Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2020 CHRT 11
Date: May 13, 2020
File No.: T2255/1018 & T2389/4819

Between:

Kelli Windsor-Brown

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: George E. Ulyatt

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I. Facts

[1] This is a motion brought by the Complainant pursuant to Rule 3 of the Rules of procedure of the Canadian Human Rights Tribunal ("the Tribunal"), where she requests that the Royal Canadian Mounted Police (RCMP, Respondent) disclose all arguably relevant documents in its possession or its control in respect to the issues in the present complaint.

[2] There are two complaints that were referred to the Tribunal pursuant to sections 7, 10 and 14 of the *Canadian Human Rights Act* (the Act) on the grounds of sex, family status and disability (s.3 and 3.1 of the Act). Namely, the Complainant alleges that she experienced adverse differential treatments, more precisely that the RCMP failed to provide a harassment free environment and that it also had discriminatory policies and practices.

[3] The Complainant seeks an order from the Tribunal to force the RCMP to disclose all documents referenced at page 97 of her Statement of Particulars ("SOP").

[4] The Complainant's Motion seeks the following:

a. shift schedules for corporals in other Manitoba detachments of similar size to East St. Paul, including Grand Marais and St. Pierre, 2011 through 2014;

b. Records of any harassment and sensitivity training required of Sgt. Gilligan post October 2013;

c. A copy of Sgt. Gilligan's January 20, 2015 submission of his grievance, if his submission addresses the substantive harassment allegation made by the Complainant. Alternatively, the Complainant requests that the Respondent confirm that the submission does not address the substantive allegations of harassment in any way;

d. An un-redacted copy of Staff Sgt. Doyle's notes from his interviews with Cst. Steinke and other members of the East St. Paul detachment (Note: a heavily redacted copy has been provided);

e. Copies of all documents and audio statements reviewed by RCMP investigators in the investigation of the Prevention and Resolution of Harassment in the Workplace complaints against Supt. Mehdizadeh; Insp. LeMaistre and Sgt. Gilligan; and finally

f. Un-redacted Final reports and Records of Decision regarding code of conduct inquiries into Leavy, Reilly and McKenna (Note: redacted versions have been provided).

[5] The Respondent denies the allegations of adverse differential treatments. It denies any failure to provide a harassment free environment, as well as the allegations set forth with respect to the claims made pursuant to Sections 7,10 and 14 of the Act. The addition of another prohibited ground of discrimination, namely disability, is a secondary claim, which is also in dispute.

[6] The Commission, in its Statement of Particulars (SOP), mainly addresses the historical problems with the workplace environment in the present complaint.

[7] The Complainant, in her SOP, explains that she commenced employment with the Respondent in 1992 initially in Montreal, Quebec for language training and upon completion was sent to Regina for training. Following the completion of her training in Regina, the Complainant was transferred to Surrey B.C and then on or about 1998, she was transferred to Stonewall, Manitoba. In 2005, she was promoted to Corporal and was transferred to Oakbank, Manitoba. The position as Corporal was a supervisory position and led her to be transferred into the Criminal Operations Division at Division D Headquarters in Winnipeg, Manitoba from 2008 to 2011.

[8] At the Complainant's request, she was later transferred from Division D Headquarters to East St Paul, Manitoba, as a Corporal supervisor in 2011. The posting to East St. Paul was part of one detachment within the greater Selkirk Detachment.

[9] The Complainant acted in a temporary position, in a position normally assigned to a Sargent from April 2011 to December 2011.

[10] In East St. Paul, her immediate supervisor in the chain of command was Sargent Gilligan, who himself reported to Staff Sargent Doyle from the Selkirk Detachment. Staff Sargent Doyle then reported to inspector Mark LeMaistre, who was also working out of the Selkirk Detachment.

[11] On March 12, 2013 the Complainant went on sick leave for psychological and emotional stress from marital difficulties. This led her to experience psychological stress, depression and anxiety.

[12] The Complainant alleges that after March 2013, she was the subject of harassment in the workplace. This led her to file a complaint with the Canadian Human Rights Commission (Commission) on January of 2014, in which she alleged that the RCMP had breached the provisions of the Act. Beyond sexual harassment, she also alleged that the Supervisors were creating an unusual and unreasonable work schedules for herself, which was unusual for a person of her rank and position: these schedules were at odds with normal and accepted practices.

[13] In February 2018, the Commission referred the complaint to the Tribunal and, quickly, the disclosure process started. Since she felt that the Respondent was not disclosing all the relevant documents, the Complainant filed a motion for the production of some documents in December 2019.

