SUPREME COURT OF YUKON

Citation: *Boles v Yukon Residential Tenancies Office*, 2025 YKSC 46

Date: 20250801
S.C. No. 25-A0094
Registry: Whitehorse

BETWEEN:

CARRIE BOLES

AND

YUKON RESIDENTIAL TENANCIES OFFICE
AND THE GOVERNMENT OF YUKON

Before Justice E.M. Campbell

Appearing on her own behalf — Carrie Boles

REASONS FOR DECISION

INTRODUCTION

[1] Carrie Boles applies in writing and without notice for indigent status under the *Rules of Court* of the Supreme Court of Yukon (the "*Rules*"). Ms. Boles seeks to be exempted from paying the required filing fees to commence a civil action in damages against the Yukon Residential Tenancies Office ("YRTO") and the Government of Yukon ("Yukon"). She also seeks to be exempted from paying all the other court fees payable to the Territorial Treasurer typically borne by litigants in civil matters. Ms. Boles' application relies on S1 of Appendix C, Schedule 1 of the *Rules*, which deals with indigency status and reads as follows:

> **INDIGENCY STATUS**
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> **S1** (1) If the court, on summary application before or after the commencement of a proceeding, finds that a person is indigent, the court may order that no fee is payable to the Territorial Treasurer by the person to commence, defend or continue the whole or any part of the proceeding unless the court considers that the claim or defence
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> (a) discloses no reasonable claim or defence, as the case may be,
> (b) is scandalous, frivolous or vexatious, or
> (c) is otherwise an abuse of the process of the court.
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> (2) An order under subsection (1) may apply to one or more of the following:
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> (a) a proceeding generally;
> (b) any part of the proceeding;
> (c) a specific period of time;
> (d) one or more particular steps in the proceeding.
>
> (3) On application or on the court's own motion, the court may review, vary or rescind any order made under subsection (1) or (2).
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> (4) Despite anything in this Schedule, if the court makes an order in relation to a person under this section, no fee is payable to the Territorial Treasurer by that person in relation to the proceeding, part of the proceeding, period of time or steps to which the order applies.

[2] The first question to determine is whether Ms. Boles is indigent within the meaning of the *Rules*. The second question is whether her civil claim is sufficiently meritorious, and not otherwise an abuse of the process, to justify an order exempting her from paying court fees.

a) Is Ms. Boles *indigent* within the meaning of the *Rules*?

[3] The word "Indigent" is not defined under the *Rules*. Also, there is no test set out for indigency status under the *Rules.*

[4] However, courts have found that "[t]he purpose of granting indigency status is to ensure that those with arguable cases, but inadequate finances, have access to justice" (*Tan v Yukon (Government of)*, 2005 YKSC 19 ("*Tan*") at para. 6).

[5] Relying on the leading case on this issue, *National Sanitarium Association v The Town of Mattawa*, [1925] 2 DLR 491, where the court found that the word "indigent" means "a person possessed of some means but such scanty means that he is needy or poor", Gower J. concluded in *Tan*, at para. 5, that, generally, the term indigent "means a person who is not penniless, but who has such few resources that they may be considered needy" (see also *Huggard v Huggard*, 2005 YKSC 23, and more recently *R v Smith,* 2021 YKSC 35 at paras. 6-7 where Duncan CJ considered the issue under the *Summary Conviction Appeal Rules*, 2009).

[6] In addition, in *Tan* at para. 8, Gower J. adopted the caution first expressed in *Trautmann v Baker*, [1997] B.C.J. No. 452, at para. 4, and reiterated by the British Columbia Court of Appeal in *Griffith v Canada (Royal Canadian Mounted Police)*, 2000 BCCA 371, at para.3, that "while the courts should not be 'overly rigorous' in approaching such application, 'it must be recognized that giving a litigant indigent status may be affording an unfair advantage to that litigant vis-à-vis the other party'".

[7] Ms. Boles filed affidavit evidence in support of her application. Her evidence is that she is an education assistant working in public schools on a temporary on-call basis at a rate of $42.00 an hour. So far, she has not been successful in finding summer employment. She has been denied employment insurance for the summer on the basis she has not worked enough hours this past year. However, she has applied for reconsideration. If found eligible, she would receive payments in the range of $500 to

$600 per week. In addition, it is expected she will return to work at the end of August. Ms. Boles is currently homeless and living in the bush or within territorial campgrounds. Her main possession is an old car in need of maintenance repair. She has less than $100 available to meet her living expenses and has maxed out her credit card with $1,000 limit. Finally, she owes $20,000 in student loans and has an outstanding veterinary bill of $2,000.

[8] Based on her financial circumstances, I find that Ms. Boles is indigent within the meaning of the *Rules*. However, as stated earlier, this is not the end of the inquiry.

(b) Even if Ms. Boles is indigent, is her claim sufficiently meritorious and not otherwise an abuse of the process of the court to justify an order exempting her from paying fees?

