Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2024 CHRT 18
Date: March 28, 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. Decision

[1] The RCMP has asked the Tribunal to admit into evidence an Affidavit from the Director and General Counsel of the Canadian Judicial Council (CJC), attached to which are two exhibits, both relating to CJC File 15-0516 (the "CJC Affidavit"). The first CJC Affidavit exhibit, only recently obtained by the RCMP, is a January 7, 2016 letter of complaint from some of the Complainants and witnesses in this proceeding about a Judge of the Supreme Court of British Columbia (the "CJC complaint letter").

[2] The second CJC Affidavit exhibit, a January 29, 2016 letter of reply from the CJC to these same Complainants and witnesses (the "CJC reply letter"), has been in the RCMP's possession for several years. It appeared on the RCMP's List of Documents that it disclosed to the other parties, as well as on its list of proposed exhibits in this inquiry, at R-13.

[3] For the reasons set out below, I decline the RCMP's request to admit the CJC Affidavit with the attached exhibits. However, I agree to admit exhibit R-13, the January 29, 2016 CJC reply letter, as evidence in this proceeding.

II. Background

[4] The present Ruling is related to another Ruling I recently issued in this matter (2024 CHRT 5 (CanLII)) in which I denied the RCMP's request to issue a summons for the CJC's Director and General Counsel, Jacqueline Corado, to appear at the hearing of this complaint along with the documents contained in CJC File 15-0516 (the "CJC Summons"). One could describe the present Ruling as essentially Part 2 to the CJC Summons Ruling, as the RCMP's present application relates to the same documents it was seeking to obtain and admit as evidence through its request for the CJC Summons.

[5] Through the CJC Summons application the RCMP was attempting to obtain the CJC complaint letter submitted by the Complainants and their witnesses, as it was already in possession of the CJC reply letter. Immediately after I denied the CJC Summons request, the RCMP demonstrated that it was able to obtain the complaint letter by requesting it from the CJC, thus highlighting the sentiment expressed in the last sentence of the CJC

Summons Ruling that, “If the RCMP had simply asked for a copy of the complaint letter … much earlier in the process, everyone’s time and resources could have been preserved” (2024 CHRT 5 (CanLII) at para 48).

[6] Upon receiving the CJC complaint letter, and before closing its case, the RCMP asked the Tribunal to admit these two CJC documents via a “business records affidavit” sworn by Ms. Corado, pursuant to section 30 of the *Canada Evidence Act*, RSC 1985, c C-5 [CEA]. As indicated above, these documents relate to a complaint filed with the CJC by some of the Complainants and their witnesses in this proceeding. Specifically, the CJC complaint letter was submitted by Cathy Woodgate, Ann Tom, Richard Perry, Ronnie Matthew West, Beverly Abraham and Ronnie Alec against Justice Wedge of the Supreme Court of British Columbia.[1]

[7] Cathy Woodgate, Ann Tom and Richard Perry are all Complainants in this human rights proceeding, although Cathy Woodgate and Ann Tom passed away prior to the start of the hearing. Richard Perry testified during the first two weeks of the hearing, as did Ronnie Matthew West and Beverly Abraham, who were witnesses called by the Complainants. The RCMP cross-examined Mr. Perry, Mr. West and Ms. Abraham but did not put the CJC reply letter (proposed exhibit R-13) to them during cross-examination, nor did it ask them for or about the CJC complaint letter.

[8] Justice Wedge, about whom the CJC complaint letter was made, presided over a trial involving a claim by Laura Robinson that she was defamed by someone referred to in this human rights proceeding as “A.B.” Justice Wedge dismissed Ms. Robinson’s claim against A.B. (*Robinson v [A.B.],* 2015 BCSC 1690 (CanLII)). A.B. was the subject of the RCMP’s investigations that are at issue in this human rights inquiry and he has been granted limited Interested Person status in this proceeding. Ms. Robinson was called as a witness by the Complainants in this human rights proceeding. When she was cross-examined by

[1] In the CJC Summons Ruling (2024 CHRT 5), I noted at paragraph 40 that, in addition to these 6 signatories, the letter to the CJC included in the media link provided by the Complainants included an additional signatory - “Morice Joseph”, a Complainant in this proceeding. However, the letter attached to the CJC Affidavit does not include Mr. Joseph’s name as a signatory. I note also that the spelling of his first name in the letter attached to the media article differs from how it is spelled in the style of cause and throughout these proceedings, which is “Maurice”.

the RCMP, Ms. Robinson was asked about her own complaint to the CJC against Justice Wedge, and both her complaint and the CJC's response were admitted as evidence.

