

**BEFORE THE HUMAN RIGHTS BOARD OF ADJUDICATION**  
**IN THE MATTER OF THE *YUKON HUMAN RIGHTS ACT***  
**AND IN THE MATTER OF**  
**Darrell March v Ed Huebert and Government of Yukon**

**Appearances**

Darrell March  
Susan Roothman  
Zeb Brown

Complainant  
For the Commission  
For the Respondents

**Panel Members**

Barbara Evans, Chief Adjudicator  
Michael Dougherty  
Renzo Ordonez

**Yukon Human Rights Board of Adjudication**

Heard: Whitehorse, Yukon April 23-25, April 30-May 3,  
May 15, May 18, May 22-23, May 28,  
June 11-12, June 14, June 18, June 20, June 26 and  
September 25, 2007

Decision: November 25, 2007

# Yukon Human Rights Board of Adjudication

## IN THE MATTER OF THE *YUKON HUMAN RIGHTS ACT*

### AND IN THE MATTER OF

#### **Darrell March v Ed Huebert and Government of Yukon**

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## **I. What is this complaint about?**

This Human Rights complaint is about whether a long-time, senior employee of the Government of Yukon, Darrell March [the “Complainant”] was discriminated against on the basis of his mental disability (bipolar disorder) in the area of employment by his supervisor, Deputy Minister Ed Huebert [the “DM”] and his employer, Government of Yukon

- 7(h) prohibited ground: mental disability),
- 8 duty to provide for special needs: accommodation to the point of undue hardship; and
- 9(b) prohibited discrimination in connection with any aspect of employment.

## **II. Who are the Parties?**

The Complainant is Mr. Daryl March, Acting Assistant Deputy Minister (ADM) of Corporate Services within the Department of Environment at the relevant time, is an employee of the Government of Yukon. Mr. March is a participating self-represented party.

The Respondents, as represented by Mr. Zeb Brown are:

- i) Mr. Ed Huebert, Deputy Minister of Corporate Services within the Department of Environment and the Complainant’s supervisor at the relevant time of the complaint; and
- ii) The Government of Yukon, the employer of both Mr. March and Mr. Huebert at the relevant time of the complaint;

The Yukon Human Rights Commission, as represented by Susan Roothman, carrying the Complaint referred to the Board of Adjudication for determination.

## **III. What are the circumstances giving rise to the complaint?**

Darrell March began work with the Government of Yukon on July 11, 1995 as the Manager of Finance for the Department of Environment.

In March of 1999 Mr. March first experienced a mental health crisis. A series of episodes would lead to his hospitalization and eventual diagnosis as suffering from bipolar disorder with seasonal affect.

Mr. March returned to work in September 2000. At this time he made a presentation to a management meeting about his bipolar disorder, beginning his proactive education of fellow staff about his medical situation.

Mr. March held temporary project-based jobs for some time before resuming his substantive position. His supervisor, Ms. Joy Waters, accommodated his condition

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by permitting flexible work arrangements including flexibility scheduling, permission to work from home, allowing more frequent breaks and restructuring of work tasks, including adjusted project deadlines [his “accommodation”].

At the time of the complaint, Mr. March was in a term position as Acting Assistant Deputy Minister of Corporate Services within the Department of Environment. He was in this one-year term position between August 25, 2004, and August 24, 2005. Mr. March had assumed this position on the recommendation of Ms. Waters, the substantive ADM for this position, while she was on leave.

In March 2005, the Complainant advised the Deputy Minister, Mr. Huebert, that he was in a seasonal hypomanic phase and may require greater levels of accommodation, which was recognized by the Deputy Minister. Mr. March continued his regular work routine. On May 26, 2005, Mr. March attended a weekly senior management meeting. At that meeting, issues surrounding an upcoming departmental initiative, GIS or New Directions, were to be discussed. Mr. March criticized the project and challenged the course of action determined by the DM. Mr. Huebert, Deputy Minister for the Department of Environment, characterized Mr. March’s behaviour at the meeting as “extremely aggressive,” “argumentative,” and “disruptive.”

