MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

No. KEN-24-480

MAINE HUMAN RIGHTS COMMISSION
(FOR THE USE OF JUSTIN ENGSTROM)
Plaintiff-Appellee

v.

D&L APARTMENTS, ET AL.,
Defendants-Appellants

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT
DOCKET NO. CV-18-49

BRIEF OF APPELLEE MAINE HUMAN RIGHTS COMMISSION

March 5, 2025

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STATEMENT OF THE FACTS

Justin Engstrom is a Maine native who enlisted in the United States Marine Corps ("USMC") and served in combat in Afghanistan. *APP012*. In 2014, Engstrom received a medical discharge and returned to the United States. During his transition out of active duty, Engstrom received treatment from multiple doctors through the U.S. Department of Veterans' Affairs ("VA"). *Id.* Ultimately, his doctors diagnosed him with Post-Traumatic Stress Disorder ("PTSD"). *Id.*

In 2013, one of Engstrom's healthcare providers recommended that he consider adopting an assistance animal to help mitigate his symptoms. *Id.* Engstrom then contacted Dogs 4 Warriors, a program that pairs individually trained dogs with disabled veterans and was placed on their waiting list. *Id.* While still on the waiting list, Engstrom returned to Maine in the late spring/early summer of 2016. *Id.* He lived with his parents while he searched for an apartment that he believed would be suitable for both him and his anticipated assistance animal. *Id.* Engstrom responded to several advertisements for available apartments, but ultimately did not apply to any of them because he did not believe they were suitable to live in with a dog. *APP012-013.*

In June 2016, Engstrom telephoned Darrell Sproul, the owner of D&L Apartments, about an apartment he had advertised for rent at Hermon, Maine. *APP013*. A friend of Engstrom's resided in a different unit nearby, so Engstrom

was familiar with the apartment's basic layout and believed it would be a good fit for him and the assistance animal he intended to acquire. *Id*. Engstrom had noticed that Sproul's advertisement had stated "no dogs" were allowed in the unit, so Engstrom sought to clarify this point. Sproul confirmed that no dogs were allowed. *Id*. Engstrom asked whether a dog would be allowed if it was a "federally-protected" or "service" dog. Sproul cut him off, reiterated "no dogs," and told him not to bother applying for the apartment. *Id*.

Engstrom was discouraged by his conversation with Sproul, testifying that it made him feel "disfigured" and "less of a man." *APP014*. Shortly thereafter, Engstrom removed himself from the Dogs 4 Warriors waiting list because he believed the whole thing seemed futile. *Id*. Upon hearing about Engstrom's conversation with Sproul, Dogs 4 Warriors advised him that he should file a complaint of discrimination. *Id*.

Eventually, Engstrom stopped pursuing rental opportunities and instead purchased a home in July 2016, where he now lives with his dog. *Id*.

SUMMARY OF THE ARGUMENT

Canons of construction are used by the Court to interpret *ambiguous* legislation. When the plain meaning of a statute is apparent from its plain language, canons of construction are unnecessary. Nevertheless, assuming *arguendo* that 5 M.R.S. § 4582-A(3) presented any ambiguity, the Superior Court

analyzed it appropriately (using the nearest-reasonable-referent canon, which it referred to as the last antecedent rule). Additionally, the Superior Court could have easily reached the same conclusion by applying the disjunctive canon (where the use of "or" creates a disjunctive list), and the aptly-named grammar canon (where words are to be given the meaning that proper grammar and usage would assign them). Appellant's argument that the series-qualifier rule was a more appropriate canon for interpretation ignores basic English grammar rules, as well as the purpose and intent of the MHRA.

