Federal Court  Cour fédérale

Date: 20170113

Docket: T-1766-14

Citation: 2017 FC 43

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 13, 2017

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

MARIE MACHE-RAMEAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Marie Mache-Rameau, the applicant, is seeking judicial review of the decision made by the Canadian Human Rights Commission [the Commission] on July 16, 2014, concluding that the review of her complaint [the Complaint] by the Canadian Human Rights Tribunal [the Tribunal] is not justified, given the circumstances. The Commission based its decision on

subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [the Act], reproduced in the Annex.

[2] First, Ms. Mache-Rameau is asking this Court to find that the Commission's decision is unreasonable and contrary to the principles of procedural fairness, and to order the Commission to conduct another investigation.

[3] Ms. Mache-Rameau is specifically challenging the investigation process that preceded the Commission's decision. She essentially maintains that the investigator erred by deciding not to investigate the allegation of breach of the memorandum of understanding, by not considering the context of the first complaint and by limiting Ms. Mache-Rameau's reply record to a maximum of 10 pages.

[4] The Attorney General of Canada [AGC], the respondent, essentially maintains that the Tribunal does not have jurisdiction to deal with the allegation of breach of the memorandum of understanding, that the first complaint was considered by the investigator, and that the 10-page limit does not breach the principles of procedural fairness.

[5] For the reasons set out below, this Court will dismiss the application for judicial review. In short, the Court finds that the investigator did not err by rejecting the allegation of breach of the memorandum of understanding during her investigation, that the investigator reasonably considered the factual context of the first complaint as part of her investigation on the other

allegations of the Complaint, and that imposing a 10-page limit on submissions is reasonable and fair.

II. Background and material facts

[6] The Commission's decision, which is the subject of this application for judicial review, deals with the Complaint, signed by Ms. Mache-Rameau on May 28, 2012. However, it is part of a broader context, which began in 2003, and addressing it seems relevant.

[7] From 1990 to January 2014, Ms. Mache-Rameau worked for the Canadian International Development Agency [CIDA]. Although the Agency's name changed on June 26, 2013, the Court will nonetheless refer to it under the acronym CIDA to facilitate reading.

A. *Complaint dated 2003*

[8] On July 28, 2003, Ms. Mache-Rameau filed her first complaint of discrimination on the ground of race in the course of employment (complaint #20031234) with the Commission against her employer, CIDA; and, in 2005, this complaint was forwarded to the Tribunal.

[9] However, on November 29, 2006, the parties signed a memorandum of understanding before the complaint was dealt with, and the Tribunal closed the file as a result. In particular, this memorandum of understanding provides the following at paragraph 6:

> [TRANSLATION]
> In the event that the complainant does not pass the training within the first six months of her assignment at the Public Service Commission, the complainant shall resume working for the respondent in the PE-03 position. The respondent agrees to provide

> the complainant with 18 months of training. On the condition that positive results are obtained on the quarterly assessment—which is based on clear and precise objectives and on assessment criteria—the complainant will be appointed to level PE-04 through a non-advertised process at the end of the 18-month training period.

[10] Furthermore, paragraphs 15 and 16 of the memorandum of understanding, reproduced in the Annex, provide that the parties consent to allowing this memorandum to be made an order of the Federal Court and that it be enforced as such. It also provides that the parties agree to resume mediation in the event of a disagreement concerning the implementation of these conditions.

[11] Shortly after signing this memorandum of understanding, Ms. Mache-Rameau was assigned to the Public Service Commission on an acting basis, where she held a PE-04 position for two years.

[12] Upon her return to CIDA in February 2009, Ms. Mache-Rameau was reinstated into a PE-03 position. She requested that the terms and conditions of paragraph 6 of the above memorandum of understanding be enforced and, more specifically, that she be appointed to a PE-04 position. From July 2009 to January 2012, the parties entered into a mediation process intended to resolve their disputes in terms of the interpretation of the memorandum of understanding. On March 7, 2012, CIDA informed Ms. Mache-Rameau that she had been excluded from that process.

[13] On April 18, 2012, while she was still in a PE-03 position, Ms. Mache-Rameau learned that her position had been affected by a workforce adjustment.

