

**File Nos.: T1683/3811 and
T1684/3911**

CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**GRAND CHIEF STAN LOUTTIT in a representative capacity on behalf of the FIRST
NATIONS OF MUSHKEGOWUK COUNCIL, GRAND CHIEF LOUTTIT in his personal capacity
AND GEORGE WESLEY**

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

**INDIAN AND NORTHERN AFFAIRS CANADA AND
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS CANADA**

Respondents

**STATEMENT OF PARTICULARS of the
CANADIAN HUMAN RIGHTS COMMISSION**

OVERVIEW

This is an allegation of discrimination in the provision of a service based on race, ethnic or national origin, contrary to section 5 of the *Canadian Human Rights Act (CHRA)*. The Complainants (Mushkegowuk First Nations Council (Council), Grand Chief Stan Louttit (Grand Chief) and George Wesley) allege that the Respondents; Indian and Northern Affairs Canada (INAC) and Public Safety and Emergency Preparedness Canada (PSEPC), discriminate against members of Mushkegowuk communities by treating them in an

-2-

adverse differential manner by inadequately funding policing services, the whole contrary to section 5 of the *CHRA*.

THE PARTIES

Complainants

1. The following facts are taken from the material submitted by the parties.
2. The complainants are Mushkegowuk First Nations Council (Council), Grand Chief Stan Louttit (Grand Chief) and George Wesley. The Council is the regional tribal council and regional aboriginal government for the Mushkegowuk Aboriginal people, who claim traditional territories in the western James Bay region of northern Ontario.
3. The members of the Council are the various Mushkegowuk First Nations located in the traditional Mushkegowuk territories. These First Nations are: the Attawapiskat First Nation, the Kashechewan First Nation, the Fort Albany First Nation, the Moose Cree First Nation, the Taykwa Tagamou Nation (formerly New Post Nation), the Chapleau Cree First Nation and the Missanabie Cree First Nation. The Grand Chief of Mushkegowuk Council was elected by all individuals who are members of one of the Mushkegowuk First Nations in the Council.

Respondents

4. The Respondents, Indian and Northern Affairs Canada (INAC) and Public Safety and Emergency Preparedness Canada (PS), are departments of the Federal Government of Canada. Since the filing of this complaint, the names of these two respondents have been changed. INAC is now known as Aboriginal Affairs and Northern Development Canada (AANDC) and PSEPC now falls under the department of Public Safety Canada (PS). The Respondents will be referred to by their current names throughout the remainder of the Commission's Particulars.

-3-

5. On its website, the AANDC indicates it is one of the federal departments responsible for meeting Canada's obligations and commitments to First Nations, Inuit and Métis and for fulfilling the federal government's constitutional responsibilities in the North. AANDC reports to Parliament through the Minister of AANDC.

6. PS is responsible for emergency management, national security, law enforcement, corrections and crime prevention. It also administers the First Nations Policing Program, which sets the funding and operational framework for the Nishnawbe-Aski Police Service (NAPS) tripartite agreement. According to its website, it fulfills the fundamental role of government to secure the public's safety and security. As part of its mandate, it is responsible for ensuring that Aboriginal policing services are responsive to the needs of Aboriginal communities. PS reports to Parliament through the Minister of Public Safety Canada.

THE FACTS

A. BACKGROUND TO COMPLAINT

7. The Complainants belong to the Nishnawbe-Aski Nation (NAN), which is a political territorial organization representing 49 First Nation communities within Northern Ontario. The NAN Tribal Council includes the various First Nations communities, of which Mushkegowuk Council is one. The context for the complaint is the tripartite agreement between the NAN, the federal government (52% of funding) and the Ontario government (48% of funding).

8. The stated purpose of the tripartite agreement is to ensure that culturally sensitive police services are provided to the communities, and "continue with the development of policing services that are based on First Nations laws, culture, customs, values, traditions, and standards".

9. NAPS is the largest First Nations Police Service in Canada and the second largest in North America. It provides policing services to the various Mushkegowuk First Nations

-4-

that together comprise the Council. The First Nations Policing Policy and Program indicates that the federal government has a role in setting up the frameworks for First Nations policing, and in deciding what kinds of quality of services are provided. The tripartite agreement says that policing in the communities should be "at least equivalent in level and standard of service to that provided in non-Aboriginal communities in Ontario with similar characteristics".

B. THE COMPLAINT

10. The Complainants allege that they are receiving lower quality police services and facilities in and around Mushkegowuk communities compared to services customarily available to non-Aboriginal communities. They indicate these differences are present in relation to personnel, infrastructure and resources, as well as housing for officers. According to the Complainants, the under-funding and lack of support by the Respondents have meant that NAPS is unable to provide adequate policing services to the communities they are meant to serve.

