Federal Court Cour fédérale

Date: 20170731

Docket: T-2099-16

Citation: 2017 FC 742

Ottawa, Ontario, July 31, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

CHERYL GRAVELLE

Applicant

and

ATTORNEY GENERAL OF CANADA,
THE MINISTER OF PUBLIC SAFETY,
ON BEHALF OF THE ROYAL CANADIAN
MOUNTED POLICE AND,
THE COMMISSIONER OF ROYAL
CANADIAN MOUNTED POLICE

Respondents

JUDGMENT AND REASONS

[1] This is a judicial review of the order rendered on November 4, 2016 [impugned order] by Ms. Kelly Sullivan, an Employee Management Relations Officer [EMRO] from the "H" Division of the Royal Canadian Mounted Police [RCMP], acting as the statutory delegate of the Commissioner of the RCMP, requiring the applicant to undergo a medical examination and

assessment by a qualified person, pursuant to paragraph 20.2(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [RCMP Act] and section 19 of the *Commissioner's Standing Orders (Employment Requirements)*, SOR/2014-292 [CSO (Employment Requirements)].

Background

[2] The applicant is a sworn member of the RCMP with twenty-four years of service and holds a rank of Staff Sergeant. On October 29, 2008, she was injured during the course of her employment when she was violently confronted by an individual suffering from mental health problems. Because of her injuries, she underwent back surgery and was on medical leave from February to May 2010, after which she was put on an extended medical leave of absence from May 2010 to January 2012. She then returned to work on a gradual basis, but was once again forced to go on a medical leave of absence on March 22, 2012. Since then, she has not returned to work but has received and continues to receive her full salary, including all allowances, economic increases and benefits at the Staff Sergeant level. The applicant's medical file is currently managed by the Health Service Office [HSO] of the "H" Division.

[3] During her authorized leave of absence, the applicant made complaints about various incidents. While these elements do not necessarily impact on the legality or reasonableness of the impugned order, the applicant nevertheless considers that they justify her reluctance to provide access to her private and confidential information:

(a) In April 2012, the applicant filed a complaint under the *Public Servants Disclosure Protection* Act, SC 2005, c 46, against four high-ranking officers in the Atlantic Region which was rejected in part by an RCMP Professional Integrity

Officer [PSDPA Complaint]. Later, the applicant filed a complaint against the adjudicator given that he failed to disclose the fact that one of the officers was his former colleague and direct supervisor;

(b) In August 2012, the applicant's medical file was transferred from the "H" division to the "J" Division, due, in part, to a breach of her privacy rights by an agent of the "H" Division HSO. Incidentally, on August 20, 2013, the applicant filed a complaint with the Office of the Privacy Commissioner of Canada [OPCC] regarding this breach of her privacy rights. On December 2, 2015, the OPCC upheld her complaint and concluded that the agent had violated the applicant's right by accessing her personal and confidential information while acting in his dual role as her direct supervisor and her EMRO;

(c) On July 24, 2015, the applicant brought to the attention of Superintendent Dennis Daley, the Officer-in-Charge of Administration and Personnel, "H" Division, that an agent from the Internal Services had directly contacted her mother to obtain private information, causing her to become confused, emotionally upset and worried about her daughter's well-being. She later expressed to Inspector Chapman her disappointment and concerns about the lack of action on the part of the RCMP regarding Superintendent Daley's failure to address the harassing of her mother and the breach of her personal health information; and;

(d) Due to the harassment of her mother, as well as the failure of her superior officers to communicate with her, the applicant filed on June 28, 2016, four harassment complaints.

[4] On May 13, 2016, the applicant's file was transferred back to the "H" Division, due to the heavy caseload of the "J" Division and the distance between the "J" Division HSO team and the applicant, making consultation difficult. The applicant was then informed that Ms. Kelly Sullivan would be the new EMRO handling her file. However, the applicant, who disagrees with such transfer, filed a grievance on June 13, 2016. On July 29, 2016, Ms. Sullivan contacted the applicant to explain her role and what steps would be taken to assist her in resolving the harassment complaints.

