

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 107

Date: September 26, 2024

File No.: HR-DP-2946-23

Between:

Coreena Masson

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Onion Lake Cree Nation

Respondent

Ruling

Member: Gary Stein

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I. OVERVIEW

[1] Coreena Masson, the Complainant, is an Indigenous woman who identifies as Plains Cree. Onion Lake Cree Nation (“Onion Lake”), the Respondent, is a Cree Nation community near Lloydminster, which is on the border of Saskatchewan and Alberta. Ms. Masson owns property next to Onion Lake’s reserve lands.

[2] Ms. Masson filed a human rights complaint against Onion Lake Cree Nation in 2017 (the “Original Complaint”). The parties settled the Original Complaint.

[3] Ms. Masson filed a further human rights complaint in October 2020 (the “Retaliation Complaint”), alleging that Onion Lake had retaliated against her for making the Original Complaint. The Canadian Human Rights Commission (the “Commission”) referred the Retaliation Complaint to the Tribunal in May 2023 for inquiry.

[4] This ruling determines two issues related to the parties’ Statements of Particulars (SOPs): the Respondent’s motion to strike paragraphs in the Complainant’s and the Commission’s SOPs and a request from the Complainant and the Commission to amend their SOPs.

A. The Motion to Strike

[5] Onion Lake’s motion requests that seven allegations in the SOPs be struck.

[6] Five of the disputed allegations in Ms. Masson’s SOP are alleged to have occurred in 2019. The allegations were not included in the Retaliation Complaint and predate the first allegations of discrimination in the Retaliation Complaint. Ms. Masson agrees to withdraw four of these allegations but submits that one of them should not be struck.

[7] The two other disputed allegations refer to Onion Lake’s interference with Ms. Masson’s employment. This interference is alleged to have occurred in 2021, with a final event in 2022. Ms. Masson and the Commission submit that these allegations should not be struck.

B. The Request to Amend the Statements of Particulars

[8] This ruling also determines a request to amend the Complainant's and the Commission's SOPs. The proposed amendment provides specific information about and the names of individuals in an alleged event that was included in the Retaliation Complaint but inadvertently not included in the SOPs.

II. DECISION

[9] I grant the requests in part based on the reasons that follow:

A) The Complainant has confirmed her agreement to withdraw the following headings and paragraphs from her SOP:

- i. Heading II and paragraphs 52–56.
- ii. Heading III and paragraphs 57–62.
- iii. Heading V and paragraphs 68–73.
- iv. Heading VII and paragraphs 106–110.

B) I grant the Respondent's motion to strike the one remaining 2019 allegation, set out in paragraphs 5, 42(IV), heading IV and paragraphs 63–67 of the Complainant's SOP, along with the corresponding paragraphs in the Commission's SOP.

C) I deny the Respondent's motion to strike the employment-related allegations set out in heading VI and paragraphs 74–105 of the Complainant's SOP.

D) I allow the request to amend the Complainant's and the Commission's SOPs.

E) I order the parties to amend their SOPs in accordance with this ruling.

III. ISSUES

[10] This ruling addresses the following issues:

A) What principles guide the Tribunal in deciding whether to strike allegations from a SOP or whether to allow amendments to a SOP?

B) Should the disputed allegations be struck?

C) Should the parties' SOPs be amended?

IV. MOTION TO STRIKE - DETAILS OF THE DISPUTED ALLEGATIONS

[11] Ms. Masson's Retaliation Complaint filed with the Commission in 2020 refers to a dispute between the parties about Ms. Masson's property and related events. A central allegation is that Onion Lake blocked roads to prevent Ms. Masson from accessing a property that she identifies as her homestead. The Retaliation Complaint also refers to other events arising from the roadblocks and addresses the impacts of the alleged dispute on Ms. Masson.

[12] Onion Lake's SOP denies Ms. Masson's allegations of discrimination and her perception of the related events.

