Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2018 CHRT 32
Date: November 29, 2018
File No.: T1706/6111R

Between:

Norman Murray

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Immigration and Refugee Board

Respondent

Ruling

Member: Ronald Sydney Williams

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I. Introduction

[1] In preparation for the hearing of this case, the Respondent brought a motion seeking to strike certain paragraphs from the Statements of Particulars ("SOPs") filed by the Complainant and the Canadian Human Rights Commission ("CHRC"), and also seeking further particulars from the Complainant. This motion is the subject of the present ruling.

II. Background

[2] The Complainant is a black African-Canadian male who has worked for the Immigration Refugee Board ("IRB") since 1989 as a Case Officer at the Toronto Regional Office.

[3] On or about April 23, 2004, the CHRC received a complaint from the Complainant alleging discrimination pursuant to sections 7, 10, 12 and 14 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 ("*CHRA*"), in essence stating that the Complainant and other employees at the IRB facility in Toronto face systemic discrimination that prohibits the advancement of their careers and maintains black employees in the lower levels of the work force.

[4] The CHRC dismissed the Complainant's entire complaint, which led to a judicial review application before the Federal Court of Canada, heard before the Honourable Madam Justice Hansen (T-1796-08).

[5] The scope of the complaint was established by consent of the parties in an order issued by Justice Hansen on August 18, 2009, which remitted back to the CHRC for supplemental investigation the matter of systemic discrimination, as it related to the situation of visible minorities at the IRB Toronto Regional Office, during the 12 month period preceding the filing of the complaint, with specific reference to:

a. Clustering of visible minorities in lower status positions;
b. Underrepresentation of visible minorities in permanent positions.

[6] In so doing, Justice Hansen left intact the CHRC's decision to dismiss all other aspects of the complaint.

[7] On July 29, 2011, the CHRC requested an inquiry by the Tribunal into the complaint.

[8] On January 4, 2013, Member Lustig dismissed the complaint (see 2013 CHRT 2), holding that the subject matter of the current proceeding had been previously the subject of adjudication by the Public Service Staffing Tribunal ("PSST").

[9] On February 11, 2014, in a further judicial review decision, the Honourable Madam Justice Bédard of the Federal Court of Canada held that the adjudication by the PSST did not bar the CHRT from inquiring into the allegations of systemic discrimination allegedly occurring during the period of March 2003 – March 2004, at the Toronto Regional Office of the Respondent (see 2014 FC 139).

III. The Respondent's Motion to Strike

A. Notice of Motion

[10] On April 27, 2016, the Respondent brought a motion seeking:

A. An order striking from the Complainant's SOP the following paragraphs: 1, 2, 3, 23, 24, 26 and 28 (a);

B. An order for more particularity for the following paragraphs in the Complainant's SOP: 24, 25, 26(f), (l), (m), (n), (o), (p), (q), (s), (t), (u), and (v), 27(b);

C. An order striking from the CHRC's SOP the following paragraphs: 21, 28, 29, 30, 31, 32, 51, 52, 53, 54, and 62 (a), (c), (d), (e), (f), (g) and (h);

D. An order directing the Complainant and the CHRC to serve and file amended SOPs, which set out allegations, seek remedies and request documents within the scope of the complaint, by a specified date;

E. An order extending the time for the service and filing of the Respondent's SOP to a specified date after the service and filing of the Complainant's and CHRC's Amended SOPs;

B. Moving Party's Submissions

[11] The Respondent wishes to strike most of those paragraphs set out above on the basis that they contain allegations of discrimination that are beyond the scope of the complaint as confirmed and narrowed by Justice Bédard. With respect to para. 62 of the CHRC's SOP, the argument is that the disclosure requests identified therein should be struck as irrelevant to the complaint.

[12] The Respondent refers to *Basudde v. Health Canada* 2005 CHRT 21 ("*Basudde*") as providing authority to strike paragraphs in an SOP if the paragraphs deal with matters that are not before the Tribunal. In *Basudde,* the Tribunal held that it could not strike out certain aspects of the complaint brought forward to it by the CHRC. However it could strike out paragraphs of an SOP as "[t]he review of pleadings comes within the normal scope of the Tribunal's functions" (see para. 5).

