Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2016 CHRT 19

Date: November 22, 2016

File Nos.: T1111/9205, T1112/9305 & T1113/9405

Between:

Ruth Walden et al.

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada)

Respondent

- and -

Sue Allardyce, Chantal Basque, Aubrey Brenton, Robert Churchill-Smith, Glen Coutts, Claudette Dupont, Pat Glover, Gary Goodwin, Valerie Graham (Estate of), Carol Ladouceur, Mayer Pawlow, Cindi Resnick, Sharon Smith, Don Woodward

Interested Parties

Ruling

Member: Matthew D. Garfield

Table of Contents

I. Introduction

[1] Sixteen individuals - two Complainants[1] and fourteen non-Complainants granted Interested Party status, collectively referred to as "the Goodwin Group"[2] - seek an Order from the Canadian Human Rights Tribunal ("Tribunal") that they performed "Eligible Work" under the Memorandum of Agreement of July 3, 2012 between Ruth Walden et al. and the Attorney General of Canada ("MOA"), and compensation (for pain and suffering, lost wages/benefits) and other remedies (reclassification). The Employer, Employment and Social Development Canada ("ESDC"), formerly Human Resources and Skills Development Canada and Social Development Canada, determined that their work as Vocational Rehabilitation Case Managers ("VRCMs") did not qualify as Eligible Work under the MOA and accordingly, were denied any compensation.

[2] This Ruling deals with the scope of the hearing on Eligible Work and related issues.

II. The Main Proceeding: *Walden et al. v. Attorney General*

[3] The MOA is the result of human rights complaints filed by Ruth Walden and 416 other Complainants between 2004 and 2007, challenging the classification of Medical Adjudicators ("MAs"), a group made up predominantly of female nurses involved in the assessment/adjudication of applications for *Canada Pension Plan* ("CPP") disability benefits, when compared to Medical Advisors, a group made up predominantly of male doctors working alongside the MAs. The Complainants alleged that, as a result of their classification, Medical Advisors received better compensation, benefits, training, professional recognition and opportunities for advancement than MAs despite the fact that

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[1] Both Ms. Pick and Ms. Taylor received *Walden* compensation as Complainants for their work as MAs, and hence already had standing before the Tribunal. Accordingly, they are included in "Walden et al." in the style of cause/title of proceeding. They are also part of the sixteen individuals - the Goodwin Group - claiming compensation and other remedies for their work as VRCMs.

[2] Mr. Goodwin is the Interested Party who filed the motion on June 27, 2014 on behalf of the group and represented it until September 20, 2016.

both groups performed similar work in the assessment/adjudication of CPP disability benefit applications.

[4] In a decision dated December 13, 2007 (*Walden et al. v. Attorney General of Canada*, 2007 CHRT 56 ("Liability Decision")), the Tribunal found that while there were some differences in the day-to-day responsibilities of Medical Advisors and MAs, the "core function" of each position was the same and both positions required the application of professional knowledge and expertise in determining applicants' eligibility for CPP disability benefits. The Tribunal concluded that the Government's refusal to recognize the professional nature of the work performed by MAs in a manner proportionate to the professional recognition awarded to the work of Medical Advisors amounted to adverse differentiation on the ground of sex and violated both sections 7 and 10 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 as amended ("*CHRA*"). This decision was upheld by the Federal Court on judicial review: *Canada (Attorney General) v. Walden*, 2010 FC 490.

[5] The Tribunal made a separate award on remedies in a decision dated May 25, 2009: *Walden et al. v. Attorney General of Canada*, 2009 CHRT 16 ("Remedy Decision"). In this decision, the Tribunal concluded that the creation of a new Nursing (NU) Sub-Group within the SH [Health Services] Occupational Group for the Medical Adjudication position would recognize suitably MAs as health care professionals, thereby acknowledging that they apply their comprehensive knowledge of the professional specialty of nursing to their work. The Tribunal found that this would be the most appropriate way to redress the discriminatory practice identified in the Liability Decision and ordered that work on the creation of the new NU Sub-Group commence within 60 days of the date of the decision. The Tribunal did not otherwise award any compensation for wage loss and ordered compensation for pain and suffering to two individuals only.

