

Federal Court



Cour fédérale

Date: 20210305

Docket: T-1694-19

Citation: 2021 FC 206

Ottawa, Ontario, March 5, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

NINA TRYGGVASON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Nina Tryggvason seeks judicial review of a decision by the Canadian Human Rights Commission [Commission] not to deal with her complaint because it was based on acts or omissions that occurred more than one year before the complaint was filed. The Commission found that Ms. Tryggvason had not provided a reasonable explanation for the delay in submitting her complaint.

[2] Ms. Tryggvason is a former employee of Transport Canada, where she says she experienced discrimination on the grounds of disability, religion, sexual orientation, marital status, and age, contrary to s 7 of the *Canadian Human Rights Act* [the Act]. She first contacted the Commission about the possibility of submitting a human rights complaint in 2010.

[3] By letter dated July 9, 2010, an Early Resolution Analyst with the Commission advised Ms. Tryggvason as follows:

Under section 41(1)(b) of the *Canadian Human Rights Act*, the Commission may refuse to deal with a complaint that can be dealt with, initially or completely, under another Act of Parliament. As an employee in the public service, you have the right under the *Public Service Labour Relations Act*, to file a grievance regarding the issues you raise. Consequently, the Commission will not accept a complaint at this time. You are encouraged to have your allegations of discrimination addressed through the grievance process. If your allegations have merit, that process will be able to provide you with a range of human rights remedies.

[...]

Please note that the Commission has not accepted a complaint at this time. If, after pursuing all of the procedures available to you, including adjudication, under the *Public Service Labour Relations Act*, you believe your allegations of discrimination were not addressed, you may contact the Commission again in order to file a complaint. You should do so within 30 days of being advised of a final decision with respect to your grievance. [Emphasis original.]

[4] With the help of her union, Ms. Tryggvason filed five grievances between December 29, 2009 and May 17, 2011 concerning the same subject matter as her proposed human rights complaint. She did not file any further grievances after May 17, 2011.

[5] All five grievances were either dismissed or withdrawn between May 4, 2010 and January 26, 2012. There were no active grievances after January 26, 2012.

[6] Ms. Tryggvason did not contact the Commission about proceeding with a human rights complaint until December 2015, almost four years after the last of her grievances was concluded. It was not until May 1, 2017 that the Commission received her complaint in the appropriate form.

[7] In July 2018, the Commission asked Transport Canada for its position on whether the human rights issues had been dealt with through another process, or alternatively its position on the allegations made in Ms. Tryggvason's complaint. On September 21, 2018, Transport Canada objected to the Commission dealing with the complaint under s 41(1)(d) of the Act, on the ground that the human rights issues had been addressed through another process. Transport Canada also questioned the timeliness of the complaint under s 41(1)(e) of the Act.

[8] On May 30, 2019, the Commission declined to deal with Ms. Tryggvason's complaint pursuant to s 41(1)(e) of the Act, because it was based on acts or omissions that occurred more than one year before the complaint was filed. The Commission also found that Ms. Tryggvason had not provided a reasonable explanation for the delay in submitting her complaint.

[9] Ms. Tryggvason represented herself in this application for judicial review. She submitted voluminous documentation, some in paper form and some electronic, much of which was never provided to the Commission.

[10] Subject to limited exceptions, none of which are applicable here, the evidentiary record before the Court in an application for judicial review is restricted to the evidentiary record that was before the decision-maker (*Mohamed v Canada (Citizenship and Immigration)*, 2015 FC 1379 at para 19, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19). The additional documentation provided by Ms. Tryggvason is therefore not admissible in this proceeding.

[11] The sole issue raised by this application for judicial review is whether the Commission reasonably exercised its discretion not to deal with Ms. Tryggvason's complaint because it was submitted outside the applicable time period.

[12] The Commission's decision is subject to review against the standard of reasonableness. This is a deferential standard. The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Syed v Canada (Attorney General)*, 2020 FC 608 at paras 35-36, citing *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100).

[13] The Act provides in s 41(1)(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

Irrecevabilité

41 (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle

of that complaint it appears to the Commission that:

[...]

(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 appropriate in the circumstances, before receipt of the complaint.

estime celle-ci irrecevable pour un des motifs suivants:

[...]

(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 la Commission estime indiqué dans les circonstances.

[14] An officer with the Commission [Officer] prepared an investigation report on November 13, 2019, and recommended that the Commission not deal with Ms. Tryggvason's complaint under s 41(1)(e) of the Act. When the Commission adopts an investigator's recommendations and provides no reasons or only brief reasons, the Court may treat the investigator's report as constituting the Commission's reasoning (*Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 37).

[15] The Officer wrote to Ms. Tryggvason on December 20, 2018, and requested that she "[p]lease explain why you waited until late December 2015 – early January 2016 to contact the Commission asking to reactivate your complaint when the union withdrew the above-noted grievances in January 2012." Ms. Tryggvason did not respond to this request.

[16] One of Ms. Tryggvason's allegations was that in 2013, Transport Canada tried to force her to attend the workplace to sign exit paperwork. It does not appear that Ms. Tryggvason submitted a grievance in respect of this allegation. Giving Ms. Tryggvason the benefit of the doubt, and assuming the date of the last alleged act of discrimination to be the last day of

December 2013, the Officer concluded that Ms. Tryggvason should have submitted her complaint by December 31, 2014.

[17] Ms. Tryggvason did not submit a complaint in a form acceptable to the Commission until May 1, 2017, more than two years after the time in which to do so had expired. The Officer acknowledged that the additional delay in submitting a complaint in an acceptable form was not solely attributable to Ms. Tryggvason. However, even if one disregards the delay between Ms. Tryggvason's request to proceed with her complaint in December 2015 and the date when she submitted a complaint in an acceptable form, her complaint was still out of time by almost one year.

[18] When Ms. Tryggvason first spoke to the Commission about the possibility of submitting a human rights complaint in 2010, she was told that she should contact the Commission within 30 days of a final decision with respect to her grievances. The last of Ms. Tryggvason's grievances was dismissed or withdrawn on January 26, 2012. She provided no explanation to the Commission for waiting until December 2015, almost four years later, to contact the Commission about proceeding with her human rights complaint.

[19] Ms. Tryggvason says that, due to difficult circumstances in both her professional and personal life, she was unable to communicate effectively with the Commission during the relevant time. She says that she does not recall being asked to provide an explanation for the delay in proceeding with her human rights complaint.

[20] The record before this Court does not indicate that Ms. Tryggvason provided any explanation to the Commission for the delay in submitting her human rights complaint. I therefore conclude that the Commission's decision not to deal with Ms. Tryggvason's complaint under s 41(1)(e) of the Act was reasonable.

[21] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1694-19

STYLE OF CAUSE: NINA TRYGGVASON v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN VANCOUVER, BRITISH COLUMBIA AND OTTAWA, ONTARIO

DATE OF HEARING: MARCH 3, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MARCH 5, 2021

APPEARANCES:

Nina Tryggvason
(on her own behalf)

FOR THE APPLICANT

Malcolm Palmer

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT