

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

DORA UNKA

Plaintiff

- and -

SOUTH SLAVE DIVISIONAL EDUCATION COUNCIL

Defendant

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**REASONS FOR DECISION  
of the  
HONOURABLE JUDGE GARTH MALAKOE**

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Heard at:	Hay River, Northwest Territories
Date of Decision:	September 23, 2016
Date of Trial:	June 28, 2016
Appearances for Plaintiff:	Dora Unka
Counsel for Defendant:	Christopher Buchanan

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**A. INTRODUCTION**

**A.1 The Claim**

[1] Dora Unka is suing the South Slave Divisional Education Council (the “SSDEC”) for \$5,000 plus her costs. Ms. Unka claims that she had a contract with the SSDEC and that although she performed what was required of her under the contract, the SSDEC has not paid her. In response, the SSDEC agrees that there was a contract. However, the SSDEC claims that what Ms. Unka provided pursuant to the contract does not fulfil her obligations under the contract and has no value to the SSDEC.

**A.2 Background**

[2] The contract in question comes from a complaint filed with the Northwest Territories Human Rights Commission. Ms. Unka (as “Complainant”) filed a Human Rights Complaint against the SSDEC (as “Respondent”) on July 25, 2013. As a result of a mediation process, the parties settled the complaint. They signed a document entitled “Terms of Settlement” which I will refer to as the “Settlement Agreement” dated June 27, 2014. One of the terms of the Settlement Agreement was the following:

3(b) Prior to December 31, 2014, the Respondent shall enter into a contract with the Complainant for services as a “consultant.” The services provided by the Complainant will be negotiated between the parties. The value of this contract will be at least *five thousand dollars* (\$5,000.00)

[3] In compliance with this paragraph of the Settlement Agreement, the parties entered into an agreement dated November 10, 2014 (the “Contractor’s Agreement”). Under the Contractor’s Agreement, Ms. Unka, as Contractor, agreed with the SSDEC, that she would provide the following services:

1. The Contractor shall review 10 aboriginal themed children’s books and provide Holistic First Nations World View talking points on each. The Contractor also agrees to provide a preamble to this series which connects the concepts presented in each book to key aspects of Dene Culture and values. The talking points and preamble shall be presented in a word document that can be reproduced and shared with others.

[4] The Contractor’s Agreement also contains the following Appendix which is not referred to in the main body of the agreement:

#### **APPENDIX “A”**

##### **DESCRIPTION OF RESPONSIBILITIES**

###### **General Description**

The Contractor shall review 10 aboriginal themed children’s books and provide Holistic First Nations World View talking points on each. The Contractor also agrees to provide a preamble to this series which connects the concepts presented in each book to key aspects of Dene Culture and values. The talking points and preamble shall be presented in a word document that can be reproduced and shared with others.

###### **Detailed Terms of Contract**

The Contractor will provide examples and templates/models of the first two book reviews to the Assistant Superintendent of the SSDEC for feedback and approval.

The Contractor will provide a full listing of the books that will be used in this project on or before December 10, 2014 for approval by the Assistant Superintendent of the SSDEC.

###### **Timing**

The collection, including preamble and individual talking points for all ten books, will be completed for presentation to the SSDEC on or before June 15, 2015.

[5] Finally, the Contractor’s Agreement requires “satisfactory completion” of the contract before payment:

1. The SSDEC agrees to pay for the services a fee of \$5,000. Payment will be made within satisfactory completion of the contract and within fifteen (15) days of receipt of an invoice from the Contractor.

[6] On December 11, 2014, the Plaintiff faxed a list of books to Brent Kaulback, the assistant superintendent of the Defendant. On May 20, 2015, the Plaintiff faxed a two and one-half page document entitled, “SSDEC CONTRACT – HOLISTIC FIRST NATIONS WORLD VIEW TALKING POINTS” which I will refer to as the “Plaintiff’s Response”.

[7] On May 29, 2015, Brent Kaulback e-mailed a document entitled, “Teachers Resource Guide – Three Feathers – Written by Richard Van Camp and illustrated by Krystal Mateus” (which I will refer to as the “Three Feathers Teachers Resource Guide”) to the Plaintiff with instructions to “please review this template and use it for expanding the work you have already done on the other nine books.”

[8] At some point, Ms. Unka made handwritten changes to the Three Feathers Teacher Resource Guide and returned them to Brent Kaulback. She requested an extension to the June 15, 2015 deadline of the Contractor’s Agreement and on June 15, 2015, received an extension to the end of July, 2015.

[9] The parties appear not to have interacted further until the Plaintiff filed her statement of claim on March 11, 2016.

### **A.3 Conduct of the Trial**

[10] The trial was conducted in Hay River, NT on June 28, 2016. Ms. Unka represented herself. The SSDEC was represented by legal counsel. The sole witness for the Plaintiff was Dora Unka. The sole witness for the Defendant was Brent Kaulback.

