

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 78

**Date:** August 8, 2025

**File No.:** T2753/12921

**Between:**

**Rubi-Helen Shirley**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Mikisew Cree First Nation**

**Respondent**

**Ruling**

**Member:** Ashley Bressette-Martinez

## **I. OVERVIEW**

[1] The Complainant in this case, Rubi-Helen Shirley, made a complaint to the Canadian Human Rights Commission (CHRC) about the alleged conduct of Archie Waquan, a former Chief (Chief AW) of the Mikisew Cree First Nation (MCFN), the Respondent. When Ms. Shirley filed her amended Statement of Particulars (the “amended SOP”) with the Tribunal, she included allegations and information about systemic discrimination. The MCFN opposed the inclusion of the allegations and information about systemic discrimination in the amended SOP.

[2] Hearing dates for this matter were set for October 2025. However, given the dispute about the true scope of this complaint, the Tribunal asked the parties to address their positions by way of a motion. Ms. Shirley thinks that the Tribunal should allow the scope of this complaint to include the allegations of systemic discrimination. The MCFN opposed any expansion of the scope of this complaint.

[3] As part of this motion, Ms. Shirley also asked the Tribunal to award the legal costs she incurred in a proceeding before the Federal Court. The MCFN argues that the Tribunal has no authority to award any legal costs.

## **II. DECISION**

[4] Ms. Shirley has not established a nexus between her original complaint and the allegations of systemic discrimination which are entirely new. These allegations are not part of the scope of this complaint and are struck from her amended SOP.

[5] The Tribunal cannot award Ms. Shirley the legal costs the Federal Court declined to award her. She ought to have pursued those costs more vigorously in that proceeding.

## **III. ISSUES**

[6] The issues for decision in this motion are:

- i. What is the scope and substance of Ms. Shirley’s complaint?

- ii. Should some of the allegations and information from the amended SOP be struck because they are outside the scope of her complaint?
- iii. Can the Tribunal award Ms. Shirley the legal costs the Federal Court of Canada declined to award her?

#### IV. ANALYSIS

##### i. Legal framework – scope of a complaint

[7] The *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA) sets out a comprehensive framework for dealing with complaints of discrimination. The CHRC is responsible for receiving, screening and investigating complaints (ss. 40, 44 and 49 of the CHRA). The Tribunal gets its jurisdiction to hear complaints based on the original complaint filed with the CHRC and its decision when it refers a complaint to the Tribunal (ss. 44(3) and 49(1) of the CHRA), *Garnier v. Correctional Service of Canada*, 2023 CHRT 32 at para 9 [*Garnier*].

[8] This Tribunal has found that the same legal principles apply in cases where it is asked to decide the scope of a complaint or a motion to strike parts of a Statement of Particulars (*Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at para 7 [*Levasseur*]). Parties must have a full and ample opportunity to present their case and prepare for the hearing (s. 50(1) of the CHRA), and proceedings must be as fair and expeditious as the rules of natural justice allow (s. 48.9(1) of the CHRA and Rule 5 of the *Canadian Human Rights Tribunal Rules of Procedure*, 2021, SOR/2021-137 (the “Rules of Procedure”)).

[9] The Tribunal can amend, clarify and determine the scope of a complaint to decide the real issues in dispute, so long as the amendment does not cause a prejudice to the other parties (*Canada (Attorney General) v. Parent*, 2006 FC 1313 at paras 30 and 40, *Casler v. Canadian National Railway*, 2017 CHRT 6 at paras 7–11). Amendments must, however, respect the factual foundation of the original complaint (*Gaucher v. Armed Forces*, 2005 CHRT 1 at para 11, *Levasseur* at para 15).

[10] The Tribunal can consult the complaint form filed with the CHRC, its investigation report and Record of Decision, along with any other administrative forms in the file to determine if there is a sufficient nexus between the amendments and the original complaint (*Levasseur* at paras 16–17). Amendments cannot introduce a new complaint since this would undermine the CHRC’s referral process set out in the CHRA (*Garnier* at para 10), but they can be used to clarify, refine and elaborate on what was submitted in the original complaint (*Levasseur* at para 13). The Tribunal will not generally grant an amendment if it is plain and obvious that the amendment cannot succeed in proving discrimination (*Garnier* at para 11) and will apply the principle of proportionality (*Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at para 58). Striking portions of a Statement of Particulars should only be done in the clearest of cases (*Richards v. Correctional Service Canada*, 2020 CHRT 27 at para 86).

## **ii. What is the substance and scope of Ms. Shirley’s complaint?**

[11] Ms. Shirley’s complaint form was filed with the CHRC in March of 2019. In it, she listed “sex” as the prohibited ground of discrimination. She said she experienced discrimination in the form of adverse differential treatment in employment under section 7 of the CHRA. In 2021, the complaint form was amended to add another allegation of discrimination—the failure to provide a harassment-free workplace under section 14 of the CHRA.

