

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 5
Date: January 29, 2024
File No.: T2459/1620

Between:

**Cathy Woodgate, Richard Perry, Dorothy Williams, Ann Tom, Maurice Joseph and
Emma Williams**

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

- and -

Attorney General of British Columbia

Interested party

Ruling

Member: Colleen Harrington

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I. Context

[1] The hearing into this complaint began on May 1, 2023 in Burns Lake, British Columbia. The hearing was in person for two weeks and has continued via Zoom videoconference for several weeks since then. The Tribunal has heard from over 30 witnesses during nearly 40 days of hearing so far. On May 31, 2023, I decided that the Complainants could reopen their case, after the RCMP began theirs, in order to call additional witnesses relating to one particular type of remedy they are seeking (the independent investigatory team) (2023 CHRT 21 (CanLII)). The Complainants have now called all of their evidence.

[2] On November 15, 2023, I granted interested person status to the Attorney General of British Columbia (AGBC) to respond to the independent investigatory team remedy sought by the Complainants. We are now at the stage where the RCMP is calling its final witnesses in relation to the remedies being sought by the Complainants, after which the AGBC will call a limited number of witnesses relating to the independent investigatory team remedy.

[3] On January 12, 2024, the RCMP submitted a Request for Summons form to the Tribunal. The form asks the Tribunal to issue a Summons for a person who the RCMP later identified as the current Director and General Counsel for the Canadian Judicial Council (CJC). The Request form indicates “the witness had or has personal or direct knowledge of the facts and issues in dispute” and asks the witness to bring the following documents to the hearing on January 25, 2024: “Canadian Judicial Council File No. 15-0516, including the original complaint and decision letter.” The RCMP also states in its Request form: “We will accept a business records affidavit under section 30 of the Canada Evidence Act now in lieu of appearing at the hearing and presenting the documents then.” In an email to the Tribunal accompanying the form, counsel for the RCMP states that they are requesting the summons because, “Based on the evidence the Complainants recently led and their email of 18 December 2023, we are reevaluating the evidence to lead for our case in response.”

[4] Given the late stage of the proceedings and because it was unclear to the Tribunal why the RCMP was asking to call a witness from the CJC, the Tribunal did not issue the

summons, but rather established deadlines for submissions from the RCMP and from the other parties in response to the request for the CJC summons.

[5] Specifically, the Tribunal asked the RCMP to advise why it wishes to call this particular witness, what it believes is contained in CJC File No.15-0516, how or why such evidence is arguably relevant to a fact, question of law, or remedy sought by a party to the proceeding, and in particular how this request relates to the Complainants' December 18, 2023 email and evidence they have recently led. The RCMP was also asked to indicate why it did not identify this witness or request disclosure of this file much earlier in the proceeding, and specifically prior to the commencement of the hearing.

[6] The Complainants and the Canadian Human Rights Commission (Commission) oppose the request for the CJC summons.

II. Positions of the Parties

A. The RCMP

[7] The RCMP provided further information as requested on January 17, 2024. The RCMP says the purpose of calling this witness is to enter the CJC's file relating to a complaint made by Ronnie Matthew West, Beverly Abraham, Ronnie Alec, Richard Perry, Cathy Woodgate and Ann Tom against Justice Wedge of the Supreme Court of British Columbia. Cathy Woodgate, Ann Tom and Richard Perry are all Complainants in this human rights proceeding. While Richard Perry testified at the hearing, Cathy Woodgate and Ann Tom passed away prior to the start of the hearing. Ronnie Matthew West and Beverly Abraham are witnesses who testified at the hearing in May 2023.

