

**THE NORTHWEST TERRITORIES HUMAN  
RIGHTS ADJUDICATION PANEL**

**IN THE MATTER OF The Northwest Territories  
*Human Rights Act*, R.S.N.W.T, 1988. as amended,**

**BETWEEN:**

**Juanita Robinson**

**Complainant**

**-and-**

**The Government of the Northwest Territories  
Respondent**

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**Reasons for Decision**

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**Before: James R. Posynick, Adjudicator**

**Place of Hearing: Yellowknife, NT**

**Dates of Hearing: March 7 – 18, 2011; June 20-23, 2011; December 6, 2011.**

**Juanita Robinson Ms. Robinson  
Bruce Goddard, Agent for Ms. Robinson  
Karen Lajoie, Legal Counsel for the Respondent  
Nicole McNeil, Labour Relations Officer, GNWT**

**Sections of the *Human Rights Act* considered:  
Sections 5(1), 7(1), 9 and 15.**

## REASONS FOR DECISION

### A. Background

Juanita Robinson, has been employed by the Government of the Northwest Territories (“GNWT”) since 1997. During the course of her employment she attempted to have her job description revised to reflect “senior management” roles and responsibilities without success. The revisions might have (and should have, in her view) resulted in increased pay and benefits. In the meantime she saw other job descriptions being revised instead of her own. She observed men filling other jobs in her department and getting greater pay and benefits than her. She believed those men were doing substantially similar work as her.

In May of 2006, Ms. Robinson filed a human rights complaint alleging her employer discriminated against her by paying her at a rate less than the rate of pay given to male employees classified as senior management who performed the same or substantially similar work as her.

Ms. Robinson also alleges the GNWT retaliated after she filed the complaint by making changes to her job description in 2007 that amount to a “demotion”, by changing her role and by scaling down her operational budget.

The GNWT says that differences in pay between the Ms. Robinson and male employees is because her work is not the same or substantially similar as theirs.

The GNWT also says that the retaliation claim is baseless because the 2007 job description reflects the work Ms. Robinson had been doing since at least 2002. It says changes in her role were related to changing operational needs and conditions and the scaling down of her operational budget was in accordance with government wide austerity and prudent financial decisions.

### B. The Legislation

Section 5 (1) of the Northwest Territories (“NWT”) *Human Rights Act* (the “Act”) prohibits discrimination based on gender.

Section 7(1) of the *Act* prohibits discrimination in relation to employment.

Section 9(1) of the *Act* prohibits paying female workers less than male workers where both perform the same or substantially similar work.

However differences in pay between employees who perform the same or substantially similar work will not be discrimination unless the those differences in pay are based on a prohibited ground; in this case “gender”: Section 9 (2).

“Pay” is not restricted to financial compensation. “Pay” includes other forms of remuneration including leave and benefits schemes: Section 9 (6).

Section 9(5) of the Act says work will be considered “similar or substantially similar” if it:

- (a) involves the same or substantially similar skill, effort and responsibility; and
- (b) is performed under the same or substantially similar working conditions.

Finally, Section 15 of the Act prohibits retaliatory conduct (getting even or exacting a measure of revenge) towards people who file human rights complaints and those who assist them in prosecuting complaints.

### **C. Findings of Fact**

The following is a summary of my findings following the hearing of testimony from six (6) witnesses for Ms. Robinson and ten (10) witnesses for the Respondent. While most of the facts were not in dispute, where a dispute arose I will address how it was resolved.

#### **Events and Circumstances Leading to the Complaint**

The Industrial Benefits Consultant Job, c. 1998

Ms. Robinson applied for the position of Industrial Benefits Consultant (the “Consultant”) offered by the department of Resources, Wildlife & Economic Development (“RWED”) in the winter of 1997. The position was in the Union of Northern Workers (“UNW”) bargaining unit. She was attracted to the position because she had some negotiation training while obtaining a bachelor’s degree in business administration and wanted to develop her negotiation skills. The official job description for the position says that the incumbent will:

“Lead the development of strategic plans to promote the maximization of benefits, such as employment and procurement opportunities, from industrial development for NWT residents by... Designing and implementing research methodologies to collect information and data...analyzing information for application to the NWT...Leading the development of strategic plans, including the development of policy...Participating with Department colleagues to gain acceptance of GNWT strategies by federal colleagues... Participate in the identification of potentially beneficial projects and preliminary information exchange with proponents...Lead the negotiation of industrial benefits agreements with proponents...Monitor industry compliance with negotiated

industrial benefits agreements...Evaluate the success of strategies, policies... agreements in meeting objectives and recommend revision as required” (underlining added)

The job description also required the incumbent to have “Technical (subject matter) knowledge”. For example:

“Specialized knowledge of industrial benefits and the regulatory framework... Specialized knowledge of strategic planning, policy analysis and development and evaluation...Knowledge of computer software...(underlining added)

Managerial or supervisory skills were listed as:

“...skills to plan, organize, integrate and coordinate activities and ...provide consultant advice and support.”(underlining added)

The job also required a “high level of written communications... [and] verbal communications skills ...” The contacts for the position included “Divisional and Department colleagues to exchange information and expertise, participate on or lead task teams and to ensure coordinated and complementary efforts”. The incumbent was expected to contact representatives of business and industry regularly “to promote alliances, represent NWT interests, negotiate agreements and exchange information”. The incumbent worked with other provinces and territories “to promote alliances or partnerships, represent NWT interests, exchange information and contribute to negotiations related to strategic agreements.”

The problem solving function is explained this way:

“The position is considered the expert in relation to industrial benefits and recommendations are not reviewed as to their technical accuracy.” (underlining added)

Under the heading “Accountability”, the “degree in which the position has control over the end result” is described this way:

“The position has full control over the choice and results of research methodologies, the recommended strategies, negotiation positions and consultant advice given”. (underlining added)

Ms. Robinson was successful in her application and, because of the salary level of her previous position in government, her starting salary was increased to that level. She began reporting to a senior manager, the Director, Trade and Investment, in April of 1997. That organizational unit included 6 different sections, 3 of which (including Ms. Robinson) were headed by women. One was a senior manager, the Director of Policy, Legislation and Communications.

### Ms. Robinson's First Job Re-evaluation

In February of 1998, Deputy Minister of RWED Joe Handley, notified Ms. Robinson that her existing job description was re-evaluated under the newly implemented *Hay* method. The *Hay* method measures "core factors" described as know-how (or skill), problem solving (or effort), accountability (or responsibility) and working conditions. *Hay* method evaluations exclude the department head who proposes the evaluation from participating in the evaluation beyond being called by the evaluation committee to answer questions relating to the work described in the job description approved by that head. Neither the identity nor the gender of employees is revealed to the committee.

A *Hay* method evaluation conducted by an inter-departmental committee of 6 men, all senior managers, and the Department's female Human Resources Manager, Birgit Ballantyne, determined that her job fit a "Balanced profile for advisory/consultative role". Her position was not classified as senior management and she received no pay increase.