[13] I have reviewed the parties' positions on the motion in the following documents: the Respondent's September 15, 2023, notice of motion; the Respondent's October 31, 2023, SOP; the Complainant's and the Commission's replies to the Respondent's SOP, both dated November 29, 2023; the parties' written submissions; and the Complainant's August 13, 2024, email confirming the withdrawal of certain paragraphs from her SOP.

A. The Complaints in 2019

[14] Five of the seven disputed allegations occurred before Ms. Masson filed the Retaliation Complaint with the Commission. Onion Lake submits that these allegations are beyond the scope of this complaint because:

- a) These allegations are alleged to have taken place in 2019 but, as shown on the front page of Ms. Masson's Retaliation Complaint, the alleged discrimination began in March 2020.
- b) The Commission did not investigate these five allegations or include them when it referred the Complaint to the Tribunal for inquiry. Onion Lake submits that it would be prejudicial to include them in the inquiry.
- c) The Tribunal does not have the authority to consider these allegations because they occurred more than one year before Ms. Masson filed her complaint with the Commission. They are therefore barred by the limitation period outlined in section 41(e) of the Canadian Human Rights Act (CHRA).

[15] Ms. Masson has agreed to withdraw four of the five contested allegations. Consequently, the paragraphs in the parties' SOPs that correspond to the four withdrawn allegations will be deleted, as set out below.

[16] The one remaining allegation is that an Onion Lake Band Council Member and his relatives trespassed and unlawfully used Ms. Masson's property during the summer of 2019 for drinking parties. This allegation is set out in paragraphs 63 to 67 of Ms. Masson's SOP and in paragraphs 28 to 30 of the Commission's SOP. Ms. Masson submits that it should not be struck. The Commission submits that this allegation should not be struck or, in the alternative, should remain in the SOP for context.

B. The Employment Complaints

[17] Two of the seven disputed allegations are about Onion Lake's interference with Ms. Masson's employment. They are alleged to have occurred after the filing of the Retaliation Complaint.

(i) Employment Complaint #1

[18] One employment-related allegation, referred to as "Employment Complaint #1" in Onion Lake's written submissions, is set out in paragraphs 74 to 83 of Ms. Masson's SOP. This allegation is based on a letter from Onion Lake's Director of Education to Ms. Masson, dated around June 2021, notifying Ms. Masson that Onion Lake will not renew her employment contract.

[19] Ms. Masson's Retaliation Complaint did not refer to this allegation. However, the Report for Decision that the Commission's Human Rights Officer prepared does refer to it. The report states: "After filing her complaint in October 2020, the Complainant advised Commission staff in April 2021, that her contract with the Respondent was not renewed and her employment was terminated for the school year 2020-21. She stated that she requested severance pay and that, in order to receive it, she had to sign a release that she would not pursue any legal action against her employer."

[20] The Report for Decision quotes the wording of the release and then states: “The release clearly indicates that it relates to matters of employment and it specifically includes actions or causes under the Act. Given that the Complainant acknowledges that she signed the release, this allegation will not be considered further in this report.”

[21] Onion Lake submits that, based on the report’s conclusion about Employment Complaint #1, and because the Commission did not issue separate reasons for its decision, it is reasonable to infer that the Commission’s decision to refer the Retaliation Complaint to the Tribunal for inquiry did not include this allegation. Ms. Masson and the Commission disagree with Onion Lake’s position.

(ii) Employment Complaint #2

[22] The other employment allegations are referred to collectively in Onion Lake’s submissions as “Employment Complaint #2” and are set out in paragraphs 84 to 105 of Ms. Masson’s SOP. They allege that Onion Lake coerced Ms. Masson into signing the release related to her former employment, that it withdrew a later offer of employment, and that it informed Ms. Masson that Onion Lake will not consider her for future employment. Onion Lake submits that the allegations in Employment Complaint #2 do not have the required “nexus” to the roadblock-related allegations in the Retaliation Complaint. Ms. Masson and the Commission argue that there is a nexus between the Retaliation Complaint and these allegations.

