Federal Court Cour fédérale

Date: 20201002

Docket: T-1288-19

Citation: 2020 FC 951

Toronto, Ontario, October 2, 2020

PRESENT: Mr. Justice Diner

BETWEEN:

SAJJAD ASGHAR

Applicant

and

ROGERS COMMUNICATIONS INC.

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Sajjad Asghar (Applicant) seeks judicial review of the Canadian Human Rights Commission's (Commission) decision finding his discrimination claim against Rogers Communications Canada Inc. (Rogers) frivolous under paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*]. I will not interfere with the Commission's decision for the reasons that follow.

II. Background

[2] Mr. Asghar applied for three different positions with Rogers. He alleges the circumstances surrounding each opportunity, individually and collectively, amounted to discrimination on the prohibited grounds of race, national or ethnic origin, religion, sex, sexual orientation, gender identity/expression, and genetic characteristics.

[3] Mr. Asghar applied for a Sales Consultant position (the First Opportunity) on June 21, 2017. During the application process, he completed and submitted an optional survey (Survey) which canvassed information relating to minority status, sex, sexual orientation, and other employment equity matters. A Rogers recruiter (Recruiter #1), invited Mr. Asghar to complete an additional survey, and scheduled a phone interview for June 22, 2017. There is some dispute as to whether the two scheduled the interview for 11:30 a.m., as Mr. Asghar contends, or 11:45 a.m., as Recruiter #1 had noted. As will become clear, timing was a factor in this litigation.

[4] Recruiter #1 called Mr. Asghar at 11:56 a.m. the day of the interview – up to 26 minutes after the scheduled start time. Mr. Asghar declined the interview. That same day, he e-mailed Recruiter #1 alleging the delay was intentional and that Recruiter #1 acted for a third party to engage in discrimination, organized crime, and professional misconduct specifically targeting him. Recruiter #1 apologized and offered to continue the phone interview, which Mr. Asghar refused.

[5] On August 28, 2017, a second Rogers recruiter (Recruiter #2), e-mailed Mr. Asghar regarding a Customer Service Consultant position (the Second Opportunity). Recruiter #2's e-mail included a link to a job posting that ultimately redirected Mr. Asghar to an expired job

posting. Mr. Asghar alleges Recruiter #2 intended to ridicule and discriminate against him, by directing him to an illegitimate job opportunity.

[6] On September 14, 2017, a third Rogers recruiter (Recruiter #3) contacted Mr. Asghar regarding an Inside Sales Consultant position (the Third Opportunity). Recruiter #3 sent Mr. Asghar an online assessment to complete and resubmit through a dedicated Rogers website. Four days later, Recruiter #3 informed Mr. Asghar that she had not received the completed assessment, and gave Mr. Asghar an additional 24 hours to complete it. Mr. Asghar responded insisting he had submitted his assessment the same day he received it, and asked for clarification. The record is unclear as to whether Recruiter #3 responded to this message, but on October 5, 2017, Mr. Asghar received an e-mail from Rogers stating his application for the Third Opportunity was unsuccessful.

III. Decision Under Review

[7] Mr. Asghar filed a human rights complaint with the Commission on October 23, 2017, alleging employment discrimination against Rogers (Complaint) on the grounds listed above in paragraph 2.

[8] In a letter dated November 9, 2017, the Commission informed the parties it would prepare a section 40/41 report (Report) to decide whether it would deal with the complaint, or reject it for frivolousness. The letter indicated the potential application of paragraph 41(1)(d) of the *CHRA* to Mr. Asghar's Complaint, specifically regarding the absence of a link between the impugned conduct and a prohibited ground of discrimination. The Commission then invited the parties to make submissions on the issue.

[9] In his November 20, 2017 response to the Commission, the Applicant largely repeated the same allegations, and alleged the Commission did not permit him to submit evidence. Rogers submitted its response on January 3, 2018.