[5] On August 25, 2016, Dr. Kevin Bourque, Health Service Officer of the "H" Division, completed his evaluation of the applicant's file and informed Ms. Sullivan that it was not possible to determine the applicant's functional status or any indicated employment limitations at that time. This was due to both a lack of recent documentation from her treatment providers and the documentation not sufficiently addressing the issue of the applicant's functional status. Indeed, the applicant had not provided a medical certificate nor any updated medical information required to confirm the necessity of her leave of absence since November 2015. Consequently, the applicant was contacted in order to obtain her consent for disclosure of updated medical information from her treating physicians, which she refused, as she considered her grievance halted the transfer of her medical file from the "J" Division to the "H" Division.

[6] On August 26, 2016, Ms. Sullivan provided to the applicant a general update, including the transfer of the medical file to the "H" Division. The applicant responded that same day correcting some errors in Ms. Sullivan's review and asking her several questions (including what her rank was and who her Line Officer was).

[7] On October 25, 2016, Ms. Sullivan advised the applicant about the need for updated information to assess her current medical situation, as well as the need to identify any accommodation needs and to determine if a return to work would be feasible. Although she acknowledged the outstanding grievance and ongoing harassment complaints from the applicant, Ms. Sullivan nevertheless asked the applicant to provide updated information about her attending physician to verify if the current injury prevented her from working, or whether a return to work would be possible. Ms. Sullivan also required the applicant to contact Dr. Bourque, no later than October 27, 2016, to arrange for required medical information to be provided. Finally, Ms. Sullivan informed the applicant that failure to comply with the preceding may result in an order to attend an Independent Medical Evaluation [IME] pursuant to section 19 of the CSO (Employment Requirements).

[8] The applicant replied in an email stating her apprehension that complying with this request would undermine her outstanding grievance regarding the transfer of her file to the "H" division. She then refused to comply with this requirement and instead wrote directly to the "J" Division HSO. She then gave them permission, which has been provided in the past, to contact her treating practitioners. However, she asked them not to share any information received to the "H" Division until her grievance would be appropriately dealt with.

[9] On October 27, 2016, Ms. Sullivan received the confirmation from Dr. Bourque that he had not been contacted by the applicant, or any HSO staff.

[10] Consequently, on November 4, 2016, the applicant was served with a Notice requiring her to undergo a Medical Examination or an Assessment by a Qualified Person, which is the object of the present judicial review.

Order of the statutory delegate of the Minister

[11] The impugned order made by the statutory delegate of the Commissioner reads as follows:

> The *Royal Canadian Mounted Police Act* ("RCMP Act") provides that the Commissioner may require a member to undergo a medical examination or an assessment by a qualified person specified by the Commissioner for the purpose of establishing the member's ability to perform their duties. The Commissioner, pursuant to the Delegations of Authority - Professional Responsibility Sector - *RCMP Act*, has delegated this authority to me as the Employee Management Relations Officer and OIC Occupational Health and Safety.
>
> On 2016-10-25, I requested that you contact the Divisional Health Services Officer (HSO), Dr. Kevin Bourke, to arrange for required medical information to be provided as a result of the RCMP having insufficient information to confirm your current absence is medically required. On 2016-10-27 1 was informed by Dr. Kevin Bourke, your assigned Health Services Officer (HSO), that you did not comply with this request. Given the HSO has determined there is insufficient information to determine your abilities, functional limitations and restrictions, I am satisfied that you are required to attend a medical examination or assessment by a qualified person for the purpose of establishing your ability to perform your duties ("the Examination"). Health Services will contact you within 5 days from the date of this Notice with the details of the qualified person specified as well as the date, time and location of where you must present yourself.
>
> Having been delegated the authority by the Commissioner, and pursuant to section 20.2(1)(c) of the *RCMP Act*, please take notice that I require you to undergo the above noted medical examination or assessment by the qualified person specified for the purpose of establishing your ability to perform your duties. Pursuant to section 19 of the Commissioner's *Standing Orders (Employment*

