

Federal Court



Cour fédérale

Date: 20140224

Docket: T-1543-12

Ottawa, Ontario, February 24, 2014

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

NANCY FORWARD ARIAS

Applicant

and

ROYAL CANADIAN MOUNTAIN POLICE

Respondent

JUDGMENT

UPON an application for judicial review of a decision of the Canadian Human Rights Commission (“the Commission”) to not deal with Nancy Forward Arias’s (the Applicant) complaint against her former employer, the Royal Canadian Mounted Police (the “RCMP”), under paragraph 41(1)(e) of the *Canadian Human Rights Act*, RSC, 1985, c. H-6 (the “CHRA”), because it found the complaint was based on acts or omissions, the last of which occurred more than one year prior to the filing of the complaint;

AND UPON reading the written submissions and hearing the oral submissions of the parties;

AND UPON review of the Certified Tribunal Record (CTR);

AND UPON determining that this application should be dismissed for the following reasons.

[1] The Applicant worked for the RCMP from September 1989 until June 2006, when she was asked to resign or take medical retirement.

[2] The Applicant filed a complaint with the Commission on January 6, 2012.

[3] Her complaint alleged that between 1998 and 2006, she was subject to harassment by co-workers and supervisors including defamation of her character.

[4] In her complaint she claimed this treatment is related to two criminal accusations against her filed with the Ottawa Carleton police by a co-worker over workplace incidents where she says no criminal charges were laid.

[5] The essence of the accusations as presented by the Applicant are:

- In 1998, a co-worker accused the Applicant of physically assaulting her at work;
- In 2001, the co-worker accused the Applicant of uttering death threats;
- As a result of these complaints, she alleges the RCMP failed to provide a safe and healthy work environment because they failed to adequately investigate this incident.

[6] On April 17, 2012, Resolution Services of the Commission issued a Section 40/41 report (the Report) that recommended the Commission exercise its discretion to not deal with the complaint under paragraph 41(1)(e).

[7] The Report held that the date of the last alleged discriminatory act occurred in June 2006, while the Applicant only first contacted the Commission by letter dated September 30, 2011, and filed her complaint in an acceptable format on January 6, 2012.

[8] The Report's recommendation was based on finding that the delay was completely within the Applicant's control and she had neither provided a reasonable explanation for not filing the complaint on time, nor been diligent in filing her complaint. Further, the Report concluded that the Applicant had raised issues that were private in nature, and the Respondent would be prejudiced in investigating the complaint.

[9] The Applicant submitted a response to the Report on May 20, 2012, and claimed she had been diligent in pursuing her claim by:

- Following withdrawal of her grievance, between 2004 and 2006, she pursued her claim before the Ontario Superior Court and Court of Appeal. These claims were ultimately dismissed for lack of jurisdiction;
- Following a fire to her home in 2007, between 2008 and 2010, she pursued claims before the Public Service Labour Relations Board. These claims were found to be out of time for failure of the Applicant to have submitted her claim within 90 days;

- Between 2010 and 2011, the Applicant continued to seek avenues independently. In 2011, upon receipt of a response by the Commission informing the Applicant that she could apply to the Commission, the Applicant began preparing her complaint;
- In the response submissions, the Applicant addressed the Report's finding that the Respondent would be prejudiced by the delay by submitting her reasons for delay were valid and her complaint should be heard on the merits;
- In a decision dated July 4, 2012, the Commission decided not to deal with the Applicant's complaint under paragraph 41(1)(e) of the CHRA for because it was based on acts that occurred more than one year before the complaint was filed;
- Decisions by the Commission to deal with complaints under subsection 41(1) of the CHRA are subject to review on a standard of reasonableness (*Ayangma v Canada (Attorney General)*, 2012 FCA 213, at para 56 (*Ayangma*); *Exeter v Canada (Attorney General)*, 2012 FCA 119, at para 6 (*Exeter*));
- This includes the review of discretionary decisions by the Commission to decide to deal with complaints that under paragraph 41(1)(e) of the CHRA are otherwise out of time (*Bredin v Canada (Attorney General)*, 2008 FCA 360, at paras 5, 16; *Richard v Canada (Attorney General)*, 2010 FCA 292, at para 9).

