**MANITOBA HUMAN RIGHTS BOARD OF ADJUDICATION**

Interim Decision

**BETWEEN:**

**DANIEL LEONHARDT**

Complainant,

**-and-**

**GOVERNMENT OF MANITOBA**

Respondent,

**Appearances:**

Daniel Leonhardt, in person

Scott Hoeppner & Kristin Kersey, counsel for the Respondent

Isha Khan, counsel for the Manitoba Human Rights Commission

**DAN MANNING, Adjudicator:**

## I. INTRODUCTION

1. The Complainant, Mr. Leonhardt has made a motion for my recusal on what he alleges is either actual bias, or a reasonable apprehension of bias against him. The issue was first raised on 17 January 2017 during a pre-hearing teleconference ("teleconference"). I heard submissions on 3 February 2017 and all parties have provided me with written submissions. This is my decision.

*Background*

2. I was designated as an adjudicator by the Chief Adjudicator on 28 April 2016. I contacted all the parties in early May 2016 indicating that I wanted to convene a teleconference.

3. In July 2016 a series of emails were exchanged between all parties. It was agreed that: the hearing would commence on 23 January 2017 and last three days; documents would be exchanged by the end of September 2016; and a witness list would be exchanged by the end of November 2016.

4. On 25 October 2016 I emailed all parties to confirm whether the matter was still proceeding and if so whether a teleconference would be required.

5. On 20 December 2016 the Commission sent an email to all parties requesting a teleconference. In that email counsel for the Commission indicated that, "we are, however, still waiting for confirmation from the Respondent as to whom they will be calling as witness. We would appreciate your firm direction on this point as the Commission may request subpoenas with respect to a number of Respondent employees who will be key to speak to a number of the documents put before you." (Appendix I, email #3)

*January 3, 2017 teleconference (#1)*

6. The first teleconference was scheduled for 3 January 2017. The Respondent, Mr. Leonhardt, did not attend. I was advised at the teleconference by counsel for Commission, Ms. Khan, that Mr. Leonhardt was aware of the matter and had consented to the teleconference proceeding in his absence. The hearing

was anticipated to proceed on the hearing dates and no request for subpoenas were made.

7. On 12 January 2017, 11 days before the hearing, Mr. Leonhardt sent me an email requesting assistance with subpoenaing witnesses to which I responded. (Appendix I, emails #4-#13)

*January 17, 2017 teleconference (#2)*

8. On 17 January 2017 at 9:30 a.m. a second teleconference was convened. It was apparent that there had been a recent divergence in understanding between the Commission and the Complainant as to which witnesses were required. The Commission intended to call only the Complainant in support of their case. The Complainant sought to examine seven, none of whom were under subpoena. (Appendix I, email #11) He did not know the whereabouts of at least one of them.

9. I suggested to Mr. Leonhardt that he could request an adjournment to allow him time to secure his witnesses. The alternative would be that he might have to proceed to the hearing without his witnesses present because it was unrealistic to have subpoenas sent out and served given the imminence of the hearing. The Complainant and the Respondent were not opposed to an adjournment. Counsel for the Respondent, Mr. Hoeppner indicated that should the Respondent be found to have contravened *The Human Rights Code*, any remedial order under s.43(2) should take into consideration the adjournment request by the Complainant.

10. Mr. Leonhardt could not decide whether to request an adjournment. Mr. Leonhardt asked to have the teleconference adjourned for him to decide.

11. Mr. Hoeppner indicated that he had scheduled meetings with his witnesses starting the next day and would be working towards preparing for the hearing all week. He was concerned about inconveniencing witnesses and incurring unnecessary costs to his client in the shadow of an inevitable adjournment.

12. I advised Mr. Leonhardt that given the circumstances he would have to make the decision today and agreed to reconvene at 2 p.m. for him to decide.

13. Mr. Leonhardt did not participate in the 2 p.m. teleconference and further emails were exchanged. Mr. Leonhardt indicated that he would be seeking a

new adjudicator because he believed I would not conduct the hearing fairly. (see Appendix I, emails #14-#17)

*January 18, 2017 teleconference (#3)*

14. On 18 January 2017, a third pretrial teleconference was convened. The Commission sought an adjournment of the hearing and I agreed to the adjournment given the circumstances including the breakdown in understanding between Mr. Leonhardt and Ms. Khan with respect to which witnesses were necessary. The hearing was set for three days commencing 3 October 2017. A motion date for recusal was set for 3 February 2017 to hear argument.

15. On 3 February 2017 I heard oral argument on the issue of recusal. At the conclusion of the hearing I invited Mr. Leonhardt the opportunity to respond to the submissions of the Respondent and the Commission by way of written submission, which he did on 12 February 2017 which I have attached to this decision as Appendix II.

## II. **Position of the Parties**

16. The Complainant makes numerous allegations in support of his motion for recusal. In addition to the issues he raised during oral argument I have also considered his written materials. I have carefully considered all his points and have distilled his argument into four categories. They are:

    a. That I have been exposed to settlement documentation and discussions during the prehearing process such that there is either actual bias or an apprehension of bias.

    b. That I was unwilling to sign his subpoenas.

    c. That my interaction and communication with all parties, including the Complainant, reveal either actual bias or a reasonable apprehension of bias.

    d. That the cumulative effect of the above lead to a reasonable apprehension of bias.

17. The Respondent and the Commission are of the view that bias has not been made out.

## III. The Law

18. All parties agree that the governing legal principle and test has been established by the Supreme Court of Canada in *Wewaykum Indian Band v. Canada,* 2003 SCC 45 (CanLII), [2003] 2 S.C.R. 259:

> [60] In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board, supra*, at p. 394, is the reasonable apprehension of bias:
>
> … the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

19. In *R v. S. (R.D.),* 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484, the Supreme Court of Canada confirmed at paragraph 112 that there requires a real likelihood or probability of bias and that "mere suspicion" is not enough. Further, the reasonable person must also be "informed." Cory J. wrote:

> [111] … [T]he reasonable person must be an informed person, with knowledge of all the relevant circumstances, including "the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold"….
>
> [113] … Indeed an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice. …

20. Cases raised by the Complainant where bias has been found are: *Laver v. Swrjeski*, 2014 ONCA 294, *Toronto (City) v. Mangov*, 2014 ONCJ 351, and *Hazelton Lanes Inc. v. 1707590 Ontario Limited*, 2014 ONCA 793.

