

CANADIAN HUMAN RIGHTS COMMISSION

BETWEEN :

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

Complainants

and

**HER MAJESTY THE QUEEN in right of CANADA and
HER MAJESTY THE QUEEN in right of ONTARIO**

Respondents

HUMAN RIGHTS COMPLAINT

Overview

1. The findings of the Honourable Justice Sidney B. Linden, Commissioner of the Ipperwash Inquiry, regarding First Nations Policing sum up the core of this complaint against the respondents:

[A]t some level, the issue can be simply reduced to equality and fairness. There is no reason why residents of First Nations in Ontario should have lower-quality policing than non-Aboriginal Ontarians do.¹

2. The complainants are receiving lower quality police services and facilities in and around the Mushkegowuk communities compared to services customarily available to the public. As the respondents Canada and Ontario are ultimately

responsible for overseeing and funding these services and facilities, the respondents' practices in this regard amount to discrimination as they are unequally providing services and facilities on an adversely differentiated basis due to the complainants' ancestry, ethnic origin, and race.

3. The complainants further allege that these discriminatory practices are systemic and ongoing. The complainants accordingly seek appropriate redress in the form of the respondents adequately funding police services and facilities in and around the Mushkegowuk communities to provide the level of services that are customarily available to the public in general.

The Parties

4. Mushkegowuk Council is the regional tribal council and regional aboriginal government for the Mushkegowuk Aboriginal people whose traditional territories are the western James Bay region of northern Ontario.
5. The members of Mushkegowuk 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.
6. Stan Louttit is the Grand Chief of Mushkegowuk Council, elected by vote of all the individual Mushkegowuk persons who are members of one of the Mushkegowuk First Nations in the Mushkegowuk Council. He is also personally a member of the Moose Cree First Nation. Grand Chief Louttit brings this complaint both in his personal capacity and in a representative capacity on behalf of all of the First Nations of Mushkegowuk Council, and through them, all their individual community members

¹ Ontario, *Report of the Ipperwash Inquiry: Policy Analysis*, vol. 2 (Toronto: Queen's Printer, 2007) at 249.

7. George Wesley brings this complaint in his personal capacity as the father of Ricardo Wesley, who died in a fire in the police detention facility in Kashechewan, due to poor policing services and facilities. George Wesley is also a member of the Kashechewan First Nation and resides on its reserve.
8. In light of the combination of both federal and provincial responsibilities with respect to policing for Aboriginal peoples and communities, the two human rights complaints against the two governments are described together in this one claim form, which is filed separately but simultaneously in the two respective federal and provincial human rights processes.
9. The respondent Her Majesty the Queen in right of Canada is or represents the federal Crown and government for purposes of the federal complaint. The relevant federal departments for the federal complaint include:
 - a. the Department of Public Safety Canada, which is the federal department responsible for policing and law enforcement, including with respect to the complainants; and
 - b. the Department of Indian and Northern Affairs Canada, which is the federal department responsible for Canada's relationships with First Nations, including the First Nations relevant for this complaint.
10. Her Majesty the Queen in right of Ontario is or represents the provincial Crown and government for purposes of the provincial complaint. The relevant provincial ministries for the provincial complaint include:
 - a. the Ministry of Community Safety and Correctional Services, which is the provincial Ministry responsible for policing services throughout the Province of Ontario; and

- b. the Ministry of Aboriginal Affairs, which is the provincial Ministry responsible for Ontario's relationships with First Nations, including the First Nations relevant for this complaint.
11. It may be that the provincial Commission has some jurisdiction over the federal Crown and government within the context of a provincial human rights complaint (and similarly for the federal Commission over the provincial Crown and government), in which case paragraph 9 would also apply for the purposes of the provincial complaint (and similarly, paragraph 10 would also apply for the purposes of the federal complaint).

Constitutional Background

12. As the Mushkegowuk First Nations have been present on their traditional territories since time immemorial, they have long historical relationships with both the federal and provincial Crowns. Certain elements of this history are particularly relevant for this complaint, although this complaint is brought without prejudice to any of the aboriginal and treaty rights of the Mushkegowuk First Nations.
13. For example, in 1869 and 1870, in exchange for Britain uniting the then Rupert's Land with Canada, the Parliament of Canada made the following protection pledge to the British Crown and in respect of the Aboriginal nations of Rupert's Land:

That upon the transference of the territories in question [Rupert's Land] to the Canadian government, ***it will be the duty of the Government to make adequate provisions for the protection of the Indian tribes [the Mushkegowuk First Nations] whose interests and well-being are involved in the transfer.*** [emphasis added]

14. This protection pledge was incorporated into the Rupert's Land Order, and became part of Canada's constitution in 1870. The Province of Ontario was subject to these duties when portions of Rupert's Land were added to Ontario.

