Canadian Human
Rights Tribunal

Tribunal canadien
des droits de la personne

**Citation:** 2025 CHRT 111
**Date:** November 20, 2025
**File No.:** T1810/4012

**Between:**

**Mississaugas of the Credit First Nation**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Attorney General of Canada**

**Respondent**

# Ruling

**Member:** Edward P. Lustig

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## I. OVERVIEW

[1] The Respondent, the Attorney General of Canada, on behalf of Indigenous Services Canada (ISC), by letter dated October 8, 2025, requested that the Tribunal quash three summonses that it issued to the Complainant, Mississaugas of the Credit First Nation (MCFN), at its request. The Tribunal issued these summonses pursuant to section 50(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA) on September 18, 2025.

[2] ISC submits that the evidence likely to be adduced from the three summoned witnesses who all work for ISC will be repetitive and duplicative of the testimony of another ISC witness, Jonathan Allen. Mr. Allen will be called as the primary witness for ISC, and ISC argues that the summoned witnesses' evidence at the hearing will therefore be redundant and not necessary. As section 50(3)(a) of the CHRA provides that evidence adduced at a hearing must be necessary to the Tribunal's conduct of the proceeding, ISC submits that the summonses should be quashed as the summoned witnesses will not provide any additional relevant evidence. ISC submits that necessity stands alongside relevance as the legal test that a party whose summons is challenged must satisfy.

[3] MCFN submits that the evidence of the summonsed witnesses in question is arguably relevant to the determination of the issues before the Tribunal at the hearing and that it would be prejudicial to MCFN should they not be permitted to testify. MCFN submits that arguable relevance is the legal test that a party whose summons is challenged must satisfy. MCFN submits that if the summonses are not quashed at this stage and the three summonsed witnesses are permitted to testify at the hearing, ISC will still be able to cross-examine the witnesses and produce evidence in response to the evidence of the summonsed witnesses at the hearing if it so chooses. In the event that the Tribunal determines at the hearing that the summonsed witnesses' testimony is not necessary or that their evidence is of little or no weight or irrelevant to its determination, other than taking up some of the parties' and the Tribunal's time, there will be no prejudice to ISC.

[4] The Canadian Human Rights Commission submits that applicable legal principles point to the need for a broad interpretation of the arguable relevance test by the Tribunal.

[5] At this stage of the proceeding, before the start of the hearing, the Tribunal has not yet heard from the summonsed witnesses to actually know whether their evidence will be relevant and not duplicative, redundant, and unnecessary. On the basis of the information provided by MCFN in the Requests for Summonses forms for each of the three witnesses submitted to the Tribunal on September 16, 2025, and the information provided about the witnesses in the MCFN's submissions, the Tribunal finds that, at this stage, the summonsed witnesses' anticipated evidence may be relevant and that their attendance at the hearing to provide their testimony may be necessary to assist the Tribunal in determining the issues before it in this complaint. As such, the summonses challenged by ISC should not be quashed.

## II. DECISION

[6] The Tribunal finds at this stage of the proceeding that the potential prejudice of not allowing the summonsed witnesses to testify at the hearing is greater than the potential prejudice of allowing them to testify. The Tribunal therefore dismisses the motion to quash the summonses.

## III. ISSUE

[7] Should the Tribunal quash the three summonses issued by the Tribunal to MCFN on September 18, 2025?

## IV. BACKGROUND

[8] At the case management meeting on October 17, 2025, the parties were informed that, as ISC's reply submissions in this motion had not yet been received and because the hearing was scheduled to begin on October 27, 2025, in order to be both as expeditious and fair as possible in informing the parties of the status of the summonses being challenged, the Tribunal would issue a ruling without written reasons by letter prior to the start of the hearing with written reasons to be provided after the hearing was underway. The letter ruling issued on October 22, 2025, denied the motion to quash the summonses and also held that

Neil Rae would not be compelled to attend the hearing under his summons if he was not able to do so on account of his health, according to a qualified physician. This ruling follows the letter ruling.

[9] The complaint in this matter was commenced on September 25, 2009, and referred by the Commission to the Tribunal for an inquiry on March 30, 2012. A hearing of the complaint was finally scheduled to start on October 27, 2025. A total of 26 hearing dates have been scheduled for the hearing with witnesses, including experts scheduled to testify orally as well as through affidavits filed together with many documents and exhibits proposed to be entered into evidence.

