

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2025 CHRT 91

Date: September 11, 2025

File Nos.: HR-DP-2899-22 & HR-DP-2900-22

Between:

Amanda Lepine and Amanda Lepine (on behalf of A.B.)

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

- and -

West Coast LEAF

Interested party

Ruling

Member: Jo-Anne Pickel

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I. OVERVIEW

[1] Amanda Lepine and her son, A.B., the Complainants, allege discrimination against them in the provision of services provided by Correctional Service Canada, the Respondent, through its Mother-Child Program. The Respondent brought a motion to strike the expert report and reply report filed by the Complainants. The Complainants opposed the motion.

[2] Neither the Canadian Human Rights Commission nor the interested party, West Coast LEAF, have made submissions on this motion.

II. DECISION

[3] I grant the Respondent's motion in part.

III. ISSUES

[4] The issue I address in this ruling is whether it is appropriate to strike all or part of the expert report and expert reply report filed by the Complainants.

IV. BACKGROUND TO EXPERT REPORTS

[5] The Complainants filed a proposed expert report and reply report written by Dr. Martha Paynter, an assistant professor in the Faculty of Nursing at the University of New Brunswick. The Respondent filed a proposed expert report written by Dr. Karen Nordahl, a medical practitioner licensed in British Columbia. The Complainants have not sought to strike Dr. Nordahl's report. Instead, they will address any issues they have with her report in their submissions regarding the weight that should be accorded to it. Meanwhile, the Respondent has brought this motion seeking to strike all or part of Dr. Paynter's report and reply report. The Respondent argues that Dr. Paynter's reports are mostly irrelevant, unnecessary and without proper factual foundation. It also argues that the reports are partial and argumentative and portions exceed Dr. Paynter's expertise. The Respondent submits

that Dr. Paynter's reply report does not constitute proper reply evidence, amounts to case splitting and usurps the Tribunal's function as the trier of fact.

V. ANALYSIS

[6] The parties did not dispute that the Tribunal has the power to consider whether proposed expert evidence ought to be excluded and to determine its admissibility prior to a hearing: *Woodgate et al. v. RCMP*, 2023 CHRT 9 at para 12 [*Woodgate*]. See also sections 48.9(2)(g) and 50(3)(e) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA).

A. Scope of the complaints

[7] At the outset, it is important to set out what these complaints are about—in other words, the scope of the complaints. It is important to do so because the legal criteria for admissibility must be assessed against the factual and legal issues that are raised in a complaint.

[8] The complaint filed by Ms. Lepine alleges that the Respondent has engaged in an ongoing pattern of discrimination against her based on her disability (a knee injury and her weight/size), her sex (pregnancy), her family status, and her race or national or ethnic origin (indigeneity). The complaint filed on behalf of A.B. alleges that the Respondent has engaged in an ongoing pattern of discrimination against him on the basis of his disability (allergies), his age, and his race or national or ethnic origin (indigeneity). The Complainants challenged various policies or practices of the Respondent and seek public interest remedies in addition to financial compensation. However, they made no allegations of systemic discrimination in the sense of claiming particular instances of discrimination against any other individuals. The Complainants also made no allegations regarding any aspects of the Mother-Child Program other than the ones set out in their complaints.

[9] The complaints are being dealt with together, and the Complainants filed one Statement of Particulars (SOP) for both of them. The Complainants' initial SOP did not include any allegations of systemic discrimination in the sense of alleging particular

instances of discrimination against any other individuals or groups of individuals. In their amended SOP, the Complainants sought to add various references to the systemic nature of the Respondent's allegedly discriminatory practices in this case. I asked the Complainant's former counsel about these added references to systemic discrimination in my first case management conference call with the parties in January 2025. She clarified that the Complainants' allegations are "systemic" in that they are challenging the application of the Respondent's policies and in terms of the remedies being sought.

