

Before the Yukon Human Rights Board of Adjudication

In the matter of the Yukon *Human Rights Act*

and the matter of

Christine Grant (Complainant)

& Yukon Human Rights Commission (Commission)

v.

Government of Yukon, Department of Highways and Public Works (Respondent)

BOARD DECISION

Before: Chief Adjudicator Judith Hartling

Adjudicator Victoria Chan

Adjudicator Roxane Larouche

Appearances

Emma Dickson for

Commission

Christine Grant

Complainant

Lesley Banton and

Simone Dumbleton for

Respondent

Heard: Whitehorse, Yukon, July 6 to 10, and 17, 2026

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Legislation

Human Rights Act, Yukon, RSY 2002, c 116

7 Prohibited grounds

It is discrimination to treat any individual or group unfavourably on any of the following grounds

(a) ancestry, including colour and race; ...

(f) sex, including pregnancy, and pregnancy related conditions;

9 Prohibited discrimination

No person shall discriminate

(b) in connection with any aspect of employment or application for employment;

14 Harassment

(1) No person shall

(a) harass any individual or group by reference to a prohibited ground of discrimination;

(2) In subsection (1), “harass” means to engage in a course of vexatious conduct or to make a demand or a sexual solicitation or advance that one knows or ought reasonably to know is unwelcome.

35 Acts of employees

Employers are responsible for the discriminatory conduct of their employees unless it is established that the employer did not consent to the conduct and took care to prevent the conduct or, after learning of the conduct, tried to rectify the situation.

Cases Considered

Commission

1. Arunachalam v. Best Buy Canada, 2010 HRTO 1880
2. Baker v. Hoco Properties and others, 2007 BCHRT 375
3. Cassidy v. Canada Post Corporation and Thambirajah, 2012 CHRT 29
4. Faryna v. Chorny, 1951 CanLII 252 (BCCA)
5. Ghosh v. Domglas Inc., 1992 CarswellOnt 6682
6. Graham v. Enterprise Rent A Car Canada Company representing Enterprise, Alamo, and National Car Rental, 2020 HRTO 424
7. Janzen v. Platy Enterprises Ltd., 1989 CarswellMan 158

8. Kenney v. Thames Valley District School Board and Patrick, 2023 HRTO 1795
9. Laskowska v. Marineland of Canada Inc., 2005 HRTO 30
10. Moore v. British Columbia (Education), 2012 SCC 61
11. Ross v. 4888970 Manitoba Ltd., 2017 CanLII 149348 (MB HRC)
12. Simon v. Sallows, White Tornado Cleaning Services, 2017 YHRPA
13. Stewart v. Elk Valley Coal Corp., 2017 SCC 30
14. Walsh v. Northern Environmental Services, YHRPA File 2025-01
15. Young v. VIA Rail Canada Inc. 2023 CHRT 25

Respondent

1. A.B. v. Joe Singer Shoes Limited, 2018 HRTO 107 (CanLII)
2. Baczkowski v. Suffesick, 2000 CanLII 49456 (YK HRC)
3. Budge v. Talbot Arm Motel Ltd., 2018 CanLII 153095 (YK HRC)
4. Canada (Human Rights Commission) v. Canada (Armed Forces) (T.D.), 1999CanLII 18902 (FC), [1999] 3 FC 653
5. Faryna v. Chorny, 1951 CanLII 252 (BC CA)
6. Hureau v. Yukon Human Rights Board of Adjudication, 2014 YKSC 21 (CanLII)
7. Janzen v. Platy Enterprises Ltd., 1989 CanLII 97 (SCC), [1989] 1 SCR 1252
8. Lacosse v. Childhood Discoveries Preschool, 2013 CanLII 148595 (YK HRC)
9. Mahmoodi v. University of British Columbia and Dutton, 1999BCHRT 56 (CanLII)
10. Matthews v. Memorial University of Newfoundland, 1991CanLII 13161 (NL HRC)
11. Moore v. British Columbia (Education), 2012 SCC 61 (CanLII), [2012] 3 SCR 360
12. Samson v. Deputy Head (Department of Justice), 2019 FPSLRB 40 (CanLII)
13. Simon v. Sallows, 2017 CanLII 150013 (YK HRC)
14. Vieira v. School District No. 42 (Maple Ridge - Pitt Meadows) and others (No. 2), 2005 BCHRT 350

Text of the Complaint

Pursuant to Regulation 7(3) of the Human Rights Regulations, YOIC 1998/170, the text of the complaint referred for adjudication to the Yukon Human Rights Board of Adjudication is as follows:

Complainant: Christine Grant

Respondent: Government of Yukon (Department of Highways and Public Works)

Contravention: The Complainant alleges that the Government of Yukon (Department of Highways and Public Works) contravened subsections, 7(a), 7(f), 9(b) and 14(1)(a) of the Yukon Human Rights Act, RSY 2002, c. 116 (the “Act”) by discriminating against her on the prohibited grounds of ancestry, including colour and race, and sex, including pregnancy, in relation to any aspect of employment.

Specifically, the Complainant alleges that she experienced racial and sexual harassment from Respondent staff throughout her employment, including numerous negative comments and jokes regarding Indigenous peoples and women, as well as inappropriate staring.

Sections of Act Contravened: 7(a) and (f), 9(b), 14(1)(a)

Date of Contravention: October 2020 and Winter 2022/23

Issues

1. A) Did Frank Johnstone discriminate and harass Christine Grant by making remarks related to:

- 31st Avenue;
- beavers;
- driveway;
- women; and
- deaths in the community?

1. B) Did Frank Johnstone discriminate and harass Christine Grant by assigning menial tasks to Christine Grant, yelling at her, and criticizing her over the radio?

2. Did Darrell Porter discriminate and harass Christine Grant by staring at her chest?
3. Was the Respondent Employer, Department of Highways and Public Works, Yukon, responsible for the acts of their employees, Frank Johnstone and Darrell Porter?

1. The Respondent named is the Government of Yukon, Department of Highways and Public Works (HPW).
2. Johnstone and Porter were employed by HPW. This matter concerns allegations against Johnstone and separate allegations against Porter.
3. For ease of understanding this matter, when Johnstone and Porter are referenced, they are part of the Respondent, Government of Yukon (HPW) as they were employed by HPW during the said period of time.
4. There were summer season and winter season operations for maintenance camps.
5. Summer was from May 1 to August 31, with a two-week break from August 15 to 31.
6. Winter was from September 1 to April 30, with a two-week break from April 15 to the 30.

