

Federal Court



Cour fédérale

Date: 20230928

Docket: T-731-22

Citation: 2023 FC 1311

Ottawa, Ontario, September 28, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

AAREN JAGADEESH

Applicant

and

CANADIAN IMPERIAL BANK OF
COMMERCE (CIBC)

Respondent

JUDGMENT AND REASONS

I. **Overview**

[1] On this application for judicial review, Mr. Aaren Jagadeesh challenges a decision of the Canadian Human Rights Commission (Commission) that dismissed his complaint. Mr. Jagadeesh's complaint alleged that his former employer (CIBC) discriminated against him and terminated his employment based on prohibited grounds of discrimination, namely, disability and sexual orientation as a heterosexual man: *Canadian Human Rights Act*, RSC 1985, c H-6, s 3 [CHRA].

[2] The Canadian Human Rights Tribunal (Tribunal) is the adjudicative body tasked with deciding complaints of discrimination under the *CHRA*. The Commission, whose decision is at issue here, acts as a gatekeeper to the Tribunal and performs a screening role by deciding whether a complaint should proceed to an inquiry by the Tribunal: *Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at paras 52-53; *Tutty v Canada (Attorney General)*, 2011 FC 57 at para 12. As part of its screening role, the Commission may decide not to deal with a complaint at an early stage in the screening process (for example, for reasons described in section 41 of the *CHRA*), or the Commission may investigate the complaint in order to decide whether it should be referred to the Tribunal for an inquiry. The Commission may rely on the work of a human rights officer to help it decide what should happen with a complaint.

[3] In Mr. Jagadeesh's case, the Commission referred his complaint to a human rights officer (Officer) for investigation. The Officer reviewed the documentary record, interviewed witnesses, and submitted a report of her findings (Report for Decision) to the Commission: *CHRA*, s 44. The Report for Decision recommended to the Commission that Mr. Jagadeesh's complaint be dismissed, on the basis that there was insufficient evidence to warrant further inquiry. The parties were then given an opportunity to file submissions in response to the Report for Decision, for the Commission's consideration. Mr. Jagadeesh and CIBC both did so.

[4] The Commission issued a decision on March 15, 2022. The Commission decided that an inquiry by the Tribunal was not warranted, and dismissed Mr. Jagadeesh's complaint pursuant to subparagraph 44(3)(b)(i) of the *CHRA*.

[5] Mr. Jagadeesh, who represented himself in this matter, asks this Court to set aside the Commission's decision. He submits the Commission violated principles of procedural fairness and natural justice, and that its decision was biased. Mr. Jagadeesh states the Commission erred in relying on the Officer's under-inclusive, unfair, and biased Report for Decision to dismiss his complaint, and based its decision on erroneous findings of fact and/or mixed fact and law that failed to account for his submissions showing errors in the Report for Decision. He states the Commission's conclusions do not accord with the provisions of the *CHRA*.

[6] CIBC submits the investigation was thorough, and fully addressed the issues raised in Mr. Jagadeesh's complaint. CIBC submits the Commission's reasons were clear, its conclusions were supported by the facts and the law, and Mr. Jagadeesh's arguments on judicial review do not provide a basis to question the fairness of the Commission's process or the reasonableness of its decision to dismiss his complaint.

[7] For the reasons that follow, Mr. Jagadeesh has not established that the Commission's decision was procedurally unfair or unreasonable. Accordingly, this application for judicial review is dismissed.

II. **Background**

[8] CIBC hired Mr. Jagadeesh in June 2014 as a financial services representative in its call centre. Mr. Jagadeesh states he developed severe throat and vocal cord pain from the demands of the job, which included calling a high volume of customers and being required to recite

lengthy legal disclosures on the calls. In February 2015, Mr. Jagadeesh submitted a request for accommodation, asking to work in any capacity other than on the phone with customers.

[9] CIBC's corporate physician examined Mr. Jagadeesh in March 2015 and referred him to a specialist. The specialist diagnosed muscle tension dysphonia, and recommended therapy, workplace accommodations of frequent breaks, and ideally, a break from the telephone position.

[10] According to Mr. Jagadeesh's complaint, CIBC started discriminating against him soon after the specialist's diagnosis and confirmation of his disability. The complaint made a number of allegations of discriminatory treatment and harassment, including that CIBC refused requests for accommodation and instead asked him to go on short-term disability (STD), and that CIBC cut his pay, denied incentives and bonuses, threatened disciplinary action for taking essential medical breaks, manipulated performance statistics, made up warning letters in order to "get rid of him", and ultimately terminated his employment in May 2016. The complaint also alleged that Mr. Jagadeesh had applied for 17 other jobs within CIBC, and despite his qualifications and experience, CIBC refused to employ him in any position other than the call centre position. According to the complaint, Mr. Jagadeesh's manager asked for a meeting in September 2015, and while discussing qualifications and medical problems the manager mentioned that unless Mr. Jagadeesh joined their "group", there was no hope for him. Mr. Jagadeesh states his manager explained that "every male Manager both here and downstairs are gay / bisexual people", and that was how so many young employees with limited qualifications were getting promoted. While Mr. Jagadeesh did not think about it at the time, later he felt his refusal to join the "group" may have been the primary reason for his problems at CIBC.

