SUPREME COURT OF NOVA SCOTIA

Citation: *Boutilier v. Nova Scotia (Human Rights Commission)*, 2018 NSSC 166

Date: 20180709
Docket: Hfx No. 461263
Registry: Halifax

Between:

Holly Boutilier

Applicant

v.

Nova Scotia Human Rights Commission, Glentel Inc., and
The Attorney General (Nova Scotia)

Respondents

Decision

Judge: The Honourable Justice Gerald R.P. Moir

Heard: May 2, 2018, in Halifax, Nova Scotia

Counsel: Barry Mason Q.C., for the Applicant
Kendrick Douglas, for the Nova Scotia Human Rights Commission

Moir, J. :

Introduction

[1] Ms. Sponagle (formerly Boutilier) complained to the Human Rights Commission that her former employer, Glentel Inc., had discriminated against her on the basis of sex. She said she endured this during her employment and when she was fired. The Commission decided to summarily dismiss the complaint.

[2] Ms. Sponagle applied for judicial review on five grounds:

1) The Human Rights Commission breached the Applicant's right to procedural fairness when it failed to provide her with sufficient reasons for why her human rights complaint was dismissed;
2) The Human Rights Commission breached the Applicant's right to procedural fairness when it relied on an investigative report that failed to investigate the Applicant's allegation of systemic discrimination;
3) The Human Rights Commission breached the Applicant's right to procedural fairness when it relied on an investigative report where the investigator failed to interview key witnesses to the events outlined in the Applicant's human rights complaint;
4) The Human Rights Commission erred in its interpretation of s. 29… of the *Human Rights Act*…;
5) The Human Rights Commission's decision was unreasonable, given the evidence that was before it… .

Ms. Sponagle's Complaint

[3] Ms. Sponagle signed a "Complaint under the Human Rights Act" on January 6, 2016 and another one on August 11, 2016. She complained that Glentel Inc. treated her differently from other employees because of her sex.

[4] Glentel is a retailer of cell phones and cell phone services offered through kiosks in shopping malls. Ms. Sponagle joined the firm in January of 2014 to manage it's kiosk in Highland Square Mall, New Glasgow. She says she received positive comments about her work and the performance of her store.

[5] The complaints say that the discrimination began in February of 2015 when a Mr. David Reynolds took over as district manager. "From that point, he systematically targeted the female managers for negative treatment resulting in all of us leaving or being subjected to dismissal."

[6] Ms. Sponagle also said that female managers were singled out by Mr. Reynolds, and "If the female managers did not leave on their own he created a reason to dismiss them by misapplying the standards." They were bullied by him.

[7] The complaints specify a managers' meeting in August 2015 at Moncton. At that time, Ms. Sponagle was the only woman manager. According to Ms. Sponagle, she asked "if we could get another female manager as I was feeling a little out of place with 17 men in the room." Her complaint is that one of the store managers replied: "We don't need another female, maybe you are the next to go."

[8] Ms. Sponagle complained to the human resources division of Glentel about this comment. Someone there said they would look into it. Ms. Sponagle said she

also requested an apology through Mr. Reynolds. He refused. Again she contacted human resources, but she never heard from them.

[9] There was another managers' meeting in October, 2015. Mr. Reynolds was there. So was his supervisor, Ms. Renate Schiffman. Ms. Sponagle complains that Ms. Schiffman treated her rudely and, unlike during presentations by other managers, made notes when Ms. Sponagle spoke.

[10] Also at that meeting, "Mr. Reynolds challenged me on every response I gave." She complains further, "He put a negative spin on all of my responses, subjecting me to ridicule in front of my colleagues." And, "At one point he told me I had rated myself too highly and that I wasn't 'that good'."

[11] At the end of that month Mr. Reynolds gave her store a negative "performance review". "I had never received a negative appraisal prior to that." She was fired soon afterwards.

[12] Ms. Sponagle wrote, "I believe the treatment I experienced was due to my sex (gender) because I was treated differently than my male colleagues. There was a different standard applied to my work than that of my male colleagues." Further,

> I was the last of six female managers that were systematically removed from our employment. My store's performance was surpassing the expected standards. My sales were surpassing my sales goals. There was not progressive discipline. There was no coaching. In failing my [store], Mr. Reynolds spoke to my DM

> binder reporting which was impacted by my having taken vacation the week prior. He then applied a different standard to my work and failed me on factors that had never been an issue before.