Facts

7. The Complainant was born in Mayo, Yukon, and was raised, and presently resides, in Teslin, Yukon. She is Inland Tlingit of the Dakl'áweidi clan.
8. She is a heavy equipment operator with 20 to 25 years of experience.
9. She worked privately until May of 2018 when she was employed by the Respondent as a "casual" on the chipper crew (summer season). The crew laid fresh chipseal on the road.

10. She described her working experience on the chipper crew as “great”.
11. At the end of the chipper season (summer season), she went to Swift River as a heavy equipment operator (HEO). She was in Swift River for the winter season of 2018-2019.
12. She described this work experience as “great.” She “really enjoyed it.”
13. She returned to the chipper crew for the summer season of 2019. She didn’t provide a description of her work experience during this period.
14. She returned to Teslin for the winter season of 2019-2020 as a heavy equipment operator. She became a permanent employee October 21, 2019.
15. Frank Johnstone was her direct supervisor. His position was foremen. This was the first time Frank Johnstone was the Complainant’s supervisor.
16. She describes her working relationship with Johnstone as “fairly good”. It was a respectful atmosphere where the entire crew got along.
17. Johnstone described her work as “fine. She ... came to work and did her job like everybody else.” In deciding for the grader training, he found her to be “a very skilled operator” and suitable for training.
18. She returned to the chipper crew in the summer of 2020.

A. Johnstone

19. The Complainant returned to Teslin in October of 2020 for the winter season. Johnstone was again her supervisor.

20. She gave evidence of “That was when the comments started.”

21. The comments were made by Johnstone and then by other crew members.

Remarks

1. Remarks relating to 31st Avenue

22. Johnstone would refer to Fox Point as 31st Avenue when speaking about it.

23. He would ask the Complainant to plow 31st Ave.

24. She knew he was referring to Fox Point subdivision but didn’t understand why he called it “31st”. When she asked him, he replied, “Because everybody up there got their money from Bill C-31.”

25. She told Johnstone she didn’t appreciate his comments and that that was not what Bill C-31 was about. She told him that her parents and family members lived there.

26. She explained in her evidence that this was a derogatory comment. When her mother, a First Nation person, married her dad who was not First Nation, her mother lost her status as a First Nation person. Bill C-31 rectified that. First Nation women regained their status.

27. He continued to make the comments despite her objection. He didn’t cease until the union was involved.

28. He would make these comments at least once a week.

2. Remarks relating to beavers

29. Under direct examination, the Complainant testified as follows:

A Yeah. It was commonplace for them to talk about the beavers which in my culture there is a Beaver clan. My dad was adopted into the Beaver clan, actually. My grandfather was the clan leader, and we are taught not to swear or make derogatory comments about any animals, and most especially the animals that are related to our clans.

Q And could you elaborate on comments he made?

A He would say, like, he, he would tell us to “go get rid of those effing beavers,” and “they’re just dirty” and — and he would talk about them.

Q And was he, was he — did you ever advise him of the connection between — you, you mentioned earlier, beavers being your clan leader?

A Yes, I advised the entire crew that beavers were culturally significant to us.

Q And was that before or after the comments were made regarding the beavers?

A After he’s made comments about them, I told him, I told everyone, like, we don’t talk about them like that. I’m not comfortable with it.

Q And just for clarity, did the comments continue?

A Yes.

30. The Complainant was employed in Teslin for the summer of 2021 as a Heavy Equipment Operator.

31. Part of the staff’s responsibility was to keep culverts clear of beaver activity.

32. The comments were ongoing from 2020.

33. They trickled down to the crew.

Q And, Ms. Grant, did — was Frank the only individual at site who made comments like that?

A No, it eventually trickled down through the whole crew. Because Frank was the foreman, and he was saying it, and it kind of made it okay, I guess, for other people to make comments.

Q So, when you say, “trickle down”, just to clarify, do you mean it’s — those comments started after Frank made the comments?

A Yes.

Q Okay. Could you elaborate a bit on what you heard, observed?

A Other crew members started calling Fox Point 31st Ave. The other crew members would continue to, like, swear at the animals that we were dealing with. It was — there was a lot of lack of respect for, I guess, our community.

Q When you say “our community,” could you specify?

A Our First Nations people.

3. Remarks relating to a driveway of a First Nation person

34. Under direct examination, the Complainant stated:

Q Ms. Grant, were there any particular — I guess — we discussed comments. Were there any other jokes, or other comments made, in relation to any, in relation to Indigenous people?

A Yes.

Q Could you elaborate?

A So, we were responsible for, taking care of driveways — we called them third parties — for seniors and elders who lived along the highway. We were in the office one day, at a tailgate meeting, when he got a phone call to — about doing somebody's driveway. And when he hung up, he turned around and said, “That that was [an elder] calling, wanting us to do his driveway. I should have just told him we don't work on Indian land.”

Q Could you advise us of who [the elder] is?

A ... He is an elder in Teslin...

Q And can you recall, to the best of your ability, when this comment was made?

A 2022. It was after — there was a change in the people that were working.

35. The Complainant testified the foregoing remarks “took a job that [she] loved and turned it into a place that [she] hated to go to.”

4. Remarks relating to women

36. The Complainant testified that Johnstone made a remark concerning women:

A The one that stands out most in my mind was, we were at a tailgate meeting and, at this point, there was three women on the crew. And this particular day, there was two men and us three women. And Frank turned to the other man and said, “Oh, look, we're outnumbered today, but that doesn't mean you girls get to have an opinion,” which — and then they laughed.

37. Her evidence is that it occurred in the summer of 2022, that it made her angry, but she tried not to show it.

Absences from Work

38. In late 2021 she started using more of her leave.

A I guess that's when I started using more of my leave.

Q Can you explain why?

A I was under a lot of stress, both in my personal life and at work. There was a, there was a lot of deaths around that time, of a lot of people that I knew.

Q And when you, and when you discuss — when you mentioned work stress, could you elaborate?

A It was, it was — all the comments, all the, kind of, being pushed, pushed out, almost. Like, it's hard to explain.

Q Did you have any discussions with anybody regarding what was going on at that time?

A Yes, I tried.

Q And who did you have discussions with?

A I talked to HR about what was going on in the camp. And I tried to talk to the acting superintendent at the time.

