

SUPREME COURT OF YUKON

Citation: *Bachli v Human Rights Commission*,
2025 YKSC 79

Date: 20251216
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

RESPONDENTS

Before Justice K. Wenckebach

Appearing on his own behalf

Erwin Bachli

Counsel for the Government of
Yukon Department of Health and
Social Service

Lesley Banton

Counsel for the Yukon Human
Rights Commission

Caroline Grady

REASONS FOR DECISION

OVERVIEW

[1] The Petitioner, Erwin Bachli, filed a complaint with the Human Rights Commission (the “Commission”), alleging that the Government of Yukon (“YG”) discriminated against him on the basis of disability in the provision of services. An investigator for the Commission investigated the complaint and wrote an Investigation

Report (the “Report”), which recommended that the complaint be dismissed. The Commission reviewed the Report and dismissed the complaint.

[2] Mr. Bachli is now seeking a judicial review of the Commission’s decision.

[3] For the reasons that follow, I deny Mr. Bachli’s application for judicial review.

INTRODUCTION

[4] Mr. Bachli is a paraplegic who cannot voluntarily move his body below the chest area. YG, through the Department of Health and Social Services and the Insured Health Program, has provided him with medical equipment, such as wheelchairs, and has also provided him home care services.

[5] Mr. Bachli complained to the Commission that YG discriminated against him when providing those services to him. He asserts YG failed to repair and test the equipment, as well as failed to replace the equipment when necessary. He also alleges YG discriminated against him when it suspended the provision of home care services to him.

[6] In the Report, the investigator found that there was no reasonable basis in the evidence that YG’s actions regarding repairs and purchase of new equipment, and in suspending of home care services, was discriminatory. She therefore recommended that the Commission dismiss the complaint.

[7] In its decision, the Commission reviewed the Report and agreed with the investigator’s recommendation.

ISSUES

[8] Mr. Bachli raises issues about the enactment of the *Human Rights Act*, RSY 2002, c 116, (the “Act”), the authority of the Commission and investigator to address

Mr. Bachli's complaint, as well as about the conduct of the investigation. The issues can, therefore, be set out as follows:

- (A) Is the *Act* properly enacted?
- (B) Were the commission and investigator authorized to deal with Mr. Bachli's complaint?
- (C) Did the investigator commit errors in her investigation or in the Report?

ANALYSIS

- (A) Is the *Act* properly enacted?

[9] As I understand Mr. Bachli, he argues that the *Act* was never enacted. Moreover, even if it was, the Yukon is not a province and cannot enact human rights legislation. According to Mr. Bachli, it is the Canadian Human Rights Commission that has authority over human rights matters in the Yukon.

[10] I conclude that the *Act* was properly enacted.

Enactment of the Legislation

[11] Mr. Bachli's concern about the validity of the *Act* seems to stem from the fact that all copies of the *Act* before the Court and used by the Commission are identified as "unofficial consolidations". Mr. Bachli argues that this suggests the legislation was not enacted.

[12] This submission is incorrect. Under the *Public Printing Act*, RSY 2002, c 180 (s. 5) and the *Continuing Consolidation of Statutes Act*, RSY 2002, c 41 (s. 15), it is only the King's Printer that has the authority to print the official version of legislation. Versions of legislation that are produced by any other source are, in contrast, unofficial versions. The legislation filed in this case was unofficial because it was obtained from

the Yukon government website. That does not mean, however, that the *Act* was not enacted.

[13] The *Act* was introduced as Bill No. 99, with a first reading on December 1, 1986 (“Bill No 99, Human Rights Act”, 1st reading, Yukon, Legislative Assembly, *Hansard*, 26-3, No 46, 1 December 1986 at 89 (Hon Mr Kimmerly)). The second reading was on December 4, 1986 (“Bill No 99, Human Rights Act”, 2nd reading, Yukon, Legislative Assembly, *Hansard*, 26-3, No 49, 4 December 1986 at 166 (Hon Mr Kimmerly)). The bill went before the committee of the whole in January 1987, and was approved February 12, 1987 (“Bill No 99, Human Rights Act”, committee of the whole, Yukon, Legislative Assembly, *Hansard*, 26-3, No 59, 7 January 1987 at 384 (Hon Mr Kimmerly)). The 3rd reading and Royal Assent was on February 12, 1987 (“Bill No 99, Human Rights Act”, 3rd reading, Yukon, Legislative Assembly, *Hansard*, 26-3, No 76, 12 February 1987 at 719 (Hon Mr Kimmerly)). The *Act* was, therefore, enacted by the Legislature.