V. REQUEST TO AMEND STATEMENTS OF PARTICULARS – THE PROPOSED AMENDMENT

[23] The Commission requested that its SOP be amended to include:

- A) A statement that Ms. Masson requested and was granted a meeting with Onion Lake’s Chief and Council to discuss her concerns about the roadblocks to her property.
- B) The names of the attendees at the meeting.

- C) An allegation that a Council member “stood up and pointed at her and said she had no grounds or rights to the land and that she didn’t live there” and an allegation that Ms. Masson was called “outsider” and “trespasser” and was ridiculed.
- D) An allegation that other Council members did not defend Ms. Masson against these allegations or address the allegedly aggressive behaviour.
- E) Adding a statement about this allegation to the summary of alleged incidents in paragraph 17 of the Commission’s SOP.

[24] The Commission’s position is that the proposed amendment corresponds to the allegations in the Retaliation Complaint and that Onion Lake was notified of these allegations but that they were inadvertently omitted from the SOP.

[25] Ms. Masson has not provided proposed wording to amend her SOP but has provided submissions in support of the Commission’s request.

[26] Onion Lake does not object to the proposed amendment if it provides context about the roadblock allegations. However, it objects if the amendment is treated as a separate complaint on the basis that the allegations, even if true, could not support a finding of liability. The Commission, in its reply, disagrees with the latter point.

VI. ANALYSIS

A. What principles guide the Tribunal in deciding whether to strike allegations from a SOP or whether to allow amendments to a SOP?

[27] The same legal principles apply whether the Tribunal is dealing with a motion to strike allegations in a SOP or a motion to expand the scope of a complaint (*Temate v. Public Health Agency of Canada*, 2022 CHRT 31, paras 6–7 [*Temate*]).

[28] Amendments to a human rights complaint should be allowed for the purpose of determining the real questions in controversy between the parties, provided that they do not result in prejudice to the other party (*Canada (Attorney General) v. Parent*, 2006 FC 1313, at paras 30, 40 [*Parent*]). Additionally, the amendments should be based on “a common factor underpinning the allegations of discrimination” (*Parent* at para 43).

[29] The considerations for determining whether to strike or amend allegations were recently summarized in *Mohamed v. Royal Bank of Canada*, 2023 CHRT 20 [*Mohamed*]:

[8] As part of its authority to determine the scope of a complaint, the Tribunal has the power to strike portions of a Statement of Particulars that exceed the scope of the complaint. However, the Tribunal must exercise its authority “cautiously” and only in the “clearest of cases” (*Richards v. Correctional Service Canada*, 2020 CHRT 27 at para. 86).

[9] Under section 44(3) and section 49 of the Canadian Human Rights Act, R.S.C., 1985, c. H-6 (the Act or CHRA), a request to the Tribunal to institute an inquiry into a complaint may be made only when the Commission has considered the complaint. Indeed, the SCC in *Cooper v. Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC), [1996] 3 S.C.R. 854, at para. 48 states that the Act sets out a complete mechanism for dealing with complaints and that the Commission is central to that mechanism.

[10] The well-established case law (see for example *Casler and Canadian Museum of Civilization Corporation v. Public Service Alliance of Canada (Local 70396)*, 2006 FC 704) states that the scope of the dispute before the Tribunal may not introduce a new complaint that has not already been considered by the Commission and that does not respect the Commission’s request to institute an inquiry. The Tribunal therefore does not have the power to deal with a complaint that has not been dealt with first by the Commission and that has not been referred to the Tribunal for inquiry (see *Cook v. Onion Lake First Nation*, 2002 CanLII 61849 (CHRT), [2002] C.H.R.D. No. 12 [*Cook*]). It is therefore necessary that the Tribunal confine itself to the complaint, the Commission’s decisions with respect to the complaint and, in particular, the request for inquiry that the Commission has made to the Tribunal.

[11] The concept of a complaint is nevertheless broad enough to be interpreted in a way that encompasses the full extent of a complainant’s allegations (*Cook*, para. 11). A complaint is the first step in the process, and it is inevitable that new facts and circumstances will come to light in the course of the Commission’s investigation (*Casler*). The complaint is refined and clarified as the process moves forward (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 1, para. 11) [*Gaucher*].

