Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 58
Date: May 29, 2025
File No.: T1340/7008

Between:

First Nations Child and Family Caring Society of Canada

- and -

Assembly of First Nations

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada
(Representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

- and -

Chiefs of Ontario

- and -

Nishnawbe Aski Nation

- and -

Amnesty International

Interested parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

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I. Context – Timetable Variation Joint Motion

[1] On April 8, 2025, the Tribunal directed filing deadlines in relation to the Chiefs of Ontario (COO) and Nishnawbe Aski Nation (NAN)'s Joint Motion (Joint Motion), (seeking an order to approve a Settlement Agreement with Canada that would address the long-term reform of the delivery of child and family services for Ontario, have all the Tribunal orders concerning Ontario replaced by the terms of the Settlement Agreement and of relevance to this ruling, settle the part of the complaint that deals with Ontario) to : May 30, 2025, for those taking no position or supporting the Joint Motion; and June 16, 2025, for those seeking to oppose the Joint Motion, including the requirement that those opposing the Joint Motion file their affidavits by June 16, 2025.

[2] The Tribunal granted leave to the COO and the NAN to file an Amended Joint Motion and the Amended Joint Notice of Motion was filed with the Tribunal on May 7, 2025, included the following paragraph:

> **5. If the COO's and the NAN's status as interested parties restricts them from filing this motion to partially settle the Complaint as it relates to Ontario as described in paragraph 2, the COO and the NAN request that the Tribunal make an order granting the COO and the NAN additional participation rights for the purposes of bringing this motion or whatever relief the Tribunal deems just pursuant to its responsibility under s.48.9(1) of the Canadian Human Rights Act to ensure proceedings are conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.**

[3] On May 14, 2025, after reception of this Amended Joint Notice of Motion, the Tribunal wrote to the parties indicating that the issue raised in the COO and the NAN's Amended Joint Notice of Motion dated May 7, 2025, at paragraph 5 above, is central and the Tribunal wishes to address it as expeditiously as possible before ruling on all the interested party status requests to participate in this Joint Motion.

[4] The Tribunal directed the parties to provide detailed submissions in writing in accordance with the schedule below:

> The COO and the NAN's joint detailed submissions by May 21, 2025.

> Canada's detailed submissions by May 28, 2025 (Canada consents to the Amended Joint Motion).
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> The First Nations Child and Family Caring Society of Canada (Caring Society) and the Assembly of First Nations (AFN)'s detailed joint or separate submissions by June 4, 2025 (the co-complainants in this case).
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> The Commission's submissions by June 11, 2025 (the Tribunal invites the Commission to provide a position given its mandate and expertise on the *CHRA*'s regime and the public interest of such a central question. The Commission has indicated that it prefers responding after the Indigenous parties).
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> The COO and the NAN's joint reply by June 18, 2025.

[5] On May 14, 2025, the Caring Society wrote to the Tribunal asking for a change of the Joint Motion schedule set on April 8, 2025. The same day, the COO wrote to the Tribunal requesting the opportunity to reply to the Caring Society's submission by end of day on May 16, 2025, given the filing deadlines with respect to the Joint Motion which they are attending to, and will need time to seek instruction from their client and to confer with the NAN.

[6] On May 15, 2025, the Tribunal invited the COO and any other party who wished to file a response to the Caring Society's May 14, 2025, submission to vary the Joint Motion schedule to do so by end of day May 16, 2025. The Caring Society was allowed to file a reply, if any, by May 21, 2025.

[7] On May 23, 2025, the Tribunal found that it had discretion to determine the process to be followed to deal with the issues before it. The Tribunal stated that it did not want to unduly delay the matters; however, for several reasons that would be further explained at a later date, the Tribunal found it appropriate to answer the important question found at paragraph 5 of the Amended Joint Notice of Motion, on a preliminary basis before pursuing with the partial Joint Motion schedule.

[8] This ruling provides the detailed reasons following the Tribunal's May 23, 2025, direction.

II. Parties' submissions on the current Joint Motion schedule set on April 8, 2025

[9] In sum, the Caring Society submits that when the Tribunal set the partial Joint Motion schedule, the April 15, 2025, deadline for Interested Party Motions had not passed (and therefore the number of requests was unknown) and the issue now raised in the Amended Joint Notice of Motion was unknown.

[10] These developments now place all responding parties to the Joint Motion on uncertain ground, as it remains to be seen whether and to what extent there will be interested parties participating, whether those interested parties will be granted leave to file evidence, and what specific relief will be sought in the Joint Motion. The May 30, 2025, and the June 16, 2025, deadlines will be challenging to meet and raise particular procedural concerns for all responding parties, as requiring parties to take a position before fully understanding the relief sought is prejudicial and may cause further procedural hurdles as the Joint Motion moves forward.

