

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2020 CHRT 10

**Date:** April 27, 2020

**File Nos.:** T1990/7013 & T1991/7113

**Between:**

**Alice Taylor (on behalf of Kevin Taylor)**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Aboriginal Affairs and Northern Development Canada and Health Canada**

**Respondents**

**Ruling**

**Member:** Jennifer Khurana

## **I. Overview**

[1] The complainant, Alice Taylor, and her son Kevin are members of the St. Theresa Point First Nation in northern Manitoba. Mr. Taylor lives on reserve with his parents who are his primary caregivers. Kevin has cerebral palsy and requires support and services relating to his physical, intellectual and cognitive disabilities. In 2010, Ms. Taylor filed these complaints with the Canadian Human Rights Commission on Kevin's behalf, alleging that the respondents' approach to service delivery has failed to meet her son's needs. She further alleges that barriers her son has faced in accessing the support he needs are part of broader systemic problems with the delivery of services to First Nations adults with disabilities ordinarily resident on Manitoba reserves.

[2] The Commission referred this complaint to the Tribunal in January 2014. The Tribunal appointed a mediator to assist the parties in resolving the complaint. In September 2019 after more than 5 years, the Tribunal Chairperson withdrew the Tribunal's mediation support and assigned this inquiry to me for case management. As detailed below, since that time the parties have requested – and been granted – several extensions to deliver and file their Statements of Particulars (SOPs) and disclosure.

[3] This ruling determines the parties' joint request to indefinitely adjourn the proceedings. In their request, the parties advise that they have settled all of Ms. Taylor's personal and financial claims, but on condition that the Tribunal indefinitely adjourns the proceedings. The adjournment would also trigger the respondents' commitment to fund a research project (the "Research Project") that would assess, evaluate and make recommendations for improving services for First Nations adults with disabilities in the Island Lakes region of Manitoba.

## **II. Issue**

[4] Should the proceedings be adjourned indefinitely? If not, should the current deadlines for the filing of the respondents' SOPs and any replies be extended?

### **III. Decision**

[5] The parties' request to indefinitely adjourn this complaint is denied. The Tribunal is required by statute to conduct its proceedings in an expeditious and fair way and "indefinite adjournments" are exceptional. The Tribunal process is not a bargaining chip to be bartered in mediation. The parties have had more than six years to resolve these complaints which could have brought closure to the Taylor family and addressed the broader systemic and public interest allegations underlying the complaints.

[6] The respondents' deadline for the delivery of their SOPs, any replies, and next steps in this process are set out below.

### **IV. The parties' requests**

[7] On April 21, 2020, the Commission sent a letter on behalf of all of the parties, advising that they had reached a conditional agreement (the "Agreement") that would fully and finally resolve all of the Taylor family's personal financial claims and hopefully also lead "in time to a full resolution of all aspects". The Agreement does not resolve the systemic aspects of the complaint, which alleges discrimination in the provision of various health, home and community care and/or assisted living services to First Nations adults with disabilities.

[8] The parties request an indefinite adjournment of the proceedings to bring the Agreement into force. According to the parties, the purpose of the requested adjournment is to allow Canada to fund the Research Project, after which they will be able to discuss possible next steps. They hope that the Research Project will lead to "collaborative reforms" that will result in the resolution and possible withdrawal of systemic allegations of discrimination. They also seek an order that would allow Ms. Taylor to return to the Tribunal at some point in the future to ask that the adjournment be lifted, but no sooner than six months after the delivery of the final report from the Research Project which is projected to be delivered in December 2020.

[9] The parties have made the Agreement conditional on the Tribunal granting their request to indefinitely adjourn the complaint. If the Tribunal refuses to comply with the parties' condition, the Agreement shall be considered null and void. To spell this out more simply, unless the Tribunal does as the parties ask, the Taylor family will not receive the financial compensation agreed to by the parties as set out in the Minutes of Settlement. According to the terms of the Agreement, the respondents could still choose to continue to fund the Research Project even if the Tribunal refuses the adjournment request.

[10] Together with their request, the parties attach a copy of the Agreement, with financial terms redacted. The Agreement is signed by the parties, and has been approved by the Commission pursuant to s.48(1) of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the "Act"). The parties also ask that the Tribunal issue an order in the form of the draft they attached to their request.

[11] In sending a copy of the Agreement to the Tribunal, albeit redacted of any financial settlement amounts, the parties have elected to make elements of their negotiated terms public.

## **V. Reasons**

[12] The parties' request to adjourn the proceedings indefinitely is denied. I do not find that there are exceptional circumstances warranting an indefinite adjournment of this proceeding.

