

YUKON HUMAN RIGHTS PANEL OF ADJUDICATORS

Between:

**Stacey Burke
Vincent Chudy
Alyx Stastny
Raymond Nukon-Blake**

“Complainants”

And:

The Yukon Human Rights Commission

“Commission”

And:

**Yukon Government, Department of Justice,
Whitehorse Correctional Centre**

“Respondent”

DECISION

P. Gawn (Chief Adjudicator):

The Respondent has applied to dismiss the complaint of Alyx Stastny in this proceeding. For the following reasons, the Respondent’s application is granted in part, and the individual Stastny complaint will be dismissed.

BACKGROUND

1. On January 25, 2018, my Interim Ruling regarding this application was released, stating as follows:

- *An application has been made by the Respondent, as a consequence of the untimely death of the Complainant Stastny which occurred in August of 2017. The Respondent’s application to dismiss the Stastny complaint is dated December 8th, 2017 and the Commission’s submissions in response were provided on January 4th, with the Respondent’s reply submissions being then received on January 19th, 2018.*

- *The Commission opposes the dismissal of the Stastny complaint and says it should be allowed to proceed in the*

consolidated complaints hearing, but that “only a systemic remedy based upon the evidence relating to all of the complaints” will be sought by the Commission. The Commission does not elaborate on the nature of the systemic remedy that requires the Stastny complaint to continue but says that it “will not seek a personal remedy on behalf of Ms. Stastny”. In reply, the Respondent seeks either to have the Stastny complaint dismissed entirely; or, “in the alternative, to dismiss the individual portion of the complaint”.

- *Pursuant to the November 14th, 2017 Case Management Order the Commission is to file by January 31st, a written summary “defining (or narrowing) the factual and legal issues to be determined by the Board in respect of each Complaint, including defining the factual and legal issues common to more than one Complaint and will deliver a comprehensive statement of remedies sought”. The Respondent then has until March 2nd, 2018 to respond to the written summary and statement of remedies.*

- *The application to dismiss should be considered in the context of the facts and legal issues involved in these consolidated complaints, including whether the systemic remedies sought by the Commission in relation to Ms. Stastny overlap with or are distinct from those arising from the other complaints.*

- *I am therefore going to postpone making a decision on the application to dismiss until I have had an opportunity to receive and review the further particulars due January 31st and March 2nd, 2018.*

2. The Commission’s summary dated January 31, 2018 describes the systemic remedies now being sought in this consolidated proceeding:

C. Common or systemic remedies sought

1. *That the WCC will commit to ending the use of Separate confinement within a reasonable and predetermined amount of time.*

2. *That the WCC immediately end the use of the separate or cell confinement aspect of its Secure Supervision Placement policy.*

3. *That until such time as the WCC ceases the use of Separate Confinement:*

a. *Inmates with mental disabilities at WCC not be admitted to Separate Confinement under sections 20, 23, 22 or 28 fo the Corrections Regulation unless WCC first ensures that all possible alternatives to separate*

confinement are explored, exhausted and documented, and rejected.

b. The WCC will take into account the Indigenous status of inmates in making a decision to place an inmate in Separate Confinement under sections 20, 21, 22 or 28 of the Corrections Regulation.

c. The Yukon Government will provide resources for the independent oversight of the use of Separate Confinement at the WCC by a new impartial third party, and that this individual will be given full access to WCC premises and records.

4. The WCC will immediately implement an alternative measures panel for internal disciplinary charges in accordance with s. 32 of the Corrections Regulation.

5. The WCC will ensure the Independent Chairpersons in internal disciplinary matters have training to:

a. meaningfully implement Gladue principles into their decision-making; and

b. consider the differential impact that Segregation has on Indigenous prisoners and prisoners with mental disabilities, including addiction and trauma.

6. The WCC will review the adequacy of mental health services offered to WCC inmates and implement any additional services and training required to accommodate the mental disabilities of inmates.

