Canadian Human
Rights Tribunal

Tribunal canadien
des droits de la personne

Citation: 2019 CHRT 9
Date: February 27, 2019
File Number: T2251/0618

[ENGLISH TRANSLATION]

Between:

Gilbert Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation)

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Public Safety Canada

Respondent

Ruling

Member: Gabriel Gaudreault

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I. Background

[1] Public Safety Canada (the respondent) filed a motion with the Canadian Human Rights Tribunal (Tribunal), requesting that the Tribunal stay its proceedings until the Superior Court of Quebec (Superior Court) renders a final judgment on the originating application filed by Pekuakamiulnuatsh Takuhikan against the Attorney General of Canada and the Attorney General of Quebec, bearing the reference No. 155-17-000027-173. The respondent filed this motion on November 8, 2018. The complainant and the Commission had an opportunity to file their submissions on November 30, 2018, and the respondent had an opportunity to file a response on December 14, 2018.

[2] Without repeating all the details of the complaint, Gilbert Dominique, Chief of the Pekuakamiulnuatsh First Nation, on behalf of members of the Pekuakamiulnuatsh First Nation (the complainant), filed a complaint with the Canadian Human Rights Commission (Commission) on February 12, 2016. This complaint was referred to the Tribunal on January 11, 2018. The complainant alleges that Public Safety Canada differentiated adversely in relation to it in the provision of services, more specifically with regard to police services, thereby violating section 5 of the *Canadian Human Rights Act* (*CHRA*), and did so, on the basis of the race and national or ethnic origin of members of the Pekuakamiulnuatsh First Nation. The complaint covered, among others, the First Nations Policing Program (FNPP), the funding thereof, the level of police service and the duration of agreements under this program.

[3] It should also be noted that on April 13, 2017, the band council representing Pekuakamiulnuatsh Takuhikan in Mashteuiatsh filed an originating application before the Superior Court, and that the application was amended on December 1, 2017. The plaintiff is claiming approximately 1.6 million dollars from the Attorney General of Canada and the Attorney General of Quebec for deficits accumulated since April 1, 2014, for policing services provided on its territory, pursuant to the agreements concerning the provision of policing services, which are tripartite funding agreements.

[4] The attorneys general of Canada and Quebec filed a motion to dismiss, since they were of the view that the plaintiff's originating application had no legal basis. The

Honourable Justice Sandra Bouchard of the Superior Court sitting in Roberval, Quebec, dismissed that motion on September 7, 2017.

[5] That said, the Tribunal takes note of the quality of material received by all the parties, and following a careful reading and analysis of this material, the Tribunal dismisses the application for a stay of proceedings filed by the respondent.

[6] To ensure a clear understanding of this decision, when the Tribunal refers to Mr. Dominique (on behalf of the Pekuakamiulnuatsh First Nation) and Public Safety Canada as parties to the complaint before the Tribunal, they will respectively be referred to as the "complainant" and the "respondent". When the Tribunal refers to the Pekuakamiulnuatsh Takuhikan and the attorneys general of Canada and Quebec in the context of the Superior Court proceedings, they will respectively be referred to as the "plaintiff" and the "defendant(s)".

II. Issue

[7] The Tribunal must answer the following question:

> Is it in the interest of justice for the Tribunal to suspend the inquiry into this complaint pending the Superior Court of Quebec's final judgment on the originating application, bearing reference number 155-17-000027-173, filed by Pekuakamiulnuatsh Takuhikan against the Attorney General of Canada and the Attorney General of Quebec?

III. Analysis

[8] In a recent decision, *Duverger v. 2553-4330 Québec Inc.*, 2018 CHRT 5 [*Duverger*], the Tribunal expanded on the applicable test when considering a motion to stay its own proceedings. In order to allow for a broader, more flexible and, most importantly, reasonable analysis of the factors to consider when deciding motions to stay proceedings, the Tribunal stated that the applicable test is that of the interest of justice.

