

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 63

**Date:** June 23, 2025

**File No.:** T2251/0618

**Between:**

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

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Public Safety Canada**

**Respondent**

**Ruling**

**Member:** Jo-Anne Pickel

## **I. OVERVIEW**

[1] These are my reasons for granting the disclosure motion filed by Public Safety Canada, the Respondent.

[2] Gilbert Dominique, the Complainant, filed a complaint under the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the Act) on behalf of the Pekuakamiulnuatsh First Nation. He alleged that the Respondent differentiated adversely in the provision of police services contrary to the Act. The Tribunal agreed to bifurcate this proceeding, separating the issue of liability from the issue of remedy.

[3] The Tribunal ended up determining that the complaint was substantiated (*Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4). Its decision has been upheld by both the Federal Court (*Canada (Attorney General) v. Pekuakamiulnuatsh First Nation*, 2023 FC 267) and the Federal Court of Appeal (*Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh*, 2025 CAF 24). The Tribunal is now in the process of determining the appropriate remedy.

[4] The Complainant filed an expert report prepared by Professor Mylène Jaccoud to support the remedies he is seeking in this case (the “Jaccoud report”). The Respondent filed a motion to seek disclosure of the materials used by Professor Jaccoud in the preparation of her report, including the recordings of interviews that she conducted and notes she took during those interviews. The Complainant opposed the motion. However, in the event that disclosure was ordered, he brought his own motion seeking a confidentiality order with respect to the interview recordings and Professor Jaccoud’s interview notes.

## **II. DECISION**

[5] In a letter ruling issued to the parties on May 27, 2025, I granted the Respondent’s disclosure motion. I set out my reasons for this ruling below.

[6] As consented to in a case management conference call, the parties will communicate with each other and agree to the implementation of confidentiality measures to be applied

to the materials I have ordered disclosed. The Complainant may renew his motion for a confidentiality order regarding these materials later in the proceeding if it becomes necessary. In an email to the parties on June 9, 2025, I granted the Complainant's request to subject Appendix 2 of the Jaccoud report to an interim confidentiality order. The Tribunal will revisit this interim confidentiality order prior to the remedies hearing to determine whether it should be lifted or be made permanent.

### **III. ISSUES**

[7] The issue I must decide is whether the Tribunal should order the disclosure of the materials relating to the Jaccoud report that are sought by the Respondent?

### **IV. ANALYSIS**

#### **A. Background to the Jaccoud report**

[8] The Complainant retained Professor Jaccoud to produce a report that the Complainant will seek to admit as an expert report to support the remedies he is seeking in this case. Professor Jaccoud swore an affidavit in support of the Complainant's position on these motions. In her affidavit, Professor Jaccoud indicated that her report was based on the internal documents listed in Appendix 1 of her report, the interviews conducted with participants listed at Appendix 2 of her report, and the public documents listed at Appendix 3 of her report.

[9] As set out in her affidavit, Professor Jaccoud carried out a number of individual and group interviews for her report. She asked participants to express themselves both in terms of their professional expertise and/or positions within different organizations as well as from the perspective of being a citizen and community member. Among others, Professor Jaccoud chose to interview persons who had links to the police services of the community of Mashteuiatsh, as well as persons who are vulnerable individuals or likely to have contact with the police.

[10] Professor Jaccoud promised interview participants that the interviews would remain confidential despite the fact that they were being recorded. She told participants that no information that could allow them to be identified or that would permit the identification of persons mentioned in their responses would be communicated to third parties or mentioned in her report. In her affidavit, Professor Jaccoud states that such a guarantee of confidentiality was necessary to have the interview participants open up and share the information they provided in her interviews with them. I am sensitive to the importance of keeping certain information confidential in this proceeding to the extent possible. However, Professor Jaccoud was specifically retained by the Complainant to provide a report to be tendered as evidence in this legal proceeding. Therefore, I am bound to apply the law that is applicable to the disclosure of information to adverse parties in this case.

