Federal Court  Cour fédérale

Date: 20231031

Docket: T-1210-22

Citation: 2023 FC 1451

Ottawa, Ontario, October 31, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

TRENT COROY

Applicant

and

ROYAL CANADIAN MOUNTED POLICE

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the Canadian Human Rights Commission's ("Commission") decision declining to deal with the Applicant's complaint pursuant to paragraph 41(1)(e) of the *Canadian Human Rights Act*, RSC, 1985, c H-6 ("*CHRA*"). The Commission's May 13, 2022 decision ("the Decision") found that Mr. Coroy failed to provide a reasonable explanation for the delay in submitting his complaint.

[2] For the reasons that follow, I find that the Commission's Decision was both procedurally unfair and unreasonable. I will therefore allow this application for judicial review.

II. **Background**

[3] The Applicant, Trent Coroy, filed a human rights complaint online with the Commission against the Royal Canadian Mounted Police ("RCMP") on April 8, 2021.

[4] The complaint was accepted by the Commission on October 30, 2021.

[5] In his complaint, the Applicant alleged that in February 2019, the RCMP failed to accurately record incidents of intimate-partner violence that he experienced because of his sex, family status, and disability. He also alleged that the RCMP failed, on an ongoing basis, to correct the inaccuracies in its records, ultimately jeopardizing his claim for support from the Victims of Crime program.

[6] In attempting to file his April 8, 2021 complaint, the record shows that the Applicant experienced significant difficulties due to his disabilities, which include post traumatic stress disorder (PTSD).

[7] On December 22, 2021, an Officer with the Commission issued a Report for Decision, recommending that it not deal with the Applicant's complaint because it was submitted over one year following the last alleged act of discrimination.

[8] The Applicant was given an opportunity to make further submissions in response to the Report for Decision. The instruction sheet provided to him by the Commission explained that his submissions would be limited to ten pages. If he required more than ten pages, the instruction sheet explained that he was required to seek permission from the Commission.

[9] On May 5, 2022, the Commission provided its decision. It decided, pursuant to paragraph 41(1)(e) of the *CHRA*, not to exercise its discretion to deal with the Applicant's complaint.

III. **Decision under Review**

[10] The Commission identified the last act of discrimination as occurring in February of 2019, two years and eight months before the Commission received the Applicant's complaint in an acceptable form in October 2021. While the Commission acknowledged that the delay between April 8, 2021 and July 15, 2021 (when it did not respond to the Applicant) was not attributable to the Applicant, it found that he had "not provided an explanation as to why he contacted the Commission for the first time fourteen months after the one-year deadline."

[11] The Commission found that the Applicant failed to exercise due diligence in filing his complaint and, he had not provided a reasonable explanation for the delay in filing.

IV. **Issues and Standard of Review**

[12] The Applicant submits that the Commission's Decision not to deal with his complaint was unreasonable.

[13] With respect to procedural fairness, the Applicant submits that the Commission made procedural decisions, including refusing to provide him with additional pages in which he could provide his response submissions. The Applicant asserts that the impact of those decisions was to unfairly limit the Applicant's right to be heard.

[14] On the first issue, the standard of review is reasonableness. The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness*: Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption is present here.

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

[16] Whether the duty of procedural fairness has been met does not require a standard of review analysis, although it is often referred to as a correctness review. The ultimate question to be answered by a reviewing Court is whether the Applicant knew the case to be met and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56.

V. **Analysis**

[17] The Applicant submits that the Commission offered no additional reasons and instead adopted the reasons given in the Report for Decision and, as previously stated, argues that a decision made in reliance on a deficient Report will itself be deficient.

[18] I agree with the Applicant that the Commission's Decision is unreasonable because the Report for Decision did not deal with the core elements of the Applicant's complaint and the Commission failed to provide a remedy. The Commission's Decision rests, in large part, on the reasoning set out in a fundamentally flawed Report for Decision and since those flaws were not otherwise addressed, the Decision is deemed unreasonable.

