

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2017 CHRT 28

Date: August 14, 2017

File No.: T2125/4115

Between:

Kayreen Brickner

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: David L. Thomas

Table of Contents

I.	Complaint & Motions for Disclosure	1
II.	Principles of Disclosure.....	1
III.	Complainant’s Motion for Disclosure.....	3
IV.	Documentation Requested By Complainant.....	4
1.	All documents pertaining to the outcome of the question posed in 2013 by K Division DSSR Michelle BOUTIN to Commissioner PAULSON regarding Workplace Accommodation.	4
(i)	Complainant’s Submissions.....	4
(ii)	Commission’s Submissions	4
(iii)	Respondent’s Submissions	4
(iv)	Tribunal’s Ruling	5
2.	All requests made within M Division (Yukon) and all documents pertaining to the number of Family accommodations received as per form 6346 (created b/w 2012-05) in 2012, 2013, 2014 and 2015. These documents can be vetted to protect the identity of the requestor.....	5
(i)	Complainant’s Submissions.....	5
(ii)	Commission’s Submissions	5
(iii)	Respondent’s Submissions	6
(iv)	Tribunal’s Ruling	6
3.	All documents pertaining to file 2013-3588, this file was created and maintained by S/Sgt. Diane DOYLE. S/Sgt. DOYLEs position was a Respectful Workplace representative for E Division which oversaw M Division.	7
(i)	Tribunal’s Ruling	7
4.	All documents pertaining to the “yellow” files labeled BRICKNER and/or MARINIS maintained by E and M Division Human Resource Officer A/Comm Sharon WOODBURN.....	7

(i)	Tribunal’s Ruling	7
5.	All documents pertaining to Sgt. Cindy RATTRAY, E Division promotions unit, giving direction or receiving requests for assistance from S/Sgt. Tony PARK. Including any notes, direction or communications relating to M Division and MCU placements and/or Cpl. Kayreen BRICKNER.	8
(i)	Tribunal’s Ruling	8
6.	All documents pertaining to conversations, communications or direction Elizabeth MACDONALD gave regarding staffing, grievances or human rights complaints involving Cpl. Kayreen BRICKNER and/or Phil GOULET and any member in M Division relating to promotional or staffing actions, specifically the two processes of the MCU position (2014-2017) and the Crops Reviewer (promotion) 2015. This would include notes, files and phone conversations relating to Cpl. Kayreen BRICKNER including the following phone conversations;.....	8
(i)	Tribunal’s Ruling	9
7.	All documents from Inspector Phil GOULET, E Division Promotions Unit, pertaining to Cpl. Kayreen BRICKNER, the Crops Reviewer position (promotion 2015) includes (sic) any notes, documents and communications regarding phone conversations, the staffing file and the Grievance.....	9
(i)	Tribunal’s Ruling	9
8.	All documents pertaining to the (depersonalized) staffing actions for M Division, including Bulletins, STE positions, and divisional placements, newly created positions, official staffing actions (posted jobs national/promotion) and a list of positions that remained vacant anytime within years 2012 – 2014. Breaking down:.....	10
(i)	Complainant’s Submissions.....	10
(ii)	Commission’s Submissions	11
(iii)	Respondent’s Submissions	11
(iv)	Tribunal’s Ruling	11

9.	All documents pertaining to the MCU staffing file (2014) for the Corporal position that has remained vacant and is still vacant. Including notes, meetings, emails and direction regarding the stopping and starting (reviews) of this job process.	13
	(i) Complainant's Submissions.....	14
	(ii) Commission's Submissions.....	14
	(iii) Respondent's Submissions	14
	(iv) Tribunal's Ruling	14
10.	A copy of then Cpl. and now Sgt. Calista MCLEODs CV that was submitted for the MMIW&G position in 2013.	15
	(i) Complainant's Submissions.....	15
	(ii) Commission's Submissions.....	15
	(iii) Respondent's Submissions	16
	(iv) Tribunal's Ruling	16
11.	A copy of then Cpl. and now Sgt. Calista MCLEODS resume / CV used for her placement/secondment to MCU in 2013 (2013-2015).....	16
	(i) Complainant's Submissions.....	16
	(ii) Commission's Submissions.....	17
	(iii) Respondent's Submissions	17
	(iv) Tribunal's Ruling	17
12.	A copy of then Cpl. and now Sgt. Calista MCLEOD's competencies and Cover resume used to compete in the promotion for the Crops Reviewer Position in January 2015.....	18
	(i) Tribunal's Ruling	18
13.	All documents pertaining to the request by M Division for an "Independent" Review of the MCU selection (2012) including a copy of the review file, communications and notes between involved parties. This is referenced in emails and is believed to have been created by Insp. LUCIER and/or Supt. MCCONNELL.....	18

	(i) Tribunal’s Ruling	18
14.	A copy of the document (attachment) from S/Sgt. BRAMHILL’s email titled “Family Separation” that was sent to S/Sgt. Douglas COOPER on October 31, 2014.	19
	(i) Tribunal’s Ruling	19
15.	A copy of the attachment from the email forwarded to Insp. TEWNION on June 4, 2012 by S/Sgt. PARK. Attachment was labeled “MARINIS-spouse”	19
	(i) Tribunal’s Ruling	19
16.	All relevant documents related to Cpl. Lana PLUMMERS emails to M Division S/Sgt. PARK and/or Sgt. Mark LONDON (August 7, 2012) where Cpl. PLUMMER identified herself as a mother with an 18 month old child and was interested in the MCU position.	20
	(i) Tribunal’s Ruling	20
17.	A list of all the Corporals within the division and the dates each Corporal received their assessments for since 2013.	20
	(i) Complainant’s Submissions.....	20
	(ii) Commission’s Submissions	20
	(iii) Respondent’s Submissions	21
	(iv) Tribunal’s Ruling	21
18.	A list of the M Division Corporals and or Constables in an acting role (Sergeant and/or Staff/Sergeant) since 2013.	22
	(i) Complainant’s Submissions.....	22
	(ii) Commission’s Submissions	22
	(iii) Respondent’s Submissions	22
	(iv) Tribunal’s Ruling	23

19.	In June or July 2012 Carla DECOCK applied for a dispatchers position in M Division, in the initial stages of the job process, the staffing officer Barb ARMSTRONG contacted S/Sgt. Tony PARK and advised him that DECOCK had applied for a position/transfer to Whitehorse and was common law with Cpl. Mark CASWELL. ARMSTRONG sent an email “to see if there would be anything for him in Whitehorse if he is deemed releasable and outlined that he was currently in GIS. In light of this secondary process that was started <i>after</i> I had requested family accommodation, and the efforts that were made to identify and accommodate Cpl. Mark CASWELL just prior to the MCU job being advertised, I am requesting that all information pertaining to Carla DECOCK and the discussions surrounding her transfer to Whitehorse be disclosed.	23
	(i) Complainant’s Submissions.....	25
	(ii) Commission’s Submissions	25
	(iii) Respondent’s Submissions	25
	(iv) Tribunal’s Ruling	25
20.	Full Disclosure regarding any discrimination, harassment or workplace conflict complaints made against S/Sgt. Jason FLYNN, Sgt. Mark LONDON, S/Sgt. Doug HARRIS, C/Supt. Paul McCONNELL, and Assistant Commissioner Peter CLARK including how they were addressed, the outcome of those complaints, and any subsequent redress.	27
	(i) Complainant’s Submissions.....	27
	(ii) Commission’s Submissions	27
	(iii) Respondent’s Submissions	27
	(iv) Tribunal’s Ruling	28
21.	Full disclosure regarding any grievances or complaints under the command of Insp. Phil GOULET, the Officer in Charge of the Staffing and Promotion unit where applicants were removed from the validation pool when there was a supported objection of a validation committee member, including how they were addressed, the outcome of those complaints.	29
	(i) Complainant’s Submissions.....	30

