

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2019 CHRT 46

Date: November 5, 2019

File No.: T2276/3118

Between:

Michael Eric Desson

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: Alex G. Pannu

I. Motions for Disclosure

A. Background

[1] Both the Complainant and Respondent have filed Notices of Motion under the Canadian Human Rights Tribunal's (the "Tribunal") Rules of Procedure. Each party seeks additional disclosure of documents from the other party.

[2] The Complainant seeks disclosure of the following:

- a. Any and all documentation on how overtime opportunities are assigned/approved in the RCMP;
- b. A list of all overtime opportunities worked by each member at the Constable Rank, and Constables acting as Corporals, within all Lower Mainland Detachments (LMD) detachments in "E" Division, from January 14, 2011 until May 26, 2015;
- c. A list of members in all LMD detachments in "E" Division that were promoted from Constable to Corporal between January 14, 2011 and the present, and the dates of their promotion; and;
- d. A list of all overtime opportunities worked by each member at the Constable Rank, and any Constables acting as Corporals, within all LMD detachments in "E" Division for the three-month period beginning on May 29, 2017.

[3] The Respondent agrees to disclose overtime hours worked by constables in the Burnaby detachment from January 2011 to May 2015 and overtime hours worked for constables in the Maple Ridge detachment from May 2017 to August 2017.

[4] The Respondent also agrees to use reasonable and diligent efforts to identify and disclose RCMP policy documents pertaining to overtime assignments.

[5] The Respondent opposes the remainder of the Complainant's disclosure request on the basis that they are overly broad or would require the creation of documents.

[6] The Respondent seeks disclosure of the following:

- a. Clinical records and electronic documents from several of the Complainants' medical providers as well as hospital and emergency care providers from January 2005 to present;

- b. Printouts of the Complainant's Medical Services Plan (MSP) and Pharmanet records; and
- c. the Complainant's driving record in Ontario and BC from January 2005.

[7] The Complainant agrees to provide documents relating to some but not all his medical providers. The Complainant opposes disclosure of documents from hospital and emergency care providers, MSP and Pharmanet records and his driving records on the basis that the request is a fishing expedition or not relevant.

B. Law

[8] The standard for disclosure of documents in accordance with the Tribunal's Rules has been well-settled by the case law. Parties before the 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. If there is a rational connection between a document and the facts, issues or forms of relief identified by the parties in the matter, it should be disclosed. *Yaffa v. Air Canada* 2014 CHRT 22 para. 3.

[9] A party must show not that the evidence is relevant in the traditional sense, but that disclosure of the document will be useful, is appropriate, is likely to contribute to advancing the debate and 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, para. 11.

[10] However, the request for information must not be speculative or amount to a fishing expedition and the documents should be identified with reasonable particularity. *Guay v. Canada (Royal Canadian Mounted Police)*, 2004 CHRT 34, paras. 42-44.

[11] While the threshold for arguable relevance is low, and the tendency now is toward more disclosure, the nexus between the issues to be proven and the requested material must nonetheless be demonstrated. *Warman v. Bahr*, 2006 CHRT 18, paras. 6-7, 9.

[12] This does not mean that these documents or this information will be admitted in evidence or that significant weight will be afforded to them. *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28, para. 4.

C. Orders

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

- A. The Respondent shall undertake a reasonable and diligent effort attempt to identify and disclose any official RCMP policy documents relating to the assignment of overtime to RCMP officers. They Respondent will undertake the same effort to disclose any informal policies and procedures on overtime assignment in the Burnaby and Maple Ridge RCMP detachments from January 2011 to August 2017;
- B. The Respondent shall disclose a list of all overtime opportunities worked by each constable, and any Constables acting as Corporals, within the Burnaby RCMP detachment from January 2011 to May 2015 and the Maple Ridge RCMP detachment from May to August 2017;
- C. The Complainant shall disclose the clinical file of Dr. Diggle for the period of July 14, 2010 to May 26, 2015;
- D. The Complainant shall disclose the clinical file of Dr. Schimpf for the period of July 14, 2010 to present;
- E. The Complainant shall disclose the clinical file of Dr. Fasihy from July 14, 2010 to May 26, 2015 as it relates to his neurological functioning/epilepsy and from July 14, 2010 to present as it relates to his psychological state, with any unrelated medical issues redacted by counsel in the copy disclosed by the Complainant;
- F. The Complainant shall disclose the clinical file of Dr. Abraham from January 1, 2018 to present as it relates to his neurological functioning/epilepsy and his psychological state, with any unrelated medical issues redacted by counsel in the copy disclosed by the Complainant;

- G. The Complainant shall disclose the clinical file of Dr. Davies from January 1, 2016 to December 31, 2017;
- H. The medical records provided in sections C-G above shall not be disclosed to any other individuals other than the Respondent and Commission without prior permission from the Tribunal and notification to the Complainant. The documents may not be used for any purpose outside of the Complaint and the documents shall be returned to the Complainant at the conclusion of the inquiry when all issues have been decided and any judicial review or appeal proceedings have been exhausted or are time-barred.

