Federal Court Cour fédérale

Date: 20180814

Docket: T-372-17

Citation: 2018 FC 834

Ottawa, Ontario, August 14, 2018

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

BARRY ANDERSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision [Decision] by the Canadian Human Rights Commission [Commission] wherein the Commission declined to deal with the Applicant's human rights complaint against the Royal Canadian Mounted Police [RCMP] pursuant to paragraph 41(1)(*a*) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [Act]. Paragraph 41(1)(*a*) of the Act provides that the Commission shall deal with any complaint filed

unless it appears to the Commission that the complainant ought to first exhaust grievance or review procedures otherwise reasonably available. For the reasons set out below, I dismiss the application for judicial review.

II. Facts

[2] At all relevant times, the Applicant was employed as a regular member of the RCMP in Regina, Saskatchewan.

[3] The Applicant became medically unfit to work following work-related incidents in 2002 and 2009. As a result, he assumed the status of off-duty sick [ODS], returning to work in 2011. The record is unclear as to whether he was ODS for the whole of the period 2002 to 2011. Regardless, nothing in these reasons turns on the duration of his ODS status. The Applicant again assumed ODS status in June 2014 after the RCMP required him to complete Hazardous Occurrence Reports for the incidents that had occurred in 2002 and 2009.

[4] In March 2015, the Applicant began a graduated return to work [GRTW]. He advised his superior that a return to his former workstation would be a barrier to his successful return for two reasons, namely: (1) he had worked there when completing the Hazardous Occurrence Reports in June 2014, and working there again risked re-triggering his medical condition (Post-Traumatic Stress Disorder); and (2) a return to that workstation would require him to work alongside a member who had expressed hostile and demeaning views of persons with disabilities. The RCMP rejected the Applicant's request for accommodation. The Applicant again assumed ODS status in June 2015.

[5] In the fall of 2015, the Applicant began coaching his sons' hockey team while ODS. He claims his medical specialist recommended this activity to assist in his recovery and his eventual return to full-time active duty. Upon becoming aware of the Applicant's coaching responsibilities, the RCMP ordered he cease performing them until such time as he sought and obtained permission for secondary employment. Although the Applicant made the necessary application in that regard, permission was denied. The Applicant claims the denial occurred in the absence of consultation with his medical advisors or the RCMP's Health Services Office.

[6] The Applicant filed grievances in response to the order to cease coaching and the decision to refuse his application for permission to coach. The Applicant had not received responses from the RCMP to those two grievances by the time he filed his human rights' complaint.

[7] In December 2015, the RCMP and the Applicant agreed he would start another GRTW, which commenced, as scheduled, on January 4, 2016. Because of the Applicant's previous concerns about the location of his workstation, the RCMP assigned him to a different unit for this GRTW. He claims that his new position required he perform job functions of a civilian nature, to which he objected. He claimed he was capable of performing police-related work consistent with his medical restrictions. The RCMP required he perform the duties assigned.

[8] After returning to work in January 2016, the Applicant filed a harassment complaint against one of his superiors, Inspector Kerr, for statements attributed to her during a meeting

with him. As of the week of February 27, 2016, the Applicant was successfully working full-time, five days a week. He completed his GRTW on March 7, 2016.

[9] The Applicant's manager, Inspector Munro, was away on holiday when the Applicant completed his GRTW. The Applicant states that Inspector Munro had directed him to complete Request for Workplace Accommodation forms in her absence in order that she could review them upon her return. The Applicant says he understood Inspector Munro would review the forms upon her return from vacation at the end of March and that he would return to his regular unit shortly thereafter.

[10] Despite the completion of his GRTW and his Request for Workplace Accommodation, the RCMP, through the offices of Inspector Munro, relieved the Applicant of his duties on April 4, 2016 and informed him of the RCMP's intention to initiate administrative discharge.

