Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 115
Date: December 16, 2025
File No.: HR-DP-3082-24

Between:

Coalition of First Nation Adults with Disabilities

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Indigenous Services Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] This ruling orders the Complainant, the Coalition of First Nation Adults with Disabilities ("Coalition"), to provide better particulars of the complaint, including identifying the proposed victims and the factual assertions it believes give rise to liability under s. 5 of the *Canadian Human Rights Act,* RSC 1985, c H-6 (the *"*Act*").* It also addresses some aspects of the parties' proposals for case management and the adjudication of this complaint.

[2] The Complainant filed a Statement of Particulars (SOP) alleging that the Respondent, Indigenous Services Canada (ISC), has failed to meet the needs of First Nation adults with disabilities for a broad range of services that support their health and well-being, meaningful participation in community and culture, and social and economic inclusion.

[3] ISC says that it cannot meaningfully respond to the Coalition's SOP because it contains only general claims of systemic discrimination but does not set out on whose behalf the complaint is brought, their specific protected characteristics, what they each allege, and during what specific period. ISC wants the Tribunal to order the Coalition to provide this information, and to define a reasonable time frame for the proceeding, connected to specific factual assertions.

[4] The Coalition and the Canadian Human Rights Commission (the "Commission") dispute the need to provide further particulars. Among other things, they say that ISC's request risks frustrating the purpose of the Act and would impose significant burdens of time and cost.

II. DECISION

[5] ISC's request is allowed. The Coalition and the Commission's approach to particulars is not grounded in the Act, nor does it comply with the basic requirements of procedural fairness or promote the fair and expeditious resolution of this proceeding. The Coalition's SOP does not set out sufficient facts to permit ISC to understand the case to meet. Tribunal

proceedings must be fair to all parties and procedurally manageable. The Coalition must identify any alleged victims who are making allegations of discrimination under the Act, and for whom relief is sought and provide sufficient particulars, as set out below.

III. BACKGROUND

A. The Coalition's SOP

[6] The Coalition's particulars state that its members are a diverse group of First Nations people who reside in rural, semi-rural and remote parts of the province of Manitoba and who allege discrimination the provision of services under s.5 of the Act. The complaint invokes the intersecting grounds of disability, age and race. The Coalition describes its members as "individuals with disabilities and their families whose experiences illustrate the depth and breadth of the adverse impacts of the Respondent's system of providing supports and services to First Nations adults with disabilities". Membership is granted by submitting a form to the Coalition's legal counsel who maintains the membership list, which continues to grow. The SOP does not identify the alleged victims on whose behalf it has brought this complaint, nor provide any specific information about them.

[7] The SOP refers in general terms to ISC's "patchwork system of supports and services that fails to meet Coalition members' needs". It states that Coalition members living on reserve face barriers and delays in accessing services, which has forced some families to leave their communities to access provincial services, creating jurisdictional ambiguity between the federal and provincial systems. The SOP alleges that its members cannot adequately access a wide range of services, including, but not limited to, specialist care, physiotherapy, physical therapy, occupational therapy, massage therapy, speech language pathology, dietician services, podiatry and long-term mental health care. The Coalition acknowledges that some services may not be medically necessary but says they are essential to well-being. It also refers to the challenges its members have experienced because in-home services and respite care are inadequate. It further mentions housing issues, underfunding, and a flawed medical model of disability which conflicts with First Nations' cultural approaches.

[8] The Coalition does not define a time period for its allegations in its SOP, though the complaint form lists the start date of the alleged discrimination as 1977, when the Act was enacted, and an end date of 44 years later, in 2021, when the Coalition filed its complaint with the Commission. The Commission's referral to the Tribunal does not appear to identify a specific time period either.

B. Case management directions to the parties

[9] The parties attempted to resolve these issues amongst themselves, following which I held a case management conference call (CMCC) to address ISC's requests for further particulars. Following the call, I directed the parties to respond to specific questions to help me decide ISC's request, and to help in determining an approach to case management and adjudication of this complaint, in keeping with the Tribunal's mandate under the Act.

[10] In advance of the CMCC, I directed ISC to provide an exhaustive list of any deficiencies it had not already identified in the particulars in its previous communications. Upon receipt of ISC's list, I asked the Coalition and the Commission to provide responses before the CMCC. Together with its response, the Coalition was directed to provide a list of all alleged victims in respect of whom it intends to lead evidence and for whom relief is being sought in these proceedings. I also directed the Coalition to set out whether it views evidence about these alleged victims as representative evidence, and to confirm whether it is intending to request that any possible findings on liability be extrapolated or applied to other alleged victims who may not give evidence or participate in the proceeding.

[11] The Coalition did not provide the list as directed in advance of the CMCC. Instead, it reiterated its position that it was not required to directly identify Coalition members. It acknowledged that it did not comply with the direction, but that "[s]hould the Registry's directive" stand, after consideration of its correspondence, it would comply. It also asserted that it would provide the Tribunal with certain evidence of select Coalition members' experiences as part of the hearing process, noting that it had not yet identified which members would take on this responsibility, but that it would "advise the parties in due course".

