

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 17

Date: March 14, 2025

File No.: T2610/16720

Between:

Lisa Cross Guy

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Mohawk Council of Kahnawake

Respondent

Ruling

Member: John Hutchings

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I. OVERVIEW AND DECISION

[1] The Mohawk Council of Kahnawà:ke (MCK), the Respondent, asks me to stop Lisa Cross Guy, the Complainant, and the Canadian Human Rights Commission from using Dr. Jane Dickson's report at the hearing of this complaint. The report is about Mohawk membership customs and laws. The MCK says that the report is inadmissible and that using it would make the hearing unfair, complex and costly. Ms. Cross Guy and the Commission want to call Dr. Dickson to testify at the hearing and use her testimony and report as expert evidence.

[2] After carefully considering all of the parties' submissions, I dismiss the motion as premature. There is no basis at this time to conclude that the report is obviously irrelevant and unnecessary or that Dr. Dickson breached a proposed expert's duty to be impartial and independent. Because the report would logically contribute to Ms. Cross Guy's and the Commission's case, there is no basis for declining to call Dr. Dickson as a witness. I need her testimony, the MCK's cross-examination and the parties' submissions on the relevance and necessity of her proposed evidence before I can decide if it is admissible.

II. ISSUES

[3] I must decide the following issues:

- i. Is Dr. Dickson's report manifestly irrelevant or unnecessary, or did she breach the duty to be impartial and independent?
- ii. If not, does her evidence logically contribute to Ms. Cross Guy's and the Commission's case?

III. ANALYSIS

A. At this time, there is no basis to find that Dr. Dickson's report is manifestly irrelevant or unnecessary or that she lacks impartiality or independence.

[4] Dr. Dickson's report does not meet the high threshold for excluding expert evidence before the hearing. While the Tribunal may find a proposed expert's evidence inadmissible before a hearing and decline to call them to testify, it has done so only when that evidence is manifestly (obviously) irrelevant, unnecessary or lacks impartiality or independence: *Christoforou v. John Grant Haulage Ltd*, 2016 CHRT 14 [*Christoforou*]; *Lafrenière v. Via Rail Canada Inc*, 2018 CHRT 19 [*Lafrenière*]. Unless this threshold is met, the Tribunal should wait to assess the admissibility of an expert's evidence until they are called to testify: *P.S.A.C. v. Northwest Territories (No. 10)*, 2001 CanLII 61120 (CHRT) [*P.S.A.C.*] at paras 5–6. Put another way, an expert's evidence needs to be manifestly inadmissible for the Tribunal to consider excluding it before the hearing. Ms. Cross Guy's case is different from the cases where the Tribunal excluded expert evidence before the hearing. Because there is no basis at this time to conclude that Dr. Dickson's report is manifestly inadmissible, I must wait until the hearing to consider its admissibility.

[5] Dr. Dickson's proposed expertise lacks the obvious problems that made the Tribunal stop other proposed experts from testifying. In *Christoforou*, the respondent employer wanted a medical expert to critique evidence from the complainant's doctor. However, the Tribunal declined to call the expert to testify because he lacked experience in reviewing other doctors' work, had not spoken to the complainant or their doctor, did not base his report on objective assessment or research, and offered no "spontaneous, independent observations or opinions" (at para 78). In *Lafrenière*, another case relating to a complainant's medical condition, the Tribunal also barred the respondent's proposed expert before the hearing. The expert already belonged to the respondent's defence team. Their report "merely challenge[d] the medical notes of another physician without even having met the [c]omplainant" (at para 55). I find that Dr. Dickson is unlike those experts. She provides detailed information on her experience, has conducted community research, and offers comprehensive observations and opinions that reflect her particular perspective. I find that her report falls short of the threshold for exclusion before a hearing that the proposed

expertise in *Christoforou* and *Lafrenière* met. Because Dr. Dickson's report is not manifestly inadmissible, it would be premature for me to exclude it before the hearing.

B. Dr. Dickson's report logically contributes to Ms. Cross Guy's and the Commission's case. She may be called to testify.

[6] At this time, I must only decide whether Dr. Dickson should be called as a witness, not whether her evidence is admissible. I bear in mind that parties are entitled to provide a complete answer to the case against them: *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 50(1).