[12] However, a limit is necessary when the amendment to a complaint can no longer be considered a simple amendment but is instead more like a new complaint (*Gaucher*). Likewise, upon reading a complainant’s Statement of Particulars, the allegations of facts to be analyzed by the Tribunal for the purposes of determining the dispute must somehow emanate from or arise out of the complaint itself and must not depart from it in such a way as to constitute a new complaint.

[30] The Tribunal is not authorized to deal with a complaint that the Commission has not first dealt with and which the Commission has not referred to the Tribunal for inquiry (*Mohamed* at para 10). An allegation may be allowed in a SOP as background or to clarify and elaborate upon the initial allegations, as long as the substance of the original complaint is respected (*Casler v. Canadian National Railway*, 2017 CHRT 6 at para 9 [*Casler*]; *Jorge v. Canada Post Corporation*, 2021 CHRT 25 at paras 240–242 and 248–251).

[31] The scope of a Tribunal inquiry is established by the Commission's referral letter to the Tribunal, and if the letter to the Tribunal does not express any limitations or exclusions, the Tribunal assumes that the complaint is referred in its entirety (*Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2 at paras 19–20 [*Karas*]; *Miller v. International Longshoremen's Association, ILA Local 269*, 2022 CHRT 39 at para 34 [*Miller*]; *Ali v. Department of National Defence*, 2022 CHRT 44 at para 92 [*Ali*]).

[32] When the Tribunal determines the scope of a complaint and whether it should be amended, it does not conduct a substantive review of the merits of the new elements (*Temate* at para 56). However, the substance of the SOP must reasonably respect the factual foundation and the original allegations set out in the original complaint (*Dorey et al. v. Employment and Social Development Canada*, 2023 CHRT 23 at para 81).

[33] A motion to amend a SOP may be dismissed when it is plain and obvious that the allegations have no chance of success (*Dinardo v. Correctional Services Canada*, 2024 CHRT 80 at para 10 [*Dinardo*]; *Temate* at para 17; *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 2 at para 6; *Virk v. Bell Canada*, 2004 CHRT 10 at para 7).

B. Should the disputed allegations be struck?

(i) Should the allegations about “drinking parties” on the Complainant's property be struck?

[34] Yes, the allegations that an Onion Lake Band Council Member and his relatives trespassed on Ms. Masson's property in 2019 and held drinking parties should be struck because there is not a sufficient nexus between the trespassing allegations and either the

Original Complaint or the Retaliation Complaint. The trespassing allegations predate the allegation that Onion Lake blocked roads to Ms. Masson's property in 2020, which gave rise to the Retaliation Complaint. Further, the Retaliation Complaint does not include trespassing allegations. The Commission's Report for Decision about the Retaliation Complaint also indicates that the Original Complaint filed in 2017 involved allegations about the denial of employment opportunities, and there is no reference in the Report for Decision to allegations of trespassing. As in *Casler*, new facts and circumstances that come to light during a Commission investigation, or later, might fall within the scope of a Tribunal inquiry if they emanate from or arise out of the complaint itself. However, based on the findings above, my view is that the "common factor underpinning the allegations of discrimination" that *Parent* requires is insufficient between the allegation of trespassing and either of the human rights complaints that Ms. Masson has filed.

[35] I do not accept the Commission's submission that this allegation should remain in the SOP for context. I also acknowledge Ms. Masson's submissions about the importance of historical context and behaviour as a foundation for her complaint. However, if this allegation were to remain for context, it may require testimony seeking to prove it or refute it. It might require witnesses who would not otherwise be called to testify. A focus on this allegation, for the limited purpose of background or context, would distract from the core issues in the hearing. In my view, the value that might be gained by proving or disproving this contextual allegation is disproportionate to the time and resources it would take to fairly address it in a hearing.

