

Federal Court



Cour fédérale

Date: 20250124

Docket: T-2712-23

Citation: 2025 FC 156

Ottawa, Ontario, January 24, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

ANTOINE NABIL BAKHACHE

Applicant

and

CANADA (ATTORNEY GENERAL)

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Canadian Human Rights Commission (“CHRC”) dated November 22, 2023, to not address a complaint because of the delay between the last act of discrimination and the filing of the complaint (“Decision”).

[2] The Applicant seeks an order of *mandamus* to compel the CHRC to re-open the file and send the matter to the Canadian Human Rights Tribunal to investigate his complaint.

[3] The Applicant is self-represented.

[4] For the reasons that follow, this application is dismissed.

II. Background

[5] The Applicant, Mr. Bakhache, is a 27-year veteran of the Canadian Armed Forces (“CAF”). He enrolled in the CAF Reserve on June 25, 1991, and transferred to the Regular Force on September 7, 2001, as a Marine Surface (“MARS”) Officer.

[6] On October 15, 2020, the Applicant was diagnosed with adjustment disorder and chronic daily headaches. He was released from service for medical reasons the same day. The Applicant submits that his health problems were caused by his service and have been a barrier in his post-service life.

[7] The Applicant is Canadian of Lebanese origin. Throughout his military service, the Applicant submits that he was the victim of adverse and differential treatment due to his race, heritage, and ethnic origin. The Applicant reported numerous incidents of this treatment through CAF processes in 46 harassment complaints and 16 grievances.

A. *CAF grievances and process*

[8] It is important to set out a bit of the history of the CAF grievances filed by the Applicant, as these grievances and the CAF decisions in relation to them underpinned the Applicant’s CHRC complaint.

[9] On September 14, 2020, Admiral McDonald completed a Situational Assessment (“Situational Assessment” or “SA”) and determined that of the 46 complaints, 19 of the allegations were not proven, eight did not meet the definition of harassment, four were referred

for disciplinary review, and the remaining 15 were considered as part of the 16 other grievances filed.

[10] On October 14, 2020, the Applicant submitted 12 separate grievances against Admiral McDonald's findings. This complaint was forwarded to the Chief of Defence Staff ("CDS"), General Wayne Eyre, on March 18, 2021. The Military Grievances External Review Committee ("MGERC") reviewed the allegations and recommended an investigation.

[11] The Canadian Forces Grievance System ("CFGS") requires that all the Applicant's grievances concerning alleged harassment be sent to the CDS, who is the Final Authority ("FA"). The FA sent the file to the MGERC for an independent review on December 29, 2020. The MGERC provided its findings and recommendations to the FA on April 22, 2021 ("Recommendations Report"). The FA indicated it was considering the MGERC recommendations, including the recommendation to further investigate some of the alleged incidents.

[12] On January 29, 2021, the Applicant received an email from the Vice Chair of Defence Staff requesting a meeting. The meeting took place on February 1, 2021, and the Applicant was requested to address his issues using Alternative Dispute Resolution ("ADR"). ADR was not ultimately pursued.

[13] On April 22, 2021, the MGERC's Recommendation Report was sent to the Applicant.

[14] On June 8, 2021, the Applicant retained counsel, Mr. Joshua Juneau, to assist with his grievances with the CAF. On June 21, 2021, Mr. Juneau sent a letter to the CAF Grievance

Authority outlining additional alleged discriminatory incidents involving the Applicant that took place between 2017–2019.

[15] On June 21, 2021, with the assistance of counsel, the Applicant provided written comments in response to the Recommendations Report.

[16] In October 2021, the Applicant’s grievances were clustered together by the CFGS into two batches, “Batch 1” and “Batch 2.” In Batch 1, four of the grievances were collectively denied by the FA. These concerned performance reports and initial counselling received by the Applicant in December 2018.

[17] Batch 2 consisted of 12 grievances concerning allegations of systemic racism and discrimination. The FA has not issued a decision concerning these grievances.