[14] On or around May 28, 2012, believing that she was still a victim of discriminatory treatment with respect to career advancement and being of the opinion that CIDA was not complying with the 2006 memorandum of understanding, Ms. Mache-Rameau filed the Complaint with the Commission (number 20120530).

[15] On May 29, 2012, Ms. Mache-Rameau obtained from the Federal Court an order confirming that the 2006 memorandum of understanding had been [TRANSLATION] "made an order of the Federal Court."

[16] On November 2, 2012, Ms. Mache-Rameau asked the Federal Court to issue a show cause order against the CIDA president, who allegedly committed contempt of court (section 467 of the *Federal Courts Rules*, SOR/98-106). According to Ms. Mache-Rameau, the CIDA president's refusal to give her a promotion breached the 2006 memorandum of understanding, which was made an order.

[17] Justice Boivin (as he then was a judge at the Federal Court of Appeal) dismissed the motion and concluded that Ms. Mache-Rameau did not make a *prima facie* case that the CIDA president failed to comply with the memorandum of understanding made an order. The Court indicated that paragraph 6 of the memorandum of understanding was at the heart of the dispute, but that the parties presented different interpretations of the same text, which therefore contains an ambiguity. Because the conduct of the parties was not clearly stated in the text, the Court concluded that "the facts in this case do not allow the Court to find, as the applicant argued at the hearing, that the way the negotiations between the applicant and [the Department] were

conducted under paragraph 16 of the agreement constitutes contempt" (*Rameau v Canada* (*Attorney General*), 2012 FC 1286 at paragraph 20).

B. *Complaint dated 2012*

[18] In her Complaint, Ms. Mache-Rameau alleges that she is the victim of discrimination in the course of employment because her employer continues to subject her to differential treatment because of her race, colour, and national or ethnic origin. She also alleges that she was subjected to retaliation and harassment on the same grounds and because of the first complaint filed in 2003. In particular, she alleges that her employer breached the 2006 memorandum of understanding by refusing to recognize her skills and by systematically refusing to give her any kind of promotion.

[19] On March 21, 2013, the Commission issued its investigation report, which was used to determine whether Ms. Mache-Rameau's Complaint was vexatious. The report discusses the issues that the Federal Court had already reviewed and, in particular, it states that the Complaint contains additional allegations, that [TRANSLATION] "the human rights issues raised by the complaint were not before the Court and [that] there are allegations in the complaint that were not before the Court either."

[20] On June 19, 2013, relying on that report and on the parties' subsequent submissions, the Commission determined that the Complaint was not vexatious within the meaning of section 41 of the Act because it [TRANSLATION] "contains allegations that were not dealt with by the Federal Court." On July 2, 2013, the Commission thus tasked an investigator with the Complaint.

[21] On January 8, 2014, the investigator had a discussion with Ms. Mache-Rameau and her lawyer. She did not inform them that the allegation of breach of the memorandum of understanding would not be covered by her investigation.

[22] The investigator issued her report on March 27, 2014 [Investigation Report]. In this report, she affirms that she had reviewed all the documentation provided by the parties. The investigator decided to exclude from her investigation the allegations concerning the breach of the 2006 memorandum of understanding, considering that they had been dealt with through another process. She thus confirmed that her investigation concerned the allegations of retaliation and discrimination in the course of employment, including the allegations related to the presumed impossibility of obtaining a promotion or an appointment to certain PE-04 and PE-05 positions and the allegation that CIDA allegedly did not offer Ms. Mache-Rameau training to help her acquire staffing competencies.

[23] The investigator recommended that the Commission—pursuant to subparagraph 44(3)(b)(i) of the Act—dismiss the Complaint because, given the circumstances, its review by the Tribunal was not justified.

[24] On April 24, 2014, Ms. Mache-Rameau filed submissions in response to the Investigation Report. Ms. Mache-Rameau limited her submissions to the 10-page total prescribed by the Commission and set out in section 9.4 of the Dispute Resolution Operating Procedures of the Canadian Human Rights Commission.

[25] On July 16, 2014, following the Investigation Report and given the circumstances, the Commission determined that the Tribunal's review of the Complaint was not justified. It based its decision on subparagraph 44(3)(b)(i) of the Act.

[26] That is the decision that Ms. Mache-Rameau is challenging before this Court.

