

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2022 CHRT 3

**Date:** January 24, 2022

**File No.:** T2459/1620

**Between:**

**Cathy Woodgate, Richard Perry, Dorothy Williams, Ann Tom,  
Maurice Joseph and Emma Williams**

**Complainants**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Royal Canadian Mounted Police**

**Respondent**

**Ruling**

**Member:** Colleen Harrington

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## I. Introduction

[1] Cathy Woodgate, Richard Perry, Dorothy Williams, Ann Tom, Maurice Joseph and Emma Williams (collectively the “Complainants”) are members of the Lake Babine First Nation in northern British Columbia. They have filed a human rights complaint alleging that the Royal Canadian Mounted Police (“RCMP” or the “Respondent”) discriminated against them and others by failing to properly investigate claims of historic childhood abuse suffered in schools in Burns Lake and Prince George. The applicant in this Motion, A.B. (the “Applicant”), taught in schools in these communities in the late 1960s and the 1970s and was the subject of the RCMP’s investigation. The investigation of the Applicant did not result in any criminal charges against him. The Complainants allege that, in the course of its investigation, the RCMP exhibited bias in favour of the Applicant, who is a “powerful non-Indigenous” individual.

[2] Following an investigation by the Canadian Human Rights Commission (the “Commission”), this complaint was referred to the Canadian Human Rights Tribunal (the “Tribunal”) for an inquiry in February of 2020.

[3] In November of 2021, the Applicant filed this Motion for a partial grant of standing as an “interested person” in relation to this inquiry, pursuant to Rule 27(1) of the *Canadian Human Rights Tribunal’s Rules of Procedure, 2021*, SOR/2021-137 (the “Rules”). He argues that his privacy interests and his personal and professional reputation are implicated in this proceeding. He also suggests that the Tribunal’s process is being used by one of the Complainants’ “non-legal representatives” as part of a targeted campaign against him.

[4] The Applicant seeks limited standing as an interested person in the proceeding in order to bring a Motion to dismiss the complaint under Rule 10 of the Tribunal’s *Rules*. He also asks the Tribunal to order that all records filed in support of this Motion be subject to a confidentiality order and sealed from public access pursuant to section 52(1) of the *Canadian Human Rights Act* (the “CHRA”).

[5] The Complainants oppose the Applicant’s Motion to be granted partial interested person status in this proceeding, while the RCMP takes no position on the Motion. The Commission does not object to the Tribunal granting the Applicant limited standing to deal

with two discrete issues. However, the Commission asks that the Tribunal place terms on the Applicant's participation as an interested person.

## **II. Decision**

[6] I agree to grant the Applicant limited interested person status in this proceeding, on the terms outlined in the Order below.

## **III. Issues**

[7] This Motion raises the following issues:

- i) Should the Applicant be granted partial interested person standing pursuant to Rule 27(1) of the Tribunal's *Rules*?
- ii) If I agree to grant the Applicant standing, what is the scope of his participation in the proceeding?
- iii) Should all records in support of the Applicant's Motion be subject to a confidentiality order and sealed from public access pursuant to section 52(1) of the *CHRA*?

## **IV. Legal Framework**

### *Interested Person Status*

[8] Section 48.9(2) of the *CHRA* states that the "Chairperson of the Tribunal may make rules of procedure governing the practice and procedure before the Tribunal, including, but not limited to, rules governing ... (b) the addition of parties and interested persons to the proceedings".

[9] Rule 27(1) of the Tribunal's *Rules* - which came into effect on June 11, 2021, and which the parties have agreed shall apply to these proceedings - states that a person who wishes to be recognized as an interested person in respect of an inquiry must file a motion

to that effect. 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” (27(2)). Rule 27(3) states: “If the panel grants the motion, it must specify the extent to which the interested person is permitted to participate in the inquiry.”

[10] In *Letnes v. Royal Canadian Mounted Police*, 2021 CHRT 30 (CanLII) [*Letnes*] the Tribunal reviewed the relevant case law and concluded that a person or organization applying for interested person<sup>1</sup> status under Rule 27 must meet at least one of the following criteria:

- i) The prospective interested person’s expertise will be of assistance to the Tribunal;
- ii) Their involvement will add to the legal positions of the parties; and
- iii) The proceeding may have an impact on their interests.

[11] The Tribunal’s analysis of these factors must be done on a case-by-case basis, applying a flexible and holistic approach (*Letnes* at para 13; *Attaran v. Citizenship and Immigration Canada*, 2018 CHRT 6 (CanLII)).