During 1999 Ms. Robinson worked closely with Handley and legal counsel to develop a Socioeconomic Agreement ("SEA") with Diavik Diamond Mines Inc. ("Diavik"). According to Mr. Handley, he was the "lead" negotiator and Ms. Robinson was the "lead person...supporting [him] in the negotiations" who, along with legal counsel, participated in "side table" discussions with proponents. The development and implementation of the agreement was no small task. Its success, Handley noted in an email to Ms. Robinson, was due to the sound advice she provided. That advice resulted from many long hours of work for which Ms. Robinson received no additional pay. Her immediate supervisor would not pre-approve overtime pay.

### The Potential for Further Re-evaluation

In discussions between Ms. Robinson and Handley in the fall of 1999, Handley expressed the view that her position might be rewritten and re-evaluated by the Hay Plan review committee. He wanted to change the reporting relationship in the job description to show direct reporting to the Deputy Minister as it had in fact been for several months while the Diavik negotiations were underway. He saw the Consultant being responsible for coordinating all government departments, participating in negotiations and monitoring socio-economic agreements. The Consultant would be the main consultant, "subject expert". He felt the "new" Consultant position would be similar to the Director of Diamond Projects in terms of classification, i.e. a director level position, but rated a little lower in terms of responsibility. In response, Ms. Robinson drafted a new job description and sent it by email to Handley for his review. Handley, in the meantime, had left to run as a candidate in the territorial election. Within weeks he became a member of the Legislative Assembly and returned to RWED as Minister. He had no further direct contact with Ms. Robinson upon his return.

### The Creation of “Industrial Initiatives”, 1999

Inspired by Handley’s comments, the following month Ms. Robinson sent a copy of Handley’s email and her own draft job description to incoming Deputy Minister Robert McLeod and Birgit Ballantyne. Two months later in December, 1999, McLeod notified RWED staff that he was creating a “function” called “Industrial Initiatives” led by Ms. Robinson who would report to him directly. It said “Ms. Robinson will continue her present role of leading the development of strategic plans, the negotiation and implementation of socioeconomic agreements and promoting the GNWT socioeconomic position during project approvals”.

### Ms. Robinson’s Self-evaluation, 2001

Ms. Robinson had at least one discussion with Mr. McLeod about revising her job description and re-evaluating it during the period December 1999 through April, 2001 but nothing was done. On the latter date, she sent Ms. Ballantyne and Mr. McLeod what she described as a “realistic and fair evaluation” of the Industrial Initiatives Consultant position. She received no response from Mr. McLeod and did not follow-up with him believing that he would answer her when he was ready to do so.

### The Unofficial Job Evaluation, 2002

Despite the lack of response from the deputy minister, Ms. Robinson continued to talk to Ms. Ballantyne to explore a new job description and new evaluation of her job. In January of 2002 she drafted two new job descriptions, one entitled “Director, Industrial Initiatives” and the other “Consultant, Industrial Benefits”. She met with Ms. Ballantyne and the manager of job evaluations, Colin Gordon. He felt that Ms. Robinson’s self-evaluation was not objective and unrealistically high. It was higher than any existing senior management position.

Gordon offered suggestions for revising the job descriptions. Unknown to Ms. Robinson at the time, he later did an unofficial evaluation of one of them rating it at 677 points, pay range 22, which was consistent with an excluded (non-union) or senior management position. The unofficial evaluation was given to Ms. Ballantyne and it is likely that she gave a copy to Deputy Minister McLeod. Neither took any action to have a new job description signed by Ms. Robinson and submitted for evaluation.

### First Perceptions of Unequal Treatment

During 2002 Ms. Robinson was beginning to feel that men in RWED were treated differently than her. She was aware that a male senior manager (an Assistant Deputy Minister or “ADM”) was hired to look after pipeline development in the Mackenzie Valley: the Mackenzie Valley Pipeline Office (“MVPO”). She learned that he was given a current job description. She also learned that the MVPO hired a man into a position

with no job description at all. The man, she heard, was able to negotiate his own salary. He was “direct appointed” to a senior position in the MVPO.

The man gave testimony. He was a 5 year employee of the GNWT when he heard that RWED was looking for someone to fill an as yet unadvertised position. He had a discussion with the manager in the MVPO, negotiated a salary and began working as a casual in the position of “Program Development and Planning Officer” without having a job description. Eventually he was offered, and accepted, a direct appointment to the position of “Senior Advisor”. There was a job description in place at the time of his appointment.

#### Ms. Robinson’s Transfer Agreement, 2002

In August of 2002 Ms. Robinson entered into an Interdepartmental Transfer Agreement (“ITA”) to work as the director of policy and planning for the Department of Education, Culture and Employment (“ECE”) for 16 months. The internal transfer of employees between departments is common practice used to fill vacancies and increase the skills, knowledge and experience of transferring employees. RWED gave a “guarantee” that when Ms. Robinson returned to her former position as Consultant her salary level would be at least the same. The ITA was consummated by a written agreement summarizing her duties and functions and indicating that her job was “under review”.

#### Clay Buchanan’s Transfer Agreement

In September of 2002, Clay Buchanan, the Director of Community Financial Services in the department of Municipal and Community Affairs (“MACA”), replaced Ms. Robinson by way of an ITA. He reported to Deputy Minister McLeod. His senior management salary was maintained while he was on transfer. His salary was “guaranteed” upon completion of the term of the ITA.

During Mr. Buchanan’s tenure, the budget of Industrial Initiatives increased and, for the first time, Industrial Initiatives appeared a separate organizational unit on the departmental Organization Chart.

#### Mr. Vician becomes the Deputy Minister, 2003

Peter Vician arrived at RWED in the fall of 2003 after serving 4 years as Deputy Minister at the Department of Transportation. He was briefed by Deputy Minister McLeod and learned that, among other ongoing operational issues, he had to negotiate three agreements including a socio economic agreement, a “rough diamond” agreement and an environmental assessment agreement. He was told he had until March 2004 to accomplish all three.

A university graduate and a veteran of 21 years with the GNWT, Mr. Vician was also tasked with restructuring RWED into two new departments. This meant that all aspects of administrative infrastructure would have to be examined and reorganized. The target for completion of the restructuring was the spring of 2005. This task was in addition to the usual work of overseeing existing programs, divisions, projects and services. The restructuring posed significant challenges.