[13] The Respondent relies on the wording of Rule 6 of the CHRT's Rules of Procedure ("Rules"), which provides that SOP's must include, *inter alia*, the material facts that the party seeks to prove in support of its case, and the legal issues raised by the case. The Respondent stipulates that an SOP must include information that relates to the actual case that is before the Tribunal.

[14] While the Respondent acknowledges that the SOP may include information outside the scope of the case "for context"—including a chronology of events leading up to the complaint—it submits that the SOP should not include allegations of discrimination that have been previously struck, or extraneous information that could confuse, mislead or prejudice the inquiry before the Tribunal.

[15] The reason for this, in the Respondent's view, is that SOPs are determinative of the scope of documentary disclosure, as well as of the evidence and arguments that can be admitted during the hearing. An SOP that includes out of scope allegations leads to an inquiry that is broader and more complex than it is meant to be; properly drafted SOPs allow for a more efficient and expeditious proceeding.

[16] The Respondent asserts that Justice Hansen's order did not disturb the CHRC's decision to dismiss a number of allegations contained in the Complaint, in particular:

A. That the IRB failed to provide a harassment free workplace;

B. That the IRB had discriminatory policies involving standardized tests; and

C. That the IRB had a poisoned workplace.

[17] In addition, it notes that Justice Hansen did not send back for further investigation the individual allegation of discrimination under s. 7 of the *CHRA*. This result was confirmed in Justice Bédard's reasons, where she stated that the CHRC's decision to dismiss the entire complaint was quashed only insofar as it related to the specific allegations in Justice Hansen's order.

[18] The Respondent asserts that the impugned allegations and factual assertions in the Complainant's SOP go beyond simply providing context, and it submits that they are clearly outside the subject matter, geographic scope and time period of the complaint. It identifies, in particular:

A. Allegations based on s. 7 of the CHRA, which the CHRC decided not to investigate, and which were not included in Justice Hansen's order;

B. Allegations of systemic barriers at the IRB relating to a poisoned work environment, harassment, and the use of standardized tests, which were dismissed by the CHRC and not resurrected by Justice Hansen's order;

C. Allegations directed against the IRB as a whole, contrary to Justice Bédard's ruling that the complaint is limited to the Toronto Regional Office of the IRB;

D. Allegations outside the time period of the complaint as stipulated in Justice Bédard's ruling, i.e., March 2003 – March 2004.

[19] The Respondent also points to portions of the CHRC's SOP that go beyond simply providing context, and that fail to recognize that the scope of the Complaint is limited to the Toronto Regional Office of the IRB during the period March 2003 – March 2004. In particular, the CHRC mentions a 2007 staffing process for new PM-05 positions and a staffing audit by the Public Service Commission, both of which post-date the relevant period.

[20] Furthermore, the CHRC's SOP seeks disclosure for documents from "2002 to the present", with little or no effort to focus the requests on clustering and representation in the Toronto Regional Office from March 2003 – March 2004. While acknowledging that some relevant documents may need to come from outside the Toronto Regional Office, and/or the specified time period, the Respondent asserts that the CHRC's wide-ranging request for documents appears as a fishing expedition.

[21] Leaving the SOP's as they are and dealing with the Respondent's concerns at the hearing would require it to expend considerable time and resources disclosing a large volume of irrelevant documents, and could unnecessarily consume Tribunal time and resources. Such an approach would run contrary to s. 48.9 of the *CHRA* and the Rules.

[22] Finally, the Respondent seeks additional particulars on certain allegations within the scope of the complaint that are contained in the Complainant's SOP.

C. Complainant's Submissions

[23] The Complainant's position, simply put, is that the Federal Court did not confine the scope of the complaint of systemic discrimination to one time frame, and indeed that one must examine both unconscious prejudices and stereotypes along with any action or inaction by an employer to determine the existence of such discrimination.