[10] A reading of the complaints makes clear that the allegations in the complaints are about alleged patterns of discrimination against Ms. Lepine and A.B. They do not include any instances of alleged discrimination against other individuals, and they do not challenge any aspects of the Mother-Child Program other than the ones that applied to the Complainants. At most, the complaints are "systemic" in the sense that they challenge policies and practices that, whether by design or impact, had the effect of disadvantaging the Complainants. They are also "systemic" in the sense that they seek public interest remedies. However, any remedies awarded must flow from any discrimination that is established: *Moore v. British Columbia (Education)*, 2012 SCC 61 (CanLII), [2012] 3 SCR 360 at para 64 [*Moore*]. The fact that a complainant seeks systemic remedies does not open the door to expanding the complaint beyond the actual allegations made in it.

B. Extent of the Tribunal's mandate

[11] The Tribunal's mandate is limited to applying the CHRA. In the context of section 5 complaints, this means determining whether a complainant was denied a service, denied access to a service or subjected to adverse differentiation in the provision of a service on a prohibited ground. The Tribunal is an adjudicator of a particular claim that is before it, not a royal commission: *Moore* at para 64. The Tribunal does not have a broader mandate to redress all inadequacies in services or instances of mistreatment or inappropriate conduct in the provision of services that are not connected to any of the prohibited grounds of discrimination listed in the CHRA.

[12] I am fully aware that various people, including Dr. Paynter, have criticized the Mother-Child Program for various reasons. Among other things, commentators, including Dr. Paynter, have criticized the inadequacy of the Mother-Child Program. They have also criticized the fact that the program does not provide access to all of the entitlements available to non-incarcerated mothers. Finally, some commentators, including Dr. Paynter, have gone further to argue against the incarceration of pregnant persons and mothers and even to argue against incarceration itself. Those are not issues that I have the power to decide, and, accordingly, they are not issues that I will address in this case. Incarcerated status is not a prohibited ground of discrimination under the CHRA. Therefore, I have no power to address any adverse differential treatment based on that ground. I also do not have the kind of broad powers that might be granted to a royal commission to examine all aspect of a program and make recommendations for its improvement or recommendations as to whether pregnant persons should remain incarcerated. All of these issues fall outside the powers granted to me.

C. Legal principles and findings

[13] At the outset, I start by recognizing that Dr. Paynter is an accomplished individual who might otherwise be qualified to provide expert testimony in legal proceedings. That said, I find that some of the proposed evidence in her reports is inadmissible in relation to the precise issues I must address in this case.

[14] To determine the admissibility of the proposed expert opinion evidence, the Tribunal must address the following:

1. What is the nature and scope of the proposed expert opinion evidence?
2. Does the proposed expert evidence meet the relevant criteria for admissibility, namely relevance, necessity, absence of an exclusionary rule and a properly qualified expert?

3. Do the benefits outweigh the risks of admitting the proposed expert evidence? *R. v. Mohan*, [1994] 2 SCR 9 at pp 20–25; *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at para 19 [*White Burgess*]; *R. v. Bingley*, 2017 SCC 12 at para 17.

a) What is the nature and scope of the proposed expert opinion evidence?

[15] According to the Complainants in their response to the motion, Dr. Paynter’s expert reports are tendered to “establish the systemic existence of imbalanced treatment of incarcerated Indigenous women, and the health impacts of incarceration on both mother and child”. This includes proposed expert opinion in response to the questions posed to Dr. Paynter on the following issues:

1. the difference in available services for post-partum, breastfeeding women inside and outside of the federal prison system in B.C.;
2. the distinct needs of incarcerated birth parents—and Indigenous women in particular—compared to the general inmate population and the care necessary to meet those needs;
3. the impact of surveillance on women during pregnancy and birth, particularly on Indigenous women;
4. the barriers for Indigenous women participating in the Mother-Child Program;
and
5. the impact of unreliable or insufficient supply of infant necessities and the impact of requiring Indigenous birth parents to seek assistance from child welfare services to obtain basic necessities.

[16] Dr. Paynter's reply report addresses the following issues:

1. the risks to children residing in CSC's residential Mother-Child Program in the context of the COVID-19 pandemic;
2. how maternal care providers can account for their patients' indigeneity; and
3. whether the presence of correctional officers interfered with or impacted Ms. Lepine's care or stay in the hospital.

b) Does the proposed expert evidence meet the relevant criteria for admissibility?

