

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

BETWEEN:

ALI TAHMOURPOUR

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ROYAL CANADIAN MOUNTED POLICE

Respondent

DECISION

MEMBER: Karen A. Jensen

2008 CHRT 10
2008/04/16

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I. INTRODUCTION

[1] Ali Tahmoupour is a Muslim Canadian who was born in Iran. He had always dreamed of becoming a police officer.

[2] On July 12, 1999 he was given the opportunity to achieve his dreams. On that date he entered the Royal Canadian Mounted Police (RCMP) Training Academy in Regina, Saskatchewan (known as Depot). On October 20, 1999, Mr. Tahmoupour's training contract was terminated prior to completion of the program. Mr. Tahmoupour believes that the termination of his training contract was the culmination of three months of harassment and discrimination on the basis of his race, religion and ethnic or national origin.

[3] Mr. Tahmoupour filed a complaint with the Canadian Human Rights Commission (the Commission) on March 21, 2001 alleging violations of sections 7 and 14 of the *Canadian Human Rights Act*.

II. AN OVERVIEW OF THE COMPLAINT

[4] Mr. Tahmoupour alleged that from the first day of training at Depot he was singled out for negative treatment on the basis of his religion, race and national or ethnic origin. He stated that he was ridiculed for wearing a religious pendant and for signing his name in the Persian style. He was subject to ongoing verbal harassment, hostile treatment and negative performance evaluations by his instructors. This had the effect of undermining his confidence and impairing his ability to develop and demonstrate the necessary skills at Depot. When Mr. Tahmoupour challenged one of the instructors who was treating him negatively, the instructor in question began mounting a campaign to have him removed from Depot. At the urging of this instructor, Mr. Tahmoupour was given negative and inaccurate performance evaluations which ultimately led to his dismissal from the training program. The final act of discrimination occurred, in Mr. Tahmoupour's view, when the RCMP denied him the ability to return to the program on the basis of an inaccurate evaluation of his mental stability.

[5] It is Mr. Tahmourpour's view that the negative treatment he received was a manifestation of systemic discrimination against visible minorities at Depot. According to him, the systemic discrimination at Depot consisted of the RCMP's failure to address a culture of disrespect and negativity towards visible minority cadets at Depot, as a result of which the attrition rates for visible minorities were higher than for non-visible minority cadets.

[6] The RCMP denies that there was systemic discrimination at Depot during the time that Mr. Tahmourpour was there. The RCMP states that Mr. Tahmourpour's performance at Depot was fairly evaluated and found wanting. His training contract was terminated for no other reason than that he failed to meet the standards at Depot. When he was informed that his contract was terminated, Mr. Tahmourpour's negative reaction to this event demonstrated that he could not deal with challenges. Therefore, the RCMP was justified in putting a note on his file recommending that he not be considered for re-enrollment.

[7] The Canadian Human Rights Commission did not participate in the proceedings. However, it remained a party to the proceedings and indicated its interest in any preliminary, resolution, enforcement or judicial review proceedings that might arise.

III. WHAT ARE THE SPECIFIC ISSUES IN THIS COMPLAINT?

[8] Mr. Tahmourpour alleges that the following events took place, and that they constitute harassment and differential treatment on the basis of race, religion and national or ethnic origin:

- (1) Mr. Tahmourpour was subjected to discriminatory remarks, hostile treatment and verbal abuse by instructors at Depot;
- (2) Mr. Tahmourpour's performance at Depot was improperly evaluated;
- (3) The Respondent terminated Mr. Tahmourpour's training contract on the basis of false pretenses;

- (4) Mr. Tahmourpour was improperly designated as being ineligible for re-enrollment in the Cadet Training program at Depot; and
- (5) Mr. Tahmourpour was the victim of harassment on the basis of a prohibited ground of discrimination while at Depot.

[9] For the reasons that follow, I have found that Mr. Tahmourpour's complaint is substantiated.

IV. WHAT MUST BE PROVEN WITH REGARD TO SECTION 7?

[10] Section 7 of the *Act* defines a discriminatory practice as "adverse differentiation on the basis of a prohibited ground of discrimination".

[11] The Complainant has the initial burden of establishing a *prima facie* case that he was subjected to adverse differentiation on the basis of his race, religion and ethnic or national origin. A *prima facie* case is one that covers the allegations made and which, if the allegations are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent (*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at para. 28 ("*O'Malley*"); and *Dhanjal v. Air Canada*, (1997), 139 F.T.R. 37 at para. 6).

[12] The onus then shifts to the respondent to provide a reasonable explanation that demonstrates either that the alleged discrimination did not occur as alleged or that the conduct was somehow non-discriminatory (*Morris v. Canada (Canadian Armed Forces)* 2005 FCA 154 at para. 26). The Tribunal must then determine, on a balance of probabilities, whether the allegation of discrimination has been substantiated.

A. Was Mr. Tahmourpour Subjected to Discriminatory Remarks, Hostile Treatment and Verbal Abuse?

(a) The Reference to Mr. Tahmourpour's Religious Pendant

[13] On July 12, 1999 Mr. Tahmourpour attended his first day of Physical Training (PT) at Depot. The Instructor, Sergeant Paul Hébert (now Superintendent), instructed the cadets to change into their fitness clothing and to remove all jewelry and watches. Mr. Tahmourpour approached Sergeant Hébert to explain that he wore a religious pendant and that he did not want to remove it. Sergeant Hébert replied that this was acceptable.

[14] Mr. Tahmourpour requested that Sergeant Hébert keep the information about his religious pendant confidential; he did not want to be singled out as different on the basis of his religious affiliation. Mr. Tahmourpour testified that contrary to his request, Sergeant Hébert announced to all of the cadets in Troop 4 that “there was no jewelry to be worn during Physical Training, except for Ali here, who's allowed to wear his religious pendant”. He stated that Sergeant Hébert made the comment in a loud, sarcastic and condescending voice while rolling his eyes in the direction of Mr. Tahmourpour.

[15] Mr. Tahmourpour testified that for several days after this incident he was questioned by his troop mates about his religion and the reason he wore a pendant. He stated that this made him feel uncomfortable and concerned that he had been identified as “different”.

[16] On October 14, 1999, Mr. Tahmourpour had a conversation with Sergeant Hébert during which Sergeant Hébert apologized for his comment regarding the religious pendant. According to Mr. Tahmourpour, Sergeant Hébert stated that he would employ a different method for dealing with exemptions for religious jewelry in the future.

[17] The RCMP Dress and Hygiene Instructions provided to the cadets at the time that Mr. Tahmourpour was at Depot stipulated that no jewelry was to be worn, except for medic alert bracelets. It did not provide exceptions for religious jewelry. This put cadets in a position where

they either had to remove their religious jewelry, or approach the instructor as, Mr. Tahmourpour did, to request an exemption.

[18] On the basis of this evidence, I find that Mr. Tahmourpour has established a *prima facie* case that the RCMP Dress and Hygiene Instructions, and the announcement made by Sergeant Hébert in front of Troop 4, adversely differentiated against him on the basis of his religion.

The Respondent's Explanation

[19] Sergeant (now Superintendent) Paul Hébert testified on behalf of the RCMP. He admitted that he made an announcement to Troop 4 that no jewelry was to be worn in PT, except for Mr. Tahmourpour, who would be permitted to wear his religious pendant.

[20] Sergeant Hébert explained that he made the announcement to all the cadets because he did not want them to give Mr. Tahmourpour a hard time because he was not following the rule. Normally, if a cadet neglected to take jewelry off for PT, the troop would be required to do push ups as a reminder. To avoid this, the cadets would remind one and other to remove their jewelry. Sergeant Hébert felt he should announce to Troop 4 that Mr. Tahmourpour was permitted to wear his religious jewelry so that the cadets would not remind him to take it off before PT class.

[21] Sergeant Hébert stated that Mr. Tahmourpour did not tell him that he wanted the information to be kept confidential. Had he known this, he would not have made the announcement to the entire troop. He would have told only the right marker. The right marker makes sure that the whole troop is on time for class and in proper uniform. It would be necessary to tell the right marker that an exception had been made to the uniform rule so that he or she would not give the cadet a hard time for not being in proper uniform.

[22] Sergeant Hébert's admission that he would not have made the announcement to the entire troop had Mr. Tahmourpour asked him not to, undercuts his explanation that it was necessary to provide this information to everyone.

[23] Sergeant Hébert also acknowledged that a better practice would have been to publicly inform the cadets about the rule and the exceptions for religious jewelry and medic alerts, without mentioning any names. Then, if there were problems arising from the use of jewelry in PT class, the instructor could approach the cadet(s) on an individual basis and discretely discuss the situation.

[24] Sergeant Hébert stated that his tone of voice during the announcement would have been loud because it was a noisy environment. However, he would not have used a sarcastic voice because he respected people's beliefs and values.

[25] I accept Sergeant Hébert's testimony that the announcement was made publicly to Troop 4, but in a neutral manner. This does not, however, change the fact that Mr. Tahmourpour felt that he had been identified as being different from the rest of the troop on the basis of his religion. Although several of his troop mates testified on behalf of the RCMP that they did not know about his Muslim background, this does not mean that Mr. Tahmourpour was not questioned about his religion by other cadets who did not testify.

[26] One of the challenges that Mr. Tahmourpour faced in this case was to present evidence from his former troop mates who are now RCMP officers. Mr. Tahmourpour stated that he had difficulty finding individuals who would testify against the RCMP in this case.

[27] Moreover, Mr. Tahmourpour's own perception that he had been identified as different is sufficient for me to find that, although unintended, the effect of the RCMP's policy with respect to dress and hygiene and Sergeant Hébert's announcement about Mr. Tahmourpour's religious pendant was to adversely differentiate against Mr. Tahmourpour on the basis of his religion. This allegation is therefore, substantiated, on a balance of probabilities.

(b) Discriminatory Remarks and Treatment by Corporal Dan Boyer

[28] The Head Instructor of the Firearms Unit was Corporal Dan Boyer. Corporal Boyer (now retired) was known for his loud, commanding presence on the Firearms Range. Many cadets

were afraid of making mistakes on the Range because Corporal Boyer was harsh and brusque in his reprimands.

[29] Mr. Tahmourpour testified that Corporal Boyer was constantly hostile and verbally abusive towards him. He stated that Corporal Boyer would stand very close to him at the firing range and scream into his ear that he was a “loser”, a “coward”, “fucking useless” and “incompetent”. Mr. Tahmourpour conceded that Corporal Boyer yelled and was verbally abusive to other cadets in Troop 4. However, he stated that Corporal Boyer directed significantly more of his negative attention towards Mr. Tahmourpour than the other cadets. This had a very negative effect on Mr. Tahmourpour’s ability to perform in Firearms.

[30] Mr. Tahmourpour stated that Corporal Boyer made it clear that he knew his behaviour was offensive. He often announced to Troop 4 that he was “politically incorrect” and he did not care who knew this or objected to it.

[31] Dr. Scot Wortley, a criminologist from the University of Toronto, testified on behalf of Mr. Tahmourpour. He was qualified as an expert in racism and policing. Dr. Wortley testified that the term “politically correct” is pejorative and sarcastic. It is meant to convey an attitude of disdain towards human rights. Dr. Wortley stated that when a person in a position of authority states that he is politically incorrect, it may communicate the idea that the system does not take complaints of discrimination seriously and that discriminatory attitudes are tolerated.

[32] Mr. Tahmourpour testified that on one occasion, fairly early in the training program, Corporal Boyer watched him sign an evaluation form and then stated: “What kind of fucking language is that, or is it something that you’ve made up?” Mr. Tahmourpour signs his name from right to left in the Persian style he learned when he was a child in Iran. He has continued to sign his name in this way. He was deeply offended when Corporal Boyer made the offensive remarks about his signature.

[33] Mr. Tahmourpour stated that he was unable to concentrate and perform to capacity in Firearms because he was in constant fear of rebuke and condemnation from Corporal Boyer.

[34] His poor performance in Firearms Training, which ultimately led the termination of his training contract, was due to Corporal Boyer's prejudicial dislike and mistreatment of him.

[35] Sergeant Brar testified on behalf of Mr. Tahmourpour. He was an instructor and troop facilitator at Depot from 1998 to 2000. Sergeant Brar is a visible minority; he is of East Asian descent. While on the firing range with his troops, Sergeant Brar observed that Corporal Boyer focused a lot of negative attention on visible minority cadets and women (unless he appeared to find them attractive, in which case he would treat them favourably). He stated that Corporal Boyer was particularly loud and abusive with visible minority and female cadets. Corporal Boyer was more jovial with Caucasian males and attractive female cadets.

[36] Sergeant Brar stated that he had observed that Corporal Boyer's behaviour had an effect on cadets' performance. When he yelled in their ear and berated them loudly, Sergeant Brar noticed that the cadets did not perform well.

[37] Sergeant Brar brought Corporal Boyer's differential treatment of the women and visible minority cadets to the attention of the Officer in Charge of Depot, Inspector Keith Clark. Sergeant Brar could not recall the specific date that he reported Corporal Boyer's behaviour to Inspector Clark. He told Inspector Clark that he believed that there would be complaints of harassment and racial discrimination as a result of Corporal Boyer's behaviour. Sergeant Brar stated that Inspector Clark did not ask for any further information.

[38] Sergeant Brar testified that he and Corporal Boyer were not on good terms during the time that he was at Depot. He stated that it was his impression, based on what he observed about Corporal Boyer's behaviour, that the latter gentleman did not like him because of his race and ethnicity.

[39] Sergeant Brar testified about an incident between himself and Corporal Boyer in which Corporal Boyer berated Sergeant Brar for a decision that he had made with respect to one of the cadets in his troop. Sergeant Brar stated that Corporal Boyer's tone of voice and abusive language towards him on the telephone was inappropriate given that he was speaking to a

colleague of the same rank. Sergeant Brar hung up on Corporal Boyer rather than allowing Corporal Boyer to continue berating him.

[40] On the basis of the evidence above, Mr. Tahmourpour has made out a *prima facie* case that Corporal Dan Boyer made a derogatory remark about Mr. Tahmourpour's signature that was based on Mr. Tahmourpour's ethnic or national origin and that Corporal Boyer was verbally abusive toward Mr. Tahmourpour. This evidence, in addition to the evidence that Corporal Boyer flaunted his "political incorrectness", and Sergeant Brar's evidence that he was harder on visible minority cadets and instructors than their Caucasian counterparts, provides sufficient circumstantial evidence to establish a *prima facie* case that Corporal Boyer's hostile and abusive conduct towards Mr. Tahmourpour was based, at least in part, on Mr. Tahmourpour's race, religion and national or ethnic origin.