[11] Mr. Jagadeesh's complaint alleged that CIBC's actions caused financial and emotional harm, including loss of pay, benefits, and advancement opportunities within CIBC, and that CIBC left him with a disability that has rendered him unable to work phone-based jobs. He alleged he was ineligible for unemployment insurance benefits and could not find another job because CIBC refused to provide a reference and falsified his record of employment to say his employment was terminated within a probationary period.

[12] Mr. Jagadeesh filed a complaint with the Commission in April 2017. The Commission appointed an investigator who conducted an investigation from July 2017 to July 2018, and issued a report in August 2018 recommending that the complaint be dismissed. The Commission accepted the investigator's recommendation and dismissed Mr. Jagadeesh's complaint in November 2018.

[13] Mr. Jagadeesh challenged the Commission's November 2018 decision, and his application for judicial review was granted in September 2019: *Jagadeesh v Canadian Imperial Bank of Commerce*, 2019 FC 1224 [*Jagadeesh*]. The Court found the investigation and decision were not procedurally fair because the Commission did not conduct a thorough review of the grounds of Mr. Jagadeesh's complaint. The matter was returned to the Commission for a fresh investigation with a different investigator and a new decision based on the full record.

[14] The Commission then appointed a new investigator whose results and analysis are set out in the Report for Decision that issued in September 2021. The Commission's March 15, 2022

decision that is under review in this proceeding is the decision that followed the second investigation.

III. Standard of Review

[15] Mr. Jagadeesh’s allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]; see also *Canada (Attorney General) v Ennis*, 2021 FCA 95 at para 45. These include Mr. Jagadeesh’s allegation of bias, and his allegation that his complaint was not investigated in a thorough manner: *Joshi v Canadian Imperial Bank of Commerce*, 2015 FCA 92 at para 6. The duty of procedural fairness is “eminently variable”, inherently flexible, and context-specific: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*], citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 22-23 [*Baker*], among other cases. An applicant must have had a meaningful opportunity to present their case and to have it fully and fairly considered: *Baker* at para 32. The central question is whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[16] The allegations that impugn the merits of the Commission’s decision are reviewed in accordance with the guiding principles for reasonableness review set out in *Vavilov*. The reasonableness standard of review is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether a decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and

rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

IV. Analysis

A. *Preliminary Issue: Admissibility of Mr. Jagadeesh's Affidavit*

[17] Mr. Jagadeesh's application record in this proceeding includes an affidavit he swore on May 6, 2022. Mr. Jagadeesh states that in addition to providing general background information, he uses the affidavit to show how the Officer's investigation was conducted, and what transpired during and after the investigation. The affidavit attaches 16 documents as exhibits (exhibits A-P), and states these documents were part of the original evidence Mr. Jagadeesh submitted to the Commission in 2017 or they are email communications between Mr. Jagadeesh and the Officer or the Commission during the course of the investigation.

[18] Mr. Jagadeesh submits his affidavit is admissible for two reasons. First, to the extent that it relates to information that was not before the Commission, he states the affidavit provides necessary background information for the Court to understand his allegations of bias, procedural unfairness, and lack of thoroughness: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 20 [*Access Copyright*]. Second, Mr. Jagadeesh states his notice of application included a request for the Commission to provide a copy of the entire record that was before it, but the Commission's response did not include his evidence; therefore, the affidavit is necessary to place documents before the Court that are in his possession and were part of the original evidence: *Mackie v Via Rail Canada Inc*, 2022 FC 871

at para 15, citing *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268 at paras 15-23.

[19] The respondent does not object to the admissibility of the exhibits, to the extent the Court finds them necessary to decide the issues of bias and procedural fairness; however, the respondent argues that the body of Mr. Jagadeesh's affidavit should not be admitted because it consists of argument and merely restates Mr. Jagadeesh's views as set out in his memorandum of argument.

[20] As a general rule, the evidentiary record on judicial review is restricted to the record that was before the decision maker: *Access Copyright* at para 19. There are exceptions to the general rule, and evidence that was not before the decision maker may be admissible if it: (i) provides general background information to assist the Court in understanding the issues relevant to the judicial review, without providing evidence relevant to the merits of the administrative decision; (ii) explains procedural defects that cannot be found in the record, so that the Court can fulfill its role of reviewing for procedural unfairness; or (iii) highlights a complete absence of evidence before the administrative decision maker when it made a particular finding: *Access Copyright* at para 20. The general background information exception applies to non-argumentative, orienting statements that assist the reviewing court in understanding the history and nature of the case that was before the administrative decision maker: *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45.