21. In *Laver, supra.* the respondent was a police officer and the appellant was not. The application judge stated during argument that he would have a very difficult time making a finding of credibility against a police officer because he had known the police officers previously when he was a criminal lawyer and knew them to be honest. The application judge found in favour of the respondent (police officer) and rejected the evidence of the (civilian) appellant. On appeal Feldman J wrote:

> [25] Applying the test for reasonable apprehension of bias, in my view it is clear that a reasonable observer would conclude that it was more likely than not that, consciously or unconsciously, the application judge would not impartially decide whom to believe. The application judge's comments indicate his partiality to the evidence given by police officers. Even though he gave other reasons for deciding whose evidence he believed, those reasons are tainted by his comments.

22. *Mangov, supra*, involved the appeal of a traffic conviction. The Appellant pleaded "not guilty" to a speeding infraction to which the presiding justice of the peace complained it would have been better to plead guilty. The presiding justice asked the Appellant's agent, "how many trials do I have to do for speeding before people understand?" The justice also curtailed the Appellant's cross-examination and found the Appellant guilty. Justice Nakatsuru, on appeal, decided that the comments made at the start of the trial and the related exchanges during cross-examination raised a reasonable apprehension of bias in favour of the prosecution and allowed the appeal and entered an acquittal.

23. I have also reviewed *Hazelton Lanes Inc. v. 1707590 Ontario Limited*, *supra.* and *Lloyd v. Bush*, *supra.* which were provided by the Complainant as instances were bias had been made out.

## IV. Analysis

### *A. Settlement Documents & Discussions*

24. A review of the jurisprudence establishes that the test for bias is: what would a reasonably informed person, with knowledge of the tradition of fairness of our judicial and adjudicative process, conclude? The threshold is high and the onus is on the Applicant to show bias. As Joyal J. put it in *Kalo v. Manitoba (Human Rights Commission)*, 2008 MBQB 92:

> [25] In addressing the applicable test, I note again that the onus of demonstrating bias is a high one, requiring more than surmise and conjecture. Importantly, any apprehension of bias need be a reasonable one, held by a reasonable and right-minded person, applying him or herself to the question and obtaining in that regard the required information. To achieve that "informed" status, the right-minded person requires not only information respecting the facts of a particular case, but knowledge of the tradition of integrity and impartiality underpinning our judicial system.

25. The Complainant alleges that my exposure to settlement documents and related discussions has led to a reasonable apprehension of bias.

26. My response after receiving the settlement document was to advise Mr. Leonhardt that I had not opened the attachment. (Appendix I, #1 and #2) Mr. Leonhardt alleges, "you had the email for 8 months, it's pretty reasonable to say that you had ample time and opportunity to look at it, especially after things got "ugly." (Appendix II)

27. I infer from this submission that Mr. Leonhardt is alleging that I either did read the document or that my possession of the document *per se* leads to a reasonable apprehension of bias because I had the opportunity to view the document.

28. With respect, this assertion is based on surmise and conjecture. A reasonable and informed person with knowledge of the tradition and integrity of our judicial and adjudicative system would conclude an Adjudicator would not wilfully and knowingly expose himself or herself to irrelevant, possibly prejudicial information. I wish to make clear that I have not opened the settlement document that was sent to me by Mr. Leonhardt.

29. Mr. Leonhardt complains that I have "seen many emails that include settlement and mediation discussion" but I have carefully reviewed all emails that I have received from all parties and I cannot agree with this assertion.

30. Even if I had been exposed to settlement documents and discussions I would not conclude that it would lead to a reasonable apprehension of bias. Counsel for the Commission provided me with the case of *A.C. v. Pembridge Insurance*

*Co.*, [2014] O.F.S.C.D. No.81. That case cites with approval *Allstate Insurance Co. of Canada v. Sharma*, 2009 CanLII 71001. In *Allstate* the respondent had blurted out settlement discussions during her cross-examination. The arbitrator advised Ms. Sharma that the process was difficult and suggested that she try resolving her issue with Allstate. Allstate appealed on the basis of reasonable apprehension of bias but was unsuccessful. Leitch, J. writing for a panel of three wrote at paragraph 45:

> [45] We are satisfied that there is no reasonable apprehension that Arbitrator Wilson may not act impartially. The fact that settlement information was disclosed to Arbitrator Wilson in the circumstances described above, does not raise a reasonable apprehension of bias. He assumed for the purposes of his decision on the mistrial motion that a settlement offer was disclosed because at that time there was a factual dispute as to whether that disclosure had in fact been made. He was correct in stating that disclosure of settlement information does not always mandate the declaration of a mistrial. He considered the case cited by Mr. Grossman, *Webber*, and distinguished that decision from the circumstances before him. The fact that he also referred to other decisions does not create a reasonable apprehension of bias. He carefully considered Mr. Grossman's submissions and outlined the reasoning which led to his conclusions.

*B. That I was unwilling to sign the subpoenas*

31. Mr. Leonhardt alleges bias because on 12 January 2017 he requested my assistance with subpoenas. He alleges that my response was to "not deal with his request" but instead to set up a pretrial teleconference. (Appendix II)

32. However, this assertion must be examined in context. Mr. Leonhardt did not attend the 3 January 2017 pretrial teleconference. I am mindful that he is a self-represented litigant, but even so, he knew or ought to have known that one of the purposes of the 3 January 2017 teleconferences was to confirm witnesses and send out subpoenas. Counsel for the Commission, Ms. Khan in her 20 December 2016 email (Appendix I, email #3) indicated that she was requesting a teleconference because she may request subpoenas with respect to several Respondent employees.

33. I accept that there was a breakdown between the Commission and Mr. Leonhardt's understanding of which witnesses were required and I accept that Mr. Leonhardt believed that the Commission would request subpoenas for these witnesses. But counsel for the Commission is not counsel for the Complainant.

It is true that often the Commission and the Complainant's interests are aligned and therefore their strategies are similar - but not always.

34. Unfortunately, Mr. Leonardht was unable to attend the teleconference. Had he attended this teleconference like he said he would, or sought an adjournment because he was unavailable, this entire issue could have been avoided, because he would have known then that the Commission was not seeking subpoenas for his desired witnesses.