[10] The hearing is being held to determine whether ISC discriminates in the provision of educational services to First Nations children on reservations in Ontario by underfunding the services through the use of its Interim Regional Funding Formula (IRFF), as alleged by the MCFN, contrary to section 5 of the CHRA.

[11] On September 16, 2025, MCFN requested summonses for three witnesses to appear at the hearing, and the Tribunal issued the summonses on September 18, 2025, for Mr. Rae, Ryan Orlando, and Micheal O'Bryne.

[12] In the Request for Summons form that MCFN submitted to the Tribunal for the summons for Mr. Rae, it stated that

> The witness can provide relevant evidence because: the witness had or has personal and direct knowledge of the facts and issues in dispute; the witness had or has a role in creating, administering or managing a policy or process; the witness has or had a relevant decision-making role or relevant responsibilities; and the witness is the Senior Policy Manager of Education and Social Programs for Indigenous Services Canada. He has held this and other positions at ISC for approximately 15 years. He has been directly involved in matters relating to the federal approach to funding First Nations education in Ontario, including the interim funding model for Ontario, the development of that model, OTTIFA and the MCFN REA.

[13] In the Request for Summons form that MCFN submitted to the Tribunal for the summons for Mr. Orlando, it stated that

> The witness can provide relevant evidence because the witness had or has personal or direct knowledge of the facts and issues in dispute; the witness had or has a role in creating, administering or managing a policy or process; the witness has or had a relevant decision-making role or relevant responsibilities; and the witness is an employee at the Education and Social Programs Branch of Indigenous Services Canada that has the most detailed and technical knowledge of the formula for funding core education services on reserve (the interim funding formula). He has been directly involved in matters relating to the federal approach to funding First Nations education in Ontario, including the interim funding formula for Ontario, the changes to that formula over time, OTTIFA, and the MCFN REA.

[14] In the Request for Summons form that MCFN submitted to the Tribunal for the summons for Mr. O'Byrne, it stated that

> The witness can provide relevant evidence because; the witness had or has personal or direct knowledge of the facts and issues in dispute; the witness had or has a role in creating, administering or managing a policy or process; the witness has or had a relevant decision-making role or relevant responsibilities; and the witness is the Indigenous Services Canada Regional Director General for Ontario Region. He is therefore able to speak to changes to Jordan's Principle in the context of education funding for Ontario First Nations. This is relevant, among other things, to the Attorney General of Canada's allegations regarding Jordan's Principle, including as a tool to address deficiencies in the Interim Funding Formula.

[15] In its submissions in response to the motion dated October 10, 2025, MCFN has provided additional information about the summonsed witnesses in support of its contention that the summonsed witnesses' evidence is relevant.

## V. PARTIES' SUBMISSIONS ON THE MOTION TO QUASH

### A. ISC's submissions

[16] In its submissions in support of the motion dated October 8, 2025, and in its reply on October 22, 2025, ISC does not question the accuracy of the information regarding the summoned witnesses described in paragraphs 12 to 14 above per se. Instead, it submits that the evidence proposed to be adduced by MCFN in summonsing these witnesses is not necessary for the full hearing and consideration of the complaint by the Tribunal as required by section 50(3)(a) of the CHRA.

[17] Section 50(3)(a) of the CHRA provides, in part, that in

> relation to a hearing of the inquiry, the member or panel may, in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce and documents and things that the member or panel considers **necessary for the full hearing and consideration of the complaint**…
> [Emphasis added].

[18] ISC submits that the primary consideration is whether the witness has relevant evidence. However, relevance is not the only consideration. The issuance of a summons is not warranted where the evidence would be repetitive, redundant, or duplicative, or where it is speculative.

[19] ISC contends that the summoned witnesses proposed evidence is not necessary for the full hearing and consideration of the complaint. Its primary witness is Mr. Allen, who is the Senior Director in the program's Directorate of the Education branch of the Children, Families and Learning Sector at ISC. He has provided affidavit evidence in advance of the hearing, and as agreed to by the parties he will be examined and cross-examined orally at the hearing on his affidavit evidence.

[20] Mr. Rae and Mr. Orlando, who have not provided affidavits, both work under and report directly and indirectly to Mr. Allen at ISC. ISC contends that neither of these individuals have any information or evidence that cannot also be obtained from Mr. Allen, who will be cross-examined. Additionally, Mr. Rae has been on medical leave since May of 2025, and there is no indication as to when he might return to work.