7. The WCC will review its provision of services to Indigenous inmates to ensure the accommodation of the cultural and spiritual needs of those inmates including:

a. a commitment to consider Gladue principles in all decision involving Indigenous inmates; and

b. the implementation of any additional services and training required to accommodate Indigenous inmates.

8. The WCC will ensure that all inmates are provided with timely access to cultural and religious supports, including times of crisis.

3. The March 2, 2018, written summary received from the Respondent contains an outline of “Current Factual and Legal Issues” and of “Individual Factual and Legal Issues” but does not specifically comment on the Commission’s list of systemic remedies set out above.

4. The positions of the Commission and the Respondent in this application are summarized at paragraph 2 of the Interim Ruling set out above. Although it is not seeking a personal remedy on behalf of Ms. Stastny, the Commission does seek a “systemic remedy based on the evidence relating to all the complainants”. There has been no objection filed on behalf of any of the individual complainants to the position of the Commission.

ANALYSIS

5. The Respondent submits that the Commission is not a party to this proceeding with standing to continue the complaint of Ms. Stastny. It seems clear however from the *Human Rights Act, RSY 2002, c.116 (the Act)*, and its *Regulations* that the Commission is intended to be a party in hearings before a board of adjudication. The Commission is a creature of statute and these portions of that legislation, which governs its participation in hearings before a board of adjudication, are relevant:

Section 16(1)(d) and (e) of the Act:

16(1) There shall be a Yukon Human Rights Commission accountable to the Legislative Assembly and the commission shall...

(d) promote a settlement of complaints in accordance with the objects of this Act by agreement of all parties;

(e) cause complaints which are not settled by agreement to be adjudicated, and at the adjudication adopt the position which in the opinion of the commission best promotes the objects of this Act.

Sections 8, 9, 10 and subsection 16(1)(b) of the Human Rights Regulations, OIC 1988/170 :

8. (1) Having received from the Commission a request that a complaint be decided by a board of adjudication, the Chief Adjudicator shall forthwith establish a board of adjudication to decide the complaint and shall give the Commission, the complainant, and the respondent at least 30 days notice of when the board will hear the complaint.

(2) The text of the complaint to be decided may be changed at any stage of the proceeding, but only with the permission of the Chief Adjudicator or, after the hearing begins, the board of adjudication, and only in circumstances or upon conditions which give reasonable assurance that no party will be prejudiced by the change.

9. (1) The Chief Adjudicator may change the date previously established for beginning a hearing, but the time between the making of the change and the new date for the hearing to begin

shall be at least 30 days unless the commission, complainant, respondent, and any intervenor consent to a shorter time.

(2) After the hearing has begun the board of adjudication may in its discretion adjourn the hearing as required.

(3) No hearing may be adjourned without first giving each party an opportunity to make representations about the proposed adjournments.

10. The normal procedure shall be that evidence shall be presented by the Commission, then by the complainant, and then by the respondent, and argument shall be presented in the same order as the evidence but the board of adjudication may modify that order where it seems appropriate for the effective conduct of the hearing.

16. (1) The Chief Adjudicator or, after the adjudication hearing has begun, the board of adjudication may allow a person to intervene and take part in the hearing in the way and on the conditions determined by the board where...

(b) the person can make a contribution which will assist the board in fairly and effectively resolving the issues brought before it by the Commission, the complainant, and the respondent.

As well, the *Rules of Procedure* definition of “party” is as follows:

“party” means a complainant, the Commission, a respondent to a complaint, or an intervenor

6. The distinction between the roles of the Commission and the complainants in human rights complaints was well-discussed and clarified by the Ontario Court of Appeal in *Tilberg v McKenzie Forest Products Inc.*, 2000 Carswell Ont 1252:

33. I agree with the appellant that, once the Commission exercises its discretion to refer a complaint to the Board of Inquiry, the role of the Commission fundamentally changes. It no longer acts as an investigative and screening body, but becomes a part of the proceeding. At this point, the determination of the complaint then becomes the responsibility of the Board of Inquiry.

