

Federal Court



Cour fédérale

Date: 20201230

Docket: T-816-19

Citation: 2020 FC 1193

Ottawa, Ontario, December 30, 2020

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

HESAMEDDIN ABBASPOUR TAZEHKAND

Applicant

and

BANK OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Canadian Human Rights Commission [Commission] which dismissed the Applicant's complaint that the Bank of Canada [Bank] refused to interview him due to discrimination based on race, national or ethnic origin [Complaint]. The Commission decided to dismiss the Complaint [Decision] based on an Investigation Report [Report] prepared by an Investigator of the Commission who recommended the Commission dismiss the Complaint. The Decision was made under subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [Act].

I. Facts

[2] The Applicant obtained a Master's in Mathematics in 2007 and a PhD in Mathematics in 2012. He obtained a Master's in Public and International Affairs in 2015.

[3] On October 9, 2016, he applied for a position as Analyst (Master's Degree, Recent Graduates) [Position] at the Bank. Among other "key requirements", the job posting [Posting] stated the Position required "education: Master's degree in finance or a Master's degree in a related subject such as: economics, computer science, mathematics, statistics, business administration (MBA)" obtained between 2015 and 2017.

[4] On November 23, 2016, the Applicant contacted the Bank regarding the status of his application. The Bank responded on December 5, 2016 saying the Applicant was not successful because other candidates had "extensive experience". The Applicant emailed the Bank again saying the Position was aimed at recent graduates only, so "experience can't have been the deciding factor". The Respondent responded again saying other candidates "showcased extracurricular activities and strong grades".

[5] Wishing more information as to why his application was unsuccessful, on December 9, 2016, the Applicant emailed the Bank's Chief Operating Officer for further clarification. This time, on December 15, 2016, a senior employee of the Bank, the Director, Recruitment and Global Mobility [Director] contacted the Applicant. She advised him, among other things, "[his] academic background, although extensive, did not have the particular relevancy that the

Financial Sector Departments were looking for this year”. The Applicant disagreed with this assessment and stated he had engaged in relevant course work in the past; this was set out in his email reply of December 20, 2016.

[6] On December 22, 2016, the Director arranged for a “blind review” process to validate that the initial assessment was fair. The Applicant’s name and all identifying characteristics were removed from his application, which was then distributed to managers not involved in the initial screening. This “blind review” confirmed the results of the initial assessment, particularly noting the Applicant did not have a Master’s degree in an area specific to economics and he had not written a thesis in a topic of relevance to monetary policy, as had other applicants. I note the Applicant was not aware of this “blind review” until after the application for judicial review was filed in this Court.

[7] On January 5, 2017, the Director sent a further email to the Applicant advising he did not have the relevant thesis work to show he had a sufficient background on monetary policy. The Applicant responded on January 5, 2017 asserting he did have the relevant education in monetary policy, he further stated: “[y]our explanation is very unconvincing, I still think I am being unfairly treated in this matter”.

II. Decision under review

[8] On October 5, 2017, the Applicant filed his Complaint with the Commission under section 7 of the *Act*, alleging that the Bank refused to employ him based on race, national or ethnic origin. The *Act* provides:

Employment

7 It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination

Prohibited grounds of discrimination

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Emploi

7 Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects:

a) de refuser d'employer ou de continuer d'employer un individu;

b) de le défavoriser en cours d'emploi.

Motifs de distinction illicite

3 (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'identité ou l'expression de genre, l'état matrimonial, la situation de famille, les caractéristiques génétiques, l'état de personne graciée ou la déficience.

[9] The Bank was asked to respond to the Complaint, which the Bank did by letter dated April 24, 2018. On August 8, 2018, the Applicant filed a response letter to the Bank's submissions.

[10] The Investigator reviewed the positions of the parties and issued a Report dated December 21, 2018.

[11] The Report found the Applicant not qualified for the Position.

[12] The Report also concluded the Applicant's failure to obtain the Position was not linked to race, national or ethnic origin.

[13] Pursuant to subparagraph 44(3)(b)(i) of the *Act*, the Report recommended the Complaint be dismissed:

Report

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.

(3) On receipt of a report referred to in subsection (1), the Commission

(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

Rapport

44 (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :

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

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

Commission to deal with complaint

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

(a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;

(b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;

(c) the complaint is beyond the jurisdiction of the Commission;

(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers

Irrecevabilité

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) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;

c) la plainte n'est pas de sa compétence;

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;

e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que

appropriate in the
circumstances, before
receipt of the complaint.

la Commission estime
indiqué dans les
circonstances.

[14] The Report was sent to both parties for comment. The Applicant responded to the Report on January 18, 2019. The Respondent did not make further submissions. The Report and the Applicant's response were sent to the Commission to decide what should happen next: if the Complaint should be dismissed, sent to the Canadian Human Rights Tribunal [Tribunal], or otherwise.

[15] On March 27, 2019, the Commission rendered its Decision and accepted the Report's recommendation to dismiss the Complaint.

[16] The Commission determined the Applicant had "not provided any other evidence to support his claim that the failure to interview or hire him was based on his race or national or ethnic origin."

[17] The Commission also found the Applicant did not possess the essential requirements for the Position.

[18] The Decision stated:

The Commission agrees with the recommendation to dismiss the complaint.

In his post-disclosure submissions, the Complainant has provided information to correct what he perceives to be errors in the Investigation Report. Despite these perceived errors, it is clear that the complainant did not possess the essential qualifications of the

position advertised. The Respondent required a successful candidate to have obtained a Master's degree in one of an enumerated list of subjects between 2015 and 2017. The Complainant had obtained a Ph.D. in Mathematics, one of the enumerated subjects, in 2012, which was outside of the timeframe identified by the Respondent. As such, the Complainant did not possess the essential qualifications of the position. The Complainant has not provided any other evidence to support his claim that the failure to interview or hire him was based on his race or national or ethnic origin.