[11] The Applicant filed two more grievances, the first relating to the decision to relieve him of his duties and to initiate administrative discharge, and the second relating to the decision to discharge. These were submitted on May 2 and 13, 2016, respectively. The Applicant had not received a response from the RCMP in relation to these grievances by the time he filed his human rights' complaint.

[12] The RCMP issued an Order to Discharge the Applicant on May 9, 2016. He contested this decision pursuant to the RCMP's internal grievance policy. Once again, he had not received a response by the time he filed his human rights' complaint.

[13] On May 16, 2016, the Applicant filed a complaint with the Commission in which he alleged employment discrimination on the ground of disability. He claimed the RCMP had discriminated against him by ordering him to stop coaching while on medical leave and by failing to accommodate him, resulting in his medical discharge.

[14] The Commission initially advised the Applicant it was considering whether his complaint may be subject to paragraph 41(1)(*a*) of the Act. He was invited to make submissions on that issue, which would inform the preparation of a Section 40/41 report by the Commission [Report]. The Applicant provided submissions as requested. A Human Rights Officer employed by the Commission then prepared the Report, which recommended that, pursuant to paragraph 41(1)(*a*) of the Act, the Commission not deal with the Applicant's complaint. Both the Applicant and the RCMP were given the opportunity to present submissions in response to the Report. The Applicant provided no further submissions. The RCMP responded with a brief letter in which it agreed with the Report's conclusion and recommendation.

[15] By way of a letter dated February 15, 2017, the Commission advised the Applicant that, pursuant to paragraph 41(1)(*a*) of the Act, it would not deal with his complaint. That Decision is the subject of the present application for judicial review.

[16] In bringing the within application for judicial review, the Applicant included in his record an affidavit sworn to on June 21, 2017. The affidavit provides no evidence with respect to the Decision. Its purpose is simply to attach a copy of a report authored by the Civilian Review and Complaints Commission for the RCMP [CRCC] entitled "Report into Workplace Harassment in

the RCMP" [CRCC Report]. The CRCC Report is dated April 2017, approximately two months after the Decision. It follows that none of the information contained within the CRCC Report was before the Commission at the time of the Decision. The Respondent contends no weight should be given to the affidavit or the CRCC Report.

III. Decision

[17] In its February 15th letter, the Commission states it reviewed the Report before rendering its Decision. The Report sets out the basis of the complaint and the analysis undertaken pursuant to paragraph 41(1)(*a*) of the Act. It recommends against the Commission acting on the complaint at that time. The Report does not eliminate the possibility of the Commission dealing with the complaint at a future time in the event the internal RCMP procedures prove not to be reasonably available or after termination of those procedures.

A. *The Report*

[18] The Report first provides a summary of the Applicant's complaint, which it describes as employment discrimination on the basis of disability resulting from adverse differential treatment and employment termination contrary to section 7 of the Act.

[19] The Report then sets out section 41 of the Act and enumerates factors relevant to making a decision under paragraph 41(1)(*a*):

a. Is there another process available to the complainant? Does the complainant have full access to the process?

b. If another process is available, has it resulted in a final decision? If a final decision has not been made, has the complainant caused the delay?

c. Should the Commission ask the complainant to use the other process? Specifically:

   i. What other process is available to the complainant? For example, is it a complaint or grievance process? Is the decision-maker a neutral third party (independent from the complainant and respondent)? If not, is the process set up to be fair to both the complainant and respondent?

   ii. Is the other process an acceptable option for everyone?

   iii. Does the complainant's current situation make him or her vulnerable? Could the other process harm anyone involved?

   iv. Does the other process have ways to prevent and/or protect people from retaliation?

   v. Will the parties be able to deal with all of the human rights issues through the other process? If not, what human rights issues cannot be dealt with through the other process?

   vi. What remedies are available through the other process? Would these remedies resolve the human rights issues?

   vii. Have any steps been taken to use the other process? If no steps have been taken to use the other process, why not?

   viii. If the parties have started the other process, how far along in the process is the complaint or grievance?

ix. What are the timelines of the other process? How long is it likely to take before a final decision is made?