35. Given the last minute nature of the subpoena request it comes as no surprise that Mr. Leonhardt did not have all the information necessary to complete the subpoenas. He asked, "[t]here is one individual who the Commission and the Respondent's council *(sic)* are not being forthcoming in providing contact info. I am asking if you could please subpoena her… as I don't have the authority to do so." (Appendix I, email #4) And, "If you could, through your judicial powers please call…or force the respondent to provide you (or myself) with contact info to properly serve her a subpoena…" (Appendix I, email #10)

36. My response was this: I do not have access to a computer database that would disclose personal addresses (Appendix I, email #9); that we would deal with his issue at the next pretrial teleconference; that I could not assist him with completing his documents given my role as an impartial adjudicator; and that he should consider getting advice from a lawyer instead. (Appendix I, email #12)

37. As has already been mentioned, at the 17 January 2017 teleconference I suggested the remedy of an adjournment to Mr. Leonhardt and none of the other parties were opposed. Mr. Leonhardt was given an opportunity to consider his options and the teleconference was recessed from the morning to the afternoon. Mr. Leonhardt did not call in for the afternoon teleconference. On 18 January 2017 I granted the adjournment.

38. In my view a reasonable informed person would not conclude that the above exchange supports a finding of bias or an apprehension of bias. Mr. Leonhardt advised he wanted to have witnesses present that he described were the "core" of his case but he did not have all the information that he needed to subpoena them. An adjournment was a reasonable solution to Mr. Leonhardt's issue and I granted the adjournment.

*C. That my interaction with the Complainant, the Respondent or the Commission, or the actions of the Complainant themselves raise a reasonable apprehension of bias.*

39. I have carefully considered the Complainant's allegations that he raised both at the hearing on 3 February 2017 and in his written submissions (Appendix II).

40. Allegations that I was "demeaning," "degrading", or that I "lambasted" the Complainant are simply not supported in the documents nor was that the case during the hearing or teleconferences. (Appendix II)

41. My suggestion to the Complainant that he should consult with counsel was not an insinuation that he was incompetent but, was a reasonable one considering Mr. Leonhardt is an unrepresented litigant dealing with the possibility of having to proceed to a hearing without his witnesses under subpoena. It was a situation, in my view, that would be complicated for an unrepresented individual and therefore my suggestion was entirely appropriate.

42. Mr. Leonhardt's action of contacting the Chief Adjudicator to ask for me to be replaced, or by sending me emails that may have been relatively informal do not support an apprehension of bias. Once again, a reasonably informed person having considered our correspondence would not find an apprehension of bias or actual bias.

*D. That the cumulative effect of the above lead to a reasonable apprehension of bias.*

43. I have carefully reviewed the allegations raised by the Complainant as a whole. I have considered if the cumulative effect discharges the Complainant's onus. I find it does not. With respect, the Complainant has not made out a reasonable apprehension of bias. A review of all the allegations taken as a whole fail to meet the standard required for me to recuse myself. I am mindful of the comments of Joyal J in *Kalo, supra.:*

**[34]** There are few challenges for a judge more fundamental than allegations of bias. Such allegations must be addressed seriously. However, when met with a challenge to his or her impartiality, before a reflexive recusal occurs, a presiding judge must be sure that he or she has not opted for an analytical shortcut. Such a shortcut occurs when recusal takes place based on a vague and unfocused reference to a "possible perception" on the part of the public.

**[35]** While a conscientious concern about the perception of the public (and that of the challenging party) is undeniably subsumed in any analysis on a motion for recusal, it does not displace the more precise and rigorous question that has to be posed: "What would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude?"

**[36]** Applications for recusal can be complex and difficult and are always fact-specific. Nonetheless, decisions to recuse made without adequate attention to <u>all</u> aspects of the applicable test and made in the absence of sufficient evidence to discharge the moving party's burden, risk betraying the presumption of impartiality. Such unjustifiable decisions also risk trivializing the solemnity of the judicial oath. Rather than enhancing the judicial role and legitimatizing particular results, decisions to recuse in those circumstances become inadvertent abdications of duty.

## V. <u>Conclusion</u>

44. There is no evidence that I acted arbitrarily, capriciously, or denied the Complainant procedural fairness. For all these reasons, I decline to recuse myself.

45. I make one last comment. The nature of litigation requires adjudicators to make decisions that may be for or against a party to the proceedings. My decision today to dismiss the Complainant's application ought not to be seen by him as yet another instance of "bias." On the contrary, I am absolutely committed to ensuring a fair hearing and deciding this case on the merits.

DATED: 5th day of April, 2017

"Dan Manning"

_____

**Dan Manning**
**Adjudicator**

# Appendix I

(Except as otherwise noted all exchanges are by email and are shared with the Commission, the Respondent, the Complainant, and the Adjudicator either at the time, or later by way of email thread.)

1. May 19, 2016 at 11:17 AM from Daniel Leonhardt (to adjudicator only)

Hi Dan,

Daniel Leonhardt here. I received your letter late last week, sorry for not responding sooner as I was waiting to hear back from the MHRC. I'm expecting something from them later this week / early next week, once I have that I'll know a little more on how to proceed.

In order for you to get better acquainted with the case, I've attached my 5 page submission which was provided to the Human Rights Board of Commissioners in response to the Respondents settlement offer.

I look forward to speaking with you, regards.

2. May 27, 2016 at 11:19 AM from Daniel Manning

Hi Mr. Leonhardt, it's important that any communication with me be copied to all other parties please. I did miss your May 19th email and I have not opened the attachment.

3. December 20, 2016 at 10:15AM from Isha Khan

On 12/14/2016 6:01 PM, Khan, Isha (JUS) wrote:

**Subject: Leonhardt v. Government of Manitoba: Request for Pre-hearing Conference**

Dear Adjudicator Manning,

I am writing to update you with respect to hearing preparation. Mr. Keith Labossiere and Ms Kersey are now acting for the Government of Manitoba on this matter. Mr. Leonhardt remains self-represented, but continues to work closely with me in my role as Commission counsel with carriage of the complaint.

As directed, in late September or early October, the Commission provided a list and copies of documents to the Respondent with a view to preparing an Agreed Book of Documents. There has been some minimal further document exchange and we expect that a few more documents will still be exchanged by the parties. The Commission is optimistic that we can still come to some agreement by way of an Agreed Book and further documents can be entered through the witnesses if need be.

As directed, the Commission has conveyed its list of witnesses to the Respondent. We are however, still waiting for confirmation from the Respondent as to whom they will be calling as witnesses. We would appreciate your firm direction on this point, as the Commission may request subpoenas with respect to a number of Respondent employees who will be key to speak to a number of the documents that we expect to put before you.

The Commission is pleased to prepare the public hearing notices and will forward those to you by the end of this week for publishing in the Winnipeg Free Press and on our website. Kindly advise if you wish us to arrange for service.

Finally, we will continue to pursue the possibility of a resolution, but with the holiday season approaching and the hearing to commence on January 23, we believe it may be a good idea for all parties to convene by way of a prehearing teleconference or in person, in advance.

