

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 113

Date: October 22, 2024

File Nos.: T2635/1121, T2636/1221, T2637/1321

Between:

SM, SV and JR

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Royal Canadian Mounted Police

Respondent

Decision

Member: Paul Singh

Table of Contents

I.	INTRODUCTION	1
II.	DECISION.....	2
III.	FACTS	2
A.	The Unit	3
B.	The RCMP NCO promotion process	3
C.	Complainants' evidence.....	5
(i)	Cpl. JR	5
(ii)	Cst. SM	7
(iii)	Sgt. SV.....	9
D.	Complainants' witnesses	10
(i)	Cst. TL	10
(ii)	S/Sgt. GS.....	10
(iii)	Dr. Kanika Samuels-Wortley.....	11
E.	The RCMP's witnesses.....	11
(i)	Insp. VM.....	11
(ii)	Jamie Kenny	11
(iii)	A/Comm. MP	12
(iv)	Insp. CM.....	12
(v)	Supt. JC	12
(vi)	Nadine Huggins	12
IV.	ANALYSIS	13
A.	Legal principles	13
B.	<i>Prima facie</i> test for discrimination	15
C.	Credibility	15
D.	SLO backgrounds	16
E.	Justification for candidate selections.....	17
(i)	The 2016 Corporal Training / Reviewer Position	17
(ii)	The 2018 Corporal Supervisor/Investigator Position	21
(iii)	2019 Staff Sergeant position.....	27
F.	Racial comments	33
G.	Promotions within the Unit	35

H.	Availability of acting opportunities	35
I.	Expert evidence on systemic racism in police organizations	38
J.	Subjectivity of the NCO promotion process	40
K.	The Strachan memo	42
V.	Conclusion	43
VI.	Decision and Order	44

I. INTRODUCTION

[1] The Complainants SM, SV, and JR, who are of South Asian descent and identify as visible minorities, are police officers employed by the Respondent Royal Canadian Mounted Police ("RCMP"). Their complaints ("Complaints") each center on the RCMP's failure to promote them because of their colour, national or ethnic origin, and/or race (collectively "race") while they worked at an RCMP unit in Ontario (the "Unit") and on the alleged racism in the Unit's promotional processes generally. This, they say, constitutes discrimination contrary to section 7 of the *Canadian Human Rights Act*, RSC 1985, c H-6 ("*CHRA*").

[2] The RCMP denies discriminating against the Complainants during the promotion competitions at issue, or at all, and seeks a dismissal of the Complaints.

[3] The Complaints were referred to the Tribunal for inquiry in February 2021 and later joined.

[4] The Unit is a covert unit. In October 2021, I allowed the RCMP's motion for a broad confidentiality order, on consent of the Complainants, on the basis that disclosure of information relating to the Unit would be injurious to officer safety, national security, and sensitive RCMP investigations: *SM, SV and JR v. Royal Canadian Mounted Police*, 2021 CHRT 35. The scope of the confidentiality order included anonymizing the names of the Complainants and other officers affiliated with the Unit and not disclosing information about Unit operations ("Operations") including descriptions, investigations, and techniques.

[5] In May 2022, I allowed the RCMP's motion, on consent of the Complainants, to bifurcate the issue of liability and remedy in these proceedings. The issue of the RCMP's liability for the Complaints would first be determined by the Tribunal. If liability was found, the issue of remedy would be determined by the Tribunal at a subsequent hearing.

[6] In October 2023, I allowed the RCMP's motion, on consent of the Complainants, to close the hearing to the public: *SM, SV and JR v. Royal Canadian Mounted Police*, 2023 CHRT 46. I determined it was not reasonably possible to mitigate the risk to officer safety, national security, and sensitive RCMP investigations while conducting an effective hearing without excluding the public.

[7] A 15-day hearing on liability for the Complaints was completed in December 2023 and closing submissions were completed in March 2024. The Canadian Human Rights Commission did not participate in the hearing.

[8] Twelve witnesses testified at the hearing. I refer to the officers by the rank they held at the time of the hearing. Six witnesses testified for the Complainants cases: the Complainants - Corporal ("Cpl.") JR, Constable ("Cst.") SM, and Sergeant ("Sgt.") SV; two lay witnesses - Staff Sergeant ("S/Sgt.") GS who was Sgt. SV's supervisor in 2019, and Cst. TL, a current member of the Unit; and one expert witness - Dr. Kanika Samuels-Wortley.

[9] In response, six witnesses testified for the RCMP: the current Officer-in-Charge ("OIC") of the Unit - Inspector ("Insp.") VM; the current civilian OIC of the RCMP's National Promotions Unit - Ms. Jamie Kenny; the three previous OICs of the Unit whose promotional decisions were challenged in the Complaints - Assistant Commissioner ("A/Comm.") MP, Insp. CM, and Superintendent ("Supt.") JC; and the RCMP's Chief Human Resources Officer - Ms. Nadine Huggins.

II. DECISION

[10] The Complaints are all dismissed as the Complainants did not prove that their race was a factor in the promotion competitions at issue.

III. FACTS

[11] In the Complaints, Cpl. JR says he was subject to racial discrimination in a 2016 Corporal Training/Reviewer promotion competition. Cpl. JR and Cst. SM both say they were subject to racial discrimination in a 2018 Corporal Supervisor/Investigator promotion competition. Sgt. SV says he was subject to racial discrimination in a 2019 Staff Sergeant promotion competition.

[12] To contextualize the Complaints, I have set out some general information about the Unit, the RCMP's Non-Commissioned Officer ("NCO") promotion process, and relevant witness evidence.

A. The Unit

[13] The Unit performs covert Operations on a full-time basis. It works with other covert units (“Related Units”) and non-covert RCMP units and agencies, as needed.

[14] The majority of the Unit’s Operations relate to national security investigations and sensitive international investigations. The Unit is comprised, in order of rank, of one Inspector, one Staff Sergeant, three Sergeants, ten Corporals, and about seventy-four Constables. Apart from the Inspector, who is a commissioned officer, the remaining ranks in the Unit are non-commissioned.

[15] The Constables in the Unit are primarily responsible for conducting Operations on the road. The Constables are supervised by Corporals in a Team Leader position. The Sergeants supervise the Corporals and oversee Unit Operations.

B. The RCMP NCO promotion process

[16] Regular, non-commissioned members of the RCMP are appointed under the *Royal Canadian Mounted Police Act*, RSC 1985, c. R-10. NCO promotions are governed by the NCO promotion process found in the RCMP’s Career Management Manual.

[17] Promotion opportunities are advertised on the RCMP’s Infoweb. The advertisement sets out key information about the position. This includes: the required competencies and training which the candidate must demonstrate they meet in their application; the names of the Subject Matter Experts (“SME”) who will validate competency examples; and the name of the Selecting Line Officer (“SLO”) or their delegate who will select the successful candidate for promotion.

[18] To apply for an NCO promotion, the candidate must have a passing score on the Job Simulation Exercise (“JSE”) and the minimum years of required service. The minimum years of service are: seven years for promotion from Constable to Corporal; at least two years for promotion from Corporal to Sergeant; and at least two years for promotion from Sergeant to Staff Sergeant.

[19] Candidates applying for a promotion must submit an application package which contains three documents: an application form which includes the candidate's background information and confirmation of support from their current supervisor; a competency resume which includes two examples per functional competency required; and a cover letter which includes an explanation of how the candidate's experience and skill set is relevant to the promotional opportunity.

[20] Candidates submit their application package to the National Promotions Unit ("NPU"), which screens the package to ensure it is complete. If the package is complete, it goes to the competency validation stage through a validation committee.

[21] A validation committee made up of two SMEs reviews the candidates' competency examples to determine whether the examples meet the minimum requirements set out in the job advertisement.

[22] When the SMEs determine that a candidate meets the competency requirements, the candidate is deemed validated. The candidate need not be re-validated for that competency at that level for future promotional processes even if they submit new competency examples in a future application package.

[23] If the SMEs determine that a candidate has not met the minimum requirements for a required competency, they are not validated. The candidate is provided an explanation for the non-validation and removed from the promotion process.

[24] If the candidate's competency examples are validated, they move to the final selection stage. At this stage, the SLO makes the final selection of the successful candidate. A maximum of seven candidates can advance to this stage. Where there are more than seven candidates, those with the top seven JSE scores advance.

[25] The SLO makes the selection based on the application packages only. They have discretion to use their own scoring matrix when reviewing application packages. There is no interview process. Performance documents such as performance reviews are not included in the application package, and SLOs do not consider performance reviews when making their final selection.

[26] The SLO has the discretion to select the candidate who is the right “fit” for the position after considering the candidates’ applications. Factors that inform the “fit” analysis include current and future operational needs of the unit, and skills that may be lacking in the unit. After selecting the successful candidate, the SLO prepares a Line Officer Recommendation Rationale (“Rationale”) for the unsuccessful candidates, which explains why the successful candidate was selected.

[27] Prior to the selection being finalized, the NPU receives a copy of the Rationale and any scoring matrix or notes the SLO prepared to support the selection. The role of the NPU is to review the Rationale for selection and to verify whether there is sufficient information contained in the Rationale to explain the SLO’s selection. The NPU also verifies whether the information in the Rationale is expressly contained in the application packages. This is to help ensure that only information contained in the application packages informs the SLO’s selection, and not the SLO’s personal knowledge of a candidate outside the promotion process.

[28] Candidates may object to the involvement of any SME or SLO identified in the job advertisement. An objection is submitted in writing to the NPU, who then determines its merits. Whether the NPU upholds an objection is assessed on a case-by-case basis and is dependent on the nature of the objection. If the NPU upholds an objection, the SME or SLO is replaced.

