

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Harjinder Kaur Rai

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

File No.: T1795/2512

Member: George E. Ulyatt

Date: December 20, 2013

Citation: 2013 CHRT 36

Table of Contents

I. Background 2

II. Ruling..... 5

 A. Respondent’s request for unredacted psychiatrist/psychologist files 6

 B. Commission’s request for disclosure 7

 C. Complainant’s requests for disclosure 8

 (i) Requests (a) to (c) 8

 (ii) Requests (d) and (e) 8

 (iii) Request (f)..... 9

 (iv) Request (g) 9

 (v) Request (h) 10

 (vi) Request (i)..... 10

III. Next case management conference call 11

I. Background

[1] An inquiry by this Tribunal has been requested by the Commission pursuant to paragraph 44(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [the *Act*]. The Complainant alleges discrimination on the bases of sex and disability pursuant to ss. 7, 10 and 14 of the *Act*.

[2] On the 24th day of January 2013, the Respondent requested disclosure of medical documentation from the Complainant and documents from her personal injury action related to her 2007 motor vehicle accident.

[3] Member Marchildon, on March 20th, 2013, made a ruling that set out in considerable detail the position of the parties as it related to the Respondent's request for:

- (a) the Complainant's medical documents from April 1st, 2007 to present;
- (b) her unredacted psychiatrist/psychologist files;
- (c) documents related to her personal injury action; and,
- (d) the settlement agreement from her personal injury action.

[4] Member Marchildon ruled on issue (a), the Complainant's medical documents, and issues (c) and (d), the documents relating to her personal injury action and the settlement agreement (which provided for further submissions by the third party to the agreement). Therefore, this ruling will not deal with items (a) and (c). The parties have exchanged some further correspondence on item (d), with the Complainant indicating that she has been unable to locate the three defendants who were party to the settlement agreement. Subject to further discussion on item (d) at the next case management conference call on January 9th, 2014, I will rule on that item at that time or at a later date.

[5] Member Marchildon, with respect to issue (b), the Complainant's redacted psychiatrist/psychologist files, requested further submissions from the parties and this matter will be addressed later in this ruling.

[6] The Complainant, subsequent to the Respondent's request for disclosure dated January 24th, 2013, made an informal disclosure request by way of letter dated February 28th, 2013, requesting the following information:

- (a) notes, summaries or other information recorded following Barry Hicks' interview of Michelle Baly on or about September 28, 2000, referenced in RCMP 2.0065;
- (b) the entire contents of the Code of Conduct file related to the Investigation into S/Sgt. Lunn (File 2000CQ-34116), including but not limited to notes, summaries, and other documents prepared or collected by Barry Hicks and Ric Hall;
- (c) notes taken by Barry Hicks and Ric Hall related to the Code of Conduct referred to in (b) above that are not contained in the Code of Conduct file;
- (d) Cst. Eric Lenger's curriculum vitae, application materials and notes or emails related to his application for the INSET position to which he was posted in or around November 2005, including any comments regarding concerns related to past allegations of obstruction;
- (e) Cpl. Kneckt's curriculum vitae, application materials and notes or emails related to his application for the Team GIS position to which he was posted in or around October 2006;
- (f) all materials/files related to an investigation into an incident in the Coquitlam Green Team whereby members' names were written onto an RCMP garbage can (we believe this to be RCMP Internal Investigation files 01-309 and/or 02-246);

- (g) “E” Division harassment file #2007-22106 regarding S/Sgt. Steve Seward and Insp. Bob Wood, which we believe contains emails confirming Cpl. Rai was selected as the successful candidate for Team GIS; and
- (h) emails from Ric Hall to Harjinder Rai in or around January 2001, wherein Ric Hall says nothing can be done about her Complaint against S/Sgt Lunn; and
- (i) any internal investigation guidebook, handbook or policy governing investigation of Code of Conduct or harassment complaints in 2000-2001.

[7] The Complainant, in a letter of April 12th, 2013, expanded her requests in (d) and (e) above to include:

- application materials (formal or informal) (at para. 8);
- information regarding Cst. Lenger’s disciplinary record (at para. 8); and,
- curricula vitae for the successful candidates, or alternatively, documentation from the relevant time regarding those candidates’ backgrounds, training, experience, performance records or other considerations relevant to the selection process (at para. 10).

[8] The Commission, on February 27th, 2013, requested the following:

- (a) any recent study on sexual harassment within the RCMP;
- (b) any recent report on sexual harassment within the RCMP;

- (c) “E” Division RCMP employee Your-say survey conducted by “E” Division Operations Strategy Branch, June-July, 2012; and,
- (d) “E” Division Royal Canadian Mounted Police Summary Report on Gender Based Harassment and Respectful Workplace Consultations, April 17, 2012.

