

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 11

Date: April 7, 2022

File No.: T2636/1221, T2635/1121, T2637/1321

Between:

SM, SV, and JR

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: Paul Singh

Table of Contents

I.	Background.....	1
II.	Legal Framework	2
III.	Analysis.....	3
	Management Review Reports.....	3
	Promotions Report	6
	Blind Promotions Process	9
	Promotions training	10
IV.	Conclusion	10

I. Background

[1] The Complainants SM, SV, and JR, who are of South Asian descent and self-identify as visible minorities, are police officers employed by the Respondent Royal Canadian Mounted Police (“RCMP”). Their complaints centre on the RCMP’s failure to promote them while they worked in the Toronto office of an RCMP unit (“Unit”) and on the alleged systemic racism in the Unit’s promotional processes generally. This, they say, constitutes discrimination contrary to sections 7 and 10 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (“CHRA”) on the basis of color, national or ethnic origin, race, and/or religion.

[2] The RCMP denies discriminating against the Complainants during the promotional processes at issue, or at all, and denies any systemic policy or practice of denying promotional opportunities to the Complainants or members who identify as visible minorities in the Unit.

[3] In October 2021, the Tribunal granted the RCMP’s motion for a confidentiality order, including anonymizing the names of the Complainants and the Unit as well as the nature of the operations conducted by the Unit: *SM, SV, and JR v. Royal Canadian Mounted Police*, 2021 CHRT 35.

[4] In February 2022, the Complainants and the Canadian Human Rights Commission (“Commission”) each filed motions for disclosure against the RCMP.

[5] The Complainants seek the following documents:

- a. The complete underlying raw data from the 2014 and 2019 management reviews of the Unit, including all survey results and interview notes from Unit members.
- b. Copies of all documents and exhibits referenced in a report produced by the RCMP titled *A Review of [Unit] Promotions, 2015-2020*.

[6] The Commission also seeks the two categories of documents noted above, and, in addition, seeks the following documents and information:

- a. The date on which training was delivered pursuant to training material produced by the RCMP entitled *National Promotion – Rationale Training Power Point Presentation*.

- b. Documents relating to an initiative entitled *Equitable Promotion Process – Blind Promotion Process* as applied to the Unit.

[7] The RCMP agrees to disclose the date on which the training was delivered but opposes the remainder of the disclosure requests.

[8] While I do not refer to it all in my decision, I have considered all the information filed in relation to these motions. This is not a complete recitation of the parties' positions but only those necessary to come to my decision.

[9] For reasons that follow, the Complainants and Commission's motions for disclosure are allowed on the terms set out below.

II. Legal Framework

[10] Section 50(1) of the *CHRA* provides that all parties appearing before the Tribunal must be given a "full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations". The *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 ("*Rules*") set out the parties' disclosure obligations which are aimed at ensuring that parties are afforded this opportunity.

[11] Specifically, the *Rules* require the parties to file and exchange, on an ongoing basis as necessary, a list of documents that are in the parties' possession that relate to a fact or issue that is raised in the complaint or to an order sought by any of the parties, and to exchange any non-privileged documents with the other parties: *Rules* 18 to 24.

[12] Parties are required to disclose all arguably relevant information in their possession or care, subject to any asserted privilege, prior to the hearing of the matter. The standard of "arguable relevance" is not a particularly high threshold - 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. However, the disclosure of arguably relevant documents does not necessarily mean that the information will be admitted in evidence or, if admitted, that significant weight will be afforded to it at the hearing of the matter: *Turner v. Canada Border Services*, 2018 CHRT 9 at para. 25.

[13] Notwithstanding the low disclosure threshold of “arguable relevance”, the information should also be proportionate in the circumstances for a disclosure order to be made by the Tribunal. As noted by the Tribunal in *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28, on a motion for disclosure:

[7] ... the request for disclosure must not be speculative or amount to a “fishing expedition” 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....

[8] This Tribunal has already recognized in its past decisions that it may deny 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....

III. Analysis

Management Review Reports

[14] The Complainants and the Commission seek production of the complete underlying raw data from the RCMP’s 2014 and 2019 management reviews of the Unit and corresponding reports, including all survey results and interview notes from Unit members.

