Federal Court Cour fédérale

Date: 20250723

Docket: T-776-24

Citation: 2025 FC 1309

Montréal, Québec, July 23, 2025

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

STEVEN PRETRUSKA

Applicant

and

AIR CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Steven Petruska, the Applicant, seeks judicial review of a Canadian Human Rights Commission [Commission] decision dated March 5, 2024. The Commission dismissed Mr. Petruska's complaint filed against Air Canada, the Respondent, on September 23, 2023 (file number 20230593) [Complaint], pursuant to paragraph 41(1)(e) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [Act], due to it being filed well beyond the prescribed time limit of one year from the last alleged discrimination event [Decision].

[2] In his Memorandum of Fact and Law, Mr. Petruska submits that the Decision is unreasonable and unfair as the Commission dismissed his Complaint without considering (1) that he had exerted all efforts possible and always had the intention to file a complaint; (2) the discrimination as being ongoing since October 2021; and (3) his correspondence of February 25, 2024, that followed the Human Rights Officer [Officer]'s report for Decision [Report] and Air Canada's submissions.

[3] Air Canada submits that the standard of review is reasonableness, and that the Decision is reasonable given that the last act of alleged discrimination dates back to October 21, 2021, and that Mr. Petruska only filed his Complaint with the Commission on September 27, 2023, which is nearly two years after.

[4] Air Canada adds that the only way the Complaint could have been heard is if the Commission had exercised its discretion and granted an extension. Given that Mr. Petruska did not provide sufficient reasons to explain his delay to file the Complaint, it was not unreasonable for the Commission to deny moving forward with the analysis of his Complaint.

[5] Although Mr. Petruska is self-represented, he made able and professional representations before the Court. However, many of his submissions were not supported by evidence. Moreover, there was no evidence that they had been put before the decision-maker prior to the Decision being rendered. Therefore, for the reasons that follow, the application for judicial review will be dismissed. Given the legislative dispositions, the record before this Court and the reasons provided by the Commission, the Court has not been convinced that the Decision is unreasonable.

II. Context

A. *Events Leading to the Complaint*

[6] According to information in the record, Mr. Petruska was an employee of Air Canada since 2007. He was on approved medical stress leave for an undisclosed period of time; however, it appears he was ready to return to work in May 2021.

[7] In May 2021, as he was working in a federally regulated job, Mr. Petruska sought a protected COVID-19 related leave of absence to take care of his 4-year-old daughter. He claims that his leave was initially granted but later denied by Air Canada, who decided to terminate his employment for "job abandonment" on June 14, 2021.

[8] A grievance was filed on behalf of Mr. Petruska with his union International Association of Machinists and Aerospace Workers [IAMAW] on July 1, 2021. A settlement was reached between the IAMAW and Air Canada, and in the context of this settlement, on October 21, 2021, Mr. Petruska's employment status was transformed from "terminated" to "suspended pending discharge", as provided in a Memorandum of Settlement between himself, Air Canada and the IAMAW.

[9] Mr. Petruska sought to add new terms in the Memorandum of Settlement, but he received no response from the IAMAW. However, on December 25, 2021, Mr. Petruska received a letter, this time his manager, reiterating his status as "suspended pending discharge". Moreover, on December 31, 2021, Mr. Petruska was informed by IAMAW that they were dropping his case.

[10] Mr. Petruska claims that it was on purpose that Air Canada had their letter delivered to him on Christmas day, and that the IAMAW had their letter delivered on New Year's Eve. He considers this to be further proof of harassment.

[11] On January 16, 2022, i.e., after receiving the IAMAW letter of December 31, 2021, Mr. Petruska filed a complaint with the Canada Industrial Relations Board [CIRB]. While this CIRB complaint is not relevant for this Court to determine the reasonableness of the Commission's Decision, the Court notes that it was denied on July 19, 2024, and is currently in judicial review before the Federal Court of Appeal (Court File No. A-359-24).

[12] On September 27, 2023, Mr. Petruska filed his Complaint with the Commission in an acceptable form. In his Complaint form, he alleged discriminatory practices including being fired, treated differently than others and harassed. On each ground, Mr. Petruska provides a detailed chronology of events and the impacts these practices had on him.

