Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 31
Date: April 23, 2025
File No.: HR-DP-3056-24

Between:

C.D.

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Armed Forces

Respondent

Ruling

Member: Jo-Anne Pickel

Contents

I. OVERVIEW

[1] This ruling addresses the request by the Canadian Armed Forces (CAF), the Respondent, to dismiss all or part of this complaint or, alternatively, to strike portions of the Statement of Particulars (SOP) file by C.D., the Complainant.

[2] The Complainant is a transgender woman who worked for the CAF. In October 2020, she filed a complaint with the Canadian Human Rights Commission (the "Commission") alleging that the Respondent harassed her and discriminated against her contrary to the *Canadian Human Rights Act,* R.S.C., 1985, c. H-6 (CHRA). In addition to filing a complaint with the Tribunal, the Complainant filed a claim to receive financial compensation under the Final Settlement Agreement (FSA) arrived at in class action proceedings filed against the Government of Canada – Federal Court docket (nos. T-2111-16 and T-460-17). The class actions were filed by members of the CAF and public employees who had allegedly experienced sexual misconduct in connection with their military service and/or employment with the Department of National Defence or another government agency related to the CAF.

[3] The Respondent raised two objections with respect to the complaint. First, the Respondent argued that all of the allegations of discrimination and harassment set out in the complaint are barred by the full and final release provision contained in the FSA, whether the incidents occurred before the approval of the FSA or after. In the alternative, the Respondent took the position that the allegations in the Complainant's SOP that post-date the filing of her complaint with the Commission fall outside the scope of her complaint. Specifically, the Respondent argued that any allegations of discrimination or harassment related to the Complainant's transfer to the Esquimalt Transition Unit due to her medical limitations around November 2021, and subsequent events, fall outside the scope of the complaint. I address these objections below. Even though the Respondent raised its objections in a letter following a case management conference call I held with the parties, I treat them here as a motion to dismiss all or part of the complaint or to strike portions of the Complainant's SOP.

II. DECISION

[4] The Respondent's motion is allowed in part. The following sets of allegations do not properly form part of the complaint and are struck from the Complainant's SOP:

a) All allegations of discrimination or harassment based on gender identity or expression in respect of events that occurred on or before the date that the FSA was approved (November 25, 2019); and

b) All allegations of discrimination or harassment that relate to the Complainant's transfer to the Esquimalt Transit Unit around November 2021 and all subsequent allegations. That said, the Complainant will be permitted to rely on evidence from the period following the filing of her complaint to argue that she continued to experience the ongoing effects of previous alleged discrimination or harassment that falls within the scope of her complaint. However, this evidence would relate exclusively to the issue of the appropriate remedy if the Complainant substantiates the allegations of discrimination or harassment that properly form part of the complaint before me.

III. ISSUES

[5] This ruling determines the two following issues:

a) In light of her claim under the FSA, would it be an abuse of process to permit the Complainant to proceed with any or all of the allegations of discrimination and harassment contained in her complaint?

b) Do the discrimination and harassment allegations that the Complainant included in her SOP with respect to her transfer to the Esquimalt Transition Unit and subsequent events fall outside the scope of the complaint that is before me?

IV. ANALYSIS

A. In light of her claim under the FSA, would it be an abuse of process for the Complainant to proceed with any or all allegations contained in her complaint?

[6] Only in part. It would only be an abuse of process to permit the Complainant to proceed with allegations that were settled in the FSA and thus subject to the release provision included in the FSA. Specifically, it would be an abuse of process to permit the Complainant to litigate her allegations regarding incidents that occurred up to and including the date on which the FSA was approved (November 25, 2019).

(i) Class action proceedings by members of the CAF and others

[7] In 2016 and 2017, several former members of the CAF initiated class action lawsuits against the Government of Canada (Heyder and Beattie class actions). The lawsuits alleged sexual harassment, sexual assault or discrimination based on sex, gender, gender identity or sexual orientation in connection with the plaintiffs' military service and/or employment with the Department of National Defence or another government agency related to the CAF. The plaintiffs to the Heyder and Beattie class actions entered into the FSA as a settlement of those class actions.