11. The Complainants indicate that the Respondents negotiated the first tripartite agreement, and also negotiated the renewals and extensions of that initial agreement. These negotiations largely determine the level of services and facilities provided for Mushkegowuk policing. Under the agreement, the Respondents have obligations and accountability mechanisms, providing an active oversight role. The Respondents exercise independent control and impose terms and conditions for the distribution and use of these funds. The Complainants allege that the Mushkegowuk communities are treated differently from the average non-Aboriginal Ontario community or the average Canadian community.

12. The Complainants allege that the differential treatment they have experienced has involved negative consequences for them in the form of substandard levels of policing. Further, the differences in infrastructure and service levels exacerbate the social problems, such as substance abuse, in the First Nations communities.

-5-

ISSUES

13. The Commission will address the following issues:

- a) Have the Respondents discriminated against the Complainants in the provision of a service by under funding and providing inadequate services to ensure the adequacy of the police services and facilities on Mushkegowuk First Nations, or adversely affecting them, the whole contrary to section 5 of the *CHRA* based on race, ethnic or national origin?
- b) If the respondents are found to have infringed the *CHRA*, what public interest remedies should follow?

14. The Commission expects to argue: (i) that by failing to provide adequate police services (including funding) to the complainants, the Respondents are discriminating against the Complainants by adversely differentiating between the Complainants and other, non-Aboriginal communities across Canada, and (ii) this adverse differential treatment is unjustified.

THE LAW AND THEORY OF THE CASE**a) Provision of a Service**

15. The Commission will submit that the facts at issue do constitute a "provision of a service" under the *CHRA* because the actions taken by the Respondent include a benefit "held out" as services and "offered" to the public.

b) *Prima facie* case

16. The initial onus is on the Complainants to establish a *prima facie* case of discrimination in the provision of services on at least one of the grounds alleged. The

-6-

threshold for proving such a case is low. A *prima facie* case is one "which covers the allegations made and which, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent".¹ That answer or explanation must be believed and not shown to be a pretext.²

17. Once a *prima facie* case of discrimination is established, the burden of proof shifts to the respondent to demonstrate that the alleged discrimination either did not occur or is justified.³

c) *Bona fide* justification

18. When the evidence establishes a *prima facie* case of discrimination, the burden shifts to the respondent to demonstrate that its decision is a *bona fide* justification under s. 51(1)(g) of the *CHRA*. To do so, in light of the decisions from the Supreme Court of Canada in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*⁴ ("*Meiorin*") and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*⁵ ("*Grismer*"), the Respondents must demonstrate on a balance of probabilities that:

- a) The respondent adopted the standard for a purpose or goal rationally connected to the function being performed;
- b) The respondent adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate purpose or goal; and

¹ *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears* [1985] 2 S.C.R. 536 at page 558

² *Basi v. Canadian National Railway (No. 1)* (1988), 9 C.H.R.R. D/ 5029 (CHRT)

³ *Ontario Human Rights Commission v. Etobicoke* [1982] 1 S.C.R. 202 at page 208

⁴ [1999] 3 S.C.R. 3

⁵ [1999] 3 S.C.R. 868

-7-

c) The standard is reasonably necessary to the accomplishment of that legitimate purpose or goal, in the sense that it is impossible to accommodate an individual sharing the characteristics of the complainant without incurring undue hardship.

19. The Commission will respond to the Respondent's submissions and evidence on this issue.

PUBLIC INTEREST REMEDIES SOUGHT

If the complaint is established, the Commission will seek the following remedies:

a) Pursuant to section 53(2)(a) of the *CHRA*, an Order that the Respondents immediately cease the discriminatory practice and more particularly an Order requiring that the Respondents take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in the future;

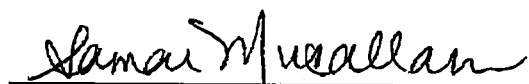
b) That the Respondents work with the Commission and the Complainants in their re-evaluation of the needs of the Complainants' policing services in providing adequate policing and security services to their communities.

-8-

LIST OF WITNESSES

19. The Commission intends to participate in the hearing of this matter and to rely on the evidence to be called by the Complainants and the Respondents. The Commission may have some questions of its own for these witnesses. The Commission does not expect to call its own witnesses at this time.

DATED at Ottawa, this 9th day of January, 2012.



Daniel Poulin / Samar Musallam
Counsel
Canadian Human Rights Commission
344 Slater Street, 9th Floor
Ottawa, ON K1A 1E1

Tel: (613) 947-6399
Fax: (613) 993-3089
Daniel.Poulin@chrc-ccdp.gc.ca
Samar.Musallam@chrc-ccdp.gc.ca
Counsel for the Commission