We can be available by phone at any time next week. We look forward to hearing from you.

4. January 12, 2017 at 12:08PM from Daniel Leonhardt

**Subject:** Subpoena of Witnesses Required

Hello Mr. Manning,

I have requested several times for multiple witnesses to be called but this has yet to be done.

Isha has just advised me today that you would provide me with the subpoena but later sent me a template.

- Should I fill it out for each party I'm requesting then deliver it to you for signature then send it to the respective party?
- There is one individual who the Commission and the Respondent's council are not being forthcoming in providing contact info. I am asking if you could please subpoena her, it's Gisela Rempel as I don't have the authority to do so.

Your time and assistance is greatly appreciated.

Regards,
Daniel

5. January 12, 2017 at 1:13PM from Isha Khan

**Subject:** RE: Pre-hearing matters

Dear Adjudicator Manning,

This email is to clarify and also perhaps update you further since our pre-hearing teleconference. Mr. Leonhardt has confirmed that he will be taking an active role in the adjudication of his complaint.

**Witnesses:** The Commission will be calling one witness, Mr. Leonhardt. My understanding is that Mr. Leonhardt wishes to call other witnesses, some of whom the Respondent has already identified as their witnesses and in particular one former employee of the Respondent, whom he is unable to locate. I have explained that it is up to you, as adjudicator, to direct the order in which you wish to see us proceed with openings, witnesses, etc., namely to clarify how you wish the Complainant and the Commission (with carriage) to function. If you can give

us this direction prior to the hearing it will assist all of us in preparing our direct and cross-examinations.

**Agreed Documents and Facts:** It does not appear that we have a formal agreement from all parties regarding an Agreed Book of Documents. I suggest that we will bring a binder compiled with most arguably relevant documents simply to assist with the task of authenticating and marking exhibits. It does not appear that we will have a formal agreement from all parties regarding an Agreed Statement of Facts. If you wish to set a pre-hearing teleconference, kindly advise and I can provide the Commission's services.

Finally, the Notice of Hearing has been submitted for publishing with the correct address.

6. January 12, 2017 at 2:05 PM from Daniel Manning

**Subject:** Re: Pre-hearing matters

Let's set another pretrial please. It would be best that we are all clear on all the issues so that the hearing proceeds fairly. It is important that Mr. Leonhardt be a part of the teleconference. How is next week for everyone?

7. A series of emails are exchanged relating to arranging dates that are not reproduced here.

8. January 12, 2017 at 5:30 PM from Daniel Leonhardt

**Subject:** Pre-hearing matters

Those times work for me as well.

Adjudicator Manning, apart and independent from this tele-confrence, I still require two former GoM employees subpoenaed. Gisela Rempel and Marni Yasumatsu. I do not have Gisela's contact info, the respondent isn't able or willing to provide so I would need your help in the matter. My understanding is that you can do this through the court system.

Many thanks, I do appreciate your time.

Daniel

9. January 12, 2017 at 6:53 PM from Daniel Manning

**Subject:** Pre-hearing matters

I am available at any time during the 17th. Ms. Khan can you please arrange for a teleconference?

Mr. Leonhardt, we can address the issues of subpoenas during the teleconference although you should know that I do not have access to the court system nor is there any computer database that I have access to that would disclose personal addresses.

10. January 12, 2017 at 7:16 PM from Daniel Leonhardt

**Subject:** Pre-hearing matters

Good evening Adjudicator Manning,

Unfortunately this is not something that needs to be discussed next week, nor would waiting until then be fair from my standpoint. She was directly involved in my case prior / during and after my termination (for several years) so I do require her as a witness. I had requested this and was under the impression by the MHRC that she (rather all witnesses that I requested months ago) had been called, I have only been told otherwise this week that the have not.

I have been advised by the MHRC that you - as a representative of our judicial system - have the ability to call upon any witness.

If you could, through your judicial powers please call Gisela Rempel as a witness, or force the respondent to provide you (or myself) with her contact info to properly serve her a subpoena I would appreciate it. Due to the nature of her position (Assistant Deputy Minister for my department) and the fact that she only very recently retired, the respondent (GoM or pension plan) will have her contact info.

If as adjudicator of my case you do not have this authority, please advise who does.

Thank you, respectfully.
Daniel

11. January 13, 2017 at 12:07 PM from Daniel Leonhardt

**Subject:** Pre-hearing matters

Adjudicator Manning, I would appreciate your response to this email.

I am not prepared to have a teleconfrence or move forward with trial until I have all of my witnesses subpoenaed because these witnesses are the core of the case.

They include the following:

- John Mitchell
- Dean Tokariwski
- Carla Bond
- Ewan Watt
- Marnie Yhasumatsu
- Marion Guinn
- Gisela Rempel

There is a minimum of three days notice required by a witness before a trial, so as you know, if this waits until next week we will not have the time. I was advised by the MHRC last year that all witnesses were going to be called, I was just advised this week that they failed to do so - I had requested confirmation repeatedly in Nov, Dec and Jan.

I require all these parties in order to prove my case in court. Both Ms. Rempel and Ms. Yhasumatsu held senior decision making positions, were active in my termination, documents in their name, I met with them face to face and for these reasons they are required.

Do you as Adjudicator of my case have the authority to call upon Ms. Rempel and Ms. Yhasumatsu? I do not know the whereabouts of Ms. Rempel and require the court's / your assistance in properly subpoenaing her.

Respectfully,
Daniel

12. January 13, 2017 at 12:48 PM from Daniel Manning

**Subject:** Pre-hearing matters

Mr. Leonhardt,

As you are aware there was a pretrial conference held on January 3, 2017. I was advised by counsel that you were aware of the date and that you were able to call in yet you were not present at that time. The issue you now raise could have been discussed then. I am more than willing to discuss this with you at the next pretrial conference with all parties present. I cannot compel you to attend the January 17 pretrial conference but can tell you that the function of a pretrial conference is to deal with issues such as the one you are now raising.

Mr. Leonhardt, as an adjudicator in this matter I must decide this case in accordance with due process of law. As such, I am not in any position to render any legal advice to you or provide you with assistance completing documentation. I would suggest that you seek independent legal advice to discuss what, if any, remedies are available to you.

That being said, I am optimistic that we will be able to deal with your issues at upcoming pretrial so I look forward to speaking with you then.

