Federal Court Cour fédérale

Date: 20251009

Docket: T-1952-24

Citation: 2025 FC 1669

Ottawa, Ontario, October 9, 2025

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

SIMON BANDA

Applicant

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision of the Canadian Human Rights Tribunal [the Tribunal] dismissing a human rights complaint by the Applicant (*Banda v Correctional Service Canada*, 2024 CHRT 89 [the Decision]).

[2] The Canadian Human Rights Commission [CHRC] as well as the Attorney General of Canada [AGC] are the Respondents. The CHRC takes an adverse position to the AGC, aligning their argument with the Applicant's position.

II. Facts

A. *Background*

[3] The Applicant, Simon Banda, is a Black Canadian of Zambian origin. He attended the Correctional Training Program [the Program] from April 2 to June 19, 2014, held at a Royal Canadian Mounted Police training facility in Regina, Saskatchewan. The purpose of the Program is to qualify trainees for employment with Correctional Service Canada [CSC].

[4] The Program is the third stage in CSC's pre-employment training. Admission into the Program is not an offer of employment with CSC. If a recruit does not successfully complete the Program, they may reapply and if their application is accepted, they may reattend (Decision at para 9).

[5] The Program has a "three strikes" policy applying to formal theory and skills tests. Under the policy, each recruit is given two retest credits for the entirety of the Program. Each recruit is entitled to retake a strikable test once after a failure, but a second failure on the same test or a third overall failure results in the recruit's automatic dismissal from the Program.

[6] Staff Training Officers [STOs] monitor and record the performance of recruits in the Program. STOs are instructed to note concerns, complaints, observations, performance issues, and failures in the training files for each recruit (Decision at para 18).

[7] The Applicant was the only Black recruit in his class of 27. The group also included eight women, 16 white male recruits, and two other racialized male recruits – one of Asian and one of Arab ethnic origin. Two other recruits, in addition to the Applicant, were released from the Program before completion.

[8] On April 23, 2014, the Applicant failed the Self-Defence Theory exam. This was his "first strike" in the Program. He did not allege discriminatory conduct in respect of this failure. He subsequently retook and passed the Self-Defence Theory exam on April 28, 2014 (Decision at para 21).

[9] On June 12, 2014, the Applicant failed a 9 mm pistol skills test. This was his "second strike" in the Program. He did not allege discriminatory conduct in respect of this failure. He subsequently retook and passed the test (Decision at para 22).

[10] The Applicant also failed two non-strikable assessments but passed them on retests.

[11] On June 19, 2014, the Applicant failed a 12-gauge shotgun manipulation test [the Shotgun Test]. This was his "third strike" and resulted in his release from the Program. It is the subject of dispute between the parties. The CSC claims that the Applicant failed due to a repeated failure to apply the safety selector on the shotgun. The Applicant ultimately admitted to

failing to put the shotgun's safety on three times (Decision at para 124). However, he claims that he should have passed the test but failed due to discriminatory evaluation by STO Angela Davie (Decision at paras 23–24).

[12] In June 2015, the Applicant filed a complaint with the CHRC, alleging that he was unfairly singled out and subjected to harsher treatment than his white peers in the Program, at least in part due to his race, colour, or national or ethnic origin, contrary to section 7 of the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA]. The Applicant further alleged that this discrimination culminated in his release from the Program days before his expected graduation.

[13] On June 28, 2017, the Applicant's complaint was dismissed by the CHRC as not warranting an investigation.

[14] The Applicant sought a judicial review of the CHRC's decision, which was granted on June 6, 2019 (*Banda v Canada (Attorney General)*, 2019 FC 791).

[15] Following the judicial review, the matter proceeded. In a pre-hearing motion, the Applicant requested an order striking part of CSC's statement of particulars alleging that he pointed a shotgun at STO Davie. The Tribunal dismissed the motion, finding that CSC was entitled to make the argument. The Applicant argued then and maintains now that this was prejudicial and reflects CSC's discriminatory attitude toward him (*Banda v Correctional Service Canada*, 2021 CHRT 19 at paras 8, 10, 12, 14, 17, 34).

