

Federal Court



Cour fédérale

Date: 20240522

Docket: T-1004-23

Citation: 2024 FC 773

Ottawa, Ontario, May 22, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

CHRISTOPHER PRIEST

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Christopher Priest, worked for the Canada Revenue Agency (CRA) as a Research Technology Advisor in the Scientific Research and Experimental Development (SR&ED) program. In the fall of 2020, about two years before Mr. Priest retired, the CRA posted a notice of a job opportunity as a Research and Technology Manager. Mr. Priest applied for the position, but his application was screened out at an early stage because he did not meet the minimum education requirements. Mr. Priest believes he was treated arbitrarily and his

application was screened out due to an education requirement that discriminated against him based on his age.

[2] According to CRA staffing policies, the recourse available to Mr. Priest was to submit a request for individual feedback to the manager responsible for the staffing process. Mr. Priest did so. The hiring manager, Nicholas Benton Kearney (Manager), met with Mr. Priest, considered his request, and issued an individual feedback decision stating that the education requirement did not discriminate based on age. Mr. Priest successfully challenged that decision in a previous application for judicial review and the matter was returned for reconsideration: *Priest v Canada (Attorney General)*, 2022 FC 1598 [*Priest*]. On reconsideration, the Manager concluded that Mr. Priest had not been treated arbitrarily in the assessment of education credentials and the education requirement did not discriminate based on age. In this proceeding, Mr. Priest seeks judicial review of this second individual feedback decision (Decision).

II. Background

[3] Mr. Priest became a Research Technology Advisor in 2009. The position was categorized as a CO-02 position, with CO being the code for the commerce occupational group and 02 being the level. When new minimum education requirements were implemented in 2019, Mr. Priest no longer met the minimum requirements for his position and he was granted “acquired rights”. Mr. Priest’s acquired rights letter stated that, as a permanent incumbent of a CO position, he was deemed to meet the new minimum education standard “**for your group and level only**, based on your education, training, and/or experience” [emphasis in original].

[4] The posted Research and Technology Manager position that Mr. Priest applied for was a higher-level position in the same group, categorized as CO-03. Despite the different levels, both positions had the same education requirement, namely, CRA's "minimum education standard for CO". In 2020, the minimum education standard for CO positions was:

A postgraduate degree from a recognized postsecondary institution with an acceptable specialization in a field of science or engineering relevant to the Scientific Research and Experimental Development (SR&ED) Program. Candidates possessing a bachelor's degree in engineering or computer science with an acceptable combination of education, training and/or experience will be considered as meeting the standard.

[5] Candidates applying for the Research and Technology Manager position were required to describe their education credentials in their application. There is no dispute that Mr. Priest does not have a postgraduate degree or a bachelor's degree in engineering or computer science. He has a bachelor's degree from McMaster University in biology. However, Mr. Priest states the CRA hired him in 2009 based on his computer science credentials, not his biology credentials. He states he does not have a degree in computer science because, when he graduated in 1975, university degrees in computer science did not exist. Mr. Priest states he took the computer science courses that were available at McMaster, and after graduating, he completed several computer science training courses and acquired decades of teaching and job experience in the field.

[6] Mr. Priest submitted a request for accommodation with his application for the posted position. He claimed that the minimum education requirements discriminated against him based on age and he requested accommodation by adjusting the requirements or applying acquired

rights. He pointed out that he was deemed to meet the computer science requirements of the advisor position and the requirements for the manager position were the same.

[7] On November 19, 2020, Mr. Priest learned that the staffing board had screened him out of the hiring process because he did not meet the minimum education requirement for a CO-03 level position. Under CRA's policies, the recourse for being screened from a staffing process was to request individual feedback. Mr. Priest was told he could request individual feedback if he believed he had been treated arbitrarily at the stage of screening for prerequisites.

[8] On December 3, 2020, Mr. Priest submitted a request for individual feedback, stating:

I am not being considered further due to an education requirement that discriminates on the basis of age. Per the duty to accommodate on CRA webpage...[CRA] employees and candidates for employment can request an accommodation to reduce or eliminate barriers related to the prohibited grounds of discrimination. A manager's duty to accommodate is a legal obligation outlined in the Canadian Human Rights Act and the Employment Equity Act. This places the responsibility on the hiring board. The hiring board in applying the education policy accedes to arbitrary and discriminatory treatment.

The Commissioner has also advised that employee recourse procedures for staffing matters are provided under the CRA's Staffing Program in the form of Individual Feedback. Again placing the responsibility on the hiring board. The board is asked to modify the [job notice] to use the CS wording for computer personnel as was requested in the accommodation request and include Mr. Priest in the pool. The board is requested to cease placing discriminatory [job notices].

