

CANADA / JUDGMENT

SM v. Canada (Attorney General)

2025 FC 1893

COURT

Federal Court

DECIDED

27 November 2025

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SM v. Canada (Attorney General)

Court (s) Database

Federal Court Decisions

Date

2025-11-27

Neutral citation

2025 FC 1893

File numbers

T-3248-24

Decision Content

Date: 20251127

Docket: T-3248-24

Citation: 2025 FC 1893

Toronto, Ontario, November 27, 2025

PRESENT: Madam Justice Go

BETWEEN:

SM, SV, and JR

Applicants

and

ATTORNEY GENERAL OF CANADA and

CANADIAN HUMAN RIGHTS COMMISSION

Respondents

JUDGMENT AND REASONS

I. Overview [1] Constable SM, Sergeant SV, and Corporal JR [Applicants] are police officers employed by the Royal Canadian Mounted Police [RCMP]. Two of the Applicants are current members of the RCMP's Special "O" unit [Unit] while one is a former member of the Unit. The Applicants all identify as visible minorities and allege discrimination on the basis of race in the promotion process of the RCMP within the Unit.

- [2] The Applicants individually filed complaints against the RCMP to the Canadian Human Rights Commission [Commission] under the Canadian Human Rights Act, RSC 1985, c H-6 [CHRA] after they were denied certain promotions. Further to its investigation, the Commission referred the Applicants' complaints to be heard by the Canadian Human Rights Tribunal [Tribunal].
- [3] After a 15-day hearing, the Tribunal dismissed the Applicants' complaints, finding that the Applicants did not prove that their race was a factor in the promotion competitions at issue [Decision]. The Applicants seek judicial review of the Decision. The Commission as well as the Attorney General of Canada [AGC] are the Respondents. The Commission takes an adverse position to the AGC, aligning their argument with the Applicants' position.
- [4] In granting the judicial review, I agree with the Applicants that the Tribunal erred by misapplying the long-established test for proving prima facie discrimination pursuant to the CHRA. In so doing it reversed the onus of proof between the Applicants and the RCMP and imposed a higher evidentiary burden of proof on the Applicants to establish their prima facie case than required by the case law.
- [5] In addition, I find the Tribunal committed reviewable errors in its assessment of the evidence. Specifically, I find the Tribunal failed to meaningfully engage with the Applicants' evidence including the expert evidence on systemic discrimination as well as statistical evidence about the underrepresentation of racialized individuals in the Unit's promotion process, and failed to consider evidence that contradicted the Tribunal's finding with respect to the application of employment equity requirement in the RCMP's promotion process. Cumulatively, the Tribunal's errors undermine its justification and render the Decision unreasonable.

II. Background A. The Unit and its Promotion Process [6] The Unit is a covert surveillance unit. All three Applicants worked in the Unit's office located in the Greater Toronto Area [GTA] – one of the most diverse regions in Canada – during the relevant period. The Unit also has an Ottawa office. At the time of the Tribunal hearing, the Unit in the GTA is comprised of, in order of rank and supervisory status: one Inspector in charge of the Unit as the Officer-In-Charge [OIC], one Staff Sergeant, three Sergeants, 10 Corporals and 74 Constables. The Constables are supervised by

Corporals in a Team Leader position. The Sergeants supervise the Corporals and oversee Unit operations.

- [7] Officers who hold the Constable [Cst.] rank may apply to the higher ranks of Non-Commissioned Officer [NCO], including Corporal [Cpl.], Sergeant [Sgt.], Staff Sergeant [S/Sgt.], Staff Sergeant Major, Sergeant Major, and Corps Sergeant Major. The promotion process for NCO roles is governed by the RCMP's Career Management Manual [CMM]. The National Promotions Unit [NPU] is responsible for administering all NCO promotions across the RCMP. The NPU acts as a screening body and reviews all selections made regarding NCO promotions.
- [8] Promotional opportunities are published on the RCMP Infoweb (an internal intranet system) with key information about the position including: the required competencies, the names of Subject Matter Experts [SMEs] who will validate competency examples; the name of the Selecting Line Officer [SLO] who will select the candidate for promotion; and any additional criteria that must be met.
- [9] To apply for a NCO promotion, the candidate must first pass the Job Simulation Exercise [JSE] test and meet the minimum years of service for the specific rank. Then, the candidate needs to submit an application package to the NPU consisting of: (i) an application form containing their background information and a confirmation of their current supervisor's support for the promotion; (ii) a "competency resume" which contains two examples of the functional competency required; and (iii) a covering letter explaining how the candidate's experience and skill set is relevant to the promotional opportunity.
- [10] The NPU screens the package to ensure completion, and if it is complete, the NPU sends it to a validation committee for competency validation, whereby two SMEs review the candidate's competency examples to determine whether the examples meet the minimum requirements set out in the job advertisement. If the SMEs answer in the affirmative, the candidate is deemed validated and moves to the final selection stage. A maximum of seven candidates can advance to this stage.
- [11] At the final selection stage, the SLO selects the successful candidate based on the application packages alone, meaning the selection does not involve any interviews or consideration of performance documents. The SLO has discretion to use their own scoring matrix when reviewing application packages. The SLO chooses the candidate who is the right "fit" for the position using their own scoring matrix. According to the CMM, "fit" is defined as "an appropriate combination of qualifications and relevant characteristics for the position being staffed after consideration of the identified job requirements and desirable attributes, if applicable, together with the operational and organizational needs of the detachment or unit and/or the RCMP." The right "fit" determination is a key concept in this matter and will be further discussed in the analysis below.

- [12] After selecting the successful candidate, the SLO prepares a Line Officer Recommendation Rationale [Rationale] for the unsuccessful candidates to explain why the recommended candidate was chosen for the position. 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 NPU reviews the Rationale for selection and verifies whether there is sufficient information contained in the Rationale to explain the SLO's selection and whether the information in the Rationale is expressly contained in the application packages.
- [13] Candidates may object to the SMEs or the SLOs participating in a process. The NPU assesses each objection on a case-by-case basis and, if founded, replaces the individual.

B. The Applicants [14] The Applicants brought their complaints under section 7 of the CHRA. The relevant provisions of the CHRA can be found in Appendix A. Notably, subsection 7(b) deems it a discriminatory practice for an employer to adversely differentiate an employee on a prohibited ground of discrimination. The Applicants allege that the RCMP violated this subsection in the promotion competitions at issue on the prohibited ground of race.