[11] To this end, the Caring Society requests that the Panel amend the existing deadlines set out in the April 8, 2025 direction, and direct that the deadlines for those parties taking no position or supporting the Joint Motion, and those parties seeking to oppose the Joint Motion be set for some time after the Panel has ruled on the issue raised in the Amended Joint Notice of Motion.

[12] The COO and the NAN say the Caring Society seeks to extend its own timelines to reply to the Joint Notice of Motion on the Ontario Final Agreement (OFA) approval, in particular its deadline for stating its position on the Joint Motion (being May 30, 2025 or June 16, 2025, depending on whether the Caring Society takes no position on, approves of, or opposes the OFA) until after the Interested Party Motions have been determined and in particular until after the evidence of Chippewas of Georgina Island and Taykwa Tagamou Nation has been filed (if they are granted interested party status). This would result in a delay for the Caring Society to be able to file its position and evidence last, even after any interested parties, resulting in what would be a substantial delay to the hearing of the OFA Motion. That result would cause prejudice to the COO and the NAN and is not in the best interests of children.

[13] The Caring Society suggests they are prejudiced by the direction to file their positions on the Joint Motion because the COO and the NAN have proposed amendments to their Joint Motion to seek clarification of their rights as interested parties.

[14] The COO submits that the timetable should proceed as planned without delay. There is no prejudice to the Caring Society.

[15] The amendments to the Joint Motion raise a limited issue of clarification of the COO's and the NAN's rights as interested parties in the proceeding, which is largely a legal question. The affidavit evidence filed by the COO and the NAN on May 15, 2025, closes the evidence of the moving parties on the Joint Motion (save for reply), including the amendments. The question of clarification of the Moving Parties' rights to request the relief sought in the Joint Motion on OFA Approval does not at all affect the merits of the OFA Approval Motion or the relief sought on the merits of the Joint Motion. It does not change the amount of time that the Caring Society has had to consider its position, or the evidence filed by the Moving Parties and Canada. There is no prejudice to the Caring Society.

[16] As the Tribunal has now directed the COO and the NAN to file their positions on the relief sought by the proposed amendments by May 21, with other parties to follow, the Tribunal can decide this as a preliminary matter. The COO and the NAN will file a draft order regarding this discrete matter to accompany the submissions that the Tribunal has directed them to make by May 21, 2025, so there can be no mistake about the relief sought. Should the Tribunal find that the COO and the NAN have interested party status that extends to a right to bring the Joint Motion, then the Joint Motion can continue as planned.

[17] All parties are now on equal footing with regard to the issue of the COO's and the NAN's rights as interested parties, with submissions on that point due in short order. The Caring Society's ability to take a position on the merits of the OFA Motion, and what information they have before them in formulating that position, remains exactly the same as if there was no amendment sought.

[18] Had the proposed amendments been included in the original Joint Motion, the Caring Society would not have been able to delay taking a position and filing evidence. Their status is unaffected by the proposed amendments and therefore they are not prejudiced.

[19] The COO submits that the OFA Joint Motion should proceed without delay.

[20] The NAN submits that the issue raised in the Amended Joint Notice of Motion regards the Moving Parties' rights to seek the relief as outlined; it is intended to clarify a question of process. This is not a substantive amendment to the OFA Approval Motion, and the evidence, merits, and relief concerning the same, remain as it was initially filed on March 7, 2025. As such, nothing in the Amended Joint Notice of Motion places a responding party on new or uncertain ground, nor prejudices their ability to finalize their position. NAN submits that the only prejudice to be concerned with is that which arises from delay.

[21] Canada supports the positions filed by the COO and the NAN, in response to this request. Canada agrees with the points made by the COO and the NAN, including that their request for expanded participatory rights is irrelevant to the merits of the OFA Joint Motion and the responding parties' ability to formulate a position. Canada requests that the current OFA Motion deadlines remain in place.

[22] The Caring Society submits in reply that the principle concern is the procedural pathway of the Joint Motion: if the COO and the NAN do not have standing to bring the Joint Motion or the Tribunal places parameters on the scope of the relief they can seek as interested parties, it will be essential for all parties to have this information before filing any material on the merits of the Joint Motion.

[23] The Caring Society is concerned about the sequencing, as expending significant resources to prepare for both deadlines (as the Caring Society continues to consider its position) is particularly challenging when it remains unclear whether the COO and the NAN have standing and, if so, what the parameters of that standing may be in relation to the Tribunal's jurisdiction of a human rights complaint brought by the Caring Society and the Assembly of First Nations. Requiring the Caring Society to fully form its position and expend resources before understanding the scope of the relief is procedurally challenging and may be prejudicial to the Caring Society.