RWED was a large department with as many as 400 employees. Its budget topped \$120M. It operated in 5 regions across the north. The breadth of its mandate is evident from a 2003 telephone Directory which lists the following administrative units:

- Directorate
- Mackenzie Valley Development Planning
- Business Development Investment Corporation
- Energy Secretariat
- Compliance Division
- Industrial Initiatives
- Corporate services Finance & Administration
- Informatics
- Human Resources
- Policy, Legislation and Communications
- Environmental Protection
- Diamond Projects
- Wildlife and Fisheries
- Minerals, Oil and Gas
- C.S. Lord Northern Geoscience Centre
- Parks and Tourism
- Investment & Economic Analysis
- The BIP Monitoring Office
- Canada/NWT Business Service Centre
- NWT Business Credit Corporation
- NWT Development Corporation
- Forest Management (two branches)

Mr. Vician enlisted the help of senior managers, including former and current assistant deputy ministers to work on the restructuring project. He relied on existing internal support and services, particularly in the area of Human Resources which was still managed by Ms. Ballantyne.

Ms. Ballantyne and her staff assisted senior managers with the writing and evaluation of jobs in the new departments. Mr. Vician priority was to deal with the jobs of senior management first because they were in charge of the new organizational units. Once their roles were defined, he planned to have each unit's manager complete the organization of each unit including conducting any necessary reviews of job descriptions and evaluations. There were about 30 senior managers in the department at the time,



including two assistant deputy ministers. When those descriptions were rewritten they were submitted to the *Hay* evaluation committee.

#### Ms. Archibald Replaces Mr. Buchanan

Deborah Archibald, a senior mining advisor in RWED, came to Industrial Initiatives in October 2002 as an analyst. When Mr. Buchanan's ITA expired, Ms. Archibald acted as the Consultant for four months. She provided research, analysis and advice to the Deputy Minister who was then working on the environmental impact assessment at Snap Lake diamond mine and developing a protocol agreement for the Mackenzie Gas Project ("MGP") proponents.

Upon the completion of her term in January, 2004, Mr. Vician created a new senior management position, the Associate Director of Minerals, Oil and Gas in anticipation of the Director's retirement. When the retirement happened, Ms. Archibald became acting Director and then Mr. Vician offered her the position as Director.

#### Ms. Robinson's Return

Ms. Robinson returned to RWED in January of 2004. She met with Deputy Minister Vician on at least one occasion that month and the topic of discussion was her job description. She discussed her attempts to rewrite the position before she left on transfer assignment. He was in the midst of the restructuring project and negotiating agreements. Dealing with Ms. Robinson's job description was not a priority. He asked Ms. Robinson to prepare a job description and he asked Birgit Ballantyne to deal with it.

In June of 2004 Ms. Robinson submitted a draft job description to Ms. Ballantyne. She discussed it with Mr. Vician who was not prepared to sign it because the job descriptions and valuations of senior management remained unfinished. Ms. Ballantyne did not tell Ms. Robinson what Mr. Vician said and the issue of a new job description did not come up again until the spring of 2005 when Ms. Robinson asked Mr. Vician about it. He replied that he would leave it for the newly created position of Assistant Deputy Minister of Strategic Initiatives (the "ADMSI") to deal with. Ms. Robinson did not ask Mr. Vician for a new job description again.

#### The Director of Diamond Projects

One of the existing positions that was re-evaluated during the departmental restructuring was that of the Director of Diamond Projects (the "DDP"). It was created by former Deputy Minister McLeod in 1998 to develop policies, strategies and plans for the (then) new diamond industry. A male senior manager was hired. The position was subsumed by the Minerals, Oil and Gas division by April, 2005.

## The Director, Planning and Coordination, Mackenzie Valley Pipeline Office

In September, 2004, Mr. Vician received direction from the Cabinet to create a “division” to deal with all matters relating to the development of a Mackenzie Valley pipeline. The division was to be headed by a senior manager responsible for the coordination of NWT and federal planning for the development. A male senior manager was hired.

### Perceived Changes to Ms. Robinson’s Job

Mr. Vician was directed by cabinet to take the lead on coordinating and organizing governmental processes relating to the Mackenzie Gas Project, including the negotiation of an SEA. He took the lead in negotiations as his predecessors had. He also took the lead on the De Beer SEA. He viewed the role of the Consultant as a specialist, an expert and the primary project support person for negotiating SEA’s and for monitoring them post-agreement.

Ms. Robinson felt that her job function as the “lead negotiator” of SEA’s was taken away by Mr. Vician and she felt “demoted”. Nonetheless she continued to provide support by doing research, analysis and compiling information for the Deputy Minister and by participating in committee work with departmental and inter-departmental teams and representatives of business and industry.

### Doctor Hassan’s Email

The MVPO was under the overall direction and management of a female Assistant Deputy Minister. She, with the approval of Mr. Vician, asked Dr. Masood Hassan to transfer via ITA to RWED from his position as Director at the Department of Transportation and he did so in March of 2004. He became the Senior Advisor in the MVPO and was paid his (former) senior management salary.

Dr. Hassan has a PhD in Transportation Engineering and a Master of Science degree. He had a distinguished public service career in Saskatchewan and the NWT. His role at the MVPO was to ensure that the GNWT’s efforts in relation to the proposed Mackenzie Valley pipeline were coordinated among departments and agencies of government. He sat on several departmental and inter-departmental committees with the Ms. Robinson. Other women also sat on those committees. He believed that all of the committee members were senior management although some, including Ms. Robinson, were not. He was shocked to learn that Ms. Robinson was not paid as a senior manager. In his opinion her pay was “ridiculously low”. He based this on his experience as a senior manager in the NWT and Saskatchewan.

During his interdepartmental committee work he heard Ms. Robinson referred to as a “difficult woman”. His own Deputy Minister (a female) did not speak well of Ms.

Robinson. She attributed a “difficult woman” comment to Mr. Vician. The comment was also made by other male committee members. On one occasion, following a committee meeting at which Ms. Robinson had been particularly forceful in her submission, Dr. Hassan heard the word “women” or “woman” used in a disparaging manner. He thought it came from the end of the table where Mr. Vician and another senior manager were seated. At another meeting at which Ms. Robinson was absent, he heard a man say “it must be that time of the month” followed by “snickering”. That “atmosphere” showed up from time to time in meetings and discussions among men. While he could not attribute any disparaging comments to Mr. Vician specifically, he recalled him showing “frustration” at meetings with Ms. Robinson evidenced by his facial expressions and by shrugging his shoulders. Mr. Vician also showed signs of being frustrated with other people, male and female, in committee meetings.

In October of 2004, Dr. Hassan sent an email to Mr. Vician suggesting that Ms. Robinson’s job was under-classified and underpaid. He stated that a reclassification was “in the interest of equity” and the department’s ability to attract and retain competent employees.

Mr. Vician was taken aback by the email. While he respected Dr. Hassan’s opinion generally, he felt Dr. Hassan had overstepped his role by sending an email advocating a pay raise for an employee who he did not directly supervise and whose work and responsibilities would not be familiar to him. He ignored the email and continued to focus on the task of restructuring the department and dealing with existing senior management jobs.

Dr. Hassan left the department in August 2005 without talking to Mr. Vician about his email or any of the disparaging comments made by men during committee meetings.

#### RWED is Split

In April of 2005, RWED was split into two departments, Industry, Tourism and Investment (“ITI”) and Environment and Natural Resources (“ENR”). Mr. Vician became the Deputy Minister of ITI.