III. The RCMP's Application to Admit the CJC Affidavit

[9] After the last of the RCMP's witnesses testified on January 31, 2024, it requested that the CJC Affidavit be entered as evidence. The RCMP argues that the CJC Affidavit is relevant and material to issues in this inquiry and is admissible under section 30 of the CEA.

[10] Section 30(1) of the CEA states: "Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record."

[11] The CJC Affidavit sworn by Ms. Corado on January 30, 2024 states that the CJC's mandate includes the consideration of complaints made against Superior Court judges. As part of its records, the CJC retains all complaints it receives and its responses to these complaints. Ms. Corado's affidavit states that, although they are available to the public online, she has provided through her Affidavit copies of the CJC complaint letter submitted by Ms. Woodgate and the others, and the CJC reply letter. The CJC reply letter indicates that the complaint does not warrant consideration by the CJC because it does not fall within its mandate.

[12] The RCMP argues that the documents attached to the CJC Affidavit offer context to the hearing by explaining the background of the case. It argues that prior statements made by the Complainants to other bodies are relevant to issues in this inquiry, particularly since the Tribunal has heard a great deal of evidence about the *Robinson v [A.B.]* litigation and complaints about the RCMP's investigations that are the subject of this hearing. It says that the CJC complaint was "another procedure the Complainants followed after the B.C. Supreme Court released its decision in Robinson v. [A.B.]".

[13] The RCMP notes that it mentioned the Complainants' complaint to the CJC in its amended Statement of Particulars ("SOP"). It says that, in addition to "providing context", "the letters to and from the CJC by the Complainants bear directly on the question of

impugning the criminal investigations that are the subject of this hearing through multiple legal and other processes in multiple forums, a matter which is raised in the Respondent's pleading and is expected to be raised in final submissions." It argues that it should be allowed to tender relevant evidence that may support later submissions relating to a potential abuse of process argument such as collateral attack or *res judicata* or a related doctrine.

IV. Commission's Position

[14] In reply to the RCMP's position on section 30 of the CEA, the Commission argues that the CJC letters would fall under the exceptions set out in subsection 30(10)(a)(i) and (ii) of the CEA, as they could be described as (i) "a record made in the course of an investigation or inquiry" or (ii) "a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding".

[15] However, the Commission's main argument is that the RCMP does not need to rely on the eligibility criteria in the CEA in order to ask to introduce these two letters as documentary evidence, because section 50(3)(c) of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6 [CHRA] permits the Tribunal to "receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit, whether or not that evidence or information is or would be admissible in a court of law". The Commission refers to the case of *Itty v Canada Border Services Agency*, 2020 CHRT 38 (CanLII) [*Itty*], in which the Tribunal stated that the various subsections of section 50 of the CHRA "work together to authorize the Tribunal to admit evidence unconstrained by the rules of admissibility which govern the admission of evidence in courts of law", subject to restrictions relating to privileged information (para 54).

[16] The Commission argues that *Itty,* while not identical, is analogous to the present situation. In *Itty* the complainant asked to admit two letters into evidence after both parties had closed their cases. The respondent objected to their admission. In deciding whether to admit the letters, the Tribunal determined that it had to answer three questions (at para 59): 1) Is the proposed evidence relevant to a fact, issue or remedy in the complaint? 2) If so,

will the admission of the proposed evidence cause undue prejudice to any party? 3) If so, can the prejudice be cured?

[17] The Commission submits that further evidence about complaints made to the CJC does not meet the first part of the *Itty* test. It argues that this is a tangential topic and not relevant for the Tribunal to answer the question before it, which is whether the RCMP discriminated against the Complainants in the provision of a service under the CHRA.

[18] The Commission also argues that admitting the evidence will cause prejudice to the Complainants that cannot be cured at this stage of the proceeding. It submits that, as the RCMP did not put its abuse of process arguments to the Complainant witnesses who were the signatories to the CJC complaint letter and who testified at the hearing, they were denied the opportunity to address the issue in redirect. The Commission argues that such prejudice cannot be cured without causing further delay, which is also prejudicial to the Complainants.