Authority to Enact Legislation

[14] I believe Mr. Bachli also submits that the Yukon Legislature does not have the jurisdiction to enact human rights legislation because it is not a province.

[15] Mr. Bachli is correct that the Yukon’s authority is not the same as that of the provinces. Provinces derive their authority from the Constitution. The Yukon, on the other hand, is under the control and administration of the Federal Government. The Federal Government has, however, enacted the *Yukon Act*, SC 2002, c 7 which grants the Yukon government province-like powers. The Legislative Assembly and the Legislature (ss. 10, 17) are established under the *Yukon Act*; and the Legislature is granted the authority to make laws, including with regard to property and civil rights (s. 18(j)). As human rights falls under the category of civil rights, the Government of

Yukon has authority to enact the human rights legislation (*Scowby v Glendinning*, [1986] 2 SCR 226 at para. 4).

- (B) Were the commission and investigator authorized to deal with Mr. Bachli's complaint?

[16] Mr. Bachli raises concerns about the legitimacy of the Commission and who should have conducted the investigation. I conclude the Commission and investigator were authorized to handle Mr. Bachli's complaint.

[17] Commission members are appointed by the Legislative Assembly (s. 17(1), *Act*). The Commission members who reviewed Mr. Bachli's complaint were Michael Dougherty, Aja Mason, and Nathan Cross. The legislature approved Mr. Cross' three-year appointment on November 21, 2023 (Yukon, Legislative Assembly, *Journals*, 35-1 (October 4, 2023 – November 23, 2023) at 701), Mr. Dougherty's three-year appointment on November 21, 2024 (Yukon, Legislative Assembly, *Journals*, 35-1 (October 2, 2024 - November 21, 2024) at 955), and Ms. Mason's appointment on April 28, 2022 (Yukon, Legislative Assembly, *Journals*, 35-1 (March 3, 2022 – April 28, 2022) at 326).

[18] Having been appointed by the Legislature as required under the *Act*, the Commission had the authority to consider Mr. Bachli's complaint.

[19] Mr. Bachli also submits that the investigator did not have the authority to conduct the investigation. As I understand him, his argument is that, pursuant to the *Act*, the Commission is required to conduct the investigation. Here, however, the Commission members did not conduct the investigation but simply reviewed the Report before making their decision. Mr. Bachli essentially submits that the Commission improperly delegated its responsibility to the investigator.

[20] The *Act* states that a person may make a human rights complaint to the Commission “...who shall investigate the complaint...” (s. 20(1)). It is perhaps because of this that Mr. Bachli submits that it was the Commission members who were required to investigate the complaint.

[21] I am not persuaded by this argument. Subsection 20(1) must be read in conjunction with s. 19 of the *Act* and s. 4 of the *Human Rights Regulations*, OIC 1988/170 (the “*Regulations*”). Section 19 establishes a Director of Human Rights. The Director is charged with “ensuring that complaints are dealt with in accordance with [the] *Act*”, and “carrying out, ... the administration of [the] *Act*” for the Commission. Subsection 4(1) of the *Regulations* states: “[t]he investigation of a complaint by the Commission shall be conducted or directed on its behalf by the Director.” Thus, the Director is responsible for the investigation. They can either conduct the investigation or direct someone else to investigate the complaint. In this case, it was an employee who investigated the complaint as directed by the Director.

(C) Did the investigator commit errors in the investigation?

[22] Mr. Bachli submits the investigator erred in three ways: first, she did not examine the equipment, nor was she qualified to assess its fitness; second, she did not speak to Mr. Bachli; and third, she relied on false evidence.

[23] I conclude the investigator did not commit any errors in the investigation.

Law

[24] Before assessing whether the investigator committed errors, it is necessary to understand the Commission’s scope of authority. The *Act* provides that the Commission can deal only with complaints about discrimination. It cannot deal with any other kind of complaint.

[25] Discrimination, in turn, only arises if three requirements are met:

- First, the complainant must be a member of a group that is protected under the *Act* (such as age, sex, disability, etc...);
- Second, the complainant must have experienced “unfavourable treatment” (in other words, they were treated negatively); and
- Third, the negative treatment must be connected to the person’s membership in the protected group.

(Stewart v Elk Valley Coal Corp., 2017 SCC 30, at para. 24, citing Moore v British Columbia (Ministry of Education), 2012 SCC 61, at para 33)

[26] When a complaint is made, the Commission’s role is to determine whether there is evidence that all three requirements have been met. If there is enough evidence that the three requirements are met, there is evidence of discrimination. The Commission can then refer the complaint to the Board of Adjudication. If there is not enough evidence to meet the three requirements, then discrimination is not proved. In that case, the Commission must dismiss the case.

