

# SUPREME COURT OF YUKON

Citation: *Bachli v Yukon Human Rights Commission*,  
2025 YKSC 39

Date: 20250620  
S.C. No.25-AP005  
Registry: Whitehorse

BETWEEN:

ERWIN BACHLI

PETITIONER

AND

YUKON HUMAN RIGHTS COMMISSION and GOVERNMENT  
OF YUKON, DEPARTMENT OF HEALTH AND SOCIAL SERVICES

RESPONDENT

Before Justice K. Wenckebach

Appearing on his own behalf

Erwin Bachli

Counsel for the Yukon Human  
Rights Commission

Caroline Grady

Counsel for the Department of  
Health and Social Services

Lesley Banton

## REASONS FOR DECISION

[1] The petitioner, Erwin Bachli, has brought an application for judicial review of the decision of Yukon Human Rights Commission (the “YHRC”) to dismiss Mr. Bachli’s complaint. In his complaint to the YHRC, Mr. Bachli alleged that the government of Yukon (“YG”) discriminated against him on the basis of disability, stating YG did not provide him equipment he needs because of his disability. I am the judge who has been

scheduled to hear the application for judicial review. Mr. Bachli's position is that I should recuse myself (that is, withdraw from hearing the application) because of a reasonable apprehension of bias or actual bias.

[2] For the reasons set out below, I will not recuse myself from the proceedings.

[3] As I understand him, Mr. Bachli states that I am biased for two reasons. First, when I was a lawyer, I worked with and had a close community relationship with other lawyers. I will, therefore, not be neutral in deciding between Mr. Bachli, who is self-represented, and the lawyers appearing before me.

[4] Second, if I understand Mr. Bachli correctly, he submits that I am part of the government and would, therefore, not be able to be neutral in proceedings involving YG. During the hearing I pointed out that I was appointed by the Canadian Federal Government, and it is the Federal Government that pays me. According to Mr. Bachli, that does not matter. As the Yukon is a territory and not a province, YG is still subject to the authority of the Federal Government.

[5] As a part of his argument, Mr. Bachli also made submissions about my jurisdiction to preside over the judicial review application, and whether I had the legal authority to decide the judicial review. That is not an issue about whether I am biased, however, so I will not consider that question on this application.

[6] The law on reasonable apprehension of bias was well summarised in *Taylor Ventures Ltd (Trustee of) v Taylor*, 2005 BCCA 350 at para. 7. The legal principles are:

(i) a judge's impartiality is presumed;

(ii) a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified;

(iii) the criterion of disqualification is the reasonable apprehension of bias;

(iv) the question is what would an informed, reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude;

(v) the test for disqualification is not satisfied unless it is proved that the informed, reasonable and right-minded person would think that it is more likely than not that the judge, whether consciously or unconsciously, would not decide fairly;

(vi) the test requires demonstration of serious grounds on which to base the apprehension;

(vii) each case must be examined contextually and the inquiry is fact-specific.

[emphasis in the original] (citing *Wewaykum Indian Band v Canada*, [2003] 2 S.C.R. 259)

[7] In the case here, based on his first argument, Mr. Bachli must show that a reasonable person, viewing the matter realistically and practically, would consider that it is more likely than not that I would not decide the judicial review application fairly because of the nature of my relationship with the lawyers who are acting in this matter.

[8] As part of his evidence, Mr. Bachli attached the first page of the Minutes of the Annual General Meeting of the Law Society of Yukon, held March 25, 2017. It shows that I attended, as did many other lawyers. Mr. Bachli is correct that lawyers interact frequently with each other. That is a part of the nature of lawyers' work. They will also meet for legally related issues, such as for annual general meetings of law societies, or professional training. This alone, however, would not cause a reasonable person to conclude that a lawyer, upon becoming a judge, would be biased towards lawyers, or that there would be a reasonable apprehension of bias.

[9] Moreover, in this case, before I was appointed judge, I did not work with the lawyers who are acting in this matter. I do not know if Ms. Grady, who is counsel to the YHRC, was called to the bar in the Yukon when I was still a lawyer, but I have only a passing acquaintance with her. Ms. Banton was called to the bar in the Yukon after I was appointed. She has appeared before me in court, but I have very little knowledge of her outside of court. I therefore conclude there is no reasonable apprehension of bias on that basis.

[10] Mr. Bachli's second concern raises the issue of independence as well as bias. The argument there is that, because I receive my paycheques from the government, I will be less inclined to rule against the government. A judge's independence could be jeopardized if the judge were concerned that the government may retaliate against them if the judge were to rule against it. In Canada, however, judges have security of tenure. This means that judges' salaries are set by law, and a judge may only be removed from their job only for "cause related to the capacity to perform judicial functions"; and, capacity is assessed through a judicial inquiry (*Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 SCR 3 at paras. 115, 119) Any judge sitting in the Supreme Court of the Yukon Territory can therefore decide a case in which YG is involved without fear of retaliation.

[11] I therefore dismiss Mr. Bachli's application that I recuse myself from hearing his application for judicial review.