[27] It is also useful to mention that, on August 26, 2014, the Tribunal refused to consider Ms. Mache-Rameau's request to interpret part of the memorandum of understanding. On October 19, 2015, Justice Roy of the Federal Court dismissed Ms. Mache-Rameau's application for judicial review, and he notably affirmed that the Tribunal does not have jurisdiction to rule on the memorandum of understanding made an order by the Federal Court (*Rameau v Canada* (*Attorney General*), 2015 FC 1180).

III. Issues

[28] The Court must first determine the appropriate standard of review, then answer the questions raised.

[29] Ms. Mache-Rameau states the questions that the Court must answer as follows:

(1) Is the Commission's decision marred by an error of law that requires that it be set aside?

(2) Is the Commission's decision unreasonable?

(3) Did the investigation process breach procedural fairness?

IV. Positions of the parties

A. *Ms. Mache-Rameau*

[30] Ms. Mache-Rameau submits that (1) the Commission committed an error of law by rejecting a consideration of the issue of breach of the memorandum of understanding in light of the Federal Court's decision related to the motion for contempt of court; (2) the Commission rendered an unreasonable decision by adopting the reasons of the Investigation Report, which was the result of a deficient, illogical, and incomplete investigation, and contrary to the Act's principles and values; (3) procedural fairness and thoroughness were breached in the Commission's investigation.

[31] Ms. Mache-Rameau submits that an error of law must be dealt with in accordance with the standard of correctness (*Walsh v Canada* (*Attorney General*), 2015 FC 230 [*Walsh*] at paragraph 20). The decision to dismiss a complaint under subparagraph 44(3)(b)(i) of the Act constitutes an error of mixed fact and law that must be dealt with in accordance with the reasonableness standard (*Hicks v Canadian National Railway*, 2015 FCA 109 at paragraph 11). Finally, Ms. Mache-Rameau submits that a clear breach of procedural fairness must result in the setting aside of the decision (*Grover v Canada* (*National Research Council*), 2001 FCT 687 at paragraphs 63 to 66, 69 to 71).

> (1) The Commission committed an error of law by rejecting a consideration of the issue of breach of the memorandum of understanding in light of the Federal Court's decision related to the motion for contempt of court.

[32] According to Ms. Mache-Rameau, the Commission erred by accepting the conclusion that the issues before the Federal Court on November 2, 2012, in the contempt of court

proceedings, were the same as those in the Complaint. More specifically, Ms. Mache-Rameau submitted that (a) the Commission's June 19, 2013, decision to rule on the Complaint did not limit the scope of the investigation, nor did it conclude that the issues before it and before the Federal Court were the same; (b) the contempt of court proceedings dealt with different issues, and the legal considerations and the burden of proof are dissimilar; and (c) that the investigator exceeded her jurisdiction by excluding the issues related to the memorandum of understanding even though those issues had not been excluded by the Commission.

(2) The Commission made an unreasonable decision by adopting the grounds of an Investigation Report that was the result of an inadequate, illogical and incomplete investigation and against the principles and values of the Act.

[33] In her factum, Ms. Mache-Rameau argues that [TRANSLATION] "The Commission has rendered an unreasonable decision by adopting the grounds of an inadequate, illogical, and incomplete decision that is against the principles and values of the CHRA."

[34] In her Complaint, Ms. Mache-Rameau claims that she did not undergo the training she was entitled to and that paragraph 6 of the memorandum of understanding was not complied with. In this respect, Ms. Mache-Rameau submits that the investigator disregarded the events that took place between 2009 and 2012 and that she erred by not considering the circumstances of the first complaint to asses the Complaint. The first complaint is a comparator for assessing the existence of similar facts or a model of continuous discriminatory treatment. Ms. Mache-Rameau states that the Investigation Report does not explain why the context and the allegations in the first complaint cannot be considered as factual circumstances relevant to the Complaint. Since the Commission has not provided explanations for the refusal to take account of the

memorandum of understanding, it is breaching its statutory duty to clearly and precisely explain the decision not to investigate an alleged breach of the memorandum of understanding.

[35] According to Ms. Mache-Rameau, the decision not to investigate an alleged breach of a memorandum of understanding approved by the Commission adversely affects the integrity of the Commission's system and the ability to uphold human rights in Canada. Furthermore, she argues that the Act does not limit the Commission's jurisdiction to deal with unresolved allegations—even after having approved a memorandum of understanding—and that once that memorandum is made an order of the Federal Court, the Commission has a statutory duty, as set out in section 2 of the Act, to investigate a breach of the memorandum.