[8] Justice Wedge presided over and rendered a decision (2015 BCSC 1690 (CanLII)) in a defamation case between Laura Robinson, a witness in this human rights hearing, and A.B. The RCMP's investigation of A.B. is the subject of this human rights proceeding. He is not a party to the human rights complaint, but he was granted limited interested person status at an earlier stage in this proceeding. The RCMP says that much was said in evidence and in the judgment of this BC Supreme Court defamation case about the 2012-2014 RCMP

investigation that is the subject of this hearing, including the accusations made against A.B. It says that “many of the same accusations (and actors) that exist” in this human rights proceeding were made or were involved in the defamation trial.

[9] In its January 17, 2024 submissions, the RCMP says it has the CJC’s decision letter, which it included in its list of proposed exhibits prior to the start of the hearing (at R-13). However, it does not have the originating complaint to the CJC or any other documents from the CJC file. It says the CJC decision letter is “sparse on detail.”

[10] The RCMP says that, following the close of the Complainants’ case on December 19, 2023 “and their effective amendments to their pleadings on 18 December 2023 to state their claimed remedies include reinvestigation”, the RCMP evaluated what evidence to call for its case.

[11] The RCMP refers to s.50(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6 [CHRA], which says the Tribunal has the power to compel the attendance of witnesses and the production of documents, and says the Tribunal should do so here. It relies on *Dorais v Canadian Armed Forces*, 2021 CHRT 13 (CanLII) [*Dorais 2021*], in which the Tribunal stated that, when determining whether testimony is necessary, “the golden rule” is “there must be relevance, a connection between the evidence that a party is seeking through the testimony of a witness and a fact, a question of law or remedy relating to the complaint.”

[12] The RCMP suggests that the Tribunal may apply the 3-part test from *Dorais v Canadian Armed Forces*, 2023 CHRT 6 (CanLII) [*Dorais 2023*] to determine whether to issue the CJC summons, even though this is not an application to reopen its case, but rather “to lead evidence in the normal course.” This 3-part test, modified by the Tribunal in the present case when considering the Complainants’ application to reopen their case, consists of asking these questions: (i) Is the proposed evidence relevant? In other words, if presented, could the new evidence influence the result? (ii) Could the proposed evidence have been obtained before the hearing with the exercise of reasonable diligence? (iii) Do exceptional circumstances exist justifying the exercise of the Tribunal’s discretionary power to admit additional evidence? The RCMP says the Tribunal should also consider the residual question of whether there is prejudice to any party in issuing the summons.

[13] The RCMP argues that prior statements the Complainants may have made to other bodies about reinvestigation or the accusations made against A.B. are necessarily relevant, as they are rationally connected to their “effectively amended” pleadings. The RCMP says that, where the Complainants have effectively amended, or clarified, their pleadings, its evaluation of what evidence is relevant necessarily changes and it should have the opportunity to obtain, assess and lead relevant evidence via a summons. The RCMP states that the Tribunal’s goal of truth-seeking would be furthered by issuing the summons. It says that not permitting the RCMP to call the evidence it chooses for its case is necessarily prejudicial and refusing the summons would deny it the ability to make a full answer to the complaint against it.

B. The Complainants

[14] The Complainants disagree with the RCMP’s contention that they effectively amended their Statement of Particulars (SOP) on December 18, 2023 to ask for a new remedy of a reinvestigation. The Complainants say that reinvestigation of the abuse allegations has always been a desired outcome of this human rights process. They argue that this is evident from a plain reading of their June 2020 SOP, which includes the following paragraph under the heading ‘Remedies for the Complainant and Past Abuse Survivors’:

91. Further, pursuant to subsection 53(2)(b) of the CHRA the Complainants seek an Order for the provision of the investigatory services that they were denied because of the RCMP’s discriminatory practices. Such Order should specify that the investigatory services to be made available to the Complainants must extend to all individuals who attended the schools listed in Appendix A.

[15] The Complainants say that their December 18, 2023 email to the parties and Tribunal clarified that evidence has not been called in this hearing in relation to all of the schools listed in Appendix A of their SOP, but only in relation to Immaculata School and Prince George College.