[19] This is consistent with the jurisprudence of this Court. The point was succinctly expressed by Justice Mactavish (now Mactavish J.A.) in *Dupuis v Canada (Attorney General)*, 2016 FC 1137 at paragraph 37:

> [37] [I]f the Commission decides to dismiss a complaint based upon a deficient investigation, that decision will be deficient because "[i]f the reports were defective, it follows that the Commission was not in possession of sufficient relevant information upon which it could properly exercise its discretion."

See also *Canada (Attorney General) v Ennis*, 2021 FCA 95 at para 62, and *Nepp v KF Aerospace*, 2019 FC 1169 at paras 25, 26, and 33.

[20] Under the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85. In the absence of any reasons to explain how

the Commission came to the conclusion that a further inquiry was not warranted, despite the obvious omission in the Report for Decision, the Decision is not justified, and therefore it is not reasonable.

[21] The Commission had several options available to address the question. For example, it could have sent the case back for further investigation, however, it did not do this and, in the absence of any explanation for its reasoning, it is impossible to know how the Commission concluded that the complaint should be dismissed.

[22] The Applicant further submits that the Commission breached the principles of procedural fairness.

[23] I agree.

[24] In the present case, the Commission imposed a categorical rule on the Applicant – his responding submissions could not exceed ten pages in length. If he submitted more than ten pages, the Commission would read only the first ten pages.

[25] Although this is the rule that was imposed on the applicant, it is not the general rule adopted by the Commission. Rather, paragraph 9.4 of the *Canadian Human Rights Commission Dispute Resolution Operation Procedures* provides as follows:

> 9.4 Subject to 9.6, a submission will not exceed ten (10) pages in length, including attachments. The Commission, on notice to the party, may refuse to place those parts of the submission in excess of ten pages before the Commissioners for consideration. Where

> the Commission places submissions longer than ten pages before the Commissioners for consideration, it shall provide notice to the other parties and give them the opportunity to file submissions of equal length and then place those submissions before the Commission.

[26] The Commission expressly reserves to itself the discretion to place before the Commissioners submissions that exceed ten pages in length in a given case. If it declines to exercise this discretion, it must do so on notice to the party whose submissions exceeded the page limit. If it chooses to exercise this discretion, it must provide notice to the other parties and give them the opportunity to file submissions of equal length, all of which would then be placed before the Commissioners. To exercise this discretion fairly and reasonably, the Commission would have to consider the submissions that exceed the usual limit. Only then would it be in a position to determine whether to make an exception in the case at hand or not.

[27] In the present case, the Commission did not follow its own procedure. Rather than considering whether to exercise its discretion in the Applicant's favour and permit a longer-than-usual response, it applied a categorical rule that permitted only one outcome. I agree with the Applicant that this is a clear example of fettering of discretion: *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at paras 13 and 18. The absence of any explanation from the Commission as to why the Applicant's additional materials would not be considered despite the fact that the Commission has the discretion to accept submissions longer than ten pages leaves the decision to do so lacking in justification, transparency and intelligibility: *Davidson v Canada (Attorney General)*, 2019 FC 1278 at para 17 [*Davidson*]. As a result, the refusal to consider the supporting material is an unreasonable omission on the part of the Commission amounting to a breach of procedural fairness: *Davidson* at para 17.

[28] In my view, the appropriate remedy for this breach of procedural fairness is that the Applicant should be permitted to submit a new response that accords with paragraph 9.4 of the *Canadian Human Rights Commission Dispute Resolution Operation Procedures*. What this means is that the Applicant's new response should be no longer than ten pages in length. However, if the Applicant concludes that it is necessary for him to submit supporting documents that will exceed ten pages in length, he should include them for the Commission's consideration along with a request to this effect and an explanation of why the documents are material. Whether, or to what extent, submissions that exceed ten pages are put before the Commission when it makes its decision will then be for the Commission to determine.

VI. **Conclusion**

[29] For the reasons set out above, this Application is allowed and this matter shall be returned to the Commission for redetermination in accordance with the reasons set out in this Judgment.

[30] The applicant not having requested costs, no costs shall be awarded.

JUDGMENT IN T-1210-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed and shall be returned to the Commission for redetermination in accordance with the reasons provided in this Judgment.
2. No costs.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1210-22
STYLE OF CAUSE:	TRENT COROY v ROYAL CANADIAN MOUNTED POLICE
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
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