

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2023 CHRT 40  
**Date:** September 11, 2023  
**File No.:** HR-DP-2903-22

**Between:**

**The Estate of Edward Peters**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Peters First Nation**

**Respondent**

**Ruling**

**Member:** Athanasios Hadjis

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## **I. OVERVIEW**

[1] The Estate of Edward Peters (the “Estate”) is the Complainant in this case. Mr. Peters passed away in 2019, a few months after he had filed this complaint with the Canadian Human Rights Commission (the “Commission”).

[2] The Estate and the Commission have requested that the Canadian Human Rights Tribunal (the “Tribunal”) order the Respondent, Peters First Nation (PFN), to disclose certain documents.

[3] Mr. Peters was a PFN member. The issues as stated in the complaint are basically the following:

a) In the mid 1990s, Mr. Peters’ home located on PFN territory burned down. PFN refused to provide funding or other assistance to enable him to rebuild it. PFN also denied his requests that it build him a new house. He claimed that PFN provided these services to other community members from different family lines.

b) Mr. Peters was denied attendance and physically removed from band functions, including a meeting of the Chief and Band Council, which he alleged had ordered that he be harassed whenever on the reserve or at band functions.

c) He and other members of his family were mocked, harassed, and made to feel unwelcome.

[4] The Estate claims that Mr. Peters’ family status, disability, and age were factors in this treatment and therefore discriminatory under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the “Act”).

[5] The complaint contained several other alleged incidents, but the Estate confirmed that it is not seeking a remedy relating to them.

## **II. DECISION**

[6] I grant the requests in part, noting that PFN has in any event agreed to provide some of the requested documents.

### III. ISSUES

[7] The issues addressed in analyzing each requested document are as follows:

- Are the requested documents in PFN's possession?
- If so, do they relate to a fact or issue that is raised in the complaint or to an order that is being sought?
- If so, should they still be ordered disclosed considering other applicable disclosure principles?

### IV. ANALYSIS

#### A. Disclosure principles

[8] Under Rules 18 and following of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, (the "Rules of Procedure"), parties are required to disclose all the documents in their possession that relate to a fact or issue that is raised in the complaint or to an order sought by any of the parties.

[9] In *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28, at paras. 4-10, the Tribunal set out the following principles that have been developed around disclosure.

[10] The parties' duty to disclose is consistent with their right under s. 50(1) of the Act to have a full and ample opportunity to present their case. This requires, among other things, that all arguably relevant information in the possession or care of parties be disclosed to each party before the hearing of the matter. The disclosure of information allows each party to know the case it is up against and, therefore, adequately prepare for the hearing.

[11] The standard is not a particularly high threshold for the requesting party to meet. If there is a rational connection between a document and the facts, issues, or forms of relief identified by the parties in the matter, the information should be disclosed. However, the disclosure request must not be speculative or amount to a "fishing expedition." The documents requested must also be identified with reasonable particularity. The Tribunal may exercise its discretion to deny a motion for disclosure, so long as the requirements of natural justice and the Rules of Procedure are respected, to ensure the informal and expeditious conduct of the inquiry.

[12] The Tribunal may deny a disclosure request where the probative value of the evidence sought would not outweigh its prejudicial effect on the proceedings. Notably, the Tribunal is cautious when an order would subject a party to an onerous and far-reaching search for documents, especially if it would risk adding substantial delay to the efficiency of the inquiry or where the documents are merely related to a side issue rather than the main issues in dispute.

[13] Pre-hearing disclosure of arguably relevant information does not mean that it will be admitted in evidence at the hearing or that it will be afforded significant weight in the decision-making process.

[14] Moreover, given that a party's obligation to disclose is limited to documents that are "in the party's possession" under the Rules of Procedure, the Tribunal cannot order a party to generate or create new documents for disclosure.

[15] PFN's submissions in response to the motions included an affidavit signed by PFN Chief, Norma Webb, to which she attached copies of several of the requested documents.

[16] My analysis below begins with the documents that PFN does not possess and those that it does not object to disclose, followed by the requests that I grant and then those that I deny. Except where otherwise indicated, the Estate made all the requests.