[9] An applicant for indigency status must establish that they have a "reasonable claim" (S1(1)(a)) and that their claim is not "scandalous, frivolous or vexatious" (S1(1)(b)). At this very early stage of the proceeding, "there is a low threshold for both requirements, which is met if there is at least some prospect of success" (*Tan* at para. 15).

[10] Also, the claim must not constitute an abuse of process. The doctrine of abuse of process was described recently by the Supreme Court of Canada in *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4 at para. 33:

> The doctrine of abuse of process is concerned with the administration of justice and fairness (*Behn*, at para. 41). The doctrine engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 37; *Behn*, at para. 39; *Abrametz*, at para. 33).

[11] Ms. Boles attached her proposed claim against the YRTO and Yukon to her application.

[12] Ms. Boles' Statement of Claim is quite short. It appears her claim is based, at least in part, on the result of a successful judicial review that concluded that the YRTO breached procedural fairness by not providing Ms. Boles with evidence it received and which the deputy director considered, before coming to his decision to uphold a 14-day eviction notice that Ms. Boles' landlord issued to her. However, the judicial review judge found that the matter was moot and that, consequently, it should not be remitted back to the YRTO for decision. As a result of her conclusion on the issue of procedural fairness, the judge found it unnecessary to decide whether the decision of the YRTO was reasonable (*Boles v Yukon Residential Tenancies Office*, 2024 YKSC 33).

[13] Ms. Boles attempted to appeal the judicial review decision. However, she filed her appeal late. On January 28, 2025, the Court of Appeal of Yukon, in *Boles v Yukon Residential Tenancies Office*, 2025 YKCA 2, dismissed her application for an extension of time to file her notice of appeal because it saw no practicality in her appeal:

> [18] Ms. Boles is no longer a tenant of Mr. Kuhn. She does not seek to have her tenancy restored, which is not a remedy she could obtain. She did succeed on the judicial review application in establishing that the RTO hearing was procedurally unfair. That means the analysis of the evidence by the RTO should be given no weight.
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> [19] The RTO has no authority to reinstate her tenancy, and Ms. Boles, quite fairly, concedes she is not seeking damages. Her goal is simply to clear her name and challenge the conclusion that there was any cause for her eviction.
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> [20] While I am sympathetic to Ms. Boles' reasons for wanting to appeal, I see little practical utility in her appeal because what she is seeking is not a remedy this Court

> could give her. On any appeal, this Court would not make findings of fact as to the interactions between the tenant, other tenants and landlord. For this reason, I am not satisfied that the interests of justice are served in allowing an extension of time to appeal.
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> [21] Given this conclusion, it is not necessary to comment further on the merits of the appeal and whether the judge was correct or incorrect in concluding that it was moot.

[14] Ms. Boles now seeks to pursue a civil claim in damages against the YRTO and Yukon.

[15] Rule 20 of the *Rules* provides that a pleading, which includes a statement of claim, must contain a statement in summary form of the material facts on which the party relies.

[16] However, Ms. Boles' statement of claim is scarce in facts. She pleads that, on July 17, 2023, a 14-day for cause eviction was enforced against her. In addition, she pleads that the YRTO erroneously upheld the eviction notice she received because the notice did not meet the required threshold; that the rules of evidence applied by the YRTO were flawed or erroneous; and that the means through which the eviction was enforced undermined dignity and security of the person. Ms. Boles further pleads her forced eviction has caused her hardship which could have been avoided through mediation. This is the extent of Ms. Boles' allegations regarding the liability of the defendants.

[17] Ms. Boles further states that she seeks financial compensation for the significant social and financial hardship caused by her eviction; hardship she describes in her statement of claim.

[18] Unfortunately, the lack of material facts makes it difficult to discern the basis upon which Ms. Boles claims the YRTO and Yukon bear liability for the damages she says she suffered because of the eviction. Therefore, the only background information available to the Court on this application, with respect to Ms. Boles' claim, comes from the decisions issued in the judicial review proceeding. However, the existence of published court decisions in another proceeding does not relieve Ms. Boles from the requirement of pleadings the facts that are material (relevant) to her civil claim against the YRTO and Yukon in her statement of claim.

[19] Nonetheless, I note the director of residential tenancies carries several responsibilities under the *Residential Landlord and Tenant Act,* SY 2012, c. 20 (the "*Act*"), one of them is to adjudicate disputes between residential landlords and tenants. Pursuant to ss. 65 and 73 of the *Act*, it is the director of residential tenancies that has the authority to determine dispute between residential landlords and tenants over rights, obligations, and prohibitions under the *Act* or a tenancy agreement (*Westerlaken v Yukon Residential Tenancies Office*, 2025 YKSC 7 at para. 23). The deputy director may exercise any of the director's powers or fulfill any of the director's duties under the *Act*, other than the power to establish rules (s. 91(2) of the *Act*).