[24] The Complainant argued in his SOP that, although rooted in the period of 2003 to 2004, the systemic discrimination against racialized employees at the IRB has continued beyond that period. He stated that he has held the same lower level position since he began working for the IRB 27 years ago. Despite pursuing opportunities for advancement, he has only ever been afforded acting opportunities.

[25] The Complainant argues that the purpose of the SOP is to define the issues, prevent surprises, enable the parties to prepare for the hearing, and facilitate the hearing. Parties are entitled to know the material facts on which the other parties seek to rely. These material facts include background information and context to the allegations in issue. The facts alleged in an SOP must be potentially relevant to the matters in issue. He states that systemic discrimination is distinct from an individual complaint of discrimination.

Systemic discrimination is rooted in prejudicial attitudes and beliefs about racialized employees.

[26] In this regard, the Complainant relies on *Chopra v. Health Canada*, 2008 CHRT 39, para. 255:

> "Systemic discrimination in an employment context….results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. Systemic discrimination is often unintentional. It results from the application of established practices and policies that, in effect, have a negative impact upon hiring and advancement prospects of a particular group. It is compounded by the attitudes of managers and co-workers who accept stereotyped visions which lead to the firmly held conviction that members of that group are incapable of doing a particular job, even when that conclusion is objectively false…" [emphasis added]

[27] Thus the Complainant asserts that in determining liability, human rights tribunals will generally hear relevant evidence of systemic discrimination from outside the time period of the complaint. With regard to compensable losses, the Tribunal has the discretion to impose limits going backward in time. But going forward in time, there is no authority for restricting the compensation period—even if it means hearing evidence of the employer's systems and practices up to the date of the hearing in order to fashion an appropriate remedy.

[28] The Complainant states that there was nothing in Justice Hansen's order or Justice Bédard's decision that froze the complaint in time. Moreover, the CHRC's decision to refer the complaint contained no indication that it intended to place any temporal limitation on the scope of the Tribunal's inquiry.

[29] With regard to the Respondent's assertions that particular allegations are out of scope, the Complainant maintains that:

A. Allegations of poisoned work environment for and harassment against racialized employees are within the subject matter of the complaint, as they provide important context to the complaint, and can serve as circumstantial evidence. Allegations about the use of standardized tests are relevant, as they demonstrate neutral policies that present barriers to the advancement of racialized employees, and shed

light on the question of why racialized employees are clustered in lower-level positions.

B. Allegations of systemic discrimination more broadly throughout the IRB are relevant to the question of whether there is systemic discrimination in Toronto. Circumstantial evidence in relation to the organization more broadly can support an inference of such discrimination at the Toronto office specifically.

C. Allegations outside the 2003-2004 period are relevant, as the question of whether systemic discrimination existed in that period necessitates an inquiry reaching back in time, and also includes the question of whether it continues to this day. Facts related to the entire career trajectory of racialized employees are thus material to the question of whether there was systemic discrimination during the period, and have a bearing on the redress to be awarded to the victims, as well as on the necessary measures to prevent its recurrence.

D. Insofar as the Respondent objects to references to s. 7 of the CHRA in the SOP, the Complainant acknowledges that the complaint as referred currently focusses on systemic discrimination under s. 10. However, he notes that evidence of discrimination against him individually is still relevant, and if the complaint is substantiated, he is entitled to claim the same form of relief as that identified in his SOP.

[30] In response to the request for further particulars, the Complainant asserts that the particulars are sufficient as written, that the request itself mischaracterizes the Complainant's case, and that the Respondent in some instances requests more information than is required, *e.g.* the disclosure of evidence. Alternatively, the Complainant asserts that it is premature for the Respondent to request further particulars until after the Tribunal has ruled on the motion to strike. A ruling granting the motion could drastically change the nature of the complaint; a ruling dismissing the motion could warrant deferring the particulars request until after the Respondent has completed its documentary production.

D. CHRC's Submissions

[31] The CHRC identifies the issue as being whether the Tribunal should determine the nature of the complaint on a preliminary basis and deprive the Complainant and the CHRC of a full and ample opportunity to present evidence and legal argument relevant to the inquiry and the substance of the complaint.