III. Issues

[19] The issues are as follows:

1. Did the Commission breach principles of natural justice and/or procedural fairness?
2. Is the Decision reasonable?

IV. Standard of Review

A. *Principles of natural justice and/or procedural fairness*

[20] The first issue raises an issue of procedural fairness. In my respectful view, questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at para 43. That said, I wish to note that in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, per Stratas JA at para 69, the Federal Court of Appeal says a correctness review may need to take place in “a manner ‘respectful of the [decision-maker’s] choices’ with ‘a degree of deference’”: *Re:Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42.” But, see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [Rennie JA]. See also, *Al-Haddad v. Canada (Citizenship and Immigration)*, 2019 FC 274 at paras 10-11 and *Ibid v. Canada*

(*Immigration, Refugees and Citizenship*), 2019 FC 359 at paras 39-40. The Supreme Court of Canada's teaching in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*] at para 23 also indicate the standard of review for procedural fairness is correctness:

[23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.

[21] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

[50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

B. *Reasonableness*

[22] The second issue raises an issue of reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, Justice Rowe stated that *Vavilov* sets out a revised framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption may be rebutted in certain situations, none of which apply to the second issue. Therefore the second issue is reviewable on the standard of reasonableness.

[23] In *Canada Post*, Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

[31] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[Emphasis added]

[24] In the words of the Supreme Court of Canada in *Vavilov*, the reviewing court must be satisfied the decision-maker’s reasoning “adds up”:

[104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or

an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

[105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[Emphasis added]

[25] The Supreme Court of Canada in *Vavilov* at para 86 states, "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision-maker to those to whom the decision applies."

[26] *Vavilov* also confirms that decision makers may assess and evaluate the evidence before them, and that, "absent exceptional circumstances", a reviewing court will not interfere with factual findings. *Vavilov* instructs that the reviewing court "must refrain" from reweighing and reassessing the evidence considered by the decision maker:

[125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial

review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

[126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.

[Emphasis added]

V. Analysis

[27] As a preliminary issue, the Bank objects to the admissibility of Exhibit "I" of the Applicant's affidavit - a report from the Office of the Privacy Commissioner [Privacy Commissioner]. This information was not before the Commission when it made its Decision. The Bank submitted that a Court on judicial review must rely solely on the evidence before the decision-maker, and that none of the exceptions to this general rule apply in this case. The Bank requested that the Court not admit or consider the information contained in Exhibit "I".

[28] The Applicant argues the Privacy Commissioner's report should be admitted because it illustrates the Bank's poor conduct towards him and shows the Bank made the Applicant go to the Privacy Commissioner to get information rather than offering him the information requested.

In addition, the Applicant says the Privacy Commissioner sided with him regarding the Bank's conduct.

[29] With respect, I am not persuaded to admit Exhibit "I". It is new evidence, that is, evidence which neither the Investigator nor the Commission had before them. In *Davidson v Canada (Attorney General)*, 2019 FC 997 [*Davidson*], a judicial review of the same Commission's decision pursuant to subparagraph 44(3)(b)(i) of the *Act*, the applicant submitted a number of documents obtained under the *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*]. At para 52, I ruled these documents were not admissible because they were neither before the Investigator nor the Commissioner and met none of the exceptions to the rule that judicial review is a review of what was before the decision-maker, and generally speaking, nothing else. This rule is set out in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22, per Stratas JA [*Association of Universities*].

[30] I made such ruling at the hearing in the case at bar, stating (edited for grammar, case citations, quotations and content):

1. The Applicant has requested the Court undertake a review of a document, two pages in length, issued by the Privacy Commissioner [Document]. The essence of the Applicant's position is that the Document illustrates behaviour on the part of the Bank that informs the Court's review of the actual decision under review. He submits that as part of his judicial review he is entitled to assess the conduct of the Respondent in another proceeding to assess the reasonableness of his application for judicial review of the Commission's Decision. I am not satisfied that it is necessary or desirable for the Court to undertake reviews of other decision-makers in such an inquiry.

2. The Applicant concedes the Document was released after he filed his application for judicial review in this case. It is common

ground the Document was not before the Investigator or the Commission in connection with the Decision under review.

3. It is well known, although perhaps not to the Applicant who is self represented, that judicial review entails a review of only the documents before the decision-maker, and the decision in issue. Other documents may be admissible on judicial review, but only if they satisfy conditions set out by law. I rely in this connection on *Association of Universities*, per Stratas JA:

[20] There are a few recognized exceptions to the general rule against this Court receiving evidence in an application for judicial review, and the list of exceptions may not be closed. These exceptions exist only in situations where the receipt of evidence by this Court is not inconsistent with the differing roles of the judicial review court and the administrative decision-maker (described in paragraphs 17-18, above). In fact, many of these exceptions tend to facilitate or advance the role of the judicial review court without offending the role of the administrative decision-maker. Three such exceptions are as follows:

(a) Sometimes this Court will receive an affidavit that provides general background in circumstances where that information might assist it in understanding the issues relevant to the judicial review: see, *e.g.*, *Estate of Corinne Kelley v. Canada*, 2011 FC 1335 at paragraphs 26-27; *Armstrong v. Canada (Attorney General)*, 2005 FC 1013 at paragraphs 39-40; *Chopra v. Canada (Treasury Board)* (1999), 1999 CanLII 8044 (FC), 168 F.T.R. 273 at paragraph 9. Care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider. In this case, the applicants invoke this exception for much of the Juliano affidavit.

(b) Sometimes affidavits are necessary to bring to the attention of the judicial review court procedural defects that cannot be

found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness: *e.g.*, *Keeprite Workers' Independent Union v. Keeprite Products Ltd.* (1980) 1980 CanLII 1877 (ON CA), 29 O.R. (2d) 513 (C.A.). For example, if it were discovered that one of the parties was bribing an administrative decision-maker, evidence of the bribe could be placed before this Court in support of a bias argument.

(c) Sometimes an affidavit is received on judicial review in order to highlight the complete absence of evidence before the administrative decision-maker when it made a particular finding: *Keeprite, supra.*

4. In my respectful submission, although there are exceptions, none of them are applicable to the Applicant's request. I note the request is not made by notice of motion, however I waive that because the Document in question was filed in the Applicant's Record by way of inclusion of the material and because the Respondent has had an opportunity to respond to it, where it took issue of the inclusion of Exhibit "I" of the Applicant's affidavit. Both parties have had an ability to discuss this matter before me in writing and to amplify their views in oral submissions at the hearing.

5. My decision is that this Document is not admissible and should not have been included in the Applicant's Record and therefore I will disregard it in coming to my decision.

