Federal Court

Cour fédérale

Date: 20200831

Docket: T-1136-19

Citation: 2020 FC 870

Ottawa, Ontario, August 31, 2020

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

ZIAD ANANI AND ANDREA ANANI

Applicants

and

ROYAL BANK OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Ziad Anani and Andrea Anani, seek judicial review of a decision made on June 12, 2019 by the Canadian Human Rights Commission (the Commission) to dismiss their complaint against the Respondent, Royal Bank of Canada (RBC) [the Decision]. The Applicants also seek damages of one million dollars from the Respondent. The Applicants further seek $45,

plus interest, as reimbursement for what they say is an improper nonsufficient funds (NSF) fee charged to them.

[2] The Applicants, who are self-represented, allege that the Respondent discriminated against them by denying them services on the ground of religion, contrary to section 5 of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*].

[3] The Commission dismissed the complaint on the basis that the complaint was frivolous within the meaning of paragraph 41(1)(d) the *CHRA*.

[4] For the reasons that follow, this judicial review is dismissed, with costs.

II. **The Applicants' Complaint**

[5] On November 28, 2018, the Applicants filed a complaint with the Commission alleging that the Respondent violated their rights on five different occasions over the years 2010 - 2018.

[6] First, the Applicants allege that in November 2017, the Respondent refused a cheque "on the false pretence of No Sufficient Funds" and wrongfully charged the Applicants a $45 NSF fee.

[7] Second, the Applicants allege that in August 2014, they were "forced to file for bankruptcy in the USA as a result of the Banks (*sic*) discriminatory treatment of the Anani (*sic*)."

[8] Third, the Applicants allege that in 2013, the Respondent "illegally maintained the shadowy CENTURA account at Credit Bureaus," which negatively affected the Applicant's credit score. The Applicants state that in doing so, the Respondent harassed and discriminated against the Applicants and committed fraud.

[9] Fourth, the Applicants allege that the Respondent charged them two different interest rates and provided different explanations for why it did so.

[10] Fifth, the Applicants allege that in 2010 they made their credit card payments before the due date, but the Respondent did not accept the payments on time, which affected the Applicants' credit score.

III. **The Report**

[11] On February 22, 2019, a Human Rights Officer [Officer] at the Commission recommended that the Commission not deal with the complaint because it was plain and obvious that the complaint was frivolous as per paragraph 41(1)(d) of the *CHRA* [the Report].

[12] In the Report, the Officer set out the Applicants' position, which was that the Respondent had treated the Applicants in an adverse differential manner based on their Muslim religion.

[13] The Officer identified the issue for determination was whether the complaint was frivolous either because the conduct was not a discriminatory practice described in section 5 – 14.1 of the *CHRA* or because the conduct is not linked to a prohibited ground of discrimination.

[14] In considering the issue, the Officer noted the position of the Applicants and referred to the allegations relied upon by the Applicants in support of their position.

[15] The Officer noted that based on the information provided by the Applicants:

1) the complaint did not establish a link to a prohibited ground;

2) it was plain and obvious that the complaint could not succeed;

3) the allegations could not establish a discriminatory practice in sections 5 – 14.1 of the *CHRA*; and,

4) did not have a reasonable basis for believing that the Respondent's conduct was discriminatory under the *CHRA*.

[16] In the Analysis and Recommendation section, the Officer identified principles from the jurisprudence as support for the recommendation not to deal with the complaint:

1. Only in plain and obvious cases should the Commission decide not to deal with a complaint.

2. The test of whether a complaint is frivolous is whether it is plain and obvious that it cannot succeed.

3. The burden is on the complainant to put sufficient information or evidence forward to persuade the Commission of a link between alleged acts and a prohibited ground.

4. The complainant must recount some facts that establish a link between alleged acts and a prohibited ground.

[17] The principles, taken together with the considerations led to the recommendation that, taking the allegations in the complaint as true, it was plain and obvious the complaint was frivolous.

IV. **Submissions on the Report**

[18] On February 25, 2019, the Officer sent the Report to the parties by mail. In the letter, the Commission advised the parties that the Commission believed paragraph 41(1)(d) of the *CHRA* may apply because the Applicants did not establish a link to a prohibited ground of discrimination. The parties were advised that they could make submissions on the Report, limited to 10 pages, including attachments, and that the Commission would "read the first ten pages only."

[19] The letter informed the parties that the Commission would not be addressing the merits of the complaint at that time, and that they should not include evidence related to the allegations of discrimination.