One of the consequences of the split was a review of signing authorities. Ms. Robinson’s signing authority was reduced without her knowledge.

Around the same time, human resources support moved from within each department to a new, centralized department.

#### Director, Energy Planning

In January, 2005, Deputy Minister Vician received direction from the Cabinet to create the Director of Energy Planning (“DEP”) position. The purpose of the position was to

“lead the development of GNWT policies which will result in increased use of domestic energy resources and reductions in NWT energy supply costs”. A male director was hired.

#### Jim Winsor’s Transfer Agreement

To help with the day-to-day implementation of the departmental restructuring, ITI entered into an ITA with the Department of Transportation to obtain the services of Jim Winsor. Winsor was a senior manager. Mr. Vician chose Mr. Winsor because he had worked for him in the past. The intention was to have Mr. Winsor work with him almost daily on the departmental restructuring project. He transferred to ITI in May of 2005 as an “Executive Director” and, like Clay Buchanan, received senior management pay based on the salary he was earning in his former department. He worked without the benefit of any job description. His former job was not “guaranteed” because he intended to retire at the conclusion of the term of the Transfer Agreement, which he did.

#### The ADM of Strategic Initiatives

During the restructuring process, Mr. Vician identified the need for a senior management position that he called the “Assistant Deputy Minister of Strategic Initiatives” (“ADMSI”). The position was created in the spring of 2005. Strategic Initiatives are activities that are intended to achieve goals or objectives within a specific period of time. SEA’s are one such activity.

Mr. Vician decided that the Consultant position would report to the ADMSI when that position was filled. The task of dealing with the Consultant job description would then fall on the ADMSI. Vician told Ms. Robinson that shortly after the position was created. However the position was not filled. As early as 2006, Vician decided that the position was not financially feasible. He did not, however, deal with Ms. Robinson’s request for a new job description and evaluation. The ADMSI remained unstaffed until 2008 when it was deleted entirely from the organization.

#### **Post-complaint Findings of Fact**

##### The New Job Description and Evaluation, c. 2007

On April 13, 2006, Ms. Robinson filed a human rights complaint with the NWT Human Rights Commission alleging discrimination on the basis of gender. In response, the GNWT conducted a review of her 1998 job description. A “new” job description was approved by Mr. Vician and signed by Ms. Robinson almost one year later.

The 2007 job description refers to the incumbent being “an expert” in relation to industrial benefits. It says the incumbent is to “support the development of a GNWT negotiating position” and “contribute[s] to the development of strategic plans. Under

the heading "Scope", it mentions several projects which have or will have SEA's including the MGP. However:

"The position does not have sole responsibility for the strategic planning and development...the position leads a collaborated effort, it does not have the freedom to act as the Deputy Minister of the department makes the final decisions on all matters."

The 2007 *Hay* evaluation committee found the job comparable to other "subject matter experts".

"It does not have subordinate managers or significant number of subordinate senior professional staff. It is not accountable for program planning or deliver...This position is a technical expert that provides advice and recommendations"

The net result was a rating of 585 points and an increase in pay levels from 18 to 20. The pay was made retroactive to January 1, 2002, excluding the period during which Ms. Robinson was on transfer to ECE. Despite the raise in pay, Ms. Robinson once again felt "demoted" by the outcome.

## Budgets

During the fiscal years 05-06 thru 09-10, there were reductions in Industrial Initiatives' budget. In 05-06 the reduction was \$206,000.00; in 06-07, \$409,000.00; in 07-08, \$119,000.00; in 08-09, \$26,000.00; in 09-10, \$4,000.00. In 10-11, the budget increased by \$133,000.00. Other units of activity within the department also had budget reductions but none had a string of yearly reductions like Industrial Initiatives.

The Industrial Initiatives budget reductions related to projects that were anticipated to have a beginning and an end. The budget allocations were intended to expire or "sunset" as the project lives wound down and ended. Other reductions occurred at the commencement of a new government regime or to meet government austerity policies.

## Role of the Consultant

Ms. Robinson continued to play the role of providing information, analysis and other support to the Deputy Minister in the negotiation of SEA's, including the MGP.

Ms. Robinson participated in Joint Review Panel ("JRP") hearings on two occasions and had answered technical questions regarding SEA's. On those occasions, Mr. Vician was not present. In May of 2007 – a month after signing-off her new job description - Ms. Robinson appeared with Mr. Vician and five other GNWT employees at a televised JRP hearing. Before the hearing, the Ms. Robinson asked Mr. Vician if there was anything she needed to know before the hearing began. The answer was "no".

When technical questions were asked about SEA's and a report that Industrial Initiatives prepared yearly, Mr. Vician deferred to the Assistant Deputy Minister of Strategic Planning, rather than to Ms. Robinson. Ms. Robinson felt ignored, humiliated and insulted especially since the hearing was televised.

After the meeting Ms. Robinson wrote a memo to Mr. Vician expressing her dismay at not being able to fulfill her role at the JRP meeting. She criticized Mr. Vician for treating the efforts of Industrial Initiatives "cavalierly" and for allowing "others to assume credit for [Industrial Initiatives'] success".

Mr. Vician's response to the memo was to cancel a meeting with her and advise that he would be "conveying directions on the MGP SEA in writing". He viewed her memo "as a complaint of [his] management of the hearing" which was in his "sole discretion". He realized that she was offended but he did not agree with the memo.

#### Opportunities for Training and Advancement

Post complaint, Ms. Robinson has continued to receive opportunities to gain senior management experience. She acted as Regional Superintendent for ITI in 2007 and 2009. She entered into an ITA to act as ITI's Director of Policy and Planning in 2008.

#### **C. Issues for Decision**

- 1. Did the GNWT discriminate against the Ms. Robinson on the basis of gender by paying her at a rate less than that of male employees who performed the same or substantially similar work?**
- 2. If so, what remedy is appropriate in the circumstances?**
- 3. Did the GNWT retaliate against the Ms. Robinson?**
- 4. If so, what remedy is appropriate in the circumstances?**

#### **D. Analysis**

**Issue 1: Did the GNWT discriminate against the Ms. Robinson on the basis of gender by paying her at a rate less than that of male employees who performed the same or substantially similar work?**

##### a. Credibility

In assessing the believability of witness testimony, I considered whether testimony was consistent with the whole of the evidence and whether it was reliable. Generally I did

not find significant conflicts between the testimony of Ms. Robinson and Respondent's witnesses although, for the reasons set out below, I did not rely on the opinion evidence of witnesses.

b. Burdens of Proof

Discrimination is "a distinction, whether intentional or not but based on [a ground prohibited under section 5(1) of the Act] ...which has the effect of imposing burdens, obligations or disadvantages on [an individual which are] ...not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society" (*Andrews v. Law Society of B.C.* [1989] 1 S.C.R. 143).

