Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2019 CHRT 21
Date: May 10, 2019
File No.: T2251/0618

Between:

Gilbert Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation)

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Public Safety Canada

Respondent

Ruling

Member: Gabriel Gaudreault

Table of Contents

I. Background

[1] This is the second decision rendered by the Canadian Human Rights Tribunal (Tribunal) in this case. On February 27, 2019, it dismissed a motion for a stay of proceedings filed by Public Safety Canada (the respondent) (see *Gilbert Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2019 CHRT 9). Further to this dismissal, the Tribunal is now in a position to render a decision on the motion at hand.

[2] On November 1, 2018, the Canadian Human Rights Commission (Commission) filed a motion with the Tribunal, under rule 3(1) of the *Rules of Procedure*, asking the Tribunal to order the respondent to disclose documents in its possession that are potentially relevant to a fact, an issue or a form of relief sought by the parties.

[3] On December 7, 2018, the respondent filed a response to the Commission's motion; the Commission did not file a reply to this response.

[4] Gilbert Dominique, on behalf of the members of the Pekuakamiulnuatsh First Nation (the complainant), did not file any submissions concerning this motion. The Tribunal will therefore focus solely on the submissions of the Commission and the respondent.

[5] The Commission seeks the disclosure of documents divided into three categories:

a. all documents, including emails, memos, notes, presentations, analyses, reports, or drafts of these documents in the respondent's possession concerning the First Nations Policing Program (FNPP), not limited to those pertaining to the sole community involved in this case;

b. all interview notes, reports, comments and emails related to the 2014 report of the Office of the Auditor General of Canada concerning the FNPP, including updates since 2014;

c. all documents produced under the Treasury Board's *Evaluation Policy, Results-Based Management and Accountability Framework* (RMAF) concerning the FNPP.

[6] The respondent objects to the disclosure under points (a) and (b). With respect to point (c), it has agreed to disclose the program evaluation reports, which are publicly available and accessible documents. The respondent states that if the Commission's

disclosure motion includes documents other than these reports, it will oppose the motion. This point is particularly problematic for the Tribunal, as will be explained in the paragraphs below.

[7] For the following reasons, the Tribunal dismisses the Commission's motion for disclosure and acknowledges the respondent's agreement to disclose certain documents described later on in this decision.

II. Issue

[8] The issue here is straightforward: should the Tribunal order the respondent to disclose the documents sought by the Commission because of their potential relevance to the case?

III. Analysis

A. Applicable Law

[9] The parties agree that the Tribunal has the authority to order a party to disclose documents which are potentially relevant to the case. They also agree on the principles applicable to disclosure. These principles were summarized by the Tribunal in the recent decision of *Malenfant v. Vidéotron s.e.n.c.*, 2017 CHRT 11, at paragraphs 25 to 29 and 36:

> [25] Each party has a right to a full hearing. In this regard, the CHRA provides as follows at subsection 50(1):
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> > 50(1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations. [Emphasis added.]
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> [26] This right includes the right to the disclosure of relevant evidence in the possession or care of the opposing party (*Guay v. Royal Canadian Mounted Police*, 2004 CHRT 34, para. 40). The Rules of Procedure of the Canadian

Human Right Tribunal (the Rules) provide as follows in Rule 6(1), and more specifically at paragraphs (d) and (e):

6(1) Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out:

. . .

(d) a list of all documents in the party's possession, for which no privilege is claimed, that relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

(e) a list of all documents in the party's possession, for which privilege is claimed, that relate to a fact, issue or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

. . .

[Emphasis added.]

[27] Regarding disclosure, the Tribunal has already ruled several times that the guiding principle is probable or possible relevance (*Bushey v. Sharma*, 2003 CHRT 5 and *Hughes v. Transport Canada*, 2012 CHRT 26. See in the alternative *Guay,* supra; *Day v. Department of National Defence and Hortie*, 2002 CanLII 61833; *Warman v. Bahr*, 2006 CHRT 18; *Seeley v. Canadian National Railway Company*, 2013 CHRT 18). The Tribunal notes that the parties have an obligation to disclose potentially relevant documents in their possession (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 42, para. 17).