[32] The CHRC argues that:

> "…there is nothing in Justice Bédard's decision which suggests that the Tribunal should decline to hear allegations relevant to the substance of the complaint or disregard its statutory obligation to provide the parties a full and ample opportunity to put forward evidence and make legal representations in support of their respective cases."

[33] The CHRC states that the motion is premature and ignores the purpose of the Tribunal's Rules of Procedure, which is to provide the parties a full and ample opportunity to be heard (see Rule 1(1)(a)). Rule 6, governing SOP's, does not entail the creation of an Agreed Statement of Facts; parties are not expected to agree on their respective positions.

[34] The CHRC maintains that its SOP, in its entirety, deals with the systemic component of the Complainant's complaint and contains factual assertions relevant to the ongoing nature of the systemic discrimination at issue.

[35] In support of its contention that the motion is premature, the CHRC cites s. 50(1) of the *CHRA*, requiring the Tribunal to provide the parties "…a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations."

[36] The CHRC refers to *Emmett v. Canada Revenue Agency,* 2013 CHRT 12 ("*Emmett*"), another systemic employment discrimination case, in which—similarly to the case at bar— the Respondent filed a motion to limit the scope of the systemic complaint to a specific timeframe. In *Emmet*, the Tribunal concluded that there was no basis to dismiss the claims for relief which fell outside the complaint period prior to receiving evidence on the merits of the complaint.

[37] The CHRC invokes *Bailie et al v. Air Canada and Air Canada Pilots Association*, 2011 CHRT 17 ("*Bailie*"), para. 20, wherein the Tribunal refused to strike pleadings and found that the issues raised in the motions before it should be debated at the hearing and after the presentation of evidence. The Tribunal in *Bailie* noted that the *CHRA* and Rules do not expressly empower the Tribunal to strike an SOP.

[38] It argued that in the case of *Sugimoto v. Royal Bank of Canada* 2006 CHRT 2 the Tribunal re-iterated the importance of having a full evidentiary record before determining the scope of the complaint. In the circumstances, the Tribunal held that a decision determining the merits of the complaint should not be made without the benefit of a full hearing.

[39] The CHRC states that the Respondent's request to considerably restrict the debate surrounding the systemic discrimination complaint "…undermines the Tribunal's ability to inquire into the substance of the complaint", which would prevent the achievement of the remedial purpose of the *CHRA*.

E. Moving Party – Reply

[40] In reply, the Respondent asserts that the CHRC's original decision to dismiss the complaint was based on the finding that further inquiry was not warranted.

[41] The Respondent also notes that there was no evidence indicating that Justice Hansen's temporal limit was connected to the statutory limit in s. 41 of the *CHRA*, nor was there evidence indicating that it did not apply to the Tribunal inquiry.

[42] Moreover, given that the Complainant consented to Justice Hansen's order, he has consented to the narrowing of the allegations and timeframe of his systemic discrimination complaint. In fact, the Complainant relied upon this narrowed timeframe in the judicial review proceeding before Justice Bédard to argue that the current Tribunal inquiry did not constitute impermissible relitigation of the PSST matter.

[43] The Respondent views the jurisprudence cited by the other parties as distinguishable, given the judgments of Justices Hansen and Bédard. In the present case, the Federal Court has ruled on the extent of the complaint forwarded for inquiry. In addition, one cannot invoke the need for context as a ground for resurrecting a dismissed allegation.

[44] A decision by the Tribunal to strike paragraphs of an SOP that are irrelevant to a narrowed complaint would not breach s. 50(1) of the *CHRA*.

[45] While evidence of facts outside the geographic or temporal scope of the complaint could help the Tribunal craft an appropriate remedy, such facts do not justify a finding that all information within the IRB as a whole, dating from 2002 onward, is relevant.

[46] The Respondent notes that its request for better particulars is still valid in the event the Tribunal decides not to strike the impugned paragraphs in the SOPs. The request is necessary in order for the Respondent to know how to respond to the SOPs. For example, better particulars would enable the Respondent to know what—if any—other comparator groups the Complainant intends to rely upon, or what transparency problems the Complainant alleges in regard to which assessment processes.