[10] A Human Rights Officer (Officer) for the Commission produced the Report on May 14, 2019, finding the Complaint to be frivolous within the meaning of paragraph 41(1)(d) of the *CHRA*. Specifically, it found Mr. Asghar had made bald allegations and failed to demonstrate a reasonable basis for believing Rogers' conduct was discriminatory. The Commission once again requested submissions from the parties. Mr. Asghar responded on June 9, 2019, once again making materially the same allegations, in addition to noting the delay in preparing the Report. On July 12, 2019, the Commission issued its decision (Decision), adopting the Report's finding that the Complaint was frivolous under paragraph 41(1)(d) of the *CHRA*. Mr. Asghar filed for judicial review on August 7, 2019.

IV. Issues and Standard of Review

[11] Mr. Asghar raises five issues for this Court to consider:

A. Was the Commission's Decision reasonable?

B. Did the Decision breach Mr. Asghar's right to procedural fairness?

C. Did Rogers or the Commission breach Mr. Asghar's *Charter* rights?

D. Is the *CHRA* constitutionally valid?

E. Should Mr. Asghar be awarded the damages or costs he claims?

[12] In terms of the standard of review, this Application arose in the context of *Dunsmuir v New Brunswick*, 2008 SCC 9. The Court must now review the decision under the new analytical

framework applicable to administrative decisions developed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Thereunder, the reasonableness standard serves as the presumptive starting point (*Vavilov* at para 16): see also *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27 [*Canada Post*].

[13] As was the case prior to *Vavilov*, the reasonableness standard continues to apply to the substance of a decision in the human rights context: see *O'Grady v Bell Canada*, 2020 FC 535 at para 30 [*Bell II*]; *Ennis v Canada (Attorney General)*, 2020 FC 43 at para 18. Thus, a reasonableness approach must be applied to the decision to reject the Complaint for frivolousness.

[14] On a reasonableness review, the Court must examine the decision-maker's reasons and determine whether the outcome demonstrates an "internally coherent chain of reasoning, justified in light of the relevant legal and factual constraints" (*Canada Post* at para 2). This requires the Court to examine whether the Decision as a whole was unreasonable, in light of its outcome and the reasoning process (*Vavilov* at para 83). If the Decision bears the hallmarks of reasonableness – namely justification, transparency, and intelligibility – and it is justified in relation to the relevant factual and legal constraints, the Court should not interfere (*Vavilov* at para 99).

[15] It is worth noting that the Commission's role is not adjudicative, as the *CHRA* vests that function in the Canadian Human Rights Tribunal (Tribunal): see *Canada Post Corporation v Canadian Postmasters and Assistants Association (CPAA)*, 2016 FC 882 at para 27 [*CPAA*]; *Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at para 53. Instead, the Commission screens and investigates complaints, and determines whether the Tribunal should consider them. Thus, a reviewing court considers only the reasonableness of that "screening"

decision: see *CPAA* at para 27; *O'Grady v Bell Canada*, 2012 FC 1448 at para 37 [*Bell I*]. Moreover, these types of discretionary decisions by human rights commissions warrant deference: see *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at para 17, *Hood v Canada (Attorney General)*, 2019 FCA 302 at para 27 [*Hood*].

[16] *Vavilov* did not change correctness as the standard of review applicable for procedural fairness issues (*Vavilov* at para 23; *Bell II* at para 30). The reviewing court determines for itself whether the administrative process satisfied the level of fairness required in the circumstances (*Hood* at para 25).

V. Analysis

A. *The Commission's decision was reasonable*

[17] Commission decisions under paragraph 41(1)(d) of the *CHRA* typically include brief reasons that must be read together with the investigative report (*Bell I* at para 12): see also *Canada (Attorney General) v Sketchley*, 2005 FCA 404 at para 37. Consistent with the duty to analyze both the outcome and its underlying process, I will consider not only the Decision, but also the Report, the initial Complaint, and any submissions made by the parties to the Commission, all of which led to the Decision: see *Piché v Canada (Attorney General)*, 2008 FCA 356 at paras 14-15.