[9] CS is the code for the computer systems occupational group. Mr. Priest asked the board to use "the CS wording" because the minimum education standard for the CS group would

recognize a degree or diploma in computer science, information technology, or a related specialization, or any degree plus three years of information technology experience.

[10] As part of the individual feedback process, Mr. Priest discussed his request with the Manager and sent emails providing additional information. The Manager issued a decision on January 7, 2021. The Manager determined that reducing the minimum education requirements was not a required accommodation and “the treatment of the minimum education standard was not arbitrary or discriminatory”.

[11] As noted above, Mr. Priest successfully challenged the January 2021 decision. In *Priest*, the Court found that the core complaint in Mr. Priest’s request for individual feedback was that rules that apply equally to everyone can be discriminatory where they have an effect or impact of disadvantaging a particular group, and the minimum education requirement that was applied to screen him out of the CO-03 competition was a rule that resulted in adverse effect discrimination based on age. The Court concluded that the Manager’s decision was unreasonable because it did not address the core complaint and the record did not indicate whether the decision maker had considered it. The matter was remitted for reconsideration.

[12] In the second Decision, the Manager stated that, following *Priest*, he had further considered the issues Mr. Priest raised during individual feedback. The Manager stated he spoke with Mr. Priest in February 2023 and considered the materials filed in *Priest* as well as documents Mr. Priest provided in February 2023. The Decision outlined the CRA’s policies, including the policies on acquired rights, and the requirements of the CO-03 manager position. It addressed Mr. Priest’s submissions regarding the education standards for CS positions and

explained that CRA programs were available to provide educational assistance to achieve career advancements.

[13] The Decision also stated:

9. With regard to the claim of adverse effect discrimination based on age resulting from the use of minimum education standard, you have claimed that the requirement of a Computer Science degree has the effect of discrimination based on age as such degrees were not available when you attended university. The CO education standard in the October 20, 2020 Staffing Program-Procedures Policy states that the minimum requirement is a graduate degree in a field of physical sciences or computer science or engineering and not a more restricted standard of a Computer Science degrees [*sic*] as you have indicated. As a result of [*sic*] the CO education standard is broadly open to all current and past physical sciences masters degrees and does not impose a restriction based on age or when the education credential was obtained. The application of the minimum education policy does not create an intentional or unintentional distinction based on age.

10. You indicated that the requirement of a computer science degree resulted in an adverse affect [*sic*] based on age. None of the twenty five applicants to the staffing process are recipients of a Computer Science Degree as they have a variety of educational backgrounds. Additionally, none of the eleven CO-03, Research and Technology Managers, currently in SR&ED in the Ontario Region hold a Computer Science Degree. Four of the twenty five applicants to the subject staffing process are similar in age as you and attended their undergraduate degree programs during the 1970s as you had. Their applications were accepted into the staffing process as a result of their completion of a masters degree or PhD in their chosen fields. An additional four applicants were similarly accepted in the staffing process that undertook their undergraduate studies in the early to mid 1980s and subsequently completed graduate level degrees in a variety of fields of science.

11. Your application was one of twenty five applications in the staffing process and one of two applications that identified a Bachelor of Science degree as the highest obtained education level. Your degree was issued in 1975 and the other applicant's degree was issued in 2017. The decision to remove both applicants from the process was based on the fact that a Bachelor of Science Degree did not meet the CO minimum education standard in the

October 20, 2020 Staffing Program-Procedures Policy. The decision to remove these two applications was not influenced by age or when the degree was issued but on the basis that the level of your highest degree was not a masters degree as outlined in the CO minimum education standard for the position.

12. The staffing process at issue, for a CO-03 position, would constitute a promotion given that your position was at the CO-02 group and level. Although I also read the cases you had provided in support of your [individual feedback] request, I did not find that they supported a request to accommodate minimum education standards beyond the applicant`s current role.

[14] The Manager concluded that Mr. Priest was not treated arbitrarily in the assessment of his education credentials, the application of the CO education standards in the staffing process at issue did not discriminate based on age, and in any event, “a reasonable explanation exists for the need for the education standard applied in light of business requirements for the job”.

III. **Issues and Standard of Review**

[15] The issues on this application are whether the individual feedback process was procedurally fair and whether the Decision was reasonable.