[13] Tribunal proceedings should be conducted as expeditiously as the requirements of natural justice allow (s. 48.9(1) of the *Act* and Rule 1(1)(c) of the Tribunal Rules of Procedure). It is only in the most exceptional cases that the hearing of a complaint should be suspended (*Bailie et al. v Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 at para. 22).

[14] The Tribunal is entitled to control its process and must guard against abuse and ensure that parties to its proceedings respect its rules and deadlines. See, for example, *Labelle v Rogers Communications Inc.*, 2012 CHRT 4 at para 83 ("*Labelle*") and *Johnston v Canadian Armed Forces*, 2007 CHRT 42 at para 31 ("*Johnston*").

[15] The parties submit that the adjournment is reasonable and appropriate in the circumstances as it is in the best interests of the parties, and the public interest for four reasons:

1. The requested adjournment will allow the Taylor family to resolve its financial claims and trigger the respondents' commitment to fund an important Research Project which may help understand how to address the rest of the complaint;
2. The Tribunal has repeatedly encouraged parties to litigation of this kind to collaborate and work together to resolve matters. Granting the adjournment would further the important goal of Reconciliation between First Nations peoples and the Crown;
3. Even if the Research Project and subsequent discussions do not resolve the systemic aspects of the complaints, the Agreement will have narrowed the scope of the proceedings by resolving the individual financial claims and by generating useful knowledge that could help inform the Tribunal's deliberations; and
4. The request is unusual but not unprecedented. In "at least two previous cases", the Tribunal has indefinitely adjourned analogous allegations of systemic discrimination in the provision of services to First Nations peoples to allow research studies to be conducted and to inform further discussions.

[16] I do not accept the parties' arguments.

[17] The parties are asking the Tribunal to put the proceedings on hold, indefinitely, ostensibly to allow the Taylor family to resolve its financial and personal claims and so that the respondents can fund an important Research Project.

[18] Yet it is the parties themselves who created this condition and made its fulfillment a requirement to resolve the individual claims and to trigger the respondents' commitment to the Research Project. To bring closure to this matter for Ms. Taylor, a settlement of the complaints, in whole or in part, could have been pursued, rather than tying payment of any financial compensation to a Tribunal decision on an adjournment. The parties have chosen to put the Taylor family's settlement of their individual claims on the line by making the bringing into force of the Agreement conditional on the Tribunal's acceptance of an adjournment they knew – or should have known - could be refused, particularly in light of the Tribunal's statutory mandate to conduct its proceedings in an expeditious way.

[19] I also do not accept that a Tribunal adjournment is required to pursue what is described as potentially valuable and important research work that could narrow the systemic issues in dispute, inform the Tribunal's deliberations or result in recommendations to improve the provision of health services to First Nations adults with disabilities. As the Agreement provides, the respondents have the option to fund this project irrespective of the Tribunal's determination on the adjournment request. Nothing the Tribunal decides prevents the respondents from honouring this commitment, in the spirit of the Reconciliation between First Nations peoples and the Crown referenced in their submissions.

[20] The parties have already expended considerable time and energy on this file, during which time such research could also have been initiated. Yet they now seek an indefinite adjournment of proceedings to "allow the Research project to be completed", thereby implying that it would be the Tribunal holding the respondents back from honouring this commitment or from settling with the Taylor family. That is simply not true and I find the parties' arguments disingenuous.

[21] The parties submit that the Tribunal has frequently encouraged parties to collaborate and work together to resolve matters, referring to rulings in the *First Nations Child and Family Caring Society* case. See, for example, 2016 CHRT 10 at paras 41-42; 2016 CHRT 16 at para12.

[22] I agree that the Tribunal encourages parties to work together if possible, at all stages of the hearing process, whether in case management, mediation, or following a finding of liability with respect to proposed remedies. In my view, however, encouraging parties to work together to resolve issues is not to be equated with what is being presented by the parties here as "collaboration", namely making the receipt of a family's financial settlement conditional on the adjournment of the very proceedings that are intended to provide redress for alleged victims of discrimination. If the parties are collectively committed to collaboration, they can continue to pursue their settlement efforts in parallel with their preparation for the hearing, without putting the whole proceeding on hold indefinitely.

[23] Finally, the parties argue that the request is not “unprecedented” and rely on two unreported decisions where the Tribunal granted an indefinite adjournment, on consent, following very similar requests tying research and settlement of individual claims to the granting of an indefinite adjournment. (These unreported consent orders were issued in *Mississaugas of the New Credit First Nation v Attorney General of Canada (representing Indigenous and Northern Affairs Canada)* (“*Mississaugas*”), Tribunal files T/1810/4012; and *Pruden v Health Canada and Aboriginal Affairs and Northern Development Canada* (“*Pruden*”); Tribunal Files 1992/7213 & T1993/7313). I am not bound by these Tribunal determinations, and in any event, they are consent orders. No written reasons were given for the Tribunal’s acceptance of the parties’ requests and conditions.