- (1) Cpl. JR [15] Cpl. JR self-identifies as a visible minority based on his Indo-Chinese ethnic origin, race and dark skin colour.
- [16] He joined the RCMP in 2000 as a Constable performing General Duty and First Nations policing in Saskatchewan. In 2006, he transferred to Ontario and joined the Unit as a Constable. According to his complaint to the Commission and his Tribunal hearing testimony, he observed the Unit predominately operating in racialized communities and jokes and derogatory language used by his White colleagues when referring to such communities. Cpl. JR testified about his own susceptibility to such jokes and related an occasion where he used a derogatory term while recounting a joke to Unit colleagues.
- [17] Cpl. JR also observed the lack of visibly racialized representation in the Unit's promotional ranks as well as the lack of cultural competence in Unit operations. He said in this complaint that the Unit has never promoted a visible minority to the rank of Corporal.
- [18] In 2016, Cpl. JR applied for the Corporal Training Coordinator position. He was unsuccessful. The successful candidate was then Cst. MW, a White colleague who was acting in the Corporal Training Coordinator role at the time of promotional application. Cpl. JR said he was the runner up to the successful candidate by a slim margin.
- [19] In 2018, Cpl. JR applied for a Corporal Team Leader position. He was unsuccessful again. The successful candidate was then Cst. SS, a White colleague who was trained by Cpl. JR in his field training within the Unit. The SLO for the promotion called Cpl. JR for a meeting and said he was again the runner up to the successful candidate, this time by a slim margin of "0.5" in their respective scores in the SLO's scoring matrix.
- [20] Cpl. JR filed a CHRA complaint to the Commission in November 2019. The Commission referred the Tribunal to institute an inquiry into the complaint in February 2021.

- [21] In 2021, Cpl. JR applied for the Corporal Team Leader position and was promoted. He testified being told by the SLO that he “knew this was a long time coming.”
- (2) Cst. SM [22] Cst. SM self-identifies as a visible minority based on his East Indian ethnic origin, race, dark skin colour, and his Sikh religion.
- [23] He joined the RCMP in 1991 as a Constable in the Unit and he continues to hold the same rank after over 30 years.
- [24] According to his complaint to the Commission and his Tribunal hearing testimony, Cst. SM observed White colleagues making racist and Islamophobic comments about the racialized communities the Unit worked in. He testified being called a “Paki” on his first day in the Unit. He recalled visibly racialized members in the Unit being called names as of 2020.
- [25] Like Cpl. JR, Cst. SM observed the lack of visibly racialized representation in the Unit’s promotional ranks as well as the lack of cultural competence in Unit operations. In his testimony, he described being customarily assigned as the second-in-charge of a team when there were no upcoming promotions in the Unit, but the role would be given to a White Constable when a Corporal promotion came up. He believes this practice gave White colleagues an advantage in promotions because being second-in-charge while applying for a promotion bolsters one’s promotion application.
- [26] Cst. SM has been unsuccessful in several promotions throughout his tenure at the Unit. In 2018, Cst. SM applied for a Corporal Team Leader position, the same promotional competition that Cpl. JR applied for. Cst. SM was called by the SLO for a meeting to discuss his unsuccessful candidacy, where he learned that the successful candidate was then Cst. SS, a White colleague who he believed only had half of his service with the RCMP and a third of his service in the Unit.
- [27] In July 2018, Cst. SM filed a CHRA complaint to the Commission. Cst. SM testified that later that year, the 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.
- (3) Sgt. SV [28] Sgt. SV self-identifies as a visible minority based on his East Indian ethnic origin, race, dark skin colour, and his practice of the Hindu and Sikh religions.
- [29] He joined the RCMP in 1999 and started his career in General Duty policing in New Brunswick. Subsequently, he completed a three-year tour with the Musical Ride. In 2006, he transferred to the Unit as a Constable. Starting in 2009, he worked in several related units to the Unit performing covert work and was promoted to Corporal in 2012. In 2016, he was promoted from an outside related unit into the Unit as a Sergeant. As a Sergeant in the Unit, he was still required to perform the full-time duties of his former position in the related unit. Sgt. SV spent six months as the Sergeant for the Unit before his supervisor from the related unit arranged for his return to the related unit.

[30] 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 members were favored for promotion opportunities in the Unit.

[31] In November 2019, Sgt. SV applied for promotion to the role of Unit Staff Sergeant, which would require him to exclusively work in the Unit on a full-time basis. He was unsuccessful. He learned that the selected candidate was PL, a White Sergeant who spent the last 17 years in the Unit and was promoted from the rank of Constable. Sgt. SV testified being called to meet with the SLO for the promotion and being confused about the rationale provided.

C. The Tribunal Hearing [32] The Tribunal hearing was closed to public. It took place over 15 days in November and December 2023.

[33] In addition to testifying at the hearing themselves, the Applicants called Sgt. SV's supervisor and another Constable who are both current members of the Unit as witnesses. In addition, the Applicants called Dr. Kanika Samuels-Wortley, Canada Research Chair in Systemic Racism, Technology and Criminal Justice at Ontario Tech University as an expert witness who tendered an expert witness report. The RCMP objected to the admissibility of the expert witness 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. In overruling the RCMP's objection, the Tribunal determined that Dr. Samuels-Wortley was properly qualified as an expert in the fields of unconscious and conscious racial bias within policing. The Tribunal thus permitted Dr. Samuels-Wortley to testify and admitted her report into evidence.

[34] The RCMP called current OIC of the Unit, Insp. VM; acting OIC of the NPU, Ms. Jamie Kenny; Chief Human Resources Officer, Ms. Nadine Huggins; and the three OICs of the Unit whose promotional decisions were the subject of the complaints: Assistant Commissioner MP [A/Comm. MP]; Inspector CM [Insp. CM] and Superintendent JC [Supt. JC].

[35] Closing submissions were completed in March 2024. The Commission made closing submissions in support of the Applicants but did not take part in the hearing.