[12] In *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2016 CHRT 11 (CanLII) [*First Nations Child and Family Caring Society of Canada*<sup>2</sup>], the Tribunal held that a person or organization could be granted interested party status if: (1) they are impacted by the proceedings, (2) they can provide assistance to the Tribunal in determining the issues before it and, (3) that assistance will add a different perspective to the positions taken by the parties and further the Tribunal’s determination of the matter (at para 3).

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<sup>1</sup> I note that, although the Tribunal’s current *Rules of Procedure*, which came into effect in June of 2021, use “interested person” in Rule 27, the previous *Rules of Procedure* (03-05-04) used “interested party” instead (in Rule 8), and so this is the term used in most of the Tribunal’s case law. However, the current *Rules* reflect the wording of s.48.9(2) of the *CHRA*, which distinguishes between “parties” and “interested persons”.

<sup>2</sup> Note that I reference several rulings from this case, all hereinafter referred to as *First Nations Child and Family Caring Society of Canada*, but individually identified by their citations in CanLII.

[13] Pursuant to section 48.9(1) of the *CHRA*, the extent of an interested person's participation must take into account the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (*Letnes* at para 20; *First Nations Child and Family Caring Society of Canada*, 2016 CHRT 11 (CanLII) at para 3).

[14] The Tribunal has consistently held that the burden of proof rests on the proposed interested person.

### *Confidentiality*

[15] The Tribunal is required to comply with the open court principle. This means that its inquiries are to be conducted in public, unless it is satisfied that "there is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public" (s.52(1)(c) *CHRA*).

[16] The onus is on the party seeking a confidentiality order to establish that an exception to the open court principle is necessary because of the particular circumstances of the case. When considering applications for confidentiality, the Tribunal must ensure that the need to prevent the "disclosure of personal or other matters" outweighs the societal interest in a public hearing.

[17] The Tribunal has found that there must be "a serious risk, well-grounded in the evidence, which poses a threat to an important interest in the context of the litigation because reasonably alternative measures will not prevent the risk" (*White v. Canadian Nuclear Laboratories*, 2020 CHRT 5 (CanLII) at para 50, referring to *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII) at paras 48 and 53, and *Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), and *R. v. Mentuck*, 2001 SCC 76 (CanLII)). As such, exceptional conditions of sensitivity or privacy necessitating anonymity should generally be present before such an order is made (*R.L. v. Canadian National Railway*, 2021 CHRT 33 (CanLII) at para 7; *Mancebo-Munoz v. NCO Financial Services Inc.*, 2013 HRTO 974 (CanLII) at para 6).

## **V. Positions of the Parties**

### **A. The Applicant**

#### **(i) Prior to the Motion**

[18] In September 2021, prior to filing this Motion, the Applicant's legal counsel wrote to the Tribunal stating they had recently learned of the existence of this proceeding and of former Chairperson Thomas' Ruling (*Woodgate et al. v. RCMP*, 2021 CHRT 20 (CanLII) [*Woodgate*]) agreeing to redact certain information in the Complainants' Statement of Particulars ("SOP"). The Applicant's counsel was seeking access to an unredacted version of the official Tribunal record in order to evaluate whether they may wish to bring an application for interested person status on behalf of the Applicant. This issue was addressed when counsel for the RCMP confirmed that his office had already sent the unredacted SOP to the Applicant, through his previous counsel, in October of 2020, and this was passed on to his current counsel.

[19] In addition to the request for the unredacted SOP, the Applicant's counsel raised the issue of a possible breach of an implied undertaking of confidentiality to the British Columbia Supreme Court (the "BCSC"). This concern arose from the Applicant's review of the Commission's List of Documents that had been filed as part of the Tribunal's case management process. The Commission had filed only the List with the Tribunal, not the documents themselves, although the documents were disclosed to the Respondent and Complainants.

[20] The Commission's List refers to several documents that the Applicant believes the BCSC ordered the RCMP to produce in prior litigation involving the Applicant and Laura Robinson, that were subject to an implied undertaking of confidentiality. Ms. Robinson is a journalist who has written articles alleging the Applicant committed abuses against Indigenous children while teaching in northern BC approximately 50 years ago. She has been identified as a "non-legal representative" of the Complainants and appears on the Complainants' witness list.

