

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 17

Date: May 12, 2023

File No.: T2739/11521

Between:

Oswaldo Campos-Ruiz

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada (representing the Royal Canadian Mounted Police)

Respondent

Ruling

Member: Athanasios Hadjis

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I. OVERVIEW

[1] The Respondent, the Attorney General of Canada (representing the Royal Canadian Mounted Police) (RCMP), requests that the entire Statement of Particulars (SOP) of the Complainant, Osvaldo Campos-Ruiz (Mr. Campos-Ruiz), be struck. The RCMP claims that all the SOP's allegations relate to parts of the human rights complaint that the Canadian Human Rights Commission (Commission) never referred to the Canadian Human Rights Tribunal (Tribunal) for inquiry. The Commission agrees that the SOP's allegations relate solely to matters not referred to the Tribunal but submits that Mr. Campos-Ruiz should be allowed to provide further and better particulars.

[2] Mr. Campos-Ruiz objects to the RCMP's motion, arguing that all the complaint's allegations are before the Tribunal and that he is entitled to address them in his SOP.

II. DECISION

[3] For the following reasons, I grant the RCMP's request to strike all the SOP's allegations but allow Mr. Campos-Ruiz to file a new SOP.

III. ISSUES

[4] I must decide the following issues:

- Which parts of the complaint did the Commission ask the Tribunal to inquire into?
- Does the SOP address those parts of the complaint?
- If not, should the entire SOP be struck?
- If so, should Mr. Campos-Ruiz be permitted to file a new SOP to deal with the parts of the complaint that were referred to the Tribunal?

IV. ANALYSIS

1. Only the RCMP's Residency Policy was referred to the Tribunal for inquiry

[5] Mr. Campos-Ruiz filed his complaint in August 2019. At the time, he had been a member of the RCMP for 11 years. His spouse, Briana Campos-Ruiz (Ms. Campos-Ruiz),

was also an RCMP member, and they were both employed in British Columbia. Ms. Campos-Ruiz had taken a medical leave from her employment, and her physicians had recommended that she be closer to her family in Saskatchewan for support in her recovery. Mr. Campos-Ruiz therefore requested a transfer to the RCMP's F Division (Saskatchewan).

[6] In his complaint, he states that he was told the transfer would not be granted as long as his spouse was unable to return to work in full capacity or until she left the RCMP altogether. He thus submits that he was treated differently because he was married, a discriminatory practice based on the grounds of family and marital status (the Transfer Denial Allegation).

[7] Mr. Campos-Ruiz contends that faced with the RCMP's refusal to transfer him, his spouse was "forced" to take her medical pension several months after the refusal and to be discharged from the RCMP to eliminate the obstacle to his transfer. Shortly thereafter, he received the paperwork approving his transfer to F Division. Four detachment options were offered to him, including three that were 30-45 minutes from Regina, Saskatchewan, which is where his spouse had established herself to be close to her family. She had also set up a new business there, unrelated to policing, as a form of therapy encouraged by her physicians.

[8] Mr. Campos-Ruiz claims that, when he received his transfer documents, he learned for the first time that F Division has a policy requiring members to live within 40 km of the detachment area (Residency Policy). None of the detachment options that were offered to him were within this distance from Regina, and he could therefore not reside there and be employed even at the nearest of those options, in Milestone, Saskatchewan. His complaint appears to allege that the enforcement of this policy in his circumstances constitutes a discriminatory practice on the grounds of marital and family status.

[9] According to the SOP, Mr. Campos-Ruiz took stress leave around the time he filed his human rights complaint and retired from the RCMP in May 2020.

[10] The Commission investigated the complaint and on October 6, 2021, issued the following decision that only the Residency Policy portion of the complaint be dealt with:

DECISION OF THE COMMISSION

Before rendering its decision, the Commission reviewed the Complaint Form and the Report for Decision. After examining this information, the Commission decides:

- with respect to the allegation that the Complainant was denied a transfer opportunity because his wife was on medical leave, not to deal with this aspect of the complaint because it is vexatious pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act*; and,
- with respect to the allegation concerning the application of the Residency Policy, to deal with this aspect of the complaint pursuant to subsection 41(1) of the *Canadian Human Rights Act*.

The Commission also decides, pursuant to subparagraph 44(3)(a)(i) of the *Canadian Human Rights Act*, to request that the Chairperson of the Canadian Human Rights Tribunal institute an inquiry into the allegation concerning the application of the Residency Policy, because having regard to all the circumstances of the complaint, an inquiry is warranted.

[11] On October 7, 2021, the Commission wrote to the Chairperson of the Tribunal to request that pursuant to s. 44(3)(a)(i) of the *Canadian Human Rights Act*, RSC 1985, c. H-6 (*Act*), an inquiry be instituted into the “allegation concerning the application of the Residency Policy as [the Commission] is satisfied that, having regard all the circumstances, an inquiry is warranted.”