(ii)	Commission’s Submissions	30
(iii)	Respondent’s Submissions	30
(iv)	Tribunal’s Ruling	30
22.	Copies of Curriculum Vitae (CV’s) for the following witnesses and /or people referenced as Subject Matter Experts.....	31
(i)	Complainant’s Submissions.....	31
(ii)	Commission’s Submissions	31
(iii)	Respondent’s Submissions	32
(iv)	Tribunal’s Ruling	32
23.	Copies of all notes for the following individuals relating to me, my husband (as I am referred to his spouse in documents) and my complaint(s) (grievance/Canadian Human Rights Complaint) which has been summed up and simplified within the RCMP as lateral transfer including my complaint of Harassment (Act of Retaliation).	32
(i)	Complainant’s Submissions.....	33
(ii)	Commission’s Submissions	34
(iii)	Respondent’s Submissions	34
(iv)	Tribunal’s Ruling	34

I. Complaint & Motions for Disclosure

[1] Corporal Kayreen Brickner (Complainant or Cpl. Brickner) is a female member of the Royal Canadian Mounted Police (RCMP), the Respondent in this proceeding. She is married to another member of the RCMP and together they have four minor children. The Complainant and her husband, Corporal Marinis (Cpl. Marinis), had been stationed together at E Division (British Columbia) in Squamish, B.C. In April 2012, Cpl. Marinis applied for an RCMP position in Whitehorse in the Yukon Territory but it required moving his spouse and children from British Columbia to the Yukon Territory.

[2] The Complainant alleges in her Statement of Particulars (SOP) that the RCMP agreed to try its best to accommodate her in securing a new position in Whitehorse. However, she only began to work in Whitehorse two years later in January 2015. In the meantime, the Complainant alleges that the RCMP in the Yukon (M Division) had offered her a position that did not accommodate her childcare responsibilities. The Complainant further alleges that subsequent to her rejection of this offer of employment, M Division failed to inform her of other available employment opportunities and deviated from RCMP practice in filling positions with other candidates rather than staffing the said positions with the Complainant. She alleges this was discrimination based on the grounds of sex and family status. She also alleges two acts of retaliation.

[3] In preparing for the hearing of this case, Cpl. Brickner has brought this motion for the disclosure of documentation that she believes is arguably relevant.

II. Principles of Disclosure

[4] Pursuant to subsection 50(1) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (*Act*), parties before the Canadian Human Rights Tribunal (Tribunal) must be given a full and ample opportunity to present their case. To be given this opportunity, parties require, among other things, the disclosure of arguably relevant information in the possession or care of the opposing party prior to the hearing of the matter. Along with the facts and issues presented by the parties, the disclosure of information allows each party to know the case it is up against and, therefore, adequately prepare for the hearing.

[5] In deciding whether the information ought to be disclosed, the Tribunal must consider whether the information at issue is arguably relevant (see *Warman v. Bahr*, 2006 CHRT 18 at para. 6). This standard is meant to “prevent production for purposes which are speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming” (see *Day v. Department of National Defence and Hortie*, Ruling No. 3, 2002/12/06). This also ensures the probity of the evidence.

[6] The standard is not a particularly high threshold for the moving party to meet. If there is a rational connection between a document and the facts, issues, or forms of relief identified by the parties in the matter, the information should be disclosed pursuant to paragraphs 6(1)(d) and 6(1)(e) of the Tribunal’s *Rules of Procedure (03-05-04) (Rules)* (see *Guay v. Canada (Royal Canadian Mounted Police)*, 2004 CHRT 34 at para. 42 (*Guay*); *Rai v. Royal Canadian Mounted Police*, 2013 CHRT 6 at para. 28; and, *Seeley v. Canadian National Railway*, 2013 CHRT 18 at para. 6 (*Seeley*)).

[7] However, the request for disclosure must not be speculative or amount to a “fishing expedition” (see *Guay* at para. 43). The documents requested should be identified with reasonable particularity. It is the Tribunal’s view that in the search for truth and despite the arguable relevance of evidence, the Tribunal may exercise its discretion to deny a motion for disclosure, so long as the requirements of natural justice and the *Rules* are respected, in order to ensure the informal and expeditious conduct of the inquiry (see *Gil v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8407 (FC) at para. 13; see also s. 48.9(1) of the *Act*).

[8] This Tribunal has already recognized in its past decisions that it may deny ordering the disclosure of evidence where the probative value of such evidence would not outweigh its prejudicial effect on the proceedings. Notably, the Tribunal should be cautious about ordering searches where a party or a stranger to the litigation would be subjected to an onerous and far-reaching search for documents, especially where ordering disclosure would risk adding substantial delay to the efficiency of the inquiry or where the documents are merely related to a side issue rather than the main issues in dispute (see *Yaffa v. Air Canada*, 2014 CHRT 22 at para. 4; *Seeley* at para. 7; see also *R. v. Seaboyer* [1991] 2 S.C.R. 577 at 609-611).

[9] It should also be noted that the disclosure of arguably relevant information does not mean that this information will be admitted in evidence at the hearing of the matter or that significant weight will be afforded it in the decision making process (see *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 at para. 4).

[10] Moreover, given that a party's obligation to disclose is limited to documents that are "in the party's possession" under section 6 of the *Rules*, the Tribunal cannot order a party to generate or create new documents for disclosure (see *Gaucher v. Canadian Armed Forces*, 2005 CHRT 42 at para. 17).

III. Complainant's Motion for Disclosure

[11] The disclosure process between the parties commenced more than a year ago. The Respondent provided a number of documents, more than 1,100 in total, to the Complainant in the fall of 2016. However, Cpl. Brickner believed there were more relevant documents outstanding, so she made a written request to the RCMP in January of 2017, outlining various documents that she wanted disclosed. Cpl. Brickner was not satisfied with the Respondent's response to her request, which she received in April 2017. As such, Cpl. Brickner brought a motion for disclosure to the Tribunal on May 17, 2017.

[12] A Case Management Conference Call (CMCC) was held on May 24, 2017, at which time I raised the point that the time required to hear, rule on and comply with any order made on this complex motion might result in the parties not being ready to begin the hearing scheduled to start in September 2017. Two days later, Cpl. Brickner advised the Tribunal that she would amend her motion to narrow the list of requests. The new motion, which is the subject of this ruling, was received by the Tribunal on May 29, 2017. Submissions on the motion were received from the Commission and the RCMP, and the Complainant and the Commission were permitted to provide reply submissions.

[13] In total, the motion lists 23 separate documents or groups of documents that Cpl. Brickner would like disclosed by the RCMP. This ruling will address each of those 23

requests separately, with the Tribunal's ruling for each request contained under each of the 23 headings below.

IV. Documentation Requested By Complainant

- 1. All documents pertaining to the outcome of the question posed in 2013 by K Division DSSR Michelle BOUTIN to Commissioner PAULSON regarding Workplace Accommodation.**

Note: Commissioner PAULSON is set to retire by the end of June 2017. If this particular disclosure is moved forward by the tribunal then I request that a firm deadline also be imposed on the RCMP to guard against the potential inability of Commissioner PAULSON to disclose given his announced retirement date.

(i) Complainant's Submissions

[14] Cpl. Brickner believes these documents are arguably relevant because they would show that senior managers of the RCMP were informed in 2013 that there were failures throughout the organization to meet requests for family accommodations. In her view, this would be evidence of a systemic issue within the RCMP.

(ii) Commission's Submissions

[15] The Commission believes this information would be helpful to Cpl. Brickner and that Commissioner Paulson's response to female officers about workplace accommodation would be arguably relevant to compare it to the manner in which Cpl. Brickner was treated.

(iii) Respondent's Submissions

[16] The RCMP submits that this request is too vague, too broad and the information requested is, at best, of questionable usefulness. There is no adequate information in the request to specifically identify the email exchange or to understand which documents she is seeking production of. It also submits that a response given four years ago may not be an accurate reflection of current RCMP policies or practices.

[17] Notwithstanding its objections, the RCMP has indicated it will make reasonable efforts to look for and produce Commissioner Paulson's email or otherwise written response to DSSR Michelle Boutin's 2013 question on workplace accommodation.