The Respondent's Explanation

[41] Corporal Boyer testified on behalf of the RCMP. He was a Firearms instructor at Depot from July 1996 to 2001. He admitted that he made a comment about Mr. Tahmourpour's signature. However, he stated that he did not swear at him. Corporal Boyer observed Mr. Tahmourpour signing one of the feedback forms. He noticed that Mr. Tahmourpour signed his name from right to left and then added a few "scribbles" at the end. The signature looked like it was written in another language. Corporal Boyer testified that he did ask Mr. Tahmourpour what language his signature was in, or whether it was just something that he had made up. Corporal Boyer testified that he asked Mr. Tahmourpour about his signature out of curiosity; he was genuinely interested in different languages. Also, he stated that Mr. Tahmourpour was signing a legal document and he wanted to make sure that it was his real signature.

[42] Corporal Boyer admitted that he swears at work. He admitted that he was told by the troops that he yelled and was loud. He admitted that there were other complaints about him but he could not recall the specifics of any of the complaints. He said that it was possible that he had been warned about his condescending and inappropriate comments to cadets. Corporal Boyer admitted that one of his performance reviews stated that he had a "filthy mouth", but that he had

worked on this problem. Yet, he admitted that he still swore in front of his family and therefore, his efforts had not been entirely successful. Corporal Boyer also admitted that there had been complaints prior to his retirement that he swore at cadets.

[43] On the basis of this evidence, I find that it is more probable than not that Corporal Boyer asked Mr. Tahmourpour: “What kind of a fucking language is that, or is it something that you just made up?” Corporal Boyer’s statement that he was genuinely curious about other people’s languages and cultures did not ring true. It sounded rehearsed and insincere. Moreover, it was inconsistent with other evidence that I heard about Corporal Boyer’s tendency to degrade visible minority cadets.

[44] His explanation with regard to the authenticity of Mr. Tahmourpour’s signature did not make sense and also sounded fabricated. The manner in which Mr. Tahmourpour signed the Feedback form would have no bearing whatsoever on the authenticity or validity of the contents of the document. It simply connoted that the cadet had been given the document. Therefore, I do not accept Corporal Boyer’s explanations about his signature comment.

[45] Corporal Boyer denied that he was harder on Mr. Tahmourpour than the other cadets in Troop 4. He stated that, like a number of Firearms instructors, he was loud and aggressive. He stated that he was not a bully, although he was aware that he could “possibly” intimidate people. Corporal Boyer said that he used this style because Firearms was a very dangerous environment and it was critical to ensure that order and decorum was maintained at all times on the line.

[46] Corporal Boyer stated that he was not “politically correct” at all times. He thought “politically correct” meant never swearing and yelling. He viewed Depot as a “politically correct” world where you don’t swear and try keep things as polite as possible. Corporal Boyer stated that he swears and yells and in that sense, he is not politically correct. However, he did not see himself as racist.

[47] Corporal Boyer was also questioned about his reaction to a direction from his supervisor that he remove the “men’s magazines” that he had left in the men’s washroom. (I infer that

“men’s magazines” refers to material depicting women in sexually explicit ways which is seen by many as not conducive to gender equality). Corporal Boyer stated that his first response to the direction to remove the magazines may have been that Depot was trying to be “politically correct”. Corporal Boyer stated that by that he would have meant that Depot was a “fair environment” and some of the material might have been offensive to people.

[48] Corporal Boyer’s evidence was not consistent or convincing. It is highly probable that he knew that “political correctness” meant more than not swearing, or he would not have responded that Depot was trying to be politically correct when he was told to take the “men’s magazines” out of the washrooms. I think he knew, but was not willing to admit on the stand, that “political correctness” meant respecting the rights of women and minority groups, among others. I find it more probable than not that Corporal Boyer told people that he was politically incorrect, and by that he meant that he would say whatever he wanted about people even if it was sexist or racist. In my view, this is what reasonable listeners would think when they heard Corporal Boyer declaring that he was politically incorrect.

[49] Constable Brendon McCarney testified on behalf of the RCMP. He was a visible minority member of Troop 4 during the time that Mr. Tahmourpour was in Troop 4. Constable McCarney stated that he strongly disliked Corporal Boyer. He was confrontational; he would yell at the cadets right in their faces, very close to them.

[50] Constable McCarney was subjected to a tirade from Constable Boyer. He was stunned. He made sure that he did not repeat the mistake that prompted the reaction. He did not feel singled out, however. He stated that anyone who made a mistake was yelled at by Corporal Boyer, including Caucasian cadets.

[51] Constable McCarney stated, however, that he considered Corporal Boyer to be “politically incorrect”. By that he meant someone who is rude and uses inappropriate words to refer to an individual’s race, sexual orientation or colour. He stated that someone who is politically incorrect with respect to race could be called racist. In that sense, Constable McCarney thought that

Corporal Boyer could be racist, although he did not use racist terms with him. Corporal Boyer was simply mean to him.

[52] I find that Constable McCarney's evidence corroborates Mr. Tahmourpour's assertion that although Corporal Boyer was hard on all the cadets, his treatment of visible minority cadets had an added perniciousness. There is further evidence to support this conclusion in the testimony of Corporal Eldon Draudy. Corporal Draudy testified on behalf of the RCMP. He is a Caucasian male. Corporal Draudy stated that he found Corporal Boyer to be very intimidating. He was afraid of making mistakes because Corporal Boyer would yell in a very loud voice if a mistake was made. Corporal Draudy did make a mistake. Corporal Boyer yelled at him for "not having his head in the game" and for not concentrating. Corporal Boyer told him that he could put his life or someone else's life in danger.

[53] Corporal Draudy did not refer to Corporal Boyer as "mean" or "abusive" as did Sergeant Brar, Constable McCarney and Mr. Tahmourpour (all visible minorities). Rather, Corporal Draudy stated that he appreciated Corporal Boyer's approach because the range is a dangerous place and Corporal Boyer had to maintain strict control over it to ensure that no one was hurt. Corporal Draudy's experience of being corrected by Corporal Boyer was quite different from the experiences of the visible minority members and cadets who testified. Corporal Draudy was told that he did not have his head in the game, a comment that would be considerably easier to accept than being told, as Mr. Tahmourpour was, that he was "fucking useless".

[54] On the basis of this evidence I find it more likely than not that Corporal Boyer treated visible minority cadets differently and more negatively than non-visible minority candidates. I also find it more probable than not that Corporal Boyer was verbally abusive and hostile towards Mr. Tahmourpour at least in part on the basis of his race, religion, ethnicity or national origin.

[55] Corporal Boyer denied that he was racist; he has many friends and family members who are from visible minority groups. However, in assessing the weight to be accorded to such a statement, I must consider that it is quite possible that Corporal Boyer's attitudes with respect to

visible minority cadets and RCMP officers are markedly different from his attitudes towards his friends and family.

[56] There was evidence from an RCMP survey of Regular Members in 1996 that indicated that 51 percent of Caucasian male members felt resentment towards their visible minority, female and Aboriginal colleagues in the RCMP, based on their perception that employment equity initiatives have given these RCMP officers an unfair advantage. There was no evidence that this attitude had changed between 1996 and 1999 when Mr. Tahmourpour was attending training at Depot.

[57] Corporal Boyer was, like all of the instructors and facilitators at Depot, a regular member of the RCMP. In my view, it is a reasonable inference, based on the Regular Members' Survey and on the evidence presented about Corporal Boyer's behaviour at Depot, that his behaviour toward Mr. Tahmourpour may have been based, at least in part, on resentment that he, like many regular Caucasian Males, felt towards members of visible minority groups and women in the RCMP.

[58] In conclusion, I find that Corporal Boyer made a derogatory comment about Mr. Tahmourpour's signature that was based on a prohibited ground of discrimination. He also adversely differentiated against Mr. Tahmourpour on the basis of a prohibited ground by being especially verbally abusive and hostile towards Mr. Tahmourpour at Depot.

B. The Evaluation of Mr. Tahmourpour's Performance at Depot

(a) The First Evaluation

[59] On September 10, 1999, Mr. Tahmourpour received a Cadet Performance Feedback Sheet dated September 8, 1999 that listed 12 "NI's" in Applied Police Sciences (APS). "NI" signifies "needs improvement". An NI is assigned when a cadet's performance is deficient, even if only slightly so. Cadets are provided with written notification when they receive an NI. If a cadet receives two NI's in the same competency, he or she is given a U, or an "Unacceptable" rating.

[60] The criticism in the September 8, 1999 Feedback document focused on Mr. Tahmourpour's alleged weaknesses in communication skills, group participation, self-assessment, ability to handle stress, and decision-making skills. A number of examples were provided that allegedly demonstrated his weaknesses in these areas. Mr. Tahmourpour was given one month to improve his performance; a meeting was set to discuss his progress.

[61] Mr. Tahmourpour alleged that almost all aspects of the September 8, 1999 evaluation were false. He stated that his performance to that point in time was no more deficient than that of any other cadet, and that the negative assessments constituted adverse differential treatment on the basis of his race, religion and ethnic or national origin. In the alternative, if his performance was weak in any of the areas listed in the evaluation, it was because of the discriminatory treatment he was receiving. Unlike his fellow cadets, he was not provided with a non-discriminatory environment in which to develop and demonstrate his capabilities.

[62] I will deal with two of the examples provided in the September 8, 1999 evaluation: Mr. Tahmourpour's weak communication skills and the pepper spray incident, the latter of which allegedly demonstrated his weaknesses in the handling stress and decision-making. These two examples are illustrative of the issues raised in this case.

(i) Mr. Tahmourpour's Communication Skills

[63] Mr. Tahmourpour's facilitators reported that he had a lot of difficulty in listening and communicating effectively. He demonstrated this during an anger management simulation on August 18, 1999. At the time, Mr. Tahmourpour failed to listen to clients who were offering a suitable course of action. Mr. Tahmourpour stated that although he did not perform remarkably well during this session, his performance was certainly no worse than other cadets in his Troop.

[64] Another example that was provided in the September 8th evaluation of Mr. Tahmourpour's poor listening and communication skills involved the "community consultative group" scenario. Scenarios are role plays of situations that occur during the course of

police work. They require the cadets to apply the information and skills that they have acquired in training to solve the problem in the scenario.

[65] Mr. Tahmourpour volunteered to play the role of a police officer whose task was to facilitate a community meeting regarding an issue of concern to local residents. Corporals Bradley and Jacques reported that “the members of a fictitious community brought different problems to the table and what started as a constructive meeting ended up in a destructive situation where community members were obviously upset with the police officer”. They stated that this occurred because Mr. Tahmourpour failed to use good communication and consensus-building skills to define the problem and arrive at a solution. He failed to listen to the community members and seemed to have his own agenda.

[66] In contrast, Mr. Tahmourpour stated that the community meeting went very well. He stated that the residents of the community wanted the by-laws changed so that guests to their home would not receive parking tickets when they visited. He told them that the law was the law, and that he would try to work through the appropriate channels to see what could be done. Mr. Tahmourpour thought that all of the participants were quite happy with that result. His troop mates gave him positive feedback on his handling of the incident.

The Respondent's Explanation

[67] Corporal (now Inspector) Bradley testified that from the beginning, she perceived that Mr. Tahmourpour had a great deal of difficulty in scenario training. He had difficulty reading the environment and responding appropriately. She stated that his difficulties stemmed from poor communication skills. Communication skills are more than just speaking. They involve listening, taking in information and responding appropriately. As a result of his inability to communicate effectively, Mr. Tahmourpour was poor in all aspects of risk assessment, police and public safety assessment and interactions with suspects.

[68] Corporal Bradley stated that Mr. Tahmourpour was given regular verbal feedback about his communication skills. For example, in the anger management scenario, Mr. Tahmourpour was

unable to respond to the cues and to use the techniques that he had been taught. In keeping with the standard procedure, his performance was critiqued after the scenario. Corporals Jacques and Bradley testified that the feedback would have been provided in a constructive way.

[69] With regard to the Community Consultative Group, Corporal Bradley stated that Mr. Tahmourpour seemed to have formulated an approach to dealing with the problems presented in the meeting. Regardless of the information or emotion that was presented to him, he would not deviate from his plan. The result was that he did not listen to people and would not react to what they were saying. The group became increasingly angry when they perceived that Mr. Tahmourpour was not responding to the issues they were raising. He did not use the techniques that had been taught to engage in interest-based negotiation such as paraphrasing, identifying interests, asking questions, reading emotions and saying things like “ok, I can see that this is really important to you, what can we do to help you with this?”

[70] Inspector Bradley provided credible testimony regarding Mr. Tahmourpour’s communication difficulties. She performed well during a rigorous cross-examination on this point. When challenged, for example, about the fact that Mr. Tahmourpour’s peers thought that he remained in control throughout the Community Consultative Group, Inspector Bradley stated that it was not inconsistent to remain in control of the group (which was generally positive) and yet, be unresponsive to the needs and interests that were being raised during the meeting. She did not waiver in her assessment that Mr. Tahmourpour’s performance during this meeting was unacceptable. She was able to respond to the questions put to her by counsel for the Complainant in a calm, straightforward manner. She was assertive and forthright, and spoke with conviction and an air of candour that I found convincing.

[71] In contrast, I found Mr. Tahmourpour’s evidence on the issue of his communication skills to be less credible. He asserted that his performance in the Community Consultative Group was excellent because he came up with a solution. It appeared to me that he did not fully appreciate that there is more to communication than expressing one’s own ideas and coming up with a solution to a problem. For example, when Mr. Tahmourpour was asked what he thought was meant by “active listening” he stated that he thought that it meant taking good notes.

[72] Mr. Tahmourpour also demonstrated his weakness in self-assessment during the hearing. He agreed in cross-examination that he might have some weaknesses in communication skills. Yet, when asked what these weaknesses were, Mr. Tahmourpour was unable to identify any area. He often repeated that, like everyone, he had areas that he needed to work on. But, when pressed on what those might be, he was evasive.

[73] Therefore, I think it more probable than not that by September 8, 1999 Mr. Tahmourpour had demonstrated that he was failing to develop certain communication skills that are essential to police work: active listening, consensus building, interest-based negotiation, and speaking in a commanding tone of voice. The first part of Mr. Tahmourpour's *prima facie* case, therefore, is not made out.

[74] However, Mr. Tahmourpour asserted, in the alternative, that his weaknesses at Depot resulted from the constant unfounded criticism that he received at Depot. Mr. Tahmourpour did receive a lot of attention from the instructors at Depot. Some of the attention he received came in the form of sincere efforts to assist him to overcome weaknesses in areas such as communication skills. However, as I have already noted, he was also subjected to verbal harassment and derogatory remarks by Corporal Boyer that were based, at least in part, on his race, religion and/or ethnic or cultural background. Mr. Tahmourpour stated that he felt intimidated and his confidence was seriously undermined by this treatment.