[17] I provide my overarching reasons for my findings in the paragraphs that follow and address specific impugned portions of Dr. Paynter's report and reply report in the Appendix that forms part of this ruling.

i. Some parts of the reports lack relevance or are unnecessary for deciding this case

[18] I agree with the Respondent that some portions of Dr. Paynter's reports lack relevance to the issues that form part of the scope of these complaints or are unnecessary for addressing those issues.

[19] The Respondent argues that parts of the Dr. Paynter's report and reply report are irrelevant as they are akin to a literature review based on publicly available information. It also notes that the reports do not seem to consider the specific facts of the complaints or the Agreed Statement of Facts agreed to by the Complainants and the Respondent. In addition, the Respondent argues that parts of the report are unnecessary for me to decide the issues in this case.

[20] In their response to the motion, the Complainants submit that the Respondent is seeking to improperly narrow the focus of the case only to the "incident facts" rather than

the systemic nature of the Respondent's discrimination which disadvantages pregnant and parenting persons in custody and their children, particularly those who are Indigenous. The Complainants submit that they are seeking systemic changes to the Respondent's policies and practices. In their view, this then makes Dr. Paynter's proposed evidence relevant and necessary as it addresses the impact of these policies on birthing parents and children, especially those who are Indigenous.

[21] I do not fully agree. As noted above, the scope of this complaint relates to the forms of adverse differential treatment allegedly experienced by the Complainants. The Tribunal only has the power to address the forms of discrimination alleged in the complaints and to award remedies (including public interest remedies) that flow from any discrimination that is established. The Tribunal does not have the power to conduct a more general inquiry into any and all forms of discrimination that might allegedly be connected to the Mother-Child Program beyond those raised in the complaints.

[22] I agree with the Respondent that some parts of Dr. Paynter's reports lack relevance with respect to the precise issues I must decide in this case. Some parts of the reports are written as though they are intended to support a more general inquiry into the sufficiency of the Mother-Child Program. Some parts are written as if they were meant to support a challenge under the protections for security of the person found in section 7 of the *Canadian Charter of Rights and Freedoms (Charter)*. However, I do not have the power to conduct either of these types of inquiries, and the complaint also does not raise any *Charter* issues in any event.

[23] Proposed evidence relating to alleged systemic issues that do not arise in the complaints is not relevant as it relates to issues that exceed the scope of the complaints. For example, proposed evidence that is aimed at showing that incarcerated women do not have access to services that are available to non-incarcerated women lacks relevance to this case. As noted above, incarcerated status is not a prohibited ground of discrimination under the CHRA. Therefore, I do not have the power to address any adverse differential treatment based on someone's incarceration status. As another example, information contained in Dr. Paynter's report about the distance of some prisons for women from the nearest maternity hospital has no connection to these complaints as the institution where

Ms. Lepine was incarcerated was only 2.8 km from the nearest hospital. Likewise, Dr. Paynter's general evidence about why Indigenous women may not want to participate in the Mother-Child Program is not relevant to the Complainants' case as Ms. Lepine did participate in the program. These are just some examples of portions of Dr. Paynter's report that lack relevance for my inquiry in this case. I address further portions of the report that lack relevance in the Appendix.

[24] The Complainants seek to rely on the Tribunal's decision in *Woodgate*. However, this case is distinguishable from *Woodgate* in many respects. *Woodgate* was a case involving six complainants who tendered expert evidence as social context evidence about the historical and ongoing relationship between the Royal Canadian Mounted Police (RCMP) and Indigenous peoples in Canada. The Tribunal found the evidence to be relevant and necessary as context to the allegations made in the complaint. Those allegations related to the failure of the RCMP to properly investigate their claims of abuse when attending schools in British Columbia in the 1960s and 1970s. Therefore, the social context evidence admitted by the Tribunal had a close connection to the allegations in the case.

[25] By contrast, some portions of Dr. Paynter's report have little to no connection to the precise allegations in this case. Therefore, I do not agree that those parts should be admitted as "context". Doing so would only risk diverting the parties' attention to issues that extend beyond the scope of these complaints.

ii. Some parts of the proposed evidence are not necessary

[26] The Respondent argues that Dr. Paynter's expertise or specialized knowledge is not necessary for the Tribunal to make factual or legal findings. The Tribunal will be able to make factual findings based on the Agreed Statement of Facts and the evidence the parties present.