[16] Regarding the summons request, the Complainants do not see the relevance of the CJC file to the remedy stage of this proceeding. They say there is no reason the RCMP could not have put their questions about the CJC complaint to the relevant witnesses who

testified in May of 2023. They provide a link to the original complaint letter to the CJC, which they say has been publicly available since January of 2016. The Complainants note that the complaint to the CJC did not address the remedies being sought from the Tribunal.

C. The Commission

[17] The Commission says the Tribunal should refuse the RCMP's request for a summons for several reasons. First, it says the RCMP waited too long to make this request. The Commission refers to *Nash v Canadian Armed Forces*, 2023 CHRT 22 (CanLII) [*Nash*], in which the Tribunal stated that a party cannot call a witness at the hearing unless a summary of the witness testimony was disclosed in accordance with the timelines under the Tribunal's *Rules of Procedure*, or the Tribunal grants leave to do so. In *Nash*, the Tribunal refused leave to grant a summons that was requested the day before the hearing was scheduled to start, saying the late filing of the request was grounds enough to dismiss (para 48) and calling the timing of the request "inherently problematic, especially coming from a party represented by counsel" (para 50).

[18] The Commission points out that the RCMP are making this request for a summons more than 7 months into an ongoing hearing. It says there is no reason it could not have made its request long ago, especially since it has known about the CJC complaint since before the hearing started, given that the RCMP itself disclosed the CJC decision letter. The Commission argues that, as in *Nash*, the inexplicable delay in making the request is grounds enough to dismiss the request for the CJC summons.

[19] The Commission argues that the Tribunal should reject the RCMP's suggestion that its request for the CJC file has somehow been triggered by an alleged amendment to the Complainants' requested remedies. The Commission agrees with the Complainants that they have been asking for a reinvestigation since they filed their SOP in 2020 and that nothing changed in that regard in December of 2023.

[20] The Commission also argues that granting the RCMP's request for a summons would almost certainly cause prejudice in the form of significant delay. It says that allowing the RCMP to "summons the witness, obtain the CJC file, pick through it, then file some or

all of its contents here under a business records affidavit ... would be unfair and contrary to the rules of evidence.” The Commission says that, if the RCMP plans to use potential prior inconsistent statements to undermine credibility, the witnesses in question would need to be recalled, which would cause significant prejudice in the form of further delay.

[21] The Commission further argues that the RCMP has not shown that the additional evidence sought from the CJC is of sufficient relevance to justify the prejudice that would flow from the lateness of this request. The Commission says the CJC file deals with a complaint of judicial misconduct in a defamation case involving parties other than the Complainants or their witnesses. Further, the RCMP has the CJC decision letter and, as the Complainants pointed out in their submissions, the complaint letter to the CJC has been publicly available for many years. The Commission says that the RCMP provides no reason for demanding production of the rest of the CJC file, other than to suggest that it may contain information the RCMP could attempt to use to impeach the credibility of the Complainants or their witnesses on the issues material to this case of discrimination under the CHRA. The Commission argues that this is essentially a fishing expedition that should not be sanctioned at this late stage of the hearing.

D. The RCMP’s Reply

[22] In reply, the RCMP says that the CJC file is arguably relevant because “it is reasonable to expect it will contain information and, potentially, assertions from the Complainants regarding the investigation at issue for this inquiry and what relief or outcome they want to obtain through available legal processes. The relief the Complainants seek is a central issue for this inquiry.”

[23] The RCMP asserts that the Complainants’ and Commission’s argument that it could have obtained the CJC file through other means “inverts the disclosure obligations”, arguing that the Complainants were responsible for providing any documents regarding the CJC file to the RCMP. It says the Complainants cannot use their failure to do so as grounds for the RCMP to not obtain and enter the file in evidence through a suitable witness.