D. The Decision [36] The Tribunal issued the Decision on October 22, 2024, dismissing all three complaints.

[37] The Tribunal laid out the test to make a prima facie case for discrimination that requires a complainant to prove on a balance of probabilities that 1) they have a characteristic protected by the CHRA, 2) they experienced an adverse impact in their employment, and 3) their protected characteristic was a factor in the adverse impact: *Moore v British Columbia*, 2012 SCC 61 [Moore]. If the Applicants could prove these elements, the burden shifts to the RCMP to justify their conduct. If the conduct is justified, there is no discrimination: *Moore*.

[38] While the Tribunal found that the first two elements of the Moore test for prima facie discrimination were satisfied, it concluded that the Applicants had not established on a balance of probabilities that race was a factor in the RCMP's decisions to not promote them. Therefore, the Tribunal concluded there was no prima facie discrimination.

III. Issues and Standard of Review [39] The Applicants make the following arguments to challenge the reasonableness of the Decision:

The Tribunal misapplied the test for proving prima facie discrimination; The Decision failed to account for the evidence and submissions before the Tribunal by:

failing to meaningfully consider the managerial review reports which set out the problems of favouritism in the Unit;

failing to intelligibly assess the Applicants' expert witness report and testimony on systemic discrimination and implicit bias;

disregarding the statistical evidence demonstrating the persistent racial underrepresentation in the Unit's promotional ranks; and

finding that the SLOs were not mandated to consider employment equity in the promotion processes; and

The Tribunal unreasonably favoured the RCMP's evidence over the Applicants.

[40] The parties agree the standard of review for the decision is reasonableness, as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65 [Vavilov]. Under the Vavilov framework, the Court should assess whether the Decision bears the requisite hallmarks of justification, transparency and intelligibility: Vavilov at para 99. The Applicants carry the onus of demonstrating that the Decision was unreasonable: Vavilov at para 100.

IV. Analysis [41] As I have stated at the outset, I find the Tribunal misapplied the test for proving prima facie discrimination and committed several reviewable errors in the Decision. I will focus my analysis on these issues only and need not address the remainder of the Applicants' submissions.

A. The Tribunal erred by misapplying the test for proving prima facie discrimination [42] As mentioned above, the Tribunal accepted that the first two elements of the Moore test were made out, but found the Applicants failed to prove, on a balance of probabilities, the third element of whether the protected characteristic was a factor in the adverse treatment or disadvantage.

[43] The Applicants take issue with the way that the Tribunal conducted its analysis to make this finding. They submit that their burden to prove prima facie discrimination should be assessed purely on its own, without being weighed against the RCMP's evidence. By incorporating RCMP's response to the allegations of discrimination in its analysis, the Tribunal improperly reversed the onus by placing an evidentiary burden on the Applicants to prove that the RCMP's evidence was a pretext for discrimination and to disprove the

RCMP's explanation in order to demonstrate a prima facie discrimination.

- [44] The Applicants rely on *Ont. Human Rights Comm. v Simpsons-Sears*, 1985 CanLII 18 (SCC), [1985] 2 SCR 536 [Simpsons-Sears] which states at para 28 that a prima facie case of discrimination is “one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent-employer.” The Applicants cite two decisions where the Tribunal affirmed this interpretation: *Mason v St. Theresa Point First Nation*, 2024 CHRT 85 at para 19; *Dawson v Canada Post Corporation*, 2008 CHRT 41 at para 66. They also submit that the Tribunal failed to follow the same approach taken in the two decisions it cited: *Salem v Canadian National Railway* 2008 CHRT 13; *Turner v Canada Border Services Agency*, 2020 CHRT 1 [Turner].
- [45] The AGC submits that the Tribunal reasonably applied the Moore test. It argues that the interpretation the Applicants presented is inconsistent with the Supreme Court of Canada’s [SCC] approach in *Quebec (Commission des droits de la Personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 [Bombardier]. Citing *Rehman v Department of National Defence*, 2025 CHRT 14 at paras 14-15 [Rehman], the AGC further argues that the SCC made clear in *Bombardier* that the Tribunal should not follow a silo-based approach in determining if a prima facie case of discrimination has been proven and affirmed the respondent’s evidence should be considered at this stage.
- [46] The AGC also relies on *Peel Law Association v Pieters*, 2013 ONCA 396 at para 87 [Pieters] to argue that regardless of how the Tribunal structures its analysis, which ought to be afforded significant deference, the task of the Tribunal is to consider all the evidence and argument to determine if the Applicants have proven the three elements of the Moore test on a balance of probabilities. As the RCMP presented evidence on the selection processes for two purposes: to refute the allegations of prima facie discrimination and, if the Tribunal found the Applicants met their prima facie burden, to demonstrate a credible response the Applicants’ case, applying *Bombardier*, all the evidence and circumstances should be considered to determine whether together an inference of discrimination can be drawn. The AGC, like the Applicants, also relies on *Turner* to support its position: *Turner* at para 48.
- [47] While I do not fully agree with the Applicants’ arguments and do not find all of their cases to be on point, I agree with them that the Tribunal misapplied the prima facie test, and I reject the AGC’s arguments for the following reasons.
- [48] As a starting point, it is worth noting that the test set out in *Moore* is based on well-established jurisprudence with a long line of cases reflective of the courts’ recognition that discrimination, particularly adverse effect discrimination, is often difficult to prove. As the SCC explained in *Simpsons-Sears*, discrimination may be in the form of adverse effect discrimination or direct discrimination. In either case, the complainant is not required to prove “motive” behind the discrimination act. As Justice McIntyre noted, “[t]o take the

narrower view and hold that intent is a required element of discrimination under the Code would seem to me to place a virtually insuperable barrier in the way of a complainant seeking a remedy.” Simpson-Sears at para 14.