[21] Mr. O'Byrne is also an employee of ISC and has not provided an affidavit. He is being summonsed by MCFN to discuss Jordan's Principle, and ISC contends that there is no reason to believe that Mr. O'Byrne has any additional information or evidence on Jordan's Principle that Mr. Allen, who will be cross-examined, does not have.

[22] ISC argues that the testimony from the summonsed witnesses will be repetitive, duplicative, redundant, and unnecessary. ISC submits that MCFN has not satisfied the onus upon it to establish that any of the summonsed witnesses' testimony is "necessary for the

full hearing and consideration of the complaint". It submits that the motion should be allowed and the summonses quashed.

## B. MCFN's submissions

[23] MCFN submits that the summoned witnesses and their testimonies at the hearing are necessary and will not be repetitive, duplicative, or redundant. The proper legal test for the issue of whether to quash a summons is whether the potential evidence is arguably relevant to the issues before the Tribunal.

[24] MCFN argues that the Tribunal possesses the authority to determine this matter as it has wide powers to admit evidence as long as it acts fairly, reasonably, and expeditiously. The legal test of arguable relevance is a low threshold to satisfy, and that threshold has been satisfied by MCFN based upon the information before the Tribunal at this stage in the Request for Summons forms submitted to the Tribunal for each of the summonsed witnesses and the additional information provided in MCFN's submissions.

[25] MCFN argues that the fact that two of the summonsed witnesses report to ISC's primary witness Mr. Allen should not prevent them from testifying. It submits that they have had different involvement with the IRFF and have different qualifications and expertise, such that their testimony will not simply duplicate that of Mr. Allen.

[26] MCFN contends that there would be a prejudice to it if the testimonies of the summonsed witnesses were not herd by the Tribunal as it advances the rights of the children on reservations in Ontario to receive educational services that are substantively equal to those received by children off reservations in Ontario. It contends that this evidence is necessary in relation to the determination of the issue before the Tribunal as to whether ISC discriminates against First Nations children on reservations in Ontario, contrary to section 5 of the CHRA, by underfunding educational services through its use of the IRFF.

[27] At worst, MCFN argues that if the Tribunal determines not to give any weight or to give very little weight to the evidence of the summoned witnesses at the hearing, the only prejudice to ISC will be time the Tribunal must spend considering the evidence. ISC has the

right to examine the witnesses and respond with its own evidence at the hearing, including in its final submissions.

[28] The Tribunal should not make a determination that the proposed evidence of the summonsed witnesses is irrelevant and quash the summonses at this stage when it has not yet heard the testimonies of the summonsed witnesses and does not know whether they will actually be relevant to the issue before the Tribunal for determination in this complaint. MCFN argues that the Tribunal should therefore not quash the summonses and should instead dismiss the motion.

### C. COMMISSION'S submissions

[29] As noted above, the Commission takes no position on the substantive aspects of the motion but takes a position on applicable legal principles that it submits point to the need for a broad interpretation of the arguable relevance test by the Tribunal.

## VI. LEGAL FRAMEWORK

[30] Parties before the Tribunal must be given a full and ample opportunity to present evidence and make representations (section 50(1) of the CHRA).

[31] The Tribunal must conduct proceedings as informally and expeditiously as the requirements of natural justices and the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the "Rules of Procedure") allow (section 48.9(1) of the CHRA). One of the requirements of natural justice is a party's right to be heard.

[32] The Tribunal has a discretion to summons witnesses to a hearing and to receive and accept evidence and information that would otherwise be inadmissible in a court of law, including hearsay evidence (subsections 50(3)(a) and (c) of the CHRA).

[33] The Tribunal is the master of its own procedure (*Prassad v. Canada (Minister of Employment and Immigration*), [1989] 1 SCR 560 at paras 568–9) and may decide all questions of law or fact necessary to determining any matter under inquiry (section 50(2) of the CHRA).

[34] A hearing under the CHRA is not a fishing expedition where a party may call any number of witnesses or present testimony irrelevant to the dispute. Testimony should not be redundant and should not distract from the essence of the dispute (*Grant v. Manitoba Telecom services Inc.*, 2010 CHRT 29 at para 9).

