

Federal Court



Cour fédérale

Date: 20240830

Docket: T-2470-23

Citation: 2024 FC 1360

Ottawa, Ontario, August 30, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

WILLIAM STURGESS

Applicant

and

ELECTIONS CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application by the Applicant for judicial review of the decision dated October 20, 2023, by the Canadian Human Rights Commission (the “Commission” or the “CHRC”) dismissing his complaint against Elections Canada.

[2] The CHRC decision held that the Applicant failed to demonstrate a *prima facie* case of discrimination in refusing to appoint him as a Deputy Returning Officer in the 2021 general election on the basis that he would not wear a mask, as required of all poll workers at that time.

[3] The CHRC held that the Applicant did not provide any evidence demonstrating that his medical condition interfered with his ability to wear a mask, which would have required accommodation, despite having been given numerous opportunities to do so.

[4] While the Applicant's complaint outlined that the Applicant suffers from generalized anxiety disorder, ADHD, and depressive tendencies, and that these conditions prevent him from wearing a mask, the CHRC found that the complaint did not provide supporting evidence or explain how these conditions prevented him from wearing a mask.

[5] The factual background leading to this judicial review is aptly set out in paragraphs 10 to 41 of the Respondent's memorandum of fact and law, but more succinctly can be stated as:

- (i) October 6, 2021: the Applicant filed a complaint with the Commission against Elections Canada (the "Complaint");
- (ii) February 10, 2022: the CHRC advises the Applicant further details were needed for his complaint to be accepted and that a copy of the medical exemption he received be provided;

- (iii) February 14, 2022: the Applicant provided copies of medical records relating to his conditions, but no evidence that the conditions prevented him from wearing a mask, such as a doctor's note;
- (iv) April 14, 2022: the CHRC again requested evidence of a medical exemption signed by a health care professional;
- (v) April 20, 2022: the Applicant provided additional medical records; however, he did not provide a medical exemption from a doctor. While the Applicant offered to explain how his medical conditions prevented him from wearing a mask, he did not provide that explanation;
- (vi) April 27, 2022: the CHRC submitted the complaint to senior management for review;
- (vii) May 13, 2022: the complaint was provided to Elections Canada and a response was provided June 13, 2022 which rejected the basis for the complaint, indicating all poll workers had to wear masks, without accommodation for medical exemptions, as a *bona fide* occupational requirement during the 2021 general election;
- (viii) June 13, 2022: the Applicant reiterated that his medical conditions were linked to genetic characteristics;

- (ix) December 12, 2022: the Commission referred the complaint to conciliation, which took place on February 1, 2023;
- (x) February 20, 2023: the Applicant made an offer of settlement, which Elections Canada rejected; the matter was remitted back to the CHRC;
- (xi) March 31, 2023: a Human Rights Officer was designated to assess the complaint; she reviewed the submitted information and spoke with the Applicant;
- (xii) June 19, 2023: the Officer issued her Report for Decision under section 41(1) of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the “CHRA” or the “Act”);
- (xiii) June 23, 2023: the Applicant and Elections Canada received a copy of the Report for Decision and were given an opportunity to make submissions on the Report;
- (xiv) June 27, 2023: the Applicant made submissions to the CHRC; agreed with the recommendation to refer the matter to conciliation, and then to the Tribunal if conciliation was unsuccessful; in making his submissions, the Applicant argued that he had provided medical records proving the legitimacy of his disability and that there was no requirement to provide a medical exemption to have his conditions accommodated;
- (xv) July 13, 2023: Elections Canada provided its submissions and disagreed with referring the matter to conciliation given the failed earlier conciliation; Elections

Canada argued that the Report for Decision failed to investigate the Applicant's claimed disability and conflated the Applicant's request for a mask exemption, which was not disputed, with the required link to a disability which the Applicant had to prove;

- (xvi) September 19, 2023: the CHRC advised the parties that the Commission would base its decision on the Complaint, the Report for Decision, and the submissions of both parties; no further submissions were allowed;
- (xvii) October 24, 2023: the CHRC issued its decision and dismissed the complaint.

II. Issues

[6] The parties agree that there are five issues:

- A. What is the Standard of Review?
- B. Is the decision reasonable?
- C. Was the process procedurally unfair?
- D. Are any of the CHRC's broader statutory duties engaged by the complaint and relevant to this judicial review?

- E. If the Court finds that the Decision was unreasonable or procedurally unfair, what is the remedy?

III. Analysis

A. *Standard of Review*

[7] The standard of review for the substance of the decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100).