- [49] It was in this context that the SCC confirmed that the plaintiff alleging an adverse effect discrimination carries the burden of showing a prima facie case of discrimination, which “covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent-employer.” Simpsons-Sears at para 28.
- [50] The SCC in Moore re-affirmed the two-step approach to adjudicate human rights complaints; this approach was once again reconfirmed by the SCC in Bombardier.
- [51] While I agree with the AGC that the SCC in Bombardier reminded human rights tribunals the need to consider all the evidence, and be satisfied on a balance of probabilities that the plaintiff has been discriminated against before it can decide in the plaintiff's favour, the SCC did not alter the two-step test nor the three elements of the prima facie test established by the jurisprudence. On the contrary, after reviewing the case law including Moore, the SCC in Bombardier reiterated the test as follows:
- [64] This brief review of the case law shows that the use of the expression “prima facie discrimination” can be explained quite simply on the basis of the two-step test for complaints of discrimination under the Charter. This expression concerns only the three elements that must be proven by the plaintiff at the first step. If no justification is established by the defendant, proof of these three elements on a balance of probabilities will be sufficient for the tribunal to find that s. 10 of the Charter has been violated. If, on the other hand, the defendant succeeds in justifying his or her decision or conduct, there will have been no violation, not even if prima facie discrimination is found to have occurred...
- [52] The SCC also noted at the end of para 64: “In practical terms, this means that the defendant can either present evidence to refute the allegation of prima facie discrimination, put forward a defence justifying the discrimination, or do both.”
- [53] Consistent with Bombardier, I agree with the AGC that the RCMP was entitled to present evidence to both refute the allegations of prima facie discrimination and put forward a defence justifying the discrimination. However, the RCMP’s entitlement to represent evidence and the Tribunal’s obligation to consider the totality of the evidence does not give the latter licence to change the two-step approach or reverse the onus between the parties by swapping or conflating the two steps.
- [54] It is worth noting that in the Decision, the Tribunal made clear that in dismissing the complaints, it found the Applicants had failed to make out a prima facie case that their race was a factor in the RCMP’s selection processes. Nowhere in the Decision did the Tribunal explain its findings by proceeding to the second part of the two-step test. Yet, in effect, the Tribunal bypassed its assessment of the third element of the Moore test and assessed the

Applicant's evidence of discrimination against the "justifications" of the RCMP as reasons for finding that the Applicant failed to make out a prima facie case, thus conflating the two steps into one, with no regard to the differential burden of proof for each step.

[55] Throughout the Decision, the Tribunal referred to the "justifications" of the RCMP to consider if they were a "pretext" for discrimination in finding that the Applicants failed to establish that race was a factor in their failure to be promoted. Examples of such findings in the Decision are set out as follows:

At para 81, the Tribunal stated that it accepted that the Applicants genuinely believed they were better qualified than the successful candidates in the promotion competitions at issue and 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," the Tribunal could not "draw an inference of a nexus between the [Applicants'] race and their failure to be promoted."

Under the heading "Justification for candidate selections" at para 87, the Tribunal found that based on the SLOs evidence which it accepted, the Tribunal "cannot conclude that their justification for promoting the successful candidates were a pretext for discrimination." The Tribunal went to find that the SLOs provided "reasonable explanations for their selections" based on their testimony.

At para 89, the Tribunal referred to A/Comm. MP's rationale that Cpl. MW's completion of the course "was a justification for his promotion." While accepting JR held a genuine belief that he was more qualified for promotion than Cpl. MW, the Tribunal at para 101 stated that it could not step into the shoes of the SLO to conduct its own de novo assessment, and that the proper scope of the Tribunal's inquiry is to determine "whether the RCMP's actions were a pretext for discrimination and whether the [Applicants'] race was a factor in the SLOs determination."

At para 101, the Tribunal stated the proper scope of its inquiry "is to determine whether the RCMP's actions were a pretext for discrimination and whether the [Applicants'] race was a factor in the SLO's determinations."

At para 103, the Tribunal stated that it "cannot conclude that A/Comm. MP's justification for determining that Cp. 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." The Tribunal noted that 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."

At para 121, in considering the evidence of Insp. CM, after stating that “it is not the Tribunal’s role to weigh and parse each qualification of each candidate in a de novo assessment [citation omitted],” the Tribunal noted the “reasonable explanation for Cpl. SS’s selection, his detailed contemporaneous scoring matrix, detailed notes supplementing the matrix, and Rationales justifying the selection,” and accepted as reasonable “[Insp. CM’s] determination that Cp. SS was more qualified for the position than Cpl. JR and Cst. SM.”

The Tribunal adopted similar reasoning in accepting 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.” Decision at para 141.

At para 187, the Tribunal found the SLOs “provided comprehensive and reasonable contemporaneous justifications for the officers they selected for promotion which were consistent with their testimony at the hearing.”

[56] Finally, after accepting the Applicants’ evidence that they experienced and witnessed racism in the RCMP, both inside and outside the Unit, and accepting the expert evidence that systemic racism and implicit bias may limit promotional opportunities for racialized police officers, the Tribunal nevertheless concluded as follows:

[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 [Applicants] because of their race or that this negatively impacted their chance of promotion.

[Emphasis added.]

[57] The above quoted passages were by no means the only instances where the Tribunal infused the RCMP’s “justifications” into its analysis in the third component of the Moore test and injected a requirement of the Applicants to demonstrate the justifications were pretext for discrimination at the prima facie stage.

[58] The Tribunal’s profound misapprehension of the appropriate test warrants the Court’s intervention for the following reasons.

- [59] First, bearing in mind that the Decision was based on the Tribunal's finding that the Applicants had not established *prima facie* discrimination on a balance of probabilities, the Tribunal was required to provide reasons to support that finding, based on the proper legal framework, before engaging with the RCMP's justifications in response. By conflating the two steps, the Decision cannot be justified in light of the relevant legal constraints: Vavilov at 99.
- [60] Second, by conflating the Applicant's burden to prove a *prima facie* case with the RCMP's onus to provide justifications for their selection processes, the Tribunal effectively placed a higher burden on the Applicants than required by the jurisprudence. It also failed to recognize the low evidentiary threshold that the Applicants need to meet at this stage, namely to establish, on a balance of probabilities, an inference that race is a factor in the denial of their promotions.
- [61] The SCC confirmed in *Simpsons-Sears* at para 28 that the burden on the complainant for making out a *prima facie* claim of discrimination need not be heavy. It was reinforced by the Ontario Court of Appeal [ONCA] in *Pieters* stating that relatively "little affirmative evidence" is required to support an inference of discrimination at the *prima facie* stage. As the ONCA went on to state in *Pieters* at para 73: "And the standard of proof requires only that the inference be more probable than not. Once there is evidence to support a *prima facie* case, the respondent faces the tactical choice: explain or risk losing." This is so because, as the ONCA observed at para 72:

The question whether a prohibited ground is a factor in the adverse treatment is a difficult one for the applicant. Respondents are uniquely positioned to know why they refused an application for a job or asked a person for identification. In race cases especially, the outcome depends on the respondents' state of mind, which cannot be directly observed and must almost always be inferred from circumstantial evidence. The respondents' evidence is often essential to accurately determining what happened and what the reasons for a decision or action were.