[27] This also means that the Commission does not address other ways in which a complainant may have been wronged. For instance, it does not address negligence, nor will it refer a complaint to the Board of Adjudication if the issue is one of negligence.

The Report

[28] In her Report, the investigator addressed whether there was evidence of discrimination. On the first requirement, the investigator had no difficulty concluding that Mr. Bachli is a member of a protected group, as it is clear Mr. Bachli has a physical disability.

[29] The investigator also concluded that there was evidence Mr. Bachli's equipment fell into disrepair and was not adequately fixed. She furthermore concluded that Mr. Bachli has not received new equipment, even though the old equipment was broken beyond repair. Finally, it was uncontroversial that YG had suspended home care services to Mr. Bachli. The investigator found that the second requirement was met: Mr. Bachli had experienced unfavourable treatment from YG.

[30] The investigator's analysis then turned to the third requirement: whether the negative treatment was connected to Mr. Bachli's disability. On the issue of the provision of equipment, the investigator concluded that Mr. Bachli's complaint was about the quality-of-service YG provided: he alleged that YG was incompetent and negligent. She noted that an organization can provide negligent or incompetent services without being discriminatory. She concluded that, in Mr. Bachli's case, the issues raised by Mr. Bachli about his medical equipment were purely about quality-of-service, rather than about discrimination.

[31] Concerning YG's suspension of home care services, the investigator referred to evidence that YG suspended home care on the basis that Mr. Bachli had communicated with the home care workers in a manner that was disrespectful and un conducive to a safe work environment. The investigator also concluded that evidence of Incident Reports from workers and a safety plan that was created for staff when visiting Mr. Bachli's home supported YG's assertion that Mr. Bachli was verbally aggressive and disrespectful to staff. The investigator stated that discontinuance of services is not, by itself, discriminatory.

[32] She determined there was no link between the suspension of home care services and Mr. Bachli's disability. Rather, the investigator concluded that home care was

suspended because of the way Mr. Bachli interacted with home care staff and because of YG's responsibility for ensuring a safe working environment. The investigator thus recommended dismissing the complaint.

Analysis

[33] Mr. Bachli's arguments that the investigation was flawed because the investigator was not qualified to assess the equipment and did not examine it is misplaced, as it focuses on whether YG was incompetent or negligent, and not on whether YG was discriminatory towards him.

[34] Because the investigator's role was to determine if there was evidence of discrimination, it was not necessary for the investigator to examine the equipment. The investigator accepted that Mr. Bachli's equipment was not always repaired competently and that he does not currently have equipment in good condition. Questions about how poor the repairs were, whether the equipment suited Mr. Bachli's needs and the extent to which the equipment is in disrepair were, therefore, irrelevant in determining whether Mr. Bachli suffered from discrimination.

[35] Mr. Bachli also argues that the investigator should have interviewed him as a part of her investigation. In her report, the investigator explains that Mr. Bachli refused to attend an in-person interview or phone interview. Because of this, the investigator hand delivered written interview questions to the facility where Mr. Bachli was residing. They were sent back to the investigator, with the request that the questions be put in a binder. The investigator put the questions in a binder and hand delivered them again. Mr. Bachli sent a response; however, in his response, he had not answered the questions.

[36] Mr. Bachli does not refute the investigator's statements. The investigator did try to interview Mr. Bachli, then, but he did not respond.

[37] Finally, Mr. Bachli submits that some of the evidence the investigator relied on was falsified. He was not clear about which evidence was falsified, nor did he corroborate his claim. There is also evidence, such as an interview with his wife, that is consistent with some of the evidence the investigator relied on in her report.

[38] Investigators are required to conduct neutral and thorough investigations. However, deference is given to the investigator's determinations on the value of the evidence before them and whether further investigation is necessary. It is only where the investigator fails to investigate "obviously crucial evidence" that a court's intervention is warranted (*Melew v Yukon (Human Rights Commission)*, 2022 YKSC 41 at para. 35, quoting *Slattery v Canada (Human Rights Commission)* [1994] 2 FC 574 at 56). In this case, the investigator's investigation was comprehensive. It was also thoughtful and well-reasoned. The investigator did not commit errors in her investigation or in the Report.

CONCLUSION

[39] I deny Mr. Bachli's application for judicial review.

WENCKEBACH J.