Appellant's arguments that the trial court should have considered Sproul's intent and that the Commission did not establish its prima facie burden further reveal Appellant's misunderstanding of the law and the nature of the claim at hand. First, discriminatory intent is not a requisite for determining whether a statement is discriminatory – courts, instead, look to the *effect* of a statement. Second, Appellee's claim is very simple: Appellant violated 5 M.R.S. § 4582-A(3) by telling Engstrom "no dogs" were allowed, even after Engstrom asked about "federally protected" or "service" dogs.[1] The Commission did not assert a claim

[1] Appellant uses the terms "service animal" and "assistance animal" interchangeably. The Superior Court, in its decision, used the term "service animal" because the MHRA used that term in 2016, when the underlying interaction occurred. Under current law, in the housing context, animals who provide services for individuals with disabilities – whether through emotional support or other services for which they are specifically trained – are called "assistance animals". *Compare* 5 M.R.S. § 4553(1-H) (assistance animals) with 5 M.R.S. § 4553(9-E). The change in terminology is irrelevant to the analysis of the statute, and the Commission will use the term

for disparate impact, disparate treatment, or failure to make a reasonable accommodation; those are different claims addressed by different subsections of 5 M.R.S. §§ 4581-A and 4582-A. Whether by ignorance or confusion, Section III of Appellant's argument leads this Court down a rabbit-hole to nowhere for no good reason.

Finally, the Superior Court did, despite Appellant's caviling, take the context of Mr. Sproul's statement into account when it reached its final decision. The statement "no dogs" is not, in and of itself, a discriminatory statement or denial of the use of an assistance animal. Only after considering the context of the "no dogs" statement—that it immediately followed the question of whether the dog ban included "federally protected" or "service" dogs—could the judge reach her conclusion that the MHRA had, in fact, been violated.

ARGUMENT

I. 5 M.R.S. § 4582-A(3) is not ambiguous and, even if it were, the lower court interpreted it properly.

This Court has held on multiple occasions that canons of construction are only necessary when the meaning of a statute is not obvious. "We look beyond the plain language of the statute to other indicia of legislative intent *only* if the statute is ambiguous" *Dussault v. RRE Coach Lantern Holdings, LLC*, 2014 ME 8, ¶ 14,

"assistance animal" throughout its brief, except when referring to the language used by Engstrom.

86 A.3d 52 (emphasis added). *See also Fuhrmann v. Staples the Office Superstore E., Inc.*, 2012 ME 135, ¶ 23, 58 A.3d 1083; *HL 1, LLC v. Riverwalk, LLC*, 2011 ME 29, ¶ 17, 15 A.3d 725. "A statute is ambiguous if it is reasonably susceptible to different interpretations." *Estate of Joyce v. Commercial Welding Co.*, 2012 ME 62, ¶ 12, 55 A.3d 411. When evaluating the plain meaning, the Court first construes the language of the statute "to avoid absurd, illogical or inconsistent results." Id. at ¶ 12; *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 360 (Me. 1994). If there is ambiguity in a statute, the Court gives deference to the administering agency, and "review[s] whether the agency's interpretation of the statute is reasonable and uphold[s] its interpretation unless the statute plainly compels a contrary result." *Goodrich v. Me. Pub. Emps. Ret. Sys.*, 2012 ME 95, ¶ 6, 48 A.3d 212.

A. *The plain meaning of the statute is obvious.*

As an initial matter, basic sentence construction and the plain language of the statute suffices to reach a clear and unambiguous understanding of its meaning. A clause in a sentence is "a group of related words that contains a subject and a predicate." William Strunk Jr. & E.B. White, The Elements of Style 90 (4th ed. 2000). A subject is "the noun or pronoun that indicates what a sentence is about, and which the principal verb of a sentence elaborates." *Id* at 94. A predicate is "the verb and its related words in a clause or sentence. The predicate expresses what the

subject does, experiences, or is." *Id* at 93. In the case of 5 M.R.S. § 4582-A(3) ("Subsection 3"), the predicate expresses what the subjects ought not to do. The relevant portion of Subsection 3 states the following:

> It is unlawful housing discrimination, in violation of this Act . . . [f]or any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of an assistance animal or otherwise discriminate against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation. . . .

