidence in respect of the conversation and subsequent email with Mr. Goss was also vague.
160. The evidence of Paul Abbott and Heather Harding, being the two witnesses who formed part of the 30-person panel who actually conducted the interview, was the most useful. Ms. Harding, in particular, had quite good recollection of the interview and could explain what transpired during the course of the interview in great detail. She was able to articulate precisely what considerations in the interview process formed the basis for their findings.
161. Her evidence in respect of Mr. Vincent’s answers to the situational questions, which was ultimately the basis upon which Mr. Vincent was not selected for the position, together with his lack of education or experience in social sciences, was persuasive.
162. She also was able to articulate the basis for the new requirement for social science education or experience in a way that justified their findings on that issue. I refer to paragraphs 130-133 herein in respect of this evidence/

163. Regarding whether she spoke to anyone after the interview, or whether her opinion was swayed but any other outside factors or individuals, she said that the panel's decision was made right after the interview. Regarding Glenn Goss calling the two managers, she was unaware about that.
164. I am satisfied that the interview panel did not implement improper measures in assessing the candidates, and that age did not form the basis of any consideration in the interview process.
165. I also find that Glenn Goss, while participating in the job competition process insofar as he conducts a "sign off" on the competition report, did not play a role in the assessment of the interviewees. Any comments made to Mr. Vincent by Mr. Goss after the fact, some of which are regrettable, do not constitute discrimination on the basis of age by NLHC.
166. Again, it is not the role of the adjudicator to make a determination regarding whether the "best" candidate was indeed selected, but rather, whether the Applicant was disqualified based on the consideration of a prohibited ground.
167. Mr. Vincent's displeasure arising from his conversation with Glenn Goss is understandable, and that, no doubt, created his perception that age played a role in the ultimate decision. Mr. Vincent's disappointment in not being successful in this job competition is also understandable. I do not, however, find that any such inappropriate considerations were actually undertaken by the interview panel in any way.
168. I am satisfied that the Respondent has established that the position had changed sufficiently that Mr. Vincent's qualifications were no longer an appropriate fit for the position, and I accept that the job selection process was conducted, and the successful candidate chosen, based on individual merit.

## CONCLUSION

169. I am satisfied that the evidence does not support discrimination on the basis of age.
170. The Application is dismissed.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 22<sup>nd</sup> day of August, 2017.

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Kimberley Horwood  
Chief Adjudicator