Q So, when you say, "what was going on at camp," could you specify?

A The comments, the treatment, like, consistently being put on the most menial tasks, like, the tasks that would usually get spread out among the crew, because they were the ones that nobody really wanted to do. I was continuously put on those. Being yelled at for things like running chains in a freezing rainstorm or taking the time to find clamps before grinding rust off of a cutting blade for the loader.

39. The remarks by Johnstone concerning 31st Ave started in the winter of 2020–2021, in the Teslin camp, and continued until the union was involved. The Complainant stated this was 2021, however, it appears the union was involved in June of 2022.

40. This appeared to support the allegation that the 31st Ave comments occurred from September 2020 to March 2022 — a period of 18 months.

41. The beaver comments occurred in the summer of 2020 and continued. There was no evidence of when they ceased or if they did.

42. There is no evidence that the beaver comments were a subject matter of the Complainant's complaint to Human Resources or the union. It appears that the first time she spoke about beaver comments was at this hearing.

43. She said that she contacted Human Resources and met with Amy Johnson on March 21, 2022. She told Amy Johnson "things that were going on, the comments, the preferential treatment..." and "... being talked down...." She did not provide, in evidence, any further details as to what she advised Amy Johnson. A meeting with Amy Johnson did occur on March 21, 2022, but it did not relate to the comments Frank Johnstone made. It was to discuss the Complainant's mental state because of her extended absences from work.

44. There was no follow-up from this meeting.

45. She said that she contacted Superintendent Pat Hogan shortly after contacting Amy Johnson and advised him on "... what was going on in the camp...." Again, in her evidence, she didn't provide details of what was meant by "what was going on in the camp". He dismissed the complaint saying he was busy with the flood.

46. June 27, 2022, the Complainant and Richard Wagner (Wagner) of the union corresponded. He advised he had read her intake and would like to unpack the issues. No issues were identified in the email.

47. Wagner started the grievance process for her. The grievance process was the first time the Complainant spoke about the 31st Avenue comments.

48. June 22, 2022, she was transferred to Swift River.

49. She testified she had been seeking a transfer prior to this and was not provided one until she produced a medical note.

50. The Complainant stated she considered the impact of coming forward. She was concerned it would end her career. She didn't want to be labelled as a troublemaker.

51. On June 30, 2022, Wagner emailed Amy Johnson and advised that Johnstone had made remarks concerning 31st Avenue and women's opinions.

52. It did not include remarks concerning the elder's driveway, beavers, or deaths in the community.

53. At the suggestion of Wagner, on July 5, 2022, the Complainant requested a meeting with the Respectful Workplace Office.

54. The Complainant was frequently absent from work over the winter of 2021, being October 2021 to April 2022, and the spring of 2022, being May to June.

55. She had been trying to obtain a transfer out of Teslin previously but was unable to obtain one. She believes that the medical note advising that she not work for the month of July 2022 triggered the transfer approval.

56. She was transferred to Swift River on a permanent basis in June/July of 2022.

57. Frank Johnstone was, unrelated to the Complainant's complaint, placed on a special duty and was not expected to attend the Teslin or Swift River camps. He was never advised not to attend where the Complainant was working.

58. It appears the Respondent did not initiate either the Complainant's transfer to Swift River or Johnstone's removal from Teslin as attempts to rectify the situation.

B. Porter, September 2022 — April 2023

59. Both the Complainant and Porter were working in the Swift River camp from September 2022.

60. She testified Porter was staring at her chest:

Q What was your work relationship like with Mr. Porter when he first came to Swift River?

A Um, it was all right. I considered him a good hand. By a good hand, I mean he was knowledgeable about our work. Um, I thought he was a pretty decent lead hand.

Q Did any, did anything change?

A Yes.

Q Can you describe that? What changed?

A After I asked him to stop staring at my chest, and that it made me uncomfortable.

Q So, when you say it made you uncomfortable, did that impact your, your behaviour around him?

A Yeah. Yes.

Q How did it impact your behaviour around him?

A I would do things like wear a hoodie zipped right up to my neck at plus 20 and above. I was constantly trying to shrink into myself I guess you could say.

Q And just going back, could you, did he always stare at your chest when speaking to you? Or, I should say, just how often did it happen?

A It was quite often. It was — I can't say always, but I can say that it was often. I noticed it at least once a day, if not more, especially in hot weather, as we tend to — I tend to wear tank tops.

Q And did you work with Mr. Porter before?

A Yes.

Q Okay. Just — did this — was this behavior something that began in Swift River?

A No. He did it when we worked on the chipper crew together, but I was able to distance myself, and I was — rarely did I have to be alone with him, if ever. If I did have to be alone with him, it was never more, for more than a few minutes.

Just the nature of the work that we did, we weren't, we weren't in direct contact all the time, so I was able to keep my distance from him.

Q And in Swift River, were — did you have that same ability?

A No.

Q So, how did it make you feel when Mr. Porter looked at, or — when Mr. Porter looked at your, your chest?

A Dirty. It made me feel like I was always doing something wrong. I should be doing something. It was my fault.

Q So, you — you say you asked him to stop staring at your chest. What, how did — first of all, do you recall approximately when that occurred?

A Early winter. I'm sorry. Timelines — when you work seasonally, it's — I guess, it's not so much, like, January, February, March. It's winter, spring, summer, fall, I guess, especially when you work long hours that I would. It just kind of tends to run into each other. I —

Q Did Mr. Porter have a reaction when you asked him to stop?

A He just walked away from me. He didn't say anything. He just turned around and walked away.

Q Did the staring continue after that?

A Not as much.

61. Kayne Geddes (Geddes) was the supervisor of Porter. Porter was the direct supervisor of the Complainant.

62. The Complainant had known Geddes all her life.

63. On November 27, 2022, Geddes and the Complainant went on a road check together. He advised her of complaints about her dogs and her insubordination to Porter. He advised that something should be done so that problems didn't escalate. He made a written report concerning this including, "That's when Christine said, I will say, stop looking at my boobs."

64. This is an incomplete sentence, but it is how it is recorded in the report.

65. The Complainant had not made a complaint as she felt that if she treated the staring lightheartedly it wouldn't be an issue.

66. The Complainant made a report concerning Porter after the November conversation with Geddes.

67. On January 3, 2023, a fact-finding meeting was held, conducted by HR, to discuss the Porter complaint and the Complainant's absences. The Complainant and Wagner were present.