[8] On November 25, 2019, the Federal Court certified the lawsuits as class proceedings and approved the FSA. Among other things, the Government of Canada agreed to provide financial compensation to certain persons who fall within the class that was certified by the Federal Court for the purposes of the class proceedings (the "Class Members"). Any Class Member, as defined in the FSA (see below), could seek financial compensation under the FSA by filing a claim through the procedures provided for under the FSA.

(ii) Relevant FSA provisions

[9] Section 4.01 of the FSA defines CAF Class Members as:

> All current or former CAF Members who experienced Sexual Misconduct up to and including November 25, 2019, who have not opted out of the Heyder or Beattie Class Actions. [emphasis added]

[10] The FSA defined "Sexual Misconduct" as follows:

> "Sexual Misconduct" means the following, in Connection with Military Service for the CAF Class and in Connection with Employment for the DND/SNPF Class:
>
> i. sexual harassment;
> ii. sexual assault; and/or
> iii. discrimination on the grounds of sex, gender, gender identity or sexual orientation.

[11] It is not disputed by the parties that the Complainant fell within the definition of CAF Class Member as her allegations of discrimination based on gender identity or expression fall within the definition of "Sexual Misconduct" in the FSA.

[12] The Complainant had the option of opting out of the class actions and FSA. However, she chose not to do so. It is not disputed that she filed claims for financial compensation under the FSA process and received compensation under that process based on some of the allegations of discrimination and harassment contained in her complaint.

[13] Section 13 of the FSA sets out a full and final release as well as limitations on further litigation. Section 13.01 states in its relevant part as follows:

> Upon approval by the Court of this FSA, the Plaintiffs and Class Counsel agree that the actions and the claims of the Class Members and the Class as a whole, are discontinued against Canada, without costs and with prejudice and such discontinuance shall be a defence and absolute bar to any subsequent action against Canada in respect of any of the claims or any aspect of the claims made in the Class Actions and relating to the subject matter hereof, and are released against the Releasees, and particularly the Releasor(s) fully, finally and forever release and discharge the Releasees, from any and all Legal Proceedings… respect to or in relation to any aspect of the Class Actions and this release includes any such claim made or that could have been made in any proceeding including the Class Actions whether

> asserted directly by the Releasor(s) or by any other person, group or legal entity on behalf of or as representative for the Releasor(s). [emphasis added].

[14] Section 13.01 goes on to set out certain exceptions to the release for certain employees. However, these exceptions are irrelevant to this matter as they do not apply to the Complainant.

(iii) Applicable legal rules regarding abuse of process

[15] Rule 10 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021* (SOR/2021-137) empowers the Tribunal to make any order that it considers necessary to prevent an abuse of process. The doctrine of abuse of process is one of the common law doctrines that seeks to protect the principles of finality, fairness and the integrity of the administration of justice (*British Columbia (Workers' Compensation Board) v. Figliola,* 2011 SCC 52, at para 31; see also for example *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, paras 34–36).

[16] Proceeding with a human rights complaint containing allegations that were subject to a settlement and a full and final release may constitute an abuse of the Tribunal's process. The reason for this relates to the principles of finality and judicial economy. When two parties agree to settle a legal dispute, the principle of finality demands that the settlement be given effect. The principles of finality and judicial economy prevents parties from litigating settled matters unless there are compelling reasons to allow such litigation. Most litigation ends in settlements, and almost all settlements include a provision by which a complainant fully releases the respondent from future claims relating to the subject matter of the settlement. To be effective, settlements must be final. Otherwise, parties would have no incentive to enter into settlements to end litigation. It is for this reason that it would be an abuse of process to proceed with a complaint whose subject matter is covered by a settlement and release, unless there are compelling reasons to set them aside (See *Nolan v. Royal Ottawa Health Care Group*, 2014 HRTO 1604, at para 43; *Cawson v. Air Canada*, 2015 CHRT 17 at para 25).

[17] The corollary to these principles is that it is <u>not</u> an abuse of process to permit a complainant to proceed with allegations which do <u>not</u> fall within the parameters of the

settlement and release agreed to by the parties. I will return to this issue when I address the Respondent's position below.