#### **B. Respondent's motion for disclosure**

[11] The Respondent requested disclosure of all facts, documents and other sources that Professor Jaccoud used in the preparation of her report. The Respondent took the position that the following materials should be disclosed at a minimum:

- A copy of all of the documents listed in Appendix 1 of the Jaccoud report, and
- The recordings of the interviews conducted by Professor Jaccoud with the persons listed in Appendix 2 of her report, all factual notes regarding what was discussed during the interviews, and any document that may have been provided by the persons being interviewed.

[12] The Respondent made clear that it was not seeking disclosure of any communications between Professor Jaccoud and the Complainant's counsel, any preliminary drafts of the Jaccoud report, or any of Professor Jaccoud's personal notes.

[13] The Complainant did not oppose the disclosure of the documents listed at Appendix 1 of the Jaccoud report. He also did not make any arguments to oppose any of the other materials or information sought by the Respondent other than the interview recordings and Professor Jaccoud's interview notes. The Canadian Human Rights

Commission (the “Commission”) did not take a position with respect to the Respondent’s disclosure motion. In a case management conference call, the Commission’s counsel requested disclosure to the Commission of any materials that I order the Complainant to disclose to the Respondent.

**C. The materials sought by the Respondent are arguably relevant and necessary for it to make full answer and defence**

[14] The materials and information sought by the Respondent are arguably relevant to issues in this case. Therefore, they must be disclosed unless they are privileged. As I explain below, the content of the interviews and Professor Jaccoud’s interview notes are not subject to any privilege that would bar their disclosure. Moreover, I agree with the Respondent’s counsel that the disclosure of the content of the interviews and interview notes is required for them to properly test Professor Jaccoud’s evidence and thus to make full answer and defence.

[15] It is well established in the case law that experts will be bound to make available to the opposing party all of the materials in their possession that they relied upon to prepare any reports tendered as evidence in the case (see *Montreuil v. Canadian Armed Forces*, 2007 CHRT 17 at para 43). Once an expert witness takes the stand, they are offering an opinion for the assistance of the tribunal or court (*R. v. Stone*, [1999] 2 SCR 290 at 99. See also subsection 22(2) of the *Canadian Human Rights Tribunal Rules of Procedure*, 2021 (SOR/2021-137). The opposing party must be given access to the foundation of the expert’s opinions to test them adequately (see *R. v. Stone*, *ibid.*; see also *Poulin c. Prat*, 1994 CanLII 5421 at para 29 (QC CA); 9295-2985 *Québec inc. c. Municipalité de Lac-Simon*, 2022 QCCS 498 at para 29; *Soudure Gi-Mar Inc. c. Toitures P.L.C. Inc.*, 2001 CanLII 12049 (QC CS) at para 13).

[16] Pursuant to the case law cited above, the Respondent is entitled to have disclosed to it the materials and information it sought in its motion, subject to any confidentiality measures that may be appropriate. As detailed in the following sections, I am not persuaded by any arguments made by the Complainant for why the case law cited above does not apply in this case.

#### **D. Rules relating to hearsay evidence are not relevant to the disclosure request**

[17] The Complainant argued that the right to obtain disclosure of materials used by an expert in the preparation of their report is not absolute but instead has its limits. He argued that the Respondent did not have a right to materials it has sought because the Jaccoud report is admissible even if it is based on hearsay evidence.

[18] In my view, the Complainant has confused two issues: (1) the disclosure of materials relating to the preparation of the Jaccoud report and (2) the admissibility of the report itself. As argued by the Complainant, an expert report may be admitted into evidence and granted weight even if not all facts on which the report is based have been established in the evidence. However, parties tendering an expert report must nevertheless disclose the materials that formed the foundation of the report if requested to do so by an opposing party. These are two separate and distinct issues.

[19] None of the decisions cited by the Complainant about the admissibility of expert opinion evidence based on hearsay are on point as they do not speak to whether the materials used in the production of the reports at issue must be disclosed (see, for example, *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 39).

#### **E. Materials are not subject to a case-by-case privilege**

[20] I do not agree with the Complainant that the materials sought by the Respondent are subject to a case-by-case privilege, as determined through the application of the Wigmore test. The Complainant sought to analogize the present circumstances to the privilege that applies to journalistic sources (see *R. v. National Post*, 2010 SCC 16). He argued that a privilege applies in this case to prevent the disclosure of confidential information gathered in a relationship of confidence.