[13] Amongst other incidents, he claimed that on December 2, 2022, Air Canada instructed the IAMAW to cut his lock, gather his private belongings from his locker, put them into a garbage bag, and advised him to collect it. Mr. Petruska further claimed that on September 26, 2023, Air Canada and the IAMAW withheld his record of employment [ROE] and blocked all his financial resources. He considered this to be a form of continuous bullying, harassment, and discrimination.

B. *The Officer's Report*

[14] On November 29, 2023, in their Report, an Officer of the Commission recommended that the Commission not deal with the Complaint because it had not been filed within the one-year time period prescribed by the *Act*.

[15] In the Report, the Officer summarizes the Complaint as follows:

> The Complainant alleges that [Air Canada] discriminated against him in employment on the grounds of disability and family status by treating him in an adverse differential manner contrary to section 7 of the Canadian Human Rights Act (the Act).
>
> Specifically, the Complainant alleges [Air Canada] terminated his employment; which was subsequently modified to a suspension, despite having approval for a job-protected leave of absence to care for his four-year-old daughter. The Complainant further alleges [Air Canada] refused his request for a demotion as recommended by his doctor. Further details regarding these allegations can be found in the Complaint Form.

[16] The Report then provides a chronology of events, based on the allegations in the Complaint and the evidence submitted, and identifies the last act of discrimination as being the receipt of a letter on October 21, 2021, stating that Air Canada "was at fault and agreed to expunge any record of this event". This letter outlined that Air Canada had changed Mr. Petruska's employment status from "terminated" to "suspended pending discharge".

[17] The Report goes on to states that Mr. Petruska "filed his complaint with the Commission in an acceptable form on September 27, 2023, which is nearly two years after the last act of alleged discrimination and approximately eleven months beyond the deadline to file."

[18] After noting that there are instances where the failure to file a Complaint within the prescribed one-year period can be reasonably explained, the Officer outlined having spoken to Mr. Petruska on November 6, 2023, to inquire as to why he had filed his Complaint 11 months after the one-year time period prescribed by the *Act*. The Report indicates that Mr. Petruska would have stated that he believed the discrimination to be ongoing and therefore, disagreed that his Complaint had been filed out of time. The Report specifically states that Mr. Petruska "did not attribute the delay in filing to his disability or any other reason."

[19] While the Officer notes that the decision to cut Mr. Petruska's lock and put his personal belongings in a garbage bag was upsetting to Mr. Petruska, they state that the removal of items from the locker did not constitute harassment. Moreover, the Officer disagreed with Mr. Petruska that the discrimination was ongoing, and determined instead that the actions of December 2, 2022, appeared to be the consequences of the alleged discrimination.

[20] Moreover, given the steps taken by Mr. Petruska with the IAMAW between May 5, 2021, and October 20, 2021, the grievance he filed against Air Canada with the IAMAW on July 1, 2021, and the complaint against the IAMAW with the CIRB on January 16, 2022, the Officer found that there did not appear to be any barriers for Mr. Petruska to act in a timely manner. Therefore, the Officer reached the conclusion that Mr. Petruska had not exercised due diligence nor provided a reasonable explanation for the delay in filing his Complaint.

[21] The parties were given an opportunity to respond to the Officer's Report. On December 8, 2023, Air Canada informed the Commission that it was in agreement with the Officer's recommendation to not deal with the Complaint.

[22] On December 20, 2023, Mr. Petruska provided his position on the Report. Therein, he essentially provided corrections to the chronology outlined in the Report as well as additional information to support his claim that the discrimination had been ongoing. For instance, he stressed that Air Canada (1) was ensuring to deprive him of the right to have access to his personal information as well as other important documents by removing his access to the internal portal; (2) had not complied with the three days of paid "investigation" following the 10 day "suspension pending discharge" period for decision purposes, as provided in his collective agreement, (3) undeservedly punished him by withholding his ROE, thereby blocking his financial resources by preventing him to apply for employment insurance or for a new job; and (4) intruded on him by tempering with his personal belongings in his locker and by removing them in an urgent manner. Mr. Petruska claimed these showed continuous discrimination and harassment.