[12] Ms. Shirley’s original complaint is one paragraph. In it, she says that on November 1, 2018, at a Community Trustee meeting where there were approximately 11 witnesses, Chief AW allegedly made an inappropriate sexual comment to her (the “November 1 Incident”). She goes on to say that she made a complaint to the Human Resources team but that nothing was done to address it. She says she confronted Chief AW about the November 1 Incident on November 28 and that on December 11, 2018, she was suspended from her role as a Councillor. That is the entire complaint.

[13] The CHRC’s investigation report summarizes Ms. Shirley’s complaint as alleged discrimination under sections 7 and 14 of the CHRA. It focuses almost entirely on the November 1 Incident and Ms. Shirley’s suspension from Council. The investigation report

also addressed Ms. Shirley's court actions against the MCFN in both the Court of Queen's Bench of Alberta and the Federal Court of Canada concerning her suspension as a Councillor. The investigation report does not address any allegations of systemic discrimination.

**iii. Paragraphs 14(b), (f), (h) and (i) are about allegations of systemic discrimination and are not part of this complaint. They must be struck from the amended SOP**

[14] The MCFN asks that paragraphs 14(a)–(k) of Ms. Shirley's amended SOP be struck because they contain information and allegations about systemic discrimination which it says were not part of the scope of the original complaint and were not investigated or referred to the Tribunal. Ms. Shirley argues that the allegations at paragraph 14 of her amended SOP “were a part of a pattern of events of discrimination, harassment and discriminatory conduct against women” by Chief AW and ought to be included within the scope of this complaint.

[15] To provide context for this analysis, paragraph (b) of the amended SOP is about alleged discrimination against another female Councillor. Paragraph (f) is about differential treatment between men and women Councillors by Chief AW. Paragraph (h) is about derogatory comments Chief AW allegedly made about his spouse at Council meetings. Paragraph (i) expresses an opinion that Chief AW sought to surround himself with female Councillors who would agree with his comments and decisions.

[16] The original complaint filed and the CHRC's investigation report do not mention or address the allegations about systemic discrimination in the amended SOP. The complaint that was referred to the Tribunal is about two specific issues: first, whether Chief AW discriminated against Ms. Shirley at the Council meeting that took place on November 1, 2018, and, second, whether Ms. Shirley's suspension from Council was discrimination. These are the real issues in controversy between the parties that must be decided in this complaint. The additional allegations and information Ms. Shirley is seeking to include as part of her case do not merely clarify, refine or elaborate on her original complaint (*Richards v. Correctional Service Canada*, 2025 CHRT 5 at para 20), nor do they have a sufficient nexus to her original complaint (*Levasseur* at paras 16–17).

[17] This complaint is not about how Chief AW treated women (other than Ms. Shirley) differently than men, nor is it about what he said about his spouse or his expectations that Councillors agree with his comments and decisions. This information would not assist me in resolving the core issues in dispute between the parties (*Brickner v. Royal Canadian Mounted Police*, 2018 CHRT 2 at para 38). Allowing these proposed amendments, which are entirely new allegations, would bypass the screening and referral function the CHRC has under the CHRA (*Garnier* at para 10). Paragraphs 14(b), (f), (h) and (i) must be struck from Ms. Shirley's amended SOP. The Tribunal will not hear any evidence about the allegations of systemic discrimination, and Ms. Shirley's witness list and will-say statements should be amended accordingly.

**iv. The Tribunal cannot award costs from the Federal Court proceeding to Ms. Shirley and paragraphs 20(i), (ii) and (iii) must be struck from the amended SOP**

[18] Ms. Shirley argues that any person who is subjected to discriminatory conduct or retaliation ought to be able to get reimbursement for legal costs associated with any legal challenges the person opts to pursue. She says that denying a claim for legal expenses will create and exacerbate the imbalance of power between parties in cases like this one and will prevent individuals from pursuing claims for discrimination.

[19] In its submissions, the MCFN argued that the Tribunal has no authority to award legal costs as part of remedy under section 53(2) of the CHRA. The Supreme Court of Canada in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII), [2011] 3 SCR 471 at paras 32 and 64 [*Mowat*] found that sections 53(2)(c) and (d) of the CHRA provide no authority for the Tribunal to award legal costs and said there is no other reasonable interpretation of this provision.

[20] Ms. Shirley says, however, that the *Mowat* case does not apply in this situation because she is not asking for legal costs for this proceeding. She wants this Tribunal to compensate her for the significant legal costs she incurred as one of the applicants in *McKenzie v. Mikisew Cree First Nation*, 2020 FC 1184 (CanLII) [*McKenzie*] which dealt with her suspension from Council. However, as the MCFN pointed out in its submissions, the

applicants in *McKenzie* were awarded \$2,000 as a lump sum all inclusive cost award and never appealed the Federal Court decision. The decision in *McKenzie* also says the applicants made no substantive submissions in support of their written request for solicitor-client costs (*McKenzie* at para 100) as part of that proceeding.

[21] While Ms. Shirley noted in reply submissions that she was not provided with a separate opportunity to argue costs, the Federal Court decision is clear that Ms. Shirley chose not to provide substantive submissions in *McKenzie*. Ms. Shirley also acknowledges that she did not appeal the Court's decision, albeit because she did not have adequate financial resources to do so.