> *Requirements)*, you must present yourself to the qualified person for the Examination, including any follow-up appointments. You must undergo any tests, examinations or other assessments required by the qualified person to establish your ability to perform your duties. If you fail or refuse to attend the Examination, your sick leave may be rescinded, which could result in a Stoppage of your Pay and Allowances, or your Discharge from the RCMP.
>
> Take Notice, pursuant to Section 8(2)(a) of the *Privacy Act*, the "H" Division Occupational Health Services Office is authorized and required to disclose the relevant and necessary personal medical information under the control of the RCMP to the qualified person for the purpose of establishing your ability to perform your duties pursuant to section 20.2(1)(c) of the *RCMP Act*.
>
> When a member is absent from the workplace because of illness or injury Occupational Health Services, coordinated by the HSO, may intervene at any time to ensure the member is receiving all the services and/or treatment needed for a timely return to good health and fitness for duty. If you have questions with respect to this Notice, you may contact me at […]. The Employee Assistance Program is also available to you by calling 1-800-268-7708, and provides a confidential assistance and support service. You may also wish to seek advice and assistance from your Member Workplace Advisor.

[12] The applicant, who has not fully complied with the order, has sought in the meantime, without success, to have the order rescinded by the statutory delegate or to have it set aside by an adjudicator.

Facts subsequent to the impugned order

[13] The applicant initially refused to comply with the impugned order, reasserting that complying with it would undermine her on-going grievance. Be that as it may, on November 16, 2016, Ms. Sullivan received confirmation from Nurse Gartley that the applicant had provided the names and contact of her treatment providers. However, upon consultation with Dr. Bourque,

Ms. Sullivan found that there was still a need for an IME, as the information received from her treatment providers was still insufficient to completely assess her fitness to return to work. Furthermore, the applicant had failed to provide any written authorizations sufficient for OHS to obtain copies of any clinical records or responses from the treatment providers with respect to questions relating to impairment or prognostic. Indeed, a few days later, an appointment with a specialist was scheduled for the applicant for an IME. However, the applicant refused to submit to this examination. More specifically, the applicant asserted that the IME could not take place at this time and was unlawful, as the RCMP had not first exhausted all less intrusive measures for obtaining necessary information concerning her health status. As a result, the applicant advised Ms. Sullivan that she would attend the appointment, even though she was not consenting to such examination.

[14] The statutory delegate refused to rescind the impugned order. In an email dated November 21, 2016, Ms. Sullivan replied to the applicant that, by not submitting to this examination, it may result in her sick leave being rescinded, a stoppage of pay and allowance or discharge from the RCMP. Effectively, on November 22, 2016, the applicant attended at the office of Dr. Luke Napier, the qualified person identified by the RCMP for the medical examination. However, she informed Dr. Napier that she was ordered to attend this examination but that she did not consent to it. Therefore, Dr. Napier acknowledged that he could not examine her without her consent, and subsequently ended the appointment.

[15] On November 25, 2016, the applicant filed an appeal against the order pursuant to subsection 20(2) of the CSO (Employment Requirements) and paragraph 37(d) of the

Commissioner's Standing Orders (Grievance and Appeals), SOR/2014-289 [CSO (Grievances and Appeals)], and which was ultimately dismissed for timeliness, as explained below.

[16] On December 6, 2016, the applicant filed the present judicial review application.

Preliminary objection of the respondents

[17] The general rule is that a party can seek judicial review only after all adequate remedy and all recourses in the administrative process have been exhausted (*Black v Canada (Attorney General)*, 2012 FC 1306, [2012] FCJ No 1427 [*Black*] at para 37 referring to *CB Powell Ltd v Canada (Border Services Agency)*, 2010 FCA 61, [2010] FCJ No 274 at para 30). In their memorandum of fact and law, the respondents therefore submit that the Court ought to decline to exercise its discretion to decide this application for judicial review because the applicant has an adequate alternative remedy, and as a matter of fact, has already submitted an appeal of the impugned order, which was still outstanding at that time, that is on May 11, 2017. That being said, at the hearing held in Vancouver on July 13, 2017, the Court was informed by the applicant's counsel that a final decision dismissing the appeal of the applicant for timelessness had been rendered a few weeks earlier by an adjudicator. A copy of the decision in question rendered on June 9, 2017, by Kevin L. Harrison, Recourse Contract Adjudicator, has been provided on July 14, 2017 by applicant's counsel, as requested by the Court.

