

T-2044-94

OTTAWA, ONTARIO, this 21st day of December, 1995

PRESENT: The Honourable Madame Justice Sandra J. Simpson

BETWEEN:

**GARY BARNETT**

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
THE COMMISSIONER OF THE ROYAL  
CANADIAN MOUNTED POLICE,  
DEPUTY COMMISSIONER HUMAN RESOURCES,  
J. BEAULAC, and THE ROYAL CANADIAN MOUNTED POLICE**

Respondents

**ORDER**

UPON application for judicial review of a decision made by the RCMP's  
Deputy Commissioner of Human Resources and dated July 7, 1994;

AND UPON hearing counsel for both parties in Toronto, on November 21,  
1995;

AND UPON reserving my decision to this date.

THIS COURT ORDERS THAT, for the reasons given this day, the application is allowed and the matter is referred back for a redetermination by the Commissioner or by a different Deputy Commissioner.

Judge Sandra J. Simpson

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- and -

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Respondents

**REASONS FOR ORDER**

**SIMPSON J.**

This application is for judicial review, pursuant to s. 18.1 of the *Federal Court Act* R.S., 1985, c. F-7 of a decision dated July 7, 1994 (the "Decision") made by Herman J.R. Beaulac, the Deputy Commissioner Human Resources (the "Deputy Commissioner") for the Royal Canadian Mounted Police (the "RCMP"). In his Decision, the Deputy Commissioner, who was performing the role of a level II adjudicator, denied the applicant's grievance against a RCMP policy, known as Administrative Manual Bulletin or (AM) 1646.

**BACKGROUND**

The applicant was hired by the RCMP as a special constable in August 1979. Special constables received modified training which was less than the training provided

for full constables. Special constables' training was specific to their duties which included, among other things, airport policing, diplomatic protection and property security. In 1988, special constables were paid a salary which was approximately 82% of a full constable's salary.

In 1988, the RCMP decided to change the services it provided at airports by eliminating special constables and staffing airports with fully trained RCMP officers. This decision was motivated by an awareness that hijacking was no longer the sole security threat at airports; terrorism had also become a threat and it was felt that it could only be met by fully trained officers.

It appears from a memo dated February 2, 1994 to the Deputy Commissioner (Administration) from the Director of Personnel that the RCMP's initial plan was to phase out special constables in the airport and, as well, in surveillance and executive-diplomatic protection work. However, approximately two years later, it was decided that all promotable special constables, regardless of their duties, would be promoted. These changes were accomplished by two new policies.

#### The First Policy

This policy was directed to airport and surveillance special constables and was known as Administration Manual 1215 ("AM 1215"). It was issued on March 3, 1988 and provided that:

1. Applicants for promotion would apply;
2. To apply, applicants had to be eligible which meant, *inter alia*, that they had to be prepared to relocate;
3. Applicants would be accepted if they met specific promotability and releasability criteria;
4. Successful applicants would be promoted and posted just before training;
5. Pay increases would be effective on promotion; and
6. If promoted applicants were unsuccessful at training, they would be demoted to their former positions as special constables.

An amendment to AM 1215 ("AM 1215-A") was issued on November 10, 1989. It changed AM 1215 in the following two material respects:

- A willingness to relocate was removed as an eligibility criterion;
- Demotion no longer followed unsuccessful training.

The applicant was promoted under this amended policy. At the time AM 1215 was first issued, he had been unwilling to relocate and was, therefore, ineligible for promotion. However, when the relocation requirement was dropped in AM 1215-A, his application went forward. On May 6, 1990, 6 months after the issuance of AM 1215-A, he was promoted and sent for training. He received a pay raise effective in May of 1990.

As a practical matter, when AM 1215 and 1215-A governed, the timing of promotions was dependant on the training schedules. The RCMP training facilities, which are located in Saskatchewan, had a limited capacity, and not all successful applicants could be trained at the same time. Accordingly, since a special constable was not promoted until just before training, promotions and salary increases occurred at different times. However, while the training and promotion process was ongoing, RCMP airport duties remained the same for special constables and constables. This meant that former special constables who had been promoted and trained and were receiving full constable pay worked alongside and performed the same duties as eligible special constables who had not been promoted and trained and who were, therefore, still receiving special constable pay. Although everyone received their pay increase on promotion, due to normal training schedules, promotions occurred at different times.

### The Second Policy

More than two years after the special constable promotion process began with AM 1215, a second policy was issued on June 6, 1990. It was AM 1646 and was directed to the promotion of the balance of special constables. It provided that:

1. Applicants were to be recommended for promotion;
2. If recommended, all applicants would immediately be conditionally promoted.

(This meant, in practice, that they were conditionally promoted on June 7, 1990.)