In a discussion after the meeting, Mr. Huebert asked Mr. March why he had been so aggressive. Mr. March replied, “I am not aggressive. I am passionate.” Mr. Huebert testified that he felt Mr. March had moved away from a “solution-minded attitude to being very aggressive and judgemental.”

On May 27, 2005, Mr. Huebert sent a letter to Mr. March in which he noted: *“It has become very apparent over the past week that you have become unable to perform your duties as Acting ADM, Corporate Planning. I am therefore directing you to be off work immediately. You will be on paid sick leave. I strongly advise you to seek medical assistance. Further I am a strong supporter of yours, Darrell, and I want to support you in any way I can and help you to return to work as soon as you are able to. In the meantime, I would like to again say that I feel you need to address your medical condition as soon as possible.”*

Mr. March saw this letter as “intended to be demeaning in a most appalling way.”

On May 27, 2005, Nonie Mikeli, Director of Human Resources for the Department of Environment, on the direction of Mr. Huebert, asked Mr. Klassen, as the Network Administrator “to disable Darrell’s computer account.” Later that day Mr. March came into Mr. Klassen’s office “in an agitated state demanding to know who had authorized me to disable his account,” according to Mr. Klassen. Once informed by Mr. Klassen, “this agitated him more” particularly when Mr. Klassen testified “that there was concern expressed about him and his meds.” This comment was given in “the context of his behavioural swing and his openness in requesting feedback from staff and friends.”

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On May 31, 2007, Mr. March saw his family doctor, Dr. Ross Phillips. He did not seek an assessment from Dr. Phillips at this time. Dr. Phillips noted that Mr. March exhibited 'pressure of speech,' a symptom of bipolar disorder but couldn't conclude that Mr. March was in a manic state without further evidence. Mr. March also met with Mr. Jon Breen, of the Workplace Diversity Employment Office, for the first time.

Mr. March met with Dr. Phillips again on June 2, 2007. Dr. Phillips reported that Mr. March was showing elements of hypomania. He placed Mr. March on Resperidone for this reason. Dr. Phillips did not complete a medical report for Mr. March and did not require him to take time off work because, as he testified, Mr. March was already on leave.

On June 8, 2005, Mr. March met with Ms. Mikeli and Mr. Huebert. Without informing the others present, Mr. March tape recorded the meeting. He expressed concerns about his e-mail being cut off and that people were being told to stay away from him as he was on leave. Mr. Huebert stated that he never told people to stay away from him but he did have his e-mail disabled for Mr. March's own protection while he was on medical leave. They agreed to reinstate his access to his e-mail, on the condition that any out-going communications would be copied to Mr. Huebert. Ms. Mikeli e-mailed Mr. Klassen with instructions to this effect.

Mr. March met with Mr. Huebert, Mr. Breen and Michael Hanson, a Staff Development consultant, on June 10, 2005. Mr. March proposed a special assignment (a Yukon-wide tour of all campgrounds) to be conducted during his medical leave as an accommodation to his mental disorder. During the discussions, all agreed there would be value in seeking a psychiatric assessment. In a letter to Mr. March later that day, Mr. Huebert wrote, "I believe that, due to your behaviour exhibited in the workplace over the past three weeks, I would prefer that you remain on leave until you have received an assessment from your psychiatrist."

Due to a series of unforeseeable delays, Mr. March was finally flown to Vancouver at the employer's expense to have his assessment done by his former psychiatrist, Dr. Jaime Smith. On August 10, 2005, Dr. Smith advises Mr. Breen that Mr. March is able to return to work.

In e-correspondence of August 17, 2005, with Mr. Breen, Mr. March notes that he had applied for annual leave from August 17 to September 7, 2005, and would return to work following his annual leave. He also suggests the need for a workplace accommodation; because "it may be inappropriate for me to return to a position directly or indirectly subordinate to Ed until the matter is fully resolved.... I will consider temporary assignments in other departments if there is something suited to my background."

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Mr. March returned to work and continued to work in various departments other than in his substantive position with the Department of Environment.