[21] While many of the exhibits to Mr. Jagadeesh's affidavit were before the Officer, the Commission's Rule 318 response indicates they were not before the Commission when it rendered its decision. Strictly speaking, the exhibits are not relevant to a review of the merits of the decision: *Access Copyright* at paras 19-20. However, Mr. Jagadeesh alleges the Officer's investigation was not thorough and the Commission should have reviewed all the evidence before rendering its decision. For the purposes of analyzing Mr. Jagadeesh's procedural fairness arguments, I will admit the exhibits as an exception to the general rule, to allow the Court to "fulfill its role of reviewing for procedural unfairness": *Access Copyright* at para 20.

[22] With respect to the paragraphs of Mr. Jagadeesh's affidavit:

- i. Paragraphs 1-2 are standard opening paragraphs that are not objectionable.
- ii. Paragraphs 33-34 introduce the exhibits. Since the exhibits are admitted, I have decided to admit these paragraphs even though some of the exhibit descriptions in paragraph 34 constitute argument.
- iii. Paragraphs 11-23 contain statements that could be considered proper affidavit evidence that is somewhat relevant to the procedural fairness issues. While paragraphs 11-23 also include argument, I see no purpose in parsing these paragraphs since they largely repeat information (albeit with some discrepancies) found in the admitted exhibits. Paragraphs 11-23 are admitted.
- iv. Paragraphs 3-10, 24-32 and 35 do not introduce any relevant, necessary evidence. They are strictly argument. An affidavit is not an additional venue for making submissions: *Jagadeesh* at para 42; see also *Rosianu v Western Logistics Inc*, 2021 FCA 241 at para 29. These paragraphs are inadmissible.

B. *Did the Commission breach procedural fairness?*

[23] Mr. Jagadeesh submits the Officer was biased. He states he raised bias with the Officer, her manager, and the Commission by sending a comprehensive, 16-page email (February 2021 Email) that explained the Officer's glaring errors and omissions, her attempts to misconstrue his evidence, and how she acted unethically—including in the way the Officer interviewed him and revised her interview notes to accord with CIBC's version of events. Furthermore, Mr. Jagadeesh states his submissions to the Commission provided several examples showing the Officer's bias and failure to consider his evidence, and explained why her Report for Decision was procedurally unfair, biased, under-inclusive, unreasonable, and unethical. Mr. Jagadeesh states the Commission not only failed to act, it went further to say he had not provided any concrete examples that would lead it to find that the Report for Decision and investigation were biased and unethical. Mr. Jagadeesh argues his case has many parallels with the circumstances in *Saran v Canada (Minister of Citizenship and Immigration)*, 2021 FC 524 [*Saran*] and *Sanderson v Canada (Attorney General)*, 2006 FC 447 [*Sanderson*].

[24] Apart from bias, Mr. Jagadeesh alleges the Commission and the Officer breached principles of procedural fairness and natural justice in other ways. He submits the Officer did not investigate the complaint in a neutral and thorough manner, including because she failed to consider important discrimination grounds, she ignored evidence showing that CIBC never offered accommodation and did not want to offer accommodation unless he joined the "group", and she failed to properly investigate CIBC's intentional acts of falsifying records of employment and manipulating performance statistics in order to punish him. Furthermore, Mr. Jagadeesh alleges the Commission did not consider the full scope of the evidence and

disregarded the Federal Court's direction that required it to consider the "full record", which contained crucial evidence substantiating his allegations. He states the process the Commission followed in deciding to dismiss his complaint was unfair and unjust, there was bias in the investigation, and the Commission failed to consider his submissions and the importance of the decision to him.

[25] CIBC submits Mr. Jagadeesh has not met his onus of demonstrating actual bias or a reasonable apprehension of bias. The threshold is high and suspicion is insufficient: *Hughes v Canada (Attorney General)*, 2010 FC 837 at para 21 [*Hughes*]. According to CIBC, the Commission was correct to note a lack of concrete examples of bias or unethical conduct. CIBC states that while Mr. Jagadeesh disagrees with the Report for Decision, the report demonstrates that the Officer was not biased.

[26] CIBC submits the Commission met its duty of procedural fairness. The second investigation that led to the Report for Decision was thorough, and the Commission did not disregard the Federal Court's guidance from the first judicial review proceeding. CIBC states the Commission has considerable latitude in the way it conducts its investigations; perfection is not the standard and only fundamental issues need to be investigated: *Ritchie v Canada (Attorney General)*, 2017 FCA 114 at para 30 [*Ritchie*]. The Report for Decision and the Commission's decision dealt with all of the fundamental issues raised in Mr. Jagadeesh's complaint, and the Commission addressed the submissions he filed in response to the Report for Decision.