[18] In his correspondence to the Court of July 14, 2017, applicant's counsel states: "Ms. Gravelle has advised me that <u>she is not seeking judicial review</u> of the decision dismissing her appeal" [my underlining]. In her correspondence to the Court dated July 17, 2017, counsel for

the respondents maintains that the Court ought to decline to exercise its discretion to decide this application because the applicant has an adequate alternative remedy in the appeal process and can now seek judicial review of the adjudicator's decision dismissing her appeal.

[19] The preliminary objection made by the respondents that the present judicial review application is premature or that the applicant should now attack the adjudicator's decision, is dismissed by the Court. There was no motion to strike this proceeding and the matter was fully argued on the merits. Indeed, a full day of hearing was set down for this purpose. It would serve no useful purpose and would be contrary to the interests of justice to refuse at this late stage to decide the present application. I have also considered the adjudicator's decision dismissing the appeal. In effect, the adjudicator has found that the applicant is statute-barred from prosecuting her appeal, as it was not presented within the 14 day time limitation period mentioned in section 38 of the CSO (Grievances and Appeals). Moreover, the adjudicator has nevertheless considered whether the circumstances of this case merit a retroactive extension of the limitation period. He found no reason to grant such an extension of time, and, although the adjudicator made a preliminary assessment of the appeal and determined that it does not disclose an arguable case, this finding hardly qualifies as a full examination of the merits of the appeal. Forcing the applicant to now seek judicial review of the adjudicator's decision on the preliminary issue of timeliness would only cause further delays, but there is no assurance that the privacy claim made by the applicant would ever be finally decided on its merits by an adjudicator.

Merits of the present judicial review

[20] I will now successively consider the submissions made by the parties, the applicable standard of review and the merit of the underlying arguments made by the applicant – which are all dismissed, as this Court finds the impugned order reasonable.

A. *Parties' submissions*

[21] The applicant seeks a declaration that the impugned order breaches her privacy right and, therefore is unlawful, as well as an order from this Court in the nature of *certiorari* setting aside the impugned order. In a nutshell, considering that an employee has a "special privacy interest" in his or her personal medical information, the applicant submits that the statutory delegate had no power under paragraph 20.2(1)(c) of the RCMP Act and section 19 of the CSO (Employment Requirements) to make the impugned order, that she failed to explain why the information already provided by the applicant's healthcare providers was insufficient, and that she further failed to find a less intrusive method to find the required information about her functional status, which renders the impugned decision unreasonable.

[22] Firstly, the applicant underlines the importance of the employee's right to privacy, recognized as being a "core workplace value" (*Trimac Transportation Services-Bulk Systems v Transportation Communications Union*, (1999), 88 LAC (4th) 237 (Burkett)). A medical examination by a third-party physician is an extremely intrusive method of obtaining medical information in respect to an individual (*NAV Canada, The Employer v The Canadian Air Traffic Control Association*, (1998) 74 LAC (4th) 163 at para 55). Accordingly, the employer must "use

the least intrusive means capable of securing whatever information they require" (Donald JM Brown & David M Beatty, *Canadian Labour Arbitration*, 4th ed (Aurora: Canada Law Book, 2014) at 7:6142; *Peace Country Health v United Nurses of Alberta*, [2007] AGAA No 17 at para 36; *(Attorney General) v Grover*, 2007 FC 28). Consequently, the applicant contends that the order purportedly made under the authority of paragraph 20.2(1)(c) of the RCMP Act and section 19 of the CSO (Employment Requirements) was unlawful or unreasonable, because the statutory delegate has failed to establish that: a) the medical information sought was reasonably necessary for the purpose of establishing her ability to perform her duties; and, b) that efforts to obtain the reasonably necessary medical information by less intrusive means had been exhausted.

[23] Secondly, the applicant submits that the statutory delegate should have agreed to rescind the impugned order. Although she initially refused to disclose her medical information to the "H" Division HSO, she only did so due to her concerns about the previous breach of privacy of her medical records by the same Division. She was also under the impression that her grievance with respect to the transfer of her medical file would suspend the process until it was concluded. Once the applicant learned that the transfer would proceed nevertheless, she took steps to provide updated medical information to the "H" Division HSO. Notwithstanding this disclosure, the statutory delegate concluded that the medical information was insufficient and maintained the impugned order, without giving any reasons, which renders the impugned order unintelligible and reviewable by the Court.

