

Docket No.: CA 164577
Date: 20001205

NOVA SCOTIA COURT OF APPEAL

[Cite as: DeYoung v. Central Regional Health Board, 2000 NSCA 142]

Flinn, Chipman and Cromwell, JJ.A.

BETWEEN:

DIANNE DeYOUNG, ROY FRENCH, MARY HARRISON AND CAROL
HETHERINGTON

Appellants

- and -

CENTRAL REGIONAL HEALTH BOARD

Respondent

REASONS FOR JUDGMENT

Counsel: Bernadette C. Maxwell, for the appellants
Hugh H. Wright, for the respondent

Appeal Heard: December 5th, 2000

Judgment Delivered: December 5th, 2000

THE COURT: Appeal allowed in part per oral reasons for judgment of
Flinn, J.A.; Chipman and Cromwell, JJ.A. concurring.

FLINN , J.A. (Orally):

[1] This appeal is from the decision of Justice Stewart, in Chambers, which, while permitting certain amendments to the appellants' statement of claim, refused to allow specific additional wording to paragraph 5 of that statement of claim.

[2] The appellants commenced an action for wrongful dismissal against the respondent. Included in the claim was an allegation that the appellants "were treated unfairly and they were the innocent victims of favouritism and punitive actions on the part of the employer."

[3] Included in the application for leave to amend the statement of claim was a request to amend paragraph 5 by adding the following:

The Plaintiffs say that the character of the Defendant employer as a public body mandates that it treat its employees fairly in the matters of promotion and dismissal. They say further that the employer was aware of serious allegations of unfair practices in the workplace, particularly in relation to Colleen Phillips, the Head Nurse, to the extent that it caused an investigation to be conducted by one John LaRocque in the winter and spring of 1997-1998, which resulted in an extensive report. The Plaintiffs believe this report contains details of the unfairness and inequity in the workplace, which eventually culminated in their dismissals. They say the report refers to a workplace situation in which the "A-Team" received benefits and privileges denied to the "B-Team". They say they were members of the "B-Team" which did

not enjoy Ms. Phillips' favour. They say further that because they were outspoken in their criticism of workplace practices, they were dismissed.

[4] The amendment to paragraph 5, which the appellants requested, except for the first sentence thereof, does not plead facts on which the appellants rely for their claim in this action. Rather, it pleads evidence, or proof, of certain facts which are alleged by the appellants as part of their claim. As such, the proposed amendment is contrary to **Civil Procedure Rule** 14.04, and is not permitted.

[5] **Civil Procedure Rule** 14.04 provides as follows:

Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which the facts are to be proved, and the statement shall be as brief as the nature of the case admits.

[6] In the result, as to the first sentence of the proposed amendment to paragraph 5, leave to appeal is granted, the appeal is allowed and the appellants are granted leave to amend paragraph 5 of the statement of claim on file herein by adding thereto the following:

The plaintiffs say that the character of the defendant employer as a public body mandates that it treats its employees fairly in the matters of promotion and dismissal.

[7] In all other respects leave to appeal is denied. There will be no order as to costs.

Flinn, J.A.

Concurred in:

Chipman, J.A.

Cromwell, J.A.