[20] The Respondent did not make any submissions on the Report.

[21] On March 20, 2019, the Applicants provided 4 pages of written submissions and 40 pages of documents.

[22] The written submissions to the Commission by the Applicants were divided into four sections.

[23] The first section was untitled. It summarized three allegations of bias made by the Applicants against the Officer and made a statement as to the quality of their evidence:

a) The investigator was biased for finding the complaint frivolous after accepting the "word" of RBC, without evidence, and rejecting the Applicants' evidence;

b) It was "very plain and obvious from the evidence that [they would] succeed" and that their "evidence for a link between the alleged acts and a prohibited grounds (*sic*) is OVERWHELMING " (emphasis in the original).;

c) The investigator was biased for limiting submissions to 10 pages, since there is nothing in the *Act* that supports such a limitation; and,

d) The investigator was biased for banning the Applicants from including any evidence in their 10-page submission.

[24] The Applicants then set out, under the heading "The Facts", a short summary indicating that the discrimination started in 2010, when the Applicants were in Florida. The Applicants stated that they were forced into Bankruptcy in 2015. They stated that the last act of discrimination occurred in Windsor, Ontario when the RBC Bank "fraudulently claimed N.S.F. on a deposit cheque when there was more funds in the account than the cheque was signed for."

[25] The details of the five complaints were set out together with references to attached Exhibits that the Applicants said evidenced the discrimination under each of the complaints. The attached documents included one page of a Small Claims Court transcript, correspondence with the Respondent, credit reports, bank account and Visa statements, a copy of the NSF cheque, the Applicants' discharge from bankruptcy, doctors' notes, the Applicants' original complaint and correspondence with the Commission.

[26] The Exhibits referred to above are not in the Certified Tribunal Record. This is discussed later in these reasons when reviewing whether or not the process was procedurally unfair.

[27] In the third section of their submissions, titled “Argument”, the Applicants elaborated upon the Visa payment issue and double interest charges they incurred on their Visa account. They also elaborated on the NSF deposit cheque of $1,000 and stated that “RBC Bank discriminated against non-Christian names, targeting Muslims, and non-Muslims with non-Christian names, by violating the Human Rights Act, Section 14(1)(a).”

[28] The Applicants concluded their Argument section by stating that they were “maliciously defamed, humiliated and subjected to inhumane treatment by the Bank” and that they were “tormented” and “suffered indescribable pain.”

[29] The final section of the submissions was “Relief Sought” in which the Applicants sought “punitive damages in the amount of One Million Dollars.”

V. **The Decision**

[30] The Decision contains a letter and the Report. In section 40/41 screening decisions, when the Commission “adopts the investigator’s recommendations and provides no reasons or only brief reasons,” the report is deemed to be part of the Commission’s reasons. This is because the investigator’s report is prepared for the Commission, and so “the investigator is considered to be an extension of the Commission”: *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paragraph 37.

[31] The Commission confirmed that it had considered the Report and any submissions received in response to it. The Commission decided, after examining the information, that it

would not deal with the complaint because, pursuant to paragraph 41(1)(d) of the *CHRA* it was frivolous within the meaning of the *CHRA*.

VI. **Preliminary Issue – Claim for Damages**

[32] The Notice of Application in this matter indicates that the Applicants are seeking an Order granting them "One Million Dollars for defamation, harassment, suffering and for punitive damages." For the following reasons, an award of damages is not available in this application.

[33] The Court's powers on judicial review are set out in subsection 18.1(3) of the *Federal Courts Act*, S C 2002, c 8:

Powers of Federal Court	**Pouvoirs de la Cour fédérale**
(3) On an application for judicial review, the Federal Court may	(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[34] Based on the legislation, the Supreme Court of Canada has determined that this Court does not have the power to award damages on an application for judicial review: *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 at paragraph 26.

[35] Accordingly, the Applicants' claim for punitive damages will not be considered.

VII. **Issues**

[36] The Applicants' arguments raise two issues:

1. Did the Commission breach the Applicants' right to procedural fairness or display bias against them when it limited submissions to a total of 10 pages and refused to accept any evidence related to the allegations of discrimination?
2. Is the Decision not to deal with the complaint pursuant to paragraph 41(1)(d) of the CHRA reasonable?

VIII. **Standard of Review**

A. *Reasonableness Review*

[37] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] extensively reviewed the law of judicial review of administrative decisions. It confirmed that the standard of review of an administrative decision is presumptively reasonableness. This presumption is subject to certain exceptions that do not apply on these facts to the Decision on the merits: *Vavilov* at paragraph 23.