[19] The Commission points out that the RCMP knew about these documents and had the opportunity to put at least the CJC reply letter to the Complainant witnesses in cross-examination but did not do so. It says that recalling elderly, vulnerable witnesses at this stage of the proceeding after they have already gone through intense periods of testifying would be prejudicial to them.

[20] The Commission argues that the facts before the Tribunal do not pass the *Itty* test, and so the CJC Affidavit and attached exhibits should not be admitted.

V. Complainant's Position

[21] The Complainants adopt the Commission's submissions, and they argue that the RCMP has not established the relevance of the *Robinson v [A.B.]* civil proceeding to this human rights proceeding. They submit that, while the CJC complaint letter that the RCMP wishes to admit was written by some individuals who were witnesses in this hearing, the subject matter of the letter is their objection to the fact that decisions were made about them in a civil lawsuit when their voices were not heard. The subject of this human rights complaint is discrimination by the RCMP in the way it conducted investigations into the abuse of many more people than those who signed the CJC letter. The Complainants note that the civil trial

presided over by Justice Wedge had nothing to do with discrimination, and the CJC complaint letter did not address their human rights claim of discrimination by the RCMP.

[22] The Complainants argue that, if the RCMP wants to rely on the CJC complaint letter, it should have to put this to the witnesses to get their responses to it. Doing so at this stage would not be fair to the Complainants and would risk further delay, while having no relevance to the issues at hand. They say that requiring these witnesses to take the stand and testify again would be harmful, as the process has been very difficult for them.

VI. RCMP's Reply

[23] In response to the positions of the Commission and Complainants, the RCMP reiterates its position that, because both the Complainants and the RCMP have led evidence about the prior litigation between Ms. Robinson and A.B., and other complaints made about the RCMP's investigations, these CJC documents are also relevant.

[24] The RCMP says it is just exercising its right to respond to the case it has to meet, as guaranteed by section 50(1) of the CHRA, which requires the Tribunal to give parties a full and ample opportunity to present their cases. This assists the Tribunal with its truth-seeking function. The RCMP says it listened to the evidence about the prior litigation and complaints and has been considering its position on that issue. It says that, as the CJC Affidavit and the exhibits attached thereto are relevant to potential arguments it may want to make in its final argument, the RCMP wants this additional evidence admitted.

[25] When asked why it was seeking to admit the CJC documentary evidence at this stage of the proceeding and how this was fair to the Complainants, given that Mr. Perry, Mr. West and Ms. Abraham had all testified early in the hearing, the RCMP stated that there is no legal requirement to tender evidence in any particular order.

[26] The RCMP argues that the question for the Tribunal in this application is whether the evidence is admissible via a business records affidavit, not whether the evidence could be admissible some other way or through some other witness. It submits that evidence can be admissible via multiple different ways and through multiple witnesses.

[27] The RCMP says it is not asking to put the documents to any witnesses, it is asking to enter them as evidence, referring to the case of *R v Smith*, 2011 ABCA 136 (CanLII) [*R v Smith*] at paragraph 46, which states: "…Records admitted under s.30 of the CEA are *prima facie* evidence of their contents for all purposes, criminal as well as civil, and may, depending on the circumstances, satisfy the requirement for proof beyond a reasonable doubt."

[28] The RCMP further argues that the CJC Affidavit does not offend the rule in *Browne v Dunn*, 1893 CanLII 65 (FOREP) as it is not attempting to contradict or impeach the evidence of a Complainant witness.

[29] The RCMP disagrees with the Commission's position that section 30(10) of the CEA applies to the CJC Affidavit because the CJC did not accept the complaint and declined to act. The RCMP further argues that, even if section 30 of the CEA does not apply to Tribunal proceedings, it should inform the Tribunal's decision making and how the Tribunal approaches evidence, as many provisions in the CEA are designed to increase efficiency and convenience in the legal process, which is entirely consistent with the CHRA and the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 [Rules of Procedure].

VII. Analysis

[30] I agree with the Commission that the RCMP need not have relied on section 30 of the CEA to introduce these documents through a business records affidavit. Section 30 of the CEA "in effect … creates a statutory exception to the rule against the admission of hearsay evidence" (*R v Smith* at para 15). In *R v Mackie*, 2020 ONCJ 360 (CanLII), the Ontario Court of Justice stated that section 30 of the CEA "is not intended to replace common law principles of admissibility, but, instead, offers a practical short cut to unnecessary *viva voce* evidence" (para 67). The Court in *R v Mackie* noted that the "rationale supporting a 'business records' hearsay exception is grounded in both necessity and practicality. Finding an author of a particular business record in a large governmental

setting and securing their attendance in court to verify the record often does not add probative evidence beyond the information apparent on the record itself" (para 56).