And, "there were five other female managers who experienced similar treatment."

Commission Investigation

[13] Ms. Shannon Tarr launched an investigation on behalf of the Commission. She spoke by telephone with six witnesses and she obtained relevant documents, such as emails, tables of kiosk performance, and store visit reports.

[14] Tables rank the seventeen kiosks in the Atlantic provinces for sales of cell phone connections, sales of accessories, and sales of warranties. They show that the New Glasgow kiosk ranked 12th, 14th, and 10th respectively when Ms. Sponagle managed it. After she left, the New Glasgow kiosk improved to 8th in all three categories of sales.

[15] Another table shows that from June to October, 2015 the New Glasgow kiosk was consistently below target in all three categories and by a substantial margin. This contradicts what Ms. Sponagle said to the Human Rights Commission.

[16] Contrary to Ms. Sponagle's statement about a sole negative performance review, Ms. Tarr found:

> There were no performance reviews provided by either party prior to the Complainant's termination but rather two store visit reports dated June and October 2015 on which she scored 37% and 45% respectively. The Complainant did have a store visit report completed on April 23, 2014, by her previous district manager and scored 70%. The Respondent considered a minimum score of 80% or satisfactory on a store visit.

[17] Three of the witnesses were former managers, all men. They had all been recommended by Ms. Sponagle for interview, and her lawyer supplied their current telephone numbers. They knew Ms. Sponagle from the managers' meetings, but also from managers' conference calls held every working day. The information they gave did not support Ms. Sponagle's allegations of different treatment.

[18] Only one of the former managers heard the remark made by another manager about not needing female managers. The person who made the remark is no longer with Glentel.

[19] Another witness is still a manager of one of the kiosks. He too knew Ms. Sponagle through the daily conference calls and the meetings. He saw no targeting of, or different treatment of, Ms. Sponagle. He did not hear the sexist comment made at the August, 2015 meeting by a former manager.

[20] Ms. Tarr also interviewed Mr. Reynolds over the telephone.

[21] Mr. Reynolds had been with Glentel for a number of years. His current position requires him to oversee the seventeen stores in Atlantic Canada. He advised that the Mic Mac Mall kiosk was now managed by women. Also, there were five women who are assistant managers at five other kiosks.

[22] Mr. Reynolds said that his management is about performance, not sex. He pays attention to operations and sales, not what sex a manager happens to be. Ms. Sponagle's kiosk did not meet performance standards. She also had trouble managing her store. She failed to audit contracts daily despite being instructed to do so. Deposit logs were lacking, as were other things necessary for supervising daily operations.

[23] None of the managers of the six kiosks that performed worse than Ms. Sponagle's remained as managers. One had been demoted. Two were fired. And, three resigned. Five were men, one a woman.

[24] Ms. Tarr recorded, "An assessment was done by management and it was determined that the Complainant was not able to manage the store in a manner that was up to the standard required."

[25] Mr. Reynolds said he did not hear the sexist comment made at the August, 2015 meeting. Ms. Sponagle choose not to bring it to the district manager's

attention. When Mr. Reynolds found out about it, he confronted the former manager. Mr. Reynolds understood an apology had been given.

[26] Ms. Tarr concluded:

> Based on the above information it would appear that the evidence is not sufficient to support taking the Complainant to the next stage. My recommendation is that the complaint be dismissed pursuant to section 29(4)(b) of the *Nova Scotia Human Rights Act* as there is insufficient evidence to support the allegation.

Responses

[27] Ms. Sponagle and Glentel were given copies of Ms. Tarr's investigative report and opportunities to respond to it.

[28] Mr. Mason provided the Commission with a thorough submission on behalf of Ms. Sponagle. He submitted that the investigation into discrimination had been flawed. There should have been "a deeper inquiry into how women at Glentel felt they were treated by Mr. Reynolds as compared with the male managers."