[12] After hearing from the parties during the CMCC, I directed the Complainant to do the following:

a. Set out its detailed proposal for how the case management and adjudication of this complaint should proceed before the Tribunal in light of its position that no further particulars are required because they would distract from the expeditious and fair hearing of the complaint;

b. Set out the role it sees for individual experiences and evidence, if any, and its view of how each stage of the Tribunal process will proceed, including disclosure, identification of witnesses, and its plan for representative testimony for some alleged victims;

c. Explain how it sees the Tribunal determining remedy in the event of a finding of liability, including how it would quantify any eventual loss for each victim for whom relief is sought. The proposal should take into account the Complainant's position that any evidence led be extrapolated to other First Nations adults with disabilities who may not have given evidence.

[13] I gave the other parties the opportunity to propose an alternative case management strategy that addresses the same points set out above about each stage of the proceeding, and directed them to explain how their proposed approach aligns with the wording and scheme of the Act, and in particular, how their approach favours the fair, informal and expeditious resolution of these complaints within the meaning of s. 48.9(1). Finally, I directed the parties to distinguish between any issues relating to the Coalition's composition and standing, and those pertaining to the identification of alleged victims for whom relief is sought.

IV. ISSUE

(i) Are the Coalition's particulars sufficient to allow ISC to respond and to allow the Tribunal to hold a fair hearing?

V. LEGAL FRAMEWORK

[14] The mandate of the Canadian Human Rights Tribunal is defined by the Act. The Tribunal's role is to inquire into complaints referred to it by the Commission (see sections 40, 44(3) and 49 of the Act).

[15] The Tribunal can amend, clarify and determine the scope of a complaint to determine the real questions in controversy between the parties, provided the amendment is linked to the original complaint and does not cause prejudice to the other parties (*Canada* (*Attorney General) v. Parent,* 2006 FC 1313 at paras 30, 40 [*Parent*]; *Mohamed v Royal Bank of Canada*, 2023 CHRT 20 at paras 7-12). The substance of the original complaint and the Commission's mandate must be respected (*Casler v. Canadian National Railway*, 2017 CHRT 6 at para 7; *Parent,* para 39).

[16] It is the Tribunal's responsibility to ensure it respects its mandate and stays within its legislative confines. The Tribunal is an adjudicator of the particular claim that is before it, not a Royal Commission (*Moore v. British Columbia (Education),* 2012 SCC 61 at para 64 [*Moore*]). Turning proceedings into a Royal Commission is inconsistent with the principles guiding human rights tribunals, which were put in place to provide a fast, flexible and informal alternative to the traditional court system (*Canada (CHRC) v. Canada (AG),* 2012 FC 445 at para 127 [*FC Caring Society 2012*]; *Richards v. Correctional Service Canada*, 2025 CHRT 57 at 48-49.)

[17] Section 5 of the Act reads as follows:

> **5** It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public
> **(a)** to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
> **(b)** to differentiate adversely in relation to any individual,
> on a prohibited ground of discrimination.

[18] Any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file a complaint with the Commission (s.40(1) of the Act).

[19] The Act sets out how the Tribunal should conduct inquiries (see ss. 48.9, 49, 50, 52 and 53). Proceedings before the Tribunal must be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s.48.9(1)). It is part of the Tribunal's adjudicative role to identify an appropriate procedure to secure the just, fair and expeditious determination of each complaint coming before it. That procedure may vary from case to case, depending on the type of issues involved (*FC Caring Society 2012* at para 128).

[20] The *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the "Rules"), require complainants to set out, in a Statement of Particulars, the facts they intend to prove in support of their complaint, the issues raised by the complaint, and their position on each issue (including the prohibited grounds of discrimination and the discriminatory practices), and an explanation of the relationship between the prohibited grounds and the discriminatory practices. They are also required to provide the name of each witness, other than expert witnesses, whom they intend to call, along with a summary of the witness' anticipated testimony. Finally, they must provide a list of all documents in their possession that relate to a fact or issue that is raised in the complaint or to an order sought by any of the parties. They must provide to the other parties a copy of any document that they disclosed on their list (Rules 18(1) and 23(1)).

[21] The purpose of particulars includes defining the issues, preventing surprises, enabling the parties to prepare for the hearing, and facilitating the hearing. One of the reasons for particulars is to limit the generality of a claim by one of the parties and prevent a party from going into other matters while adducing evidence. Parties should disclose sufficient facts to permit the other parties to prepare themselves for the hearing. This is a fundamental aspect of fairness and natural justice, since a party cannot properly respond unless they have the material facts on which those parties are relying. It is also a matter of efficacy and assists the parties and the Tribunal in facilitating the hearing process (*Public*

Service Alliance of Canada v. Canada (Minister of Personnel for the Government of the Northwest Territories), 1999 CanLII 19858 (CHRT) [*GNWT*]. If a respondent is not provided with sufficient details in the SOP, it will be impossible for them to interview potential witnesses or to source the arguably relevant documentation, which would prejudice the respondent *Brickner v. Royal Canadian Mounted Police*, 2018 CHRT 2 at para 34-35 [*Brickner*]).

[22] The Tribunal is master of its own procedure (*FC Caring Society* 2012, para 129). It may decide all questions of law or fact necessary to determining the matter under inquiry (s.50(2) of the Act*).* In the event a party does not comply with the Tribunal's Rules, the panel may order the party to remedy their non-compliance, proceed with the inquiry, dismiss the complaint or make any other order to achieve the purpose set out in Rule 5, which provides that the Rules are to be interpreted and applied so as to secure the informal, expeditious and fair determination of every inquiry on its merits (Rule 9).