[31] The RCMP submits that, if documents were not admissible by way of a business records affidavit under section 30 of the CEA, the authors of all such documents would be required to testify just to authenticate the documents. This assertion is not supported by the CHRA or the Rules of Procedure, nor by the Tribunal's case law, and it has not been the case in the present hearing. The Tribunal has underscored in this proceeding the well-accepted point that it is not bound by the formal rules of evidence, including traditional rules regarding the admissibility of hearsay evidence. Section 50(3)(c) of the CHRA gives the Tribunal very broad discretion to admit evidence, through an affidavit or otherwise, as it sees fit, even if such evidence would not be admissible in a court proceeding.

[32] Section 30 of the CEA contains a non-derogation clause stating that its provisions are meant to add to, not take away from, "(a)…any other Act of Parliament respecting the admissibility in evidence of any record or the proof of any matter; or (b) any existing rule of law under which any record is admissible in evidence or any matter may be proved" (s.30(11)). This means that section 30 does not detract from or take away any of the power given to the Tribunal by section 50(3)(c) of the CHRA.

[33] Both section 30 of the CEA and section 50(3) of the CHRA share the common goal of ensuring flexibility and efficiency in legal proceedings. While section 30 may simplify how business records are admitted, it does not displace the Tribunal's usual considerations with regard to admissibility of evidence.

[34] The Tribunal must exercise its discretion to admit evidence in a manner that is consistent with the scheme of the CHRA and the principles of natural justice while balancing the rights of all parties to a full and fair hearing (*Clegg v Air Canada*, 2019 CHRT 4 (CanLII) [*Clegg*] para 68; ss. 48.9(1) and 50(1) CHRA). As the Tribunal stated in *Clegg*, the "basic rule of admissibility is that all evidence must be relevant to a material issue in the case" (para 70). When considering whether proposed evidence is admissible, "the Tribunal will weigh the evidence's relevance, consider issues of procedural fairness, and may factor in restrictions from the law of evidence more generally or any other prejudice that may militate

against the admissibility of the evidence under the regime established by the CHRA" (*Clegg* para 72).

[35] I do not need to decide whether the documents attached to the CJC Affidavit are truly business records under section 30 of the CEA, as raised by the Commission's argument pursuant to s.30(10) of the CEA. Given the flexibility provided to me by the CHRA to admit evidence through an affidavit or otherwise, I must still consider whether the CJC documents introduced by the RCMP are relevant to a fact or issue in this proceeding and decide whether to exercise my discretion to admit them at this stage of the hearing.

[36] As mentioned above, the Commission has referred to the case of *Itty, supra* which dealt with a similar issue of a party introducing documentary evidence that could have been introduced through a witness who had already testified earlier in the proceeding. In that case, both parties had already closed their cases when the complainant asked to admit two letters, whereas here the RCMP asked to admit these documents just prior to closing its case.

[37] The test for admissibility of evidence applied by the Tribunal in *Itty* - is it relevant to a fact, issue or remedy in the case; would admitting it cause prejudice to a party; and, if so, can the prejudice be cured - is consistent with the approach taken by the Tribunal generally when considering requests to admit evidence.

[38] In my view, the test in *Itty* is consistent with the scheme of the *Act*, and the principles of natural justice, and balances the rights of all parties to a full and fair hearing. I see no inconsistency in applying the same test to the documents attached to the CJC Affidavit.

(i) Relevance

[39] As noted above, the basic rule of admissibility is that all evidence must be relevant to a material issue in the case. In the present case, the RCMP wants to admit the two CJC letters in order to possibly rely on them during its closing submissions, in support of an abuse of process type of argument. The RCMP has not explained what that argument would entail, either in its SOP or in its submissions in the present application.