[28] To show that the documents or information is relevant, the moving party must demonstrate that there is a rational connection between those documents or information and the issues in the case (*Warman*, supra, para. 6. See for example *Guay*, supra, para. 42; *Hughes*, supra, para. 28; *Seeley*, supra, para. 6). Relevance is determined on a case-by-case basis, having regard to the issues raised in each case (*Warman*, supra, para. 9. See also *Seeley*, supra, para. 6). The Tribunal notes that the threshold for arguable relevance is low and the tendency is now towards more, rather than less disclosure (*Warman*, supra, para. 6. See also *Rai v. Royal Canadian Mounted Police*, 2013 CHRT 36, para. 18). Of course, the disclosure must not be speculative or amount to a fishing expedition (*Guay*, supra, para. 43).

[29] The Tribunal notes that the production of documents stage is different from the stage of their admissibility in evidence at the hearing. Accordingly, relevance is a distinct concept. As Member Michel Doucet stated in *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 (hereafter *TEAM*), at para. 4:

> [4] . . . The production of documents is subject to the test of arguable relevance, not a particularly high bar to meet. There must be some relevance between the information or document sought and the issue in dispute. There can be no doubt that it is in the public interest to ensure that all relevant evidence is available in a proceeding such as this one. A party is entitled to get information or documents that are or could be arguably relevant to the proceedings. This does not mean that these documents or this information will be admitted in evidence or that significant weight will be afforded to them.
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> . . .
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> [36] Finally, I would remind the parties that the duty to disclose the documents concerns documents in their possession. Accordingly, the duty does not extend to creating documents for disclosure (*Gaucher*, supra, para. 17). . . .

[10] There are also limits to the disclosure of documents, as the Chairperson of the Tribunal, David L. Thomas, explained in *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28, at para. 8. For example, disclosure may be denied if the probative value of evidence would not outweigh its prejudicial effect on the proceedings. It may also be denied if the scope of the search and disclosure is particularly onerous and creates disproportionate costs for one of the parties to the litigation (or a third party, if applicable). Lastly, a motion for disclosure may be denied when the documents concern a side issue rather than the main issues in dispute or if such disclosure would risk adding substantial delay to the efficiency of the inquiry (*Nur v. Canadian National Railway Company*, 2019 CHRT19, at para. 15).

B. Submissions of the Parties and Analysis

[11] It is important to remember that Gilbert Dominique, acting on behalf of the members of the Pekuakamiulnuatsh First Nation, alleges in his complaint that the respondent subjected the First Nation to adverse differential treatment in the provision of services under paragraph 5(b) *CHRA*, and did so based on the prohibited grounds of discrimination on the basis of race and national or ethnic origin.

[12] More specifically, the alleged discrimination concerns the provision of police services in the community under the FNPP and the resulting tripartite agreements

between the federal government, the provincial government and the First Nation itself. The complaint includes allegations concerning the inadequacy of the funding provided, the problematic duration of these agreements and the subpar level of police services.

[13] The Commission seeks disclosure of the documents listed in paragraph 3 of this ruling, since it believes that they are potentially relevant to the case.

[14] The Commission also alleges that the facts of the complaint raise questions of systemic discrimination based on race or national or ethnic origin for the First Nation communities which participate in the FNPP. This would therefore justify having the Tribunal conduct a thorough review of the entire program and order remedies to rectify this systemic discrimination.

[15] The respondent is of the view that the Commission's motion is insufficiently detailed and that the Commission has not explained how the documents sought are relevant to the case. The respondent argues that it has disclosed all potentially relevant documents in its possession and that this request is too broad, targets irrelevant documents and constitutes a fishing expedition. It reiterates that there must be a rational connection between the documents sought and the case and maintains that the motion falls short of satisfying that burden.

[16] The respondent adds that the disclosure concerning the Pekuakamiulnuatsh community alone has already resulted in the disclosure of more than 220 documents. In its response, it states that close to 200 Indigenous communities receive services under the FNPP.

[17] Consequently, it submits that the disclosure sought by the Commission is overly broad and that such a quantity of documents, although regarded as irrelevant in its view, would not help either the parties or the Tribunal to resolve the complaint. It adds that the delays caused by such a disclosure would be disadvantageous to everyone.

(i) Documents referred to in point (a)

[18] The Commission alleges that the complaint raises questions of systemic discrimination and that the FNPP is a national program. Is this enough for Tribunal to order the respondent to disclose documents concerning the FNPP which are not limited solely to the community of the Pekuakamiulnuatsh First Nation? In point (a) of its motion, the Commission seeks the disclosure of all documents, including emails, memos, notes, presentations, analyses, reports, or drafts of these documents in the respondent's possession, concerning the FNPP but not limited to the sole community involved in this case.