C. Complainants’ evidence

(i) Cpl. JR

[29] Cpl. JR is 48 years old and identifies as Indo-Canadian, with his parents born in Bangladesh. After obtaining an undergraduate degree from the University of Western Ontario he decided to pursue a career in the RCMP.

[30] Cpl. JR graduated from Depot training in 2000 and began his RCMP career as a Constable performing General Duty and First Nations policing in Saskatchewan. He then

moved to Traffic Services. During this time, Cpl. JR testified about experiencing racism and being called racial slurs by members of the public.

[31] In 2006, Cpl. JR transferred to Ontario and joined the Unit. Over the next decade, he gained various experiences in the Unit. He was certified as a Field Coach to mentor new members coming into the Unit. He also became an instructor on several advanced training courses for Unit Operations and was sent overseas several times to teach these courses for the RCMP's international partner agencies.

[32] Cpl. JR testified that he expressed an interest in promotion to the Corporal rank in the Unit for many years. He stated that during his time in the Unit, he observed a lack of visibly racialized representation in the Unit's promotional ranks, and a lack of cultural competence in the Unit's Operations.

[33] Cpl. JR's Unit performance reviews were consistently positive and noted his interest in promotion to Corporal.

[34] Cpl. JR testified that the Unit Operations primarily targeted racialized communities and Unit members often concentrated their work in these communities. He testified that White Unit members would use derogatory language and jokes when referring to these communities, including their worship, traditional attire, and cuisines. He testified that he also engaged in inappropriate jokes and used derogatory language on occasion. He eventually recognized this was inappropriate and stopped doing so.

[35] In 2016, Cpl. JR applied for the Corporal Training Coordinator position. He was unsuccessful, losing the position to Cpl. MW, a White Constable who had been acting in the role at the time of the promotion competition. The Rationale Cpl. JR received from A/Comm. MP (the SLO for that process) cited Cpl. MW's instructional experience in the areas of firefighting, first aid, and firearms, as well as Cpl. MW's acting experience in the Training Coordinator role as two of the right fit criteria on which she had based her decision.

[36] Cpl. JR testified he could not understand how Cpl. MW's instructional experience in the fields of firefighting, first aid, and firearms could be more important for the position than Cpl. JR's own examples, which came almost entirely from Unit Operations. Cpl. JR also

testified he had asked to act in the Training Coordinator role before the promotional competition, but this request was denied because he had not yet passed the JSE. He stated that passing the JSE had never been a policy requirement to occupy an acting position.

[37] In 2017, after a year in the role, Cpl. MW went on sick leave and Cpl. JR was asked to act in the Training Coordinator position. In 2018, while still acting in the Training Coordinator Role, Cpl. JR decided to apply for promotion to the Corporal Team Leader position.

[38] Both Cpl. JR and Cst. SM applied for the Corporal Team Leader position in 2018 and both were unsuccessful in the competition. The successful candidate was SS, a White Constable. Cpl. JR testified that Cpl. SS was several years junior to him and he had been Cpl. SS's Field Coach and mentor when Cpl. SS was a new member. Cpl. JR was also the second-in-charge on Cpl. SS's team, where Cpl. SS did not have any leadership role.

[39] When Cpl. JR reviewed the Rationale from Insp. CM (the SLO for the process), he testified he was confused by its focus on Cpl. SS's tactical intervention skills. Cpl. JR testified that the Unit is not involved in tactical takedowns due to its covert nature. He could not understand how these skills had made Cpl. SS's application better than his own when Cpl. JR's application specifically described the day-to-day duties of the Corporal Team Leader position.

[40] Cpl. JR testified that in November 2019 he decided to file a human rights complaint after speaking with Cst. SM and Sgt. SV. When he was promoted to Corporal Team Leader in 2021, he testified that given his experience and tenure, he should have been many ranks ahead of where he was.

(ii) Cst. SM

[41] Cst. SM is 59 years old and identifies as East-Indian. He was born in the United Kingdom and grew up in a small town in British Columbia. He joined the RCMP after two years with the Ontario Provincial Police. He enrolled in Depot training in 1990 and joined the Unit in 1991 as a Constable and continued to hold that rank for the past 33 years.

[42] Cst. SM testified that he passed the Corporal JSE many times between 2000 and 2016 and had led several complex and lengthy investigations for the Unit. He was a Unit Field Coach for new members and served as second-in-charge under several Corporals.

[43] Cst. SM's performance reviews were consistently positive and noted his ongoing interest in promotion to Corporal. He testified that he had unsuccessfully applied for promotion to Corporal several times in past years.

[44] Cst. SM described his experience with racism in the Unit during over the past three decades of service. These included being called a "Paki" on his first day in the Unit and witnessing racist comments made by White Unit members about racialized communities in which they worked.

[45] Cst. SM testified that he was customarily assigned as second-in-charge of a team when there were no promotions in the Unit. However, once a Corporal Team Leader promotion came up, a White Constable would be moved into the second-in-charge role so they could use that role in their promotional application.

[46] Cst. SM described the lack of visibly racialized people in the Unit's promotional ranks and lack of cultural competence in the Unit's Operations. He noted that even as recently as 2020, when he went on leave, visibly racialized members were called derogatory names in the Unit.

[47] Cst. SM testified about his application package for the 2018 Corporal Team Leader position. He described how his competency examples and cover letter set out the types of skills that were needed for the position and how he met the criteria for promotion. He said he was called to a meeting in Insp. CM's office to discuss not being chosen for the promotion and Cpl. SS being the successful candidate. Cst. SM testified he was distraught and frustrated following the meeting and, in July 2018, decided to file a human rights complaint.

[48] Later that year, Cst. SM testified that then-RCMP Assistant Commissioner Jodie Boudreau contacted him to discuss his concerns with the Unit, which he relayed to Ms. Boudreau. He said he also reported his concerns about discrimination during the Unit's 2019 Managerial Review but no one followed up with him regarding his feedback.

(iii) Sgt. SV

[49] Sgt. SV is 47 years old and identifies as East Indian. He was born in Prince Edward Island and obtained his undergraduate degree in science and pursued doctoral studies in chemistry before leaving the program to join the RCMP.

[50] Sgt. SV joined the RCMP in 1999 and completed Depot training in 2000. From 2000 to 2003 he worked in General Duty policing in New Brunswick before joining the Musical Ride. The Musical Ride promotes the RCMP's image in communities throughout Canada and involves police officers performing drills on their horses. Sgt. SV went through several months of training in equestrian skills before beginning his tour with the Musical Ride.

[51] After a three-year tour with the Musical Ride, Sgt. SV transferred to the Unit in 2006. He was a Constable in the Unit until 2009. He then worked in several Related Units performing covert work. In 2012, he was promoted to Corporal. In 2016, he was promoted from an outside Related Unit into the Unit as a Sergeant. He did not occupy this position on an exclusive basis as he was still required to perform the full-time duties of his former position. Sgt. SV spent six months as the Unit Sergeant before his supervisor from the Related Unit arranged for his return to the Related Unit.

[52] Sgt. SV testified to racial comments and jokes he witnessed in the Unit. These included comments relating to attire, worship, and cuisines of racialized communities. He also testified to his belief that White officers were favored for promotion opportunities in the Unit.

[53] Sgt. SV's performance evaluations over the years were positive and documented his interest in promotion. In November 2019, Sgt. SV sought to return exclusively and on a full-time basis to the Unit and applied for promotion to the role of Unit Staff Sergeant. Sgt. SV testified in detail about the application he submitted and how he believed he was exceptionally qualified for the role.

[54] Sgt. SV was not successful in the competition. The selected candidate, PL, was a White Sergeant who had spent the last 17 years in the Unit and was promoted up from the rank of Constable. The Rationale that Sgt. SV received from Supt. JC (the SLO for the

process) stated that the Staff Sergeant role would require in-the-field participation in Unit Operations and that S/Sgt. PL had been chosen for his experience in this area in addition to his acting experience in the role.

[55] Sgt. SV testified about meeting with Supt. JC about the competition results. Supt. JC informed him that S/Sgt. PL's application package was more unit-level in nature whereas Sgt. SV's package was more national and international in nature. Sgt. SV said he felt confused by the Rationale and the explanation received by Supt. JC. Sgt. SV explained that he believed the Staff Sergeant role was an office-based managerial role that would not require in-the-field participation in Unit Operations. Sgt. SV also believed he had addressed his unit-level managerial skills and experience thoroughly in his application. Sgt. SV subsequently filed a human rights complaint in November 2019 as he believed his race was a factor in not receiving the promotion.

D. Complainants' witnesses

[56] In addition to their own testimony, the Complainants called two other RCMP officers (Cst. TL and S/Sgt. GS) and an expert witness (Dr. Kanika Samuels-Wortley) in support of their case.

(i) Cst. TL

[57] Cst. TL joined the Unit in September 2019. He testified that he filed a harassment complaint against a member in the Unit who had made an offensive comment on the radio. That complaint was informally resolved through the Independent Centre for Harassment Resolution. Cst. TL said that in his view acting opportunities were not fairly distributed within the Unit and there was favoritism.

(ii) S/Sgt. GS

[58] S/Sgt. GS has been an RCMP officer since 1995. He was Sgt. SV's supervisor in a Related Unit in 2019 when Sgt. SV applied for the Staff Sergeant position in the Unit. S/Sgt. GS testified that the Staff Sergeant role typically held an "administrative job function". He

testified he was not surprised that Sgt. SV did not receive the Staff Sergeant position in the Unit. He said that the selected candidate S/Sgt. PL had been acting in that position and had gained the necessary skills to be the successful candidate.