[11] Following the submissions by both parties, I indicated that I would reserve my decision.

## **B. ISSUES**

[12] In my view, the answers to the following two issues are determinative of this action:

- (a) Does the Plaintiff’s Response fulfill the Plaintiff’s obligations under the Contractor’s Agreement?
- (b) If the answer to the above is “no”, is there value to the Plaintiff’s Response such that the SSDEC should have to pay the Plaintiff some amount for what was provided?

## **C. ANALYSIS**

### **C.1 Onus and Burden of Proof**

[13] Before addressing the two issues raised in this trial, it is important to state two basic principles that are fundamental to my decision. Dora Unka is the Plaintiff in this action. She has filed a statement of claim. The Defendant has filed a statement of defence. The onus is on the Plaintiff to prove her claim. In order to do so, she must show, on a balance of probabilities, that the SSDEC breached its contract.

[14] The fact that either party has stated an allegation in their statement of claim or statement of defence is not evidence that the allegation is true. I can only make my decision based on the evidence that was presented in Court. This was explained to the parties at the beginning of the trial.

### **C.2 Was the Plaintiff's Response satisfactory?**

[15] The Plaintiff takes the position that the delivery of the Plaintiff's Response satisfies her obligations under the Contractor's Agreement. In particular, according to the Plaintiff, it is a document which "reviews 10 aboriginal themed children's books and provides Holistic First Nations World View talking points on each." Further, it contains a "preamble to this series which connects the concepts presented in each book to key aspects of Dene Culture and values."

[16] The key obligation of Dora Unka under the contract is to provide "talking points" on each of the 10 identified books. Therefore, to decide whether or not the Plaintiff's Response fulfilled Ms. Unka's obligation under the Contractor's Agreement requires an analysis of the phrase "talking points" and who was to use the "talking points" once they were completed.

[17] Ms. Unka testified that the phrase "talking points" came from Brent Kaulback when they were discussing the proposed content of the Contractor's Agreement. Mr. Kaulback recalls the phrase "talking points" as coming from Ms. Unka and preferred the term "teachers' resource guide" to describe what was expected. In any case, the term "talking points" does not seem to have any generally accepted meaning.

[18] Ms. Unka testified that she felt that the talking points would be used by her in speaking to teachers about the ten books. In contrast, Mr. Kaulback stated that the talking points would be used by teachers as a resource in speaking to their students about these books.

[19] In explaining her interpretation, Ms. Unka stated that she understood that the Contractor's Agreement would be the first step in a continuing relationship between her and the SSDEC in which she would act as a consultant. Ms. Unka conceded that, on the face of it, the Contractor's Agreement did not have any provision for an ongoing relationship and spoke only of a specific product to be delivered by a specific date.

[20] When asked how she came to her interpretation, Ms. Unka testified that it was based on the word "consultant" in the sentence of the Settlement Agreement which stated "Prior to December 31, 2014, the Respondent shall enter into a contract with the Complainant for services as a 'consultant'".

[21] Ms. Unka testified that the SSDEC did not represent to her during the negotiation of the contract that there would be work for her as a consultant after the contract was completed.

[22] In explaining his interpretation, Mr. Kaulback said that the description of the services to be provided in the Contractor's Agreement states clearly that the talking points would be reproduced and shared with others. Mr. Kaulback stated that the Defendant is an education council and the only reasonable interpretation of the talking points being "shared with others" is that they would be shared with teachers.

[23] I cannot accept Ms. Unka's interpretation of who the talking points would be used by. I reject this interpretation for a number of reasons. First, the Settlement Agreement was reached in the context of a human rights complaint. There is no indication that there was to be a continuing relationship between the parties and if there was, I would have expected this to have been stated in the Settlement Agreement or the Contractor's Agreement. Second, Ms. Unka initially responded positively to the format suggested by Mr. Kaulback for the teachers' resource guide which is an indication that she saw the talking points to be for teachers. Finally, there is simply insufficient basis in either the Settlement Agreement or the Contractor's Agreement to support this interpretation.

[24] In my view, the "talking points" were to be given to teachers for the purpose of speaking to their students.

[25] It is unfortunate that Ms. Unka chose to ignore the requirement in Appendix "A" that:

The Contractor will provide examples and template/models of the first two book reviews to the Assistant Superintendent of the SSDEC for feedback and approval.

[26] This should have been done sometime shortly after the November 10, 2014 start date on the Contractor's Agreement. If Ms. Unka was confused as to who the "talking points" were for, this would have been discovered when she provided "the examples and template/models for the first two book reviews" for approval. She would have known quickly what the SSDEC expected in order that there be a "satisfactory completion" to the Contractor's Agreement. Instead, she waited over six months and submitted the Plaintiff's Response on May 20, 2015. This was less than a month before the June 15, 2015 completion date.

