

Federal Court



Cour fédérale

**Date: 20160407**

**Docket: T-2243-14**

**Citation: 2016 FC 389**

**Ottawa, Ontario, April 7, 2016**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**CATHY MANSLEY**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Cathy Mansley [Cst. Mansley] brings an application for judicial review pursuant to s 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7, from a decision of the Canadian Human Rights Commission [CHRC] which dismissed her complaint that the Royal Canadian Mounted Police [RCMP] had discriminated against her on the grounds of disability. Specifically, Cst. Mansley, contends adverse differential treatment by the RCMP on the basis of alcoholism and Post-Traumatic Stress Disorder [PTSD]. The CHRC concluded, based on the Investigation Report

completed July 4, 2014, that an inquiry by the Canadian Human Rights Tribunal [the Tribunal] was not warranted. For the reasons set out herein I would dismiss the application for judicial review.

## II. Relevant Facts

[2] Cst. Mansley joined the RCMP in August, 1995. After her basic training she was deployed as a general duty police officer in Nova Scotia. In 2007 the RCMP recommended Cst. Mansley seek professional counselling in relation to alcohol use. On or about January 21, 2009, Cst. Mansley arrived at the Tantallon Detachment of the RCMP while off-duty and under the influence of alcohol. One of her co-workers eventually drove her home. On the evening of January 30, 2009, Cst. Mansley, while off-duty, attended a private residence and conducted herself in a manner which made the occupants feel uncomfortable. Later that evening or early morning on January 31, 2009, Cst. Mansley, while off-duty, was found by police officers in her personal vehicle while under the influence of alcohol. As a result of that incident she was charged with having the care or control of a motor vehicle while impaired by alcohol. Cst. Mansley was involved in subsequent alcohol-related incidents, one of which resulted in charges for impaired operation of a motor vehicle. From February 16 to March 13, 2009, and from August 5 to September 8, 2010, Cst. Mansley followed re-habilitation programs for alcohol dependence. Both treatment programs were financed by the RCMP.

[3] On or about October 7, 2010, the RCMP suspended Cst. Mansley's employment with pay. As at the date of this judicial review hearing Cst. Mansley remained suspended with pay. I also note that she suffered no loss of income during her attendance at the two treatment programs. On

April 29, 2011, the Adjudication Board constituted pursuant to the discipline procedures set out in the *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10 rendered its decision regarding Cst. Mansley's conduct in relation to the incident of January 30 and 31, 2009. The Adjudication Board imposed a reprimand and the forfeiture of 10 days' pay, along with a recommendation for continued counselling until such time as the RCMP Health Services Officer deemed otherwise. In its decision, the Adjudication Board noted that Cst. Mansley's PTSD and alcohol abuse were mitigating factors considered in coming to its decision.

[4] On November 30, 2011, the CHRC received a complaint from Cst. Mansley alleging the RCMP discriminated against her based on disability (alcoholism and PTSD) as a result of its application of the disciplinary process in relation to the incident of January 30 and 31, 2009. Specifically, she alleged the RCMP treated her in an adverse differential manner when it applied its Code of Conduct without taking into account her disabilities, and by failing in its duty to accommodate.

[5] Upon receipt of Cst. Mansley's complaint, the matter was referred to an investigator pursuant to section 43(1) of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [the Act], who completed the Investigation Report on July 4, 2014. The investigator provided both Cst. Mansley and the RCMP an opportunity to make submissions regarding the Investigation Report, which they both did. The parties were also provided the opportunity to reply to each other's submissions. Again, both parties took advantage of this opportunity.

[6] By letter dated October 1, 2014, the CHRC informed Cst. Mansley of its decision to dismiss the complaint.

### III. Legislative Scheme

[7] Section 43(1) of the Act provides that the CHRC may designate an investigator to investigate a complaint. The investigator submits his or her findings, accompanied by the responses of the parties, to the CHRC pursuant to section 44(1) of the Act. In accordance with section 44(3) of the Act, the CHRC may refer the matter to the Tribunal or dismiss the complaint. Attached hereto as Appendix 'A' are the relevant sections of the Act.

