

Federal Court



Cour fédérale

**Date: 20200529**

**Docket: T-1582-19**

**Citation: 2020 FC 652**

[CERTIFIED ENGLISH TRANSLATION, REVISED BY THE AUTHOR]

**Ottawa, Ontario, May 29, 2020**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**LUCIE ALLAIRE**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Lucie Allaire is seeking judicial review of the decision of the Canadian Human Rights Commission [the Commission] dismissing her discrimination complaint against her employer, the Correctional Service of Canada [the Service]. I am dismissing her application, as the Commission could reasonably conclude that the substance of Ms. Allaire's complaint had already been dealt with through the grievance process.

I. Background

[2] I will confine myself here to setting out the facts that are directly relevant to this application for judicial review. Ms. Allaire is an employee of the Service. In March 2016, her supervisor reorganized some of the duties of her job. Ms. Allaire was of the view that this constituted discrimination.

[3] Ms. Allaire therefore filed a complaint with the Commission. Since Ms. Allaire is a federal government employee, the Commission told her that she must first file a grievance pursuant to section 208 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.

[4] Ms. Allaire therefore filed a grievance under that Act. On July 14, 2017, the acting Assistant Commissioner of the Service, responsible for rendering a final level decision, denied Ms. Allaire's grievance.

[5] Ms. Allaire then asked the Commission to resume processing her complaint. On July 12, 2019, a Commission investigator provided the parties with a "section 40/41 report", which recommended that the complaint be dismissed as "vexatious" pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [the Act]. In essence, the investigator concluded that the substance of the discrimination complaint had been dealt with in the grievance process and that the finality of the decision rendered in that process should be respected.

[6] At the invitation of the Commission, Ms. Allaire provided her comments on the section 40/41 report, while the Service declined to comment.

[7] On September 12, 2019, the Commission informed Ms. Allaire of its decision to dismiss the complaint under paragraph 41(1)(d) on the basis that [TRANSLATION] “the alternative remedy was effective in substantially adjudicating the allegation of discrimination”.

[8] Ms. Allaire is seeking judicial review of the Commission’s decision.

## II. Analysis

[9] It is worth recalling the legal framework governing this Court’s intervention in judicial review proceedings. When it is called upon to review a decision rendered by a government decision-maker, this Court inquires into the legality of that decision. This legality has two components: compliance with procedural fairness, and the reasonableness of the decision on the merits. On judicial review, this Court cannot substitute itself for the administrative decision-maker and decide the matter anew, as the Supreme Court of Canada recently reiterated in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 83 [Vavilov]. In addition, the relationship between an individual and the government may involve several decisions made by different individuals or agencies. An application for judicial review may be brought in respect of a single decision only: rule 302 of the *Federal Courts Rules*, SOR/98-106. An application for judicial review of one decision does not allow this Court to review another decision, let alone the entire relationship between the applicant and the government.

[10] Moreover, in reviewing an administrative decision, this Court relies solely on the evidence before the decision-maker. Indeed, the role of this Court is to ensure that the impugned decision was reasonable in light of the evidence submitted to the decision-maker. Except in very specific circumstances, it is therefore not possible to bring new evidence before this Court. See, in this regard, the decision of the Federal Court of Appeal in *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 12, at paragraphs 86 and 98.

[11] Ms. Allaire's application for judicial review falls outside these parameters. Although her application can only relate to the Commission's refusal to deal with her complaint, Ms. Allaire reiterated all the arguments in support of her discrimination complaint and even sought to file additional documents, particularly regarding her medical condition. She also raised some concerns about the manner in which her grievances were examined and about other issues.

[12] Ms. Allaire's arguments do not tend to show that the Commission made an unreasonable decision in dismissing her complaint. Nor does Ms. Allaire argue that the Commission breached its duty of procedural fairness in the handling of her complaint. Nevertheless, I will briefly review the Commission's decision to determine whether it was reasonable. I will then consider the arguments presented by Ms. Allaire.

A. *Reasonableness of Commission's decision*

[13] There is no dispute that the Commission may dismiss a complaint under paragraph 41(1)(d) of the Act where the substance of the complaint has been properly dealt with in another decision-making process. The investigator's report sets out the factors to be

considered by the Commission. I find this section of the report to be consistent with relevant case law, including *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52, [2011] 3 SCR 422, and *Bergeron v Canada (Attorney General)*, 2015 FCA 160.

[14] In concluding that the substance of the complaint had been dealt with through the grievance process, the Commission's investigator compared the text of the complaint with that of the grievance and found that they were virtually identical. She also reviewed the decision rendered on the grievance and found that it had dealt with the substance of the complaint. She further noted that Ms. Allaire had not identified any breach of procedural fairness.

[15] Having personally reviewed the complaint, the grievance and the decision rendered on it, I am of the opinion that the Commission's decision was reasonable. It is clear that Ms. Allaire is merely seeking to relitigate the final decision made regarding her grievance, which is not the role of the Commission.