To prove discrimination, Ms. Robinson must prove it is more likely than not that, because of her gender, she was paid less than men working in the same "establishment" who performed the same or substantially similar work as her. Consequently Ms. Robinson's task is inherently comparative: she must show the men she has chosen as Comparators, or at least one of them, (a) performed the same or substantially similar work and (b) were paid more than her.

Ms. Robinson does not have to prove the employer intended to discriminate against her or that gender was the only or the main reason she suffered differential treatment. It will be sufficient if Ms. Robinson proves that gender was a factor in the denial of equal treatment.

If I find the evidence substantiates her allegations and is believable, the GNWT will have to demonstrate there is a reasonable explanation for the discriminatory conduct that is not a pretext for what occurred [*Ontario (Human Rights Commission) v. Simpsons-Sears Ltd.* [1985] 2 S.C.R. 536].

In this analysis I will refer to Ms. Robinson's job as the "Consultant position" and to the three positions she chose to compare with her job as the "Comparators" or, specifically, by their titles or abbreviations of them.

c. "Same establishment" and "Rate of Pay"

There is no dispute between the parties that the Comparators are employed in the same establishment. There is no dispute that the Comparators are "paid" more than her.

d. "Same or Substantially Similar"

In determining whether the work is the same or substantially similar, it is job content, not classifications, point values or job title that will be the determining factor: *Harmatiuk v. Pasqua Hospital* (1982), 4 C.H.R.R. D/1177 at 1180 (Sask. Comm.Inq.); aff'd (1983), 4 C.H.R.R. D/1650 (Sask. Q.B.); aff'd (1987), 8 C.H.R.R. D/4242 (Sask. C.A.).

Analyzing job content requires an analysis of “skill, effort and responsibility...[and whether the work is] performed under the same or substantially the same working conditions” (section 9(5) of the Act). Further, “similar or substantially similar” does not mean the work must be identical. Differences in work that do not affect the “core duties” of the job will not be determinative. I adopt the following description of core duties:

“... those central to the job, necessary to achieve the purposes for which the position was created and which, if the incumbent is unable to perform them, would alter the nature of the position. They are also the duties which are compensable from the perspective of the employer. They form the basis of the job” (*Reid (No.5)*, 2000 BCHRT 30); *Reid v. Vancouver Police Board*, 2005 BCCA 418).

If my analysis of skill, effort, responsibility and working conditions required for the Comparitors shows that they are the same or substantially similar to those of the Consultant position, I will then consider the GNWT’s explanation.

e. Definitions: “Skill, Effort and Responsibility”

Courts and human rights tribunals continue to adopt the following definitions from *Department of Labour v. University of Regina* (1975), unreported (Sask. H.R.Comm.); *aff’d* (1975) 62 D.L.R. (3d) 717 Sask. Q.B.):

“Skill” is “a learned ability, involving consideration of such factors as experience, training, education and ability...”

“Effort” includes “the measurement of the quality and quantity of physical or mental exertion needed for the performance of a job...”

“Responsibility” is “the measurement of the importance of the assigned duties and the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation, and includes activities such as supervision of other employees, handling sums of money, responsibilities for safety of persons, premises, health etc.”

These definitions have been used by investigators, tribunals and courts to determine whether work is “substantially the same” or “similar”. (e.g. *Canada Post Corp. v. Public Service Alliance of Canada*, 2008 FC 223, [2008] 4 FCR 648; *Public Service Alliance of Canada v. Canada Post Corporation*, 2005 CHRT 39). I adopt those definitions for the purpose of deciding this case rather than those set out in the *1986 Equal Wages Guidelines* referred to me by Ms. Robinson. The latter are meant to apply where there are allegations of gender discrimination resulting in unequal pay for work of equal value.



f. Testimony and other Evidence

Neither Ms. Robinson nor the Respondent chose to call the incumbents in the Comparators that still exist, i.e. the Director, Planning and Coordination, Mackenzie Valley Pipeline Office and the Director, Energy Planning. For the most part I have to rely on documentary evidence especially job descriptions and evaluations as well as the testimony of witnesses who, with a few obvious exceptions, had little personal involvement with any of the positions, for example Ms. Robinson, former Deputy Minister Handley and incumbent Deputy Minister Vician.

Both parties called witnesses who offered opinions comparing Ms. Robinson's work with the Comparators and other positions. Those witnesses had varying degrees of experience in writing and evaluating job descriptions but none were qualified as experts at the hearing.

The most experienced job evaluator among the opinion witnesses was a compensation consultant employed by the company that developed and owns the *Hay* method. He provides training and advice to various governments, including the GNWT. His is not a "neutral" perspective. Similarly, the other witnesses who expressed comparative opinions either worked for or continue to work for the GNWT.

For the latter reasons, I give the opinion evidence little weight. As the *Harmatiuk* case (infra) suggests, I must take an objective view of the job content myself to decide whether the work is substantially similar and not rely on classifications, points and titles.

On the other hand, I did hear testimony about the work performed by Ms. Robinson and, to a lesser extent, the Comparators; also, how Ms. Robinson was treated, all of which informs this decision.

Besides the testimony of witnesses, there were 361 documentary exhibits filed at the hearing. In my view the most important exhibits are those that speak to the work of Ms. Robinson and the Comparators and how Ms. Robinson's efforts to get a new job description and evaluation were handled by the GNWT. I have reminded myself that Ms. Robinson's complaint is not about systemic discrimination arising from hiring and job evaluation policies practices. Her case is about how she was treated by successive deputy ministers of government, namely Michael McLeod and Peter Vician. Having said that, I have reviewed and considered *all* of the evidence led by both parties, testimonial and documentary, in my analysis and decision.

g. Ms. Robinson's Work

I have no doubt that Ms. Robinson sat on, and co-chaired, departmental and inter-departmental committees, including committees of Deputy Ministers and Senior Managers and committees with a mixture of senior and line managers and subject

experts. Nor that she prepared detailed written reports including reports that were used by the Cabinet. She prepared presentations and attended community meetings as the GNWT's representative and participated in SEA negotiations with proponents. She and her staff performed research on a wide range of topics relating to SEA's resulting in expert advice to the Deputy Ministers and other divisions and departments. Her advice and support to her Deputy Ministers was critical for their effective participation in, and the successful conclusion of, the negotiation of SEA's at the highest levels of government, business and industry.

Through hers and her staff's considerable capacity for work and learning, she developed an expertise that contributed to the success of several SEA's and informed the government in the planning, development and monitoring of economic projects. She was seen as an expert on SEA's by her colleagues I have no doubt that the work done by Industrial Initiatives informed the GNWT's strategies and policy development relating to SEA's.

The socioeconomic impact of industrial development ultimately affects all territorial residents. If soundly developed and implemented, SEA's mitigate negative impacts and promote positive social and economic impacts on people and communities. For example, one exhibit showed the impact of a diamond mines between 1996 and 2009 included \$7 billion worth of goods and services and 14,000 person years of northern resident employment.