[9] When the Tribunal considers the interest of justice criteria, it may consider not only the principles of natural justice, procedural fairness and expeditiousness, but also other

factors, for example, those developed in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 (namely, (1) a serious issue of fact and/or law to be tried, (2) irreparable harm and (3) the balance of convenience). Other factors relied on by the parties could also be considered by the Tribunal, most notably, costs, energy, stress, anxiety, damage to reputation or the recovery of certain payments remitted improperly. This list is not exhaustive, and the analysis of the various factors will depend on the circumstances of each case (*Duverger*, para. 60).

[10] The parties did not challenge the Tribunal's jurisdiction to hear this type of motion. Indeed, the Tribunal is the master of its own procedure and has the authority to determine a motion to stay its own proceedings (*Duverger*, at para. 33).

[11] The parties raised several factors which, according to them, would argue either for or against staying the proceedings before the Tribunal. The Tribunal will need to analyze the various factors. Most of the arguments made by the respondent concern the general idea that the proceedings before the Tribunal and the Superior Court duplicate each other. The complainant and the Commission disagree with the respondent. This duplication of proceedings is manifested in various aspects which will be analyzed in the following paragraphs.

[12] First, the respondent argues that any decision rendered by the Superior Court and the Tribunal respectively will rely on the same bases and factual framework. Indeed, I agree with the respondent's position that the facts concerning the two proceedings should generally remain quite similar. However, does this automatically mean that either the Superior Court or the Tribunal should stay its own proceedings because the legal proceedings before each authority share similar facts? I do not necessarily agree. A court or tribunal must rule on the facts, interpret them and apply the law to the facts of each case. Based to its own jurisdiction and the nature of disputes that it hears, a court or tribunal is required to analyze the facts according to its own unique perspective. Therefore, two of them may hear evidence that is similar or identical on a number of different aspects, but they must analyze this evidence differently with a view to rendering judgments that will not have the same effects. Consequently, it is above all the nature of the dispute that is important.

[13] The respondent argues that several issues in dispute in the context of the two proceedings are identical or inseparable, a fact which would support a decision to stay the proceedings. Both the complainant and the Commission allege that, on the contrary, the disputes differ in nature.

[14] It is important to remember that when the Tribunal is required to decide whether discrimination has occurred under section 5 of the *CHRA*, three aspects must be proven based on a balance of probabilities (*Commission des droits de la personne et de la jeunesse v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 and 44 to 52 [*Bombardier*]). The three-part test was developed in the Supreme Court judgment in *Moore* (*Moore v. British Columbia (Education)*, [2012] SCR 61, at para. 33) and requires the following:

1) there is a prohibited ground for discrimination under the *CHRA*;

2) the provider of goods, services, facilities or accommodation customarily available to the general public denied, or to denied access to, any such good, service, facility or accommodation to any individual, or differentiated adversely in relation to any individual; and

3) the prohibited ground of discrimination was a factor in the differential treatment suffered by the individual.

[15] The Tribunal had the benefit of the documentation submitted by the parties concerning the proceedings before the Superior Court, particularly the originating application (Exhibit A of the respondent's motion), the request for setting down for trial and judgment by way of a joint declaration (Exhibit 5 of the complainant's submission record) and the decision concerning the defendants' grounds for dismissal, rendered by the Honourable Sandra Bouchard, J.S.C., and dated October 5, 2017.

[16] The proceedings before the Superior Court involve aspects and principles which are not part of the analysis performed by the Tribunal and developed in *Moore*. The parties are asking the Superior Court to analyze, among other issues, whether the defendants failed to fulfill their obligations to negotiate in good faith, to act with honour and to

discharge their fiduciary duties to the First Nation (see the originating application, as well as the issues set out in in the request for setting down for trial and judgment by way of a joint declaration). The Tribunal has not been asked to take a position on these aspects in these proceedings.

[17] As noted by the Honorable Sandra Bouchard, this forms the cornerstone of the First Nation's action in the Superior Court (see paragraphs 32 and 33 of her judgment, *Pekuakamiulnuatsh Takuhikan c. Procureur général du Canada*, 2017 QCCS 4787). She provides useful insight into the foundations of the principle of the honour of the Crown and the Crown's fiduciary duty, as well as the potential vulnerability assessment concerning the plaintiff (see judgment, para. 46).

[18] There is nothing in the analysis made by the Honourable Sandra Bouchard concerning the notions of fiduciary duties, the honour of the Crown or good faith negotiations that would suggest the need to present evidence concerning any prohibited ground for discrimination or adverse differential treatment that the complainant allegedly suffered in the context of the provision or denial of services. Moreover, there is nothing to suggest the need to present evidence concerning an existing link between these two aspects developed, most notably, in *Moore*.

[19] Even though the Honourable Sandra Bouchard stated that evidence should be presented to support the plaintiff's claim that the alternative of being served by a non-Indigenous police service is an unreasonable and discriminatory option, there is a significant lack of details on this aspect of *discrimination* in the documentation provided in relation to the Superior Court proceedings.

[20] The only mention of a discriminatory aspect in the plaintiff's originating application can be found in paragraph 60, which reads as follows:

> [TRANSLATION]
>
> Even though MASHTEUIATSH could theoretically refuse to be a party to the FNPP and the tripartite agreements, such an alternative is unreasonable and <u>discriminatory</u> in light of the reports and objectives that resulted in the creation of the FNPP, and of the reasonable expectations of

> MASHTEUIATSH to ensure compliance with the objectives of the FNPP and the tripartite agreements concluded as a result thereof.
>
> [Emphasis added]

[21] More specifically, the complainant's written submissions concerning the present motion to stay proceedings state that the Superior Court will not need to determine whether the FNPP is discriminatory (or not) and that the reference to this discriminatory aspect in paragraph 60 only serves to provide context.

[22] Indeed, upon reading the originating application, it does not appear to be focused on this aspect of *discrimination*, but rather on the principle of the honour of the Crown, the Crown's fiduciary duties and its obligation to negotiate in good faith. It is not the Tribunal's impression that the discriminatory aspect forms the basis of the Superior Court case, as the complainant submits; if such were the case, the record would be more explicit on this aspect. Presumably, the parties would have explicitly referenced the *discrimination*, most notably when confirming the issues in dispute in the request for setting down for trial and judgment by way of a joint declaration filed with the Superior Court, as well as in the originating application itself. One might expect that the parties would have provided details of the test applicable to matters related to discrimination, a test which has been developed and reiterated on several occasions by the Supreme Court. I must also add that the plaintiff's originating application makes no mention whatsoever of section 15 of the *Canadian Charter of Rights and Freedoms* (*Canadian Charter*). Yet this section could have prompted an analysis of a discriminatory act based not on the *CHRA* or Quebec's *Charter of human rights and freedoms*, but on the *Canadian Charter*. This suggests that the *discrimination* aspect is not the cornerstone of the case.

[23] Accordingly, and without any intention whatsoever of interfering with the Superior Court's jurisdiction or the inherent powers invested in that Court, I find that the Superior Court and the Tribunal will be required to conduct very different analyses and that this would not support staying the Tribunal's proceedings.

[24] The respondent further alleges that the complainant is seeking the same remedy in both proceedings, namely, reimbursement of the deficit accumulated by the First Nation

for management of its police service. However, the complainant and the Commission argue that while it is true that this remedy is being sought in both proceedings, there are numerous other remedies that are also being sought before the Tribunal, but not in the proceedings before the Superior Court.

[25] Indeed, before the Tribunal, both the complainant and the Commission are seeking a wide range of remedies under section 53 of the *CHRA*. The Tribunal will not restate all the remedies being sought here but notes that they include, for example:

- an order to stop the discriminatory treatment and end discriminatory funding practices under the FNPP;
- an order under which the FNPP would provide the requisite funding to allow public safety authorities in the community of Mashteuiatsh to offer police services that are at least on par with the minimum level of service offered by non-Indigenous police departments in Quebec, based on Level 1 services as set out in the *Police Act*;
- an order to pay the victim of the discriminatory practice, as well as each member of the Pekuakamiulnuatsh First Nation residing in Mashteuiatsh, up to $20,000 in compensation for pain and suffering; and
- an order requiring the respondent to provide a compliance report concerning the measures ordered.