A. *Principles of Natural Justice and Procedural Fairness*

[31] The Applicant submits the Commission erred in determining the Applicant did not possess the essential qualifications of the Position, namely obtaining a Master's degree in one of the "enumerated list of subjects" between 2015 and 2017. A "key requirement" of the Position was a "Master's degree in finance or a Master's degree in a related subject such as: economics, computer science, mathematics, statistics, business administration (MBA)".

[32] The Applicant submits that the phrase “such as” is illustrative rather than exhaustive and the Posting does not have an “enumerated list of subjects”. I agree the words “enumerated list of subjects” is used by the Commission. While I agree with the Applicant that the list is illustrative, it is not open-ended. Any acceptable degree must be in a “related subject” to a Master’s degree in Finance. That is the plain reading of the whole sentence. Therefore, the listed degrees are illustrations of degrees the Bank considered related to a Master’s in Finance. In my view, nothing material turns on the Commission’s use of its word “enumerated.” Moreover, no procedural unfairness results from that word choice when the Decision is read as a whole as it must be.

[33] The Applicant also argued the Bank “is taking the rather bizarre position that a Master’s degree in computer science is more relevant to the advertised Analyst position than a Master’s degree from the University of Ottawa’s Graduate School of Public and International Affairs (GSPIA)”. I note the Applicant has a Master’s in Public and International Affairs.

[34] The Posting was part of the record before the Commission; the Applicant submits the Commission incorrectly interpreted the Posting, which, he says, shows the Commission did not consider the record before it when issuing the Decision. This is the basis of his procedural fairness argument.

[35] With respect there is no merit to the Applicant’s procedural fairness argument on the record in this case.

[36] I agree the duty of fairness requires that the process followed by the Commission to determine whether further inquiry is warranted must be fair, neutral and thorough: see for example *Desgranges v Canada (Administrative Tribunals Support Services)*, 2020 FC 315 [*Desgranges*], where Justice Kane states at paras 29 and 30:

[29] As noted in *Desgranges I*, the role of the Commission is to determine whether the complaint should be forwarded to the Tribunal (*Cooper v Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC), [1996] 3 SCR 854 [*Cooper*]; *Slattery v Canada (Human Rights Commission)*, 1994 CanLII 3463 (FC), [1994] 2 FC 574 at paras 14-15, 46 ACWS (3d) 923, aff'd [1996] FCJ No 385 (CA), 62 ACWS (3d) 761 [*Slattery*]; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paras 37-38, 144 ACWS (3d) 509). The Commission performs a screening function, not an adjudicative function.

[30] In *Georgoulas*, the Court provided an overview and summarised the relevant principles from the jurisprudence (including *Hughes v Canada (Attorney General)*, 2010 FC 837 at paras 30-34, 323 DLR (4th) 699 [*Hughes*]; *Cooper*; *Slattery*; *Sketchley*; *Bergeron v Canada (Attorney General)*, 2015 FCA 160, 474 NR 366; and, *Ritchie v Canada (Attorney General)*, 2017 FCA 114, 19 Admin LR (6th) 177), all of which apply equally in the present case. At para 87 of *Georgoulas*, the Court noted:

87 To summarize the relevant principles from the jurisprudence which have been applied in the present case:

- The role of the Commission is not adjudicative, rather the Commission's role is to decide if an inquiry into the complaint is warranted. The Commission's role is to assess the "sufficiency of the evidence before it" – in other words, it plays a screening role
- The Commission has broad discretion to determine whether further inquiry is warranted in the circumstances;
- The duty of procedural fairness requires that the process followed by the Commission to determine whether further inquiry is warranted must be fair, neutral and thorough;

- In assessing the thoroughness of the investigation, deference is owed to the decision-maker to assess the probative value of evidence and to decide whether to further investigate. Only fundamental issues need to be investigated; the Investigator need not refer to everything;
- The Commission has considerable latitude in the way that it conducts its investigations; and,
- An investigation into a human rights complaint cannot be held to a standard of perfection.

[Emphasis added]

[37] However, the Decision and Report show the Commission did thoroughly consider the record. The Court is not simply reviewing the short Decision of the Commission; it is doing that of course, but it is also reviewing the underlying Report, which, in a case like this, together with the Decision constitutes the decision under review. The two are reviewed together not in isolation: see *Sketchley v Canada (Attorney General)*, 2005 FCA 404 [Linden JA] at para 37; *Piché v. Canada (Attorney General)*, 2008 FCA 356 [Létourneau JA] at para 14; *Asghar v. Rogers Communications Inc.*, 2020 FC 951 [Diner J] at para 17; and *O’Grady v Bell Canada*, 2012 FC 1448 [Kane J] at para 12.

[38] The Report and Decision confirms the Investigator did in fact thoroughly consider the Applicant’s submissions. Indeed a great deal of the Report is gathered from the submissions of the Applicant when he made his Complaint and in his submissions replying to the Bank’s response to the Investigator’s request for input on the Complaint. The Report, for example, at paragraphs 35 and 36 quotes from material filed by the Applicant. In addition, paragraphs 37 and

38 of the Report are based on submissions made by the Applicant and the Bank, the Posting and the Applicant's application for the Position:

Documentary evidence

Key Requirements for Recent Graduate Analyst position

35. The job posting indicated that applicants needed to have graduated "(sic) between January 2015 and December 2017.

36. The additional key requirements for the position were as follows:

Education: Master's degree in finance or Master's degree in a related subject such as: economics, computer science, mathematics, statistics, business administration (MBA)

Language skills: English or French essential

Communication skills: excellent interpersonal skills and ability to clearly communicate information and ideas adapted to the target audience, using clear and compelling written and oral communications

Learning and development: ability to motivate yourself and demonstrate commitment to continuous learning and self development

Teamwork and collaboration: ability to develop positive working relationships by supporting team decisions, addressing conflicts and promoting cooperation and partnerships

Planning and organizing skills: ability to organize work effectively, setting priorities to ensure follow through and project completion in a timely manner and under tight deadlines

Innovation: capacity to create new insights, devise novel approaches and make innovative decisions

Research skills: ability to initiate and undertake in depth research projects

Analytical and technical skills:

- ability to analyze complex economic and financial issues, diagnose multidimensional problems and devise appropriate responses or strategies
- demonstrated interest in policy issues related to financial stability
- knowledge of policy issues related to financial systems, including key regulatory reforms under way
- ability to integrate specialized and complex areas of expertise, e.g., financial market analysis, economic analysis and regulatory issues analysis

Fields of study: courses in one or more of the following areas:

- macroeconomics
- microeconomics
- econometrics
- quantitative analysis
- finance

Analysis and Conclusion

37. The table below compares the essential qualifications of the Recent Graduate Analyst position and the complainant's qualifications as demonstrated in the documents he provided to the respondent in his application package: Cover letter, resume, and Master of Arts Public and international Affairs 2015 transcript.

