

**Government of Alberta** ■  
Human Services

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**Occupational Health and Safety  
Council  
Appeal Hearing  
Feb 28, 29 Mar 01, 2012**

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**Decision upon Application By:**

**Persons with Developmental Disabilities Central Region – Appellant**

**And**

**Workplace Health and Safety – Respondent**

**Board Members**

Peter Schaefer – Appeal Panel Chair, Employer Representative,  
Occupational Health and Safety Council  
Maggie Fulford – Public Representative  
Occupational Health and Safety Council  
Ernest Tessier – Worker Representative  
Occupational Health and Safety Council

**Appearances:**

For the appellant: Gary Zimmerman Legal Counsel for Persons with Developmental  
Disabilities Central Region Community Board (PDDCR)  
Wayne Morrow- Chief Executive Officer -PDDCR

For the respondent: Mark Greene, Legal Counsel for Workplace Health and Safety  
Gerry Wager – (WH&S),  
Dwayne Barrett– (WH&S),  
Melanie Eyben– (WH&S)

The Appeal Panel (the Panel) convened on Feb 28, 29, and March 01, 2012 to hear an appeal pursuant to Section 2(5) of the *Occupational Health and Safety (OH&S) Act. (Act)*

Section 2(5) of the Act reads:

**Obligations of employers, workers, etc**

(5) Every contractor who directs the activities of an employer involved in work at a work site shall ensure, as far as it is reasonably practicable to do so, that the employer complies with this Act, the regulations and the adopted code in respect of that work site.

RSA 2000 cO-2 s2; 2002 c31 s3

**The specific reasons for appeal are:**

- Appeal of Order – MEYN-8HTJ84
- It is the position of the appellant that Persons with Developmental Disabilities Central Region (referred to as PDDCR) is not a "contractor" as defined by section 1(b) of the OH&S Act and as such the issuing officer has no jurisdiction over PDDCR.
  - Section 1 (b) of the OH&S Act  
In this Act,  
(b)"contractor" means a person, partnership or group of persons who, through a contract, an agreement or ownership, directs the activities of one or more employers involved in work at a work site;

**The respondents contend that:**

- It is the position of the Respondent that PDDCR is a "contractor" as defined in the section 1(b) of the OH&S Act and that PDDCR is in non-compliance of Section 2(5) of the Occupational Health and Safety Act, RSA 2000, c.O-2 as outlined in the Client Contact Report Reference Number - MEYN-8HTJ84.

**The Issue(s) to be Resolved:**

Is PDDCR a "contractor" as defined in Section 1(b) of the OH&S Act?  
Was PDDCR non-compliant with section 2(5) of the OHS Act?

**Submissions Considered by the Appeal Panel**

***From the Appellant, Gary Zimmerman***

- OHSC Appeal Questionnaire – completed by Wayne Morrow
- Evidence by Witnesses;
  - Jim Menzies-Acting Executive Director PDD Program Branch
  - Wayne marrow – CEO PDDCR
  - Stephen Golub- Director of Corporate Development- PDD
  - Dave Waddel- Director of Corporate Services
  - Gerald Scotvold- Manager of Community Engagement
  - Derrick Richards- Senior Consultant Alberta Seniors and Community Supports
- Evidence (specific exhibits) presented by Gary Zimmerman- PDDCR

- Exhibit A- Persons with Developmental Disabilities Website
- Exhibit B- Persons with Developmental Disabilities Community Governance Act
- Exhibit C- April 22, 2012 Agreement between Persons with Developmental Disabilities Central Region Community Board and the Canadian Mental Health Association Alberta East Central Region. Referred to as the "contract".
- Exhibit D- Individual Service Agreement dated Dec 14, 2010.
- Exhibit G- Support Schedule Summary
- Exhibit H-SIS Interview and Profile (SIS ID # 17250) dated April 30, 2010
- Exhibit J -Creating Excellence Together
- Exhibit L- ISA(Individual Service Agreement) Website
- Exhibit M- Fatality Inquiry Report J0338(Rev 2005/10)
- Exhibit O- Small Business Toolkit

*From the Respondent, Mark Greene, and Workplace, Health and Safety (WH&S)  
Package of information relating to the appeal obtained from both the Appellant and the Respondent which was:*