[40] A review of the Respondent's amended SOP shows that it refers to the CJC reply letter once in the "Facts" section when discussing what happened after the RCMP investigations occurred, and once in a section called "Prima facie case", detailing how the RCMP's investigations were thorough and impartial. However, there is no mention in the SOP about the RCMP seeking any sort of remedy related to an abuse of process by the Complainants or making any other related argument. This potential closing argument was first mentioned in relation to the present application. This was not even given as a reason for seeking the CJC Summons.

[41] The RCMP's position when requesting the CJC Summons was that the documents were relevant to its case because the Complainants had recently amended their pleadings to state for the first time that they were seeking a reinvestigation of their abuse allegations as a remedy in this proceeding. The RCMP said this led it to reevaluate the evidence it may wish to call at the hearing. I rejected the RCMP's assertion that it was unaware that the Complainants were seeking a reinvestigation and that they had amended their pleadings in this way, and I denied the summons request.

[42] Now the RCMP has changed its position on why these documents should be admitted as evidence, saying they are relevant to an argument it might make in closing submissions relating to an abuse of process. I cannot conclude that such a potential argument raised for the first time at the end of its case is a "material issue in the case".

[43] The RCMP also says the CJC letters provide further context to the complaint. It says that both the Complainants and Respondent have led considerable evidence regarding the prior litigation and complaints made about the RCMP's investigations, which shows that both parties view these matters as relevant to the factual matrix of this inquiry.

[44] While they may add a limited amount of further context to what happened after the RCMP investigation occurred, and even though some evidence was admitted relating to Ms. Robinson's CJC complaint, it is difficult to see how this is a material issue in this discrimination case.

[45] I would conclude that the CJC letters are of only very marginal relevance to a fact that the RCMP may wish to prove in the hearing, being that the Complainants engaged in

other complaint processes prior to filing their human rights complaint. Even then, in the section of its SOP addressing these facts, the RCMP refers only to the CJC reply letter. The RCMP did not have the CJC complaint letter at the time it drafted its SOP and obviously did not consider the document important enough to its case to obtain it at any time prior to the end of the hearing. The fact that the RCMP wishes to prove – that some of the Complainants and some witnesses in this matter complained about a Judge's decision in a defamation case in which they were not involved - can be established by the CJC reply letter alone.

(ii) Prejudice to Any Party

[46] The RCMP has been in possession of the CJC reply letter for several years, had disclosed it to the other parties, referred to it in its SOP, and listed it as a proposed exhibit prior to the start of the hearing, as required by the Tribunal's Rules of Procedure. These Rules are meant to ensure procedural fairness for all parties and are consistent with section 48.9(1) of the CHRA, which requires that proceedings before the Tribunal are to be conducted "as informally and expeditiously as the requirements of natural justice and the rules of procedure allow". The Rules of Procedure are to be applied so as to secure the "informal, expeditious and fair determination of every inquiry on its merits" (Rule 5).

[47] While the RCMP complied with the Rules of Procedure with regard to the CJC reply letter, it did not do so with regard to the CJC complaint letter. It apparently did not request a copy of the CJC complaint letter from the Complainants or from the CJC during the disclosure stage of the Tribunal's process despite being in possession of the CJC reply letter. It only requested and obtained the document near the end of the hearing, well after the Complainants and their witnesses had testified.

[48] When it was unsuccessful in having these CJC documents entered as evidence through Ms. Corado, which the RCMP stated was the purpose of summoning her as a witness in the hearing, the RCMP changed its approach and asked to admit them under section 30 of the CEA through a business records affidavit sworn by Ms. Corado instead.

[49] The RCMP argues that admitting the complaint to, and reply from, the CJC through a business records affidavit would not cause any delay or prejudice to any party, since the

Complainants have been in possession of these documents since 2016 and the CJC's reply letter was already produced by the RCMP as part of its documentary disclosure in this proceeding.

[50] I do not consider this to be a persuasive argument. Just because the Complainants were aware of the documents does not mean they necessarily knew for what purpose the Respondent might wish to rely on them in this case, particularly given that the RCMP listed only the CJC reply letter as a proposed exhibit and then did not introduce it when cross-examining the witnesses to whom the letter was addressed. Asking to introduce these documents at this stage and in this way is unfair to the Complainants, particularly when the RCMP is raising the possibility of making an abuse of process argument for the first time at this late stage. As the Commission points out, the RCMP did not put its abuse of process argument to the Complainants or their witnesses who were the signatories to the CJC complaint letter and who testified at the hearing. As such, they were denied the opportunity to address the issue in redirect.