Key Requirements for the Recent Graduate Analyst Position

Education: Master's degree obtained between January 2015 and December 2017 in Finance or in one of the following related fields:

- Economics,
- Computer Science,
- Mathematics,
- Statistics,
- Business Administration

Language skills: English or French essential

The complainant's qualifications

Master of Arts and Public and International Affairs obtained in 2015.

A Ph.D. in mathematics was obtained in 2012.

An M.SC. in Mathematics was obtained in 2007.

Application submitted in English

<p>Communication skills: excellent interpersonal skills and ability to clearly communicate information and ideas adapted to the target audience, using clear and compelling written and oral communications</p>	<p>Writing technical skills of composing briefing notes and writing memoranda (which)... requires that one decide what the critical and relevant information is, then one has to possess a writing style that can communicate a potentially large amount of information succinctly.</p>
<p>Learning and development: ability to motivate yourself and demonstrate commitment to continuous learning and self development</p>	<p>Not articulated in application</p>
<p>Teamwork and collaboration: ability to develop positive working relationships by supporting team decisions, addressing conflicts and promoting cooperation and partnerships</p>	<p>Not articulated in application</p>
<p>Planning and organizing skills: ability to organize work effectively, setting priorities to ensure follow through and project completion in a timely manner and under tight deadlines</p>	<p>Not articulated in application</p>
<p>Innovation: capacity to create new insights, devise novel approaches and make innovative decisions</p>	<p>Not articulated in application</p>
<p>Research skills: ability to initiate and undertake in depth research projects</p>	<p>Research positions as a policy analyst” (<i>sic</i>) including a study of Brazil's Africa policy over a period of 50 years. “I have skills which will be most useful in any research and that is to break the original problem into smaller and manageable parts. This also</p>

helps to more effectively plan and manage resources dedicated to complex projects.”

Analytical and technical skills:

- ability to analyze complex economic and financial issues, diagnose multidimensional problems and devise appropriate responses or strategies
- demonstrated interest in policy issues related to financial stability
- knowledge of policy issues related to financial systems, including key regulatory reforms under way
- ability to integrate specialized and complex areas of expertise, e.g., financial market analysis, economic analysis and regulatory issues analysis

Acquired through “background in Mathematics” and “it provides a certain clarity and a deliberate direction which in turn helps build a systematic approach to problem solving”.

“Able to use my mathematical knowledge to translate the quantitative results for those working in the policy world.” Previous work experience included various research assignments in an academic and / or private business environment in various fields ranging from financial and administrative data, foreign policy, and data reporting.

Fields of study: courses in one or more of the following areas:

- Macroeconomics
- Microeconomics
- Econometrics
- Quantitative Analysis
- Finance

The complainant states he was exempted from the following courses:

- Macroeconomic
- Microeconomics for Public Policy

The complainant did not have the other three required courses on his 2015 course transcript.

38. Based on the information above and the evidence gathered during the investigation process it appears that the complainant's lack of many of the essential qualifications required, and his failure to provide evidence in his resume and covering letter of any

academic focus on, or experience in matters relating to monetary policy, or to the stability of the financial system were the sole reasons for his lack of success.

[39] In conclusion, the Investigator found:

Summary

39. Based on the evidence gathered the complainant was not qualified for the advertised position and his failure to obtain the position is not linked to his race or national or ethnic origin.

[40] Furthermore, the Decision states the Applicant “provided information to correct what he perceives to be errors in the [Report]. Despite these perceived errors, it is clear the [Applicant] did not possess the essential qualifications of the position advertised”. This further establishes the Commission thoroughly considered the evidence in the Applicant’s submissions including the Bank’s explanations for rejecting his application, the perceived discrepancies in the Posting, statistics regarding the immigration status of other applicants of the Position, and the perceived mistakes of the Report. The Commission concluded these submissions did not amount to evidence that could support the Applicant’s claim that the failure to interview him was based on his race, national or ethnic origin.

[41] I understand the Applicant disagrees with the findings of the Commission and the Report, but disagreement with a result. That is not a procedural fairness argument.

[42] With respect, and given the above, there is no basis for his argument that the Commission did not thoroughly consider the record.

[43] The Applicant raised another basis for his argument that the Decision is unfair, namely that the Commission erred in stating the Applicant had “not provided any other evidence to support his claim that the failure to interview or hire him was based on his race, national or ethnic origin”. He argues he did provide sufficient evidence to the Commission.

[44] For the reasons just outlined, these submissions do not form the basis of a procedural fairness argument. The Applicant confuses his disagreement with findings by the Commission and the Investigator, with procedural unfairness.

[45] In summary, there is no merit to the Applicant’s procedural unfairness arguments.

B. *Reasonableness*

[46] The Applicant challenges several aspects of the Decision including whether it reasonably assessed his allegation of discrimination based on race, national or ethnic origin, and whether it reasonably concluded he lacked the essential qualifications of the job. I will discuss these now.

[47] The Applicant criticizes the Commission’s conclusion that he had “not provided any other evidence to support his claim that the failure to interview or hire him was based on his race or national or ethnic origin”. The Applicant asserts this is contrary to the evidence arguing he did provide relevant evidence but it was not considered by the Commission. Specifically he argues the Commission failed to review (i) the Bank’s contradictory explanations about why the application was rejected; (ii) the Posting provided to the Commission by the Bank which is different than the Posting that was actually posted; (iii) statistics regarding the immigration and

citizenship status of applicants who had been interviewed and subsequently hired for the Position; (iv) the “fields of study” requirement for the Position, or ignored some of the evidence presented (this in essence is his claim that he met the essential requirements of the job contrary to the findings of the Investigator and the Commission); and (v) the report from the Privacy Commissioner (which is inadmissible as new evidence before this Court).