[6] On judicial review of the Remedy Decision (*Canadian Human Rights Commission v. Canada (Attorney General)*, 2010 FC 1135), the Federal Court upheld the Tribunal's conclusions regarding the creation of the new Sub-Group, but set aside the Tribunal's conclusions vis-à-vis compensation for lost wages and pain and suffering. The Court remitted both of these matters back to a new panel of the Tribunal for redetermination. The

Federal Court of Appeal upheld this decision: *Canada (Social Development) v. Canada (Human Rights Commission)*, 2011 FCA 202. I was assigned the matter as the new "panel" by the Chair of the Tribunal in December of 2010.

[7] Following these decisions, the Respondent created the MA NU Sub-Group as part of the Public Service Nursing Classification Standard. It is defined as: "Positions responsible for determining the medical eligibility of applicants for a government program or for the provision of expert advice related to medical adjudication" and includes two levels of Medical Adjudication nursing positions: the NU-EMA-01 which involves "the assessment of medical information for the purposes of determining the eligibility of applicants for a federal government program" and the NU-EMA-02 which "accommodates supervisory medical adjudication nursing positions or technical specialist and/or expert positions in headquarters and/or the Regions".

[8] The parties also negotiated settlements on appropriate remedies to redress the discriminatory practice: first dealing with compensation for pain and suffering and expressed in an Order on consent dated October 26, 2011; then on July 3, 2012, concluding the MOA which sought to resolve all remaining issues, including lost wages/benefits. No amendments have been made to the MOA. It is the MOA, and in particular its definition of "Eligible Work", that forms the subject matter of the Goodwin Group's Eligible Work motion.

[9] The MOA awards $16,500 per year to individuals who are determined to have performed "Eligible Work" during the "Eligibility Period" which spans from December 1, 1999 to September 30, 2011. The MOA also provides for the payment of interest, other compensation for individuals who completed Eligible Work for periods prior to December 1, 1999, as well as additional compensation for pain and suffering as per s. 53(2)(e) of the *CHRA*.

[10] Eligible Work is defined under Section 1, "Definition of Terms" of the MOA:

> **"Eligible Work"** is defined as described in paragraph 4 of the Tribunal's order dated October 26, 2011, that is, the individual was primarily employed in the CPP Disability Program in Human Resources and Skills Development Canada (HRSDC) either conducting adjudications (i.e.

> assessing medical information for the purposes of determining eligibility for CPP disability benefits and, in doing so, was required to use knowledge associated with being a registered nurse) or providing expert advice to or directly supervising those who did conduct adjudications.

[11] On July 31, 2012, the Tribunal issued a Consent Order implementing the terms of the MOA. The Tribunal retained full jurisdiction to deal with any dispute or controversy surrounding the meaning or interpretation of the MOA upon the application of any party or individual who may have performed Eligible Work as defined in the MOA. The Tribunal initially retained this jurisdiction until June 30, 2014, but has since extended this date to March 31, 2015, and then on consent beyond that date with respect to the issue of gross–up payments only.

III. Background to Motion for Redetermination of Eligible Work

[12] From 2014 to the present, the Goodwin Group filed an original disclosure motion then subsequent amended ones, seeking additional disclosure/production, "clarification/explanation" and further particulars from the Respondent. Many of the requests were opposed by the Respondent on the grounds of lack of relevance, breach of privacy rights and settlement privilege. I also note that much disclosure/production has occurred between the parties.

[13] At the Case Management Conference Call ("CMCC") of December 15, 2014, upon hearing the submissions of the parties, I ordered that the motion be converted to an oral hearing of evidence and argument on the merits of the Eligible Work claim, as had been done in previous Eligible Work motions.[3] Many CMCCs have been held between the parties and me in order to resolve pre-hearing matters and move the matter forward. The parties filed lists of proposed witnesses and will-says. Additions, deletions and substitutions were proposed. On June 5, 2015, the Respondent sought a ruling about the scope of the hearing and specifically, challenged the Goodwin Group's intention to have twelve of its proposed witnesses summoned before the Tribunal to give testimony. As

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[3] See *Walden et al. v. Attorney General of Canada*, 2015 CHRT 15 ("*McIlroy*").

well, various adjournments and an abeyance of the matter were sought and granted by me along the way. The last submissions were filed on October 7, 2016.