[17] The Estate and the Commission take issue with some of PFN's responses as to what documents are available or in its possession. The parties' good faith is presumed during the disclosure process. Their assertions can be challenged and tested at the hearing through cross-examination and other means.

**B. Documents that PFN states it does not possess and those that it does not object to disclosing**

**(i) 1977 construction cost of Mr. Peters' home**

[18] PFN states that it has not been able to locate any documentation relating to the construction cost of Mr. Peters' house. It is therefore not in its possession.

**(ii) Complete versions of PFN's Documents 1, 2, and 3**

[19] The requested documents relate to housing renovations for persons other than Mr. Peters. PFN located additional documents regarding house renovations, which were attached to the affidavit.

**(iii) PFN's renovation expenses for Mr. Peters' home**

[20] PFN states that it was only able to locate and provide two documents (one dated June 27, 1980, regarding a loan taken out by Mr. Peters and a "Needs Identification Form" from 2016) but was unable to locate any documents relating to funds provided by the Government of Canada for Mr. Peter's home renovations, as requested. The two documents were attached to the affidavit.

**(iv) Fire chief's report**

[21] PFN states that it was unable to locate any fire chief's report, as described in the request. It is therefore not in its possession.

**(v) Victoria Peters' notes**

[22] PFN confirms that all of Victoria Peters' notes were already provided before she became incapacitated due to illness. Once she recovers, PFN's counsel will ask her to review her file materials once again.

**(vi) History of all PFN home builds and renovations**

[23] PFN states that it diligently searched the file materials in its possession regarding house renovations and reconstruction on the reserve beyond those already disclosed and that it located a few more. Chief Webb also asked Indigenous Services Canada (ISC) for any documents in its possession relating to this topic. All additional documents obtained to date through the search and from ISC were attached to Chief Webb's affidavit. PFN undertakes to disclose any additional documents that it uncovers or receives.

**(vii) Commission's requested documents in paragraph 9 of its motion**

[24] The Commission requested five documents in paragraph 9 of its motion for disclosure. With respect to items a) to d) of the Commission's list, PFN confirmed that it undertook further extensive reviews of its file materials and produced all additional documentation regarding renovations or reconstruction of PFN members' houses that was found. PFN has also requested that a person named Angie Lee, at the ISC, provide any similar documentation. As the Commission points out, PFN did not specify Ms. Lee's title and role at the ISC. A direction that PFN provide this information is included in my order below.

[25] Regarding item e) on the Commission's list, PFN states that no additional documentation was found.

**C. Disclosure requests that are granted**

**(i) PFN's voting list**

[26] In its submissions, the Estate notes that PFN said in its Statement of Particulars that it has only 77 members. The Estate claims that reviewing the voting list would make it easy to "distinguish voting pools by family," since members of Mr. Peters' family "are known not to vote" for PFN's Band Council. The Estate also refers to several judgments of the Federal Court involving Mr. Peters' daughter and the voters list. The Estate points out that under the *Indian Band Election Regulations*, C.R.C., c. 952, s. 4.2(1)(a), the names of electors are posted, and the lists are therefore public. The Estate submits that full disclosure of the list combined with other evidence will show divisions of family voting pools into those that are privileged and those that are disadvantaged.

[27] PFN maintains that who is entitled to vote in band elections has no bearing on the replacement of Mr. Peters' house or his attendance at membership meetings. These matters were never an election issue.

[28] At the core of the Estate's complaint is the allegation that Mr. Peters' family was treated differently than members of other families in relation to the funding of his home

reconstruction and his treatment at band meetings. The Estate purports to be able to prepare tables showing alignments between the distribution of band funding and how people voted along family lines. While the probative value of the voting list for this purpose may be limited, the question of how council support is distributed by family is arguably relevant to the Estate's allegations. Moreover, the lists are public according to the applicable regulations.

[29] This disclosure request is granted.