**(ii) The Motion**

[21] The Applicant does not take a position on the complaint against the RCMP specifically. His Motion for interested person status is mainly to ensure his own interests are protected.

[22] The Applicant says his privacy interests and personal and professional reputation are implicated in this proceeding. His Motion says he is “a well known, public figure, likely most recognized by Canadians in his role as the President and CEO of the Vancouver Organizing committee for the 2010 Olympic and Paralympic games.” He argues that Ms. Robinson is using the Tribunal for the collateral purpose of targeting him, which threatens to undermine the integrity of this proceeding and amounts to an abuse of the Tribunal’s process.

[23] The Applicant and Ms. Robinson previously sued one another for defamation in the BCSC. The Applicant withdrew his claim and Ms. Robinson’s was dismissed by the Court (*Robinson v. A.B.*, 2015 BCSC 1690 (CanLII)). It was in the context of that proceeding that the BCSC ordered the RCMP to produce certain documents pertaining to its investigation of the Applicant.

[24] The Applicant alleges that, following the BCSC trial, Ms. Robinson retained documents that were subject to the implied undertaking to the Court and “unlawfully emailed these documents to the Commission for use in its investigation.” He suggests that the Commission launched its investigation into the RCMP on the basis of the information contained in these unlawfully produced documents.

[25] The Applicant says no relief from the implied undertaking was sought or obtained by Ms. Robinson from the BCSC and that there has been no explanation offered for the presence of these documents on the Commission’s list other than they originated from Ms. Robinson in breach of the implied undertaking.

[26] The Applicant is seeking limited standing as an interested person to bring an application for dismissal of the complaint under Rule 10 of the Tribunal’s *Rules*. He suggests this would remedy the breach of the implied undertaking to the BCSC and what he refers to as “the misuse and abuse of” the Tribunal’s process by Ms. Robinson.



[27] The Applicant sets out certain other actions he attributes to Ms. Robinson that he says constitute a campaign against him, including an Assembly of First Nations Resolution passed in 2016 urging the government to further investigate the allegations against him. If he is granted limited standing as an interested person in this inquiry to file a motion to dismiss the complaint, he anticipates providing additional evidence that Ms. Robinson continued her campaign to disseminate information to other parties about the allegations she had advanced against him.

[28] The Applicant says his proposed standing in the inquiry is limited to “demonstrating Ms. Robinson’s collateral purpose and abuse of the Tribunal’s process” and “assisting the Tribunal in respect to his personal privacy interests”. He requests confidentiality and sealing orders to preserve the fairness of the inquiry and to preserve his rights as a non-party whose interests are affected by the Tribunal process.

[29] The Applicant notes that, in his Ruling, former Chairperson Thomas indicated that the Tribunal had received several media inquiries about this matter, usually referencing the Applicant’s name (*Woodgate* at para 26). The Applicant argues that such media inquiries indicate that the Tribunal “should be vigilant to ensure the confidentiality of the inquiry and the protection of” his rights.

[30] The Applicant submits that s.52(1)(c) of the *CHRA* is applicable, as there is a real and substantial risk that “publicity of the alleged and unsubstantiated child abuse from 50 years ago will cause [the Applicant] undue hardship such that the need to prevent any disclosure related to him outweighs the societal interest that the inquiry be conducted in public.”

[31] In his reply submissions, the Applicant submits an affidavit from an organizer of the Victoria Salvation Army’s fundraising luncheon which indicates that the Applicant was scheduled to speak at the November 2021 event until the media sponsor alerted the Salvation Army to an August 6, 2021 article published by *The Tyee* about the Tribunal’s proceeding entitled “[The Applicant’s] Accusers Finally Will Get a Hearing”. According to the affidavit, the media sponsor advised it would have to pull its support from the event if the Applicant was participating, and so he was replaced as the keynote speaker.

[32] Most recently, APTN has applied to livestream the hearing of this complaint and they name the Applicant in their request letter. The Applicant says the “potential impact on [the Applicant’s] privacy interests of national television coverage of the actual hearing cannot be overstated. Few things can be more invasive of one’s personal privacy than having one’s name broadcast across Canada on a national television network, particularly for a well-known public figure such as” the Applicant. He argues that APTN’s application highlights and reinforces his need to be granted interested person status as a matter of fairness to ensure his privacy interests are fully considered and protected.

[33] The Applicant also submits that s.52(1)(b) of the *CHRA* applies in that “there is a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public.”

