



[2022] 2 F.C.R. D-3

HUMAN RIGHTS

Related subject: Indigenous Peoples

Judicial review of Canadian Human Rights Tribunal (Tribunal) decision (2022 CHRT 4) finding Pekuakamiulnuatsh (Pekuakamiulnuatsh First Nation), members of Mashteuiatsh community, suffered adverse treatment as result of implementation of First Nations Policing Program (FNPP) on ground of race, national or ethnic origin, within meaning of *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (Act), s. 5(b) — Applicant claiming adverse treatment stemmed from insufficient funding provided to First Nation for maintaining own police force, resulting in inadequate service not comparable to services provided to non-Indigenous communities, significant annual deficit — Tribunal applying test established by Supreme Court in *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360 to conclude existence of discriminatory practice within meaning of Act, s. 5(b) — Public Safety Canada providing Pekuakamiulnuatsh First Nation service within meaning of Act through implementation, application of FNPP — Tribunal noting First Nation ran budget deficit year after year — Funding level resulting from application of FNPP not allowing Mashteuiatsh police to provide policing coverage equal to level provided to other non-Indigenous police forces — Tribunal concluding legitimate, reasonable for Mashteuiatsh community to want to provide members with level of services comparable to services provided to other Quebec residents — In sum, Tribunal rejecting argument claiming FNPP only funding or contribution program, Canadian government not obliged to fully fund Indigenous police services — Tribunal also rejecting applicant's arguments claiming Mashteuiatsh community in some ways in better position than non-Indigenous communities — Tribunal concluding implementation of FNPP perpetuating existing discrimination, goal of substantive equality not achieved by FNPP because of FNPP's very structure — Main issue whether Tribunal erred in finding Pekuakamiulnuatsh First Nation discriminated against on prohibited ground in provision of service within meaning of Act, s. 5 — Quebec Court of Appeal's interpretation of Policy, FNPP in *Takuhikan c. Procureur général du Québec*, 2022 QCCA 1699, scope giving thereto, persuasive, retained for purposes of analysis in present case — Tribunal committed no error warranting Court's intervention in finding Pekuakamiulnuatsh First Nation discriminated against on prohibited ground in provision of service by federal government — Tribunal correctly rejected applicant's position claiming FNPP simply contribution program to fund various Indigenous police forces, or FNPP's only purpose to improve provincial policing services — This interpretation fundamentally narrow, not taking into account object, scope of policy aiming to implement Indigenous Peoples' inherent right to self-govern — While true that Policy providing that "First Nations communities will, where possible, be encouraged to help pay for the cost of maintaining their police service, particularly for enhanced services", services at issue in case at bar not enhanced services, but basic services — Provision having to take into account First Nation's autonomy in allocating, managing resources, that government could not rely on provision to interfere in First Nation's budgets, or to force First Nation to dip into fund maintained for other purposes to offset police service funding deficits — Yet government did so — Applicant's interpretation of federal government's obligations under Policy, FNPP not well founded — Reasonable for Tribunal to find Pekuakamiulnuatsh First Nation discriminated against on prohibited ground in provision of service

within meaning of Act, s. 5 — Application dismissed.

CANADA (ATTORNEY GENERAL) V. PEKUAKAMIULNUATSH FIRST NATION, (T-454-22, 2023 FC 267, Gagné A.C.J., reasons for judgment dated February 27, 2023, 28 pp.)