



T-1825-09

Court File No.:

**FEDERAL COURT**

**ATTORNEY GENERAL OF CANADA**

Applicant

and

**GRAND CHIEF STAN LOUTTIT in a representative capacity on behalf of the  
First Nations of MUSHKEGOWUK COUNCIL, GRAND CHIEF STAN LOUTTIT  
in his personal capacity, and GEORGE WESLEY**

Respondents

### **NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

**YOGINDER GULIA**  
**REGISTRY OFFICER**  
**AGENT DU GREFFE**

November 4, 2009

*Issued by:*

(Registry Officer)

Address of  
local office:

Federal Court  
180 Queen Street West  
Suite 200  
Toronto, Ontario  
M5V 3L6

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TO: Murray Klippenstein  
KLIPPENSTEINS  
160 John Street, Suite 300  
Toronto, Ontario  
M5V 2E5

Tel: (416) 598-0288  
Fax: (416) 598-9520

AND TO: Canadian Human Rights Commission  
344 Slater Street, 8<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 1E1

Tel: (613) 995-1151  
Fax: (613) 996-9661

## APPLICATION

This is an application for judicial review in respect of the decisions of the Canadian Human Rights Commission ("Commission") rendered on September 23, 2009, and communicated by letters dated September 30, 2009, received by the Applicant on October 5, 2009. In its decisions, the Commission has decided to deal with the complaints filed by the Respondents against Public Safety and Emergency Preparedness Canada (PS) and Indian and Northern Affairs Canada (INAC). The Commission decided that it has jurisdiction to deal with the complaints pursuant to section 41(1) of the *Canadian Human Rights Act (CHRA)*. The Commission also decided to appoint an investigator pursuant to section 43 of the *CHRA*.

The Applicant makes application for:

1. An Order setting aside the Commission's decisions and dismissing the Respondents' complaints against PS and INAC;
2. In the alternative, an Order setting aside the decision and referring the matter back to the Commission with the direction that it dealt with the complaints in accordance with the reasons of this Honourable Court;
3. An order allowing the Applicant to challenge the two decisions pursuant to Rule 302 of the *Federal Courts Rules*;
4. the costs of this application; and,
5. Such further and other relief as counsel may advise and this Honourable Court may permit.

The grounds for the application are:

1. The Respondents have filed complaints with the Commission against PS, INAC and the Government of Ontario, alleging that the Respondents are receiving "lower quality police services and facilities in and around the Mushkegowuk

communities compared to services customarily available to the public.” The Respondents allege that the Governments of Canada and Ontario are responsible for “overseeing and funding these services and facilities and that their “practices” amount to discrimination in the provision of services and facilities on the basis of the complainants’ ancestry, ethnic origin, and race, contrary to the *CHRA*.

2. The Respondents filed an identically worded complaint against PS, INAC and the Government of Ontario with the Ontario Human Rights Commission.

3. The Respondents allege in their complaint that the practices of PS, INAC and the Government of Ontario, including their considerable underfunding of the Nishnawbe-Aski Police Service (NAPS), cause adverse differentiation in the provision of police services and facilities to the Respondents. The Respondents allege that through their significant lack of funding and support, Public Safety, INAC and the Government of Ontario have caused NAPS to be unable to provide policing services and facilities to the Respondents that are the same quality as the services and facilities received by non-Aboriginal Ontarians.

4. In a letter dated February 10, 2009, counsel for the Attorney General wrote to the Commission on behalf of PS and INAC (the Departments) requesting the Commission to issue a decision refusing to deal with the complaint pursuant to sections 41(1)(c) and 41(1)(d) of the *CHRA*. The Departments submitted that the Commission lacks jurisdiction over this complaint on the basis that the Departments do not provide a service within the meaning of section 5 of the Act; and there is no proper comparison to found a case of discrimination in this case.

5. In a report dated June 24, 2009, the Commission’s assessor recommended that the Commission deal with the complaints because the Commission has jurisdiction over the complaints and because the complaints are not trivial, frivolous, vexatious or made in bad faith. The assessor also recommended that the Commission request the Chairperson of the Canadian Human Rights Tribunal constitute a tribunal to inquire into the complaints, pursuant to section 49 of the *CHRA*.

6. In its decisions received on October 5, 2009, the Commission dismissed the Departments' submission and adopted the reasons to the assessment report on the issue of the Commission's jurisdiction to deal with the complaints pursuant to section 41(1) of the *CHRA*. The Commission also decided that an investigator should be appointed to conduct an investigation of the complaints pursuant to section 43 of the *CHRA*.

7. The Commission erred in law and/or made an unreasonable or incorrect decision in deciding to deal with the complaints.

8. The Commission erred in law and/or made an unreasonable or incorrect decision in deciding that it had jurisdiction to deal with the complaints.

9. The Commission erred in law and/or made an unreasonable or incorrect decision in refusing to dismiss the complaints.

10. The Commission erred in law and/or made an unreasonable or incorrect decision in refusing to dismiss the complaints on the ground that the Commission lacks the constitutional jurisdiction to deal with the complaints, in that policing in Ontario is governed by valid provincial legislation, i.e. the *Police Services Act*, R.S.O. 1990, c. P.15, and human rights jurisdiction over the complaints is also provincial.

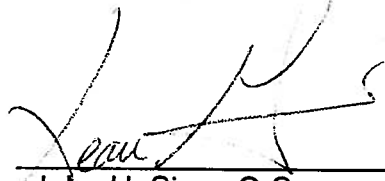
This application will be supported by the following material:

1. The supporting affidavits of witnesses yet to be identified;
2. The Certified Record of the Commission; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicant requests the Commission to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Commission to the Applicant and to the Registry:

All materials that were before the Commission and considered by the Commission when it made the decisions to deal with the Respondents' complaints.

November 4, 2009



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AGENT DU GÉNÉRAL  
RÉGISSEUR GÉNÉRAL  
YOGINDER GILL