B. *The Applicant’s CHRC complaint*

[18] On August 31, 2021, the Applicant filed a complaint to the CHRC alleging that the CAF discriminated against him in an employment setting on the prohibited grounds of race and national or ethnic origin by treating him in an adverse and differential manner and by failing to provide him with a harassment-free work environment, contrary to sections 7 and 14 of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*].

[19] On December 13, 2021, the CHRC requested a rewrite of the Applicant’s narrative. The rewritten narrative was provided on December 16, 2021.

[20] On February 21, 2022, the Applicant received the CAF’s response to the CHRC complaint via email. The CAF requested that the CHRC not address the complaint, pursuant to paragraphs 41(1)(a), (d) and (e) of the *CHRA*.

[21] On March 2, 2022, the Applicant submitted his reply submissions.

[22] On October 3, 2022, the Applicant received a report from the FA. The FA found that the Applicant had been aggrieved, but did not offer any redress.

[23] On October 6, 2023, the MGERC issued a findings and recommendations report (“MGERC Report”), concluding that the CHRC ought not address the Applicant’s complaint as the allegations concerned incidents past the one-year deadline, with the last incident occurring approximately five years before the complaint was filed.

[24] On October 13, 2023, counsel for the Applicant expressed disagreement with the MGERC Report.

[25] On November 22, 2023, the CHRC released the Decision dated November 10, 2023. This is the Decision that is the subject of this application for judicial review.

III. Applicable Legislation

[26] The following sections of the CHRA are applicable here:

Employment	Emploi
7 It is a discriminatory practice, directly or indirectly,	7 Constitue un acte discriminatoire, s’il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
(a) to refuse to employ or continue to employ any individual, or	a) de refuser d’employer ou de continuer d’employer un individu;
(b) in the course of employment, to differentiate	b) de le défavoriser en cours d’emploi.

adversely in relation to an employee,

on a prohibited ground of discrimination.

...

[...]

Harassment

Harcèlement

14 (1) It is a discriminatory practice,

14 (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :

(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

a) lors de la fourniture de biens, de services, d'installations ou de moyens d'hébergement destinés au public;

(b) in the provision of commercial premises or residential accommodation, or

b) lors de la fourniture de locaux commerciaux ou de logements;

(c) in matters related to employment,

c) en matière d'emploi.

to harass an individual on a prohibited ground of discrimination.

...

[...]

Commission to deal with complaint

Irrecevabilité

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

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 :

...

[...]

<p>(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.</p>	<p>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.</p>
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IV. Standard of Review

[27] The applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[28] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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).

[29] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[30] That said, the standard of review applicable to allegations of a breach of procedural fairness is correctness. The principles applicable to the review of procedural fairness were set out by the Federal Court of Appeal in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*]. The “reviewing exercise is ‘best reflected in the correctness standard’ even though, strictly speaking, no standard of review is being applied” (*CPR* at para

54, citing *Eagle's Nest Youth Ranch Inc v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20; see also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[31] The central consideration to determine if an administrative tribunal decision is fair is if the applicant knew the case to be met and had a full and fair chance to respond (*CPR* at para 56; see also *Larocque v Canada (Attorney General)*, 2022 FC 613 at paras 25–26). A reviewing court is concerned with the whole process, having regard to all the circumstances (*CPR* at paras 54–55).

[32] The Federal Court of Appeal recently confirmed that the appropriate standards with respect to a judicial review of a CHRC decision are “the deferential reasonableness standard of review for the merits of the Commission’s decision and no deference, sometimes called correctness review, for review of procedural fairness issues” (*Canada (Attorney General) v Ennis*, 2021 FCA 95 at para 44).

[33] Accordingly, I am of the view that the standard of reasonableness applies to the CHRC’s Decision and that the standard of correctness will apply to the allegations of a breach of procedural fairness.

V. Issues

[34] The issues in this Application are:

- A. Was the CHRC’s Decision rendered in a reasonable manner?
- B. Was the process and the Decision procedurally fair?

VI. Analysis

[35] The Record of Decision states the following:

The Commission reviewed the Complaint Form, the Report for Decision, and the submissions of the parties filed in response to this report.