[34] He argues that his Motion is consistent with Tribunal case law in which limited interested person status, along with confidentiality orders, were granted to protect the privacy interests of third parties, including *Clegg v. Air Canada*, 2019 CHRT 4 (CanLII) [*Clegg*] and *Egan v. Canada Revenue Agency*, 2019 CHRT 27 (CanLII) [*Egan*].

## **B. The Complainants**

[35] The Complainants oppose the order sought by the Applicant to be granted partial standing as an interested person in these proceedings. They submit that the Applicant has not met the necessary criteria to be deemed an interested person, as he has not established that his privacy interests are in need of protection. Nor has he established that he can assist the Tribunal by offering a perspective different from that of the RCMP.

[36] The Complainants question how the Applicant’s privacy interests can be impacted given that the RCMP investigation that is the subject of this complaint has already been the subject of extensive media attention and previous legal proceedings. They argue that the cases relied on by the Applicant, *Egan* and *Clegg*, are unhelpful in determining his application. In *Egan*, a doctor who had treated the complainant was granted interested person status to allow her name to be anonymized. The Complainants say that, in the present case, the Applicant is seeking a stay of proceedings rather than confidentiality

measures. They also submit that, unlike in *Clegg*, no confidential information about the Applicant is being proffered in this matter.

[37] The Complainants submit that, even if the Applicant has a privacy interest, the requested remedy is unreasonably excessive, and there is no precedent for a stay of proceedings to protect one's privacy. The Complainants state, however, that they do not oppose anonymizing the Applicant's name as was done in *Clegg* and *Egan*.

[38] They argue that, if the implied undertaking rule was inadvertently breached by the Complainants or the Commission, any concerns about the Applicant's privacy can be addressed by either removing the documents in question or anonymizing the Applicant's name and identifying information in any documents available to the public.

[39] The Complainants further state that the Applicant is unable to establish that a breach of the implied undertaking has occurred, but if it has, the suggested remedy of staying the proceedings is excessive and unreasonable. They disagree that any breach of the implied undertaking would result in a violation of the Applicant's privacy, as the documents in question concern the RCMP's investigation, and are not the Applicant's personal documents.

[40] The Complainants also argue that there is no legal or factual support for the Applicant to bring a motion for abuse of process and no merit to the argument that the Applicant requires limited standing to assist the Tribunal in demonstrating his perspective that Ms. Robinson has targeted the Applicant. The Complainants say that this perspective has previously been raised by the RCMP and considered by the Commission during its investigation of the complaint and is not adding a different perspective from that of the Respondent. They say that all of the evidence offered by the Applicant suggesting that Ms. Robinson was targeting the Applicant was known to the Commission during its investigation.

[41] In response to the Applicant's accusation that Ms. Robinson is using the Tribunal for her own purposes, the Complainants point out that this proceeding was commenced not by Ms. Robinson, but at the direction of the Commission after its own investigation, which included witness interviews.

[42] The Complainants emphasize that the past legal disputes between Ms. Robinson and the Applicant have no bearing on the issue before the Tribunal, which concerns the alleged discriminatory nature of the RCMP's investigation and its adverse impacts on the Indigenous Complainants and witnesses. The complaint is not against the Applicant and the issue is not whether he did, in fact, abuse the Complainants or other individuals at the schools, but rather whether there was a non-discriminatory investigation by the RCMP into the complaints raised by the Complainants and witnesses.

[43] The Complainants say they are innocent parties whose complaints have not been heard by a trier of fact. They argue that they should not have their claim dismissed because of an alleged dispute between two people who are not parties to the proceedings before the Tribunal. A dismissal of the claim because of their dispute would be unfair to the Complainants.

[44] Also with regard to the Applicant's proposed motion to dismiss the complaint under Rule 10, the Complainants take the position that this Rule is only applicable to parties and not to interested persons.

### **C. The Commission**

[45] The Commission takes the position that the Applicant demonstrates a limited interest in participating in this case. It submits that he would be in a position to assist the Tribunal with respect to two discrete issues: (i) the alleged breach of the implied undertaking to the BCSC and (ii) confidentiality measures to protect his privacy in these proceedings. The Commission does not object to the Tribunal granting the Applicant limited interested person status to participate in these proceedings on these two issues but asks that terms be placed on his limited participation.