In my view the core duties of Ms. Robinson's work are:

By using highly specialized research, analytical and communication skills provide support, recommendations and advice to senior government officials, i.e. deputy ministers, ministers and cabinet, for the purpose of negotiating and maintaining SEA's that optimize benefits and minimize socioeconomic risks to residents of the NWT.

In my view all of the other work that Ms. Robinson does as the Consultant and all of the output by her staff supports these core duties.

#### h. The Director Diamond Projects Work

The "DDP" job description requires the development of a significantly broad range of expertise in a unique, international industry that has territory-wide, employment and revenue implications. The range of expertise includes an expert understanding of applicable Federal, territorial and international legislation and regulation, the development of diamond mines, the production of diamonds, the development of secondary industries relating to diamond production, and the marketing of diamonds and their respective impacts on a wide range of policies and programs of the GNWT, including SEA's. While the DDP is accountable to a Deputy Minister, she or he is "the

principal Departmental link to national and international diamond dealers, producers, marketers and manufacturers.”

In my view the core duties of the DDP’s work are:

To develop expertise on all aspects of the diamond mining industry, from project development thru to the marketing of diamonds for the purpose of establishing and maintaining an economically viable diamond industry in the NWT.

All other duties of the position arise from or are subsumed by the latter core duties.

i. Director, Energy Planning

The “DEP” position is responsible for all energy related policy development in the NWT for the purpose of increasing the use of territorial resources and reducing energy supply costs territory-wide. This includes the supply of hydroelectricity, oil and natural gas produced energy as well as alternative energy sources. The incumbent is also responsible for monitoring and reporting on continental and global energy policies and having an understanding of the oil and gas market and its fluctuations. Ultimately, the DEP’s work has broad impacts on the several boards and agencies that provide energy and set rates for all NWT residents. The DEP’s work impacts the businesses that produce or propose to produce and/or supply energy.

In my view the core duties of the DEP are:

To acquire a global range of expertise on the production and use of a variety of domestic energy resources for the purpose of creating, implementing and monitoring policies impacting the production and use of a variety of energy resources in an economical and sustainable manner.

All other duties of the position arise from or are subsumed by these core duties.

j. Director of Planning and Coordination of the MVPO

The “DPC” oversees inter-departmental policy, planning and communication services relating to the MGP. The MGP is a project with huge potential for employment and economic development, i.e. an economic value estimated at \$30 billion over twenty years. Planning involves Federal regulators, NWT communities and a variety of departments and agencies of the GNWT. The DPC evaluates GNWT policies, involves and provides expert advice to the latter stakeholders in the planning process and coordinates all development activities. The overall stated objective is “to maximize the opportunities for NWT residents”.

In my view the core duties of the DPC are:

To develop expertise on the development of the MGP and apply it by overseeing, the planning, coordinating, monitoring and evaluating of all governmental communication, practices, policies and procedures relating to the MGP for the purpose of maximizing economic impacts and minimizing negative social consequences.

All other duties arise from or are subsumed by these core duties.

k. Analysis of Core Duties

Skill

It is apparent that the Ms. Robinson and the Comparitors are “experts” in their respective domains of subject matter and activities. To put it another way, the “know-how” requirements are substantial. There are differences however. The know-how requirements for developing and monitoring SEA’s pales somewhat with those required for establishing and maintaining a viable diamond industry, for understanding the complexities involved in various means of energy production and for overseeing the government’s role with respect to the MGP. By that I do not mean that SEA’s are not complex nor do I mean that they are less important. However SEA’s dealing with the diamond industry have been the subject of research and negotiation for many years. While the evidence I heard suggested there were some changes made to them back in the 1990’s, their structures and objectives are well established. On the other hand, the learned abilities of the DDP, the DEP and the DPC are relatively new and more difficult to achieve and manage because of the wider breadth of activities and core duties.

Effort

I have no doubt that all four positions require significant mental exertion. However the quantity of mental exertion in the Comparators is greater than the Consultant position because of their wider breadth of activities and core duties.

Working Conditions

Similarly, the mental demands of the Comparitor positions are, in my view, proportionately greater than the Consultant position because of the wider breadth of activities and core duties.

## Responsibility

“Responsibility” is a measurement of the importance of the duties and the degree of accountability of each incumbent. Are there substantial similarities in importance and accountability between the Consultant position and the Comparators’?

### (a) Importance

All four positions report to senior management positions, i.e. a Deputy Minister or an Assistant Deputy Minister. All make a contribution to the social and economic well-being of the NWT. All have responsibility for several staff and there is no wide disparity in their yearly budgets.

Ms. Robinson says that the positions are of substantially similar importance.

The importance of developing, implementing and monitoring sound SEA’s is high. The health, safety and livelihoods of NWT citizens is at stake.

In my view, however, the health, safety and livelihoods of citizens is one of many important and complex issues arising from the larger, more complex activities of the Diamond Industry, Energy production and the development of the MGP. That is reflected in the core duties of the DPP, DEP and the DPC and, hence, in their evaluations as “senior managers”.

### (b) Accountability

Ms. Robinson says that the level of accountability, reflected in the reporting relationship between deputy ministers and/or assistant deputy ministers, is substantially similar between the Consultant position and the Comparitors.

Within their sphere of work, it is clear to me that all of the positions provide highly important advice and recommendations to department heads and other senior government officials that are essential to the economic development of the NWT. None of the positions has the ultimate say on planning (strategic development) or policy issues. None of them is an island of expertise. It is shared and it is sharing that makes the wheels of economic development turn in an organized, coordinated manner.

However reporting relationships are just one aspect of “accountability”. After all, the evidence was that many different positions doing many different types of work (and therefore having a wide range of pay and benefits) report to deputy and assistant ministers. So I turn to my dictionaries and see that “Accountable” means “responsible; required to account for one’s conduct” (Oxford Canadian Dictionary, 1998) and “answerable” (Merriam Webster on-line). Keeping in mind the *University of Regina* case, *infra*, it is the degree of accountability that is crucial for me to analyze, i.e. the less

answerable, the less the requirement to account, the greater overall responsibility in the position.

Ms. Robinson argued that her 1998 job description uses language like “lead the development of strategic plans” and “lead the negotiation of industrial benefits agreements” and that “to lead” suggests greater authority and independence, less accountability. Her testimony demonstrated that she attended meetings to inform and discuss the results of her project research and analysis with colleagues in various departments. Those meetings would inform strategic plans both within hers and other departments. She identified issues for negotiation, met with proponents, prepared materials for the deputy minister and, generally, provided research and analytical support for all of the members of the negotiating teams, e.g. deputy ministers and legal counsel.