[18] As noted above, the Commission performs a screening function vis-à-vis the Tribunal. Part of that role involves dispensing with complaints the Commission considers "trivial, frivolous, vexatious or made in bad faith" (*CHRA* at para 41(1)(d)). Doing so requires the

Commission to decide, based on the record, whether it is "plain and obvious" the complaint could not succeed: see *Gregg v Air Canada Pilots Association*, 2019 FCA 218 at para 7; *Love v Canada (Privacy Commissioner)*, 2015 FCA 198 at para 23 [*Love*].

[19] In assessing a complaint's frivolousness, the Commission may look to the absence of a claimed link between the impugned conduct and a prohibited ground of discrimination (*Love* at para 24). As Justice Mary Gleason explained in *Love*, the Commission may reasonably conclude it is plain and obvious a complaint cannot succeed where the complainant "fails to explain why the adverse treatment was connected to one of the grounds prohibited under the CHRA" (at para 24; see also *McIlvenna v Bank of Nova Scotia*, 2014 FCA 203 para 14).

[20] Here, the Commission properly identified the "plain and obvious" test for frivolousness. The Commission further identified that the *CHRA* requires a complainant to have a reasonable basis for filing a complaint. Specifically, section 40 of the *CHRA* only enables complainants "having reasonable grounds for believing" there exists a discriminatory practice or conduct to file a complaint:

40 (1) Subject to subsections (5) and (7), <u>any individual or group of individuals having reasonable grounds for believing</u> that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.	**40 (1)** Sous réserve des paragraphes (5) et (7), <u>un individu ou un groupe d'individus ayant des motifs raisonnables de croire</u> qu'une personne a commis un acte discriminatoire peut déposer une plainte devant la Commission en la forme acceptable pour cette dernière.
[Emphasis added.]	[Je souligne.]

[21] The threshold of "reasonable grounds for believing" a discriminatory practice has transpired may be low, but it nonetheless exists. Thus, the Commission may dismiss a complaint for frivolousness under paragraph 41(1)(d) where that complaint fails to set out a reasonable or

prima facie basis for the allegation of discrimination (*Love* at para 23): see also *Public Service Alliance of Canada v Canada (Attorney General)*, 2015 FCA 174 at para 33. Looking at the other side of the same coin, the complainant must present some credible evidence to satisfy the Commission of the complaint's merit, or risk having the claim rejected (*Gregg* at para 7).

[22] Here, the Applicant alleged before the Commission that Rogers discriminated against him on prohibited grounds on three separate occasions in the First through Third Opportunities, individually and collectively revealing a discriminatory hiring practice. He alleges that Rogers never intended to hire him, but instead aimed to humiliate and demean him by intentionally delaying an interview, sending an expired job opportunity, and denying him a job by ignoring his assessment.

[23] Importantly, the Applicant claimed his name – which he argues suggests a nationality and/or religion – coupled with the Survey data, show the necessary link between Rogers' impugned conduct and one or more prohibited grounds. The claimant alleged that each of the three recruiters acted "as a con artist who was hired by the organized crime proxy network and as a result she/he discriminated against [Mr. Asghar] on the basis of prohibited grounds which were color, origin, minority status, gender, gender orientation and religion which was obvious from [his] name as well as from the survey included in the job application and database."

[24] I note that before this Court, Mr. Asghar repeated his allegations of a criminal network controlling the three recruiters, both in his oral submissions, and in his memorandum of fact and law, stating that the three recruiters "prey on applicants due to skewed mindset and state conducted community based organized crime."

[25] When I asked how Rogers discriminated against Mr. Asghar on an enumerated ground, Mr. Asghar responded that he only named the company as a party due to its vicarious liability for the "*mala fides*" of its three recruiters who discriminated against him by conducting themselves in a premeditated manner – their conduct orchestrated from the outset by the organized crime network. As Roger's counsel pointed out, even if there was some sort of conspiracy at work – rather than any mistakes ascribable to lateness, technical glitches, or human error, which the record appeared to indicate – then Mr. Asghar failed to link that conspiracy to any enumerated grounds of discrimination, other than his say-so.

