

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2017 CHRT 25

**Date:** July 18, 2017

**File No.:** T2126/4215

**Between:**

**Nicole Grace Valenti**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canadian Pacific Railway**

**Respondent**

**Ruling**

**Member:** Anie Perrault

## **I. Background**

[1] The Complainant in this file, Ms. Nicole Grace Valenti, filed a complaint with the Canadian Human Rights Commission (Commission) on April 15, 2013, which was later amended on August 27, 2014.

[2] The Complainant alleges that she has suffered discrimination contrary to section 7 of the Canadian Human Rights Act (*CHRA*).

[3] More particularly, she alleges that her employer discriminated against her based on the ground of disability, and treated her in an adverse differential manner, following a work-related car accident which took place on September 28, 2012.

[4] On December 22, 2015, pursuant to section 44(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "*CHRA*"), the Commission requested the Chairperson of the Canadian Human Rights Tribunal (the "Tribunal") institute an inquiry into the complaint.

[5] On June 27, 2016, the Tribunal Chairperson assigned the file to me for inquiry, and the disclosure process commenced.

## **II. The motion for further disclosure**

[6] In her statement of particulars (SOP) filed on October 7, 2016, the Complainant disclosed approximately 109 documents, and requested disclosure for 95 classes of documents from the Respondent.

[7] In its response, the Respondent disclosed 41 non-privileged documents in its SOP filed on November 18, 2016. On December 15, 2016, the Respondent disclosed an additional 466 documents.

[8] A motion for further disclosure was submitted by the Complainant on January 21, 2017.

[9] On February 10, 2017, in order to considerably reduce the number of disputed documents raised in the Complainant's motion, I sent written directions to the parties.

[10] In order to facilitate the process of ascertaining how each document produced corresponded to a class of documents requested, I directed the Respondent to transmit to the Complainant a Table of Concordance.

[11] After many email exchanges between the parties during the months of March to June, and the disclosure of new documents, a final Table of Concordance with some thirty document requests still in dispute was produced. The table contained submissions by both parties in respect of each of the disputed documents.

[12] In an effort to resolve the motion for further disclosure, I invited the parties to participate in a case management conference call (CMCC), which took place on June 29, 2017. At that time, 21 document requests were still in dispute, and each party had the opportunity to present their verbal arguments in regard to each of those requests.

[13] Although the Commission will not be participating at the hearing, they did participate in the CMCC. The Commission stated their position on some of the documents discussed during the call.

[14] As a result of the discussion that took place during the CMCC, the parties reached an agreement on five (5) of the document requests, and full disclosure was made of those documents.

[15] For the remaining sixteen (16) document requests, I advised the parties that I would rule on each request and give my decision in writing.

### **III. Tribunal Rules and Jurisprudence**

[16] Rule 6 of the Tribunal *Rules of Procedure* (Rules) deals with the SOP, disclosure, and production of documents.

[17] Rule 6(1)(d) is particularly relevant and states:

Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out,

[...]

(d) a list of all documents in the party's possession, for which no privilege is claimed, that relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;

[18] Rule 6(5) makes the obligation to disclose ongoing in the circumstances described.

[19] The jurisprudence is well-settled that the standard for the disclosure of documents pursuant to Rules 6(1) (d) and 6(5) is that of "arguable relevance".

[20] "Arguable relevance" means that a document requested to be disclosed must have a nexus or rational connection to a fact, issue or form of relief sought or identified by a party (*Guay v. Royal Canadian Mounted Police*, 2004 CHRT 34 ("*Guay*") at para. 42; *Seeley v. Canadian National Railway*, 2013 CHRT 18 ("*Seeley*"), at para. 6).

[21] A request for disclosure cannot be "...speculative or amount to a 'fishing expedition'" (*Guay*, at para. 43).

[22] I would add that a party must show—not that a document is relevant in the traditional sense—but that disclosure of such document will be useful, is appropriate, will likely contribute to advancing the debate, is based on an acceptable objective that he or she seeks to attain in the case, and that the document is related to the dispute (*C.E.P.U. v. Bell Canada*, 2005 CHRT 34, at para. 11).

[23] Most importantly, the link between the issues to be proven and the requested material must be demonstrated in the present case before the Tribunal — and not in another case before another tribunal or court (*Warman v. Bahr*, 2006 CHRT 18, ("*Warman*") at paras. 6-7, 9).

[24] The question is, could the document, if accepted as evidence at a hearing, affect the conclusion of the Tribunal in regard to the existence of a fact, a disputed point of law,

or the justification of a remedy sought? If the answer is yes, the document is then deemed to be arguably relevant and should be disclosed. It is not sufficient that the name of one of the parties appears on the document to make this document arguably relevant.

[25] Finally, unless there is reason to believe that a party is not complying with Rule 6 in good faith, or with reasonable diligence, it is the Tribunal's practice, once such a party's list is complete and any particularized disclosure requests are answered, to accept the disclosure made as the full disclosure of that party, at that time. While parties have ongoing obligations under Rule 6(5), the foregoing is generally sufficient to confirm that the party does not have any other arguably relevant documents in its possession.

#### IV. Decision

[26] With this legal framework in mind, the following is my ruling for each outstanding document request. In the following table, the number of each document request is the same as the one appearing in the last Table of Concordance produced by the Respondent, which was used during the CMCC. Only the sixteen (16) document requests still in dispute are referred to in the table.