[75] Mr. Tahmourpour testified about his feelings of alienation and vulnerability arising from a session on "sensitivity training" that was held early in the program. He stated that Corporal Jacques introduced the session by stating: "This is the session where we are going to teach you all how to be politically correct so that you don't get yourselves into trouble". After that introduction, one cadet stated: "Let's go to Fort McMurry, eh". Then another cadet quipped: "Let's stop for some photocopier juice and some varsol first, eh?" The cadets imitated the accent of some Aboriginal Canadians when they made these statements. Apparently, many of the cadets laughed at these remarks. According to Mr. Tahmourpour, Corporal Jacques did not object to the statements or reprimand the cadets for making them. Mr. Tahmourpour stated that he felt

extremely uncomfortable and alienated from his troop mates as a result of these obviously racist comments.

[76] The Respondent did not provide any evidence in response to these allegations. Therefore, I find, on a balance of probabilities, that the events occurred as described by Mr. Tahmourpour and that their effect was to make Mr. Tahmourpour feel vulnerable to racism at Depot.

[77] It is generally understood that racism and discriminatory treatment in general have a detrimental effect on the victim's ability to function effectively in the workplace (see for example: *Nkwazi v. Correctional Service Canada* [2001] C.H.R.D. No. 29 at para. 119; *Naraine v. Ford Motor Co.* [1996] O.H.R.B.I.D. No. 23 at para. 93, rev'd on an another point: (2001), 209 D.L.R. (4th) 465 (O.C.A.); *Hinds v. Canada (Employment and Immigration Commission)* [1988] C.H.R.D. No. 13). Therefore, in analyzing the particular allegations in a human rights complaint, the complainant's conduct must be assessed in the context of the wider work environment. If the work, (or in this case, training) environment was poisoned with discrimination and harassment, the Tribunal must determine whether this affected the complainant's conduct or performance.

[78] When I consider Mr. Tahmourpour's conduct in the context of the discriminatory treatment he was experiencing at Depot, I find it more probable than not that this treatment was a factor in the difficulty he was having in developing and demonstrating acceptable communication skills. In an atmosphere where racial intolerance and harassment is tacitly condoned, and where cadets like Mr. Tahmourpour are subjected to verbal abuse and bullying, it is reasonable to infer that their performance will be negatively affected. For that reason, I find that although the facilitators' criticism of his communication skills was likely an accurate reflection of what they were seeing, it was not necessarily an accurate reflection of Mr. Tahmourpour's true abilities in this area. Mr. Tahmourpour was not provided with a non-discriminatory environment in which to develop and demonstrate his communication skills. Therefore, I find, on a balance of probabilities that the second part of Mr. Tahmourpour's *prima facie* case with respect to this aspect of the September 10, 1999 evaluation has been made out.

(ii) The Pepper Spray Incident

[79] On August 26, 1999, Troop 4 participated in a session where they received pepper spray in the face and then performed a series of tasks. The purpose of the session was to provide the cadets with a personal experience of the effects of pepper spray and to evaluate their performance under stress. Each cadet was matched with a partner whose role was to assist his or her troop mate afterwards to wash the spray out of the eyes and to recover. The cadets lined up with their partners. When their names were called, one cadet moved forward to receive the spray, while the other stayed close at hand to assist.

[80] In the Cadet Performance Feedback Sheet dated September 8, 1999, Corporals Bradley and Jacques stated that prior to the pepper spray session, Mr. Tahmourpour was so nervous that he did not think he could go through with it. They further stated that during the testing, his anxiety made him oblivious to his surroundings. As a result, he was missing from the line-up when his partner was about to be sprayed. Other troop mates had to locate him so that he could look after his partner.

[81] Mr. Tahmourpour testified that the evaluation of his performance during the pepper spray session was inaccurate. In his view, he did very well during the session. He was not missing when it was his partner's turn to be sprayed; he was right there to assist him as required.

[82] Mr. Tahmourpour stated that the pepper spray evaluation was one of a number of false evaluations that were included in the September 8, 1999 Feedback document in order to make a case against him at the instigation of Corporal Boyer. Corporal Boyer had taken a prejudicial dislike to him and was doing everything he could to have his training contract terminated, according to Mr. Tahmourpour.

[83] According to Mr. Tahmourpour, the September 8 evaluation in APS was completed on September 9 or 10, after he had had a confrontation with Corporal Boyer on September 9, 1999. On September 9, Corporal Boyer gave Mr. Tahmourpour a U for having a dirty pistol. Mr. Tahmourpour disagreed that his pistol was dirty. He asked for a second opinion.

Corporal Boyer then flew into a rage and stated: “Get the fuck out of my face or I’ll kick your ass”. Mr. Tahmourpour stated that the two men nearly came to blows, but because Mr. Tahmourpour backed down, they did not. Mr. Tahmourpour alleged that the September 8 Feedback in APS and was “trumped up” in response to suggestions from Corporal Boyer.

[84] As proof that the evaluation was prepared in response to Corporal Boyer’s pressure, Mr. Tahmourpour pointed to the fact that prior to September 8, 1999, he had only received formal feedback in Police Defensive Tactics and Firearms. He had received no formal feedback in APS for which Corporal Bradley and Corporal Jacques were the instructors. Then suddenly, on September 8, 1999 he received 12 NI’s in APS. According to Mr. Tahmourpour, the September 8, 1999 was the first time that he learned that his performance in APS was seriously deficient. Contrary to the Cadet Assessment Procedures, he had not been told at the time of many of the incidents cited in the evaluation, that his performance was deficient. Those incidents date as far back as August 18, 1999 – about three weeks prior to the issuance of the formal feedback. The pepper spray incident was almost a full 2 weeks prior to the September 8, 1999 Feedback. If his performance had been deficient at that time, he should have been made aware of it then.

[85] According to the Cadet Assessment Procedures, if no formal feedback is received, a cadet can assume that his or her performance is at the “Professional” (or “P”) level. Feedback is to be given immediately or as soon as possible after the event occurred so that the cadet has time to improve. Mr. Tahmourpour did not receive any formal feedback at the time of many of the incidents cited in the September 8, 1999 evaluation, and specifically for the pepper spray session on August 26, 1999. This constituted a significant deviation from the standard evaluation procedure. Together with the timing of the evaluation, it suggests that there was another factor influencing the Feedback on September 8, 1999 besides the instructors’ concerns about Mr. Tahmourpour’s performance.

[86] Corporal Boyer had already demonstrated a prejudicial dislike towards Mr. Tahmourpour. Corporal Jacques and Corporal Boyer were in close contact with one and other since they both taught Firearms. Therefore, it is likely that Corporal Boyer had an influence on Corporal Jacques’ opinion of Mr. Tahmourpour.

[87] On the basis of the evidence presented by Mr. Tahmourpour, I find that he has established a *prima facie* case that he was treated differently from the other cadets in the evaluation of his performance in the pepper spray incident, and that his status as a visible minority cadet was a factor in this treatment.

The Respondent's Explanation

(i) What happened at the Pepper Spray Session?

[88] Corporal Brendon McCarney provided a DVD of some of the troop's activities and training sessions. One of the activities that was recorded on the DVD was the pepper spray session. There was only one pepper spray session per troop at Depot.

[89] Corporal McCarney testified that the troop hired a videographer to record a selection of activities to keep as a memento of their experiences at Depot. The DVD recording did not include all of the activities and sessions at Depot. The Tribunal accepted the DVD as evidence with the proviso that it did not represent the entirety of the experiences at Depot. Therefore, the events that are portrayed in the DVD must be examined in the context of all of the evidence presented during the hearing.

[90] The DVD recording showed Troop 4 marching in to the area where the pepper spraying was to take place. They were in two lines. Mr. Tahmourpour was in a line beside Cadet Lasson, who was his partner for the pepper spray session. The DVD recording showed that Mr. Tahmourpour was not missing when Cadet Lasson was being sprayed: the video shows that Mr. Tahmourpour was, at that point in time, there to help his partner, Cadet Lasson. Cadet Meyer, however, was not there immediately when his partner, Cadet Lyle, was due to be sprayed in the face. The recording shows that a call went out to wait until Cadet Meyer was located. It would appear, therefore, on the basis of the DVD recording, that it was Cadet Meyer who was not there to assist his partner, not Mr. Tahmourpour.

[91] Like the other cadets who testified in this case, Corporal McCarney had no recollection that any of the cadets were missing when their partner was being sprayed. However, when he watched the DVD again, he acknowledged that Cadet Meyer had to be located when his partner, Cadet Lyle, was about to be sprayed. He also acknowledged that the DVD showed that Mr. Tahmourpour was there when his partner, Cadet Lasson, was about to be sprayed. He stated that the cadets received only one treatment of pepper spray each.

[92] Corporal Bradley was not present at the pepper spray incident; she had no recollection of the events other than what she had been told by Corporal Jacques. Corporal Bradley admitted that from what she observed on the recording, Mr. Tahmourpour was there for his partner and performed as well as the other cadets during the pepper spray test. However, she stood by the information that was provided to her by her fellow troop facilitator, Corporal Jacques, that at some point in time, Mr. Tahmourpour was not there for his partner when he was pepper-sprayed and had to be located.

[93] Corporal Jacques stated that the problem with Mr. Tahmourpour's conduct was that he did not line up with the troop before the pepper spray session commenced. His troop mates had to find him and get him into line with the rest of the troop so that he could support his partner while he was being pepper sprayed. The line-up prior to the commencement of the pepper spray session was not shown on the DVD.

[94] Corporal Jacques admitted in cross-examination that, contrary to his usual practice, he did not make a note of Mr. Tahmourpour's failure in his diary. He also admitted that he usually made notes in his diary of significant training events. He kept thorough notes about Mr. Tahmourpour's progress, but this incident was not in his notes.

[95] There was another problem with Corporal Jacques' testimony. In spite of the witness exclusion order that was in effect, Corporal Jacques was informed prior to testifying about the DVD recording of the pepper spray incident and the difficulty that the previous witnesses had experienced in reconciling the content of the recording with the Feedback document indicating that Mr. Tahmourpour was absent when his partner was "about to be pepper sprayed". This

provided Corporal Jacques with an opportunity to present his evidence in a way that would address this difficulty. As a result, the witness exclusion order was effectively circumvented. This caused me to question the authenticity of the evidence that Corporal Jacques provided on this point. I am not sure that he would have “recalled” the moment when Mr. Tahmourpour was allegedly absent from the line-up had he not been provided an opportunity to consider the evidence that had been presented prior to testifying. Furthermore, the event was not noted in his diary, and he relied extensively on those notes to refresh his memory.

[96] Finally, Corporal Jacques testified that Mr. Tahmourpour was not in line when the troop was preparing for the exercise. Yet, the Feedback document indicates that Mr. Tahmourpour was not ready when his partner was “about to be sprayed”. The wording of the Feedback document suggests a much more immediate absence from his place in line. It suggests the kind of conduct that was observed from Cadet Meyer who was not there when his partner was about to be sprayed.

[97] On the basis of this evidence, therefore, I find that Mr. Tahmourpour’s description of the pepper spray incident is more probable. He was, in fact, there for his partner when the time came for Cadet Lasson to be sprayed. He may have been nervous about the incident, but no more so than the other cadets appeared to be for what was clearly an intensely unpleasant and stressful event. I find therefore, that the Feedback document was not accurate.

(ii) Was the September 8, 1999 Feedback influenced by Corporal Boyer?

[98] The timing of the September 8, 1999 Feedback suggests that parts of it may have been fabricated, or at the very least, hastily and inaccurately prepared on September 9 or 10, in response to the incident that occurred on September 9, 1999 between Corporal Boyer and Mr. Tahmourpour. Based on the evidence that I heard, I think it more probable than not that part of the Feedback document was prepared on September 8, 1999 on a computer at Depot, and then additions were later made to it on September 9 or 10, 1999.

[99] Corporal Boyer stated that he could not recall inspecting Mr. Tahmourpour’s pistol on September 9, 1999. He denied, however, that he had threatened to beat Mr. Tahmourpour up on

that day. He stated that he would have been in “severe trouble” had he done such a thing. He admitted, however, that he has used the term “kick your ass” in other contexts with cadets.

[100] Corporal Boyer also could not recall if Mr. Tahmourpour had asked for a second opinion regarding the pistol’s cleanliness. Corporal Boyer stated that if a cadet asked for a second opinion, he would calmly deny it and move on. Even though he admitted to being authoritarian, he stated that he would not be upset to hear a cadet make that kind of request. Corporal Boyer’s testimony on this point is not consistent with the evidence that I heard about Corporal Boyer’s temper on the range, nor with what he himself said about his manner with cadets and his propensity to swear. Corporal Boyer would not, in my view, have taken a challenge to his authority lightly.

[101] I think it is more probable than not that Mr. Tahmourpour did challenge Corporal Boyer’s assessment of the cleanliness of his weapon and asked for a second opinion. I accept Mr. Tahmourpour’s version of what happened when he did so. His evidence on this point was most consistent with other evidence in this case.

[102] Mr. Tahmourpour alleged that after the confrontation occurred, Corporal Boyer falsely issued 2 NI’s and a U in Firearms on September 9, 1999, and then urged his fellow instructor, Corporal Jacques to issue negative feedback to Mr. Tahmourpour also.

[103] Corporals Bradley and Jacques denied that this was the case. However, Corporal Bradley did admit that the instructors spoke to one and other about the cadets’ performance and that Corporal Boyer was not one to keep his opinions to himself.

[104] Corporal Jacques, who taught APS with Corporal Bradley, was also cross-trained to Firearms and worked closely with Corporal Boyer. That meant that Corporal Jacques taught both APS and Firearms at Depot. Corporal Jacques struck me as someone who might well be influenced by an experienced officer with an extremely strong personality like Corporal Boyer.

[105] Interestingly, on September 10, 1999 Corporal Jacques noted in his diary that Mr. Tahmourpour did not have the basic qualities to be a police officer. Yet, up until September Mr. Tahmourpour's performance at Depot had not merited a single NI other than two in Firearms and one for improper handcuffing in PDT. Out of the blue, on September 10, 1999, Mr. Tahmourpour was presented with a performance evaluation indicating that he had 12 NI's in APS. In cross-examination, Corporal Jacques was asked: "If during July and August, Mr. Tahmourpour demonstrated that he lacked the basic qualities to be a police officer, and was so clearly off the mark, why had he not received a single NI in APS during that time?"

[106] Corporal Jacques responded that Mr. Tahmourpour was given informal verbal feedback on an ongoing and immediate basis that his performance in the areas outlined in the September 8th evaluation was weak. Some of the NI's would have come as a surprise to him, but not all. He would have known from the feedback that was being given to him on a regular basis that his performance was below what was expected.