VI. ANALYSIS

(i) Are the Coalition's particulars sufficient to allow ISC to respond and to allow the Tribunal to hold a fair hearing?

[23] No. The Coalition's SOP is broad, general, and inchoate. It is limited to general assertions of systemic discrimination and does not include sufficient factual details to allow ISC to know the case to meet and prepare for the hearing. It does not adequately delineate the scope of the complaint, identify on whose behalf the complaint is being brought, particularise their allegations and the alleged discriminatory practice(s), nor does it set out the facts to be proven at the hearing or how those facts correspond to the constituent elements of s.5 of the Act. It does not connect any allegation to a defined period within the 44-year range stipulated in the complaint.

[24] The Coalition says that ISC already has "abundant" information about the case against it. It argues that further particulars are unnecessary and inappropriate, given the nature of the complaint, and that after the parties exchange their particulars, they can complete their disclosure and identify proposed witnesses, including experts. It says that its

proposed approach “enables the Tribunal to focus narrowly on evidence about the Respondent’s system of supports and services”, which will avoid extensive disclosure, including medical records, diagnoses, and services accessed and denied, for “each member of a large and growing Complainant Coalition”.

[25] ISC argues that it does not know who it is dealing with, what the specific services in issue are, what problems the Coalition’s members have encountered, how its practices are alleged to be discriminatory, and how far back in time the Coalition intends to ask the Tribunal to reach. It submits that it will be irredeemably prejudiced if better particulars are not provided, and that the deficiencies in the SOP signal the Coalition’s intent to have the Tribunal embark on a broad, general and multi-decade commission of inquiry into past practices of a federal department or departments, in the guise of a human rights complaint. According to ISC, it does not seem possible that such a hearing could be efficient or expeditious.

[26] I agree. ISC, like all respondents to a claim of discrimination, is entitled to know what it is alleged to have done or failed to do, when and where this allegedly occurred, and who was involved. Most importantly, these factual assertions must be tied to the constituent elements of the discriminatory practice being invoked. A complainant’s particulars should not rest on another party’s disclosure. While the Commission and the Coalition argue that we can and should move ahead without delay, the Tribunal cannot “wait and see” what the case is about, in the hopes of figuring it all out later, or at the hearing. Hearings are not a discovery process where the parties and the Tribunal get to learn about the scope of evidence for the first time (Rules 18-20; *Richards v Correctional Service Canada*, 2025 CHRT 88 at para 18. Particulars must be detailed enough so that a respondent can have a reasonable opportunity to respond, interview potential witnesses and prepare for the evidence and argument that will be brought against it *Brickner* at paras 34-35. Hearing preparation is one of the goals of particularization.

[27] The Coalition has not provided “abundant information” as it purports. It makes general statements about Canada’s “patchwork system of supports and services”. In describing how First Nations adults with disabilities face adverse impacts and denials of ISC’s services, the Coalition writes: “First Nations adults with disabilities face delays,

disruptions and denials in accessing supports and services to meet their needs. These impacts are clearly illustrated in the experiences of Coalition members and in the many publicly available reports and documents related to these issues, including those authored by the respondent or its associated government departments."

[28] The SOP says its members' experiences will generally fit within the following categories, namely:

> 1) they regularly experience denials of service because ISC's programs are perpetually underfunded and have failed to identify and meet demand and needs;
> 2) they are deprived of the requisite range of services because of a dominant focus on medical needs, omitting supports in broader areas including connection to culture, spirituality, language and land, education and training, and income support;
> 3) the services they receive are inadequate, plagued by underfunding and failures to adequately assess needs in order to meet demand for services;
> 4) they are required to travel to relocate to access services that ISC has failed to provide, which is itself a barrier to accessing services; and
> 5) service is disrupted or removed when eligibility for Jordan's principle ends and a First Nations person with a disability reaches the age of 18.

[29] Absent from the SOP are factual assertions that fully correspond to the constituent elements of s. 5, namely who was adversely differentiated against in the provision of what service, and when and where this allegedly happened.

[30] In my view, the Coalition's proposed approach bears the hallmarks of something else — a Royal Commission, or a research study— but not a claim under the Act. As ISC argues, in the absence of particulars, the Tribunal would be conducting an inquiry that is purely theoretical. Or, put differently – acting as a commission of inquiry with broad, open-ended terms of reference. The Tribunal cannot proceed with a generalized inquiry into what ISC has done over decades in the absence of a concrete claim asserting identifiable victims and other facts relevant to a s.5 analysis. Doing so would be unfair, unworkable and runs counter to the legislative scheme Parliament established. While the Coalition maintains that its approach will avoid "pitfalls which the Respondent proposes to create", what it characterizes as "pitfalls" are in fact the foundations of natural justice and the mandate Parliament conferred on the Tribunal under ss. 4, 5, 50 and 53 of the Act.

