

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**Between:**

**Grand Chief Stan Louttit in a representative capacity  
on behalf of the First Nations of Mushkegowuk Council  
and Grand Chief Stan Louttit in his personal capacity**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Attorney General of Canada**

**Respondent**

**Ruling**

**Member:** Sophie Marchildon

**Date:** January 16, 2013

**Citation:** 2013 CHRT 3

I.	Background.....	1
II.	Ruling.....	4
	A. The First Disclosure CD is Incomplete and Inadequate .....	4
	B. The documents disclosed contain redactions .....	6
	C. Request for further disclosure.....	7
	(i) Documents 1 and 2.....	8
	(ii) Documents 3, 4 and 10.....	9
	(iii) Documents 5(a) and 5(b) .....	10
	(iv) Documents 6, 7, 8 and 9 .....	10
	(v) Document 11 .....	11
	D. Post-2007 Documents .....	11
	E. Timing of Disclosure .....	12

[1] On April 5, 2011, pursuant to paragraph 44(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the *Act*), the Canadian Human Rights Commission (the Commission) requested that the Chairperson of the Canadian Human Rights Tribunal (the Tribunal) institute an inquiry into the complaint of Grand Chief Stan Louttit, in his personal capacity, and in a representative capacity on behalf of the First Nations of Mushkegowuk Council (the Complainants). The Complainants assert that they have received and continue to receive inferior policing services in comparison with non-First Nations communities in Canada. According to the Complainants, this amounts to discrimination on the basis of race, pursuant to section 5 of the *Act* by the Attorney General of Canada (the Respondent).

[2] The following ruling deals with a motion for disclosure by the Complainants with regard to the above mentioned complaint.

## **I. Background**

[3] Pursuant to Rule 6(1) of the Tribunal's *Rules of Procedure (03-05-04)* (the *Rules*), each party is to serve and file a Statement of Particulars setting out, among other things, a list of documents in the party's possession that relate to a fact, issue, or form of relief sought in the case. On March 2, 2012, the Respondent provided a Statement of Particulars, with a document list (the First Document List) and disclosure package (the First Disclosure CD).

[4] The Complainants requested further disclosure from the Respondent and, following an extension of time to do so, the Respondent provided a supplementary document list (the Second Document List) and disclosure package (the Second Disclosure CD).

[5] Despite the supplementary disclosure, the Complainants assert the Respondent has failed to provide a complete document list and has failed to provide complete copies of many documents listed in its document list.

[6] Following a Case Management Conference Call on August 8, 2012, the parties agreed to attempt to resolve the disclosure issue informally. As those attempts were unsuccessful, on October 1, 2012, the Complainants brought the present motion seeking an order for further and better disclosure from the Respondent.

[7] Submissions on the motion were completed on November 16, 2012. The Commission did not take a position.

[8] On December 21, 2012, the Tribunal issued the following order with regard to the present motion:

1. The Respondent shall disclose all documents requested by the Complainants in Table A of its October 1, 2012 Motion Record; or, confirm that the documents requested do not exist.

a. With specific regard to the documents requested at paragraph 5(a) of Table A of the Complainants' October 1, 2012 Motion Record, the Respondent is to disclose all documents outlining the process by which staffing and funding levels are set in remote or isolated communities served by the Royal Canadian Mounted Police (the RCMP). The request is for general RCMP policy documents, and the individual staffing and funding levels of each remote or isolated community need not be disclosed.

b. With specific regard to the documents requested at paragraph 5(b) of Table A of the Complainants' October 1, 2012 Motion Record, the Respondent is to disclose all documents outlining the process by which staffing and funding levels are set in remote or isolated communities served by First Nations police forces operating under the federal government's First Nations Policing Policy. The request is for general policy documents under the First Nations Policing Policy, and the individual staffing and funding levels of each First Nations police force need not be disclosed.

c. With specific regard to the documents requested at paragraph 11 of Table A of the Complainant's October 1, 2012 Motion Record, the Respondent is to disclose all documents outlining the standards of the RCMP governing service levels; facilities; equipment; wages, benefits, and isolation pay; and, any standards specific to policing in remote or

isolate communities. The request is for general RCMP policy documents, and the individual standards governing specific First Nations or non-First Nations communities need not be disclosed.