None the above remedies are being sought in the proceedings before the Superior Court.

[26] Consequently, the remedial measures being sought in the two legal proceedings are very different, with the exception of the request for reimbursement of the accumulated deficit. I will add that before ordering any remedial action, the Tribunal must first decide whether any discrimination occurred, based on the evidence filed at the hearing. If discrimination is not established, no remedies can be ordered. That said, the remedies being sought must also be established by evidence during the hearing. It is important to remember that the outcome of this case remains uncertain at this point.

[27] It is also important to keep in mind that despite the fact that the Superior Court case is ready to proceed, a date has yet to be scheduled for the hearing. The case before the Tribunal may very well proceed after (or before) the Superior Court case. Consequently, if the Tribunal case were to proceed after the Superior Court case, nothing would prevent the parties, or the Tribunal, from adapting the proceedings accordingly. If, for example, the Superior Court ordered the defendants to remit certain amounts to the plaintiff, the parties would no doubt advise this Tribunal that these amounts have been or could potentially be remitted, and vice versa if the Tribunal case proceeded before the Superior Court case.

[28] The respondent argues that the vision adopted by the Commission and the complainant regarding the prospective nature of the remedies sought before the Tribunal ignores the practical reality of a decision of the Superior Court. In particular, the respondent states that if the Superior Court orders the Government of Canada and the Government of Quebec to assume the costs for the plaintiff's police services, the respondent would be required to take cognizance of that Court's order and findings of fact. This could have an impact on future funding, and the judgment could set a precedent for other communities wishing to participate in the FNPP.

[29] With respect, what the respondent is arguing is difficult to predict. What will the Superior Court decide? What impact will such a judgment have on the FNPP? Will this judgment set a precedent? Nothing is certain yet. Keeping in mind that the *discrimination* aspect does not appear to be the cornerstone of the Superior Court case, it is difficult to predict whether it will have a real impact on the FNPP and whether its discriminatory aspect, as alleged in this complaint by the complainant, will be corrected.

[30] Consequently, in my opinion, the question of remedies does not support a decision to stay the proceedings.

[31] The respondent claims that the only point exclusive to the Tribunal is the allegation that the complainant was being subjected to discrimination because it did not receive so-called level 1 police services, which is the minimum level under the *Police Act* (R.S.Q. c. P-13.1). The respondent argues that this is an indirect attack on a piece of provincial

legislation and that the Tribunal does not have jurisdiction to express an opinion on the validity of provincial laws.

[32] With respect, this argument is not helpful at this stage of the proceedings and does nothing to help the Tribunal make a decision on the present motion to stay proceedings. The respondent did not file a motion to limit the Tribunal's jurisdiction regarding certain aspects of the case; the Tribunal must decide whether to suspend its own proceedings. This factor is not relevant to the Tribunal's analysis.

[33] The respondent is of the view that the Tribunal's analysis would be easier if it had the benefit of a judgment by the Superior Court which addressed the issue of whether it is discriminatory that the complainant does not adhere to the FNPP. Once again, this *discrimination* aspect does not appear to be the focus of the proceedings before the Superior Court. That said, the Tribunal is not saying that it would not find a judgment by the Superior Court useful, even though that judgment does not address discrimination. Indeed, it could clarify certain aspects of the Tribunal's case which are similar to those in the application filed before the Superior Court. However, according to the material filed by the parties, there is no guarantee that the Superior Court's decision will be a determinative factor in the Tribunal's analysis. Without reiterating all the elements raised earlier, the issues in dispute are different, the analysis of the two cases will not be based on the same precepts, and different remedies are being sought in each of the two proceedings, with the exception of the request for reimbursement of the accumulated deficit. This argument does not support a decision to stay the Tribunal's proceedings.

[34] Both the Commission and the complainant allege that the parties involved in the two proceedings are not the same, an argument which, in their opinion, should preclude a stay of proceedings. In both cases, the complainant and the respondent are necessarily involved. However, the Attorney General of Quebec is named as a party in the Superior Court case but not in this complaint, while the Commission, for its part, is named as a party in the Tribunal's proceedings but not in the Superior Court case.