68. It appears the Complainant was on leave from January 11, 2023, when Mueller had instructed Geddes to advise Grant to leave the camp.

69. She was on leave from January 11, 2023, to June 2023.

70. She then went to the Eagle Plains camp.

71. She remained in Eagle Plains until May of 2024.

72. She was on the chipper crew until September of 2024.

Evidence of Frank Johnstone

73. Frank Johnstone was a long-term employee with the HPW. This included his position as foreman of the Teslin camp during the years of 2019 to 2023.

74. He described his duties as foreman as "everything".

75. He was the Complainant's supervisor from October 2019 to April 2020, winter season, during which there were no issues.

76. He resumed being her supervisor in October 2020 to April 2021.

77. During that winter, her lack of attendance “went through the roof”. He spoke with her a few times about the absenteeism. She would become upset and cry. She would say, “You guys don’t understand.”

78. He was concerned about her mental state and suggested to her that he contact HR. She agreed.

79. A meeting was held with Amy Johnson on March 21, 2022. The Complainant and a union representative were present. Johnstone was not.

80. The Complainant advised that the workplace was toxic and spoke about being passed over for training but did not relate the comments made by Johnstone concerning 31st Avenue or beavers.

81. Johnstone said that March 2022 was the last time he worked with or supervised the Complainant.

82. The date is unclear, but he was advised by Human Resources, Highways (HR) not to use the term “31st Ave”. This may have been after June 27, 2022, when the union became involved. However, he no longer worked with the Complainant.

83. He said he has worked with many First Nations people and that a crew might be composed of up to 75 percent First Nations and that he has worked with many women where the crew was up to 50 percent female.

84. He gave details of roads to be cleared which included 150 kilometres of the Alaska Highway and a list of personal driveways of elders. There were seven crew members who worked 10 hours per day, of which four worked from Monday to Thursday and the remaining three worked Thursday to Sunday.

85. According to Johnstone, when the Fox Point subdivision was built, the road to it had no name. Everyone referred to it as 31 Ave or C31 Ave. Subsequently the road was named Fox Point subdivision, but people continued to refer to it as 31 Ave or C31 Ave.

86. He denies making derogatory remarks about C31 saying he only used it as a reference point for a location.

87. He denies the Complainant spoke with him about the discomfort she felt when he referred to it. He denies that she asked him why he used the term.

88. When asked if he made the comment "We are outnumbered but that doesn't mean you girls get to have an opinion," he answered, "I don't recall ever saying that."

89. When asked about a comment it was alleged he made that "We don't work on First Nations land," (Grant advised he said, "Indian land" while it was counsel who used the term "First Nations land") he advised he said, "municipal property" and explained that the Department of Highways Yukon does not work on municipal land unless directed to do so.

90. When speaking with the Complainant about deaths in the community he said he was worried about the well-being of his workers. He worried about her as she broke down crying.

91. He denied expressing anger with her over the radio when she didn't remove chains from the equipment she was operating. He would not do that to any operator as he wouldn't know the condition of the road they were operating on.

92. He denies a discussion with the Complainant that beavers were sacred.

93. He does not recall yelling at anyone and said, "Sometimes you have to raise your voice if you are talking around machines that are running."

Evidence of Darrell Porter

94. Porter has been employed with Highways for approximately 15 years.

95. He was an HEO and a lead hand in Swift River.

96. He was in Swift River when the Complainant was there.

97. He had an issue with her dogs defecating on or near his step. He reported it to his supervisor Geddes.

98. He was conducting a tailgate meeting when the Complainant arrived, walked by the group, and commenced prepping a truck. He followed her and asked what was going on. She replied she was prepping her truck. Porter told her he was sending another operator out on it. He said that she then got "into his face". The situation dissolved when Porter agreed to her taking the truck.

99. He reported the incident to his supervisor.

Did Ms. Grant ever tell you to stop looking at her breasts?

A No.

Q Did you ever look at Ms. Grant's breasts?

A I look at everybody's eyes when I talk to them, especially my crew. No, I didn't look at her breasts.

100. HR conducted an investigation.

101. Porter thought after the investigation "it was done."

102. He then wanted to file a grievance against the Complainant.

103. He was very impacted by the allegations.

104. He was asked questions leading to what opportunities would there be for him to look at the Complainant's chest.

105. When they worked, they were alone in their equipment. They had tailgate meetings daily, worked in the shop with others in prepping their equipment, then would work alone for the rest of the shift, and would see each other at the end of the day.

Evidence of Scott Mueller

106. Mueller's evidence relates primarily to the Porter complaint.

107. Mueller had been employed by the Respondent in several different positions over a lengthy period of time. He did not provide a starting date. He presently was not employed by the Respondent.

108. He was, at one time, the superintendent overseeing seven Highways maintenance camps in the Yukon with his office in Whitehorse.

109. Porter, Geddes, and Johnstone reported to him.

110. He received the first complaint concerning the Complainant in November of 2022, from Porter. It concerned her dogs. He received a second complaint from Geddes. Mueller asked Geddes to write a report. Geddes did and submitted it on January 3, 2023.

111. It contained information about the Complainant's dogs and that the Complainant said, "I will say, stop looking at my boobs."

112. Mueller was aware of tension in the camp between the employees. He did not say it was because of the Complainant. He was aware of an incident concerning a wing truck and whether the Complaint would be operating it.

113. He was aware she was absent "a lot".

114. Her absences were sometimes on short notice causing staffing issues.

115. The Complainant was transferred to Swift River by a request made by herself.

116. He didn't provide the transfer date. The Complainant had not brought any issues concerning Porter to him. The first time he had heard about Porter looking at her chest was in his conversation with Geddes.

117. He testified that if the Complainant had said, "I don't want to work in Swift and I don't want to work in Teslin. Can you find me somewhere else?" he would have found her somewhere else to work.

Evidence of Helen Booth

118. Booth is presently the Director of Human Resources for the Department of Highways and Public Works.

119. She was not personally involved in the HR file involving the Complainant.

120. Booth has access to all documents HR Highways department holds regarding this matter. She has reviewed those documents.

121. The Board heard her evidence as a representative of the Respondent noting Booth has no personal involvement in the matter.