[16] The hearing took place over the course of ten days, from September 27, 2022, until October 7, 2022. A decision on the merits of the Applicant's claim was issued on July 12, 2024.

[17] My understanding is the Applicant could have reapplied at any time to the Program. The Applicant was released from his first attempt in the Program in 2014, and this matter has been ongoing since the complaint was filed in June 2015.

B. *Key elements of the Tribunal's reasoning*

[18] While the entirety of the Tribunal's reasoning will not be canvassed at this point, it will be useful to understand certain elements to contextualize the submissions of the parties in this application.

[19] The Tribunal dismissed the complaint, finding that the Applicant failed to establish on a balance of probabilities that he suffered adverse differential treatment or that CSC subjected him to adverse differentiation at least in part due to his race, colour, or national or ethnic origin (Decision at para 6).

(1) Identification and analysis of central issues

[20] The Decision records that, after input from the parties at the beginning of the hearing, it was agreed that the Tribunal would focus on evaluating seven incidents or issues central to the allegations (Decision at para 26). These were the only issues that the Tribunal was to deal with and that it would receive submissions relating to:

1) Notation regarding an incomplete homework assignment;

2) Allegation regarding photos on the gun range;

3) Denial of a sick leave request;

4) Shotgun Test and release from the Program;

5) Escort and release from the premises;

6) Booking of flight; and

7) Enhanced documentation, scrutiny, and monitoring.

(Decision at para 27.)

[21] For each of these issues, the Tribunal undertook the following analysis:

1. Has the Applicant established a *prima facie* case of discrimination under section 7 of CHRA because CSC subjected him to adverse differential treatment, at least in part due to his race, colour, or national or ethnic origin?

2. If so, has CSC established a valid justification for its otherwise discriminatory actions?

3. If CSC cannot establish a justification, what remedies should be awarded?

(Decision at para 29.)

[22] To determine whether a *prima facie* case of discrimination was made out, the Tribunal held that Applicant must prove that each element of the following three-part test was met:

1. The Applicant had a characteristic protected from discrimination under the CHRA;

2. The Applicant experienced an adverse impact with respect to employment; and

3. The protected characteristic was a factor in the adverse impact.

(Decision at paras 31–32, citing *Quebec (Commissions des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 65 [*Bombardier*]; *Moore v British Columbia (Education)*, 2012 SCC 61 at para 33 [*Moore*].)

(2) Tribunal's finding on credibility

[23] Given divergent accounts of facts between the parties, the decision maker had to decide credibility. She found that in his evidence in chief, the Applicant's evidence was "given freely and directly, but, on cross-examination, it was not. He was not forthright in his answers and … evasive when pressed in cross-examination. He would often avoid answering the question asked" (Decision at paras 41–42).

[24] The decision maker also noted that the matter had been ongoing for many years and the Applicant "introduc[ed] new versions of events for the first time at the hearing" (Decision at para 43). After discussing examples, she agreed with CSC that the Applicant lacked the hallmarks of a credible witness (Decision at paras 42, 44).

III. Issues

[25] Did the Tribunal breach its duty of procedural fairness in reaching its Decision?

[26] Is the Decision reasonable?

[27] If a standard of correctness applies to allegations of procedural unfairness and the proper selection of the test for *prima facie* discrimination, did the Tribunal err in its assessment of those issues?

IV. Relevant Provision

[28] The Tribunal was tasked with determining whether CSC's conduct amounted to a violation of section 7 of the CHRA, which provides:

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

V. Analysis

(1) The standard of review is reasonableness

[29] When a court reviews an administrative decision, the presumptive standard of review is reasonableness. This presumption is rebutted where there is indication that the legislature intends for a different standard or set of standards to apply, or where the rule of law requires that the

standard of correctness be applied (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 39–40; *Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 35).