[15] The Complainants say the 2014 report noted some issues of favoritism, harassment, discrimination, and an “atmosphere of conflict” within the Unit, which were not included in the 2019 report. This, the Complainants say, despite two of the Complainants having raised these very concerns in their survey and interview responses for the 2019 review.

[16] The Complainants say that all raw data, including all survey results and interview notes from both reviews, is relevant to their complaints as the data is necessary to determine the extent to which issues such as favoritism, harassment, discrimination, and an “atmosphere of conflict” within the Unit were present and reported by Unit members. They

also say this raw data is necessary to determine whether and to what extent these issues were disregarded or downplayed by the authors of the reports.

[17] The RCMP says that the moving parties have failed to explain the potential relevance of the raw data to any of the issues raised in the complaints and that, in any event, it would be onerous to produce the requested documents.

[18] The RCMP says that the moving parties do not provide any basis on which to challenge the accuracy of the findings in the reports but, instead, simply speculate that the reports might not accurately reflect alleged discrimination in the Unit. The RCMP says there is no reasons to go beyond what is set out in the previously disclosed reports.

[19] The RCMP also says that the reviews were conducted for the entire Unit, which included both the Ottawa and Toronto offices. It says that the questionnaires completed by the members of the Ottawa Unit are irrelevant since the complaints are limited to allegations of discrimination in the Unit's Toronto office.

[20] The RCMP says it will agree to produce some of the raw data in the two reports – specifically, the member survey responses to questions in the “Employment Satisfaction and Supervision” section of the reports regarding discrimination. However, the RCMP says the remainder of the raw data is irrelevant and opposes its disclosure.

[21] On review of the 2014 and 2019 management review reports and the parties' submissions, I am persuaded that the raw data is arguably relevant to the complaints and its disclosure is proportionate in the circumstances. I therefore order the RCMP to produce all the raw data for the reports to the parties, including all survey results and interview notes from Unit members, within thirty days. My reasons are set out below.

[22] First, the moving parties should be afforded an opportunity to review and challenge, if appropriate, the interpretation and conclusions found in the reports and can reasonably do so only if they have access to the raw data underlying the reports. To that end, the raw data is arguably relevant to the complaints in that it pertains to the extent to which Unit management recognized (or failed to recognize) any issues of racial discrimination within the Unit.

[23] Two of the Complainants allege that they raised concerns regarding discrimination in their 2019 survey responses which were not reported in the 2019 report. In these circumstances, the parties should be afforded an opportunity to review what data loss occurred, if any, between the surveys and the reports.

[24] Second, I am not persuaded by the RCMP's submission that, apart from the survey responses directly addressing discrimination (which it agrees to produce), the remainder of the raw data is irrelevant. The Tribunal is not in a position to parse which aspects of the raw data are relevant to the issue of discrimination given that the data has not been provided to the Tribunal for review and given the subtle and indirect manner in which discrimination can be raised.

[25] For example, the Complainants say they intend to use evidence of "favoritism" or an "atmosphere of conflict" found in the reports to support their claims of discrimination. While these issues are not expressly included in the discrimination survey questions the RCMP has agreed to produce, the determination of how these issues were characterized by the Unit's management, and management's knowledge of, and responsiveness to these issues is arguably relevant to the complaints. Accordingly, these aspects of the raw data, while not explicitly invoking discrimination, are arguably relevant to the systemic claims of discrimination alleged by the Complainants.

[26] Third, I am not persuaded by the RCMP's argument that the raw data for the reports is irrelevant because neither party provides any basis on which to challenge the accuracy of the findings in the reports. The Complainants do, in fact, challenge the accuracy of the findings in the reports by saying that their complaints of discrimination were not documented in the 2019 report despite them having completed surveys to that effect. In any event, the RCMP's argument is premature since the moving parties have not yet received the raw data on which they may ground any reasonable challenge to the findings in the reports.

[27] Fourth, I am not persuaded by the RCMP's argument that the raw data from the Unit's Ottawa office is irrelevant because the Complainants' allegations concern the Unit's Toronto office only. The RCMP does not dispute the Complainants' contention that the Toronto and Ottawa Unit offices appear to work together and report under the same ultimate chain of

command. In these circumstances, the raw data produced from the Ottawa office may contain information applicable to the Toronto office and is arguably relevant as a result.