- [62] I reject the AGC's argument that *Pieters* stands for the proposition that the two-step approach does not matter in cases where the respondent chooses to call evidence: *Pieters* at paras 82-83. Read as a whole, *Pieters* maintained the *prima facie* case framework to be a "useful" analytical tool even in cases "that have been fully contested:" *Pieters* at para 84. As the ONCA explained, this approach "allows the Tribunal first to satisfy themselves that the record contains sufficient evidence to support a finding of discrimination before turning to consider evidence that might counter the inference of discrimination or establish a statutory defence:" *Pieters* at para 84. The ONCA's comments at para 87 about leaving it to the Tribunal to "structure their analysis of the evidence" should not be taken to mean that the Court also decided to leave it to the Tribunal to do away with the necessary framework of analysis and shift the onus of proof without regard to the established jurisprudence.

- [63] In this case, by imposing the context or pretext and justifications into the third element of the first step, the Tribunal thus misapplied the prima facie test. I agree with the Applicants that the Tribunal's approach was particularly unreasonable for cases alleging systemic discrimination where the evidence is almost always neutral on its face.
- [64] Third, by conflating the third element of the prima facie test, which the Applicants had the burden of proving, with the Tribunal's analysis of the justifications of the RCMP for its selection decisions, which the RCMP bears the onus to establish, I find that the Tribunal erred by requiring the Applicants to disprove the RCMP's justifications or prove that the reasons given were a pretext, without the burden having shifted to the respondent to justify its selection decisions. In so doing, the Tribunal converted the burden of the RCMP to prove their justifications into an onus on the Applicants to disprove them.
- [65] Moreover, by reversing the onus, the Tribunal ended up privileging and prioritizing the evidence of the RCMP over that of the Applicants. While the Applicants see this prioritizing as a contest of credibility between the parties, I disagree. I share the AGC's position that the Tribunal did not make any negative credibility findings against the Applicants. However, I am of the view that because of its misapplication of the two-step test, and because of its insertion of the RCMP's justifications into the third element of the prima facie test, the Tribunal erroneously put the justifications as the goalpost against which the Applicants were made to contest. This error, as the Commission points out, results in an appearance of reverse-engineering a pre-determined outcome.
- [66] Finally, I share the Commission's concern that the legal error in this case has ramifications for cases to come if the Decision is relied on going forward. In failing to properly follow the two-step test, and in requiring the Applicants to disprove the RCMP's justifications, the Tribunal privileged the RCMP's institutional responses to the Applicants' complaints above the Applicants' lived experiences of racism. As well, by raising the burden on the Applicants to disprove the RCMP's explanations, the Tribunal was in effect seeking direct proof and/or expressed acknowledgment of discrimination, when in reality, such evidence is difficult to obtain. If allowed to stand, the Decision will make it more difficult for human rights complainants in general, and complainants of race-based discrimination in particular, to advance their complaints, as they will be required to do more than establishing an inference of discrimination at the initial prima facie stage.
- [67] For all these reasons, I find that the Tribunal's misapplication of the prima facie test to be such a fundamental flaw to its Decision as to warrant the Court's intervention.
- [68] Before I conclude on this section, let me say a few words about the Tribunal decisions the AGC cites in support of their argument, namely Turner and Rehman.
- [69] I do not find Turner to be an example of the Tribunal retreating from the two-step test. Rather, the Tribunal in Turner made specific findings rejecting the complainants' examples as direct or overt evidence of discrimination, which led it to examine "all of the circumstances and pieces of evidence, circumstantial and otherwise, including the

aforementioned examples, to determine whether together an inference can be drawn, on the balance of probabilities, that there existed the ‘subtle scent’ of discrimination in the decisions to disqualify Mr. Turner from the two competitions as alleged by him.” Turner at para 107 [emphasis in original]. The Tribunal stayed true to the two-step approach and the evidentiary burden that the complainant had to meet, while acknowledging the need to consider all of the evidence in order draw an inference of discrimination in that case.

[70] Finally, as the Tribunal’s decision in Rehman is now subject of a judicial review application before this Court, I will refrain from commenting on it and its applicability to the case at hand. In any event, this Court is not bound by the decisions of the Tribunal.

B. The Tribunal failed to engage with the Applicants’ expert evidence [71] As mentioned above, the Applicants called Dr. Samuels-Wortley as an expert witness, and the Tribunal found her to be properly qualified as an expert in the fields of unconscious and conscious racial bias within policing.

[72] While the Tribunal accepted Dr. Samuels-Wortley’s general conclusions that racialized police officers may face barriers in promotional opportunities arising from systemic racism and implicit bias, it found her expert report unhelpful in assessing whether race was a factor in the three specific promotion competitions at issue since it did not directly address the Unit, and many articles cited involved studies in other jurisdictions outside of Canada. The Tribunal also found the article cited in the expert report examining recruitment and promotion of racialized officers in Canadian police services of limited relevance as the article analyzed the use of interviews, performance appraisals, and seniority when considering members for promotions, which were not the basis of the promotion process at issue.

[73] The Applicants submit that the Tribunal’s approach to assessing expert evidence does not accord with the expert witness’ appropriate scope of contribution. The Applicants also cite case law, including the Tribunal’s prior jurisprudence, to argue that there is no requirement for an expert witness to advance an opinion with respect to the specific facts of the complaint. Rather, social context evidence of the sort provided by Dr. Samuels-Wortley has been recognized as useful to the Tribunal to establish a “frame of reference or background context for deciding factual issues crucial to the resolution of a particular case.” Woodgate et al v RCMP, 2023 CHRT 9 at para 25 and 41 [Woodgate].

[74] The AGC submits that the Tribunal justifiably attributed limited weight to the expert evidence and that it is entitled considerable deference considering its specialized expertise and clear explanation in arriving to its conclusion.

[75] I agree with the Applicants that the Tribunal erred in its engagement with the expert evidence.

[76] While I note that Woodgate dealt with the admissibility of an expert witness, the general proposition the Tribunal relied on reflects the importance of social context evidence when assessing cases dealing with vulnerable population, not only in human rights law, but in other legal context: see McKay v Toronto Police Services Board, 2011 HRT0 499 at para 95; R v Spence, 2005 SCC 71 at para 57 as cited in Woodgate at para 41.