[20] The author of the Report then reviews the parties' submissions at length. The Report summarizes the information provided by the RCMP as follows:

a. There is an internal redress procedure available;

b. The Applicant has filed six grievances under the RCMP grievance policy and one grievance under the RCMP harassment policy;

c. Third party representation may be used in the internal process;

d. The Applicant has appointed a civilian lawyer to represent him in the process;

e. Decision-makers receive training on internal policies after appointment, including the RCMP human rights policy;

f. Decision-makers cannot award interest or damages for pain and/or suffering; and

g. Monetary award beyond the grievance process may be up to $25,000 where warranted.

[21] The Report summarizes the Applicant's position as follows:

a. The Applicant does not have full and meaningful access to the internal procedure as a discharged member;

b. His complaints have not been dealt with in a timely manner;

c. The process does not involve independent, neutral, third party adjudication — a weakness judicially criticized;

d. The process is prone to excessive and unnecessary delays;

e. His workplace related injury makes him particularly vulnerable to harm if he continues to engage directly with the respondent in the internal process;

f. The process does not have the appropriate structure, expertise, or capacity to resolve the human rights issues; and

g. The process does not offer the remedy sought under the Act.

[22] Following its analysis of the parties' submissions, the Report concludes:

> 65. The complainant has filed six grievances and one harassment complaint dealing with the same issues on the same set of facts raised in this complaint. It appears that the complainant has full access to the grievance process, and that the process will be able to deal with the human rights issues raised in this complaint.
>
> 66. The grievance process may consider the human rights issues and has some discretion related to the remedy awarded. The information does not indicate the human rights issues cannot be resolved in the internal process.
>
> 67. The information provided indicates the complainant can participate in the grievance process in a manner that mitigates his concerns around dealing directly with the respondent. He is able to hire or appoint a third party to represent him, and in fact has done so. This reduces or eliminates his direct engagement with the respondent which was the concern raised by the complainant in his written position.
>
> 68. If at the termination of the grievance procedure, the complainant believes that his human rights issues were not addressed, he may ask the Commission to reactivate his complaint. If that should occur, an analysis will be done at that time to determine whether the Commission should deal with the complaint.

[23] The Report recommends, pursuant to paragraph 41(1)(*a*) of the Act, that the Commission not deal with the complaint. It concludes the Applicant ought to first exhaust grievance or review procedures otherwise available to him. It observes that the Applicant may request that the

Commission exercise its discretion to deal with the complaint at the termination of such procedures, or if they prove not to be reasonably available.

B. *The February 15th letter*

[24] The Commission subsequently adopted the Report's recommendation. In its February 15th letter, the Commission states that, after examining the Report and submissions filed in response to the Report, it had decided not to deal with the complaint at that time because the Applicant "ought to exhaust grievance or review procedures otherwise available." No other reasons are provided. The Commission simply advises that the file is now closed, and that "[a]t the termination of these procedures, or if they prove not to be reasonable [sic] available, the Commission may exercise its discretion to deal with the complaint at the complainant's request."

IV. Relevant Provisions

[25] The relevant provisions of the Act are set out in paragraph 41(1)(*a*) and section 42, which provide as follows:

Commission to deal with complaint	**Irrecevabilité**
41 (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that	41 (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :
(a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise	a) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des

reasonably available;	griefs qui lui sont normalement ouverts;
[…]	[…]
Notice	**Avis**
42 (1) Subject to subsection (2), when the Commission decides not to deal with a complaint, it shall send a written notice of its decision to the complainant setting out the reason for its decision.	42 (1) Sous réserve du paragraphe (2), la Commission motive par écrit sa décision auprès du plaignant dans les cas où elle décide que la plainte est irrecevable.
Attributing fault for delay	**Imputabilité du défaut**
(2) Before deciding that a complaint will not be dealt with because a procedure referred to in paragraph 41(a) has not been exhausted, the Commission shall satisfy itself that the failure to exhaust the procedure was attributable to the complainant and not to another.	(2) Avant de décider qu'une plainte est irrecevable pour le motif que les recours ou procédures mentionnés à l'alinéa 41a) n'ont pas été épuisés, la Commission s'assure que le défaut est exclusivement imputable au plaignant.