[12] The Tribunal's jurisdiction to conduct inquiries into complaints is derived from s. 49 of the *Act*, according to which the Tribunal Chairperson must institute an inquiry into a complaint upon receipt of a request from the Commission (s. 49(2)). The scope of Tribunal inquiries is thus limited to the matters arising from the complaints accompanying such requests (see *Kowalski v. Ryder Integrated Logistics*, 2009 CHRT 22 (CanLII) at para 7).

[13] In the present case, the Commission exercised its authority under the *Act* and specifically decided not to deal with the Transfer Denial Allegation in the complaint. The scope of the Tribunal inquiry is thus limited to the Residency Policy.

[14] Mr. Campos-Ruiz submits that the Tribunal has jurisdiction nonetheless to deal with the Transfer Denial Allegation because doing so would enable a full and proper hearing into the totality of his circumstances. He contends that his “forced resignation” was due to a

combination of the Residency Policy and the denial of the transfer, and one cannot be parsed from the other. He asserts that this combined issue was “clearly referred to the Tribunal by the Commission.”

[15] In fact, it is quite the opposite. The Commission could not have been any more explicit in its decision when it ruled that it would not deal with “the allegation that the Complainant was denied a transfer opportunity because his wife was on medical leave.”

[16] Consequently, the Tribunal is only seized with the part of the complaint dealing with the Residency Policy.

2. The SOP does not address the RCMP’s Residency Policy

[17] The facts and issues dealt with in the SOP only address the Transfer Denial Allegation, an observation that the Commission describes as “obvious” in its submissions on the motion.

[18] Mr. Campos-Ruiz’s SOP details the facts of his case in 14 paragraphs under the heading “Facts in support.” The first five set out uncontroversial background facts such as the dates when he joined the RCMP and when his spouse went on off-duty sick leave. Paragraphs 6 to 9 refer exclusively to the difficulties he had obtaining a transfer and how the denial was connected to his spouse’s situation.

[19] In paragraph 10, Mr. Campos-Ruiz states that he took a stress leave in August 2019 and then resigned in May 2020, which he links to the RCMP’s conduct. These facts were not mentioned in the complaint as they occurred after it was filed.

[20] In paragraphs 11 to 13, Mr. Campos-Ruiz details the income and benefits he has lost as a result of his having been “compelled to resign” from the RCMP.

[21] He concludes at paragraph 14 that he was placed in the position of having to choose between his job and the needs of his family as a consequence of the RCMP’s discriminatory conduct.

[22] In his outline of issues to be dealt with in the complaint, Mr. Campos-Ruiz states that he was discriminated against based on his family status and lists as the sole discriminatory practice the RCMP's requirement that his spouse resign as a prerequisite to approving, or even considering, his request for a transfer. In other words, the Transfer Denial Allegation.

[23] The rest of his SOP consists of a breakdown of the orders he is seeking as remedy and a list of his proposed witnesses. He also includes a list of relevant documents that the *Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137, (Rules of Procedure)* require.

[24] The Residency Policy is not mentioned at all. The Transfer Denial Allegation is the sole allegation outlined in Mr. Campos-Ruiz's SOP.

3. The entire SOP must be struck

[25] In its motion, the RCMP highlights the importance of particulars to a fair hearing process. Principles of natural justice dictate that a party must be aware of the case it must meet at the hearing. The purpose of requiring parties to prepare SOPs is to sufficiently describe to the other parties the details of the allegations and the factual matters intended to be proven at a hearing. If a respondent is not provided with sufficient details in the SOP, then it will be impossible for them to interview potential witnesses or to source the arguably relevant documentation (*Brickner v. Royal Canadian Mounted Police*, 2018 CHRT 2 at para. 34 (CanLII)).

[26] Mr. Campos-Ruiz gives no details in his SOP about the one matter that the Commission referred to the Tribunal for inquiry, the Residency Policy. The particulars either refer to general background information or the Transfer Denial Allegation. They are therefore outside the scope of the portions of the complaint that are before the Tribunal.

[27] The Tribunal has the authority to strike particulars in an SOP that do not fall within the scope of the complaint that the Commission referred to it for inquiry (*Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at para. 7).

[28] Mr. Campos-Ruiz submits that the Tribunal should refuse to do so in this case and that it should exercise its “jurisdiction” to include the Transfer Denial Allegation as part of the hearing of his matter because it would enable a full and proper hearing of the totality of his circumstances. He argues that the RCMP has only raised “technical objections”, which can be dealt with at the hearing, and that it has not demonstrated how it would be prejudiced if its motion is denied. He refers to decisions holding that respondents must show that they will experience actual prejudice (*Karas v. Canadian Blood Services*, 2020 CHRT 12 (CanLII); *Canadian Association of Elizabeth Fry Societies v. Correctional Service of Canada*, 2022 CHRT 12 (CanLII) (*Elizabeth Fry*)).