[23] In his response, Mr. Petruska also indicated that in the fall of 2022, he tried to reach out to the Commission over the phone and was advised that he could file a complaint with the Commission at the same time as with the CIRB and that an advisor would call him back for further advice. He added that he did not hear back from any advisor despite multiple attempts he made with follow-up phone calls. Therefore, in February 2023, he took the opportunity to submit the Complaint to the Commission without knowing that the Complaint would be based solely on the last act of discrimination. In any event, he added that in his view, the last act of discrimination had not yet happened as his employment status was still lingering as "suspension pending discharge".

[24] The Court notes that nowhere in these submissions it is indicated that Mr. Petruska would have filed his first complaint with the Commission by email in April 2022, as more fully addressed

hereinafter, and no evidence of his alleged attempts to file a complaint prior to February 2023 or of his alleged follow-up phone calls was provided to the Commission.

[25] On January 25, 2024, Air Canada provided further representations essentially reiterating that it agreed with the Officer's report and that Mr. Petruska had not presented any facts supporting such a lengthy delay before filing his Complaint.

[26] On February 25, 2024, Mr. Petruska provided additional information to the Commission, in which he mostly challenged the delays taken by Air Canada to respond to the Report (or other deadlines), that he had not received his vacation pay until January 25, 2024, and that it took Air Canada 980 days to investigate the case, instead of the 10-days set out in the Collective Agreement, but this new information would have been ignored by the Commission. In these new submissions, he does not provide any information as to his own delay to file the Complaint but suggests that the above would be further evidence that the discrimination was on-going.

III. Decision Under Review

[27] On March 5, 2024, the Commission dismissed Mr. Petruska's Complaint and stated as follows:

> 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 discussed in the report, the Commission decides not to deal with this complaint because it was filed more than one year after the last act of alleged discrimination took place and the circumstances do not justify extending this time limit.

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

As was discussed in the report, this complaint was submitted on September 27, 2023, and the last alleged discriminatory act occurred on October 21, 2021, when the Complainant received a letter and settlement agreement from his union which indicated that his status was "suspended pending discharge." The Commission does not accept his argument that the alleged discrimination is ongoing but agrees with the comment in the report that the conduct he describes reflects the consequences or impact of the alleged discrimination and not ongoing discrimination. The Commission concludes that the complaint was filed approximately 11 months after the time limit in the Act.

After reviewing the submissions of the parties, the Commission decides not to exercise its discretion to deal with the complaint because the Complainant has failed to provide a satisfactory explanation for the delay. He asserts that the delay was due to the Respondent discontinuing his access to its login portal, so that he was unable to access the Collective Agreement, the Respondent's Workplace Harassment Policy or certain personal information. He does not indicate that he requested and was denied that information, however, and it is reasonable to assume that it would have been available to him through other sources or with the assistance of his union. It is also unclear why that information was essential for the purpose of submitting a complaint. He states that he was able to file a complaint against his union with the Canada Industrial Relations Board on January 16, 2022, which would have been within the time limit for submitting this complaint.

The Complainant states that he always intended to file a complaint and that during his initial contact with the Commission in the fall of 2022, he spoke to a Commission advisor. Although he claims not to have received a follow-up call, he would certainly have been advised of the time limit during his initial contact and the information is also available on the Commission's website. He has not provided a satisfactory explanation for waiting an additional year before submitting his complaint and there is nothing to suggest that the delay was beyond his control.

In summary, the Commission decides not to deal with this late-filed complaint because the Complainant has failed to provide an explanation for the delay that would justify extending the time limit.

[28] On March 7, 2024, the parties were advised of the Decision by email.

[29] On April 8, 2024, Mr. Petruska filed his application for judicial review. In support of his application, Mr. Petruska filed his own affidavit with numerous exhibits. Therein, he includes new facts and evidence that do not appear to have been before the decision maker in relation to his Complaint against Air Canada. More importantly, he states that he made his first complaint on April 9, 2022, and that he made multiple attempts to reach out to the Commission afterwards but to no avail. In support of these claims, he attaches as Exhibit L a screenshot of information indicating that complaints can be filed online, by email, fax or mail, and the website error he faced when he tried to file his complaint on the Commission's website and his April 9, 2022, email complaint (without any complaint attached).

[30] On May 22, 2025, Mr. Petruska filed a Motion to introduce new evidence on the record. Per the Court's June 5, 2025, direction, this motion would be dealt with by the Applications Judge, as part of the hearing of the application on its merits.