[16] Mr. Priest’s allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The duty of procedural fairness is “eminently variable”, inherently flexible, and context-specific: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*], citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 22-23, 174 DLR (4th) 193 [*Baker*], among other cases. An applicant must have had a meaningful opportunity to present their case and to have it fully

and fairly considered: *Baker* at para 32. The central question is whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[17] A reasonableness standard applies when reviewing the substance of the Decision. The reasonableness standard is a deferential but robust form of review: *Vavilov* at paras 12-13, 75, 85. In applying the reasonableness standard, the reviewing court determines whether a decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

IV. **Evidentiary Issues**

[18] As a preliminary matter, the respondent and Mr. Priest raise issues with each other's affidavit evidence.

[19] The respondent submits that parts of Mr. Priest's affidavit should be struck out because: (i) paragraph 20 attempts to supplement the record with documents that were not in the affidavit Mr. Priest served on the respondent; (ii) paragraphs 2-4 and 25-26 contain information and documents that the Manager did not have when he made his Decision; and (iii) paragraphs 7 and 25 are speculative, opinion evidence, and/or legal argument.

[20] The respondent relies on an affidavit from the Manager. Mr. Priest submits the affidavit should be struck out. Mr. Priest states he wanted to name the CRA as a respondent, but was told that the tribunal should not be a respondent. He states the CRA has not asked for and does not have standing before the Court, and the role of an administrative tribunal whose decision is at issue should be limited to an explanatory role with reference to the record: *Northwestern Utilities Ltd v Edmonton (City)*, [1979] 1 SCR 684 at 709, 89 DLR (3d) 161 [*Northwestern Utilities*]. In addition, Mr. Priest submits that parts of the Manager's affidavit should be struck out because of the content. He states paragraphs 1-17 provide no new information that is of use to the Court and paragraph 17 relates to events that occurred before the Manager was hired, so it is also objectionable because it is not based on first hand knowledge. Mr. Priest states paragraph 18 is argument, and paragraphs 20 and 23 attempt to justify the Manager's actions or augment the reasons for his Decision.

[21] The respondent counters that the CRA has standing by virtue of section 69 of the *Canada Revenue Agency Act*, SC 1999, c 17 [*CRA Act*]. The respondent states the Manager was directly involved in the individual feedback process and his affidavit attests to facts within his knowledge.

[22] Beginning with Mr. Priest's affidavit, I find that paragraphs 2-4, 7, and 25-26 should be struck out. As a general rule, the record on judicial review is limited to the record that was before the administrative decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19; see also *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 86. In my view,

paragraphs 2-4, 7, and 25-26 of Mr. Priest's affidavit provide evidence that was not part of the record before the Manager and the evidence is not admissible as an exception to the general rule. Specifically, paragraphs 2-4 of Mr. Priest's affidavit do not relate to the Decision or the hiring process at issue and are not relevant, paragraph 7 is legal argument, and paragraphs 25-26 relate to matters that post-date the Decision.

[23] Paragraph 20 of Mr. Priest's affidavit should not be struck out. Contrary to the respondent's argument, paragraph 20 does not attach any documents and the respondent has not filed evidence demonstrating that the affidavits Mr. Priest served and filed are different. Paragraph 20 states that Mr. Priest provided certain documents to the CRA in advance of the reconsideration and this evidence is relevant to a procedural fairness argument. I note that the Manager acknowledged receiving the documents in question.

[24] Turning to the Manager's affidavit, I disagree with the respondent that the Manager's evidence is admissible because section 69 of the *CRA Act* gives the CRA standing to respond. Section 69 states that actions, suits, or other legal proceedings in respect of any right or obligation acquired or incurred by the CRA may be brought or taken by or against the CRA in its own name. It does not say that the CRA has standing to respond as a non-party in a judicial review proceeding that challenges a CRA decision. In any event, assuming the CRA is entitled to respond, there would be limits to its role: *Northwestern Utilities* at 708-711; see also *Ontario (Energy Board) v Ontario Power Generation Inc*, 2015 SCC 44 at paras 41-72.

[25] Paragraphs 4-13, 20, and 22-23 of the Manager's affidavit provide some background information and facts that can be confirmed by documents in the parties' records, but the paragraphs also provide irrelevant information, attempt to buttress the Decision, or explain the Manager's knowledge of the requirements of CO-03 level roles and his expertise in staffing decisions. In my view, the Manager should not supplement the Decision through an affidavit in this proceeding. Paragraphs 4-13, 20, and 22-23 are struck out because the evidence is unnecessary, irrelevant, and/or improper.

[26] Paragraphs 16-18 of the Manager's affidavit respond to paragraphs of Mr. Priest's affidavit that have been struck out. These paragraphs will also be struck out.