3. Training would be from 4 to 15 weeks in length depending on an applicant's prior training;
4. After successful training, an applicant's salary increase became effective and he or she received a posting; and
5. Candidates who were conditionally promoted, but failed to complete training successfully, reverted to their former special constables' status.

Under AM 1646, training schedules again dictated the dates of promotion and the related salary increases. However, in 1990, regular troops were also receiving training to meet an increased demand for members in contract divisions of the force. As a result, the training of newly promoted special constables, did not proceed as scheduled. This meant that officers who received training became entitled to their pay raise before those who had not been trained even though all special constables had the same promotion date.

The inequity of this situation was recognized at a Commanding Officers/Divisional Staff Relations Representatives Conference in November 1990 and AM 1646 was thereafter amended on January 31, 1991 ("AM 1646-A"). Its text contained an admission of the inequity and provided a solution; all special constables conditionally promoted or after June 7, 1990, would receive salary raises retroactive to their date of promotion following the successful completion of training. This amendment did not, however, cover the applicant, as AM 1646-A did not apply to those promoted under Am 1215 or 1215-A. Hereafter, AM 1215 and 1215-A will be referred to together as the "First Policy" and AM 1646 and 1646-A will be described together as the "Second Policy".

### The Grievance

The applicant's grievance was made on form 3081 dated March 2, 1992 and was supplemented by a memorandum dated April 10, 1991 (the "Grievance"). The applicant suggests that the logic which drove amendment AM 1646-A should have been extended to the entire promotion process and should have covered all those

promoted under the First Policy. This, according to the applicant, would have been achieved if salary increases for all special constables who were promoted under either the First or Second Policy had been made retroactive to June 24, 1988. This was the date of the first special constable promotion. Specifically, the Grievance raises the *Canadian Human Rights Act* R.S., 1985 c. H-6 and asks why all RCMP officers working at the airport did not receive equal pay for work of equal value.

### The Decision

It is important to recall that it is not the First and Second Policies which are at issue in this judicial review. This review is of the Decision of the Deputy Commissioner.

The substantive part of his Decision is quite brief and reads as follows:  
 In my view, the policy change was a proper exercise of management's rights and it is inevitable that there will be members who feel disadvantaged when new policy is implemented. The Griever and others in the same situation as himself, were all treated equitably, to the extent that the former policy was uniformly applied to them.

If all policy was made retroactive to suit all situations, we would be continuously amending past actions. Constables hired in one year were not necessarily paid the same wages as those hired in another.

The grievance is denied. Please ensure that Cst. Barnett receives a copy of my decision.

From this passage, I have determined that the Deputy Commissioner concluded that, since the applicant received the same treatment as everyone else to whom the First Policy applied, he had been treated equitably. He also appears to have concluded that there was nothing wrong by reason of the fact that the Second Policy was not applied retroactively to those who were promoted under the First Policy. This conclusion was apparently justified on the basis that, to impose such retroactivity would create administrative difficulties.

### THE ISSUES

The applicant says that the Deputy Commissioner erred in law because he failed to take into account two relevant considerations in his assessment of the Grievance. Firstly, he failed to have regard for the fact that the airport duties of the special constables and constables were identical and, secondly, he failed to give weight to the

fact that, under the First Policy, the timing of the promotion and the accompanying pay raise were beyond a special constable's control because they depended on the training schedule. These objections mean in substance that the Deputy Commissioner erred in that he failed to address the applicant's argument under the *Canadian Human Rights Act*.

### ANALYSIS

The issue raised by the Grievance is whether the Second Policy should have been made retroactive to a date which covered those promoted under the First Policy. This, it is argued, would have provided all eligible special constables in the course of promotion with equal pay for equal work.<sup>1</sup> It is not my role on judicial review to resolve this issue. However, its resolution will require an assessment of what constitutes equal treatment. The fact that all of the special constables were treated alike, in that they received pay raises at the time of promotion under both policies, does not necessarily mean that they received equal treatment or what has been described as "substantive equality".

In my view, the Deputy Commissioner erred in law by failing to render a Decision which squarely addressed the issues. No mention is made of the *Canadian Human Rights Act*, or of the fact that special constables and constables performed identical airport duties, or of the fact that training schedules drove the timing of pay raises under the First Policy and that this situation was found to be inequitable under the Second Policy.

Accordingly, the matter is sent back for redetermination by the Commissioner or by a different Deputy Commissioner.

Judge \_\_\_\_\_

Ottawa, Ontario  
December 21, 1995

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<sup>1</sup>I should note that the applicant's argument would not apply in his own case because, due to his unwillingness to relocate, he was not eligible for promotion when the first officers were promoted.