

SUPREME COURT OF YUKON

Citation: *Barrick v. Humane Society Yukon*,
2018 YKSC 51

Date: 20181026
S.C. No.: 18-A0090
Registry: Whitehorse

BETWEEN:

BRIDGET TERESE BARRICK and WILLIAM ALLERTHORN BARRICK

PLAINTIFFS

AND

HUMANE SOCIETY YUKON, PATRICK COLFER, BETTY IRWIN, CAROL OBERG and
SARAH MURPHY

DEFENDANTS

Before Mr. Justice J. Menzies

Appearances:
Gary W. Whittle
Mark Wallace

Counsel for the Plaintiffs
Counsel for the Defendants

REASONS FOR JUDGMENT

[1] MENZIES J. (Oral): The plaintiffs are bringing an action against the Humane Society Yukon and a number of its directors based on a claim that the Society has been acting in bad faith and/or the directors are acting dishonestly, have been unfair in their treatment, have failed to follow the rules of natural justice, and are taking actions against the plaintiffs arbitrarily.

[2] On October 24, 2017, the Humane Society Yukon received a complaint alleging harassment by the two plaintiffs of employees of the Humane Society Yukon.

[3] By way of background, on June 28, 2018, a harassment policy was presented to the Board at their meeting and that policy was adopted. The purpose of the policy purported to be to establish guidelines which will foster a harassment-free facility where all employees, volunteers, members, and the general public are treated with respect and dignity.

[4] *Inter alia*, the policy provided that the Board will deal with harassment situations immediately, they may establish an ad hoc committee to investigate to determine if the allegations are substantiated, and they will ensure that harassment situations are dealt with in a meaningful, sensitive, and confidential manner.

[5] One of the allegations by the plaintiffs is that that policy was outside the scope of Board and that the Board could not enact and follow that policy unless it was verified and voted upon by the membership of the Humane Society Yukon.

[6] The plaintiffs point to s. 22 of the bylaws. I have read s. 22 and I am not convinced nor am I satisfied that s. 22 does restrict what the directors may do, except to the extent by the authority that they cannot violate the existing law of the Yukon, the existing bylaws of the Society, and any rules passed by the members of the Society as a whole.

[7] No bylaws or rules passed by the Society which would prohibit an anti-harassment policy were presented and I am of the opinion that they do not exist. Therefore, and considering the bylaws, I go to Bylaw Number 59, which allows the directors to establish policies and procedures for staff, and Bylaw 30, which allows the directors to delegate powers that they have to committees for the committees to conduct investigations and report back. There is nothing in the evidence before the

Court to substantiate that the anti-harassment policy was outside the course of the powers of the Board of Directors or that it was improperly enacted. In fact, in my opinion, the evidence establishes the opposite. The policy was properly adopted by the Board in accordance with the bylaws of the Humane Society Yukon.

[8] Over and above the anti-harassment policy, it cannot be ignored that the Humane Society Yukon is an employer and, as such, the employer owes a duty to its employees, a duty to ensure that they have a safe, productive workplace, and a duty to investigate complaints of harassment in the workplace and to take steps to remediate any situation that leads to harassment if, in fact, it exists.

[9] The plaintiffs argue they have been treated unfairly by not disclosing the complaint verbatim to them and then proceeding to investigate the complaint unfairly, prejudicially, and in violation of their rights. In actual fact, the parties were at the point of establishing an ad hoc committee to investigate the complaint and meet with the plaintiffs to hear their version of the events. The plaintiffs argue that they are entitled to a verbatim copy of the complaint. I have no doubt that, when the parties commence the investigation, they will receive full particulars of the complaint and will be provided with the opportunity to respond.

[10] As for the alleged unfairness on behalf of the Board, I am not satisfied that the evidence discloses that the Board is, in fact, acting unfairly. There can be no question that, on September 20, 2018, when the Board met, that the tenor of the meeting was tense, tempers flared; however, I am not satisfied that the evidence discloses any evidence of oppression or denial of natural justice.

[11] Accordingly, I am not satisfied that there is a serious question to be tried. In order to obtain an injunction, that is one of the matters that the plaintiffs must prove. At this point, the Society is only attempting to investigate a complaint. No determinations have been made. The Society is only following through with its responsibilities as an employer in accordance with the policy that was adopted by the Board of Directors. If anything, this application is premature.

[12] Dealing now with irreparable harm, the plaintiffs allege that, if the Society is allowed to proceed with this investigation, they will suffer irreparable harm. The harm that they claim they will suffer is damage to their reputation and the anxiety and psychological stress of being under an investigation.

[13] First of all — and I do not say this to be smug — but the parties will only suffer damage to their reputation if the investigation determines that they have, in fact, acted in a matter that contradicts the anti-harassment policy. However, we do not know what that determination will be because the investigation has not yet been undertaken.

[14] As for the stress and anxiety of being under investigation, a quick, efficient, and fair determination of the complaint would address that concern. Having said that, however, the courts have assessed damages for psychological harm in the past and will continue to do so in the future. There is no claim that the defendants are impecunious and could not honour that award for damages. There is little question that the matter will give rise to anxiety for the plaintiffs with only the prospect of a claim for damages, but this is only one factor to be considered.

[15] As for the balance of convenience, this clearly favours the defendant. As an employer facing a complaint of harassment in the workplace, they must be seen to take

that complaint seriously and to conduct an investigation into the validity of the complaint. To delay the investigation of a complaint which was received over a year ago any further is to do an injustice to the persons having made the complaint and places the Humane Society Yukon in an untenable position as employer. Accordingly, the application for an injunction is dismissed.

[16] Dealing with costs, having determined that there is little merit in the claim and the balance of convenience favours the defendant, I am inclined to make an order of costs. Mr. Barrick attacks the authority of the Board to act in accordance with a policy that he was instrumental in enacting. Costs are warranted.

[17] The parties have suggested \$5,000 for special costs, if special costs are to be awarded. This whole proceeding has forced the Humane Society Yukon and their directors to obtain counsel. There has been an attempt to block a lawful process of investigation. Allegations of impropriety have been made personally against all members of the Board. However, having considered all of the applications before me, it is my opinion — and I am going to exercise my discretion — to make an order of costs in the amount of \$2,500, payable forthwith in any event of the cause.

MENZIES J.