

October 25, 2010

**IN THE MATTER OF THE YUKON *HUMAN RIGHTS ACT*
AND IN THE MATTER OF**

Joanne Goold

v

Government of Yukon (Economic Development) & Luke Pantin

Parties

Complainant: Susan Roothman, Legal Counsel
Respondent: Mark Pindera, Legal Counsel
Rosemary Tait, Government of Yukon

Yukon Human Rights Board of Adjudication:
Michael Dougherty
Vicki Hancock

**DECISION ON CHALLENGE REGARDING
ALLEGED BOARD MEMBER CONFLICT**

BACKGROUND

On August 13, 2010, the Complainant raised a conflict issue with respect to Barbara Evans' participation on this Board due to Ms. Evans' administrative role with the Capability and Consent Board, formerly known as the Mental Health Review Board. The conflict challenge stemmed from Ms. Evans' disclosure of her work with the Capability and Consent Board during the Pre-Hearing Conference held on July 8, 2010.

On September 1, the Board responded to Ms. Roothman's August 13 e-mail, clarifying Ms. Evans' involvement with the Capability and Consent Board, and invited submissions from Parties on the matter of alleged conflict by September 9. The Complaint requested an extension for submissions, to September 30, which was subsequently granted by the Board on September 3.

On September 13, the Board provided to Parties its written policy on Board Member Roles and Responsibilities, which includes a process for dealing with issues arising related to conflict of interest or bias.

The Respondent indicated that it was satisfied with the Board's process of determining issues of conflict or bias, as outlined in its policy, and would be making no further written submission on this matter.

The Commission indicated in its September 21 correspondence that it would not be participating as a Party in this matter. Further, on September 29, the Commission made a submission indicating that it takes no issue with respect to the bias allegations.

On September 22, 2010, the Board forwarded to Parties case law from its legal counsel, on the matter bias allegations.

The Board scheduled a Pre-Hearing Conference on October 14, to deal with preliminary issues, including this issue related to alleged conflict.

At the October 14 Pre-Hearing Conference, the following Board members were in attendance: Chief Adjudicator Barbara Evans, Michael Dougherty and Vicki Hancock. Ms. Evans' stepped aside as Chair while further submissions from Parties on this issue were heard by the remaining two adjudicators.

Ms. Roothman initially stated that this was not an issue of bias but rather an accommodation requested by the Complainant who suffers from a "Cluster A Personality Disorder". The Complainant declared her conflict with Ms. Evans "based on her perception that people involved with mental health services or people working in close contact with mentally disabled people, in whatever capacity, have stereotypes about the very same people they serve or work with. Given this perception, Ms. Roothman stated in her submission that the Complainant "may be at risk for developing severe anxiety in stressful situations."

Ms. Evans made abundantly clear that her relationship with any mentally disabled person in her administrative role with the Capability and Consent Board was at arm's length. Ms. Evans also made it clear that, given the initial lack of a response by the Parties to any concern about individual Yukon Human Rights Panel members' participation on a Board of Adjudication for this matter, a Board was struck. Following the Board of Adjudication being struck, which membership included Ms. Evans, the conflict submission was made by the Complainant.

Discussion among the Parties at the October 14 Pre-Hearing Conference focused on possible accommodations for the Complainant at the hearing. It became apparent that Ms. Roothman saw no such accommodation possible. Counsel argued that the Complainant would see any participation of Ms. Evans as affecting the basic fairness of the hearing.

In accordance with the Board's policy, the remaining Board members — Ms. Hancock and Mr. Dougherty — made the decision on the conflict issue, based on the written and oral submissions and responses received from the Parties and Ms. Evans.

DECISION

The Board understand that the Complainant holds a perception of bias regarding the participation of Ms. Evans on the Board. Given the facts and that it is in the paramount interest of this Board and all concerned Parties to maintain the principles of natural justice, which necessitates that at all times the deliberations in this matter is to be conducted fairly, openly and without an apprehension of bias, this Board decides that the Chief Adjudicator is to name a replacement from the Panel of Adjudicators for herself to this Board.

Signed this 25th day of October 2010 at Whitehorse, Yukon



Michael Dougherty
A/Chief Adjudicator