

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2021 CHRT 30

Date: August 25, 2021

File No.: T2248/0318

[ENGLISH TRANSLATION]

Between:

Ryan Letnes

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

- and -

National Police Federation

Interested party

Ruling

Member: Marie Langlois

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I. National Police Federation’s Motion for Interested Party Status

[1] On April 6, 2021, the National Police Federation (the “NPF”) filed with the Canadian Human Rights Tribunal (the “Tribunal”) a motion for interested party status in the inquiry into the matter of Ryan Letnes (the “Complainant”) against the Royal Canadian Mounted Police (the “Respondent”), File No. T2248/0318.

[2] The Respondent objects. The Canadian Human Rights Commission (the “Commission”) and the Complainant agree with the NPF’s motion.

II. Issues

[3] The issues are the following:

- A. Should the NPF be recognized as an interested party?
- B. If yes, what is the scope of its participation in the inquiry?

III. Analysis

A. Should the NPF be Recognized as an Interested Party?

[4] The Tribunal is of the view that the NPF should be recognized as an interested party at the hearing, for the reasons that follow.

[5] The *Canadian Human Rights Act*, R.S.C. c. H-6 (the “Act”), sets out that the member or panel shall inquire into the complaint after due notice to the Commission, the parties and, at the discretion of the member or panel conducting the inquiry, any other interested party (s. 50(1)). The Tribunal therefore has the discretionary authority to grant interested party status.

[6] The *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the New Rules of Procedure), which came into effect on July 11, 2021, state at section 27 that a motion for interested person status must be filed. The motion must specify the assistance the person wishes to provide to the inquiry and the extent to which the person wishes to

participate in the inquiry. The former *Tribunal Rules of Procedure* (03-05-04), which still apply to this case on a transitional basis, also stated that the motion had to specify the extent of the desired participation (s. 8), but those rules were silent regarding the obligation to specify the assistance the person wishes to provide to the Tribunal.

[7] The Tribunal finds that the addition to the new Rules, regarding the assistance the person wishes to provide to the inquiry, codifies existing law by emphasizing the specific perspective that a party can bring to the Tribunal in determining the issues before it.

[8] The Tribunal's jurisprudence sets out the necessary conditions for the granting of interested party status.

[9] In *Walden et al. v. Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada)*, 2011 CHRT 19 (*Walden*), the Tribunal granted interested party status to the Professional Institute of the Public Service of Canada ("PIPSC"), a union representing federal public service employees, in a dispute between it and the Treasury Board of Canada. In that case, as in this one, the complainants, who were union members, were not represented by PIPSC before the Tribunal.

[10] PIPSC argued that interested party status had been granted in the past in situations in which one of the following criteria was met:

- A. The prospective interested party's expertise will be of assistance to the Tribunal;
- B. Its involvement will add to the legal positions of the parties; and
- C. The proceeding may have an impact on the moving party's interests.

[11] In that case, the Tribunal accepted the criteria proposed by PIPSC and granted interested party status to PIPSC, holding that it met all three. The Tribunal did not address whether it was necessary to meet each of the three criteria.

[12] In this case, the Respondent argues that interested party status can only be granted if all three criteria are met, as per the decision in *Walden*. This Tribunal does not accept this rigid interpretation of the test as submitted by the Respondent because, as seen above, this is not what *Walden* stands for.

[13] Moreover, recent case law shows that the analysis must be performed not strictly and automatically, but rather on a case-by-case basis, applying a flexible and holistic approach.

[14] In *Attaran v. Citizenship and Immigration Canada*, 2018 CHRT 6 (*Attaran*), the Tribunal held that what is required is a holistic approach on a case-by-case basis. It cited with approval *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 11 (*NAN*). In that case, the Tribunal held that a person or organization could be granted interested party status if they were impacted by the proceedings and could provide assistance to the Tribunal in determining the issues before it. That assistance should add a different perspective to the positions taken by the other parties and further the Tribunal's determination of the matter. The Tribunal therefore granted interested party status to the Nishnawbe Aski Nation (the "NAN"). This Tribunal notes that the decision made no distinct mention of the NAN's institutional expertise as a specific criterion to consider.

[15] The same is true for *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 11 (*CAP*), in which the Tribunal granted interested party status to the Congress of Aboriginal Peoples (the "CAP"). The Tribunal did not perform a specific analysis of the expertise of the proposed interested party, the CAP, but instead used the holistic approach prescribed in *Attaran*.

[16] In *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2020 CHRT 31 (*Innu Nation*), the Tribunal granted interested party status to the Innu Nation primarily on the basis that a large number of members of the Innu Nation would be affected by the outcome of that decision.

[17] In a very recent decision rendered orally on July 20, 2021, in *Saldanha v. Statistics Canada*, the Tribunal dismissed the motion of a person seeking interested party status, noting, among other things, the lack of assistance the proposed interested party could provide to the Tribunal.

[18] Thus, without contradicting the principles set out in *Walden*, the Tribunal appears to favour a more flexible and holistic approach. Moreover, the Tribunal has consistently held that the burden of proof rests on the proposed interested party.