I accept Mr. Handley and Mr. Vician’s testimony that they were the leaders in negotiations in the sense that they had charge of and directed the operations of negotiations. They made final decisions relating to strategic development policies. Mr. Handley described Ms. Robinson’s role as providing “advice” and “support”: “She would provide me with advice on the implications of something that we were considering putting on the table...Ms. Robinson’s role was one of coordinating a lot of this and seeking out the information I needed”. Mr. Vician described her role as having two functions “...the implementation or management of the [SEA’S] with the three diamond mines...[and] ... to assist the deputy... with negotiations of [SEA’s] with other mines”. Both descriptions, and the testimony of the Ms. Robinson herself, are consistent with what I have found to be the core duties of the Consultant, i.e. providing information, advice and support relating to SEA negotiations and monitoring.

With respect to the Comparitors, Mr. Vician stated they have a “greater degree of personal and individual responsibility...to move [their] agendas forward, work essentially independently...[They have] a wide range of personal responsibility to advance and undertake that work”.

After hearing from Mr. Handley and Mr. Vician, it is clear to me that deputy ministers and assistant deputy ministers have a wide range of activities and duties to administer, hence their responsibility to their departments, cabinet and the government is very significant. Independence of action is a necessity in the circumstances. It would make no sense for them to be running off to their ministers before taking decisive action.

Logically a similar principle will apply for other positions in government that have a wide variety of activities to administer: the greater the range of activities (sometimes called the “scope” of activities) the less direct supervision one would expect and the greater the degree of independence and accountability. I think that is what Mr. Vician alluded to in his statement about the Comparitors.

Applying the latter principle, I see significant differences in accountability between the Comparitors and the Consultant position. The core duties of the Consultant reflect a smaller range of activities than those of the Comparators. There is a broader range of activities involved in the core duties of the DDP, DEP and the DPC than in providing expert support in the negotiation and monitoring of SEA's. Hence I conclude there is a greater degree of accountability in the Comparitor positions.

#### I. Conclusion

While there are some similarities in the work of all four positions, particularly with respect to the development and use of expertise and the overall objective of working to ensure the best interests of territorial residents, there are, in my view, substantial differences between the Consultant position and the Comparitors in the required skill, effort and responsibility required to discharge core duties. The burden of proving that the work is substantially similar is not met.

#### m. Evidence of Gender Discrimination

The evidence on the whole was not sufficient to demonstrate that it was more likely than not that Ms. Robinson was discriminated against on the basis of gender.

The law requires there must be material facts from which I may infer that discrimination has occurred. Those facts may arise from credible and reliable testimony of witnesses and from documentary evidence or from both. Importantly, I may draw inferences only where the evidence supporting them makes them more probable than other possible inferences or hypotheses (B. Vizkelety, *Proving Discrimination in Canada*, Carswell, 1987, p. 142).

In this case there was undisputed evidence of other women occupying senior management jobs in the same department as Ms. Robinson. In fact the number increased during Mr. Vician's tenure. There was undisputed evidence of a massive departmental reorganization that kept the highest levels in the department, i.e. the Deputy Minister and Human Resources personnel, preoccupied for months and years. There was evidence that the structure of personnel services changed from being departmentally administered to being a self-contained department.

Both men and women were hired and evaluations were performed using processes that were not demonstrably unfair or discriminatory. The men who were hired into senior positions to assist with the reorganization fall into that category. There was nothing unusual about men and women being moved via ITA's and retaining their previous salaries. Ms. Robinson was treated the same way. When she returned to her job and discovered a larger budget, she was the beneficiary of increased funding. Also there was nothing unusual about changes being made to Ms. Robinson's spending authority,

i.e. a reduction, except that she was not notified and, as a result, was not disadvantaged by it.

The testimony of comments made about Ms. Robinson being a woman was, in my view, unreliable. The comments were made at interdepartmental meetings and the witness was unable to attribute them to anyone in particular. There was no other evidence that might lead me to conclude that Ms. Robinson was subjected to gender-based comments or that she worked in a “poisoned” workplace. There were no poor appraisals of her work. The testimony of witnesses, including a former deputy minister and the current one, was that her work was professional, soundly researched, analyzed and exceptionally thorough.

Despite having raised the issue of her job description and evaluation on numerous occasions with her Deputy Ministers over the years, she did not, at any time, raise the concern that men were being treated differently. Ms. Robinson testified that she did not do so because it was “not appropriate”. She was a union employee but did not raise it with her union representative. She filed no grievances regarding her outdated job description, classification or how she was treated in the workplace. While I appreciate that there are often circumstances that prevent an employee from speaking out in the face of discriminatory conduct, e.g. fear of retaliation, Ms. Robinson did not raise that concern in her testimony nor when given the opportunity to do so on cross-examination.

My impression is that Ms. Robinson’s efforts to have her job description rewritten and reclassified were stymied for a number of reasons unrelated to gender including lack of continuity in her own efforts due to work demands and lack of continuity arising from the complexities of departmental splitting and reorganization and the creation of a new human resources department. The burden of personal continuity does not lie solely with Ms. Robinson, of course. Her supervisors, the deputy ministers, and their human resources staff bear significant responsibility for delaying the rewriting of her job description and its evaluation. Bearing responsibility for the delay is one thing, finding that the delay was related to the gender of Ms. Robinson is another matter.

The evidence I heard in this case is insufficient to support an inference that Ms. Robinson suffered any disadvantage or was denied opportunities in her employment because of her gender. The complaint is dismissed. There is no need for me to deal with Issue 2.

### **Issue 3. Did the GNWT retaliate against the Ms. Robinson?**

#### **a. Burden of Proof**

Section 15 of the *Act* prohibits retaliation against anyone *because* a complaint is made. The word “because” means “by reason of” (Merriam Webster, 1998 ed.). Proof of



retaliation therefore requires proof of a *nexus* or connection between the filing of the complaint and conduct that causes harm to a person. Ms. Robinson must prove that the perpetrator was aware of the complaint, the action was motivated by the complaint and the action caused harm (*Virk and the CHRC and Bell Canada*, 2005 CHRT; *Walsh v. Mobil Oil Canada* (2008) 296 D.L.R. (4<sup>th</sup>) 178 (ABCA)).

b. The 2007 Job Description and Evaluation

The evidence was that the 2007 job description was prepared by Mr. Vician with the assistance of human resources staff. It was different from the 1998 job description because the job had changed over the intervening years. Evidence showed that ever since Mr. Handley's era as Deputy Minister Ms. Robinson was providing research, analysis and negotiation support for the Deputy Minister. She was the primary support person for the negotiation and implementation of SEA's. That was the case after Mr. Vician's arrival. The changes in language in the 2007 job description along with the testimony from Deputy Ministers Handley and Vician clear-up any ambiguity about what the word "lead" meant, in my view.