(iii) Dr. Kanika Samuels-Wortley

[59] Dr. Samuels-Wortley is an associate professor in the Department of Criminology and Justice at Ontario Tech University. The Complainants filed an expert report from Dr. Samuels-Wortley titled *Systemic and Implicit Bias within Police Institutions*, and she also testified at the hearing. Her report addressed barriers that racialized police officers face in career advancement through a review of existing literature on policing, race, racism, and organizational bias. The research she reviewed suggested that systemic racism and implicit bias may limit the promotional opportunities for racialized police officers.

E. The RCMP's witnesses

[60] In response to the Complainants' evidence, the RCMP called six witnesses.

(i) Insp. VM

[61] Insp. VM identifies as a racialized officer of Guyanese descent. He was the OIC of the Unit and held that position since November 2020. Insp. VM joined the RCMP in 2000, at the same time as Cpl. JR, and was in the same Depot training cohort as Sgt. SV. He described being successfully promoted through the NCO ranks and then the Commissioned Officer ranks to the Inspector level. In 2021, Insp. VM promoted Cpl. JR from Constable to Corporal.

(ii) Jamie Kenny

[62] Ms. Kenny was the acting OIC of the NPU, which is responsible for overseeing NCO promotional processes. Ms. Kenny had worked at the NPU for about ten years. She provided a comprehensive account of the NCO promotion process.

(iii) A/Comm. MP

[63] A/Comm. MP identifies as a gay woman. She was the SLO for the 2016 Corporal promotion competition in which Cpl. JR was unsuccessful. A/Comm. MP joined the RCMP in 1985. She was the OIC of the Unit at the rank of Inspector from January 2016 to March 2017.

(iv) Insp. CM

[64] Insp. CM identified as ethnically diverse. He was the OIC of the Unit from 2017 to 2018 at the rank of Inspector and was the SLO for the 2018 Corporal promotion competition in which Cst. SM and Cpl. JR were unsuccessful. Insp. CM joined the RCMP in 1991 and left in December 2018.

(v) Supt. JC

[65] Supt. JC identifies as Indigenous. He was the OIC of the Unit from October 2018 to August 2020 at the rank of Inspector. He was the SLO for the 2019 Staff Sergeant promotion competition in which Sgt. SV was unsuccessful. He joined the RCMP in 1989 and spent numerous years in Aboriginal Policing.

(vi) Nadine Huggins

[66] Ms. Huggins identified as a racialized person and is the RCMP's Chief Human Resources Officer. Her responsibilities in the role included modernizing the RCMP's people management strategies, developing initiatives for improving equity, diversity and inclusion, and modernizing recruitment and retention strategies. She joined the RCMP in 2020 and prior to that worked on various diversity, equity, and inclusion initiatives in other federal departments of the Government of Canada including as Executive Director with the Treasury Board Secretariat.

IV. ANALYSIS

A. Legal principles

[67] The Complainants bring their Complaints under s. 7 of the *CHRA* which states:

It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee

on a prohibited ground of discrimination.

[68] The Complainants allege that contrary to s. 7(b) the RCMP adversely differentiated against them in the promotion competitions at issue on the prohibited ground of race.

[69] In accordance with the legal test for discrimination, the Complainants must prove a *prima facie* case on a balance of probabilities that they have a characteristic protected by the *CHRA*, that they experienced an adverse impact in their employment, and that their protected characteristic was a factor in the adverse impact. If the Complainants prove these elements, the burden shifts to the RCMP to justify their conduct. If the conduct is justified, there is no discrimination: *Moore v. British Columbia*, 2012 SCC 61 [Moore]. The evidence on all three elements of the *Moore prima facie* test must be “clear, convincing, and cogent”: *Naistus v. Chief*, 2009 CHRT 4 at para. 72.

[70] Further, a protected characteristic need only be a factor in the adverse treatment, and not necessarily a significant or only factor: *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30 at para. 46. In addition, discrimination does not require intent - rather, the focus is on the effect of a respondent's actions on the complainant: *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 SCR 536 at para. 18.

[71] The Complainants do not rely on direct evidence to prove their *prima facie* case. Instead, their cases are circumstantial. As this Tribunal and Courts have recognized, it is difficult to prove allegations of discrimination by way of direct evidence. As stated by the Tribunal in *Basi v. Canadian National Railway*, (1988) 9 CHRR D/5029 at D/5038,

“discrimination is not a practice which one would expect to see displayed overtly, in fact, there are rarely cases where one can show by direct evidence that discrimination is purposely practiced”. The Tribunal must therefore consider all the circumstantial evidence to determine what was described in *Basi* as the “subtle scent of discrimination”.

[72] However, it is not enough that circumstantial evidence is simply consistent with an inference of discrimination: *Brooks v. Canada (Department of Fisheries and Oceans)*, 2004 CHRT 36 at para. 114 (reversed on other grounds 2006 FC 1244). Circumstantial evidence must, if believed, tend to prove the allegation of discrimination. An inference of discrimination may only be drawn “where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses”: *Dawson v. Canada Post Corp*, 2008 CHRT 41 at para. 73.

[73] While the Supreme Court of Canada in *Moore* set out the general test for discrimination, the Ontario Board of Inquiry (as it then was) in *Shakes v. Rex Pak Ltd.*, 1981 CanLII 4315 (ON HRT) (“*Shakes*”) set out a tailored test to address employment discrimination arising from a failure to promote. This test has been endorsed by the Federal Court: *Canada (Department of National Health and Welfare) v. Chander*, [1997] FCJ 692.

[74] In accordance with the *Shakes* test, complainants must prove the following three elements: they were qualified for the promotion; they were not promoted; and someone no better qualified than them but lacking the distinguishing feature which is the gravamen of the human rights complaint subsequently obtained the position.

[75] The *Shakes* test does not supplant the *Moore* test. It serves only as a guide and should not be applied in a rigid or arbitrary fashion in every employment case: *Canada (Armed Forces) v. Canada (Human Rights Commission)*, 2005 FCA 154 at para. 26. The key issue for the Tribunal is whether the Complainants have proven that their race was a factor in the RCMP’s decision not to promote them. While the *Shakes* test may serve as a useful guide, it is not binding on this determination: *Emmett v. Canada Revenue Agency*, 2018 CHRT 23 at para. 58.

B. *Prima facie* test for discrimination

[76] There is no dispute that the Complainants have satisfied the first two elements of the *Moore* test. They are of South Asian descent and their racial identity is a protected characteristic under the *CHRA*. They also suffered an adverse impact in their employment as they were unsuccessful in the promotion competitions at issue.

[77] On the third element, however, I find that the Complainants have failed to prove on a balance of probabilities that their race was a factor in their failure to be promoted. It is to this issue that I now turn.

C. Credibility

[78] I can accept some, all, or none of a witness' evidence depending, in part, on their credibility.

[79] In *Faryna v. Chorny* 1951 CanLII 252 (BCCA) the British Columbia Court of Appeal described the approach that should be taken to assess credibility, which I have adopted:

...Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors combine to produce what is called credibility.

The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions (...) Again a witness may testify to what he sincerely believes to be true, but he may honestly be mistaken. (pg. 356-357)

[80] On considering the factors set out in *Faryna*, I find the witnesses called on behalf of the RCMP to be credible and reliable witnesses. Their evidence was reasonable, believable, and internally consistent. It was also consistent with contemporaneous records and harmonious with each other's evidence.

[81] I also accept that the Complainants genuinely believed they were better qualified than the successful candidates in the promotion competitions at issue. I further accept that they genuinely believed their race was a factor in their failure to be promoted. However, after considering the RCMP's justification for the promotion decisions and other collateral evidence, I cannot draw an inference of a nexus between the Complainants' race and their failure to be promoted.

D. SLO backgrounds

[82] The SLOs for the promotion competitions at issue vigorously denied discriminating against the Complainants. They each testified that they themselves were members of an equity seeking group and would not engage in the type of racial discrimination alleged.

[83] The SLOs membership in an equity seeking group does not, of course, mean that they could not engage in discrimination against the Complainants or others. However, their background is relevant insofar as it serves to contextualize the approach they took when evaluating the Complainants' promotion applications.

[84] For example, A/Comm. MP testified that in her role as an SLO she reviewed the application packages within the context of her own experiences as a gay woman who herself overcame barriers within the RCMP.

[85] Insp. CM testified he was "hurt" when he learned of the allegations of discrimination against him in light of his own ethnically diverse background and contributions he had made to promote diversity within the RCMP. This included being involved in the Commanding Officer's committee to promote racial diversity amongst members applying for NCO and Commissioned Officer promotions.

[86] Similarly, Supt. JC, who is of Indigenous heritage, testified he has been involved in various diversity initiatives within the RCMP to help promote the interest of equity-seeking members within the RCMP. This included being the "O" Division leader for Indigenous Reconciliation where he was involved in initiatives related to the RCMP's efforts to implement the Truth and Reconciliation Calls to Action. This also included being on the "O" Division Diversity and Employment Equity Committee along with Insp. CM. In this context,

he testified he was aware of the importance of racial equality in hiring decisions and firmly rejected engaging in discrimination against Sgt. SV in the 2019 Staff Sergeant promotional process.

E. Justification for candidate selections

[87] Based on the SLOs evidence, which I accept, I cannot conclude that their justification for promoting the successful candidates were a pretext for discrimination. Each of the SLOs testified that, in their view, the successful candidates were better qualified than the Complainants and provided what I determined to be reasonable explanations for their selections, as set out below.

(i) The 2016 Corporal Training / Reviewer Position

[88] In 2016, Cpl. JR applied for a Corporal Training/Reviewer position in the Unit. A/Comm. MP was the SLO for this competition. The primary purpose of the position was to coordinate and deliver training for the Unit.