[46] The Commission says that, while the focus of the complaint is on the RCMP's investigation and the experience of the Complainants in relation to the investigation, it is reasonable to assume that testimony and documentary evidence presented during the hearing will refer to the Applicant. As the Applicant argues that his privacy and personal and professional reputation are implicated in the proceeding, the Commission submits that the

Applicant has demonstrated a limited interest in participating in this matter in order to speak to the disclosure of specific documents and any impact he might face if that evidence is used in the present proceedings.

[47] The Commission suggests that, as the Applicant was a party to the BCSC defamation matter, he could provide the Tribunal with some background on the documents that appear to have been disclosed in breach of the implied undertaking.

[48] The Commission says that it was not aware of the BCSC order and implied undertaking when it received documents during its complaint investigation. Following its investigation, the Commission referred the complaint to the Tribunal for an inquiry. The Commission first learned about the implied undertaking and court order when the Applicant's counsel alerted the parties and Tribunal in September 2021. By this point the Commission had already disclosed its investigation file to the parties pursuant to the Tribunal's *Rules*.

[49] After being made aware of this issue, the Commission has identified documents in its disclosure that may have been provided to it in breach of the implied undertaking. Since providing its response to this Motion, the Commission has compiled a list of such documents and indicated it is seeking direction from the Tribunal about how to proceed with case management and the hearing in a way that ensures the undertaking and court order are respected. In a Case Management Conference Call with the Tribunal and parties, the Commission indicated it is proposing that the Tribunal receive submissions from the parties and the Applicant about how best to deal with this issue.

[50] The Commission says that the Tribunal's direction regarding the alleged breach of undertaking could be relevant to the admission of evidence in the hearing, including matters of reliability and admissibility. It says that, by hearing from the Applicant, the Tribunal could issue a more informed directive on this issue.

[51] With respect to the Applicant's intention to seek a dismissal of the complaint to remedy the alleged breach, however, the Commission submits that bringing a motion for interested person status for the express purpose of seeking a dismissal is not "giving assistance to the inquiry" as required by Rule 27(2) and the test for interested person status.

[52] The Commission notes that, in a recent oral decision, the Tribunal dismissed a motion for interested person status because it found that the proposed interested person could not assist the Tribunal (*Saldanha v. Statistics Canada*, oral Ruling of Vice-Chairperson Jennifer Khurana July 20, 2021).

[53] Even if he is granted interested person status, the Commission argues that the Applicant would not have standing to seek a dismissal for abuse of process because, according to Rule 10 of the Tribunal's *Rules*, abuse of process orders must be sought by a "party" or on the Tribunal's own initiative. If the Applicant's Motion is granted, he would be an interested person, not a party with full participatory rights. The Commission argues that it would be an improper use of interested person status for the Applicant to seek a dismissal under Rule 10 since he would lack the standing to do so.

[54] With regard to his privacy interests, the Commission submits that the Applicant could assist the Tribunal in ensuring the integrity and fairness of its process. It points out that the Tribunal has recognized that non-parties to a proceeding have privacy interests and has granted protection to those interests. The Commission argues that it would be in the public interest for the Tribunal to allow someone like the Applicant, who alleges their privacy will be breached, to at least make submissions on a potential confidentiality order under s. 52 of the *CHRA*.

[55] The Commission argues that, if the Applicant is granted interested person status, the Tribunal should place terms on his participation in the proceedings, which is a common practice. It argues that the Tribunal can limit the participation of interested persons in a number of ways, including by ordering that they may only make submissions on a single issue, that they must take the Tribunal record as is and may not adduce new evidence, and by limiting their participation to written arguments only (*First Nations Child and Family Caring Society of Canada*, 2019 CHRT 11 (CanLII)).

[56] In order to ensure the Applicant's participation remains focused on the unique assistance he can likely provide to the Tribunal, the Commission requests that any grant of interested person status include the following terms: (a) the Applicant may participate only on two discrete issues: (i) the alleged breach of implied undertaking and Court order, and

(ii) his privacy interests; (b) on the breach of undertaking issue, the Applicant shall be limited to adducing evidence on the background of the documents disclosed to the Commission in alleged breach, but shall not be permitted to bring any motions related to this issue; (c) on the privacy issue, the Applicant shall be permitted to bring a motion and adduce evidence only for confidentiality and sealing orders under s.52 of the *CHRA*, and for no other purpose.