5 M.R.S. § 4582-A(3). Admittedly, the subsection may be difficult to read for those uninitiated in the arts of statutory language. It begins as a slog of individuals (subjects) to whom the prohibitions apply, then it sprints ahead breathlessly to the prohibitions (predicates) and the affirmative defense. The reason the second half of the sentence feels like a sprint is due to the legislature's failure to use the oxford (or serial) comma—which, normally, would follow "lease," "accommodation," and especially "agents." Maine, notoriously, does not use the serial comma, *See* Office of the Revisor of Statutes, Maine Legislative Drafting Manual 124 (1st ed. 1990, revised through October 2016), much to the detriment of the ordinary reader.

Appellant bemoans that "there is no punctuation signal separating the first so-called clause from the second." *Appellant's Brief*, 16. Indeed, there is no comma present at that location of Subsection 3, however, what Appellant fails to recognize is that, absent the comma, the word "or" does the heavy lifting by separating the clauses. In other words, the MHRA states that it is unlawful

discrimination for the delineated individuals (the subjects) to (1) refuse to permit the use of an assistance animal, *or* (2) otherwise discriminate against an individual with a disability who uses an assistance animal at the accommodation. The verbs "refuse" and "otherwise discriminate against" are each predicates which form their own clauses in conjunction with the subjects at the beginning of the sentence.

Appellant claims that the trial court "abandoned common sense by artificially separating a linked conceptual clause," *Appellant Brief*, 17, however, the contrary is true, and the Appellant ought to afford "or" its due respect. "[C]ases begin (and often end) with the presumption that [the legislature] is careful in all its word choices and afford[s] variations between terms like 'and' and 'or' the same respect due others." *Pulsifer v. United States*, 601 U.S. 124, 172 (2024). "And" is used in conjunctions, meaning that its "function is to connect specified items." *Id*. at 161.[2] "Or," on the other hand, is disjunctive, meaning that its function is to separate specified items. *Id*. at 162. If the legislature had intended the clauses to be linked they would have chosen the word "and" instead of "or" and produced the following sentence: "It is unlawful housing discrimination . . . to refuse to permit the use of an assistance animal *and* otherwise discriminate against an individual

[2] See also J. Opdycke, Harper's English Grammar 200 (rev. ed. 1966); The Chicago Manual of Style §5.183, p. 191 (15th ed. 2003); Schoolhouse Rock, "*Conjunction Junction*", Youtube: (February 28, 2025), https://www.youtube.com/watch?v=LjdCFat9rjI.

with a physical or mental disability who uses an assistance animal." With "and" present Appellant would have at least had a rational argument that the two clauses were linked. Alas, in grammar one cannot link what "or" has separated.[3]

Understanding how "or" is used in sentences, and giving "or" the meaning that proper grammar and usage typically assign it, the plain language of 5 M.R.S. § 4582-A(3) leaves no room for doubt that there are two clauses and, therefore, two prohibitions. The latter prohibition does not modify the former. As Appellant himself stated, the language of Subsection 3 is "straightforward" and "appears plain enough." *Appellant's Brief*, 12, 14. Constructive canons, therefore, whether the series-qualifier canon or any other, are unnecessary to understand the plain meaning of the statute and the Court should reject Appellant's argument to the contrary.

B. *The series-qualifier rule is a solecism, and unsuitable to interpret 5 M.R.S. § 4582-A(3).*

Even assuming, *arguendo*, that the statute is ambiguous (which it is not), the series-qualifier canon urged by Appellant does not help to resolve that ambiguity. According to *Black's Law Dictionary*, the series-qualifier canon is "the presumption that when there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier

[3] Cf. Mark 10:9.