[51] In *Itty*, the Complainant was asking to admit two letters after all parties had closed their cases. The Tribunal determined that, if it concluded that the two letters were or were likely to be relevant to an issue in the inquiry, it would admit them so long as doing so did not unduly prejudice the Respondent "according to the rules of procedural fairness and fundamental justice developed in administrative law" (para 74).

[52] In *Itty*, the letters had been disclosed to the complainant by the respondent before the testimony of the respondent's witness who could speak to the letters. The complainant did not ask the witness about the letters in cross-examination even though they were relevant to the issue she testified about, which was a material issue in the case. The Tribunal found that, even though the two letters were the respondent's documents, the respondent had no obligation to ask their witness about them in direct examination or to enter them into evidence. The Tribunal determined that, if the complainant believed the documents were relevant, he should have introduced them when he cross-examined the respondent's witness.

[53] The Tribunal in *Itty* referred to *First Nations Child and Family Caring Society of Canada, et al. v Attorney General of Canada (for Minister of Indian Affairs and Northern Development Canada),* 2014 CHRT 2 (CanLII) in which the Tribunal recognized that prejudice could arise if a party sought to rely on "evidence during its final argument that was not introduced according to" the relaxed application of the Rules of Procedure and, because of that, the Tribunal might take "appropriate curative measures" in the interests of safeguarding procedural fairness (at para 58.d). Those curative measures included permitting the recall or calling of witnesses, bringing additional documentary evidence, and adjourning the hearing, thereby giving the party prejudiced the opportunity to respond.

[54] The Tribunal in *Itty* took issue with the fact that the respondent did not know the case it had to meet with respect to the two letters the complainant was asking to introduce late in the proceeding. The Tribunal concluded that it would be contrary to natural justice and procedural fairness if the letters were introduced into evidence at such a late stage and if submissions were made about them only at the final argument stage (para 99).

[55] The present case is very similar. The RCMP did not put the document it had listed as proposed exhibit R-13 (the CJC reply letter) to any of the recipients of the letter who testified at the hearing, nor did it seek to obtain the CJC complaint letter, either before the hearing or at the time that these witnesses testified. It now wishes to admit the letters so that it can rely on them in its closing submissions, to make an argument it did not ask these witnesses about or even raise until the hearing was nearly over, well after all of the Complainants' witnesses had testified. I find that, because this information was not put to the Complainants, they did not know the case they had to meet with respect to the CJC letters, which is contrary to natural justice and procedural fairness. The Complainants would be unfairly prejudiced if the CJC Affidavit is admitted as evidence at this stage and if submissions are made about it only at the final argument stage in relation to a potential abuse of process.

[56] Simply because the Tribunal has considerable latitude in determining what evidence it can admit, and then determining the appropriate weight to afford that evidence once admitted, does not mean that the Tribunal is required to admit any and all evidence that is tendered before it in every case (*Clegg* para 73). At the admissibility stage, the Tribunal

must carefully balance the value of the proposed evidence against the prejudice that its admission could cause to a party or to the inquiry. “This balancing inheres in the proper exercise of the Tribunal’s discretion under s. 50(3)(c) of the *Act*” (*Clegg* para 73).

[57] If the probative value of the CJC documents outweighed the prejudice to the Complainants in admitting the CJC Affidavit at this stage, that would be a factor for the Tribunal to consider. However, the probative value of these two documents is marginal at best. As previously noted, both documents do not need to be admitted in order to establish the contextual fact that the RCMP wishes to prove relating to the Complainants having filed other complaints prior to filing their human rights complaint. The CJC reply letter alone can establish this fact.

(iii) Can the Prejudice Be Cured?

[58] I do not find that the prejudice can be cured with respect to the CJC complaint letter, which was signed by some Complainants and two witnesses who testified at this hearing.

[59] In *Itty*, the Tribunal determined that the prejudice to the respondent could be cured by permitting it to recall one of its witnesses to testify about the letters that the complainant wanted to admit. What is important to note in *Itty*, however, is that the letters related to a material issue in the case, being the alleged destruction of relevant evidence by the respondent.

[60] In the present case, as I have already determined, the CJC letters are of only very marginal relevance to a fact that the RCMP may wish to prove in the hearing, that the Complainants engaged in other complaint processes prior to filing their human rights complaint. The fact may relate to an argument the RCMP has not raised until recently and did not articulate in its SOP, relating to abuse of process. The prejudice to the Complainants outweighs the probative value of admitting both documents.