[18] The general principles of contract law are to be applied in the interpretation of settlements and releases. Contractual interpretation requires decision-makers to give the words of a contract their ordinary and grammatical meaning, in a way that is consistent with the surrounding circumstances known to the parties at the time of contract formation (see *Corner Brook (City) v. Bailey*, [2021] 2 SCR 540 at paras 21 and 35).

(iv) Application of the above principles to this case

[19] I agree with the Respondent that it would be an abuse of process to permit the Complainant to proceed with the allegations contained in her complaint and SOP that were settled under the FSA. The FSA's release provision applies to any claims, or any aspect of the claims, relating to the subject matter of the Heyder and Beattie class actions. The FSA applies to allegations of Sexual Misconduct as that term is defined in the agreement. It is clear from the definition of the CAF class in the FSA that the Sexual Misconduct to which the FSA applies is Sexual Misconduct that occurred during the period up to and including November 25, 2019, the date on which the FSA was approved.

[20] The parties each made arguments about the interpretation of the FSA that are not supported by the proper interpretation of the text of the settlement.

[21] First, the Respondent argued before me that the release provision in the FSA applies not only to incidents that predate the approval of the FSA, but also to any complaint of harassment based on gender identity or expression and any adverse differential treatment in connection with a claimant's military service. In other words, the Respondent argued that the release applies not only to events that occurred prior to the date the FSA was approved but also to any allegations relating to events that post-date the FSA. I cannot accept this argument. There is nothing in the text of the FSA or its surrounding circumstances that would support such an interpretation. Such an interpretation would in effect immunize the Respondent from any future allegations of Sexual Misconduct relating to a claimant's military service until the end of their career. If the parties to the FSA had intended this kind of broad

and all-encompassing release from liability, they would have said so in clear and unambiguous terms. However, they did not.

[22] The interpretation of the FSA's release provision argued for by the Respondent would in effect permit the parties to contract out of the application of human rights legislation in relation to future incidents of discrimination or harassment. It is well accepted that such contracting out of human rights legislation is not permitted under the law (*Ontario Human Rights Commission v. Etobicoke*, [1982] 1 S.C.R. 202 at 213–214; see also *Chow v. Mobil Oil Canada*, 1999 ABQB 1026, at paras 57–67).

[23] Overall, the Respondent has pointed to nothing in the FSA that would suggest that the release applies to any alleged incidents of Sexual Misconduct that occurred after November 25, 2019. This is the case even if such incidents are inextricably connected to incidents that occurred on or before November 25, 2019.

[24] Meanwhile, the Complainant also advanced arguments that are not supported by the language of the FSA or its release. She argued that she should not be bound by the release because part of the consideration for Class Members to accept the settlement was an implied obligation on the part of the Respondent to prevent further sexual misconduct. I do not accept this argument for reasons similar to those described in the previous paragraph. As with the Respondent's argument, there is nothing in the release or the FSA to support the Complainant's argument that she was not bound by the release if the Respondent failed to prevent further alleged Sexual Misconduct from occurring after the approval of the FSA. If the parties had intended for this to be the case, they would clearly have specified such a limitation on the release in the FSA. However, they did not. There is also no evidence on which to infer that the parties intended there to be such an implied limitation to the application of the FSA's release provision.

[25] I am not persuaded by the other arguments presented by the Complainant for why it would not be an abuse of process to permit her to litigate allegations that were settled by the FSA. First, I do not agree with the Complainant that it is sufficient for her to agree to carve out the sum she received under the FSA from any remedy she might receive from this Tribunal. The abuse of process in this case does not simply relate to a potential double

recovery by the Complainant if she were permitted to litigate allegations covered by the settlement. The abuse of process also arises from the fact that the Respondent would have to expend resources defending itself against allegations that have already been settled. Moreover, the Tribunal would have to expend limited public resources to hear and decide allegations that have already been settled and subject to a full and final release that precludes re-litigation.