[14] Mr. Goodwin and Ms. Ladouceur represented themselves and the fourteen other individuals comprising the Goodwin Group until September 20, 2016. Their written and oral submissions are very detailed. I appreciate that they have put a lot of thought and time into them. I feel that I have a good understanding of the case from their efforts and the submissions of the other parties.[4] A mountain's worth of submissions and documents have been filed. Upon reading them and my notes of the numerous CMCCs that have been held, I have decided to issue herein my Ruling on the scope of the Eligible Work hearing with directions to the parties. My decision was informed in part by the recent arrival of Jean-Rodrigue Yoboua, Representation Officer of the Public Service Alliance of Canada's Legal Services department (and a member of the Bar) to represent the Goodwin Group. I am hopeful that this Ruling with directions regarding the scope of the Eligible Work hearing and other related matters will assist the parties in efforts to resolve the outstanding disclosure/production and "witnesses" issues. After such efforts, if there is anything remaining in contention that the parties and I believe cannot be resolved with further case management, then I will render a further Ruling.

IV. Parties' Positions on the Instant Motion

[15] The Goodwin Group maintains that ESDC failed to properly, fairly and consistently, interpret, apply and implement the MOA to their claims for compensation for the Eligible Work that they performed as VRCMs in the CPP Disability Program. They allege various inconsistencies in the interpretation, application and administration of the MOA to not just the Goodwin Group, but to other VRCMs and MAs performing the same work as the Goodwin Group. The Goodwin Group also argues that the Respondent has changed its positions on several key issues so as to seriously put in question its credibility in the

[4] The Commission filed a brief concerning its general view of factors to be considered in Eligible Work motions, while not taking a position as to the merits of the Goodwin Group's claim. Its counsel indicated that the Commission would not be participating in the hearing on Eligible Work. The Commission has also filed brief submissions on other preliminary issues and participated in the numerous CMCCs held.

implementation and administration of the *Walden* compensation regime. For example, it highlights the alleged changing of positions by the Respondent on the question of whether it erroneously paid compensation to non-Goodwin Group substantive (home-positioned) VRCMs who were performing VRCM work just like the Goodwin Group (who were not so compensated). Of any wrongly paid VRCMs, the Respondent indicated that it would seek recovery of said monies.

[16] The Goodwin Group also states that the misapplication and implementation of the MOA illustrates not just a level of incompetence or benign error, but rather, also suggests a lack of good faith on the part of ESDC by treating the Goodwin Group ("undeserving awardees") differently in a pejorative sense from the other non-Goodwin Group MAs and VRCMs who received *Walden* compensation ("deserving awardees", or those who were Registered Nurses who had experience as MAs). Indeed, the Goodwin Group avers that ESDC had decided on who was to receive compensation and who was not well *before* it negotiated the remedial aspects of the *Walden* human rights litigation, including the MOA. Furthermore, the Goodwin Group alleges that ESDC simply carried out its previously made decisions on who was to receive compensation even *after* the MOA and Consent Order were signed.

[17] The Respondent counters that, "The issue in this motion is whether VRCM work is Eligible Work, not whether a possible error may have been made in settling with a non-party to this motion." The reference to "non-party" denotes ESDC's decision to compensate and treat as Eligible Work any individuals who held substantive MA positions during the Eligibility Period under the MOA, irrespective of the *actual work performed*. These payments to those who held a substantive MA position but did not actually perform "medical adjudication…" or not "providing expert advice to" and/or "directly supervising those who did conduct adjudications" as per the MOA's Eligible Work definition, admittedly were not expressly provided for in the MOA. However, the Respondent argues that it was open to ESDC to make such payments for administrative, logistical reasons (there were approximately 850 Complainants/non-Complainants and paper work/documents proving the actual work performed during the entire 33-year span of the *Walden* Eligibility Period,

(Periods 1 and 2) no longer existed for all of them. (The Goodwin Group disputes this latter assertion.)