[47] The motion for particulars is not premature. The Complainant should know, before being possibly required to revise his SOP, how much detail he is expected to provide.

[48] Lastly, by choosing to include disclosure requests in its SOP, the CHRC made it necessary for the Respondent to address these requests in its motion to strike.

IV. Legal Framework

[49] Section 10 of the *CHRA* addresses discriminatory policies or practices, and reads as follows:

> 10 It is a discriminatory practice for an employer, employee organization or employer organization
>
> a. to establish or pursue a policy or practice, or
>
> b. to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,
>
> that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

[50] Rule 6(1) of the Canadian Human Rights Tribunal Rules of Procedure reads as follows:

> 6(1) Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out,
>
> a. the material facts that the party seeks to prove in support of its case;
>
> b. its position on the legal issues raised by the case;
>
> c. the relief that it seeks;
>
> 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;
>
> e. a list of all documents in the party's possession, for which 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;
>
> f. a list identifying all witnesses the party intends to call, other than expert witnesses, together with a summary of the anticipated testimony of each witness.

V. Analysis

[51] The Respondent makes a persuasive argument when it paraphrases Rule 6 of the Tribunal's Rules, stating that the SOP must include information that relates to the case before the Tribunal. I also agree with the principle that facts leading up to the alleged discrimination may be included, but that one must be cautious about including allegations of discrimination that have been previously struck, or information that could confuse the inquiry.

[52] In my opinion, the Respondent supports its motion when it states at para. 25 of its written submissions:

> "The reason for [the aforementioned principle] is because SOPs are determinative of everything that follows. The scope of documentary disclosure is determined by the SOPs as is the evidence and arguments that can be admitted during the hearing. Thus, by including allegations in an SOP that are not part of the complaint, the inquiry before the Tribunal becomes broader and more complex than it is meant to be."

[53] On the other hand, the Complainant, in support of his argument that the SOP can be broad enough to provide context to the particular scope of the complaint identified by

Justice Hansen, cites the case of *R v. Spence*, 2005 SCC 71, wherein at paras 31-32 the Supreme Court of Canada took judicial notice of the pervasiveness of hidden and unconscious prejudicial attitudes towards racialized persons, and of the fact that the use of negative racist stereotypes is widespread in our society. I endorse the belief that prejudice is very much "alive and well" in our communities.

[54] The order of Justice Hansen of the Federal Court of Canada states in paragraph 3 thereof as follows:

> "The matter of systemic discrimination is remitted back to the Commission for a supplemental investigation…examining the situation of visible minorities at the IRB Toronto Regional office during the period of 12 months preceding the filing of the Complaint with the Commission with specific reference to:
>
> a. Clustering of visible minorities in lower status positions;
> b. Underrepresentation of visible minorities in permanent positions;"

[55] In the judicial review of Member Lustig's decision to dismiss the complaint on the grounds of issue estoppel and abuse of process, Justice Bédard of the Federal Court stated at paragraph 54 of her judgment:

> "…In my view, the history of Mr. Murray's human rights complaint can only lead to one conclusion: the Tribunal was seized with the specific allegations of systemic discrimination referred to in Justice Hansen's Order for the specific period of March 2003 to March 2004."

[56] Justice Bédard further stated at paragraph 68 that:

> "…as a result of Justice Hansen's Order, <u>which was rendered on consent by all parties</u>, the scope of Mr. Murray's complaint was clearly narrowed to specific allegations of systemic discriminations in a specific timeframe. As a result, only specific portions of the complaint were re-investigated by the Commission and only the allegations covered by the supplemental investigation could be referred to the Tribunal. These allegations related to the clustering of visible minority employees in lower level positions and their under-representation in permanent higher level positions at the Toronto Regional Office of the IRB for the specific period of March 2003 to March 2004…" [emphasis in original]

[57] While Justice Hansen's decision was clear as to the limited scope of the complaint, I found no grounds in her decision for the premise that the Complainant cannot provide

material facts as to the roots of systemic discrimination and its presence in the workplace prior to the period of March 2003 to March 2004. I agree that such facts may assist in providing context to the understanding of Mr. Murray's complaint. Systemic discrimination is a continuing phenomenon which has its roots deep in history and cannot be isolated to a single action or statement (*P.S.A.C. v. Canada (National Defence)* 1996 CanLII 4067 (FCA)).