[36] With Ms. Masson's withdrawal of four allegations and this decision to strike the allegation about trespassing, all complaints about events in 2019 are to be deleted from the parties' SOPs. Consequently, it is not necessary to address the Respondent's submissions that the 2019 allegations cannot be considered because they occurred more than one year before the Retaliation Complaint was filed.

(ii) Should the employment allegations be struck?

[37] No, the employment allegations are not struck for the reasons described below.

[38] First, I do not accept the Respondent's submissions that Employment Complaint #1 should be struck. The Respondent submits that, upon reviewing Ms. Masson's signed release, the Commission's Human Rights Officer decided not to further consider this complaint; it can, therefore, be inferred that the Commission adopted the Report for Decision as its reasons when it referred the Retaliation Complaint to the Tribunal.

[39] That is not my view. The Report for Decision makes clear that Employment Complaint #1 came to light during the Commission's investigation and that the Human Rights Officer considered it; and, on reviewing the release that Ms. Masson signed, the Human Rights Officer stated that "the allegation will not be considered further in this report." However, the Human Rights Officer's decision not to further consider this allegation does not bind the Tribunal or limit the scope of the Tribunal's inquiry (*Connors v. Canadian Armed Forces*, 2019 CHRT 6 at paras 37–39).

[40] I also find these facts to be consistent with the summary of principles about scope in paragraphs 10 and 11 of *Mohamed*. New facts arose during a Commission investigation, and a Human Rights Officer considered them. A Commissioner of the Canadian Human Rights Commission then reviewed the Report for Decision and issued the decision to refer the Retaliation Complaint to the Tribunal for inquiry "because having regard to all the circumstances of the complaint, further inquiry by a Tribunal is warranted." The Commission's decision did not exclude the employment complaint from the referral, or refer to any limitations on the referral, or indicate that the decision adopted the Report for Decision's position. In the absence of limitations or express exclusions in the Commission's decision, and in accordance with *Karas*, *Miller* and *Ali*, I find that the Commission referred the Retaliation Complaint in its entirety, including the employment complaint that Ms. Masson brought to the Commission's attention.

[41] Second, the Respondent's submissions rely on *Torraville v. Jazz Aviation LP*, 2020 CHRT 40 [*Torraville*], but I find that the facts underlying that decision differ to such an extent that it does not apply to the Retaliation Complaint. Paragraph 22 of *Torraville* refers to *Waddle v. Canadian Pacific Railway and Teamsters Canada Rail Conference*, 2016 CHRT 8 [*Waddle*] to support the proposition that, where there is evidence that a complainant endorsed or expressed agreement with the content of a document from Commission staff,

the documents and the interactions between the complainant and the Commission might be relevant in clarifying the scope of an inquiry. Paragraphs 42 and 43 refer to the discussions between the Commission's staff and the complainant about the scope of the complaint, to the complainant's agreement to a specific start date for the alleged discrimination, and to the complainant's agreement that the events occurring before the start date were for context only. Consequently, in paragraphs 46 and 47, the Tribunal concluded that, as in *Waddle*, there was a limited temporal scope for the complaint based on the discussions between the Commission and the complainant.

[42] In Ms. Masson's complaint, the interactions between the Complainant and the Commission about Employment Complaint #1 do not include similar facts. The Commission's Report does not refer to discussions between the Commission and Ms. Masson about the scope of the complaint or to any agreement about scope. Additionally, there is no indication that the Commission's referral decision adopted the conclusion in the Report for Decision about the signed release. Because the factual foundation underlying the *Torraville* reasoning is not present, the *Torraville* conclusions do not apply.

[43] Third, I find that Employment Complaint #1 and Employment Complaint #2 are temporally connected to the complaint about the roadblocks to Ms. Masson's property. In the Retaliation Complaint, Ms. Masson alleges that the Respondent blocked the road to her property in the late spring of 2020. She states that she contacted the municipality about it in September 2020 and later attended a meeting of Onion Lake's Chief and Council. In her SOP, Ms. Masson alleges that the road to her property continued to be blocked in 2021 (para 44), that Onion Lake sent a letter to Ms. Masson in about June 2021 stating it would not renew her employment contract (para 78), and that additional events involving Ms. Masson's employment occurred in November or December 2021 (paras 92–99).