#### **D. The Respondent**

[57] The Respondent takes no position on the Motion for interested person status. However, the Respondent disagrees with the Complainants' position that the Applicant would not offer a different perspective from the RCMP. It states that, as a subject of the investigation, the Applicant necessarily brings a different perspective, as evidenced by his submissions on the breach of the implied undertaking, privacy interests, and proposed remedies.

#### **E. Reply of the Applicant**

[58] In replying to the submissions of the parties, the Applicant says that the impact on him of having this hearing proceed would be profound, particularly if it proceeds without conditions restricting the scope of the evidence and a ban on the publication of his name. The Applicant says that a review of the Complainants' SOP shows that at least 18 of the witnesses expected to give evidence at the hearing intend to make allegations of wrongdoing by the Applicant.

[59] In addition to the impacts of this proceeding mentioned earlier, including being replaced as the keynote speaker at a charity luncheon, the Applicant submits that the hearing may also affect him because one of the orders sought by the Complainants is that he be reinvestigated.

[60] With regard to the terms proposed by the Commission on his participation, the Applicant agrees that his evidence and submissions should be permitted on the issues of the breach of the implied undertaking and his privacy. However, he also maintains his position that he should be allowed to participate in relation to issues of abuse of process. In

the alternative, he submits that, to protect his privacy interests and the Tribunal's process, the evidence before the Tribunal should be restricted to the conduct of the RCMP, not the Applicant. He submits that he can bring a unique perspective on all of these issues, can assist the Tribunal with all of them, and that he has satisfied the criteria for being granted limited interested person standing with respect to each.

[61] The Applicant submits that a condition that would preclude him from making submissions about the relationship between the BCSC proceedings and the propriety of the remedy sought in this proceeding, or from assisting the Tribunal with respect to the issue of abuse of process in general, is unduly restrictive. He says that, if the Tribunal were to consider a motion by a party or on its own initiative under Rule 10, or final submissions on the issue of remedy, it would be assisted by hearing the Applicant's different perspective arising from the overlap of the BCSC proceedings with this proceeding. He states that, once the "extent and cause of the breaches are determined, it may be that the Tribunal will wish to consider issues of abuse of process and in that event that the Applicant can further assist the Tribunal in assessing the appropriate remedy."

## **VI. Analysis**

[62] I agree to grant the Applicant limited interested person status in respect of this inquiry, pursuant to Rule 27 of the *Tribunal's Rules of Procedure*. In coming to this decision, I have determined that the proceeding may have an impact on the Applicant's interests.

[63] I agree with the Commission that the Applicant's involvement in the Tribunal's proceedings should be limited to the two issues of applying for confidentiality in the inquiry and the alleged breach of the implied undertaking.

### *Confidentiality in the inquiry*

[64] The Applicant was the subject of the RCMP's investigation that is alleged by the Complainants to have been discriminatory. The investigation is the subject of this inquiry. The Applicant was not charged as a result of the investigation, but much of the evidence proposed to be called during the inquiry relates to the Applicant. As he is not a party to the



proceeding, he will not be in a position to respond to the claims made about him during the inquiry, although it is also not the Tribunal's role to determine whether the allegations against the Applicant are substantiated, but rather to evaluate whether the RCMP's investigation was discriminatory.

[65] The Applicant has provided evidence that his relationship to this proceeding has affected a speaking engagement he had scheduled in November of 2021. The Tribunal has received a recent request from a national media outlet asking to livestream the hearing, that refers to the Applicant by his name. The Applicant has been referred to by name in media articles and interviews, including a podcast, the transcript of which was provided by the Applicant in support of his Motion. Such media coverage references the Tribunal proceeding.

[66] I accept that the inquiry may have an impact on the Applicant's privacy interest or personal or professional reputation. I agree that the Applicant should be permitted, as an interested person, to bring a Motion and adduce evidence for a confidentiality order pursuant to section 52 of the *CHRA*.

*Alleged breach of the implied undertaking*

[67] I accept that the Applicant has an interest in the issue of whether there was a breach of the implied undertaking to the BCSC through the disclosure of documents in the Tribunal proceeding. The Applicant was a party to the proceeding in which the implied undertaking was made to the BCSC. This is an issue he has raised with the Tribunal and it would appear that he could provide assistance to the Tribunal in determining how to deal with this issue. His assistance will add a different perspective to the positions taken by the parties, since none of them was a party to the BCSC proceeding. The issue is important because it involves documents that the parties will presumably wish to introduce as evidence at the hearing. It is an issue that needs to be addressed in order for the hearing to proceed in a timely manner.