13. January 13, 2017 at 7:50 PM from Daniel Leonhardt

(this email was sent only to the Adjudicator and the Commission not the Respondent)

Goodday Adjudicator Manning,

I was out of country on Jan 3rd and under the impression that the witnesses which the MHRC, the respondent and myself agreed on had been called (in Nov as you requested). I asked Ms. Khan to confirm my list with you and all parties that morning before the call. I just found out 2-3 days ago after repeated requests to the MHRC that this was not fulfilled. I have tried diligently over the past 10 days since that call, and is why I engaged you 2-3 days ago.

Respectfully, I am not asking for legal advice or for you to step out of you defined role. The MHRC website indicates the following under the guide to hearing:

**Do I need a lawyer?**
No...you may represent yourself. The adjudicator will always make an effort to explain the process in terms understandable to non-lawyer.

The MHRC advised me that you have the authority as judicial body to subpoena people that I can not; as a regular citizen of this city. Regardless if I had a paid for lawyer, s/he would also not have that jurisdiction. I also spoke with a Manitoba Court of Queen's Bench magistrate and a Federal equivalent today and was given the same message - they were not able to subpoena my witnesses because it's a human rights case.

So, I am a non lawyer asking for your effort in assisting with this human right.

I apologize if I used the word 'assistance', what I need is your judicial authority to subpoena a key witness in my case. Her name is Gisela Rempel, I have completed and attached the subpoena to the best of my ability (lacking mailing address) and have also attached Marie Yasumatsu (her contact info do I have). Those forms also require your name or signature, I'm not sure?

I will be more than happy to join into the conference call next week, however as I mentioned earlier, my need for these witnesses is independent of that - this is at the foundation of my case - regardless if the respondents council or the MHRC agrees. I need them.

So please, do whatever is required by law to facilitate my request. I ask for no more or no less and your time is appreciated.

Regards.
Daniel

14. January 17, 2017 at 12:09 PM from Daniel Leonhardt

**Subject:** Requesting New Adjudicator

Hi Ms. Khan,

I am not please with how things have progressed so far and I very much lack confidence that things will proceed to trial in a fair manner. With this in mind I am requesting a new Adjudicator to hear my case. Please do what you need to, if that means forwarding this email to the MHRC Board of Commissioners the please do so.

- I sent a settlement document to Adjudicator Manning in May 2016 without realizing that doing so could cause prejudiced in the case (this was only mentioned to me in Jan '17). Regardless if he read it or not, he responded to the fact that he saw it.
- Further to that, his response was demeaning. He cc'ed you and the respondent with a tone that I should have known better, and when sending email all parties should be cc'ed. Fair enough however
- That same day or week, Adjudicator Manning replied to an email to the respondent (in a much nicer manner), including you but NOT me. I didn't find this fair and didn't like it at all.
- Ms Khan, it upset me today when you told Mr. Manning that I have been uncooperative and unwilling to work with you when, as I said on the phone today, it has been you that failed to ensure my witness have been called when you said they would. For someone in your position to say to the Adjudicator who is hearing the case that I have been unruly most certainty undermines the potential for a fair trial. He will have build prejudice from that statement.
- I even found Mr. Manning to be unsympathetic and rather forceful that I have made errors up to this point (witnesses). This is a human rights case, not a criminal case.
- On top of that, as I said to him in an email Friday - things have already become a little ugly -

"Respectfully, I am not asking for legal advice or for you to step out of you defined role. The MHRC website indicates the following under the guide to hearing:" Do I need a lawyer?
No...you may represent yourself. The adjudicator will always make an effort to explain the process in terms understandable to non-lawyer. "So, I am a non lawyer asking for your effort in assisting with this human right." To which he still hasn't made the effort.

- I don't agree with him that because I was out of the Country on Jan 3 and didn't make the conference call that I should be punished for it. That it's my fault.
- When I asked today for one day to make a decision, Mr. Manning got upset saying it was a cost and inconvenience to everybody, but I have been asking him to answer this for nearly one week and he refused to reply to my emails.
- I feel he is already weighing the respondents time as more worthy than mine

For these reasons things are already not fair.

Regards and thanks,
Daniel

15. January 17, 2017 at 2:08 PM from Daniel Leonhardt (also quoting correspondence between Complainant and the Commission)

**Subject:** Re: Requesting New Adjudicator

The problem that I have Isha is:

1. You said you would call the witness, you didn't.
2. Then you keep saying you responded, however you never responded to my direct questions about the witness until the week of Jan 9th, 2017.

And to raise this with Adjudicator Manning and him to get angry with me in front of the respondent and MHRC (that I should have done more) - like I said on the phone this morning, apart from coming to your office there is little more I could have done. And let's not forget that I was out of the country for several weeks.

I'm not comfortable calling in and talking to Mr. Manning. I felt that I was being forced or bullied into making a rash decision when I had given him days (and repeated requests) to respond to my query. Even had to quote MHRC documents stating their required effort / response.

Could either of you please let me know how I contact the Chief Adjudicator.

Thank you.
Daniel

On Tue, Jan 17, 2017 at 1:43 PM Khan, Isha (JUS) <Isha.Khan@gov.mb.ca> wrote:

Daniel,

If you want to make a request (or a motion) to have Adjudicator Manning recused, the Commission is not the one who would handle that request. You could make the request of the Chief Adjudicator who assigns the adjudicators to each complaint from a list of adjudicators, but more likely it is an issue that will need to be argued and heard by Adjudicator Manning.

I am not sure what your decision will be on our call a 2:00 PM, but we should probably come out with an idea of whether we are convening to deal with the issue of bias, or fairness that you raise in your email below, or whether we are meeting to argue your case.

I apologize for any misunderstanding about the witnesses. I felt it important that with the repeated comments that the Commission had not done what you believe it should, that I deserved an opportunity to provide a response.

In my experience I have always had a good working relationship with complainants and been able to discuss the relevance of witnesses so we can come out on the same page. Because you did not want this discussion, I left it to you to call your own witnesses which is your right. I do not believe at any time, that I confirmed to you that your entire list of witnesses were to be called by the Commission.

I will speak with you on the call at 2:00 PM. Please use the same call in, information.

I remain pleased to meet with you or discuss on the telephone, hearing preparation. The level of detail required makes it difficult to do this via email alone.

16. January 17, 2017 at 2:13 PM from Daniel Leonhardt

**Subject:** Re: Requesting New Adjudicator

I was only given the subpoena template four days ago, so you can not say you were 'assisting' or providing me knowledge months ago.

On Tue, Jan 17, 2017 at 2:08 PM Daniel Leonhardt <dleonhardt@gmail.com> wrote:
The problem that I have Isha is:

1. You said you would call the witness, you didn't.
2. Then you keep saying you responded, however you never responded to my direct questions about the witness until the week of Jan 9th, 2017.

