

YUKON HUMAN RIGHTS PANEL OF ADJUDICATORS

Between:

Shaun LaDue

“Complainant”

And:

The Yukon Human Rights Commission

“Commission”

And:

**Government of Yukon, Department of Health and Social Services,
Registrar Vital Statistics**

“Respondent”

INTERIM RULING

1. P. Gawn (Chief Adjudicator): An application has been made by the Respondent to dismiss this complaint on the basis that the Yukon Human Rights Board lacks jurisdiction under the *Human Rights Act*, RSY 2002, c. 116 (the *Act*) to hear the complaint.
2. A case management order made November 17th, 2017, directed dates for submissions to be filed with the application to be decided by the Chief Adjudicator on the basis of the written submissions, as a preliminary jurisdictional issue.
3. The Respondent’s application was filed December 15th, 2017, the Commission’s response January 10th, and the Respondent’s reply February 15th, 2018.

4. The Commission in its response requested that this application be held in abeyance pending the decision of the Supreme Court of Canada (the SCC decision) in *Matson et al v. Indian and Northern Affairs Canada*, 2013 CHRT 13 and *Andrews et al v. Indian and Northern Affairs Canada*, 2013 CHRT 21 (both affirmed in *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2016 FCA 200). The SCC heard the appeal and reserved its judgment on November 28th, 2017.

5. The Text of the Complaint received in May 2017 alleges discrimination by the Respondent on the prohibited grounds of sex and disability and specifies that on July 4th, 2016 the Complainant's request that his birth certificate be altered to reflect his gender identity and expression was denied by the Registrar of Vital Statistics, relying on the *Vital Statistics Act* as it then was. In Preliminary Information filed by the Commission and the Complainant in June of 2017, the remedy sought was described as:

1. The Complainant was seeking that the Respondent YG amend the Vital Statistics Act to permit him to receive a birth certificate reflecting his gender identity and expression, rather than sex assigned at birth, without the requirement that he have his "anatomical sex structure changed". As the Act has now been amended, the Complainant no longer seeks this remedy.

2. Damages for injury to dignity, feelings and self-respect.

6. The Commission submits that the issues argued before the SCC in November are the same as those now being argued in the Respondent's application and that the SCC decision will be binding on the Board with respect to those issues.

7. The questions at issue before the SCC are stated in the Factum of the Canadian Human Rights Commission as including:

How is the term “services” to be interpreted, in the context of statutory human rights protections against discrimination in the provision of services customarily available to the general public? Do human rights statutes apply where a complainant seeks to access benefits, but is denied because of legislated eligibility criteria?

The SCC decision can therefore be expected to be quite relevant to the jurisdictional argument being made by the Respondent that the essence of this complaint is a challenge to legislation which is a matter outside the scope of the *Act*.

8. Since the Complainant does not object to the Commission’s request, and since the Respondent in its submission in reply agrees, the Respondent’s application will now be held in abeyance pending the release of the SCC decision.

9. The Respondent is directed to file the SCC decision forthwith after its release and the parties are at liberty to then each file supplementary submissions based on the SCC decision, limited to the question of its applicability and relevance to the Respondent’s application.

10. I thank the participants for their helpful submissions.

Whitehorse, Yukon, March 28th, 2018



Penelope Gawn, Chief Adjudicator
Yukon Human Rights Panel of Adjudicators