[14] In its reply to the Complainant's motion, the Respondent, agreed to items (a) and (c) of the Complainant's request, but it disputed the four remaining requests.

[15] Therefore, there are four outstanding issues, including the disclosure of:

i. Records of any harassment and sensitivity training required of Sgt. Gilligan post October 2013;

ii. An un-redacted copy of Staff Sgt. Doyle's notes from his interviews with Cst. Steinke and other members of the East St. Paul detachment;

iii. Copies of all documents and audio statements reviewed by RCMP investigators in the investigation of the Prevention and Resolution of Harassment in the Workplace complaints against Supt. Mehdizadeh; Insp. LeMaistre and Sgt. Gilligan; and finally

iv. Un-redacted Final reports and Records of Decision regarding code of conduct inquiries into Leavy, Reilly and McKenna.

II. Issues

[16] The matter before me is whether the Tribunal should order the Respondent to disclose the documents sought by the Complainant in her motion. More precisely, the Tribunal will have to determine whether (a) the above-mentioned documents requested by the Complainant are arguably relevant to the facts; issues or forms of relief identified by each of the parties in this matter; and (b) whether there is a connection sufficiently

established between the information requested and the issues in dispute and (c) whether the probative value of the requested evidence would not outweigh its prejudicial effect on the proceedings. Finally, I will have to determine if some documents have to be disclosed without the redaction that has already been done by the Respondent.

Review of the Parties' Arguments

Records of any harassment and sensitivity training required by Sgt. Gilligan post October 2013

[17] The complainant argues that these documents are arguably relevant as she alleges that the Respondent inadequately investigated Sgt. Gilligan's misconduct and that the operational guidelines used were insufficient. Furthermore, the Complainant alleges that her position was ultimately right since Sgt Gilligan was required to take the sensitivity training in the end.

[18] The Respondent submits that all relevant documents have already been provided. Furthermore, the Respondent argued that the sensitivity training information is not relevant. The Respondent further argued that the issue of Sgt. Gilligan's sensitivity training ought not be revealed.

[19] The Respondent further argued that Sgt. Gilligan has not signed a consent or release for disclosure and, therefore, it relies on section 7; 8 and 26 of the *Privacy Act*. Additionally, the Respondent argued that releasing this information would be contrary to the *Commissioner's Standing Orders (Investigation and Resolution of Harassment Complaints)* ("the Commissioner's Standing Orders"), which deals with the non-production of investigations and resolutions of harassment complaints. Finally, the Respondent argued that this a proverbial fishing expedition into the privacy of Sgt. Gilligan.

[20] In reply, the Complainant argued that section 6(5) of the Commissioner's Standing Orders only addresses the requirement that the final decision be served on the complainant. This section states the following:

> A copy of the decisions, including the written decision of a conduct board that is a decision maker for the purpose of these Standing Orders, must be served

on the complainant and include a statement of the decision maker's findings, reasons for the decision and whether any conduct measures are imposed.

[21] Finally, the Complainant submitted that if the Commissioner's Standing Order does serve to prohibit disclosure of arguably relevant documents in the present proceeding, which is denied, the *CHRA* takes precedence over it. Given that the *CHRA* is a quasi-constitutional legislation, when it comes into conflict with other legislation (or in this case, subordinate legislation in the form of a regulation), the provisions of the human rights enactment prevail (see *Insurance Corp. of British Columbia v. Heerspink*, [1982] 2 S.C.R. 145.

Copies of all documents and audio statements reviewed by RCMP investigators in the investigation of the Prevention and Resolution of Harassment in the Workplace complaints against Supt. Mehdizadeh; Insp. LeMaistre and Sgt. Gilligan

[22] The Complainant argues that the production of these records is justified as these individuals will all be called as witnesses and therefore the evidence is arguably relevant.

[23] The Respondent contends that all relevant materials have been produced; that the privacy of the parties is paramount and that the consent of the parties has not been provided. It further argues that all relevant materials have already been provided and that the Complainant has not provided an explanation with respect to why these documents/recordings are relevant.

Un-redacted Final reports and Records of Decision regarding code of conduct inquiries into Leavy, Reilly and McKenna.

[24] The Complainant takes the position that these un-redacted final reports are relevant to establish the historic harassment that took place over the years at the RCMP. She also wants to show what type of behavior she was subjected to and she believes these documents can provide a context to her complaint.