[44] All these events, if proven, occurred sequentially from about mid-2020 to late in 2021. In my view, this short period of time establishes a sufficient temporal connection between the alleged occurrences in the Retaliation Complaint and the employment-related allegations in the SOPs.

[45] Fourth, I find that there is also a sufficient substantive link between the allegations in the Original Complaint, the roadblock allegations in the Retaliation Complaint, and the employment-related allegations of retaliation in the SOP. Again, it remains to be seen whether these events can be substantiated. However, in my view, there is a conceivable link among the Original Complaint about the denial of employment opportunities, a possibly difficult relationship between the parties after Ms. Masson filed the Original Complaint, the alleged retaliating action of blocking roads in 2020 and continuing into 2021, the alleged retaliation actions of ending Ms. Masson's employment in 2021, and the alleged June 2022 communication that Ms. Masson would not be considered for future employment (para 100 of the SOP). On balance, I find that the sequence of events conceivably demonstrates a pattern of retaliatory events that are, as in *Parent*, conceivably connected.

[46] The Tribunal must exercise its authority on a motion to strike particulars before a hearing "cautiously" and only in the "clearest of cases" (*Richards*). I have applied this approach in considering these allegations. In my view, it is not clear that the Complainant's employment allegations are incidents of alleged retaliation that should be struck.

C. Should the parties' Statements of Particulars be amended?

[47] Yes, I allow the proposed amendment to the Commission's SOP and a corresponding amendment to Ms. Masson's SOP.

[48] The proposed amendment, in my view, closely follows the wording about the alleged event in the Retaliation Complaint, with the addition of names of people present at the Chief and Council meeting. There is no addition to the substance of the original allegation. The amendment enhances the clarity of an alleged event that is already stated. The Respondent has also been aware of this allegation since it was first made in 2020.

[49] Whether this allegation, if proven, could be an independent incident of retaliation and entitle the Complainant to a remedy or, alternatively, should be restricted to contextual allegations, may be a matter for argument after the parties have provided their evidence in a hearing. However, in my view, and consistent with *Dinardo* and *Temate*, it is not "plain and obvious" at this stage of the proceedings that this allegation cannot succeed.

VII. ORDER

A) Based on the Complainant's agreement to withdraw allegations from her SOP, the following headings and paragraphs are to be deleted:

- i. Heading II and paragraphs 52–56.
- ii. Heading III and paragraphs 57–62.
- iii. Heading V and paragraphs 68–73.
- iv. Heading VII and paragraphs 106–110.

The corresponding allegations in the Commission's SOP and the corresponding responses in the Respondent's SOP are also to be deleted.

B) The following headings and paragraphs involving the allegations that the Complainant agreed to withdraw are to be deleted from the Complainant's SOP: paragraphs 6, 7, and 42 (II), (III), (V) and (VII).

C) The Respondent's motion to strike the allegations about trespass on the Complainant's property is granted. The following headings and paragraphs of the Complainant's SOP are to be deleted: paragraphs 5, 42 (IV), heading IV and paragraphs 63–67. The corresponding paragraphs in the Commission's and the Respondent's SOPs are also to be deleted.

D) The Respondent's motion to strike the employment-related allegations in heading VI and paragraphs 74–105 of the Complainant's SOP, and the corresponding allegations in the Commission's SOP, is denied.

E) I allow the request to amend the Complainant's and the Commission's SOPs by including the Commission's proposed amendment to its SOP and corresponding wording to the Complainant's SOP.

F) The parties' SOPs are to be revised and refiled in accordance with this ruling by October 18, 2024.

Signed by

Gary Stein
Tribunal Member

Ottawa, Ontario
September 26, 2024

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2946-23

Style of Cause: Coreena Masson v. Onion Lake Cree Nation

Ruling of the Tribunal Dated: September 26, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Coreena Masson, Self-represented

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