D. Analysis

Complainant's Motion

[14] The Complainant states that the information he requests is to assist in the calculation of his claim for lost wages. Recovery of wage loss is a valid form of relief as envisaged in Rule 6(1)(d). The information sought is arguably relevant in my view.

[15] The Respondent has agreed to make "reasonable and diligent" efforts to produce any official RCMP documents on assignment of overtime. The Complainant's motion also asks for any informal policies and procedures within the RCMP on overtime assignment.

[16] In its response to the Complainant's motion, the Respondent filed an affidavit from the officer in charge of Professional Responsibility Support Services for "E" Division (British Columbia). In the affidavit, Officer Lovelace states that overtime assignments are made at the detachment/unit level without input from senior management. They are not standardized across the RCMP and are not consistently documented.¹ Therefore the Respondent maintains that an order for production of informal policies and procedures could require it to generate documents which previously did not exist, contrary to the Tribunal's rules.

[17] In *Kayreen Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28, the Tribunal said it 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,

¹ Affidavit of Rashpal Lovelace, Respondent's Motion Record, paras 4-5

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.

[18] I believe a balance can be struck between the intent of the legislative scheme to allow for full and ample disclosure and the need to maintain an efficient and expeditious process. My order above requires the Respondent to disclose any informal policies and procedures on overtime assignment, if they exist, at the Burnaby and Maple Ridge detachments only, during the periods in which the Complainant was stationed.

[19] My order on the disclosure of overtime worked by RCMP constables or those acting as Corporals continues along this attempt to balance competing interests. My order directs the RCMP to disclose information only with respect to the Burnaby and Maple Ridge detachments during the periods when the Complainant worked in those locations. To expand the search for documents to all detachments in the Lower Mainland, as requested by the Complainant, would be overly broad.

[20] I have not accepted the Complainant's request for disclosure of all promotions of RCMP members to Corporal in Lower Mainland detachments from January 2011 to present. The Complainant alleges that had he not been discriminated against, he would have gained the operational experience necessary to pass the exam for promotion to corporal. However, the affidavit submitted by Officer Lovelace states that the corporal exam is a wide-ranging exam and not simply a test of job-specific knowledge. Thus, operational experience itself would not necessarily have allowed the Complainant to pass the exam, which has a pass rate of only 54% according to Officer Lovelace's information. In addition, many of the records sought that were more than five years old would likely have been destroyed pursuant to the RCMP's document retention policy, according to Lovelace's affidavit. Denying this part of the motion is in my view, consistent with the Tribunal's direction in *Brickner* of not imposing onerous requirements on parties and risking delays in search of evidence on side issues.

Respondent's Motion

[21] The Respondent asked for and the Complainant consented to provide, clinical files from several medical providers who treated the Complainant. These are set out above in my order in paragraph 14 C-G. The Complainant asked for some conditions relating to confidentiality which I find reasonable and include in my order.

[22] I do not accept the Respondent's request for the medical records of Dr. Nemetz who provided the Complainant with behaviour therapy treatment for work stress two years before his 2010 seizure which initiated the sequence of events leading to the Complaint. The Complainant's medical condition is arguably not relevant prior the 2010 seizure. The two-year period between Dr. Nemetz' treatment makes it not sufficiently proximate to the 2010 seizure.

[23] I do not accept the Respondent's request for a list of medical care providers and all medical documents of the Complainant from 2005. This is a wide-ranging request that in my view, amounts to a fishing expedition. Much of this information is already contained in the medical records of the Complainant held by the Respondent. Much of it will be disclosed in the clinical files of medical providers which the Complainant has agreed to provide.

[24] I do not accept the Respondent's request for MSP and Pharmanet printouts. The Respondent characterizes these documents as "...an essential discovery mechanism to determine whether all relevant documents have been produced..." However, there is no suggestion the Complainant will refuse to comply with his disclosure obligations, and the Respondent has not identified any dispute in which these documents would assist the Tribunal. This is another fishing expedition which I will not allow.

[25] Finally, I do not accept the Respondent's request for the Complainant's driving records from Ontario and BC. The Complainant's driving status is not in dispute. The issue is the Respondent's policy classifying the Complainant. The records are not arguably relevant to his complaint.

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

Signed by

Alex G. Pannu
Tribunal Member

Ottawa, Ontario
November 5, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2276/3118

Style of Cause: Michael Desson v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: November 5, 2019

Motion dealt with in writing without appearance of parties

Written representations by:

Allison Tremblay, for the Complainant

Daphne Fedoruk, for the Canadian Human Rights Commission

Graham Stark, for the Respondent