[89] Two candidates were shortlisted for this position (Cpl. JR and Cpl. MW) as both candidates met the minimum requirements for the position and were qualified to perform the position. Their application packages were provided to A/Comm. MP at the final selection stage and she selected Cpl. MW, a White officer, for the position.

[90] A/Comm. MP scored the application packages in her scoring matrix as follows:

	Legis 1	Legis 2	Facil 1	Facil 2	“Op” 1	“Op” 2	Spvsr	Cover	Total
Cpl. JR	5	4.5	5	5	5	5	8	17	54.5
Cpl. MW	4	4.5	5	5	5	5	9	19	56.5

[91] In her matrix, “Legis” refers to the functional competency of “Knowledge of Applicable Legislation and RCMP Policies, Procedures, and Strategic Priorities”, “Facil” refers to the functional competency of “Knowledge of Facilitation/Instructional Techniques”, and “Op” refers to the functional competency of Operations techniques.

[92] A/Comm. MP testified about how she created her scoring matrix. She assigned a value of 1-5 for each functional competency example included within the competency resume, a value of 1-10 for supervisor comments, and a value of 1-20 for the cover letter.

[93] A/Comm. MP explained that she allotted significant weight to the Supervisor comments because these comments were the only source of independent, third-party information in an application that was otherwise entirely written by the applicant. A/Comm. MP allotted the most weight to the cover letter because the cover letter provided the applicant the opportunity to discuss the full breadth of their relevant work experience and to explain how that work experience tied into the position requirements.

[94] A/Comm. MP stated that Cpl. JR outscored Cpl. MW by one point in the functional competency examples, as set out in the scoring matrix. However, she determined that Cpl. MW's supervisor comments and cover letter were stronger than those of Cpl. JR.

[95] A/Comm. MP testified that Cpl. MW's cover letter was more focused than Cpl. JR's on the position requirements. Cpl. MW better tailored his experience to the position requirement and more clearly described how, when, and where he coordinated and provided training programs. The training examples Cpl. MW provided were comprehensive and spanned his lengthy career from his time as a firefighter prior to joining the RCMP to his time in the RCMP, including as an Acting Training Coordinator in the Unit. A/Comm. MP stated it was evident from a review of Cpl. MW's application that "training was in his DNA". She stated that the cover letter provided by Cpl. MW had so many examples of his training skills that she could envision Cpl. MW performing well in the Training/Reviewer role and was confident he was the best candidate for the job. On review of Cpl. MW's cover letter, I accept as reasonable A/Comm. MP's characterization of its contents.

[96] A/Comm. MP prepared a Rationale for Cpl. JR dated August 22, 2016 which was approved by the NPU. In it she comprehensively set out the reasons why Cpl. MW was selected over Cpl. JR. The Rationale was consistent with her testimony and the candidates' application materials and included the following explanation:

The recommended candidate provided a stronger Covering Letter. He provided clear details of his skills and showed how they could quickly dovetail into the Training/Reviewer position. The information he provided went beyond the scope of [Operations] duties. The recommended candidate's Covering Letter laid out clear leadership roles and decision-making abilities when the member may not have even been in an acting role. For example, he provided examples of his experience as an instructor prior to joining the RCMP with Kirkland Lake Fire Services, lecturing on firefighting techniques on a three-week Instructional Techniques Course at the Ontario Fire College, delivering Course Training Standards (CTS) to Volunteer Fire Services as an Officer of the Ontario Fire Marshal's Office, and delivering training as a Red Cross First Aid/CPR Instructor. Within the RCMP, he described that he is a lead Basic Firearms Instructor during [redacted].

He described how he was identified for his understanding of [Operations] principles and leadership skills to instruct on [Operations] courses, where the feedback he delivered gave the candidates tools to meet the Course Training Standards (CTS). He stated that he has instructed on over 20 STC, 4 ASCs (240 members plus 100 firefighters); that he was lead instructor, coordinator and mentor on 1 ASC and on 11 STCs; that he was hand-picked and sent to Indonesia to deliver an STC, representing the Canadian government and the RCMP. He demonstrated problem solving abilities when ensuring the [Operations] CTS' were taught accurately by members of their [redacted] section, overcoming challenges relating to the language barrier and cultural differences, and ensuring debriefs were delivered in a way that respected their rank structure. What set the recommended candidate apart was his ability to see behind the scope of his day-to-day duties.

He stated that he was selected by the OIC and the Acting Ops NCO to take on the responsibilities of the Training Coordinator for [the Unit]. He explained that instructing is one part of the role, that he also performs administrative responsibilities such as ensuring all members are current with their mandatory training, scheduling courses either delivered or taken by [Unit] members, tabulating and submitting monthly training records to the logistical NCO, completing the Training budget for 2016/2017 and working closely with CDR in London to organize and deliver the Divisional ASCs and STCs, working with different detachments to coordinate and deliver in-house training scenarios, ½ day workshops, STCs and SMR initiatives.

He provided further examples of the depth of his training and leadership capabilities as well as addressed the organizational competencies required for this position such as Developing Others, Flexibility, Planning and Organizing, Problem Solving, Decisiveness, and Team Leadership.

The recommended candidate provided stronger supervisor comments. His supervisor stated that he has been acting as the Training Coordinator in [the Unit] for the past 14 months and has successfully organized and ran a five-week advanced [Operations] course. His supervisor commented positively on his commitment to learning and development, his commitment to client centered service, and his conscientiousness.

Although you provided a good Covering Letter, overall the experience demonstrated in the Application, Competency Resume examples, and Cover Letter led me to determine that the recommended candidate is the right fit for the position.

[97] Cpl. JR argues that the explanation provided to him by A/Comm. MP was a pretext for discrimination because it unduly favored Cpl. MW's firefighting experience over Cpl. JR's Unit-level experience.

[98] However, as set out in the Rationale and A/Comm. MP's testimony, her focus was not on Cpl. MW's firefighting experience but rather the training he provided to firefighters and police officers. She considered this experience relevant as he was providing and coordinating training for first responders, which was comparable to training police officers.

[99] Cpl. JR also argues he was unfairly passed over from taking the Supervisor Development Program Course which Cpl. MW completed and benefitted from. However, on cross-examination he stated he could not recall whether it was offered prior to him having applied for the Trainer position. In addition, there was no evidence to suggest that completion of the course was a pre-requisite or a desired attribute for the position, nor was there any suggestion in A/Comm. MP's Rationale that Cpl. MW's completion of the course was a justification for his promotion.

[100] There is no dispute that Cpl. JR was qualified for promotion as he met the minimum competency requirements and advanced to the final selection stage. I also accept that Cpl. JR held a genuine belief that he was more qualified for promotion than Cpl. MW.

[101] However, it is not the Tribunal's role to step into the shoes of the SLO to conduct its own *de novo* assessment and weigh each point of qualification between candidates. Rather, the proper scope of the Tribunal's inquiry is to determine whether the RCMP's actions were a pretext for discrimination and whether the Complainants' race was a factor in the SLOs determinations.

[102] I adopt the approach taken by the Tribunal in *Turner v. Canada Border Services Agency*, 2020 CHRT 1 ("*Turner*") when considering a similar complaint alleging discrimination in a selection board promotional process:

... a Tribunal is not required to assess the complainant's qualifications and experience in absolute terms, not even in relation to other candidates. The Tribunal is not sitting as a selection board in such a case, nor is it exercising appellate jurisdiction in respect of the selection board's decision. Rather, the Tribunal is required to assess the decision-making process of the selection board in order to determine whether the complainant was adversely impacted by the decision and whether the complainant's protected characteristics or a combination thereof played a role in the selection board's decision-making process. (at para. 46)

(Emphasis added)

[103] In this case, I cannot conclude that A/Comm. MP's justification for determining that Cpl. MW was more qualified than Cpl. JR for promotion was a pretext for discrimination or that Cpl. JR's race was a factor in the selection. A/Comm. MP provided reasonable and logical evidence both in her comprehensive and contemporaneous Rationale and in her testimony which credibly explained her reasons for selection. I see no grounds for the Tribunal to disturb that selection.

(ii) The 2018 Corporal Supervisor/Investigator Position

[104] In 2018, Cpl. JR and Cst. SM both applied for the Supervisor/Investigator promotional opportunity at the Corporal rank. The incumbent in this position was responsible for supervising Unit officers on the road while conducting Operations.

[105] Insp. CM was the SLO for the competition. He received seven application packages from officers who were short-listed, including Cpl. JR and Cst. SM.

[106] Insp. CM reviewed and graded the seven applications based on a scoring matrix he created and determined that SS, a White Constable, was the best qualified applicant. The scoring matrix for Cst. SM, Cpl. JR, and Cpl. SS are reproduced below.

Competency	Cst.SM	Cpl. JR	Cpl. SS
Ability to Prepare and present Testimony in Court	5	5.5	6
Concern for Safety	4.5	7	9
Knowledge of Conflict Management Practices	7	8	6
Knowledge of [Operations] Techniques	7	8	8
Total	23.5	28.5	29
Cover Letter	4	6	7
Total	27.5	34.5	36

[107] Insp. CM testified that Cst. SM's competency examples, while previously validated, were old and outdated. His examples for "Ability to Prepare Testimony in Court" were over two decades old while the other competency examples were about a decade old.

[108] Cst. SM testified he did not provide more recent competency examples because he believed the examples would require additional validation. However, I accept Ms. Kenny's evidence (which was not disputed by the Complainants) that new examples submitted for an already validated competency did not require revalidation by the SMEs. As a result, Cst. SM could have provided more recent and relevant competency examples to bolster his application but chose not to.