[27] CIBC submits that in performing its screening or gatekeeping function, the Commission has broad discretion to determine whether further inquiry of a complaint is warranted. As the Commission's decision to dismiss Mr. Jagadeesh's complaint was procedurally fair, the decision should be accorded deference, in keeping with the reasonableness standard of review.

[28] I agree with CIBC that Mr. Jagadeesh has not established the Commission's decision should be set aside due to bias or on other procedural unfairness grounds.

[29] The Commission found that none of the issues Mr. Jagadeesh had raised led it to conclude that the investigation or the Report for Decision was "procedurally unfair, biased, under inclusive, unreasonable, and also unethical" as alleged.

[30] With respect to bias specifically, the Commission found Mr. Jagadeesh had not provided any concrete examples that would lead it to conclude that the investigation was biased or unethical, or that a reasonably informed person, viewing the matter realistically and practically, would draw such a conclusion. As noted above, Mr. Jagadeesh argues before this Court that he in fact gave several examples of bias in his submissions to the Commission, and in the February 2021 Email he had previously sent to the Officer and to the Commission.

[31] Allegations of bias and unethical conduct impugn the decision maker's integrity, and it is often said that the threshold for establishing bias is high: *Hughes* at para 21. Mr. Jagadeesh's submissions to the Commission did not provide a cogent reason to believe the Officer was predisposed to an outcome or that she failed to investigate the complaint impartially. His

submissions did not clearly distinguish allegations of bias and unethical conduct from other allegations of procedural unfairness, and the particulars supporting these allegations were in the nature of alleged mistakes, unfair processes, or unreasonable findings that, whether considered separately or together, do not indicate the Officer approached the complaint with a “closed mind”: *Hughes* at para 23. The Commission’s statement that Mr. Jagadeesh had not provided concrete examples of bias or unethical conduct was accurate.

[32] The Commission was not required to address the February 2021 Email. Mr. Jagadeesh filed written submissions, as he was entitled to do, and those submissions were the vehicle for presenting his arguments to the Commission. Each side’s submissions were limited to 10 pages. The Commission was not required to consider and address additional submissions set out in the 16-page email.

[33] In any event, the particulars in the February 2021 Email do not indicate bias or a breach of procedural fairness in the investigation. The email points to minor or inconsequential differences between Mr. Jagadeesh’s notes and the Officer’s notes that do not support Mr. Jagadeesh’s allegations that the Officer took undue advantage of his voice disability by misconstruing his answers when he had pain in his throat, crafted her notes so it would appear that he was unable to provide information or that he misunderstood information, or hid important details. The February 2021 Email alleges Mr. Jagadeesh was not given an adequate opportunity to give evidence during his interview because the Officer had another appointment that required her to conclude the interview after one hour and ten minutes, and he was prepared to go on. There is no basis to conclude that Mr. Jagadeesh was deprived of the opportunity to fully present

his case at the interview—particularly when he had other opportunities to present his case, such as by way of the complaint itself, other communications with the Officer, and written submissions. Mr. Jagadeesh’s email also raised a concern that the Officer lied to him about being alone in the room during the interview. The basis for this concern was that the Officer initially referred to her notes as “officer’s notes” but she subsequently referred to the same notes as “witness notes”. Because of this, Mr. Jagadeesh was concerned that an undisclosed witness took notes for the Officer and people were manipulating the content of his file. Mr. Jagadeesh’s unsupported suspicions do not establish bias: *Hughes* at para 21.

[34] *Sanderson* is not analogous to Mr. Jagadeesh’s case. In *Sanderson*, the applicant alleged that the investigator’s personal relationship with a key witness led the investigator to approach the investigation with a closed mind, and neither the investigation report nor the Commission’s decision had addressed these allegations “in any way, shape or form”: *Sanderson* at para 36. Mr. Jagadeesh did not raise a comparable concern, and both the Officer and the Commission addressed his allegations of bias.

[35] *Saran* is also distinguishable. In *Saran*, the Court was satisfied that the applicants had provided concrete evidence of a reasonable apprehension of bias—this included evidence that the visa officer who interviewed them and refused their work permit application told the interpreter to leave, the interview was not conducted in the language stated in the officer’s notes, and the officer prevented the applicants from speaking, cut off their answers, and threatened to ban them from Canada for five years. Mr. Jagadeesh has not presented evidence of bias, and there is no basis to infer bias from the Report for Decision itself. The report reveals a methodical,

comprehensive, and balanced analysis that provides ample justification supporting the Officer's recommendation that the Commission dismiss the complaint pursuant to subparagraph 44(3)(b)(i) of the *CHRA*, based on insufficient evidence to warrant further inquiry.

[36] Turning to the other allegations of procedural unfairness, as noted above Mr. Jagadeesh alleges that the investigation of his complaint was not thorough and the Commission's process was unfair.