2. The Respondent shall disclose all documents in its possession for the time period covering 2007 to the present, that relate to a fact, issue, or form of relief sought in the present case, including those facts, issues and forms of relief identified by the other parties; or, confirm that the documents requested do not exist.

3. Pursuant to Rule 6(1)(d) and 6(5) of the Tribunal's *Rules of Procedure (03-05-04)*, the Respondent shall provide the other parties with a consolidated list of documents in the Respondent's possession, for which no privilege is claimed. This consolidated list shall include all non-privileged documents disclosed to date and any non-privileged documents disclosed pursuant to orders 1 and 2 above.

4. Pursuant to Rule 6(4) of the Tribunal's *Rules of Procedure (03-05-04)*, the Respondent shall produce to the other parties a copy of the documents identified in the consolidated list under order 3 above. Each document produced shall be clearly titled or labeled to correspond with the consolidated document list to allow the Complainant to easily identify and consult the document.

5. The documents produced under order 4 above shall be unredacted. If documents cannot be produced in unredacted form, the Respondent shall provide an explanation thereof.

6. Pursuant to Rule 6(1)(e) and 6(5) of the Tribunal's *Rules of Procedure (03-05-04)*, the Respondent shall provide the other parties with a consolidated list of documents in the Respondent's possession, for which privilege is claimed. The Respondent shall provide an explanation for each privilege claimed. This consolidated list shall include all privileged documents disclosed to date and any privileged documents disclosed pursuant to orders 1 & 2 above.

7. The Respondent shall complete orders 1 to 6 above by February 15, 2013.

[9] The following are the Tribunal's reasons for issuing that order.

## II. Ruling

[10] Pursuant to the rules of natural justice and subsection 50(1) of the *Act*, parties before the Tribunal must be given a full and ample opportunity to present their case. This requires the disclosure of arguably relevant evidence between the parties. If there is a rational connection between a document and the facts, issues, or forms relief identified by the parties, it should be disclosed pursuant to paragraphs 6(1)(d) and 6(1)(e) of the Tribunal's *Rules* (see *Guay v. Canada (Royal Canadian Mounted Police)*, 2004 CHRT 34 at para. 42; and, *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 at para. 4). In this regard, I also note the purpose of the Tribunal's *Rules*, which is to ensure that:

- (a) all parties to an inquiry have the full and ample opportunity to be heard;
- (b) arguments and evidence be disclosed and presented in a timely and efficient manner; and
- (c) all proceedings before the Tribunal be conducted as informally and expeditiously as possible.  
(subsection 1(1) of the Tribunal's *Rules*)

[11] With these principles in mind, the following are the grounds raised by the Complainants in support of the present motion, and the Tribunal's ruling thereon.

### A. The First Disclosure CD is Incomplete and Inadequate

[12] The Complainants submit the First Disclosure CD is incomplete and inadequate because many documents in the First Document List were not included on the CD and the documents on the CD do not correspond to the numbering in the First Document List. According to the Complainants, the CD mainly contains large PDF files, which appear to each contain multiple, unindexed and unsorted documents. The Complainants claim the lack of organization in the First Disclosure CD makes document review difficult. They submit that the requirement to provide

documents under Rule 6(4) of the Tribunal's *Rules of Procedure (03-05-04)* presumably includes an obligation to do so in a manner that would allow the receiving party to locate and confirm the identity of documents disclosed. Therefore, the Complainants seek a disclosure CD or binder from the Respondent that is organized in a workable manner and contains all of the documents listed in its First Document List.

[13] According to the Respondent, it has provided disclosure to the Complainants on March 2 and July 5, 2012. The Respondent asserts it is not required to re-organize documents that have already been provided to the Complainants.