[24] The model suggested in these two files is not one that encourages me to accept the parties’ arguments about how such a solution is in the best interests of all parties, or indeed in the public interest, particularly given the Tribunal’s statutory mandate and the length of time that Ms. Taylor has waited for her complaint to proceed.

[25] In the *Mississaugas* case, which involve systemic allegations related to the First Nations special education system in Ontario, the Tribunal granted the adjournment in 2016. Four years later, the matter has not yet resumed and is still adjourned. In *Pruden*, the Tribunal granted the adjournment on consent on April 1, 2019. Those complaints involved allegations of discrimination in the provision of special education and health-related services to First Nations children in Manitoba and the promise of a research project to improve the special education and health-related services available to First Nations children in Manitoba. That matter is still ongoing and the lifting of the adjournment has yet to be requested, let alone granted.

[26] I empathise with Ms. Taylor and her family. They have spent 10 years pursuing litigation and have expended considerable energy and resources in bringing their complaints forward. The Tribunal’s process and the level of complexity of proceedings must be confusing and bewildering. Kevin Taylor was 28 years old when the complaints were filed, and is now 38 years old. The Tribunal has a duty to proceed in an expeditious manner and adjourning these proceedings indefinitely in these circumstances will not promote that objective.

[27] I acknowledge that the complainant agreed to the Agreement and its conditions. However it is not up to the parties to keep the hearing of this complaint on hold indefinitely because of how they negotiated the terms of a financial settlement. Again, if the respondents wish to settle with Ms. Taylor on the individual aspects of her claims, they are free to do so.

[28] I also acknowledge that the stated goal of the indefinite adjournment is to fund a Research Project that would ultimately lead to recommendations on how to improve services to First Nations adults with disabilities. In my view, however well-intentioned this goal may be, the approach adopted by the parties in this request is wrong-headed and contrary to the Tribunal's statutory mandate to institute an inquiry after a complaint has been referred to it by the Commission (s. 49 (1) of the *Act*).

[29] The parties continue to argue in this case that it is better for them to come to a settlement, and that litigation of a complex matter such as Ms. Taylors' would be lengthy, costly and difficult. Settling some or all elements of the complaint could make the process more efficient. I agree. It was open to them to settle some or part of this case without imposing a condition, but they have chosen not to do so. Further, as set out above, the Tribunal provided mediation services to the parties for five years. While the Tribunal bears responsibility for allowing that process to continue on for so long, the parties do as well. Delays are not free and not only impact the parties to a complaint who continue to wait for resolution, but also affect the Tribunal, taxpayers, and other litigants.

[30] I have set out what is expected of the parties going forward in my order below.

## **VI. Next steps**

[31] In July 2019, the parties agreed, at the mediator's request, to a proposed schedule for the delivery of disclosure and particulars that would have concluded in December 2019.

[32] The Chairperson assigned this file to me as the case manager in September 2019, following the Tribunal's withdrawal of its mediation services.



[33] At a case management conference call held on October 2, 2019, the parties asked me to lift any remaining deadlines to allow them time to focus on an upcoming meeting. They proposed fresh deadlines for disclosure and particulars that would conclude in February 2020. In support of their request for more time, they cited the federal election, the time required for a new government to provide instruction to counsel for the respondents, the systemic aspects of the complaints, and the availability of counsel. I granted this request.

[34] On November 6, 2019, the parties again wrote to the Tribunal, on consent, seeking a further extension. They referenced the respondents' "settlement mandate" with respect to the individual aspect of the complaints and an upcoming meeting amongst the parties. They argued that if a settlement could be reached on the individual aspects of the complaints, it could have a significant impact on the SOPs and could streamline proceedings. As the requested extension was reasonable and allowed for an additional month following the parties' meeting, I granted this extension. In my decision communicated by way of email on November 6, 2019, I indicated that "barring exceptional circumstances, no further extensions for the filing of SOPs and disclosure will be granted in view of the time that has already been allowed for mediation in this matter".

[35] On December 11, 2019, two days prior to the first deadline for SOPs and disclosure by the complainant and the Commission, the parties again wrote to the Tribunal, on consent, asking that the Tribunal suspend current filing deadlines due to recent developments in settlement talks. They indicated that they had reached an agreement in principle with respect to all claims for personal remedies, and that they were actively discussing a specific proposal for a potential resolution of systemic aspects of the complaint regarding the delivery of services generally available to First Nations adults with disabilities living on reserve in Manitoba. They were planning a meeting and proposed providing a further update to the Tribunal in January 2020.