And to raise this with Adjudicator Manning and him to get angry with me in front of the respondent and MHRC (that I should have done more) - like I said on the phone this morning, apart from coming to your office there is little more I could have done. And let's not forget that I was out of the country for several weeks.

I'm not comfortable calling in and talking to Mr. Manning. I felt that I was being forced or bullied into making a rash decision when I had given him days (and repeated requests) to respond to my query. Even had to quote MHRC documents stating their required effort / response.

Could either of you please let me know how I contact the Chief Adjudicator.

Thank you.
Daniel

17. January 17, 2017 at 2:24 PM from Daniel Manning

**Subject: Re: Requesting New Adjudicator**

Hi Mr. Leonhardt,

Can you please call in? It's important that we have your position on the adjournment matter and the issue of me recusing myself (new adjudicator)

Thank you,

Dan

18. January 17, 2017 at 2:38 PM from Daniel Manning

**Subject: RE: teleconference: Jan 18 at 9AM – Leonhardt v. Government of Manitoba**

Please be advised that I have requested Ms. Khan to arrange a teleconference tomorrow at 9a.m. for all participants to call in. This hearing will take place to hear submissions on any adjournment requests and/or any motions for recusal. The hearing will be audio-recorded and form part of the formal record.

To recap what occurred today we had a teleconference at 9:30am at which time we discussed the possibility of an adjournment to address the concerns that Mr. Leonhardt had regarding witnesses that he wished to have present at the hearing. The matter was adjourned to 2pm for Mr.
Leonhardt to consider his position. Prior to the 2pm meeting Mr.
Leonhardt sent an email requesting, effectively, that I recuse myself on the basis of bias. Mr. Leonhardt did not call in at 2pm as he had earlier indicated that he would.

Mr. Leonhardt, I want you to be aware that if you do not call in at 9a.m. tomorrow morning your submissions will not be considered and decisions will be made in your absence. I strongly encourage you to call in.

Thank you,

DM

19. January 17, 2017 at 2:47 PM from Daniel Leonhardt

**Subject: Re: Requesting New Adjudicator**

And yes, I'm asking that you recuse yourself - we didn't start on the right foot and I made the error of emailing you my settlement offer.

# Appendix II

## Motion for Adjudication Recusal on the Basis of Bias

Supporting Documentation - Daniel Leonhardt (Feb 12th, 2017)

Attn: Mr. Adjudicator Manning,
Cc: Ms. Khan, Mr. Hoeppner, Ms. Kersey

As you requested, please include this document as a supplement to our hearing on February 8th, 2017. As we are all aware, I am requesting that you recuse yourself from this case due to reasons of bias. As before, I apologize if my terminology, manner of reference or format is non-typical as I am not a lawyer.

1. The **formal test** for reasonable apprehension of bias is well-established and reflects the now seminal Supreme Court jurisprudence laid out in *R. v. Campbell*, *R. v. S. (R. D.)*, and *Wewaykum Indian Band v. Canada*. There is a presumption that judges are impartial, and there is a high threshold to successfully challenge a decision based on reasonable apprehension of bias.

2. A judge's impartiality requires scrutiny because the integrity of the legal system requires both **fairness and the appearance of fairness** throughout the court process; without both, public confidence in the system is lost and our democratic system hangs on this.

3. The test is whether a ***reasonable person*** *properly informed would apprehend that there was* ***conscious*** *or* ***unconscious bias*** *on the part of the judge. T*he test requires dual objectivity: the perspective from which the alleged bias is viewed is that of a "reasonable person" (generally not the complainant), and the bias must also be **serious**, **reasonable** and the complaint done **in good faith** given the circumstances of the conduct.

4. A positive finding under this test means that the judge reasonably appeared to be biased in the circumstances. And I will (and have) demonstrated that all of these markers have been met by Adjudicator Manning throughout the course of the proceedings. From May 2016 – Feb 2017.

5. In fact, Adjudicator Manning on Feb 8th at the trial, after I had opened with my submission, you had indicated to Mr. Hoeppner that it wasn't even necessary for him (respondents council), to enter their submission – you had "heard enough" through my submission. That in itself speaks that you agreed there was ample reason to accept bias on your part.

6. Further, in the case of *Committee for Justice and Liberty v. National Energy Board* – it states, would he think it is more likely than not that the [decision-maker], whether consciously or unconsciously, would not decide fairly. Adjudicator Manning, you have already acted with bias towards me, both consciously and unconsciously, so there is already sufficient reason to believe you would not rule fairly.

7. I am requesting recusal on the basis of your exposure to the settlement documentation and based on the negative interactions you and I have had for the course of this process.

8. The MHRC cited the following cases:
    A. *A.C. v. Pembridge Insurance Company*. The judge had exposure to the settlement document and decided it wasn't adequate reason to recuse her or himself.
        i. You not only had my settlement document for nearly 8 months but you have also seen many emails that include settlement and mediation discussion, plus some of the issues and drama that we previously have had.
        ii. I am requesting reinstatement. This has been discussed in person, over the phone and in email. These emails were sent to all parties, including yourself, and were entered as evidence and discussed on Feb 8th.
        iii. Further, email titled *Submission sent to Adjudicator Manning last May. Document 1,* states that my settlement would prevent me from becoming further financially and socially disadvantaged, it would make improvements to my mental health, being let go damaged my sense of self worth, the respondent was not accommodating which left me confused, that the amount of time this has taken has caused further and undue hardship.
        iv. A. Manning, you have seen much more than just a submission document, so really, there are few if any parallels with *A.C. v. Pembridge*.