122. The Respondent was trying to address a change in the culture of Highways:

- Exhibit 25, a Respondent email dated July 14, 2022, reads “In terms of efforts to support a culture change in HPW....”
- Exhibit 28, notes of a meeting held on August 11, 2022 with the Respondent and the Complainant reads, “Further investigation regarding this type of behaviour in Teslin and other TMB camps is ongoing.”
- A Case Management Summary, dated August 29, 2022, reads “RWO and HPW will continue to address workplace culture issues through RWO-TMB training.”
- An email dated January 18, 2023, from Jennifer Dawson to Sandra Smith and Jennifer Lyon, reads “RWO says the broader cultural issues that Christine raised are being addressed through the sexual harassment awareness training that is currently happening at all the HPW camps.”

123. Booth testified that it was expected the union would keep the Complainant updated.

124. The Complainant was advised that actions taken by Highways involving Johnstone were confidential. She would not find out what those were.

125. This incident, allegations by the Complainant, was a contributor to the continuing push to change the culture in Transportation Maintenance Branch.

126. The Government of Yukon, General Administration Manual (Amended October 13, 2020) contains 15 pages of content of the Respectful Workplace Policy.

127. In an email dated June 22, 2022, there is reference of intensifying training to include the program "Train the Trainer". This training was wanting to go beyond the basic and instruct on how to identify and report disrespect. It was "see something, say something".

128. An Investigation Office was also created.

129. An email of July 14, 2022 is about the beginning of online training regarding sexual harassment.

130. This led to formalization of sexual harassment training. This training was rolled out in 2024.

131. It is unclear as to the scope of the RWO and HR as they relate to each other.

132. The Complainant was dealing with the RWO and simultaneously or subsequently with HR.

133. The Respectful Workplace Office began training with Highways camps, including the one the Complainant was working on in 2022. (Exhibit 22)

134. The training was offered (she did not testify as to the manner in which it was delivered) to describe what's in a Respectful Workplace Office (RWO) policy. This policy

is contained in the General Administration Manual of the Yukon government. It formally outlines how to work together and respect each other in the workplace. The RWO training was meant to “bring this down to a much more plain language level....”

135. Training was required by all Highways employees. There was a schedule in Exhibit 22 of when the training was to be delivered to which camp. Teslin and Swift River camps were only scheduled to receive training September 2022. There is no evidence that they did receive it.

136. There is no evidence of how it was delivered or a list of employees who might have taken it.

137. On June 22, 2022, the Yukon government was considering a proposal to invite a representative from BC’s Ending Violence to present a program of “Train the Trainer” also known as “Be More Than a Bystander”. It was a program to invite people who witness disrespectful behaviour, to say something. It’s unclear if it was instituted but Booth testified that it led to a formalization of sexual harassment training in Highways and Public Works. It is online training and anyone can take it. It is not mandatory. It started approximately 2024. It was rolled out to a small group. The month is not stated.

138. An email was sent on June 30, 2022, advising staff that presenters from the Ending Violence group in BC will be attending Yukon for a presentation.

139. This appears to be the start of a program that rolled out in 2024.

140. On August 11, 2022, in a meeting with the Complainant, an employee for the Respondent (YG) tells the Complainant that she is not expected to interact with Johnstone should he be at the camp she is in.

141. At no time did the Respondent advise Johnstone to not attend camps where the Complainant was in attendance.

142. The Complainant's file concerning Johnstone was closed in the fall of 2022.

143. In summary, the Complainant's allegations sparked actions by the Respondent to start addressing the culture of HPW by providing training. It appears that in 2022 the Respectful Workplace Office conducted training in the camps about the General Administration Manual's guidelines. This wasn't a new policy but a manner of delivering training on GAM.

144. In 2022, the Yukon government reviewed a program from BC Ending Violence of "Train the Trainor". It is not clear if that program still exists as a separate program. It did lead to formalization of sexual harassment training in HPW and, more broadly, the Yukon government. This was implemented in 2024.

Law/Findings

145. To successfully establish discrimination in the human rights context, the Complainant must prove on a balance of probabilities that the discrimination was a factor in the Respondent's actions. A balance of probabilities means that the Board must determine whether it is more likely than not that the violations occurred.¹

¹ *Kenney v. Thames Valley District School Board and Patrick*, 2023 HRTO 1795

146. There is no exact formula. Each case must be decided on its facts.

147. The test of finding discrimination is found in *Moore v British Columbia (Education)*, 2012 SCC 61.

[33] As the tribunal properly recognized, to demonstrate prima facie discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code that they experienced an adverse impact with respect to the service and that the protected characteristic was a factor in the adverse impact. Once a prima facie case has been established the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified discrimination will be found to occur.

148. Note that *Moore* does state the discrimination alleged need only be a factor. The Complainant was suffering from emotions of several deaths in the community and caring for her mother who had dementia.

149. These may have been contributing factors to the Complainant's mental state but do not detract from the adverse effect the Complainant experienced from the Respondent's alleged conduct. The Complainant does not have to show that the allegations of harassing comments were solely responsible for the adverse impact she experienced.

150. Harassment is a separate section under the *Act*. It is form of discrimination.

14 Harassment

(1) No person shall

(a) harass any individual or group by reference to a prohibited ground of discrimination;

(b) retaliate or threaten to retaliate against an individual who objects to the harassment.

(2) In subsection (1), "harass" means to engage in a course of vexatious conduct or to make a demand or a sexual solicitation or advance that one knows or ought reasonably to know is unwelcome.

151. To uphold the complaints of harassment by the Respondent, the Board must find that, on a balance of probabilities, the following requirements set out in the *Act* have been made out:

- 1) that the Respondent engaged in a course of vexatious conduct;
- 2) that the Respondent knew or ought reasonably to have known that conduct was unwelcome;
- 3) that the harassment was by reference to the prohibited grounds of discrimination of ancestry and/or sex:
- 4) that the conduct took place in connection with any aspect of employment or application for employment.²

152. It is undisputed that the comments occurred in the aspect of employment. The Complainant was employed by the Respondent on chipper crews and as a HEO1. Johnstone was employed by the Respondent as the foreman of the Teslin Highways maintenance camp.

153. The comments were made while working.

154. It is undisputed that the allegations were by reference to prohibited grounds of ancestry or sex. The Commission did present a case that found ancestry was a prohibited ground.³ That case was decided by the Ontario Human Rights Board. The Ontario act

² *Simon v. Sallows, White Tornado Cleaning Services*, 2017 YHRPA

³ *Kenney v. Thames Valley District School Board and Patrick*, 2023 HRT0 1795 *supra*

does not specify ancestry as a prohibited ground. As such, it was a factor in the case to be decided.