34. The Commission does, of course, have a responsibility to advocate its view of the public interest and in so doing, may also advocate for the interests of the individual complainant. However, the Commission’s role as a party to the proceeding cannot derogate from the independent status of an individual complainant.

7. Although the Ontario legislation under consideration in *Tilberg* is not identical to Yukon’s *Act*, the role of the Commission, as distinct from that of the individual

complainant, is a significant one in Yukon as in Ontario, and is based on similar principles and intent. The objects of the *Act* include furthering “in the Yukon the public policy that every individual is free and equal in dignity and rights” as well as discouraging and eliminating discrimination [s.1(a) and (b)]. Considering the *Act* as a whole, along with the *Regulations*, leads to the conclusion then that the Commission is a party to the hearing before the board of adjudication with a mandate to cause complaints to be adjudicated and to promote the public interest. The systemic remedies being sought by the Commission in this consolidated proceeding may well come within that mandate.

8. This case is unusual in that it is a consolidated proceeding involving four individual complainants. The consolidation was ordered following the application made by the Commission and five individual complainants. The Respondent consented to the consolidation with respect to four of those five complaints. The relevant factors and purpose of the consolidation were set out in my decision on the application, dated July 28, 2017. A significant factor in allowing the consolidation was the similarity among the complaints and the issues common to the complaints, referred to in the decision at paragraph 5:

All five of these Complaints are brought against the same Respondent and are about treatment of the Complainants while incarcerated at WCC. The use of segregation/solitary confinement for inmates with mental disabilities, and the adequacy of mental health services for such inmates, are at issue in all of the Complaints. There are other issues that are common to most, but not all of the Complaints, such as the adequacy of cultural and spiritual services available for First Nation inmates. There are in addition allegations of systemic discrimination included in all of the Complaints.

9. For the systemic remedies sought to be fully considered, the Commission should be able to bring forward all the evidence relevant to those issues. There is however no need for the individual complaint of Ms. Stastny to be continued since no individual remedy is now being sought, nor should it be.

10. The Yukon *Act* has no provision that excludes the common law principle that personal rights terminate upon the death of an individual. Relying on the case law, the individual Stastny complaint will therefore be dismissed as it is a personal right that has not survived her death.

Hislop v Canada (AG), 2007 SCC 10 at paras 72 and 73

British Columbia v. Gregoire, 2005 BCCA at paras 7 and 9

11. With respect to the systemic remedies sought by the Commission, I make no advance ruling that would have the effect of precluding the Commission from introducing evidence relevant to those remedies, including evidence pertaining to the relevant

aspects of the Stastny complaint. It is in the interest of fundamental justice that all aspects of the matters raised in the consolidated complaint proceeding should be available for consideration by the board on the issue of the systemic remedies being sought by the Commission. This ruling does not however prevent the Respondent from objecting, when before the board, to the introduction of any evidence that is not pertinent to those systemic remedies. It should also be emphasized that the prior consolidation of these complaints in this case is a primary consideration in allowing the pursuit of all the related systemic remedies to continue.

CONCLUSION

- A. The application of the Respondent is granted in part and the individual Stastny complaint is dismissed.
- B. The Commission is a party before the board of adjudication with standing to cause complaints to be adjudicated and to promote the objects of the Act.
- C. In the hearing before the board of adjudication of this consolidated complaint proceeding, admissible evidence pertaining to the circumstances in the Stastny complaint will be allowed insofar as it is relevant to the systemic remedies sought by the Commission.

I thank counsel and the parties for their helpful submissions.

SIGNED at Whitehorse, Yukon on April / 7, 2018



Penelope Gawn, Chief Adjudicator

For the Yukon Human Rights Panel of Adjudicators