[28] Finally, the raw data for the reports is confined to a discrete period of time within a discrete Unit and its disclosure is proportionate in the circumstances. While the RCMP argues that production of the raw data will be onerous, they present no compelling evidence to explain how or why production of the raw data will be so onerous or prejudicial so as to override its probative value.

[29] I therefore order that the RCMP produce to the parties all the raw data underlying the 2014 and 2019 managerial reviews of the Unit, including all survey results and interview notes from Unit members, within thirty days.

Promotions Report

[30] The Complainants and Commission seek disclosure of all documents and exhibits referenced in a report produced by the RCMP titled *A Review of [Unit] Promotions, 2015-2020* ("Promotions Report").

[31] As set out in the report, its purpose is to reveal and address barriers to career progression in the Unit for members who identify as Black, Indigenous, and People of Color ("BIPOC").

[32] Some of the key findings of the report are:

- a. BIPOC members comprised 10%-16% of all regular members working in the Unit between 2015 and 2020. These rates are lower than force-wide statistics that show 18% - 19% of all regular members identifying as visible minorities and Indigenous peoples for those years.
- b. Although 19 of the 25 BIPOC members working in the Unit over the examination period had eligible scores, only four applied for promotions within the Unit.
- c. Three of the four BIPOC members who applied for promotions had participated in long-term acting assignments in the Unit.
- d. BIPOC members applied to six of the eight Unit promotional competitions held between 2015 and 2020. One BIPOC member was promoted.

- e. The Line Officers who selected the successful candidates in four of the six competitions involving BIPOC members were identified as BIPOC members themselves. Neither were involved in the competition in which the BIPOC member was promoted.

[33] The appendix to the Promotions Report lists 20 documents which the author reviewed when preparing the report. These include documents on the Unit's population of BIPOC members and the Unit's records of BIPOC members' promotion attempts, including: a list of BIPOC members working in the Unit from 2015 to 2020; a list of BIPOC candidates who applied for Special O promotions between 2015 and 2020; documents regarding Unit acting assignments; and, data relating to several staffing actions in the Unit involving BIPOC members.

[34] The moving parties say that the Promotions Report speaks directly to the main issue in the complaints – that of alleged discrimination and racism in the Unit's promotional processes. They say that since the Promotions Report is relevant to the complaints, they should be afforded an opportunity to review the source material underlying the report to investigate any alleged discrimination on a full evidentiary record. They also say that experts contracted by the parties may be called upon to review the source material to opine on the facts in issue, which is a further basis for disclosure.

[35] The RCMP says that the moving parties do not dispute the accuracy of the findings in the Promotions Report and that their request for source material is therefore a fishing expedition. The RCMP further says that the request to review the source material is a speculative attempt to undermine the report's conclusions and findings which is not a proper basis for ordering disclosure.

[36] The RCMP also says that while the Complainants have made complaints of systemic discrimination, the complaints are not so broad so as to include a claim on behalf of all BIPOC members and, as a result, they have not demonstrated a rational connection between the source material and the issues in their complaints.

[37] Finally, the RCMP says that eight of the twenty documents listed in the appendix to the report are National Promotions Unit data for various Unit staffing actions, which are subject to confidentiality agreements. The RCMP says that disclosure of this data would be

more prejudicial than probative because, if this data is disclosed, the RCMP may have to call the individual line officers in each of the six processes to justify their recommendations in each promotional process. This, the RCMP says may unnecessarily lengthen the hearing of the complaints.

[38] On review of the Promotions Report and the parties' submissions, I am persuaded that the documents listed in the appendix to the report are arguably relevant to the complaints and their disclosure is proportionate in the circumstances. I therefore order the RCMP to produce to the parties all documents listed in the appendix to the report within thirty days. My reasons are set out below.

[39] First, the Promotions Report is clearly relevant to the issues in the complaints as the report specifically addresses the issue of potential discrimination in promotional processes within the Unit. Consequently, the source material on which the author's analysis and conclusions are based is also arguably relevant to the complaints.

[40] Second, I am not persuaded by the RCMP's argument that a request for the source material is a fishing expedition because the moving parties have not advanced evidence to challenge the findings of the report and the complaints are not so broad so as to include a claim on behalf of all BIPOC members.

