

Pollock et al. v. Winnipeg Condominium Corporation No. 30

[COMPLETE DECISION PDF](#)

SUMMARY

The complainants made an application to the Adjudicator relating to the Manitoba Human Rights Commission's jurisdiction to terminate all proceedings, including the adjudication, after complaints have been referred to adjudication and to withdraw from the proceedings. Some of the complainants also requested to amend their complaints to include allegations of reprisal, and funding to retain counsel and pay witness fees and expenses in the event that the Commission withdraws from the adjudication. There were also various other requests to accommodate the special needs of the complainants and their witnesses with respect to the adjudication hearing.

The complainants argued that the Commission was *functus officio* once it had referred a complaint to adjudication and could no longer consider further offers of settlement by the respondent. The Commission argued amongst other things that the complainant's approach undermines the legislature's objective with little added benefit for complainants or for the public's interest in remedying and preventing discrimination and accordingly requested a ruling that an adjudicator under The Code may not continue an adjudication if the Commission has terminated proceedings under clause 29(2)(b).

The Adjudicator found that the Commission is *functus officio* in terms of its section 29 powers and therefore an interpretation of The Code which would allow the Commission to unilaterally terminate the adjudication, at presumably any time prior to its completion, would be inconsistent with the independent status and statutory duty of an adjudicator to adjudicate the complaint.

In light of the foregoing determination, the complainants argued that the Commission should not be permitted to withdraw from the adjudication proceedings. The Adjudicator agreed that pursuant to section 34, the Commission is a party to the adjudication whose role is to represent and advance the public interest, which may include advocating for the interests of the complainant, but it is not required under the statute to do so. The Commission may continue to assess whether it would be in the public interest to settle a matter on terms as set forth by the respondent, but the Commission cannot withdraw from the adjudication. The Commission can, however, withdraw from actively participating in the proceedings.

The complainants argued that if the Commission is entitled to withdraw from actively participating in the adjudication, the Government of Manitoba be required to fund or provide legal counsel at no cost to the complainants. The Adjudicator determined that there is no basis for an order requiring or requesting the Government to fund or provide legal counsel to the complainants for the adjudication of their complaints, nor for an order requiring the Commission to pay one of the complainant's expenses for attending and participating at the hearing of her complaint.

The Adjudicator was not prepared to amend the complaints to include allegations of reprisal on the basis of the factual information provided to her, nor was she prepared to determine the matter of certain accommodations requested. She was however, prepared to allow one of the complainants to act on behalf of another on an unpaid basis.