[29] Mr. Mason submitted that the investigation into the sexist comment was incomplete. Key witnesses, including the former manager who made the remark, were not interviewed.

[30] The response does not attempt to explain the contradictions of important statements made by Ms. Sponagle to the Commission about deviation from standards, positive performance reviews, or store performance.

Decision of Commission

[31] The Commission met on February 22, 2017 and communicated its reasons the next day:

> After a thorough review of the matter, the Commissioners decided that based on the available information, the complaint is dismissed pursuant to Section 29(4)(c) of the *Human Rights Act* because "the complaint raises no significant issues of discrimination". Decisions by the Commissioners of the Nova Scotia Human Rights Commission are final.

Standards of Review

[32] No discussion of standards of review is appropriate when the question is procedural fairness. See, for example, *Green v. Nova Scotia (Human Rights Commission)* 2010 NSSC 242, a decision of Justice Bryson, now of the Court of Appeal. (This decision was affirmed on its main issue: 2011 NSCA 47.) On the other question, the standard is reasonableness, not correctness. *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)* 2012 SCC 10, a unanimous decision written by Justice Cromwell.

Adequacy of Investigation

[33] Ms. Sponagle submits that Ms. Tarr's investigation was so inadequate as to breach procedural fairness. She relies on the decision of Justice LeBlanc in *Tessier v. Nova Scotia (Human Rights Commission)* 2014 NSSC 65.

[34] Ms. Tessier complained against the Halifax Fire Department. Her bases were discrimination against her sex and mental disability. She filed a complaint, the city a response, and she a rebuttal.

[35] The investigator interviewed four witnesses. Although the complaint had been outstanding for two years, the investigator wrote that he needed "to interview more witnesses/the respondents, and very likely gather further evidence." However, he left the Commission.

[36] The replacement investigator intended to interview several witnesses, but after scheduled appointments fell through he wrote a report instead. He relied on the notes of the interviews made by the original investigator. No further interviews were conducted despite both investigators saying, or acting as though, they were necessary.

[37] The Tessier complaint was summarily dismissed on the basis that the evidence supporting the allegations was insufficient.

[38] At para. 34 of *Tessier* Justice LeBlanc said "The Commission serves a screening or gatekeeping function in determining which complaints to dismiss and which complaints to refer to a Board of Inquiry." He cited the decision of the Supreme Court of Canada in *Halifax* as authority for that proposition. The

Supreme Court said at para. 22, “In deciding to refer a complaint to a board of inquiry, the Commission’s function is one of screening and administration, not adjudication.”

[39] Justice LeBlanc says at para. 36 of *Tessier*, “In the context of human rights investigations, complaints are owed a duty of procedural fairness by both the investigator gathering the evidence and crafting a report, and by the Commission in reaching its decision.” And at para. 37, “It is well established that human rights investigators are masters of their own procedure and are afforded broad discretion in choosing who they interview and how they gather information.”

[40] Also at para. 37, Justice LeBlanc cautions that the discretion cannot eclipse the duty. “That broad discretion, however, must be exercised in accordance with the duty of procedural fairness owed to the complainant.”

[41] There is no need for me to review the authorities underlying Justice LeBlanc’s conclusions. His conclusions seem settled law.

[42] One facet of the duty of fairness owed by a human rights commission investigating a complaint concerns thoroughness, which includes interviewing key witnesses. Justice LeBlanc discussed this at paras. 41 to 44 of *Tessier*, concluding as follows with para. 44:

> In my view, the language in *Tinney*, *supra*, of "useful" interviews being "required" is contrary to Justice Nadon's observations in *Slattery*, *supra*, that investigators are entitled to significant deference, and judicial intervention will be warranted only where an investigator fails to investigate obviously crucial evidence. It is easy to imagine an investigation where many potential witnesses could provide "useful" information, but that information would fall short of being "crucial" to the investigation. Accordingly, as in *Gravelle*, *supra*, and *Sanderson*, *supra*, I will apply the *Slattery* thoroughness test to determine whether the failure of the investigator in this case to interview certain witnesses amounted to a failure to investigate obviously crucial evidence.