[27] I agree with the Respondent that some parts of Dr. Paynter's report are not necessary. For example, I do not find it necessary to have Dr. Paynter summarize the Respondent's policies. I am certain that one of the parties will file copies of applicable policies, and the Complainant's counsel can make submissions in relation to them.

iii. Concerns about partiality and providing an opinion outside the scope of expertise

[28] The Respondent argues that Dr. Paynter will either be unable or unwilling to provide impartial evidence as she has stated that she is morally opposed to prisons and advocates to abolish them. Among other things, she has argued that pregnant people should not be incarcerated at all.

[29] An expert witness has a duty to assist the Tribunal member in an impartial, objective and independent manner: Rule 22(2) of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137. A proposed expert witness who is unable or unwilling to fulfill his or her duty to provide impartial evidence is not properly qualified to perform the role of an expert: *White Burgess* at para 53.

[30] The Tribunal must determine, having regard to both the particular circumstances of the proposed expert and the substance of the proposed evidence, whether the proposed expert is likely to be unable or unwilling to carry out their primary duty to the Tribunal. To successfully argue against the admissibility of a proposed expert's evidence, a party opposing admissibility must establish that there is a realistic concern that the proposed expert is unable and/or unwilling to comply with his or her duty. In *White Burgess*, the Supreme Court held that the exclusion of evidence for this reason at the threshold stage of the analysis will likely be "quite rare". According to the Court, it should occur only "in very clear cases" in which the proposed expert is unable or unwilling to provide the court or tribunal with fair, objective and non-partisan evidence (at para 49). Anything less than clear unwillingness or inability to do so should not lead to exclusion. Instead, it should be taken into account in the overall weighing of the costs and benefits of receiving the evidence.

[31] In my view, the Respondent has not provided sufficient evidence to persuade me, at this stage, that Dr. Paynter is unable or unwilling to fulfill her duty to this Tribunal to provide her evidence in an impartial, objective and independent manner. In my view, the fact that Dr. Paynter advocates for the general abolition of prisons and opposes the incarceration of pregnant persons does not necessarily prove that she is unable or unwilling to carry out her duties to this Tribunal to provide evidence on the precise issues on which her evidence

would be relevant. In my view, any concerns the Respondent may have about Dr. Paynter's partiality are best addressed by arguments about the weight to be attached to her evidence after I have heard it.

[32] Finally, the Respondent argues that some of the proposed evidence in Dr. Paynter's expert reports fall outside the scope of her expertise. I agree that proposed experts are only qualified to provide evidence within their scope of expertise. I address the sections of Dr. Paynter's reports impugned by the Respondent on this basis in the Appendix.

iv. Do the benefits outweigh the risks of admitting the proposed expert evidence?

[33] In my view, the benefits of some parts of Dr. Paynter's proposed evidence outweigh the risks of hearing it—in other words, the time and resources spent on the evidence and the possible distraction of the parties from the actual issues at the centre of the case. However, the risks of hearing evidence that is irrelevant or unnecessary (or for which any relevance and necessity is overly remote) outweigh any benefits of such evidence.

v. Additional arguments against the reply report

[34] Relying upon Federal Court case law, the Respondent objected to Dr. Paynter's reply report on the basis that it deals with issues that could have been anticipated and amounts to improper case splitting. It also argues that the information contained in the reply report is repetitive and improperly usurps my function as a trier of fact. See, for instance, *Boehringer Ingelheim (Canada) Ltd. v. Jamp Pharma Corporation*, 2024 FC 656 and *T-Rex Property AB v. Pattison Outdoor Advertising Limited Partnership*, 2022 FC 1008 cited by the Respondent.

[35] I do not agree that it is appropriate to find the entire reply report inadmissible for these reasons. This Tribunal has the power to admit evidence that the member sees fit, whether or not that evidence would be admissible in a court of law: subsection 50(3)(c) of the CHRA. I do fully agree with the concerns expressed by the Federal Court in the decisions cited above which in large measure relate to the principle of proportionality. However, on the facts

of this case, it is relevant that Dr. Paynter's reply report is only three pages long. As noted in the Appendix, I find portions of the reply report inadmissible for other reasons. In my view, if the Respondent believes that there are portions of Dr. Paynter's reply report to which it needs to provide reply evidence, it may file a short reply (surreply) report. This reply report must only reply to those portions of Dr. Paynter's reply report that I have admitted and that raise topics that Dr. Nordahl has not fully addressed in her report. The filing of such a reply report will not delay this case and, given the very limited scope of any reply, it would not prove to be a drain on the parties' resources or those of the Tribunal. Of course, Dr. Nordahl will also have the opportunity to respond to Dr. Paynter's reports if and when she testifies in this case.