[30] In this case, the Court must examine whether the Applicant's allegations of procedural unfairness and the purported error in applying the *prima facie* discrimination test constitute exceptions requiring the court to apply the standard of correctness.

[31] Neither of the Applicant's proposed reasons for derogating from the presumptive standard of reasonableness is valid. Reasonableness is the applicable standard of review throughout this case.

(2) There was no breach of procedural fairness

[32] Allegations of procedural unfairness are reviewable on a standard akin to correctness (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at 838–841; *Nedelec v Rogers*, 2024 FC 1059 at para 18).

[33] The Applicant alleges four separate breaches of procedural fairness. He argues that two arise from the exclusion of 13 documents from the record (namely, the exclusion of six documents relating to damages sought by the Applicant and seven documents including interview notes and memoranda from CSC and the CHRC), and that two more arise from the Tribunal's failure to comment on "documentary or contradictory evidence." Specifically, the Applicant alleges that the Tribunal failed to consider STO Brand's inability to adequately

explain her performance evaluation notations and by "failing to consider contradictory evidence of [CSC's] witnesses" respecting the Shotgun Test in assessing CSC's credibility.

[34] On the first two alleged breaches of procedural fairness, the Respondent has answered that the documents in question were all in fact before the Tribunal. The seven documents with direct evidentiary value were admitted under different identifiers in the Respondent's list of exhibits. A letter from the CHRC confirms that as the reason for the exclusion of these seven documents from the list of exhibits jointly prepared by the Applicant and the CHRC:

- HR-124 was filed as R-17;
- HR-126 was filed as R-15;
- HR-130 was filed as R-133;
- HR-131 was filed as R-134;
- HR-152 was filed as R-135;
- HR-154 was filed as R-130; and
- HR-155 was filed as R-16.

[35] The six remaining documents (HR-137, HR-138, HR-140, HR-148, HR-149, and HR-150) included collective agreements of the CSC employees' union, benefits, pension, and overtime calculations made by the Applicant for the purpose of assessing entitlement to damages. These are documents in the Applicant's control which counsel for the AGC objected to the inclusion of in the record. The Applicant acknowledged that the documents were referred to in argument, as directed by the Tribunal. These documents were, therefore, properly before the Tribunal as evidence presented in argument.

[36] I find no procedural unfairness related to these 13 documents, nor the grounds for a reasonable apprehension of bias as alleged by the Applicant. The allegedly disregarded evidence was all properly before the decision maker. It was reasonable in this case to direct that the evidence relating to remedies be submitted in argument and for the decision maker to decline making a decision on the remedies when the Applicant's complaint was unsuccessful.

[37] On the latter two alleged breaches of procedural fairness, the Applicant cites a passage from *Junusmin v Canada (Citizenship and Immigration)*, 2009 FC 673 at para 26 [*Junusmin*], which in turn cites a passage from *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17.

[38] The passage in *Junusmin* narrowly refers to an obligation to comment on documentary evidence that is commensurate with its relevance. Here, the Applicant has argued that the Tribunal breached procedural fairness by failing to consider testimony that was not given by STO Brand or by witnesses to the Shotgun Test who were not called as witnesses by the AGC.

[39] Madam Justice Gleason has commented on the application of *Junusmin*, stating that reviewing courts must begin with the presumption that a tribunal considered the entire record, and that applicants challenging this presumption bear a high burden of persuasion (*Herrera Andrade v Canada*, 2012 FC 1490 at para 11).

[40] The Applicant is effectively arguing that the absence of certain evidence (i.e., the potential testimony of witnesses who were not called) was not given adequate weight. This does not amount to a breach of procedural fairness. There is no property in a witness, and the

Applicant could have called those witnesses if he had wished. Some of the witnesses were on his witness list, but in the end, he did not call any witnesses.

[41] This is not a case where negative inferences can be drawn from a witness not testifying. I find no procedural unfairness from any evidence not being commented on, as such evidence was not presented.