[26] Second, I am not persuaded by the Complainant's argument that she should be allowed to pursue allegations covered by the FSA based on what she believes the release language likely would have been if the CAF had made certain policy changes before the FSA was approved. Specifically, the Complainant argued that she should be allowed to proceed with the allegations covered by the FSA because the CAF's policy on such complaints changed after the approval of the FSA. She believes that, if the policy change had happened prior to the approval of the FSA, the release provision likely would have permitted CAF members to proceed with complaints under the CHRA. I cannot accept this argument. As noted above, the general principles of contractual interpretation apply to the interpretation of releases. Therefore, the language I must interpret is the language that is actually set out in the actual release. It is not the language that one party believes likely would have been included in the release if the policy context had been different at the time the release was agreed to and approved.

[27] As noted above, the Complainant could have opted out of the class actions and the FSA if she wished to pursue her allegations of Sexual Misconduct that were covered by them. She chose not to do so. In my view, allowing the Complainant to relitigate the settled allegations would provide a disincentive for the Respondent to enter into settlements like the FSA in the future.

[28] For the above reasons, it would be an abuse of process to permit the Complainant to proceed with the allegations contained in her complaint regarding events that occurred on or before November 25, 2019.

[29] The Tribunal may, at times, permit testimony about events that do not form part of the complaint to put the allegations which are properly before the Tribunal into context.

However, I do not consider it necessary to hear evidence regarding any events that occurred on or before November 25, 2019, to understand the context to the post-November 25, 2019, allegations in this case.

[30] As a final point, I note that the parties spent a good deal of time providing submissions on whether the Respondent's position before the Tribunal contradicted the one it took before the Commission. In my view, I do not need to address the above issues as it is clear from the FSA itself that the only allegations covered by the release are those regarding incidents of Sexual Misconduct that occurred on or before November 25, 2019. This is the case regardless of whether there existed a contradiction in the position taken by the Respondent before the Tribunal as compared to the position it took before the Commission.

B. Do some or all of the allegations that post-date the filing of the complaint fall outside the scope of the complaint before me?

[31] Yes. The allegations of discrimination or harassment contained in the Complainant's SOP regarding her transfer to the Esquimalt Transition Unit and subsequent events fall outside the scope of the complaint that is before me.

(i) Legal framework

[32] The Tribunal's role is to inquire into complaints referred to it by the Commission (see sections 40, 44 and 49 of the CHRA). The Tribunal can amend, clarify and determine the scope of a complaint to determine the real questions in controversy between the parties. However, it will only do so if such an amendment has a sufficient nexus to the original complaint and does not cause prejudice to the other parties.

[33] When a party includes allegations of discrimination in their SOP that were not raised in their complaint, the Tribunal must consider whether there is a sufficient nexus between the new allegations and the allegations giving rise to the original complaint. The Tribunal may permit a complainant to add new allegations that form part of the same factual continuum as the allegations contained in the complaint (see *Canada (Attorney General) v. Parent*, 2006 FC 1313; *Richards v. Correctional Service Canada*, 2025 CHRT 5, para 36

["*Richards*"]). However, amendments cannot introduce a substantially new complaint not considered by the Commission, as this would bypass the Commission referral process set out in the Act (*Richards* at para 10).

[34] In determining the scope of a complaint, the Tribunal may consult, among other things, the Commission's investigation report, the letters sent by the Commission to the Chairperson and the parties, the original complaint and any administrative forms (*Levasseur v. Canada Post Corporation,* 2021 CHRT 32 ["*Levasseur*"] at para 17).

[35] The same principles apply whether the Tribunal is ruling on the scope of a complaint or addressing a motion to strike allegations from a complaint or an SOP (*Levasseur* at para 7).

(ii) Allegations contained in the complaint versus the SOP

[36] The Complainant filed her complaint with the Commission in October 2020. The substance of her complaint centers on the alleged discrimination and harassment she experienced when she was posted on the HMCS Winnipeg at CFB Esquimalt. It includes alleged incidents occurring during an approximately 15-month period from January 14, 2019, until the last date of alleged discrimination in her complaint which she listed as occurring on April 13, 2020. The substance of the complaint relates to allegations that the Complainant was persistently misgendered and ostracized by her supervisors and colleagues and that she was subjected to harassing or discriminatory comments from her supervisors. She also alleges that she was treated differently based on her gender identity and/or expression, for example, with respect to bunking accommodations, the assignment of leadership roles and the evaluation of her performance.