[107] Corporal Bradley stated that early in the program, it does not make sense to give the cadets formal feedback for the many mistakes they are making. The provision of formal feedback at this stage of training could result in the early and unfair termination of a training contract. Therefore, cadets are given informal verbal feedback and time to improve before formal feedback is issued.

[108] However, in my view providing Mr. Tahmourpour with verbal feedback that he could improve in certain areas would certainly not have signaled to him that his performance was so deficient that he was at risk of receiving 12 NI's in APS. Corporal Jacques' admission that some of the NI's would have come as a surprise to Mr. Tahmourpour indicates that, contrary to the Cadet Assessment Procedures, Mr. Tahmourpour was not given immediate feedback on his performance in all respects, and that the September 8 Feedback was, therefore, a deviation from the standard practice at Depot.

[109] The Respondent failed to provide a reasonable explanation as to why the standard practice was not followed in this case. Furthermore, it has not refuted Mr. Tahmourpour's assertion that Corporal Boyer's discriminatory conduct towards Mr. Tahmourpour was a factor in the

September 8, 1999 Feedback. On the contrary, Corporal Jacques' response to a question about the Cadet Cumulative Data Sheet led me to the conclusion that he prepared at least some of the September 8 Feedback after the incident between Corporal Boyer and Mr. Tahmourpour over the pistol inspection. This supports the theory that discrimination was a factor in the September 8 Feedback.

[110] The Cadet Cumulative Data Sheet (CCDS) is a document that is used by the troop facilitators to keep track of all the Feedback that is given to the cadets by the various instructors at Depot, and the dates on which the Feedback is provided. It is a master evaluation sheet. Feedback from the instructors is usually recorded on the CCDS in chronological order. However, in Mr. Tahmourpour's case, the 2 NI's and 1 U in Firearms that he was given on September 9, 1999, were entered before the 12 NI's that were purportedly given to Mr. Tahmourpour on September 8, 1999.

[111] Corporal Bradley explained that this sometimes happens when instructors provide their Feedback forms late or the facilitators have not had time to update the Cumulative Data Sheet. However, in this case, it was the facilitators who were preparing the September 8th Feedback and who should have been able to enter that on the Cumulative Data Sheet immediately after preparing it. Then, when the Feedback was received from Firearms on or after September 9, 1999, it would have been entered after the September 8th Feedback from the facilitators.

[112] Corporal Jacques was questioned about this anomaly. His answer was equivocal. He stated: "the only thing that I can think of now is that the three Feedback Sheets that were dated September 9, from Firearms were entered first, while I was working on the other uh ... before the other document was served to Cadet, Mr. Tahmourpour and that's why it got entered after the September 9th Feedback Sheets". The first part of Corporal Jacques' answer (before the "uh") suggests that he was working on the "September 8th" Feedback Sheet containing the 12 NI's on September 9 or later, when the three Feedback Forms (containing the 2 NI's and a U) from Corporal Boyer came in. This lends credence to Mr. Tahmourpour's theory that the Feedback he received from Corporals Bradley and Jacques was influenced, at least in part, by Corporal

Boyer's negative impressions of him. I think that the second part of Corporal Jacques' statement was an attempt to put a different "spin" on what happened.

[113] Therefore, I find that it is more probable than not that Corporal Jacques was influenced by Corporal Boyer's racist attitude towards Mr. Tahmourpour. Corporal Jacques responded to that influence by providing an inaccurate evaluation of Mr. Tahmourpour's performance during the pepper spray session.

[114] Accordingly, I find that discrimination was a factor in the September 8th Feedback regarding Mr. Tahmourpour's performance in APS.

(b) Corporal Boyer's Request for File Review

[115] On September 30, 1999, Corporal Boyer made a request for the review of Mr. Tahmourpour's file. A file review is the first step in the process of terminating a cadet's contract.

[116] The *Cadet Assessment Procedures* stipulate that a cadet's contract will be terminated if the cadet receives 2 U's in the same competency during one assessment period, with no improvement shown. A contract may also be terminated if the cadet receives a total of 2 U's in different or the same Competencies.

[117] Corporal Boyer made the request for a file review on the basis of 2 U's and 5 NI's in Firearms. The feedback related to a number of issues within Firearms such as the manipulation and handling of a shotgun and a pistol, the proper loading of a firearm, failing the shooting accuracy benchmarks and finally pistol cleanliness.

[118] Mr. Tahmourpour took issue with some, but not all of the evaluations that were given to him in Firearms. In particular, he alleged that the 2 U's that he was given for having a dirty pistol on September 9, 1999 and September 28, 1999, were fabricated by Corporal Boyer to build a case for the termination of his contract.

[119] Mr. Tahmourpour received an NI for having a dirty pistol on August 26, 1999. He took this negative evaluation very much to heart. He cleared the NI by presenting a clean pistol on two subsequent occasions. He became “an expert” in cleaning a pistol. He cleaned pistols for everyone in the troop and they passed their weapons inspection; he did not, however.

[120] Mr. Tahmourpour stated that on September 9th when he received a U for a dirty pistol, he knew his weapon was in pristine condition. Therefore, he disputed Corporal Boyer’s assertion that it was dirty and merited a U. Furthermore, he stated that if his pistol was truly dirty, he should have received an NI, not a U, since he had cleared the previous NI, and therefore, was starting fresh.

[121] Mr. Tahmourpour testified that on September 28, 1999, he again presented his pistol for inspection, this time to Corporal Jacques. Corporal Jacques claimed that it was dirty. Mr. Tahmourpour stated that it was not dirty. After further inspection and attempts to dislodge the dirt, Corporal Jacques agreed with Mr. Tahmourpour that there was a textured discoloration in the magazine part of the weapon. This was a design flaw, not dirt. He permitted Mr. Tahmourpour to go on the range and shoot with the pistol. After the shooting, Corporal Boyer approached Mr. Tahmourpour and insisted that his weapon had been dirty and that he would have to sign the feedback document assigning him a U. Mr. Tahmourpour protested, stating that Corporal Boyer had not even been present for the inspection.

[122] The Feedback documents for both dirty pistol incidents were drafted and signed by Corporal Jacques. They did not indicate who had performed the inspections.

[123] Corporal Boyer concluded his request for a file review by stating that according to the Cadet Assessment Procedures, 2 U’s in the same competency meant that file review should be requested with a view to terminating the cadet’s training contract.

[124] Mr. Tahmourpour presented credible evidence that his pistol was clean when he presented it for inspection on September 9 and 28, but Corporal Boyer judged it to be dirty. Mr. Tahmourpour has, therefore, established a *prima facie* case that Corporal Boyer treated him

differently than other cadets with respect to the evaluation of his performance in the Firearms Unit. Given the discriminatory statements and verbal abuse of Mr. Tahmourpour by Corporal Boyer, I find, on a *prima facie* basis, that the differential treatment with respect to the evaluation of Mr. Tahmourpour's performance and the consequent request for file review were based, at least in part, on a prohibited ground of discrimination.

The Respondent's Explanation

[125] The Respondent asserted that the evaluation of Mr. Tahmourpour's performance in Firearms was entirely fair and accurate; Mr. Tahmourpour's pistol was dirty on September 8, 1999 and on September 28, 1999.

[126] Corporal Boyer explained that there is an unwritten policy in Firearms that a cadet is automatically assigned a U if his or her pistol is dirty in situations where he or she has had a previous NI for pistol cleanliness, even if that NI has been cleared. There is no discretion according to Corporal Boyer. Corporal Jacques however, did not mention this policy; he simply stated that if the pistol is found to be dirty a second or third time and it is clear that no effort has been made, the cadet will receive formal feedback. Sergeant Guay (now Chief Superintendent), the officer in charge of Firearms instruction at the time, testified that a U is given when a weapon is consistently dirty.

[127] On the basis of the evidence that I heard, I was not convinced on a balance of probabilities, that Corporal Boyer's statement about the automatic U for a second dirty pistol was accurate. Given the serious consequences of receiving a U, I think it more likely than not that if there was an "automatic U" policy with respect to gun cleanliness, it would be set out in the Cadet Assessment Procedures. Certainly, the cadets and the instructors would have to be made aware of the policy. Yet, none of the other witnesses in this case testified about such a policy. Therefore, I find that it was a discretionary decision on the part of the Firearms instructor to assign an NI or a U for a second dirty pistol.

[128] The Respondent's evidence with regard to the pistol inspection on September 9, 1999 was weak: Corporal Boyer could not recall that inspection, and Corporal Jacques did not address either of the two pistol inspections in his testimony. The note in the Request for File Review states that on September 9th the pistol was "filthy".

[129] In contrast, Mr. Tahmourpour's evidence about the pistol inspection on September 9, 1999 was clear and unshaken on cross-examination. He knew that his pistol was clean. He had become an "expert" in cleaning pistols. However, to be sure that it was clean, Mr. Tahmourpour had asked a fellow troop mate to check it before the September 9th inspection. Although none of the troop mates who testified could recall checking his pistol, Corporal Draudy stated that it was common to do so. He said that it was likely that Mr. Tahmourpour would have had his pistol checked before presenting for inspection. Mr. Tahmourpour stated that he knew he could not afford to make any mistakes in training at this point. He was so sure that his pistol was clean that when Corporal Boyer told him that it was dirty, he demanded a second opinion.

[130] Corporals Bradley and Hébert stated that in situations where there was a disagreement, it is a good idea to obtain a second opinion. Sergeant Guay, on the other hand, thought that this was inappropriate. There was, however, evidence that second opinions were provided on occasion in training, and that Firearms Instructors would inspect pistols together to ensure that they had properly assessed their cleanliness. Yet, Corporal Boyer refused to do this. He was angry that Mr. Tahmourpour had the temerity to ask for a second opinion. Therefore, he assigned Mr. Tahmourpour a U, even though he could have assigned an NI if the pistol had in fact, been dirty.

[131] Mr. Tahmourpour's evidence stands as the clearest account of what happened on September 9, 1999. The Respondent has not refuted Mr. Tahmourpour's assertion that his pistol was clean on September 9, 1999.

[132] Corporal Boyer had a clear recollection of the September 28th inspection. However, his description of the incident differed greatly from that of Mr. Tahmourpour. Corporal Boyer said that he did the inspection himself. He found that Mr. Tahmourpour had done a good job of

cleaning most of the pistol. However, he had missed a piece of carbon in a portion of the barrel where residue is often found. Corporal Boyer was able to dislodge this piece of carbon quite easily with a pen.

[133] Mr. Tahmourpour, on the other hand, claimed that Corporal Jacques inspected his pistol on September 28 and had agreed with him, upon closer inspection, that the apparent “dirt” was in fact, a textured discoloration inside the gun.

[134] The issue thus boils down to one of credibility. Unfortunately, neither gentleman provided consistently credible testimony throughout the hearing. Both had a tendency to present evidence in a manner to suit their own purposes. This made it difficult to determine what really happened.

[135] As is often the case, it is probable that the truth lies somewhere between the two versions of the events. My best assessment of the evidence is that Corporal Jacques inspected Mr. Tahmourpour’s pistol on September 28, 1999. He told Mr. Tahmourpour that his pistol was dirty. Mr. Tahmourpour, however, insisted that the dirt was really a textured discoloration. Rather than getting into a fight with Mr. Tahmourpour over this, Corporal Jacques sent him onto the Range to practice shooting. (There was evidence that this was done to teach cadets the effect of having a dirty pistol.) Later, when Corporal Boyer was told what had happened, he inspected Mr. Tahmourpour’s gun to see if there was a textured discoloration. He found no such flaw. He was able to flake the carbon in Mr. Tahmourpour’s gun off with a pen. Since Mr. Tahmourpour had just been firing his gun, it is likely that there would have been carbon in the barrel.

[136] I do not think that it can be said, with any degree of accuracy, whether Mr. Tahmourpour’s pistol was dirty on the 28th. What can be said, however, is that there were two very negative encounters on September 9 and September 28, 1999, regarding the cleanliness of Mr. Tahmourpour’s pistol that were not handled well by Corporal Boyer. He exhibited a degree of animosity towards Mr. Tahmourpour that is not fully explained by the fact that Mr. Tahmourpour challenged his instructors’ opinions.

[137] A request for a file review is made only when a cadet has received two U's in the same competency (which in this case, was pistol cleanliness). The U that Mr. Tahmourpour received from Corporal Boyer on September 9, 1999 was the only U he had received in training up to that point. Thus, even if Mr. Tahmourpour's pistol was, in fact, dirty on September 28, 1999, Corporal Boyer's request for file review on September 30, 1999 was improper; at best, it would have been based on only 1 U for pistol cleanliness. Indeed, even if Mr. Tahmourpour's gun was dirty on September 28, 1999, Corporal Boyer could have given him an NI. He chose not to do this.

[138] Given the direct and circumstantial evidence of Corporal Boyer's discriminatory attitude toward Mr. Tahmourpour, I find, on a balance of probabilities, that Mr. Tahmourpour's race, religion and/or ethnic or national background was a factor in Corporal Boyer's assessment of the cleanliness of Mr. Tahmourpour's pistol on both September 9 and September 28, 1999.

[139] On a balance of probabilities, I find, therefore, that Corporal Boyer's request for file review was improper and was based, at least in part, on a prohibited ground of discrimination.

(c) The October 8th Cadet Performance Feedback and The October 7th Termination Request

[140] On October 7, 1999, Corporals Bradley and Jacques submitted a request for the termination of Mr. Tahmourpour's training contract based on their review of his file. The 2 U's that Mr. Tahmourpour received for pistol inspection triggered the review of his file which ultimately led to the request for the termination of Mr. Tahmourpour's contract. The request for termination was made one day prior to the completion of the one month deadline that Mr. Tahmourpour had been given to improve his performance in Applied Police Sciences.

[141] In the Termination Request, Corporals Bradley and Jacques noted that Mr. Tahmourpour would be receiving an additional set of 5 U's in APS on the following day, on October 8th in a Cadet Performance Feedback Sheet. October 8th was the one month deadline for improvement in APS. Corporals Bradley and Jacques stated that in spite of obvious effort on Mr. Tahmourpour's part, he had shown "no real improvement" in the APS areas where he was deficient in September.

Therefore, they stated that the termination request was not based on the two U's in Firearms alone. It was also based on the 5 U's that he was to receive in APS.

[142] Mr. Tahmourpour disputed the entire contents of the Cadet Performance Feedback Sheet dated October 8, 1999, and the Termination Request dated October 7, 1999. He maintained that they were based on false evaluations, exaggerations and underestimations of his performance at Depot. The following are two examples of his allegations in that regard:

(1) The Request for Termination states that Mr. Tahmourpour had difficulty in learning and applying the techniques in Police Defensive Tactics and that his skills in this area were weak. Mr. Tahmourpour said this was inaccurate. He asserted that the PDT instructor, Corporal Sloan, had told him that she was happy with his performance in PDT. He had failed his first test in PDT on August 25, 1999 for poor handcuffing technique (for which he received an NI), but improved and then passed the re-test with Corporal Brock, an instructor who was known for being tough but fair (the NI was replaced with a P on October 1, 1999).