(3) The test for *prima facie* discrimination was properly selected

[42] The Applicant cites *United Nurses of Alberta v Alberta Health Services*, 2021 ABCA 194 [*United Nurses of Alberta*] as an authority for the claim that an improper articulation of the *prima facie* discrimination test is reviewable on a standard of correctness. In outlining the argument to this effect, the Applicant alleges that the Tribunal failed to apply the "subtle scent of discrimination" test from *Basi v Canadian National Railway*, 1988 CanLII 108 (CHRT) [*Basi*].

[43] The Respondent correctly states that the Alberta Court of Appeal held in *United Nurses of Alberta* that the proper test for *prima facie* discrimination is the three-part test from *Moore*, which was precisely what was selected and applied by the Tribunal in this case (*United Nurses of Alberta* at para 64; Decision at para 32).

[44] I find that the Tribunal selected and applied the correct test for *prima facie* discrimination.

[45] The Applicant has not demonstrated that the Tribunal erred in relying upon the *prima facie* discrimination test from *Moore*. By citing *Basi*, the Applicant instead objects to the

Tribunal's failure to draw an available inference from the circumstantial evidence before it. This is not reviewable on a standard of correctness.

[46] In oral submissions, the Applicant argued — without evidence — that the Tribunal erred by requiring a burden of proof higher than a balance of probabilities. This argument must be rejected, as the Tribunal expressly adopted the proper standard of proof (Decision at para 31). There is no indication that the decision maker ever departed from this standard.

(4) Judicial review is not an opportunity for re-litigation

[47] The purpose of this judicial review is not to relitigate the issues. It is to assess the reasonableness of the Tribunal's decision. This arises as the Applicant and the CHRC raise certain arguments about the May 21st and June 13th notations by STO Brand in a manner that is not appropriate at the stage of judicial review.

[48] The hearing was over the course of 10 days of evidence and argument before the Tribunal and the decision maker made many findings of fact after hearing and weighing all the evidence. The Tribunal's decision cannot be assessed against a standard of perfection. A judicial review cannot "be divorced … from the history of the proceedings" (*Vavilov* at para 91).

[49] The parties agreed at the Tribunal hearing that the May 8th notation regarding an incomplete homework assignment was of central importance to the claim (Decision at para 27). There is no indication that the Applicant insisted on a detailed review of the May 21st and June 13th notations, or that the Tribunal improperly ignored these entries or disregarded their

importance. The decision deals with this issue in detail and the only argument and evidence at issue was the May 8th homework notation (Decision at paras 50–65).

[50] The Tribunal discussed Brand's notations at length, including in the context of evaluating the Applicant's claim of cumulative impact (Decision at paras 50–65, 174–185). The Court made a finding of fact based on the arguments and evidence presented to them at the hearing that it was the May 8th notation that was of central importance to the claim.

[51] Now new arguments are being made related to STO Brand's notations of May 21st and June 13th. The parties agreed at the outset of the Tribunal hearing that it was only the May 8th notation that was of central importance. It is not appropriate for this Court to disturb the Tribunal's factual findings on these points as unreasonable since those arguments were not before the decision maker.

(5) The Decision does not exhibit unreasonableness

(a) *The Tribunal reasonably found that Mr. Banda was not singled out for negative performance by STO Brand*

[52] The Applicant argues that the Tribunal's finding – that *prima facie* discrimination was not established regarding Mr. Banda being singled out for negative performance evaluations – was unreasonable. In the alternative, the Applicant argued it was unreasonable for the Tribunal to find that STO Brand's excessive scrutiny of the Applicant was not based upon a protected characteristic.

[53] The Tribunal accepted the Applicant's argument that STO Brand's May 8th notation could have left a negative impression on a subsequent reader, since it concerned a failure to complete a homework assignment (Decision at para 59).