(iv) Tribunal's Ruling

[18] The RCMP is ordered to make reasonable efforts to look for and produce Commissioner Paulson's email or otherwise written response to DSSR Michelle Boutin's 2013 question on workplace accommodation. The Tribunal imposes a deadline of September 15, 2017, to comply with this order. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If this documentation cannot be located with reasonable efforts, the RCMP will advise the other parties and the Tribunal what steps were undertaken in committing their efforts on or before September 15, 2017.

2. All requests made within M Division (Yukon) and all documents pertaining to the number of Family accommodations received as per form 6346 (created b/w 2012-05) in 2012, 2013, 2014 and 2015. These documents can be vetted to protect the identity of the requestor.

(i) Complainant's Submissions

[19] The Complainant states that this form is required by the RCMP when a family accommodation request is made. However, she was not advised of this requirement and as such, she wants to see if there was any formal direction or policy requiring the completion of this form at the relevant time.

(ii) Commission's Submissions

[20] The Commission supports the request given that the RCMP alleged in its SOP that Cpl. Brickner did not make a request for accommodation or fill out form 6346. It further adds that the RCMP should disclose the number of times a family accommodation was made in 2012-2015 in M Division where the form 6346 was not submitted.

(iii) Respondent's Submissions

[21] The RCMP characterizes this request as an onerous and far-reaching search for documents. Its submission explains that there are approximately over 200 employees in M Division alone and that formal family-related workplace accommodation requests are not kept in a central database. Thus, to fulfill the request, the RCMP would be required to manually review the paper service files of each RCMP member posted at M Division within the relevant time. Furthermore, since the paper copies of such forms would only exist in each employee's file, where employees have transferred to other divisions of the RCMP, M Division would have to request the assistance of other divisions of the RCMP to obtain the forms, if any, in dispute. Where the form was not filed, an informal request would have been made to the employee's supervisor, and in such cases, the RCMP submits, it would be necessary to contact every supervisor working during that period to canvass their recollection of informal requests. The RCMP also gave additional reasons why it objects to this request.

(iv) Tribunal's Ruling

[22] The Tribunal recognizes that the production of the documents requested by Cpl. Brickner may help refute the RCMP's claim that she ought to have completed form 6346 in order to receive family accommodation. However, given that the collection of this information would be time-consuming for the RCMP and given that the documentation sought appears to be of limited value to the Complainant's case, it is the Tribunal's view that this request for disclosure ought to be denied.

[23] At the hearing, and perhaps in the cross-examination of the Respondent's witnesses, Cpl. Brickner will have the opportunity to explore the question of whether there were exceptions to the requirement to complete the form 6346 in order to have workplace accommodation. It is the Tribunal's view that proceeding in this manner will prevent further delay in the proceeding while preserving the Complainant's right to know the case she has to meet.

[24] Regarding the Commission's suggestion that the RCMP disclose the number of times a family accommodation was made in 2012-2015 in M Division where the form 6346 was not submitted, the Tribunal is of the view that the Commission is requesting the Tribunal to order the creation of a document or list. Under section 6 of the *Rules*, a party's obligation to disclose is limited to documents that are in the party's possession. As stated above, the Tribunal cannot order a party to generate or create new documents for disclosure. For these reasons, the Commission's request is denied.

3. **All documents pertaining to file 2013-3588, this file was created and maintained by S/Sgt. Diane DOYLE. S/Sgt. DOYLEs position was a Respectful Workplace representative for E Division which oversaw M Division.**

(i) Tribunal's Ruling

[25] The RCMP has agreed to disclose and produce all documents located in the above-mentioned file, with the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed. The Tribunal orders the production of these documents and imposes a deadline of September 15, 2017, to comply. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to the hearing in a timely manner.

4. **All documents pertaining to the "yellow" files labeled BRICKNER and/or MARINIS maintained by E and M Division Human Resource Officer A/Comm Sharon WOODBURN.**

(i) Tribunal's Ruling

[26] The RCMP has agreed to disclose and produce a copy of Cpl. Brickner and Cpl. Marinis' "yellow files" (service files). In its submissions, the RCMP argues that much of Cpl. Brickner's file, and perhaps the totality of Cpl. Marinis' file, is not arguably relevant. However, in this case, the RCMP has agreed to the disclosure request anyway, but on the

condition that it receives written consents from Cpl. Brickner and Cpl. Marinis before such disclosure is made. The reason for this was not explained in the RCMP's submissions, but it would appear to be a reasonable request, especially for Cpl. Marinis, who is not a party to this proceeding.

[27] As such, the Tribunal makes no order regarding this request and leaves it up to the Complainant and her husband to avail themselves of the Respondent's offer.

5. All documents pertaining to Sgt. Cindy RATTRAY, E Division promotions unit, giving direction or receiving requests for assistance from S/Sgt. Tony PARK. Including any notes, direction or communications relating to M Division and MCU placements and/or Cpl. Kayreen BRICKNER.

(i) Tribunal's Ruling

[28] The Tribunal does not need to order disclosure on this request as the RCMP indicates its belief that it has already disclosed all such relevant documents in its possession. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a list of all documents that it has already provided which it believes meets this request on or before September 15, 2017. The Respondent has further agreed to confirm with Sgt. Rattray that all documents arguably relevant to this matter, including notes from July and August 2012, have been produced. If any new documents are identified, the Tribunal orders their disclosure subject to the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed. The Tribunal imposes a deadline of September 15, 2017, to comply with this order. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to the hearing in a timely manner. If any new such documents are identified at a later date, they will be disclosed and produced as required by Rule 6(5)(b).

6. All documents pertaining to conversations, communications or direction Elizabeth MACDONALD gave regarding staffing, grievances or human

rights complaints involving Cpl. Kayreen BRICKNER and/or Phil GOULET and any member in M Division relating to promotional or staffing actions, specifically the two processes of the MCU position (2014-2017) and the Crops Reviewer (promotion) 2015. This would include notes, files and phone conversations relating to Cpl. Kayreen BRICKNER including the following phone conversations;

- April 2015 Phone conversation(s) with Insp. Phil GOULET relating to the Crops Reviewer promotional position in M division, grievance and human rights complaint.
- February 12, 2016 Phone conversation with S/Sgt. Jason FLYNN regarding the conversation and direction given relating to the MCU lateral position.

(i) Tribunal's Ruling

[29] The Tribunal does not need to order disclosure on this request as the RCMP indicates it believes that it has already disclosed all such relevant documents in its possession. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a list of all documents that it has already provided which it believes meets this request on or before September 15, 2017. If any new documents relevant to this request are identified, the Respondent must disclose them in accordance with Rule 6(5)(b) subject to the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

- 7. All documents from Inspector Phil GOULET, E Division Promotions Unit, pertaining to Cpl. Kayreen BRICKNER, the Crops Reviewer position (promotion 2015) includes (sic) any notes, documents and communications regarding phone conversations, the staffing file and the Grievance.**

(i) Tribunal's Ruling

[30] The Tribunal does not need to order disclosure on this request as the RCMP indicates that it believes it has already disclosed all such relevant documents in its possession. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a

list of all documents that it has already provided which it believes meets this request on or before September 15, 2017. If any new documents relevant to this request are identified, the Respondent must disclose them in accordance with Rule 6(5)(b) subject to the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

8. All documents pertaining to the (depersonalized) staffing actions for M Division, including Bulletins, STE positions, and divisional placements, newly created positions, official staffing actions (posted jobs national/promotion) and a list of positions that remained vacant anytime within years 2012 – 2014. Breaking down:

- All 2285's for the NCO General Duty positions in from April 2012 thru 2014.
- All A22a issued for M Division NCO Cpl. positions filled laterally or promoted into between April 2012-2014.
- General Duty Schedule (working schedule) including restructuring, secondments and vacancies for 2012, 2013 and 2014.
- M Division MCU schedule (working) which reflects the restructuring, secondments and vacancies throughout 2012, 2013, and 2014.
- Org Chart – Including years 2012, 2013, 2014 outlining FTE and duration in each position in which he did not vacate General Duty until his transfer in Feb 2013.

(i) Complainant's Submissions

[31] Cpl. Brickner argues that these documents will give an accurate account of how M Division manages its resources and vacancies. She suggests that there were additional positions available that were not offered to her and as such these documents support her allegations of discrimination and retaliation.