[37] By contrast, the Complainant's SOP spans a period of over five years, from January 2019 to the date of her medical discharge in April 2024. In it, she added disability as a ground of alleged discrimination. In her SOP, the Complainant included allegations relating to her being placed on medical limitations (MELs) for anxiety and depression. The Complainant was eventually transferred to the Esquimalt Transition Unit in 2021 and medically discharged in 2024 for allegedly not meeting the Universality of Service requirement

because of her MELs. In her SOP, the Complainant made a number of wide-ranging allegations about her treatment in the Esquimalt Transition Unit, including the following:

- that she was poorly supported in that unit;
- that she was not provided information about her new job description or expected duties;
- that she was not allowed to attend career advancing coursework when her MELs did not preclude her from doing so;
- that she was not given her mandated annual performance reviews;
- that the Respondent failed to facilitate her return to regular duties, even when her MELs were changed to return her to full-time work status.

[38] The Complainant alleged that all of the above affected her annual points rankings on the Continuous Merit List which in turn affected her career progression up to the point that she was medically released.

(iii) Parties' submissions

[39] The Respondent argued that it was prejudicial for the Complainant to attempt to expand her complaint to include a different posting and a temporal period that increased from 15 months to five years. In response, the Complainant argued that she had discussed her allegations of ongoing discrimination with the Commission's Human Rights Officer (HRO) who was assigned to her complaint. Counsel for the Complainant also argued that the Complainant expressly pleaded issues arising from further incidents through the end of 2022 in a Reply she filed with the Commission. Based on this, counsel for the Complainant argued that the Respondent has been on notice for years that the scope of the complaint included allegations relating to the Complainant's transfer to the Esquimalt Transition Unit.

[40] Meanwhile, there was absolutely no mention of any allegations of ongoing (post-complaint) discrimination in the Commissioner's decision, the document that referred the complaint to the Tribunal. The decision centers entirely on whether the allegations contained in the Complainant's complaint were covered by the FSA and release or not.

[41] Without taking a position on the issue, Commission counsel noted that the Commissioner did not limit the scope of the complaint in her decision letter. Commission counsel also noted that the Commissioner clearly stated in her decision that she had reviewed the complaint, the investigation report and the submissions of the parties in response to that report. Based on this, Commission counsel argued that the allegations regarding the Complainant's transfer to the Esquimalt Transition Unit and subsequent events were in front of the Commissioner at the time she made her referral to the Tribunal. Commission counsel noted that there is no mention that the Commissioner dismissed post-complaint allegations that were summarized in the investigation report.

[42] The difficulty I have with these arguments from the Commission is that, in her report, the HRO made no mention of the Complainant having raised any allegations of ongoing discrimination or harassment regarding her transfer to the Esquimalt Transition Unit or any subsequent events. The report addresses the Complainant's allegations of discrimination based on her gender identity and expression which the HRO said spanned approximately two years from 2019 to 2021 (at para 62). The HRO specifically analyzed three sets of allegations that occurred between 2019 and November 2021 (at paras 29–50). The last incident the HRO analyzed was an incident in or around November 9, 2021, in which the Complainant's then-supervisor made an allegedly harassing or discriminatory comment toward her.

[43] There are only three paragraphs of the HRO's report that make any mention of events that post-date the filing of the complaint. At paragraph 23 of her report, the HRO noted that the Complainant stated in her Reply that she was in the process of being medically released from the CAF as of 2023 and that she subsequently informed the HRO that she was medically released in April 2024. Similarly, in paragraph 47, the HRO noted that the Complainant told her that she left the HMCS Winnipeg because the Respondent was not resolving any of the allegations she had raised and that this led to a loss of employment

opportunities and her eventual medical release. Finally, in paragraph 64 of the investigation report, the HRO indicated that the Complainant suffered a deterioration of her mental health. She noted once again that the Complainant left her position on the HMCS Winnipeg due to a lack of resolution from the Respondent. The HRO also noted that the Complainant had subsequently lost employment opportunities and was medically released by the Respondent. Based on this, the HRO stated that there was a reasonable basis in the evidence that the alleged harassing conduct could have created a poisoned work environment or could have had adverse consequences on the Complainant.