[16] Moreover, the fact that Ms. Allaire was unsuccessful in the grievance process does not mean that the substance of her complaint has not been dealt with or adjudicated. Otherwise, the finality of grievance decisions would be compromised.

B. *Arguments raised by Ms. Allaire*

[17] In her written argument, Ms. Allaire mentions several times the existence of another grievance concerning her performance review. She submits that this grievance should have been

considered in conjunction with her discrimination grievance. She also claims that her union representative failed to forward certain [TRANSLATION] “exhibits” to the decision-maker.

[18] There is no need for me to consider these allegations, as they do not affect the reasonableness of the Commission’s decision. It is worth recalling that only the Commission’s decision is the subject of this application for judicial review. The issue before the Commission was whether the complaint before it had already been decided through another process. In finding that it did, the Commission relied solely on the discrimination grievance , which is substantially identical to the complaint. The Commission did not need to go further and review the performance review grievance. In doing so, the Commission acted reasonably. Therefore, any issues relating to the performance review grievance are irrelevant to the present application for judicial review.

[19] Ms. Allaire also pointed out that the final decision on the discrimination grievance was not sent to her until December 2017, although it was rendered in July 2017. While this is unfortunate, Ms. Allaire does not appear to have suffered any prejudice as a result. More specifically, no one argued that Ms. Allaire exceeded the various time limits set for exercising her rights or for providing additional information. The delay in receiving the decision rendered in July 2017 had no impact on the Commission’s decision. Nor is it relevant to the present application for judicial review.

[20] Ms. Allaire further alleges [TRANSLATION] “security concerns” related to communications her employer may have had with her landlord. She also complains of receiving various

unsolicited e-mails. However, she did not bring any evidence linking such incidents to the discrimination to which she was allegedly subjected by her employer. Moreover, those responsible for these incidents are likely not federal employers under the Commission's jurisdiction. The Commission was therefore correct in disregarding these allegations.

[21] Finally, Ms. Allaire produced various medical documents in support of her application, attesting to her state of health. Those documents were not submitted to the Commission. For that reason, I cannot take them into account in this application for judicial review. I would merely point out that the Commission has not questioned Ms. Allaire's state of health. Its decision was based on other grounds.

### III. Conclusion and costs

[22] For these reasons, the application for judicial review will be dismissed.

[23] The Attorney General also asks that Ms. Allaire be ordered to pay costs. Under rule 400 of the *Federal Courts Rules*, I have full discretion with respect to the awarding of costs.

Nevertheless, it is well-established practice that the losing party be ordered to pay the costs of the successful party. In the exercise of my discretion, however, I am of the view that I should depart from this practice and make no order as to costs.

[24] Costs are a form of partial compensation for the expenses incurred by the successful party in defending the case. The reason for requiring the losing party to pay costs is to implement a form of incentive aimed at influencing the decisions that litigants make about the conduct of the

proceedings: *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 1119, at paragraph 4. For example, if faced with the possibility of being ordered to pay the opponent's costs if their case is dismissed, litigants will be encouraged to make a more rigorous assessment of their chances of success before bringing a lawsuit.

[25] Ms. Allaire was not represented by counsel in this application for judicial review. It is not always easy for a self-represented litigant to fully appreciate the scope of an application for judicial review, particularly in the context where several administrative bodies have rendered decisions on the same facts.

[26] In this regard, I note that the Commission's decision included a statement that [TRANSLATION] "parties to a complaint may apply to the Federal Court for judicial review of the Commission's decision pursuant to subsection 18.1(1) of the *Federal Courts Act*". However, the decision did not explain the limited scope of an application for judicial review before this Court. While such a reference may serve the laudable purpose of informing litigants of the remedies available to them, it may also, if it is not accompanied by the necessary nuances, give them false hope as to the scope of those remedies. At the hearing, Ms. Allaire explained that she understood that, by this sentence, the Commission was suggesting that she should apply to our Court for a ruling on the merits of her complaint. However, as I said earlier, that is not our role.

[27] It is therefore difficult to criticize Ms. Allaire for her lack of knowledge of the principles governing an application for judicial review. Thus, even assuming that she was aware of the possibility of being ordered to pay the costs, I find it difficult to see how Ms. Allaire could have



included that factor in her decision to bring this application. I am therefore of the opinion that she should not be ordered to pay costs.

**JUDGMENT in T-1582-19**

**THIS COURT'S JUDGMENT** is as follows:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

“Sébastien Grammond”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1582-19

**STYLE OF CAUSE:** LUCIE ALLAIRE v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HEARING HELD VIA VIDEOCONFERENCE  
BETWEEN OTTAWA, ONTARIO, AND MONTRÉAL,  
QUEBEC

**DATE OF HEARING:** MAY 28, 2020

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** MAY 29, 2020

**APPEARANCES:**

Lucie Allaire

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Mélyne Félix

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Ottawa, Ontario

FOR THE RESPONDENT