normally applies to the entire series." Black's Law Dictionary (10th ed. 2014).[4] The last antecedent rule, on the other hand, is the doctrine "that qualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote."[5] *Id*. These two canons have a history of conflict regarding a particular type of sentence construction. In *Lockhart v. United States*, 577 U.S. 347 (2016), for example, the Supreme Court heard a criminal appeal involving interpretation of 18 U.S.C.S. § 2252(b)(2). The statute gave sentencing guidelines which increased if an individual had a prior conviction "under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." *Lockhart v. United States*, 577 U.S. 347, 350 (2016). The question was whether the phrase "involving a minor or ward" modified only the phrase "abusive sexual conduct," or whether it also modified "sexual abuse" and "aggravated sexual abuse." According to the last antecedent rule, "involving a minor or ward" would only apply to the final phrase in the list: "abusive sexual conduct." Under the series-qualifier rule, "involving a minor or ward" would apply to each phrase in the series. Ultimately, the Supreme Court found in favor of the last antecedent rule. *Id*. at 361.

[4] A modifier is "a word or phrase that qualifies, describes, or limits the meaning of a word, phrase, or clause." Strunk & White, 92.

[5] Originally, it was "the doctrine that a pronoun, relative pronoun, or demonstrative adjective generally refers to the nearest reasonable antecedent," *id*., although that form of the canon is no longer in popular use.

Neither canon, however, is the appropriate tool for interpreting 5 M.R.S. § 4582-A(3). Unlike the statute in *Lockhart*, the MHRA subsection is not a series where all the terms have a straightforward, parallel construction. The only series in this sentence is the list of individuals at the beginning who are prohibited from refusing to permit assistance animals. Appellant's argument that the series-qualifier canon ought to be applied to Subsection 3 is, on its face, untenable – it is unclear what modifier, exactly, Appellant believes is qualifying what series.

Interestingly, the last antecedent canon is commonly referred to in modern practice when what is actually meant is the nearest-reasonable-referent canon. Black's Law Dictionary (10th ed. 2014). The nearest-reasonable-referent canon is "the doctrine that when the syntax in a legal instrument involves *something other than a parallel series of nouns or verbs*, a prepositive or postpositive modifier normally applies only to the nearest reasonable referent." *Id*. (emphasis added). The modifier at issue here is the phrase: "an individual with a physical or mental disability who uses an assistance animal." According to the nearest-reasonable-referent canon, this postpositive modifier should only apply to the verb immediately preceding it: "otherwise discriminate against."

Although the Superior Court cited the last antecedent rule in its decision, the reasoning it used in its holding follows the logic of the nearest-reasonable-referent canon. *See APP018* (citing a Supreme Court case and Black's Law Dictionary (12th

ed. 2024) when describing the rule as one where "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows"). Accordingly, the Superior Court used the appropriate canon in practice (if not in theory) to resolve the alleged ambiguity which Appellant reads into 5 M.R.S. § 4582-A(3). This Court should reject the series-qualifier canon as relevant to interpreting Subsection 3 because, even if the plain meaning of the statute were not apparent, it is nonsensical to try and qualify a series when there is, in fact, no series present to qualify.

C. *The Superior Court's reading of 5 M.R.S. § 4582-A(3) is logical, and consistent with both the MHRA and the Commission's interpretation of the MHRA*

While the Commission concedes that the intent of the MHRA is to, inter alia, "protect people with disabilities in their use of a[n assistance] animal," Appellant's brief, 14, the Act's protections extend further than that single safeguard. Appellant's argument that the series-qualifier canon somehow means that landlords, etc., are only prohibited from refusing the use of assistance animals if an individual "presently own[s an assistance] animal," Appellant's Brief, 23, is absurd, illogical, and inconsistent with the rest of the MHRA. [6]

[6] The Commission's interpretation of the MHRA is entitled to deference. *See Scamman v. Shaw's Supermarkets, Inc.*, 2017 ME 41, 18, 157 A.3d 223; see also *Mulready v. Bd. of Real Estate Examiners*, 2009 ME 135, 984 A.2d 1285 (courts "will not second-guess the agency on matters falling within its realm of expertise" (internal quotation marks omitted)); *Maine Maritime Energy v. Fund Ins. Review Bd.*, 2001 ME 45, 7, 767 A.2d 812, 814 ("When the dispute involves an agency's interpretation of a statute administered by it, the agency's