IV. Analysis

A. *Preliminary Questions*

[31] There are three preliminary questions to deal with, namely:

1. Whether Mr. Petruska's Motion to introduce new evidence should be granted;

2. Whether certain exhibits attached to Mr. Petruska's affidavit are admissible; and

3. Whether the new issues raised by Mr. Petruska are properly before the Court.

(1) Mr. Petruska's Motion for New Evidence

[32] As mentioned above, by way of a Motion filed on May 22, 2025, Mr. Petruska seeks to introduce four new documents to the judicial review record. These documents consist of:

i. An email from the Commission dated May 20, 2025, concerning another complaint he filed with the Commission on January 23, 2023 (file number 12300289), which complaint appears to relate to the unjust termination of his employment;

ii. Mr. Petruska's undated response to the Commission's email of May 20, 2025;

iii. An email from the Commission dated March 19, 2025, stating that it will not attend the hearing before the Court; and

iv. A notice of change of solicitor from the Commission dated May 16, 2025.

[33] According to Mr. Petruska, the proposed new evidence meets the strict but applicable standard set out in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] and *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 SCR 202. In essence, he argues this evidence was not available to him at the time of the submission of his Applicant's record and affidavit, despite reasonable diligence, and this evidence directly related to issues of procedural fairness and factual matters relevant to the Court's assessment of the legality and reasonableness of the Decision.

[34] Air Canada opposes Mr. Petruska's Motion, highlighting that the Commission has since confirmed that the email dated May 20, 2025, was sent to Mr. Petruska in error. It submits that neither the email dated May 20, 2025, nor Mr. Petruska's response should be admitted as new evidence; as they are irrelevant, unreliable, and procedurally inappropriate for inclusion in the record. Air Canada made no submission on the other two documents.

[35] The Court agrees with Mr. Petruska that these four documents were not available to him at the time of the submission of his Applicant's Record and affidavit, and could thus evidently not be provided to the Commission at the time it made its Decision. Accordingly, the Court agrees that the first document, i.e., the email from the Commission dated May 20, 2025, meet the procedural fairness exception and is thus admissible (*Access Copyright* at para 20).

[36] However, the content of Mr. Petruska's response email constitutes mostly self-serving evidence to highlight his arguments regarding procedural fairness and is therefore not admissible. As for the two other documents, they meet none of the exceptions and are irrelevant to issues before the Court. They are thus inadmissible and will not be considered by the Court.

(2) New Evidence

[37] Mr. Petruska enclosed 21 exhibits to his affidavit in support of his application for judicial review. As discussed with the parties at the hearing, several of these exhibits were not in the record before the Commission. More specifically, these exhibits are:

i. Exhibit A: Text communications dated April 20, 2021, to May 28, 2021, between Mr. Petruska and the IAMAW chairman;

ii. Exhibit B: Mr. Petruska's undated COVID-19 related leave request, screenshot of COVID-19 related questions and answers, and email dated July 5, 2021, from an Early Resolution Officer of the Labour Standards of the Government of Canada;

iii. Exhibit C: Email dated June 14, 2021, from Mr. Petruska's manager to Mr. Petruska and letter of discipline dated June 28, 2021;

iv. Exhibit E, page 2: Letter dated December 23, 2021, from Air Canada stating that Mr. Petruska's status remained "suspension pending discharge";

v. Exhibit G: Clause 19.06 of Mr. Petruska's collective agreement;

vi. Exhibit H: Clauses 17.01.01 to 17.01.05 of Mr. Petruska's collective agreement;

vii. Exhibit I: Copy of a cheque dated January 23, 2024, and screenshot of the *Federal labour standards* website;

viii. Exhibit J, in part: Screenshot of Mr. Petruska's Service Canada account (only the ROE with serial number W80102099 was before the Commission);

ix. Exhibit L: Screenshot of the Commission's website and email dated April 9, 2022, from Mr. Petruska to the Commission;

x. Exhibit M: Email dated September 18, 2023, from the Commission to Mr. Petruska;

xi. Exhibit Q: Email exchange between December 21, 2023, and December 28, 2023 between the Officer, Mr. Petruska and Air Canada;

xii. Exhibit R, page 1: Email dated February 7, 2024, from the Officer to Mr. Petruska;

xiii. Exhibit S: Email dated February 25, 2024, from Mr. Petruska to the Officer and Mr. Petruska's submissions; and

xiv. Exhibit U: Transcript of an audio recording of a conversation allegedly held on June 10, 2021 between Mr. Petruska and an Air Canada scheduler.