### IV. Impugned Decision

[8] Since the CHRC's decision provides only brief reasons and upheld the recommendation of the Investigator against referring the matter to the Tribunal, I shall rely on the Investigation Report as the reasons of the CHRC (*Canada (Attorney General) v Sketchley*, 2005 FCA 404, [2005] FCJ No 2056 at para 37; *Shaw v Royal Canadian Mounted Police*, 2013 FC 711, [2013] FCJ No 772 at para 44 [*Shaw*]; *O'Grady v Bell Canada*, 2015 FC 1135, [2015] FCJ No 1165 at para 39).

[9] The Investigator reports having reviewed the parties' submissions, all documentary evidence as well as having conducted telephone interviews with several individuals. The Investigator concluded Cst. Mansley alleged adverse differential treatment by the RCMP's application of its Code of Conduct without taking her disability into account; by the RCMP's

failure to accommodate her; and by the requirement that she report daily to the Halifax detachment as a condition of her suspension with pay.

[10] In determining the merits of Cst. Mansley's contentions, the Investigator set out a three-step framework. Step 1 required the Investigator examine whether Cst. Mansley was adversely impacted in employment. In the event an allegation of discrimination were made out at step 1, the Investigator would proceed to step 2 to assess Cst. Mansley's allegation of a failure to accommodate. Depending upon the Investigator's findings at step 2, the Investigator may proceed to step 3 to consider any policy, rule, practice or standard relied on by the RCMP and its rational connection and necessity to employment.

[11] With respect to step 1, the Investigator concluded that Cst. Mansley's behavior which led to discipline was linked, in part, to her disabilities. The parties did not dispute this conclusion.

[12] With respect to step 2 of the investigation, the Investigator found that Cst. Mansley required accommodation, including various periods of leave, psychological services and restricted or administrative duties. The Investigator concluded that the RCMP provided Cst. Mansley with accommodation that was medically required, including: (i) various periods of leave; (ii) psychological services; and (iii) restricted or administrative duties.

[13] With respect to Cst. Mansley's contention that the RCMP ought to have accommodated her rather than applying discipline, the Investigator concluded that Cst. Mansley failed to provide specific information regarding the accommodation she required. Furthermore, the Investigator

recognized that although the jurisprudence requires an employer consider the role a disability may have played in the impugned conduct, an employer is not prevented from applying discipline. The Investigator concluded that the RCMP took Cst. Mansley's disability into consideration at the time it imposed discipline.

[14] With respect to Cst. Mansley's contention that the RCMP failed to accommodate her when it imposed a requirement that she report daily to the Halifax detachment, the Investigator noted the existence of conflicting expert opinion in that regard. Dr. John Sperry supported the change in reporting while RCMP Psychologist Gilles Chiasson was of a different view. The Investigator concluded it was reasonable for the RCMP to accept the opinion of RCMP Psychologist Chiasson since he had previously treated Cst. Mansley and was familiar with her personal circumstances.

[15] In a letter dated October 1, 2014, the CHRC informed Cst. Mansley of its decision to follow the recommendation found in the Investigation Report. It concluded: "having regard to all the circumstances of the complaint, an inquiry by a Tribunal is not warranted."

## V. Issues

[16] Upon reviewing the written submissions of the parties and having heard Cst. Mansley's oral arguments, which elaborated significantly upon her written submission, I would frame the issues as follows:

1. Did the CHRC meet the requirements of procedural fairness?

2. Was the CHRC's decision to dismiss Cst. Mansley's complaint reasonable?

## VI. Standards of Review

[17] Cst. Mansley raises issues related to an apprehension of bias and procedural fairness. Those issues are to be assessed on a correctness standard (*Phipps v Canada Post Corporation*, 2015 FC 1080, [2015] FCJ No 1079 at para 30; *Canada (Attorney General) v Davis*, 2009 FC 1104, [2009] FCJ No 1346 at para 21; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43). When reviewing on the correctness standard, this Court is not required to show deference to the decision maker: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*].