[38] Citing *Dunsmuir v New Brunswick*, 2008 SCC 9, the Supreme Court confirmed in *Vavilov* that a reasonable decision is one that displays justification, transparency and

intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at paragraph 15.

[39] The reasonableness standard of review is intended to ensure courts intervene in administrative matters only when it is truly necessary in order to safeguard the legality, rationality, and fairness of the administrative process. As such, when conducting a reasonableness review the Court begins with the principle of judicial restraint and a respect for the distinct role of administrative decision-makers: *Vavilov* at paragraph 13.

B. *Procedural Fairness Review*

[40] The Federal Court of Appeal has established that there is no standard of review for issues of procedural fairness. What is fair in any particular circumstance is highly variable and contextual. In assessing whether a process has been fair, no deference is given to the decision-making tribunal other than with respect to the choice of procedure. A reviewing Court uses the term "correctness" not as a standard of review but rather as the measure to determine whether the requirement to provide procedural fairness has been met: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 40 and 49.

[41] It has been held that "the denial of a fair hearing 'must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision'". A limited exception may arise where the outcome on the merits would be inevitable given the facts: *Canada (Human Rights Commission) v Canada (Attorney General)*, 2012 FC 445 at paragraphs 201 and 203; affirmed 2013 FCA 75.

IX. **Analysis**

A. *Legal Principles*

[42] A number of well-established legal principles apply to judicial review of findings made by the Commission and the process it used in arriving at those findings.

(1) The Role of the Commission

[43] The Commission performs an important screening function. It conducts a limited assessment of the merit but does not make any final determination about complaints under the *CHRA*. The Commission is only to assess the sufficiency of the evidence it has received. It is to determine whether there is a reasonable basis in the evidence to proceed to the next stage: (*Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at paragraph 53.

[44] The screening function is established in paragraph 44(3)(b) of the *CHRA* which provides that upon receipt of a report after an investigation, the Commission shall dismiss the related complaint if it is satisfied that one of two circumstances exist: (1) an inquiry into the complaint is not warranted or (2) the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e).

(2) The Meaning of Frivolous

[45] The legal meaning of "frivolous" in the context of paragraph 41(1)(d) of the *CHRA* is not the same as its ordinary or colloquial meaning. Rather, it has been held to mean "lacking a legal basis on legal merit". Therefore, a decision-maker will consider whether the complaint has some likelihood of success if accepted at face value, which the Commission did in this case when it

took the allegations as being true: *Hagos v Canada (Attorney General)*, 2014 FC 231 at paragraph 60.

[46] The meaning of frivolous in this context has also been described as "having no prospect of success": *Zulkoskey v Canada (Employment and Social Development)*, 2016 FCA 268 at paragraph 24.

(3) Demonstrating Discrimination

[47] The Supreme Court of Canada set out the test for discrimination in the human rights context in *Moore v British Columbia (Education)*, 2012 SCC 61 [*Moore*] at paragraph 33:

> [33] …[T]o demonstrate *prima facie* discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur.
>
> (emphasis added)

(4) The Onus on the Complainant – establish a link

[48] A complainant is required to put before the Commission sufficient information to persuade it that there is a link between the complained-of acts or conduct and a prohibited ground of discrimination: *Hartjes v Canada (Attorney General),* 2008 FC 830 at paragraph 23 [*Hartjes*].

(5) Great latitude is owed to the Commission's assessment

[49] When performing its screening function the Commission is "to be afforded great latitude in exercising its judgment and in assessing the appropriate factors when considering the application of paragraph 41(1)(d) of the *CHRA*": *Bergeron v Canada (Attorney General)*, 2013 FC 301 at paragraph 39. This means the Commission is to receive a high degree of deference when the Court reviews its screening decisions: *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paragraph 38.

[50] Because the role of the Commission in the early stages of a complaint is to determine if further inquiry by a Tribunal is called for, which is a fact and policy driven process, a high degree of deference must be afforded to the Commission: *Ritchie v Canada (Attorney General)*, 2017 FCA 114 at paragraph 38.

[51] Having set out these basic principles I now turn to the analysis of the issues.

B. *The refusal to accept evidence was not procedurally unfair nor evidence of bias*

[52] A major source of concern expressed by the Applicants is that the Certified Tribunal Record (CTR) does not contain all the information they submitted to the Officer. The Officer submitted the four pages containing the Applicants' submissions to the Commission and, as stated by the Applicants, "omitted the thirty nine (39) pages of evidence in support of the applicants (*sic*) Submission."