[109] Insp. CM testified that when scoring the candidates he first reviewed the application packages and then reviewed the RCMP Competency Dictionary profiles. He then reviewed the competency examples in the applications and assigned them each a score out of 5 based on the criteria in the Dictionary. He then combined the scores for the two examples

provided by the candidates, resulting in a single maximum score of 10 for each competency. He also reviewed the candidates' cover letter and scored them out of 8.

[110] Insp. CM made detailed, contemporaneous notes to supplement his scoring matrix. Reproduced below are Insp. CM's notes regarding Cst. SM, Cpl. JR, and Cpl. SS' cover letter and the "Concern for Safety" competency which was a key factor in his selection.

	Cst. SM	Cpl. JR	Cpl. SS
Concern for Safety	The member demonstrates a level 2.5 in this competency. In both examples the member demonstrates that they plan to avoid risks danger and ensure safety for self and co-workers. Both their examples were essentially the same and referred to ensuring that vehicles were in good working order and had all appropriate safety equipment. While in example 1 they referred to monitoring the driving of candidates they did not clearly demonstrate risk assessment and analysis throughout the incidents.	The member shows that they are operating at a level 4/3, in so far as they demonstrate an evolving and continuous process of risk assessment during conducting of high risk investigations. The candidate also shows that they conduct contingency planning and seek out internal and external resources in order to ensure increased safety in the event of such contingencies. This member demonstrates a high degree of planning to ensure safety for members, supervisors and the public during high-risk activities and always considers the client's needs and objectives balanced against the safety of the members, suspect and the public.	The member shows that they are operating at a level 4/5, in so far as they demonstrate that they have the ability to analyse a situation and pro-actively ensure the necessary resources are in place to ensure not only his own team's safety but also the safety of other clients. Additionally, the member clearly demonstrates that he has a wider understanding of safety within the context of policy and procedures and the resources both internal and external that he can call upon to enhance safety for all. This member shows a clear understanding of the resources that are available during critical situations and takes steps to ensure that all possible information is gleaned to minimize risk in necessarily risky situations. The member then ensures that team members are familiar with the multitude of situational parameters and scenarios of action and the

	Cst. SM	Cpl. JR	Cpl. SS
			mitigating strategies for each to ensure optimal responses. The member effectively oversees all aspects of an operation and the safety of the members, public and suspect. The member demonstrated contingency planning and forethought which allowed this member to effectively address dangerous situations and bring them to a successful and peaceful conclusion.
Cover Letter	In their cover letter the candidate demonstrated that they are a strong self-motivated member who has [Operations] experience. They also demonstrated that they have experience supervising [Operations]. The member demonstrated that they look for innovative solutions to [Operations] challenges and that they have strong planning and organizing skills.	In their cover letter the candidate demonstrated that they have significant experience in [Unit Operations] as well as for other police agencies in Ontario and abroad for foreign police agencies as part of the RCMP's outreach	In their cover letter the candidate demonstrated that they are a strong self-motivated member who has [Operations] experience. They also demonstrated that they have experience supervising [Operations]. The member demonstrated that they look for innovative solutions to [Operations] challenges and that they have strong planning and organizing skills.

[111] Insp. CM prepared Rationales for Cpl. JR and Cst. SM dated June 26, 2018, which were approved by the NPU. In it he comprehensively set out the reasons why Cpl. SS was selected over them. The Rationales were consistent with his testimony and with the information contained in the application packages and included the following explanation:

In determining right fit I am looking for a candidate with experience in providing supervision and decisive leadership at the Corporal level within [Unit]. This experience is important since the Team Leader position supervises on the

road members and is asked to make critical decisions affecting public and officer safety.

Throughout his application, I determined the recommended candidate showed strong experience in all facets of supervision at the desired level. In his Application, his supervisor stated the recommended candidate has on multiple occasions and for extended periods of time acted in the Corporal role as [Unit] Team Leader/Supervisor and has experience with both operational and administrative duties. In his Covering Letter, the recommended candidate highlights his experience as a [Unit] Team Leader and demonstrated a dedication to the development and mentoring of members. For example, he described developing a Unit Performance Improvement Plan in which he derived objectives from the Unit APP to further develop his team's skills and his abilities as a supervisor.

I determined the recommended candidate showed the strongest level of mastery in Concern for Safety. In one example he demonstrated his ability to bring an extremely volatile and dangerous situation to a safe and successful conclusion. In the other example, he described how he managed a high risk tactical situation setting up contingency planning and leading his team through tactical options and possible outcomes and ensuring that internal and external resources were available to assist and respond to a myriad of possible realities. I determined he was able to clearly demonstrate strength in Concern for Safety and showed decisive leadership in this example. In his Covering Letter the recommended candidate stated that despite varying levels of risk, he is able to react quickly and effectively to make assertive decisions while displaying sound judgment, strategic thinking and successful outcomes.

Overall, the experience, knowledge and skills demonstrated in the recommended candidate's Application (including supervisor comments), Competency Resume and Covering Letter led me to determine he was the right fit for the position.

[112] When determining the best candidate for the position, Insp. CM testified he considered the current operational needs of the Unit. At the time, the Unit was involved in Operations involving terrorist targets. Insp. CM stated that Unit officers needed to be prepared to intervene if the targets became a threat to public safety that required immediate actions by the officers. Insp. CM stated he therefore considered the candidates' experience with tactical interventions when assessing their applications.

[113] Insp. CM testified that while the Unit was responsible for Operations involving dangerous targets, there were also random terrorist attacks occurring in other parts of the world. If an attack occurred near Unit members conducting Operations, including by the

target of their Operations, Insp. CM stated those officers must be prepared to intervene to protect the public notwithstanding their covert posture. Insp. CM also testified that he initiated new firearms and combat training to give Unit officers the necessary skills and confidence to address these types of situations.

[114] Insp. CM testified that from his own experience as an undercover operator, he would rather have officers intervene to protect his safety and risk his identity being exposed than officers do nothing to avoid exposing his identity. As a result, Insp. CM stated he particularly focused on the “Concern for Safety” functional competency and the candidates’ team leadership skills. He stated that Cpl. SS’s examples were “exemplary” and some of the best he had ever seen in an application package. He stated that Cpl. SS in his cover letter set out in detail his extensive experience acting in Corporal Team Leader roles and his extensive experience in both operational and administrative duties.

[115] Insp. CM stated that Cpl. SS was the strongest candidate for the “Concern for Safety” competency. He provided excellent examples, including from general duty policing where he led a team responsible for raiding a house in a hostage crisis, and first built a mock-up of the building to strategically practise how to safely enter the house.

[116] Insp. CM’s testimony regarding the importance of tactical intervention skills was corroborated by Supt. JC. Supt. JC testified that the Unit trains officers for tactical interventions because the officers need to be able to respond to emergency situations. He stated it would be detrimental to the RCMP if officers were not adequately prepared and could not respond to potentially dangerous situations impacting public safety while conducting covert Operations.

[117] The Complainants argue that given the low probability of tactical interventions being required for a Unit that engages in covert Operations, Insp. CM’s reliance on it when assessing candidate applications was unreasonable and a pretext for discrimination.

[118] However, upon considering Insp. CM’s experience as an OIC of the Unit, his personal experience as an undercover officer, his testimony as noted above, and the corroborating evidence of Supt. JC, I accept as reasonable Insp. CM’s evidence that tactical interventions

skills were relevant to Unit Operations and should be considered during the promotion competition. I cannot conclude, without more, that this was a pretext for discrimination.

[119] Additionally, on review of the candidates' application packages, I find that Insp. CM's contemporaneous notes and Rationales were reasonably supported by the information in the packages.

[120] There is no dispute that Cpl. JR and Cst. SM were both qualified for promotion as they met the minimum competency requirements and advanced to the final selection stage. I also accept that they both held a genuine belief that they were more qualified than Cpl. SS.

[121] However, as noted earlier, it is not the Tribunal's role to weigh and parse each qualification of each candidate in a *de novo* assessment: *Turner*. Given Insp. CM's reasonable explanation for Cpl. SS' selection, his detailed contemporaneous scoring matrix, detailed notes supplementing the matrix, and Rationales justifying the selection, I accept as reasonable his determination that Cpl. SS was more qualified for the position than Cpl. JR and Cst. SM.

(iii) 2019 Staff Sergeant position

[122] In 2019, Sgt. SV applied for promotion to Staff Sergeant for the Unit. This position was responsible for the management of operations of over 100 employees in the Unit. Supt. JC (the SLO for the competition) received three short-listed applications and selected PL, a White Sergeant, for the position. S/Sgt. PL had spent his last 17 years in the Unit, promoting up from the rank of Constable.

[123] Supt. JC testified that he considered skill sets that were lacking in the current Staff Sergeant position in the Unit when evaluating the short-listed applicants. He stated that the prior Staff Sergeant had significant administrative experience but not enough operational experience and this created an operations gap in the Staff Sergeant role. Supt. JC stated that to bridge this gap, the incoming Staff Sergeant would ideally have significant operations expertise to be considered the right fit for the role.

[124] Supt. JC noted that the Unit had the largest and most accountable operations program in Canada. In light of this, he stated that the Unit's Staff Sergeant should have sufficient expertise and credibility as an operations specialist both within and outside the Unit.

[125] Supt. JC further explained that as he came from outside the Unit, he did not have sufficient technical knowledge or expertise of Unit Operations and would be relying on the Staff Sergeant for that expertise. He also determined that the incumbent should have strong conflict management skills as he was aware of a history of conflict within the Unit.

