

Before the Yukon Human Rights Board of Adjudication

In the matter of the Yukon *Human Rights Act*

and the matter of

Marsha Cooke (“Complainant”)

&

Yukon Human Rights Commission (“Commission”)

v.

Government of Yukon, Department of Health and Social Services (“Respondent”)

BOARD DECISION ON COSTS

Before: Chief Adjudicator Judith Hartling
Adjudicator Victoria Chan
Adjudicator Roxane Larouche

Parties:	Marsha Cooke	Complainant
	Michael DeRosenroll and Emma Dickson	Counsel for the Commission
	Lesley Banton and Mina Connelly	Counsel for the Respondent

Written Reasons by:

Chief Adjudicator Judith Hartling

Concurred by:

Adjudicator Roxane Larouche

Adjudicator Victoria Chan

The Application

1. The Commission seeks costs on behalf of the Commission and on behalf of the Complainant.
2. The Commission seeks an order for costs of \$30,217.35 for the Commission and an order of \$217.42 for the Complainant.
3. The Respondent took no position on whether costs should be awarded to the Commission but, if costs were awarded, submitted that the amount should be \$16,087.35.
4. The Respondent objected to costs being awarded to the Complainant.
5. The Commission and the Respondent provided written argument on the issue of costs.
6. The Complainant did not.

Overview

7. The Yukon Supreme Court has stated that the general rule is “costs follow the event”, meaning the winning party is generally entitled to recover costs. *Ursich v Security National Insurance Company 2005 YKSC 72*
8. However, the *Human Rights Act* is a special piece of legislation designed to deter discrimination. The availability of costs changes in the human rights context.
9. This is evident in the manner in which different jurisdictions have legislated for costs and in the awarding of costs.

10. The awarding of costs must be considered in the context of the Yukon *Human Rights Act's* objectives.

1 Objects

(1) The objects of the Act are...

(b) to discourage and eliminate discrimination;

(c) to promote recognition of the inherent dignity and worth and of the equal and inalienable rights of all members of the human family...

Process

11. Costs are considered on a case-by-case basis.

12. Consideration of costs is a two-step process:

- Firstly, should costs be awarded?
- Secondly, at what amount?

13. Factors to be considered when deciding if costs should be awarded include the following:

- The purpose of awarding costs is a means for a successful party to recoup legal expenses.
- The possibility of costs being awarded may encourage early settlement.
- Costs encourage adherence by the parties to the human rights process.
- Costs discourage misconduct of the process.
- The possibility of costs can create a chilling effect on complainants coming forward with a legitimate human rights complaint.
- Costs of human rights matters can exceed the financial award given in human rights matters.

A review of the legislation and its application

Yukon

14. The *Human Rights Act*, Yukon, section 24 reads as follows:

(1) If the complaint is proven on the balance of probabilities the board of adjudication may order the party who discriminated to ...

(f) pay costs.

25 Costs of adjudication

If the board of adjudication concludes that the complaint was frivolous or vexatious or that the proceedings have been frivolously or vexatiously prolonged the board may order the commission to pay to the respondent

(a) part or all of the respondent's costs of defending against the complaint...

15. The *Regulations* read at section 15

If the board of adjudication awards costs (b) shall be assessed by the board as party and party costs in the same manner and on the same basis as if the hearing had been a proceeding in the supreme court.

16. A review of human rights cases in the Yukon dating back to 2018 found only one case, *Budge v Talbot Arms, June 2018*, where costs were sought. Although the decision was against the Respondent, the Respondent still sought costs against the Commission and Complainant.

17. Needless to say, the Board declined to award costs against the Commission or Complainant.

18. In the matter of *Mark Hureau and 17385 Yukom Inc. v Yukon Human Rights Board of Adjudication, 2014 YKSC 21* being heard by way of appeal to the Supreme Court of Yukon, J. Veale ordered "the parties may bring the matter of costs in this Court to a case management for decision if necessary".

19. It is noted that the costs referred to were those costs available at the Supreme Court level when the matter was appealed. It was not costs pursuant to the tribunal.

Alberta

20. Section 32 of the Alberta *Human Rights Act* states

32 (2) A human rights tribunal may make any order as to costs that it considers appropriate.

21. The Alberta Act does not speak to frivolous or vexatious matters or to misconduct.

22. A review of the case law shows that the Alberta Human Rights Tribunal rarely orders costs save where there was misconduct by the parties.

23. An article, April 2025 from the law firm of McLennan Ross provides the state of the law in awarding costs by the Alberta Human Rights Tribunal:

Human rights complaints are an increasingly common issue for employers in Alberta. However, in spite of the growing frequency of complaints filed, and the increasing number of decisions released each year, there is still a very limited number of instances where costs are awarded to the successful party by the Alberta Human Rights Tribunal (the “Tribunal”).

While section 32(2) of the *Alberta Human Rights Act* (the “Act”) grants the Tribunal the discretion to award costs, the Tribunal has historically used that discretion sparingly. The Tribunal’s historical reluctance to use its discretion is informed, in part, by public policy considerations; specifically, not wanting the risk of a potential adverse costs award to discourage potential complainants from bringing forward legitimate complaints. Although these public policy considerations remain, we are now seeing the Tribunal be less reluctant to use its discretion.