V. Issues

[26] The parties raise five issues for consideration by the Court:

1. What is the appropriate standard of review?
2. Who is the correct Respondent in this matter?
3. Should this Court consider new evidence offered by the Applicant?
4. Has the Commission breached the principles of natural justice and procedural fairness by failing to issue reasons for the Decision?

5. Presuming the Report constitutes the reasons, is the Decision reasonable in the circumstances?

VI. Analysis

A. *Standard of Review*

[27] The parties agree reasonableness is the appropriate standard of review for the fifth issue (*Mulligan v. Canadian National Railway Company*, 2015 FC 532, [2015] F.C.J. No. 502 at para. 14; *Andrews v. Canada (Attorney General)*, 2015 FC 780, [2015] F.C.J. No. 783 at para. 20; *Canada (Attorney General) v. Windsor-Brown*, 2016 FC 1201, [2016] F.C.J. No. 1191 at para 16). In the event this Court concludes the Report constitutes the reasons for decision, it must then consider the justification, transparency and intelligibility of the decision-making process, and ensure the Decision falls within a range of possible acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47 [Dunsmuir]).

[28] The parties disagree regarding the standard to be applied in assessing the fourth issue. The adequacy of reasons is not a stand-alone basis for review and must be considered in relation to the reasonableness of the decision (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708 at para 21 [*Newfoundland Nurses*]). However, the failure to provide any reasons may be considered a violation of the principles of natural justice and procedural fairness which attracts a correctness standard (*Carroll v. Canada (Attorney General)*, 2015 FC 287, [2015] F.C.J. No. 250 at para 23

[*Carroll*]; *Dunsmuir* at para. 129; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 79). The Applicant contends the Commission failed to provide any reasons for its decision and pleads the correctness standard. The Respondent contends the Report constitutes the Commission's reasons and that the reasonableness standard of review applies. For the reasons set out below, I conclude the Report constitutes the reasons and the reasonableness standard applies.

B. *Who is the correct Respondent?*

[29] The Attorney General of Canada [Attorney General] contends that, pursuant to subsections 303(1) and (2) of the *Federal Courts Rules*, SOR/98-106, it is the only proper Respondent in this application. It contends neither Robert W. Paulson, nor the Commissioner of the RCMP, both originally named as Respondents, is a person directly affected by the order sought. The Attorney General requests both be removed as parties. The Applicant makes no submissions on this issue. I agree with the Attorney General and grant her request. There will be an order directing the style of cause be amended to strike the other Respondents and name only the Attorney General of Canada as the responding party.

C. *Should this Court consider the Applicant's new evidence?*

(1) Content of the CRCC Report

[30] The CCRC Report sets out is findings following what it describes as a comprehensive review of the RCMP's policies and procedures on workplace harassment. It notes the CRCC's concern over the RCMP's "culture of dysfunction" and details many perceived flaws in the RCMP's policies and processes for dealing with harassment complaints. Among its key findings

are that the RCMP has failed to introduce the “sustained and comprehensive measures necessary” to address harassment. The report also finds that potentially meritorious complaints are being dismissed due to an unduly narrow definition of “harassment”, the RCMP’s policies on harassment are too complex and difficult to understand, and decision-makers are inadequately trained and regularly apply the wrong legal tests when assessing harassment complaints.