[21] I am not persuaded by the Complainant's analogy to journalistic sources. Unlike the situation with journalistic sources, the information collected by Professor Jaccoud was specifically collected with the intention that it would form the basis for an expert report that

would be filed as evidence in this proceeding. Therefore, I agree with the Respondent that all those involved should reasonably have realized that the information they shared could be disclosed in some form, at least to the Tribunal and the Respondent.

[22] The only decision the Complainant cited that involves materials that form the foundation of a report somewhat similar to the one at issue here is a decision of a Case Management Justice of the Alberta Court of King's Bench: *Anderson v. Alberta*, 2024 ABKB 64. That case did not deal with an expert report but instead with a First Nation's reports relating to land use studies.

[23] I agree with the Respondent that the Alberta Court of King's Bench decision must be distinguished. In that case, the Case Management Justice found that the information that was incorporated into the traditional land use final reports was not provided in confidence and therefore was not privileged. The Case Management Justice did find that certain additional information communicated by persons interviewed for the report was subject to a case-by-case privilege. The Case Management Justice found that information such as the names of participants, names of medicines and pinpoint locations were either not relevant or their probative value was diminished by the inclusion of generalized descriptions of this information in the report. It was for this reason that the Case Management Justice found that this additional information was subject to a case-by-case privilege as the interest in protecting the information from disclosure outweighed the interest in having it disclosed.

[24] In this case, the materials sought by the Respondent are foundational materials on which the Jaccoud report was based. In accordance with the case law from the Supreme Court of Canada and other courts cited above, these materials must be disclosed to permit the Respondent to test the proposed evidence contained in the Jaccoud report. To the extent that certain information contained in the materials and information sought by the Respondent should be kept confidential, the Tribunal has the power to make a confidentiality order to protect the confidentiality of this information if necessary.

[25] For all of the above reasons, I do not agree with the Complainant that the materials and information sought by the Respondent are subject to any case-by-case privilege.

**F. Other arguments made by the Complainant are not accepted**

[26] I am not persuaded by the Complainant's argument that the materials sought by the Respondent should not be disclosed due to the reliability of the Jaccoud report. One of the main reasons that the materials sought by the Respondent must be disclosed is to permit its counsel to test the reliability of the Jaccoud report. In an adversarial legal process, each party has the right to test the other party's evidence, including its expert evidence. The disclosure of materials and information on which the report is based is necessary to permit the Respondent to fully test the evidence tendered by Professor Jaccoud.

[27] The Complainant argued that the materials being sought by the Respondent do not form part of the substance of the Jaccoud report. I do not agree. It is clear from the Jaccoud report and Professor Jaccoud's affidavit that the materials listed in appendices 1–3 were the foundational materials on which she based her report.

[28] The Complainant argued that the materials sought by the Respondent do not need to be disclosed because they are not necessary for an understanding of the report. The Complainant argued that, in the decisions cited by the Respondent, it was necessary to consult the underlying materials to understand the reports at issue. However, that is not the case with respect to the Jaccoud report. I am not persuaded by this argument. There is no discussion, in any of the decisions cited by the Respondent, that the courts and tribunals were ordering the disclosure of the requested materials because they were necessary to understand the expert opinions in those cases. All of them speak to an obligation to produce all of the sources on which an expert founded their opinion. In addition, as noted above, the purpose of the disclosure is not to assist in understanding the report but, instead, to allow the opposing party to test the proposed evidence and opinions contained in the report.

[29] Finally, I am not persuaded by the Complainant's argument that the Respondent does not need to have access to the materials and information from Professor Jaccoud as it could simply conduct its own interviews with the persons listed in Appendix 2 of the Jaccoud report. If this argument were accepted, courts and tribunals would rarely, if ever, order the disclosure of the content of interviews or an expert's interview notes as it would always be possible for an opposing party to conduct its own interviews with persons who



were interviewed for the original report. The case law cited above makes clear that the content of interviews and the interview notes of a proposed expert must be disclosed. As noted above, courts and tribunals have accepted that opposing parties have a right to obtain disclosure of foundational materials such as the content of interviews and interview notes on which a report is based. This disclosure is necessary for the opposing party to test the evidence of the proposed expert witness in order to make full answer and defence. The same principle would apply if the Complainant were seeking disclosure of foundational materials used by one of the Respondent's proposed experts in their report.