Appellant's reasoning creates a brand-new protected class. His argument purports that on the one hand there are disabled people, and on the other hand there are disabled people with assistance animals, and that Subsection 3 only protects the latter. But the MHRA does not make that distinction, stating simply that people with a "physical or mental disability" shall not be discriminated against in housing. 5 M.R.S. § 4581. By protecting a disabled person's right to use an assistance animal, Subsection 3 is one small piece of how the Act secures the rights of the disabled overall. Appellant's compartmentalization of Subsection 3, in effect, re-writes the statute to say something it does not say, and to do something that it was never intended to do. In reality, the Superior Court's ruling and the Commission's interpretation of Subsection 3 secure the disabled (and the disabled alone) against preemptive denials like Sproul's denial that he would allow an assistance (or service, or federally-protected) animal at his housing accommodation.

In response to Appellant's bizarre assertion that the Superior Court's decision somehow gives protection to able-bodied Mainers who are seeking to circumvent a landlord's pet policy, *Appellant's Brief at* 18-23, such a result is legally impossible. A person, by definition, cannot possess an assistance animal

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interpretation, although not conclusive, is entitled to great deference ...."). While the Commission recognizes that the U.S. Supreme Court has overturned federal "*Chevron* deference", Maine case law nonetheless provides separately for deference to Maine agencies.

unless that person is disabled.[7] If an able-bodied person asked a landlord whether they allowed assistance animals, and the landlord said no, the able-bodied person would not have standing to bring a claim for the denial of use of an assistance animal under the MHRA because they are not disabled. Indeed, the Superior Court recognized this important distinction in its decision denying Appellant's motion for summary judgment in September 2019. *See App027-035*.[8] The court explained that this was not a case in which an individual was "merely conducting a random survey of landlords' pet preferences", but one where an individual with a disability was actively seeking a home where he could live with an assistance animal. *App033*.

Finally, if the Court were to adopt Appellant's interpretation, it would result in absurd scenarios that are inconsistent with the purpose and intent of the MHRA. One can easily imagine a situation where a disabled individual who is considering whether to acquire an assistance animal could be deterred from applying to a rental when they believe that an assistance animal would not be allowed. In fact, one

[7] An assistance animal is defined as "[a]n animal that has been determined necessary for an individual with a physical or mental disability," 5 M.R.S. 4553(1-H)(A), or "[a]n animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability." 5 M.R.S. 4553(1-H)(B).

[8] To be clear, such a statement would still be a discriminatory statement and in violation of the MHRA, however, the able-bodied person would not experience the discriminatory effect, unless they rented from the landlord, later became disabled, and were deterred from acquiring an assistance animal because of their belief that the landlord would not allow it.

needs only look to the facts of this case for such an example. There is also the issue of what could happen to a tenant who became disabled during their tenancy. Say, for example, the tenant had an accident at work and became blind, and their doctor recommended that they acquire a seeing-eye dog. Under Appellant's version of the statute, if the tenant asked the landlord for permission in advance (which, to be clear, is unnecessary) the landlord would have the right to disallow the tenant from having a dog under the premise that the tenant did not "presently own" the assistance animal. Or, in a similar vein, a landlord with a "no dogs" policy could acquiesce to the tenant's acquisition of an assistance animal as long as it was not a dog. These scenarios are problematic because they violate the spirit and intent of the MHRA which, as stated above, is to protect the disabled from discrimination.

Contrary to Appellant's assertions, the Superior Court's decision is fully consistent with the spirit of the MHRA, the intent of its drafters, and the Commission's long-standing interpretation of the law. This Court should reject Appellant's slipshod logic and uphold the Superior Court's decision.

