

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2019 CHRT 41

Date: October 4, 2019

File No.: T2248/0318

Between:

Ryan Letnes

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: Alex G. Pannu

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I. Scope of the Complaints

A. Background

[1] The Complainant filed a Statement of Particulars March 11, 2018 (the “Complainant’s Original SOP”), Complainant’s Reply to the Respondent’s Statement of Particulars, dated May 9, 2018 and Amended Complainant’s Reply to the Respondent’s Statement of Particulars, dated May 11, 2018 (together, the “Complainant’s Replies”). The Respondent and the Canadian Human Rights Commission (the “Commission”) did not object to any of the particulars pleaded in the Complainant’s Original SOP or Complainant’s Replies. All three of these documents are now before the Tribunal.

[2] The Complainant seeks to amend his Original SOP by filing three additional SOPs, which were deposited with the Tribunal in the form of three separate Notices of Motion:

- a. Notice of Motion – Additional Complainant Statement of Particulars dated May 17, 2018 (the “May SOP”);
- b. Notice of Motion – Additional Complainant Statement of Particulars Version 2.0 dated June 19, 2018 (the “June SOP”);
- c. Notice of Motion – Additional Complainant’s Statement of Particulars Version 3.0 dated August 29, 2018 (the “August SOP”).

[3] The Respondent opposes the filing of the three additional SOPs and asks the Tribunal to dismiss the Motions in their entirety.

[4] The Commission opposes parts of the Complainant’s additional SOPs but does not object to other parts or takes no position on them.

B. Law

[5] The Tribunal may allow a party to amend a Statement of Particulars at any stage to ensure they properly and fairly reflect the issues in dispute between the parties to a

complaint.¹ Human rights proceedings are thus open to refinement as new facts and circumstances come to light.²

[6] However, the Tribunal must determine whether the amendment sought is connected in fact and law to the Complaint and whether the amendment would cause “real and significant” prejudice to the other party that cannot be remedied.³

[7] The Tribunal’s jurisdiction flows from the Commission’s referral of the Complaint. The scope of the referral is determined by looking at the letter from the Commission addressed to the Chairperson of the Tribunal, as this letter initiates the entire Tribunal inquiry process. In *Casler* the Tribunal said “This document determines whether the complaint has been referred in its entirety or not. In performing this examination, the Tribunal is ensuring that there is a link to the allegations giving rise to the original complaint and that it is not bypassing the Commission’s referral mandate under the *Act*.”⁴

[8] In *Gaucher v. Canada (Armed Forces)*, the Tribunal considered a motion to amend a complaint. It said that the real issue was whether the amendment would prejudice the Respondent by seriously undermining the fairness of the process. “If a proposed amendment opens up a new and unanticipated route of inquiry, it should not be allowed.”⁵

C. Analysis & Orders

[9] Having considered the arguments submitted by the parties, I make the following orders:

- a. The Complainant’s May 2018 SOP be accepted for filing but paragraphs 35-49, 51 and 56 be struck;

¹ *First Nations Child and Family Caring Society v Canada* (Minister of Indian Affairs and Northern Development), 2012 CHRT 24 at para 13

² *Casler v Canadian National Railway*, 2017 CHRT 6 at para 9

³ *Itty and Canada (Border Services Agency) Re*, 2013 CHRT 33; *Cook v. Onion Lake First Nation*, 2002. CanLII 61849 (CHRT)

⁴ *Casler* at para 7.

⁵ *Gaucher v. Canada (Armed Forces)*, 2005 CHRT 1.

- b. The Complainant's June 2018 SOP be accepted for filing but paragraphs 19-25 be struck; and
- c. The Complainant's August 2018 SOP be accepted for filing but paragraphs 12-29, 41-51, 55-56 and 58 be struck.

[10] As proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow, the parties are not required in this case to file Amended Statements of Particulars. The changes to the Complainant's SOP's are hereby deemed to have been made.

[11] Following receipt of this ruling by the parties, the Tribunal shall convene a Case Management Conference Call to determine any remaining procedural issues prior to establishing hearing dates and location.

(i) May 17, 2019 Motion

[12] The Complainant alleges that emails sent by Supt. Ghalib Bhayani to RCMP members who were potential witnesses to this matter were intended as witness intimidation. The Respondent disputed the allegation by providing its own explanation of the intent of the emails. I agree with the position of the Commission that witness intimidation under s. 59 of the *Act* is a quasi-criminal offence that can be enforced by the courts but not the Tribunal. I lack the jurisdiction to allow an allegation of witness intimidation as requested by the Complainant in paragraph 51 of his Motion. The Commission and RCMP have a Memorandum of Understanding regarding the sharing of information when an investigation under section 59 is initiated. The purpose of the MOU is to coordinate the two organizations' respective statutory mandates under the *Act*. The Tribunal also lacks the jurisdiction to order the discontinuance of the MOU as the Complainant requests in paragraph 56. However, I am prepared to consider the same set of facts under an allegation of retaliation under s. 14(1) of the *Act*.

[13] Paragraphs 35-38 of the Motion refer to a mandate letter from the Minister for Public Safety to the incoming Commissioner of the RCMP. There are statements in the motion referring to the under-representation of various groups, including disabled

people, in the leadership of the RCMP. Allegations of systemic discrimination may be permitted as additional grounds of discrimination if they are sufficiently linked to the factual nexus of the original complaint. For example, in *Itty v. Canada (Border Services Agency)*⁶, the Tribunal permitted an amendment to add section 10 allegations when the allegations of systemic discrimination flowed from the same facts the Complainant relied upon to support allegations of discrimination in employment and adverse differential treatment under section 7.

