COURT OF APPEAL OF YUKON

Citation: *Wood v. Yukon (Occupational Health and Safety Branch)*, 2024 YKCA 8

Date: 20240723
Docket: 18-YU825

Between:

Juanita Wood

Applicant

And

Director, Occupational Health and Safety Branch, Yukon Workers' Compensation Health and Safety Board

Respondent

And

Attorney General of Yukon

Respondent on Application

Before: The Honourable Chief Justice Marchand
(In Chambers)

On appeal from: An order of the Supreme Court of Yukon, dated May 3, 2018 (*Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 24, Whitehorse Docket 17-AP015; additional reasons 2018 YKSC 29).

The Applicant, appearing in person:	J. Wood
No one appearing on behalf of the Respondent Director, Occupational Health and Safety Branch, Yukon Workers' Compensation Health and Safety Board	
Counsel for the Respondent on the Application, Attorney General of Yukon:	I.H. Fraser
Place and Date of Hearing:	Whitehorse, Yukon June 18, 2024
Place and Date of Judgment:	Whitehorse, Yukon July 23, 2024

Summary:

The applicant is subject to orders declaring her a vexatious litigant in the Supreme Court of Yukon and in this Court. She applies to re-open an appeal to adduce fresh evidence. The appeal relates to Ms. Wood's loss of employment with the Government of Yukon's Department of Highways and Public Works in 2015. Ms. Wood seeks to challenge factual and legal determinations made within a concluded appeal. To do so, she requires leave of the Court under a vexatious litigant order made against her in a separate but related matter.

Held: Application dismissed. Ms. Wood's proposed fresh evidence could not have affected the result in the appeal at issue and is therefore not admissible.

Reasons for Judgment of the Honourable Chief Justice Marchand:

Introduction

[1] The applicant, Juanita Wood, is subject to orders declaring her a vexatious litigant in the Supreme Court of Yukon and in this Court: *Wood v. Yukon (Government of)*, 2018 YKSC 34; *Wood v. Yukon (Public Service Commission)*, 2019 YKCA 4 [*Wood*, *YKCA* 2019]. She applies to re-open an appeal to adduce fresh evidence. The appeal relates to Ms. Wood's loss of employment with the Government of Yukon's Department of Highways and Public Works in 2015. The application is Ms. Wood's most recent effort to correct what she considers to be a miscarriage of justice.

[2] Ms. Wood seeks to challenge factual and legal determinations made within a concluded appeal, Court of Appeal of Yukon docket YU825 ("appeal YU825"), with reasons indexed as 2018 YKCA 16 [*Wood*, *YKCA* 2018]. To do so, she requires leave of the Court under a vexatious litigant order made against her in a separate but related matter under the Court of Appeal of Yukon docket YU830 ("appeal YU830"): *Wood*, *YKCA* 2019 at para. 38.

[3] Ms. Wood raises a number of issues, but the determinative ones are:

1. Does the proposed fresh evidence meet the test for admission set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, 1979 CanLII 8?

2. If so, should the appeal be reopened to adduce the fresh evidence?

[4] I understand Ms. Wood's loss of employment with the Yukon Department of Highways and Public Works has been difficult for her in a variety of ways. But, for the reasons that follow, Ms. Wood's proposed fresh evidence is not admissible and I dismiss her application for leave to re-open her appeal.

Facts and Procedural History

[5] The facts and procedural history underlying Ms. Wood's application were succinctly summarized by this Court in *Wood*, *YKCA* 2019:

> [5] Ms. Wood was hired by the Government of Yukon's Department of Highways and Public Works in February 2014 as a heavy equipment operator. On February 5, 2015, while Ms. Woods was still in her probationary period, the Department terminated her employment on the basis that she was unsuitable for continued employment. Following her termination, Ms. Wood commenced a number of proceedings seeking various remedies, all of which have been dismissed, struck or withdrawn.
>
> [6] Ms. Wood first appealed her termination to the Deputy Minister of the Department of Highways and Public Works. The Deputy Minister dismissed the appeal on March 5, 2015, concluding that the employer's concerns about Ms. Wood's conduct and behaviour were substantiated.
>
> [7] On March 5, 2015, Ms. Wood filed a complaint with the Yukon Workers' Compensation Health and Safety Board, claiming that her termination was a reprisal for her raising safety concerns at work contrary to section 18(1)(a) of the *Occupational Health and Safety Act*, R.S.Y. 2002, c. 159. A safety officer reviewed Ms. Wood's complaint and, on November 13, 2015, determined that the employer had not contravened the *Act* and that prosecution of the employer was not warranted.
>
> [8] Ms. Wood appealed the decision of the safety officer to an Appeal Panel of the Yukon Workers' Compensation Health and Safety Board. In a decision rendered February 1, 2016, the Appeal Panel declined to interfere with the safety officer's decision not to prosecute. Ms. Wood filed a request for reconsideration of the Appeal Panel's decision on February 5, 2016, which she later withdrew in May 2016. In June 2017, Ms. Wood sought to revive her appeal with the Yukon Workers' Compensation Health and Safety Board. However, in December 2017, she withdrew her application to reopen the appeal.
>
> [9] On April 5, 2016, Ms. Wood filed a complaint with the Yukon Human Rights Commission, alleging that her employer, the Government of Yukon, had discriminated against her on the basis of her sex. She sought, among other forms of relief, reinstatement to her position with the Department of Highways and Public Works. On October 14, 2016, the Director of Human