[126] Based on his scoring matrix, Supt. JC scored the application packages of Sgt. SV and S/Sgt. PL as follows:

	Knowledge of Applicable Legislation (Level 3)		Knowledge of Conflict Management (Level 3)		Records and Information Management (Level 3)		Knowledge of Operations Techniques		Team Leadership		Covering Letter	TOTAL
S/Sgt. PL	3.5	4	5	3.5	3.5	3.5	4	4	5	4	5	25.5
	4		4.5		3.5		4		4.5			
Sgt. SV	3.5	4.5	3	4	4	3.5	3	3.5	4	3	3.5	22
	4.5		3.5		3.5		3.5		3.5			

[127] Supt. JC testified about the rationale behind his scoring matrix. He stated he reviewed the competency examples to assess their complexity, including the number of members involved in an operation both within the Unit and outside of it, as well as their impact and relevance to Unit Operations. He would then assign a score out of 5 for each example based on the RCMP Competency Dictionary. He would then consider the scores for the two examples and provide a global score out of 5 for each competency. He also assigned a score out of 5 for the candidates' cover letters. He also prepared a separate chart in which he tracked the recency and relevance of the examples and whether they were from inside or outside the Unit.

[128] S/Sgt. PL's total score in the matrix was 3.5 points higher than Sgt. SV's, which Supt. JC considered to be a significant difference. Supt. JC testified that S/Sgt. PL's application described a number of scenarios where he dealt with conflict without compromising Unit Operations. All of S/Sgt. PL's examples were from within Unit offices which Supt. JC considered a positive factor given the leadership role of the incumbent within the unique environment of the Unit. In contrast, Sgt. SV had only a few examples from the Unit.

[129] Supt. JC noted that S/Sgt. PL demonstrated a broad knowledge of Unit Operations in his application package. He had been acting in the role of Staff Sergeant for over 400 working days and also had significant Operations experience as he had held every position in the Unit. S/Sgt. PL had significant experience training members and international partner agencies in Operations techniques. Supt. JC testified there likely could not have been a better fit for the position than S/Sgt. PL given his unique experiences in the Unit.

[130] Supt. JC testified that Sgt. SV's examples were not comparable to those of S/Sgt. PL. They did not demonstrate an understanding of Operations techniques at the Staff Sergeant level since the type of operations conducted by Sgt. SV in the Related Unit were not the same as those conducted in the Unit. Additionally, Sgt. SV's cover letter did not include many examples of his skillsets and the examples he included were mostly not from the Unit. Supt. JC testified that these examples did not adequately demonstrate expertise in specific Unit Operations.

[131] Supt. JC prepared a Rationale for Sgt. SV dated October 30, 2019 which was approved by the NPU. In it he comprehensively set out the reasons why S/Sgt. PL was selected over Sgt. SV. The Rationale was consistent with his testimony and with the information contained in the application packages and included the following explanation:

... the [Unit] is the largest and most accountable [Operations] program in the country. As a result, it is important that the incumbent is recognized within and outside the RCMP as a subject matter expert in [Operations]. This position is responsible for the day to day coordination and management of operations for a program in excess of 100 employees.

Based on the above mentioned conditions and duties of the position, I determined that strong experience in Knowledge of Conflict Management and Knowledge of [Operations] were important criteria in right fit.

Due to the operating team environment, managing conflict effectively can help find creative solutions to international relationship issues and prevent an environment that breeds negativity, stress, and general poor employee morale. This position must manage and bring an effective conclusion to the differences between parties in a holistic manner while considering the totality of multiple issues. The ultimate objective is to improve employee well-being while meeting high operational demands, resulting in [Unit] being recognized as a unit of choice for members.

The recommended candidate demonstrated strong knowledge of conflict management skills in his Competency Resume and Covering Letter where he documented situations of addressing conflict, relevant to [Unit] in a broad and complex range of applications. For instance, he documented two situations which required him to resolve conflict as the NCO i/c of [redacted] which demonstrated a diversity of operational environments. In both examples, he was sought by the OIC to attend these sites. In one instance, documented in an example for Knowledge of Conflict Management, unit conflict and tension was high, and the previous NCO i/c had been removed from his duties.

The candidate documented how he was able to identify and address the root cause of the conflict by consulting with unit members. He described facilitating a unit meeting, answering all questions, and also meeting with individuals. In response to his analysis of the situation, he explained that he held daily briefings and debriefings, ensuring all members were included; met individuals regularly to ensure that issues and concerns were addressed; and assigned each member responsibilities within the unit and monitored same. He noted that he was able to successfully operate the unit without conflict, and that operations were not compromised.

In another instance, documented in his Covering Letter and in an example of Team Leadership, the recommended candidate described his actions as the sole NCO for [redacted] after being asked by the OIC to assist in the running of the day-to-day operations. In his Covering Letter, he explained how he dealt with conflict due to members being transferred into the unit. He explained that he encouraged open communication with all members, maintained a professional working environment and ensured that operations were not jeopardized.

In his Competency Resume, he indicated that he used his knowledge of [Operations] to gain credibility in the unit. He wrote that he demonstrated his knowledge of [Operations] by working with the team, led by example, and acquired acceptance. He concluded that when he speaks to some members from the [redacted], his leadership and the direction provided continue to be appreciated.

Knowledge of [Operations]

[Operations] is the essence of the unit. This position will be responsible for the day to day operations. Upon occasion, the candidate will be required to attend in the field and to actively participate in [Operations] and/or to provide operational direction, as well as assess the effectiveness of the teams/members. In order to conduct these tasks, the candidate must have job relevant credibility within [Unit]. This comes from an enhanced level of understanding of [Operations].

The recommended candidate demonstrated strong knowledge of [Operations] throughout his application. In his Application, his supervisor wrote that the recommended candidate “is consistently sought for advice and expertise regarding [Operations]”. In his two examples for Knowledge of [Operations], the recommended candidate documented his actions as NCO in two separate, recent, high priority National Security files. In one of his examples for Knowledge of Applicable Legislation and RCMP Policies, Procedures and Strategic Priorities, the recommended candidate documented his knowledge of case law pertaining to [Operations].

In the other, he explained how he facilitated training sessions and provided advice to members on changing policy regarding conducting [Operations]. In his Covering Letter, the recommended candidate documented his experience as acting [redacted] OIC along with his experience instructing on [Operations] training. He stated he is a subject matter expert in [Operations] and indicated he has worked every position within the unit. He explained that he has acted as the Staff Sergeant in charge of operations in excess of 435 working days between 2015-2019, has acted as the OIC for over 60 days, and has performed both roles simultaneously.

Furthermore, the recommended candidate demonstrated that he has a complete understanding and ability to apply [Operations] techniques by documenting his [Operations] contributions. He indicated numerous examples of instructing on [Operations] courses including as the lead facilitator/instructor/coordinator on approximately 40 one-week [Operations] courses, and facilitating/instructing on five Advanced [Operations] Courses for [Unit]. He also explained that he has represented Canada a total of four times during international [Operations] training.... This experience not only demonstrates to me the recommended candidate’s complete understanding of [Operations], it is also unique and hard to replicate.

Overall, the experience, knowledge and skills demonstrated in the recommended candidate’s Application (including Supervisor Comments), Competency Resume and Covering Letter led me to determine that he is the right fit for the position.

[132] In his testimony, Sgt. SV stated that the value Supt. JC placed on S/Sgt. PL's "Knowledge of Conflict Management" examples was overstated given that they both occurred in the Unit. Sgt. SV stated that his diverse experience with inter-unit operational environments should have been given more weight than S/Sgt. PL's, which almost exclusively focused on his time in the Unit.

[133] Sgt. SV disputed Supt. JC's evidence that the Staff Sergeant would be required to go out into the field and actively participate in the Unit and Sgt. SV stated he had not seen this done before. Sgt. SV stated that while it would be helpful for the Unit Staff Sergeant to have some knowledge of Operations, the Staff Sergeant would not be required to conduct Operations as they would be too busy with administrative tasks.

[134] Sgt. SV also argued that Supt. JC was biased due to his personal knowledge of S/Sgt. PL in his role as his supervisor in 2019.

[135] However, I am not persuaded that Sgt. SV's arguments demonstrate discrimination in Supt. JC's selection process.

[136] I accept as reasonable Supt. JC's preference of Unit experience over Related-Unit experience given the unique and complex nature of Unit Operations. In this regard, Sgt. SV's examples of his skillsets in the application package were largely not from the Unit. Additionally, Supt. JC's testimony that Sgt. SV's "Knowledge of Operations Techniques" examples did not comprehensively speak to the technical aspects and techniques of the Operations is also reasonable when compared with the examples provided by S/Sgt. PL.

[137] I also accept as reasonable Supt. JC's evidence on the importance of the incumbent Staff Sergeant possessing significant Unit Operations experience. His evidence is corroborated by that of Insp. VM, the current OIC of the Unit. Insp. VM testified that it is important for Unit Staff Sergeants to be trained in Operations because they assist and advise the OIC who may arrive from outside the Unit, as Supt. JC had. In addition, Supt. JC testified that, following the promotion, S/Sgt. PL went out on the road with Unit members several times, thereby highlighting the importance of having Operations experience.

[138] I also cannot conclude that Supt. JC was biased in favor of S/Sgt. PL because of his personal knowledge of S/Sgt. PL as his supervisor in 2019. There is no information in the Rationale to suggest that Supt. JC improperly relied on his personal knowledge of S/Sgt. PL when assessing the applications. I also accept Ms. Kenny's testimony that it is not uncommon for SLOs to supervise one or more candidates in a promotional process, especially when the candidates are applying from within the same unit.

[139] There is no dispute that Sgt. SV was qualified for promotion as he met the minimum competency requirements and advanced to the final selection stage. I also accept that Sgt. SV held a genuine belief that he was more qualified than S/Sgt. PL.