[24] Thirdly, the applicant strongly denies having revoked her consent, as is suggested in Ms. Sullivan's affidavit at paragraph 28. Indeed, in an email sent on November 21, 2016, the applicant stated the following:

> I believe that you feel that you can order my participation. However, ordering me, you have revoked any consent that I can possibly give. The law will prove both you and the RCMP wrong If you go down this path. I will also conclude that this action of yours has been sanctioned by Commr. Paulson's office.

[25] The applicant explains that the above statement was not meant to revoke her consent concerning the HSO contacting her healthcare providers. Rather, she was stating that, by ordering her to attend the IME, the said medical examination could no longer be consensual. In fact, the applicant agreed for the HSO to contact her healthcare providers for the purpose of obtaining reasonably necessary medical information. However, the statutory delegate chose not to rescind the impugned order and, instead, compelled her to attend the medical examination before a medical examiner chosen by the RCMP.

[26] In turn, the respondents submit that the evidence in the record clearly shows that the applicant has refused to provide further necessary and adequate medical information to assess her functional status, and that the requested relief should be refused by the Court.

[27] Firstly, the respondents submit that the Court must consider the reasonableness of the impugned order at the date of its making on November 4, 2016. Consequently, in view of the applicant's refusal to provide updated information from her treating practitioners, it was entirely reasonable at that time for the statutory delegate to issue the order requiring her to undergo a medical examination by a qualified person for the purpose of establishing her ability to perform

her duties, as provided by subsection 20(1) of the RCMP Act and section 19 of the CSO (Employment Requirements). Accordingly, the impugned decision is neither unlawful, nor unreasonable.

[28] Secondly, the respondents submit that there is no breach of the applicant's privacy right, which is not absolute. On the contrary, it is the applicant who is in breach of the RCMP policy and requirement provided in the RCMP Administration Manual, ch 19 [RCMP Manual]. Indeed, as set out in the tribunal record and by the applicant's own evidence, the employer provided the applicant with several notices of the requirement to provide updated medical information to justify her current medical leave of absence, as well as to assess her ability to perform her duty and any need to accommodate. The applicant was fully aware of the need for such information, but steadfastly refused to provide the information requested due to her ongoing dispute with the RCMP regarding her grievance or outstanding complaints.

[29] Thirdly, contrary to the applicant's statement, the respondents submit that the "H" Division HSO had not received any medical reports from the applicant's treating practitioners (including her psychologist). In any event, the medical information subsequently obtained was not sufficient. The applicant also revoked her consent by an email dated November 21, 2016 and she continues to refuse to submit to an IME. Consequently, it was reasonable for the statutory delegate to determine that the impugned order was still necessary to obtain a complete, updated, objective and specialized medical assessment with respect to the applicant's current fitness to return to work.

B. *Standard of review*

[30] The parties agree that the applicable standard review is reasonableness. Be that as it may, the applicant nevertheless submits that the Court should not grant a high level of deference to any finding made by the statutory delegate of the Commissioner of the RCMP, given that the EMRO does not have more expertise than this Court in the subject matter in dispute. On the other hand, the respondents submit that the impugned order is fact-driven and concerns the management and administration of the RCMP, an area squarely within the EMRO's expertise, which should warrant a high level of deference from this Court. I agree with the respondents. While this Court has not established the standard of review applicable to the statutory delegate's decision under paragraph 20.2(1)c) of the RCMP Act and section 19 of the CSO (Employment Requirements), this Court has ruled on numerous occasions that the appropriate standard against similar types of decisions from the RCMP involving a dispute between an employee and an employer is reasonableness (*Black* at paras 42-43; *Elhatton v Canada (Attorney General)*, 2013 FC 71, [2013] FCJ No 58 at paras 30-31; *Su v Canada (Attorney General)*, 2017 FC 645, [2017] FCJ No 668 at para 42; *Canada (Attorney General) v Boogaard*, 2015 FCA 150, [2015] FCJ No 775 at para 33; *Camara v Canada*, 2015 FCA 43, [2015] FCJ No 153 at para 19). Clearly, the Court has been quite deferential when reviewing decisions of the Commissioner or its delegates, given their specialized expertise, especially when internal RCMP policies are involved. In the present case, a high degree of deference should be granted to the statutory delegate considering the EMRO's recognized expertise in human resources, and the fact that the impugned order is mostly fact-driven and turns on the determination of whether an IME is appropriate for the purpose of establishing the applicant's capacity to return to work.