II. Ruling

[9] The matters presently before the Tribunal are: (A) the Respondent’s request for the Complainant’s unredacted psychiatrist/psychologist files; (B) the Commission’s request for disclosure dated February 27th, 2013; and, (C) the Complainant’s requests for disclosure dated February 28th, 2013 and April 12th, 2013.

[10] The matter before the Tribunal was first commenced by the Respondent for disclosure and other requests were commenced and formulated by correspondence from the Complainant and the Commission. The requirement of full disclosure is fundamental for a fair hearing. There is certainly no dispute between the parties as to their disclosure requirements. However, the issue of relevancy of evidence is a question that causes the parties concerns. The *Canadian Human Rights Tribunal’s Rules of Procedure (03-05-04)* (the *Rules*), at paras. 6(1)(d) and 6(1)(e), require disclosure, which Member Marchildon made reference to in paragraph 28 of her ruling of March 20th, 2013 (2013 CHRT 6).

[11] Being mindful of the principles of the aforesaid, the following is the Tribunal’s ruling on the request by the Respondent, the Complainant and the Commission for disclosure of documents.

A. Respondent's erquest for unredacted psychiatrist/psychologist files

[12] Member Marchildon in her ruling set a time frame for parties to provide submissions on this issue. The Complainant, by way of a letter dated April 4th, 2013, set forth a proposal which states as follows:

Dr. Babbage's file consists of six pages, only one of which contains redactions. Dr. Sanders' file is seven pages long and four of those pages contain redactions. We have disclosed to the RCMP an unredacted copy of all of the documents that we have received from Dr. Flamer's office in response to our request for disclosure of his file. Given that only five pages are at issue, we submit that it is appropriate for the Tribunal to review the pages at issue along with the complaint and the response to the complaint to determine whether the information contained therein tends to lead to a train of inquiry that tends to prove or disprove a material fact at issue and to adjudicate the validity of Cpl. Rai's claim of privilege.

[13] The Respondent, by way of a letter dated April 12th, 2013, responded as follows:

With regard to the redacted medical records the Complainant has produced, the Respondent agrees with Complainant's approach to the redactions as outlined in her letter of April 4, 2013. However, in addition to redacting the psychiatrist and psychologist files, the Complainant has also extensively redacted the clinical notes of the Complainant's family doctor, Dr. Andre Bredenkarnp. The Complainant replaced 16 pages of Dr. Bredenkarnp's clinical records with 16 blank pages entitled "irrelevant". The Respondent requests that the Tribunal direct the Complainant to produce Dr. Bredenkarnp's file in its entirety.

[14] To a large degree the issue has been resolved by the parties by correspondence as set forth above, a resolution of which the Tribunal adopts. The Tribunal adopts the position, as it relates to the files of Dr. Babbage and Dr. Saunders, that the redacted pages of their files be forwarded to the Tribunal to ascertain whether privilege applies.

[15] The issue of Dr. Bredenkamp's clinical records will be dealt with in the same manner as Dr. Babbage and Dr. Saunder's files. The Complainant is directed to forward the 16 redacted pages of Dr. Bredenkamp's file for review by the Tribunal and a decision is to be made as to the appropriateness of disclosure and relevancy of same.

B. Commission's request for disclosure

[16] The Commission has requested by letter of February 27th, 2013, a number of reports and studies that are in the possession of the Respondent. The Respondent has taken the position that the matters are not relevant to the complaint and have no bearing on these proceedings.

[17] The Respondent, in support of its position, relies on *Moore v. British Columbia (Education)*, 2012 SCC 61 [*Moore*], paragraph 64 (incorrectly stated as paragraph 66), where the Supreme Court of Canada stated:

In this case, the claim was made on behalf of Jeffrey, and the evidence giving concrete support to the claim all centred on him. While the Tribunal was certainly entitled to consider systemic evidence in order to determine whether Jeffrey had suffered discrimination, it was unnecessary for it to hold an extensive inquiry into the precise format of the provincial funding mechanism or the entire provincial administration of special education in order to determine whether Jeffrey was discriminated against. The Tribunal, with great respect, is an adjudicator of the particular claim that is before it, not a Royal Commission.