[24] The RCMP argues that, in relying on *Nash*, the Commission misunderstands the situation here because in *Nash* it was the Complainant seeking a summons for a witness on the eve of the hearing, whereas here the RCMP is the Respondent. It says the evidence the respondent intends to call depends on the case the other parties plan to make and, because the Complainants' SOP filed in 2020 does not use the word "reinvestigation", nor do any of their will-say statements, this means they have effectively amended their pleadings by using this word in their December 18, 2023 email.

[25] The RCMP argues that, in relation to the request for a reinvestigation remedy, "what the Complainants may have said to the CJC regarding their intent or what outcome they seek, as recorded in the CJC file, is relevant. Obtaining and entering that file is the purpose of the summons."

[26] In response to the Commission's argument that granting the summons will lead to recalling some of the Complainants' witnesses, the RCMP says that, if they seek to recall any witnesses as a result of what is disclosed in the CJC file, such application can be dealt with on its merits.

[27] The RCMP also says that the Commission's assertion that this is a fishing expedition misconstrues this term because the RCMP knows the author, recipient and subject of the third-party documents it seeks.

[28] The RCMP did not acknowledge in its reply submissions the fact that it now has a copy of the complaint letter to the CJC, a link to which was included in both the Complainants' and Commission's submissions.

E. Additional Information from the Complainants

[29] Following receipt of the submissions of the parties, I asked the Complainants to provide further information to the Tribunal and parties. As the RCMP says it wants to know what the Complainants said to the CJC in their complaint, I asked the Complainants' counsel to advise whether the letter attached to the January 2016 media article they provided a link to in their submissions is the same as the complaint letter submitted by the Complainants

and witnesses to the CJC. I also asked whether any of the Complainants had provided any further information to the CJC in addition to the complaint letter.

[30] Complainants' counsel responded to say that she had spoken with all of the individuals who signed the letter to the CJC that was attached to the January 22, 2016 media article, except for those who are deceased and Richard Perry, who is grieving the loss of his sister. They confirmed that the letter attached to the media article is identical to the letter they submitted to the CJC in January of 2016. None of the Complainants or witnesses that Counsel spoke to were asked to provide any further information to the CJC. Counsel also points out that the only email address that was provided as contact information to the CJC was Cathy Woodgate's.

III. Decision

[31] I deny the RCMP's request to issue a summons for the CJC witness and the CJC file.

IV. Analysis

[32] Although the parties made various arguments in their submissions, all of which I have read and considered, given the stage of the proceedings and the need to rule quickly so that the hearing may proceed expeditiously, I have focused in this Ruling on the arguments I consider necessary and relevant to dispose of the issue (*Turner v. Canada (Attorney General)*, 2012 FCA 159 (CanLII) at para 40; *Constantinescu v. Correctional Service Canada*, 2020 CHRT 3 (CanLII) at para 54).

[33] All parties have been given considerable latitude during the course of this hearing to introduce documents and witnesses outside of the strict confines of the Tribunal's *Rules of Procedure*, in order to ensure that they have the opportunity to present the evidence that they feel is necessary to make their cases. This is a complex complaint and I have been as flexible as possible within the confines of procedural fairness. As such, applying the same factors that the Tribunal did in *Nash* would not be fair in the circumstances of this hearing. I

am not dismissing the request for the CJC summons on the basis of the timing of the request.

[34] Issuing a summons is not a purely administrative act (*Dorais 2021* at para 18). Section 50(3)(a) of the CHRA permits the Tribunal to “summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the member or panel considers necessary for the full hearing and consideration of the complaint.” This language is discretionary, leaving it to the Tribunal to determine if certain evidence is necessary for the full hearing and consideration of the complaint. If I do not conclude that this evidence is necessary, I can deny the request for the summons.

[35] However, in determining whether proposed evidence is necessary, the Tribunal must determine that there is relevance, “a connection between the evidence that a party is seeking through the testimony of a witness and a fact, a question of law or remedy relating to the complaint. The crucial element is this relevance or rational connection between the anticipated testimony and the complaint” (*Dorais 2021* at para 21).