[10] The Applicant challenges the decision on these grounds:

- She submits the Commission's decision to refuse to deal with her complaint amounts to an overly narrow application of paragraph 41(1)(e). She asserts the exceptional circumstances of her case, namely the delay by the RCMP in initiating an investigation into the criminal allegations made against her, as well as the continuous and incessant

- nature of the events in her situation, amount to exceptional circumstances that justify setting aside the time limit and that the Commission can only dismiss a complaint under section 41 in “plain and obvious cases”;
- She submits that the Commission’s decision to not deal with her complaint is contrary to case law and an un-cited departmental guideline that governs the Commission’s application of its discretion under paragraph 41(1)(e). She relies on *Oster v International Longshore & Warehouse Union (Marine Section), Local 400*, 2001 FCT 1115, as authority that exceptions over the application of paragraph 41(1)(e) to allow late complaints can and should be made on a case by case basis, with regard to the criteria in the guidelines;
 - The final ground she challenges is the Commission’s finding that the RCMP would be prejudiced by an investigation because named individuals are no longer with the RCMP, was made without regard to the facts. In support of this argument she submits that she has five credible individuals directly involved who have submitted affidavits to the effect that they would be willing to participate in an investigation.

[11] The legal principles applicable in determining whether to deal with complaints are:

- Under subsection 41(1) of the CHRA, the Commission is obliged to deal with complaints filed with it unless it is plain and obvious the complaint falls into one of the five enumerated exceptions in paragraphs (a) to (e) that allow the Commission to refuse to deal with complaints (*Canada Post Corp v Canada (Canadian Human Rights Commission) (re Canadian Postmasters and Assistants Assn)*, [1997] FCJ No 578; 130 FTR 241, aff’d [1999] FCJ No 705);

- Under the exception in paragraph 41(1)(e), the Commission can refuse to deal with complaints that are out of time, meaning if they are based on acts or omissions the last of which occurred one year prior to the receipt of the complaint;
- However, for a complaint the Commission finds is out of time, under paragraph 41(1)(e), the Commission retains authority to deal with those complaints where the Commission considers it appropriate in the circumstances to do so;
- Those decisions of the Commission to nevertheless deal with complaints that are otherwise out of time amount to discretionary decisions, where the Applicant has the burden of providing a satisfactory explanation for the delay that the Commission considers reasonable in the circumstances (*Bredin v Canada (Attorney General)*, 2007 FC 1361, at para 27; *Bredin v Canada (Attorney General)*, 2008 FCA 360, at para 5).

[12] The Commission justified its refusal by adopting the findings of the Report that similarly recommended not dealing with the Applicant's complaint.

[13] When a Commission provides only brief reasons for adopting recommendations from an investigator's report, the investigator's report forms part of the Commissioner's reasoning, and is subject to judicial review along the same highly deferential standard (*Canada (Attorney General) v Sketchley*, 2005 FCA 404, at paras 37-38; *Bergeron v Canada (Attorney General)*, 2013 FC 301, at paras 28, 35). In this case the Report is detailed thus making it not necessary for the recommendation to be lengthy and detailed.

[14] This court has held that a complainant is still obliged to contact the Commission within the one year time frame while he or she seeks to pursue alternative avenues of redress (*Bredin v Canada (Attorney General)*, 2007 FC 1361, at para 40).

[15] Reasonableness is concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, having regard to both the particular decision, and the process followed by the decision maker (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 59; *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, at para 44).

[16] The Commission's finding that the delay was within the Applicant's control and that she did not use due diligence in filing her complaint is within the range of possible acceptable outcomes.

[17] The Applicant's argument fails that there is no prejudice to the RCMP. Discretionary decisions by the Commission citing the prejudicial nature of the passage of time as its reason for refusing to exercise its discretion paragraph 41(1) (e) to deal with time barred complaints have been upheld (*Richard v Canada (Attorney General)*, 2010 FCA 292, at paras 3, 4, 19).

[18] I find the Commission's decision to refuse to exercise its discretion is supported by reasons, and its decision falls within the range of possible outcomes.

[19] The Applicant has named the “Royal Canadian Mounted Police” as the Respondent. As discussed at the hearing, the style of cause is amended naming “Canada (Attorney General)” as the Respondent.

[20] The application is dismissed.

THIS COURT’S JUDGMENT is that:

1. The Application is dismissed;
2. The style of cause is amended by removing “Royal Canadian Mounted Police” as Respondent and replaced by “Canada (Attorney General)”;
3. No costs are awarded.

“Glennys L. McVeigh”

Judge