[19] It should also be noted that the principles arising from the case law of the Human Rights Tribunal of Ontario (the "HRTO"), codified in sections 11.14 and 11.15 of the *HRTO Rules of Procedure*, set out the procedure for granting intervention status to a union (bargaining agent) of which the complainant to the proceedings is a member. Furthermore, the case law establishes that, absent exceptional circumstances, a union will automatically be granted intervention status in proceedings dealing with human rights in the workplace when one of its members is the complainant (see especially *Boyce v. Toronto Community Housing Corporation*, 2009 HRTO 131; and *George v. University of Ontario Institute of Technology*, 2017 HRTO 608).

[20] This Tribunal also notes its responsibility to conduct its proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s. 48.9(1) of the Act).

[21] In light of these principles, this Tribunal is of the view that the NPF, as the bargaining agent for approximately 20,000 members of the RCMP, including the Complainant, may, given its expertise or its perspective, be of assistance to the Tribunal in conducting its inquiry into this matter. It states that it has, in the past, represented RCMP members directly or indirectly in complaints or grievances involving human rights. It knows the RCMP's processes and policies on disability, the medical profile system, position and promotion management and anti-harassment policies, certain aspects of which are negotiated at the bargaining tables at which it has a seat. Not only does it have knowledge of the application of existing policies and procedures, but it may act as a partner in their future development through collective bargaining or its presence on certain committees, such as the one addressing harassment, or in other ways. Its contribution should allow for a more comprehensive understanding of the systemic issues.

[22] Moreover, according to the motion, the NPF does not share the Complainant's perspective with regard to some of the systemic remedies sought. In all likelihood, it will

raise other legal points of view. The outcome of the proceedings could certainly affect the NPF and its other members.

[23] Therefore, the Tribunal is of the view that the NPF could bring a different perspective from that of the Complainant and could assist in the determination of the matter.

[24] Accordingly, the Tribunal grants interested party status to the NPF. Therefore, question A is to be answered in the affirmative.

B. What is the Scope of its Participation in the Inquiry?

[25] To avoid prolonged debate and in accordance with the rules of natural justice, the Tribunal is of the view that it should grant limited participation to the NPF.

[26] The Respondent submits in its alternative arguments that the NPF should be authorized to provide a maximum of 30 pages of written submissions, and solely with respect to the remedies sought.

[27] Given the additional insights that the NPF could bring not only to the remedies sought, but also to the processes and policies being applied, the Tribunal finds that it would be inappropriate to limit its participation solely to the arguments on the remedies.

[28] The Tribunal finds, however, that the NPF's participation should be limited as follows:

- A. It may not call its own witnesses without specific leave from the Tribunal;
- B. It may not participate in case management conferences, unless it is specifically directed to attend by the Tribunal;
- C. It may not request postponements or changes to the hearing dates established by the Tribunal with the collaboration of the other parties;
- D. It may receive all the documentation filed at the hearing, including any expert reports;
- E. It may cross-examine the witnesses on the following subjects:
 - The interaction between the RCMP's medical profile system and the duty of reasonable accommodation;

- The allegations of a general culture of discrimination against disabled RCMP members, including administrative dismissals for medical reasons;
- The systemic remedies sought by the Complainant; and
- The NPF's participation in the policy and procedural change process in connection with the issues raised by the Complainant, namely, the promotion process, the medical profile system, the culture of discrimination and the internal anti-harassment process.

F. It may receive any written submissions from the parties;

G. It may submit written arguments in a document of no more than 30 pages; and

H. It may file a book of authorities.

IV. DECISION

FOR THESE REASONS, THE CANADIAN HUMAN RIGHTS TRIBUNAL

GRANTS the motion of the National Police Federation (the "NPF");

GRANTS interested party status to the NPF; and

LIMITS the NPF's participation as follows:

- i. It may not call its own witnesses without specific leave from the Tribunal;
- ii. It may not participate in case management conferences, unless it is specifically directed to attend by the Tribunal;
- iii. It may not request postponements or changes to the hearing dates established by the Tribunal with the collaboration of the other parties;
- iv. It may receive all the documentation filed at the hearing, including any expert reports;
- v. It may cross-examine the witnesses on the following subjects:
 - The interaction between the RCMP's medical profile system and the duty of reasonable accommodation;
 - The allegations of a general culture of discrimination against disabled RCMP members, including administrative dismissals for medical reasons;
 - The systemic remedies sought by the Complainant; and

- The NPF's participation in the policy and procedural change process in connection with the issues raised by the Complainant, namely, the promotion process, the medical profile system, the culture of discrimination and the internal anti-harassment process.
- vi. It may receive any written submissions from the parties;
- vii. It may submit written arguments in a document of no more than 30 pages; and
- viii. It may file a book of authorities.

Signed by

Marie Langlois
Tribunal Member

Ottawa, Ontario
August 25, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2248/0318

Style of Cause: Ryan Letnes v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: August 25, 2021

Date and Place of Hearing: July 12, 2021

By Zoom videoconferencing

Appearances:

Ryan Letnes, for the Complainant

Christine Singh, for the Canadian Human Rights Commission

Graham Stark, for the Respondent

Malini Vijaykumar, for the Interested Party

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