[31] The CRCC Report concludes that “the RCMP has failed to come to grips with the problem of harassment”, and that the roots of the RCMP’s issues of workplace conflict lie in its “dysfunctional organizational culture, a lack of effective leadership, and fundamental problems in the structure of the organization”. The CRCC found that “given the RCMP’s poor track record of implementing change, strong civilian oversight and government leadership are required to ensure sustained reform”.

(2) Admissibility of the CRCC Report

[32] Although the CRCC Report was not before the Commission at the time of the Decision, the Applicant submits it should be considered by this Court. The Applicant contends there are several exceptions to the general rule against the Court receiving post-hearing evidence and that the list is not closed. The Applicant correctly pleads that reviewing courts have received affidavit evidence in circumstances where it facilitated their reviewing task and did not invade the administrative decision-maker’s role (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, [2012] F.C.J. No 93 at paras 19-20; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, [2015] F.C.J. No 1396 at paras 19-28 [*Bernard*]). The Applicant contends the CRCC Report is relevant to the within

application in that it reveals contextual background that would facilitate the “reviewing task” of the Court. I disagree. For the reasons set out below I accord no weight to the CRCC Report.

[33] First, the CRCC Report is fundamentally unreliable. The CRCC did not examine any witnesses under oath. It did not hold public hearings. It admits it conducted 155 confidential interviews in the course of its review. It does not indicate the number, if any, of interviews that were made public. It admits virtually all of the material gathered constitutes hearsay. It admits it relied upon numerous other reports commissioned over the years that are, in my view, equally unreliable. That is to say, they were based upon hearsay, private interviews, untested assertions and unsworn statements. For this Court to rely upon such a report would, in my view, violate principles of fairness and natural justice to which the RCMP, as a legal entity, and the Attorney General, as a party, are entitled.

[34] Second, I note the CRCC Report considers only the management of harassment complaints. Grievances and harassment complaints engage two distinct procedures within the RCMP. They are handled by two separate offices (the Office for the Coordination of Grievances and Appeals and the Office for the Coordination of Harassment Complaints) under two different policies, using two distinct procedures. The vast majority of the Applicant’s complaints, six of the seven according to my understanding of the record, relate to grievances and not harassment complaints. They constitute grievances from:

(a) an order that the Applicant cease coaching;

(b) a decision to refuse the Applicant’s request for permission to coach;

(c) a decision to relieve the Applicant from duty and initiate administrative discharge;

(d) a decision to discharge the Applicant;

(e) an official Order to Discharge, dated on May 9, 2016; and

(f) a decision to refuse the Applicant's request to retain his kit.

Accordingly, the CRCC Report, even if admissible, could not facilitate a review of the Commission's findings on the reasonable availability of the RCMP grievance and appeals procedures for most of the Applicant's claims.

[35] Third, this Court is not the decision-maker of first instance and should limit itself to a review of the information that was before the decision-maker at the time of its decision. A court should only deviate from this general rule where doing so facilitates its reviewing task and does not invade the administrative decision-maker's role (*Bernard* at para. 28). These conditions are not met here.

[36] Finally, the CCRC Report is, in my view, highly prejudicial and of little probative value.

[37] For all of the above reasons, the Court gives no weight to the impugned affidavit or the CRCC Report.

D. *Has the Commission breached the principles of natural justice and procedural fairness by failing to issue reasons for the Decision?*

[38] The Applicant contends the Commission "failed to provide any reasons for its decision." He says the February 15th letter states only that the Commission decided not to deal with the

Applicant's complaint "because the complainant ought to exhaust grievance or review procedures otherwise available." This statement, he asserts, fails to provide any insight into "why the tribunal made its decision. He says that, while the Commission acknowledges it reviewed the Report prior to rendering its Decision it does not explicitly state it adopts the Report. As a result, the Applicant contends the Court cannot conclude the Report constitutes the reasons for the Decision.