[48] In brief, the Bank submits the Applicant did not provide any evidence of a link between the Applicant’s race, national or ethnic origin and the Bank’s decision not to offer the Applicant an interview. I agree.

[49] The Bank also says the Complaint was properly investigated and his application properly dismissed by the Commission in that the Commission reasonably concluded the Applicant did not have the essential qualifications of the Position. Again, and with respect, I agree with the Bank.

[50] I will discuss the Applicant’s five specific points raised as set out above.

[51] As to (i) I take the Applicant to assert that the Commission did not reasonably consider the fact that the Bank provided “four contradictory explanations as to why [his] job application was rejected”. He originally said this was part of procedural unfairness, which it is not. However, I will consider it here. The Bank said the responses provided by the Bank built on each other and were provided because the Applicant continued to request additional information about why his application was dismissed. With respect, I am not persuaded the Bank acted unreasonably in

answering the Applicant as it did in their exchange of multiple emails. There are minor inconsistencies but they build on each other. More importantly, the Bank's responses in my view inform the Applicant that his qualifications did not meet the "key requirements" threshold in respect of a recent Master's degree related to a Master's in Finance, and that other candidates were better qualified than the Applicant. There is no unreasonableness in this advice, being as it is consistent with the record before the Bank.

[52] In this connection, it is the potential employer (here, the Bank) that normally is entitled to decide who meets its required job qualifications: see *Lavigne v Canada (Justice)*, 2009 FC 684 [Shore J] at para 2; *MacAdam v Canada (Attorney General)*, 2014 FC 443 [Mosley J] at para 54. It is otherwise if the employer is discriminating on a prohibited ground, so the question of importance is: was there discrimination here? While the Applicant alleges discrimination sufficient to warrant a Tribunal hearing, it is not enough to allege discrimination; discrimination on a prohibited ground under the *Act* must be reasonably open and be shown on a personal level: *Desgranges* at paras 80-82; *Davidson v Canada (Attorney General)*, 2019 FC 877 [Elliott J] at para 35. I will address the Applicant's argument concerning his Master's in Public and International Affairs where it arises later in these Reasons.

[53] At this juncture, there is nothing to connect the exchange of emails and the statements to the Applicant's Complaint of discrimination on the basis of race, national or ethnic origin.

[54] Second, regarding (ii), the Applicant argues the Commission should not have used the wrong job qualifications, submitting the Bank supplied job qualifications to the Commission that

were different than the qualifications from the Posting the Applicant submitted. In my view, there is no merit to this allegation, because, in fact there was only one Posting reviewed by the Investigator and the Commission, namely the very Posting filed by the Applicant himself with his Complaint. Thus his argument proceeds on a factually incorrect basis. The Commission had the correct Posting before it. However, and with respect, even if the Bank reviewed the wrong Posting, which it did not, the discrepancies are immaterial. I say this because the Decision is based on the conclusion the Applicant did not possess a qualification that in fact was common to both of the Postings, namely, the requirement for a Master's degree in Finance or a related subject between 2015 and 2017.

[55] At the hearing, the Applicant advanced this argument to show bad conduct by the Bank. The Respondent explained the different Posting, which was before the Court on judicial review but not the decision-maker, was drawn from its internal database which had more information on it than the public Posting. This at best seems to be an innocent error; the record before the decision-makers contained the correct Posting which in my view is what matters on judicial review.

[56] Certainly at this juncture, there is nothing to suggest the Bank was discriminating against the Applicant on the basis of race, national or ethnic origin.

[57] As to (iii), the Applicant states that statistics regarding the immigration and citizenship status of applicants who had been interviewed and subsequently hired for the Position were not

sufficiently considered in the Report. The Respondent Bank, in its submissions to the Investigator said:

Based on aggregate statistics drawn from self-identification process in 2017, 23% of all Bank employees identified as visible minorities. In the Economics departments, where the Analyst position sought by Mr. Tazehkand was located the proportion of employees who identified as visible minorities is even higher, at 27%.

[58] The Applicant, in his reply to the above said:

Without more information, such as what percentage of overall applicants identify as visible minorities, the numbers above prove precisely nothing.

The present complaint provides a good example, I filed an *Access to Information* application, requesting the immigration statistics of job applicants as they moved through the various stages of the hiring process for the job posting I had applied to. The results show that Canadian citizens comprised less than 55% of overall applicants (267/487), yet they made up 80% (4/5) of the eventual hires.

[59] The Respondent submits that the Bank did not consider race, national or ethnic origin for any of its applicants in its hiring process, and responded to the Investigator stating:

In response to the statements in Mr. Tazehkand's complaint, the Bank would first note that it does not consider national or ethnic origin in its hiring process. Mr. Tazehkand has not provided any evidence that his national or ethnic origin was known to, or discussed by anyone involved in the hiring process.

[60] I have reviewed the record, and in my respectful view there is nothing in the record that identifies the Applicant's race, national or ethnic origin. The closest one can get to any of these factors is a question relating to a candidate's immigration status, to which the Applicant replied

permanent resident. The question was asked to assess the employability of the Applicant as in some cases an applicant's immigration status might preclude an ability to work in Canada. The Applicant's answer established he could.

[61] The Applicant was not personally interviewed,

[62] He was not asked, nor did he identify his race. Nor was he asked, nor did he identify his nationality or ethnic origin. In these respects, there is nothing on the record to base his personal allegation of discrimination on the basis of race, national or ethnic origin.

[63] Notwithstanding, the Applicant challenges the Commission's conclusion that "[t]he Complainant has not provided any other evidence to support his claim that the failure to interview or hire him was based on his race or national or ethnic origin."

[64] It appears the Applicant agrees with my description of the record. However, he argues I should nonetheless conclude he is the victim of discrimination on the basis of race, national or ethnic origin.

[65] In this he asks me to reweigh and reassess the evidence and find the Decision and the Report unreasonable. There are two problems with his request: first, there is no merit to this submission. Secondly, and in any event the Court is unable to find an exceptional circumstance to permit it to reweigh and reassess the evidence in this case.

[66] In this connection, the Applicant responded to the Report. He advanced the same arguments in response as he did before this Court. In his response to the Report he claimed:

Bank of Canada's online job application process requires that applicants declare their immigration status: whether they are Canadian citizens, permanent residents, or neither. Based on my application Bank of Canada knew I was not a Canadian citizen, and discrimination against those who are not citizens is by definition discrimination based on national origin.