[58] Conversely, the Respondent concedes that material facts and documents falling outside the temporal or geographic scope of the complaint as referred could be appropriately included in its own SOP, *inter alia*, "…to explain how the IRB improved its employment equity practices over time…"

[59] I have difficulty accepting the premise that the SOPs should be limited to particulars within the narrow scope of March 2003 to March 2004. I do not believe that was the intent of Justice Bédard's decision. While that is the "target" time period of the complaint, I agree with the Complainant's statement at paragraph 29 of his submissions that "…[t]o arbitrarily limit the evidence to a particular period of time would drastically impede a complainant's ability to establish systemic discrimination, an inherently difficult form of discrimination to prove, and undermine the remedial purpose of human rights legislation."

[60] Ultimately, it is for the Tribunal to determine, based on the evidence heard, whether the Complainant was subject to systemic discrimination during the identified time period. But the Complainant should not be "handcuffed" by evidentiary requirements so onerous that proving systemic discrimination is rendered effectively impossible (*Radek v. Henderson Development (Canada) Ltd.* 2005 BCHRT 302, para. 505; *Starblanket v. Correctional Service of Canada*, 2014 CHRT 29 at para. 24).

[61] The Respondent points out that the Supreme Court has long held that tribunals have the authority to control their own processes (*Prassad v. Canada (Minister of Employment and Immigration*) [1989] 1 S.C.R. 560). Rule 6(1)(a) of the Tribunal's Rules of Procedure states that the SOP shall set out "…the material facts that the party seeks to prove <u>in support of its case</u>" [emphasis added]. It is not for the opposite party to pre-determine what material facts support a party's case. The place for determination is at the

hearing before the Tribunal, and it is for the Tribunal to determine what facts do or do not support the case of either party.

[62] Upon review of the 17 paragraphs identified in the Notice of Motion as asserting facts that are out of scope, and the Respondent's largely similar objections to each (see para. 18 *supra*), I have reached the following conclusions:

[63] Many of the impugned paragraphs do not expressly reproduce the geographic or temporal specificity articulated in Justice Hansen's order (*i.e.* March 2003—March 2004; Toronto District Office). Often general allegations are made about systemic discrimination against racialized employees at the IRB in the form of clustering in lower level positions, and underrepresentation in higher ones. However, I do not view the mere lack of geographic or temporal specificity in these allegations as evincing an intent by the SOPs' drafters to plead facts that are necessarily outside the scope of the complaint as referred. To strike these allegations on the basis that—divorced from their context—they could conceivably be construed in a manner that takes them outside the scope of the referral, would import a level of formalism into CHRT proceedings that is not contemplated by s. 48.9(1) of the *CHRA.*

[64] Moreover, to the extent that the impugned paragraphs reference events that pre-date the key period of March 2003 – March 2004, it is clear that such events can serve as useful context to understanding the dynamics at work during the period itself. The Respondent has essentially conceded as much in its representations.

[65] Insofar as events are alleged that post-date the key period, these would seem naturally relevant to consideration of any claim for relief, if the complaint is substantiated in respect of March 2003 – March 2004. This principle extends to references made to *continuing* discrimination, or to the consequences or effects of alleged discrimination. For example, references to a "poisoned work environment" (Complainant's SOP, para. 2), a "poisoned" workplace (Complainant's SOP, para. 26(f)), or "harassment" (*ibid*) are made in the context of detailing alleged effects of the systemic discrimination, *e.g.,* it contributed to a poisoned work environment *etc*. I do not view these mere references as a resurrection of

allegations dismissed by the Commission as I do not understand them to be advanced as free-standing sources of liability.