C. *Impugned order reasonable*

[31] After reviewing both parties' submissions and the evidence on record, I find there is no reason to intervene. I basically endorse the arguments of the respondents. In all respect, the impugned order has been lawfully made and is reasonable. Accordingly, the declaratory and *certiorari* reliefs sought by the applicant are denied.

[32] Firstly, although I do recognize its quasi-constitutional character and importance, the privacy right invoked by the applicant is not absolute and is the object in this case of reasonable limitations. Obligations and duties rest on the RCMP and on the employee regarding a medical leave of absence. The RCMP Manual requires all members to provide a medical certificate for any period of absence due to illness or injury exceeding 40 working hours. Members are also required to comply with HSO Disability Case Management requests for additional information and actively participate in any employer mandated medical assessment. If a member of the RCMP seeks to obtain an authorized leave of absence on medical grounds from its employer, he or she must be ready to promptly submit to the HSO relevant medical information, especially if the member wishes to continue to receive his or her full salary and all other benefits after an extended period of time, such as in this case (over four and a half years of absence from work). As such, refusal to disclose medical information required by the HSO to validate medical condition for which absences due to injury is requested may result in sick leave being denied or rescinded, or even discharge.

[33] Secondly, the applicant has not convinced me that the statutory delegate has made any reviewable error upon which the Court should intervene. The evidence on record shows that the

impugned order was made as a last resort after the applicant had ignored previous requests to obtain updated medical information from treating practitioners. Pursuant to paragraph 20.2(1)(c) of the RCMP Act, the Commissioner, or his statutory delegate (the EMRO), may require a member to undergo a medical examination or an assessment by a qualified person specified by the Commissioner for the purpose of establishing the member's ability to perform their duties or to participate in conduct related proceedings. Moreover, section 19 of the CSO (Employment Requirements) provides that a member, who is required to undergo such examination, must present himself or herself to the qualified person on the dates and at the time specified, and comply with the Commissioner's requirement.

[34] Thirdly, the requests and the impugned order are not capricious or arbitrary as the medical information requested and the IME are necessary to assess the applicant's "abilities, functional limitations and restrictions." At the time of the making of the impugned order, the applicant had not provided updated medical information since November 2015. Although the applicant attributes this delay to the poor administration of her file from her past EMRO, her explanations are vague and not convincing. The statutory delegate did not act contrary to law. Indeed, Ms. Sullivan followed the policies established by the RCMP. The following extract of the four page letter sent by Ms. Sullivan on October 25, 2016 under the heading "Next Steps" is telling:

> The RCMP is committed to providing all members with work-related accommodation and a working environment that respects the prohibited grounds of discrimination, up to the point of undue hardship.
>
> At this time, the Occupational Health Team requires additional medical information to assess your current employment situation, identify your accommodation needs, and determine if a return to

work is feasible. In particular, updated medical information from your attending physician is required to:

l) Verify that your injury/illness currently prevents you from working, and to substantiate the use of sick leave in accordance with a A.M. 19.3;

2) To understand whether a return to work will be possible and if so approximately when; and

3) What, if any accommodations we should make for you to ensure you can safely return to work, including on a graduated basis if this is your treating physician's recommendation.

My understanding of your current employment situation is that you have been absent from duty with authorization from March 2012 to November 2015. I understand that the Occupational Health Team has already reached out to you to communicate this need. I also understand that on August 29, 2016, you advised your Health Services Case Manager, Judy Gartley that you refuse to identify your current treating practitioner(s); provide consent for health services to contact your treating practitioner; and/or to provide any medical information whatsoever.

In consulting your Health Services Officer (HSO), I have been informed that you have not provided Medical Certificates nor the medical information since November 2015, which is required by the HSO to confirm your leave is medically required as well as for accommodation return to work planning.