[25] The Respondent argues that all relevant materials have been provided to the Complainant with respect to members Leahy, Reilly and McKenna. Furthermore, the Respondent argues that the relevancy claims loses its merit inasmuch as the Complainant is aware of the decisions with respect to these members already. Furthermore, it argues that the members have an expectation of privacy when it comes to employment/personnel

records. It is further noted by the Respondent that none of the members will be providing testimony at the anticipated hearing. Finally, the Respondent relies on section 40(3) of the *RCMP Act* which provides the right to deny production of redacted portions of the Final Report and Record of Decision with respect to members.

[26] Conversely, the Complainant argues that section 40(3) of the *RCMP Act* is only meant to cover answers or statements "made in response to a question described in subsection (2)" which states:

> Member not excused from answering
>
> (2) In any investigation under subsection (1), no member shall be excused from answering any question relating to the matter being investigated when required to do so by the person conducting the investigation on the grounds that the answer to the question may tend to criminate the member or subject the member to any criminal, civil or administrative action or proceeding.

[27] The Complainant relied upon the decision *Gustar v. Wadden,* 1992 CanLII 643 (BC CA) to assert that section 40(3) of the *RCMP Act* only covers answers or statements "made in response to a question described in the aforementioned subsection (2)". In *Gustar,* the Court of Appeal wrote:

> …a question described in subsection (2) is a question where the answer may tend to criminate the member or subject the member to a proceeding or to a penalty. If all questions in the investigation were intended to be encompassed by the legislative provision, then subsection (2) could have ended after the word "investigation" the second time it appears, immediately before the words "on the ground. (para 10).

[28] The Complainant submits that Final Reports and Records of decisions do not override the public's interest in ensuring all relevant evidence is disclosed.

An un-redacted copy of Staff Sgt. Doyle's notes from his interviews with Cst. Steinke and other members of the East St. Paul detachment

[29] Staff Sgt. Doyle had been assigned to investigate Constable Steinke's complaints about Sgt. Gilligan treatment of staff at the East St. Paul detachment. The Complainant asks for copies of all documents and audio statements that relate to Staff Sgt. Doyle's interviews.

[30] The Complainant argues that the investigation conducted by Staff Sgt. Doyle and his notes are clearly relevant to the issues at hand including, “the Respondent’s investigation into alleged harassment and discrimination by Sargent Gilligan” wherein he interviewed a number of members and employees from the East St Paul detachment.

[31] The Respondent argues that these are not arguably relevant and that they are furthermore protected by the Privacy Act. The Respondent submits that the Complainant has disclosed how Cst. Steinke’s concerns respecting Sgt. Gilligan’s leadership and relationship are not relevant and have not been supported by the materials for this Tribunal.

[32] The Respondent also puts forth an expectation of privacy for the employees’ employment personal records, since no release has been provided by members Leahy, Reilly and McKenna. It also mentions the *Privacy Act,* as previously referred to as a justification for its denial to disclose further information.

[33] The Complainant in reply argues that the notes and information garnered by Staff Sgt Doyle was not limited to the Complainant’s circumstances but is clearly relevant to assessing the Respondent’s claim that it has acted appropriately.

[34] The Respondent also noted that one of the members will be providing testimony at the Hearing before the Tribunal.

III. Legal Framework

[35] The *Canadian Human Rights Act* sets forth the obligations of the parties in Section 50(1) of the Act, which states as follows:

> After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.

The Rules of the Tribunal provide at subsections 6(1), (2), (4) and (5) as follows:

Statement of Particulars

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.

Reply

6(2) The complainant and the Commission shall serve and file a Reply within the time fixed by the Panel,

a) where they intend to prove facts or raise issues to refute the respondents Statement of Particulars; and

b) where these facts or issues were not identified in their Statement of Particulars under 6(1).

Production of documents

6(4) Where a party has identified a document under 6(1)(d), it shall provide a copy of the document to all other parties. It shall not file the document with the Registry.

Ongoing disclosure and production

6(5) A party shall provide such additional disclosure and production as is necessary

a) where new facts, issues or forms of relief are raised by another party's Statement of Particulars or Reply; or

b) where the party discovers that its compliance with 6(1)(d), 6(1)(e), 6(1)(f), 6(3) or 6(4) is inaccurate or incomplete.

[36] The Tribunal, in the decision *Allan Shaw v. Bell Canada*, 2019 CHRT 24 (Shaw), referred to the decision in *Kayreen Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28, which sets forth the principles regarding the applicable tests for disclosures in the Tribunal as follows:

> 59 The case of Kayreen Brickner v. Royal Canadian Mounted Police, 2017 CHRT 28 (Can. Human Rights Trib.), cited by the Commission sets out the key principles regarding the applicable test for disclosure in Tribunal inquiries as follows:
>
> > Principles of Disclosure
> >
> > [4] Pursuant to subsection 50(1) of the Canadian Human Rights Tribunal 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 arguable relevant information in the possession or case 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, 2002/12106). 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 I8 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 end 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 CanLII 76 (SCC), {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).