VI. ORDER AND DIRECTION

[36] I grant the Respondent's motion in part. I do not find it appropriate to find all of Dr. Paynter's reports inadmissible. However, for the reasons set out above, I do find several portions inadmissible (see Appendix).

[37] **Within 21 days of this ruling**, the Complainants must refile copies of Dr. Paynter's report and reply report with the portions that I have ruled inadmissible struck out using the strike out function of their word processing program.

[38] **Within 21 days of the date of this ruling**, the Respondent may file a reply report from Dr. Nordahl within the limitations detailed in paragraph 35.

[39] I will discuss the next steps in this case with the parties in the case management conference call that the Registry is in the process of scheduling. Among other things, in that call, I will confirm whether the parties remain willing to take part in a mediation. I will also discuss with them issues flowing from my two rulings in this case.

Signed by

Jo-Anne Pickel
Tribunal Member

Ottawa, Ontario
September 11, 2025

Appendix

Impugned sections of Dr. Paynter's report

Page #	Proposed evidence	Basis for Respondent's objection	Summary of Complainant's submissions	Finding with respect to Respondent's motion to strike
3	For incarcerated clients, the greatest barrier to accessing perinatal and postpartum services of all types (doulas, IBCLCs, public health nurses, midwives and physicians) is not knowing about options, not being able to contact the services directly, and not being proactively supported by institutional health care providers to make these decisions and connections to external care providers. There are institutional and financial barriers to incarcerated clients using the telephone or internet to research options and self-refer, and to paying for services that are usually privately financed.	Irrelevant, unnecessary and lacks proper foundation.	Relevant to systemic allegations.	- Granted – the evidence is not relevant to the Complainants' allegations as Ms. Lepine knew about the Mother-Child Program and applied to it. - The case does not deal with systemic barriers to the Mother-Child Program. Doing so would take the Tribunal well beyond its jurisdiction.
4	The Correctional Services Canada Commissionaire's (sic) Directive 800 Health mentions pregnancy only once, in Section 20, where it is stipulated that "for pregnant offenders, Health Services will ensure arrangements for childbirth are made at an outside hospital." It is also a requirement that health care providers under contract with Correctional Services Canada "ensure health services are sensitive to the needs of Indigenous and women offenders, and offenders with special needs. To the extent possible and with the offender's prior consent, health professionals providing services	Unnecessary	- The fact that the Directive makes little mention of pregnant women is relevant. - Dr. Paynter has expertise in service provision to pregnant women in prisons. - The objection should go to the weight to be accorded to the evidence. - It is relevant to systemic allegations.	Granted – the content of the Directive will be relevant to this case, but it is unnecessary to have Dr. Paynter summarize it. The Complainants may file a copy of the Directive as evidence and make arguments in relation to it.

	to Indigenous offenders will consult with Elders to gain an Indigenous perspective on the impact of the offender's social history in order to deliver culturally relevant health services.			
4	My research has found prisons for women in Canada may be located up to 132 km from the nearest maternity hospital, or over one hour drive away, introducing significant risk for emergent deliveries.	• Irrelevant, unnecessary and lacks proper foundation.	• It gives context to the impact of incarceration on pregnant women. • It is relevant to systemic allegations.	• Granted – the evidence is not relevant to the Complainants' allegations.
4–5	Canadian research evidence about the impact of incarceration on pregnancy outcomes, newborn health and the wellbeing of birthing people is limited. When paid for privately, doula birth packages cost in the range of \$800-\$14,000.	• Irrelevant and unnecessary.	• The evidence is relevant because it demonstrates the under-investigated issue of the impact of incarceration on pregnant people and newborns, which is at issue in this case. • Additionally, the studies about midwifery in the UK are relevant even though those services were not available to Ms. Lepine while in prison. This is an example of systemic harm, as midwifery care was available in the community. Access to a midwife is a live issue in this case. • It is relevant to systemic allegations.	• Granted – the evidence is not necessary. Also, the Complainants can themselves make the point that midwifery care was available in the community. However, as noted above, the CHRA does not provide protections against discrimination based on incarceration status.
6	Pregnant people in the federal prison may be deciding on whether or not to apply for the	• Irrelevant, unnecessary and lacks	• This is relevant to systemic impacts of the Respondent's	• Granted – the evidence is not relevant to the