[27] Paragraphs 1-3, 14-15, 19, and 21 of the Manager's affidavit are general opening/closing paragraphs or they respond to procedural fairness issues Mr. Priest raised. In my view, these paragraphs are admissible.

V. Analysis

[28] The CRA is governed by its own statute that allows it to establish employment policies: *CRA Act*, s 54; *Priest* at para 7; see also *Canada (Attorney General) v Gagnon*, 2006 FC 216 at para 18. CRA's staffing processes are governed by three main policies: *Policy on the Staffing Program*, *Procedures for Staffing (Staffing Program)* [Staffing Procedures], and *Procedures for recourse on staffing (Staffing Program)* [Recourse Procedures]. Appendix A to the Staffing Procedures requires that candidates applying for positions meet certain education requirements,

known as the “minimum education standard”, subject to any exception for those with acquired rights.

[29] Individuals who are dissatisfied with decisions made in staffing processes have the right to recourse. Recourse is intended to address an employee’s concerns of arbitrary treatment as a result of a staffing decision: Recourse Procedures, s 4.2. The type of recourse available depends on the stage of the staffing process: Recourse Procedures, s 5.2.2 and Appendix A. For screening decisions, the recourse is individual feedback and the hiring manager responsible for the hiring decision conducts the individual feedback: Recourse Procedures, Appendix A and s 5.9.3.

[30] The CRA also has policies on discrimination and harassment. The Discrimination and Harassment Centre of Expertise (DHCE) handles discrimination complaints in accordance with the *Discrimination and Harassment Resolution Process* policy.

A. *Was the individual feedback process procedurally fair?*

[31] Mr. Priest submits the individual feedback process was procedurally unfair and he has been denied the right to be heard.

[32] First, Mr. Priest states the CRA is using the limitations of the individual feedback process to deny resolution of the root issue of discrimination. He states he pursued multiple avenues of redress, and he was referred to the process of individual feedback because his complaint was a staffing matter and the recourse for staffing matters is to submit a request for individual feedback

to the manager responsible for the staffing process. Mr. Priest relies on the Court's statement in *Priest* that "someone in authority at the CRA must examine Mr. Priest's complaint that he has experienced adverse effect discrimination based on his age, by being screened out of the CO-03 competition because he did not meet the education requirements": *Priest* at para 91. He contends the reviewer with appropriate authority to decide his case would be someone at the level of a CRA Commissioner or Deputy Commissioner. Although he prepared a presentation for the Commissioner and asked the Commissioner's office to address his complaint, he did not receive a reply. Mr. Priest asks this Court to remit the matter to the CRA for reconsideration with a clear statement that there must be a *de novo* hearing before a new decision maker with full authority to decide the issues and a requirement that the CRA prepare an enforceable, time-limited plan for resolution.

[33] Second, Mr. Priest states he sent the presentation he prepared for the Commissioner as well as his memorandum of fact and law from *Priest* to the Manager, but these documents are not found in the certified record. Mr. Priest argues this represents a fatal error: *Akram v Canada (Citizenship and Immigration)*, 2018 FC 1105 at para 21 [*Akram*].

[34] Third, Mr. Priest submits the *CRA Guide for the investigation of discrimination and harassment* [DH Investigation Guide] provides a process of investigating complaints of discrimination, and the Manager should have applied that process or called for an investigation under the DH Investigation Guide.

[35] The respondent submits the allegations of procedural unfairness are without merit. Mr. Priest asked to be exempted from the minimum education requirement for an employment position and the individual feedback process was the proper process to canvass why his request was not granted. Mr. Priest's matter did not have to be addressed by someone other than the Manager. The Recourse Procedures specifically state that the manager responsible for the staffing decision must conduct the individual feedback and this Court has found that a hiring manager is well placed to conduct the assessment: *Anderson v Canada (Customs and Revenue Agency)*, 2003 FCT 667 at paras 48-49 [*Anderson*].

[36] The respondent submits the Recourse Procedures outline the individual feedback process, the Manager followed that process, and the Manager offered the remedies that were authorized by the Recourse Procedures. The respondent states the Manager complied with this Court's reasons in *Priest* by specifically addressing whether Mr. Priest experienced adverse effect discrimination because of the education requirement. Had discrimination been found, the *CRA Directive on Harassment and Discrimination* would have provided a mechanism to modify the education standard.

[37] The respondent contends the procedural fairness requirements were met. Mr. Priest was informed why he was screened out of the staffing process and he had a full opportunity to present his case as to why he believed this was done arbitrarily, which was all that was required: *Anderson* at paras 47-51.