[68] I accept that, prior to September of 2021 when the Applicant raised the issue, none of the counsel for the parties was aware of the alleged breach of the implied undertaking to the BCSC. The breach is alleged to have occurred when Ms. Robinson provided documents

to the Commission as part of its investigation. The Commission disclosed these documents to the other parties as part of disclosure obligations under the Tribunal's *Rules*. None of the documents was provided to the Tribunal until the Complainants attached some to their submissions in this Motion. However, I am of the view that the documents were provided prematurely to the Tribunal, as I am not deciding how to deal with these documents in this Motion. As such, I did not review any of the documents contained in Tabs 1-20 or Tab 22 of the Complainant's Index of Documents filed with their submissions.

[69] In order to ensure that no documents that may have been disclosed in breach of the implied undertaking to the BCSC are contained in the Tribunal's record, I order that these documents shall be returned to the Complainants or destroyed and will not form part of the record of this Motion.

[70] I agree that the Applicant should be permitted, as an interested person, to adduce evidence on the background of the documents disclosed to the Commission in the alleged breach of the implied undertaking, and may be permitted to make submissions with respect to the breach if requested to do so by the Tribunal. However, he will not be permitted to bring any motions related to this issue.

[71] The Applicant and parties should also be aware that the Tribunal does not have jurisdiction to review the Commission's investigation and screening process. The Tribunal receives its jurisdiction over a complaint when the Commission asks the Tribunal to inquire into the complaint. The only body with the jurisdiction to look into the Commission's decision-making process is the Federal Court.

[72] I do not agree with the Applicant's position that he should be permitted to file a motion to dismiss the complaint under Rule 10 of the Tribunal's *Rules*. Rule 10 clearly states that only a party can file such a motion.

[73] I also agree with the Commission that bringing a Motion for interested person status for the express purpose of seeking a dismissal of the Tribunal's inquiry is not "giving assistance to the inquiry", as required by Rule 27(2) and the test for interested person status.

[74] When deciding whether to allow an application to intervene, the British Columbia Human Rights Tribunal (“BCHRT”) will balance “how likely it is that the intervenor will make a useful contribution” to the resolution of the complaint against the risk of prejudice to any of the parties, and in particular the risk that the intervenor will “take the litigation away from the parties” (*Campbell v. Vancouver Police Board*, 2019 BCHRT 12 (CanLII) at para 8; see also *Hughson v. Town of Oliver*, 2000 BCHRT 11 (CanLII) at para 7). While I recognize that the BCHRT’s discretion to allow intervenors in its proceedings is conferred by different legislation, I find its reasoning to be of assistance.

[75] This Tribunal’s case law has recognized that applications for interested person status are to be determined on a case-by-case basis (*Letnes* at para 13). In the present case, the issue of possible prejudice to the parties is a factor that is important to consider.

[76] Pursuant to section 48.9(1) of the *CHRA*, the extent of an interested person’s participation must take into account the Tribunal’s responsibility to conduct its proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (*Letnes* at para 20; *First Nations Child and Family Caring Society of Canada*, 2016 CHRT 11 (CanLII) at para 3). At a case management hearing in July of 2021, the hearing of this matter was tentatively scheduled to commence in January of 2022. However, the Applicant did not raise the implied undertaking issue until September of 2021. As this Motion and certain other issues needed to be determined, the January hearing dates were vacated.

[77] Sadly, two of the Complainants have passed away since September of 2021 and the Tribunal is committed to dealing with all of the outstanding issues as quickly as possible in order to comply with section 48.9(1) of the *CHRA*. Permitting the Applicant to file a motion to dismiss the complaint on the basis of his view that a non-party to the proceedings is using the Tribunal’s process to target him poses a significant risk of prejudice to the parties. His stated goal is to take the litigation away from the parties quite literally. Similarly, this is not Ms. Robinson’s complaint against either the Applicant or the RCMP. This complaint is between the Indigenous Complainants and the RCMP, and the focus of the inquiry should remain on the parties.

[78] The Complainants state in their submissions that the RCMP had raised the issue of Ms. Robinson's involvement in the complaints during the Commission's investigation. Despite this, the Commission referred the complaint to the Tribunal for an inquiry. As Ms. Robinson is listed as a witness for the Complainants, she may be asked questions by the RCMP about any issues relevant to the complaint.