- Evidence by Witnesses;
  - Melanie Eyben– OH&S Officer
- Evidence (specific exhibits) presented Mark Greene (WH&S)
  - Exhibit E – Restrictive Procedures Review document March 17, 2008 WDACS
  - Exhibit F – Consent to Release of Information. Dated Jan 18, 2010
  - Exhibit G – Support Schedule Summary
  - Exhibit I- CMHA Restrictive Procedures Dated Feb 23, 2012
  - Exhibit K – Risk Assessment Summary Report Update document dated August 25, 2009
  - Exhibit P- Email
  - Exhibit Q – WDACS Letter dated Nov 19, 2009
  - Exhibit R – Client Contact Report MEYN-8HTJ84
  - Exhibit S - Client Contact Report MEYN-8HTJAK
  - Exhibit T – Email Cynthia McCracken dated June 14, 2010
  - Exhibit U - Email Cynthia McCracken dated Aug 23, 2010
  - Evidence by Witness- Melanie Eyben OH&S Officer
  - Submission binder produced from WH&S, containing appellant's information, WH&S investigation, investigating officer notes and findings

**Facts:**

The following is a list of facts agreed to by the parties and considered by the appeal panel:

- Exhibit S- CCR MEYN-8HTJAK was entered and agreed by both parties to be a supportive document to Exhibit R- CCR MEYN-8HTJ84 and that only the orders of Exhibit R- CCR MEYN-8HTJ84 are being appealed.
- CCR MEYN -8HTJ84- 2 indicates that PDDCR complied with the Order of June 14, 2011.

**Position of the Parties and Remedy Requested:**

**Appellant, [Position of the Appellant]**

PDDCR is not a "contractor" as defined in section 1(b) of the OHS Act and as such, the issuing officer has no jurisdiction over PDDCR.

Alternatively if PDDCR is determined to be a "contractor" under the OHS Act and is required to perform the duties of a "contractor" as defined in the OHS Act, then PDDCR argues that; PDDCR has not breached section 2(5) of the OHS Act as alleged in the Orders, the Orders violate the principals of natural justice as there is no qualitative ability to determine if PDDCR complied with the Orders as it can be "removed at the discretion of the Officer" and that the site of the fatality is a private residence which was owned by a private individual and rented directly by T. Saddleback through his guardian.

PDDCR requests that the Council rescind the Orders in their entirety.

**Respondent, [Position of the Respondent]**

OH&S submits that the order is appropriate, justified and necessary to ensure worker safety and that PDDCR is a "contractor" within the meaning of the OHS Act.

OHS requests that the Order and the seven measures be confirmed.

**Decision:**

The meaning of the word "contractor" became a part of the basis of our decision weighing. The panel put broad weighing into the definitions of; contractor, directs, work, worksite and occupation. Each of these separate definitions were applied back into the context of the order and the appeal. This panel concluded that under section 1 (b) of the OHS Act the definition of "contractor", PDDCR did not "direct the activities of one or more employers involved in work at the work site".

The Panel found that the evidence, witness's testimony and arguments provided by PDDCR to be more persuasive in the Appellant's position than argued by the Respondent. Specifically the panel concluded that Exhibit C- the agreement dated April 22, 2012 between PDDCR and Canadian Mental Health Association (CMHA) did not "direct the activities of an employer involved in the work at the work site" but rather provided a reference to recognized standards of care, methods of establishing changes to the contract and to allow for auditing for financial

reasons. The panel further agreed that the requirement to “direct activities at the worksite” was established by Exhibit D - Individual Service Agreement between [REDACTED] and CMHA not the agreement with PDDCR.

The panel also considered the Respondent's argument that PDDCR failed to provide the necessary hazard assessment to CMHA thereby preventing the CMHA from knowing the risks associated with providing services. The panel found the testimony provided by Dave Waddel- Director of Corporate Services and evidence provided by the Appellant reasonably demonstrated that CMHA did have the required information to provide services to the client in absence of Exhibit K- Risk Assessment dated June 23, 2008. In considering this evidence, more weighting was given to the testimony than Exhibit E – Restrictive Procedures Review- WDACS dated March 17 2008, Exhibit K- Risk Assessment dated June 23, 2008 as both Exhibit E and K were produced for WDACS in 2008 not for the current service provider CMHA.

After considering the evidence and reviewing the legislation, with a “modern approach”, the Panel finds that PDDCR is not a “contractor” as defined in section 1(b) of the OH&S Act and as such the Order regarding PDDCR being in non-compliance to section 2(5) is invalid. It is the determination of this panel to revoke the Order - Client Contact Report Reference Number- MEYN-8HTJ84.

**Occupational Health and Safety Council Appeal Panel**