[39] The Respondent contends it is well established that, where the Commission adopts the recommendation of a Section 40/41 report, the report constitutes the Commission's reasons for decision. The Attorney General asserts the Commission need not provide separate reasons. It argues the applicable jurisprudence does not require the Commission to specifically state it adopts the reasons set out in the Report. She claims it is sufficient for the Commission to accept the recommendation in the Report. I agree. A Section 40/41 report generally constitutes the reasons for a Commission's decision pursuant to section 41 of the Act where the Commission adopts the report's recommendation (*Klimkowski v. Canadian Pacific Railway*, 2017 FC 438, [2017] F.C.J. No. 432 at para. 35; *Liddiard v. Canada Post*, 2016 FC 758, [2016] F.C.J. No. 763 at para. 36; *Carroll* at para. 28; *Andrews v. Attorney General of Canada*, 2015 FC 780, [2015] F.C.J. No. 783 at para. 34; *D'Angelo v. Canada (Attorney General)*, 2014 FC 1120, [2014] F.C.J. No. 1160 at para. 24 [*D'Angelo*]; *Herbert v. Canada (Attorney General)*, 2008 FC 969, [2008] F.C.J. No. 1209 at para. 26 [*Herbert*]). There is no requirement that the Commission explicitly adopt the Report:

> If the Commissioner has decided to adopt the recommendation made in a section 40/41 report, then the Court usually considers that the report constitutes the reasons of the Commissioner and reviews the matter on that basis. However, if the Commissioner

> decides to dismiss a complaint for reasons other than as set out in the report, the Commissioner should set out in the reasons why that was done (D'Angelo at para. 24. See also Herbert at para. 26).

[40] In my view, the Report constitutes the reasons for the decision. There is no breach of procedural fairness or violation of the principles of natural justice.

E. *Was the Decision reasonable in the circumstances?*

[41] The Applicant contends that, if the Report constitutes the reasons for the Commission's decision, the reasons demonstrate the Commission made significant and fundamental errors in its analysis, leading to an unreasonable result. The Applicant says this unreasonableness is evidenced by the following:

(a) An exaggerated distinction between the "new" (post-2014) and "old" (pre-2014) RCMP procedures;

(b) An erroneous finding that the RCMP's internal remedies could resolve the Applicant's human rights issues;

(c) An erroneous finding regarding RCMP decision-makers' human rights training and expertise; and

(d) An erroneous finding regarding the decision makers' lack of independence and impartiality.

(1) The distinction between the "new" and "old" RCMP procedures

[42] In my view, the Applicant misconstrues the Report with respect to the distinction it makes between the former and current internal RCMP procedures. The Report simply states the procedures have changed since 2014 and distinguishes authorities cited by the Applicant based upon the fact they refer to the former procedure. Such an approach is reasonable. No court cases were cited which address the perceived inadequacies of the current procedure.

[43] The Applicant attempted to rely upon the CRCC Report as proof that the inadequacies of the previous RCMP procedure continue to exist. I have already concluded that evidence is being given no weight for purposes of this application. Furthermore, as already indicated, the CRCC Report would be of minimal assistance to the Applicant given that it relates to harassment and not the grievance policy.

(2) The RCMP's internal remedies

[44] The Applicant contends that the Commission erred in concluding that "it is not clear the [RCMP's] internal process is incapable of providing the remedies sought." He bases his contention, in part, upon the fact the internal process provides decision-makers with no jurisdiction to award interest or damages for pain and suffering. The Commission acknowledges this to be true. However, the Commission notes that monetary compensation is available through the RCMP's Employee Management Relations Officers. In my view, the Commission reasonably concluded it could consider all grievance and review procedures available to the Applicant, including the possibility of obtaining monetary compensation through steps taken by the Employee Management Relations Officers.

(3) The RCMP decision-makers' human rights training and expertise

[45] The Applicant contends the Commission erred by concluding the RCMP's internal decision-makers have sufficient training and expertise to appropriately resolve human rights and discrimination issues. He says the Commission's reasoning ignores its own highly specialized human rights' expertise. He argues the RCMP's internal training is an inadequate substitute for such specialized expertise and that the RCMP decision-makers do not constitute the equivalent of specialized labour arbitrators.