[36] In addition, the investigator erred by not studying the impact on Ms. Mache-Rameau of not having been appointed to a PE-04 position in which she would have been protected. In her Complaint, Ms. Mache-Rameau does not challenge the PE-05 or PE-03 appointment processes; rather, she argues that CIDA did not comply with its duty to appoint her to a PE-04 position under the memorandum of understanding. Thus, she says she is concerned by a matter of justice related to the positive consequences that could have resulted from an appointment to a PE-04 position.

[37] Finally, Ms. Mache-Rameau submits that the 10-page limit that was imposed prevented her from properly responding to all the errors that the investigator committed. Indeed, Ms. Mache-Rameau claims that she could not include her first complaint nor the related investigation report, which the investigator did not request nor refer to.

(3) There was a breach of procedural fairness and thoroughness in the Commission's investigation.

[38] Only one conversation took place between the investigator and Ms. Mache-Rameau, who was accompanied by her lawyer. During that conversation, the investigator did not indicate that the allegation of a breach of the memorandum of understanding would not be covered by the investigation, depriving Ms. Mache-Rameau of the opportunity to file additional documents to support her position. As a result, the investigator did not meet Ms. Mache-Rameau's legitimate expectation of seeing this aspect taken into consideration as part of the investigation.

B. *The Attorney General of Canada*

[39] The AGC responds that the Commission correctly decided that the Tribunal's review of Ms. Mache-Rameau's Complaint was not justified.

[40] The first point raised by the AGC is the fact that neither the notice of application nor the applicant's factum contain allegations to the effect that either the investigator or the Commission allegedly incorrectly interpreted the evidence collected during the investigation or that they came to erroneous conclusions based on the facts that were submitted as evidence. He claims that (1) the Commission did not breach the principles of procedural fairness by limiting the length of Ms. Mache-Rameau's written submissions; and (2), the Commission did not commit a reviewable error by limiting the scope of the investigation.

[41] The AGC claims that Ms. Mache-Rameau is essentially challenging the Commission's imposition of a page limit for her written submissions and the investigator's decision to exclude details of the first complaint and the issues arising from the memorandum of understanding within her investigation. The AGC acknowledges that these allegations must be examined in accordance with the standard of correctness, which represents both an alleged breach of procedural fairness and potential errors of law.

(1) The Commission did not breach the principles of procedural fairness by limiting the length of Ms. Mache-Rameau's written submissions.

[42] The AGC claims that it is not out of the ordinary for administrative decision makers to limit the number of pages that can be submitted by a party in a given context. He refers to the Court's decision in *Phipps v Canada Post Corp*, 2015 FC 1080, at paragraphs 39 and 40, in which Gleeson J. noted that the Commission could impose a page limit on the written submissions submitted by the parties to preserve a functional and efficient process. This limit is not objectionable if it is applied in an even-handed manner. This position was confirmed by the Federal Court of Appeal (*Phipps v Canada Post Corp*, 2016 FCA 117).

(2) The Commission did not commit a reviewable error by limiting the scope of the investigation.

[43] The AGC states that the investigator did not ignore Ms. Mache-Rameau's first complaint because that first complaint appears in the timeline drawn up at paragraph 10 of the Investigation Report, is the starting point for the analysis of the allegations of retaliation at paragraphs 58 to 61 and is mentioned at various times during the examination of the allegations of retaliation.

According to the AGC, the investigator rightly decided not to examine the details of the complaint dated 2003, and it was appropriate to analyze the events that have occurred since. Furthermore, the AGC notes that Ms. Mache-Rameau did not indicate which specific items in the first complaint dated 2003 could have influenced the investigator's analysis of the Complaint.

[44] Concerning the memorandum of understanding, the AGC submits that making it an order of the Federal Court limits the ability of the Commission or the Tribunal to rule on a potential breach. The AGC refers to paragraphs 38 to 40 of Justice Roy's decision dated October 19, 2015 (*Rameau v Canada (Attorney General*), 2015 FC 1180).