[18] The Respondent submits that the other issues raised by the Goodwin Group are not germane or relevant to the main issue. In addition to involving the disclosure of irrelevant information and that which would breach privacy protection and/or settlement privilege, it would be of no probative value to the hearing, yet consume precious additional time and other resources.

[19] To sum up: "ESDC submits that the Tribunal, both for its own and the parties' interest, must impose reasonable and principled parameters regarding the scope and extent of relevant evidence in this motion."

V. Analysis: Scope of the Hearing on Eligible Work and Related Issues

A. The Primary or Main Issue

[20] As stated in my Reasons for Decision in the *McIlroy* motion-hearing on Eligible Work*, supra*, when determining such motions, I must look at the MOA, including the plain, ordinary meaning of the words therein, the parties' intentions, and by way of contextual analysis, the broader litigation at hand. The "broader litigation" encompasses the actual Complaints filed, the Liability and Remedy Decisions (including any Implementation Decisions) of the Tribunal and any relevant findings/comments from the Courts on judicial review/appeal. The MOA is rooted in the *gender* discrimination Complaints filed by over 400 MAs and states that the MOA's aim is to "settle all outstanding issues arising out of the Complaint[s]". It was not negotiated and agreed to in a vacuum. The MOA is not a free-standing agreement: it was made an Order of this Tribunal.

[21] I cannot stress enough that we are in the end-days of the Remedial Implementation phase of *Walden*. The key here is to adjudge whether the sixteen members of the Goodwin Group, as VRCMs performing VR work (which they call "adjudication"), fall within

the Eligible Work definition of the MOA and are entitled to compensation thereof and other remedies sought by them (i.e., reclassification).[5]

[22] While the jurisdiction-retention provisions of the Consent Order that approved the MOA are broad, they cannot confer jurisdiction that does not find a basis in the *CHRA*. The two Consent Orders contain a preamble that acknowledges that the Complaints have been "substantiated" (mirroring language from section 53 of the *CHRA*), per the Liability Decision. Any remedy flowing from those findings, including in the Remedy Decision itself, agreements between the parties like the MOA, or further Orders by the Tribunal, must be connected to the Liability Decision and have a nexus with the subject-matter of the Complaints. Motions like the instant one are not to be construed as simply and only an exercise of contractual interpretation.

[23] It is important to state that the jurisdiction-retention provisions are triggered "on the application of any party, or Individual who may have performed Eligible Work as defined in the Agreement." They are not meant to provide for a Tribunal or party-initiated general review or inquiry into the implementation of the *Walden* compensation regime. Para. 4 of the Consent Order accords parties or non-party individuals the right to bring their individual respective claims for Eligible Work re-determination. The Tribunal retained jurisdiction to deal with discrete issues brought before it, such as the Goodwin Group's Eligible Work motion.[6]

[24] Notwithstanding my comments above, of course the goal is to have a perfect implementation/administration of the MOA and Consent Orders. The allegations and submissions of the Goodwin Group raise matters of concern that less-than-perfection has been achieved by ESDC in its implementation of *Walden*. That may include individuals who were erroneously paid compensation, depending on my ultimate Decision on the

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[5] I note that the parties will need to make submissions at the hearing about whether the Tribunal has jurisdiction at this point to grant the reclassification remedy.

[6] The Tribunal no longer has jurisdiction to deal with disputes under the first consent Order dated October 26, 2011 pursuant to para. 8.

merits of the Goodwin Group's Eligible Work motion. The Respondent has indicated already that in such a case, it would seek recovery of said payments.

[25] Individuals who have been paid but shouldn't have, and those who haven't been paid but should have, concerns me. It is of interest, but not of *relevance* to the Eligible Work motion before me. In other words, such errors (in both examples) are beyond the proper scope of the hearing into this Eligible Work motion. I say this because whether ESDC made a mistake paying non-Goodwin Group VRCMs (or MAs for that matter) does not make the work of VRCMs eligible *per se* under the MOA. It is somewhat akin to the proverbial "two wrongs don't make a right" adage that we learned as children. Any errors made by ESDC in its implementation/administration phase of *Walden* do not change or alter the duties and responsibilities of VRCMs and make their work eligible for compensation under the MOA.