Rights discontinued the investigation into the complaint, prompting Ms. Wood to request a re-consideration of that decision. The Yukon Human Rights Commission confirmed the Director's decision on May 26, 2017.

[10] On May 27, 2016, Ms. Wood commenced an action against the Department of Highways and Public Works, seeking reinstatement as well as damages. On December 7, 2016, Gower J. struck the claim on the basis that it disclosed no reasonable cause of action, was vexatious and amounted to an abuse of process: *Wood v. Yukon (Highways and Public Works)*, 2016 YKSC 68. Ms. Wood appealed that decision to this Court and, on May 25, 2017, the appeal was quashed for being devoid of merit: *Wood v. Yukon (Highways and Public Works)*, 2017 YKCA 4.

[11] On April 27, 2017, Ms. Wood filed a petition seeking judicial review of the decision of the Department of Highways and Public Works to terminate her employment. This petition was dismissed by consent on May 11, 2018.

[12] On November 21, 2017, Ms. Wood laid a private information alleging a breach of s. 18(1)(a) of the *Occupational Health and Safety Act*. This information was withdrawn in January 2018.

[13] On January 22, 2018, Ms. Wood filed a petition seeking judicial review of the manner in which the Yukon Workers' Compensation Health and Safety Board handled her March 5, 2015 complaint. On May 3, 2018, Bielby J. struck the petition for being an abuse of process and otherwise vexatious and disclosing no reasonable claim: *Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 24.

[14] Ms. Wood's appeal of that decision was dismissed by this Court in *Wood Appeal No. 1* [2018 YKCA 16], as described above.

[15] On March 14, 2018, Ms. Wood filed a petition for judicial review of the decision of the Yukon Human Rights Commission to discontinue the investigation into her complaint. The Government of Yukon, the respondent in that matter, applied for orders declaring Ms. Wood to be a vexatious litigant and prohibiting her from instituting proceedings in the Supreme Court without leave. On July 20, 2018, Miller J. found that Ms. Wood had persistently instituted vexatious proceedings and had conducted proceedings in a vexatious manner: *Wood v. Yukon (Government of)*, 2018 YKSC 34. Justice Miller accordingly prohibited Ms. Wood from continuing with her petition and from instituting another proceeding on behalf of herself or another person in the Supreme Court except with leave of the Court.

[16] Ms. Wood's appeal of that decision was dismissed by this Court in *Wood Appeal No. 2*, as described above.

[17] Following the hearing of Ms. Wood's two appeals in this Court, the Government of Yukon brought an application under section 12.1 of the *Court of Appeal Act* to prohibit Ms. Wood from instituting a proceeding in the Court of Appeal on behalf of herself or another person without leave of the Court.

[Emphasis added.]

Analysis

Does the proposed fresh evidence meet the *Palmer* test?

[6] Ms. Wood seeks to adduce three affidavits. I will address only her Affidavit #2 filed on May 22, 2024. The other affidavits are clearly immaterial. I will not mention them further.

[7] Ms. Wood's Affidavit #2 filed on May 22, 2024 has four exhibits. Exhibit A is the key exhibit. It is a copy of a report published by the Yukon Workers' Safety and Compensation Board ("Board") titled "Modernization and Amalgamation of the Workers' Compensation Act and the Occupational Health and Safety Act: What We Heard" (20 August 2020), online (pdf): *Government of Yukon* <yukon.ca/en/engagements/modernization-workers-compensation-act-and-occupational-health-and-safety-act> [Report]. It summarizes public input the Board sought and received on updating the *Workers' Compensation Act*, S.Y. 2008, c. 12 [*WCA*] and the *Occupational Health and Safety Act*, R.S.Y. 2002, c. 159 [*OHSA*]. As I understand it, as a result of the Report the *WCA* and the *OHSA* were amalgamated. Accordingly, neither Act is currently in force.