[143] The Request for Termination indicates that Corporal Sloan did not think that the PDT re-test was a good measure of Mr. Tahmourpour's abilities in PDT because it was not one of the most difficult tests. It dealt with combative behaviour which did not involve a great deal of decision-making.

[144] Mr. Tahmourpour stated that he knew these views were not those of Corporal Sloan. During the meeting on October 7, 2008 to discuss the Request for Termination, he asked Corporals Jacques and Bradley if they would bring Corporal Sloan in to the meeting to clarify her views on his PDT skills and the re-test. His request was denied.

[145] There was a significant difference between the wording of the Request for Termination dated October 7, 1999, and the Cadet Performance Feedback Sheet dated October 8, 1999. In the latter, Corporal Jacques stated that he observed the testing and felt that the test did not allow for the demonstration of enough skills to upgrade Mr. Tahmourpour's NI to a P. This would suggest

that it was Corporal Jacques, not Corporal Sloan, who thought that the PDT re-test was not a good test of Mr. Tahmourpour's abilities.

[146] Regardless of whether the PDT re-test was a good test of Mr. Tahmourpour's skills, by the time the termination request was made he did not have a single NI in PDT. Therefore, according to Mr. Tahmourpour, it was inaccurate and unfair to allege that he was weak in PDT. If he was weak, there should have been NI's on his record since an NI is to be assigned for performance that is even slightly deficient. If no formal feedback is provided, a cadet is entitled to assume that his or her performance is professional, according to the Cadet Assessment Procedures.

(2) The Memorandum requesting termination of Mr. Tahmourpour's contract indicates that he was being given 5 U's in APS because he had not been able to show improvements in the areas discussed one month ago. Those areas related to communication, decision-making, planning and coordination, risk management and self-evaluation as demonstrated in scenarios, Physical Training, Applied Police Sciences, and Firearms.

[147] Mr. Tahmourpour stated that, contrary to the October 8th Feedback Sheet and the Termination Request, he had demonstrated real improvements in these areas in the following ways:

- (i) While he performed poorly in the first scenario involving a domestic disturbance on August 18, 1999, on September 30, 1999 Corporal Jacques noted that he had improved, although some mistakes were made. Mr. Tahmourpour was not given an NI for his performance in this scenario. Therefore, according to the Cadet Assessment Procedures, his performance in this scenario was deemed to be professional (P). That constituted an improvement from the August 18th domestic disturbance scenario.
- (ii) Mr. Tahmourpour testified that his second detachment visit on or about September 24, 1999 went very well. Detachment visits, which occur halfway through training, involve a visit to a mock RCMP Detachment unit where the cadets are called out to deal with situations, just as though they were on police duty at an RCMP Detachment

anywhere in Canada. The Detachment scenarios require the cadets to integrate and apply many of the skills they have learned in the various units in training. The visit usually happens over a two day period. Mr. Tahmourpour's performance on the second day was monitored by Corporal Torsky. Mr. Tahmourpour stated that Corporal Torsky was "exceptionally happy" with his performance on the second day of the detachment visits. He was not given any feedback, which meant that his performance on this scenario was at the professional level.

- (iii) Mr. Tahmourpour performed very well on the Firearms Simulator Test. The simulator is a computerized system on a large screen television monitor that responds to the cadet's reactions. Mr. Tahmourpour was told that the simulator was quite difficult and that in fact, it was more difficult than any other scenario. He identified himself as a police officer and was able to defend himself against numerous simulated attackers. Corporal Jacques told Mr. Tahmourpour that he was quite impressed with Mr. Tahmourpour's performance on the firearms simulator.
- (iv) Mr. Tahmourpour performed well in instinctive shooting. Instinctive shooting is a technique where the individual looks at the target and without utilizing the sights of the pistol, fires at the target. It is very hard to acquire this skill and requires a lot of practice to master.
- (v) Mr. Tahmourpour stated that the Request for Termination failed to take into account the fact that he had passed the Physical Abilities Requirement Evaluation (PARE) test on both test dates and that he had reduced his time in the PARE test by 35 seconds during the 24 weeks he spent at Depot.

[148] Mr. Tahmourpour has established a *prima facie* case that his abilities in the program were not assessed fairly on the Cadet Performance Feedback Sheet and in the termination request. His accomplishments and improvements were minimized or not noted at all. His performance in PDT was not fairly assessed.

[149] Dr. Wortley testified that systemic discrimination is often manifested in the underestimation or minimization of an individual's abilities. He hypothesized that systemic discrimination may be one of the reasons that the attrition rate for visible minority cadets at Depot was roughly twice as high as that of non-visible minority cadets during the time that Mr. Tahmourpour was in attendance there.

[150] Dr. Wortley analyzed three sets of data provided by the RCMP with respect to attrition and failure rates at Depot. "Attrition" refers to early departures from the program for a number of reasons including failure, personal reasons and misconduct. The first set of data provided by the RCMP related to attrition rates for the period 1996-2000. Those statistics showed an attrition rate for non-visible minority cadets at Depot of 5.97% over the five year period. The average attrition for visible minorities is 13.35% over the five-year period in question. For 1999/2000, the year that Mr. Tahmourpour's contract was terminated at Depot, the attrition rate for visible minorities was 16.98%, and for non-visible minorities it was 6.88%.

[151] The second set of statistics for attrition rates for the period from 1996-2001 revealed a similar pattern. The attrition rate for visible minorities was 2.24 times higher than the attrition rate for non-visible minorities. Dr. Wortley stated that this was a statistically significant difference.

[152] The third set of statistics presented the failure rates of cadets at Depot from 1998-2003. The failure rate is a subset of the attrition rate. Attrition rates cover cadets who have left the program for personal reasons, have been expelled for misconduct and who have failed. The third set of statistics revealed that the rate of failure among visible minority cadets in the training program (12.2%) was almost double that of the Caucasian candidates (6.5%). Furthermore, for the year that Mr. Tahmourpour was at Depot, the failure rate for visible minority cadets (19.6%) was almost three times that of the Caucasian cadets (7.0%). The same is true of 2000-2001.

[153] I accept Dr. Wortley's testimony that despite some problems with the RCMP's means of obtaining and reporting these statistics, they constitute the best information available. I also accept his testimony that they reflect the actual number of cadets who were in the program, and

are not a sample group. As a result, the problems regarding sample size that are associated with social science research are not an issue in this case. I find, therefore, that the statistics are reliable on a balance of probabilities.

[154] On the basis of this evidence I find that during the year that Mr. Tahmourpour was in attendance at Depot, the attrition rate for visible minority cadets was 16.98%, and for non-visible minority cadets it was 6.88%. The failure rate was 19.6% for visible minorities and 7% for non-visible minorities.

[155] Given the circumstantial evidence of differential attrition rates and discriminatory attitudes towards visible minority members and cadets, I think that it is a reasonable inference that the minimization or discounting of Mr. Tahmourpour's abilities in the October 8 Feedback and in the Request for Termination was based, at least in part, on his race, religion and/or ethnic or national origin. Mr. Tahmourpour has, therefore, established a *prima facie* case with regard to this allegation.

The Respondent's Explanation

[156] The RCMP denied the existence of systemic racism at Depot. It presented Dr. Garry Bell, an RCMP employee, as an expert witness to respond to the analysis of the data on attrition rates provided by Dr. Wortley. Dr. Bell was the Acting Officer in Charge of Cadet Training who agreed with the recommendation that Mr. Tahmourpour not be considered for re-enrollment at Depot. Given the closeness of his connection to one of the parties in the case, and to one of the questions being litigated, the Tribunal was of the view that the probative value of Dr. Bell's opinion evidence would be significantly outweighed by its prejudicial effect. Therefore, the Tribunal did not permit Dr. Bell to testify as an expert in this case.

[157] The RCMP provided data indicating that the attrition rates for regular RCMP members for the period from 1997-2004 was significantly lower than that of the non-visible minority members. The RCMP also produced a statement from the Canadian Human Rights Commission dated May 16, 2007, indicating that the RCMP had demonstrated that it was fulfilling its obligations

under the *Employment Equity Act* with regard to regular members. Those obligations require the RCMP to identify and remove employment barriers against women, Aboriginal people, members of visible minority groups and disabled persons.

[158] The evidence provided by the Respondent with regard to the employment equity obligations and the attrition rates of regular members did not address the situation of cadets at Depot. It applied exclusively to individuals who are employed by the RCMP. Cadets at Depot are not yet employed by the RCMP. They are not paid to attend the Academy and they are not considered to be employees. Therefore, I find that the RCMP did not provide evidence to counter the evidence presented by Mr. Tahmourpour with regard to the attrition rates at Depot.

[159] The RCMP contended that Mr. Tahmourpour's race, religion and/or national or ethnic origin had absolutely nothing to do with his dismissal. He was simply unable to demonstrate the required skills by that point in training and showed no likelihood that he would be able to do so in the future. The RCMP denied that Mr. Tahmourpour was unfairly evaluated.

[160] Corporal Bradley stated that while Mr. Tahmourpour may have passed the re-test in PDT with Corporal Brock, the scenario in the re-test did not provide an opportunity to test the areas where Mr. Tahmourpour had been identified in APS as having been weak: communication skills, decision-making, risk-assessment, and self-evaluation. That explanation may explain why one day after the interview in which Mr. Tahmourpour disputed that Corporal Sloan had said he was weak in PDT, the Feedback Document dated October 8, 1999 indicated that Corporal Jacques did not think the re-test was a good measure of Mr. Tahmourpour's APS-related performance.

[161] However, the RCMP's explanation does not explain why Mr. Tahmourpour was reported as being weak in PDT. Corporal Bradley admitted that Corporal Brock, who conducted the second PDT test and removed Mr. Tahmourpour's NI in this area, was an extremely competent PDT instructor and that his evaluation of Mr. Tahmourpour's ability in PDT could not be second-guessed. Mr. Tahmourpour did not receive any NI's in PDT other than for the first test which he then cleared with Corporal Brock. Therefore, his PDT skills should have been considered professional and not the subject of comment in the Termination Request. If Mr. Tahmourpour

had not been put on notice, through the issuance of formal NI's in PDT, that his performance was deficient enough to count towards the termination of his contract, he was entitled to assume that his performance in PDT was professional.

[162] It is significant that Corporal Sloan, who allegedly made the negative comments about Mr. Tahmourpour's performance in PDT, was not called as a witness by the RCMP.

[163] I find that the RCMP did not provide a satisfactory explanation with regard to the negative assessment and portrayal of Mr. Tahmourpour's performance in PDT.

[164] Corporal Bradley gave very convincing testimony about the difficulties that Mr. Tahmourpour was having with respect to communication skills and self-evaluation in APS. During Mr. Tahmourpour's testimony, I observed some of the same weaknesses. For example, Mr. Tahmourpour's ability to self-assess seemed to me to be weak. He asserted that, like all cadets, he had weaknesses. Yet, when asked what those weaknesses were he was unable to respond. As has already been noted, Mr. Tahmourpour's idea of active listening was taking good notes. I also noted that Mr. Tahmourpour was often evasive in his responses to questions put to him by his own counsel and by counsel for the Respondent in cross-examination. His responses particularly to the questions about his activities after he left Depot were unclear, contradictory and hard to follow.

[165] I also note the testimony of Mr. Tahmourpour's three fellow troop mates that his skills in many areas were so weak that they would be afraid to work with him in the field. There was credible evidence that Mr. Tahmourpour had difficulty performing competently in scenarios, and that this was largely a function of his inability to listen to people, to integrate the information he received and to formulate an appropriate course of action based on that information.

[166] However, I am troubled by the fact that evaluations of arguably legitimate weaknesses in Mr. Tahmourpour's performance at Depot were included among evaluations, such as the PDT evaluation, the pistol cleanliness evaluation and the pepper spray evaluation, that were improper or that discounted his abilities.

[167] Moreover, the Cadet Performance Review that was provided a month (or so) after the September 8th evaluation indicated that Mr. Tahmourpour had made no real progress. On that basis he was given the 5 U's that formed part of the termination request. Yet, the RCMP witnesses agreed that Mr. Tahmourpour had improved his PARE time, and had performed well in instinctive shooting and in the Firearms Simulator test. Corporal Jacques stated that Mr. Tahmourpour had performed to a professional standard on the second day of the detachment visit and that he had shown sufficient improvement in the domestic disturbance scenario that no formal feedback had been issued. Yet, these improvements or positive performances are not noted in the one month Cadet Performance review.

[168] Any positive achievements that are noted in the Assessment are discounted. Mr. Tahmourpour passed his PDT test, but the test was not a good measure of his abilities in APS. He passed his APS exam, but he could not apply the knowledge that he had demonstrated in the exam. While this may be true, the lack of inclusion of his success in the above-mentioned areas conveys a distinctly different picture of Mr. Tahmourpour than had they been included.

[169] Corporal Hébert stated that in a Request for Termination, it is assumed that those areas that are not discussed are professional; only the problematic areas are presented. I accept this explanation as far as the request for termination is concerned, but with respect to the one-month follow-up assessment, I was not given a satisfactory explanation as to why Mr. Tahmourpour's improvements were not noted. Furthermore, I was not given a satisfactory explanation as to why the facilitators did not wait until they had completed the one-month follow-up assessment before they requested Mr. Tahmourpour's termination.

[170] When asked whether improvement in PDT, and in the second day of the detachment visit, and the absence of an NI in the second domestic disturbance scenario constituted "improvement", Corporal Bradley simply maintained that Mr. Tahmourpour was not showing improvement. Clearly, that was not the case. The improvements may not have been sufficient for Corporals Bradley and Jacques to change their opinions of Mr. Tahmourpour's suitability for police work. However, their failure to provide a balanced account of Mr. Tahmourpour's performance up to that point in training, as well as their inclusion of inaccurate assessments, strongly suggests that

there was another factor influencing their assessment of Mr. Tahmourpour's file. The RCMP has not rebutted the *prima facie* case raised by Mr. Tahmourpour that his race, religion and/or ethnic or national origin were a factor in the assessment of his file and the request for termination of his training contract.

[171] I accept Corporal Bradley's testimony that she had real concerns about Mr. Tahmourpour's communication skills, judgment and ability to solve problems. She did not think that he would be able to do police work because of these deficiencies. The problem with this explanation, however, is that in a training environment where derogatory comments about race are condoned and directed at people like Mr. Tahmourpour, where evaluations are inaccurate and improper, and where instructors take pride in being "politically incorrect", it is difficult for someone like Mr. Tahmourpour to develop and demonstrate his skills in these areas. I find it reasonable to infer that such conditions erode one's confidence and ability to perform well. Therefore, the Respondent's explanation that Mr. Tahmourpour's performance at Depot was weak is not satisfactory. Mr. Tahmourpour's performance was more likely than not affected by the discrimination to which he was exposed.