[140] However, on reviewing Sgt. SV and S/Sgt PL's application packages and considering witness testimony, I find that Supt. JC's Rationale was reasonably supported by the information in the packages.

[141] Additionally, as noted earlier, it is not the Tribunal's role to weigh and parse each qualification of each candidate in a *de novo* assessment: *Turner*. Supt. JC provided a reasonable explanation for S/Sgt. PL's selection which was corroborated by his contemporaneous scoring matrix, Rationale, and witness evidence. I accept as reasonable Supt. JC's determination that S/Sgt. PL was more qualified for the position than Sgt. SV and cannot conclude that his justification was a pretext for discrimination.

F. Racial comments

[142] The Complainants make allegations of systemic discrimination but do not make a specific complaint under section 10 of the *CHRA*. That section prohibits an employer from establishing or pursuing a policy or practice that deprives or tends to deprive individuals of employment opportunity on a prohibited ground of discrimination.

[143] Instead, they say that systemic discrimination within the RCMP helps explain why they were denied the promotions at issue.

[144] The RCMP has acknowledged that systemic racism exists in their organization and Ms. Huggins testified about recent efforts made by the RCMP to foster a better culture of inclusion by, for example, implementing the “Vision 150” modernization plan to promote equity and diversity.

[145] There is no dispute that the Complainants experienced and overheard offensive and racist remarks during their career in the RCMP, both inside and outside the Unit. The Complainants also testified about inappropriate racist comments made on Operations radios during their time in the Unit, which I accept.

[146] However, the evidence indicates these comments were made by Constables and not their supervisors, senior NCOs, or OICs of the Unit. Additionally, the evidence establishes that the OICs did not generally monitor the radio. A/Comm. MP and Insp. CM testified, and I accept, that they were not aware of members making offensive comments on the radio and that such comments were not brought to their attention. A/Comm. MP testified, and I accept, that she would not have tolerated such behavior had it been brought to her attention.

[147] There is also insufficient evidence to suggest that the SLOs for the promotions at issue (A/Comm. MP, Insp. CM, and Supt. JC) made or endorsed racist or other inappropriate comments or were otherwise influenced by racial or other bias during the promotion competitions.

[148] The OICs of the Unit who were made aware of inappropriate comments testified they took immediate steps to address the situation. Insp. VM testified that about a year prior to this hearing, he became aware that one of his Constables had made racist comments over the Unit’s radio to another Constable. The latter Constable also accused someone else of calling him a racist. Insp. VM stated he interviewed these Constables and conveyed there is a zero-tolerance policy for harassment and discrimination. He also testified he consulted with headquarters in Ottawa and was advised to initiate formal harassment complaints through the RCMP’s Independent Centre for Harassment Resolution. Insp. VM proceeded to file harassment complaints on behalf of these Constables, who then worked through the informal conflict management program to informally resolve the complaints.

[149] In addition, Supt. JC testified that on one occasion, Sgt. LF informed him that an inappropriate comment was made on the radio. On discussing the matter with Supt. JC, Sgt. LF agreed to address the situation and spoke with the member to express that the comment was inappropriate.

G. Promotions within the Unit

[150] The Complainants argue that the general lack of promotion of racialized members from within the Unit is suggestive of racial bias in the promotion competitions at issue.

[151] However, I find there is insufficient evidence to draw that inference. I accept the RCMP's argument that the Complainants' focus on not being promoted from within the Unit does not account for the contextual realities of the Unit.

[152] There is no dispute that many of the Unit members have spent the majority of their careers within the Unit. As a result, I accept the RCMP's evidence that there are fewer promotional opportunities in the Unit and members who seek promotions often transfer outside the Unit. For those who stay within the Unit, the promotional processes are highly competitive because of the limited number of opportunities, and it may take years before a member is promoted. This is evident from the circumstances of S/Sgt. PL who was selected over Sgt. SV in one of the promotion competitions at issue. S/Sgt. PL was an RCMP officer for over 30 years and in the Unit for almost 20 years before he was promoted to the rank of Sergeant.

H. Availability of acting opportunities

[153] The Complainants testified that acting opportunities were not fairly distributed within the Unit. Cpl. JR stated that White officers were favored over racialized officers for acting opportunities which he says is consistent with reports of favoritism in the Unit following two Managerial Reviews conducted in 2014 and 2019. Cst. SM testified that prior to a promotion opportunity being advertised, a White officer would be selected to act in that position to increase their chances for promotion. The Complainants argue that this supports an inference of racial bias in the promotion competitions at issue.

[154] However, I am unable, without more, to place much weight on comments from prior managerial reviews reports. A/Comm. MP, who was involved in conducting the 2014 Managerial Review, testified that only some patterns of comments were included in the final report. Supt. JC, who requested the 2019 Managerial Review, testified he did not request or review the underlying data including the questionnaires completed by the members.

[155] I also cannot draw an inference of discrimination from the Complainants' evidence regarding acting opportunities. The evidence shows that Cst. SM, Cpl. JR, and Sgt. SV were regularly provided acting opportunities within the Unit.

[156] Cst. SM was a full-time acting Corporal in 2007 and 2008 and had several acting Corporal and "2 i/c" (i.e. second in charge of the team) opportunities every year from 2009 to 2018.

[157] Cpl. JR, during his tenure in the Unit from 2006-2017, had over 9 years of acting experience in the Unit as a 2 i/c and acting Team Leader. For example, he was an acting Team Leader in 2009 and 2010, an acting Corporal in 2011 and 2012, a 2 i/c from 2013-2015, and an acting Corporal from October 2017 to February 2018. When he applied for the 2018 Corporal position, he was acting in the Corporal Training/Reviewer position.

[158] Similarly, Sgt. SV, during his initial three-year tenure in the Unit as Constable, acted as Corporal (Operations Coordinator/Reviewer) for about one year.

[159] There is also insufficient evidence to support the Complainants' suggestion that White officers were deliberately assigned acting positions right before an upcoming promotion competition to bolster their chance of promotion.

[160] Cst. SM testified there is about a one-month lead up time to promotional opportunities. I accept the RCMP's evidence that each of the successful candidates in the challenged promotional processes began acting well before they or others would have been aware of upcoming promotion competitions. Cpl. MW was acting in the Training/Reviewer position for 14 months prior to applying for the 2016 Corporal competition (an acting position for which Cpl. JR was ineligible since he did not have a passing JSE score at the time).

[161] Cpl. SS was in a long-term acting Corporal position prior to applying for the 2018 Corporal promotion competition. Similarly, S/Sgt. PL and the only other Sergeant in the Unit were equally sharing acting time well prior to them applying for the 2019 Staff Sergeant competition. In addition, Sgt. SV's own promotion to Unit Sergeant in 2016 when Sgt. LF was acting in that position suggests acting members were not always promoted to that position.

[162] The RCMP provided evidence, which I accept, that set out how the OICs of the Unit made efforts to support members and try to fairly distribute acting opportunities amongst Constables. For example, A/Comm. MP testified that while there was no policy to assign acting opportunities, her approach was to give as many members as possible the opportunity to act. Similarly, Supt. JC testified he sought to provide as many members as possible with acting opportunities. He stated he encouraged racialized members to be supported for acting opportunities and if they were not ready, he would seek out mentors for them to develop their skill set. Supt. JC stated he supported keeping Cpl. JR in an acting Corporal Team Leader position in the Unit and encouraged Cpl. JR to apply for future promotional opportunities. He also encouraged Sgt. SV to apply for the Officer Candidate Process ("OCP") (i.e. the process for being promoted to the Commissioned Officer ranks within the RCMP). Insp. CM testified he recommended Sgt. SV for consideration for the OCP.

[163] Sgt. SV testified he believed he was promoted to the rank of Unit Sergeant in 2016 only to "keep the seat warm" until Sgt. LF could pass his JSE score and apply for the Sergeant position. This, the Complainants say, further supports their contention of racial bias and favoritism in the Unit.

[164] However, Sgt. SV's belief is contradicted by the evidence of A/Comm. MP. A/Comm. MP testified she promoted Sgt. SV to Sergeant in 2016 because he was the best candidate in the promotion process. After the promotion, Sgt. SV's supervisor from the Related Unit asked if he could remain in the Related Unit. A/Comm. MP stated she asked Sgt. SV if he wanted to come to the Unit and he agreed to stay in the Related Unit. A/Comm. MP stated she made it clear at the outset that it was Sgt. SV's decision to move to the Unit or remain in the Related Unit. Had Sgt. SV asked to come to the Unit, A/Comm. MP stated she would

have taken the necessary steps to facilitate the move. Given A/Comm. MP's reasonable and credible evidence on this issue, I prefer it over Sgt. SV's speculation on A/Comm. MP's motives. I cannot therefore conclude that Sgt. SV's promotion to Sergeant was simply to "keep the seat warm" for another White candidate or that this supports an inference of racial bias and favoritism in the Unit.

[165] There is also insufficient evidence that racialized Unit members were denied teaching or other employment opportunities, as suggested by the Complainants, and the Complainants do not provide sufficient particulars in this regard. On review of the Complainants' promotion application packages, they set out significant opportunities provided to them.

[166] For example, between 2010 and 2018, Cpl. JR was the Lead Instructor on six Advanced Operations Courses and twelve Advanced Driving courses. He was selected to instruct operations overseas in Peru and Indonesia to law enforcement. He was also selected to complete the Supervisor Development Program in 2018.

[167] Cst. SM instructed on multiple operations courses, mentored and developed members through the Field Coach Training Program, and was the Ops-Coordinator for the Unit when required. Similarly, Sgt. SV instructed on multiple operations courses and was selected to oversee a \$500K annual budget in a Related-Unit.