[31] Assuming that all Coalition members are alleged victims for the purposes of the Act, I accept ISC's premise that each individual in the Coalition possesses their own unique set of characteristics and a disability or disabilities, and their own set of circumstances that led to their allegations of discrimination. Complainants must comply with the Tribunal's Rules to particularize their complaints, provide documentary disclosure, identify their proposed witnesses, and summarize their anticipated evidence. In other words, a complainant must commit to a theory of the case, so that the respondent can source arguably relevant documentation and interview potential witnesses (Rule 18 and *Brickner* at para 34). The act of apparently bundling a series of claims does not absolve the Coalition from showing how it intends, at the hearing, to substantiate its claim under s.5 of the *Act*, nor does it exempt the Coalition from complying with the Rules and the principles of natural justice.

A. The Caring Society case has not changed Tribunal practice and does not displace the Act

[32] In their submissions, both the Coalition and the Commission rely heavily on the Tribunal's experience in the case of *First Nations Child and Family Caring Society of Canada (First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)* [*Caring Society*]. The inquiry is still ongoing in that case, 9 years after the merits decision was issued (see 2016 CHRT 2).

[33] The Coalition takes the position that it is not required to identify victims of discrimination, that doing so would be inappropriate, and that "individual evidence is not required to establish harm arising from systemic discrimination". It submits that its approach "avoids subjecting vulnerable victims of the Respondent's discrimination to undue personal scrutiny", which, it says, has been denounced as inconsistent with a purposive and liberal interpretation of the statute, and the requirements of s. 48.9(1) of the Act. It relies on the Tribunal's 2019 compensation ruling in the *Caring Society* case (2019 CHRT 39 at para 188) and the Federal Court's judgment dismissing the application for judicial review of that decision and other related decisions (see *Canada (Attorney General) v. First Nations Child*

and Family Caring Society of Canada, 2021 FC 969 at paras 140, 148, 154 and 163-4 *[FC Caring Society 2021*]).

[34] Similarly, the Commission submits that the Tribunal's "*sui generis* procedures and expertise are best suited to manage and decide group human rights complaints of this nature".

[35] Having reviewed *the Caring Society* authorities to which I was referred, I acknowledge that the case is unique and complex, but I do not find it to be of assistance in the management of the matter before me. Moreover, it is not a binding model for how proceedings before this Tribunal must be conducted. As ISC argues, the *Caring Society* case involved a very specific set of facts, parties, procedural history and evidence, particular to a long-standing series of disputes ranging over many decisions and many years. The case is ongoing, almost a decade after the merits decision was issued.

[36] Further, while the Coalition and the Commission rely extensively on the Federal Court's 2021 judgment in that case, it is not an endorsement of the Tribunal's merits decision, nor of its method of proceeding in that inquiry. The Federal Court did not review the Tribunal's decisions until the Respondent challenged the Tribunal's approach to the issues before it in compensation and eligibility decisions that were issued in 2019 and 2020 respectively. As the Court mentions several times, the Respondent, a sophisticated litigant, had every opportunity to challenge or seek judicial review of previous rulings and decisions (including the 2016 merits decision) but elected not to (*FC Caring Society 2021* at paras 28, 32, 34, 47, 137, 141, 159, 194, 223, 224, 231, 232, 282, 284, 286, 289, 293, 294 and 304).

[37] In this regard, *FC Caring Society 2021*, and the Coalition and Commission's reliance on it, must be considered in their proper context. The Applicant in that proceeding had alleged that the Tribunal's Compensation and Eligibility decisions were unreasonable. The Compensation decision determined that there were victims of discrimination who were entitled to compensation—First nations children who were apprehended from their home, as well as the parents or grandparents of these children. It also fixed the quantum of compensation payable for pain and suffering, and for special compensation (*FC Caring*

Society 2021 at paras 53-54.) The Court confirmed that it was not its role to ask itself what decision it would have made if seized of the matter (*FC Caring Society 2021* at para 80). The Applicant argued that this decision transformed the complaint from systemic discrimination to individual discrimination and therefore unreasonably awarded damages. The Court noted that it was evident from the outset of the proceedings that First Nations children and their families were identified as the subject matter of the complaint or the victims. It went on to say:

> More importantly, the Merit Decision addressed all of the applicant's submissions on this as well as the remaining issues. The applicant did not challenge the Merit Decision. **It cannot do so now**. Nevertheless, I will review each of its submissions. [emphasis added] (*FC Caring Society 2021* at para 141).

[38] Within the context of this finding, the Court noted that the Commission's statement of particulars clearly identified who the complaint sought to benefit (*FC Caring Society 2021* at para 148). It dismissed as technical the Applicant's argument that the Respondents in the judicial review had not identified the victim in the complaint. It also observed that a complaint form only provides a synopsis of the complaint, as the conditions for the hearing are defined in the statement of particulars (*FC Caring Society 2021* at para 154).

[39] Further, the Court was convinced the Tribunal understood that complainants and victims can be different people. It acknowledged that the Tribunal has awarded compensation to non-complainant victims, and that in the case under review, the Tribunal had relied on extensive evidence (*FC Caring Society 2021* at para 163). Finally, the Court found that the Tribunal has broad discretion to accept any evidence as it sees fit, and that it does not necessarily need to hear from all the alleged victims of discrimination to compensate all of them for pain and suffering, nor does the Act require testimony from a small group of representative victims (*FC Caring Society 2021* at para 164) .