Mr. March filed his human rights complaint with the Yukon Human Rights Commission on December 8, 2005, having been unsuccessful in his attempts to informally resolve his concerns to his satisfaction.

During the hearing, the Board also heard evidence related to events subsequent to Mr. March's return to work. It was Mr. March's contention that these events were related to his human rights complaint insofar as he perceived the actions of the employer to be in retaliation to his filing of a human rights complaint.

### **IV. The Parties' Positions**

The parties disagreed as to the extent that the Complainant's bipolar disorder in a hypomanic phase affected his behaviour in the workplace and whether it required him to take mandatory sick leave and of psychiatric assessment.

The Respondent held that the Complainant had been successfully accommodated for six years, that he had openly and extensively educated the people in his work environment to his bipolar disorder, to the point of inviting others to assess his behaviour in any ongoing circumstances and to advise him of any behaviour changes. The Respondent held that the Complainant engaged in "misconduct" whereby his actions were not appropriate for someone in his position. The Respondent alleged his conduct included disruptive, rude, disrespectful and aggressive behaviour. The Respondent held that their actions were in the best interest of the employee and that the consideration of discipline as the appropriate response to the Complainant's behaviour was impossible when he was known to be in a state of hypomania. Further, in light of the fact he had so vigorously educated his coworkers as to the warning signs characteristic of seasonal affective escalations of the bipolar disorder, the employer could not ignore the potential impact of a medical issue.

The Commission held that the Respondent must show that the only option available was the removal of the Complainant from the workplace, having considered alternatives to this action. Further, the Commission was asking the Board to focus on the discriminatory effect on employees in the absence of a policy in place to manage issues relating to accommodation for employees with mental disabilities.

From the perspective of the employer, the actions of the Complainant during May 2005 were uncharacteristically inappropriate. Under most circumstances, disciplinary action would have taken place. The Respondent argued that because they knew of the Complainant's bipolar disorder, they were required to consider whether or not the inappropriate behaviour was subject to discipline only after determining it was not arising out of his disability.

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The Complainant argued that the employer should have applied disciplinary action as would have been applied to any other employee, so that he had the opportunity to challenge it. Mr. March's perspective in this instance was that he was entitled to be treated as any other employee.

The Commission argued that the employer's actions arose out of a stereotypical reaction to a mental disability, rather than procedural compliance.

There was no issue during the proceedings as to whether or not Mr. March's bipolar disorder constituted a disability.

As well, there was no dispute over the duty to accommodate a person with special needs if those needs arise from a disability as envisioned in the Act.

It is discrimination under the Yukon *Human Rights Act* to treat an individual unfavourably on the grounds of physical or mental disability [section 7(h)]. Under the Act it is the employer's responsibility to accommodate a person with special needs if those needs arise from a disability (section 8); and discrimination "in connection with any aspect of employment or application for employment" is also prohibited under the Act [section 9(b)].

The issue the Board of Adjudication was asked at the outset of the hearing to decide is whether the Complainant was discriminated against on the basis of his mental disability, bipolar disorder with seasonal affect, when the Complainant's direct supervisor, Mr. Ed Huebert, acting on behalf of the employer, removed Mr. March from the workplace and placed him on mandatory sick leave on May 27, 2005, pending medical assistance. This followed an incident at the Yukon Department of Environment senior staff meeting of May 26, 2005.

This directive to Mr. March was amended by Mr. Huebert on June 10, 2005, 14 days later, to "I would prefer that you remain on leave until you have received an assessment from your psychiatrist." The Complainant initially contended that it was at this point that the discrimination was alleged to have taken place.

Arising from the opening statements, the Commission brought a Motion to Amend the Date of Contravention in the Complaint Text to be read as "ongoing". The Complainant believed that the Respondent not only discriminated against him, but that there was ongoing retaliation. The Board granted the Motion to amend, recognizing the scope of the complaint to which the Respondent wished to hold the matter - the specific events of the single day of June 10, 2005, was not reasonable. The Board reserved the right to hear evidence and make the determination as to what would be relevant to the complaint and what would be held outside the scope of "ongoing".