[26] The Officer concluded in her Report that Mr. Asghar did not substantiate any link between the impugned conduct and the alleged discrimination with any other facts or evidence. The Officer found in her two key paragraphs (20 and 21) of the Report that:

> More than speculation is needed to file a complaint. Having a reasonable basis for a complaint requires more than just a statement or bald assertion that the conduct is discriminatory. There is an obligation on the part of the complainant to demonstrate that a reasonable person in his circumstances would believe that the policies or practices complained of are discriminatory.
>
> The complainant alleges that the respondent discriminated against him based on the cited grounds because he completed an optional survey and because his name may suggest he belonged to a certain religion or national or ethnic origin. However, he has not offered any information or facts beyond assertions to support his allegations that the respondent treated him differently based on these grounds. His allegations are bald assertions unsupported by any facts set out in the complaint. The complainant has not demonstrated that a reasonable person in his situation would believe that the respondent discriminated against him. As such, this complaint cannot succeed, and it is frivolous within the meaning of the Act.

[27] Given the legal and factual constraints, I find the conclusion to be reasonable. Mr. Asghar did not explain how his name may have played a role in Rogers' conduct, beyond the allegation that it did. Similarly, Mr. Asghar did not demonstrate when or how the Survey data influenced Rogers' conduct. Indeed, Rogers appears to have continued to try to recruit Mr. Asghar after he completed the Survey, but he did not cooperate, such as after the first recruiter was a few minutes late for his interview call, apologized, and tried to reschedule, all of which Mr. Asghar rejected.

[28] Finally, I acknowledge that the Survey – like any employment equity survey – asked questions, some answers to which, if used to effect differential treatment, could ground a claim for discrimination. But in this case, Mr. Asghar did no more than baldly assert the Survey data led to differential treatment, without demonstrating how it did so, nor did he point to or provide any evidence to this effect. It is precisely this type of omission on which the Commission found it plain and obvious the Complaint could not succeed, which was justified in light of the relevant legal and factual constraints. As a result, the Decision was coherent, logical and thus reasonable, given the lack of any link between the conduct and a prohibited ground.

B. *The Commission's decisional process was procedurally fair*

[29] Mr. Asghar, in his oral submissions, stated that he relied on his written arguments on procedural unfairness, which were that the Commission (a) failed to obtain or attempt to obtain transcript evidence of his telephone call with Recruiter #1; (b) prevented him from submitting documentary evidence; and (c) excessively delayed its Decision.

(1) The Commission had no duty to investigate

[30] Both this Court and the Federal Court of Appeal have held that, consistent with its screening function, the Commission has no duty under paragraph 41(1)(d) to investigate a complaint: see *Davidson v Canada (Attorney General)*, 2019 FC 877 at para 26 [*Davidson*]; *Wisdom v Air Canada*, 2017 FC 440 at paras 28-30. Rather, the Commission's only function at the screening stage is "to examine, on a *prima facie* basis, whether the grounds set out in subsection 41(1) are present, and if so, to decide whether to deal with the complaint nevertheless": *Davidson* at para 26, *English-Baker v Canada (Attorney General)*, 2009 FC 1253 at para 18.

[31] Therefore, the Commission was not obliged, at this early screening stage, to look into whether Rogers had transcripts of the call between Mr. Asghar and Recruiter #1. Its only duty was to consider the Complaint and subsequent submissions to determine if, on a *prima facie* basis, the Complaint met the relevant statutory criteria.

(2) Mr. Asghar had ample opportunity to present his case

[32] Mr. Asghar alleges the Commission did not allow him to submit documentary evidence linking the alleged acts to the cited grounds. It is unclear precisely what evidence Mr. Asghar believes he was unable to submit. The Report, however, does address this concern in paragraphs 22 and 23, as follows:

> In his position statement, the complainant notes that Commission staff did not allow him to submit evidence to demonstrate a link between the alleged acts and his cited grounds. It appears the complainant is referring to documentation he included with his initial complaint submission. Although supporting documentation cannot form part of the complaint form, the Commission does

> consider additional information submitted by the parties at the 41 stage if it is relevant to the issues being analyzed.
>
> For greater certainty and for fairness to the complainant; the Human Rights Officer reviewed all documentation he initially submitted to the Commission. These consist of email confirmations of the complainant's applications to various positions with the respondent, and of his communications with the-recruiters referenced in the complaint form. However, a thorough review of these documents does not reveal any information that would, when taken alt face value, establish a link between the alleged negative treatment and a prohibited ground of discrimination under the Act.
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> [Emphasis added.]