In addition to my immigration status, the resume I submitted shows that I have a B.Sc. in mathematics from Sharif University of Technology which is located in Tehran, Iran.

Last fall I filed a *Privacy Act* request with Bank of Canada asking for all records and documents related to my person starting October 1, 2016. In its response Bank of Canada provided a total of three emails, which was surprising since I had at least two dozen email exchanges with Bank of Canada myself. As a result I filed a complaint with the Office of the Privacy Commissioner of Canada regarding Bank of Canada's grossly inadequate response, after which Bank of Canada provided me with nearly 150 pages of documents and many previously undisclosed emails. However, Bank of Canada has redacted a large portion of these emails by claiming solicitor-client privilege. In other words, Bank of Canada is claiming I have provided no evidence while withholding internal emails which potentially contain evidence.

[67] I am not persuaded the Commission and Investigator acted unreasonably. The Applicant's concerns were put before and rejected by the Investigator and the Commission. While it is possible the Bank could have determined that Sharif University of Technology is located in Tehran, Iran, there is no evidence the Bank did. It is noteworthy that his job application to the Position did not state the location of this university. There is nothing to suggest the Bank concluded anything about the Applicant's race, national or ethnic origin from any such a deduction.

[68] I also note the Applicant in his covering letter to the Bank said he had also lived in Iran, Austria and Turkey. But again, there is nothing to link these nations with the Applicant's race, national or ethnic origin. We simply do not know what his race, national or ethnic origins are. I am not persuaded the Bank had knowledge of the Applicant's race, national or ethnic origin. Again, and to this point in the analysis I am not persuaded the record supports a claim of discrimination based on race, national or ethnic origin such as to reasonably warrant the Commission sending the matter to the Tribunal.

[69] Further, this extremely speculative line of argument, untethered to the record, invites the Court to reassess and reweigh the evidence before the decision-maker and determine that his Master's in Public and International Affairs met the Posting's key requirement of a Master's degree relating to a Master's degree in Finance. The Investigator and Commissioner found otherwise.

[70] The Supreme Court of Canada has repeatedly and most recently in *Vavilov* instructed reviewing courts, absent exceptional circumstances, not to reassess and reweigh the evidence. Yet, and with respect, it seems to me this is exactly what the Applicant asks me to do. But I am unable to find any exceptional circumstances. *Vavilov* at para 125 states: “[i]t is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from ‘reweighing and reassessing the evidence considered by the decision maker’”, citing to the following passage in *Canada (Canadian Human Rights Commission v. Canada (Attorney General)*, 2018 SCC 31:

[55] In reasonableness review, the reviewing court is concerned mostly with “the existence of justification, transparency and intelligibility within the decision-making process” and with determining “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court’s preferred solution.

[Emphasis added]

[71] Applying these reasons to this case, I am not persuaded the Decision or Report are unreasonable in their finding that the Applicant was not discriminated against on the basis of race, national or ethnic origin. Simply put, at this juncture as well, there is no evidence on which to base the allegation and no exceptional circumstances reasonably require this Court to reweigh and or reassess the record.

[72] I also note this argument was squarely put to and rejected by the Investigator and the Commission itself: see *Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574 [Nadon J] (failure to consider only the most crucial of evidence will warrant judicial intervention and only when the parties have not already had an opportunity to rectify the omission); *Sketchley v Canada (Attorney General)*, 2005 FCA 404 [Décary, Linden and Sexton JJA] (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).

[73] As to (iv), the Applicant submits that the Commission either misread the “fields of study” requirement for the Position, or ignored some of the evidence presented. Again with respect, I disagree. The Report shows that the Commission reasonably read and understood the Posting as requiring a course in one or more of a list of study areas that was listed as an essential qualification for the Position; both in my view reasonably concluded that the Applicant lacked a “key requirement” (the language of the Posting) or “essential qualification” (the language of the Decision) of the job, which key requirement or essential qualification (Master’s related to Finance) was clearly set out in the Posting.

[74] In a nutshell, the Bank at least in my respectful view, reasonably determined that the Applicant’s Master’s in Public and International Affairs was not sufficiently related to a Master’s degree in Finance to qualify him for the position.

[75] The Applicant disagrees, He submits his Master’s degree in Public and International Affairs is related to a Master’s degree in Finance.

[76] Indeed the Applicant went so far as to state the Bank “is taking the rather bizarre position that a Master’s degree in computer science is more relevant to the advertised Analyst position than a Master’s degree from the University of Ottawa’s Graduate School of Public and International Affairs (GSPIA)” when given the chance to review the Report before it was sent to the Commission.

[77] The Commission rejected his submissions.

[78] I am not persuaded of any unreasonableness in the Bank's handling of this argument. It was for the Bank in the first instance, without prohibited discrimination, to determine if the Applicant had the needed qualifications. The debate repeatedly pressed by the Applicant that his Master's in Public and International Affairs was sufficiently related to a Master's degree in Finance is a fact driven determination. As such, it was a determination for the Bank to make, unless tainted by unlawful discrimination as the Applicant argues.

[79] The Applicant asks me to reweigh and reassess the evidence, and find that his degree was sufficiently related to a Master's degree in Finance to render the Bank's assessment unreasonable. For the reasons noted above, I have concluded this Court should not engage in reassessing and reweighing the record, unless there are exceptional circumstances. I am unable to see any exceptional circumstances on this branch of the Applicant's submissions any more than on his previous submissions: see *Vavilov* at para 125, citing to the following in *Canada (Canadian Human Rights Commission v. Canada (Attorney General)*, 2018 SCC 31:

[55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.