Disposition

[43] I will deal first with the grounds about procedural fairness in reverse order: 3) key witnesses, 2) failure to investigate, 1) insufficient reasons. Then I will deal with the forth ground about the reasonableness of the Commission's interpretation of s. 29(3)(c), then the fifth ground about the reasonableness of the decision.

Key Witnesses (Third Ground)

[44] Ms. Sponagle submits that Ms. Tarr failed to investigate the allegation of systemic discrimination at all, and she failed to interview key witnesses.

[45] On key witnesses, the Commission submits:

> In this case Ms. Boutilier provided HRO Tarr with a list of witnesses she wished to have contacted. Ms. Boutilier provides some names and information around private Facebook conversations with unnamed individuals. The people that were contacted and that could be reached were from the list provided by Ms. Boutilier. It is unclear how she can now come back and say that HRO Tarr's actions were procedurally unfair in conducting witness interviews. This argument does not amount to any unfairness.

[46] Ms. Tarr's study of Glentel's tables for sales performance was relevant to personal discrimination and tended to show Ms. Sponagle was discriminated against on the basis of poor performance, not sex. Those tables contradict what Ms. Sponagle said to the Commission about performance of her store and deviation from standards. The same goes for Ms. Tarr's study of the store visit reports, which contradicted Ms. Sponagle's account and, on the contrary, tended to show that concerns with her performance did not arise out of the blue. The interviews of managers suggested by Ms. Sponagle herself did not support her allegations of different treatment. Another manager contradicted Ms. Sponagle's allegation that she was a target at meetings.

[47] Ms. Tarr's interview of Mr. Reynolds shows a serious attempt to get at his motivations, and serious answers about store performance and store management. He was also specifically challenged on concrete differences between Ms. Sponagle's treatment in comparison to others who had performance problems, and the responses are recorded in Ms. Tarr's report.

[48] The allegation of systemic discrimination fades when the investigation suggests poor performance, rather than specific discrimination on sex, lead to Ms. Sponagle being fired. Beyond the question of specific discrimination, the investigation obtained information about women managers and assistant managers

in Glentel's employ, and about the sex of the other poor performers who had moved on.

[49] In my assessment, Ms. Tarr's investigation met the standard required to afford procedural fairness.

Failure to Investigate (Second Ground)

[50] The Commission submits "The Applicant's second ground – failure to investigate systemic discrimination – is not supported by the Record." I agree.

[51] Ms. Sponagle's ground about failing to investigate systemic discrimination is really the ground about key witnesses in another guise. Ms. Sponagle submits, "A meaningful inquiry into systemic gender discrimination must involve at least some witnesses (other than the complainant) who are members of the targeted group." The answers to this proposed axiom are threefold.

[52] First, Ms. Sponagle had the opportunity to suggest witnesses to be interviewed, and she did so on two occasions. Most of her nominees were interviewed. Second, the information obtained tended to show Ms. Sponagle was targeted because of her performance, not her sex. Third, by "target group" Ms. Sponagle means other women managers who no longer work for Glentel. The proposed axiom would require the investigation to doubt Glentel's reasons, to find

the former women managers, and to ask them whether the sometimes embarrassing reasons given by Glentel were true.

[53] The former women managers were not key witnesses with "obviously crucial evidence" to give. Without intruding into their lives, Ms. Tarr had obtained evidence that contradicted what Ms. Sponagle told the Commission and showed she had been fired for chronic poor performance.

Insufficient Reasons (First Ground)

[54] The Supreme Court of Canada decided in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 that "in certain circumstances, the duty of procedural fairness will require the provision of a written explanation for a decision": para 43. However, a screening decision under s. 29(4) of the *Human Rights Act* does not require extensive reasons: *Green v. Nova Scotia (Human Rights Commission)* 2011 NSCA 47.

[55] Ms. Sponagle seeks to distinguish the sparse reasons in *Green* from the sparse reasons in her case.

[56] Subsection 29(4) empowers the Commission to screen out a complaint in any of seven circumstances prescribed by s. 29(4)(a) to (g). Paragraph 29(4)(b) reads "the complaint is without merit". In *Green*, the Commission wrote only:

> After a thorough review of the matter, the Commissioners decided that based on the evidence and the information contained in the investigation report, the complaint is without merit and is dismissed… .