C. The Decision to Terminate Mr. Tahmourpour's Contract

[172] On October 20, 1999, the Commanding Officer of Depot, Chief Superintendent Lynn Twardosky terminated Mr. Tahmourpour's training contract. The decision was based on the recommendation made to the Commanding Officer by Corporals Bradley and Jacques. In her written decision, the Commanding Officer stated that she concurred with Corporals Bradley and Jacques' "decision" to terminate Mr. Tahmourpour's contract.

[173] The recommendation and decision to terminate Mr. Tahmourpour's contract were based on discriminatory assessments of Mr. Tahmourpour's skills. In addition, they were based on his performance in a program where he was not given an equal opportunity like other cadets, to develop and demonstrate his abilities and skills at Depot. Therefore, I find that discrimination on the basis of a prohibited ground was a factor in the termination of Mr. Tahmourpour's training contract.

D. The Assessment of Mr. Tahmourpour's Suitability for Re-enrollment

[174] Mr. Tahmourpour was told that it was not uncommon for cadets to fail the training program and then be re-admitted by the RCMP at a later point in time. When his contract was terminated, Mr. Tahmourpour hoped that this would be the case for him. However, to his surprise, he discovered that a memorandum had been placed on his file, dated December 23, 1999, indicating that he was to be given no consideration by the Recruiting Division for re-enrollment.

[175] The author of the memorandum was Sergeant Champigny, the Career Manager at Depot at the time. Sergeant Champigny did not testify. However, in the Memorandum he stated that during the termination process, Mr. Tahmourpour demonstrated physical symptoms that appeared to be related to stress. He reported that on two separate occasions, Mr. Tahmourpour's troop mates escorted him to the Medical Treatment Centre because he was vomiting, shaking, hyperventilating and was incoherent. Sergeant Champigny reported that Corporals Bradley and Jacques consulted with the F Division staff psychologist (no name given) who described Mr. Tahmourpour's behaviour as "passive suicidal ideation". Sergeant Champigny reported that a follow-up discussion with Dr. Roy, another staff psychologist, revealed that Dr. Roy had concerns about Mr. Tahmourpour's ability to handle difficult and challenging situations. Dr. Roy would not recommend Mr. Tahmourpour for re-engagement.

[176] Mr. Tahmourpour stated that he went to the Medical Treatment Centre on only one occasion on October 15, 1999, for treatment of vomiting, hyperventilation and shaking. He stated, however, that he did not meet with a psychologist or a doctor. He denied that suicide had ever entered his thoughts. He was sick, exhausted and upset about the discrimination he had experienced at Depot and the termination of his training contract.

[177] After Mr. Tahmourpour left Depot, he sent a letter to the troop via Corporals Bradley and Jacques in which he expressed his hope that he and his troop mates would be reunited at some point in the future. Corporal Bradley and Corporal Jacques found this to be very odd. They were concerned that he had not accepted the reality of his termination. Corporal Jacques provided a

copy of Mr. Tahmourpour's letter to Dr. Roy and suggested that he let the people in staffing know what his opinion was of Mr. Tahmourpour's mental state.

[178] Mr. Tahmourpour has established a *prima facie* case that he was treated differently from other cadets who had not successfully completed their training. He was denied the opportunity to re-enroll at Depot on the basis of a medical opinion that appears to have been given without ever having met him. Moreover, the evidence strongly suggests, on a *prima facie* basis, that Mr. Tahmourpour's facilitators were instrumental in ensuring that he would not be permitted to re-enroll at Depot. Given the foregoing evidence of the discriminatory treatment of Mr. Tahmourpour and the systemic discrimination at Depot, I find that there is a *prima facie* case that the denial of an opportunity to re-enroll was based, at least in part, on Mr. Tahmourpour's race, religion and/or ethnic or national background.

The Respondent's Explanation

[179] The RCMP alleged that Mr. Tahmourpour became mentally unstable after he was given the news on October 7, 1999 that a request had been made to terminate his training contract. Staff psychologists provided their opinions that Mr. Tahmourpour should not be considered for re-enrollment given his evident inability to deal with stress and challenges.

[180] Corporals Droudy and Mangat testified that Mr. Tahmourpour began behaving very strangely after he received the news that his contract was being terminated. He left Depot for long periods of time without a jacket, slept a lot on the weekend and appeared unkempt and disheveled. They reported this behaviour to Corporal Jacques. Corporal Jacques stated that he and Corporal Bradley contacted Dr. Yaholnitsky-Smith, an RCMP staff psychologist for F Division, who advised them that Mr. Tahmourpour might be suffering from passive suicidal ideation. Corporal Jacques was not sure that Mr. Tahmourpour had met with Dr. Yaholnitsky-Smith, but he thought that he had met with the doctor, Dr. Dufour. Neither Dr. Dufour, nor Dr. Yaholnitsky-Smith testified. There were no medical records to confirm that Mr. Tahmourpour met with either of these two doctors.

[181] The Memorandum from Sergeant Champigny does not say that Mr. Tahmourpour met with Dr. Yaholnitsky-Smith, or that she provided a formal diagnosis. It simply states that the troop facilitators “consulted with the “F” Division psychologist who described the behaviour as “passive suicidal ideation”.

[182] The staff psychologist at Depot, Dr. Robert Roy, testified. He was hampered by the fact that he did not have Mr. Tahmourpour’s medical file; it was destroyed pursuant to an RCMP policy regarding the retention of records. Dr. Roy had almost no independent recollection of the events in this case. He based his testimony on what he thought must have happened.

[183] Dr. Roy could not recall meeting with Mr. Tahmourpour. He admitted that at the time that Mr. Tahmourpour was leaving Depot, he was probably on holiday. Yet, Dr. Roy thought that he must have met with Mr. Tahmourpour, however briefly, because Sergeant Champigny referred to an opinion he had provided about Mr. Tahmourpour. Dr. Roy stated that if he had met with Mr. Tahmourpour, he would have made a very qualified statement about his mental stability. He would not have provided a firm diagnosis because he was sure that he had not met with him at length. Dr. Roy would have recommended that Mr. Tahmourpour have a full psychological work-up before being considered for re-enrollment.

[184] The Memorandum about Mr. Tahmourpour does not recommend a full psychological assessment prior to considering Mr. Tahmourpour for re-enrollment. That would have been the reasonable approach to dealing with the RCMP’s concerns about Mr. Tahmourpour’s reaction to disappointment and challenge. Instead, the recommendation to deny Mr. Tahmourpour consideration for re-enrollment was unconditional, and was based on cursory psychological examinations, if any.

[185] The RCMP has failed to provide a satisfactory explanation that discrimination on the basis of a prohibited ground was not a factor in the recommendation and consequent decision to refuse Mr. Tahmourpour re-enrollment at the Academy.

V. WHAT MUST BE PROVEN WITH REGARD TO SECTION 14 OF THE ACT?

[186] It is a discriminatory practice, under s. 14 of the *Act*, to harass an individual on a prohibited ground of discrimination in matters related to employment. Harassment, as proscribed under the *Act*, has been broadly defined as repetitive and unwelcome conduct related to one of the prohibited grounds of discrimination that detrimentally affects the work environment or leads to adverse job-related consequences for the victims (*Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252 at 1284; *Rampersadsingh v. Wignall (No. 2)* (2002), 45 C.H.R.R. D/237 at para. 40 (C.H.R.T.); and *Canada (Canadian Human Rights Commission) v. Canada (Canadian Armed Forces) (re Franke)* [1999] 3 F.C. 653 (T.D.) at paras 43 and 45).

A. Was Mr. Tahmourpour a victim of harassment on the basis of a prohibited ground?

[187] Mr. Tahmourpour alleged that Corporal Boyer's conduct constituted harassment on the basis of his race, religion and/or ethnic or national origin. He stated that Corporal Boyer repeatedly screamed in his ear on the Firing Range that he was a "loser", a "coward" and "incompetent". Mr. Tahmourpour told Corporal Boyer that his conduct was upsetting him, and yet, Corporal Boyer persisted. Mr. Tahmourpour stated that Corporal Boyer's constant verbal abuse of him negatively affected his self-confidence and his performance at Depot. Sergeant Brar testified that he observed Corporal Boyer to exhibit this kind of behaviour towards female and visible minority cadets.

[188] Mr. Tahmourpour alleged that Corporals Bradley and Jacques also subjected him to harassment on the basis of a prohibited ground. He stated that Corporals Bradley and Jacques regularly removed him from class to ridicule and criticize him for his personal traits, including his soft-spoken voice, his tendencies to sit back in class and to take too many notes.

[189] Mr. Tahmourpour stated that Corporals Bradley and Jacques met with him on a daily basis during the lunch period thereby preventing him from marching with his troop to the dining hall for lunch. As a result, he stated that he missed lunch almost every day, especially towards the end of training, and sometimes would even miss another meal during the day to speak with Corporals

Jacques and Bradley. Mr. Tahmourpour stated that he was too embarrassed to enter the dining hall alone after his meetings with Corporals Bradley and Jacques; all the cadets would suspect that there was something wrong if he did this. So, he regularly missed meals.

[190] The different treatment that Mr. Tahmourpour received from Corporals Jacques and Bradley was exhibited publicly, according to Mr. Tahmourpour. He stated that prior to being shown a video about two officers who were killed in action, Corporal Bradley described one of the deceased officers as similar to Mr. Tahmourpour in his soft-spoken manner. She stated that this perceived weakness had contributed to the officer's death and suggested that this kind of officer would be a danger to himself and to other officers.

[191] Mr. Tahmourpour stated that on September 10, 1999, he met with Corporals Jacques and Bradley to discuss a performance feedback evaluation. He described the meeting as extremely antagonistic. For over an hour Corporals Bradley and Jacques yelled at him in an abusive and hostile manner, at times standing directly in front of his face. Mr. Tahmourpour testified that during the meeting of September 10, 1999, Corporal Bradley stated that she could not understand his English.

[192] Mr. Tahmourpour established a *prima facie* case that he was subjected to harassment on the basis of a prohibited ground of discrimination by Corporals Bradley, Jacques and Boyer. It should be noted that Mr. Tahmourpour also adduced the transcript of an audio-taped telephone conversation that he had with one of his troop mates, Constable Rob Lasson, about Mr. Tahmourpour's experiences at Depot. At its best, the transcript could be said to lend some support to Mr. Tahmourpour's case that his instructors were particularly hard on him. However, it consisted of self-serving and hearsay evidence that was not tested through cross-examination. I accorded it very little weight as a result.

The Respondent's Explanation

[193] Corporal Boyer denied that he verbally harassed Mr. Tahmourpour. However, based on the evidence that I have reviewed in these reasons, I find that Corporal Boyer harassed

Mr. Tahmourpour on the basis of his race, religion and/or ethnic or national origin. Corporal Boyer asked Mr. Tahmourpour “what kind of fucking language is that or did you make it up?” when Mr. Tahmourpour signed a feedback form early in training. He went on to berate Mr. Tahmourpour regularly and publicly for his poor performance in Firearms. Corporal Boyer also told Mr. Tahmourpour “get the fuck out of my face or I’ll kick your ass” when Mr. Tahmourpour asked for a second opinion about the cleanliness of his pistol.

[194] Mr. Tahmourpour’s evidence of verbal harassment on the basis of a prohibited ground of discrimination was corroborated by that of Sergeant Brar and Constable McCarney. While Corporal Boyer was generally loud and aggressive with all cadets, he was significantly more so with Mr. Tahmourpour and other visible minorities. I have found this differential treatment to be based on a prohibited ground. Therefore, I find, on a balance of probabilities, that Corporal Boyer harassed Mr. Tahmourpour on the basis of a prohibited ground contrary to s. 14 of the *Act*.

[195] Corporal Bradley denied that she removed Mr. Tahmourpour from class or kept him back from lunch on a daily basis. She stated that the only meetings that occurred with Mr. Tahmourpour were during the issuing of formal feedback.

[196] Corporal Bradley stated that the tone of the meetings was professional and sensitive. She denied that she screamed at Mr. Tahmourpour or that she told him that she did not understand his English. She also denied that she referred to Mr. Tahmourpour when she was introducing the session about the two constables who were killed on duty.

[197] Corporal Bradley stated that the procedure for each of the feedback meetings was standard. The Feedback Sheet would be reviewed. The deficiency was linked to a particular skill area or competency. The cadet would be asked for his or her comments and input. An action plan would be formulated to deal with the identified deficiencies taking into account the suggestions made by the cadet.

[198] Corporal Bradley stated that she provided verbal feedback to Mr. Tahmourpour during classes but that it was done in a constructive way. That is, she would tell him what he had done

well and what he could do to improve. She denied repeatedly telling Mr. Tahmourpour that he should not be sitting back and taking notes. She did not have a problem with this behaviour; rather she told Mr. Tahmourpour that he needed to participate more effectively during training.

[199] Corporal Bradley provided her testimony on this point in a forthright and convincing manner. She struck me as a direct, well-spoken individual who would not mince words, but who would express herself in a professional manner. Therefore, I accept her testimony that she did not pull Mr. Tahmourpour out of class every day to berate him about his performance.

[200] Corporal Jacques stated that he may have met with Mr. Tahmourpour more frequently than Corporal Bradley, but that he did not meet with Mr. Tahmourpour on a daily basis, nor did he pull him out of class or hold him back from his meals on a daily basis. It is plausible that Corporal Jacques would have met with Mr. Tahmourpour more frequently than Corporal Bradley since he was Mr. Tahmourpour's instructor in both Firearms and APS.

[201] Like the testimony of Corporal Bradley on this point, I found Corporal Jacques' testimony with regard to the tenor and frequency of his meetings with Mr. Tahmourpour to be convincing. Although I concluded earlier that Corporals Bradley and Jacques facilitated and furthered Corporal Boyer's initiative to eliminate Mr. Tahmourpour from the training program, the additional and distinct allegation of aggressive and coercive behaviour stands in stark contrast to the overall evidence of the conduct and comportment of Corporals Bradley and Jacques. Constable McCarney, for example, whose testimony I found to be very forthright and frank, testified that out of the numerous courses he has taken with the RCMP, he has yet to experience instructors who are as patient and professional as Corporals Jacques and Bradley.

[202] In contrast, I found Mr. Tahmourpour's testimony regarding the frequency and tenor of the meeting he had with Corporals Bradley and Jacques to be less credible. Mr. Tahmourpour stated that he was pulled out of class or kept late by Corporals Bradley and Jacques almost every day during training. Towards the end of his training period, the frequency of these meetings increased to several times a day. As a result, he missed meals on a daily basis. In spite of missing so many meals, Mr. Tahmourpour testified that he was able to gain 9 pounds and reduce his

PARE time by 35 seconds. He achieved this on a diet of cookies and ready-to-go food from Wal-Mart. I found Mr. Tahmourpour's testimony on this point implausible.