[18] Since the CHRC's decision not to proceed to an inquiry is discretionary in nature (*Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 SCR 364 at para 25; *Keith v Canada (Correctional Service)*, 2012 FCA 117, [2012] FCJ No 505 at para 43 [*Keith*]), it is subject to significant deference and is reviewed on the reasonableness standard (*Halifax*, above at para 27; *Keith*, above at para 44; *Shaw*, above at para 25). In *Halifax* at para 53, Justice Cromwell concluded that "the reviewing court should ask itself whether there is any reasonable basis in law or on the evidence to support that decision". This Court must consider whether the CHRC's decision is justified, transparent and intelligible, and whether it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47).

## VII. Analysis

### A. *Procedural Fairness Requirements*

[19] Cst. Mansley contends the Investigator demonstrated an apprehension of bias by failing to conduct a neutral investigation. She contends the Investigator accepted “most of what the respondent told her as reasonable and truthful without questioning it”. She specifically contends that the Investigator: (1) failed to personally interview Dr. Sperry; (2) failed to consider a pamphlet produced by a law firm titled *Accommodating Mental Illness in the Workplace: A practical Guide*; (3) failed to obtain a copy of a report provided by her to the RCMP regarding workplace hazards (in this report Cst. Mansley apparently refers to stress and headaches she was experiencing sometime between 2005 and 2008); and (4) failed to refer to a report prepared by Dr. Robert Konopasky related to her PTSD which is dated June 30, 2013. That report obviously post-dates the discipline hearing which is the subject of the complaint and the filing of the complaint. The test for reasonable apprehension of bias is set out in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369. See also *Miller v Canada (Canadian Human Rights Commission)*, [1996] FCJ No 735, 112 FTR 195 at para 14.

[20] I will respond briefly to each of the contentions made by Cst. Mansley as it relates to reasonable apprehension of bias or procedural fairness, as she has framed them. First, there is no requirement that the Investigator interview Dr. Sperry. The Investigator had the benefit of Dr. Sperry’s opinion regarding the reporting requirements imposed upon Cst. Mansley during her suspension with pay and those of RCMP Psychologist Chiasson. She was entitled to determine that issue based upon the material before her. The Investigator is the master of her procedure



provided she demonstrates fairness to both parties. The investigator provided ample opportunity to Cst. Mansley and the RCMP to make submissions, and was entitled to assess and weigh the material before her. This is not a termination case in which the standard of procedural fairness might be more elevated. I find the approach taken by the Investigator meets the requirements of procedural fairness. Second, there is no requirement on the part of the Investigator to consider promotional materials prepared by a law firm regarding a topic with which the Investigator is surely familiar. The Investigator is owed considerable deference in how she conducts the investigation. While I question whether the correctness standard applies to this aspect of the case advanced by Cst. Mansley, I am satisfied the correct approach was adopted and, in any event, it meets the test of reasonableness. Third, while the Investigator did not seek out a copy of the workplace hazardous report prepared by Cst. Mansley, she (the Investigator) specifically refers to it in her Investigation Report and accepts the truthfulness of what Cst. Mansley had to say about its contents. It cannot be said that the Investigator's treatment of this material demonstrates any bias or apprehension of bias. Finally, given that Dr. Konopasky's report post-dates both the disciplinary hearing findings which were the subject of the human rights complaint and the filing of the complaint itself, the Investigator possessed the jurisdiction to accept or reject it. Again, while I question whether the standard of review for this aspect of Cst. Mansley's contention is correctness, I find the approach was correct, and in any event, it meets the test of reasonableness. There is no violation of procedural fairness, nor any apprehension of bias, in the treatment afforded to Dr. Konopasky's report.