[29] These decisions are taken out of context. In *Karas*, the Tribunal looked at whether to deal with complaints against two separate respondents in a single inquiry. It was not about the scope of the complaints or whether to strike allegations. In *Elizabeth Fry*, the issue was whether the Tribunal would permit the Commission and the complainant to amend or “update” their SOPs. The Tribunal pointed out, at para. 14, that amendments are allowed if they are linked to the original complaint and do not cause prejudice to other parties. But an amendment cannot introduce a substantially new complaint as this would bypass the Commission referral process dictated by the *Act*.

[30] This last point is relevant to the present case. Mr. Campos-Ruiz has filed an SOP that does not deal with the single matter that the Commission referred to the Tribunal—the Residency Policy. If the Tribunal exercised the “jurisdiction” that he claims it possesses to deal with the Transfer Denial Allegation, the Tribunal would effectively be introducing a new complaint to the process. The Tribunal does not have the authority to introduce a new complaint. It is not just a “technical” issue. Whether the RCMP would be prejudiced with the reintroduction of the allegation is irrelevant. The Commission decided not to request an inquiry into it and if Mr. Campos-Ruiz was not satisfied with this decision, he could have asked the Federal Court of Canada to judicially review it. He apparently did not.

[31] Mr. Campos-Ruiz submits that the application of the Residency Policy is merely an evidentiary issue as it was just one of the methods used by the RCMP to deny him accommodation. Parties are not required to provide every detail of their case in an SOP, only the material facts.

[32] This is a misrepresentation of the issue that the RCMP is raising. The Residency Policy was the only portion of the complaint that the Commission referred to the Tribunal for inquiry. It is not just a piece of evidence in support of the case before me. It is the entire case. Yet the SOP makes absolutely no mention of it. In the absence of any reference to the Residency Policy, the SOP in its current form has basically no connection to the complaint before the Tribunal.

[33] Mr. Campos-Ruiz argues that his spouse's circumstances are integral to understanding the matter before the Tribunal. She has filed her own complaint against the RCMP, and it has been referred to the Tribunal as well. He suggests that both complaints should be joined, a question that was also raised at the Case Management Conference Call held on February 8, 2023. I directed that the RCMP's motion to strike would be dealt with first and that we would deal with the joinder of the two complaints afterwards.

[34] Thus, the question of joining the two complaints and providing the necessary context remains a possibility. But the fact that two complaints may be joined for the purposes of hearing does not allow the Tribunal to assume jurisdiction over a portion of a complaint that the Commission did not refer for inquiry.

[35] Information that provides context can be important to a case and perhaps some of the information mentioned in the current SOP may serve that purpose. But the fact remains that there is absolutely no mention in the SOP of the single issue that was referred for inquiry, the Residency Policy. As I direct later in this ruling, Mr. Campos-Ruiz will be able to file another SOP. He may choose to incorporate some facts that provide the context he wants to present, but they must be centred and related to the one matter that is before the Tribunal, the Residency Policy.

[36] Since the particulars do not address the Residency Policy at all, the SOP must be struck.

4. The Complainant may file a new SOP to deal with the Residency Policy

[37] In his submissions, Mr. Campos-Ruiz requested in the alternative that if his particulars are struck, he be given the opportunity to amend them. In a similar vein, the

Commission suggested that rather than striking the whole SOP, the Tribunal should order him to provide further and better particulars dealing with the Residency Policy allegation.

[38] Mr. Campos-Ruiz points to instances where the Tribunal has allowed parties to amend their SOPs. However, as mentioned earlier, amendments are allowed where they add to the existing particulars and allegations but still relate to the original complaint.

[39] In this case, the existing particulars in their current form do not make any mention of the matter in the complaint that was referred for inquiry. We cannot speak of “further and better particulars” since the Residency Policy allegation was not dealt with at all in the SOP.

[40] The more appropriate and fair approach is to give Mr. Campos-Ruiz the opportunity to “start from scratch,” so to speak, by striking the existing SOP and enabling him to file his SOP anew, taking into account my findings in this ruling.

V. ORDER

[41] For the above reasons, the Tribunal grants the RCMP’s motion. The particulars in Mr. Campos-Ruiz’s SOP under the headings A) *Facts in support*, B) *Issues for complaint*, and C) *Orders sought* are struck.

[42] Mr. Campos-Ruiz may provide and file a new SOP by June 2, 2023.

[43] The RCMP will provide and file its SOP and the related disclosure in accordance with Rule 20 of the *Rules of Procedure* by June 23, 2023.

[44] Mr. Campos-Ruiz may file his reply to the RCMP’s SOP by June 30, 2023.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, ON
May 12, 2023

Canadian Human Rights Tribunal

Parties of Record

File No.: T2739/11521

Style of Cause: Osvaldo Campos-Ruiz v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: May 12, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

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