[38] In my view, Mr. Priest has not established a breach of procedural fairness. Having considered the parties' arguments and the CRA's policies included in the record, in my view the Manager followed the policies for conducting individual feedback and reconsidered Mr. Priest's matter in a procedurally fair manner.

[39] In *Priest*, Mr. Priest raised a similar issue of whether individual feedback is the proper avenue for resolving a complaint that a policy is discriminatory, including whether his matter should be returned to individual feedback or whether the appropriate level is the Commissioner or Deputy Commissioner. However, the Court did not return the matter on this basis. The Court noted that the application before it was one for judicial review of the individual feedback decision and not other processes Mr. Priest had engaged in relating to his situation. While the Court recognized that Mr. Priest felt a sense of frustration about not getting the answers he sought, the evidence filed and conclusions reached in other processes were not pertinent, other than as background context to the individual feedback decision under review. The Court reformulated the questions before it as being (i) whether the individual feedback process was fair to Mr. Priest in all of the circumstances, and (ii) whether the individual feedback decision was unreasonable. Ultimately, the Court dismissed the procedural fairness aspect of Mr. Priest's claim, but found the decision was unreasonable because the Manager's reasons did not satisfy the minimum requirement of responsiveness under *Vavilov*.

[40] On reasonableness, the Court stated:

[88] ...While a formalistic or legalistic discussion of Mr. Priest's complaint was not required, the decision, amplified by the record, needed to demonstrate that the hiring manager considered his claim of adverse effect discrimination based on age

and examined his request for accommodation to eliminate the unjust treatment. If the evidence of discrimination was found to be lacking, or otherwise insufficient, that needed to be stated. Instead, the decision mentions that the rule was applied to everyone, and repeats the blanket statement attributed to the expert at DHCE that education rules do not discriminate based on age. That does not justify the outcome, as *Vavilov* requires.

[89] For these reasons, I find the decision to be unreasonable. This finding is grounded in the particular facts of this case, and any future challenge to an Individual Feedback decision will rest on the particular facts in those circumstances. I emphasize that this decision should not be understood as imposing an elevated standard for such decisions; in most cases, a summary of the discussion and an indication why the outcome was reached will suffice. It bears repeating that this was an unusual situation because of the way in which Mr. Priest framed and explained his arguments, which called for a correspondingly detailed and specific explanation of the outcome.

[90] The application for judicial review is granted. The Individual Feedback decision is quashed, and the matter is remitted back for reconsideration.

[91] In sending the matter back, and recognizing the passage of time, I would simply underline the core requirement – someone in authority at the CRA must examine Mr. Priest’s complaint that he has experienced adverse effect discrimination based on his age, by being screened out of the CO-03 competition because he did not meet the education requirements. If that contention is accepted, the question of how to accommodate Mr. Priest, and whether any other redress is required, is a matter for the CRA to consider, in light of all of the circumstances, Mr. Priest’s requests, and the relevant jurisprudence on those questions.

[41] While the Court stated that “someone in authority” must examine Mr. Priest’s complaint, the Court did not state that the individual feedback process was itself inappropriate or unfair in the circumstances, and it did not require someone other than the Manager to address the matter on reconsideration.

[42] Mr. Priest contends that issues of discrimination should supersede staffing policies and the individual feedback process is inappropriate for deciding human rights issues. Other processes may be available, but it is not the Court's role on this application to decide whether another process is more suitable or to direct the CRA to consider Mr. Priest's matter through a different process. As in *Priest*, the issues before the Court in this proceeding relate to the individual feedback process, and the Recourse Procedures explicitly state that the manager responsible for the staffing decision must conduct the individual feedback discussion: Recourse Procedures, ss 5.9.3-5.9.4.

[43] Mr. Priest submits the Manager should have called for an investigation under the DH Investigation Guide. However, the Manager did not agree with Mr. Priest that the staffing process discriminated against him based on his age. I am not persuaded that the Manager failed to apply the proper process or that he violated principles of procedural fairness by not calling for an investigation under the DH Investigation Guide.

[44] With respect to the documents that are missing from the certified record—Mr. Priest's presentation to the Commissioner and an estimate of lost income—it is not clear to me that Mr. Priest was entitled to have the Manager address these materials as part of the individual feedback process. Mr. Priest prepared the materials because, in his view, someone at the level of the Commissioner or Deputy Commissioner was the appropriate level of authority to consider his complaint. However, the individual feedback process outlined in the CRA's policies is conducted by a manager. The process centres around an "Individual Feedback – Request and Response" form and the manager is required to address the employee's concerns identified on

the form. The Court's decision in *Priest* did not state that Mr. Priest was entitled to submit additional materials.

