



British Columbia Human Rights Tribunal

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December 7, 2009

John Bowman
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McGrady & Company
Box 12101, Nelson Square
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(counsel for CUPE Local
4951)

Dear Sirs/Mesdames:

Re: Request for Special Program Approval

On November 26, 2009, the Tribunal received the College of New Caledonia's (the "College") modified request for Special Program approval pursuant to s. 42(3) of the *Human Rights Code*. CUPE Local 4951 ("CUPE") and the Faculty Association of the College of New Caledonia (the "Faculty Association") support the application.

The College has provided letters of support from the College's Aboriginal Advisory Committee, the Carrier Sekani Tribal Council and the College's Student's Union. Also, an earlier version of the application was provided to a number of Aboriginal stakeholders for comment, and the Tribunal received letters of support from the District Principal – Aboriginal Education for School District No. 91 (Nechako Lakes), the Nechako Aboriginal Service Plan Steering Committee, the Prince George Aboriginal Advisory Committee and the Lakes Aboriginal Steering Committee.

Background

In its application, the College advises that Aboriginal students are a significant and increasing demographic for its programs. In 2007, the Ministry of Advanced Education and Labour Development (the "Ministry") announced an Aboriginal Post-Secondary Education Strategy and Action Plan (attached to the College's application) with the goal of closing the socioeconomic gap between Aboriginal and non-Aboriginal British Columbians. To achieve this goal, the Ministry outlined the following objectives:

- Increase the access, retention, completion and transition opportunities for Aboriginal learners.
- Increase the receptivity and relevance of post-secondary institutions and programs for Aboriginal learners.
- Strengthen partnerships and collaboration in Aboriginal post-secondary education.

The College was one of eleven institutions to receive Aboriginal Service Plan ("ASP") funding to develop and implement a comprehensive three year plan for Aboriginal education. The College advises that the ASP funds have allowed it to work with Aboriginal Advisories and partners to develop three year strategic plans for Aboriginal education at each of its campuses. Together, they identified priorities in the areas of programs, services and relationships. The College is working to implement these recommendations, including hiring staff to provide supports to Aboriginal students, in teaching positions, and in administrative positions to work on Aboriginal policy, program development and on strengthening partnerships with Aboriginal communities.

The College states in its application that it wishes to respond positively to the direction that it has received from its Aboriginal communities. It is putting forward this application in order to enable compliance with the Ministry's objectives stated above. It is seeking a Special Program approval as the first phase of a three phase plan leading to employment equity.

The College advises that it is committed to achieving employment numbers that will reflect the diversity of its communities, to strengthen partnerships and to provide Aboriginal employees who will, through their involvement with the College and its students, role model success to Aboriginal learners.

The Special Program

The College seeks Special Program approval to allow it to restrict hiring to Aboriginal applicants for positions in the following categories (collectively, the "Positions");

- a. Employees providing direct operational, instructional or administrative service to primarily Aboriginal students (i.e. Aboriginal Academic Advisor, Aboriginal Liaison, Senior Policy Advisor/Manager of Aboriginal Services).
- b. Employees instructing courses whose content is primarily Aboriginal (i.e. Aboriginal Studies courses, Aboriginal Early Childhood Education, College & Career Preparation - Lheidli Project).
- c. Employees offering services and/or programs funded through Aboriginal-specific funding initiatives.

The College advises that its objective is to have approximately 50 Aboriginal individuals employed in various operational, faculty and administrative positions over a five year period.

The College also wishes to use the following language in postings for some of the Positions (the "Statement"):

This position requires a person of Aboriginal heritage, who also meets all other necessary qualifications. Should a qualified Aboriginal person not be available for the position, the College will consider non-Aboriginal applicants with the other necessary qualifications.

The College wants to require candidates for the Positions to demonstrate proof of Aboriginal ancestry on the following terms (collectively, "Eligibility Criteria"). Candidates are to provide written proof of Aboriginal ancestry through a nationally or provincially recognized Aboriginal

organization. All candidates must fall under the description of Aboriginal as defined in the *Constitution Act of 1982*, Part II, s. 35(2) as "the Indian, Inuit and Métis peoples of Canada", or be identifiable as Non Status Indians. The College also wishes to reserve the right to request a letter from the First Nation verifying Aboriginal ancestry from those who present status cards issued under the *Indian Act*. In addition, the College may use the services of some of its Aboriginal partners to verify Aboriginal status or ancestry.

The College says that the Special Program will benefit Aboriginal students for the following reasons:

- It will enable the College to establish Aboriginal ancestry as a qualification for identified positions.
- It will provide a greater number of Aboriginal role models on campus for Aboriginal students; thereby advantaging all learners at the College, not only Aboriginal learners.
- It will open doors for Aboriginal applicants. Though the College welcomes applications from all populations, community consultations show that there is a perception that the system is closed.
- It will provide higher levels of employment for local Aboriginal communities.
- It will provide much needed encouragement to Aboriginal students that there are career opportunities available to them upon graduation, thereby increasing the retention rates of Aboriginal students at the College.
- It will strengthen the College's relationships with Aboriginal communities and partner groups by illustrating it is committed to meeting their needs as outlined in the community consultations of 2007.

Approval and Terms

I am prepared to grant the College's application for Special Program approval pursuant to s. 42(3) of the *Human Rights Code* to allow it to restrict hiring to Aboriginal applicants for the Positions, to include the Statement on postings for various Positions and to request proof of the Eligibility Criteria for a five year period. This will not be considered a contravention of the *Human Rights Code* as long as this Special Program approval remains in full force and effect.

The College's Special Program is subject to the following terms.

Existing or new positions in the Special Program covered by CUPE's or the Faculty Association's collective agreements will continue to be covered by those collective agreements. Aboriginal heritage as a qualification for the Positions will not impact provisions of CUPE's or Faculty Associations' collective agreements, including with respect to seniority, accumulation of work, layoff and bumping.

Implementation of the Special Program and the recognition and identification of Aboriginal heritage as valid qualification for the Positions may result in some current employees being unable to access additional work for which they may no longer be considered fully qualified. Implementation of the Special Program will not result in the loss of work for individuals in existing positions, pending the continuation of that work as part of the College's strategic direction and/or funding availability.

The College will provide CUPE and the Faculty Association with as much notice as possible as Special Program positions are identified. At a minimum, ten working days notice will be provided prior to a position being filled.

The College will establish a joint committee consisting of the College, CUPE/Operational Staff and the Faculty Association to consult on the implementation of the Special Program and to assist in achieving its objectives.

The College's Human Resources Department and the Senior Policy Advisor on Aboriginal Education are responsible for Special Program's implementation and monitoring. The Human Resources Department will provide an annual report to the Aboriginal Advisory Committees at each of the College's campuses, and to CUPE and the Faculty Association.

The College must also provide annual reports to the Tribunal. At pages three and four of its application, the College has outlined a number of measurements for the progress and success of the Special Program, which will be finalized through consultation with the Aboriginal Advisory Committees at the various campuses, CUPE and the Faculty Association. The College's annual reports to the Tribunal are required to provide information on these various measures, as well as to provide information on the College's efforts to move towards employment equity. The first report is due on December 7, 2010, and thereafter annually for the duration of the Special Program approval.

Please note that the College's Special Program approval will automatically expire on December 7, 2014. If the College intends to apply for a renewal of the Special Program approval it is advised to do so well in advance of its expiration and to address in its application the factors required in the Tribunal's Special Program Policy applicable at that time.

Yours truly,



Heather M. MacNaughton
Chair

cc: Zoe Towle, Staff Representative, Federation of Post-Secondary Educators
Ray Gerow, CNC Aboriginal Advisory Committee and Prince George Aboriginal
Advisory Committee
David Luggi, Tribal Chief, Carrier Sekani Tribal Council
Valentine Crawford, Chairperson, College of New Caledonia Students' Union
Calvin Desmarais, District Principal – Aboriginal Education for School District No. 91
(Nechako Lakes) and the Nechako Aboriginal Service Plan Steering Committee
Rhea Charlie, Lakes Aboriginal Steering Committee and Burns Lake Band (Tsíl Kaz
Koh) Representative

Fax Call Report

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Date: December 8, 2009

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Fax No: (604) 734-7009**FROM:** Heather MacNaughton

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