[Emphasis added]

[80] The Commission and the Investigator once again specifically address his concerns and rejected them. In this respect, the Investigator's Report went into considerable detail. As set out earlier, the Report for example at paragraphs 35 and 36 quotes from material filed by the Applicant. Paragraphs 37 and 38 of the Report are based on submissions made by the Applicant and the Bank, the Posting and the Applicant's job application:

Documentary evidence

Key Requirements for Recent Graduate Analyst position

35. The job posting indicated that applicants needed to have graduated "(sic) between January 2015 and December 2017.

36. The additional key requirements for the position were as follows:

Education: Master's degree in finance or Master's degree in a related subject such as: economics, computer science, mathematics, statistics, business administration (MBA)

Language skills: English or French essential

Communication skills: excellent interpersonal skills and ability to clearly communicate information and ideas adapted to the target audience, using clear and compelling written and oral communications

Learning and development: ability to motivate yourself and demonstrate commitment to continuous learning and self development

Teamwork and collaboration: ability to develop positive working relationships by supporting team decisions, addressing conflicts and promoting cooperation and partnerships

Planning and organizing skills: ability to organize work effectively, setting priorities to ensure follow through and project completion in a timely manner and under tight deadlines

Innovation: capacity to create new insights, devise novel approaches and make innovative decisions

Research skills: ability to initiate and undertake in depth research projects

Analytical and technical skills:

- ability to analyze complex economic and financial issues, diagnose multidimensional problems and devise appropriate responses or strategies
- demonstrated interest in policy issues related to financial stability
- knowledge of policy issues related to financial systems, including key regulatory reforms under way
- ability to integrate specialized and complex areas of expertise, e.g., financial market analysis, economic analysis and regulatory issues analysis

Fields of study: courses in one or more of the following areas:

- macroeconomics
- microeconomics
- econometrics
- quantitative analysis
- finance

Analysis and Conclusion

37. The table below compares the essential qualifications of the Recent Graduate Analyst position and the complainant's qualifications as demonstrated in the documents he provided to the respondent in his application package: Cover letter, resume, and Master of Arts Public and international Affairs 2015 transcript.

Key Requirements for the Recent Graduate Analyst Position	The complainant's qualifications
<p>Education: Master's degree obtained between January 2015 and December 2017 in <u>Finance</u> or in one of the following related fields:</p> <ul style="list-style-type: none"> ● <u>Economics,</u> ● <u>Computer Science,</u> 	<p>Master of Arts and Public and International Affairs obtained in 2015.</p> <p>A Ph.D. in mathematics was obtained in 2012.</p>

<ul style="list-style-type: none"> ● <u>Mathematics,</u> ● <u>Statistics,</u> ● <u>Business Administration</u> 	An M.SC. in Mathematics was obtained in 2007.
Language skills: English or French essential	Application submitted in English
Communication skills: excellent interpersonal skills and ability to clearly communicate information and ideas adapted to the target audience, using clear and compelling written and oral communications	Writing technical skills of composing briefing notes and writing memoranda (which)...requires that one decide what the critical and relevant information is, then one has to possess a writing style that can communicate a potentially large amount of information succinctly.
Learning and development: ability to motivate yourself and demonstrate commitment to continuous learning and self development	Not articulated in application
Teamwork and collaboration: ability to develop positive working relationships by supporting team decisions, addressing conflicts and promoting cooperation and partnerships	Not articulated in application
Planning and organizing skills: ability to organize work effectively, setting priorities to ensure follow through and project completion in a timely manner and under tight deadlines	Not articulated in application
Innovation: capacity to create new insights, devise novel approaches and make innovative decisions	Not articulated in application

<p>Research skills: ability to initiate and undertake in depth research projects</p>	<p>Research positions as a policy analyst” (<i>sic</i>) including a study of Brazil's Africa policy over a period of 50 years. “I have skills which will be most useful in any research and that is to break the original problem into smaller and manageable parts. This also helps to more effectively plan and manage resources dedicated to complex projects.”</p>
<p>Analytical and technical skills:</p> <ul style="list-style-type: none"> ● ability to analyze complex economic and financial issues, diagnose multidimensional problems and devise appropriate responses or strategies ● demonstrated interest in policy issues related to financial stability ● knowledge of policy issues related to financial systems, including key regulatory reforms under way ● ability to integrate specialized and complex areas of expertise, e.g., financial market analysis, economic analysis and regulatory issues analysis 	<p>Acquired through “background in Mathematics” and “it provides a certain clarity and a deliberate direction which in turn helps build a systematic approach to problem solving”. “Able to use my mathematical knowledge to translate the quantitative results for those working in the policy world.” Previous work experience included various research assignments in an academic and / or private business environment in various fields ranging from financial and administrative data, foreign policy, and data reporting.</p>
<p>Fields of study: courses in one or more of the following areas:</p> <ul style="list-style-type: none"> ● Macroeconomics ● Microeconomics ● Econometrics ● Quantitative Analysis ● Finance 	<p>The complainant states he was exempted from the following courses:</p> <ul style="list-style-type: none"> ● Macroeconomic ● Microeconomics for Public Policy <p>The complainant did not have the other three required</p>

	courses on his 2015 course transcript.
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38. Based on the information above and the evidence gathered during the investigation process it appears that the complainant's lack of many of the essential qualifications required, and his failure to provide evidence in his resume and covering letter of any academic focus on, or experience in matters relating to monetary policy, or to the stability of the financial system were the sole reasons for his lack of success.

[81] In conclusion, the Investigator found:

Summary

39. Based on the evidence gathered the complainant was not qualified for the advertised position and his failure to obtain the position is not linked to his race or national or ethnic origin.

[82] I am not persuaded this analysis is unreasonable. Rather it appears to me the Investigator went to considerable lengths to address the concerns of the Applicant and did so in accordance with the constraining facts and law.

[83] Finally regarding (v), the Applicant says the Decision lacks thoroughness because in his view, the Commission dismissed his Complaint without the resolution of his complaints before the Privacy Commissioner.

[84] There is no merit to this submission. I have outlined why I did not accept new evidence in this respect, which evidence only arose after this judicial review was commenced. The Commission may not be faulted for not relying on material that was not put before it.

[85] Nor am I able to agree that the Commission should have adjourned pending a ruling by the Privacy Commissioner. I am unable to see anything unreasonable in the Investigator and Commission's decisions to proceed with the Report and Decision in a timely manner, without waiting for the results of other proceedings before a different decision-maker, which might involve appeals and delays.

[86] It is also relevant that the Applicant did not ask either the Commission or the Investigator to adjourn their work until the Privacy Commissioner made a decision.

[87] In any event, the Privacy Commissioner's decision concluded that because the information requested was later provided to the Applicant, the Privacy Commissioner considered "the matter **resolved**" [emphasis in original].