As noted above, the duty to accommodate is a shared responsibility. The RCMP must meet a number of obligations to support ill, injured and disabled members and you as a member have a duty to facilitate the search for accommodation. This includes providing information on your abilities, functional limitations and restrictions, as well as whether limitations and/or restrictions identified are temporary or permanent in nature.

At this time, there is insufficient information available to confirm your current absence is medically required and without updated medical information as set out above, you are at risk of being found absent without authorization under paragraph 20.2(1)(c) of the RCMP Act. I encourage you to contact your HSO Dr. Bourke on **Thursday, October 27,2016 between 0800 to 1600 hrs** to arrange for the required medical information (contact information for treating practitioner and consent to contact the treating practitioner) to be provided. It is important to note, once again, that

> your medical information is confidential and the evaluation report is accessible only to the Occupational Health team. The Occupational Health Team will only share your functional abilities information (limitations and restrictions), so that we can plan for any accommodation may require. I will be your primary point of contact in these discussions and in all return to work planning and implementation.
>
> Please note that if you do not contact your HSO Dr. Bourke on **Thursday, October 27, 2016 between 0800-1600hrs** […], I will have no choice but to order you to attend an Independent Medical Evaluation pursuant to s.19 of the *Commissioner's Standing Orders (Employment Requirements)*. As you are aware, if you do not cooperate in this medical assessment process, and refuse to undergo this medical evaluation, you may be considered in violation of the Code of Conduct. This may result in an application to the appropriate authority to seek stoppage of the pay and allowances you are presently receiving.
>
> I am committed to working with you towards the future, and look forward to welcoming you back within the division. However I cannot do so without your engagement. Please call me […] if you have any questions. If you reach my voicemail, please provide a return number and time when you can reliably be contacted, and I will return your call. I look forward to speaking with you.

[35] Fourthly, although the applicant contends that the employer should have found a less intrusive method to gather the necessary information by, for example, finding a neutral medical physician, chosen by both parties, she failed to provide any precedent for such a method in the RCMP policies or manual. Her arguments are mostly based on arbitral decisions rendered under different regimes and in different sectors. This Court should not second guess the employer or the statutory delegate of the Commissioner. Cast in its most positive light from the applicant's perspective, it would appear that she is asking the Court to enforce a stay to which she believes she is entitled under the general labour doctrine and given the utmost importance of her privacy right regarding such confidential medical information. The applicant has no right in this case to obtain such a judicial declaration.

[36] As a final note, I can understand why, in the past, the applicant refused to consent to the disclosure of her medical information. However, as stated by Ms. Sullivan in her letter of October 25, 2016: “It is important to note once again, that your medical information is confidential and the evaluation report is accessible only to the Occupational Health Team. The Occupational Health Team will only share your functional abilities information (limitations and restrictions), so that we can plan for any accommodation you may require”. Moreover, according to the present facts, the applicant had the confirmation that her grievance would not be impaired by her complying with the EMRO’s requests. From that point, she should have fully collaborated with Ms. Sullivan to complete her medical file. Perhaps it is questionable whether any consent provided by the applicant by November 15, 2016 was subsequently revoked. Be that as it may, notwithstanding the parties’ different interpretations of the applicant’s email of November 21, 2016, the applicant still refused to participate in the examination fixed with Dr. Napier, contrary to her obligation stated at section 19 of the CSO (Employment Requirements). Consequently, the impugned order not only meets the criteria of intelligibility, justification and transparency, but there is no reason to intervene on the basis of facts subsequent to the making of the impugned order.

Conclusion

[37] For the reasons above, this application for judicial review is dismissed with costs.

JUDGMENT in T-2099-16

IT IS THE JUDGMENT THIS COURT that the present judicial review application be dismissed with costs.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2099-16
STYLE OF CAUSE:	CHERYL GRAVELLE v ATTORNEY GENERAL OF CANADA, THE MINISTER OF PUBLIC SAFETY, ON BEHALF OF THE ROYAL CANADIAN MOUNTED POLICE AND, THE COMMISSIONER OF ROYAL CANADIAN MOUNTED POLICE
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JULY 13, 2017
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	JULY 31, 2017

APPEARANCES:

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