[22] Regardless of whether Ms. Shirley's argument that a plain reading of section 53(2)(d) of the CHRA includes the authority to award legal costs from another proceeding, this Tribunal has no authority to award Ms. Shirley the legal costs the Federal Court of Canada declined to award her. When a party decides to pursue legal action, they do so under a specific statutory scheme and make choices about how to proceed with litigation. Ms. Shirley did not provide any substantive submissions on costs in *McKenzie*. As part of that proceeding, she had the opportunity to make her case for further costs and, if dissatisfied, could have sought an appeal. It is not the Tribunal's role to provide Ms. Shirley with a second chance to present arguments she should have made to the Federal Court. In this case, it would undermine the finality of the Federal Court's decision if the Tribunal were to contemplate a remedy the Federal Court denied Ms. Shirley.

[23] Since paragraphs 20(b)(i), (ii) and (iii) of Ms. Shirley's SOP are about the costs associated with *McKenzie*, they are struck from the amended SOP.

#### **v. Paragraphs that are not struck from the amended SOP**

##### **a) Paragraphs 14(a), (c), (d), (e), (g), (j) and (k) are sufficiently linked to the original complaint**

[24] There is no dispute between the parties that part of this complaint is about how Chief AW is alleged to have treated Ms. Shirley following the November 1 Incident up until her suspension on December 11, 2018. Paragraphs 14(a), (c), (d), (e), (g), (j) and (k) are

reasonably connected to Ms. Shirley's original complaint and the core issues I need to decide in this case (*Levasseur* at para 16). Briefly, these paragraphs concern various interactions Ms. Shirley had with Chief AW, statements he allegedly made to her about not being the Chief or are Ms. Shirley's opinion that Chief AW did not value or respect her and treated her differently than male Councillors because of her sex.

[25] These paragraphs provide additional information about her allegations that Chief AW discriminated against her (*Levasseur* at para 13). Allowing the inclusion of these paragraphs does not expand the scope of Ms. Shirley's complaint as none of these paragraphs are new allegations of discrimination but rather provide Ms. Shirley a full and ample opportunity to present her case (s. 50(1) of the CHRA). She can rely on this information to provide context about **her** interactions with Chief AW and **her** experience being on Council. This information could assist the Tribunal in addressing the two main issues in dispute in this complaint, and Ms. Shirley is allowed to keep these paragraphs in her amended SOP.

**b) Paragraph 18(d) is about allegations of harassment within the scope of this complaint**

[26] As part of the legal issues portion of her amended SOP, at paragraph 18(d), Ms. Shirley says that Chief AW sexually harassed her during the course of her employment contrary to section 14(2) of the CHRA. The MCFN asks that paragraph 18(d) be struck from the amended Statement of Particulars for two reasons. First, it says "this allegation refers to harassment "during the course of my employment", implying a systemic issue, not a "one-time" event". Second, the MCFN argues that the statement is incorrect because it does not believe that being a Councillor is considered "employment", relying on *Whalen v. Fort McMurray No. 468 First Nation*, 2019 FC 732 at para 46.

[27] Ms. Shirley's complaint is about discrimination under sections 7 and 14 of the CHRA. That is clearly set out on her complaint form and in the Record of Decision from the CHRC, and I find there is a sufficient nexus between her complaint and the reference to section 14(2) of the CHRA (*Levasseur* at para 16). Ms. Shirley has the right to argue that she experienced sexual harassment, and there is no reason to remove the reference to paragraph 18(d) in her amended SOP. The MCFN will in turn have an opportunity to present



evidence and arguments to support its position that being a Councillor does not constitute “employment” along with its position about a one-time event vs. the systemic nature of the harassment.

**c) Paragraphs 19(c), (d) and (f) are connected to the complaint**

[28] Paragraphs 19(c), (d) and (f) are part of the “legal issues” portion of Ms. Shirley’s amended SOP. These paragraphs provide context about the main issues in dispute in this case, namely the November 1 Incident and Chief AW’s treatment of Ms. Shirley based on her sex. There is no reason to strike these paragraphs as they are reasonably connected to her complaint (*Levasseur* at para 16) and form part of Ms. Shirley’s legal argument. However, Ms. Shirley cannot use paragraphs 14(c), (d) and (f) to raise any allegations of systemic discrimination that I have determined to be out of scope.

**V. ORDER**

[29] Ms. Shirley must file a new Statement of Particulars, striking paragraphs 14(b), (f), (h) and (i), and paragraphs 20(b)(i), (ii) and (iii) within 10 days after this order is communicated to the parties.

*Signed by*

Ashley Bressette-Martinez  
Tribunal Member

Ottawa, Ontario  
August 8, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** T2753/12921

**Style of Cause:** Rubi-Helen Shirley v. Mikisew Cree First Nation

**Ruling of the Tribunal Dated:** August 8, 2025

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

**Written representations by:**

Dipesh C. Mistry, for the Complainant

Orlagh O'Kelly, for the Respondent