See para. 17 of the appeal decision.

[57] In the present case, the Commission wrote only:

> After a thorough review of the matter, the Commissioners decided that based on the available information, the complaint is dismissed pursuant to Section 29(4)(c) of the *Human Rights Act* because "the complaint raises no significant issues of discrimination".

[58] As I said, s. 29(4)(b) prescribes "the complaint is without merit" for screening out complaints. That was the category recommended by the investigator in Ms. Sponagle's case, but the Commission applied s. 29(4)(c): "the complaint raises no significant issues of discrimination". Ms. Sponagle says this distinguishes her case from *Green*.

[59] In *Green*, the Commission disagreed with the investigator's recommendation. The chambers judge said, among other things, "It is a reasonable inference that the Commission preferred the argument of the university to that of Ms. Green and the recommendations in the report."

[60] Ms. Sponagle argues, that the Court of Appeal agreed such an inference could be drawn. She says that no inference can be drawn in the present case because the Commission applied a different screening category than the investigator recommended and the parties addressed. "Unfortunately it is unclear what those [the Commission's] reasons were."

[61] I do not think the reference to an inference was essential to Justice Bryson's reasons at the chambers level in *Green*. It was not part of the reasons on appeal. The point is that extensive reasons, explicit or inferred, are not required when the Commission exercises its screening discretion. Justice Oland wrote at para. 40 of *Green*:

> The absence of any legislative requirement for written or extensive reasons beyond those in s. 29(4) of the *Act*, the omission of any appeal process, the screening and administrative function performed by the Commission at this stage, and its inclusion of public policy considerations when it chooses, all support the Chambers judge's determination that the Commission is not obliged to give fuller reasons explaining its decision to dismiss a complaint.

[62] Further, a finding that "the complaint raises no significant issues of discrimination" is not inconsistent with "the complaint is without merit". The Commission's decision provides a more specific reason for screening out Ms. Sponagle's complaint.

Reasonable Interpretation (Forth Ground)

[63] Ms. Sponagle says that the Commission misinterpreted s. 29(4)(c). She relies upon Professor Driedger's fundamental principle of statutory interpretation adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, online definitions of "significant" extrapolated from "Oxford Dictionaries", and a decision of the Saskatchewan Human Rights Tribunal in *Daily v. Sears Canada Inc.*, 2003 CanLII 74508.

[64] The *Saskatchewan Human Rights Code* provides for screening out complaints and s. 27.1(2)(c) provides one of the grounds: "the complaint raises no significant issue of discrimination". Except for our unnecessary use of the plural "issues", this is the same as Nova Scotia's s. 29(4)(c).

[65] Ms. Sponagle cites *Daily* for the proposition that "In [Saskatchewan], the Human Rights Commission has interpreted the provision to mean that mere 'technical' violations should not be pursued by the Commission…". I do not read *Daily* that way. Paragraph 3 includes "technical violation", but the reasons do not embrace such an interpretation of "significant".

[66] It would be a serious departure from basic principle to substitute "technical" for "significant". What is required in "an interpretation of the statute which respects the words chosen by Parliament": *Izaak Walton Killiam Health Centre v. Nova Scotia (Human Rights Commission)* 2014 NSCA 18, para. 33, to which Mr. Douglas referred.

[67] An Indo-European prefix root "sek-" has a sense of "to follow" in Latin and Romance languages. Its homonym had a sense of "To say, utter" in Germaic languages. Both are found in Old English words. *The American Heritage Dictionary of Indo-European Roots*, 2nd ed., p. 74. Suffix "no-" after "sek-"

produces senses including seal, sign, and consign. Regarding these, the *Dictionary* refers to Latin "*signum*, identifying mark, sign (<'standard that one follows')".

[68] Although the *Oxford English Dictionary (2nd ed.)* refers exclusively to Latin and the Romance languages in its discussion of "signify", it recognizes the Germaic source of "say". See, v. XV, p. 460 and v. XIV, p. 543. Both senses go back into Old English before the Norman conquest and the prevalence of French.