[35] It is my opinion that at this stage, the parties involved in the two cases are ultimately different. With respect to the Commission's involvement as a party before the

Tribunal, it is important to clarify that the Commission is independent of the other parties involved. Indeed, the Commission has a right to be heard fully and completely and is also entitled to an inquiry which respects the principles of natural justice and the rules of practice. It has a right to present its arguments and evidence in a timely and effective manner. The *CHRA* requires proceedings before the Tribunal to be conducted as informally and expeditiously as possible (see subsections 48.9(1) and 50(1) of the *CHRA* and Rule 1(1) of the *Rules of Procedure*).

[36] One of the Commission's objectives is to protect the public interest of Canadians (section 51 of the *CHRA*). Its role is essential, and the Tribunal cannot ignore its involvement in this case as an independent and essential party to the dispute. Moreover, the Tribunal cannot disregard the specific remedies being sought by the Commission, including systemic remedies. As reminded in *Duverger*, at paragraph 59, the interest of justice includes the interest of all the parties, and complaints of discrimination inevitably concern the public interest. The public interest requires, among others, that complaints concerning discrimination should be dealt with expeditiously. These factors support a decision to dismiss the motion to stay the proceedings.

[37] That said, and as mentioned earlier, the Superior Court case appears to be focused on the Crown's fiduciary duties and its obligations to act with honour and negotiate in good faith. The respondent alleges that since this involves constitutional obligations of the Crown, the involvement of both levels of government, provincial and federal, is necessary, particularly because of the Quebec government's financial contributions to Indigenous services within its territory. Conversely, the complainant argues that the Attorney General of Quebec is not involved in the proceedings before the Tribunal and that her presence is not required because the Attorney General of Quebec had no part in the creation, administration or maintenance of the FNPP. The FNPP is a federal program, and the respondent is responsible for its administration.

[38] At this stage, the Tribunal has not been asked either by the current parties to the complaint or by another person to consider an application concerning the addition of parties or interested persons to the proceedings, in accordance with Rule 8 of the *Rules of Procedure*. Even though the respondent claims that the Attorney General of Quebec has a

role to play, either in Superior Court or before this Tribunal, it is clear that she is not a named party or interested party in the proceedings before the Tribunal. It is therefore my opinion that the respondent is free to call the Attorney General of Quebec as a witness, or add her as a party or interested party, if the respondent deems that it would be useful for this Tribunal to hear from the Attorney General of Quebec. The Attorney General of Quebec could also, on her own initiative, file a motion to intervene in these proceedings. However, the Tribunal has not received any requests related to the above scenarios to date.

[39] It is important to remember that other than the material filed by the parties in support of the complaint as part of the normal disclosure process (original complaint, statement of facts, witness list, lists of documents, etc.), the Tribunal is only in possession of the originating application filed by Pekuakamiulnuatsh Takuhikan, the request for setting down for trial and judgment by way of a joint declaration filed in Superior Court and the judgment rendered by the Honourable Sandra Bouchard concerning the defendants' motions to dismiss. The Tribunal is not in possession of the material filed by the defendants in the context of the Superior Court case. The Tribunal only has a rough idea of the defence mounted by the defendants. Without more details, the Tribunal finds it difficult to judge whether a resolution of this complaint requires the presence of the Attorney General of Quebec and the articulation of her position, most notably with respect to the facts.

[40] If the parties determine that her presence is required, it will be their responsibility (or the responsibility of the Attorney General of Quebec herself) to take appropriate action in the circumstances. Consequently, this is not a determinative factor in the context of this motion to stay the proceedings.

[41] On a different note, the respondent submits that [TRANSLATION] "relitigating issues that have already been decided by a competent court or tribunal is likely to have a significant negative impact on the interest of justice" (respondent's motion, para. 26). In support of this argument, the respondent cites *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77 [*Toronto*], a decision which deals with, among other things, the doctrines of issue estoppel, collateral attack and abuse of process. In its response, the

Commission instead refers the Tribunal to *Penner v. Niagara (Regional Police Services Board)*, [2013] 2 S.C.R. 125 [*Penner*].