[8] The standard of review for procedural fairness is correctness or a standard with the same import (*Canada (Attorney General) v Ennis*, 2021 FCA 95 [*Ennis*] at paras 44-45).

B. *Is the decision reasonable?*

[9] The CHRC dismissed the Applicant's complaint pursuant to s. 44(3)(b)(i) of the *CHRA* on the basis that the Applicant had not provided sufficient evidence to support a *prima facie* case of discrimination.

[10] The CHRC is a screening body whose primary function is to assess the sufficiency of the evidence to determine whether there is a reasonable basis for the complaint to proceed to the next stage (*Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at para 53).

[11] Section 44(3)(b)(i) of the *CHRA* provides that on receipt of a report under section 44, the Commissioner:

... shall dismiss the complaint to which the report related if it is satisfied that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted.

CHRA, section 44(3)(b)(i)

[12] The Applicant must establish a *prima facie* case before the burden shifts to the respondent to justify conduct or practice, including a *bona fide* occupational requirement (*Moore v British Columbia (Education)*, 2012 SCC 61 [*Moore*] at para 33). Therefore, the question before the Commission was whether the Applicant had sufficient evidence to establish a *prima facie* case of discrimination, not whether the Applicant was required to provide a medical exemption letter to Elections Canada.

[13] There are three elements for determination that must be established by a complainant for a *prima facie* case of employment discrimination under section 7 of the *Act*:

- (a) They have a protected characteristic under the *Act*;
- (b) They were adversely impacted with respect to employment; and
- (c) The protected characteristic was a factor in the adverse impact.

Moore at para 33.

[14] A disability is a prohibited ground of discrimination under section 3(1) of the *CHRA*.

[15] In its legal sense, a disability is “a physical or mental impairment, which results in a functional limitation or is associated with a perception of impairment” (*Desormeaux v Ottawa (City)*, 2005 FCA 311 [*Desormeaux*] at para 15). Thus, a complainant must be able to prove a link between a medical condition and a functional limitation with enough specificity to ensure that a human rights decision is based on evidence rather than assumptions and/or stereotypes about the capabilities of individuals, including mental health conditions (*Desormeaux* at para 15; *Hughes v Canada (Attorney General)*, 2021 FC 147 [*Hughes*] at paras 82-84).

[16] Despite giving the Applicant three opportunities to do so, the Applicant had not provided any documentation connecting his anxiety disorder, ADHD, and depressive tendencies to a required mask exemption. Notwithstanding the Applicant provided medical records relating to his conditions, he did not establish that his conditions precluded him from wearing a mask. His claim to this effect, without a supporting document from a health care professional, and his offer to explain by email the alleged connection, were insufficient.

[17] The CHRC found that this lack of evidence was fatal to the Applicant’s complaint, given that the link between the Applicant’s medical condition and a functional limitation that requires accommodation must be proven with specificity based on medical evidence, such as a doctor’s note (*Hughes* at paras 86 and 94). Thus, the Applicant failed to take the first element of the *Moore* test out of the realm of conjecture.

[18] The CHRC's finding is consistent with a number of Human Rights Tribunal decisions (See e.g., *Walker v Metro Grocery Store*, 2024 HRTO 245 at paras 12-15; *Rael v Cartwright Jewelers and another*, 2021 BCHRT 106 at paras 16-17; *Dier v Quad II Enterprises Ltd. and another*, 2024 BCHRT 33 at paras 20-24). The Respondent specifically refers to *Potter v Ottawa Police Services*, 2024 HRTO 242 [*Potter*] at paras 21-22 and *Bott (by Dahlgren) v Buy-Low Foods LP dba AG Foods*, 2024 BCHRT 50 [*Bott*] at paras 25-26.

[19] In *Potter*, the Tribunal held that the complainant's failure to provide medical evidence or submissions explaining why his medical condition (asthma) prevented him from wearing a mask was fatal to his claim. In that case, the Tribunal found that the link between the complainant's asthma and the accommodation requested could not be easily inferred. Similarly, in this case, the Applicant did not provide the CHRC with any evidence or explanation to either make the link or reasonably infer the link between his medical conditions and the requested mask exemption.

[20] The *Bott* case highlights the importance of linking the medical condition to the functional limitation with sufficient specificity. The British Columbia Human Rights Tribunal held that a vague medical note stating that the complainant would "struggle to wear a mask or shield" as a result of their claustrophobia was insufficient. Here, the Applicant relies on even less: his own bald assertions and public health guidance, asserting that more specific evidence is unnecessary.

[21] I am satisfied that the CHRC's decision was reasonable, based on insufficiency of evidence to prove a disability.