[32] In her Reply submissions, Cpl. Brickner does not add clarification. She reiterates requests for two documents the RCMP has agreed to provide, and she requests information in two instances, but not related to specific documents. She also uses her Reply to make argument in support of her allegations.

(ii) Commission's Submissions

[33] The Commission agrees these documents are arguably relevant because they will allow the parties and the Tribunal to examine the RCMP's defence in context of its argument that it could not offer certain positions to Cpl. Brickner.

(iii) Respondent's Submissions

[34] The RCMP states that some of the above disclosure has already been made, and it agrees to make certain further disclosure of documents requested that are in its possession. However, the Respondent refuses to disclose certain documents, such as documents relating to positions outside of Whitehorse or at levels other than Corporal, some of which it argues are not relevant and for others it argues that the requests are too onerous and far-reaching.

(iv) Tribunal's Ruling

[35] The Complainant's request was not entirely clear to the Tribunal, especially since Cpl. Brickner uses some abbreviations and terminology that are not familiar to it. She also makes a reference to a specific person in the last part of her request (i.e. "...which he did not vacate..."), but does not sufficiently identify this person. Moreover, it was not clear what M Division meant geographically to the Complainant. A request for clarification was made to Cpl. Brickner, and the other parties were offered a chance to reply to her clarifications. The Commission chose not to reply to the Complainant's clarifications. The Respondent replied and added to the clarifications. They also confirmed which documents they had already disclosed under this request. The clarifications have assisted the Tribunal with this decision. Notably, while the Complainant's understanding of M Division differs from that of the RCMP, the Complainant's response confirms that she is only interested in acquiring information about positions physically located in Whitehorse. The Complainant also specified that the person she refers to in the request is Cpl. Hutchings, yet she provided no reasons to explain the arguable relevance of this specific request.

[36] In a broad sense, any documentation requested must be arguably relevant, and as such it must bear some connection with the allegations made by a party to the dispute. It is apparent that this request relates to the allegations Cpl. Brickner made in paras. 62-73 of her SOP where she alleges that between June 2012 and December 2014, there were 11 vacant positions of which she was not advised or selected. This request seeks to further identify what other positions might have been available during this period for which again, Cpl. Brickner was not advised or considered. I am not convinced that this additional documentation will add to Cpl. Brickner's case in any measurable way. It is the Tribunal's view that allowing this request may unduly delay the efficiency of the inquiry without adding any substantial probative value as the Complainant seems to already be in possession of evidence that may support her claim that she was not considered for several jobs in M Division. The Tribunal wishes to take this time to remind the parties that the Complainant need only establish that she was passed over for one position on a prohibited ground in order for the Tribunal to make a finding of discrimination.

[37] Furthermore, if she desires, Cpl. Brickner will have the opportunity to cross-examine witnesses of the Respondent about the general turnover and availability of positions during this period. However, in the interest of keeping the inquiry focused on the allegations in the SOP, further documentation under this request will not be ordered by the Tribunal.

[38] The Respondent states that it has already produced, with one exception noted below, all relevant documents in its possession regarding the staffing actions at the Corporal level between 2012 and 2014 based in Whitehorse. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a list of all documents that it has already provided which it believes meets this request on or before September 15, 2017. If any new documents relevant to this request are identified, the Respondent must disclose them subject to the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

[39] The exception to the documents provided relate to the General Duty Watch Commander position that was offered to Cpl. Brickner in 2012. The RCMP has undertaken to disclose the documentation relating to this staffing position. Therefore, the Tribunal orders the production of these documents and imposes a deadline of September 15, 2017, to comply. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to the hearing in a timely manner. If any new such documents are identified at a later date, they will be disclosed and produced as required by Rule 6(5)(b).

[40] Cpl. Brickner also requests the General Duty Schedule, the MCU (Major Crimes Unit) Schedule and the Organizational Chart for the years 2012-2014. The RCMP has agreed to provide these documents, but it suggests that certain pieces of information Cpl. Brickner has identified in her request, namely information with respect to “restructuring, secondments and vacancies” may not be reflected in these documents. The Tribunal therefore directs the RCMP to produce the General Duty Schedules, the MCU Schedules and the Organizational Charts as they exist for the years 2012-2014 on or before September 15, 2017. The Tribunal also notes that the Complainant will have the opportunity to make specific inquiries about Cpl. Hutchings as well as any restructuring, secondments and vacancies occurring in M Division during the cross-examination of the Respondent’s witnesses.

9. All documents pertaining to the MCU staffing file (2014) for the Corporal position that has remained vacant and is still vacant. Including notes, meetings, emails and direction regarding the stopping and starting (reviews) of this job process.

- **All notes, files, documents and emails relating to the 2014-03-08 MCU selection. S/Sgt. PARK advises DUNMALL “will advise of the results once the selection process has been completed. Then on 2014-04-08 “the staffing of this position is currently being reviewed by an outside source. All applicants that were part of this process and the HRMIS run.**
- **All notes, files, documents and emails between S/Sgt. FLYNN, S/Sgt. PARK, Sgt. WILTSE and Kurtis PILOPOW relating to their discussions to create a panel for the MCU selection. If they met, reviewed or had**

any discussions relating to any applications or documents (2014-10-14).

- **All notes, files, documents and emails relating to the processes and efforts made by M Division to identify candidates for this position throughout 2014, 2015, 2016 and 2017.**

(i) Complainant's Submissions

[41] The Complainant argues that these documents are arguably relevant to her second allegation of retaliation. She believes they will be part of the evidence that shows she was not considered to fill this vacancy because she filed a human rights complaint against the Respondent.

(ii) Commission's Submissions

[42] The Commission supports Cpl. Brickner's request as it believes the documents are arguably relevant to the retaliation allegation and may demonstrate why Cpl. Brickner was not considered for this position.

(iii) Respondent's Submissions

[43] The Respondent argues that it has already disclosed all the relevant documents in its possession relating to this staffing action. The RCMP suggests that the only documents relevant to Cpl. Brickner's complaint are documents relating to the staffing action up to the point in time when she was advised of the decision not to offer her that position. Unfortunately, the Respondent does not indicate when that happened. According to the Complainant's SOP, she was advised she was not successful on two occasions, November 2014 (see SOP para. 88) and again in April 2016 (see SOP para. 95.)

(iv) Tribunal's Ruling

[44] The Tribunal finds the requested documents to be arguably relevant in the context of the retaliation complaint. The RCMP is ordered to disclose all of the requested

documents related to the vacant MCU staffing file up to December 31, 2016, on or before September 15, 2017. This disclosure order is limited to documents up until this date as the Tribunal finds that later disclosure is not arguably relevant. As the RCMP did not specify the exact date upon which Cpl. Brickner was advised of the decision not to offer her that position, December 31, 2016 was selected to permit reasonable disclosure to the Complainant without subjecting the Respondent to an unreasonable, far-reaching request for documents that are not arguably relevant. To the extent that the Respondent has already disclosed some of this documentation, it is directed to provide the Complainant with a list of such documentation already submitted under this request on or before September 15, 2017. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner.

10. A copy of then Cpl. and now Sgt. Calista MCLEODs CV that was submitted for the MMIW&G position in 2013.

(i) Complainant's Submissions

[45] Cpl. Brickner challenges statements from the RCMP that she was considered for every position that was open during the time she sought to be transferred to M Division. She believes that by comparing her qualifications to the *curriculum vitae* of Sgt. McLeod, she will be able to demonstrate that her qualifications were superior. Cpl. Brickner believes this is arguably relevant to her claim that the RCMP did not intend to offer her a position because of her family accommodation request.

(ii) Commission's Submissions

[46] The Commission also supports this request for the same reasons Cpl. Brickner provided.

(iii) Respondent's Submissions

[47] The Respondent refuses disclosure of this document on the grounds that it is not arguably relevant to Cpl. Brickner's allegations and because it contains personal information about a third-party not involved in this case. The RCMP alleges that Cpl. Brickner inquired about and was invited to indicate her interest in this position. However, Cpl. Brickner did not indicate any interest. She later disclosed that she was on work restrictions due to her pregnancy. Having acknowledged that she was not in a position to indicate her interest for the temporary positions after May 2013, including the MMIW&G's position, the RCMP argues that Cpl. Brickner was never in competition with Cpl. McLeod for this position.