For the reasons described in the report, the Commission decides to not deal with this complaint because it is out of time and the complainant has not provided a reasonable explanation for the delay in filing it. The Commission is sympathetic to the Complainant who has raised serious allegations against the Respondent. However, the considerable delay between the last act of alleged discrimination and the filing of this complaint has resulted in the allegations being out of time.

The Complainant argues that he has faced sustained and continuous discrimination throughout his career. However, the complaint needs to be grounds in discrete incidents to assess timeliness and the last specific act of alleged discrimination occurred in 2016, many years before this complaint was filed.

This decision is made under paragraph 41(1)(e) of the *Canadian Human Rights Act*.

[36] The MGERC Report sets out further reasons for the Decision (see *Paul v Canadian Broadcasting Corp*, 2001 FCA 93 at para 43). The MGERC Report recommended that the CHRC not deal with the complaint.

A. *Was the CHRC's Decision reasonable?*

[37] Between May 20 and June 12, 2022, the Applicant submitted several harassment complaints to the CAF that outlined discriminatory incidents that took place between 2016–2020. The Applicant submits that the CAF processes are biased and non-responsive, so he filed a complaint with the CHRC. The Applicant asserts that he filed the complaint within one year of the last act of racial discrimination he experienced while employed with the CAF.

[38] The Applicant asserted that the Decision is not reasonable because the reasons do not clearly set out why allegations of discrimination occurring after 2016 were not considered.

[39] The Applicant argued that it is not reasonable for the CHRC to have applied paragraph 41(1)(e) to claims of systemic racism, which he says is contrary to the objectives set out in the *CHRA*. Further, the Applicant argued that it would be unreasonable to enforce paragraph 41(1)(a) in respect of complaints against the CAF, as the grievance processes are long and do not have fixed timelines, such that he would not have been able to exhaust the CAF process and submit a CHRC complaint within the one-year timeframe.

[40] The Applicant argued it is not reasonable for the CHRC to expect a claimant to file multiple discrete claims with the CHRC to address ongoing/continued racism and harassment in the workplace that span several years.

[41] The Respondent argued that the CHRC reasonably assessed the accepted complaint submitted by the Applicant. Further, the Respondent argued that a complainant is not permitted to expand the scope of their complaint or add in allegations after the complaint has been accepted. The Respondent relied on *Manfoumbimouity v Canada (Attorney General)*, 2016 FC 988 [*Manfoumbimouity*] for the proposition that the CHRC is not required to consider allegations not set out in the accepted complaint form.

[42] The Respondent submitted that the CHRC reasonably concluded that the last incident of harassment or discrimination, as set out in the complaint form, occurred in 2016. Accordingly, the CHRC reasonably dismissed the complaint for non-compliance with paragraph 41(1)(e) of the *CHRA*.

[43] The MGERC Report, which sets out the reasons for Decision, states that “[p]ursuant to section 41(1)(e) of the Act, a complaint is considered to have been filed out of time when the last alleged act of discrimination occurred more than one year before the receipt of the complaint” (at

para 33). It goes on to note that “it is not sufficient for the Commission to only decide if a complaint is out of time; it must also determine whether it should exercise its discretion and decide if it is appropriate in the circumstances to deal with the complaint” (at para 34).

[44] A review of the MGERC Report highlights that the CHRC considered factors set out in jurisprudence including: the length of delay, reasons for delay, and prejudice or unfairness to the respondent due to the delay in its deliberations concerning whether it should exercise its discretion pursuant to paragraph 41(1)(e) of the *CHRA* (at para 49). Of note, the CHRC considered the submissions from the Respondent, where they asserted that some of the alleged incidents “occurred more than 11 years ago” and that they had “no records concerning the alleged incidents” and “no way for it to now obtain information” (at paras 38–39). In other words, the CAF asserted prejudice resulting from the delay.

[45] The MGERC Report illustrates that the CHRC seriously considered the allegations set out by the Applicant that he had faced discriminatory conduct and racism that spanned years, as well as systemic discrimination (at paras 54–55).

[46] In addition, the MGERC Report notes that the CHRC is not required to consider allegations of harassment and discrimination not listed in the complaint form; accordingly, the assessment of the Applicant’s claim was limited to the allegations set out in the accepted complaint form. In other words, more contemporaneous allegations of discrimination submitted by the Applicant that were not listed in the original complaint form were not considered.