**(ii) Band meeting minutes**

[30] The Estate did not specify the scope of this request. It referred to passages from its and PFN's Statements of Particulars that mention band meeting minutes. Unfortunately, it seems that the pinpoints of these passages in the Estate's submissions' footnotes were mixed up or unclear, and PFN centred its response to this request on those errors, even though it is obvious which passages the Estate meant to refer to.

[31] Nonetheless, the request as framed by the Estate is too broad. What would clearly be arguably relevant to the complaint is the information as described in the Commission's reply submissions—any band meeting minutes that relate to Mr. Peters' request(s) for financial assistance for residential accommodations after his house burned down.

[32] The disclosure request as reframed by the Commission is granted.

**(iii) PFN's accounting ledgers**

[33] PFN had disclosed the 2014-15 ledgers to the Commission at the complaint investigation stage. The Estate claims that an analysis of those ledgers shows adverse differential treatment between Mr. Peters' family and others. The Estate is asking for other ledgers to further "cement" its allegations, which I understand means to provide additional circumstantial evidence in support of its claim.

[34] The Commission correctly points out that the Estate's request, as presented, is too broad. PFN also submitted that the breadth of the Estate's request was unclear. The



Commission requests that the ledgers for home builds and renovations be disclosed from January 1995 (the year when Mr. Peters' home was inspected) to date. This is a reasonable timeframe and scope.

[35] This disclosure request, as redefined by the Commission, is granted.

**(iv) Commission's request for any investigation or security documents (including reports) that reference Mr. Peters between the years of 2015-19**

[36] The Commission points out that PFN alleges Mr. Peters made a serious threat to PFN's Band Council before February 16, 2016, which led to PFN hiring a security firm to be on site when cheques were later distributed. The complaint also brings up security-related issues in its reference to the removal of Mr. Peters' wife by security staff at the October 2016 band meeting and the fact that he had to follow her out. The police were called in. The Commission therefore submits that any investigation or security documents relating to Mr. Peters between 2015 and 2019, when he died, are relevant and should be disclosed.

[37] PFN did not address this request in its response to the motions for disclosure.

[38] I am persuaded, nonetheless, that this information is relevant to issues raised in the complaint and in PFN's response to it. The disclosure request is granted.

**D. Disclosure requests that are denied**

**(i) Testimony of Swede Peters**

[39] This individual was mentioned in PFN's Statement of Particulars. The Estate contends that PFN should be compelled to call him as a witness.

[40] This request is not a disclosure matter. Parties who wish to ensure the presence of individuals to present evidence at the hearing may ask the Tribunal to issue a summons for their attendance, also known as a subpoena. The Tribunal's website provides instructions on how to request a subpoena.

**(ii) Complete version of PFN's Statement of Particulars Document 12**

[41] This document was disclosed with PFN's Statement of Particulars. It is the list that PFN members signed when they picked up their cheques, reflecting a settlement that PFN had reached with the Kinder Morgan company, apparently about the Trans Mountain pipeline expansion. The names, signatures, and identification cards of PFN members other than Mr. Peters' have been redacted. The Estate submits that PFN did this intentionally and that disclosing all the names will demonstrate adverse differential treatment of Mr. Peters.

[42] In contrast, the lists of people who attended the five band meetings to discuss the settlement before the cheques were issued were not redacted. The Estate claims that these lists were not redacted even though they are marked as confidential. This is actually a mischaracterization by the Estate. The first of these lists simply said that the information explained "here," meaning at the meeting, was to be kept confidential among band members—not that the lists are confidential.

[43] PFN explains that Document 12 was produced only to confirm the date of the incident when Mr. Peters was forcibly removed from PFN's band office, as alleged in the complaint. PFN has confidentiality concerns about disclosing the names of the other cheque recipients without their consent.

[44] I am persuaded by PFN's argument. The identity of the other PFN members who picked up their cheques is not relevant to the issues in the complaint. The Estate's Amended Statement of Particulars states that Mr. Peters was removed on the date shown on this document, and it confirms that. The other cheque recipients' names are not relevant.