[40] In my view, the passages relied on from the *Caring Society* judgment do not assist in my determination of the matters before me. I am required to rule on the adequacy of an SOP filed at the outset of the proceeding, not on the reasonability of a compensation order for pain and suffering and special compensation, issued three years after a merits decision.

I am concerned with whether the Coalition's SOP sufficiently allows the opposing party to know the case it must meet and not with whether a remedy decision "transformed" a complaint from systemic discrimination to one of individual discrimination.

[41] Further, I do not accept that the Federal Court in the *Caring Society* made prescriptive findings about what is or is not required for an SOP. Rather, it noted that it was clear from the outset on whose behalf the complaint was being brought, namely First Nations children who were apprehended from their home, as well as the parents or grandparents of these children. Its principal finding was that ISC's arguments were made too late in the proceeding, and in respect of the wrong decision (*FC Caring Society 2021* at para 141). The Court also found that it would be overly technical to expect victims to be identified in the complaint form, and that conditions for the hearing are defined in the SOP. I agree, and it is the sufficiency of the SOP itself, which the Court itself indicates is a defining instrument, that is the issue before me.

[42] The Federal Court underscored that complainants and victims can be different people. It does not appear that ISC is disputing that before me, and in any event, this distinction is clearly reflected in the language of the Act (ss. 40, 50, 53).

[43] In sum, the *Caring Society* proceeding is not authority for the proposition that the SOP filed in this case complies with the rules in respect of the current claim before me. As set out above, the Court's judgment is replete with mentions of the fact that the Applicant in that case, characterized at para 286 as a sophisticated litigant, had multiple opportunities to seek judicial review of previous decisions, but elected not to.

[44] I also do not find that the Federal Court's judgment stands for the proposition that the Tribunal cannot or should not require particularization of the experiences of individuals, particularly at the liability stage of the proceeding, or that it is "inappropriate" to do so. In finding at para 164 that "the Tribunal did not necessarily need to hear from all the alleged victims of discrimination to compensate them for pain and suffering, the Court was not addressing liability but was endorsing the statement made by the Tribunal in the Compensation Decision (2019 CHRT 39, para 188). The Coalition has not provided authority for its claim that the concept of an "individual" set out in s. 5 of the Act can be

ignored, simply because it is bringing this complaint on behalf of a group of individuals seeking systemic remedies and damages for a growing and undisclosed list of alleged victims.

[45] I acknowledge that not all victims need to testify to compensate all of them for pain and suffering. But that is not the issue before me and we are nowhere near the hearing yet, let alone the remedy phase should I make a finding of liability. What I am seized with is whether the claim under s. 5 has been sufficiently particularized.

[46] The Coalition also relies on *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27where at paras 66-67, the Court observed that in a constitutional challenge to legislation, public interest litigants may be granted standing, even if they are not a directly affected plaintiff, as this would promote access to justice. However, standing before the civil courts is a matter far removed from the issue at hand, namely the sufficiency of particulars of a complaint under s. 5 of the Act, which requires particularization of the experience of actual individuals in the context of being denied services, or denied access to those services, or adverse differentiation in their provision, in order to establish that a respondent engaged in a discriminatory practice.

[47] Finally, I do not find that the other proceedings cited by the Coalition and the Commission assist here. I will not review all the cases they cite because the way members case managed and determined how to proceed in those files is not binding on the Tribunal, either because they involve decisions from provincial bodies, or because they reflect the particular facts of that proceeding. However, what some of the proceedings cited by the Coalition and the Commission have in common – in stark contrast to the Coalition's SOP - is that they were manageable or involved discrete individuals and identifiable claims (see for example *Disability Rights Coalition v. Nova Scotia (Attorney General),* 2021 NSCA 70; *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 at paras 16-20).

B. Establishing discrimination requires evidence

[48] As set out above, in addition to requesting their positions on ISC's request for further particulars, I asked the parties to set out their respective proposals for case management and to explain the role they see for individual experiences and evidence, if any.

[49] While a party does not need to plead evidence to fulfill the requirements of Rule 18(1)(a)-(d), it does need to set out the material facts on which it relies. This, in turn, informs the witnesses it will propose under Rule 18(1)(e), and the documents in will disclose under Rule 18(1)(f).

[50] The Coalition says that it will tender individual testimony to assist the Tribunal in understanding the impacts of the Respondent's system on Coalition members and others in similar circumstances that "may be accepted as representative of the experiences of other Coalition members when read together with the proposed contextual and expert evidence". It did not explain how a representative group of victims would address the wide variety of services that are mentioned in the SOP to establish a *prima facie* case or even specify which of the myriad of possible services it will lead evidence on.

[51] The Coalition also asserts that it intends to call expert evidence to testify about the adverse impacts of ISC's services, and that it will rely on some of ISC's publications documenting shortcomings and failures in resourcing and delivering services. It intends to call an expert to speak to best practices for serving and supporting First Nations adults with disabilities, including the impacts of failures to meet these standards; to address culturally appropriate supports and services, including connection to land and community; and to describe the impacts of displacement driven by limited availability of services.