[7] Unless expert evidence is manifestly (obviously) inadmissible, the only question I should decide before the hearing is whether to allow an expert witness to be called to testify, not whether their evidence is admissible: *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)*, 2012 CHRT 28 ["FNCFCS"] at paras 15–18. I have already found that Dr. Dickson's expertise is not manifestly inadmissible. While the MCK invites me to go further in assessing the report's admissibility at this stage, I am unable to accept this submission. The law requires that I stop short of ruling on admissibility and decide only if the parties putting the report forward have reasonable grounds to call its author to testify—that is, whether Ms. Cross Guy and the Commission reasonably need Ms. Dickson's testimony to advance their case.

[8] The MCK says that Ms. Cross Guy's and the Commission's particulars have limited the scope of the hearing to any discretionary element in membership administration alone. Because the hearing will no longer consider whether the legal framework for membership is itself discriminatory, or whether any infringement is justified, Dr. Dickson's report is at best minimally relevant to the complaint.

[9] With respect, I am unable to accept this submission.

[10] I find that there are reasonable grounds to call Dr. Dickson to testify because her proposed evidence logically contributes to Ms. Cross Guy's and the Commission's case. Parties need reasonable grounds to call a witness, including a proposed expert. Reasonable

grounds include the fact that the expert's testimony could help answer a factual question in the case or logically contribute to their position: *FNCFCS* at paras 15–16.

[11] Dr. Dickson's report relates to Mohawk membership customs and laws, and Ms. Cross Guy and the Commission seek to advance a case about Ms. Cross Guy's experience in this respect that differs from the MCK's perspective. The complaint relates to alleged discrimination in the provision of services and residential accommodation. Because Ms. Cross Guy was not granted membership in the Mohawks of Kahnawà:ke under Mohawk law, she does not receive member services and accommodations. It follows that Dr. Dickson's report logically contributes to Ms. Cross Guy's and the Commission's case because it concerns Mohawk membership customs and laws.

[12] Even if the parties are to focus their questioning and submissions on any discretionary element in membership administration, and not the legal framework for membership itself, I find that evidence on Mohawk membership customs and laws more generally may still provide useful context and help the Tribunal decide factual issues in the case: *FNCFCS* at para 16, citing *Mellon v. Human Resources Development Canada*, 2005 CHRT 12 at para 6. I agree with the Commission that the report is responsive to factual statements in the MCK's particulars, and I note the Commission's and Ms. Cross Guy's intention to make their own case about those statements. Because the report logically contributes to Ms. Cross Guy's and the Commission's case, they may call Dr. Dickson.

[13] I decline to make any findings about the admissibility of Dr. Dickson's report and testimony at this time. Expert opinions generally require some proof of their factual basis, and complainants must still discharge their burden of proof at their hearing: *P.S.A.C.* at para 9, *Constantinescu v. Correctional Service Canada*, 2020 CHRT 4 at para 198. Allowing Ms. Cross Guy and the Commission to call Dr. Dickson does not mean that I have accepted or will come to rely on her evidence: *Richards v. Correctional Service Canada*, 2020 CHRT 27 at para 113. At this stage, it would be premature to judge the admissibility of Dr. Dickson's report without the benefit of her testimony, the MCK's cross-examination, and the parties' submissions on the relevance and necessity of her evidence. I will assess the admissibility of Dr. Dickson's report, including its relevance and necessity in assisting me, at the hearing.

IV. ORDER

[14] For the reasons above, I dismiss the motion as premature. Ms. Cross Guy and the Commission may call Dr. Dickson to testify at the hearing. The MCK may challenge the admissibility of her evidence at that time.

[15] I will convene a case management conference to set dates for the hearing.

Signed by

John Hutchings
Tribunal Member

Ottawa, Ontario
March 14, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: T2610/16720

Style of Cause: Lisa Cross Guy v. Mohawk Council of Kahnawake

Ruling of the Tribunal Dated: March 14, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Lisa Cross Guy, Complainant

Caroline Carrasco and Christine Singh, for the Canadian Human Rights Commission

Stephen Ashkenazy and Mary Armstrong Lee, for the Respondent