[45] Therefore, according to the AGC, Ms. Mache-Rameau is seeking—once again—to compel the Commission to refer the issue of the interpretation of the memorandum of understanding to the Tribunal.

V. Standard of review

[46] Ms. Mache-Rameau notes what she considers to be errors of law and breaches of procedural fairness on the part of the investigator and questions the reasonableness of the Commission's decision.

[47] The Court agrees with the the position of the parties and concludes that the errors of law must be examined in accordance with the standard of correctness [*Walsh* at paragraph 20]. Although there is uncertainty concerning the applicable standard of review in the context of breaches of procedural fairness (*Bergeron v Canada (Attorney General)*, 2015 FCA 160 at

paragraphs 67 to 71), the standard of correctness—which is the most generous standard for the applicant—is appropriate in the circumstances (*El-Helou v Canada (Courts Administration Service*), 2016 FCA 273 at paragraph 43).

[48] Where the reasonableness standard applies, this Court's analysis "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, at paragraph 47).

VI. Analysis

[49] In response to the issues raised by Ms. Mache-Rameau, the Court considers that (A) the Commission did not commit an error of law by refusing to consider the issue of the breach of the memorandum of understanding; (B) the Commission did not make an unreasonable decision because neither the investigation nor the grounds for the Investigation Report are inadequate, illogical, incomplete or against the principles and values of the Act; and (C) there was no breach of procedural fairness and thoroughness in the Commission's investigation.

A. *The decision to reject the allegations of a breach of the memorandum of understanding*

[50] The investigator's decision to reject the considerations related to the first complaint and to the breach of the memorandum of understanding is at the heart of this dispute. It seems useful to first consider some earlier decisions made in the context of the dispute between the parties.

(1) Federal Court decision dated November 2, 2012: *Rameau v Canada (Attorney General)*, 2012 FC 1286

[51] As noted earlier, on November 2, 2012, Justice Boivin, who was at the Federal Court at the time, dismissed Ms. Mache-Rameau's motion to issue a show cause order against the president of CIDA, who allegedly committed contempt of court. That motion was based on Ms. Mache-Rameau's claim that CIDA allegedly did not comply with some of the commitments set out in the memorandum of understanding dated November 29, 2006, which was made an order of the Federal Court on May 29, 2012.

[52] When it issues a show cause order, the Court orders a person to appear before a judge, to be prepared to hear proof of the act with which the person is charged and to be prepared to present a statement of defence. At this stage, the applicant party's burden of proof is *prima facie* proof of the alleged contempt, which requires "proof of a Court order, proof of the respondent's knowledge of the order, and proof of deliberate flouting of the order" (*Angus v Chipewyan Prairie First Nation Tribal Council*, 2009 FC 562 at paragraph 35).

[53] Noting that the parties were differently interpreting paragraph 6 of the memorandum of understanding, which is at the heart of the dispute, Justice Boivin concluded that the parties' conduct was consequently not clearly set out in the memorandum. Thus, relying on the decisions in *Telecommunications Workers Union v Telus Mobility*, 2004 FCA 59 and *Sherman v Canada (Customs and Revenue Agency)*, 2006 FC 1121, Justice Boivin determined that Ms. Mache-Rameau had not provided the *prima facie* proof that was incumbent upon her and therefore dismissed her motion.

(2) Commission's decision dated June 19, 2013

[54] On June 19, 2013, the Commission concluded that Ms. Mache-Rameau's Complaint was not vexatious, as follows: [TRANSLATION] "This complaint contains allegations that were not dealt with by the Federal Court. Consequently, the complaint is not vexatious within the meaning of section 41." To reach this conclusion, the Commission relied on the Commission's investigation report dated March 21, 2013, to which the parties referred and of which they tardily submitted a copy to the Court. Ms. Mache-Rameau draws the Court's attention to paragraph 22 of the report, which stipulates the following:

> [TRANSLATION]
> The Federal Court of Appeal recently confirmed that the Commission should only dismiss a complaint under paragraph 41 in plain and obvious cases (see *Keith v Correctional Service of Canada*, 2012 FCA 117 at paragraph 50). This is not a plain and obvious case. Though the Federal Court dismissed the complainant's motion, the human rights issues raised by the complaint were not before the Court, and there are allegations in the complaint that were not before the Court either. Moreover, the Federal Court's decision was made in the context of contempt proceedings, which raises different considerations and a burden of proof separate from a complaint filed with the Commission.