[77] I also find Association of Management, Administrative and Professional Crown Employees of Ontario v Ontario (Ministry of the Attorney General), 2024 ONSC 1555 [AMAPCEO], another case the Applicants cite, to be helpful in this regard. In AMAPCEO, the reviewed decision similarly discounted the expert's evidence and concluded that the evidence required to draw inference of discrimination was not met. The Divisional Court stated that expert literature can help the trier of fact determine what inferences should or should not be drawn, and found the arbitrator erred in looking for "words or conduct" that "lead to the conclusion that such bias was present and affected conduct:" AMAPCEO at paras 51 and 53 citing Peart v Peel Regional Police Services 2006 CanLII 37566 (ON CA) at para 96, leave to appeal refused, [2007] S.C.C.A. No. 10.

[78] In the case before me, the Applicants made clear in their closing submissions to the Tribunal that they relied on the expert evidence to draw an inference between unconscious racial perceptions arising in policing in racialized communities with systemic racism in the promotional decision-making process. Specifically, the Applicants outlined the following points from the expert's evidence in their submissions:

That police surveillance tends to focus on racialized communities more than non-racialized communities, creating an "us vs them" dynamic which causes anything outside of Whiteness to be viewed with suspicion or hostility;

That this suspicion, in turn, shapes how racialized and non-racialized police officers interact with each other, meaning that police officers may be more susceptible to biases and stereotyping than other professionals, and that racialized officers are more likely to be perceived as untrustworthy;

That negative racial perceptions harboured by non-racialized police officers influences the perceived professional abilities of racialized officers, significantly impeding career mobility for racialized officers within their work environment; and

That White police officers tend to receive the bulk of informal membership, creating a form of favouritism which can seep into promotional decision-making and disadvantage racialized officers.

[79] The Applicants then went on to match the Unit's specific practices and working environment to the above noted indicia of systemic bias as identified by the expert including a) the Unit's surveillance focus on racialized communities; b) the underrepresentation of racialized individuals in the Unit's promotional ranks; c) racist comments made by members of the Unit; and d) favouritism inherent in the assignment of acting positions with the Unit.

[80] While it was open to the Tribunal to reject the Applicant's submissions and the links they sought to draw between the expert evidence and their allegations, the Tribunal erred by failing to engage with these submissions. Instead of assessing the indicia as highlighted by the expert, the Tribunal narrowly and unreasonably focused its analysis on the articles cited by the expert, as opposed to the expert's evidence about the role of bias within policing, the very issue that the Tribunal qualified the expert to opine upon. In so doing, I find the Tribunal miscomprehended the social context evidence that the expert provided and failed to consider the correlation between its own findings and the indicia of unconscious bias proposed by the expert when considering whether the Applicants had met its initial evidentiary burden based on the evidence in the record, including the circumstantial evidence: AMAPCEO at para 53.

C. The Tribunal unreasonably disregarded the statistical evidence demonstrating the persistent racial underrepresentation in the Unit's promotional ranks [81] The Applicants submit that the Tribunal failed to analyze the statistical evidence of racial underrepresentation in promotions in the Unit. The first piece of evidence is the Applicants' testimony that they have not seen or heard of any visibly racialized member promoted within the Unit in the last 30 years leading up to the time of the hearing. The second piece of evidence is "A Review of [Unit] Promotions, 2015-2020" [Review of Promotions Report], a strategic analysis report produced by the RCMP outlining the proportion of Black, Indigenous, and People of Colour [BIPOC] members in the Unit as well as the proportion of those who passed their JSE test and applied for promotions. Notably, the Review of Promotions Report stated that only one BIPOC member was promoted in the 2015-2020 period. Additionally, the Review of Promotions Report included the analyst's comments citing perceived bias in the promotion process that hinders BIPOC members from applying for promotions.

[82] The Tribunal concluded that there was insufficient evidence to draw the inference that the lack of promotions for racialized members within the Unit suggests racial bias. The Tribunal accepted the RCMP's evidence that the lack of promotions for racialized members is a result of the highly competitive nature of the promotional process within the Unit.

[83] The AGC maintains that there was no independent or statistical evidence to support the anecdotal testimony of Insp. CM that no racialized member has been promoted within the Unit since its inception. The AGC further submits that the Tribunal reasonably concluded that the contextual realities of the Unit resulted in the general lack of promotion.

[84] I do not find the AGC's submission persuasive. Instead, I agree with the Applicant that the Tribunal erred in its treatment of statistical evidence for the following reasons.

[85] As I have previously noted, the Tribunal did not make any negative credibility findings against the Applicants. Here, I will further note that the Tribunal also did not make any negative findings concerning the reliability of the Applicants' evidence.

- [86] Yet throughout its analysis, the Tribunal never once mentioned the Applicants' evidence about the zero-promotion rate within the Unit nor the RCMP's Review of Promotions Report highlighting the underrepresentation of racialized communities in the Unit. Nor did the Tribunal explain why it preferred the testimonial evidence provided by the RCMP's witnesses over the Review of Promotions Report. While it was up to the Tribunal to find the evidence before it insufficient to support the inference that the Applicants sought to draw, the Tribunal's lack of engagement of the evidence was unreasonable.
- [87] At the hearing before me, the AGC tried to take apart the Review of Promotions Report to argue that it did not support the Applicants' position. I note, however, as the Tribunal never engaged with this piece of evidence, the AGC's submissions about the shortcomings of the Review of Promotions Report cannot be a substitute for reasons of the Tribunal.
- [88] As this Court found in *Khiamal v Canada (Human Rights Commission)*, 2009 FC 495 at paras 100-102 [Khiamal], the Tribunal's failure to engage with statistical evidence may render its overall analysis flawed. Like the case at hand, the Tribunal in *Khiamal* dealt with an allegation of discrimination and did not address the statistical report produced by the respondent. The Court noted at para 101 that the Tribunal did not make any reference to the statistical data, nor did it offer any reason as to why the statistical evidence was not considered. It was therefore unclear whether the Tribunal turned its mind to this evidence, making it a flawed conclusion that the inference of discrimination was less probable than other possible inferences.
- [89] The same reasoning applies to the case at hand. As the Tribunal did not mention in the Decision any of the statistical evidence as noted above, it was not clear whether the Tribunal turned its mind to the evidence, thus rendering the Decision unintelligible.