(iv) Tribunal's Ruling

[48] The request for this document is denied. It is not arguably relevant to compare Cpl. Brickner's qualifications against successful applicants for temporary positions in which Cpl. Brickner admits she did not express an interest.

11. A copy of then Cpl. and now Sgt. Calista MCLEODS resume / CV used for her placement/secondment to MCU in 2013 (2013-2015).**(i) Complainant's Submissions**

[49] Cpl. Brickner's argument for this document is similar to the previous request. She challenges statements from the RCMP that she was considered for every position that was open during the time she sought to be transferred to M Division. She believes that by comparing her qualifications to the *curriculum vitae* of Sgt. McLeod at the time she was seconded into the MCU, she will be able to demonstrate that her qualifications were superior. Cpl. Brickner believes this is arguably relevant to her claim that the RCMP did not intend to offer her a position because of her family accommodation request.

(ii) Commission's Submissions

[50] In addition to supporting Cpl. Brickner's reasons, the Commission argues that this document is particularly relevant given that Cpl. Brickner had qualified in second place for the MCU position on offer in 2012.

(iii) Respondent's Submissions

[51] The Respondent's reasons for refusing disclosure of this document are similar to the previous request. The secondment to the MCU was another temporary position for which Cpl. Brickner did not indicate her interest. Having acknowledged that she was not in a position to indicate her interest for the temporary positions after May 2013, including this secondment, the RCMP argues that Cpl. Brickner was never in competition with Cpl. McLeod for this position. The Respondent argues there are no facts or legal questions that would justify disclosing the private and personal information of a third party not involved in this matter.

(iv) Tribunal's Ruling

[52] The request for this document is denied because it is not arguably relevant. The secondment arose out of the temporary MMIW&G position of which Cpl. Brickner was aware, but for which she chose not to express an interest. It does not appear to be probative to compare Cpl. Brickner's qualifications against a successful applicant's for a temporary position that arose from duties of another position for which Cpl. Brickner did not apply. Regarding the general vacancy of the MCU position, Cpl. Brickner will have the opportunity to lead other evidence on that subject without Sgt. McLeod's resume / CV used for her placement/secondment to MCU in 2013.

12. A copy of then Cpl. and now Sgt. Calista MCLEOD's competencies and Cover resume used to compete in the promotion for the Crops Reviewer Position in January 2015.

(i) Tribunal's Ruling

[53] The RCMP has agreed to make reasonable efforts to locate and produce Sgt. McLeod's competencies and cover résumé used to compete in the promotion for the Crops Reviewer position in January 2015. The Tribunal orders the production of these documents and imposes a deadline of September 15, 2017, to comply. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed. If this documentation cannot be located with reasonable efforts, the RCMP will advise the other parties and the Tribunal what steps were undertaken in committing their efforts on or before September 15, 2017.

13. All documents pertaining to the request by M Division for an "Independent" Review of the MCU selection (2012) including a copy of the review file, communications and notes between involved parties. This is referenced in emails and is believed to have been created by Insp. LUCIER and/or Supt. MCCONNELL.

(i) Tribunal's Ruling

[54] The Tribunal does not need to order disclosure on this request as the RCMP indicates that it believes it has already disclosed all such relevant documents in its possession. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a list of all documents that it has already provided which it believes meets this request on or before September 15, 2017. If any new documents relevant to this request are identified, the Respondent must disclose them in accordance with Rule 6(5)(b) subject to the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

- 14. A copy of the document (attachment) from S/Sgt. BRAMHILL's email titled "Family Separation" that was sent to S/Sgt. Douglas COOPER on October 31, 2014.**

(i) Tribunal's Ruling

[55] The RCMP has agreed to make reasonable efforts to locate, disclose and produce this document. The Tribunal orders the production of this document and imposes a deadline of September 15, 2017, to comply. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If the document cannot be located with reasonable efforts, the RCMP will advise the other parties and the Tribunal what steps were undertaken in committing their efforts on or before September 15, 2017.

- 15. A copy of the attachment from the email forwarded to Insp. TEWNION on June 4, 2012 by S/Sgt. PARK. Attachment was labeled "MARINIS-spouse".**

(i) Tribunal's Ruling

[56] The RCMP has agreed to make reasonable efforts to locate, disclose and produce this document. The Tribunal orders the production of this document and imposes a deadline of September 15, 2017, to comply. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If the email attachment cannot be located with reasonable efforts, the RCMP will advise the other parties and the Tribunal what steps were undertaken in committing their efforts on or before September 15, 2017.

- 16. All relevant documents related to Cpl. Lana PLUMMERS emails to M Division S/Sgt. PARK and/or Sgt. Mark LONDON (August 7, 2012) where Cpl. PLUMMER identified herself as a mother with an 18 month old child and was interested in the MCU position.**

(i) Tribunal's Ruling

[57] The Tribunal does not need to order disclosure on this request as the RCMP indicates that it believes it has already disclosed all such relevant documents in its possession. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a list of all documents that it has already provided which it believes meets this request on or before September 15, 2017. If any new documents relevant to this request are identified, the Respondent must disclose them in accordance with Rule 6(5)(b) subject to the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

- 17. A list of all the Corporals within the division and the dates each Corporal received their assessments for since 2013.**

(i) Complainant's Submissions

[58] The Complainant argues this document will show that she and her husband have been subjected to retaliation in the form of not having regular assessments. She believes this will demonstrate that she and her husband are not being supported or developed by management due to their involvement in the complaint.

(ii) Commission's Submissions

[59] The Commission supports the request and argues that the lack of assessments is peculiar. In its Reply submissions, the Commission states that the key thrust of its SOP is that the RCMP adversely differentiated against Cpl. Brickner. As such, this document request should not be restricted to the issue of retaliation. Further, the Commission highlights para. 35 of its SOP where it refers to Cpl. Brickner having been "excluded and

dismissed by members and other supervisors, including middle and senior management.” The Commission goes on to suggest this has negatively affected her prospects for career advancement.

(iii) Respondent’s Submissions

[60] The Respondent argues that this documentation is not arguably relevant because there is no nexus to the issues in dispute. Specifically, the RCMP argues that the request essentially amounts to a new allegation of retaliation that was not outlined in the Complainant’s SOP or in her Reply SOP. As such, there should be no order for compliance with this request.

(iv) Tribunal’s Ruling

[61] I note that the Complainant’s request appears to be for information, rather than specific documentation which may or may not exist. The Tribunal cannot order disclosure of a document that does not exist.

[62] The Respondent’s main objection, however, is that the allegation of retaliation, based on the allegation that neither the Complainant nor her husband have received assessments since beginning work at M Division, is a new allegation that was not part of the Complainant’s SOP. I must agree with the RCMP’s position on this point. The documents requested must have a nexus to the allegations contained in a party’s SOP. In this case, Cpl. Brickner’s SOP does not allege that she has been subjected to retaliation in the form of not having regular assessments.

[63] Moreover, the Commission’s argument that a key thrust of its SOP relates to the adverse differential treatment against Cpl. Brickner is too vague to now encompass a very specific allegation that should have been raised in a SOP. This document request alludes to a very specific act of retaliation and it would be prejudicial to the Respondent to allow what would amount to a new allegation of retaliation without having provided the RCMP the chance to respond to such in its SOP.

[64] It is always open to a party before the Tribunal to make an application to amend their SOP to add another allegation. However, all parties are reminded that any new interlocutory motion will take time and could potentially further delay the commencement of any scheduled hearing.

18. A list of the M Division Corporals and or Constables in an acting role (Sergeant and/or Staff/Sergeant) since 2013.

(i) Complainant's Submissions

[65] Similar to the previous document request, the Complainant argues this document will show that she and her husband have been subjected to retaliation by not having been given the opportunity to partake in "acting roles" which may assist in their career advancement. She would like to compare the opportunities afforded to other corporals to demonstrate that she and her husband are being excluded.

