

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 24

Date: August 10, 2022

File No(s): T1992/7213 & T1993/7313

Between:

Harriet Pruden

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, Harriet Pruden (now Sumner-Pruden), and her family are members of the Pinaymootang First Nation. Ms. Sumner-Pruden alleges that the respondents Health Canada and Aboriginal Affairs and Northern Development Canada (collectively “the government”) failed to provide her son with the essential education and health services he requires as a First Nations child living on reserve. She further alleges that the difficulties her son has faced are part of broader systemic problems with the funding and delivery of essential health and education services for First Nations children with disabilities living on reserves in Manitoba.

[2] This ruling allows the complainant’s request to lift the indefinite adjournment the Tribunal granted in 2019. I am also allowing the parties’ joint request for additional time to file amended Statements of Particulars (SOPs). I have included some direction to the parties about how to approach case management if they do not fully resolve these complaints in the meantime.

II. History of the Complaints and the Parties’ Requests

[3] The Commission referred these complaints to the Tribunal in 2013. The parties participated in Tribunal-assisted mediations in 2014 and 2015. They did not settle the complaints, so they moved into case management in 2016. The parties filed SOPs in 2016 and 2017 and worked on document production.

[4] In parallel, the parties continued their settlement discussions and resolved the personal financial claims of the Sumner-Pruden family. The government also agreed to fund a research project focused on the implementation of Jordan’s Principle in Manitoba (the “Research Project”), which addressed the structure of health, education and social services provided to First Nations children in Manitoba.

[5] The parties agreed the systemic aspects of the complaints should not be disposed of until the Research Project was completed, and until the government had a chance to

respond to any resulting recommendations. On that basis, on February 25, 2019, the parties jointly requested an indefinite adjournment of proceedings. The parties also agreed that the complainant could only ask the Tribunal to end the adjournment 6 months after the delivery of the Final Report of the Research Project.

[6] The Tribunal granted the parties' request for an indeterminate adjournment on April 1, 2019.

[7] The parties delivered the Final Report on January 31, 2022. I held a case management conference call (CMCC) with the parties to address next steps.

[8] The parties are still working to resolve the complaints. However, as the 6-month period following the delivery of the Final Report ended on July 29, 2022, the complainant is requesting that the Tribunal lift the adjournment so these complaints can move forward to a hearing. The Commission and the respondents agree with the request.

[9] The parties have also requested an extended timeline to file amended SOPs. The complainant wants to file her amended SOP in early December, the Commission in early January and the respondents request 60 days to file their SOP, citing a lengthy internal approval process. The parties need to update their particulars and to narrow the issues in dispute. They also hope that their proposed timetable will allow them to pursue their settlement discussions while ensuring that the complaints still move forward efficiently.

III. Reasons

[10] The complainant's request to lift the adjournment is granted. Ms. Sumner-Pruden filed her complaints with the Commission in 2010, and the Commission referred them to the Tribunal 9 years ago. While the parties may continue their settlement discussions in parallel, this matter has been adjourned since 2019 and must proceed.

[11] I am also allowing the parties' joint proposal to file amended and updated SOPs in keeping with their proposed deadlines. There have been significant developments in the areas of health and family services provided to Indigenous children and the institutional and

legal landscape has changed considerably since the parties last filed their SOPs in 2016 and 2017.

[12] Beyond granting the parties more time to update their particulars, I have set out below what is expected of them going forward.

The parties must use this time to focus their cases and narrow the issues in dispute

[13] The issues underlying these complaints are challenging, systemic and impact the lives of Ms. Sumner-Pruden's son and other Indigenous children with disabilities and their families in Manitoba. I hope the parties' extensive and multi-year efforts to settle these complaints will prevent litigation in an area with complex and far-reaching policy and public interest implications.

[14] However, if the parties do not resolve all aspects of these complaints, their efforts should nonetheless narrow the issues in dispute. When the parties asked the Tribunal in June 2020 to maintain the indefinite adjournment, the Commission and the complainant told the Tribunal that at a minimum, the research study and the government's response will "*result in a substantial narrowing of the issues that would remain for any revived Tribunal inquiry*" [emphasis added] (Complainant and Commission June 19, 2020 joint response to the Tribunal's May 19, 2020 correspondence). The government agreed that the adjournment should continue to allow the parties to resolve their dispute, and that the Study will "narrow the scope of these complaints, thereby reducing the judicial resources required for the hearing process" (Respondents submissions dated July 7, 2020).

[15] The *Canadian Human Rights Act* requires the Tribunal to conduct proceedings as informally and expeditiously as the requirements of natural justice allow (s. 48.9(1)). In practice this is a shared responsibility, and the parties have their part to play. I am expecting all involved to contribute to the efficient hearing of these complaints if they proceed.

[16] The parties are therefore expected to make a concerted effort to ensure the scope of these complaints does not balloon into another decade of litigation and procedure. They must focus their cases and amended particulars, reduce the issues in dispute and continue to work collaboratively to create the conditions for an efficient and timely document

production and case management process. Failing to narrow the issues and to push ahead expeditiously with disclosure will potentially result in a lengthy case management process that will further entrench and contribute to the time already taken to move forward with these complaints. The parties' amended particulars should reflect a considered and deliberate effort on this front – for the benefit of the parties, but also to allow the Tribunal to do its job effectively.

[17] The parties will be required to report to the Tribunal on the efforts they have undertaken to move these files forward expeditiously if they do not settle the systemic aspects of the complaints in their entirety.

[18] The parties' deadlines for the delivery of their SOPs, disclosure, and any replies, are set out below.

[19] The parties spent considerable time prior to their adjournment request working through documentary disclosure and timetables for production. While the nature of these complaints may involve a large volume of documents to be produced, the parties will be expected to provide a detailed report and proposed calendar to the Tribunal at the first CMCC in April 2023, to include the following:

- Disclosure/production (what has already been disclosed, timeframe for remaining production);
- Proposed witness lists;
- Any unresolved issues or possible motions; and
- Timeframe for hearing

IV. ORDER

[20] The complainant's request to lift the adjournment is allowed. The complaints will proceed with case management in preparation for a hearing. Deadlines for the filing of amended SOPs are as follows:

- a. By no later than **December 9, 2022**, the complainant is directed to file with the Tribunal and to deliver to the other parties her Amended SOP;

- b. By no later than **January 13, 2023**, the Commission is directed to file with the Tribunal and to deliver to the other parties its Amended SOP;
- c. By no later than **March 10, 2023**, the respondents are directed to file with the Tribunal and to deliver to the other parties their Amended SOP;
- d. The complainant and the Commission must file their replies, if any, **by March 31, 2023.**

[21] 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, including what the parties will be required to report on and the information they must provide to the Tribunal in advance of the call.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
August 10, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1992/7213 &T1993/7313

Style of Cause: Harriet Pruden v. Health Canada and Indigenous and Northern Affairs Canada

Ruling of the Tribunal Dated: August 10, 2022

Representations by:

Allison Fenske and Joëlle Pastora Sala, for the Complainant

Anshumala Juyal and Christine Singh, for the Canadian Human Rights Commission

Kevin Staska, Sheila Read and Stephen Hodgson, for the Respondents