15. These fundamental constitutional responsibilities are reinforced by sections 91(24), 91(27) and 92(14) of the *Constitution Act, 1867*, as well as the common law. The result is that both Canada and Ontario have simultaneous and important constitutional responsibilities with respect to the communities of the Mushkegowuk First Nations, including the provision of adequate policing services.
16. It is also well-settled constitutional and statute law that every individual has the right to the *equal protection of the law* and *equal treatment with respect to services and facilities* without discrimination (see e.g. sections 15(1) of the *Canadian Charter of Rights and Freedoms*; section 5 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6; and section 1 of the *Ontario Human Rights Code*, R.S.O. 1990, c. H. 19).
17. As shown by this background, Canada and Ontario have fundamental obligations to provide policing services and facilities to the Mushkegowuk First Nations in a manner that results in services and facilities that are customarily available to other communities and members of the public. Services and facilities that are customarily available to other communities and members of the public include those mandated by the *Ontario Police Services Act* and its regulations (such as O. Reg. 3/99, which specifies the requirements for a police service to be adequate and effective). However, as detailed below, Canada and Ontario are instead providing policing services and facilities in a manner that differentiates adversely with respect to the complainants and Mushkegowuk First Nations on the basis of ancestry, ethnic origin, and race.

Simultaneous Federal and Provincial Complaints and Jurisdiction

18. As noted above, both Canada and Ontario are respondents to these human rights complaints in light of their discriminatory actions with respect to the provision of police services and facilities to the complainants. In light of the combination of both federal and provincial responsibilities with respect to policing for Aboriginal

peoples and communities, the two human rights complaints against the two governments are described together in this one claim form, which is filed separately but simultaneously in the two respective federal and provincial human rights processes.

19. The federal human rights process has jurisdiction in light of the various constitutional documents and common law noted above. The *Constitution Act, 1867* is important, particularly in light of the powers of Parliament with respect to “Indians, and Lands reserved for Indians” as well as “[t]he Criminal Law” by virtue of sections 91(24) and 91(27). Sections 2, 3(1), and 5 of the *Canadian Human Rights Act* also prohibit discriminatory practices with respect to the provision of services and facilities that come within the legislative authority of the federal Parliament.
20. Similarly, the provincial human rights process also has jurisdiction in light of the various constitutional documents and common law noted above. The *Constitution Act, 1867* is again important, particularly in light of the provincial powers with respect to the “[t]he Administration of Justice in the Province”, which includes policing, by virtue of section 92(14). Sections 1 and 9 of the *Ontario Human Rights Code* also provide that every person has a right to equal treatment to services and facilities.
21. In light of their simultaneous complaints to both the federal and provincial processes, the complainants suggest that it may be useful to co-ordinate both processes as each respective complaint proceeds through each system. However, the complainants assert that such co-ordination should only occur to expedite the process of dealing with the complaints and achieve efficiencies. If these goals cannot be achieved, the complainants assert that each complaint should proceed alone on its merits.

Basis of the Complaint

22. The complainants and the Mushkegowuk First Nations have the right to receive police services and facilities that any member of the general public in Ontario also receives either directly or indirectly from the respondents. However, the reality shows that there is a very large difference between the police services and facilities that members of the Ontario general public receive compared to the Mushkegowuk First Nations. The respondents' practices, including their considerable underfunding of the Nishnawbe-Aski Police Service, that cause this adverse differentiation in the provision of police services and facilities are discriminatory, particularly since the Mushkegowuk First Nations are made up of Aboriginal people who generally live on reserve.
23. Perhaps the most horrific example of the results of this discrimination is the death of Ricardo Wesley. Mr. Wesley was an inmate at the time being held at the makeshift jail on the Kashechewan Reserve. This jail was located in an old renovated house; it had no fire alarms or fire suppression systems; and padlocks and chains were used to secure the inmates as the door locks were broken. The shockingly substandard nature of this jail had ultimately tragic consequences as, when a fire spread through the jail, Mr. Wesley was killed along with another inmate despite officer attempts to rescue them.
24. The Mushkegowuk First Nations are generally policed by the Nishnawbe-Aski Police Service ("NAPS"), which is funded 52% by Canada and 48% by Ontario pursuant to an agreement between the Nishnawbe-Aski Nation (of which the Mushkegowuk First Nations are members), Canada, and Ontario. Clause 2.1 of that agreement specifically provides that:
- ... It is intended that the police service in the Nishnawbe-Aski area will be appropriate to the culture and traditions of the people of the Nishnawbe-Aski area[,] responsive to the policing needs of the community, and **at least equivalent in level and standard of service to that provided in non-Aboriginal communities in Ontario** with similar characteristics. [emphasis added]