[41] The moving parties are not in a position to reasonably challenge the reliability of the report since they lack access to the source material on which a challenge may be grounded. Consequently, the moving parties' failure to raise evidentiary challenges to the report's conclusions at this early stage of the proceedings, without having access to the source material, is not a reasonable basis on which to deny them access to that material.

[42] Additionally, while the complaints do not encompass claims on behalf of all BIPOC members, the report's conclusions regarding any differential treatment of BIPOC members in the Unit remains arguably relevant to the systemic allegations of discrimination raised by the Complainants.

[43] Third, I am not persuaded by the RCMP's argument that disclosure of confidential staffing data will be more prejudicial than probative because the RCMP may then have to

unnecessarily call the individual line officers in each of the six promotional process to justify their recommendations.

[44] The RCMP's position in this regard is premature as production of the source material at this early stage of the proceedings is not determinative of the weight, if any, the Tribunal may place on these materials at a hearing, or of the witnesses that may be required to testify at the hearing. Additionally, any concerns regarding confidentiality of the source material may be addressed through the confidentiality order already in place.

[45] Finally, the source material for the Promotions Report is limited to twenty documents listed in the appendix to the report and is proportionate in the circumstances. There is no evidence to suggest that the production of this material is particularly onerous or prejudicial to the RCMP so as to override its probative value.

[46] I therefore order that the RCMP produce to the parties all documents listed in the appendix to the Promotions Report within thirty days.

Blind Promotions Process

[47] The Commission seeks documents, policies and communications relating to the RCMP initiative *Equitable Promotion Process – Blind Promotion Process* as applied to the Unit.

[48] The RCMP opposes disclosure and says that, while a business case for the initiative was forwarded to the National Police Federation as part of the collective bargaining process, the initiative was not implemented because a different promotional process in the Unit could not be adopted until the collective bargaining process was complete. In these circumstances, the RCMP says that the moving parties' request for documents pertaining to the initiative is not relevant.

[49] However, documents pertaining to the RCMP's consideration of an equitable promotional initiative for the Unit, whether implemented or not, relates to the core allegations of personal and systemic discrimination in the Unit's promotional processes raised by the Complainants and, accordingly, is arguably relevant to their human rights complaints. In

these circumstances, the Complainants should be afforded a reasonable opportunity to review the circumstances relating to the initiative.

[50] Additionally, the requested disclosure is proportionate in the circumstances as it is restricted to a discrete, identifiable initiative applicable only to the Unit.

[51] I therefore order that the RCMP produce to the parties documents related to the RCMP initiative *Equitable Promotion Process – Blind Promotion Process* as applied to the Unit within thirty days.

Promotions training

[52] The Commission seeks disclosure of the date on which RCMP training was delivered pursuant to the following training material produced by the RCMP: *National Promotion – Rationale Training Power Point Presentation*.

[53] The RCMP initially opposed this request, but, in response to the Commission's motion, has agreed to produce the requested date.

[54] The date of the training is arguably relevant to the complaints as it is needed to link the proximity of the training to the central allegations in the complaints and to determine what, if any, weight can be placed on the circumstances of the training and the RCMP's alleged discriminatory failure to promote the Complainants.

[55] I therefore order the RCMP to produce to the parties the date of the training within thirty days.

IV. Conclusion

[56] For the reasons set out above, I order the RCMP to disclose the following documents and information to the parties within thirty days:

- a. The complete underlying raw data from the 2014 and 2019 management reviews of the Unit, including all survey results and interview notes from Unit members.

- b. Documents listed in the appendix to the report produced by the RCMP titled *A Review of [Unit] Promotions, 2015-2020*.
- c. Documents relating to the RCMP initiative entitled *Equitable Promotion Process – Blind Promotion Process* as applied to the Unit.
- d. The date on which training was delivered pursuant to the following training material produced by the RCMP: *National Promotion – Rationale Training Power Point Presentation*.

Signed by

Paul Singh
Tribunal Member

Ottawa, Ontario
April 7, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2636/1221, T2635/1121, T2637/1321

Style of Cause: SM et al v. RCMP

Ruling of the Tribunal Dated: April 7, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Malini Vijaykumar & Andrew Montague-Reinholdt, for the Complainants

Caroline Carrasco, Brittany Tovee, Aby Diagne, for the Canadian Human Rights Commission

Kathryn Hucal and Jennifer L. Caruso, for the Respondent