I. Expert evidence on systemic racism in police organizations

[168] The Complainants tendered an expert report by Dr. Kanika Samuels-Wortley titled *Systemic and Implicit Bias within Police Institutions*.

[169] The RCMP objected to the admissibility of the report on the basis that it was not relevant and that Dr. Samuels-Wortley was not properly qualified to provide the opinions in the report.

[170] In overruling the RCMP's objection, I determined that Dr. Samuels-Wortley was properly qualified as an expert in the fields of unconscious and conscious racial bias within policing. I admitted her report into evidence and permitted her to testify.

[171] In her report, Dr. Samuels-Wortley conducted a literature review and analyzed existing research on policing, racism, and organizational bias. She stated that research suggests systemic racism and implicit biases may limit promotional opportunities for racialized police officers.

[172] She stated that underrepresentation of racialized officers at the senior ranks may be the result of implicit bias during evaluations and promotional processes. Decision-makers may favor candidates who mirror their own background or cultural norms. This may tend to exclude racial minorities and qualified racialized officers may be unfairly passed over for promotion.

[173] She also stated that reviewed studies suggest systemic inequalities may explain the lack of representation in senior roles resulting in fewer mentors and role models for racialized officers and reduced access to career development opportunities which are important for career advancement.

[174] I accept Dr. Samuels-Wortley's general conclusions that racialized police officers may face barriers in promotional opportunities arising from systemic racism and implicit bias.

[175] The issue before this Tribunal, however, is not whether racism exists within the RCMP (the RCMP has acknowledged that it does), but rather whether race was a factor in the three specific promotion competitions at issue. Dr. Samuels-Wortley's report does not assist the Tribunal on this issue in any meaningful way.

[176] The report does not address any specific matters related to the Unit, Related Units, or promotion competitions at issue. Many of the academic articles cited by Dr. Samuels-Wortley in the literature review involve small-sample qualitative studies of police organizations in jurisdictions outside of Canada. These organizations have their own promotional processes and social context and are of limited relevance to the specific issues the Tribunal must decide.

[177] The literature examining the impact of promotional processes on Canadian racialized officers also has limited application to the issues in this hearing. Dr. Samuels-Wortley cites an old 2000 article by Jain *et al* examining recruitment and promotion of racialized officers in Canadian police services. The article analyses the use of interviews, performance appraisals, and seniority when considering members for promotions. However, the NCO promotions process at issue does not rely on any of these indicators and the analysis is therefore of limited relevance.

J. Subjectivity of the NCO promotion process

[178] The Complainants argue that the subjectivity of the NCO promotion process permitted systemic racism and bias to affect decision-making at the final selection stage of the competitions at issue. They say that the SLOs for the competitions tailored their decision-making criteria and scoring matrices in an *ex-post* fashion due to the subjectivity in the process to select their preferred White candidate.

[179] There is no dispute that there is subjectivity in the NCO promotion process. SLOs have discretion to promote officers they believe are the right fit and meet the operational needs of a unit.

[180] However, subjectivity within a promotion process is not sufficient to demonstrate discrimination. As noted by the Tribunal in *Salem v. Canadian National Railway* 2008 CHRT 13, “[t]he mere fact that the respondent used subjective criteria to assess the candidates and that it may have erred in doing so does not in itself expose its decision to challenge on the grounds of discrimination” (at para. 63).

[181] While the scoring matrices were subjective, I cannot conclude they were arbitrary or used to mask discrimination, whether conscious or unconscious. The SLOs scored the Complainants and other candidates based solely on their application packages. The scoring matrices were all based on important parts of the application packages including points for the cover letter, required competencies, and supervisor comments.

[182] In addition, the SLOs process was consistent with the NPU's preferred approach. Ms. Kenny testified that, though not mandatory, the NPU prefers SLOs to use a matrix when scoring applications to increase transparency and to clearly identify how final selections are made.

[183] The absence of a predetermined scoring matrix does not assist the Complainants in proving discrimination, as they suggest. Ms. Kenny testified that there is no standard RCMP matrix, and matrices will necessarily vary for different promotional processes. I accept Ms. Kenny's evidence that a universal standardized matrix may be more detrimental than beneficial to candidate selection given the varying needs of different positions in different units at different times.

[184] Ms. Kenny testified that while no process can fully eliminate bias, there are several measures incorporated into the NCO Promotion Process to help negate the possibility of bias in decision-making. SLOs must send the Rationale to the NPU for review prior to finalizing the selection. This is to ensure that the justification for the recommended candidate was based solely on the information contained in the application package. Candidates also have an opportunity to object to the SMEs and SLOs who are listed on the promotional advertisements, which the Complainants did not do for the promotion competitions at issue. The Complainants have not presented sufficient evidence to demonstrate that these measures were inadequate to counteract the effects of potential racial bias in the promotion competitions at issue.

[185] The Complainants criticize the NPU's review for not including an assessment of the SLOs determination of "fit" and suggest this exacerbates subjectivity and bias in the promotion process. However, I accept the RCMP's evidence that the SLOs, who are typically the OIC of a unit and oversee unit operations, are best situated to identify the requirements of their own unit. As Ms. Kenny testified, it is not the role of the NPU to challenge the SLOs assessment of unit needs given the SLOs expertise in the area.

[186] In this case, there is no evidence to suggest any procedural breach of the NPU's process in the promotion competitions at issue. Additionally, the NPU's limited role in the process, without more, is insufficient to support an inference of discrimination.

[187] As noted earlier, I am satisfied that the SLOs reasonably determined what qualifications would be the right “fit” for the Unit based on their understanding of the Unit’s operational needs. They provided comprehensive and reasonable contemporaneous justifications for the officers they selected for promotion which were consistent with their testimony at the hearing. Despite the subjectivity of the NCO promotions process and the NPU’s limited role, I cannot conclude that race was a factor in the Complainants’ failure to be promoted.

K. The Strachan memo

[188] The Complainants say that the SLOs for the promotion competitions at issue failed to follow a May 2016 memo from then Commanding Officer of “O” Division Jennifer Strachan regarding the role of employment equity in the NCO Promotional Process. This, they say, is further evidence of discrimination.

[189] The relevant provision of the memo is as follows:

In order to promote equitable employment and address representation gaps in an occupational category, employment equity *must also be considered in every promotion process* wherein underrepresentation exists in one or more of the employment equity groups. Therefore, subsequent to using the merit principle first, “other qualifications” indicated in the desirable attributes could include an employment equity requirement to fulfill an existing representation gap, improve force wide representation statistics and provide promotional opportunities. The end result would be that self-identified individuals who meet all job requirements, and also belong to an employment equity group, as identified in the desirable attributes, could be given first consideration.

(Emphasis in original)

[190] I do not accept the Complainants’ suggestion that the SLOs were mandated by the memo to consider their race in the promotion competitions at issue due to the underrepresentation of racialized officers at higher ranks of the Unit. A/Comm. MP testified, and I accept, that the memo was not a “command” but simply a “green sheet” which provided division-level guidance on how to apply national policies.

[191] Additionally, the wording of the memo does not suggest mandatory action. The memo states that after using the merit principle first employment equity requirements could (not must) be included within the desirable attributes for a promotional opportunity, and that self-identified individuals of an equity seeking group who met the job requirements could (not must) be given first consideration.

[192] The SLOs testified about their understanding of the memo. They stated the first consideration is officer merit, which is assessed by grading the application packages. Where there are two candidates with equal qualifications, preference could be given to the candidate who is an equity seeking member. In this case, the SLOs testified that the successful applicants in the promotion competitions were graded higher on their merits than the Complainants, so employment equity did not factor into their promotional decisions.

[193] The testimony of the SLOs was reasonable and consistent with each other's and with a reasonable interpretation of the memo. I cannot conclude the SLOs violated an RCMP directive or that their actions were indicative of discrimination during the promotion competitions at issue.

V. Conclusion

[194] Discrimination by its nature is difficult to assess. The evidence is often circumstantial, as it is in this case. However, it is not enough that circumstantial evidence is simply consistent with an inference of discrimination. It must tend to prove the allegation of discrimination on a balance of probabilities.

[195] I accept the Complainants' evidence that they experienced and witnessed racism in the RCMP, both inside and outside the Unit. I also accept that they genuinely believed they were more qualified than the promoted candidates and their race was a factor in the promotion competitions. Additionally, I accept Dr. Samuels-Wortley's expert evidence that systemic racism and implicit bias may limit promotional opportunities for racialized police officers.

[196] While these factors may be consistent with an inference of discrimination, they do not prove the allegations because the most critical evidence flows from the promotion competitions themselves. As noted earlier, on review of the candidates' application packages, I find that the SLOs contemporaneous notes, scoring matrices, Rationales, and testimony were reasonably supported by the information in the packages. I also find that the SLOs explanations for their selections were reasonable and I cannot conclude they were a pretext for discrimination. Further, I cannot conclude on the evidence before me that acting or other opportunities were withheld from the Complainants because of their race or that this negatively impacted their chance of promotion.

VI. Decision and Order

[197] The Complaints are dismissed.

Signed by

Paul Singh
Tribunal Member

Ottawa, Ontario
October 22, 2024

Canadian Human Rights Tribunal

Parties of Record

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

Style of Cause: Cst. SM, Sgt. SV and Cpl. JR v. Royal Canadian Mounted Police

Dates of Hearing: November 14 to December 5, 2023 (15 days)

Written closing submissions completed: March 15, 2024

Decision of the Tribunal Dated: October 22, 2024

Appearances:

Malini Vijaykumar and Maya Fernandez, for the Complainants

Kathryn Hucal and Jennifer L. Caruso, for the Respondent