[55] However, these submissions must be contextualized. Indeed, in the preceding paragraph, the investigation report clearly indicates that [TRANSLATION] "this complaint includes additional allegations, namely the allegation that eliminating her position constitutes retaliation." The Court notes that the investigation report dated March 2013 discusses the issue of the allegations examined through other processes, but it does not recommend dealing with <u>all</u> of Ms. Mache-Rameau's allegations.

(3) Federal Court's decision dated October 19, 2015: *Rameau v Canada (Attorney General)*, 2015 FC 1180

[56] As stated earlier, on August 26, 2014, the Tribunal concluded that in the absence of a pending complaint before it, and in the absence of relevant provisions in the memorandum of understanding allowing it to maintain its jurisdiction, it cannot intervene in order to decide a question of interpretation pertaining to the application of the memorandum of understanding.

[57] Justice Roy dismissed the application for judicial review that Ms. Mache-Rameau submitted against that decision. He notes that, pursuant to subsection 44(3) of the Act, the Tribunal's jurisdiction depends on whether the Commission filed a complaint with the Tribunal. However, the Tribunal cannot interpret an agreement to which it is not a party and whose purpose is to resolve the issue that gave rise to the complaint. Justice Roy also gives some weight to the fact that the memorandum of understanding was made an order of the Court. In this respect, he affirms that the confirmation of an ambiguity by Justice Boivin preventing contempt of court does not give "jurisdiction to a statutory body to interpret settlements that have been made orders of this Court" (at paragraph 40).

(4) Conclusions

[58] The Court agrees that Justice Boivin did not deal with the human rights issues raised by the Complaint. He noted the ambiguity of the memorandum of understanding, concluded that the conduct of the parties was not clearly set out in the memorandum, that the burden of proof was therefore not discharged, and that the *prima facie* evidence had not established that the

negotiations between Ms. Mache-Rameau and CIDA, or its president's behaviour, were tantamount to contempt of court.

[59] Nonetheless, as the AGC noted, making the memorandum of understanding an order of the Federal Court limits the ability of the Commission or the Tribunal to rule on an allegation of a breach. According to paragraphs 15 and 16 of the memorandum of understanding, the parties consented to its being made an order of this Court, that it be enforced as such, and that any disagreements concerning the implementation of any of its terms be subject to mediation that would allow the issues to be renegotiated.

[60] Thus, the investigator did not err by excluding the allegation of a breach of the memorandum of understanding from her investigation.

B. *The Commission did not make an unreasonable decision because neither the investigation, nor the grounds for the Investigation Report are inadequate, illogical, incomplete or against the principles or values of the Act.*

[61] The Court finds that the Investigation Report adequately considers the context of the first complaint. The investigator refers to a "prior complaint" or to an "earlier complaint". She mentions it in the timeline of the events related to the Complaint and uses it as a starting point in her analysis of the allegations of retaliation.

[62] Ms. Mache-Rameau's argument to the effect that the investigator should have addressed the positive consequences that could have resulted from an appointment to a PE-04 position is

related to the investigator's decision not to investigate the allegation of a breach of the memorandum. The Court dealt with it earlier.

[63] The Court will address Ms. Mache-Rameau's argument concerning the limit imposed on the number of pages for the submissions in the next point.

C. *There was no breach of procedural fairness and thoroughness in the Commission's investigation.*

[64] In the letter it addressed to the parties on March 28, 2014, the Commission offers them the opportunity to make submissions on the Investigation Report, but it imposes a 10-page limit. The text reads as follows: [TRANSLATION] "You may submit up to ten pages. If you have attachments, you must include them in the page count. The Commission will read only the first ten pages." This limit complies with section 9.4 of the *Dispute Resolution Operating Procedures* of the Canadian Human Rights Commission, which stipulates the following:

> 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.

[65] This Court has already determined that such a limit imposed by the Commission is reasonable (*Jean Pierre v Canada (Minister of Citizenship and Immigration*), 2015 FC 1423 at paragraph 51) and that "there is no genuine issue of procedural fairness here" (*Donoghue v Canada (Minister of National Defence*), 2010 FC 404 at paragraph 28).