[19] Systemic discrimination has most notably been defined as follows in *Public Service Alliance of Canada v. Canada (Treasury Board)*, T.D. 4/91, 1991-04-29, at page 9:

> The concept of systemic discrimination, on the other hand, emphasizes the most subtle forms of discrimination, as indicated by the judgement of Dickson, C.J. in *CN v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114, at 1138-9. It recognizes that long-standing social and cultural mores carry within them value assumptions that contribute to discrimination in ways that are substantially or entirely hidden and unconscious.

[20] Recently, the former Tribunal Vice-Chairperson, Susheel Gupta, addressed systemic discrimination in the decision in *Emmett v. Canada Revenue Agency*, 2018 CHRT 23. He wrote the following at paragraph 73:

> [73] Recently, in *Commission des droits de la personne et des droits de la jeunesse c. Gaz métropolitain inc.*, 2008 QCTDP 24 [*Gaz métro QCTDP*], aff'd 2011 QCCA 1201, the Human Rights Tribunal of Québec defined systemic discrimination as:
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> > [36] . . . the cumulative effects of disproportionate exclusion resulting from the combined impact of attitudes marked by often unconscious biases and stereotypes, and policies and practices generally adopted without taking into consideration the characteristics of the members of groups contemplated by the prohibition of discrimination

[21] The Tribunal reiterates that it is those documents which are potentially relevant to a fact, an issue, or a form of relief, which must be disclosed. Relevance must be assessed in light of the complaint and the statement of particulars (see *Lindor v. Public Works and*

Government Services Canada, 2012 CHRT 14; see also *Nur v. Canadian National Railway Company*, 2019 CHRT 5, at para. 16).

[22] Although the Tribunal is well aware that a complaint which raises questions of systemic discrimination may have a broader scope than the original complaint itself, it is nevertheless important to remain mindful of the correlation to be made between the allegations of systemic discrimination on the one hand and the disclosure of documents potentially relevant to the case on the other.

[23] It is not the Tribunal's view that, when a complaint raises questions of systemic discrimination, disclosure should necessarily be much broader and more wide-ranging in scope for that reason. Invoking the expression "systemic" does not give a party carte blanche regarding disclosure; the documents must nevertheless still be potentially relevant to the case.

[24] A complaint found to be substantiated, even though it is an individual claim which does not raise any questions of systemic discrimination in and of itself, can still, indirectly, have a systemic effect. This would include remedies that the Tribunal is authorized to order under subsection 53(2) *CHRA*, which, in certain cases, will indirectly have a systemic effect.

[25] In this regard, the Tribunal wrote the following in the decision in *Gaucher v. Canadian Armed Forces*, 2005 CHRT 1, at paras. 15 and 16:

> [15] . . . The provisions in section 53 that deal with relief do not distinguish between the private and systemic aspects of a complaint and it is a mistake to draw some rigid dichotomy between complaints under section 7 and section 10. The Act is remedial and calls for a more organic approach. As a general rule, the Tribunal has an obligation to follow the substance of the complaint, wherever it leads. The issue on remedy is simply whether the corrective action that the Commission is seeking arises naturally out of the allegations before the Tribunal. This is generally determined by the facts of the case rather than the section under which the complaint was laid.
>
> [16] The decision of the Federal Court of Appeal in *Canada (Attorney General) v. Robinson*, [1994] 3 F.C. (F.C.A) 228, at 248, would at least implicitly support the contention that the scope of the remedial power exercised by the Tribunal is determined by the provisions of section 53, as I

> have suggested, rather than the section under which the complaint is laid. It would follow that systemic remedies are available, if the complaint, the ensuing investigation and disclosure process before the Tribunal indicate that they are appropriate. . . .
>
> [Emphasis added.]

[26] As the Supreme Court of Canada pointed out in *Moore v. British Columbia (Education)*, [2012] SCC 61, at para. 64, a Tribunal is certainly entitled to consider systemic evidence in order to determine whether a party has suffered discrimination, but the remedy ordered must nevertheless flow from the claim. The Tribunal's role is to adjudicate the complaint before it, that is, the one filed by Gilbert Dominique on behalf of the members of the Pekuakamiulnuatsh First Nation, not to act as a Royal Commission.