[47] This Court has confirmed that what is before the CHRC for consideration are those allegations that are set out in the complaint form and “[t]he Commission cannot be criticized for

not exceeding the scope of the complaint that was submitted” (*Manfoumbimouity* at para 41, see also paras 19, 33).

[48] Complainants have an obligation to put forward their best case for an assessment by the CHRC. Publicly available information online highlights that for matters that are ongoing, complainants should use the date of the most recent incident (Canadian Human Rights Commission, “Complaint Frequently Asked Questions” (2021), online: <https://www.chrc-ccdp.gc.ca/sites/default/files/2021-10/complaint_rules_faq_2021.pdf>). The Applicant must live with the choices made in terms of the details and the incidents set out in his complaint form. It was not unreasonable for the CHRC to have only considered the incidents listed in the accepted complaint form in its Decision. The Applicant could have set out more contemporaneous incidents for the CHRC’s consideration in his form.

[49] The CHRC determined that the alleged last act of discrimination, the decisions of Admiral McDonald on September 14, 2020, “do not constitute discrimination and cannot be considered the last acts of discrimination. Thus, the last act of discrimination is considered to have taken place in 2016, approximately five years before the Complainant filed his complaint in a form acceptable to the Commission in December 2021” (MGERC Report at para 50). As a result, the CHRC found the complaint out of time based on the allegations set out in the accepted complaint form. In my view, the CHRC’s finding that the complaint was out of time is reasonable.

[50] The CHRC’s refusal to hear a complaint that is filed out of time is unassailable (see *Bell Canada v Communications, Energy and Paperworkers Union of Canada*, [1999] 1 FC 113, 1998 CanLII 8700 (FCA) at para 40). “[L]imitation periods, by their very nature, contemplate that

claimants can be deprived of their remedy by the passage of time” (*Richard v Canada (Attorney General)*, 2010 FCA 292 at para 19; see also *Gandhi v Canada (Attorney General)*, 2017 FCA 26 [*Gandhi*] at para 17).

[51] The CHRC found that the Applicant did not provide reasons for the delay in filing his complaint, nor an explanation for why he did not file a complaint in 2016 or earlier (MGERC Report at para 53). Further, the CHRC noted that the Applicant had retained the assistance of legal counsel at some point to assist with his complaint (MGERC Report at para 53).

[52] Despite acknowledging that the allegations set out in the Applicant’s complaint engaged the public interest, the very lengthy delay in filing the complaint significantly weighed against the CHRC exercising its discretion to deal with the complaint (MGERC Report at paras 55–57). The CHRC considered the relevant factors for determining if they should exercise their discretion to consider the complaint notwithstanding that it was out of time. In my opinion, the reasons for the Decision are clear, transparent, and justified, and comply with the *Vavilov* standard.

B. *Was the process and the Decision procedurally fair?*

[53] The Applicant asserted that on February 9, 2021, he inquired about the possibility of making a complaint to the CHRC in respect of the alleged incidents reported via the CAF complaint process and requested information concerning the CHRC process. In response to this inquiry, the CHRC advised on March 15, 2021, via email that:

In order for the Commission to accept a discrimination complaint it must meet the following criteria:

...

4. The complaint should be filed within 12 months of the act or treatment that you are complaining about. However, there may be exceptions for certain circumstances.

HOW TO COMPLETE THE COMPLAINT FORM

When you fill out the complaint form, there will be a section where you will be asked to provide your complaint story in 3 pages or less (no more than 10,000 characters). It can be helpful to organise your complaint story in the following way:

PARAGRAPH 1 – What is the allegation?

...

PARAGRAPH 2 – What happened (Who? What? Where? When? Why?)?

...

PARAGRAPH 3 – Is there another complaint or grievance process available to you?

Section 41(1)(a) of the Canadian Human Rights Act allows the Commission to require that people use another complaint or grievance process to deal with their complaint, if one is available. If relevant, please include an explanation of why the Commission should take your complaint, even though there may be another process available.

PARAGRAPH 4 – How has this affected you?

...