## V. Preliminary Considerations

Prior to deciding the issues in this case, the Board considered the following matters:

- (i) **Where an employee's behaviour leads to the employer's contemplation of disciplinary action, what considerations, if any, must be given where there is a question of a mental disability having impact on the conduct?**

The Oxford Dictionary definition of "discipline" includes "*training of people to obey rules or a code of behaviour; controlled behaviour resulting from such training; to punish or rebuke formally for an offence.*" No one can dispute that punishment in employment results in *unfavourable treatment* and that discipline as punishment requires a determination that the employee is guilty of wilful misconduct.

Discipline is used when the job is not being done to the required standards or where wilful actions of an employee are causing disruption in the workplace. Where a medical condition could potentially result in an employee's inability to follow the code of behaviour, it cannot be found to be *wilful*. In this case, it is clear that the employer knew of a disability and was therefore required to consider medical reasons for Mr. March's non-performance and was not allowed to move to automatic or immediate discipline.

Can the employer allow the behaviour to just continue? From the perspective of *disciplinary action to correct behaviour*, it must be recognized that every employer has the right to set policies and procedures. If an employee is not following those policies or procedures, and thereby causes disruption of the business, steps must be taken to correct the situation. This requires an investigation of the reasons for the concerns, or changes that created the concerns. If there is a medical reason, an employer cannot use discipline to correct behaviour. In such cases, there must be a medical intervention to have any impact on the behaviour.

- (ii) **What is the alternative action to discipline for inappropriate behaviour?**

Based on its determination that the behaviour of the Complainant was inappropriate and, according to the testimony of Mr. Huebert, escalating, the employer had the opportunity to choose from a number of alternatives. The employer could choose to do nothing, to apply various levels of discipline to the point of termination, or to place the employee on leave (with or without conditions and with or without pay). In this case, the employer, because of the public nature of the misconduct, believed that they could not 'do nothing'. Immediate disciplinary action was not appropriate because of the belief that the conduct could have arisen out of or was impacted by a medical condition.



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Their alternative choice was to request that the employee seek medical attention, to be assured that the mental disability was under appropriate control prior to having him resume his duties. This action was perceived as an accommodating alternative to discipline that would address the employer's concerns while protecting Mr. March as a valued employee.

### VI. The Issues

The Board identified the issues to be decided in this case as:

- A) Did the Respondent's stereotyped beliefs about bipolar disorder result in discrimination against the Complainant?**
- B) Are the actions of the employer discrimination? Those actions are identified in this case as the mandatory leave, the Complainant's isolation from the workplace and the requirement for psychiatric assessment.**
- C) Has the Respondent taken reasonable steps to accommodate the Complainant at all times, to the point of undue hardship?**
- D) Did the absence of a policy regarding employees with mental disability adversely affect the Complainant?**

### VII. Finding on Discrimination

The Commission had the initial burden of establishing a prima facie case that there is credible evidence to support Mr. March's claims of discrimination and, if shown, that the employer failed to accommodate (to the point of undue hardship). It was the goal of the Respondent to reasonably explain that their conduct was not discriminatory as intended in the Yukon *Human Rights Act* and that they acted within their rights and responsibilities as the employer.

#### **A. Did the Respondent's stereotyped beliefs about bipolar disorder result in discrimination against the Complainant?**

To make this determination, the Board reviewed the evidence to determine what information was used in making the decisions regarding the Complainant and whether there is any evidence that such information was based on stereotyping versus valid, appropriate information regarding bipolar affective disorder.

The evidence provided by the Complainant was that after he returned to work subsequent to his major episode of 1999 when he was diagnosed with bipolar disorder, he made his condition clear to a number of coworkers and supervisors. He also provided a training session to senior management. Over the years, he testified, he had approached a number of coworkers and supervisors and provided them with information on bipolar disorder, and disclosed that the nature of his

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disorder included "seasonal affect" which means that the seasons can affect the level of his symptoms. He invited a number of his fellow staff to advise him if and when they noticed any changes in his behaviour, which he noted included things like mood swings.