[27] That said, the Tribunal understands the Commission's argument in its submissions, that the application of the FNPP in First Nations communities across Canada warrants an extensive review of the entire program as well as an order for remedies that would rectify systemic discrimination, if found.

[28] However, the fact that a program is applied at a pan-Canadian level, that a large group of individuals may benefit from such a program and that there is a possibility of systemic discrimination does not necessarily mean that the documents concerning all the communities that benefit from this program are relevant to the case. Indeed, the Tribunal's task is to determine whether Mr. Dominique and his community experienced discrimination in the application of the FNPP, and not whether each of the 200 communities experienced the same discrimination.

[29] Although the Tribunal takes no position on the merits of the complaint at this stage, it finds that there is no need to obtain access to the documents concerning all the other communities in order to determine whether or not there was discrimination in Mashteuiatsh. Moreover, if the Tribunal found that there was discrimination in this community, it could very well order remedies with systemic effects, including a review of the program itself and its amendment, as requested by the Commission.

[30] The Commission did not provide the Tribunal with an explanation as to why the documents, including the emails, memos, notes, presentations, analyses, reports, or drafts

of these documents concerning the FNPP but not limited to the community in Mashteuiatsh, are potentially relevant to the case, besides indicating that the complaint raises questions of systemic discrimination and that the FNPP is a nation-wide program.

[31] The Tribunal is also of the view that the complaint was specifically filed by Gilbert Dominique, on behalf of the members of the Pekuakamiulnuatsh First Nation. The complaint concerns this community, which is to date the only complainant involved in the case. The complainant will therefore bear the onus of demonstrating the existence of discrimination within its own community, based on the allegations set out in the complaint.

[32] It must specifically demonstrate:

1) that there is a prohibited ground of discrimination under the *CHRA*;

2) that it experienced an adverse impact under paragraph 5(b) *CHRA* and, more specifically, that it was subjected to adverse differential treatment in the provision of services; and, lastly,

3) that the prohibited ground of discrimination was a factor in the manifestation of the adverse impact, in other words, that there is a link between the ground and the adverse impact.

[33] As we are reminded by the Commission itself in its statement of particulars, a complainant is not required to rely on comparative evidence to establish the fact that adverse differential treatment occurred in the provision of services within the meaning of paragraph 5(b) *CHRA* (see its statement, at paragraph 22).

[34] As the Federal Court pointed out in its decision in *Canada (Attorney General) v. First Nations Child and Family Caring Society, [First Nations Child and Family Caring Society]* 2012 FC 445, at para. 290, the definition of discrimination does not include a comparator group.

[35] In certain cases, comparator groups may prove useful as means of proving the existence of discrimination. That said, it may sometimes be difficult, even impossible, to identify an appropriate comparator group, and this is why it is not an essential element to be proven (see *First Nations Child and Family Caring Society*, supra, at para. 327).

[36] In this case, the application of the FNPP in the community of the Pekuakamiulnuatsh First Nation is very specific, and the facts are focused on the reality of that community. The Tribunal agrees with the respondent's submissions concerning the fact that it will need to consider the application of paragraph 5(b) *CHRA* and the existence of discrimination based on the specific situation of the community in Mashteuiatsh.

[37] The Tribunal is also aware of the fact that each First Nation, each community, may have different realities and needs specific to each one. It also understands that the situation in Quebec, more specifically with regard to the *Police Act* and the notion of Level 1 service, is also specific to the province of Quebec.

[38] With that said, the Tribunal wonders whether it would find it useful to have documents concerning all the other 200 Indigenous communities that make use of the FNPP, knowing that it would be difficult (even impossible) and excessive to obtain information on all these communities. Moreover, obtaining a significant volume of documents without having them placed in the context of their affiliated communities, including, for example, their reality, their needs, provincial requirements concerning management of police services and specifics related to the type of police services offered and selected, raises several questions. Indeed, the Tribunal believes that such a disclosure would only serve to inundate it with documents, which would make its task considerably more burdensome, without adding any relevant information on the specific situation in Mashteuiatsh. In this context, it is important to remember that, as articulated in *Brickner*, supra, at para. 8, the Tribunal may limit the disclosure of documents if the probative value does not outweigh the prejudicial effects on the proceedings.