[14] While the *Rules* do not specify the manner or form by which production is to take place, the purpose of the *Rules* and the principles of fairness in general dictate that the disclosure and production of documents be sufficient to allow each party the full and ample opportunity to be heard. Producing an unorganized CD, with unindexed and unsorted documents, inhibits the Complainants' ability to rely upon or address evidence that the Respondent finds relevant to the present case. Furthermore, the unorganized First Disclosure CD has inhibited the timely and efficient presentation of arguments and evidence in this case. The parties have been unable to move past the disclosure stage of these proceedings since March 2012. While the unorganized First Disclosure CD may not be the sole reason for this, it has been a contributing factor. In fact, the Respondent has pointed out that some of the documents being requested in the current motion have already been provided to the Complainants. Perhaps if the documents had been produced in a more efficient manner in the first place, the current motion, or at least aspects of it, may have been unnecessary and these proceedings could have advanced more expeditiously.

[15] Therefore, in the interests of fairness and efficiency, and given the orders for additional disclosure below, I believe the most expeditious way to address the issue of the unorganized First Disclosure CD would be for the Respondent to produce consolidated lists of documents pursuant to paragraphs 6(1)(d) and 6(1)(e) of the *Rules*. The consolidated lists shall include all documents disclosed to date and any additional documents disclosed pursuant to the orders below. Any documents produced to the Complainants pursuant to subsection 6(4) of the *Rules* should be

clearly titled or labeled to correspond with the consolidated document list to allow the Complainant to easily identify and consult the document.

**B. The documents disclosed contain redactions**

[16] The Complainants assert many of the documents provided in the First and Second Disclosure CDs are redacted; and, the Respondent has not provided a justification for the redactions appearing in the documents. Therefore, the Complainants seek an order that the Respondent provide complete versions of documents that are not redacted.

[17] The Respondent acknowledges many of the documents provided to the Complainants were in redacted format. The Respondent has agreed to review the documents to ascertain whether unredacted versions of these documents exist and, if so, whether they can be provided to the Complainants.

[18] While the Respondent has agreed to review documents to determine whether unredacted versions can be provided, the Complainants point out that the Respondent has not agreed to provide the unredacted versions of the documents. Therefore, if no order is made, it would be open to the Respondent to simply advise it will not provide unredacted documents, thus necessitating further submissions and delay. Therefore, according to the Complainants, an order is warranted.

[19] While the Respondent has agreed to review the documents provided to ascertain whether unredacted versions of these documents exist and, if so, whether they can be provided to the Complainants, nevertheless, I find it necessary to make an order in this regard. The Tribunal's *Rules* distinguish between privileged (Rule 6(1)(e)) and non-privileged (Rule 6(1)(d)) documents. Only non-privileged documents are required to be produced to the other party (Rule 6(4)). That is because the only limitation on the Tribunal's ability to admit or accept evidence is if the evidence is subject to any privilege under the law of evidence (see subsection 50(4) of the *Act*). Otherwise, subject to subsection 50(5) of the *Act*, the Tribunal can receive and



accept any evidence and other information that it sees fit (see paragraph 50(3)(c) of the *Act*). While in certain situations the Tribunal may take measures to protect the privacy or confidentiality of disclosed information, usually by request of one of the parties, the Respondent has not requested that any privacy or confidentiality measures be taken with regard to any of the documents it has produced to the Complainants. Nor has the Respondent explained why redactions appear in some of the produced documents.

[20] Therefore, the Respondent is ordered to provide unredacted versions of all documents produced to the Complainants. If documents cannot be produced in unredacted form, the Respondent shall provide an explanation thereof.

### **C. Request for further disclosure**

[21] The Complainants assert the two document lists provided by the Respondent appear to be missing relevant documents that likely exist. According to the Complainants, the federal government negotiates the policing agreements governing policing in the Mushkegowuk communities, conducts assessments of First Nations policing, has significant oversight responsibilities, and operates the Royal Canadian Mounted Police (the RCMP). Through these and other roles, the Complainants claim the Respondent would have a significant number of additional relevant documents. Specifically, the Complainants submit the following documents are likely in the Respondent's possession and were not included in its document lists:

1. Indian and Northern Affairs Canada, *Indian Policing Policy Review* (January, 1990);
2. Don Clairmont, *Effectiveness and Sustainability in First Nations Policing* (2001);
3. Memorandum to Cabinet, "Indian Policing Services for Indian and Inuit Communities";
4. Record of Decision, "Indian Policing Services for Indian and Inuit Communities";
5. Documents outlining the process by which staffing and funding levels are set in remote or isolated communities served by:

- a. The RCMP; and
  - b. A First Nations police force, such as the Nishnawbe-Aski Police Service, operating under the federal government's First Nations Policing Policy.
6. Documents relating to the negotiation of the Nishnawbe-Aski Police Service "tripartite" agreements, such as:
    - a. Requests for additional resources and the responses thereto;
    - b. Documents justifying proposed budgets or refusals to increase resources; and
    - c. Internal federal government documents assessing policing needs.
  7. Assessments, reports, inspections, and photographs of officer housing in the Mushkegowuk First Nations communities;
  8. First Nations Policing Policy and Program documents, such as the most recent version of the policy, the Terms and Conditions of the program, and program guidelines and directives;
  9. Documents created in the course of the federal government's recent Comprehensive Review of the First Nations Policing Program, including the policy options created as a result of the review;
  10. Treasury Board documents discussing the quality of policing in the Mushkegowuk First Nations or in First Nations generally; and
  11. Documents outlining the standards governing the RCMP, including standards relating to:
    - a. Service levels;
    - b. Facilities (i.e. police stations and housing);
    - c. Equipment;
    - d. Wages, benefits, and "isolation pay"; and
    - e. Any standards specific to policing in remote or isolated communities.
- (i) Documents 1 and 2

[22] According to the Complainants, documents 1 and 2 contain assessments of the federal government's policing program for First Nations and are relevant to its assertion that the program is flawed and results in discriminatory treatment. The Respondent does not dispute the arguable relevance of these documents and, in fact, asserts that they have already been provided to the Complainants. Therefore, I find documents 1 and 2 to be arguably relevant to these

proceedings and they should be disclosed to the Complainants as part of the Respondent's consolidated list of documents ordered above.

(ii) Documents 3, 4 and 10

[23] The Complainants claim documents 3 and 4 contain details regarding the purpose, structure, criteria, policies and terms and conditions of the federal government's program for First Nations policing. Again, the Complainants submit these documents are relevant to its assertion that the First Nations policing program is flawed and results in discriminatory treatment. Similarly, the Complainants claim document 10 contains assessments of the quality of policing in First Nations communities, which according to the Complainants are relevant to the comparison between services for First Nations and non-First Nations communities. The Respondent submits documents 3, 4 and 10 would appear to be Cabinet confidences and as such would be protected by section 39 of the *Canada Evidence Act*. In reply, the Complainants assert section 39 of the *Canadian Evidence Act* does not apply; there has been no certification of the documents as cabinet confidences by the Clerk of the Privy Council; the documents have already been released to a third party during an evaluation of the First Nations policing program; and, it appears that the documents were created more than 20 years ago, and thus cabinet confidence protection cannot apply to them pursuant to paragraph 39(4)(a) of the *Canada Evidence Act*.

[24] Again, the Respondent does not dispute the arguable relevance of documents 3, 4 and 10. I agree with the Complainants that they are rationally connected to the issues raised in this case and, therefore, should be disclosed. If documents 3, 4 and 10 are indeed Cabinet confidences, a written certification from a minister of the Crown or the Clerk of the Privy Council attesting to this fact should be provided to the Tribunal pursuant to subsection 39(1) of the *Canada Evidence Act*.

(iii) Documents 5(a) and 5(b)

[25] For documents 5(a) and 5(b), the Complainants claim the documents are relevant to the determination of whether service levels are unequal as between First Nations and non-First Nations communities. The Respondent submits, once the Complainants identify the comparator communities they suggest are appropriate, it will be able to address the request for documents 5(a) and 5(b). In reply, the Complainants assert they have identified a number of valid comparison groups and need not limit themselves to a discrete number of specific comparison communities as suggested by the Respondent. The Complainants add, practically speaking, the documents can be provided without the identification of specific comparison communities.