[38] In other words, only Exhibits D, E (page 1), F, J (in part), K, O, P, R (pages 2 and 3) and T of Mr. Petruska's affidavit were before the Commission.

[39] Moreover, paragraphs 16 and 17 of Mr. Petruska's affidavit outline his April 9, 2022, attempt to file a complaint to the Commission. However, there is no evidence in the certified tribunal record that this information was provided to the Commission either in his Complaint form, during the November 6, 2023, phone call with the Officer or in his December 20, 2023, additional submissions in response to the Report. The Court further notes that this evidence does not appear in Exhibit S, i.e., Mr. Petruska's February 25, 2020, submissions following Air Canada's representations in response to the Report.

[40] It is well established law that in the context of a judicial review, the Court should normally not examine evidence which was not previously examined by the administrative decision maker (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14 citing *Access Copyright*; *Tsleil-*

Waututh Nation v Canada (Attorney General), 2017 FCA 128 at paras 97–98 [*Tsleil-Waututh*]). As stated at paragraph 19 of *Access Copyright*, citing the Federal Court of Appeal in *Gitxsan Treaty Society v Hospital Employees' Union*, 1999 CanLII 7628 (FCA) at para 14-15: "the essential purpose of judicial review is the review of decisions, not the determination, by trial de novo, of questions that were not adequately canvassed in evidence at the tribunal or trial court."

[41] There are a few exceptions to this rule. New evidence can be received by the Court if it (1)°provides general information and background susceptible to assist the Court to understand the issues raised by the judicial review; (ii) shows procedural vices or violation of procedural fairness principles; or (iii) shows the complete absence of evidence in front of the decision-maker when they made a particular finding (*Tsleil-Waututh* at paras 97–98; *Access Copyright* at para 20).

[42] In this case, given that Exhibits A, B, C, E (page 2), G, H, I, J (in part), L, M, Q, R (page 1), S and U were not presented to or considered by the Commission when it rendered the Decision, these exhibits are not admissible. The same applies to paragraphs 16 and 17 of Mr. Petruska's affidavit. It would be unfair to oppose to the Commission information that was not brought to its attention. Further, save for Exhibit S, these documents do not meet any of the exceptions criteria recognised by the case law to be admitted into evidence. Therefore, the Court will not consider these documents in the judicial review of the Decision.

[43] While the Court understands that Exhibit L is particularly important to Mr. Petruska's arguments before this Court, and that he maintained at the hearing that this information was discussed verbally with the Commission's agent during a phone conversation, there is no evidence in the record to support this.

[44] As for Exhibit S, this relates to Mr. Petruska's argument that the Commission did not thoroughly review all of the information provided. The two documents enclosed in that exhibit meet the procedural fairness exception outlined above and Exhibit S is thus admissible.

(3) New Issue

[45] Air Canada asserts that in his Memorandum, Mr. Petruska raises a new issue that was not before the Commission, namely that the Commission did not consider his February 25, 2024, submissions in response to those made by Air Canada. Air Canada submits that it is generally inappropriate for this Court to consider, on judicial review, an issue that could have been but was not raised before the administrative decision maker (citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 23 [*Alberta Teachers*]).

[46] The Court notes Mr. Petruska could not reasonably have raised this argument before the Commission, as there was no clear indication prior to receiving the Decision, that his February 25, 2024, submissions would not be considered.

[47] As such, although it is a new issue, the Court will exercise its discretion to consider this issue (*Alberta Teachers* at para 22).

B. *Applicable Standard of Review*

[48] The presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86). With respect to procedural

fairness, although no standard of review is applied, the Court's exercise of review is "best reflected in the correctness standard" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]; see also *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57).

[49] As recently summarized by Justice Blackhawk in *Bakhache v Canada (Attorney General)*, 2025 FC 156 [*Bakhache*]:

> [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).
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> [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).
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> [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).

[50] As in *Bakhache,* the Court will thus apply the standard of reasonableness to the Decision and the standard of correctness to the procedural fairness issue raised by Mr. Petruska.