[79] With respect to the Applicant's alternative argument, raised in his Reply submissions, that, to protect his privacy interests and the Tribunal's process, the evidence should be restricted to the conduct of the RCMP, not the Applicant, he may address his concerns about the impact on his personal or professional reputation or privacy interests in his section 52 application. The Tribunal will also consider the evidence he can provide with respect to the issue of the documents alleged to have been disclosed in breach of the implied undertaking.

[80] The Applicant submits that, if he is not permitted to make submissions about remedy or to bring or participate in applications in this proceeding arising from the alleged breach of the implied undertaking and overlap with prior BCSC proceedings, "there is a significant risk to the fairness of the inquiry." He suggests that, if the Complainants, through their non-legal representative Ms. Robinson, seek to collaterally attack the findings of the BCSC, there is a risk of embarrassment and unfairness in the Tribunal's process. This suggestion is in relation to a comment in the Complainants' submissions about disagreeing with a finding of the Court relating to Ms. Robinson's investigative techniques.

[81] The BCSC decisions are publicly available and, if those proceedings somehow become relevant to the Tribunal's proceedings, it is open to the parties to make arguments as they see fit about the findings made by the Court in those proceedings.

[82] The Applicant argues that he should not be prevented from making arguments about remedy. He points out that the Tribunal has permitted interested parties to do so, specifically in the *First Nations Child and Family Caring Society of Canada* case (See 2019 CHRT 11; 2016 CHRT 11; and 2020 CHRT 31 (CanLII)). I note that the Tribunal had already made a finding of discrimination in that case (see 2016 CHRT 2 (CanLII)) before these applications for interested party status were made. The Tribunal does not award a remedy unless it

decides that discrimination has occurred. Dismissal of the complaint is not a remedy that would be ordered if discrimination is found to have occurred.

*Confidentiality of this Motion*

[83] As I have agreed to grant the Applicant interested person status for the purpose of filing a Motion for confidentiality and sealing orders in relation to this inquiry, my decision in respect of that Motion will relate to the Tribunal's public record as a whole, including the present Ruling.

[84] As the issue of the alleged breach of the implied undertaking to the BCSC also remains to be determined, I agree to seal the Tribunal's public record until the Applicant's confidentiality Motion has been decided. The present Ruling and the materials filed in support of this Motion will therefore be sealed as part of the public record, and may not be released to the public upon request. However, if no confidentiality Motion is filed by the Applicant in accordance with the timelines established by the Tribunal for doing so, the sealing order will end.

**VII. Order**

[85] I order that the Applicant may have limited interested person status in this inquiry on the following terms:

(a) the Applicant may participate only on two discrete issues: (i) the alleged breach of the implied undertaking to the BCSC, and (ii) applying for confidentiality in the inquiry;

(b) on the breach of undertaking issue, the Applicant shall be limited to adducing evidence on the background of the documents disclosed to the Commission in alleged breach of the implied undertaking, and may be permitted to make submissions with respect to the breach if requested by the Tribunal, but shall not be permitted to bring any motions related to this issue;

(c) on the confidentiality issue, the Applicant shall be permitted to bring a motion and adduce evidence only for confidentiality and sealing orders under s.52 of the *CHRA*, and for no other purpose;

(d) until such time as the Applicant's s.52 confidentiality motion is decided by the Tribunal, this Ruling and the materials filed in support of the Motion will be sealed and may not be released to the public upon request. If no motion is filed by the Applicant in accordance with the timelines established by the Tribunal for doing so, the sealing order will end;

(e) to ensure that no documents that may have been disclosed in breach of the implied undertaking to the BCSC are in the Tribunal's record, the documents attached to the Complainants' submissions as Tabs 1-20 and Tab 22 shall be returned to the Complainants or destroyed, and will not form part of the Tribunal's record of this Motion.

*Signed by*

Colleen Harrington  
Tribunal Member

Ottawa, Ontario  
January 24, 2022

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal File:** T2459/1620

**Style of Cause:** Cathy Woodgate et al. v. Royal Canadian Mounted Police

**Ruling of the Tribunal Dated:** January 24, 2022

#### **Motion dealt with in writing without appearance of parties**

#### **Written representations by:**

Karen Bellehumeur, for the Complainants

Christine Singh and Jessica Walsh, for the Canadian Human Rights Commission

Whitney Dunn, for the Respondent

William B. Smart, Q.C. and Claire E. Hunter, Q.C., for the Applicant