[45] In any event, Mr. Priest relies on *Akram* for the principle that a decision should be overturned where a document submitted by an applicant is not in the certified record and it is unclear whether the document was before the decision maker, which is not the case here. The Decision states the Manager "considered the materials you filed in T-234-21 plus documents, such as a Loss Estimate, you provided on February 27, 2023". The Manager's affidavit filed in this proceeding confirms that he received documents Mr. Priest had provided, including documents that were part of the Court record on judicial review, the presentation for the Commissioner, and the loss estimate. The Manager did not miss any documents and this allegation of procedural unfairness must fail.

[46] For these reasons, Mr. Priest has not established that he was denied the right to be heard or that the individual feedback was procedurally unfair.

B. *Was the Decision reasonable?*

[47] Mr. Priest submits the Manager was required to provide substantial discussion on adverse effect discrimination, in line with the Court's directions in *Priest*, and he did not. According to Mr. Priest, the Decision represents an attempt to justify the same conclusion with similar blanket statements about "formal equality" that do not account for the central issue of whether a policy that was applied to all candidates equally had a discriminatory effect on him. Like the prior

decision, Mr. Priest contends the reconsideration Decision is unreasonable because the Manager simply dismissed his concerns without transparent, intelligible, and justified reasons.

[48] Mr. Priest submits the Manager failed to respond to his arguments that the CRA's education policy creates a systemic barrier due to age, as presented through various submissions including the memorandum of fact and law filed in *Priest*, the presentation to the Commissioner, and discussions with the Manager. Mr. Priest submits he provided pertinent case law, including *Griggs v Duke Power (1971)*, 401 US 424, *Homer v Chief Constable of West Yorkshire Police*, [2012] UKSC 15 [*Homer*], *Games v University of Kent*, [2015] IRLR 202, and *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, as well as Statistics Canada evidence on the number of information technology degrees by age group to show that requiring a computer science degree effectively eliminates older individuals from the staffing process. He contends that by not addressing the law, the evidence, the specific arguments, and the root issue, the Manager failed in his role.

[49] Mr. Priest submits that while the Court in *Priest* declined to consider arguments that education constitutes an analogous ground of discrimination under section 15 of 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 [*Charter*], the Court should do so now. Mr. Priest states the Manager was in a position to decide that there was a *prima facie* case of discrimination and should have so found. He contends he established that the education requirement, by its impact, created a distinction based on enumerated or analogous section 15 grounds and imposed a burden or denied a benefit that had the effect of reinforcing, perpetuating, or exacerbating the

disadvantage: *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 27 [*Fraser*]. Mr. Priest submits that, because the Court in *Priest* noted that the Manager was not required to present a formalistic or legalistic discussion in the context of individual feedback, he should not be required to formally or legalistically present the discrimination issue in that forum. He argues that the respondent has had notice of the *Charter* issue and the Court should exercise remedial discretion to decide the issue in this proceeding.

[50] The respondent submits the Manager reasonably concluded that the minimum education requirement, which applied to all candidates, did not discriminate against Mr. Priest. Furthermore, the Manager adequately explained why he found the requirement did not place older applicants like Mr. Priest at a disadvantage or prevent them from obtaining the required credentials on account of their age. For example, the Manager noted that a computer science degree was not the only way to qualify for the posted job opportunity, no applicants applying for the job had a computer science degree, four who passed screening were around the same age and attended university around the same time as Mr. Priest, and four others who attended university in the early to mid-1980's passed screening because they subsequently completed graduate degrees.

[51] The respondent submits the position did not go to someone who was no better qualified for the job but younger, and the cases Mr. Priest relied on are distinguishable. In *Homer*, it was not feasible for older individuals to upgrade their education credentials before they reached mandatory retirement age; however, the CRA does not impose a mandatory retirement age or restrict educational funding based on age, and Mr. Priest has not shown it was unfeasible to

upgrade his education credentials through the CRA's programs. In *Fraser*, there was significant evidence of a nexus between the impugned practice and its prejudicial effect. Mr. Priest did not provide the Manager with similar evidence and instead relied on assertions that older adults are less likely to meet minimum education requirements. Consequently, the respondent states Mr. Priest failed to show adverse differential treatment under section 15 of the *Charter* or *prima facie* discrimination under human rights laws.

[52] I am not persuaded that the Decision was unreasonable.