C. *The Decision is Reasonable.*

[51] The role of this Court is not to determine if the actions of Air Canada constituted discrimination or harassment. Instead, this judicial review is limited to determining whether in this case, the Commission's Decision that it would not deal with the Complaint because it was submitted outside the one-year time limit, and that it would not exercise its discretion to extend the delay and deal with the Complaint, was reasonable.

[52] In *Temate v Canada (Attorney General),* 2018 FC 1004 [*Temate*], Justice Roussel (as she was then) outlined the applicable framework of a Commission's decision under subsection 41(1) of the *Act*:

> [20] The Commission's discretion to screen out a complaint at this stage of the process is limited to cases where it is "plain and obvious" (*évident et manifeste*) that the complaint should not be processed because the Commission's decision summarily ends the complaint (*Canada Post Corporation v. Canadian Human Rights Commission* 1997 CanLII 16378 (FC), [1997] FCJ No 578 (QL) at para. 3; *Canadian Museum of Civilization* at para. 64 and 68; *Khapar v. Air Canada*, 2014 FC 138 at para. 46 [*Khapar*];

> *Bredin* at para 24; affd [1999] FCJ no. 705, 1999 CanLII 7865 [FCA]). During this preliminary step, the Commission is not required to investigate the merits of the complaint (*Khapar* at para. 64; *Bredin* at para. 26; *Cap-Breton* at para. 16).
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> [21] If the Commission determines that the complaint is inadmissible because it was submitted outside the one (1) year time limit stipulated in paragraph 41(1)(*e*) of the CHRA, it must then decide if it will exercise its discretion to grant a longer period of time to file the complaint (*Bredin* at para. 27; *Price v. Concord transportation Inc.*, 2003 FC 946 at para. 38).

[53] Moreover, the Federal Court of Appeal has previously determined that the Commission's refusal to hear a complaint that was filed out of time is unassailable (*Gandhi v Canada (Attorney General)*, 2017 FCA 26 at para 17 [*Gandhi*]). Further, that "limitation 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).

[54] As such, Mr. Petruska bore the burden of proving that the Commission made a reviewable error when rendering the Decision. This error could have been a failure in the reasoning process and/or the fact that the Decision was untenable in light of the relevant factual and legal constraints that bear on it (*Vavilov* at paras 100-101), and this, based on the evidence the Commission had before it. He did not meet this burden.

[55] First, in judicial review, Mr. Petruska claims that he exerted all efforts possible - including phone calls, online submission and emails - to reach the Commission and to file his Complaint within the time limit but did not receive responses. However, there is no indication in the record that Mr. Petruska provided any evidence of these efforts to the Commission. Moreover, as previously mentioned, his email complaint of April 2022, submitted with his affidavit supporting

his judicial review application, is not mentioned anywhere in the record and is therefore not admissible evidence.

[56] The Court further highlights that, in its Decision, the Commission duly noted and considered the submissions made by Mr. Petruska in his response to the Report of the Officer, i.e., that he would have made initial contact with the Commission in the fall of 2022 but did not receive a follow-up call. The Court notes, however, that at that time Mr. Petruska made refence to the fall of 2022 and not to an email of April 2022.

[57] Regarding this alleged initial contact, the Commission also stated that at that time, he certainly would have been advised of the time limit and that this information was available on the Commission's website. Mr. Petruska does not dispute this conclusion.

[58] Based on the record before it, the Commission found that Mr. Petruska did not provide a satisfactory explanation for waiting almost an additional year before submitting his Complaint and that there was nothing to suggest the delay was beyond his control. Again, Mr. Petruska did not provide any evidence to dispute this conclusion of the Commission.

[59] At the hearing, Mr. Petruska claimed that during his phone call with the Commission's agent, the latter would have told him that he would not consider evidence that Mr. Petruska tried to file a complaint in April 2022. It is because of this that Mr. Petruska claims he did not include the April 2022 email into evidence, nor evidence of the Commission's system failure before the decision-maker. Unfortunately, as explained to Mr. Petruska during the hearing, save for limited exceptions, the Court is bound by the evidence that was before the decision-maker. Moreover,

these details regarding his discussion with the Commission's agent are not included in his affidavit and therefore, cannot be considered by this Court.