	Institutional Mother Child Program.potentially requiring the child to spend time in foster care. Uncertainty about approval to the program generates anxiety for applicants, who are already at severe risk of perinatal mood disorders.	proper foundation. • Outside scope of expertise.	program provision. The systemic impact of the application process for Indigenous applicants is a live issue in this case. • It is relevant to systemic allegations. • Dr. Paynter's expertise does qualify her to make conclusions about the impact of risk factors that may exacerbate other risk factors. Further, reducing additional risks to patient health is a regular part of nursing care.	Complainants' allegations. • The case does not deal with systemic barriers to the Mother-Child Program. Addressing this issue would take the Tribunal well beyond its jurisdiction to address the issues raised in the complaints.
6	Many federally sentenced women report not knowing about the program or not being told about the program... In a study of participation in the MCP from 2000-2018, I found that Indigenous women were disproportionately unlikely to participate in the program.	• Irrelevant, unnecessary and lacks proper foundation.	• Relevant to systemic impacts of the Respondent's program provision. The systemic impact of the application process for Indigenous applicants is a live issue in this case. • Relevant to systemic allegations.	• Granted – the evidence is not relevant to the Complainants' allegations.
6–7	Complications of Pregnancy There are many common, minor pregnancy complications for which pregnant prisoners would need accommodation and/or clinical treatment. CSC does not even collect or publish the numbers of people	• Irrelevant and unnecessary.	• Relevant to systemic impacts of the Respondent's program provision and follow-up. The systemic impact of the Respondent's care is a live issue in this case.	• Granted – the evidence is not relevant to the Complainants' allegations. • The case does not deal with the systemic impact of the Respondent's care in a general sense.

	who experience pregnancy while federally incarcerated.		• Relevant to systemic allegations.	
10–11	3. What impact does surveillance have on women during pregnancy and birth, and Indigenous women in particular?	• Irrelevant, unnecessary and lacks proper foundation. • This evidence does not constitute proper expert evidence that will enhance the Tribunal's ability to determine issues between the parties, and, as noted below, Dr. Paynter does not have this expertise. • Dr. Paynter is not qualified to opine on why the RCMP was created, the impact of policing on Indigenous peoples, statistics relating to violence against Indigenous women, and the impact of the Respondent's surveillance directives.	• The proposed evidence is relevant to systemic impacts of the Respondent's program provision. The systemic impact of surveillance is a live issue in this case. • Dr. Paynter has expertise in service provision to pregnant women in prisons. • Objection should go to the weight to be accorded to the evidence. • It is relevant to systemic allegations. • The basis of the creation of the RCMP is not a disputed conclusion. • The impact of policing, prisons, and incarceration on Indigenous women and perinatal care contexts is exactly within Dr. Paynter's area of expertise.	• Granted in part – I will permit Dr. Paynter to provide evidence on any alleged adverse impact that surveillance might have on pregnant persons, including pregnant Indigenous persons, during intimate medical appointments and during birth. • The reason for the formation of the RCMP falls outside Dr. Paynter's scope of expertise. • Moreover, breaches of privacy or confidentiality are not, by themselves, violations of the CHRA. To be admissible, any evidence relating to breaches of privacy or confidentiality must be connected to the protections set out in the CHRA. • The Respondent can raise any objections to