[33] The Officer thus considered Mr. Asghar's evidence and, based on these findings, had every right to stop the screening process. No procedural fairness breach occurred. Mr. Asghar had three opportunities to present his case: (i) the initial Complaint, (ii) his November 9, 2017 response letter, and (iii) his Report response. He was never denied the opportunity to make his case, or be heard.

(3) The Commission's delay did not seriously or significantly prejudice Mr. Asghar

[34] Additionally, Mr. Asghar alleges the Commission committed a "miscarriage of justice" by delaying the release of its Report. The period between the Complaint's filing (on October 17, 2017) and the issuance of the Report (on May 19, 2019) spanned 19 months.

[35] In *Canadian Airlines International Ltd v Canada (Human Rights Commission)*, [1996] 1 FC 638, 39 Admin LR (2d) 270 (CA), leave to appeal to SCC ref'd, [1996] SCCA No 44 (QL), Justice Décary considered whether a four-and-a-half-year delay between filing a human rights complaint and the decision to appoint a Tribunal was unreasonable. While noting that

unreasonable delay can constitute an abuse of process, he found that there must be demonstrated evidence of prejudice of sufficient magnitude to impact on the fairness of the hearing. He held the prejudice from the delay fell short of the required threshold, that being a significant impairment of a party's ability to receive fair hearing: see also *Canada (Attorney General) v Norman*, 2002 FCA 423 at paras 26-28.

[36] In *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*], Justice Bastarache recognized that an unacceptable delay could amount to an abuse of process even where it did not compromise the fairness of the hearing (at para 115). However, he cautioned that few delays would meet the required threshold. Moreover, where fairness was not in issue, the delay would need to be "clearly unacceptable and have directly caused a significant prejudice" so as to "bring the human rights system into disrepute" and "taint the proceedings" (*Blencoe* at para 115).

[37] The delay in this case does not meet the *Blencoe* threshold. Mr. Asghar has not demonstrated any significant prejudice to himself or to the human rights process from the delay: he suffered no detrimental impact other than to have been forced to wait longer than he would have wished to get a decision with which he does not agree. The Commission, like many other tribunals, is under strain – partially due to cases such as these being brought – and with its limited resources, experiences some delay in deciding cases. The delay here was unpleasant and displeasing to Mr. Asghar, but could not be described under the case law as "abusive."

C. *No constitutional or Charter breach*

[38] Mr. Asghar's Notice of Constitutional Question (Notice) alleges, in a convoluted manner, that his section 6(2)(b), 7, 12, 15(1) and 24(1) rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 91(24) [*Charter*] were violated by i) Rogers; ii) the Commission; and iii) this Court's order removing the Commission as a named respondent to this Application (Justice Elliott's Order). He also argues that the *CHRA* is unconstitutional.

[39] The intended purpose of the notice requirement under section 57 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] is to challenge the constitutional validity, applicability, or operability of legislative provisions under section 52 of the *Charter* (*Yue v Bank of Montreal*, 2020 FC 468 at para 38 [*Yue*]). The Notice states that the *Charter* violations require a remedy under subsection 24(1) of the *Charter*.

[40] The *Charter* does not apply in this situation for several reasons. First, as explained above, judicial review is limited to a review of the underlying decision, as distinct from an action that can lead to *Charter* damages.

[41] Second, the *Charter* does not apply to private litigation: see *RWDSU v Dolphin Delivery Ltd*, [1986] 2 SCR 573 at 603 [*Dolphin Delivery*]; *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at para 39 [*Wall*]. Section 32 specifies that the *Charter* only applies to legislative, executive, and administrative branches of government (*Dolphin Delivery* at 603; *Wall* at para 39).

[42] Third, the Commission, who was once a party – but due to an earlier motion in this litigation that was never appealed – is no longer a party to this judicial review.

