

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2024 CHRT 104

**Date:** September 20, 2024

**File No.:** HR-DP-2983-23

**Between:**

**Kai Liu (on behalf of the Indigenous Police Chiefs of Ontario)**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Public Safety Canada**

**Respondent**

**- and -**

**First Nations Chiefs of Police Association**

**Interested party**

**Ruling**

**Member:** Athanasios Hadjis

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## **I. OVERVIEW**

[1] This is a motion filed by the Respondent, Public Safety Canada (PSC), regarding the scope of the complaint.

[2] The Complainant, Kai Liu, filed the complaint on behalf of Indigenous Police Chiefs of Ontario (IPCO), which represents nine self-administered Indigenous police services. IPCO alleges that PSC discriminates on the basis of race and national or ethnic origin in the application of the First Nations and Inuit Policing Program (FNIPP), which funds self-administered Indigenous police services. PSC is responsible for the implementation of the FNIPP.

[3] PSC contends in its motion that IPCO added in its Statement of Particulars (SOP) new broad allegations of underfunding that were not raised in the complaint. PSC argues that IPCO is thus trying to introduce a substantially new complaint that was not considered by the Canadian Human Rights Commission (the “Commission”).

## **II. DECISION**

[4] I find that the allegations of underfunding are not outside the scope of the complaint that the Commission referred to the Tribunal for inquiry.

[5] PSC’s request is denied.

## **III. ANALYSIS**

[6] The Tribunal’s jurisdiction to conduct inquiries into complaints is derived from s. 49 of the *Canadian Human Rights Act*, R.S.C. c. H-6 (the “Act”), according to which the Tribunal Chairperson must institute an inquiry into a complaint upon receipt of a request from the Commission (s. 49(2)). The scope of Tribunal inquiries is thus limited to the matters arising from the complaints accompanying such requests (see *Kowalski v. Ryder Integrated Logistics*, 2009 CHRT 22 at para 7).

[7] The analysis in this case is complicated somewhat by the existence of what could be loosely referred to as two versions of the complaint.

[8] On March 29, 2023, IPCO originally filed with the Commission a complaint that was 30 pages long (the “Original Complaint”). However, the Commission informed IPCO that the complaint was too long. According to the Commission’s rules, complaints cannot exceed three pages. IPCO agreed to shorten its complaint to a three-page “summary,” which it refiled along with the Original Complaint. The summary included a statement in the first paragraph affirming that IPCO was “repeat[ing] and rely[ing] on the full narrative, as set out in [the Original Complaint].”

[9] The Commission responded to IPCO that complaints must be stand-alone documents and cannot refer to other documents. Accordingly, IPCO consented to the removal of the sentence referring to the Original Complaint. It was this edited version (i.e., after the above-mentioned sentence was deleted) that the Commission attached to its letter to the Tribunal referring the complaint for inquiry pursuant to s. 49(1) of the Act (the “Referred Complaint”).

[10] PSC contends that IPCO’s SOP contains broad allegations of underfunding, which it claims were not mentioned in the Referred Complaint. It is true that the term “underfunding” does not appear even once in the Referred Complaint.

[11] IPCO’s SOP, on the other hand, alleges that Indigenous communities have experienced chronic underfunding under the FNIPP. The term “underfunding” appears about six times in the 53-page SOP.

[12] I note, however, that three of the passages in the SOP that refer to underfunding are copied almost word-for-word from the Original Complaint. The remaining references are similar to other underfunding references in the Original Complaint, except for one relating to remedies, which I will address later in this ruling.

[13] Consequently, the SOP’s references to underfunding are clearly within the scope of the Original Complaint. But that is not the document that the Commission referred to the

Tribunal for inquiry. Does this mean that IPCO is precluded from alleging underfunding in its SOP?

[14] To answer this question, I need to consider the specific circumstances that led to the filing of the Referred Complaint and how it was dealt with by the Commission.

[15] When IPCO consented to remove from the Referred Complaint the sentence regarding its continued reliance on the Original Complaint, IPCO stated to the Commission that its consent was given on the understanding that the Original Complaint remains on the record as the “detailed narrative” that the Commission would review.

[16] The Commission replied to IPCO that while it appreciated IPCO’s wish to have full details of the Original Complaint before the Commission when it makes its decision, the complaint form had to be limited in length and could not refer or rely on any other documents. The Commission nonetheless confirmed to IPCO that the Original Complaint would remain on file and would be read and considered during the assessment of the complaint. However, the Commission also added that the Original Complaint would not be before the Commission when making its decision. The Commission assured IPCO that “relevant portions” of the Original Complaint would be “brought forward into the report” that would be written.

[17] The matter was then apparently handed over to a human rights officer (HRO) of the Commission to prepare a report, known as the Report for Decision (the “HRO Report”). It is my understanding that the “assessment” to which the Commission referred in its correspondence with IPCO consists of the HRO’s review of the case leading up to the preparation of the HRO Report.

[18] PSC acknowledges in its submissions that it received a copy of the Original Complaint and the Referred Complaint at some point during this stage of the Commission process.

[19] The 14-page HRO Report is dated October 30, 2023. Its summary of the complaint appears to describe the content of the Referral Complaint only. The HRO Report does not mention that IPCO had filed the 30-page Original Complaint first.