[53] Again, it is helpful to begin with the decision in *Priest*. The Court described what reasonableness review requires when examining the decision of a hiring manager in the context of a relatively informal discussion with an employee about a job competition.

[54] The Court stated that “a reviewing court must pay careful attention to the reasons provided by the decision maker, understood in light of the evidence and argument that was before them at the time, and with due regard to the institutional context”: *Priest* at paras 43-44, citing *Vavilov* at paras 79-80. It noted that the reasonableness analysis must examine two types of questions—the first is whether the decision was consistent with the applicable law, which includes applicable CRA staffing policies, and the second is whether the decision was based on clear and logical reasoning that addressed the key facts and issues that were put before the decision maker: *Priest* at para 46.

[55] The Court noted (*Priest* at paragraph 49):

- the individual feedback mechanism is meant to provide an opportunity for a relatively informal discussion between a candidate for a position and the hiring manager; it serves as a form of recourse for aggrieved candidates who feel they have been treated in an arbitrary manner, but also as a means of explaining why they did not succeed in the staffing process with a view to improving their chances next time;
- individual feedback is a relatively informal discussion between the hiring manager and the candidate; it is not equivalent to a formal grievance process;
- the hiring manager has expertise in the SR&ED program and familiarity with the CRA staffing rules and process;
- neither party is legally trained; and
- the reasons for the decision are contained in a form that was created by CRA to capture the request for, and main outcomes of, the individual feedback discussion.

[56] In *Priest*, a significant element was the degree to which the Manager's decision was responsive to the main legal and factual questions raised by the case. The Manager's decision was brief and made following points (*Priest* at paragraph 15):

- The posted position used the minimum education standard for level CO-03 positions and the standard was applied equally to all applicants.

- CRA accommodates employees who are seeking to upgrade their education credentials through an assistance program and educational leave. Mr. Priest was advised of the programs and did not request assistance to upgrade his credentials.
- The DHCE was consulted and confirmed that educational requirements do not discriminate based on age. Reduction of the minimum standards are not a required accommodation.

[57] The key question was whether the decision showed that the hiring manager actually grappled with the essence of Mr. Priest's complaint, and then explained the reasoning in a manner that showed why the decision to screen him out was not reversed: *Priest* at para 75. The Court concluded that the decision was unreasonable because the reasons did not satisfy the minimum requirement of responsiveness under *Vavilov*. Key points were (*Priest* at paragraphs 76, 88):

- the decision and underlying record did not indicate that there was any consideration of the most important aspect of Mr. Priest's request, namely the question of whether he experienced adverse effect discrimination on the basis of his age when he was screened out of the competition for failing to meet the minimum education requirement;
- while a formalistic or legalistic discussion of Mr. Priest's complaint was not required, the decision, amplified by the record, needed to demonstrate that the hiring manager considered his claim of adverse effect discrimination based on age and examined his request for accommodation to eliminate the unjust treatment;

- stating that the rule applied to everyone and the DHCE confirmed the education requirements do not discriminate based on age did not justify the outcome, as *Vavilov* requires.

[58] Mr. Priest argues that the Manager's reconsideration Decision still fails to satisfy the requirements of responsive reasons under *Vavilov*. I do not agree.

[59] Unlike the first decision, the Manager squarely identified the core issue on reconsideration, being Mr. Priest's allegation that the education requirement, even where applied equally to all, discriminated based on age and resulted in adverse treatment. The Manager's reconsideration Decision also provides fuller reasons that explain the result. The Manager's key points were:

- the minimum education standard for the posted job was established under the authority of the *CRA Act*;
- the CRA's Staffing Procedures require managers to appoint based on merit, meaning candidates must meet the minimum staffing requirements including education; the minimum education standards are relevant to the nature of the work and the business requirements;
- if minimum education standards change, acquired rights may apply to deem employees to meet the new standard; for CO positions, the CRA's Staffing Procedures provide that acquired rights do not apply to deem candidates eligible for CO-03 level jobs;

- the Research and Technology Manager position involves direct technical oversight and review of work by a multidisciplinary team of scientists and engineers; it requires a thorough understanding of scientific principles and research techniques, and a level of knowledge that can be obtained through a Master's degree in a field of science relevant to the SR&ED program or an engineering or computer science program combined with the equivalent level of research experience that would normally be undertaken in a master's degree;
- the CO education standards in the Staffing Procedures recognize a broad range of science degrees that are relevant to the SR&ED program; all current and previously issued graduate degrees in all fields of physical and applied sciences are recognized, and the policy also supports equivalency verification of an education credential through a recognized credential assessment service;
- with respect to the CS standard, Mr. Priest has never occupied a CS position and was never granted acquired rights to CS positions;
- CRA programs provide financial support and educational leave to individuals who may be unable to advance in their career due to insufficient education;
- the CO education standard states that the minimum requirement is a graduate degree in a field of physical sciences or computer science or engineering and not a more restricted standard of a computer science degree; it includes all current and past physical sciences master's degrees regardless of when obtained and its

application does not create an intentional or unintentional distinction based on age;