[61] The Tribunal in *Itty* determined that the evidentiary part of the hearing could continue even though the parties had closed their cases. It permitted the respondent to recall a witness or to call a different witness to testify about the two letters the complainant wanted to admit. The necessary witness in *Itty* was an employee of the government department, the

Canada Border Services Agency. In the present case, the people who could testify directly about the CJC complaint letter are the Complainant Richard Perry and two witnesses, Ronnie Matthew West and Beverly Abraham.

[62] The Complainants' counsel has indicated that the hearing process was very difficult for the Complainants and their witnesses and they would not wish to be recalled to be asked questions about the CJC documents. This position is understandable. During the in-person portion of the hearing, the Complainants and their witnesses were surrounded by their community and they had access to in-person support from the Indian Residential School Survivors Society. Mr. Perry's sister was present with him when he testified and she has recently passed away and he is grieving this loss.

[63] In addition, each hearing day in Burns Lake, during which time the Complainants and most of their witnesses testified, was started with a ceremony that was meant to ensure the hearing proceeded in a good way. At the end of the evidence that was heard in Burns Lake an eagle feather ceremony was held with the community to assist those who had testified to be relieved of their difficult experiences of the hearing so they would not have to carry them forward. The ceremony was very meaningful for those who participated and I would not wish to recall any of the witnesses to testify again without the supports that were in place in the community unless it was absolutely necessary, by which I mean if it was about an issue central to this case of discrimination. The CJC documents are not central to the discrimination alleged in this case or the RCMP's response to these allegations. As such, I would decline to recall any witnesses to be questioned about these documents.

[64] Rule 37(c) of the Tribunal's Rules of Procedure says that a party may only introduce a document into evidence at the hearing if that document was previously disclosed in accordance with the other Rules of Procedure. With regard to the CJC complaint letter of January 7, 2016, signed by some of the Complainants and their witnesses, the RCMP did not adhere to the Tribunal's Rules of Procedure in any respect. It did not seek to obtain this document at all until it had called nearly all of its evidence. While the RCMP may argue that the Complainants should have disclosed the letter themselves, that was not a barrier to the Respondent requesting it, either from the Complainants or from the CJC if it thought the document was arguably relevant to a material issue in this hearing. Even if I did consider

the CJC complaint letter to be relevant to such an issue, the prejudice to the Complainants by not putting it to any of the signatories of the letter who testified outweighs any minimal probative value it may have to the RCMP, which cannot be cured without causing further prejudice to the Complainants and their witnesses.

[65] The CJC complaint letter was an afterthought for the RCMP and it would be prejudicial to admit it at this stage of the proceeding. It is less prejudicial to admit the CJC reply letter, since this was contemplated as becoming evidence from the outset of the hearing. The RCMP complied with the Tribunal's Rules of Procedure with regard to the CJC reply letter, so the Complainants had notice that the RCMP considered it to have some relevance to the complaint.

[66] In order to permit the RCMP to ensure that it has evidence on the record relating to the fact it wishes to establish - that some of the Complainants made a complaint to the CJC before filing their human rights complaint - I would agree to admit the CJC reply letter only. There is no need to admit both documents to establish this fact. The CJC reply letter was not written by the Complainants or their witnesses, but by the then-Director and General Counsel of the CJC and explains why their complaint was not accepted, as it did not fall within the CJC's mandate. There is no reason to recall any witness to testify about receiving this letter, given the prejudice that would be caused in doing so, as the Complainants have admitted to receiving the letter.

VIII. Order

[67] As the CJC reply letter was listed as proposed exhibit R-13 in the RCMP's list of proposed exhibits, I will admit the letter as exhibit R-13 in this proceeding. I will consider submissions from the parties in their closing arguments about the weight that should be given to this letter.

Signed by

Colleen Harrington
Tribunal Member, Ottawa, Ontario

March 28, 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: March 28, 2024

Date and Place of Submissions: January 31, 2024 and February 7, 2024

By videoconference

Appearances:

Karen Bellehumeur, for the Complainants

Christine Singh, for the Canadian Human Rights Commission

Spencer Slipper, for the Respondent

Graham Rudyk, for the Interested Person Attorney General of British Columbia (not participating in this Application)