[203] Mr. Tahmourpour may have felt that he was receiving more verbal and formal feedback than his troop mates. However, on a balance of probabilities I find that he did not meet with his troop facilitators with anywhere near the degree of frequency that he reported. Moreover, I find it improbable that he was subjected to verbal abuse when he did meet with them.

[204] Therefore, I find, on a balance of probabilities that Mr. Tahmourpour was not subjected to harassment on the basis of a prohibited ground of discrimination from Corporals Bradley and Jacques while at Depot.

VI. WHAT IS THE APPROPRIATE REMEDY IN THE PRESENT CASE?

[205] The Tribunal derives its remedial jurisdiction from s. 53 of the *Act*. The remedies contemplated therein are designed to stop the discrimination that is occurring from continuing, to prevent future discrimination from occurring, and to compensate individual victims for past or ongoing discriminatory practices.

(i) Compensation for Discriminatory Conduct

[206] The goal of the remedial provisions is to provide complainants with compensation for the losses caused by the discriminatory conduct (*Canada (Attorney-General) v. McAlpine* (1989), 12 C.H.R.R. D/253 at para. 13 (F.C.A.)). Therefore, to establish entitlement to a remedy, the complainant must show some causal connection between the discriminatory act and the loss claimed (*Canada (Attorney General) v. Morgan* (1991), 85 D.L.R. (4th) 473 (F.C.A.)). Until recently, the Court of Appeal's decision in *Morgan* stood for the proposition that to establish a causal connection, the complainant must prove only that there is a serious possibility that the respondent's discriminatory act caused the damage for which the complainant claims compensation ((*Chopra v. National Health and Welfare* 2004 CHRT 27; aff'd: 2007 FCA 269;

Canada (Attorney General) v. Uzoaba [1995] 2 F.C. 569 (F.C.T.D.); *Canada (Attorney General) v. Green* [2000] 4 F.C. 629 at para 142 (F.C.T.D.); and *Culic v. Canada Post* 2007 CHRT 01). However, in its 2007 decision in *Chopra*, the Federal Court of Appeal has suggested that there was no consensus on the “serious possibility” test among the three justices who decided *Morgan*. Therefore, that test may be subject to some question. Nonetheless, I am bound by decisions such as *Green* wherein the Trial Division stated that the “serious possibility” test is the means of determining whether there is a causal connection between the discriminatory conduct and the loss.

[207] So long as there is a serious possibility that the respondent’s conduct caused the damage for which compensation is being claimed, any uncertainty with regard to the probability that the conduct caused the damage must be factored into the assessment of the quantum of damages (*Green, supra*, at para 142).

[208] The case law makes a distinction between situations where the discrimination has caused a direct loss or denial of employment for which reinstatement or reinstatement is an appropriate remedy, and situations where the discrimination has caused the complainant to lose an employment or training opportunity. In the latter situation, Tribunals have held that the appropriate remedy is to require the respondent to provide the lost or denied opportunity, with or without financial compensation. (See for example: *Canada (Canadian Human Rights Commission) v. Greyhound Lines of Canada* (1987), 8 C.H.R.R. D/4184 (F.C.A.); *Chapdelaine v. Air Canada* (1991), 15 C.H.R.R. D/22 (Can. Rev. Trib.) at para. 19-32; *Bitonti v. College of Physicians and Surgeons of British Columbia* 2002 BCHRT 29 at para. 33; and *Chopra v. Department of National Health and Welfare* 2004 CHRT 27; aff’d: 2007 FCA 269).

[209] Recently, the Federal Court of Appeal has approved the distinction between lost employment opportunity and direct loss of employment in the assessment of remedy. In *Chopra*, the Tribunal concluded that a mere but serious possibility existed that Dr. Chopra would have won the employment competition but for the discriminatory practice. However, in attempting to quantify the likelihood that Dr. Chopra would have won the employment competition, it found that there was only a 33 1/3 percent chance that he would have won the competition. Therefore, rather than ordering reinstatement in the position, the Tribunal ordered compensation in the form of

wages for the lost opportunity. The Tribunal reduced the compensation by two thirds to reflect the relatively high uncertainty that Dr. Chopra would have been successful in the competition. On appeal, Dr. Chopra argued that having found that there was a serious possibility that he would have won the competition, the Tribunal was required to order reinstatement in that position. The Court disagreed. It held that Dr. Chopra had been compensated for what he lost, the opportunity to compete for the Indeterminate position on a non-discriminatory basis. Having been compensated for the loss of the ability to compete on a fair basis, it would be double compensation to then award him the position itself.

[210] In the present case, the RCMP's discriminatory conduct caused Mr. Tahmourpour to lose the opportunity to develop and demonstrate, to his full potential, the necessary skills to become an RCMP officer. I find that there is a serious possibility that had the discrimination not occurred, Mr. Tahmourpour would have successfully completed the training at Depot. Indeed, the failure rate for non-visible minority cadets was only 6.88% (the attrition rate was 7%) for 1999, indicating that when discrimination was not a factor, the vast majority of cadets successfully completed the program. On that basis, I find that one of the appropriate remedies in this case is an order that Mr. Tahmourpour be given the opportunity to re-enroll in the next available training program at Depot. The parties may also agree to a different date for re-enrollment that is mutually convenient.

[211] The order that Mr. Tahmourpour be offered re-enrollment in the Cadet Training Program is not to be interpreted as a requirement that he pass the Cadet Training Program. Mr. Tahmourpour must complete the training required of him, and achieve a professional rating in all of the required competencies and skills, in the same manner as all cadets who undertake the Cadet Training Program. If Mr. Tahmourpour completes the Training Program, he is to be treated in the same manner as all successful cadets.

[212] Mr. Tahmourpour requested an order that he be immediately instated as a regular RCMP officer at a level commensurate with the members who attended the training Academy at the same time as he did. For the following reasons, I find that this remedy is not appropriate.

[213] Firstly, Mr. Tahmourpour has not completed the RCMP training program. He missed 8 weeks of an intense 32 week program which, according to the evidence, are even more rigorous in terms of the skills that are developed and knowledge that is acquired than the preceding weeks. It is clear, then, that Mr. Tahmourpour has not acquired all of the skills that are necessary to be a police officer. It would be imprudent, to say the least, to order that the RCMP accept as a regular member, someone who does not yet possess the skills to be a police officer.

[214] Secondly, Mr. Tahmourpour has not passed the required test for shooting accuracy which is a requirement for all RCMP officers before they are permitted to carry a weapon. Sergeant Brar testified that while there are administrative duties in the RCMP that do not involve the use of a firearm, any officer whether on administrative duties or not, may be called out during a crisis for active duty involving use of a firearm. For that reason, all officers, regardless of their position, must qualify every year in firearms use. Mr. Tahmourpour has not yet demonstrated that he is capable of passing that test.

[215] Thirdly, those skills that Mr. Tahmourpour successfully acquired during the fourteen weeks he spent in training may have deteriorated over the past 8 years. He may be in need of a refresher.

[216] Finally, I have found that the discriminatory treatment prevented Mr. Tahmourpour from demonstrating the knowledge and skills required to be a police officer. It has not yet been determined whether, in a non-discriminatory environment, he can demonstrate those skills and knowledge. That must be determined before he is engaged as an RCMP officer.

[217] This does not, however, necessarily mean that Mr. Tahmourpour must repeat the entire training program. The evidence established that when cadets are unsuccessful at their first attempt at training and are re-enrolled, an assessment is done of their skills to determine the areas in which further training is needed and where no further training is needed. The same should be done for Mr. Tahmourpour.

Should compensation for lost wages be provided to Mr. Tahmourpour for the loss of the opportunity to complete training that was caused by the RCMP's discriminatory conduct?

[218] Yes. The RCMP's discriminatory conduct denied Mr. Tahmourpour the opportunity to complete training and to make his living as an RCMP officer. He must be compensated for the loss of wages that he would have earned.

How is the compensation for the wage loss resulting from the denial of the opportunity to be calculated?

[219] The Tribunal's approach in *Chopra* of providing compensation for wage loss, discounting for any uncertainty in obtaining the position, was found by the Court of Appeal to be an acceptable way of compensating for lost opportunity (*Chopra*, at para. 43). I shall follow suit.

[220] The evidence indicated that non-visible minority cadets had a 93% chance of completing training. I find it appropriate to use this figure for determining the likelihood of Mr. Tahmourpour's completion of the program because, based on the evidence that I heard and the conclusions that I have drawn about Mr. Tahmourpour's performance in the program, it is reasonable to infer that had the discriminatory conditions not been present Mr. Tahmourpour would have had the same chance as a non-visible minority candidate to successfully complete the training. I am mindful of the following potential concerns with this inference: first, Mr. Tahmourpour demonstrated weaknesses in the program that may not have been related to the discriminatory conduct, and which may have reduced his chances of success from 93% to something less. However, there is no way of knowing whether these weaknesses would have appeared and to what extent they would have influenced Mr. Tahmourpour's chances of success had he not been subjected to discriminatory treatment; any estimate of their influence would be speculative to the point of arbitrariness. It would not be fair to discount Mr. Tahmourpour's compensation on such a highly speculative basis.

[221] Secondly, I have not used the attrition and failure rate of visible minority candidates because, on the basis of Dr. Wortley's evidence, I find it more probable than not that at least one

of the factors in the higher attrition rate for visible minorities than for non-visible minority cadets is discrimination. It would be inappropriate to discount Mr. Tahmourpour's chances of success on the basis of a figure that took into account discriminatory actions.

[222] Therefore, I find that the compensation for wage loss must first be reduced by 7% to reflect the possibility that Mr. Tahmourpour might not have completed the program due to reasons that have nothing to do with discrimination. The evidence indicated that the average rate of attrition for regular members during the first 20 years of their employment is 1%. The Respondent provided no statistical evidence with regard to the attrition rates in Field Training.

[223] On the basis of these statistics, I find that Mr. Tahmourpour's compensation for the wage loss he sustained as a result of the discriminatory practice should be discounted by 8% to reflect the attrition rate both at Depot and in the Regular Force.

For what time period should Mr. Tahmourpour be compensated?

[224] Mr. Tahmourpour claimed that he should be paid wages and benefits lost on a retroactive basis for the entire period from 1999 until instatement as an RCMP officer or, in the alternative, until the date of this decision with a further order for future wage loss in the event that instatement is not ordered.

[225] Dealing first with the claim for retroactive wage and benefit loss, in *Chopra*, the Court of Appeal stated that in exercising its discretion under s. 53(2)(c) to award compensation for *any or all* of the wages lost as a result of the discriminatory practice, the Tribunal may well find that the principles underlying the doctrine of mitigation of losses in other contexts apply. Society has an interest in promoting economic efficiency by requiring those who have suffered a loss to take steps to minimize that loss as it is not in the public interest to allow some members of society to maximize their loss at the expense of others, even if those others are the authors of the loss. Thus while a tribunal is not bound to apply the doctrine of mitigation, it is not prohibited from doing so in the exercise of its discretion to determine the amounts payable to a complainant.

[226] I find that it is appropriate to consider in this case whether Mr. Tahmourpour took steps to minimize his losses. Mr. Tahmourpour's evidence on this issue was weak. He stated that when he left Depot in October of 1999, he was upset, but not depressed. He moved to Toronto to seek work. However, when he arrived in Toronto he found that he was unable to work because he was experiencing insomnia and was unable to concentrate. Mr. Tahmourpour saw a doctor who prescribed medication for his sleep difficulty. He did not take the medication because it was too expensive. He obtained Social Assistance benefits on the basis of his doctor's report that he was unable to work. Social Assistance pays for drug expenses. Later in his testimony he stated that he took the medication when he had the money to purchase it.

[227] Mr. Tahmourpour began taking courses to become a real estate agent in June of 2002. At that time, he had a doctor's note stating that he was unable to attend school or work because he was too ill. He stated that although his doctor thought he could not do this, he thought he could.

[228] Mr. Tahmourpour became a licensed real estate agent in 2003. He stated that he was a poor real estate agent; he sold only one property and received a commission of \$5,000 for this.

[229] Mr. Tahmourpour took courses with the hope of becoming an interpreter and translator in the Persian language. He was certified by the Federal Government, the province of Ontario, and city of Toronto as a Persian interpreter. He paid \$600 to become an interpreter. However, he was only able to earn \$100 as a translator.

[230] Mr. Tahmourpour stated that pursuing his human rights complaint has required almost full time effort. No employer would ever tolerate that much time away. Therefore, he could not work from the time he filed his complaint in 2001, until the present.

[231] I find that Mr. Tahmourpour has not made sufficient efforts to minimize his losses from the time he left Depot until the commencement of the hearing in August 2007. I accept that from 2000-2002, it was difficult for him to work as a result of the psychological impact of his experiences at Depot. The fact that he did not take the medication prescribed to him by his

physician for his difficulties troubles me, but I accept that he may not have been thinking clearly during this two year period.

[232] However, in June of 2002, he felt well enough to embark on Real Estate courses notwithstanding the opinion of his physician that he could not work or go to school. By 2003, he was licensed to sell Real Estate and attempted to do so. Although he became a trained translator, he earned only \$100 for his services during this time. I am not convinced that Mr. Tahmourpour put real effort into pursuing gainful employment that would have minimized his losses. Indeed, he stated that he could not do so because his human rights complaint took all of his time.

[233] I do not accept that working on his human rights complaint required Mr. Tahmourpour's full-time effort. I accept that it took some time and that his case was more arduous than most because it reached the Federal Court of Appeal and involved two investigations by the Commission. He was self-represented in some of the legal proceedings. However, it would appear that, for at least some of the time since 2000, Mr. Tahmourpour has been assisted by legal counsel since there are letters written to the RCMP by his counsel dated May 4, 2000 on the record. Therefore, I find it unreasonable that Mr. Tahmourpour was unable to work at all (other than to sell one property and perform one translation assignment) from January 2002 to the present time.

[234] Based on my knowledge of the time involved in complaints of this nature, the following represents a reasonable amount of time for a layperson such as Mr. Tahmourpour to spend on the tasks involved in this complaint:

- Drafting the complaint, cooperating with the Commission to provide information for the investigation, responding to the Commission's documentation and doing additional research to support the complaint – 60 hours;
- Preparing for and presenting the judicial review of the Commission's decision to the Federal Court Trial Division – 120 hours;

- Working with counsel on the appeal to the Federal Court of Appeal – 60 hours;
- Participating in the second investigation before the Canadian Human Rights Commission – 40 hours;
- Participating in the Tribunal process and preparing for the hearing – 200 hours.