[39] We would add that if the Tribunal ordered the disclosure of such documents, and considering the volume of documents already disclosed by the respondent for the community of Mashteuiatsh alone, that is, 223 documents, the delays that such a disclosure would cause, including the time required to consult the documents, would undoubtedly be significant and lengthy. As mentioned previously, close to 200 communities benefit from the FNPP. There is therefore a significant risk that such a disclosure would derail the Tribunal's process and increase delays considerably. The Tribunal finds that that is not in keeping with the spirit of the *CHRA*, which requires that

complaints be dealt with as expeditiously as the requirements of natural justice and the rules of procedure allow.

[40] Even though at this stage the Tribunal is unable to assess the probative value of the documents sought, it is still concerned that the prejudicial effects outweigh the benefits related to the disclosure of the documents because of, among other reasons, the lengthy delays that such a disclosure would cause.

[41] The Tribunal also remains mindful that the complainant, the respondent, and the Commission are all entitled to an expeditious hearing of the complaint. Opening the door to this disclosure and including documents from all other Indigenous communities in Canada that make use of the FNPP would necessarily be contrary to this statutory principle.

(ii) Documents referred to in point (b)

[42] With respect to the interview notes, reports, comments, and emails related to the 2014 report by the Office of the Auditor General of Canada concerning the FNPP, including updates since 2014, the Commission is of the view that the respondent has acknowledged the relevance of the documents sought.

[43] In this regard, it asserts that the respondent disclosed a document entitled *Programme de services de police des premières nations – État de la situation*, dated April 1, 2016, which refers to the report by the Auditor General of Canada, and in so doing, recognized the potential relevance of the documents listed in its motion.

[44] According to the respondent, this document was disclosed because it specifically made reference to the funding for the FNPP and the community in Mashteuiatsh, and not because it referred to the report by the Auditor General of Canada. The respondent adds that the Auditor’s mandate differs from the Tribunal’s mandate.

[45] Furthermore, the respondent included the aforementioned report in its response. That said, are the interview notes, reports, comments, and emails related to the 2014

report by the Office of the Auditor General of Canada concerning the FNPP, including updates since 2014, potentially relevant to the case?

[46] The Commission has not persuaded the Tribunal that these documents are potentially relevant.

[47] The Tribunal shares the respondent's opinion that, just because a document contains a reference to another document, the latter does not automatically become relevant to the case or merit recognition as such. It would be premature to find such a correlation. Moreover, in this case, the respondent clearly challenges its relevance.

[48] When the Tribunal consulted the 2014 Spring Report of the Auditor General of Canada, Chapter 5 – *First Nations Policing Program – Public Safety Canada*, filed by the respondent, it noted that this report summarizes the results of a performance audit conducted by the Office of the Auditor General of Canada under the *Auditor General Act*, R.S.C., 1985, c. A-17 [*AGA*]; (see page 24 of the respondent's response).

[49] The audit objective (see page 29 of the respondent's response) [TRANSLATION] "was to determine whether the design and delivery of the First Nation Policing Program was consistent with the principles of the First Nations Policing Policy". Moreover, according to the same report, the Office of the Auditor General's responsibility was to conduct an independent review of the FNPP to provide objective information, advice and assurance to assist Parliament in its scrutiny of the government's management of resources and programs. This falls within the auditor's powers under the *AGA*, particularly sections 5 and following; the Auditor General is described as the auditor of the accounts of Canada (see section 5 *AGA*).

[50] It seems clear that the Auditor General's mandate has nothing to do with the mandate of the Tribunal, which under the *CHRA* must determine whether discrimination occurred and, if appropriate, order any remedies that are necessary under the circumstances. The audit and the report by the Auditor General may have illustrated shortcomings in the management of the FNPP, but the Auditor General's mandate is not to determine whether discrimination has occurred.

[51] Even though the FNPP is a national program and is subject to national assessments, the Tribunal finds that this does not necessarily, in and of itself, give rise to potential relevance. The Auditor General's Report may be able to assist the Tribunal by providing it with important information concerning the FNPP and its application. In this regard, it is important to note that the reports by the Auditor General of Canada are publicly accessible. This document can easily be added to a party's list of documents. With respect to the interview notes, comments, and emails related to the production of the 2014 report by the Office of the Auditor General of Canada concerning the aforementioned program, the Tribunal does not find that they are potentially relevant to the case.