(ii) Commission's Submissions

[66] The Commission supports the request and gives the same argument as for the previous document request. In its Reply submissions, the Commission states that the key thrust of its SOP is that the RCMP adversely differentiated against Cpl. Brickner. As such, this document request should not be restricted to the issue of retaliation. Further, the Commission highlights para. 35 of its SOP where it refers to Cpl. Brickner having been "excluded and dismissed by members and other supervisors, including middle and senior management." The Commission goes on to suggest this has negatively affected her prospects for career advancement.

(iii) Respondent's Submissions

[67] Similar to its submissions for the previous request, the Respondent argues that this documentation is not arguably relevant because there is no nexus to the issues in dispute. Specifically, the RCMP argues that the request essentially amounts to a new allegation of retaliation that was not outlined in the Complainant's SOP or in her Reply SOP. It would

be against the principle of procedural fairness to require the RCMP to defend such factual allegations without having had the opportunity to first respond to them in its SOP. As such, there should be no order for compliance with this request.

(iv) Tribunal's Ruling

[68] Again, I note that the Complainant's request appears more to be a request for information, rather than specific documentation which may or may not exist. The Tribunal cannot order disclosure of a document that does not exist.

[69] Furthermore, as in the previous request, the Respondent's main objection is that this allegation, that neither the Complainant nor her husband have received any acting assignments since their transfer, is a new allegation that was not part of the Complainant's SOP. I must again agree with the RCMP's position on this point. The documents requested must have a nexus to the allegations contained in a party's SOP. In this case, Cpl. Brickner's SOP does not allege that she has been subjected to retaliation in the form of not having been given the opportunity to perform in acting roles.

[70] As with the previous request, the Commission's argument that a key thrust of its SOP relates to the adverse differential treatment against Cpl. Brickner, is again too vague to now encompass a very specific factual allegation that should have been alleged in a party's SOP. This document request alludes to a very specific act of adverse differential treatment or retaliation and it would be prejudicial to the Respondent to allow what would amount to a new allegation of discrimination or retaliation without having provided the RCMP the chance to respond to such in its SOP.

[71] It is always open to a party before the Tribunal to make an application to amend their SOP to add another allegation. However, all parties are reminded that any new interlocutory motion will take time and could potentially further delay the commencement of any scheduled hearing.

19. In June or July 2012 Carla DECOCK applied for a dispatchers position in M Division, in the initial stages of the job process, the staffing officer Barb ARMSTRONG contacted S/Sgt. Tony PARK and advised him that

DECOCK had applied for a position/transfer to Whitehorse and was common law with Cpl. Mark CASWELL. ARMSTRONG sent an email “to see if there would be anything for him in Whitehorse if he is deemed releasable and outlined that he was currently in GIS. In light of this secondary process that was started *after* I had requested family accommodation, and the efforts that were made to identify and accommodate Cpl. Mark CASWELL just prior to the MCU job being advertised, I am requesting that all information pertaining to Carla DECOCK and the discussions surrounding her transfer to Whitehorse be disclosed.

- **A copy of Barb ARMSTRONGS staffing file for M Division dispatchers that included Carla DECOCK (job posting in June/July 2012). Including copies of the M Division and E Division file.**
- **I request a copy of all notes and emails by S/Sgt. PARK, Barb ARMSTRONG and G Division Staffing relating to this staffing action.**
- **All documents pertaining to any discussion of a transfer to M Division involving Cpl. Mark CASWELL and/or Carla DECOCK and the staffing offices of E Division, M Division and G Division.**
- **A copy of the email response from S/Sgt. PARK to Barb ARMSTRONGS email on July 18, 2012, including any notes regarding any conversation between S/Sgt. PARK and Barb ARMSTRONG. S/Sgt. Park received an email from Barb ARMSTRONG asking if he could accommodate Cpl. Mark CASWELL. DECOCK received a notice of transfer (1272), without participating in a northern staffing interview weeks after this contact with S/Sgt. PARK.**
- **Please provide all documents involving S/Sgt. PARK and Cpl. CASWELL relating to Cpl. CASEWELLs interest and placement in M Division including any offer to him of the vacant General Duty position or suggestion that Cpl. CASWELL take an LWOP to accommodate his “common law” DECOCKs offer of a position (1272) in August 2012.**
- **A copy of all documents and emails relating to DECOCKs issuance of a 1272 without the required pre northern interview that is required before a 1272 is issued, she received her 1272 (offer of employment) before August 13, 2012.**
- **A copy of S/Sgt. BELANDs notes relating to Cpl. CASWELLs transfer to M Division including conversations and emails between Barb ARMSTRONG, S/Sgt. Tony PARK, Cpl. CASWELL and Carla DECOCK.**

(i) Complainant's Submissions

[72] The Complainant argues that these documents are arguably relevant because they represent a similar lateral staffing transfer, around the same time in 2012 that involved a trailing spouse or common law partner. Cpl. Brickner alleges that Cpl. Caswell received differential treatment because of his gender and because he was one-half of an RCMP member couple that did not have children.

(ii) Commission's Submissions

[73] The Commission supports the request and suggests the documents contain information critical to the Tribunal's examination of the different treatment received by these two RCMP member couples.

(iii) Respondent's Submissions

[74] The Respondent states that the documents relating to Cpl. Caswell's staffing into the MCU position have already been disclosed. The RCMP also agrees to make reasonable efforts to locate and produce the notes of S/Sgt. Beland relating to Cpl. Caswell's transfer.

[75] However, the RCMP refuses the disclosure of the remaining documentation on the basis that the staffing action related to Carla Decock's transfer to M Division is not arguably relevant to the issues before the Tribunal. This request concerns a separate staffing action for a totally different position. Furthermore, the Respondent objects to the disclosure of documents containing private information of third parties not involved with this matter.

(iv) Tribunal's Ruling

[76] The Tribunal acknowledges the Respondent's undertaking to use reasonable efforts to locate and produce the notes of S/Sgt. Beland relating to Cpl. Caswell's transfer to M Division. If the notes cannot be located with reasonable efforts, the RCMP will advise

the other parties and the Tribunal what steps were undertaken in committing their efforts. The Tribunal orders the production of these documents and imposes a deadline of September 15, 2017, to comply. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If the documentation cannot be located with reasonable efforts, the RCMP will advise the other parties and the Tribunal what steps were undertaken in committing their efforts on or before September 15, 2017.

[77] Regarding the documentation related to the MCU Corporal staffing action in 2012, the RCMP indicates it believes it has already disclosed all such relevant documents in its possession. As such, the Tribunal does not need to make an order regarding that documentation. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a list of all documents that it has already provided which it believes meets this part of this request on or before September 15, 2017. If any new documents relevant to this request are identified, the Respondent must disclose them in accordance with Rule 6(5)(b) subject to the exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

[78] Regarding the remainder of the documents requested, the Tribunal finds some of them to be arguably relevant insofar as the documentation related to Ms. Decock's placement are connected to the placement of her common-law partner, Cpl. Caswell. Accordingly, the Tribunal orders the RCMP to release any of the above documentation related to Ms. Decock's staffing that includes a reference to Cpl. Caswell, subject to redactions made to Ms. Decock's personal information on or before September 15, 2017. Other documentation relating to her staffing at M Division that does not mention Cpl. Caswell is not arguably relevant.

20. Full Disclosure regarding any discrimination, harassment or workplace conflict complaints made against S/Sgt. Jason FLYNN, Sgt. Mark LONDON, S/Sgt. Doug HARRIS, C/Supt. Paul McCONNELL, and Assistant Commissioner Peter CLARK including how they were addressed, the outcome of those complaints, and any subsequent redress.

(i) Complainant's Submissions

[79] The Complainant submits that these documents are arguably relevant because the RCMP failed to act, investigate or acknowledge the reported acts of retaliation after she filed her human rights complaint. She alleges that senior management did not follow policy and refused to conduct an investigation.

(ii) Commission's Submissions

[80] The Commission references the RCMP's failure to eliminate harassment and to respect the *Gender and Respect Action Plan* as concluded in the *Report into Workplace Harassment in the RCMP* and suggests the requested documents would assist the Tribunal in assessing the Respondent's defence that it was competent in relation to staffing and human rights matters.