[43] Fourth, and for Mr. Asghar's edification, Mr. Asghar's submissions focus on how the Commission's decision is unreasonable and unfair. *Charter* litigation "requires specifically identifying the *Charter* right or value at issue, precisely how that right has been violated and, if it has, whether there is any justification for the *Charter* breach by the government actor" (*Yue* at para 43). As in *Yue*, I find these elements absent here. The *Charter* arguments – whether under paragraph 6(2)(b), or sections 7, 12, and 15 - have no basis here, as I will briefly explain below.

[44] Paragraph 6(2)(b) (right to gain a livelihood), must be read in the context of the section 6 mobility rights, where people are denied a livelihood because they had previously resided in another province, or because they did not live in the province of their work (*Law Society of Upper Canada v Skapinker*, [1984] 1 SCR 357 at paras 28-29 and 33; see also Peter Hogg, *Constitutional Law of Canada*, 5th ed Loose-leaf (Toronto: Thomson Reuters Canada Limited, 2019) at 46.1(d) (Proview)).

[45] Regarding Mr. Asghar's section 7 (security of the person) arguments, Justice Bastarache recognized in *Blencoe* that the protection of the security of the person encompasses protection from "serious state-imposed psychological stress" (at para 56). To trigger this aspect, i) the psychological harm must result from state action, and ii) the psychological prejudice must be serious (*Blencoe* at para 57). Moreover, there must be some evidence before the court demonstrating the extent of psychological harm: see *James v Canada (Attorney General)*, 2015 FC 965 at para 75 [*James*]. Here, the only evidence of psychological harm is an assertion from

Mr. Asghar, with no psychological or medical evidence: see *James* at para 75; *Blencoe* at paras 46-48, 57.

[46] Section 12 protects individuals from cruel and unusual punishment. That Mr. Asghar's Complaint did not proceed to the Tribunal does not constitute such punishment; feeling a punitive aspect from being denied something one feels entitled to, is not the type of punishment that engages section 12 (*Yue* at para 45).

[47] Under subsection 15(1), Mr. Asghar claims that the Commission breached his rights to equal protection and benefit of the law by rejecting the Complaint. However, he does not indicate how the Commission treated him differently based on an enumerated or analogous *Charter* ground. He was unable to show any differential treatment, let alone one based on an enumerated or analogous ground.

[48] Finally, Mr. Asghar claims that Justice Elliott's Order violates his *Charter* rights because it prevents him from seeking *Charter* remedies against the Commission under subsection 24(1). Mr. Asghar could have appeal Justice Elliott's Ordered at the time, but he did not do so. He cannot attack it now for a host of reasons, starting with the fact that the Notice is not the appropriate time or place, nor is this Court the appropriate forum.

D. *No grounds raised to attack the constitutionality of the CHRA*

[49] Lastly, in the Notice, Mr. Asghar asks the Court how one can "justify the [*CHRA*] in the light of s. 6(2)(b), 7, 12, 15(1) of the *Charter* pursuant to s.24(1)." If this statement is indeed a challenge the constitutional validity, applicability, or operability of the *CHRA* under section 52 of the *Charter*, and since paragraph 41(1)(d) was the only provision engaged in this Decision,

this vague statement at best purports to challenge the constitutionality of that paragraph. Mr. Asghar fails to specify his claim how state conduct or legislation has infringed any *Charter* right or otherwise is constitutionally invalid. A simple assertion that the Commission's decision under paragraph 41(1)(d) is incorrect and unfair falls far short of that requirement.

E. *Damages and Costs*

[50] Mr. Asghar sought a number of remedies in this judicial review aside from asking for an order that the Decision be set aside and returned to the Commission, which I will not grant, for all the reasons set out above. The remedies requested of this Court include significant damages. I explained to Mr. Asghar that the damages he requests, namely (i) special damages equivalent to the salary he would have earned from his first contact with Rogers to the date of the Decision, and (ii) general, punitive and aggravated damages of $500,000, are not available on judicial review: see, for instance, *Canada (Citizenship and Immigration) v Hinton*, 2008 FCA 215 at para 45.

