

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES  
DROITS DE LA PERSONNE**

**KAREN SCHUYLER**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**ONEIDA NATION OF THE THAMES**

**Respondent**

**RULING ON RESPONDENT'S APPLICATION FOR A NON-SUIT**

MEMBER: Dr. Paul Groarke

2005 CHRT 18

2005/05/06

[1] The Respondent has applied for a nonsuit.

[2] The evidence on the two complaints is all from the Complainant.

[3] In her first complaint, she alleges that the band failed to accommodate her, when she returned from her cancer treatment. Her position is that they failed to provide her with half time work. Then there is a financial issue. And a question of dignity. She says that the band did not have the necessary process in place for bringing her back into the workforce. She says that she wasn't treated with compassion.

[4] There are difficulties on the financial side, since the Complainant accepted disability payments, which were awarded on the basis that she was "totally" disabled. As I understand her testimony, however, she says that she only accepted these payments after she gave up on the idea of coming back to work on a graduated, part-time basis.

[5] The second complaint alleges retaliation. Both sides agree that their relationship got progressively worse. Ms. Schuyler attributes this to the human rights complaint. She says that she had seen this kind of thing before. She says that the band did not like being sued.

[6] At this point, I only have Ms. Schuyler's testimony. Any evidence of retaliation is a matter of inference. From her perspective, however, it is a simple situation. When she refused to withdraw the complaint, she was ostracized. There may have been other factors, but that was the crux of it. The situation deteriorated and she was eventually dismissed.

[7] Ms. Schuyler's view of the situation may or may not be the right one. It is very difficult for me to say, without hearing from the Respondent. The band has already taken the position that the problems were on Ms. Schuyler's side, in the performance of her duties. I have an obligation, however, to suspend my judgement until the case closes. This is not the time, however, to choose between the two sides.

[8] Under the *Canadian Human Rights Act*, retaliation is a form of discrimination. The evidence of discrimination is often indirect. Respondents rarely admit openly that they have discriminated against a Complainant. I think that Ms. Schuyler's conclusions are entitled to some consideration. She knew the band and council and cannot be expected to provide direct evidence of the employer's motivations.

[9] The only question on a non-suit is whether there is some kind of case before me, which calls for a response from the Respondent. I think there is.

[10] I am not saying that there is a strong case. There may be difficulties with the evidence. But this is not the time to deal with those kinds of issues. The only question is whether there is a case to meet.

[11] In the circumstances, the motion is dismissed. There is a *prima facie* case. It is for the Respondent to decide whether to call evidence.

"Signed by"

Dr. Paul Groarke

OTTAWA, Ontario  
May 6, 2005

#### PARTIES OF RECORD

TRIBUNAL FILES:	T980/10004 and T1014/13404
STYLE OF CAUSE:	Karen Schuyler v. Oneida Nation of the Thames
DATE AND PLACE OF HEARING:	May 3 to 6, 2005 London, Ontario
RULING OF THE TRIBUNAL DATED:	May 6, 2005
APPEARANCES:	

Karen Schuyler	On her own behalf
John C. Peters	On behalf of the Respondent