[235] By my calculation, the total amounts to 480 hours, or 12 weeks of work at 40 hours per week.

[236] The RCMP shall pay Mr. Tahmourpour the full-time wages and benefits that he would have received for two years from January 2000 (if that is, in fact, the date when Troop 4 cadets began work as RCMP officers; if not, the appropriate date may be substituted). In addition, the RCMP must pay Mr. Tahmourpour the wages and salary that he would have received for an additional 480 hours of work. Those wages and benefits should be calculated on the basis of the average wage and salary from 2000 to August 2007, for regular members who graduated from Depot at the end of 1999. Mr. Tahmourpour may have an obligation to repay the money he received in Social Assistance benefits during this time.

[237] Taking into account the period during which Mr. Tahmourpour could not work for health and complaint-related reasons, I find that Mr. Tahmourpour could have been gainfully employed until the present time. I do not accept that working on his human rights complaint precluded full-time employment from the time that he was well enough to work until the commencement of the hearing in August of 2007. People make all sorts of arrangements and accommodations to pursue important activities outside of full-time employment. Mr. Tahmourpour could have done so too.

[238] The RCMP should be required to pay only the difference between what Mr. Tahmourpour would have earned at a full-time job and what he would have earned as an RCMP officer from the date upon which the “grace period” for health and complaint-related time ends until the date of this decision. The RCMP is therefore, ordered to pay the difference between the average full-time industrial wage in Canada for persons of his age, and the salary that he would have received as an RCMP officer for this time period.

[239] The evidence indicated that Mr. Tahmourpour would likely have been promoted to Corporal after seven years working as a Constable. The compensation paid to Mr. Tahmourpour must reflect that change in rank.

[240] The salary rates for the relevant time periods were entered into evidence at the hearing and filed as Exhibits C-1, Tabs 88 and 89. Those are the rates that are to be used in calculating the compensation unless the parties agree otherwise.

[241] The evidence on the issue of over-time pay was not clear. Constable McCarney testified that regular duty constables usually make overtime pay. He was not sure how much that was. It depended upon the work given to the constable. I find that had he been employed during the period from January 2000 to the date of this decision, Mr. Tahmourpour would have received some overtime. Therefore, I order that Mr. Tahmourpour be paid the average amount of overtime pay given to other constables who graduated from Depot in 1999.

Should there be an order for future wage loss?

[242] There was no evidence that the discriminatory conduct caused any permanent damage to Mr. Tahmourpour's ability to work. He is relatively young at 35 years of age, and has the potential for a full career life ahead of him. Mr. Tahmourpour is still eager to become an RCMP officer. He said that if he was given the opportunity to embark on the training program at Depot again, he could "ace it".

[243] Therefore, until Mr. Tahmourpour is provided with an offer to enter the training program he should be paid the difference between the average full-time industrial wage in Canada for persons of his age and the salary that he would have received as an RCMP officer up to the date of the training offer.

[244] Upon extension of the offer to attend training, the RCMP's obligation to compensate Mr. Tahmourpour for the loss of the opportunity to complete training in 1999 is extinguished. No further payments shall be made under this head of compensation.

(ii) Prevention of discrimination in the Future – The Systemic Remedy

[245] Section 53(2)(a) of the *Act* provides the Tribunal with the authority to order that the Respondent take measures to redress the practice or to prevent the same from occurring in the future.

[246] I have found that Mr. Tahmourpour was a victim of systemic discrimination at Depot in 1999. Several of the RCMP witnesses testified that they thought that Depot was a much better training environment now that individuals like Corporal Boyer had retired. Corporal Bradley indicated that changes have been made to the training program since Mr. Tahmourpour's attendance there in 1999. Now, in addition to the opportunity that Mr. Tahmourpour had to raise concerns about his instructors to their supervisors twice during the program, the RCMP audits the courses regularly to ensure that the quality of instruction and evaluation is high.

[247] Mr. Tahmourpour testified that one of the individuals against whom he had a complaint was the very supervisor who was designated to hear the cadets' concerns twice during the program. Mr. Tahmourpour did not feel comfortable raising his concerns with this individual or anyone else at Depot, for fear of reprisal.

[248] Based on this evidence, and on a Report prepared by the RCMP in April 2006, entitled "Employment Systems Review" (ESR), I am not convinced that the above-noted changes are sufficient to prevent discrimination of the kind experienced by Mr. Tahmourpour from occurring in the future. The ESR is a study that was commissioned by the RCMP to determine whether the RCMP was in compliance with the *Employment Equity Act*. In the ESR Report, the authors state that although diversity training is part of the curriculum for the Cadet Training Program, the focus is on respecting diversity in police work. The Diversity Training does not specifically address diversity issues within Depot and within the RCMP. It does not deal with respecting diversity among RCMP employees.

[249] The authors of the Report found that a number of designated group employees in the RCMP feel they do not experience a high degree of acceptance/respect of their cultural

differences from colleagues within the RCMP. The authors recommended the development of a standardized Diversity Training course targeted to address the internal diversity of the RCMP.

[250] The authors of the ESR reported that another area of concern is the prevalence of harassment that is experienced especially by women and to some extent, visible minorities. The response to complaints does not appear to be generally positive, and the consequences of lodging a complaint are so great that in some cases people do not lodge the complaint. There is mistrust of the internal system for investigating complaints.

[251] Sergeant Lise Lachance, the Acting Officer in charge of Employment Equity, testified about the RCMP's efforts with respect to employment equity. She stated that the harassment policy is being revised, and the RCMP was making efforts to combat discrimination within its ranks. However, Sergeant Lachance was not sure whether these efforts extended to the Training Academy at Depot.

[252] On the basis of this evidence, I conclude that the RCMP must take action to prevent the discrimination that occurred to Mr. Tahmourpour from occurring again. That action should address the issues set out below. However, I think it best to provide the parties with a period of 3 months from the date of this decision to reach an agreement on the exact nature of the measures that should be taken and a timetable for achieving them. I will retain jurisdiction over this portion of the decision in the event that the parties are unable to reach an agreement within 3 months. At that point, I will make a final determination on the appropriate measures to be taken by the RCMP.

[253] The measures to prevent future discrimination should include the following:

- (i) A policy and set of procedures for dealing with harassment and discrimination at Depot that provide an immediate opportunity for cadets to raise their concerns, without fear of retaliation or negative consequences, to someone with the authority to make changes. A copy of the Policy and Procedures should be provided to each cadet, as part of the welcome kit, upon arrival at Depot.

- (ii) A mandatory diversity/cultural sensitivity training program delivered to both cadets and all personnel at Depot that focuses on developing and promoting a culture of respect and tolerance for diversity within the RCMP. The issues raised in pages 59 – 64 of the Regular Members Survey, Report 3, September 1996, should be taken into account as well as any other relevant material. The suggestions for Diversity Training that are made in the Employment Systems Review by Lakshmi Ram and Associates (April 2006) should also be taken into account, specifically, the need for a training course targeted to address the internal diversity of the RCMP.
- (iii) An Advisory Committee or a Multi-Culturalism officer at Depot who makes recommendations to the Commanding Officer at Depot with regard to the prevention of discrimination and the promotion of respect and tolerance for diversity at Depot. The Commanding Officer should respond in writing to these recommendations and provide reasons if recommendations are rejected.

(iii) Pain and Suffering

[254] Section 53(2)(e) of the *Act* states that the Tribunal may order the person found to have engaged in the discriminatory conduct to compensate the victim, by an amount not exceeding \$20,000.00, for any pain and suffering that the victim experienced as a result of the discriminatory practice. Mr. Tahmourpour requested the maximum award. He testified that he was very upset by the discriminatory treatment he received. It caused him to experience a period of insomnia and difficulty concentrating. However, at times during his testimony he also stated that he was just “upset” when he left Depot, not depressed or incapable of functioning. Moreover, Mr. Tahmourpour did not always take the medication that would have reduced his suffering.

[255] I find that while Mr. Tahmourpour experienced some pain and suffering as a result of the discriminatory conduct, it was not of the duration or intensity that merits an award of \$20,000. In light of the circumstances of this case, Mr. Tahmourpour should be awarded \$9,000 in pain and suffering.

Special compensation – s. 53(3) of the Act

[256] Section 53(3) of the *Act* provides that the Tribunal may order a respondent to pay up to \$20,000 in compensation to a victim of discrimination if the respondent engaged in the discriminatory practice willfully or recklessly.

[257] I find on a balance of probabilities that Corporal Boyer willfully or recklessly made discriminatory remarks and verbally harassed Mr. Tahmourpour. I find also that his discriminatory efforts to have Mr. Tahmourpour's training contract terminated were willful or reckless. Corporal Jacques and Corporal Bradley complied with the efforts to have Mr. Tahmourpour removed by providing evaluations that were inaccurate and unfair.

[258] Prior to the termination of his contract, Mr. Tahmourpour sent a letter of rebuttal to the Chief Training Officer at the time. He addressed each point raised by Corporals Bradley and Jacques in the Request for Termination and alleged that he was treated in a discriminatory manner. The RCMP neither investigated, nor responded to his complaint of discrimination until it was required to respond to Mr. Tahmourpour's formal complaint to the Canadian Human Rights Commission.

[259] To his credit, Sergeant Hébert apologized to Mr. Tahmourpour for his discriminatory remark regarding Mr. Tahmourpour's religious pendant. Sergeant Hébert's conduct is all the more notable in the context of the reckless disregard for the consequences of the other officers' discriminatory conduct.

[260] I find therefore, that it is appropriate to order the RCMP to pay Mr. Tahmourpour \$12,000 in special compensation.

Costs

[261] Section 53(2)(c) authorizes the Tribunal to award compensation for any expenses incurred by the victim as a result of the discriminatory practice.

[262] Mr. Tahmourpour incurred expenses in the amount of \$9,500 to pay for the Real Estate Board and interpreter courses. He claimed that these expenses, incurred as part of his efforts to mitigate his damages, should be reimbursed by the RCMP. I have found that Mr. Tahmourpour's efforts with regard to minimizing his damages were half-hearted at best. Nonetheless, Mr. Tahmourpour did incur expenses that would not have been necessary had he been permitted to complete training and earn a living as an RCMP officer. Therefore, I order that the RCMP reimburse Mr. Tahmourpour for the cost of the Real Estate and Translator courses.

[263] The Federal Court has recently once again affirmed the Tribunal's authority to award reasonable legal costs: *Canada (Attorney General) v. Mowat* 2008 FC 118 at para. 40. See also: *Canada (Attorney General) v. Thwaites*, [1994] 3 F.C. 38 at para. 56; *Stevenson v. Canada (Canadian Security Intelligence Service)*, 2003 FCT 341 at paras. 23-26; and *Canada (Attorney General) v. Brooks*, 2006 FC 500.

[264] Therefore, I order that the RCMP pay Mr. Tahmourpour's reasonable legal costs as an expense arising from the discriminatory conduct. Mr. Tahmourpour did not provide evidence on the issue of legal expenses. Therefore, I am unable to make an order with respect to the quantum of this award. The parties are, however, encouraged to come to an agreement on the quantum of reasonable costs in this matter. I shall retain jurisdiction over this aspect of the award in the event that the parties are unable to reach such an agreement. The parties are to notify the Tribunal within 3 months of the receipt of this decision if an agreement has not been reached.

Interest

[265] Interest is payable in respect of the awards made in this decision pursuant to section 53(4) of the *Act*. The interest shall be simple interest calculated on a yearly basis, at a rate equivalent to the bank rate (monthly series) set by the Bank of Canada, per Rule 9(12) of the Tribunal's Rules of Procedure. The interest on the lost wages shall run from the date that Mr. Tahmourpour would have started to work for the RCMP and shall be calculated as the wages would have become payable to Mr. Tahmourpour.

[266] With respect to the compensation for pain and suffering and the compensation under s. 53(3), the interest shall run from the date of the complaint. In no case, however, should the total amount payable under s. 53(2)(e) including interest, exceed \$20,000. Similarly, the total amount payable under s. 53(3), including interest, should not exceed \$20,000.

VII. ORDERS

[267] Pursuant to its authority under s. 53(2) of the *Act*, the Tribunal orders the following:

- (i) Unless otherwise agreed upon, the Respondent shall offer Mr. Tahmourpour an opportunity to re-enroll in the next available RCMP Cadet Training Program at Depot;
- (ii) If Mr. Tahmourpour accepts the offer of re-enrollment, the Respondent shall undertake a fair assessment of his skills at the outset of the training program to determine the areas in which training is needed;
- (iii) The Respondent shall pay Mr. Tahmourpour compensation for salary and benefits he lost for the first 2 years plus 12 weeks of work as an RCMP officer after graduating from Depot. The compensation shall be discounted by 8%;
- (iv) The Respondent shall pay Mr. Tahmourpour the difference between the average full-time industrial wage in Canada for persons of his age, and the salary that he would have earned as an RCMP officer until such time as Mr. Tahmourpour accepts or rejects an offer of re-enrollment in the training program at Depot. The Respondent shall compensate Mr. Tahmourpour for the average amount of overtime paid to other constables who graduated from Depot in 1999, unless otherwise agreed upon by the parties. The compensation shall be discounted by 8%;
- (v) The compensation must reflect a promotion to Corporal after 7 years;

- (vi) The parties shall attempt to agree upon the measures and a timetable for addressing the issues set out in the “Systemic Remedy” part of this decision. In the event that they are unable to reach an agreement on this portion of the award within 3 months from the date of this decision, the Tribunal will make a final determination;
- (vii) The Respondent shall pay \$9,000 to Mr. Tahmourpour in compensation for the pain and suffering caused by its discriminatory conduct;
- (viii) The Respondent shall pay \$12,000 to Mr. Tahmourpour pursuant to s. 53(3) of the *Act*;
- (ix) The Respondent shall pay \$9,500 to Mr. Tahmourpour in compensation for the expenses he incurred in minimizing his losses. The Respondent shall also compensate Mr. Tahmourpour for the legal expenses he incurred in this matter;
- (x) The Respondent shall pay interest on the compensation awarded in this decision as set out above.

“Signed by”

Karen A. Jensen

OTTAWA, Ontario
April 16, 2008

CANADIAN HUMAN RIGHTS TRIBUNAL

PARTIES OF RECORD

TRIBUNAL FILE: T1151/3306

STYLE OF CAUSE: Ali Tahmourpour v. Royal Canadian Mounted
Police

DATE AND PLACE OF HEARING: August 13 to 17, 2007
August 27 to 31, 2007
September 17 to 21, 2007
September 24 to 28, 2007

Toronto, Ontario

DECISION OF THE TRIBUNAL DATED: April 16, 2008

APPEARANCES:

Barry Weintraub For the Complainant

No one appearing For the Canadian Human Rights Commission

Derek Edwards For the Respondent