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## **Adjudicator decides if damage to dignity offer is enough in service animal case**

The impact of discrimination was at the centre of a recent human rights decision. For the first time an adjudicator had to consider what was a sufficient monetary amount for damage to dignity, feelings and self respect when an allegation of discrimination is based on the use of a service dog.

The problem of deciding what would be an appropriate sum of money is that there are no cases in Manitoba under *The Human Rights Code* that involve discrimination in provision of services against a person who relies on a service animal to assist managing mental health symptoms.

The Manitoba Human Rights Commission Legal Counsel Isha Khan argued that general damages are case specific and that awards in past cases of discrimination are guidelines only and not the determining factor.

Adjudicator Manning decided that a \$5,500 settlement offer by the City of Brandon Police Services was not enough. The offer had been rejected earlier by the complainant, Billy-Joe Nachuk. He alleged that he was discriminated against when he was escorted out of a bar by police officers because he had a service animal.

Mr. Nachuk is a decorated Canadian Forces member who at that time had been diagnosed with post traumatic stress syndrome. He took training with a service dog from the Manitoba Search and Rescue Elite Service Dog Program to help minimize his functional limitations.

Adjudicator Manning wrote that the offer was not reasonable as Mr. Nachuk was particularly vulnerable. He also commented on the expectation that police are to uphold and not transgress *The Human Rights Code*. “This is enshrined in legislation as the preamble to the *Police Services Act*, S.M. c. 32 which states, AND WHEREAS the importance of safeguarding the fundamental rights protected by the *Canadian Charter of Rights and Freedoms* and *The Human Rights Code* is recognized by all.”

According to Mr. Nachuk, he filed the human rights complaint after he and a friend went to a bar to socialize. Although he produced his service dog’s certification papers, the Police, who were already present, were called to the table and words exchanged. Mr. Nachuk was eventually escorted off the premises by the officers. Mr. Nachuk claimed he was totally degraded.

When an adjudicator is asked to assess whether a Respondent has made a reasonable settlement offer, the adjudicator must decide if the offer approximates what the award could be if the discrimination was proven in a hearing. At this point, there has not yet been a hearing of the complaint and a finding of discrimination. This process ensures that an expensive adjudication can be avoided when a Respondent volunteers to remedy the complaint before the hearing. If the offer is not reasonable a full adjudication hearing would follow.

Human Rights Adjudicators are independent from the Human Rights Commission and appointed by the Government of Manitoba.

Discrimination as defined in *The Human Rights Code* includes a failure to reasonably accommodate an individual who has a protected characteristic under *The Code*, such as a mental or physical disability.

“Services available to the public such as schools, police services or hospitals have a duty to accommodate individuals with disabilities who rely on service animals, unless it would be an undue hardship for them to do so,” said Azim Jiwa the Executive Director of the Manitoba Human Rights Commission. “The rights of individuals with disabilities who use service animals are protected from discrimination under Manitoba’s Human Rights Code.”

*The Human Rights Code* defines a service animal as an animal that has been trained to provide assistance for a person with a disability that relates to that persons disability.

The full decision can be found on the Commissions website [www.humanrightsmanitoba.ca](http://www.humanrightsmanitoba.ca).

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