[24] In the spirit of supporting access to justice, Caring Society counsel undertakes Tribunal related work on a pro bono basis. Amending the existing deadlines to a date following the Panel's determination of the COO and the NAN's relief set out in paragraph 5

of the Amended Joint Notice of Motion will ensure efficiency of resources in this regard. The Caring Society notes that they rarely seek extensions to timelines and they generally work quickly to compress the schedule on all matters before the Tribunal and requests this to be considered in the determination of the Caring Society's request.

[25] The Tribunal has reviewed the parties' submissions on the issue of whether the partial Joint Motion schedule released by this Tribunal on April 8, 2025, should remain or be modified. The analysis is explained below. This ruling does not deal with the Caring Society's request in their May 8, 2025, submissions for the opportunity to finalize their position on the Joint Motion after the Chippewas of Georgina Island and Taykwa Tagamou Nation file their evidence, to the extent the Panel grants their requested relief as interested parties.

III. Law

[26] Section 48.9 (1) of the *Canadian Human Rights Act, R.S.C., 1985, c. H-6,* (CHRA), stipulates that: "Proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow."

[27] The Old Rules of procedure have recently been revised in *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the "New Rules"). Given that this case is ongoing and was initiated under the Old Rules, the Old Rules continue to govern these proceedings.

[28] Rule 1 of the Old Rules stipulate that:

> 1(1) These Rules are enacted to ensure that
>
> (a) all parties to an inquiry have the full and ample opportunity to be heard;
>
> (b) arguments and evidence be disclosed and presented in a timely and efficient manner; and
>
> (c) all proceedings before the Tribunal be conducted as informally and expeditiously as possible.
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> 1(2) These Rules shall be liberally applied by each Panel to the case before it so as to advance the purposes set out in 1(1).

[29] The Tribunal in these proceedings previously relied on a decision of the Federal Court of Appeal describing as an inherent authority for a Tribunal to control its process, 2019 CHRT 1, at paragraph 26.

[30] *In Canada (Human Rights Commission) v. Canada Post Corp*., 2004 FC 81 [Canada Post Corp.], at paras. 13-15, the Federal Court discussed the Tribunal's ability to control its process and protect it from abuse:

> [13] Administrative tribunals are masters of their own procedure. As Sopinka, J. stated in *Prassad v. Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (SCC), [1989] 1 S.C.R. 560, at para. 16,
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> > In order to arrive at the correct interpretation of statutory provisions that are susceptible of different meanings, they must be examined in the setting in which they appear. We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice.
>
> [14] A Consequently, it would seem to be perfectly proper for the Tribunal, at the outset of an inquiry, to entertain preliminary motions so as to clear the procedural underbrush. That is precisely what the Tribunal did in this case. It considered the preliminary motion by CPC which argued that it would be an abuse of the Tribunal's process to hold an inquiry into a matter over eight years old that had been subject to two arbitrations and a separate complaint to the Commission. Tribunal member Groarke, on the basis of a motion explicitly addressing the issue of abuse of process, came to the conclusion that an inquiry into that part of the matter related to the transfer request would indeed be an abuse of the Tribunal's process. This was not a review of the decision to refer by the Commission. Rather, it was a de novo decision in which the member was determining how best to deal with the issues which had been referred to the Tribunal.
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> [15] It strikes me as evident that one cannot maintain that the Tribunal is the "master in its own house" if it cannot protect its own process from abuse.

[31] In *Canada (Canadian Human Rights Commission) v. Canada (Attorney General),* 2012 FC 445, former Tribunal Chair MacTavish deciding a matter in these proceedings as

a Federal Court Justice, discussed the Tribunal's authority to decide issues on a preliminary basis, at paras. 119 and 144 – 147:

> [119] I need not resolve this issue as I am satisfied that the Tribunal correctly concluded that it had the authority to determine the process to be followed in deciding the issues raised by a human rights complaint. The Tribunal also correctly decided that it does not always have to hold a full evidentiary hearing in relation to each and every issue raised by a complaint in order to decide substantive issues coming before it.
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> […]
>
> [144] There may also be cases where it is appropriate to decide issues raised by a complaint in stages, in a particular order, so that the hearing may unfold in an efficient manner.
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> [145] For example, it may be entirely appropriate for the Tribunal to choose to hear and decide a truly discrete or threshold question in advance of the full hearing on the merits of the complaint, particularly if the determination of the question has the potential to narrow the issues, focus the hearing, or dispose of the case altogether.
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> [146] A hypothetical example discussed during the course of the hearing illustrates this point. The Tribunal could be faced with a pay equity case that would potentially involve a two-year-long hearing, in which a question arises as to whether the relationship between the complainants and the respondent is such that the respondent was in fact an "employer" within the meaning of section 11 of the *Act.* In such a case, it might well be appropriate for the Tribunal to hear and decide this issue first, as a negative decision on this point might dispose of the entire complaint.
>
> [147] Indeed, it would make no sense in this hypothetical scenario to compel the parties to go through the time and expense of a two-year-long hearing, if the legal status of the relationship between the complainants and the respondent was potentially dispositive of the complaint, and could quickly and fairly be determined before a full examination of the wage discrimination issue.