[8] At page 19, the Report addresses the topic of "[p]rohibited reprisals". The Report reads, in part:

> This issue [of how to handle prohibited reprisals] was introduced by the Government of Yukon for consideration. We proposed:
>
> - To update and clarify the definition of "reprisal" as well as provide an administrative process for resolving complaints of prohibited reprisals.
>
> There was support for this proposal. Feedback indicated that this is seen as a way to have unbiased and efficient resolution of reprisals with less burden on the worker. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.
>
> - This would create faster resolutions with fewer costs for workers and employers.
> - This would lead to better return-to-work outcomes for workers and may actually lead to parties being able to "shake hands" following resolution.

> - Complaints could be handled on a case-by-case basis and the process would be much fairer to workers than the current process.
>
> [Emphasis added.]

[9] Ms. Wood maintains this excerpt from the Report conflicts with the reasons of this Court in *Wood*, *YKCA* 2018 where the Court dismissed appeal YU825. More specifically, she says the excerpt demonstrates this Court upheld the Board's actions in subjecting her to an administrative law process that was not authorized under the *OHSA*. She submits her proposed fresh evidence should therefore be admitted in support of re-opening the appeal to correct an obvious miscarriage of justice.

[10] The test for admitting fresh evidence was set out by the Supreme Court of Canada in *Palmer* at 775:

> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see *McMartin v. The Queen.*
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other [evidence] adduced at trial, be expected to have affected the result.
>
> [Footnotes omitted.]

[11] In my view, Ms. Wood's proposed fresh evidence is not admissible because it fails the fourth criteria of the *Palmer* test. The excerpt from the Report simply cannot affect the result in appeal YU825. I say this for three main reasons.

[12] First, the excerpt from the Report merely contains a recommendation to replace a previous process for dealing with reprisal complaints. A recommendation in a public consultation report has no role to play in the legal interpretation of s. 18 and other provisions of the now-repealed *OHSA*.

[13] Second, in any event, there is no conflict between the recommendation and this Court's interpretation of the material provisions of the *OHSA*. In *Wood*, *YKCA* 2018, this Court dismissed Ms. Wood's appeal from her unsuccessful petition seeking judicial review of the manner in which the Yukon Workers' Compensation Health and Safety Board handled her March 5, 2015 reprisal complaint. This Court gave two reasons. Her petition was an abuse of process and it disclosed no reasonable claim: *Wood*, *YKCA* 2018 at paras. 30, 38. On the latter point, this Court held:

> [35] Thus, the safety officer in this case had the authority, as the Director's delegate, to consider Ms. Wood's s. 18 [*OHSA*] complaint and conduct an investigation for the purpose of determining whether a prosecution was warranted. His decision, which was given with full reasons, was subject to an appeal to the board under s. 26(1). Ms. Wood proceeded with an appeal to the point where the appeal panel concluded that there were no grounds to interfere with the decision not to prosecute. This is the process whereby a worker in Ms. Wood's position has a hearing. Ms. Wood's insistence that she is entitled to a hearing before a court is, in my view, without merit, as that process is one that is quasi-criminal in nature, being a prosecution for a contravention of the *Act*.

[14] I see nothing in the recommendation that is at odds with this Court's reasoning in *Wood*, *YKCA* 2018. As I read the recommendation, it proposes to introduce an administrative process to replace the previously existing prosecutorial one. It says nothing about whether a safety officer's determination of whether to prosecute a complaint under s. 18 of the *OHSA* was subject to an internal appeal to the Board under s. 26(1) of the legislation. In other words, it does not demonstrate the Board subjected Ms. Wood to a process that was not authorized by the *OHSA*.

[15] Finally, even if Ms. Wood is right and she was subjected to an unauthorized process, at worst, she had an unwarranted opportunity to appeal the safety officer's determination to the Board. Absent that internal appeal, nothing would have changed. The import of this Court's decision in *Wood, YKCA 2018* is that the safety officer had discretion to determine whether to prosecute Ms. Wood's reprisal complaint under s. 18 of the *OHSA* and validly exercised their discretion not to do so. Respectfully, that outcome is final.

[16] Ms. Wood's proposed fresh evidence could not have affected the result in *Wood*, *YKCA* 2018 and is therefore not admissible.

Should the appeal be reopened to adduce fresh evidence?

[17] Ms. Wood seeks leave to re-open appeal YU825 to adduce fresh evidence. Since the fresh evidence is not admissible, there is no reason to re-open the appeal.

Disposition

[18] Again, I understand Ms. Wood's loss of employment with the Yukon Department of Highways and Public Works has been difficult for her. But, respectfully, her application for leave to re-open appeal YU825 and adduce fresh evidence is misguided and I dismiss it.

"The Honourable Chief Justice Marchand"