    B. *Smith v. Menzies Chrysler Inc.* In this case, the judge felt that the "clash" between him and the complainant during their initial conference call wasn't sufficient for recusal.
        i. We had issues from day one. In my first email to you *(Reply to my submission - Doc 2),* I address you as a buddy, mostly because we share the same first name. I have since learnt (emails from the MHRC and the respondent addressed to you, and from our trial) that talking with an adjudicator as a friend is disrespectful. In fact, unbeknownst to me, the legal industry's culture as a whole is more hieratical and formal than other industry.
        ii. I had sent you my settlement documentation which is clearly more than frowned upon, it's problematic and perhaps why I came across as a nuisance.
        iii. I could see why you felt disrespected but our issues only progressed and got more severe as time went on.
        iv. Ms. Khan indicated that requesting a recusal motion is serious, and presented the option for me to contact the Chief Adjudicator, your boss. So I did, and in that email *(Requesting New Adjudicator - Leonhardt v. Gov of MB - Doc 3)* I stated to your boss that you were bullying, demeaning and punishing (me for being out of the country) and that things have become "ugly" between us.
        v. Any reasonable person would dislike and perhaps be angry with anything negative about them being sent to their boss, especially the chief as in this case.
        vi. On January 17th, the afternoon of our conference call, I found you and the conversation to be so aggressive that I did not call back, instead requested

recusal. However you sent me multiple emails indicating that you "strongly encourage me to call otherwise decisions will be made without me."

vii. You were clearly upset on the 17th and even implied on the 18th (call) that I was causing problems.

viii. You were upset that I, last minute, did not make the Jan 3rd conference call.

ix. Suffice to say, there is no way we can compare our issues with the onetime clash found in *Smith v. Menzies Chrysler.*

9. On top of that, in both cases the judges ruled based on single instance sufficiency and not for multiple grounds (or cause) with many occasions. Perhaps on their own it was not sufficient to warrant recusal but here, when we combine all the issue noted, discussed and what I will further highlight, any reasonable and informed person would agree that bias has already been exhibited. Plus we only need one instance, not many or in different forms to justify.

10. Now on to the "**test**" to further demonstrate bias has been made.

**A. Seriousness.**

i. Beyond the MHRC indicating that what we were doing was serious. Mr. Hoeppner stated (with the case law he presented) the gravity and seriousness in such cases. I don't argue that but as previously mentioned, there is a high threshold to successfully challenge. In fact, just recently there was a judge in Ontario who was found to show bias twice in one year, so clearly this isn't uncommon. Those cases were *R v. Huang* and *Lloyd v. Bush.*

ii. Here are additional cases where bias was established:

1. Laver v. Swrjeski
2. Toronto (City) v. Mangov
3. Hazelton Lanes Inc. v. 1707590 Ontario Limited

iii. It's also serious because of the nature and the effect it has on me. What I mean by that is my case of discrimination cost me my employment and is far more life altering than say discrimination at a store because of my race or religion.

**B. Reasonable and in good faith.**

i. Not being properly trained in law, I was not aware that sending the adjudicator my settlement documentation builds prejudice.

ii. Ms. Khan indicated in email on Jan 3rd, 2017 (*Fwd: Phone call - Bias Email 4*) that I should not talk about settlement with you, because "you are without prejudice." This is the main reason why I didn't make the teleconference that day, however I did not piece together that I had sent you exactly that 8 months earlier. I only realized after our call on Jan 17th, 2017.

iii. A. Manning, when I sent the document to you in May 2016, you replied that you received the email and document (*reply to my submission – Doc 2*), however you did not indicate that I should not be sending this kind of information to you.

iv. You also indicated that you did not open the attachment but you did not say that you would not later open it, or that you would or have deleted it. Frankly,

you had the email for 8 months, it's pretty reasonable to say that you had ample time and opportunity to look at it, especially after things got "ugly."

v. Ms. Khan raised the case of *Khakh v. Canada (M.E.I),* where it states that bias must be raised at the "first opportunity", I did just that. To say that I should have raised it last July is absurd and unreasonable as I didn't know it existed.
vi. Some of the instances involved me asking for your assistance and judicial authority – all very reasonable – to which you not only declined but accursed.
vii. I am doing this with good faith that this case is heard and judged in a completely fair manner.

**C. Reasonable and informed Person.**

i. We can look at this from (1) any intelligent person without attachment to the case who is brought up to speed, or (2) a peer equivalent of yours.
ii. Both 1 & 2 would say it's reasonably offensive or insulting that I went "above" and to your boss with (for a lack of better words), criticism about you. Again, I was given this as an option and didn't want to hear what you had previously told me – "that I could have or should have done more." This in itself would be sufficient to reasonably cause (at the least) unconscious bias towards me, however we continue.
iii. Both 1 & 2 would agree that scheduling a conference call at the end of December for January 3rd (little notice), while I was out of the Country visiting family that I see very infrequently, is unreasonable on your part.
iv. Further, to which the MHRC was aware, I did not have a cell phone and nor did I have my familiar computer. I was using a small loaned laptop and occupied with the holidays. However, you were upset that I did not call in.
v. It's reasonable to think that a peer of yours would agree that sending settlement docs, not showing certain levels of formality and respect, not including all parties in correspondences, not calling back into the conference call and even raising bias itself would be problematic and distasteful.
vi. We could argue that both 1 & 2 would agree with points D & E just below.

**D. Instances of Conscious Bias**

i. Unwilling to sign my subpoenas – period. This is huge. In email (*Fwd: Pre-hearing matters – Bias Email 2*) on Jan 12th or 11 days prior to our hearing, I request your assistance with subpoenas since the MHRC failed to do so, even though Ms. Khan said she would – in December.
ii. Your response was to <u>not</u> deal with my request but set up a call, scheduled 3 working days prior to the trial. I responded that I would make the call however the subpoena effort had to be done sooner (your signature required) and that by law, people needed a minimum of 3 days notice so there was a conflict.
iii. I made this clear to you and it's reasonable to say someone in your position would have already known this. It was ignored.
iv. Further, your response to me was demeaning, that you are not here to provide legal council, that I should hire a lawyer and that there is not computer system

at your disposal to assist me in obtaining contact info for a retired employee of the Province.

v. What's troubling is that you felt I was incompetent to fill out a very basic subpoena form and that I should hire a lawyer. I had to quote you from the MHRC website that says I'm entitled to represent myself and that adjudicators are there to assist.
vi. Keep in mind, I do not have the authority to subpoena, only you do, so the assistance I was requesting was your judicial.
vii. I was told by the Court of Queen's Bench that sheriffs can be engaged to track people down for the purpose of subpoenas, you did not mention this or make an effort.
viii. However, when you finally addressed it on Jan 17th, you mentioned the option of submitting the subpoena as a type of proxy with the Province, you could have easily told me this the week prior, not when it was too late.
ix. This is what Mr. Hoeppner calls "procedural." I don't think so. I made it clear that there were issues that had to be addressed prior to our call, heck; I even email you the subpoenas filled out, just needing your signature and contact info for Ms. Rempel.
x. This is where you lambasted me for not making the Jan 3rd call and implying that I'm asking you to do things that are not in accordance with the law.
xi. You were quick to point out an issue regarding the fail to secure the witness on my part because I didn't make the Jan 3rd call, however as soon as I was able to prove that I asked Ms. Khan to raise this during that call, your reply was that you didn't want to talk about it any longer. That was not fair.
xii. Ms. Khan has mentioned that the both of you have had working relations in the past, and have spoken a dozen or so times and met a couple of times (work related) and she even mentioned that she enjoyed working with you. She is in a respected position with the MHRC and lawyer by trade.
xiii. I say this because on our call on Jan 17th, instead of her taking responsibility for not calling the witnesses as she said she would, she points things at me by saying to you as Adjudicator that I have been uncooperative and unwilling to work. Further, to state that I have a mental condition or mental issues. As far as I can tell, this would be discrimination and most certainly bias forming, particularly coming from the legal council of the MHRC whom you've worked with and likely trust.
xiv. This is similar in nature to *Laver v. Swrjeski,* the judge in that case indicated that police officers whom he knows and respects are more believable than the complainant, so the evidence required by him or her would have to be greater, because he knew them on as professional level.

