

YUKON HUMAN RIGHTS PANEL OF ADJUDICATORS

Between:

**Stacey Burke
Vincent Chudy
Alyx Stastny
Raymond Nukon-Blake
Chris Cornell**

“Complainants”

And:

The Yukon Human Rights Commission

“Commission”

And:

**Yukon Government, Department of Justice,
Whitehorse Correctional Centre**

“Respondent”

REASONS FOR DECISION

1. P. Gawn (Chief Adjudicator): An application has been made by the Commission and the five Complainants listed above (the "Complainants") to consolidate these complaints so that they may be heard together. The Respondent is now consenting to the consolidation of four of the complaints but is opposing the inclusion of the complaint by Chris Cornell (2017-01).

2. Having reviewed and considered the submissions filed, I have concluded that the

four complaints consented to by the Respondent should be consolidated.

ANALYSIS

3. Relevant factors to consider in deciding whether human rights complaints should be heard together have been described as including:

1. The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of the witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;

2. The potential prejudice to the respondents that could result from a single hearing, including the lengthening of the hearing for each respondent as issues unique to the other respondent are dealt with, and the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one respondent or the other; and

3. Whether there are common issues of fact or law.

Lattey v. Canadian Pacific Railway [2002] C.H.R.D. No. 7, as cited and adopted in Persaud v. Toronto District School Board 2008 HRTO 25 (CanLII).

4. Consolidating complaints is specifically contemplated by the Panel's *Rules of Procedure* at 6.1, where necessary to ensure the "fair and expeditious resolution" of a complaint.

5. All five of these complaints are brought against the same Respondent and are about the treatment of the Complainants while incarcerated at Whitehorse Correctional Centre. The use of segregation and/or solitary confinement for inmates with mental disabilities, and the adequacy of mental health services for such inmates, are at issue in

all of the complaints. There are other issues that are common to most, but not all, of the complaints, such as the adequacy of cultural and spiritual services available for First Nation inmates. There are in addition allegations of systemic discrimination included in all of the complaints.

6. Consolidating these complaints will reduce the overall hearing time required by avoiding repetition of evidence, including repetition of the expert witnesses who are expected to have to travel here from outside of Yukon to testify. Considerable time and resources may therefore be saved by the consolidation of the complaints.

7. The Respondent however does not consent to the inclusion of the complaint by Chris Cornell; on the basis that it is a more recent complaint and is not at the same stage of readiness as the other four complaints. The complaints by Burke, Chudy, Stastny and Nukon-Blake were referred to the Panel of Adjudicators in October 2014 and April 2015 while the Cornell complaint was not received until March of 2017.

8. The Respondent says that the inclusion of Cornell will result in significant prejudice to the Respondent if it is allowed to proceed before it is ready for hearing. The Respondent also submits that the Cornell complaint is not yet at the same stage of readiness for hearing.

9. Because the it is a much more recent complaint, Cornell has not yet reached the same stage in the pre-hearing process. It also differs from the other four complaints in that it was the subject of a lengthy and comprehensive investigation resulting in a substantial Investigation Report. The first four complaints were referred to the Panel without investigation pursuant to section 20(1)(d) of the *Human Rights Act*, whereas the

Cornell complaint was referred after investigation, under section 21(c) of that *Act*. Accordingly, there may be different issues arising in the pre-hearing and disclosure processes for Cornell which could ultimately affect the hearing of his complaint.

10. I am therefore satisfied that there should be a consolidation of the first four complaints in the interest of justice and in fairness to all parties, but that the Cornell complaint should not at this point in time be so consolidated.

CONCLUSION

11. The Burke, Chudy, Stastny and Nukon-Blake complaints will now be consolidated and will be heard together in a consolidated proceeding before one Board of Adjudication established for that purpose.

12. As requested, there will also be continued case management in order to ensure that the four complaints can proceed to hearing fairly to all concerned. A case management conference for this purpose will be convened on September 12, 2017, a date previously reserved for the Chudy complaint, at 2:00 pm. Attendance may be in person or by telephone as appropriate. If there any availability problems regarding that date, the Registrar should be advised as soon as possible in order that, if necessary, an alternative time may be arranged forthwith.

13. As was previously discussed in case management, it is expected that the consolidated hearing will be scheduled to take place over several sittings of the Board of up to five days at a time. The order of proceeding will be arranged to suit the requirements of these four complaints proceeding without unnecessary repetition or delay. The

proposed order of proceeding, to be further discussed in case management, is as follows:

1. Evidence of the four Complainants, and factual witnesses for the Complainants and Commission;
2. Evidence of the Respondent's factual witnesses;
3. Expert opinion evidence called by the Commission and Complainants;
4. Expert opinion evidence called by the Respondent.

14. It is expected that the initial sitting of the Board to hear the consolidated proceeding will take place on December 4 to 8, 2017, in Whitehorse, as these dates have been previously reserved for this purpose. Other dates that were previously set, either for case management or for hearing of the now-consolidated individual complaints, are hereby cancelled as a result of this ruling and will be replaced by the new dates set out above, as well as by the dates to be further scheduled, on or after September 12, 2017.

15. I thank counsel and the parties for their most helpful submissions.

SIGNED at Whitehorse, Yukon on July 28th, 2017.



Penelope Gawn, Chief Adjudicator

For the Yukon Human Rights Panel of Adjudicators