				the relevance of Dr. Paynter's permitted evidence on the surveillance issue in their arguments regarding the weight, if any, I should give to the evidence.
11–13	4. What, if any, barriers are there for Indigenous women who participate in the Mother-Child Program?	• Irrelevant and unnecessary.	• The proposed evidence is relevant to systemic impacts of the Respondent's program provision. The systemic impact of the Respondent's program provision for Indigenous applicants is a live issue in this case. • It is relevant to systemic allegations.	• Granted – the evidence is not relevant to the Complainants' allegations as it addresses barriers to the participation of Indigenous women in the Mother-Child Program. That is not an issue in this case as Ms. Lepine did participate in the program. • The general systemic impacts of the Respondent's program provision for Indigenous applicants in general falls outside the scope of this case.
13–14	Indigenous families and friends of Indigenous mothers are disproportionately likely to live in poverty... due to costly and complicated travel requirements. ... Fear of being unable to provide for a child, and being assessed by Child Welfare departments as negligent, ... The very first Call to Action in the Truth and	• It falls outside the scope of her expertise. • Dr. Paynter is not qualified to opine on the financial circumstances of Indigenous families and "friends" of Indigenous mothers.	• Dr. Paynter states at the outset that her research is based on interviews. • Further, these are not "generalizations", rather they are the findings from the Truth and Reconciliation Commission	• Denied – I do not find it clear that the proposed evidence falls outside the scope of Dr. Paynter's expertise. • The Respondent can test the limits of Dr. Paynter's

	Reconciliation final report is to reduce the number of Indigenous children in the child welfare system	Dr. Paynter is not qualified to opine on the relationship between Indigenous people and Child Welfare departments. In any event, Ms. Lepine can provide direct evidence about her experience with child welfare services.	about the experience of Indigenous peoples. It is relevant to systemic allegations.	experience in relation to the issue in cross-examination. It also can raise any concerns regarding the relevance of the evidence in their submissions as to the weight, if any, that I should give to the evidence.
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Impugned sections of Dr. Paynter's reply report

Page #	Proposed evidence	Basis for Respondent's objection	Summary of Complainants' submissions	Finding
1–2	Question 1: What are the risks to children residing in CSC's residential Mother-Child Program in the context of the COVID-19 pandemic?	- Irrelevant, unnecessary and lacks proper foundation. - Not responsive to specific points in Dr. Nordahl's Report, and it could have been identified as relevant in the first instance.	- These questions are responsive to the evidence adduced by the Respondent and properly admissible to ensure that the decision maker can assess all of the relevant evidence within the context that it applies to the facts. - It is relevant as contextual systemic evidence for systemic allegations and remedies.	- Granted – the sole issue related to COVID-19 in this case is whether the Respondents denied the Complainants services or subjected them to adverse differential treatment based on one or more protected grounds in relation to COVID-19 restrictions. - Dr. Paynter's reply evidence does not assist in

				addressing that issue.
2-3	Question 2: How can maternal care providers account for their patients' Indigeneity?	• Same as above. • The Tribunal will have to determine if the Respondent's approach to providing healthcare information to Ms. Lepine was discriminatory based on the evidence, and it is not an issue that requires abstract, unsubstantiated expert evidence.	• Same as above.	• Denied – I find the evidence admissible as contextual evidence. • The Respondent may file reply evidence from Dr. Nordahl on this issue.
3	Question 3: Did the presence of correctional officers interfere with or impact Ms. Lepine's care or stay in the hospital?	• Same as above. • Dr. Paynter does not state the facts and assumptions upon which her opinion is based.	• Same as above. • The factual underpinnings of the report can be accessed in cross-examination and can go to the weight of the evidence. Dr. Paynter's opinion is based in her experience and expertise in this area.	• Denied – Dr. Paynter's opinion is based on her experience and can be tested in cross-examination. • The Respondent may file reply evidence from Dr. Nordahl on this issue. • The Respondent may also make any argument it wishes to make about the presence of correctional officers, for instance during intimate clinical exams and at birth.

Canadian Human Rights Tribunal

Parties of Record

File Nos.: HR-DP-2899-22 & HR-DP-2900-22

Style of Cause:

Amanda Lepine v. Correctional Service Canada

Amanda Lepine (on behalf of A.B.) v. Correctional Service Canada

Ruling of the Tribunal Dated: September 11, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Julian Riddell, for the Complainants

Jon Khan, Quinn Ashkenazy, Hanna Davis, Maria Oswald, & Aleksandra Mihailovic, for the Respondent