[36] The following paragraph from *Dorais 2021* is also relevant to this application:

[22] It is also understood that testimony, like documents included in the disclosure, is not meant to be speculative: the hearing is not a fishing expedition where a party may call any number of witnesses or present testimony irrelevant to the dispute. Testimony should not be redundant and should not distract from the essence of the dispute (*Grant v. Manitoba Telecom Services Inc.*, 2010 CHRT 29 (CanLII) at para 9).

[37] The RCMP has filed a Request for a Summons for a witness to appear from the CJC and bring their file “No. 15-0516, including the original complaint and decision letter” or, in lieu of appearing at the hearing and presenting the documents, “a business records affidavit under section 30 of the Canada Evidence Act.” The RCMP wants to know what the Complainants or their witnesses “may have said to the CJC regarding their intent or what outcome they seek, as recorded in the CJC file.” The RCMP states in its submissions that it wishes to “obtain documents and information from the CJC and assess whether we will lead this evidence as part of the Respondent’s case.” It says that “obtaining and entering that file is the purpose of the summons.”

[38] The RCMP knew about the CJC complaint because it was in possession of the CJC's January 29, 2016 decision letter, written by Norman Sabourin, who was the Executive Director and Senior General Counsel at the time. It was the RCMP that disclosed the letter as part of its document disclosure obligations very early in the Tribunal's proceedings and the RCMP listed the decision letter as one of its proposed exhibits in this hearing, although it has not yet introduced it as an exhibit, even though Ronnie Matthew West, Beverly Abraham and Richard Perry all testified in the first two weeks of the hearing.

[39] The CJC's January 29, 2016 letter from Mr. Sabourin states: "I am in receipt of your recent correspondence in which you complain about the Honourable Catherine C. Wedge of the Supreme Court of British Columbia." It goes on to set out the CJC's mandate and says the early process of screening complaints is governed by the *CJC Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*. Under these *Review Procedures*, Mr. Sabourin says his duties as the ED include the initial review of complaints. Once he completes the review, he must decide whether or not the matter warrants consideration by the Council. Mr. Sabourin says "in my view, the issues you raise constitute an expression of disagreement with" Justice Wedge's legal decisions, which are an inherent part of a judge's duties. "A judge's legal conclusions and decisions are not issues of judicial conduct." He says that these should be raised before the courts, usually by way of an appeal. The CJC is not a court and has no authority or mandate to reverse or amend the judgment of a Court. Neither can the CJC correct information in a decision, reconsider evidence or determine the outcome of a matter. Mr. Sabourin concludes that none of the issues raised suggests any misconduct on the part of the judge, and therefore, "in keeping with my duties under section 4.1 of the *Review Procedures*, I find that your complaint does not warrant consideration by" the CJC.

[40] As part of their submissions in response to the RCMP's request for a summons, the Complainants' counsel provided a link to a media report from January 22, 2016 that included a copy of the complaint letter to the CJC. The letter to the CJC is dated January 7, 2016 and is signed by five Hereditary Chiefs, as well as Cathy Woodgate and Ann Tom. The five Hereditary Chiefs are Ronnie Matthew West, Beverly Abraham, Ronnie Alec, Richard Perry, and Morice Joseph. I note that Mr. Sabourin's letter excluded Morice Joseph, who is also a

Complainant in this proceeding. Mr. Joseph testified in person in May 2023 in Burns Lake, as did his fellow Complainant Richard Perry, as well as Ronnie Matthew West and Beverly Abraham, who are not Complainants, but were witnesses in this proceeding.

[41] The RCMP states that the information it wishes to obtain from the CJC file relates to what the Complainants told the CJC. The letter has now been disclosed to the RCMP, albeit in a somewhat unusual manner (through a link to a media article to which the letter is attached). However, the Complainants have confirmed that the letter attached to the media article is identical to the letter sent to the CJC in January of 2016, to which Mr. Sabourin responded on January 29, 2016. The Complainants and witnesses have confirmed that they did not provide the CJC with any further information beyond their letter. Mr. Sabourin's letter says it is his job as the ED to screen complaints and decide whether to refer them to the Council and he did not do so in this case.