Additionally, the Complainant told the Board that he had an informal accommodation agreement with his supervisor, Ms. Waters, Assistant Deputy Minister of Corporate Services, whereby deadlines were flexible, he had access to the office anytime (day/night/weekends), a flexible work schedule and the ability to work from home.

Mr. March also stated that when the Acting Deputy Minister position was offered to him, he was uncertain as to how his disorder would impact his ability to perform in this role, and conversely, how the position may impact his bipolar disorder. This was of enough concern to him that he discussed it with his psychiatrist at the time, Dr. Heredia. Mr. March related that Dr. Heredia told him, "Don't deprive yourself of this opportunity out of the fear of the unknown." Mr. March's wife concurred.

According to the evidentiary statement of Mr. Huebert, Mr. March discussed his concerns with him. His recollection was that Mr. March was excited about the offer, but had concerns about his medical condition. Mr. Huebert encouraged him to take the position, advising his accommodations would continue in his new acting position. It would appear that Mr. Huebert was aware of the Complainant's condition and had no stereotypical prejudices regarding Mr. March's abilities to perform his current or anticipated duties.

The Board heard testimony from Ms. Mikeli that she had researched bipolar disorder online as she had a relative who suffered from bipolar. It is possible that she had some stereotypical perspectives as to the dangers of bipolar disorder. However, the evidence was that the actions taken by the employer were the result of the comments from Michael McBride of the Public Service Commission and not Ms. Mikeli. Since Ms. Mikeli had no decision-making authority in this respect, her stereotypical preconceptions would have had no impact on the decision beyond her reporting of feeling 'threatened' by Mr. March's uncharacteristic "aggressive" behaviour.

With regard to the stereotyping issue as it involves the reports of coworkers, the evidence is that Joanne Langevin reported to the Deputy Minister after the meeting of May 27, that a number of attendees were somewhat uncomfortable with Mr. March arising out of his behaviour at the meeting. They reported that his actions were not characteristic. It does not appear that their comments were in any way arising out of stereotyping but rather objective observations of his behaviour at that time.

The Complainant responded in his testimony that his behaviour during this period should have better been described as "passionate" rather than "aggressive." The Board also notes that Mr. March did and does not accept that his behaviour was or

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could have been perceived by coworkers as uncharacteristic or inappropriate to the situations.

The repeated evidence regarding Mr. March's efforts to educate managers and staff within his department as to his bipolar disorder and engage them in assisting him in its management is sufficient to find that the employer's actions did not arise out of stereotyping.

Had Mr. March not made the employer aware of his condition, the employer might easily have determined disciplinary action was required; however, that is not the case. The employer determined Mr. March's inappropriate behaviour during the relevant period was not "wilful". Knowledge of the mental disorder bound them to consider its impact on his behaviour in his employment situation and their duty to accommodate his bipolar disorder in every situation. Their directive regarding medical attention was in lieu of discipline, arising out of this duty to accommodate. This cannot be found to be discriminatory as intended under the Act.

Based on the evidence that Mr. March had provided extensive training, imparted honest information regarding bipolar disorder, and clearly expressed to coworkers and supervisors the symptoms of seasonal affect, it cannot be determined that the actions of the employer were based on stereotyping.

Based on the evidence, including the submission by the Complainant that the employer had effectively and successfully accommodated him for six years, the employer did not discriminate against the Complainant. Their determined course of action was to deal with his inappropriate behaviour in a manner that was beyond the usual route of discipline by considering his medical condition.

**B) Are the actions of the employer discrimination? Those actions are identified in this case as the mandatory leave, the Complainant's isolation from the workplace and the requirement for psychiatric assessment.**

There was testimony that Mr. Huebert was responding to concerns about the performance and behaviour of Mr. March as raised by others, both coworkers and contacts involved in some of his projects outside of the government. Some of those contacts were related to politically sensitive negotiations. Some evidence was presented that even when directed to stop, Mr. March continued to pursue his activities. He continued to pursue his agenda; after having been placed on leave, he continued to contact coworkers and project contacts outside of work; he attempted to use his e-mail account on the weekend. Mr. March contacted at least one co-worker by cell phone and directed that they report to him downstairs in the parking lot as he was not allowed in the building.