[32] Moreover, the Newfoundland Court of Appeal in *Newfoundland (Human Rights Commission) v. Newfoundland (Health), 1998 CanLII 18107 (NL CA),* found that the Board of Inquiry can exercise discretion regarding whether to deal with an issue of jurisdiction as a preliminary matter or not. The Board of Inquiry is neither required to deal with an issue of jurisdiction as a preliminary matter, nor to hold a full hearing before determining a

jurisdictional issue. The Board of Inquiry has discretion to determine what is appropriate in the circumstances.

> Para 18:
> [18] "(…) *Rose* (*in Memorial University v. Rose* (1990), 1990 CanLII 6496 (NL CA), 87 Nfld. & P.E.I.R. 233), is an illustration of the application of the principle stated above that in each case a board of inquiry must determine how the issue is to be dealt with in light of what is just and convenient in the circumstances." (Full Reference for *Rose* added).
> Para 21:
> [21] When faced with an application to determine a point of law the board of inquiry must decide if it is to exercise its discretion to do so prior to the hearing (…).

IV. Analysis

[33] The Tribunal advised the parties that it viewed this issue as central, and that the Tribunal wished to address it as expeditiously as possible before ruling on all the interested party status requests to participate in this Joint Motion. The Tribunal directed the parties to provide detailed submissions on this issue and the round of submissions is set to be completed on June 18, 2025. Following this round of submissions, the Tribunal must answer the following questions:

A. Does the COO's and the NAN's status as interested parties restrict them under the CHRA from filing this Joint Motion to partially settle the Complaint as it relates to Ontario as described in paragraph 2 of the Amended Joint Notice of Motion?

B. Can the Tribunal make an order granting the COO and the NAN additional participation rights for the purposes of bringing a Joint Motion seeking to partially settle a complaint?

C. Is there a relief that the Tribunal deems just, in the specific context of this case and the COO and the NAN's Amended Joint Notice of Motion, pursuant to its responsibility under s.48.9(1) of the Canadian Human Rights Act to ensure proceedings are conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow?

[34] Given the nature of the questions that must be answered, the Tribunal does not find it efficient to rule on all the Interested Party Status Motions prior to answering the questions above especially if the questions were to be answered in the negative. Given the complexity and volume of materials in the underlying Joint Motion (including multiple interested party requests), the potential benefits of addressing the standing and jurisdictional issue on a preliminary basis is an efficient use of the Tribunal and the parties' resources. If the COO and the NAN do not have standing to bring the Joint Motion, addressing this issue on a preliminary basis may render the Interested Party Status Motions moot. Furthermore, if orders are made by the Tribunal under the third question above, this may require new submissions from the parties and/or from those who are seeking Interested Party Status in the Joint Motion.

[35] If the Tribunal answers question one or two in the affirmative, the Tribunal can expeditiously determine all the Interested Party Status Motions and set the rest of the Joint Motion schedule without too much delay.

[36] Moreover, the Tribunal does not believe that it is appropriate to maintain the current partial schedule given the multiple possibilities of answers to the questions above that may impact the status of the Joint Motion.

[37] Furthermore, this Joint Motion involves two hearings, one for the cross-examinations of the affiants and one to hear arguments which involves significant resources for the parties and the Tribunal. It is in no one's interest to wait until the two hearings are completed to answer the questions above. Akin to the reasoning of Justice MacTavish above, it would make no sense to compel the parties to go through the time and expense of two hearings, if the Tribunal can quickly and fairly determine the questions above, before a full examination of the Joint Motion.

[38] The Tribunal finds that it is just and convenient in the circumstances, to suspend the current Joint Motion partial schedule and determine the questions above, on a preliminary basis.

[39] The Tribunal views the questions above as holding a public interest and having precedential value given the significant aspects of the questions above that involve the statutory regime of the *CHRA.*

[40] The Tribunal believes that it is correctly applying its discretion to suspend the partial Joint Motion schedule and to determine the questions above on a preliminary manner in accordance with the law explained in the previous section.

V. Procedural Order

[41] As previously communicated to the parties:

A. The Tribunal will deal with the question of the COO and the NAN's ability to bring the COO-NAN Joint Motion on the Ontario Final Agreement (as set out in paragraph 5 of their Amended Joint Notice of Motion) on a preliminary basis.

B. The remaining schedule to address the COO-NAN Joint Motion on the Ontario Final Agreement is suspended.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
May 29, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

Style of Cause: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: Click here to enter a date.

Dealt with in writing without appearance of parties

Written representations by:

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