[42] I have no reason to believe there is any further information in the CJC's file from the Complainants or their witnesses, aside from their January 7, 2016 complaint letter. While there might be documents the CJC considers privileged or confidential relating to its decision-making process, these certainly would not be relevant to this human rights hearing and do not fall under the type of information the RCMP is seeking from the CJC in any event. It wants to know what the Complainants told the CJC. This has been established. As such, there is no reason to issue a summons for the Executive Director and General Counsel of the CJC to appear before the Tribunal and bring the CJC's file related to the complaint filed by these Complainants and witnesses. I decline to issue a summons for the CJC witness and file because I do not consider it necessary for the full hearing and consideration of the complaint, as set out in section 50(3)(a) of the CHRA.

[43] The RCMP could have asked the Complainants well before the hearing started for the complaint that was filed with the CJC, or it could have raised this with the witnesses who testified at the hearing in May of 2023, and requested the letter then. Either of these options would likely have made the present application unnecessary. While I accept that the RCMP may not have known that Morice Joseph had been a signatory to the CJC complaint at the time he testified, it did know that Beverly Abraham, Ronnie Matthew West and Richard Perry were signatories to it and could have put the CJC decision letter to them, since this was a

document the RCMP had disclosed in the Tribunal's process and has listed on its proposed exhibits list as R-13. It did not do so.

[44] The RCMP acknowledges in its submissions that it "possibly" could have obtained the contents of the CJC file it is seeking in this application with a reasonable exercise of diligence. However, it maintains the position that the Complainants "effectively amended, or clarified" their pleadings in their December 18, 2023 email by saying they are seeking a reinvestigation, and so the RCMP's evaluation of what evidence is relevant has necessarily changed and it should have the opportunity to obtain, assess and lead relevant evidence via a summons.

[45] I am not convinced by the suggestion that the RCMP was unaware that the Complainants were seeking a reinvestigation prior to December 18, 2023. In his application for interested person status and his reply submissions in that application, A.B. specifically noted that a remedy being sought by the Complainants from the Tribunal was a reinvestigation of the allegations against him. The RCMP received and responded to A.B.'s submissions, which were filed in November of 2021, well before the start of the hearing into this matter in May of 2023.

[46] In addition, I note that, during the hearing, the issue of a reinvestigation was raised by the Complainant Morice Joseph in his testimony. Both the Complainants' counsel and the RCMP's counsel asked him about this as a remedy being sought by the Complainants. In cross-examination, the RCMP's counsel showed Mr. Joseph two different human rights complaints that he and the other Complainants made, and she clarified with him that one of the remedies they were seeking was for the government to reinvestigate A.B.

[47] Given these factors, I cannot accept the RCMP's position that it has only recently become aware that the Complainants are seeking, as a remedy from the Tribunal, a reinvestigation of their abuse allegations.

V. Conclusion

[48] I am denying the RCMP's request for a summons of the CJC witness and file. I do not agree that this decision is unfair to the RCMP, or that it is being denied the ability to

make a full answer and defense to the complaint, or that it will experience any prejudice by not receiving the summons. It is reasonable to conclude that the RCMP is now in possession of the information from the CJC file that it was seeking through its request, so there is no reason to issue the summons. If the RCMP had simply asked for a copy of the complaint letter from the Complainants much earlier in the process, everyone's time and resources could have been preserved.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
January 29, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2459/1620

Style of Cause: Woodgate et al. v. RCMP

Ruling of the Tribunal Dated: January 29, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Karen Bellehumeur, for the Complainants

Jonathan Bujeau, for the Canadian Human Rights Commission

Whitney Dunn, for the Respondent

No submissions were received from the AGBC.