[36] Given the timing of the request, namely two days before the filing deadlines, I convened a case management conference call. The parties were asked to provide an update on their recent efforts, and to identify dates for the anticipated settlement of the complaint. Following that call I granted a brief extension of the deadlines, again with a

view to reducing the scope of the complaints. The filing and disclosure schedule was to conclude at the end of March 2020.

[37] On January 14, 2020, the respondents wrote to the Tribunal and asked for more time to file their SOPs and disclosure. They indicated that they had previously requested, and been granted sixty days from the time the complainant and Commission's SOPs were received to file their own SOPs. According to the respondents, they "could not prepare a response in the current amount of time provided". The respondents proposed May 4, 2020, the current deadline for their SOPs, and May 19, 2020 for replies. I granted this request.

[38] By way of email dated January 31, 2020, the Commission provided an update on the status of settlement discussions on January 30, 2020. At that time, I recalled that while settlement discussions could continue in parallel, unless the parties fully and finally resolved the matter, the deadlines for SOPs and disclosure would stand.

[39] Both the Commission and the complainant complied with these deadlines and delivered their SOPs and disclosure as required.

[40] On April 9, 2020, counsel for Indigenous Services Canada requested the suspension of its deadline to file its SOP, or in the alternative, an extension. In support of its request, the respondent referenced signed Minutes of Settlement that had been submitted to the Commission. The respondent also referred to the efforts of Indigenous Services Canada to respond to the COVID-19 pandemic.

[41] On April 14, 2020, I denied this request. I indicated that in the absence of a notice from the Commission advising that Minutes had been approved in settlement of both complaints, the deadlines would remain. I also indicated that the Tribunal was not prepared to agree to indefinite postponements. I recalled that if the respondents were requesting an extension, they would need to provide the specific basis for the request, including a reasonable alternative date proposing a brief extension. I indicated that a general reference to the current health pandemic would not suffice. While flexibility may be warranted in some cases in light of the COVID-19 crisis, parties are expected to continue working towards deadlines to move files forward. I noted that this is particularly the case in

this proceeding, where the parties have already requested and been granted additional time, including significant time to arrive at a settlement, and where the matter has been ongoing for a decade.

[42] The complainant and the Commission have met their deadlines and delivered and filed their SOPs and disclosure.

[43] The parties now ask, yet again, that the Tribunal suspend remaining deadlines for the respondents' SOPs and for any replies, pending the Tribunal's ruling on the requested adjournment. They also ask the Tribunal to set a case management conference call to set "new and reasonable deadlines."

[44] The parties have had multiple years to contemplate their submissions, the complexities of this file, and indeed to resolve these complaints. I have indicated, both in case management calls and in writing that these complaints must now move forward. As the above chronology sets out, the parties have asked for and been granted multiple extensions.

[45] Since I took carriage of this file in September 2019 there have been five requests, including the respondent's latest request dated April 9, 2020, from one or all of the parties on consent to extend or suspend their deadlines.

[46] I am prepared to grant a brief extension to the respondents until the end of May 2020 given the challenges related to the current health crisis. Replies will be due three weeks from the receipt of the responses, as set out below.

[47] The request to hold a case management conference call for the purpose of setting deadlines is therefore denied. There have been two such calls in this file since September 2019, both of which have dealt with further extensions to deadlines.

[48] A case management conference call will be arranged following filing of the materials.

**VII. ORDER**

[49] The parties' joint request to indefinitely adjourn these proceedings is denied.

- a. By no later than **May 25, 2020**, the respondents are directed to file with the Tribunal and to deliver to the other parties their SOP(s), the documents they intend to rely on at the hearing and a list of their witnesses and willsayers.
- b. By no later than **June 15, 2020**, the complainant and the Commission must file their replies, if any.

[50] The parties are directed to participate in a case management conference call following receipt of the respondent's SOP and replies, if any. The Registrar will contact the parties to schedule this call and will send an agenda in advance of the call.

*Signed by*

Jennifer Khurana  
Tribunal Member

Ottawa, Ontario  
April 27, 2020

# Canadian Human Rights Tribunal

## Parties of Record

**Tribunal Files:** T1990/7013 & T1991/7113

**Style of Cause:** Alice Taylor (on behalf of Kevin Taylor) v. Aboriginal Affairs and Northern Development Canada and Health Canada

**Ruling of the Tribunal Dated:** April 27, 2020

**Request dealt with in writing without appearance of parties**

**Written representations by:**

Joëlle Pastora Sala, for the Complainant

Brian Smith, for the Canadian Human Rights Commission

Kevin Staska and Dhara Drew, for the Respondents