[51] I also advised Mr. Asghar at the hearing that I did not consider it appropriate to grant the additional remedy requested – that I direct that this application be treated and proceeded with as an action under subsection 18.4(2) of the *Federal Courts Act*. This is far from the "clearest of circumstances" wherein this Court may properly resort to that conversion mechanism: *Macinnis v Canada (Attorney General)*, [1994] 2 FC 464, 1994 CanLII 3467 (CA) at para 7. This is due, in part, to the evidentiary weaknesses in Mr. Asghar's claim, as reasonably found by the Commission.

[52] Rogers' counsel, at the hearing, requested its costs in the amount of $10,000, which, while less than the Tariff rate, and significantly under his firm's actual legal fees, would nonetheless dissuade Mr. Asghar from continuing his conduct in bringing frivolous litigation, and putting employers such as his client – or smaller clients in the future – to great and unnecessary cost and inconvenience. He cited not only the frivolous claims made, as the Commission found, but also the tenor of his submissions, which included many instances of inappropriate language, as well as open threats, particularly in light of his history with tribunals and courts (see below).

[53] I asked for an accounting for these costs, and Mr. Levitt (Rogers' counsel) stated that while he did not come to Court with a bill of costs, he would provide one to the Court within a day. I offered the same opportunity to Mr. Asghar. Both parties followed up in writing.

[54] In his submission, Mr. Asghar sought costs "for appearance, research, legal work, commute and several years of the process at a super discounted rate = $10,000 all inclusive." Rogers, for its part, provided a bill of costs in conformity with the Rules, calculated on the basis of the Column III of Tariff B, in the amount of $14,635.38 (inclusive of disbursements of $1,033.20).

[55] Before setting out the costs that will be payable by Mr. Asghar given the outcome of this judicial review, I will comment on Mr. Levitt's observations regarding Mr. Asghar's inappropriate submissions to the Court, which I also pointed out to Mr. Asghar at the outset of the hearing, making it abundantly clear to Mr. Asghar that the Court would not tolerate anything resembling the language he had used, or the threats implicit, in his written submissions. Mr. Asghar apologized for his language at that point.

[56] I will not dignify Mr. Asghar's profanities and threats with their repetition here: I see no need to have a potpourri of those vulgarities contaminate these Reasons. Suffice it to say, Mr. Asghar used an impressive array of profanities that cover the gamut of the English language's cussing lexicon, better suited for a schoolyard than this Court, although it bears noting that Mr. Asghar did not reserve his expletives for this judicial review. He interlaced certain eloquent passages of his responding submissions to the Commission with equally colourful obscenities, including language anchored in some of the same prohibited grounds for which he claimed to be a victim.

[57] On the positive side, Mr. Asghar apologized a second time in his oral reply submissions, after Mr. Levitt's had spoken. Mr. Asghar's two recognitions of his unacceptable language, and self-awareness of the 'unintended' impact his words may cause, are to be commended. However, I note that his conduct in this judicial review does not appear to be isolated. In a decision released less than two months ago, Justice David Corbett reproduced a passage from Mr. Asghar's pleadings for the Ontario Superior Court, which use similar crude language, in *Asghar v Office of the Independent Police Review Director*, 2020 ONSC 4686. Justice Corbett then proceeded to note the following:

> [13] There are two points to be made here. First, Mr Asghar points to a decision of the Ontario Court of Appeal in a prior case in which he was involved. That Court noted that, even where a litigant is rude and acts badly, it is still the duty of the court to adjudicate the underlying issues dispassionately. A valid claim should not be dismissed just because a litigant is rude or abusive. See *Asghar v. Toronto Police Services Board*, 2019 ONCA 479.
>
> [14] Mr Asghar seems to take these remarks from the Court of Appeal as license for incivility. It would be a grave error for him to continue on that course.