[66] Other subsequent events that could inform any examination of remedy or claim for relief include observations about the Respondent's staffing policy framework and practices (CHRC's SOP, para. 21) and specifically, allegations about the Respondent's 2007 staffing practices (CHRC's SOP, para. 29). While the Respondent invokes the fact that the PSST dismissed the Complainant's allegations regarding the 2007 staffing practices, I do not understand the paragraph as being intended to re-litigate the PSST matter. Justice Bédard's judgment makes clear that the PSST's decision does not bar the Tribunal from inquiring into allegations targeting the period 2003-2004. Depending on the findings made during this key period, events subsequent to the period may very well be relevant to the relief sought, and cannot be summarily dismissed as being out of scope.

[67] While it could be interpreted that certain impugned paragraphs of the SOPs are geographically ambiguous, the fact that they reference the Complainant's experience is a strong indicator that they are focussed on the Toronto Regional Office, where he was employed for his entire career.

[68] At one point the Respondent suggests that the Complainant has strayed from the referred complaint's focus on lower-level employees (Complainant SOP, para. 26). In so doing however, the Respondent invites the reader to infer an ambit to the paragraph for which there is simply no basis. In fact, the paragraph clearly makes mention of racialized employees clustered at the PM-01 level, and their underrepresentation at the PM-05 and PM-06 levels. This is in keeping with Justice Hansen's order.

[69] The Respondent also takes issue with the Complainant's reference to the use of standardized tests as being one of the causes of clustering (Complainant's SOP, para. 26(n)). I do not view this mere reference as an attempt to resurrect an allegation dismissed by the Commission, because I do not understand the Complainant to be advancing it as a free-standing source of liability.

[70] Ultimately, I have only found two paragraphs which in my opinion go beyond the acceptable scope of the complaint as referred. In para. 1 and para. 28 of the

Complainant's SOP, reference is made to section 7 of the *CHRA*. This is improper, as the complaint as currently referred for inquiry is based on s. 10. The Complainant concedes as much. Moreover, the Complainant does not dispute the Respondent's contention that the CHRC had decided not to deal with the s. 7 aspect of the complaint. I would therefore order that the references to s. 7 of the *CHRA* be struck from each of these two paragraphs, as their presence has the potential to confuse, mislead or prejudice the inquiry.

[71] As a final observation on the motion to strike, I would stress that it will be for the Tribunal to hear the evidence presented by all parties, subject to the Order herein, so as to give the parties a full hearing, and to allow the Tribunal to consider the respective allegations set out in their SOPs. I remind the parties that the Tribunal has the authority to exclude irrelevant evidence, and to limit the presentation of relevant evidence where its prejudicial effect on the timely conclusion of the inquiry outweighs its probative value.

[72] What remains to be addressed is the Respondent's request for particulars in respect of a number of allegations in the Complainant's SOP. I agree with the Complainant that such a request is premature, as it would be more efficient to wait until after the Respondent produces its documents under Rule 6 before determining whether additional particulars are necessary. The production of documents by the Respondent may prompt voluntary further particularization by the Complainant. I also agree that no party is required to "plead evidence" in its SOP (*P.S.A.C. (Local 70396) v. Canadian Museum of Civilization*, 2005 CHRT 17, para. 20).

[73] There also remain a number of outstanding disclosure requests in this matter. As indicated earlier, the Motion to Strike itself partially consists of an objection to several disclosure requests made in the CHRC's SOP. It is my hope that the current ruling on the scope of the complaint will lead to the resolution of these requests amongst the parties, without the need for further intervention by the Tribunal. If, however, this proves not to be the case, additional rulings may be necessary.

VI. Order

[74] The Tribunal hereby orders that references to section 7 of the *CHRA* shall be struck from paragraph 1 and paragraph 28 of the Complainant's Statement of Particulars.

Signed by

Ronald Sydney Williams
Tribunal Member

Ottawa, Ontario
November 29, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1706/6111R

Style of Cause: Norman Murray v. Immigration and Refugee Board

Ruling of the Tribunal Dated: November 29, 2018

Motion dealt with in writing without appearance of parties

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