[20] The allegations in IPCO's pared down Referral Complaint basically consist of the following:

- An explanation of IPCO's and PSC's status and mandate;
- References to decisions from the Tribunal, the Federal Court, and the Quebec Court of Appeal, which allegedly ruled that the FNIPP was "discriminatory;"
- Then, after making a general allegation of discrimination, a "Summary of Key Issues" is listed under the following headings: Canada deprives Indigenous people of legal representation; Canada refuses to negotiate at all; Canada cuts off funding to force Indigenous communities to submit to discrimination; Canada offers misleading excuses and vague promises;
- The Referral Complaint ends with a paragraph setting out the relief requested.

[21] The HRO Report's description of the complaint highlights the "Key issues" listed above. PSC submits that, in doing so, the HRO Report and, by extension, the Commission only dealt with the specific allegations in the Referral Complaint, which do not contain any general allegations of underfunding.

[22] The HRO Report's final recommendation was that the Commission request the Tribunal Chairperson to institute an inquiry into the complaint, pursuant to s. 49(1) of the Act.

[23] On December 20, 2023, the Commission issued its decision referring the matter to the Tribunal. The Commission stated in its decision that it had "reviewed the Complaint Form, the [HRO Report] and the submissions of the parties filed in response to this report." The Commission then concluded that "for the reasons discussed in the report," it had decided to refer the complaint to the Tribunal because an inquiry is warranted.

[24] In other words, the Commission adopted the HRO Report's findings as its reasons for the referral.

[25] Although the HRO Report does not refer specifically to the Original Complaint, I find that elements of the Original Complaint found their way into the HRO's analysis. In particular, the Original Complaint relies extensively on recent case law involving the FNIPP, including the following decisions: *Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh*, 2023 CF 267 [*Pekuakamiulnuatsh FC*], upholding the Tribunal's finding in *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public*

*Safety Canada*, 2022 CHRT 4; *Takuhikan c. Procureur général du Québec*, 2022 QCCA 1699 [*Takuhikan*]. The Original Complaint alleges that these decisions had found among other things that there is “systemic underfunding” under the FNIPP which exacerbates discrimination against First Nations. Notably, paragraphs 4 and 5 of the Referral Complaint also refer to these decisions. While not making any specific reference to underfunding, these paragraphs, when read in conjunction with the referenced case law, allude to the issue of underfunding as a contributing factor to the alleged discrimination.

[26] The HRO Report addresses these decisions extensively, noting that the Federal Court in *Pekuakamiulnuatsh FC* “recognized the inadequacy of the funding” and that the Quebec Court of Appeal in *Takuhikan* had found the FNIPP “did not sufficiently fund a culturally appropriate Indigenous police service.”

[27] The HRO Report states in its final analysis that there is a reasonable basis in the cited case law to support IPCO’s allegation of discrimination regarding the FNIPP.

[28] Thus, I am satisfied that although the terms chronic or systemic underfunding may not have been explicitly mentioned in the Referred Complaint, the issue as raised in the Original Complaint was considered by the HRO in the preparation of the HRO Report, particularly in addressing the recent case law. PSC was notified of those allegations early on when it received a copy of the Original Complaint. The HRO Report constitutes the reasons for the Commission’s referral of the complaint to the Tribunal, and the Referral Complaint refers explicitly to this case law. The issue of chronic underfunding as mentioned in the substantive allegations of the SOP is therefore not outside the scope of the complaint before the Tribunal.

[29] As I mentioned earlier, IPCO’s SOP also mentions underfunding in its section on remedies. It is true that the Original Complaint and the Referred Complaint do not explicitly refer to underfunding under the section entitled remedies. However, it is common for complaints, when they are filed, to provide only basic information about the remedies being sought. Details about remedies are usually given as the matter approaches a hearing, and this is precisely one of the purposes of SOPs—to provide greater detail about the remedial claims. The fact that rectifying alleged underfunding is mentioned as a remedial claim for

the first time in the SOP is not out of the ordinary and does not mean that it falls outside the scope of this case.

[30] As a final comment, it is unsurprising that a three-page complaint form was insufficient to address the intricacies inherent in a complex case such as this, involving multiple represented organizations. These types of cases can bring up numerous factual and legal issues that can be difficult to capture within the constraints of a three-page form. When dealing with scope issues, the Tribunal's role is to determine the real questions in controversy between the parties (*Canada (Attorney General) v. Parent*, 2006 FC 1313 at para 30). Substance should prevail over form. It is obvious, from the record, that IPCO always intended underfunding to form part of the inquiry, and procedural formalities should not impede the Tribunal's ability to address the substantive matters at hand.

[31] For these reasons, I deny PSC's motion requesting a finding that IPCO's broader claims of underfunding in the SOP are beyond the scope of the complaint.

[32] However, I note that PSC made important points in its submissions about the lack of particulars regarding these claims. Although I have found that the underfunding claims are not new—IPCO has been making these broad allegations since the filing of the Original Complaint—it does not necessarily mean that these issues have been sufficiently defined to enable the other parties to prepare for the hearing, prevent surprises and facilitate the hearing in general (see *Waddle v. Canadian Pacific Railway and Teamsters Canada Rail Conference*, 2016 CHRT 8 at paras 39-42; *P.S.A.C. v. Government of the Northwest Territories (Minister of Personnel)*, 1999 CanLII 19858 (CHRT)).

[33] I need not elaborate on this observation at this point. It can be addressed, along with any other disclosure related issues, at the next Case Management Conference Call, which I will be convening shortly.



**IV. ORDER**

[34] PSC's motion regarding the scope of the complaint is denied.

*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 the 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, Asha James and Shelby Percival, for the Complainant

Christine Singh and Sarah Chênevert-Beaudoin, for the Canadian Human Rights Commission

Sean Stynes and Alexandra Pullano, for the Respondent