[42] That said, I believe that the current situation differs from *Toronto* and *Penner*, the decisions on which the parties rely. In fact, the difference is relatively simple: in those cases, a decision had already been rendered by a competent authority. However, that is not the case here. The Superior Court has not yet rendered a decision on any of the issues in dispute. Conversely, the Tribunal has not yet rendered a decision concerning this complaint. That said, preventing the relitigation of an issue is an argument without merit at this stage, as *res judicata* does not yet apply in either pending case.

[43] Consequently, it is difficult for the Tribunal to specifically adopt the guidelines laid down by the Supreme Court concerning the doctrines of issue estoppel, collateral attack and abuse of process, since there is no *res judicata*. Nevertheless, these guidelines remain useful, most notably with respect to the issue of the care which courts of law and administrative tribunals must take in exercising their discretion with regard to *res judicata*, as well as the issue of the interest of justice. In *Penner*, *Toronto* or even *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, for example, the Supreme Court has developed different factors that should be taken into consideration or conditions which must be fulfilled in order to establish *res judicata*. Obviously, these factors and conditions may differ depending on the doctrine that applies in the circumstances.

[44] The Tribunal does not intend to go over all these factors and conditions in detail. It is content to provide a number of examples, such as the existence of the same issue in dispute, the finality of the previous decision, the presence of the same parties in both cases, the fairness of the earlier proceedings (which includes procedural safeguards, the existence of a right to appeal and the expertise of the decision maker), and the purposes, procedure or issues relevant to the two proceedings, which differ significantly.

[45] In their written submissions, the parties expanded, each in their own way, on these different factors or conditions established by the Supreme Court. The analysis of the question of the interest of justice by the Tribunal, which is intended to be discretionary,

broad and flexible, as developed in *Duverger*, makes it possible to consider the different, relevant and reasonable factors raised by the parties (see *Duverger*, at para. 51).

[46] The Tribunal is well aware that one party does not get to try multiple times to obtain a favourable judgment. However, in this case, there is no reason to conclude that the complainant is multiplying its efforts to seek remedies, before both the Superior Court and the Tribunal.

[47] I have already determined that other than requesting reimbursement of the deficit accumulated since 2013 in order to make up for underfunding of the FNPP, the other measures being sought by the Commission and the complainant under section 53 of the *CHRA* are not being sought in Superior Court. The Tribunal is therefore not satisfied that there are risks of conflicting measures emerging for any of the other aspects of the case.

[48] I have also found that the nature of the dispute before that Court and the issue in dispute in the complaint before the Tribunal appear to differ significantly: one raises constitutional questions concerning the honour of the Crown, fiduciary duties and good faith negotiations, while the other raises different aspects identified by the Supreme Court regarding discrimination, most notably developed in *Moore* (prohibited ground of discrimination under the *CHRA*, adverse treatment and the existence of a link between these two elements).

[49] The Tribunal appreciates the respondent's concerns regarding the relitigation of questions that have already been decided, and this argument is not far-fetched, particularly with respect to the request for reimbursement of the accumulated deficit. That said, as mentioned earlier, no decision has been rendered on any of the issues. Although the principle of *res judicata* could potentially apply to specific aspects of the case, this argument may quite simply have been made prematurely.

[50] The respondent alleges that the duplication of legal proceedings results in the duplication of legal and monetary resources. It is true that holding a new hearing to address a question that has already been decided wastes legal resources. The Tribunal has also emphasized, in *Duverger*, at para. 66, that the costs, time, energy, stress and anxiety involved are factors which may be taken into consideration in the Tribunal's

analysis concerning a stay of its proceedings. However, *res judicata* does not apply in this case. Moreover, the Tribunal has also conducted an analysis concerning the nature of the dispute, the parties involved, the remedies being sought, the factual background, etc. I have already determined that, based on the submissons of the parties and the material filed, the proceedings before the Superior Court differ from the proceedings before the Tribunal, with the exception of the request for reimbursement of the accumulated deficit. Consequently, the Tribunal cannot consider this idea of wasting judicial and monetary resources in this case as a determinative factor.