[26] The main or primary issue before me is: Did VRCMs perform Eligible Work under the MOA? The parties agree with this. The point of convergence lies in issues beyond this and the type of information to be disclosed pre-hearing and the type and nature of evidence (documentary and testimonial) to be led at the hearing.

[27] In advancing its claim, the Goodwin Group will need to adduce evidence that shows the duties and responsibilities of VRCMs during the relevant periods (approximately 1990-2011). ESDC will do so as well. Having reviewed the voluminous submissions and documents filed by the parties and their supplementary oral submissions, I am particularly interested in hearing evidence and submissions regarding the Goodwin Group's assertion that VRCMs performed "adjudicative" work very similar to that of the Reassessment MAs (or "RA-MAs"), that there was a significant "overlap" and "blurring" of lines between their work, including that in the Regions, and there were numerous individuals who performed combined RA-MA / VRCM roles. In addition, ESDC allegedly treated them as part of a unified "Return-to-Work Service Delivery Model" pursuant to the return-to-work "Continuum process and policy", "indistinguishable" in terms of operational decisions and combined resources used (e.g., automated case management database system, monthly "RA and RTW Report").

[28] Given that the mostly male, doctor Medical Advisors were the comparator group in the Liability Decision and remedy must be tied or have a nexus to findings of liability, I am also interested in hearing any evidence and argument concerning what, if any, overlap there was between the duties and responsibilities of the Medical Advisors and the VRCMs.

B. The MOA: Intent of the Parties

[29] As I found in *McIlroy*, *supra*, part of the main or primary issue of "Did VRCMs perform Eligible Work under the MOA" contains a secondary concern: What did the parties to the MOA intend vis-à-vis the work of VRCMs and compensation under *Walden*? The Goodwin Group proposes calling Laurence Armstrong (counsel to the vast majority of Complainants and negotiator of the MOA) and Nancy Lawand to testify. The Respondent has potential witnesses that could speak to that issue as well: Mary Pichette and its counsel Lynn Marchildon. Another question remains: What did the parties to the MOA intend in extending the remedy to the two additional groups or classes of individuals, vis-à-vis the VRCMs? I add this because the Goodwin Group has also included for a couple of its members the claim that they also qualified under the second ("provided expert advice") and third ("directly supervised") categories of the Eligible Work definition. While the vast majority of those who received compensation fall into the first category, that should not be construed as creating a hierarchy among the three constituent groups within the MOA.

C. Credibility

[30] The Goodwin Group seeks to adduce evidence, both through testimony and documents, that challenges the credibility of the Respondent. In particular, it challenges ESDC's inconsistent implementation of the MOA and its application to the Goodwin Group and others. This is allegedly demonstrated, for example, by the Respondent's changing of positions on the issues of the rationale or formula used for determining who received compensation and whether substantive VRCMs were erroneously paid for performing VRCM work, which the Goodwin Group argues is Eligible Work under the MOA.

[31] The Goodwin Group will be permitted to challenge the credibility of the Respondent and its witnesses, and/or the reliability of their evidence, on matters that are germane to the hearing. In other words, the farther astray the questioning of witnesses and the

tendering of evidence goes from material issues in dispute, the less latitude will be given. The key is relevancy. The focus should remain on the central or main issue as enumerated earlier in this Ruling, including how and why ESDC made the Eligible Work determinations it did on the respective files of the sixteen members of the Goodwin Group.

D. Iyer Letter Withdrawing Disclosure Motion

[32] The Goodwin Group was represented briefly by Vancouver lawyer Nitya Iyer. She and Respondent counsel reached an agreement on disclosure issues outstanding at the time. In her letter dated November 21, 2014, Ms. Iyer withdrew the outstanding disclosure motion before the Tribunal on the following terms:

> 1. Four letters from ESDC dated May 23, 2014, July 10, 2014, July 29, 2014, and October 31, 2014 (copies attached) will be put before the Tribunal on the Goodwin Group's Eligible Work Motion on consent and ESDC will not dispute the facts stated therein, subject to the following:
>
> a. With respect to the letter of May 23, 2014, the Goodwin Group and ESDC agree that this letter provides background on why ESDC accepted, for the purpose of settlement, that an individual was performing Eligible Work during any period in which they occupied a substantive medical adjudicator position.
>
> b. With respect to the letter of July 10, 2014, if the Goodwin Group intends to rely on the statement in that letter that Ms. Ladouceur never worked in a medical adjudicator position, that ESDC be given an opportunity to review Ms. Ladouceur's submissions on this fact and correct this statement.
>
> c. With respect to the letter of July 29, 2014, if the Goodwin Group intends to rely on ESDC's description of who it intended to contact in response to Ms. Ladouceur's disclosure motion, that ESDC be given an opportunity to clarify how ESDC determined which individuals to contact and who it actually contacted.

[33] During the February 8, 2016 CMCC, Mr. Goodwin, who at that time resumed as representative, along with Ms. Ladouceur, of the Goodwin Group, reiterated his Group’s position that ESDC has not complied with the terms of the agreement between Ms. Iyer and Ms. Marchildon as reflected in the November 21, 2014 letter. Consequently, if the

Respondent did not honour the agreement, the Goodwin Group sought to renew its disclosure motion.

[34] Ms. Marchildon replied on March 3, 2016: "…a proper reading of Ms. Iyer's and my agreement confirms that the time at which ESDC is to be given the opportunity to clarify items b. and c. is at the hearing on the merits of your motion, not before. However, to address your inquiries on these points, I offered to provide you now with the clarifications and corrections ESDC may have chosen to offer at the hearing." She then proceeded to provide said information in the same letter.

[35] The Goodwin Group disputes that the Respondent has complied with the terms of the Iyer-Marchildon agreement.

[36] I have reviewed the November 21, 2014 letter from Ms. Iyer, along with the four constituent letters, and the written and oral submissions of the parties. I agree with the Respondent's submissions. The future rights to adjust the factual substratum as contained in the letters belonged to the Respondent, to exercise if it wished. The Goodwin Group had no right to renew the disclosure motion until such time as the Iyer-Marchildon agreement was breached. I find that it has been complied with.

[37] The Respondent also seeks a ruling from me preventing the Goodwin Group from resurrecting part of its disclosure motion by asking the Tribunal to summon four individuals to testify on similar issues that were withdrawn by the Iyer letter. According to the Respondent, allowing the Goodwin Group to do so would constitute an abuse of process. Counsel states: "…it would be unfair to permit the Goodwin Group to re-litigate the issues raised in the disclosure motion by allowing them to summon witnesses to speak to facts that are no longer in contention."

[38] The Goodwin Group retorted that said action hardly constitutes an abuse of process, as that legal term of art is known. It is not necessary that I make such a finding to dispose of this issue. I find that the terms of this procedural/evidentiary agreement as encapsulated in the letter, have been complied with. Furthermore, the Goodwin Group was represented by counsel at the time. There is value from a public policy perspective to upholding agreements negotiated by parties through their counsel. Accordingly, the

disclosure requests, as amended, by the Goodwin Group up to the November 21, 2014 withdrawal of the motion, will not be re-opened or reconsidered by me.

E. Other Disclosure Requests

[39] As indicated above, the Goodwin Group has added greatly to its original disclosure/production requests. The last such requests and submissions were received on May 18, 2016. The above finding regarding the Iyer-Marchildon agreement does not dispose of the disclosure requests made *subsequent* to the November 21, 2014 letter. I direct the parties to communicate with each other in an effort to resolve the post-November 21, 2014 disclosure requests. They should do so having considered my comments concerning the scope of the hearing in this Ruling. Many of those disclosure requests may become moot as a result of this Ruling.

