

YUKON HUMAN RIGHTS PANEL OF ADJUDICATORS

Between:

V.C.

“Complainant”

And:

The Yukon Human Rights Commission

“Commission”

And:

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

“Respondent”

REASONS FOR DECISION

1. P. Gawn (Chief Adjudicator): The Respondent applies to dismiss the complaint of V.C. in this case. Written submissions dated June 30, 2016 were filed on behalf of the Respondent, the Commission’s submissions in response were filed August 9, 2016, and a reply by the Respondent was filed August 25th, 2016.
2. No submissions have been filed by the self-represented Complainant in response to the application although the Commission’s reply attached an *Appendix “A”* which reported the following information regarding a phone call received from the Complainant on August 9, 2016:

He received the Respondent’s Application to Dismiss his complaint in the mail a few days ago, but has not read through all of the documents. Ever since he was at WCC he hasn’t been able to focus on things and

has been having a hard time daily.

He requires medication to help him focus because of his ADHD and is waiting to be referred to a new doctor.

He does not remember why he missed the February 8, 2016 pre-hearing conference, probably it was a transportation issue.

Since then he has been waiting for the Commission or the Board to call him, he thought his complaint was thrown out, then he got this paper in the mail.

He did not understand what these papers are about. He has a hard time to read it.

He wants his human rights hearing to proceed. He thinks he can participate in a hearing that could last for at least a week.

“It’s not that I’m not taking this seriously, it’s my situation. I’m not on medication, so have a hard time focusing.”

“I have ADHD and this has been going on and on and on. How come it takes forever and there are so many people involved? When am I going to have a hearing? Can I have one soon?”

3. The Commission in its reply also submitted that there should be an in-person hearing to consider the evidence and position of the parties prior to a decision being made on the application.

4. Accordingly, a case management conference was convened at which counsel for the Commission and counsel for the Respondent appeared. Although the Complainant’s email address had been used to notify him of the meeting and attempts had been made by Commission counsel to reach him by telephone, he did not attend the case management conference. That meeting was convened in order to discuss whether there needed to be an oral hearing of the Respondent’s application. At the case management conference, counsel for the Commission withdrew its request for an oral hearing. A case management order was therefore issued confirming that the application would be decided, on the basis of the written submissions filed, by the Chief Adjudicator sitting as the Board of Adjudication for this purpose.

5. I have now reviewed and considered the written submissions provided in support of the application from the Respondent, as well as the submissions in response from the Commission opposing the application, and the Respondent's submissions in reply.

6. This case has had a lengthy history of difficulty in contacting the Complainant as well as of failure to appear for case management conferences by the Complainant.

When the Complainant failed to appear at a case management conference on February 8, 2016, it was ordered that the Commission attempt to obtain an affidavit from the Complainant setting out why he was absent from the case management conference for the second time, and defining his commitment to proceeding with a hearing before the Board of Adjudication, as well as his availability for such a hearing. Subsequent to that order having been made, counsel for the Commission advised that she had not been able to obtain an affidavit from the Complainant and that he had made an appointment to meet with her to complete such an affidavit but did not attend this appointment or advise her of the reason why he missed the appointment.

7. As submitted by the Respondent, the Respondent and the Commission have spent a significant amount of time and resources preparing for the hearing of this complaint. The Respondent has cited the decision of the Ontario Human Rights Tribunal in *Ouwroulis v New Locomotion and John Sit*, in which it was said by the tribunal that:

The opportunity for an individual to make a claim of discrimination to a publicly funded adjudicative body, which has extensive procedural and remedial powers, comes with the obligation to respect the seriousness and significance of the process, and comply with the Tribunal's Rules. The Tribunal's procedures are less formal than a court's and aim to enhance access, including for those parties who may be self-represented. But this informality should not be interpreted to mean that parties may take a casual attitude towards complying with Tribunal directions. There may be circumstances which justify a

party's failure to comply with a Tribunal rule or direction. However, an applicant who does not respond to Tribunal directions risks having the application dismissed.

8. The Complainant has not shown that he respects the seriousness and significance of this process, and has not filed any submissions in opposition to the application of the Respondent to dismiss his complaint.

CONCLUSION

9. Given the repeated failure by the Complainant to comply with directions or to participate in the pre-hearing process, I conclude that the application by the Respondent to dismiss the complaint should be allowed. However in recognition of the indication, contained in *Appendix "A"* provided by the Commission, that the Complainant may have medical issues deserving of accommodation with respect to his participation, I am going to allow him the opportunity to apply to set aside this decision by making such an application in writing within 30 days of his receipt of this decision, supported by an affidavit setting out his interest in proceeding and his availability to do so. As before, the Commission may of course assist the Complainant in making his application.

10. In the absence of such an application, the complaint will remain dismissed as requested by the Respondent.

Dated at Whitehorse, Yukon, this 26th day of October, 2016.



Penelope Gawn, Chief Adjudicator
Yukon Human Rights Panel of Adjudicators