[26] I fail to understand why specific comparator communities need to be identified for the Respondent to be able to address the request for documents 5(a) and 5(b). I understand the Complainants' request under 5(a) to be for general policy documents of the RCMP. The specific staffing and funding levels of each remote or isolated community served by the RCMP are not requested. I also understand the Complainants' request under 5(b) to be for general policy documents under the First Nations Policing Policy. The specific staffing and funding levels of each First Nations police force are not requested. Both requests are sufficiently specific and do not require further elaboration from the Complainants. The Respondent does not dispute the arguable relevance of these documents and I accept that they have a rational connection to these proceedings. Therefore, documents 5(a) and 5(b) should be disclosed.

(iv) Documents 6, 7, 8 and 9

[27] The Respondent claims documents 6, 7, 8 and 9 have already been provided to the Complainants, and if additional documents are located they will also be provided. In reply, the Complainants request that the Respondent be ordered to provide any additional materials, or confirm that none exist.

[28] There is no dispute that these documents are arguably relevant and I accept the Complainants' reasons for requesting them as explained in Table A of its Motion Record. Therefore, documents 6, 7, 8 and 9 should be disclosed to the Complainants; or, alternatively, the Respondent should confirm that no additional materials exist.

(v) Document 11

[29] Finally, for document 11, the Complainants seek documents relating to RCMP standards to compare them to standards for First Nations policing. The Respondent asserts that the request is overly broad and requires further particularization with respect to the particular communities that the Complainants suggest are the appropriate comparators for the discrimination analysis. In reply, the Complainants claim specific comparison communities need not be identified to provide the requested RCMP standards.

[30] Again, I fail to understand why specific comparator communities need to be identified for the Respondent to be able to address the request for document 11. I understand the Complainants' request to be for general RCMP policy documents. Any individual standards governing specific First Nations or non-First Nations communities are not requested. The request is not overly broad, as the Complainants have enumerated the source and type of documents it requests. No further elaboration from the Complainants is required. The Respondent does not dispute the arguable relevance of these documents and I accept that they have a rational connection to these proceedings. Therefore, document 11 should be disclosed.

#### **D. Post-2007 Documents**

[31] According to the Complainants, the Second Disclosure List does not contain any documents for the time period covering 2007 to the present. The Complainants seek documents from this period, or an explanation as to why no documents were provided from that period.

[32] The Respondent submits, while it requested documents that post-date 2007, none have been provided to date. The Respondent states it will follow up on the request for post-2007 documents and either provide such documentation that is relevant, or provide an explanation as to why no such documentation exists.

[33] Given that the Respondent does not oppose the Complainants request for post-2007 documents; and, given I have found that additional disclosure is required with regard to the documents above; the order will specify that any post-2007 documents should be included in any additional disclosure.

#### **E. Timing of Disclosure**

[34] In its response to the present motion, the Respondent indicated it would provide any further documentation, including unredacted versions of documents already produced, by January 14, 2013.

[35] The Complainants are concerned about the delay involved in the Respondent's proposal to provide any further materials by January 14, 2013. This will be over one year past the initial deadline for the Respondent's documentary disclosure. However, according to the Complainants, if orders are made in relation to the documents which the Tribunal decides should be disclosed, and the parties are thus able to move beyond the disclosure stage, the Complainants do not object to the date proposed by the Respondent.

[36] Given that the January 14, 2013 date was proposed by the Respondent despite its opposition to many aspects of the Complainants current motion; and, given that the Tribunal has ordered the disclosure of additional documents and has made other consequential orders; I will give the Respondent until February 15, 2013 to comply with this ruling.

*Signed by*

Sophie Marchildon  
Administrative Judge

OTTAWA, Ontario  
January 16, 2013

**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** TT1683/3811 and T1684/3911

**Style of Cause:** Grand Chief Stan Louttit in a representative capacity on behalf of the First Nations of Mushkegowuk Council and Grand Chief Stan Louttit in his personal capacity v. Attorney General of Canada

**Ruling/Decision of The Tribunal Dated:** January 16, 2013

**Appearances:**

Kent Elson, for the Complainant

Daniel Poulin and Samar Musallam, for the Canadian Human Rights Commission

Sean Gaudet, for the Respondent