> [15] As a litigant, Mr Asghar is required to treat the court and other justice system participants with respect and decorum even where he disagrees strongly with them and even if he is upset by what they have done.
>
> [16] If Mr Asghar had said in court what he wrote in para. 12, quoted above, I would have cautioned him for contempt of court. I would have given him an opportunity to reflect on his conduct and to apologize, but I would not have permitted him to continue using such language toward the court or toward other participants in the system. This is not because I am a fragile wallflower, diminished by the abuse of a dissatisfied litigant or because I am deeply affronted by strong language. This is because the court is a solemn public institution, where everyone is expected to conduct themselves with civility and courtesy. It is my job, as the presiding judge, to enforce this, so that proceedings do not descend into chaos.
>
> [17] Second, Mr Asghar explains that his strong language must be understood as reflecting the gravity of his situation and his naturally strong reaction to what he believes has happened. I understand that Mr Asghar feels strongly about these matters. But that is no excuse for uncivil, abusive and racist berhaviour [sic] towards other justice participants. Abuse and incivility is not a form of punctuation for rational argument to signal passionate commitment. It is juvenile, uncivilized and disorderly behaviour and it will not be tolerated.
>
> [18] Mr Asghar's Notice of Constitutional Question is replete with racial abuse and gross incivility – to police officers, the Chief of Police, and towards others. This is simply not acceptable and this conduct will not be tolerated. If Mr Asghar persists in it, the court will consider compelling him to attend at court to show cause why he should not be cited for contempt of court. See *Lochner v. Ontario Civilian Police Commission*, 2019 ONSC 3048. As an adult litigant, Mr Asghar is required to control his emotions, to present his arguments rationally, and not to engage in aggressive abuse of other justice system participants.

[58] I note many similarities between the Notice of Constitutional Questions described by Justice Corbett in this passage, and Mr. Asghar's Notice in this case. Indeed, Mr. Levitt asserted that, quite apart from the wholly inappropriate language also used in this judicial review, Mr.

Asghar had forced Rogers to go to unnecessary lengths to defend itself against the frivolous human rights claim. He cited from over 20 publicly available decisions in just the past five years alone in which Mr. Asghar and/or the basis for his claims had been criticized by tribunals, including:

i. being declared a vexatious litigant by the Ontario Human Rights Tribunal in *Asghar v HCR Permanent Search*, 2018 HRTO 1274 at para 2;

ii. being found by the Ontario Court of Appeal in its decision cited above (*Asghar v Toronto Police Services Board*, 2019 ONCA 479 at para 13) to have made scandalous pleadings; and

iii. having an action dismissed, based on similar facts and allegations to this claim, including discrimination in the failure to offer a job interview, based on an organized crime gang conspiracy (*Asghar v Avepoint Toronto*, 2015 ONSC 5544 at paras 4-6).

[59] I am aware that Mr. Asghar, as he pointed out to the Court on numerous occasions, is a self-represented litigant. I also note that in his submissions to the Court, he stated that "this court may understand that the projected income of this applicant in his self-employment has been roughly $2M for quite some time. This is important to understand that you are not dealing with a Canadian chump applying to Rogers Communications Inc. for menial jobs and hourly wages."

[60] Mr. Asghar thus appears neither to be a naive nor impecunious self-represented litigant. Indeed, he describes himself as sophisticated, and I would agree that while in Court, he comes across as articulate and polite. Nonetheless, Mr. Asghar cannot expect his poor conduct outside of the courtroom to be overlooked. Consequently, taking all of the circumstances into account,

and noting that Mr. Levitt's request for costs was reasonable in light of his bill of costs, I will order lump sum costs to Rogers in the amount of $10,000.

VI. Conclusion

[61] This application for judicial review is dismissed. Costs are awarded in favour of Rogers in the amount of $10,000, inclusive of disbursements, payable by Mr. Asghar forthwith.

JUDGMENT in T-1288-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. Costs are awarded in favour of Rogers in the amount of $10,000, inclusive of disbursements, payable by Mr. Asghar forthwith.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1288-19
STYLE OF CAUSE:	SAJJAD ASGHAR v ROGERS COMMUNICATIONS INC.
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 29, 2020
JUDGMENT AND REASONS:	DINER J.
DATED:	OCTOBER 2, 2020

APPEARANCES:

Sajjad Asghar	ON HIS OWN BEHALF
Howard Levitt	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levitt LLP Barristers and solicitors Toronto, Ontario	FOR THE RESPONDENT