Ms. Robinson's position was evaluated using the *Hay* method. She did not appeal or grieve the job description or the evaluation. Although the evaluation did not find the Consultant position was a senior management, her rate of pay increased retroactive to 2002 and she received pay accordingly. I do not see any harm to Ms. Robinson resulting from the 2007 job description and evaluation processes and I do not see evidence of a motivation to cause her harm. She was not demoted, for example by assigning her a lower rank or level of pay.

c. Budget Changes

The changes to Industrial Initiatives' budget that occurred following the filing of the complaint were explained by a witness with a professional designation and many years experience as a financial manager with the GNWT. She gave a detailed explanation about the changes to the budget based on the sunseting of programs and changing governments and government policies. Her explanations were not put in doubt on cross-examination, in my view.

In any case it seems to me incredible to suggest that a Deputy Minister who is given the responsibility to deal with projects that have enormous impacts on the social and economic well-being of the entire NWT population and whose personal success in carrying out the department's mandate is dependent upon the resources of the people in Industrial Initiatives, would or even could (considering the budget requires approval at the highest levels of government and the SEA process involves so many participants) tinker with or hinder Industrial Initiatives' budget for the purpose of retaliating.

I do not find any connection or nexus between the budget changes and the filing of the complaint and, in any event, Ms. Robinson did not adduce evidence that would lead me to believe that she was harmed, lost opportunities or suffered disadvantage by those changes.

d. The Joint Review Panel Hearing

A Joint Review Panel (“JRP”) hearing took place in May of 2007, one year after Ms. Robinson filed her complaint. She attended along with five other departmental members. She attended two other JRP hearing in the past, none with Mr. Vician in attendance. In this case Mr. Vician was the spokesperson for ITI. He managed ITI’s presentation.

Ms. Robinson’s version of events at the hearing is Mr. Vician did not refer to her several JRP questions directly related to her expertise and work on SEA’s. Instead he unexpectedly and without prior or any explanation referred those questions to the Assistant Deputy Minister of Strategic Planning (the “ADM”). She felt insulted and embarrassed.

Mr. Vician’s version of events is that he did not call upon Ms. Robinson to answer questions because “nothing emerged ... from [his] point of view...that [he] could not handle as a response... it never... came to that point that there was a specific question that [he]...couldn’t answer directly”.

However the transcript of the JRP hearing demonstrates that there were several questions relating to SEA’s, including questions about the annual report prepared by Industrial Initiatives, that Mr. Vician referred to the ADM, or at least allowed the ADM, to answer. It is clear that Mr. Vician did not answer those questions and he did not call on Ms. Robinson at all.

While Mr. Vician did not have the transcript shown to him in evidence (and he was not cross-examined on it by Ms. Robinson), he was shown the letter Ms. Robinson sent a week later which sets out ten (10) areas of questioning at the JRP that were within her field of expertise. When shown that letter Mr. Vician’s response was that while he realized Ms. Robinson was “offended and perhaps slighted” by his “management of the hearing,” that was in his “sole discretion” and he did not agree “with much” of what she had to say in the letter.

The day after receiving Ms. Robinson’s letter, Mr. Vician cancelled a meeting with her and had his secretary send an email advising that “he will be conveying directions on [the] MGP SEA implementation in writing”. According to Ms. Robinson, documentary evidence (emails) demonstrate that responsibility for the implementation of the MGP SEA was given to the Director of the Mackenzie Valley Pipeline Office a year later.

Ms. Robinson suggests that what happened in the JRP hearing and afterwards, i.e. the supposed transfer of responsibility for the implementation of the MGP to the Director of the Mackenzie Valley Pipeline Office, also amounts to retaliation.

To agree with Ms. Robinson, I must find a connection between what took place at the JRP hearing and her human rights complaint. I have no difficulty finding that Mr. Vician was aware of the human rights complaint and I have no difficulty finding that what took place caused the Complaint serious emotional harm. Mr. Vician recognized that and said in his testimony he knew, at least after reading her letter, she was offended. Ms. Robinson was hurt enough that she took the unprecedented step of writing a letter to the Deputy Minister criticizing the way he managed the hearing.

She says that during preparation for the hearing (about which I heard few details), it might have been her intuition that led her to ask Mr. Vician if there was anything she should know or if anything was “changing”. She testified that Mr. Vician said “no” to both.

Is there an explanation that prevents me from drawing an inference that his actions at and following the JRP hearing demonstrate an intention to retaliate?

Ms. Robinson filed her complaint in April of 2006, more than a year before the JRP hearing. I have already found the other allegations of retaliation, the evaluation and the budget changes, were not retaliatory.

The JRP meeting took place two months after Ms. Robinson signed-off her new job description. It is difficult for me to infer a nexus between that event and what happened at the JRP hearing in the absence of any other evidence about changes in Mr. Vician’s attitude toward Ms. Robinson before the hearing.

The transcript of the JRP hearing shows that after making introductory statements Mr. Vician invited the JRP to ask questions of the “GNWT panel”. Ms. Robinson, who had attended before the JRP in the past, was not asked any questions. Mr. Vician answered many questions during the ensuing 57 pages of the transcript which is consistent with his testimony that he was quite capable of handling the questions from the JRP. Then Mr. Vician referred a question to the Assistant Deputy Minister of Strategic Planning and the JRP member and the ADM engaged in a to and fro for about 13 pages.

The evidence I heard from many witnesses, including Ms. Robinson, is that the Deputy Minister is the leader of all things departmental including meetings. I heard testimony that Mr. Vician’s approach was no exception. He was in charge of meetings he attended and he was the spokesperson for the department in meetings with other departments and agencies. There were exceptions but those were instances of delegation by him. The May 2007 JRP hearing was not such an exception. So he was the spokesperson, he

managed the meeting and, from the transcript, appears to have made the decision to refer a question to the ADM “on the fly”.

While it might have seemed unusual to Ms. Robinson for the ADM to be answering questions that she would expect to answer, it was her first JRP hearing with Mr. Vician. It is apparent from her testimony about asking questions of him during preparation for the hearing that she did not know what to expect from him.

The fact that the ADM spoke about matters that were within her area of understanding does not lead me to believe that Mr. Vician planned to keep her from participating in the discussion or was trying to embarrass or insult her as a result of her human rights complaint. It seems to me if he wanted to do that, he would not have permitted her a place at on the GNWT panel in the first place. Ms. Robinson was there because of her expertise and because, if a JRP member wished to ask her questions or, presumably (as Mr. Vician’s testimony implies) if Mr. Vician encountered questions that he could not answer, she would be called upon to do so.

As for the allegation that the MGP SEA implementation was given to the Director of the Mackenzie Valley Pipeline Office, Mr. Vician was not cross-examined on that point. Said Director, I was told, is still administering that office but neither party called him to give evidence. There is insufficient evidence of that allegation for me to decide whether (a) it actually happened and (b) whether it happened for reasons connected to the filing of Ms. Robinson’s human rights complaint.

Conclusion:

I find that retaliation has not been proven and I dismiss the complaint. There is no need for me to deal with Issue 4.

If the parties have any outstanding matters to address they may contact the Adjudication Panel office to arrange a teleconference.

Dated this 6<sup>st</sup> day of July, 2012



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James R. Posynick, Adjudicator