[37] Mr. Jagadeesh submits the Officer: (i) failed to consider all grounds of discrimination he had raised—namely the grounds of disability, sexual orientation, the combination of both disability and sexual orientation, and harassment including sexual harassment; (ii) ignored or misconstrued conclusive evidence of CIBC's failure to accommodate his disability and discriminatory acts against him; and (iii) conducted an unfair investigation and interview, and revised her interview notes to accord with CIBC's version of events. Mr. Jagadeesh states the Commission ignored his submissions that explained why the Officer was wrong about key findings, and the Commission also ignored evidence that directly contradicted the Officer's findings.

[38] Mr. Jagadeesh states the Commission failed to respond to his arguments that: (i) the Officer made glaring errors and misconstrued evidence as explained in the February 2021 Email; (ii) his right to accommodation of a disability under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11, s 32(1)* [*Charter*] was violated; (iii) the Officer erred in finding certain allegations of

sexual exploitation were outside the scope of his complaint; (iv) he was denied the opportunity to fully present his case, as the Officer forced him to finish his interview when he wanted to provide more information; (v) the Officer reviewed the first officer's interview notes when those notes were never disclosed to him and the Federal Court had declared the first investigation to be procedurally unfair; and (vi) he was not given sufficient opportunity to respond to CIBC's evidence. Mr. Jagadeesh contends the Commission's process was procedurally unfair as the Commission did not follow its own processes, the process it did follow was unfair and unjust, it did not truly consider the full record as directed by the Federal Court, and it failed to consider the importance of the decision to him.

[39] I am not persuaded by Mr. Jagadeesh's submissions. The investigation was thorough and Mr. Jagadeesh was afforded procedural fairness.

[40] A thorough investigation is one that addresses the fundamental issues raised in a complaint: *Georgoulas v Canada (Attorney General)*, 2018 FC 652 at para 87. Perfection is not the standard: *Georgoulas* at para 86, citing *Ritchie* at para 30. Mr. Jagadeesh has not established that the Officer missed any of the fundamental issues raised in his complaint. To the contrary, the Report for Decision demonstrates that the Officer identified the fundamental allegations of Mr. Jagadeesh's complaint, which were based on disability and sexual orientation, and investigated them. The Report for Decision thoroughly addressed each allegation.

[41] The Officer summarized the complaint as follows (footnotes omitted):

1. The complainant alleges that the respondent discriminated against him in employment on the grounds of disability

(Muscle Tension Dysphonia) and sexual orientation (heterosexual) by treating him in an adverse differential manner and by terminating his employment, contrary to section 7 of the *Canadian Human Rights Act* (the Act).

2. The complainant alleges that the respondent engaged in the following behaviour due to his disability:
 - refused to provide him with modified duties, regular breaks and/or another position;
 - cut his basic pay and did not give him sales incentives or annual bonuses;
 - managers:
 - watched him to ensure he never discussed his disability with others;
 - de-activated his pass while he was still an employee;
 - threatened him with disciplinary action (including pay cuts);
 - manipulated his daily performance statistics;
 - demanded he sign warning letters/disciplinary papers; and,
 - delayed his pay after he returned to active status from Short-Term Disability (STD).
 - terminated his employment resulting in a loss of all of his employee benefits;
 - did not pay him severance or retirement pay upon his termination;
 - indicated incorrectly on his Record of Employment (ROE) that he was terminated within a probationary period which affected his eligibility for any unemployment programs; and,
 - never gave him a reference letter.

3. The complainant alleges that he applied for 17 different promotional opportunities but the respondent did not consider his applications or hire him for any of these positions and later terminated his employment due to his sexual orientation.

[42] The Officer noted that Mr. Jagadeesh raised further allegations not contained in the original complaint, and correctly stated the Commission is not required to consider new allegations that are brought forward during complaint process. A complainant is limited to allegations in the complaint as filed: *Manfoumbi-Mouity v Canada (Attorney General)*, 2017 FCA 240 [*Manfoumbi-Mouity*].

[43] The Commission was not required to separately address all of the arguments set out in Mr. Jagadeesh's submissions. The Commission correctly stated that much of what Mr. Jagadeesh addressed in his submissions was dealt with, discussed, and analyzed within the Report for Decision, which the Commission endorsed. The Commission was not required to address Mr. Jagadeesh's additional submissions set out in the February 2021 Email, as explained above.

[44] In large part, Mr. Jagadeesh's submissions to the Commission consist of disagreements with the Officer's findings, and re-statements of arguments he made in support of his discrimination complaint. The Officer was not required to address peripheral points, nor was the Commission required to re-address points that were adequately discussed and analyzed in the Report for Decision. Mr. Jagadeesh's submissions do not raise a serious concern with the conduct of the investigation, or the analysis as set out in the Report for Decision.