[44] However, there is no mention anywhere in these paragraphs or the rest of the investigation report of any actual allegations of discrimination or harassment regarding the Complainant's transfer to the Esquimalt Transition Unit or any subsequent events of the kind that she included in her SOP (summarized in paragraph 37 above).

(iv) Tribunal's March 4, 2025, direction

[45] After having reviewed the parties' submissions, I was faced with an apparent disconnect between the Complainant's and Commission's arguments and the content of the Commission's investigative report. On the one hand, counsel for the Complainant asserted that the Complainant had raised with the Commission her allegations of ongoing discrimination regarding her transfer to the Esquimalt Transition Unit and subsequent events. Similarly, the Commission took the position that these allegations of ongoing discrimination were before the Commissioner when she referred the complaint to the Tribunal. On the other hand, neither the Commissioner's decision nor the HRO's investigative report mentioned any actual allegations of discrimination or harassment regarding the Complainant's transfer to the Esquimalt Transition Unit and subsequent events up to and including her medical release.

[46] Faced with this disconnect, I asked the Complainant to file a copy of her Reply and any other communications in which she allegedly raised her allegations of ongoing discrimination regarding her assignment to Esquimalt Transition Unit and subsequent events. I also provided the Respondent with an opportunity to file a copy of any materials it

had filed in response to any such allegations. In addition, I provided all parties a chance to make submissions as to the relevance, if any, of these additional materials to the scope issue that is before me.

(v) Parties' responses to my direction

[47] In response to my direction, the Complainant filed a copy of the Reply to the Respondent's Response which she had filed with the Commission. Counsel for the Complainant also filed a copy of the submissions she made to the Commission with respect to the application of subsection 41(1)(a) of the CHRA. That subsection provides the Commission with the power to not deal with a complaint if the alleged victim ought to exhaust grievance or review procedures.

[48] Meanwhile, the Commission disclosed various emails sent to it by the Complainant. However, it argued that only the HRO's investigation report, the parties' submissions on the report and the Commissioner's Record of Decision are relevant to the Tribunal's determination of the scope issue. Commission counsel made it clear that the Commissioner would not have had before her the Respondent's Response to the complaint or the Complainant's Reply or any other correspondence sent by the Complainant when she referred the complaint to the Tribunal. Commission counsel made it clear that the Commissioner would only have had before her the summary of these documents that is included in the HRO's investigation report.

[49] Finally, the Respondent made a number of arguments in response to my directions. Among other things, the Respondent argued that it should be able to rely on the clear timeframe set out in the initial complaint. It argued that new allegations added by a complainant in its communications with the Commission cannot be accepted as *de facto* amendments to the complaint. Otherwise, respondents would be left vulnerable to an ever-growing list of allegations added through a complainant's correspondence with the Commission.

(vi) Determination of scope issue

[50] Based on the materials filed by the parties in response to my March 4, 2025, direction, I see no basis for the Commission's argument, made in its initial submissions, that the Commissioner had the Complainant's allegations of discrimination regarding her transfer to the Esquimalt Transition Unit and subsequent events before her at the time she referred the complaint to the Tribunal. As noted above, neither the Commissioner's decision nor the HRO's investigation report refers to any allegations of discrimination or harassment regarding the Complainant's transfer to the Esquimalt Transition Unit or any allegations of discrimination and harassment regarding subsequent events.

[51] What the report does refer to is the Complainant's allegation that she continued to suffer the ongoing effects of the previous discrimination she had alleged in the complaint that she filed with the Commission. Specifically, the HRO stated that the Complainant's mental health had deteriorated due to the discrimination she alleged in her complaint. The HRO also stated that the Complainant alleged that she lost employment opportunities and that she was eventually medically discharged. These allegations of ongoing effects differ significantly from the allegations that I have summarized, in paragraph 37 above, of ongoing discrimination contained in the Complainant's SOP regarding her transfer to the Esquimalt Transition Unit up to and including her medical release.