(iii) Respondent's Submissions

[81] The Respondent argues that the request is largely not arguably relevant to the facts in issue, is inappropriate, unlikely to contribute to advancing the debate and would raise privacy concerns (for both the officers named and the persons who may have lodged complaints). The Respondent also submits that the request is too broad and would be an onerous task to produce.

[82] Furthermore, the Respondent argues that if the competence of M Division is in dispute, as the Commission suggests, then complaints arising from the whole division ought to be at issue, not those of specific individual officers.

[83] In addition, the RCMP submits that it would be onerous to gather data about harassment complaints and grievances prior to November 2014 at which time they

became recorded at the RCMP's central Office of Coordination of Grievances and Appeals. The RCMP also argues that grievances generally relate to matters other than grounds of discrimination under the *Act*.

[84] Finally, in response to this request, the RCMP agrees to provide a list "setting out the total number of (i) harassment complaints in "M" Division from November 2014 to present, and (ii) human rights complaints relating to family status or gender in M Division between the periods 2009 to present, and the outcome of such complaints."

(iv) Tribunal's Ruling

[85] It is the Tribunal's view that the Complainant's request for "Full Disclosure" is not very helpful when disclosure is aimed at locating and producing specific documents. It is generally helpful if parties can specifically identify the type of documents they are requesting. Furthermore, a specific time frame would assist the Tribunal in the determination of whether the requested documentation meets the test of arguable relevance.

[86] A request for disclosure must be connected to the issues in dispute. In this case, the request ought to be limited to similar complaints, namely, discrimination on the grounds of family status or gender (see *Yaffa* at para. 60).

[87] The Tribunal notes that none of the officers named in this request were named personally in this complaint. The Complainant also failed to make a rational connection between an allegation in an SOP and these individuals in her motion materials. Moreover, I am concerned that singling out only these five individuals without having provided any reasons for same to the Tribunal in the SOP or motion materials, runs the risk of implying or inferring wrongdoing on their part. I therefore agree with the Respondent that an examination of all complaints relating to family status and gender at M Division would be more appropriate. I would also note that with the exception of Assistant Commissioner Clark, all of the above-named individuals are scheduled to be called as witnesses at the hearing. As such, Cpl. Brickner will have the opportunity during cross-examination to pose

questions concerning their previous involvement with human rights complaints that relate to family status and gender.

[88] In addition, given that the Complainant has asked for “Full Disclosure”, the Tribunal infers she would like to have full particulars of each Complaint. However, the Tribunal is concerned that the particulars of each complaint may not be arguably relevant. Indeed, the Complainant has not explained why the particulars would be relevant to her case. Moreover, persons who come forward to make complaints of harassment or discrimination ought not be dissuaded from doing so for fear of their story becoming public in the future in some unrelated proceeding before this Tribunal. Disclosure of such sensitive material should be ordered in only exceptional circumstances where the need and arguable relevancy is clearly demonstrated. The RCMP has made the further point that the Whitehorse detachment is a small office and such matters are particularly sensitive. Therefore, it is the Tribunal’s view that even where the Tribunal imposes a confidentiality order over the inquiry, the disclosure could still be unsettling for co-workers who have lodged complaints in the past.

[89] Also, I accept the RCMP’s submission that the grievance process is generally not related to complaints of discrimination under the *Act*. Therefore, I have not been persuaded that disclosure of all grievances filed against these individuals is arguably relevant.

[90] For the foregoing reasons, this request for disclosure is denied. However, in response to the RCMP’s offer, the Tribunal directs the Respondent to produce a list of the total number of (i) harassment complaints in M Division from November 2014 to present, and (ii) human rights complaints relating to family status or gender in M Division from 2009 to present, and the outcome of those complaints. Although not necessary at this stage in the proceeding, the Respondent may anonymize the list to protect the identity of third parties.

21. Full disclosure regarding any grievances or complaints under the command of Insp. Phil GOULET, the Officer in Charge of the Staffing and Promotion unit where applicants were removed from the validation pool

when there was a supported objection of a validation committee member, including how they were addressed, the outcome of those complaints.

(i) Complainant's Submissions

[91] Cpl. Brickner submits that these documents would be arguably relevant to her claim of retaliation. Specifically, she believes this disclosure will demonstrate that she was treated differently than others because of a deviation from standard policy.

[92] Noting the objections of the Respondent in her Reply submissions, Cpl. Brickner amended this request to ask for three examples of other promotional processes that are comparable, where the applicant's objection was supported and instead of following policy and removing the member of the validation committee, the applicant was removed from the pool of candidates.

(ii) Commission's Submissions

[93] The Commission supports this request as it may demonstrate retaliation and differential treatment. The Commission acknowledges there would be privacy concerns.

(iii) Respondent's Submissions

[94] The Respondent objects to the request on the basis that it is too broad and too onerous. As indicated in response to request #7 above, the RCMP undertakes to continue to make reasonable efforts to provide all relevant documents in relation to the Crops Reviewer promotional process. However, the RCMP submits that the process to comply with this request would be very onerous and time-consuming as it would have to manually review thousands of staffing actions in order to identify the information being sought.

(iv) Tribunal's Ruling

[95] It is the Tribunal's view that the initial request is too broad and would be too time-consuming for the amount of probative value suggested by Cpl. Brickner. The revised request, in Cpl. Brickner's Reply submissions, is not probative without sufficient context,

and indeed is not the type of disclosure intended by the Tribunal's process. Cpl. Brickner seeks to bring evidence before the Tribunal that she was treated differently. In the absence of any specific documents which would portray her specific adverse differential treatment, she seeks to give the Tribunal three random examples which she believes will support her allegations. The evidence Cpl. Brickner seeks to put before the Tribunal is best brought out in the context of the cross-examination of the Respondent's witnesses. The Respondent has included Insp. Phil Goulet in the list of witnesses it intends to call at the hearing. Accordingly, this request is denied.

22. Copies of Curriculum Vitae (CV's) for the following witnesses and /or people referenced as Subject Matter Experts.

- **S/Sgt. Tony PARK**
- **S/Sgt. Chuck LAN**
- **S/Sgt. Doug COOPER**
- **Insp. Keith BRAMHILL**
- **Insp. Phil GOULET**
- **S/Sgt. Jason FLYNN**
- **Insp. Stacey TABLOT**
- **Cyndi DESHARNAIS**
- **S/Sgt. Diane DOYLE**

(i) Complainant's Submissions

[96] The Complainant does not give reasons for this request in her motion. In her Reply submissions she states she would like the CV's to determine the knowledge, skills and abilities of those involved directly in this case. The Reply submissions contain a number of statements which are not argument, but unsupported assertions of evidence.

(ii) Commission's Submissions

[97] The Commission refers to the *Report into Workplace Harassment in the RCMP* and its conclusion that persons appointed to senior administrative positions often lack specialized expertise. It suggests these CVs are arguably relevant because they would

show that persons involved in processing her requests for accommodation did not understand the RCMP's obligations under the *Act*.

(iii) Respondent's Submissions

[98] The Respondent argues that the CVs are not arguably relevant to the issues in this matter. None of the people listed in this request are appearing before the Tribunal in the capacity as an expert witness, where the request for a CV would be warranted. In fact, two of the people listed, S/Sgt. Doyle and Insp. Talbot, have not been identified as witnesses by any of the parties.

(iv) Tribunal's Ruling

[99] It is the Tribunal's view that the information Cpl. Brickner seeks to elicit from the CVs, namely whether or not each person was trained about their obligations under the *Act*, may not be contained in such documents. The better method for putting such evidence before the Tribunal is for Cpl. Brickner to elicit her evidence through cross-examination. Accordingly, this request is denied.

23. Copies of all notes for the following individuals relating to me, my husband (as I am referred to his spouse in documents) and my complaint(s) (grievance/Canadian Human Rights Complaint) which has been summed up and simplified within the RCMP as lateral transfer including my complaint of Harassment (Act of Retaliation).