155. The *Human Rights Act*, Yukon, though, lists ancestry as a ground at section 7(a). The Board accepts it is a prohibited ground.

156. The Complainant is of the Inland Tlingit people. She is of the Dak'aweidi clan.

157. Sex is listed in section 7(f) of the *Human Rights Act*, Yukon, as a prohibited ground.

158. It was discussed in *Janzen v Platy Enterprises Ltd.*, 1989 CarswellMan 158

[65]... As the LEAF factum puts it, "... sexual harassment is a form of sex discrimination because it denies women equality of opportunity in employment because of their sex". It is one of the purposes of anti-discrimination legislation to remove such denials of equality of opportunity.

[66] As noted earlier, the argument that sexual harassment is sex discrimination has been recognized by a long line of Canadian, American and English (see *Porcelli v. Strathclyde Regional Council*, [1985] I.C.R. 177, affirmed [1986] I.C.R. 564 (Ct. of Session)) cases which have found sexual harassment to be sex discrimination.

159. The Board finds that the comment concerning the opinion of women is harassment of the prohibited ground of sex.

31st Avenue and Beavers

160. That comments about C31 Ave were made is not in issue. Johnstone acknowledged he made them.

161. He testified that he made them as a reference to a location. He did not make them as a reference to Bill C-31.

162. The bill restored status to First Nations women who had lost it because of marriage to non-status First Nations.

163. The issue is: Did the Complainant tell him to stop?

164. She told him that money was not what Bill C-31 was about and that she did not appreciate his referring to Fox Point as “31st Ave”. Her family lived there.

165. He denies she said that.

166. He testified that he used the term 31st Ave as a reference location. The subdivision originally did not have a name. It was eventually named Fox Point. The nickname of 31st Ave remained along with the formal name of Fox Point.

167. The Board finds that she did tell Johnstone to refrain from making the C-31st comments. The Board finds Johnstone continued to make the comments after being told not to.

168. Left alone, the comments could have been considered rude and ill-advised. However, when the Complainant told Johnstone she didn’t appreciate the comments, Johnstone had knowledge that the comments were unwelcome. In his continuing to make the comments it was vexatious.

169. Johnstone denies making any derogatory comments concerning beavers. He gave evidence of the work required in dealing with beavers. Culverts had to be cleared of beaver activity to prevent flooding.

170. Johnstone would say, “effing beavers,” and “they’re just dirty”.

171. The Complainant told the entire crew that beavers were culturally significant, that derogatory remarks about beavers made her uncomfortable. She had said “we don’t talk about them like that.”

172. The comments continued. They were vexatious.

173. It is accepted that when she referred to the “whole crew” it included Johnstone.

174. The Board finds the remarks concerning 31st Avenue and beavers were made by Johnstone, and that the Complainant told Johnstone to refrain from making them. He did not stop. He had knowledge the comments were unwelcome. He engaged in a course of vexatious conduct.

Yelling and menial tasks

175. The Complainant testified that she was yelled at for, for example, using chains inappropriately, and that she was assigned menial tasks. Few details were given surrounding these events, including frequency of when they occurred and, for example, what the tasks were compared to what was expected of other workers.

176. As such the Board makes no finding concerning the yelling and menial tasks.

Comment relating to women

177. The Board finds that the comment “we’re outnumbered” but that women’s opinions don’t count was made by Johnstone. It was a vexatious comment about women, that being sex (gender).

178. The Complainant was angry about it but said nothing. The Board finds that it is a derogatory comment about women that a person would reasonably have known was unwelcome.

Comments concerning who the Complainant was hanging out with

179. The comments concerning who the Complainant was “hanging out with” is not found to be vexatious. It appears to be a neutral piece of unsolicited advice about being with people who used illegal substances. It doesn’t have a reference to race.

Credibility and Reliability

180. The definition of credibility includes reliability.

181. Credibility is the honesty, sincerity, candour, and truthfulness when giving evidence.

182. Reliability is a complex mixture of cognitive, environmental factors, including culture, ability to see or hear, powers of observation, ability to perceive on what the witness is giving evidence that could impact the accuracy of a witness’s perception and memory. The evidence of an honest witness could still be unreliable.

Reliability

183. The Complainant did not experience hearing or seeing issues. Her powers of perception were not challenged. There was nothing to distract her from what was being said by Johnstone.

184. She was culturally knowledgeable being of First Nation ancestry.

185. The Board found her to be a reliable witness.

Credibility

186. The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by their demeanor while giving evidence.

187. It must be subjected to its consistency with the probabilities that surround the existing conditions.⁴

188. The surrounding conditions of the C-31st comments were as follows:

- Johnstone testified he made the alleged comments about 31st Ave but said he was only referencing the location. The location was known by its nickname 31st Ave and its formal name, Fox Point.
- He denies the Complainant told him to stop. It would be in his self-interest to deny that he was told to stop. He was employed by the Respondent and could expect discipline.
- The Complainant is Indigenous. She would be alert to derogatory statements of this nature.
- The Complainant had knowledge of Bill C-31, including the change of status of First Nations women married to non-First Nations.
- Johnstone testified he was married to a First Nation woman. Although it was not specifically part of the evidence led, the Board can infer he would be aware his spouse might have lost her status when she married him as he was not First Nation. He would be aware his spouse had regained her status because of Bill C-31.

⁴ *Faryna v. Chorny*, 1951 CanLII 252 (BCCA) *supra*

189. The surrounding circumstances of the beaver comments were as follows:

- Trapping beavers was part of Highways work.
- Johnstone, as foreman, would provide direction to those he supervised which would include dealing with beavers. Johnstone, in describing his duties as foreman, said it included “everything”.
- He does not recall the Complainant advising the crew that beavers were sacred and that derogatory comments cannot be made about them. It is in Johnstone’s interest to deny hearing the Complainant’s objection to derogatory comments about beaver.
- The Complainant’s father was an adopted member of the Beaver Clan. Beavers were important to members and derogatory remarks were not to be made about them.
- The beaver comments were made in a working atmosphere that is part of the work.