[66] Finally, the investigator's omission to prospectively disclose to Ms. Mache-Rameau that she would not investigate the memorandum of understanding and the allegation of breach of the memorandum does not constitute a breach of procedural fairness. The Commission is master of its own process and must be afforded considerable latitude in the way that it conducts its investigations (*Tahmourpour v Canada (Solicitor General)*, 2005 FCA 113 at paragraph 39; *Bhattacharyya v Viterra Inc*, 2015 FC 121 at paragraph 41). When the Court assesses an allegation of a breach of procedural fairness, "[d]eference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly. It should only be where unreasonable omissions are made, for example where an investigator failed to investigate obviously crucial evidence, that judicial review is warranted" (*Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574 at paragraph 56, aff'd [1996] FCJ No 385 (CA)).

[67] In this case, through the receipt of the Investigation Report, Ms. Mache-Rameau was informed of the evidence considered by the investigator. She had the opportunity to respond to this and to present all the relevant arguments related to it (*Syndicat des employés de production du Québec et de l'Acadie v Canada (Canadian Human Rights Commission)*, [1989] 2 SCR 879 at paragraph 33; *Hutchinson v Canada (Minister of the Environment)*, 2003 FCA 133 at paragraph 47). The Court finds that there was no breach of the duty of procedural fairness.

D. *Conclusion*

[68] It seems clear that Ms. Mache-Rameau is seeking, as part of this application, to submit the memorandum of understanding, and the resulting conduct of the parties, to a reassessment.

However, it is not up to the Commission to consider the breach of the memorandum alleged by Ms. Mache-Rameau and, consequently, the Commission has not committed an error of law by rejecting that allegation. Finally, this Court cannot conclude that there was a breach of procedural fairness in the Commission's investigation, nor that it made an unreasonable decision.

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. Costs are awarded in favour of the respondent.

"Martine St-Louis"
Judge

Certified true translation
This 28th day of February 2020

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1766-14
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APPEARANCES:

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Ludovic Sirois	FOR THE RESPONDENT

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APPENDIX

Canadian Human Rights Act, RSC 1985, c H-6, s 44	*Loi canadienne sur les droits de la personne*, LRC 1985, c H-6, art 44
44 (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.	44 (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.
(2) If, on receipt of a report referred to in subsection (1), the Commission is satisfied	(2) La Commission renvoie le plaignant à l'autorité compétente dans les cas où, sur réception du rapport, elle est convaincue, selon le cas :
(a) that the complainant ought to exhaust grievance or review procedures otherwise reasonably available, or	a) que le plaignant devrait épuiser les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;
(b) that the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under an Act of Parliament other than this Act,	b) que la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale.
it shall refer the complainant to the appropriate authority.	
(3) On receipt of a report referred to in subsection (1), the Commission:	(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :
(a) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied	a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and	(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,
(ii) that the complaint to which the report relates should not be referred	(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe

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

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

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

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

(4) After receipt of a report referred to in subsection (1), the Commission

(a) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3); and

(b) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under subsection (2) or (3).

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

b) rejette la plainte, si elle est convaincue :

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

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

(4) Après réception du rapport, la Commission :

a) informe par écrit les parties à la plainte de la décision qu'elle a prise en vertu des paragraphes (2) ou (3);

b) peut informer toute autre personne, de la manière qu'elle juge indiquée, de la décision qu'elle a prise en vertu des paragraphes (2) ou (3).

Protocole d'entente intervenu entre Marie Mache-Rameau et l'Agence canadienne de développement international le 29 novembre 2006, para 15 et 16

15. Les parties consentent à ce que ce règlement soit assimilé à une ordonnance de la Cour fédérale et soit exécuté comme telle en vertu du paragraphe 48 (3) de la *Loi*

canadienne sur les droits de la personne.

16. Une fois le règlement approuvé par la Commission, dans l'éventualité d'un désaccord concernant la mise en œuvre de l'une ou l'autre de ses conditions, les parties conviennent de reprendre la médiation afin de renégocier les points en litige. Les parties conviennent également que la modification sera soumise [*sic*] l'approbation de la Commission conformément à l'article 48 de la *Loi canadienne sur les droits de la personne* et que celle-ci aura force exécutoire en Cour fédérale selon les mêmes modalités que le règlement initial.