25. While the intent and goal of NAPS to provide culturally appropriate policing have been laudable, the serious lack of funding and support by the respondents has made this goal impossible. The result of the respondents' actions is that NAPS has only been able to provide very basic primary policing at best (and sometimes not even that), and the consequence is that the Mushkegowuk First Nations are receiving much lower quality policing than non-Aboriginal Ontarians.
26. Prior to filing these human rights complaints, the Mushkegowuk First Nations made numerous attempts to obtain the necessary funding and support from Canada and Ontario so that the Mushkegowuk First Nations could receive police services and facilities from the respondents in a non-discriminatory manner. However, despite these good faith attempts by the Mushkegowuk First Nations, they have not yielded any success to date, so the current intolerable policing situation continues for the Mushkegowuk First Nations.
27. The supporting material attached to this complaint outlines in more detail how the members of Mushkegowuk Council are receiving a substandard and lower quality police services and facilities than non-Aboriginal Ontarians receive. These issues include but are not limited to:
 - a. Frequent lack of 24 hour policing, 7 days a week;
 - b. Insufficient officers, staff, and other support as well as a lack of experienced and trained officers, staff, and other support that are able to be retained;
 - c. The inability to conduct "community policing", which non-Aboriginal Ontarians receive by virtue of O. Reg. 3/99, as well as the non-receipt of proper law enforcement in general, special responses, investigations and other requirements further to the Ontario *Police Services Act* and its regulations, including O. Reg. 3/99;

- d. Lack of proper police facilities (e.g. detachments, jails, housing, etc.);
 - e. The fact that NAPS replaces and is not supplemental to the Ontario Provincial Police (“O.P.P.”) in these communities (i.e. NAPS is the primary police force);
 - f. The fact that NAPS’s jurisdiction is usually limited to reserves only, yet the O.P.P. does not practically police the areas outside reserve;
 - g. The destructive legacies of colonialism and neglect (such as significantly higher rates of unemployment, poverty, substance abuse, and violent crime as well as low educational attainment and the impact of the rapid disappearance of a traditional way of life);
 - h. The different role the police play in such communities (e.g. more service-oriented and informal), particularly given the communities’ small nature, rapid change, and history (e.g. unlike elsewhere, a lack of resources is present to deal with issues involving mental health and domestic violence); and
 - i. The costs and impacts associated with the very great geographic area in northern Ontario with which NAPS is involved, including the fact that charter or other flights are often the only way in or out of several of these small communities.
28. Through their significant lack of funding and support (as well as other problems), the respondents have caused NAPS to be unable to provide policing services and facilities to the complainants that are of the same quality than the services and facilities that non-Aboriginal Ontarians receive. Canada and Ontario must provide police services and facilities in a non-discriminatory manner, and the respondents are ultimately responsible if the services and facilities are in fact being provided in a discriminatory manner. In addition, any remedies would need

to take into account the unique difficulties associated with policing a remote northern Aboriginal community.

29. The complaints further allege that no undue harm would result from remedying the discriminatory practices of Canada and Ontario, particularly given both Canada's and Ontario's significant role with respect to providing police services and facilities and their role with respect to creating the legacies of colonialism and neglect that are still present today (see e.g. *Report of the Ipperwash Inquiry: Policy Analysis* (Vol. 2) at Chapters 2-4 and the *Royal Commission on Aboriginal Peoples*).

Key Materials

30. The complainants intend to rely on the following materials in support of their complaint:
- a. Ontario, *Report of the Ipperwash Inquiry: Policy Analysis*, vol. 2 (Toronto: Queen's Printer, 2007) at Chapter 10 [First Nations Policing] [Tab 3];
 - b. Clairmont, Don, *Aboriginal Policing in Canada: An Overview of Developments in First Nations* (research paper prepared for the Ipperwash Inquiry and dated September 2006) [Tab 4];
 - c. Allan Pelletier & Associates, *A Matter of Injustice: An Independent Review and Analysis Nishnawbe-Aski Police Service Within Mushkegowuk Communities* (prepared for Mushkegowuk Council and dated February 23, 2007) [Tab 5]; and
 - d. Such other materials as counsel may advise.

Conclusion / Mediation

31. In short, the complainants are simply seeking that the members of Mushkegowuk Council receive the same quality of policing that non-Aboriginal Ontarians receive, and they seek an order that such relief, and including adequate funding, be granted against the respondents.
32. The complainants are willing to participate in mediation.

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KLIPPENSTEINS
Barristers & Solicitors
160 John St., Suite 300
Toronto ON M5V 2E5

Murray Klippenstein, LSUC No. 26950G
Basil Alexander, LSUC No. 50950H
Tel.: (416) 598-0288
Fax: (416) 598-9520

Solicitors for the Complainants

RESPONDENT ADDRESSES:

TO: HER MAJESTY THE QUEEN in right of CANADA
c/o Department of Justice Canada
284 Wellington Street
Ottawa ON K1A 0H8

AND TO: HER MAJESTY THE QUEEN in right of ONTARIO
c/o Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto ON M5G 2K1