[45] As noted above, in my view the Report for Decision demonstrates that the Officer correctly identified the fundamental allegations of Mr. Jagadeesh's complaint, investigated them, and addressed each allegation thoroughly in her Report for Decision. Nonetheless, I will elaborate on certain of Mr. Jagadeesh's submissions that allege the Officer and/or the Commission failed to address important aspects of his complaint.

[46] First, Mr. Jagadeesh submits the Officer missed the crucial ground of harassment. His submissions to the Commission alleged that, in spite of repeated requests, the Officer did not include the ground of harassment in the Report for Decision, and did not reference the relevant provision of the *CHRA* regarding harassment. However, harassment is a form of discriminatory practice: s 14 of the *CHRA*. To the extent the allegations raised in Mr. Jagadeesh's complaint involved CIBC's actions that he considered to be harassment, the Officer considered them as allegations of differentiation in employment, and addressed them in the Report for Decision.

[47] Second, relying on *Turner v Canada (Attorney General)*, 2012 FCA 159 [*Turner*], Mr. Jagadeesh states that by analyzing the grounds of discrimination based on disability and sexual orientation separately, the Officer failed to address what was in fact compound discrimination. I disagree.

[48] The decision maker in *Turner* (which was the Tribunal) was completely silent on one of Mr. Turner's alleged grounds of discrimination, and had also disregarded his arguments concerning the importance of intersecting or compound grounds of discrimination: *Turner* at para 33. The same is not true in Mr. Jagadeesh's case. The Officer and the Commission

considered all alleged grounds of discrimination, and Mr. Jagadeesh's complaint did not allege the kind of intersecting or compound discrimination that was at issue in *Turner*, or explain how he was impacted by compound discrimination. Mr. Jagadeesh's submissions to the Commission did not explain how he was impacted by compound discrimination either. Those submissions state (exactly as written):

[26] Sections of CHRA apply to my case: 7, 10, and 14.
Discrimination based on: disability, sexual orientation, the
combination of both, & harassment - including sexual harassment].
Note: AR [Para 14] unfairly shows only Section 7.

[27] Even during my last Federal Court arguments [FC- Jagadeesh], my arguments were based on the above 3 CHRA sections. I do have all details including "recorded version of my arguments in court - purchased from the Court Office." If needed, and given an opportunity, I am willing to send a copy of the same to the Commission as part of my submission.

The Officer and the Commission did not fail to consider any argument they were required to consider.

[49] Third, the *Charter* arguments in Mr. Jagadeesh's submissions to the Commission were related to the duty to accommodate. The Officer thoroughly investigated and fully addressed Mr. Jagadeesh's allegations that CIBC had failed to accommodate his disability needs. Mr. Jagadeesh had asked CIBC for a specific form of accommodation, namely, a different position within the company. The Officer concluded that the evidence before her did not establish Mr. Jagadeesh needed this form of accommodation. The evidence was that CIBC had provided accommodation that was consistent with the available medical information, until it was no longer required. As of September 2015 (when Mr. Jagadeesh was no longer on STD) there was no medical evidence of a need for accommodation. The Officer also noted evidence that CIBC was

willing to reassess Mr. Jagadeesh's situation if he provided additional medical information, but he never did.

[50] Fourth, there is no merit to Mr. Jagadeesh's argument that the Officer misidentified allegations as being outside the scope of the original complaint. The Officer stated that during the assessment process, Mr. Jagadeesh provided information which may constitute further allegations not contained in his complaint form (such as allegations that other CIBC employees were sexually exploited). The Officer explained that while she might refer to these points where they were presented as an explanation and to provide context, she would only address the allegations of discrimination in the complaint form. The Officer correctly stated that a complainant is limited to allegations in the complaint as filed (citing *Manfoumbi-Mouity*). She did not fail to address any central allegations that were within the scope of Mr. Jagadeesh's complaint.

[51] Fifth, the Commission did not disregard the Federal Court's direction by failing to consider the full scope of the evidence. In *Jagadeesh*, the Court specifically stated that in deciding whether to adopt an investigator's report, the Commission "is not obliged to consider underlying evidence submitted to Investigator (contrary to Mr. Jagadeesh's suggestion that they must)": *Jagadeesh* at para 55.

[52] In *Jagadeesh*, the Court returned the matter to the Commission because the investigator had not investigated whether Mr. Jagadeesh was passed over for alternative positions due to his sexual orientation or disability—the investigator considered the allegation to be outside the scope

of the complaint. The Court found that while Mr. Jagadeesh's complaint was not organized as clearly as it could have been, and the investigator may have reasonably misconstrued its scope, it was clear from reviewing the complaint in the context of Mr. Jagadeesh's submissions to the Commission that the allegation was in the original complaint: *Jagadeesh* at para 61. The Court went on to state that, while the investigator's error may have been remedied by addressing Mr. Jagadeesh's submissions (*Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paragraph 38), the defect was not remedied because Commission failed to address the point, and adopted the conclusions in the investigator's report without further reasons. By remaining silent and fully adopting an underinclusive report, the Court found the Commission had breached procedural fairness: *Jagadeesh* at paras 61-62.

