

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 105

Date: September 20, 2024

File No.: HR-DP-2983-23

Between:

Kai Liu (On behalf of Indigenous Police Chiefs of Ontario)

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Public Safety Canada

Respondent

- and -

First Nations Chiefs of Police Association

- and-

Assembly of First Nations

Interested persons

Ruling

Member: Athanasios Hadjis

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I. OVERVIEW

[1] This is a ruling on a motion for interested person status.

[2] The Complainant, Kai Liu, filed a complaint on behalf of Indigenous Police Chiefs of Ontario (IPCO), alleging that the Respondent, Public Safety Canada (PSC), discriminates in the application of its First Nations and Inuit Policing Program (FNIPP). The Canadian Human Rights Commission (the “Commission”) referred the complaint to the Tribunal for inquiry.

[3] The Assembly of First Nations (AFN), a national organization representing First Nations throughout Canada and their respective members, has asked the Tribunal to be recognized as an interested person in the inquiry into the complaint.

II. DECISION

[4] The AFN is recognized as an interested person, with limits on the extent of its participation.

III. ISSUES

[5] The issues are the following:

1. Should the AFN be recognized as an interested person?
2. If yes, what is the extent of its participation in the inquiry?

IV. ANALYSIS

A. The AFN is recognized as an interested person

[6] Rule 27 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, (the “Rules”) sets out the procedure that a person seeking to be recognized as an interested person must follow. Rule 27(2) states that the notice of motion must specify the assistance the person wishes to provide to the inquiry and the extent to which the person

wishes to participate in the inquiry. If the Tribunal grants the motion, it must specify the extent to which the interested person is permitted to participate (Rule 27(3)).

[7] IPCO consents to the AFN's request for interested person status with the same participatory rights as those that I previously granted to the First Nations Chiefs of Police Association (FNCPA) in *Liu v. Public Safety Canada*, 2024 CHRT 14 [*Liu*]. IPCO understands that the AFN is committed to working cooperatively with IPCO to identify the issues affecting both organizations, to discuss the particular issues that the AFN will want to make submissions on, and to ensure that the AFN does not introduce new issues that risk prolonging the proceedings.

[8] The Commission also consents to the AFN's request. The Commission submits that the AFN will bring a different perspective to the legal positions at issue, without unduly hindering the informal and expeditious conduct of the proceeding.

[9] PSC does not oppose the AFN's limited participation in the case, though it did make some observations that I address in my analysis below.

[10] The Tribunal considers the following criteria in determining whether to grant an interested person request (see *Letnes v. Royal Canadian Mounted Police*, 2021 CHRT 30 at paras 8-13; *Liu* at paras 8-9):

1. The prospective interested person's expertise will be of assistance to the Tribunal;
2. Its involvement will add to the legal positions of the parties; and
3. The proceeding may have an impact on the requesting party's interests.

[11] The analysis must not be performed strictly and automatically; rather, it should be approached on a case-by-case basis by applying a flexible and holistic perspective.

[12] I find that the three criteria are met in this case.

[13] The AFN can assist the Tribunal through its insight on what IPCO referred to in its submissions as "Canada's longstanding patterns of discriminatory implementation of the FNIPP." IPCO alleges that PSC's application of the FNIPP has resulted in chronic and systemic underfunding for First Nations police services. The AFN can provide insight on how the alleged underfunding has impacted the wellbeing of First Nations.

[14] PSC recently made a motion about the scope of the complaint, arguing that the Commission had not referred the underfunding issue to the Tribunal for inquiry. In the present context, PSC claims that if its submissions on that motion were upheld, the AFN's participation would no longer be of much assistance. However, I have since ruled on that motion and held that the complaint encompasses broader allegations of underfunding, as IPCO had claimed (see *Liu v. Public Safety Canada*, 2024 CHRT 104). Consequently, the AFN's participation may still be helpful.

[15] The AFN has a mandate to advocate and promote the unique nation-to-nation relationship between the Crown and diverse First Nations. In this capacity, the AFN may also provide helpful legal submissions on the interaction between First Nations' right to self-determination and the right to exercise jurisdiction over policing.

[16] It is also worth noting that in the context of recent injunction proceedings between IPCO and PSC regarding matters at issue in this case, the Federal Court granted intervenor status to the AFN (*Indigenous Police Chiefs of Ontario v. Canada (Public Safety)*, 2023 FC 916 at paras 38-41). The Court observed that the AFN has a long history of intervening in judicial proceedings, providing courts with insight on legal questions involving First Nations.

[17] Finally, with respect to the third criterion, this proceeding could unquestionably have an impact on AFN's members who are served by Indigenous police services in Ontario and even elsewhere in Canada.

[18] Accordingly, the AFN is recognized as an interested person in this case.

B. Terms limiting the extent of the AFN's participation

[19] The parties concur that the AFN's participation should be subject to the same terms as those assigned to the FNCPA.

[20] I agree. The AFN's role will be restricted to a limited right to cross-examine witnesses with questioning that should not overlap with that of the parties. The questioning will be for a reasonably limited duration as determined by the Tribunal once the hearing begins. The AFN will also be permitted to present final oral and written submissions.

V. ORDER

[21] I order that the AFN have limited interested person status in this case on the following terms:

1. The AFN may cross-examine the parties' witnesses provided the questioning does not duplicate or overlap with the parties' questions and for a reasonably limited duration as determined by the Tribunal once the hearing begins; and
2. The AFN may present oral and written final submissions.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, Ontario
September 20, 2024

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2983-23

Style of Cause: Kai Liu (On behalf of Indigenous Police Chiefs of Ontario) v. Public Safety Canada

Ruling of the Tribunal Dated: September 20, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Julian N. Falconer, for the Complainant

Sean Stynes and Alexandra Pullano, for the Respondent

Christine Singh and Sarah Chênevert-Beaudoin, for the Commission

Julie McGregor, for the Interested person – Assembly of First Nations