**(iii) The Seabird documents**

[45] The Estate made requests for the disclosure of four sets of documents under this heading:

- Peters First Nation Seabird Island Reserve Specific Claim Settlement Agreement
- Seabird Settlement Band Council Resolutions

- Seabird Settlement Band List(s) and Voters List(s), Seabird Settlement Information Meeting Attendance Lists/Sign-in Sheets, and Seabird Settlement Ratification Vote Meeting Attendance Lists/Sign-in Sheets
- Seabird Settlement Schedule 3 Voting Guidelines

[46] The Estate explains that, in 2019, PFN signed an agreement with Canada in the settlement of a land claim involving the Seabird Island Reserve. Mr. Peters died shortly after it was signed. The Estate contends that full disclosure of the agreement and the other requested documents will prove or disprove Mr. Peters' entitlement under the settlement, which it claims is part of the "potential remedy" in this case.

[47] I am not persuaded by this argument. There is no mention whatsoever of the Seabird settlement in the complaint. The Estate's Amended Statement of Particulars only refers to the settlement at two spots. Paragraph 185 states that Mr. Peters or his heirs "received nothing" from the settlement agreement and that the "Band Council's families were not similarly affected." In the remedies section, one of the requested orders is for "lump-sum distributions totaling \$200,000 (plus interest)" from the land settlement. This remedial request does not link back to any allegation in the complaint.

[48] In its reply submissions on the motions for disclosure, the Commission contends that the Seabird settlement is an issue in this case because it is referred to in paragraph 185 of the Estate's Amended Statement of Particulars. I disagree. The settlement is not mentioned anywhere in the complaint, which was referred to the Tribunal for inquiry in November 2022, well over three years after the settlement. I note that the Commission's Summary of Complaint sheet was amended on July 21, 2022, to add disability and age as grounds of discrimination and to replace Mr. Peters' name with the Estate's. No other amendment was made.

[49] A mere reference to the Seabird settlement in one of the 214 paragraphs of the Amended Statement of Particulars does not constitute an authorized amendment to the complaint that the Commission referred to the Tribunal for inquiry. No request to amend or expand the scope of the complaint to include this matter was ever made.

[50] The Seabird settlement is clearly not relevant to the issues as set out in the complaint that the Commission referred to the Tribunal for inquiry. The request for these documents is therefore denied.

**(iv) Band Council resolutions proving quorum (as required from time to time)**

[51] Under this request, the Estate asks for assurances, in the form of a Band Council resolution, that the entire Council is “well apprised of the history of the above proceeding and in its continuance as currently found.”

[52] The Estate withdrew this request in its reply submissions and stated that it seeks witness subpoenas instead. This is not a matter for disclosure. The Estate is directed to the Tribunal’s website for instructions on the procedure for requesting subpoenas.

**V. ORDER**

[53] In its reply submissions, the Estate asked for additional orders unrelated to its and the Commission’s motions for disclosure. They are not properly at issue, and I will not address them in this ruling. The Estate can make separate requests for those orders, which the Commission and PFN will have the opportunity to respond to before the Tribunal rules on them.

[54] I grant the Estate’s and the Commission’s disclosure requests in part. I order PFN to disclose:

1. PFN’s voting list.
2. Any band meeting minutes that relate to Mr. Peters’ request(s) for financial assistance for residential accommodations after his house burned down.
3. Ledgers for home builds and renovations from January 1995 to date.
4. Angie Lee’s title and role at ISC and the categories of documents she was asked to look for.
5. Any investigation or security documents (including reports) that reference Mr. Peters between the years 2015 and 2019.

[55] The documents and information must be disclosed within 45 days after this order is communicated to PFN.

*Signed by*

Athanasios Hadjis  
Tribunal Member

Ottawa, Ontario  
September 11, 2023

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal File:** HR-DP-2903-22

**Style of Cause:** The Estate of Edward Peters v. Peters First Nation

**Ruling of the Tribunal Dated:** September 11, 2023

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

**Written representations by:**

Darryl G. Kipp, for the Complainant

Sophia Karantonis, for the Canadian Human Rights Commission

Stan H. Ashcroft, for the Respondent