[51] The complaint was filed by the complainant in February 2016, almost three years ago at this point. As mentioned earlier, complaints concerning discrimination must be dealt with as expeditiously as possible (see *Duverger*, at paragraphs. 58, 59 and 68, subsection 48.1(1) of the *CHRA*, as well as Rule 1(1) of the *Rules of Procedure*). The Tribunal's analysis must also take the time factor into consideration. However, the Tribunal's proceedings started only recently, and the parties are still in the process of disclosing evidence. The Tribunal is currently considering a second motion, a disclosure motion filed by the Commission on November 1, 2018. The Tribunal will need some time to deal with this motion, so it would be premature to schedule a hearing for the Tribunal's case.

[52] In the event that the Tribunal grants the respondent's motion to stay the proceedings, the Commission has asked the Tribunal to allow the disclosure process to continue, and the respondent has not expressed any objection to this request. The Tribunal is the master of its own procedure and may demonstrate flexibility and creativity in that regard while respecting the principles of natural justice, fairness and the common law, as well as its legislative scheme.

[53] However, it is my opinion that it would be contradictory for the Tribunal to order a stay of proceedings while continuing its disclosure process; the Tribunal either stays the proceedings or does not stay them. Once the proceedings have been stayed, there will be a temporary suspension of the inquiry (*Duverger*, at para. 26).

[54] The Commission suggests an alternative to staying the proceedings. It states that the Tribunal could hear all of the evidence and reserve its decision if it is satisfied that there is a risk of conflicting judgments being rendered by the Tribunal and the Superior Court. The respondent is of the view that this would be counterproductive.

[55] On this point, the Tribunal finds that the proceedings are still at an early stage, since disclosure has not been completed and it is still required to render a decision on the disclosure motion filed by the Commission. A hearing date has not yet been scheduled, and it is likely that hearing dates will only be available in a few months. The Superior Court case is ready to proceed, but the Tribunal has no information on whether hearing dates have been scheduled. The Superior Court may very well hear its case before the Tribunal undertakes to hear and decide its own case.

[56] The only remaining hitch is the reimbursement of the 1.6 million dollars for the accumulated deficits which the complainant is requesting before both legal authorities. Apart from this, no other remedies which the Commission and the complainant are seeking before the Tribunal are being sought before the Superior Court. Moreover, if the Superior Court renders a decision on the accumulated deficits, there is no doubt that the Tribunal would be informed accordingly; the converse would also be desirable if the Tribunal rendered a decision on this point first.

[57] Without staying the proceedings, and to avoid undue delay of the inquiry into the complaint (the Tribunal is also required to act expeditiously: subsection 48.9(1) of the *CHRA*), other alternatives may be contemplated. For example, as the Commission proposed, the Tribunal may hear all the evidence and reserve its decision concerning the quantum of damages to be granted under paragraph 53(2)(c) of the *CHRA* to compensate for the accumulated deficits. Another option would be for the Tribunal to split the case entirely. First, the parties could present their evidence concerning the discrimination alleged under section 5 of the *CHRA*. Then, if the Tribunal finds that discrimination did in fact occur, it could hear evidence from the parties concerning the remedies to be granted.

[58] The Tribunal is not against the idea of reviewing the issue, particularly from these perspectives, at a later date in the process. At that time, the parties could be heard on the

matter and submit their submissions. At this stage, it would be premature to render a decision on this issue.

IV. Decision

[59] For all these reasons, the Tribunal finds that it is not in the interest of justice to stay its proceedings and dismisses the respondent’s motion.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
February 27, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2251/0618

Style of Cause: Gilbert Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada

Ruling of the Tribunal Dated: February, 27, 2019

Motion dealt with in writing without appearance of parties:

CAIN LAMARRE, for the complainant

Daniel Poulin, for the Canadian Human Rights Commission

Sébastien Dasylva and Pavol Janura, for the respondent