[20] An application for dispute resolution under the *Act* is made to the director. Once it is accepted, the director must set the matter for an oral hearing or a hearing in writing (s. 68); if the hearing is in writing the director establishes a timeline for written submissions (s. 68); the director may assist the parties or offer the parties an opportunity to settle their dispute (s. 69); the director may deal with any procedural issues that arise of the conduct of a proceeding (s. 78); the director may make any

finding of fact or law based on the evidence, information, and submissions properly received that is necessary or incidental to making a decision or order under the *Act* (s. 73); the director can make a range of orders (s. 76); the director's decision or order must be in writing and include the reasons for the decision or order (s. 82); and a party may apply to the director for a review of the director's decision or order (s. 84). I note that a decision or order of the director may be filed in the Supreme Court of Yukon and enforced as a judgment of the court after the period of time set out in the *Act* (s. 88).

[21] It is in that adjudicative or decision-making capacity that the deputy director and director of residential tenancies dealt with Ms. Boles' dispute with her landlord, as revealed by the decisions issued in the judicial review proceeding. It is well established that quasi-judicial/administrative tribunals and decision-makers are immune from liability in negligence when carrying out their function even if they commit an error in the adjudicative process (*Ernst v Alberta Energy Regulator,* 2017 SCC 1 ("*Ernst*") at paras. 50-51 as well as 115-120. See also the earlier decision of *Roeder v Lang Michener Lawrence & Shaw*, 2007 BCCA 152 at paras. 19-20 where the Court of Appeal of British Columbia specifically found that there is no cause of action in damages against an administrative commission or tribunal for breach of procedural fairness because, despite its limits, judicial review is the appropriate mechanism to deal with that issue.)

[22] In addition, s. 98 of the *Act* provides a broad statutory immunity against liability in damages to those employed in the administration of the *Act* or those exercising powers under the *Act*:

> (1) No legal proceeding for damages lies or may be commenced or maintained against the director, a deputy director, a person exercising delegated power under section 92, a sheriff or any other person employed in the

> administration of this Act or exercising powers under this Act because of anything done or omitted in good faith
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> (a) in the performance or intended performance of any duty under this Act; or
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> (b) in the exercise or intended exercise of any power under this Act.

[23] As stated by Cromwell J. in *Ernst*:

> [51] The rationales underlying the common law and statutory immunity for quasi-judicial and regulatory decision-makers fall into two main interrelated categories. First, immunity from civil claims permits decision-makers to fairly and effectively make decisions by ensuring freedom from interference, which is necessary for their independence and impartiality : *Morier*, at pp. 737-38, citing *Garnett v. Ferrand* (1827), 6 B. & C. 611, 108 E.R. 576, at pp. 581-82, and *Fray v. Blackburn* (1863), 3 B. & S. 576, 122 E.R. 217. Second, immunity protects the capacity of these decision-making institutions to fulfill their functions without the distraction of time-consuming litigation.

[24] Therefore, any claim in damages - based on the actions and/or decisions of those employed in the administration of the *Act* or those exercising powers under the *Act* - falling within the scope of the statutory immunity afforded by s. 98 of the *Act* and/or common law immunity, does not have any prospect of success.

[25] Based on those statutory and common law immunities, Ms. Bole's claim that she is entitled to damages because (1) the deputy director and the director (the YRTO) allegedly erred in upholding the eviction notice she received because the notice did not meet the required threshold; and (2) the rules of evidence they (YRTO) applied were flawed or erroneous, do not meet the requirement of "some prospect of success".

[26] However, the language Ms. Boles employs in her proposed statement of claim suggests she may also be seeking *Charter* damages under s. 24(1) of the *Charter of*

Rights and Freedoms, Part I of the *Constitution Act*, 1982 (the "*Charter*"), for an alleged breach of her rights to dignity and security of the person under s. 7 of the *Charter* resulting from "the means through which [her] eviction was enforced". However, it is unclear what "means of enforcement" she refers to and what entity or individuals enforced or carried out the eviction because she does not plead any facts in support of her claim. Nonetheless, depending on the facts surrounding Ms. Boles' forced eviction, this allegation may disclose a viable claim for *Charter* damages against the entity or individuals that "enforced" the eviction, if it does not fall within the purview of s. 98 of the *Act*. However, without any material facts pleaded in support of that claim, it is not possible for the Court, at this time, to make that determination.

[27] As a result, I find that, as currently drafted, Ms. Boles' statement of claim does not disclose any claim for damages against the YRTO or Yukon that has some prospect of success. As Ms. Boles' claim does not meet the second part of the requirement for indigent status, her application is dismissed.

[28] Ms. Boles may re-apply for indigent status once she complies with the requirement to set out the material facts in support of her claim, in accordance with Rule 20, which will allow the Court to properly assess whether her claim for damages based "on the means through which [her] eviction was enforced" discloses a claim with some prospect of success, or, if she does not wish to do so, she may pay the required filing fees of $140 to file her statement of claim as drafted.

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CAMPBELL J.