

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2020 CHRT 28
Date: September 18, 2020
File No.: T2276/3118

Between:

Michael Eric Desson

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Ruling

Member: Alex G. Pannu

I. Motions for Disclosure

A. Background

[1] Both the Complainant and Respondent have filed Notices of Motion under the Canadian Human Rights Tribunal's (the "Tribunal") Rules of Procedure. Each party seeks disclosure of additional documents from the other party.

[2] Both parties filed similar Notices in 2019 on substantially the same issues. The Tribunal issued an order dated November 5, 2019 requiring disclosure of some of the information demanded by both parties.

[3] The Complainant's motion alleges that the Respondent has not complied with the "spirit" of the Tribunal's 2019 order.

[4] In its motion, the Complainant seeks disclosure of documents setting out all overtime opportunities worked by constables and constables acting as corporals who were posted to the Burnaby detachment from January 2011 to May 2015 including the dates and amount of hours of these opportunities.

[5] In its motion, the Respondent submits that there were several medical practitioners that treated the Complainant whom they were not previously aware. It seeks disclosure of the following:

- a. Clinical file of Dr. Kathy Cathy Lewis, Psychologist from July 14, 2010 to present.
- b. Clinical file of Dr. Christopher A. Babbage, psychiatrist for the period July 14, 2010 to May 26, 2015.
- c. Clinical file of Dr. Anson Koo, psychiatrist for the period July 14, 2010 to May 26, 2015.
- d. Clinical File of Dr. Gurwant Singh, Neurologist from July 14, 2010 to May 26, 2015; and
- e. Clinical file of Dr. Kathy Cathy Lewis, Psychologist from July 14, 2010 to present.

B. Law

[6] As I have laid out the legal tests for the disclosure of documents in my November 2019 order, I will only briefly repeat them here.

[7] The standard for disclosure of documents in accordance with the Tribunal's Rules has been well-settled by the case law. 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 or 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 information allows each party to know the case it is up against and, therefore, adequately prepare for the hearing. If there is a rational connection between a document and the facts, issues or forms of relief identified by the parties in the matter, it should be disclosed. *Yaffa v. Air Canada* 2014 CHRT 22 para. 3

C. Orders

[8] Having considered the arguments submitted by the parties, I make the following orders:

- A. The Respondent shall disclose a list of all overtime opportunities including dates and hours worked, by each constable, and any Constables acting as Corporals, within the Burnaby RCMP detachment from January 2011 to May 2015;
- B. The Complainant shall disclose the clinical file of Dr. Christopher A. Babbage, psychiatrist for the period July 14, 2010 to May 26, 2015;
- C. The Complainant shall disclose the clinical file of Dr. Anson Koo, psychiatrist for the period July 14, 2010 to May 26, 2015;
- D. The Complainant shall disclose the clinical file of Dr. Gurwant Singh, Neurologist from July 14, 2010 to May 26, 2015; and
- E. The Complainant shall disclose the clinical file of Dr. Kathy Cathy Lewis, Psychologist from July 14, 2010 to present.

D. Analysis

Complainant's Motion

[9] In his 2019 motion, the Complainant stated that the information he requests is to assist in the calculation of his claim for lost wages. Recovery of wage loss is a valid form of relief as envisaged in Rule 6(1)(d). The information sought is arguably relevant in my view.

[10] My order in 2019 already narrowed the scope of the disclosure to the Burnaby and Maple Ridge detachments and the time periods in which the Complainant served. The Respondent has provided the requested information for the Maple Ridge detachment. The information for the Burnaby detachment lacks certain information that the Complainant requires to properly calculate potential lost opportunities and subsequent wage loss.

[11] The Respondent has not provided a reasonable explanation for not providing the information on the Burnaby detachment.

Respondent's Motion

[12] Following my order of 2019, the Respondent received clinical files from several medical providers who treated the Complainant.

[13] From a review of Dr. Fasihy's clinical records, the Respondent determined that there were additional medical practitioners that treated the Complainant and whose clinical records would be relevant to this matter. It requested these clinical records from the Complainant who did not consent to their release.

[14] The Complainant has not provided an explanation for why it does not agree to the Respondent's request. On review of an excerpt from Dr. Fasihy's records, I find that these clinical records of additional medical practitioners that treated the Complainant to be arguably relevant to his complaint.

Signed by

Alex G. Pannu
Tribunal Member

Ottawa, Ontario
September 16, 2020

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2276/3118

Style of Cause: Michael Desson v. Royal Canadian Mounted Police

Ruling of the Tribunal Dated: September 18, 2020

Motion dealt with in writing without appearance of parties

Written representations by:

Allison Tremblay, for the Complainant

Daphne Fedoruk, for the Canadian Human Rights Commission

Graham Stark, for the Respondent