B. *Reasonableness of the CHRC's Decision*

[21] In addition to the above-noted bias and procedural fairness arguments advanced by Cst. Mansley, she contends the Investigator's decision is tainted with unreasonableness on several bases. I would summarize them as follows: Cst. Mansley contends the Investigator did not have the necessary expertise to conduct this investigation and the reasons are inadequate.

[22] As stated earlier, the procedure adopted by the Investigator must be afforded significant deference. Cst. Mansley is challenging the Investigator's expertise and knowledge in relation to the issue of PTSD and alcoholism. Investigators are presumed to have the necessary expertise and are better equipped than this Court to make factual determinations (*Thomas v Canada (Attorney General)*, 2013 FC 292, [2013] FCJ No 319 at para 40; *Clark v Canada (Attorney General)*, 2007 FC 9, [2007] FCJ No 20 at par 65). As noted above, the Investigator took into consideration the evidence and opinion from Dr. Sperry and RCMP Psychologist Chiasson. This assessment of the evidence falls squarely within the CHRC's and the Investigator's area of expertise. It is the role of the CHRC and the Investigator assigned to the file to determine the probative value of evidence and to draw the appropriate conclusions from the available information (*Lamolinaire v Bell Canada*, 2012 FC 789, [2012] FCJ No 1026 at para 31). As contended by the RCMP, the CHRC, in following the recommendation of the Investigator, acted in accordance with its legislative authority pursuant to s 44(3)(b)(i) of the Act. In deciding whether the matter should be referred to the Tribunal, the CHRC also took into consideration the submissions of the parties, including the submissions made in response to the Investigation Report.

[23] With respect to the adequacy of the reasons, it is trite law that adequacy of reasons is not a stand-alone ground of review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] SCR 708 at para 14). In the present case the Investigator prepared a detailed 19 page summary of her investigation and conclusions. Disagreement with the conclusion reached by the CHRC is not sufficient to demonstrate that the decision is unreasonable. I am of the view the Investigator's determination was justified, transparent and intelligible (*Dunsmuir*, above at para 47).

#### VIII. Conclusion

[24] In my view, the decision of the CHRC, based on the findings of the Investigation Report, meets the standard of reasonableness and "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47). I am also satisfied that the Investigator conducted a thorough and neutral analysis based on the various sources of information available to her and there was no bias, apprehension of bias or breach of procedural fairness. The intervention of this Court is not warranted.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed with costs payable by Cst. Mansley to the respondent in the amount of \$1400.

“B. Richard Bell”

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Judge

ANNEXE 'A'

<b><i>Canadian Human Rights Act, RSC, 1985, c H-6</i></b>	<b><i>Loi canadienne sur les droits de la personne, LRC (1985), ch H-6</i></b>
<b><i>Investigation</i></b>	<b><i>Enquête</i></b>
<b><i>Designation of investigator</i></b>	<b><i>Nomination de l'enquêteur</i></b>
43. (1) The Commission may designate a person, in this Part referred to as an "investigator", to investigate a complaint.	43. (1) La Commission peut charger une personne, appelée, dans la présente loi, « l'enquêteur », d'enquêter sur une plainte.
...	...
<b><i>Report</i></b>	<b><i>Rapport</i></b>
44. (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.	44. (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.
...	...
(3) On receipt of a report referred to in subsection (1), the Commission	(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :
(a) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied	a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and	(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,
(ii) that the complaint to which the report relates should not be	(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en

referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(c) to (e); or

application du paragraphe (2) ni de la rejeter aux termes des alinéas 41c) à e);

(b) shall dismiss the complaint to which the report relates if it is satisfied

b) rejette la plainte, si elle est convaincue :

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or

(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,

(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e).

(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41c) à e).

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2243-14

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**PLACE OF HEARING:** HALIFAX, NOVA SCOTIA

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**DATED:** APRIL 7, 2016

**APPEARANCES:**

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