D. The Tribunal failed to consider evidence that contradicted its finding with respect to the employment equity requirement in the definition of "fit" [90] The Applicants submit that the Tribunal misinterpreted a May 2016 memorandum from the then Commanding Officer of the Unit, Jennifer Strachan [Strachan Memo]. While the Strachan Memo states that "employment equity must also be considered in every promotion process wherein underrepresentation exists in one or more of the employment equity groups" [emphasis in original] the Tribunal accepted A/Comm. MP's testimony that the Strachan Memo was not a "command." The Tribunal further agreed with the SLOs that the wording of the Strachan Memo does not suggest mandatory action but rather a preference to be given to an equity seeking candidate whose merits are equal to the other candidate(s).

- [91] At para 192 of the Decision, the Tribunal laid down the SLOs' testimonies as to their understanding of the Strachan Memo as follows:

[192] ... 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 granted higher on their merits than the [Applicants], so employment equity did not factor in their promotional decisions.

[Emphasis in original.]

[192] The Tribunal accepted the SLOs' testimonies as "reasonable and consistent with each other's and with a reasonable interpretation of the memo."

[193] The Applicants argue that the Tribunal made two errors in its analysis regarding the Strachan Memo: 1) failing to engage with the testimony of Jamie Kenny, OIC of the NPU, who stated that employment equity could be considered as a factor between any of the shortlist applicants, and 2) failing to explain how the Strachan Memo can be treated as optional when the A/Comm. MP testified that the Unit's OIC would be bound to obey a directive from the divisional Commanding Officer.

[194] The AGC maintains that the Tribunal made a coherent chain of analysis, starting with the wording of the Strachan Memo and subsequently preferred the SLOs' testimonies over the Applicants' that first consideration is merit, based on the consistency amongst the testimonies and with the content of the Strachan Memo. The AGC points out that while the Strachan Memo began by stating employment equity "must" be considered, the memo read as a whole indicates that it was not meant to be a mandatory requirement.

[195] Further, citing Vavilov at 91, the AGC argues that the Tribunal's reasons "must not be assessed against a standard of perfection." That the reasons did not include all the arguments or details that the reviewing Court would have preferred, is not, on its own, a basis to set the Decision aside. Finally, the AGC submits the Applicants are asking the Court to reweigh the evidence, which is not permissible in judicial review.

[196] Having reviewed the record, including the audio recording of the relevant testimonies, I agree with the Applicants that the Tribunal erred by failing to consider the evidence that contradicts its findings with respect to the SLOs' interpretation of the employment requirement.

[197] Specifically, I find Ms. Kenny's understanding of the employment equity requirement was just as relevant in assessing the Applicants' claim of discrimination, as was the understanding of the SLOs. Yet, the Tribunal did not once refer to Ms. Kenny's testimony before finding the SLOs' interpretation to be reasonable.

[198] As the OIC of the NPU, Ms. Kenny was responsible for overseeing NCO promotion processes. She was not, contrary to what the AGC suggested at the hearing before me, some "administrative" personnel whose view on this issue was irrelevant.

- [99] In her testimony, Ms. Kenny confirmed that employment equity could be considered as a factor amongst the eligible candidates. She testified that one of the factors that a SLO can use to determine fit, all things being equal and with merit principle coming first, could be employment equity. She further noted that an applicant who belongs to one of the identified diversity groups could be given first consideration at selection.
- [100] When asked to elaborate further on the merit principle, Ms. Kenny explained that no one can be considered at selection who has not met the qualifications of the job. All applicants will have to meet the training and screening requirements first, and then employment equity can be considered at that point. She noted that by the time a hiring manager received a selection package, all candidates included in the package would have met the required qualifications of the position.
- [101] Of note, Ms. Kenny never testified that a SLO could only consider employment equity if the candidate from a diversity group has equal scores as another candidate. In that regard, Ms. Kenny's understanding of the employment equity requirement was inconsistent with that of the SLOs who testified before the Tribunal.
- [102] What is more, Ms. Kenny noted in her testimony that the source of her understanding of the employment equity principles is a document available through the RCMP infoweb entitled "Considering 'fit' in the Promotion Process" [Considering Fit]. This document was submitted as evidence before the Tribunal, and the hyperlink of this document was also included in the Strachan Memo.
- [103] In Considering Fit, the RCMP provided the following explanation as to why "fit" is being introduced into the NCO promotion process:

To improve transparency, objectivity and confidence in the NCO Promotion Process, the Gender and Respect Action Plan directed that "fit" be formally defined in policy and that a rigorous set of criteria for its appropriate application be established, taking into account employment equity objectives. As a result, from a short list of qualified top Job Simulation Exercise (JSE) scorers, managers would make their selection based on "fit".

Managers are expected to exercise sound judgment in making appointment-related decisions, and are able to select the person who not only meets the job requirements, but also first the current and future needs of organization, as well as employment equity objectives.

[Emphasis added.]

- [104] The document went on to lay down a non-restrictive list of the factors a selecting manager consider in determining "fit" to include:

Current operational needs of the detachment or unit;

Future operational needs of the detachment or unit (e.g. succession planning);

Any abilities or skills that may be lacking in the team currently working in the detachment or unit (examples omitted);

Organizational, divisional and/or unit objectives for increasing representation of individuals belonging to one or more of the designated groups identified in the Employment Equity Act.

[Emphasis added.]

[105] Significantly, the document explained how “fit” aligns with diversity:

The RCMP is committed to achieving and maintaining an inclusive, competent workforce that values diversity and is reflective of Canadian society.

As such, 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 added.]

[106] Having reviewed the Considering Fit document, it would appear to me that Ms. Kenny’s interpretation of the employment equity is consistent with Considering Fit in two ways. First, employment equity must be considered in a promotion process if there is an underrepresentation of one of more of the designated groups. Second, the employment equity principle could be considered once self-identified equity-seeking individuals have been shortlisted for having met the job requirements.

[107] I also note that the Strachan Memo, as quoted in the Decision at para 189, reiterated a similar concept as that contained in Considering Fit:

... 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 added.]