Disputed Documents	Tribunal's Ruling
C110 C111 C113 C114 C116 C117	Given the Respondent's declaration that it has disclosed all relevant documents found, and in the absence of any evidence that the Respondent might be acting in bad faith, or that the Respondent is not co-operating, the Tribunal cannot ask for more disclosure in relation to these requests. The Tribunal accepts the Respondent's declaration that CPR does not have the document requested by the Complainant.
C119	The documents requested by the Complainant for disclosure pass the threshold for arguable relevance and the requested information should be disclosed. There is a rational connection between the <i>"CP's Benefit Team Agreement with Manulife and policy and procedure for non-</i>

	<p><i>unionized benefits</i>” requested and the relief sought by the Complainant. I refer here particularly to paras. 35, 149, 150 and 161 (ix) of the Complainant’s SOP. The request by the Complainant to have these particular documents disclosed cannot be characterized as a fishing expedition. I order that the Respondent disclose these documents to the parties by August 18, 2017.</p>
C153	<p>The Complainant cannot simply request disclosure of all documents concerning certain individuals because she feels it would be helpful. This would amount to a fishing expedition (see <i>Guay</i>, at para. 43). I accept the Respondent’s statement and explanation that it has disclosed all relevant documents in respect of this request, and I note Respondent counsel’s commitment made during the CMCC that CPR will comply with its obligation to produce on a continuous basis if other relevant documents are found.</p>
C165	<p>The Tribunal accepts the Respondent’s declaration regarding the disclosure of that document and acknowledges Respondent counsel’s commitment made during the CMCC that CPR will comply with its obligation to produce on a continuous basis if other relevant documents are found.</p>
C179	<p>For this particular request, the Complainant is making an analogy to CPR’s “<i>consent to release information</i>” policy. While I understand why the Complainant is making that comparison, it is not useful or applicable in the context of the Tribunal’s Rules. Under Rule 6, the criterion for disclosure is the arguable relevance of the documents requested. Arguable relevance means that the documents requested must have a nexus or rational connection to a fact, issue or form of relief sought or identified by a party (<i>Seeley</i>, at para. 6; <i>Guay</i>, at para. 42). For this particular request, the Complainant is clearly not being specific enough as to what exactly she is looking for, and her request amounts to a fishing expedition. The Tribunal agrees with the Respondent, and accepts the Respondent’s declaration that relevant</p>

	documents have been disclosed, and that CPR does not have other relevant documents in its possession that relate to this request.
C178 C188 C191	The Complainant cannot simply request all documents concerning certain individuals just because she feels it would be helpful. This would amount to a fishing expedition (see <i>Guay</i> , at para. 43). Given the Respondent's declaration that it has disclosed all relevant documents found, and in the absence of any evidence that the Respondent might be acting in bad faith, or that the Respondent is not co-operating, the Tribunal cannot ask for more disclosure in relation to this request. The Tribunal accepts the Respondent's declaration.
C204	<p>The Respondent's declaration is that it has no document in its possession that relates to this request. The Complainant has cited the Tribunal's decision in <i>Ledoux v. Gambler First Nation</i>, 2017 CHRT 13, ("<i>Ledoux</i>") as an example of a case where the Tribunal ordered a party to produce documents that were in the possession of a third party. The obligation to produce even when a document is in the hand of a third party was also recognized by this Tribunal in another decision, <i>Rai v. Royal Canadian Mounted Police</i>, 2013 CHRT 6, paras. 33-35.</p> <p>CPR, as a customer of a cell phone provider, is indeed in a position to obtain such documents and information like cell phone records from its provider. To oppose the production of a document or documents in the possession of a third party but on which it has a right of access doesn't respect the spirit of Rule 6. On that argument, I agree with the Complainant. But this is not sufficient to order the Respondent to produce such documents. Indeed, such documents must be relevant. And arguable relevance must be assessed in the context of the case in which the disclosure order is being sought (see <i>Warman</i>, paras. 6-7, 9). It appears that the documents requested relates to the WSIB case and the relevance of the requested documents to the</p>

	Complainant's WSIB appeal is not an appropriate consideration in this case before this Tribunal. The Tribunal notes that the facts the Complainant is trying to establish through these documents – her state of mind - can be better addressed through the Complainant's testimony at the hearing as well as through medical reports than by cell phone records which would only establish time and location of calls.
C206	The Complainant has not demonstrated how the requested vehicle records relate to a <u>disputed</u> fact in this case, as set out in the SOPs. The Respondent <u>does not contest</u> the fact that the Complainant was involved in a car accident. The Tribunal does not believe that the requested documents are then arguably relevant.
C207	Given the Respondent's declaration that it has disclosed all relevant documents found, and in the absence of any evidence that the Respondent might be acting in bad faith, or that the Respondent is not co-operating, the Tribunal cannot ask for more disclosure in relation to this request. The Tribunal accepts the Respondent's declaration. Moreover, the Tribunal notes that the facts the Complainant is trying to establish through this document request can be addressed through testimony at the hearing.

*Signed by*

Anie Perrault  
Tribunal Member

Ottawa, Ontario  
July 18, 2017



**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T2126/4215

**Style of Cause:** Nicole Grace Valenti v. Canadian Pacific Railway

**Ruling of the Tribunal Dated:** July 18, 2017

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Nicole Grace Valenti, for herself

Shane Todd, for the Respondent