[30] For all of the above reasons, I grant the Respondent's disclosure request.

#### **G. Persons to whom the requested materials must be disclosed**

[31] In their motion, the Respondent's counsel requested that I order the Complainant to disclose the materials identified above to the Respondent. Initially, the Complainant did not agree to the disclosure of the interview recordings and interview notes to the Respondent or its counsel. He only agreed to disclose an anonymized transcript of the interviews and interview notes directly to the proposed expert retained by the Respondent. At the case management conference call I held with the parties, the Complainant's counsel agreed to release a copy of the interview recordings and interview notes at this stage of the proceeding. However, she argued that these materials should only be disclosed to the Respondent's counsel and their proposed expert, not to representatives of the Respondent itself.

[32] In my view, it is necessary for the Complainant to disclose the interview recordings and interview notes to the Respondent and its counsel who may then share it with the proposed expert whom they have retained to respond to the Jaccoud report. I agree with the Respondent that the disclosure obligation owed by the Complainant under the case law is to the Respondent and not its counsel. Also, it is difficult to see how the Respondent would be able to oversee the work of its counsel and the expert it has retained without potentially being informed of the content of the disclosed materials if necessary. Therefore, I find that

the Respondent and its counsel, as well as their proposed expert, must have access to the materials that I am ordering disclosed.

[33] That said, I agree with the Complainant that the circle of persons who have access to the disclosed materials should be kept as small as possible. This principle was also not disputed by the Respondent's counsel. Therefore, only those individuals who are closely involved in providing directions to the Respondent's counsel and their proposed expert should have access to the information contained in the disclosed materials if necessary. In my view, the confidentiality of the information contained in the disclosed materials can be preserved to a very large extent through undertakings agreed to by the parties themselves, as discussed in the next section.

#### **H. Parties to come to an agreement on confidentiality measures**

[34] As noted above, the Complainant requested that I order certain confidentiality measures if I were to order the disclosure of the information sought by the Respondent. In advance of finalizing this decision, I advised the parties that I was planning to grant the Respondent's disclosure request. I encouraged them to reach an agreement on confidentiality measures that would be appropriate at this stage of the proceeding, given the limited disclosure that I have ordered and in light of the implied undertaking of confidentiality that binds the Respondent and, by extension, its counsel: *Lac d'Amiante du Québec Ltée v. 2858-0702 Québec Inc.*, 2001 SCC 51 (CanLII), [2001] 2 RCS 743 at para 42. In a follow-up case management conference call I held with the parties, they indicated that they would reach an agreement on the confidentiality measures and undertakings that are appropriate at this stage of the proceeding.

[35] It is currently unclear whether the recordings of the interviews carried out by Professor Jaccoud or her interview notes will ever be entered into evidence in this case or otherwise need to become part of the Tribunal's official record. If ever the interview recordings and/or interview notes must be entered into the Tribunal's official record, the Complainant may renew his confidentiality motion, and I will rule upon it at that time, if the parties themselves cannot reach an agreement on the issue.

[36] As it is not known at this time whether the Complainant will need to renew his confidentiality motion, on consent of the parties, I granted his request for an interim confidentiality order over Appendix 2 of the Jaccoud report. Appendix 2 lists the names of the persons interviewed for the report. Such an interim confidentiality order is necessary to protect the confidentiality of the names pending a potential renewal of the Complainant's confidentiality motion in the future. The Tribunal will revisit this interim confidentiality order prior to the remedies hearing to determine whether it should be lifted or be made permanent.

#### **I. Request to proceed orally was denied**

[37] I denied the Complainant's request to hear these motions orally. He requested the opportunity to have Professor Jaccoud testify and to make oral submissions in addition to his written submissions. I did not consider that it was necessary to spend the time that would have been necessary to have Professor Jaccoud testify. The Complainant had the opportunity to file an affidavit sworn by Professor Jaccoud, the contents of which I accepted for the purpose of ruling on the above motion. The Complainant also had the opportunity to make full written submissions. Therefore, in my view, hearing the motions in writing was most consistent with the pressing need to hear this matter as expeditiously as possible. That said, I did receive submissions from the parties with respect to the more limited question addressed above as to whether representatives of the Respondent and its counsel must have access to the materials I have ordered disclosed.