Mr. March did not provide medical substantiation from his doctor to allow his employer to accept he had sought medical attention as required in the key letter of May 27, 2005.

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Although Mr. March had been seen a number of times by his physician between May 27 and June 10, there was no evidence that Mr. March had requested a medical note, or personally reported to his employer that he had complied in seeking medical attention. Further, no reasons were provided to the Board as to why these medical appointments were not reported.

There was no evidence that Mr. March addressed his bipolar hypomanic phase with his physician when the employer modified the requirement for return to work to psychiatric assessment. The question arising is, if Mr. March's primary intent was to return to work, why did he not provide a note from his physician with whom he had several appointments between the May 27 letter and the June 10 letter? His failure to meet the initial request of the employer is, in the opinion of the Board, a failure to mitigate his situation.

The Board received evidence that Mr. March suffered no financial loss during the time of his leave. Arguments were made that the leave was not properly allocated between 'medical' versus 'annual' leave.

The employer, Government of Yukon, continues to accommodate Mr. March with temporary assignments in departments other than his substantive position in the Department of Environment.

### **C. Has the Respondent taken reasonable steps to accommodate the Complainant at all times to the point of undue hardship?**

It should be noted that the Yukon *Human Rights Act* specifies that the duty to provide for special needs is limited to needs which "arise from physical disability". The Board does not believe that an employer's responsibility for accommodation is limited to physical disability. Certainly, case law would hold that accommodation is required for all disabilities.

Undue hardship in the Yukon *Human Rights Act* can be determined by balancing the advantages and disadvantages of the provisions by reference to factors such as safety, disruption to the public, effect on contractual obligations, financial cost and business efficiency.

If Mr. March with his recognized bipolar disorder condition had been subject to disciplinary actions because of the events of May 26, 2005, there might have been a *prima facie* case for failure to accommodate on the basis of mental disability. However, he was not disciplined. His employer initially put him on sick leave pending 'medical assistance'.

The evidence was that in the absence of a medical report, and because of the Complainant's refusal to stay away from work and work duties, the employer amended the directive to the employee to require a psychiatric assessment prior to returning to work. While Mr. March was treated "differently," the evidence is that the employer determined that medical issues required such differential treatment.

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At the first stage of the directive, the employer was willing to accept minimal assurance by the general practitioner that Mr. March was able to continue work. In the absence of compliance and perhaps even ongoing defiance, the employer escalated the standard of assurance to psychiatric assessment. Mr. March was unable to see his psychiatrist and agreed to see his former psychiatrist. Due to unforeseen circumstances, that assessment was not conducted until August 10, 2005.

The allegation was made that Mr. March's isolation from work was due to the Respondent's refusal to accommodate the Complainant while awaiting psychiatric assessment. It was argued that the employer's refusal to accept his proposals was in and of itself a failure to accommodate.

Mr. Huebert responded negatively to Mr. March's proposed 'park visit – secret shopper' special project which he sought as an accommodation, because of a perceived liability issue. This concern was brought to his attention in a meeting with the Public Service Commission. "We had exposure," Mr. Huebert noted, if Mr. March went to work without resolving the medical issue.

Mr. March gave evidence of his concern over having his computer account disabled. When he expressed his concern on June 8, 2005, to Mr. Huebert and argued for its restoration in order to "see what has come in..., see what I need to respond to myself," action was immediately taken to restore his service. They agreed that copies of all outgoing correspondence would be sent to Mr. Huebert. This concession met the needs of both Mr. March and Mr. Huebert.

No evidence was received on the degree to which this restored computer access was used by Mr. March to, in his words, "get a head start on some of the work that I'm doing that I know is going to be waiting for me when I come back."

With regard to the issue of ongoing accommodation by the employer, to use Mr. March's own words... "no one else would accommodate me the way YG does." It appears to the Board that the Respondent has gone to great lengths to keep Mr. March as an employee and support his career plan.