[37] The Tribunal in *Shaw* further referred to the decision, *Egan v. Canada Revenue Agency,* 2017 CHRT 33 with respect to the criteria the Tribunal relies upon in determining whether a disclosure request should be granted:

> [40] As noted above, the jurisprudence for determining disclosure requests generally relies on the following criteria:
>
> Pursuant to section 50(1) of the Act, 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 and 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 documents allows each party to know the case they are up against and, therefore, adequately prepare for the hearing.
>
> For that reason, if there is a rational connection or nexus between a document and the facts, issues or forms of relief identified by the parties in the matter, the document should be disclosed pursuant to sections 6(1)(d) and 6(1)(e) of the Rules.
>
> The party seeking the disclosure must demonstrate that the nexus exists and the documents are probative and be arguably relevant to an issue in the hearing, which is not a particularly high standard.
>
> The request for disclosure must not be speculative or amount to a “fishing expedition.” The documents should be identified with reasonable particularity.
>
> The disclosure of arguably relevant documents does not mean that this information will be admitted in evidence at the hearing of the matter or that significant weight will be afforded to it in the decision-making process.

[38] The *Canadian Human Rights Act* oversees and is designed to ensure full disclosure in order for the parties to prepare, present and defend the matters before the Canadian Human Rights Tribunal (“the Tribunal”).

[39] Also, in *Shaw*, the Tribunal recognized that it must consider whether the information at issue is arguably relevant (*Warman v. Bahr,* 2006 CHRT 18 at para. 6).

[40] As further noted in *Shaw*, the aforementioned threshold is not particularly high in that if the moving party demonstrate that there is a rational connection between the requested documents and the facts; issues or forms of relief identified by each of the parties in the matter, the information should be disclosed pursuant to paragraphs 6(1)(d) and (e) of the Tribunal’s *Rules of Procedure* (03-05-04).

[41] That being said, the Tribunal must be cautious of requests for disclosure which are either speculative or amount to a proverbial “fishing expedition” (see *Guay* at para. 43). This means that the moving party must be able to identify the documents with reasonable particularity. As noted above in paragraph 7 of *Brickner*, it is important to note that despite

arguable relevance, 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" and further, the Tribunal may deny disclosure in the event that the ordering of disclosure would create a situation where the probative value would be outweighed by the prejudicial effect on the proceedings.

[42] In the present matter the Respondent has argued that there should be two other grounds that prevent disclosure of documents besides the arguably relevant argument. The Respondent argues the *Privacy Act,* R.S.C. 1985 c. P-21 and the Commissioner's Standing Orders prevent the release of this information.

[43] The Respondent argues that Sections 7, 8, and 26 as justification for non-production of items b, d, e and f and therefore they should not be provided. Succinctly, the Respondent argues that the *Privacy Act,* and the Commissioner's Standing Orders shall override the provisions of the *Canadian Human Rights Act.* Without the consent of the parties, the information cannot be disclosed.

[44] The Complainant, in reply, refers to the case of *LaRose v. Canadian Human Rights Commission*, 2006 PSST 1 at paragraph 7 which states:

> "A federal institution is authorized to disclose personal information when it is required to do so by subpoena or any of the like, or as stipulated in it's rules of procedure. Accordingly, paragraph 8(2)(c) of the Privacy Act provides that personal information under the control of a government institution may be disclosed when it is "for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information."

[45] Accordingly, paragraph 8(2)(c) of the *Privacy Act* provides that personal information under the control of a government institution may be disclosed when it is "for the purpose of complying with a subpoena or warrant issued, or order made a court, person, or body with jurisdiction to compel the production of the information for the purpose of complying with rules of court relating to the production" of such information.

[46] Furthermore, in *Hughes v. Transport Canada*, 2012 CHRT 26, the Tribunal determined that the *Privacy Act* did not prevent disclosure in the context of complaints filed

under the Act. In this decision, the Respondent had made the same arguments as the RCMP about the application of the *Privacy Act* to the procedures before the Tribunal and the Tribunal wrote:

> [23] Also, the Tribunal is of the view that the provisions of the *Privacy Act*, R.S.C., do not prohibit the production of documents of the kind sought by the complainant in his motion, provided that the confidential nature of the applications submitted is protected.

[47] The Tribunal will thus not consider the arguments of the RCMP in relation to the *Privacy Act* in its decision.