- none of the applicants to the staffing process and none of the current Research and Technology Managers have a computer science degree; four of the twenty five applicants who passed screening are about the same age as Mr. Priest and attended their graduate programs in the 1970s and four others undertook their undergraduate studies in the early to mid 1980s and subsequently completed graduate level degrees;
- Mr. Priest and one other applicant with a bachelor's degree from 2017 were both screened out for the same reason; both were screened out because they did not meet the minimum education standard, uninfluenced by age or when the degree was issued;
- a CO-03 position would constitute a promotion from a CO-02 group and level position; the cases Mr. Priest provided do not support a request to accommodate minimum education standards beyond the CO-02 level role;
- Mr. Priest was not treated arbitrarily in the assessment of the education credentials and the application of the CO education standards did not discriminate based on age; in any event, a reasonable explanation exists for the need for the education standard applied in light of business requirements for the job.

[60] In my view, the Manager addressed Mr. Priest's central submissions on adverse effect discrimination and the reasons show how he reached the result in view of the applicable law, policies, and facts. The Decision explained the need for the minimum education requirement for the CO-03 job, why it was wrong to focus solely on the computer science degree part of the education requirement, and why the Manager believed that the requirement as a whole did not have the effect of excluding candidates based on their age.

[61] Mr. Priest states it would be unreasonable to expect someone his age to go back to school to obtain a graduate degree. However, in my view, the question was not whether the education requirement was unreasonable in Mr. Priest's circumstances, nor whether the requirement was impractical or unfair. The question the Manager was required to address, and did address, was whether screening Mr. Priest from the staffing process on the basis that he did not meet the minimum education requirement resulted in adverse effect age discrimination.

[62] Mr. Priest states that the CRA hired him for his computer science credentials and he was granted CS acquired rights. In the Decision, the Manager states Mr. Priest never occupied a CS position and was never granted acquired rights to CS positions. In this proceeding, Mr. Priest has not provided evidence demonstrating that he was granted CS acquired rights and, more importantly, he has not established that having CS acquired rights would have advanced his application past the screening stage for the CO-03 level position in question. The Manager's Decision explained the options available to verify the equivalency of education credentials, which is done through a recognized credential assessment service.

[63] In my view, the Manager's reasons are transparent, intelligible, and responsive to the arguments presented—including those in Mr. Priest's supplemental materials (which relate to the same central point that the minimum education requirement leads to adverse differential treatment based on age). Given the purpose and informal nature of individual feedback, more was not required. The Court noted in *Priest*, and I agree, that the lack of a formalistic legal analysis and discussion of the case law does not make the decision unreasonable: *Priest* at para 75.

[64] As part of his application for judicial review, Mr. Priest also asks this Court to consider and decide a series of questions, including whether the CRA discriminated against him based on his age, whether education is an analogous ground of discrimination under section 15 of the *Charter*, and whether there is an adverse effect created by the education policy. To the extent that any of these remain live issues in view of my findings, it is not appropriate for this Court to decide them in the context of this application for judicial review.

VI. Conclusion

[65] This application for judicial review is dismissed. Mr. Priest has not established that the Decision was procedurally unfair. CRA's staffing policies provide that employees who have been screened from a staffing process may request recourse in the form of individual feedback. The Manager followed the policies for conducting individual feedback and reconsidered Mr. Priest's individual feedback request in a manner that was procedurally fair. Mr. Priest also has not established that the Decision was unreasonable. The second Decision was responsive to

Mr. Priest's arguments and did not repeat the error that led this Court to set aside the previous individual feedback decision.

[66] The respondent asked for costs. The general rule is that costs are awarded to the successful party and I see no reason to depart from the general rule in this case. The respondent did not make submissions on an appropriate cost award. In the exercise of my discretion, costs are fixed at \$750.

JUDGMENT IN T-1004-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. Costs are awarded to the respondent, in the amount of \$750.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1004-23

STYLE OF CAUSE: CHRISTOPHER PRIEST v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 31, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: MAY 22, 2024

APPEARANCES:

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FOR THE APPLICANT
(ON HIS OWN BEHALF)

David Perron

FOR THE RESPONDENT

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