[52] While the Coalition intends to call various experts, experts cannot replace fact witnesses and have a duty to assist the Tribunal in an impartial, objective and independent manner (Rule 22(2)). A complainant cannot establish a *prima facie* case based on opinion evidence and expert reports alone, which are intended to assist the trier of fact when they require knowledge or expertise outside that of an ordinary person. An expert's opinion must be based on a proper factual foundation. As the Supreme Court of Canada has held, "[b]efore any weight can be given to an expert's opinion, the facts upon which the opinion is

based must be found to exist" (*R. v. Abbey*, 1982 CanLII 25 (SCC), [1982] 2 S.C.R. 24, at p. 46 and *Peart v. Peel Regional Police Services*, 2003 CanLII 42339 (ON SC) at para 23, aff'd 2006 CanLII 37566 (ON CA), SCC leave denied 2007 CanLII 10553).

[53] As set out below and required by the Rules, the Coalition must comply with its obligations under Rule 18 and identify all witnesses other than experts, and include a summary of their anticipated evidence.

C. The scope of the complaint and the particulars must be defined now

[54] The Coalition argues that it elected to "pursue its goals through the Tribunal's process precisely for the promise of a fair, informal and expeditious resolution and structured its [c]omplaint accordingly", with reference to s.48.9(1) of the Act. It submits that its members face countless barriers to social and economic inclusion, good health and well-being, and to services necessary to meet basic needs. It says that ISC's position denies access to justice for First Nations adults with disabilities who already face barriers imposed by entrenched patterns of discrimination, social and economic exclusion, and colonization.

[55] Similarly, the Commission argues "the questions raised by Canada and reiterated by this Tribunal have caused unnecessary delay". It takes issue with the fact that the parties have had to speak to this issue three times, namely: when I sought their positions by email in advance of the CMCC, during the CMCC, and now, in response to my specific questions and ISC's request for particulars. The Commission cites a statement from my message in the Tribunal's 2024 Annual Report in which I referred to the need to reduce delay, to streamline proceedings, reduce procedural burdens and simplify how the Tribunal runs its cases. It also relies on the Department of Justice's Directive on Civil Litigation Involving Indigenous Peoples for the principle that all those involved in litigation should ensure that it is dealt with promptly, and should avoid delays due to internal bureaucracy, to contribute to advancing justice and reconciliation.

[56] The Commission further argues it is neither necessary nor preferable to proceed by presenting individual cases, and says that identifying individuals would stall proceedings, create insurmountable disclosure requirements, generate voluminous evidentiary records,

take years to prepare for and hold hearings into, and result in group complaints being impossible to case manage. It says these impacts would be even more acute to the extent the process might unnecessarily retraumatize complainants or vulnerable witnesses, again relying on the Federal Court's decision in the Caring Society proceeding (*FC Caring Society 2021* at paras 164 and 172).

[57] Again, the passages excerpted from the *FC Caring Society 2021* need to be read in context. In para 164 it appears the Court is addressing the Applicant's argument that the Tribunal erred in awarding compensation to victims who did not testify in the context of a proceeding where the issue could have been broached much earlier than in the remedy phase. But we are not even close to that stage in the proceeding before me. No finding of liability has been made, and I am only trying to determine whether the complaint has been sufficiently particularized. I do not read the judgment to say that a respondent is not entitled to ask for better particulars before the hearing, so that material facts are adduced that correspond to the constituent elements of s. 5.

[58] In para 172, the Court quotes the Tribunal where it observes that the respondent party was able to respond to the Complainant's SOP. The Tribunal goes on to say that it is unreasonable to require vulnerable children to testify about harms done to them when there is other reliable evidence available. The Tribunal alludes to past decisions in the case dealing with this issue that have gone unchallenged. Once again, this passage does not assist me. ISC objects to the Coalition's SOP and argues that it cannot respond to it. I am seized with determining the adequacy of particulars. I am not determining whether children or other vulnerable parties should be required to testify.

[59] While the Coalition and the Commission appear to argue that proceeding without identifying victims, or without further particulars, will allow for a more efficient process, they provide no authority for this statement, other than their repeated reliance on an ongoing proceeding that began its hearing 12 years ago.

[60] The Coalition and its members have decided to engage the Tribunal's process, which is an adversarial one. They have chosen to participate in a process that requires a Complainant making allegations under the Act to provide particulars of those claims, and

ultimately to substantiate them with evidence, which can be tested by the party adverse in interest. Ensuring that occurs is not "inefficient" as the Commission and the Coalition appear to suggest. It is not wasting time to ensure that the Tribunal's process is fair, and that the material facts a party intends to prove in support of their complaint are properly set out. I agree with ISC that embarking on a hearing based on undefined and indefinite assertions of discrimination will not serve the goal of the efficient and expeditious examination of concrete problems of discrimination facing individual Canadians. A protracted unfocused proceeding is also not in the public interest, nor in the interests of other litigants waiting for their cases to be heard.

[61] It is not feasible to proceed without the Coalition identifying who was adversely treated in respect of what service, and on the basis of what prohibited ground. Ensuring that happens is not delaying access to justice or creating a procedural burden - it is the starting point for any legal proceeding and is the reason why Rules 18-20 of the Tribunal's Rules of Procedure exist. Delaying determination of these foundational questions will not only have a cascading impact on disclosure, witness lists and the entire conduct of the proceedings, but will indefinitely defer addressing the serious challenges at the heart of the way this seemingly boundless complaint is framed. Finally, insofar as the process of obtaining sufficient particulars takes time, the Tribunal and the parties are required to take this time –to think through how to proceed and to ensure that the complaint is sufficiently particularised— because of the Coalition's own choices about how broadly it framed this complaint.