#### **J. Legal costs are not recoverable**

[38] Both parties requested reimbursement of their legal costs for the motions. It is well established that the Tribunal does not have the power to reimburse such costs (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53).

### **K. Pressing need to move more expeditiously in this case**

[39] In my case management conference call with the parties, I stressed to them what I see as the need to move more quickly to ensure that the remedies portion of this case is heard as expeditiously as possible in the circumstances.

[40] I am keenly aware that the hearing of this case has been greatly affected by various factors including the fact that the member previously assigned to this matter was appointed to the Court of Québec and the shortage of Tribunal members which persisted for an extended period of time. The previous member's decision to bifurcate the case into the liability and remedy portions is an additional factor that has extended the amount of time required to hear the case. I have no doubt that the bifurcation of the case seemed appropriate at the time that it was ordered. However, with the benefit of hindsight, it has become evident that the bifurcation has greatly increased the amount of time it has taken to finalize this case.

[41] As I advised the parties, I am more than a little concerned that a legal proceeding filed in a Quebec court has been able to make its way up to the Supreme Court of Canada and has been decided by that Court in less time than it will take to finalize this case (see *Québec (Procureur général) c. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39). Administrative tribunals like this one are established to provide timely access to justice for parties. This Tribunal has a mandate to ensure that proceedings are conducted in a fair, informal and expeditious way (s. 48.9 of the CHRA). However, achieving this goal also greatly depends on the parties' willingness to move forward as expeditiously as possible (see *Richards v. Correctional Service Canada*, 2023 CHRT 51 at para 27).

[42] The Tribunal's mandate to provide timely access to justice ends up being severely compromised if cases are not moved forward in the most expeditious manner possible. Although I understand the complexity of this case and its significance to the parties, in my view such factors do not override the need for the Tribunal to address the cases before it in the most expeditious way possible while still complying with procedural fairness.

## V. ORDERS

[43] For the reasons set out above, the Respondent's disclosure motion is granted. I advised the parties of the following in my May 27 and June 9, 2025 letter rulings to them:

- a) I ordered the Complainant to disclose to the Respondent and the Commission, as soon as possible and no later than June 3, 2025, all facts and documents or other sources used in the preparation of the Jaccoud report, in particular all information associated with the items mentioned in appendices 1–3 of the Jaccoud report, including the recordings of the interviews carried out by Professor Jaccoud and her interview notes.
- b) Only those individuals who are closely involved in providing instructions to the Respondent's counsel and their proposed expert may have access to the information contained in the disclosed materials, if necessary. Likewise, only individuals who are closely involved in providing instructions to the Commission's counsel may have access to the information contained in the disclosed materials. The parties will communicate with each other and agree on the appropriate measures to be put in place at this stage of the proceeding.
- c) The Complainant may renew his confidentiality motion at a later stage of proceeding if necessary.
- d) I ordered that Appendix 2 of the Jaccoud report (pp 36-37) be made subject to an interim confidentiality order. The Tribunal will revisit this interim confidentiality order prior to the remedies hearing to determine whether it should be lifted or be made permanent.
- e) Within 14 days of this ruling, the Complainant must file with the Tribunal a copy of the Jaccoud report with Appendix 2 redacted. The redacted version of the report will be placed in the Tribunal's official record until such time as the interim confidentiality order is revisited as per para d) above.

*Signed by*

Jo-Anne Pickel  
Tribunal Member

Ottawa, Ontario  
June 23, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** T2251/0618

**Style of Cause:** Gilbert Dominique v. Public Safety Canada

**Ruling of the Tribunal Dated:** June 23, 2025

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

**Written representations by:**

Benoît Amyot, Léonie Boutin and Thomas Blackburn-Boily, for the Complainant

Julie Hudson, for the Canadian Human Rights Commission

François Joyal, Marie-Eve Robillard and Pavol Janura, for the Respondent