[53] The Applicants submit that by not accepting their evidence and by setting a ten page limit for their submissions, the Officer displayed bias against them and breached their right to procedural fairness.

[54] The Certificate prepared by the Commission pursuant to Rule 318(1)(a) of the *Federal Courts Rules* SOR/2004-283, s 2 [the *Rules*] certifies that the listed material attached to the certificate is all the material that was before the Commission when it made its decision on the Applicants' complaint. The attached materials were the Summary of Complaint and Complaint, the Section 41 Report and the Applicants' four pages of Submissions on the Section 41 Report.

[55] Overall, the CTR is 21 pages long. The last 11 pages are the materials identified as being before the Commission.

[56] The first ten pages of the CTR are composed of a four-page letter from Commission Counsel to the Administrator of the Court objecting to the breadth of the request made by the Applicants in their Notice of Application. The next four pages are the two-page Decision letter sent to the Applicants and to the Respondent. The Decision letter was followed by the two-page Rule 318(1)(a) Certificate.

[57] The Applicants did not bring a motion challenging the position of the Commission although that route was available to them under Rule 318.

[58] The Applicants were told in the letter advising them of their ability to make submissions that they could file up to ten pages of submissions. They chose to file four pages. The Applicants were advised not to file evidence but chose to file 40 pages of evidence.

[59] My colleague, Mr. Justice Southcott, recently addressed this very issue in *Wisdom v Air Canada*, 2017 FC 440 [*Wisdom*] which involved judicial review of a decision by the Commission to screen out under paragraph 41(1)(d) a complaint made by Ms. Wisdom against her employer, Air Canada. On judicial review, Ms. Wisdom argued that the Commission failed to consider evidence she had submitted.

[60] After noting that the evidence was not filed with the Commission because the matter was at the screening stage of the process, Mr. Justice Southcott found that the process followed by the Commission – to not receive and consider evidence relevant to determine whether the complaint was made out – was consistent with the jurisprudence. The Commission did not err in following that process: *Wisdom* at paragraph 28.

[61] The process employed by the Commission with respect to the evidence the Applicants attempted to file in this matter is the same as in *Wisdom*. For the same reasons, it was not procedurally unfair to the Applicants.

C. *The page limit for submissions was not evidence of bias nor was it procedurally unfair*

[62] The test for whether there has been bias on the part of the Commission is not the same as the usual test for bias in administrative matters. The test for bias in this instance has been articulated in *Abi-Mansour v Canada (Revenue Agency)*, 2015 FC 883 at paragraph 51:

> [51] The burden of demonstrating either the existence of actual bias or of a reasonable apprehension of bias rests on the party alleging bias. As an allegation of bias is a very serious allegation since it challenges the integrity of the decision-maker whose decision is at issue, the burden of proof is high. Mere suspicion of bias is therefore not sufficient to establish actual bias or a reasonable apprehension of bias. (*R v RDS*, [1997] SCR 484, at para 112). Furthermore, considering the non-adjudicative nature of its screening function, the Commission is not bound by the same standard of impartiality as are the courts. The applicable test is therefore not whether there exists a reasonable apprehension of bias on the part of the Investigator but whether the Investigator "approached the case with a closed mind" (*Sanderson v Canada (Attorney General)*, 2006 FC 447, 290 FTR 83, at para 75; *Gerrard v Canada (Attorney General)*, 2010 FC 1152 at para 53; *Gosal v Canada (Attorney General)*, 2011 FC 570, at para 51).
>
> (emphasis added)

[63] The Applicants have not demonstrated through evidence or argument that the Officer had a closed mind. They simply assert that the page limit shows the Officer was biased. That is not sufficient to meet their high burden of proof.

[64] Regarding procedural fairness, the Commission is master of its own procedure. The limitation of ten pages of submissions is not evidence of procedural unfairness: *Gandhi v Canada (Attorney General)*, 2017 FCA 26 at paragraph 15.

[65] I also note that the Officer clearly stated in the Report that the complaint was believed to be frivolous within the meaning of paragraph 41(1)(d). The letter inviting submissions on the Report was equally or more clear. It set out that paragraph 41(1)(d) was at issue “because the complaint may not establish a link to a prohibited ground of discrimination under the Act.”