- **Maureen LEVY**
- **Stacey TALBOT**
- **Jerry SCOTT**
- **Ken TURNER**
- **Dan DUBEAU**
- **Cindy RATTRAY**
- **Elizabeth MACDONALD**
- **Garry JAY**
- **John BREWER**
- **Brian JONES**
- **Allan LUCIER**
- **Karen BYRNE**

- **Patrice DESJARDINS**
- **Phil GOULET**
- **Jasmin BRETON**
- **Peter CLARK**
- **Sharon WOODBURN**
- **Doug HARRIS**
- **Mark LONDON**
- **Jason FLYNN**
- **Archie THOMPSON**
- **Ken FOSTER**
- **Dan AUSTIN**
- **Tony PARK**
- **Gerry ELL**
- **Neil CROSS**
- **Scott SHEPPARD**
- **Pat Mulhall**

(i) Complainant's Submissions

[100] Cpl. Brickner submits that these senior members of the RCMP were involved in the processes that impacted her family situation, including the initial request for accommodation, gender bias, unfair treatment, family separations, harassment and ongoing acts of retaliation. She submits that the notes will demonstrate the RCMP's processes and what the role of the RCMP management is relating to issues like harassment, human rights complaints, and acts of discrimination and retaliation.

[101] In her Reply submissions, Cpl. Brickner elaborates more on the roles of Chief Superintendent Sheppard, Superintendent Jones and Inspector Austin and the potential relevance of their notes. She states that Chief Superintendent Sheppard had email communications and telephone calls with Chief Superintendent Peter Clark relating to her situation and transfer to the Yukon. Superintendent Jones arrived in M Division in January of 2016. Cpl. Brickner states that he was involved in a grievance process which she filed in May 2016 and which remains in abeyance pending the outcome of this hearing. Inspector Dan Austin arrived in M Division in September of 2015 and Cpl. Brickner alleges he did not say hi or acknowledge her during the first 6 weeks after she was relocated next to his office.

(ii) Commission's Submissions

[102] The Commission submits that the production of these notes is critical to the proper examination of the issues raised in this complaint. The notes are critical to the thorough examination of the communications, mindset, and thought process of the RCMP members involved in the events giving rise to Cpl. Brickner's complaint.

(iii) Respondent's Submissions

[103] The Respondent states that it has already disclosed all relevant notes in its possession of the following people: Phil Goulet; Doug Harris; Mark London, Tony Park; and Elizabeth Macdonald.

[104] The Respondent agrees to make reasonable efforts to locate and produce such notes from the following individuals: Stacey Talbot; Dan Dubeau; Cindy Ratray; Peter Clark; Sharon Woodburn; and Archie Thompson.

[105] The RCMP provides details about Messrs. Sheppard, Jones and Austin, submitting that they were not in relevant positions at the times of the alleged discrimination and retaliation.

[106] The Respondent refuses to produce the notes for the remaining individuals as they are not relevant to the specific allegations made in Cpl. Brickner's SOP or in her Reply to the Respondent's SOP.

(iv) Tribunal's Ruling

[107] The Tribunal does not need to order disclosure on the request for the notes of Phil Goulet; Doug Harris; Mark London, Tony Park; and Elizabeth Macdonald as the RCMP indicates its belief that it has already disclosed all such relevant documents in its possession. However, the Tribunal directs the Respondent to provide Cpl. Brickner with a list of all documents that it has already provided which it believes meets this request on or before September 15, 2017. If any new documents relevant to this request are identified, the Respondent must disclose them in accordance with Rule 6(5)(b) subject to the

exception of any document that may be protected by a recognized privilege under the law of evidence. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

[108] The RCMP has agreed to disclose and produce the notes from Stacey Talbot, Dan Dubeau, Cindy Ratray, Peter Clark, Sharon Woodburn, and Archie Thompson. The Tribunal orders production of these individuals' notes, if any, relating to Cpl. Brickner and / or Cpl. Marinis, but only in relation to the human rights complaint that is the subject of this proceeding. The Tribunal imposes a deadline of September 15, 2017, to comply with this order. For greater certainty, the disclosure order includes notes related to the MCU staffing position(s) and the crops reviewer position, given that the main thrust of the Complainant's allegations of discrimination and retaliation appear to be grounded in these staffing actions. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

[109] Having given consideration to the Reply submissions of Cpl. Brickner, the Tribunal finds the personal notes of Chief Superintendent Sheppard to be arguably relevant. Although he was not appointed as the Commanding Officer for the Yukon until November 2016, he apparently had some earlier involvement with Cpl. Brickner's transfer to the Yukon. The Tribunal therefore orders the production of Chief Superintendent Sheppard's notes, if any, relating to Cpl. Brickner and / or Cpl. Marinis in relation to the grievance and/or human rights complaint that is the subject of this proceeding, and imposes a deadline of September 15, 2017 to comply with this order. For greater certainty, the disclosure order includes notes related to the MCU staffing position(s) and the crops reviewer position, given that the main thrust of the Complainant's allegations of discrimination and retaliation appear to be grounded in these staffing actions. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

[110] Regarding the Complainant's request for the notes of Superintendent Jones, the Tribunal notes that the harassment grievance filed against Superintendent Jones and outlined by Cpl. Brickner in her Reply submissions is not a matter before this Tribunal. As that matter is outside the scope of this inquiry, no order is made for his notes relating to that grievance. However, the Tribunal orders the production of Superintendent Jones' notes, if any, relating to Cpl. Brickner and / or Cpl. Marinis in relation to the human rights complaint that is the subject of this proceeding, and imposes a deadline of September 15, 2017, to comply with this order. For greater certainty, the disclosure order includes notes related to the MCU staffing position(s) and the crops reviewer position, given that the main thrust of the Complainant's allegations of discrimination and retaliation appear to be grounded in these staffing actions. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

[111] The Complainant has not convinced me that the notes of Inspector Austin are arguably relevant. Her allegation that he did not say hi or introduce himself when she moved into the next office has no nexus with the allegations of discrimination outlined in Cpl. Brickner's SOP. Moreover, I do not find the alleged behaviour to support the Commission's allegation that Cpl. Brickner was excluded and dismissed in a way that negatively affected her prospects for future career advancement. Although Cpl. Brickner states Inspector Austin was at one time her acting supervisor, she is not specific about the dates and has not established that the alleged behaviour occurred during this period.

[112] Regarding the personal notes of Jason Flynn and Neil Cross, they are mentioned in the Complainant's SOP and Reply SOP respectively by name, and as such, I will accept the argument that their notes may be arguably relevant. The Tribunal orders the production of Messrs. Flynn's and Cross' notes, if any, relating to Cpl. Brickner and / or Cpl. Marinis in relation to her human rights complaint, and imposes a deadline of September 15, 2017, to comply with this order. For greater certainty, the disclosure order includes notes related to the MCU staffing position(s) and the crops reviewer position, given that the main thrust of the Complainant's allegations of discrimination and retaliation

appear to be grounded in these staffing actions. However, if the Respondent is able to comply earlier, the earlier production should be made to assist with this matter moving forward to hearing in a timely manner. If there are any documents for which privilege is claimed, the Respondent will indicate to the other parties such documents and the privilege claimed.

[113] The names of Maureen Levy, Jerry Scott, Ken Turner, Garry Jay, John Brewer, Allan Lucier, Karen Byrne, Patrice Desjardins, Jasmin Breton, Ken Foster, Gerry Ell, and Pat Mulhall do not appear anywhere in the parties' SOPs. While some of these names only appear in the disclosure document list of the Respondent, the Tribunal is unaware of what role these individuals may have played in the Complainant's allegations as she has not established a connection between these individuals and any facts, issues or forms of relief identified by the parties in this dispute. As a result, the Complainant has failed to convince the Tribunal of the arguable relevance of such notes, if they exist. The request for the notes of these individuals is therefore denied.

Signed by

David L. Thomas
Tribunal Member

Ottawa, Ontario
August 14, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2125/4115

Style of Cause: Kayreen Brickner v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: August 14, 2017

Motion dealt with in writing without appearance of parties

Written representations by:

Kayreen Brickner, for herself

John Unrau, for the Canadian Human Rights Commission

Edith Campbell, for the Respondent