[52] Based on the above, any allegations regarding ongoing discrimination or harassment regarding the Complainant's transfer to the Esquimalt Transition Unit and subsequent events up to and including her medical release do not properly form part of the complaint that is before me. In my view, these new wide-ranging allegations relating to the Complainant's MELs and their effects on her career progression do not have a sufficient nexus to the substance of the complaint which related to discrimination and harassment based on the Complainant's gender identity and expression. These allegations amount to a new complaint that, if they are allegations of discrimination, would primarily engage a different ground of discrimination and do not form part of the same factual continuum as the allegations contained in the complaint. Therefore, I find that they amount to a separate

complaint that should properly be assessed by the Commission under the applicable CHRA provisions.

[53] As noted above, the HRO's report does analyze the Complainant's allegation regarding a comment made to her by her supervisor on or around November 9, 2021, which was after the date on which the Complainant filed her complaint. In my view, that incident properly falls within the scope of the complaint as it was clearly part of the incidents analyzed by the Commission. In addition, it falls within the same factual continuum as the allegations in the complaint as it relates to an allegedly harassing comment based on the Complainant's gender identity.

[54] Notwithstanding the above, the Complainant will be permitted to rely on evidence from the period following the filing of her complaint to argue that she continued to experience the ongoing effects of previous alleged discrimination or harassment that falls within the scope of her complaint. However, such evidence would relate exclusively to the issue of the appropriate remedy if the Complainant substantiates the allegations of discrimination or harassment that are properly before me.

C. Crown Liability and Proceedings Act

[55] The Respondent asserted its intention to rely upon section 9 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, since the Complainant is receiving disability benefits from Veterans Affairs Canada which arose from her service with the CAF. That provision provides that no proceedings lie against the Crown with respect to a claim "if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of death, injury, damage or loss in respect of which the claim is made". The Respondent has not expanded upon how this provision applies to this proceeding, if at all. It is not obvious from the *Crown Liability and Proceedings Act* that it would apply to bar this proceeding. This is especially the case as it is well established that the CHRA is quasi-constitutional legislation, and any exemption from its provisions must be clearly stated (*Canada (House of Commons) v. Vaid,* 2005 SCC 30, at para 81). In my view, the application, if any, of the *Crown Liability and*

Proceedings Act to the issues in this case can best be addressed as part of submissions at a later stage of the proceeding, if necessary.

V. RULING

[56] The Respondent's objections to the scope of the complaint are accepted in part. Specifically, I find as follows:

a) In light of her claim under the FSA, it would be an abuse of process to permit the Complainant to proceed with any allegations of discrimination or harassment based on gender identity or expression regarding events that occurred on or before November 25, 2019;

b) All allegations of discrimination or harassment in the Complainant's SOP regarding her transfer to the Esquimalt Transition Unit and all subsequent allegations of discrimination or harassment related to subsequent events up to and including the Complainant's medical discharge fall outside the scope of the complaint that is before me;

c) The complaint that is before me properly encompasses the Complainant's allegations of discrimination and harassment regarding events that occurred between November 25, 2019, and the last incident considered by the Commission that occurred prior to the Complainant's assignment to the Esquimalt Transition Unit. That incident involved a comment made to the Complainant by her supervisor on or around November 9, 2021; and

d) As noted above, the Complainant may rely on evidence from the period following November 9, 2021, to argue that she continued to experience the ongoing effects

of previous alleged discrimination or harassment. However, such evidence would relate exclusively to the issue of the appropriate remedy if the Complainant substantiates the allegations of discrimination or harassment that properly form part of this complaint.

Signed by

Jo-Anne Pickel
Tribunal Member

Ottawa, Province
April 23, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3056-24

Style of Cause: C.D. v. Canadian Armed Forces

Ruling of the Tribunal Dated: April 23, 2025

Motion dealt with in writing without appearance of parties

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