[66] The Applicants knew the case they had to meet as it was specifically laid out for them. The Applicants were provided with the opportunity to make submissions and did so. Importantly, the limitation of ten pages of submissions is not evidence of procedural unfairness: *Gandhi v Canada (Attorney General)*, 2017 FCA 26 at paragraph 15.

[67] For the foregoing reasons, I conclude that the Applicants have failed to show the Officer was biased or that their rights to procedural fairness, as established in the principles set out above, were breached.

D. *The Decision is reasonable*

[68] As previously stated, at the pre-screening stage, the Commission is deciding whether the Applicants had put forward sufficient information to show – even at a *prima facie* level – a link between their treatment by the Respondent and a prohibited ground of discrimination: *Moore* at paragraph 33; *Hartjes* at paragraph 30.

[69] The Commission decided that the Applicants had not established such a link so it closed the file. It is readily apparent from a review of the record that the Applicants’ submissions did

not identify how any of the events they described were linked to, based upon or in any way related to the alleged acts of discrimination based on religion or ethnic or national origin.

[70] The Applicants' submissions were bald assertions of discrimination based on no more than that their last name is non-Christian and they experienced what they believe was poor service from the Respondent. From that premise they asked the Commission, and now this Court, to find that they were the victims of discrimination by the Respondent. Bald assertions without more do not establish a link between the impugned conduct and the alleged ground of discrimination.

[71] The Applicants have failed to show any connection between the alleged acts of discrimination by the Respondent and their religion, ethnicity or country of origin. By not doing so they have failed to meet their onus to provide a link to a prohibited ground of discrimination.

X. **Conclusion**

[72] In this case, both the facts and law support the Decision. Without a link between the Applicants' Muslim religion and the allegedly discriminatory acts by the Respondent, there was no basis upon which the Commission could do anything other than find that the complaint should not be dealt with pursuant to paragraph 41(1)(d) of the *CHRA*.

[73] This was a reasonable decision based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paragraphs 15 and 85.

[74] I would add that I acknowledge the Applicants' perceive that an injustice occurred in their dealings with the Respondent. At best, they have put forward a case in which a commercial error personally affected them. To be clear, I am not in a position to make such a finding nor do I express the view that there was or was not such an error.

[75] A commercial error, if one did occur, would not in and of itself demonstrate discrimination. In this case, there would need to be a reasonable basis for concluding that the action or conduct underlying the commercial error was linked to the Applicants being Muslim.

[76] Remembering that the Commission is entitled to deference and given that the Applicants have not met their onus to show the Decision was not reasonable or procedurally unfair, this application is dismissed.

XI. **Costs**

[77] Each party sought costs if successful. As the Respondent has succeeded, they are entitled to costs.

[78] The Respondent's written materials seeks costs calculated on a substantial indemnity basis. It relies on the decision of Mr. Justice Stratas in *Exeter v Canada (Attorney General)*, 2014 FCA 119 [*Exeter*] for the principle that it is appropriate to order solicitor and client costs where a party makes allegations of fraud that are not supported by the record.

[79] In *Exeter*, the Court of Appeal declined to vary the costs order made by a Prothonotary, but stated that the Prothonotary could have ordered solicitor and client costs against the self-represented appellant because the matter lacked merit and because the appellant made baseless allegations of bias against the Prothonotary and accused government officials of perjury without any supporting evidence.

[80] As in *Exeter*, the Applicants have accused the Respondent and government officials at the Commission of egregious conduct. The accusations include allegations of bias, discrimination, malice against Muslims, forgery, fraud, defamation, "criminal malicious" (*sic*), and collaboration with a realtor whom they referred to variously as a "white supremacist" and "gangster".

[81] All such allegations were made, often repeatedly, without any evidentiary basis.

[82] In light of those unsupported allegations, I have reviewed the factors set out in subrule 400(3) of the *Rules* which are to be considered in awarding costs. In particular, although the Respondent has been successful, the matter was not complex, as evidenced by their making no submissions on the Report. The amount of work required by counsel should consequently have been less than usual.

[83] The factor that is most relevant is the highly vituperative and unsubstantiated personal allegations made by the Applicants against multiple persons and business entities. The Applicants cannot have been unaware of the serious nature of the very personal allegations strewn throughout their materials.

[84] In my opinion, considering the foregoing, costs in favour of the Respondent should be assessed in accordance with column IV of Tariff B, rather than either column III or a substantial indemnity basis.

JUDGMENT in T-1136-19

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. Costs are awarded to the Respondent to be assessed under Column IV of Tariff B.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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