[27] There is no explanation from the Plaintiff for her failure to provide the template/models for the first two book reviews as required under the Contractor's Agreement. Nor is there an explanation for her delay in submitting the Plaintiff's Response. In contrast, once the Defendant received the Plaintiff's Response, it provided the Plaintiff with a template for one of the books on May 29, 2015 and requested that the Plaintiff "use it for expanding the work you have already done on the other nine books." As I said earlier, Ms. Unka originally reacted favourably to this template; made some further changes; and asked for an extension to the contract deadline. Then, there appears to have been no further communication between the parties. Ms. Unka now takes the position that the template was not a template for "talking points" but a template for a "lesson plan". She had never agreed to provide lesson plans.

[28] For the reasons I stated earlier, the talking points were meant to be used by teachers in speaking to their students. The template provided to the Plaintiff by Mr. Kaulback seemed a reasonable model for what was required under the contract.

[29] In conclusion, the Plaintiff did not complete what was required of her under the Contractor's Agreement.

[30] I find that there is no evidentiary basis for the Plaintiff's assertion in paragraph 15 of her statement of claim where it is stated:

15. The Plaintiff explicitly communicated to the Defendant early in the Contract that she would not provide lesson plans and ceased work on the revisions once she realized that the Defendant was attempting to solicit lesson plans from the Plaintiff.

[31] I recognize that Dora Unka is passionate about the teaching of First Nation issues in the school system. At trial, she expressed her views eloquently and I have no doubt that these are strongly held views based on a lifetime of experience and education. It appears that at some point between the negotiating and signing of the Contractor's Agreement and her decision to file a statement of claim, she decided that her views would not allow her to deliver what was being asked of her and

what she had agreed to. Although Ms. Unka feels strongly that only she would be able to use the talking points to teach the teachers, this was not what had been negotiated. Further, there is no evidence that Ms. Unka explained to the Defendant the reason for not responding after June of 2015.

[32] This was her choice but it meant that she did not fulfill her obligations under the contract that she had previously agreed to.

### **C.3 Did the SSDEC Benefit from the Plaintiff's Response**

[33] The Defendant asserts that the Plaintiff's Response has no value to the SSDEC and has not been used by it in any way. Accordingly, Ms. Unka is not owed anything for what the Defendant has received from her.

[34] Ms. Unka, in her testimony, said that, with respect to the Plaintiff's Response, "so therefore they can do what they want with this. They're not going to get very far with it." In the context of her testimony, I took this to mean that Ms. Unka acknowledged having submitted a response which was based on her considerable experience, education and knowledge but which would require her continued involvement in order to be useful. If Dora Unka was not hired as a consultant to explain what she meant in the Plaintiff's Response to the teachers, then it would have no value. Mr. Kaulback testified that the Plaintiff's Response has been of no use to SSDEC.

### **C.4 Relevance of Human Rights Complaint**

[35] The Settlement Agreement which settled the Human Rights Complaint was referred to earlier. The requirement that the SSDEC enter into a contract with Ms. Unka was a condition of the Settlement Agreement. The Settlement Agreement also had a condition that

3(c) . . . the Respondent shall make a computer available in the staff room for substitute teachers.

[36] During the trial, Ms. Unka asserted that it was difficult for her to get access to a computer and that it was only through the helpfulness of some teachers that she was able to use the computer. She said that as of October 2015, there was still no computer for substitute teachers at Diamond Jenness Secondary School.

[37] If there was a failure by the SSDEC to "make a computer available in the staff room for substitute teachers," Ms. Unka would have to contact the Human Rights Commission for a remedy under the Settlement Agreement. There was no



evidence adduced that Ms. Unka's ability to perform the Contractor's Agreement was frustrated by lack of access to a computer.

[38] The terms of the Settlement Agreement only required that the SSDEC enter into a contract with Ms. Unka. That was done. This Court has no jurisdiction to alter the terms of the Settlement Agreement or to provide a remedy under the Settlement Agreement.

**D. SUMMARY OF CLAIM AND JUDGMENT**

[39] The claim of the Plaintiff, Dora Unka against the Defendant, South Slave Divisional Education Council is hereby dismissed.

[40] The Clerk will prepare the Judgment. In the absence of any offer to settle made pursuant to the *Territorial Court Civil Claims Rules*, there will be no costs awarded. If such an offer was made by either party and that party is seeking costs, then that party has 15 days from the date of this Decision to notify the Court.

Garth Malakoe  
T.C.J.

Dated at Yellowknife, Northwest  
Territories, this 23<sup>rd</sup> day of  
September, 2016.

*Dora Unka v. South Slave Divisional Education Council*, 2016  
NWTC 14

Date: 2016 09 23  
File: T-2-CV-2016-000005

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