D. The Coalition's approach will not serve the interests of victims

[62] The Commission and the Coalition both made submissions about the vulnerability of the Indigenous claimants at the heart of this complaint and argue that requiring individual evidence would retraumatize victims of discrimination.

[63] I reject these arguments. As set out above, I am not seized with the question of whether vulnerable witnesses should testify. I am addressing the sufficiency of the SOP. The Tribunal can address options for evidence in due time. In any event, in the *Caring*

Society proceeding, the issue was about children testifying about apprehension from their homes. It is not clear at this stage that similar vulnerabilities arise in this matter.

[64] Further, embarking on an ill-defined, amorphous process not only exceeds the Tribunal's statutory mandate, but will not serve the interests of the alleged victims at the heart of the Coalition's complaint, who have raised important issues and want resolution for their families. It will do a disservice to this process and to vulnerable claimants to set unrealistic expectations about what the Tribunal's role is, and how an adversarial proceeding works.

[65] In any event, the nature of the complaint does not absolve the Coalition or any other party from complying with the Tribunal's Rules, or the requirements of basic procedural fairness. The Coalition has raised important questions, and Parliament may decide to create a general fact-finding body to investigate or examine them. But the Tribunal has no authority to conduct a general inquiry into supports and services and only has the mandate and jurisdiction that Parliament has chosen to delegate to it through the Act. The Tribunal is tasked with deciding whether a discriminatory practice has occurred. There are other avenues for groups who want to pursue a generalized study or bring attention to important human rights issues without 'undue scrutiny', but a Tribunal proceeding is not one of them.

[66] To advance a complaint in a hearing under the Act, a complainant must sufficiently describe the details of the allegations, and the factual matters intended to be proven at the hearing. This means engaging with the components of s. 5 of the Act and complying with Rule 18. The Tribunal is fully cognizant of its duty to accommodate all hearing participants, including vulnerable witnesses, and when the hearing gets to this stage, I will hear from all parties about their concerns and possible solutions *(Haynes v. Canada,* 2023 FCA 158, paras 18-34).

E. The temporal scope of these complaints must be limited and tied to individual allegations

[67] The SOP makes no mention of when any alleged incidents of discrimination or discriminatory practices took place. The complaint indicates that the discrimination starts on

January 1, 1977, and extends until June 6, 2021. The Coalition's failure, in its SOP, to particularize the dates on which, or the period during which, events took place, is unworkable and is antithetical to the concept of an efficient and expeditious proceeding, one of the purposes of administrative justice. It is not the Tribunal's role to conduct a general study or inquiry into how ISC managed a department or programs over decades.

[68] While the Coalition states in reply that it would be willing to narrow the period at issue to 20 years, this does not resolve the underlying problem, which is that it must provide a reasonable time frame for its allegations, connected to actual individuals or events, and to their specific allegations under s.5.

F. Legal status of the Coalition

[69] ISC submits that the Coalition does not have any legal status and that there will be practical problems in a proceeding involving an entity with no legal existence. It further argues that while the Coalition and the Commission rely on the First Nations Child and Family Caring Society of Canada's status, in contrast to the Coalition, the Caring Society is registered as a society and has legal existence and structure.

[70] The Coalition says a group of individuals can bring a group complaint under s.40(1) of the Act and submits that complainants and victims can be different people. The Commission and the Coalition argue that ISC did not challenge the standing of the Coalition or the construction of the complaint by seeking judicial review of the Commission's decision to refer the complaint to the Tribunal.

[71] I agree in part. ISC has not cited any authority to support its view that s.40(1) of the Act requires a complainant to be legally incorporated. Moreover, it is not the Tribunal's mandate to supervise compliance with s. 40(1) of the Act. That is a matter for the Federal Court. On the information before me, I do not see an issue with the standing of the complainant or with the fact that the alleged victims are represented by a Coalition, administered through a recognised representative. However, as set out above, this does not mean that the complaint can proceed with an unidentified group of alleged victims. The fact that ISC did not seek judicial review of the Commission's referral does not mean that the

Coalition is absolved from providing sufficient particulars in accordance with the Act and the Tribunal's Rules. The identification of alleged victims forms part of the material facts of the case.

G. The parties can propose a case management strategy

[72] The parties are expected to propose a way forward that is manageable and that respects the Tribunal's mandate. While the Coalition and the Commission both argued that granting ISC's request would result in innumerable individuals having to make out individual cases of discrimination, this is not necessarily the case. The particulars of the alleged denial of service or adverse differential treatment are currently unknown. However, as the Coalition begins to define who the alleged victims are in bringing these claims, and how and when they experienced discrimination under s.5, it may be possible to group certain individuals or perhaps develop a lead claimant strategy. As counsel know, this is not the first legal proceeding involving many alleged victims, and it is open to the parties to propose a workable approach that will serve the interests of all hearing participants, including the vulnerable First Nations families that the Commission and the Coalition refer to in their submissions.