[53] After the matter was returned, the Commission appointed a new investigator who fully investigated Mr. Jagadeesh's complaint. The Officer's Report for Decision addressed each of Mr. Jagadeesh's allegations, including the allegation that CIBC did not offer alternative positions and ultimately terminated his employment because he is heterosexual. The Officer found the evidence did not support the allegations that Mr. Jagadeesh's sexual orientation was a factor in CIBC's decisions. In deciding to dismiss the complaint, the Commission considered Mr. Jagadeesh's submissions in respect of the Report for Decision, and adequately addressed them in its decision.

[54] Finally, Mr. Jagadeesh states that the Officer's investigation was not neutral or thorough because she ignored crucial evidence that established CIBC's discriminatory actions: CIBC intentionally falsified his records of employment and manipulated his performance statistics as

punishment for not joining the gay/bisexual group, caused his disability and did not offer accommodation (by denying the form of accommodation he requested and by forcing him to do outbound calling, contrary to medical advice), did not consider him for 17 jobs he applied for, lied about the reason he was not offered these jobs, and did not want to offer accommodation unless he joined the group. These allegations do not reveal a deficiency in the Officer's investigation or report that could give rise to procedural unfairness. They are disagreements with the Officer's findings.

[55] The procedural fairness requirement of a neutral and thorough investigation derives from the right to be heard. An investigation is thorough if it is not clearly deficient, and does not fail to assess any obviously crucial evidence: *Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574 at 598, 73 FTR 161 (TD) at 604-606 [*Slatterly*]. The investigation and report must provide an adequate and fair basis for the Commission to evaluate whether there is sufficient evidence to warrant the appointment of a tribunal: *Slattery* at 598. In Mr. Jagadeesh's case, the Officer's investigation and Report for Decision met these requirements.

[56] Mr. Jagadeesh also had the opportunity to make submissions to the Commission explaining why he disagreed with the Officer's recommendation and Report for Decision. The Commission considered those submissions, it was not persuaded by them, and it decided there was no reasonable basis in the evidence to warrant referring the complaint to the Tribunal for an inquiry.

[57] It is the Commission's role to consider an investigator's report and decide what to do with a complaint: *CHRA*, s 44. A reviewing court must afford deference to the Commission's assessment of the probative value of the evidence gathered by the investigator and the parties' submissions when deciding whether a complaint warrants further inquiry before the Tribunal: *Ritchie* at paras 38-39, 42. Otherwise, the reviewing court would be stepping into the Commission's role.

[58] In conclusion, Mr. Jagadeesh has not established that the Commission's decision to dismiss his complaint was procedurally unfair.

C. *Is the Commission's decision unreasonable?*

[59] Mr. Jagadeesh states that paragraphs 45 to 50 of his submissions to the Commission conclusively demonstrated *prima facie* disability discrimination. He argues the Commission selectively reviewed his submissions and ignored or dismissed relevant evidence in its analysis of *prima facie* discrimination, rendering its decision unreasonable. Mr. Jagadeesh contends the Commission's analysis was fundamentally flawed, and the Commission relied on erroneous findings of fact that were not based on the evidence. Mr. Jagadeesh alleges the decision: (i) refers to the wrong date of his diagnosis, stating he was diagnosed with muscle tension dysphonia in February 2015 when the diagnosis was made after seeing the specialist in June 2015; it also misstates the date CIBC terminated his employment as May 9, 2016, instead of May 10, 2016; (ii) mentions that he worked reduced hours while on STD between May 2015 and September 2015 but hides the fact that he was forced to make outbound calls during that time, which was the primary reason for his disability; (iii) does not fully address his submissions that

explained why the investigator was wrong to conclude that CIBC had provided accommodation before September 2015 and CIBC was not required to provide accommodation after September 2015; in this regard, he states the Commission quoted only part of his submissions—that the Officer had ignored pay stub evidence—and limited its response to the narrower point, ignoring the submissions that the Officer’s conclusion was also inconsistent with CIBC emails and other obviously crucial corroborative evidence that demonstrated CIBC never actually gave him a break from telephone work and duties that required prolonged speaking, and unjustly closed his accommodation request in September 2015; and (iv) fails to say why obviously crucial evidence was not even considered, even though he clearly asked the Commission to consider all of the crucial and conclusive evidence referred to in the submissions.