[48] Finally, it is important to mention that all disclosed documents will be subject to the rule of the implied non-disclosure, as explained in the decision *Public Service Alliance of Canada (Local 70396) v. Canadian Museum of Civilization Corp*., 2004 CHRT 38 at paragraph 12:

> [12] All parties agree that the "implied undertaking rule", applies to any documents or information disclosed by the Museum. The rationale for this rule is that a party to litigation should have the full right of disclosure and inspection of relevant information, including that which is confidential, as is necessary to dispose fairly of the case. However, a party cannot use this right of disclosure for any purpose collateral to the litigation. If there is a real risk of such use despite the undertaking, additional restrictions can be imposed on how the disclosed information can be used. (See *Zellers Inc.* v. *Venta Investments Ltd.* [1998] O.J. No. 2118, (O.C.J.); *Reichmann* v. *Toronto Life Publishing Co.* [1990], 44 C.P.C. (2d) 206, 207-210 (H.C.J.); *Alberta (Treasury Branches)* v. *Leahy* 2000 ABQB 575 (CanLII), [2000] A.J. No. 993, pp. 54-55 (Q.B.).

IV. Analysis

Records of any harassment sensitivity training required of Sgt. Gilligan post October 2013

[49] Upon reviewing the arguments of the parties, the Tribunal is satisfied that the Complainant has established relevancy and a nexus between the documents sought and the allegations presently before the Tribunal. The Tribunal agrees that the documents sought by the Complainant relate to her allegations that the RCMP inadequately investigated Sgt. Gilligan's misconduct and that the operational guidance represented an insufficient response in the circumstances. Furthermore, these documents have a sufficient

connection with the Complainant's general allegation that there is a lack of response from the RCMP when faced with claims of harassment in the work environment. Finally, The Tribunal is not persuaded by the Respondent's arguments based on the *Privacy Act* or that the Commissioner's Standing Orders would prevail over the *Canadian Human Rights Act*.

An unredacted copy of Staff Sgt. Doyle's notes from interviews with Constable Steinke and other members of the East St. Paul detachment.

[50] Upon review, it is difficult for the Tribunal to determine if some redacted parts of these documents are arguably relevant.

[51] Therefore, the Respondent shall provide to the Tribunal a redacted copy and an unredacted copy of Staff Sgt. Doyle's notes from interviews with Constable Steinke and other members of the East St. Paul detachment. This will allow the Tribunal to determine if the redacted parts of the documents are arguably relevant to the case.

Audio recordings and/or documents of members and employees reviewed by the RCMP investigators relating to complaints filed against Supt. Mehdizadeh; Insp. LeMaistre and Sgt. Gilligan

[52] In the present circumstances, the Tribunal is not persuaded that the documents regarding and sought as against these individuals are relevant and has met the standard of "arguably relevant". As the moving party in her motion in disclosure, the Complainant has the burden to show how these documents are potentially relevant to her complaint and if there is a sufficiently established connection between these documents and recordings and the issues discussed in her SOP.

[53] To the Tribunal, it appears that this request is more of a fishing expedition on behalf of the Complainant. Furthermore, since the Complainant intends to call Supt. Mehdizadeh, Insp. LeMaistre and Sgt. Gilligan as witnesses during the hearing, she will have the opportunity to examine them and to obtain answers to her questions.

Unredacted final reports and records of decision regarding code of conduct enquiries of Leahy, Reilly and McKenna.

[54] The Tribunal has difficulty in finding a nexus or an argument of arguable relevance with respect to the documents sought by the Complainant in the present action. As noted by the Respondent, the decisions on those matters are well known by the Complainant and each of those individuals are not related in those actions.

[55] The Tribunal believes disclosure of these documents is too wide and does not meet the standard of "arguably relevant" or meets the nexus of the claim. It appears to the Tribunal that this particular request is more of a "fishing expedition" with respect to the Complainant's case.

V. Orders

[56] The Respondent is ordered to disclose records of any harassment and sensitivity training received by Sgt. Gillian post October 2013.

[57] The Respondent is ordered to provide copies of both the redacted and the unredacted copies of Staff Sgt. Doyle's notes from interviews with Constable Steinke and other members of the East St. Paul detachment to the Tribunal, by June 15, 2020.

Signed by

George E. Ulyatt
Tribunal Member

Ottawa, Ontario
May 13, 2020

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2255/1018 and T2389/4819

Style of Cause: Kelli Windsor-Brown v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: May 13, 2020

Motion dealt with in writing without appearance of parties

Written representations by:

Shannon Carson, for the Complainant

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