[14] However, the groups mentioned in the June SOP are done in the context of their inclusion in the *Employment Equity Act* (EEA). The EEA is a separate statute that sets out the duty of employers to implement employment equity by taking certain steps. It does not create rights that individuals can pursue through the Tribunal process and therefore should not be included in an amended SOP.

[15] The issue of systemic discrimination in the RCMP against disabled members was raised in the Complainant's original SOP. It would be open to the Complainant to call witnesses or tender evidence at a hearing to support those claims. In *Gaucher*, the Tribunal said that "...in general, it has an obligation to follow the substance of the complaint wherever it leads...this is generally determined by the facts of the case rather than the section under which the complaint was laid."⁷ The Tribunal went on to quote from the decision of the Federal Court of Appeal in *Canada (Attorney General v. Robinson*, to "implicitly support the contention that the scope of the remedial power exercised by the Tribunal is determined by the provisions of section 53, rather than the section under which the complaint is laid. It would follow that systemic remedies are available, if the complaint, the ensuing investigation and disclosure process before the Tribunal indicate that they are appropriate."⁸

[16] Paragraphs 39-49 are contained in a section of the SOP entitled "Ancillary Issues". I find that they are mainly a number of observations and personal opinions of

⁶ *Itty v. Canada (Border Services Agency)*, 2013 CHRT 33 at paras 23

⁷ *Gaucher* para. 15

⁸ *Canada (Attorney General) v. Robinson*, [1994] 3 F.C. (F.C.A) 228, at 248

the Complainant. They are not factually or legally linked to the essential complaint. I will not include them as an amendment to the SOP.

(ii) June 19, 2018 Motion

[17] When there are allegations of retaliation by the Respondent subsequent to the original complaint, the Tribunal has recognized that it would be “impractical, inefficient and unfair” to require individuals to make allegations of reprisal only through the commencement of a separate complaint proceeding.⁹ As a result, requests to add allegations of retaliation may be granted, unless it is plain and obvious that the amendments sought could not possibly succeed.

[18] The particular test to be applied when considering whether to allow the addition of allegations of retaliation requires an examination of:

- a. whether the allegations of retaliation are by their nature linked, at least by the complainant, to the allegations giving rise to the original complaint;
- b. whether the allegations disclose a tenable claim of retaliation; and
- c. whether sufficient notice has been given to the respondent, so that it is not prejudiced and can properly defend itself.¹⁰

[19] On this basis, without any comment on their merits, I accept the inclusion of the Complainant’s allegations of retaliation contained in the June motion.

[20] However, I do not accept the allegations contained in paragraphs 20-26 of the June SOP. These allegations are merely the opinion of the Complainant and have no link to the factual or legal nexus of the initial complaint.

(iii) August 29, 2019 Motion

[21] The Complainant’s motion contains a number of examples of other RCMP members and how their disabilities were allegedly dealt with by the Respondent. The

⁹ *Tabor v Millbrook First Nation*, [2013] C.H.R.D. para. 12-13

¹⁰ *Saviye v Afroglobal Network Inc. and Michael Daramola*, 2016 CHRT 18 at para 15

motion also contains allegations that the Respondent used its internal Code of Conduct process against the Complainant as a form of retaliation and allegations of harassment by the Respondent.

[22] The Respondent and Commission agree that certain sections of the Complainant's motion should not be allowed as amendments to his SOP (see para 9C above). After review of the motion I concur with their assessment.

[23] In paras. 12-17, the Complainant alleges that a 2017 Code of Conduct investigation by the Respondent into the Complainant's handling of work items was retaliation for a charge of harassment filed by the Complainant that year. However, the Complainant did not plead particulars such as the investigation was in retaliation for his human rights complaint or that the members of the Respondent were aware of his complaint. There does not seem to me to be a factual or legal connection between this allegation and the initial complaint.

[24] There are also broader allegations made in paras. 17-29 about the impact of the RCMP's disciplinary process on disabled members that do not appear to have any legal or factual nexus to the original complaint. I will not accept these as amendments.

[25] Lastly, the Complainant makes allegations that the internal RCMP harassment process denies complainants access to natural justice. These are not connected to the original and would constitute a new complaint. The Tribunal generally does not look into the internal processes of Respondent for jurisdictional and procedural reasons unless it is drafting non-pecuniary remedial orders. For example, see *Constantinescu v. Correctional Service Canada*.¹¹

(iv) May 31, 2019 Motion

[26] The Complainant filed a motion dated May 31, 2019 in response to the Commission's submission on his three motions. The Respondent opposed the inclusion of the Complainant's submission. I've exercised my discretion and the more relaxed

¹¹ *Constantinescu v. Correctional Service Canada* 2018 CHRT 17 at para 19

rules of procedure of the Tribunal to accept this Motion. My review does not alter my ruling above. The Motion claims there is new evidence to support some of the allegations in the initial SOP. They are not to be included in an amended SOP, but the Complainant is open to calling witnesses or tendering such evidence at a hearing.

Signed by

Alex G. Pannu
Tribunal Member

Ottawa, Ontario
October 4, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2248/0318

Style of Cause: Ryan Letnes v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: October 4, 2019

Motion dealt with in writing without appearance of parties

Written representations by:

Ryan Letnes, for himself

Daphne Fedoruk, for the Canadian Human Rights Commission

Sarah Eustace, for the Respondent