One such example is the recently released decision of *Shodunke v Paladin Security Group Ltd.*, 2025 AHRC 2 (“*Shodunke*”). In *Shodunke*, the respondent-employer (“Paladin”) terminated the complainant’s employment during his probationary period. In response, the complainant took the position that his termination was discriminatory and filed a human rights complaint.

Following the dismissal of the complaint, Paladin brought an application for costs against the complainant for “costs of \$20,000 or more [...] for frivolous, vexatious and improper conduct throughout the hearing process and in improperly recording

the hearing.” Paladin was successful in its costs application and of note, the Tribunal awarded it \$25,000 in costs.

In rendering the costs award, the Tribunal affirmed that “An award of costs against a [party] is only appropriate in circumstances where the [party] has engaged in conduct that was dishonest or significantly prejudicial to a party or the integrity of the process [and that] [f]or significant costs to be awarded at the conclusion of a proceeding, a party needs to have engaged in conduct that essentially amounts to an abuse of process, including: a, dishonest conduct in the proceedings; b, conduct that is significantly prejudicial to another party; or c, conduct that is significantly prejudicial to the integrity of the process.”

To this end, the Tribunal concluded that the complainant had engaged in various forms of misconduct sufficient to justify a large costs award. First, the complainant had delayed the proceedings by failing to disclose relevant and material evidence and repeatedly interrupting the proceedings with argument. Second, the complainant also tried to mislead the Tribunal by making intentional misstatements of evidence. Third, the complainant also demonstrated a total disregard for the Tribunal’s authority and process by repeatedly ignoring deadlines and submissions criteria, attempting to introduce new evidence despite being directed not to, submitting irrelevant evidence and authorities, and making baseless accusations against the respondent’s counsel and the Tribunal, respectively, regarding ethics and bias, for the purpose of obstructing the Tribunal’s process. As a result, the Tribunal exercised its discretion.

While *Shodunke* does not change the law with respect to when costs will be awarded by the Tribunal, it provides greater context (and authority) with respect to what types of misconduct will encourage the Tribunal to exercise its discretion to award costs under section 32 of the *Act*. In this regard, although cost awards will still not be attainable in most human rights complaints in Alberta, this decision is a good reminder to employers that where a complainant engages in misconduct, or abuse of process, there may be a legitimate opportunity to recoup some legal expenses in respect of the complaint through a costs award.

British Columbia

24. The BC *Human Rights Act*, at section 37.4, reads as follows:

The member or panel may award costs

- (a) against a party to a complaint who has engaged in improper conduct during the course of the complaint, and
- (b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3 (2) or an order under section 27.3 (3).

25. There is no other authority to award costs under the BC Act. Costs can only be awarded if there is misconduct.

Ontario

26. Ontario amended its *Human Rights Code* so that there is no provision for the awarding of costs.

27. Section 46 of the code is the only section that speaks of costs:

46.1(1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

28. Although it permits monetary compensation, following the Supreme Court of Canada ruling in *Mowat 2*, the term “monetary compensation” would not include legal expenses.

Federal

29. The Canadian Human Rights Act does not permit costs, *Canadian Human Rights Commission v Canada (Attorney General)* 2011 SCC 53 (*Mowat*).

30. On appeal to the Supreme Court of Canada, the SCC ruled that the CHR Tribunal had no authority to order costs.

Canadian Human Rights Act

31. Section 53(2) of the act reads as follows:

53(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory

practice and **c)** that the person compensate the victim for any or all of the wages that the victim was deprived of **and for any expenses** incurred by the victim as a result of the discriminatory practice; (Emphasis added.)

32. This case was decided on statutory interpretation. There was no term in the Act allowing costs and only section 4 allowing expenses. The SCC ruled expenses were not legal costs.

33. To date there have been no amendments to the *Canadian Human Rights Act* concerning costs.

Decision

34. The Board, having

- reviewed the legislation and its application in other jurisdictions, and
- noted the competing factors in awarding costs, generally, that is following the event,

has decided the following.

35. The Board finds that ensuring complainants come forward outweighs the factor of compensating for costs incurred, the deterrence value to parties to not engage in misconduct, and the encouragement of settlement.

36. Alberta is a jurisdiction with a similar term as Yukon legislation concerning costs. Costs may be awarded. Despite the fact that the *Alberta Human Rights Act* does not have a term addressing costs if there is misconduct, Alberta tribunals have only awarded costs where there is misconduct.

37. The Alberta and Yukon legislation is permissive in that the Panel “may” order costs. The Alberta tribunal has taken the position costs will not be awarded unless there is misconduct.

38. British Columbia, Ontario, and the federal human rights panels cannot, because of legislation or lack thereof, award costs except for misconduct.

39. This Board is not bound by parallel tribunals but has considered them.

40. This Board takes a similar position as Alberta tribunals.

41. There was no misconduct on behalf of the Respondent. The Board will not award costs.

Findings

42. The Board finds that costs will not be awarded to the Commission.

43. The Board finds that cost will not be awarded to the Complainant.

Whitehorse, Yukon, May 7, 2026



Chief Adjudicator Judith Hartling
Yukon Human Rights Panel of Adjudicators



for Roxane Larouche
Adjudicator Roxane Larouche
Yukon Human Rights Panel of Adjudicators



Adjudicator Victoria Chan
Yukon Human Rights Panel of Adjudicators