[69] The *O.E.D. (2nd)* senses for "significant" are consistent with those suggested for Ms. Sponagle. Two read: "Full of meaning or import; highly expressive or suggestive" and "Having or conveying a meaning". The earliest references are much more recent than those for "say" and "signify", and we can see elements of both homonyms of sek- in each.

[70] We can say this much. The ordinary meaning of "significant" is not synonymous with "technical", let alone "merely technical".

[71] It is possible therefore to see "significant" in "raises significant issues of discrimination" as simply excluding unimportant cases or as a more complex call for complaints that signify discrimination by reliable information.

[72] The statute allows us to construe the difficult use of "significant" in s. 29(4)(c) with some ease. In addition to the surrounding words "raises no

significant issues of discrimination", the statute tells of its purpose and provides much on its specialized use of "discrimination".

[73] The purpose is described in s. 2 of the *Human Rights Act*:

> **2** The purpose of this Act is to
>
> (a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;
>
> (b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;
>
> (c) recognize that human rights must be protected by the rule of law;
>
> (d) affirm the principle that every person is free and equal in dignity and rights;
>
> (e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and
>
> (f) extend the statute law relating to human rights and provide for its effective administration.

[74] Section 4 defines "discrimination":

> **4** For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

The cross reference to s. 5(1)(h) to (v) incorporates "age; race; colour; religion; creed; sex; sexual orientation; gender identity; gender expression; physical disability or mental disability; an irrational fear of contracting an illness or disease; ethnic, national or aboriginal origin; family status; marital status; source

of income; political belief, affiliation or activity", and association with a person having one of those characteristics.

[75] Subsection 5(1)(a) to (g) prohibits kinds of discrimination against individuals on the basis of any of the s. 5(1)(h) to (v) characteristics. However, s. 5(1)(a) to (g) limits the prohibition to certain kinds of discrimination. And, it needs to be said straight off that these appear to be significant (important) discriminations when used against a person with any of the defined characteristics.

[76] The prohibited discriminations involve provision of services, access to facilities, accommodation, the purchase or sale of property, employment, volunteer public service, publication, broadcast, or advertisement, or membership in a professional association, business, or trade association, employers' organization, or employees' organization.

[77] Section 6 provides the exceptions: services and facilities for youth or seniors, a boarder in a dwelling, domestics in a single family home, some religious positions, preclusive disabilities, good faith qualifications, good faith occupational requirements, good faith limits in pension and insurance plans, and programs to benefit persons who are systemically discriminated against.

[78] These three sections are the structural architecture of the legislative scheme of the *Human Rights Act*. They and the description of purpose are essential to the contextual interpretation of s. 29(4)(c).

[79] How could discrimination in employment against a person on account of sex ever be insignificant in the sense of unimportant? I ask the same question and get the same answer when combining any of the interests in s. 5(1)(a) to (g) with any of the characteristics in s. 5(1)(h) to (v), and excluding examples that are within the exceptions in s. 6(a) to (i).

[80] In light of that context, "the complaint raises no significant issues of discrimination" cannot simply mean a complaint that raises no important issue of discrimination. The meaning of discrimination in the *Act* already excludes discrimination that is unimportant from a *Human Rights Act* point of view. For example, discrimination in employment on the basis of poor performance.

[81] Placed in context, "raises no significant issues of discrimination" refers to a failure to signify *Human Rights Act* discrimination.

[82] In my view, the only reasonable interpretation of s. 29(4)(c) is that it excludes a complaint that is not backed by information signifying prohibited discrimination.

[83] There was no implicit misinterpretation of s. 29(4)(c) and no implication that an unreasonable interpretation was adopted. The Tribunal was entitled to consider information that discredited what Ms. Sponagle had said to the Commission and tended to show discrimination on a permitted ground, poor performance.

Reasonable Decision (Fifth Ground)

[84] I discussed the information that was before the Commission under "Ms. Sponagle's Complaint", "Commission Investigation", "Responses", and "Key Witnesses (Third Ground)". I discussed interpretation of s. 29 under "Reasonable Interpretation (Forth Ground)". I dismiss this ground also.

Conclusion

[85] Ms. Sponagle's proceeding for judicial review is to be dismissed. The parties may write to me about costs, if they wish.

J.