II. Appellant misunderstands the MHRA and the lower court's analysis.

A. Discriminatory intent is not an element of Appellee's claims.

Appellant seems determined to misunderstand the Commission's claims, the MHRA, and how the law applies to the facts at hand. In his post-trial brief, and now here before the Law Court, Appellant faults the Superior Court for not

assessing whether Sproul had discriminatory intent when he told Engstrom "no dogs" were permitted in the apartment. *Appellant's Brief,* 35. Liability may be established based on the *discriminatory effect* of a landlord's statement, regardless of whether that statement was motivated by a discriminatory intent. *See* 24 C.F.R. § 100.500 (Lexis Advance through the Mar. 7, 2024 issue of the Federal Register, with the exception of the amendments appearing at 89 FR 15744 and 89 FR 16202) (emphasis added);[9] *Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 725 F.3d 571, 577 (6th Cir. 2013) ("Subjective intent to discriminate is not required to establish a violation of [the FHA]). A landlord's denial of the opportunity or ability of a disabled person to obtain an assistance animal has the same effect as an outright denial of an assistance animal from the premises. Actual possession of an assistance animal at the time of a person's inquiry is immaterial.

B. Appellant insists on using an improper analysis that does not apply to Appellee's claims.

The claimant does not need to meet a prima facie burden when a defendant makes a discriminatory statement that directly violates the law. Appellant, in his nescience, provides a citation from *Dussault* which refers to the prima facie burden for a claimant alleging a disparate impact claim. *See Dussault v. RRE Coach*

[9] While this citation refers to the Fair Housing Act, it is equally applicable to the MHRA. Both the Commission and the Department of Housing and Urban Development ("HUD") have deemed the two acts substantially similar. Where the language of the acts are the same or similar, federal law is helpful in interpreting the MHRA.

Lantern Holdings, LLC, 2014 ME 8, ¶ 24.[10] He then refers to a case interpreting the Fair Housing Act (FHA) and proclaims that there are only three types of discrimination claims available to the claimant: disparate treatment, disparate impact, and failure to make reasonable accommodations. *Appellant's Brief*, 29. These are not the only three types of discrimination claims. While the Commission agrees that it is appropriate to look to federal precedent, *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979), looking to the FHA and federal precedent is only necessary when the Court requires *guidance* in interpreting the MHRA. *Id.* at 1261. No such guidance is needed here. The Commission did not assert a claim of disparate treatment, disparate impact, or denial of a reasonable accommodation, because they are not applicable to Subsection 3 or the facts of the case. The only question at hand is whether the Appellant refused to permit the use of an assistance animal by making a discriminatory statement to a disabled person that "no dogs" were allowed at the

[10] A disparate impact claim is only applicable in the housing context when a housing practice is facially neutral but in fact affects more harshly one group than another. *See Maine Human Rights Com. v. Department of Corrections*, 474 A.2d 860, 865-866 (Me. 1984) (employment case). Appellant's "no dogs" policy is not facially neutral because, as the Superior Court ruled, a denial of all dogs would include dogs who are assistance animals under the MHRA. *App016*. Even if it were facially neutral, however, the Commission would still succeed on the merits because Appellants would then be required to "present bona fide and legitimate justifications for its action with no less discriminatory alternatives available." *Huntington Branch, N.A.A.C.P. v. Town of Huntington*, 844 F.2d 926, 939 (2nd Cir. 1988). *Cf.* Robert G. Schwemm, Housing Discrimination Law 10-49 (2006) (explaining different standards). A less discriminatory option is not only available here, it's obvious: simply change "no dogs" to "no p ets."

rental property, even if a dog was a "federally protected" or "service" dog. There is no rebuttable presumption necessary to establish that claim, only the question of whether Appellant's action violated the law.

Moreover, Sproul's statement – apart from its function in the Commission's claim that Appellant denied Engstrom the use of an assistance animal – is a stand-alone violation of the MHRA, which makes it unlawful to:

> [m]ake, print or publish or cause to be made, printed or published any notice, statement or advertisement relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon race or color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry, national origin, familial status or any previous actions seeking and receiving an order of protection under Title 19-A, section 4007 or an intention to make any such preference, limitation or discrimination[.]