[52] Indeed, since the Auditor's mandate and objectives differ substantially from the Tribunal's mandate and objectives, the interview notes, comments and emails related to the production of the report are necessarily focused and centred on this mandate and these objectives.

[53] The Commission added that the analysis of the program by the Auditor General and the respondent's responses to this analysis lie at the heart of the dispute. The Tribunal does not share this opinion. The objective of the analysis conducted by the Auditor General in 2014 was not to determine whether the FNPP was discriminatory. As mentioned earlier, the Auditor General's analysis in fact constituted a performance audit, which is far removed from this Tribunal's raison d'être.

[54] With that said, the aforementioned report is included in the Commission's list of documents in Appendix A (see Commission's statement of particulars, Appendix A, page 8, document CCDP0058). The Commission therefore is of the view that the report is potentially relevant to the case, which has not been contested to date. When the Tribunal consulted the report, it did in fact find that certain information could shed some light on certain aspects of the case. Without the Tribunal taking a position on the admissibility of such a report, it is nevertheless important to view it in its proper context, being that of a performance audit.

[55] Moreover, the audit concerns only 16 First Nations communities in Alberta, Ontario, and Manitoba. No communities in Quebec were selected, so the report does not in any

way address the situation of the community in Mashteuiatsh. It is also important to remember that Quebec has a specific statute concerning police services in its territory, which distinguishes it from other provinces. Lastly, the report itself raises several questions regarding the inconsistency of the delivery of police services under the FNPP. It is difficult for the Tribunal to take a position on the probative value of the documents at this stage of the proceedings because we are still at the disclosure stage.

[56] The Commission did not explain why the interview notes, reports, comments, and emails related to the 2014 report by the Office of the Auditor General of Canada concerning the FNPP, including updates since 2014, are potentially relevant to the case. Since the report itself appears to have certain limitations in terms of its scope and value, the other documents related to this report and its production are even less relevant to the case.

(iii) Documents referred to in point (c)

[57] With respect to the last point in the Commission's motion, namely, all documents produced under the Treasury Board's *Evaluation Policy Results-Based Management and Accountability Framework* concerning the FNPP, the Tribunal notes that the respondent has agreed to disclose the evaluation reports concerning the FNPP. However, the respondent objects to the disclosure of other documents, besides these reports, because in its view, the Commission did not demonstrate a rational connection between the documents and the case.

[58] The Tribunal cannot help but note the Commission's gaps regarding this specific request. In fact, the Commission's motion does not include submissions concerning the Treasury Board's *Evaluation Policy Results-Based Management and Accountability Framework*; consequently, the Tribunal is not in a position to understand what this policy entails and why it could be helpful to these proceedings, much less decide whether the documents related to this policy are potentially relevant to the case.

[59] In its submissions, at paragraph 20, the Commission mentions that the FNPP is a national program which is subject to national assessments; and that these analyses are

therefore relevant to the proceedings. Lastly, it asserts that it would be incomprehensible to exclude the application of the FNPP in other communities. Perhaps this is what the Commission is referring to in seeking to obtain all documents produced under the Treasury Board's *Evaluation Policy Results-Based Management and Accountability Framework* concerning the FNPP. Nevertheless, the Tribunal is no better positioned to determine whether the documents being sought are relevant to the case.

[60] The onus is on the moving party to demonstrate the merits of its request to the Tribunal by providing sufficiently detailed information. The Tribunal would point out that it is not capable of mind-reading and that it is not its place to guess the intentions of the parties. The motions filed with the Tribunal must be sufficiently clear and detailed so that the Tribunal can render a decision, which must be informed and substantiated.

[61] The Commission was not able to satisfy its evidentiary burden. Excepting the fact that the respondent has agreed to disclose certain documents related to this motion, a fact which the Tribunal has already noted, the Tribunal denies the remainder of the requests set out in the Commission's motion.

IV. Decision

[62] For these reasons, the Tribunal dismisses the Commission's motion, while also acknowledging that the respondent has agreed to disclose the evaluation reports concerning the FNPP related to the request set out in point (c).

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
May 10, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2251/0618

Style of Cause: Gilbert Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada

Ruling of the Tribunal Dated: May 10, 2019

Motion dealt with in writing without appearance of parties

Written representations by:

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