190. The Complainant testified that Johnstone said, “... we don’t work on Indian land.”

191. Johnstone testified he said “municipal” land. He described the logistical jurisdiction of Highways which included only territorial roads and a list of elders’ driveways that required snowplowing for medical reasons.

192. Considering Johnstone’s disrespectful attitude towards ancestry, his leadership as foreman (other workers followed his lead and made similar comments), and his persistence in continuing to make comments about 31st Ave and beavers, it is found that when he referred to a First Nation person’s request to plow his driveway as “we don’t

work on Indian land” was vexatious. This was a discriminatory comment relating to ancestry.

193. It was part of Johnstone’s vexatious conduct.

194. The Board accepts the Complainant’s evidence that Johnstone said “Indian”.

195. Johnstone does not recall making the comment concerning women and that their opinion did not count.

196. The Complainant recalls the details of the comment in that it was said during a tailgate meeting.

197. The staff attending the meeting included three females and two males. The comment made her angry, but she didn’t say anything.

198. The Board accepts the evidence of the Complainant that Johnstone did make the comment that women’s opinions did not matter.

Adverse Impact on the Complainant

199. The Complainant had experienced a positive working experience during her first summer with Highways on the chipper crew, her first winter season at Swift River as a HEO, the summer of 2019, again on the chipper crew, and the following winter season, her first with Johnstone as her foreman, and her summer of 2020 with the chipper crew.

200. In summary she had positive working relations with four crews before the winter of 2020.

201. Her winter season of 2020 was in Teslin with Johnstone as her supervisor.

202. The comments began in the winter season of 2020.
203. Johnstone would refer to Fox Point as 31st Avenue.
204. The comments of 31st Avenue were about once a week.
205. The following summer there were derogatory comments about beavers.
206. The impact of the comments on the Complainant was that “it took a job that I loved and turned it into a place that I hated to go to.”
207. She was “extremely stressed” and it was “starting to really take a toll on [her] mental health.”
208. She started being absent from work.
209. Johnstone described The Complainant’s work in 2020 as “lack of attendance went through the roof.”
210. She was on medical leave from July 21, 2022. The physician stated the Complainant could not work at the Teslin station for a month.
211. She applied for a transfer even though her home was in Teslin.
212. She was on the transfer list for “quite a while.”
213. She was attempting to transfer “because of everything that was going on, the constant barrage of comments, the insult to my dignity. My mental health was — my mental health was declining.”

214. A transfer wasn't approved until June of 2022. She was transferred to Swift River.

215. She experienced difficulties with a worker while in Swift River.

216. She started having migraines. The stress was getting to her.

217. She was in contact with her union representative, Wagner, on January 27, 2022. Her "mental health was degrading quite rapidly if [she] didn't do something."

218. The Complainant was adversely affected as is shown by the stress she experienced. The result was her numerous absences from work.

219. She undertook counselling, received from a medical doctor, and tried to have a transfer approved in order to leave the camp. Her mental health was declining.

Has the Respondent met the obligations of section 35?

220. Johnstone was employed by the Respondent, the Government of Yukon.

221. Section 35 of the *Human Rights Act* states that

Employers are responsible for the discriminatory conduct of their employees unless it is established that the employer did not consent to the conduct and took steps to prevent the conduct or, after learning of the conduct, tried to rectify the situation.

222. The Respondent, Yukon government, in the Government of Yukon General Administration Manual, Volume 3, Human Resources Policy, Respectful Workplace, Effective October 27, 2015 (Amended October 13, 2020), described respectful conduct and expectations.

223. However, this was ineffective. For example, Johnstone said he might have been aware of it or read it, but he appeared to be unaware of it.

224. There was no training provided in respect to it.

225. The Respondent cannot rely on the manual to meet the test that they did not consent to the conduct or that they took steps to prevent it.

226. The Respondent did not rectify the situation after learning of it.

227. The Complainant said she called Amy Johnson in HR in the spring of 2021, expressing concerns about her workplace but not providing details about the comments Johnstone was making. There is a discrepancy in the evidence as Johnstone testified he emailed Amy Johnson and helped to set up the fact-finding meeting which occurred in March 2022. He was concerned about the Complainant's mental health.

228. A meeting was held on March 21, 2022 with Amy Johnson and the Complainant.

229. Only the Complainant's well-being was discussed.

230. Amy Johnson did not act on or follow up on the Complainant's first complaint.

231. When the Complainant called Hogan, her superintendent, he was unable to deal with it because of dealing with the flood.

232. Wagner, the union representative, was the first person to treat the Complainant's allegations seriously. This was June 27, 2022.

233. Wagner advised her to call RWO. The Complainant did.

234. This is the first time that details of the allegations of 31st Ave are brought forward. Allegations of the beaver are not brought forward.

235. Meetings were held. It appeared the Respondent was satisfied that the transfer of the Complainant was sufficient to meet their obligations to prevent and rectify the conduct.

236. The transfer was not remedial action by the Respondent. The Complainant had sought it sometime before in order to leave the toxic workplace of Teslin.

237. When she received the medical report advising she required a month of leave the transfer was granted.

238. Johnstone's special assignment was not made because of the Complainant's allegations. The timing was coincidental which made it appear it was remedial action to rectify the situation.

239. The Respondent did not advise Johnstone not to attend camps where the Complainant was present. The Respondent advised the Complainant she didn't need to interact with Johnstone if he did attend camp. This was a callous manner to deal with the issue. It displayed to the Complainant the lack of seriousness with which the Respondent considered the complaint.

240. The Board was concerned that the Complainant would not be notified of the steps the Respondent took concerning Johnstone. In order to know if the complaint was taken seriously and dealt with appropriately, the Complainant should have been advised of any discipline or other actions.

241. It is noteworthy that the Respondent's letter of expectation, Exhibit 39, was complimentary. It was not discipline. The Respondent did not deal with the allegations. The letter did not rectify the situation.

242. The Respondent employer did not prevent or rectify the situation.

243. The Complainant made a report of the allegations concerning Porter on January 3, 2023. Because the allegations of Porter are found to be unsubstantiated, the Board does not need to review the Respondent's conduct of consenting to it, preventing it, or rectifying it.

Staring

244. The burden of proof for finding the allegations of the Complainant to be substantiated rests with the Complainant. She must provide clear, cogent evidence that, on a balance of probabilities, the Board can find in her favour.