[60] It is unfortunate that Mr. Petruska did not provide more details and supporting evidence to the Commission on this important point, especially given that the Officer's Report focussed on his tardiness to file the Complaint. We will never know if the Decision would have been different if the Commission had been provided with the April 2022 email complaint. However, the Court cannot judge the Commission Decision as unreasonable for not having considered this information as it was not in front of it and could have been.

[61] It was up to Mr. Petruska to put his best foot forward before the decision-maker. As previously mentioned, judicial review is not the time to replead the case or bring up new fact or arguments (*Access Copyright* at para 19).

[62] Second, Mr. Petruska asserts that the last act of discrimination did not end on October 21, 2021, but rather that his status change lingered on for 980 days, in addition to his ongoing punishment from Air Canada including but not limited to the letter purposely delivered to him on Christmas day reconfirming his "suspended pending discharge" status, the cleaning of his locker or by removing his access to the internal Air Canada portal.

[63] On this, the Court agrees with Air Canada that Mr. Petruska seeks to relitigate the substance of the Complaint or attack the actions of Air Canada, which is not within the Court's purview on judicial review. Moreover, the Court is cognizant that Mr. Petruska does not agree with the Commission's findings that the conduct he describes reflects the consequences or impact of the

alleged discrimination and not ongoing discrimination. However, he did not provide the Court with sufficient grounds to conclude that it was unreasonable for the Commission to determine the last act of discrimination occurred on October 21, 2021, and that it was unreasonable for the Commission not to exercise its discretion granting a longer period of time to file the Complaint.

[64] In sum, given the deferential standard of review, the fact that the Commission's Decision on this aspect is transparent, intelligible, and justified, the Court cannot conclude that the Decision is unreasonable.

D. *There was no breach of procedural fairness.*

[65] At the hearing, Mr. Petruska submitted that this case was not simply about a technical dismissal for lateness and was about a deep procedural unfairness where a citizen who acted diligently and in good faith was denied any meaningful access to the Canadian Human Rights systems – not through any fault of his own, but through the internal breakdown of the very institution mandated to protect human rights. Mr. Petruska further submitted that a system that requires a citizen to meet strict time limits but refuses to respond, assist, or act when contacted is not a fair system of justice. It is a system that denies individuals their statutory rights while concealing its own administrative failings.

[66] These submissions do not appear in Mr. Petruska's notice of application for judicial review, nor his Memorandum. This Court has held that "unless the situation is exceptional, new arguments not presented in a party's Memorandum of Fact and Law should not be entertained as to do so would prejudice the opposing party and could leave the Court unable to fully assess the merits of

the new argument" (*Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 at para 81).

[67] In any event, while the Court does not doubt Mr. Petruska's good faith, as previously mentioned, he did not provide the Commission with sufficient evidence that he acted diligently. The record shows this is why the Commission decided not to accept his Complaint in addition to the fact that he did not provide a satisfactory explanation for waiting to file a complaint nor that the delay was beyond his control. Since most of the evidence he attempted to file in this judicial review was not admissible, there is no evidence supporting his claims that internal breakdown occurred within the Commission processes or that the Commission refused to respond, assist or act.

[68] As for the Commission's letter of May 2025 filed as fresh evidence and allowed by this Court, the Court is not convinced by Mr. Petruska's argument that this would prove that the Commission's process was unfair and the decision unreasonable. Although this is not part of the record, Mr. Petruska indicated at the hearing that he filed multiple complaints with the Commission and pointed out, what he calls "systemic delay, contradictions and denial of access". Once again, these allegations are not supported by admissible evidence.

[69] That said, even if the Court was to consider that Mr. Petruska filed multiple complaints, it is not impossible that this letter of May 2025 relates to another complaint he had filed and thus resulted from a simple administrative error on the part of the Commission, as submitted by Air Canada (and supported by the Commission's letter to that effect).

[70] This even more so when this letter makes reference to a complaint that would have been filed in January 2023 regarding unjust termination of employment. Accordingly, it is not possible for the Court to know if this complaint relates to the same issues as the Complaint referred to in the present matter and dealt with by the Decision. In none of Mr. Petruska's submissions to the Commission did he ever mention this January 2023 complaint. His affidavit in support of this judicial review is also silent regarding same.

[71] Given the above and the fact that this January 2023 complaint would have also been filed outside the one-year time period prescribed by the *Act*, the Court is not convinced that it shows a "deep procedural unfairness" which would warrant the Court's intervention.