[46] With respect, it appears the Applicant misconstrues the Commission's findings on this issue. First, in my view, the Applicant wrongly asserts that the internal procedure requires that decision-makers possess human rights expertise rivalling that of the Commission. Second, the Commission does not conclude the RCMP decision-makers possess equivalent training and expertise in the management of human rights and discrimination complaints as does it. It simply concludes they have *sufficient* training and expertise to *appropriately resolve the human rights and discrimination issues alleged*.

[47] Finally, with respect to this issue, I note there is no evidence the RCMP decision-makers do not receive sufficient training to properly fulfil their responsibilities. That being the case, the presumption of expertise to adjudicate upon matters brought before them applies (*Horton v. Canada (Attorney General)*, 2004 FC 793, [2004] F.C.J. No. 969). The Commission reasonably concluded, absent evidence to the contrary, that the decision-makers constitute an integral and adequate part of the alternate procedure under consideration.

(4) The lack of independent and impartial decision-makers

[48] Finally, the Applicant contends the Commission erred in interpreting *Bergeron v. Canada (Attorney General)*, 2013 FC 301, [2013] F.C.J. No. 343 [*Bergeron*] as support for its conclusion that the lack of independence and impartiality of the RCMP's decision-makers does not, on its own, render the procedure unfair. It is important to recall that, in *Bergeron*, the applicant alleged bias and partiality on the part of a decision-maker who had already rendered a decision. Here, the Applicant alleges the structure of the decision-making process does not provide any guarantees of impartiality and independence. He asked the Commission, and now asks this Court, to speculate on the perceived inadequacy of the grievance and complaint procedures.

[49] I readily accept these procedures are not perfect. However, that is not the question I must decide. The question before me is whether, after considering the factual matrix before it, the Commission reasonably concluded the impugned procedures are adequate. In reaching the conclusion they were, the Commission considered, *inter alia*, that both grievance and harassment decisions could be appealed to the Commissioner of the RCMP and that grievance appeals may, in some circumstances, be referred to the External Review Committee [ERC], which provides civilian oversight with respect to RCMP labour relations. The Commissioners decisions on such matters are, of course, subject to judicial review before this Court.

[50] The Commission considered all relevant facts and review procedures available before concluding the lack of procedural independence did not necessarily render the procedures unfair.

I see nothing to suggest this approach was unreasonable within the parameters set out in *Dunsmuir*.

VII. Conclusion

[51] For the foregoing reasons, I dismiss the application for judicial review. The Commission took considerable effort to address each issue raised by the Applicant. While the Applicant may disagree with the Commission's Report, I find neither the analysis, nor the conclusion, falls outside the range of possible acceptable outcomes which are defensible in respect of the facts and law. The Decision is reasonable.

[52] In her written submission, the Respondent requested an order of costs against the Applicant. At the close of oral argument, I requested the parties attempt to reach an agreement on costs, which they have been unable to do. I have considered subsection 400(2) of the *Federal Courts Rules* and have considered, *inter alia*, the submissions of the parties, the complexity of the matter, the importance of the matter to the parties and the benefits that flow from the Courts' guidance on this matter. In the circumstances, I decline to exercise my discretion to award costs.

JUDGMENT IN T-372-17

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended by striking the Canadian Human Rights Commission and Robert W. Paulson, in his capacity as Commissioner of the Royal Canadian Mounted Police as Respondents and naming only the Attorney General of Canada as the Respondent.
2. The application for judicial review is dismissed without costs.

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-372-17
STYLE OF CAUSE:	BARRY ANDERSON v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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JUDGMENT AND REASONS:	BELL J.
DATED:	AUGUST 14, 2018

APPEARANCES:

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Susanne Pereira	FOR THE RESPONDENT

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