E. **Instances of Unconscious Bias**

i. During our call on Jan 17th, you put me into a position that I felt I needed some time to consider. I requested one day to think my decision through and you denied it, indicating that other people's time is at stake and I should not

consider solely myself or my own time and dollars. However, this one day was the only time I'd ever asked for yet between yourself, the respondent and the MHRC, we have gone months in delay. What was one extra day?

ii. You were appointed over my case in April of 2016, it was nearly 3 months before we even booked our trial dates and that was after me repeatedly requesting the MHRC for status and to get thing going. I wasn't asking for a lot.

iii. It was clear that my time had less value than the rest, including yourself and this included while I was out of the country.

iv. During our call on Jan 18th, after booking the bias trial, you asked that I compile the few emails as evidence and then we all receive a 10 page document from the MHRC opposing me and stance. Fine, however, you almost didn't accept one of my email as evidence because it talked about settlement. The problem I have is you didn't even comment to Ms. Khan submitting when it was never requested of her.

v. Second, if the respondent and the MHRC are arguing that having the settlement in front of you is no big deal, why did you almost not accept it? Also, why would Ms. Khan say in email that it can cause prejudice? Which one is it?

vi. Anytime I sent you an email I got either a reprimand or no action so truthfully, I kept my correspondences to the bare necessity. Perhaps even waiting a day or two longer before engaging you with the subpoenas, in hope that I could resolve things on my own – not making problems worse between you and I.

11. Considering both the conscious and unconscious bias noted above, its fair to say that I and any reasonable person viewing this case would not have the trust necessary to see this case judged fairly until the end, nor does it maintain the appearance of fairness.

12. Mr. Hoeppner indicated that an informed person would be at the level of another judge or someone in the judicial arena. This is not what the test defines; it states someone who may differ from that of the litigant. But to appease him, we already demonstrated the validity from his point of view and what I found in case law.

13. You indicated twice that I should seek my own legal council as though I was incompetent, and those comments were either cc'ed or in ear shot of other parties. I found this to be a degrading and the only way you could have said this without really knowing me, is by already having preconceived negative notions about me – which is bias.

14. For the record, I requested a minimum of 5 times the status of witnesses and even straight out asked the MHRC to "do what you need to do to get these folks (list of 7 people) secured / lined up." To Ms. Khan on Dec 4th and Dec 6th (Bias email 1), Dec 13th (Bias Email 8), Jan 3rd (Bias Email 4) and Jan 10th (Bias Email 5).

15. Requesting the witness of you Adjudicator Manning on Jan 12th & 13th (Bias Email 2), subpoenas attached. Recall, I was only given the blank subpoena template on the 12th with no instruction

or assistance, not very nice.

16. Mr. Hoeppner mentioned that he didn't see any reprisal or punishment for me missing the conference call on Jan 3rd and that you were very prompt in getting back to me
    A. Adjudicator Manning, on Jan 12th I sent you an email requesting your judicial assistance and a list of my witnesses, you did not respond.
    B. On Jan 13th, I sent a follow up saying "A Adjudicator Manning, I would appreciate your response to this email." I did also say "I am not prepared to have a teleconfrence or move forward with trial until I have all of my witnesses subpoenaed." That was to evoke attention and get a response. I also stated "there is a minimum of three days notice required by a witness."
    C. Your response to that was what I referred to as the punishment for not making the Jan 3rd call (while out of country) and suggesting that I seek independent legal advice.

17. Mr. Hoeppner indicated that I waited weeks, or until Jan 17th to raise the witness issue. That's inaccurate on the verge of being deceitful. As you can see, I raised it on Jan 12th (Bias Email 2). He stated further that Ms. Khan informed me on Jan 3rd that the MHRC was not going to call some of the witnesses. This too is not accurate, however this is what he's referring to.
    A. On Jan 3rd, in Bias Email 3, Ms. Khan states: You had previously asked me to arrange to call Ewan Watt, Marnie Yhasumatsu and Gisela Rempel. I am not certain of the relevance of their evidence, so would like to discuss with you. If you wish to call them on your own, you may- but in either case, we should discuss what that entails.
    B. I took "but in either case, we should discuss what that entails" as I need to insist further.
    C. So, in the same email thread, on the 4th, to that I ask "Does this mean I have to contact everybody on the list to 'call' them? Regardless if the respondent calls them or not, I'm asking for them for us." In other word, just call them.
    D. In that same thread, I indicate again that I'm out of the county and don't have a cell.
    E. On Jan 5th I was preparing, packing, cooking and loading for my near 1700 km road trip back. Jan 6th and into the 7th I drove. Then I had a day of rest and on Sunday the 8th or Monday the 9th I saw (in the same thread) Ms. Khan replied on Jan 6th and she still hadn't confirmed the witnesses.
    F. On Jan 10th I replied with the following: "Honestly I've been sitting on this for a couple days unsure how to respond. It was clear who I wanted called, you haven't done it and only telling me now. Then to say you've been trying repeatedly to meet with me when our only failed attempt was the week I was leaving the country in mid December…. That said, I want all the people called and in that order, I don't want to rely on the R to call or not to call. If you are unwilling to do it then please let me know as soon as possible - hopefully today."
    G. I could have been in contact with you on the 10th or 11th perhaps, but as I mentioned earlier, every single communication between us was unfavorable so I waited until Ms. Khan confirmed with the blank subpoena template on the morning of 12th. I also was trying to call her desk line, left her a voice message.
    H. Once we get past the smoke, Mr. Hoeppner's several weeks is truly just one day.

18. Further, Mr. Hoeppner seems to think that I really wanted an adjournment. Perhaps I don't understand the legalities behind it but frankly to me, a delay is a delay. What I care more about is having a fair trial. It was the MHRC who requested an adjournment and not me.