[35] In determining whether anticipated evidence is necessary, the Tribunal must determine that there is relevance, a connection between the evidence that a party is seeking through the testimony of a witness and a fact, a question of law, or remedy relating to the complaint. The crucial element is this relevance or rational connection between the anticipated testimony and the complaint (*Woodgate et al. v. RCMP*, 2024 CHRT 5 at para 35 [*Woodgate*]).

[36] In a complex case, there is a need for the Tribunal in exercising its discretion under section 50(3)(a) to provide the parties with latitude to introduce documents and witnesses outside of the strict confines of the Rules of Procedure, in order to ensure that they have the opportunity to present the evidence that they feel is necessary to make their cases, subject to procedural fairness (*Woodgate* at para 33).

## VII. ANALYSIS

[37] The arguable relevance of the anticipated evidence of the three summonsed witnesses is the crucial element in determining whether their summonses ought to be quashed in this motion.

[38] In determining whether anticipated evidence is necessary, the Tribunal must determine that there is relevance, a connection between the evidence that a party is seeking through the testimony of a witness and a fact, a question of law, or a remedy relating to the complaint.

[39] That said, the Tribunal should not accept evidence if it is repetitive or duplicative of other evidence or redundant so as to distract from the essence of the dispute. Such evidence would needlessly waste the time of the parties and the Tribunal and would likely be of little or no weight or relevance in deciding the complaint.

[40] The anticipated evidence of the summonsed witnesses is briefly described by MCFN in its responses to the Request for Summons form that the Tribunal uses to issue summonses as well as in its submissions. The form does not refer to necessity but does refer to the relevance of the proposed evidence to be given by the witnesses for whom summonses are requested. The Tribunal is therefore determining this motion on the basis of the anticipated evidence at a stage prior to hearing the actual full oral testimonies of the summonsed witnesses at the hearing.

[41] The anticipated evidence of the summonsed witnesses is presently described in paragraphs 12 to 14 above together with the information about the witnesses provided in MCFN's submissions for this motion. To satisfy the test referred to in paragraph 35 above, the anticipated evidence needs to be rationally connected to the issue to be determined by the Tribunal in the complaint.

[42] All of the summonsed witnesses are employees of ISC who work with or under ISC's primary witness, Mr. Allen, who ISC intends to call as its primary witness in its case. MCFN intends to call the three summonsed witnesses to testify as part of its case, but as adverse witnesses who MCFN will cross-examine. It is therefore not yet clear exactly what their actual evidence will be if they are permitted to testify at the hearing or whether it will be helpful to MCFN or the Tribunal, as they have not yet testified at the hearing and neither has Mr. Allen.

[43] The fact that the Mr. Allen supervises and works with the summonsed witnesses does not necessarily mean that their evidence will be repetitive, duplicative, redundant, unnecessary, or irrelevant. That is something that can be determined at the hearing when Mr. Allen and the three summonsed witnesses testify about the issue before the Tribunal.

[44] At this stage of the proceeding, based upon the anticipated evidence described above, the summonsed witnesses appear to have information and experience about the IRFF that may also be helpful to the Tribunal in understanding how it works and whether its use is discriminatory as alleged. How the IRFF works is at the heart of the complaint.

[45] At this stage of the proceeding, in reviewing the anticipated evidence of the summonsed witnesses, it appears to be rationally connected to the issue to be decided by the Tribunal in the complaint as described in paragraph 10 above.

[46] At this stage of the proceeding, the potential prejudice of not allowing the summonsed witnesses to testify at the hearing is greater than the potential prejudice of allowing them to testify. In this regard, I agree with MCFN's submissions at paragraphs 26 to 28 above.

## VIII. ORDER

[47] ISC's motion to quash the summonses is dismissed. Mr. Rae will not be compelled to attend the hearing under his summons if he is not able to do so on account of his health, according to a qualified physician.

*Signed by*

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
November 20, 2025

**Canadian Human Rights Tribunal**

**Parties of Record**

**File No.:** T1810/4012

**Style of Cause:** Mississaugas of the Credit First Nation v. Attorney General of Canada

**Ruling of the Tribunal Dated:** November 20, 2025

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

**Written representations by:**

Kent Elson, for the Complainant

Anshumala Juyal, Christine Singh and Khizer Pervez for the Canadian Human Rights Commission

Dan Luxat, for the Respondent