- [108] The Tribunal did not acknowledge the testimony from Ms. Kenny, nor the RCMP's Considering Fit document before accepting the SLOs' understanding of the employment equity requirement as reasonable. While it was open to the Tribunal to reject Ms. Kenny's interpretation, its failure to mention her testimony, which contradicted the SLOs' interpretation, undermines the justifiability and transparency of the Decision.
- [109] The Tribunal also did not explain why it preferred the SLOs' interpretation of the Strachan Memo, the wording of which mirrors that of the Considering Fit, when nothing in the Strachan Memo suggests to the SLOs to use the employment equity only as a tie breaker.
- [110] I also find it unreasonable for the Tribunal to accept the SLOs' understanding to be reasonable in part because they are "consistent with each other." While the SLOs themselves may have a consistent understanding of the employment equity requirement, that understanding must still be assessed against the objective evidence including the RCMP's own policy.

E. Conclusion on Analysis [111] As this Court stated in *Hamilton v Attorney General of Canada* (Parole Board of Canada), 2025 FC 1001, at para 94:

Cumulative unreasonableness occurs where multiple errors, although individually insufficient to render a decision reasonable, collectively undermine the decision's justification to such an extent that the outcome and reasons are no longer acceptable and defensible given relevant facts and law [citation omitted]. Jurisprudence shows that courts consider three primary factors when assessing cumulative unreasonableness: materiality, interconnectedness, and impact on justification.

- [112] In this case, the multiple errors the Tribunal committed were material and interconnected. The Tribunal misapplied an important legal framework for assessing human rights complaints. It misapprehended and narrowly engaged with the expert evidence that was material in understanding the broader social context of the Applicants' human rights complaints; it ignored relevant and material statistical evidence as well as evidence that contradicted its findings. These errors, cumulatively, undermine the overall justification of the Decision.

V. Remedies [113] The Applicants ask for the matter to be sent back to a different member of the Tribunal for redetermination with "appropriate instructions" from the Court. The AGC asks that if the application is granted, the matter be sent to the same Tribunal member for redetermination. The Commission submits that the Court should give a directed verdict and only remit the determination of appropriate remedies to the Tribunal, relying on *Vavilov and Mason v Canada* (Citizenship and Immigration), 2023 SCC 21.

- [114] Given the cumulative errors that the member made in the Decision, I do not find it appropriate to send the matter back to the same member for redetermination. However, I decline to issue a directed verdict.

- [115] As the Commission admitted at the hearing before me, the Court has never issued a directed verdict over a Tribunal's decision. Similarly, as Justice Diner notes in *Wilson v Ryder Truck Rental Canada Ltd.*, 2025 FC 1032, the Court has consistently rejected requests for remitting an inquiry directly to the Tribunal instead of the Commission in the majority of post-Vavilov human rights cases involving a judicial review of the Commission's dismissal of the complaints.
- [116] Further, while I agree with both the Applicants and the Commission about the multiple errors the Tribunal committed in the case at hand, I am not convinced that the relevant constraints bearing on the decision are so overwhelming as to favour one interpretation such that there is only one reasonable outcome: Vavilov at para 141.
- [117] With regard to the Applicants' request for instructions, there are only a few instances where the Court attached instructions in human rights cases. In *Canada (Attorney General) v Brooks*, 2006 FC 1244, the Court attached instructions for the Tribunal to apply the "serious possibility" test described in its reasons after providing the parties with an opportunity to make submissions: Brooks at para 48.
- [118] Instead of giving specific instructions, I remind members of the Tribunal to consider the "broad and remedial purpose" of the CHRA when applying the CHRA in the adjudication process: *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at para 122. I have provided extensive reasons for finding the Decision unreasonable. I invite the Tribunal to review my decision and the reasons contained herein. I further remind the Tribunal to appropriately apply the two-step test, bearing in mind the purpose of the CHRA, and to meaningfully engage with the evidence as a whole, including any relevant systemic and social context evidence such as the expert evidence as well as statistical evidence.
- [119] I am mindful that this matter has gone on for some years, and have no doubt the parties are eager to have the matter resolved. I urge the parties to work together to find a way to expedite the re-determination process going forward.
- [120] Finally, the Applicants seek costs of \$2,500 against the AGC only. I will so order.

VI. Conclusion [121] The application for judicial review is granted.

- [122] The Respondent AGC shall pay the Applicants \$2,500 in costs, inclusive, within 30 days from the date of this decision.

JUDGMENT in T-3248-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is granted.

The Applicants' matter is remitted back to the Tribunal for reconsideration by a different member of the Tribunal.

The Respondent AGC shall pay the Applicants \$2,500 in costs, inclusive, within 30 days from the date of this decision.

There will be no costs against the Commission.

"Avvy Yao-Yao Go"

Judge

APPENDIX A

Canadian Human Rights Act, RSC, 1985, c H-6

Loi canadienne sur les droits de la personne, LRC (1985), ch H-6

Prohibited grounds of discrimination

Motifs de distinction illicite

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

3 (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'identité ou l'expression de genre, l'état matrimonial, la situation de famille, les caractéristiques génétiques, l'état de personne graciée ou la déficience.

...

...

(3) Where the ground of discrimination is refusal of a request to undergo a genetic test or to disclose, or authorize the disclosure of, the results of a genetic test, the discrimination shall be deemed to be on the ground of genetic characteristics.

(3) Une distinction fondée sur le refus d'une personne, à la suite d'une demande, de subir un test génétique, de communiquer les résultats d'un tel test ou d'autoriser la communication de ces résultats est réputée être de la discrimination fondée sur les caractéristiques génétiques.

Employment

Emploi

7 It is a discriminatory practice, directly or indirectly,

7 Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

- (a) to refuse to employ or continue to employ any individual, or
a) de refuser d'employer ou de continuer d'employer un individu;
(b) in the course of employment, to differentiate adversely in relation to an employee,
b) de le défavoriser en cours d'emploi.
- on a prohibited ground of discrimination.

BLANC

FEDERAL COURT

SOLICITORS OF RECORD

Docket:

T-3248-24

STYLE OF CAUSE:

SM, SV, AND JR v ATTORNEY GENERAL OF CANADA AND CANADIAN HUMAN RIGHTS
COMMISSION

PLACE OF HEARING:

Ottawa, ONTARIO

DATE OF HEARING:

November 5, 2025

JUDGMENT AND REASONS:

GO J.

DATED:

November 27, 2025

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Prepared on 24 October 2026 · Esheria