[40] In addition, I wish to make a comment about the nature of disclosure/production of *documents* under the Tribunal's *Rules of Procedure*. The disclosure/production of documents regime under the Tribunal's *Rules of Procedure* is more limiting than the discovery process used in the civil courts in Canada, which includes oral discovery, and in the United States, which also commonly employs written discovery or interrogatories. The Tribunal's documentary disclosure process is restricted to listing and producing arguably relevant documents related to the material facts, issues and relief as stated by the parties.[7] This forms part of the Statement of Particulars (or in this case the motion materials filed),[8] along with the identification of witnesses and a summary of their anticipated testimony (or "will-says"). The purpose of disclosing particulars, "will-says" and documents is to divulge the case a party intends to make at the hearing, which in turn allows each party to effectively present their respective cases at the hearing. The requesting of further documents or particulars should not be used as a "fishing expedition" or as an avenue to challenge the credibility of the facts and issues pled by the opposing party (see *Guay v.*

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[7] Rule 6(1) and 6(4) of the Tribunal's *Rules of Procedure*. Parties also must list, but are not required to produce, any documents for which a ground of privilege is asserted.

[8] No Statements of Particulars were filed here as this is an Eligible Work motion in the implementation phase of *Walden*.

Canada (Royal Canadian Mounted Police), 2004 CHRT 34 at para. 43; and *Bailie et al. v. Air Canada and Air Canada Pilots Association*, 2011 CHRT 17 at para. 15).

[41] I make the above comment because many of the Goodwin Group's disclosure requests fall beyond the purview of the Tribunal to order in the documentary disclosure stage. Many of the requests are for Orders to require the Respondent to provide information to "clarify", "explain", or "specify". For example, the Goodwin Group "are requesting that ESDC clarify their actions regarding the withholding of Mr. Cameron's e-mail…" and for ESDC "to clarify" the meaning of "Reassessments for VR". Whether such requests constitute reasonable "better particulars" I leave to the parties to negotiate after considering my comments in this Ruling on the scope of the hearing. The question for the parties is whether any information sought is *necessary* for the party to prepare its case before the Tribunal, avoiding any surprises that might necessitate a request for an adjournment. Otherwise, such should be left to the actual Eligible Work hearing.

F. Application of Remedy to Non-Goodwin Group VRCMs

[42] In his October 7, 2016 letter to the Tribunal, Mr. Yoboua wrote: "The respondent states that the Tribunal confirmed that any remedy ordered by the Tribunal will be limited to the 16 respondents *[sic]*; however, it is the complainants' position that this question has yet to be answered by the tribunal and is still outstanding." I have reviewed the summary letter and correspondence from the Tribunal Registry and my notes of the CMCC where it was raised and discussed. I acknowledge the statement in the March 24, 2016 letter from the Tribunal in response to one of Mr. Goodwin's written questions: "…should the motion be granted, any award of compensation will be limited to those members of the Goodwin Group who can establish that they performed Eligible Work." This reflected what originally appeared to be the parties' agreement on this issue at the CMCC in February 2016. However, upon further reflection of Mr. Goodwin's subsequent assertion that he "felt unprepared to be able to respond to the Member's question [during the CMCC] and was therefore both reluctant and hesitant to answer such a question without receiving legal advice on the matter", submissions on this issue will be left to the hearing on Eligible Work.

G. Other Pre-Hearing Matters

[43] I wish to raise two other matters with the parties. First, at some point consideration should be given to what evidence (testimony and documents) and submissions presented at the *Walden* hearing at the liability and remedy stages, if any, the parties wish to bring forward at the Goodwin Group's Eligible Work hearing. Second, as discussed at a previous CMCC, at the appropriate time, the parties should make best efforts to arrive at an Agreed Statement of Facts.

VI. Order

[44] Upon reading the written submissions and documents filed and hearing the supplementary oral submissions, I order the participating parties in this motion to communicate with each other and provide the Tribunal by January 13, 2017 with:

a. A List of what was resolved and to be approved by me, and specific matters still unresolved (e.g., relating to disclosure and witnesses) and left to be adjudicated, including Orders to be made. References to previously filed submissions are to be included;

b. Revised Lists of Witnesses, including any newly proposed ones, and revised or new Summaries of Anticipated Testimony ("will-says"); and

c. A Chart of specific remedies sought (compensation and reclassification) and dollar amount (if available) and time-period claimed, for each of the sixteen members of the Goodwin Group, including which of the three categories of Eligible Work s/he is claiming under the MOA.

Signed by

Matthew D. Garfield
Tribunal Member

Ottawa, Ontario
November 22, 2016