### **D. Did the absence of a Policy regarding employees with mental disability adversely affect the Complainant?**

Mr. Hanson noted that Sun Life administers the long-term disability plan for the Government of Yukon. While he sees a consistent corporate approach toward accommodation of employees with physical disabilities, there are no specific, set guidelines, policies or procedures in place for employees with mental disabilities.

The General Administration Manual of the Government of Yukon notes in the section 'Accommodating Employees with Disabilities' that "the Public Service Commission will conduct a review of this policy and accompanying procedures by

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March 2007. The review will evaluate the effectiveness of the policy in meeting employee and department needs with respect to the duty to accommodate employees with disabilities.”

The Board was presented no evidence that such a review has been started or concluded, or any anticipated outcomes.

In any event, can it be said unequivocally that if the employer had appropriate policy in place to manage employees with mental disabilities, this case would not have occurred?

### **VIII. The Yukon Human Rights Board of Adjudication’s conclusion regarding the Complaint**

The Yukon Human Rights Board of Adjudication finds no evidence of discrimination in this case. The evidence shows that Mr. March was accommodated to the point of undue hardship and his employer continues to provide accommodations.

The Board confirms that in any case where a medical issue may or could be responsible for an employment issue, the employer must confirm that the employee’s health and safety is addressed. To do so is clearly in the best interest of that employee as well as the safety and productivity of coworkers in the workplace. It is clear that an employer’s inattentiveness could lead to greater harm and substantially increase the vulnerability of the employee(s) and liability of the employer.

It appears from the evidence that the proactive efforts of the employer were undermined by the lack of a consistent policy for dealing with the Complainant’s suffering from a mental disability but not to the extent of impairing the employee’s rights.

There was no retaliatory activity on the part of the employer following the Complainant’s return to the workplace. The Board determined that the scope of the complaint was to the point of the e-correspondence of the psychiatrist indicating Mr. March was able to return to work without reservation. Evidentiary links between the Complaint and the events between the employer and the Complainant after his return to work were not proven.

Mr. March suffered no direct financial loss as a result of the actions flowing from the May 26, 2005, incident. The evidence was that he continued to receive his pay at the scale of his acting position until the ADM returned early from her leave of absence.

The allegations that Mr. March was isolated from his workplace cannot be verified by the evidence insofar as the medical testimony of Dr. Phillips is that Mr. March

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was away from work extensively, and that time away from work was, in actuality, the primary treatment plan for managing Mr. March's mental disability and stressors. Further, the accommodations required by Mr. March were of the nature that he was isolated from his coworkers by flex hours, weekend working hours and working from home.

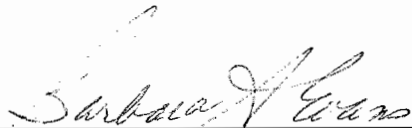
This Board of Adjudication recommends that the Government of Yukon act on its own advice to conduct a review of accommodation procedures and develop and implement a policy which will provide directives to assist in appropriate management of employment issues where employees have disclosed their mental disability.

While in this particular case, the Board dismisses the complaint of discrimination, acknowledgement of the pitfalls in the management of employees with mental disorders have been identified and, as such, it then becomes incumbent on the employer to rectify them.

The Board acknowledges the tenacity of Mr. March in bringing his concerns about the lack of consistent policy in managing employees with mental health issues into the human rights forum. He should be proud of his efforts and accomplishments that instilled such respect of his employer and general departmental awareness of bipolar disorder and its employment implications, along with the need to appropriately accommodate on the basis of a mental disability versus jumping to discipline.

As Mr. March himself advised the Board, his goal was to bring the issue to light and make things better for all government employees. The heightened awareness within the Government of Yukon of the needs of employees with mental disabilities resulting from this case should serve as validation of his efforts.

**Decided this 25<sup>th</sup> day of November, 2007 at the city of Whitehorse in the Yukon**



**Barbara A. Evans, Chief Adjudicator**