[18] According to the Commission, the central issues in this case are allegations of sexual harassment in different units within the RCMP and the alleged failure of the RCMP to adequately address the sexual harassment and provide a harassment-free workplace. In light of this, it submits that any recent studies or reports on sexual harassment within the RCMP are arguably relevant to the issues in the complaint, including proper systemic remedies. The Commission has submitted and relied on the decision of *Warman v. Bahr*, 2006 CHRT 18, at paragraphs 6-7. Based on this decision, it argues the threshold for arguable relevance is low and the tendency is now towards more, not less, disclosure because it is difficult at the disclosure stage to determine whether a document may ultimately be relevant at the hearing of the complaint.

[19] In the present circumstances, I find that the Commission has established arguable relevance of the requested material and, therefore, that the requested reports shall be disclosed. While the Tribunal's inquiry is focused on the whether the Complainant has suffered

discrimination, it is well established that evidence of a systemic problem can be used to determine whether the individual complainant may have suffered discrimination (*Canada (Human Rights Commission) v. Canada (Department of National Health and Welfare)*, 1998 CanLII 7740 (FC), at para. 22; and *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445, at paras. 389-390). In fact, despite the Respondent's reliance on *Moore*, in my view, this decision actually supports the requested disclosure, as stated in the following excerpt: "the Tribunal was certainly entitled to consider systemic evidence in order to determine whether Jeffrey had suffered discrimination..." (*Moore, supra*, at para. 64).

C. Complainant's requests for disclosure

(i) Requests (a) to (c)

[20] At the last case management conference call held on October 22nd, 2013, Respondent counsel confirmed that all materials related to issues (a) to (c) have been produced in the Respondent's disclosure to date, and advised that she has made best efforts to gather those documents. Complainant counsel confirmed she is satisfied with Respondent counsel's efforts to find such documents. Therefore, this is no longer an issue.

(ii) Requests (d) and (e)

[21] According to the Complainant, the relevancy of the requested documents stems from her allegation that the Respondent's discriminatory actions resulted in her losing out on the potential for further advancement through specialized experience in the INSET and Team GIS positions. The Respondent claims these positions were filled by qualified candidates. Therefore, the Complainant claims the qualifications of those candidates are directly at issue in the complaint.

[22] At the last case management conference call, Complainant counsel advised that her request for documents under (d) and (e) would be satisfied with a curriculum vitae or other documents that essentially create a curriculum vitae. In previous correspondence, Complainant

counsel suggested that the documents requested, or similar listings of experiences, training and qualifications are available on the RCMP's human resources management system (HRMIS).

[23] At the last case management conference call, Respondent counsel confirmed that she will seek instructions from her client regarding the disclosure of documents related to requests (d) and (e).

[24] I agree with the Complainant that these documents are arguably relevant. The Respondent will use best efforts to obtain the information requested through reviewing the personnel files of Cst. Eric Lenger and Cpl. Keneckt, as suggested by the Complainant. Whether or not the documents are admissible at the hearing and, if so, what evidentiary weight they have, is yet to be determined; however, they should be disclosed.

(iii) Request (f)

[25] The disclosure of request (f) is still outstanding; however, at the last case management conference call, Respondent counsel advised that she is in the process of redacting said documents and that she intends to produce those documents after the redaction has been completed. Therefore, no ruling is necessary at this time.

(iv) Request (g)

[26] At the last case management conference call, Respondent counsel confirmed that it was her intention to produce all relevant portions of this file as per Complainant counsel's request, and, therefore, no ruling is required at this time.

(v) Request (h)

[27] At the last case management conference call, Respondent counsel advised and confirmed that she has made all efforts to obtain these documents. She advised that she requested emails from Ric Hall and confirmed that he does not have the requested emails. Complainant counsel inquired whether Respondent counsel has made any other attempts to obtain the emails or retrieve them electronically other than asking Mr. Hall whether those documents exist. Respondent counsel confirmed that those documents are not in the possession of her client and that she does not have access to them. In light of the forgoing, the Tribunal makes no ruling with respect to this request.

(vi) Request (i)

[28] This was addressed at the last case management conference call. Respondent counsel advised that there does not appear to be any internal investigation guidebook, but that more general documents with regard to this have been listed on the Respondent's most recent supplemental list of documents. Respondent counsel also advised that in 2000–2001, the Respondent did not have a detailed harassment policy. Therefore, no ruling is necessary on this issue.

III. Next case management conference call

[29] At the next case management conference call scheduled on January 9th, 2014, the parties are to provide the Tribunal with an update regarding all outstanding disclosure items addressed in this ruling, including issues regarding the disclosure of the Complainant's settlement agreement from her personal injury action (regarding para. 4).

Signed by

George E. Ulyatt
Tribunal Member

Ottawa, Ontario
December 20, 2013