C. *Was the decision procedurally fair?*

[22] The Applicant also raises a number of objections to the process followed by the CHRC in dealing with the complaint. I summarize them below:

- A. the Applicant takes issue with the fact that the Commission did not provide the Applicant with an opportunity to respond to Elections Canada's submissions;
- B. the Applicant claims that Elections Canada raised a new preliminary objection in its submissions; and
- C. the Applicant takes issue with the process and disclosure surrounding the conciliation process.

[23] In the context of proceedings before the Commission, procedural fairness requires that (1) the investigation report that the Commission relies on be neutral and thorough, and (2) parties are given an opportunity to respond to it (*Ennis* at para 76 quoting *Canada (Attorney General) v Davis*, 2010 FCA 134 at para 6). The decision cannot be based on undisclosed evidence nor new legal issues without giving parties the opportunity to respond (*Ennis* at para 75-76).

[24] These requirements were met in this case. The investigation report was neutral and thorough, and the responses allowed the parties to correct errors and omissions. While the report was not perfect, perfection is not the standard, and both parties did make corrections to the report before the CHRC (*Tazehkand v Bank of Canada*, 2023 FCA 208 at paras 35-38). Overall, I am

satisfied that the report made the Applicant sufficiently aware of the essence of his case to meet (*Ritchie v Canada (Attorney General)*, 2016 FC 527 at paras 37 and 43).

[25] The screening process is not adversarial, and the Applicant is not entitled to make further submissions to the Commission unless requested by the Commission (*Khapar v Air Canada*, 2014 FC 138 at para 56; *Lafond v Canada (Attorney General)*, 2015 FC 735 at paras 21-22; *Complaint Rules*, s 10.7).

[26] The Applicant's second procedural fairness complaint confuses his evidentiary obligation with respect to the case he needs to meet, with a new legal issue raised by the Respondent. To reiterate, the question before the Commission, upon the Applicant filing the Complaint on the basis of discrimination, is whether there was sufficient evidence to support a *prima facie* case of discrimination. This was not a new issue raised, but simply the Applicant's burden to meet for his complaint to succeed (*Moore* at para 33). Unlike *Siebert v McDonald's (Abbotsford)*, 2024 BCHRT 60, cited by the Applicant, the Applicant was aware of his case to meet, as evidenced by his email communications during the investigative process and his submissions to the CHRC, all of which specifically address the issue of insufficient evidence linking his medical conditions to the requested accommodation.

[27] I agree with the Respondent that s. 11.1 of the *Complaint Rules* has no application here.

[28] Lastly, the Applicant claims that the CHRC's decision was tainted by Elections Canada's disclosures regarding the conciliation process and the Applicant's pandemic-related advocacy.

On my review of the decision and materials before it, I do not find this to be the case. Contrary to the Applicant's assertions, the absence of these statements in the CHRC's decision indicate that the CHRC did not give the disclosures any weight or reliance in making its decision. The decision exclusively focuses on the issue of whether the Applicant met his burden of proving a *prima facie* case. The decision correctly treats this as a question of sufficiency of evidence, not one of credibility.

[29] Similarly, I do not find the high-level statements regarding the Applicant's settlement offer affected the Commission's decision in a way that rendered it procedurally unfair. However, I agree with the Applicant that these disclosures were unnecessary to addressing the issues before the CHRC. The CHRC correctly did not rely upon them.

[30] There was no procedural unfairness.

D. *Are any of the CHRC's broader statutory duties engaged by the complaint?*

[31] The Applicant argues that the Commission failed to carry out its statutory obligations under the *CHRA* and was ignorant to the policies, practices, and decisions of provincial human rights organizations. These arguments have no merit.

[32] The CHRC's decision is consistent with other decisions of Courts and human rights organizations, as mentioned above. While the Applicant cites to the September 2, 2021 Public Health Order and the guidelines of the BC Human Rights Commissioner, these are not relevant to the Commission's investigation as to whether the Applicant was discriminated against on the

basis of a disability (*Desormeaux* at para 15). Similarly, whether other people may have been adversely affected by the Respondent's masking policy is irrelevant to the decision the CHRC was deciding at the pre-screening stage (*Hartjes v Canada (Attorney General)*, 2008 FC 830 at para 30).

[33] The CHRC thoroughly considered the issues and evidence before it, and acted reasonably in accordance with its function as a screening body.

E. *What is the remedy?*

[34] The Respondent seeks costs assessed at the mid-point of Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106. The Applicant did not seek costs and asked that no costs be ordered against him.

[35] While I do not agree with the Applicant that this is a novel issue of public importance, in my discretion, I find that no costs are warranted.

JUDGMENT in T-2470-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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