[72] In his Memorandum, Mr. Petruska also raises a procedural fairness issue relating to the fact that it took Air Canada 980 days to investigate the case, instead of the 10-days set out in the Collective Agreement. This information would have been sent to the Commission on February 25, 2024, i.e., after the Officer's Report and the rebuttal submissions by the parties but would have been ignored by the Commission.

[73] Mr. Petruska also takes issue with the fact that the Officer granted Air Canada's request for an extension of time to submit a further response to the Report from January 10, 2024, to January 25, 2024, and that he only received Air Canada's further response on February 7, 2024. He adds that at least three Air Canada representatives handled his case, but not one cared to submit such a brief response in time. Mr. Petruska stresses that while being strict to his timeliness to an

unreasonable point, the Commission accepted that Air Canada was late without any reasonable facts supporting its delay.

[74] Thus, Mr. Petruska takes issue with the fact that the new evidence contained in his February 25, 2024, submissions was never addressed or acknowledged by the Commission. In his view, this brings into question if all the information he provided to the Commission was thoroughly reviewed.

[75] Regarding judicial fairness, the ultimate question before the Court is whether the applicant knew the case to meet and had a full and fair chance to respond. In this case, the Court is satisfied there was no breach of procedural fairness as the record shows Mr. Petruska knew the case to be met and a full and fair chance to respond.

[76] More specifically, Mr. Petruska knew as early as December 8, 2024, that Air Canada agreed with the Officer's Report and recommendation to dismiss the Complaint. He subsequently filed his response to the Report on December 20, 2024. There were no additional facts or substantive submissions in Air Canada's January 25, 2024, response to the Report that Mr. Petruska could have responded to. Air Canada basically reiterated the position it took on December 8, 2024.

[77] Moreover, the certified tribunal record shows that Mr. Petruska's February 25, 2024, submissions were not shared with the Commission when it made its Decision; accordingly, the Commission did not fail to account for this information as it was simply not provided to it.

[78] In the Court's view, there was no obligation for the Officer to share Mr. Petruska's February 25, 2024, submissions with the Commission, specially considering that he had previously provided his response to the Report and that the Officer had not invited Mr. Petruska to provide further submissions. It is well established that an administrative tribunal is master of its own procedure (*Gandhi* at para 15 citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 27, *Canada (Attorney General) v Sketchley*, 2005 FCA 404, [2006] 3 FCR 392 at para 119).

[79] While the Court agrees with Mr. Petruska that "procedural fairness implies that a party must be given a meaningful opportunity to be heard, and that includes having their key evidence properly reviewed and assessed", the Court is of the view that Mr. Petruska was heard but that the Commission disagreed with his submissions.

V. Conclusions

[80] Given the above, the Court cannot conclude that the Decision was unreasonable. On the contrary, the Commission's analysis was logical and coherent in consideration of the factual and legal constraints applicable. The Decision "bears the hallmarks of reasonableness – justification, transparency and intelligibility" (*Vavilov* at para 99).

[81] Mr. Petruska has not shown that the Decision is flawed or that it has sufficiently serious shortcomings that it would justify this Court's intervention (*Vavilov* at paras 100–101). Therefore, further to the review of the Commission's reasons and of the evidence in the file, the Court is of the view that the Decision is reasonable.

[82] Moreover, the Court is satisfied that there were no breaches of procedural fairness.

[83] In light of the reasons above, the application for judicial review will be dismissed.

[84] At the hearing, the parties confirmed that neither would be seeking costs.

JUDGMENT in T-776-24

THIS COURT'S JUDGMENT is that:

1. Mr. Petruska's Motion for New Evidence is granted, in part.

2. Exhibits B, C and D of Mr. Petruska's affidavit found in his Motion for New Evidence are hereby struck.

3. The application for judicial review is dismissed.

4. No costs are awarded.

"Danielle Ferron"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-776-24
STYLE OF CAUSE:	STEVEN PETRUSKA v. AIR CANADA
PLACE OF HEARING:	MONTRÉAL, QUÉBEC
DATE OF HEARING:	JULY 8, 2025
JUDGMENT AND REASONS:	FERRON J.
DATED:	JULY 23, 2025

APPEARANCES:

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Alexandra Meunier	FOR THE RESPONDENT (AIR CANADA)

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