245. The Board was unable to find sufficient evidence to substantiate the allegation of improper staring by Porter.

246. The Board can only make two findings:

- either that the allegations were substantiated, or
- that in applying the legal test of a balance of probabilities, there was insufficient evidence to substantiate the allegation.

247. To be clear, the Board does not have jurisdiction to make a finding that the allegations did not happen. The allegations may have happened. The Board can only find there was insufficient evidence to meet the test of "balance of probabilities".

248. Staring at a woman's chest, her breasts, is prohibited discrimination of sex.

249. This matter was properly brought before the Board.

250. Sexual conduct can be subtle.

251. The Complainant's evidence is reliable and credible but is insufficient to meet the legal test.

252. It does not require corroboration, for example that someone witnessed it, but assists a finder of fact if more than a statement confirms that it happened. This places many complainants at a disadvantage as the conduct does not have surrounding factors which would assist in showing that the conduct likely occurred.

253. The comments regarding 31st Ave were made in surrounding circumstances that assisted the Board finding the allegations were proven.

254. The Board acknowledged the fact that the Complainant did not reach out to her Employer regarding the "toxic environment" and any other harassments she was subjected to until the Employer initiated the Fact-Finding Meeting to check on her mental state, as a result of excessive unscheduled absences, and a separate complaint against her dogs. The Board considered the timing of the complaints the Complainant brought forward. However, mitigation circumstances and motives are not within the human rights context as the Board is only concerned with whether a discriminating or harassing event took place under the prohibited grounds that is known or reasonably ought to be known as unwelcome or discriminatory.

Finding

255. Johnstone (Respondent) did harass the Complainant by engaging in a course of vexatious conduct that he knew was unwelcome in reference to the prohibited grounds of ancestry and sex.

256. The complaint that Porter (Respondent) harassed the Complainant is unsubstantiated.

Damages

257. The Board may award damages for injury to dignity, feelings, or self-respect. (Section 24 of the *Act*)

258. Damages are meant to compensate, not punish.

259. They should not be so low as to trivialize the social importance of the *Act*.

260. They should not be unduly high but should reflect past decisions.

261. They should consider inflation.

262. There shouldn't be an assumption that that damages are increasing.

263. Equivalent facts should lead to equivalent award keeping in mind the personal characteristics of each complainant.⁵

264. The criterion to decide a monetary amount for damages are:

- the objective seriousness of the conduct, and

⁵ *Arunachalam v. Best Buy Canada*, 2010 HRTO 1880

- the applicant's experience in response to the conduct.⁶

265. Factors to consider include:

- Humiliation experienced by the complainant,
- Hurt feelings, loss of self-respect, dignity, self-esteem, confidence,
- Experience of victimization,
- Vulnerability of complainant,
- Seriousness, frequency and duration of the vexatious conduct⁷.

Objectivity of the Conduct

266. Johnstone was aware of the vexatious nature of his conduct yet continued to make the derogatory remarks.

267. The remarks concerning 31st Ave were approximately once a week.

268. She sought a transfer, but the Respondent was slow in approving one.

269. Johnstone was assigned special duty away from Teslin, but he was not advised to not attend camps the Complainant was attending.

270. The comments continued from September 2021 to the winter of 2023 — a period of approximately 18 months.

271. They occurred at the Complainant's place of employment. She was unable to avoid them.

⁶ *Arunachalam v. Best Buy Canada*, 2010 HRT0 1880

⁷ *Sanford v. Koop*, 2005 HRT0 53

Complainant's Experience

272. The Complainant experienced considerable stress from September of 2021 to the winter season of 2023.

273. She applied for a transfer out of Teslin.

274. She received medical care and was advised to not return to the Teslin camp for a month beginning July 21, 2022.

275. She found her coworkers were avoiding her and that the work atmosphere was no longer congenial.

276. She "hated" to go to the place of work.

277. She suffered migraine headaches.

278. She was taking part in counselling.

279. She experienced panic when advised she would be returning to Teslin on a permanent basis.

280. She eventually found it necessary to abandon her position.

281. Ancestry is integral to a person's being. Johnstone, in making his remarks was not only derogatory to the Complainant but to her community.

282. She was not advised of any action the government took towards Johnstone.

283. Employment is integral to a person's being. It can, in part, identify who they are.

284. The Complainant “loved “her job. She had 20 to 25 years’ experience as a heavy equipment operator. She experienced a positive work atmosphere until Johnstone’s comments.

285. In *Hureau*, the court denied an award of damages for the stressful impact of the hearing on a party finding all hearings are stressful. The stress of the process cannot form part of the damages for general damages. Similarly, this Board finds costs of attending a hearing will not be awarded.⁸

286. The request for compensation for attendance at the hearing is denied.

287. The request that Johnstone (Respondent) receive a half-day training in human rights from the Commission, or a third party, is denied. Johnstone is retired and such training would have no effect on his capacity as a foreman in the employ of the Respondent.

288. The request that the Respondent pay the Commission costs is denied.

...that ensuring complainants come forward outweighs the factor of compensating for costs incurred, the deterrence value to parties to not engage in misconduct, and the encouragement of settlement.⁹

289. Specific damages are calculated at six months of lost wages at \$6,000 per month, minus \$2,000 per month earned sewing.

290. An order for general damages is granted.

⁸ *Hureau v. Yukon Human Rights Board of Adjudication*, 2014 YKSC 21 (CanLII)

⁹ *Marsha Cooke v Government of Yukon, Department of Health and Social Services* YHRPA File: 2024-03 Cooke

291. An order for specific damages is granted.

Order

292. The Complaint against Johnstone (Respondent) is allowed.

293. The Complaint against Porter (Respondent) is not substantiated.

294. It is ordered that

- 1) The Respondent shall pay the Complainant \$20,000 for general damages.
- 2) The Respondent shall pay the Complainant \$24,000.00 for loss of wages.

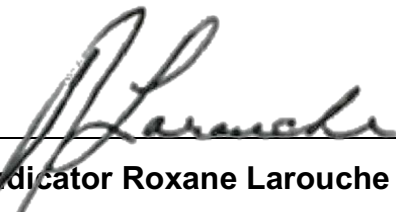
Whitehorse, Yukon, August 27, 2026



Chief Adjudicator Judith Hartling
Yukon Human Rights Panel of Adjudicators



Adjudicator Victoria Chan
Yukon Human Rights Panel of Adjudicators



Adjudicator Roxane Larouche
Yukon Human Rights Panel of Adjudicators