5 M.R.S. § 4581-A(1)(C). As the Superior Court found, and as discussed further below, Appellant's response of "no dogs" when Engstrom asked specifically about "service" or "federally-protected" dogs, was a statement of limitation which expressed Appellant's preference for a nondisabled tenant, or at least a tenant whose disability did not require the use of an assistance animal. *APP018-020.* This is a second ground upon which this Court should uphold the finding that Appellant discriminated on the basis of disability.[11]

[11] Appellant also mischaracterized the Commission's post-trial argument, stating that there was a concession that this case did not involve direct evidence. *Appellant's Brief*, 30. During the trial, Engstrom stated that the Appellant told him not to bother applying to rent the apartment after

Ultimately, Section III of Appellant's Brief wastes this Court's time arguing against a theory the Commission never asserts (and, in the case of 5 M.R.S. § 4581-A(1)(B), a claim which the trial court did not in fact rule on). Consequently, it is irrelevant to the question of whether the trial court erred and the Law Court should ignore it as superfluous.

C. The Superior Court could not have reached its decision without considering the context of the conversation between Engstrom and Sproul.

As noted above, the Superior Court also found, as a separate ground for its ruling, that Appellant's statement "no dogs" was itself a violation of the MHRA. Appellant accuses the trial court of "setting aside all . . . context" in its ruling that Sproul's "no dogs" statement was discriminatory. *Appellant's Brief*, 38. This argument is absurd and itself refuses to recognize the context of the conversation between Engstrom and Sproul while ignoring the actual reasoning used by the Superior Court in its holding.

Engstrom inquired about assistance animals. *APP013*. Based on this testimony the Commission argued that, although Appellant's "no dogs" statement alone was sufficient to establish that he violated the MHRA, an alternative theory of liability stemmed from this secondary statement as a refusal to rent or make the apartment available under 5 M.R.S. § 4581-A(1)(B). Because the statement that a person should not bother to apply for a rental is not, on its face, direct evidence of discrimination, the Commission applied the burden-shifting framework under *United States v. Grishman*, 818 F. Supp. 21 (D. Me. 1993) (adopting *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) for the housing context) to argue that Sproul's statement violated § 4581-A(1)(B). Ultimately, the Superior Court did not reach a definitive ruling on the Commission's alternate theory. *APP020-021*. Accordingly, the Commission does not seek to revisit that argument here.

The Commission agrees that, on its face, the statement "no dogs", standing alone, may well not be discriminatory. But that statement did not exist in isolation. Engstrom asked Sproul about dogs twice during the conversation. The first time, Engstrom asked generally about whether dogs were allowed, and Sproul answered "no." If the conversation had ended at this point, then it is likely that no discrimination would have occurred. But Engstrom followed up the question by asking whether that included "federally protected" or "service" dogs. Sproul reiterated that "no dogs" were allowed and told Engstrom not to bother applying. *APP013-014*. *That is the context* under which Sproul's statement transitioned from being facially neutral to openly discriminatory, and the trial court explicitly addressed that in its reasoning. *APP016*. It could not, in fact, have reached that conclusion without acknowledging the context of the conversation.

Appellant's claim that the trial court somehow failed to consider the whole context of the situation is spurious and this Court should reject it outright.

CONCLUSION

5 M.R.S. § 4582-A(3) is not ambiguous. It states that it is unlawful for owners, lessors, etc. to refuse to permit the use of an assistance animal. To say that a disabled individual seeking a rental must already be in possession of an assistance animal in order to enjoy the protections of Subsection 3 clearly contradicts the plain meaning of the statute, violates the spirit and intent of the

MHRA, and is not in accordance with the Commission's interpretation of the MHRA. Appellant's clumsy attempts to fat-finger the law so that it complies with his theory of the case is an abomination to English grammar and should be scoffed at by any self-respecting writer of the language. Moreover, taken in context, Appellant's statement that "no dogs" were allowed – even when asked specifically about "service" or "federally protected" dogs – is a separate, stand-alone violation of the MHRA. Accordingly, the Commission respectfully requests that this Court affirm the decision of the Superior Court.

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