- (1) Exhaustion of internal complaint mechanisms, subsection 41(1)(a)

[54] The Applicant submitted that the CHRC's response concerning the complaint process led him to believe that he was required to exhaust all internal CAF processes before he would be able to file a complaint with the CHRC. The Applicant submitted that the CAF processes are long, protracted, and ongoing, as he still does not have a response to all complaints made through the CAF process. The Applicant submitted that the delays in the CAF process have deprived him

of the ability to pursue a CHRC complaint, as the incidents that form the basis of his complaint occurred more than a year before filing his complaint with the CHRC.

[55] The Respondent submitted that a review of the MGERC Report is clear that the CHRC did not refuse to hear the Applicant's complaint because of paragraph 41(1)(a) of the *CHRA*.

[56] I agree with the Respondent. The MGERC Report states that "[i]f it is deemed to be in time with a recommendation to deal with the complaint, the analysis will proceed to consider objections pursuant to section 41(1)(a) of the [*CHRA*]" (at para 22). As noted above, the CHRC refused to consider the complaint because it was out of time, pursuant to paragraph 41(1)(e). The CHRC did not analyse or dismiss the complaint through the application of paragraph 41(1)(a) of the *CHRA*.

(2) Complaint form page/character limits

[57] The Applicant further submitted that the CHRC complaint form's three page and 10,000 characters limits are not reasonable and are procedurally unfair. The Applicant argued that these limitations deprive applicants an opportunity to bring forward claims of a complex nature or claims where the conduct was of long duration in relation to conduct that occurred over several years and multiple incidents, such as his complaint.

[58] The Respondent argued that the procedural fairness requirements applicable to a CHRC decision were met in this case. Specifically, the parties were informed of the evidence relied on by the CHRC, the parties received a copy of the MGERC Report and were provided an opportunity to make submissions on the recommendations, which the Applicant availed himself of.

[59] In *Gandhi*, the Federal Court of Appeal confirmed that it is well established that administrative tribunals are the masters of their own procedures (at para 15, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 27 and *Canada (Attorney General) v Sketchley*, 2005 FCA 404 at para 119). The CHRC did not breach procedural fairness by setting page or character limits on its complaint form.

[60] I agree with the Respondent that *Gandhi* does not create a 10-page minimum for the CHRC's complaint form, as asserted by the Applicant. Rather, this decision confirms that tribunals may set and rely on their own procedures.

[61] As noted above, publicly available information online to assist complainants filing claims with the CHRC highlight that for ongoing incidents, they recommend setting out details of the most recent incidents for consideration.

[62] Finally, I note that the Applicant submitted that the CHRC's Decision is unreasonable or procedurally unfair because it overlooks the systemic nature of his complaint, which contradicts the purpose of the *CHRA*.

[63] With respect, I do not agree. As noted above, the CHRC clearly understood the nature of the Applicant's complaint and the seriousness of the allegations. Notwithstanding this, the CHRC found that the complaint was out of time, with no justification. The CHRC's Decision with respect to the application of the limitation period set out in the *CHRA* is reasonable and unassailable, and does not constitute a breach of procedural fairness.

VII. Conclusion

[64] The Applicant made submissions highlighting how racism and discrimination may manifest itself at the individual, institutional, structural, and systemic level. The Applicant noted the difficulty in proving these kinds of claims because race-based discrimination is often subtle. I agree that these kinds of claims can be very difficult to prove.

[65] The Applicant argued that he has been impacted significantly by the workplace discrimination, including on his mental health and loss of employment. I agree that the allegations set out in the Applicant's CAF complaints and his CHRC complaint are serious. I also understand and am sympathetic to the impacts that these alleged incidents have had on his career and health.

[66] However, the Applicant has not demonstrated that the CHRC's Decision was unreasonable, nor has he identified any breaches of procedural fairness. Accordingly, this application is dismissed.

JUDGMENT in T-2712-23

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

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2712-23

STYLE OF CAUSE: ANTOINE NABIL BAKHACHE v CANADA
(ATTORNEY GENERAL)

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: DECEMBER 11, 2024

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DATED: JANUARY 24, 2025

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ON HIS OWN BEHALF

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