[73] The parties can also consider some of the other procedural tools available to help expedite proceedings, namely, an agreement on some facts not in dispute, if any, or they may try to resolve some or all the dispute in mediation with the consent of all the parties.

H. The parties must comply with Tribunal directions and Rules

[74] The integrity of these proceedings requires all parties to comply with Tribunal directions. If they do not agree, they can pursue other avenues of redress as they deem appropriate. But Tribunal Rules and directions are not suggestions that parties can choose to disregard. A party may not be allowed to call a witness or introduce a document at the hearing if it has not complied with the relevant disclosure rule (Rule 37).

[75] Rule 18 requires that in addition to setting out the facts they intent to prove, complainants must also include the name of each of their witnesses, together with a

summary of their intended testimony, as well as a list of documents in their possession relating to the case. Beyond the issue of sufficiency of particulars that ISC has raised, the Coalition did not include a list of witnesses or summaries of intended evidence. In addition, its list of documents appeared to consist solely of government reports, academic literature and other reports. No documents were listed related to any alleged victims on behalf of whom the Coalition seeks relief. Further, both the Coalition and the Commission have indicated that they "reserve the right" to amend their witness lists, without reference to any authority for this approach or how it can be reconciled with Rule 37.

[76] As set out in paragraph [10] above, I directed the Coalition to provide the names of the alleged victims on whose behalf it was bringing the complaint. It did not do so, choosing instead to say that if the Tribunal still wanted it to comply with its direction after reading its letter, it would do so.

[77] The parties are required to comply with the Tribunal's Rules and directions and cannot reserve their right to disregard them as they see fit, or to pick and choose when and to what extent they comply. Further, the purpose of pre-hearing disclosure is to allow the parties to know the case they are to meet and to prepare accordingly. Complainants must commit to a theory of the case, and parties cannot reserve the right to amend witness lists or elect to identify witnesses at a time of their choosing.

[78] "Reserving the right" to add witnesses is not contemplated in the Rules. The Coalition has yet to list any witnesses. After it does so, should it wish to amend its list, it will have to seek leave, and the Tribunal will decide after hearing from all the parties whether new witnesses should be added. The Coalition is directed to provide its witness list and will says, together with its amended particulars, and to comply with its disclosure obligations and with all Tribunal directions going forward. Parties are also reminded that non-compliance with Tribunal rules, orders and time limits can also result in actions being taken under rule 9.

I. Next Steps

[79] For this proceeding to advance, the Coalition must refile its SOP in a form that complies with the Tribunal's Rules. Until then, all other deadlines are suspended.

[80] The Coalition is directed to refile its SOP in keeping with Rule 18 and to provide the information ISC sought in its March 25, 2025 and May 22, 2025 letters. It must identify on whose behalf the complaint is being brought. This includes information about the number of individuals that are alleged to be victims of the discriminatory practice which is the subject of the complaint, their ages, whether the members are registered as status Indians under the *Indian Act*, whether they are members of Manitoba First Nations, whether they live on or off-reserve, and whether they are currently accessing programs and services on reserve from the First Nation, or doing so through the Province of Manitoba (if living off-reserve).

[81] The SOP must set out the specific services under section 5 of the Act the Coalition takes issue with, and what specifically within those programs it says is discriminatory. It is not sufficient to simply list and describe the programs in general terms, arguing that they are not reliably provided or are underfunded. The SOP must further specify what denials or denials of access to service, or adverse differentiation in service provision the Coalition alleges, whether such adverse impact was due to program eligibility criteria, and any other relevant factors. Rule 18(1)(c) also requires the SOP to include an explanation of the relationship between the prohibited ground and the discriminatory practice.

[82] The Coalition must therefore be specific about what it alleges was discriminatory under s. 5 of the Act and set out how any alleged denial, delay or disruption in the delivery of a service is based on a prohibited ground or what differential treatment is alleged in the delivery of an existing service and when and where it occurred. Most importantly, it must make its claims in relation to the specific individuals seeking redress under the Act and it must set out the facts that would support such a conclusion.

[83] Further information about what should be included in an SOP can be found on the Tribunal's website in its Guide for parties. The Guide contains examples of a complainant's statement of particulars and explains the content of Rule 18, including the requirements for disclosure of documents and witnesses, as well as anticipated witness testimony.

J. Mediation

[84] The Coalition states that it would be open to pursuing mediation. Should the other parties be interested in resolving the complaint in whole or in part through alternative means, they should contact the Tribunal's Registry.

VII. ORDER

[85] ISC's request is allowed.

[86] Within 60 calendar days of this order, the Coalition must refile an SOP as set out in paras [79] to [82] above.

[87] Following receipt and review of the Complainant's SOP, the Tribunal will set a deadline for the filing of the Commission's and ISC's SOPs, disclosure and witness lists. It will also set a deadline for the filing of expert reports, if any.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
December 16, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3082-24

Style of Cause: Coalition of First Nation Adults with Disabilities v. Indigenous Services Canada

Ruling of the Tribunal Dated: December 16, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Joëlle Pastora Sala, Chris Klassen and Natalie Copps, for the Complainant

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

Sheila M. Read, Kevin Staska, Gabriela Fuentealba and Margaret Girard, for the Respondent