[60] Mr. Jagadeesh also submits that the Officer committed a palpable and overriding error when she concluded that the evidence did not support Mr. Jagadeesh’s preferred accommodation of an alternative position. Mr. Jagadeesh states he explained at paragraphs 77 to 79 of his submissions to the Commission that the Officer had ignored his two workplace accommodation request forms (WARFs), and that her conclusion contradicted her findings that Mr. Jagadeesh communicated his need for accommodation by completing the WARFs.

[61] Mr. Jagadeesh states that after his termination, CIBC did not stop harassing him. In addition to causing him financial loss and failing to pay benefits he was owed on termination, CIBC filed a false record of employment indicating his employment was terminated within a probationary period, to ensure no employer would hire him. Mr. Jagadeesh states he is unable to work any phone-based job and has lost the benefit of 12 years of Canadian call centre experience

because of the disability CIBC caused, and he has been punished for being straight and refusing to join a group of gay and bisexual employees.

[62] Mr. Jagadeesh has not established that the Commission's decision is unreasonable.

[63] The Commission reasonably concluded that the evidence did not warrant further investigation of Mr. Jagadeesh's complaint of discrimination based on disability. Any errors in the date of diagnosis or termination date are inconsequential, and there is no merit to Mr. Jagadeesh's arguments that the Commission hid that he was forced to make outbound calls while on STD.

[64] Mr. Jagadeesh has not established that the Commission failed to fully address his submissions explaining why the investigator conclusions on accommodation were wrong. Mr. Jagadeesh had argued that CIBC concluded there was no need for further accommodation measures and "unjustly closed my file" based on a September 2015 workplace accommodation report that falsely stated he had been performing duties that do not require continuous speaking for five months. He alleged the accommodation report was "false and misguided" because there was "conclusive" evidence showing he was forced to perform continuous outbound calling, against the medical advice. The Commission addressed these submissions and reasonably concluded there was no evidence of a need for accommodation after September 2015. In this regard, the Commission noted that Mr. Jagadeesh did not provide medical documentation to support his need for continued accommodation after September 2015, CIBC had been willing to reassess his situation based on additional medical documentation, and the pay stub evidence did

not displace the Officer's conclusion. While the Commission did not specifically refer to the CIBC emails, these emails do not establish that CIBC's report was false, nor do they call the Commission conclusion into question. The Report for Decision summarizes Mr. Jagadeesh's rebuttal evidence that as of March 2015, when he went on STD, he performed outbound calls but worked reduced hours with paid medical breaks between calls, and following the consultation with the specialist he started non-telephonic work on June 30, 2015.

[65] Mr. Jagadeesh does not raise a valid basis to question the Officer's conclusion that the evidence did not support his preferred accommodation of an alternative position. The Officer's finding that Mr. Jagadeesh had communicated his preferred form of accommodation does not establish an error in the Officer's conclusion that that the medical evidence did not support his preference. The Officer found on the evidence that CIBC provided accommodation in the form of STD, microbreaks, reduced work hours, and modified work that was consistent with the available medical evidence. Mr. Jagadeesh maintains that CIBC was required to offer his preferred accommodation; however, the issue was fully addressed in the Report for Decision, which the Commission endorsed, and Mr. Jagadeesh has not established any reviewable error.

[66] Mr. Jagadeesh's complaint referred to alleged discriminatory actions that ultimately led to his termination in September 2015. To the extent that allegations were raised in the complaint and within the Commission's purview, the Officer thoroughly investigated them, and explained her findings in a comprehensive report. Mr. Jagadeesh disagrees with these findings, but he has not established a reviewable error.

[67] Mr. Jagadeesh's submissions to the Commission touched on virtually every aspect of the Report for Decision; however, his submissions did not raise any points that would have required the Commission to go beyond the documents that were before it, and examine any of the original evidence from the record. The Commission was not required to re-conduct the Officer's investigation or reach its own conclusions based on an independent examination of the evidentiary record that was before the Officer.

V. **Conclusion**

[68] For the reasons above, this application is dismissed.

[69] CIBC submits that costs should be awarded in favour of the successful party, and asks that the Court decide on an appropriate column under the Tariff.

[70] Mr. Jagadeesh requested an opportunity to make cost submissions in writing.

[71] If the parties cannot agree on costs, they may file cost submissions. CIBC shall deliver written submissions on costs within 15 days of this decision, and Mr. Jagadeesh shall deliver written submissions within 15 days of receiving CIBC's submissions. Each party's submissions shall be two pages or less, not including any draft bill of costs or list of authorities.

JUDGMENT in T-731-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. In the event the parties are unable to agree, costs remain to be determined.

"Christine M. Pallotta"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-731-22

STYLE OF CAUSE: AAREN JAGADEESH v CANADIAN IMPERIAL
BANK OF COMMERCE (CIBC)

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 23, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: SEPTEMBER 28, 2023

APPEARANCES:

Aaren Jagadeesh

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Elisha Jamieson-Davies

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hicks Morley Hamilton Stewart
Storie LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE RESPONDENT