[88] I note the substance of another of the Applicant's argument is that the Bank warrants criticism and he should have the Decision set aside because of its allegedly "poor" conduct towards him. With respect, this criticism does not go to judicial review in the circumstances of this case, which involves a review on the standard of reasonableness of the record before the decision-maker. I agree with the Respondent which submits the Applicant did not identify to the Commission the nature or type of documents that could potentially be ordered by the Privacy Commissioner, and if they would be relevant.

[89] Instead, the Applicant argued, without any specificity, that it was possible that some documents could be disclosed. He asked the Commission and or the Investigator to speculate

what might result, but and with respect, equally might not. In *Desgranges*, Justice Kane, with whom I agree, at para 73 found that there is no duty on the Commission to consider evidence that has not been provided and which may not even exist:

[73] The Commission cannot be faulted for not considering statistical evidence that was not provided and which likely does not exist. Mr. Desgranges acknowledged that he did not know whether statistics existed, but argued that such statistics should have been gathered and considered. Mr. Desgranges has not demonstrated how statistics about the age of persons hired as LP-01 at ATSSC (which apparently only had one Senior Counsel and one counsel at the relevant time) would have been “obviously crucial evidence” for his complaint. Mr. Desgranges’ reliance on *Canada (Attorney General) v Walden*, 2010 FC 490 at paras 109-118, 368 FTR 85 [Walden], for the proposition that statistical evidence is useful for detecting discrimination overlooks other relevant passages in that decision, including that statistical evidence, on its own, is not sufficient to establish discrimination. There must be other evidence linking the complainant’s ground of discrimination with the alleged adverse treatment (*Canada (Human Rights Commission) v Canada (Minister of Social Development)*, 2010 FC 1135 at para 18, 194 ACWS (3d) 1222; *Stukanov v Canada (Attorney General)*, 2018 FC 854 at paras 17-18, 295 ACWS (3d) 823; *Davidson v Canada (Attorney General)*, 2019 FC 877 at para 35, 307 ACWS (3d) 587).

[90] The Applicant also claims the author of the Report “did not take their job seriously” because he or she did not probe into the essential qualifications of the Position that the Applicant states are not appropriate to a position for recent graduates. In *Desgranges*, this Court stated at para 74, that “the Commission has a wide degree of latitude in conducting investigations. The Investigator is not required to pursue every possible tangential or unrelated issue. The Investigation can be thorough without being exhaustive.” I agree and find no merit in this submission, particularly noting the findings of the Report at paras 80 and 81 above.

[91] To this point, I conclude the Decision bears the hallmarks of reasonableness and is justified in the context of the evidence before the Commission and legal constraints. It follows a rational chain of analysis and adds up.

[92] I should add that, in many respects, the Applicant invites the Court to impermissibly undertake a *de novo* analysis of the Commission's Decision; see *Vavilov* at para 125 and *Desgranges* at para 28.

C. *Conduct of the Respondent*

[93] The Applicant raised many allegedly "conduct" issues regarding decisions made by the Bank.

[94] For example, he criticizes the Bank for producing the Director as a witness when she was not the Bank employee who originally rejected his job application. The Applicant says the person who initially reviewed the job application should have been the witness. The Applicant further criticizes the blind review process that was conducted by the Bank after his initial complaint; the application was sent to the group responsible for the Position but was also sent to the economics department for an Economist position and it was the economics department's reasons for refusal that were relayed to the Applicant. Finally, the Applicant states that the Posting provided by the Bank contradicts the Posting provided by the Applicant.

[95] However, the real issue before the Court is the Decision and the record. I also agree that the Applicant's claim regarding the Bank's choice of affiant is an argument of witness preference

which is insufficient particularly since the Applicant did not allege that the Director was an improper or impermissible witness as he could have under the *Federal Courts Rules*, SOR/98-106. As to the Applicant's allegations regarding the Bank's process for reviewing his qualifications against the requirements of the Position, once again I do not see who this issue assists the Applicant in establishing he was discriminated on the basis of race, national or ethnic origin. Finally, as already determined, the Applicant's accusations that the Bank provided a different Posting is irrelevant because the Investigator had the proper Posting.

VI. Conclusion

[96] The Court has reviewed the submissions made by the Applicant as to both procedural unfairness and unreasonableness. I have found there is no breach of procedural fairness, and will dismiss the application for judicial review on that basis.

[97] I will do the same with respect to the unreasonableness arguments for the reasons outlined above.

[98] Standing back and reviewing the Decision of the Commission and the Report as a whole, remembering judicial review is not a treasure hunt for errors, and recognizing I am also to pay respectful attention to the Decision, I find the Decision is justified on the record, i.e., the facts of this case and the constraining law. In addition, the Decision is both transparent and intelligible. I am unable to see a break in what is a coherent and rational chain of reasoning, or any fatal error. In my respectful view, the facts lead directly to the Decision's conclusion that the Applicant lacked the essential qualifications for the Posting, and I agree there was no material evidence of

any discrimination on the basis of race, national origin or ethnic origin. In summary, the Decision adds up. The Applicant's complaints about poor conduct by the Bank do not advance his claim, nor do his issues with procedure. Therefore, the Application must be dismissed.

VII. Costs

[99] The parties made cost submissions at the end of the hearing as required. The Applicant asked for an all-inclusive cost award of \$1,000.00 if successful. The Respondent requested an all-inclusive award of \$2,500.00 if successful. In my view and discretion, costs should follow the event. In the circumstances of this case, and in my review, a reasonable award is that the Applicant should pay the Respondent \$2,500.00 as all-inclusive costs of this application.

JUDGMENT in T-816-19

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.
2. The Applicant shall pay to the Respondent the sum of \$2,500.00 as all-inclusive costs of this application.

"Henry S. Brown"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-816-19

STYLE OF CAUSE: HESAMEDDIN ABBASPOUR TAZEHKAND v BANK
OF CANADA

**HEARING HELD BY VIDEOCONFERENCE ON NOVEMBER 23, 2020 FROM
OTTAWA, ONTARIO (COURT) (PARTIES)**

JUDGMENT AND REASONS: BROWN J.

DATED: DECEMBER 30, 2020

APPEARANCES:

Hesameddin Abbaspour
Tazehkand

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Larissa Volinets Schieven

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Emond Harnden LLP
Barristers and Solicitors
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FOR THE RESPONDENT