[54] However, the Tribunal found that the Applicant's allegation regarding the discriminatory nature of this event was speculative. The decision maker noted that the allegations was asserted without sufficient supporting evidence, such as a comparison between STO Brand's notation on the Applicant's assignment with her and other STOs' assessment of comparable incomplete assignments by other recruits (Decision at paras 60–62).

[55] The Tribunal held that the "tenor of Ms. Brand's entry does not align with Mr. Banda's claim" and further found that "the notation reflects a level of concern for Mr. Banda and an attempt to set him up for success" (Decision at para 64).

[56] STO Brand was not the only officer to review assignments or make notations. The Applicant's emphasis on the supposed inadequacy of her evidence, especially relating to the June 13th notation, does not undermine the cogency of the analysis undertaken by the Tribunal on this point. The Tribunal's finding was reasonable in light of the evidence before it.

(b) *The Tribunal reasonably chose not to draw adverse inferences about CSC's credibility from the absence of two potential witnesses*

[57] The Applicant argues that the Tribunal failed to properly assess the credibility of the Respondent by (1) not considering the motives of CSC witnesses; and (2) not drawing adverse inferences from CSC's failure to call certain witnesses.

[58] The core of this argument is that the Tribunal only heard from witnesses who were employees of CSC. On the one hand, the Applicant argues that the Tribunal did not adequately scrutinise the evidence given by these witnesses and failed to challenge alleged inconsistencies in their reasoning. On the other hand, the Applicant argues that other STOs (namely, Jason Seems and Edward Renaud) could have provided evidence supporting his case but were not called by CSC.

[59] This issue has already been discussed in relation to an alleged breach of procedural fairness (see paragraphs 40–41, above). In oral submissions, counsel for the Applicant argued that STO Seems would have had useful evidence but was unlikely to provide it to an adverse party. While counsel was entitled to not call a witness, they are not now entitled to claim that their own decision to not call a witness reflects unreasonableness on the part of the Tribunal.

[60] It was reasonable for the Tribunal to abstain from drawing adverse inferences about the evidence provided by witnesses based on either of the grounds alleged by the Applicant.

[61] On a slightly different note, the Applicant had argued that the allegation that of the Applicant was pointing a gun at an instructor should have led to credibility concerns about that Officer's evidence. I do not agree. There was no evidence lead on that point by the AGC at the tribunal hearing, so the Tribunal did not have to decide whether it happened or not. Counsel for the AGC indicated that when drafting the pleadings, he thought he had information on that point. The witnesses agreed it did not happen, and no evidence was led on that point. I find it a non-issue with regard to diminishing the CSC witnesses' credibility.

(c) *The Tribunal reasonably assessed the cumulative effect of the allegedly discriminatory conduct and the subtle nature of racial prejudices*

[62] The Applicant and the CHRC argued that the Tribunal failed to adequately consider the cumulative effect of the allegedly discriminatory conduct and did not properly appreciate the subtle nature of how racial prejudices operate.

[63] In support of this argument, the Applicant relied extensively on the case of *Turner v Canada Border Services Agency*, 2020 CHRT 1 [*Turner*]. In *Turner*, the Tribunal found that a decision to disqualify the complainant from a hiring selection process had been discriminatory and based upon "an untrue negative stereotype of the lazy, incompetent, dishonest black male" (*Turner* at para 127).

[64] However, in *Turner*, the employer had expressly raised concerns about management's perceptions of the complainant which were communicated both internally and directly to the complainant (*Turner* at paras 22–23). The Tribunal found that these perceptions were discriminatory and had no basis in fact (*Turner* at paras 108, 113, 117, 126–131).

[65] Both the Applicant and the CHRC argued that the Tribunal failed to consider the subtle and unconscious nature of racial prejudice and erroneously accepted the CSC's argument that discriminatory conduct needed to be evaluated by considering whether the individual actors, comprising CSC, discriminated against the Applicant through their independent actions or through their actions in concert (Decision at para 174).

[66] In other words, the Applicant and CHRC argued that there was sufficient circumstantial evidence for the Tribunal to infer that CSC's employees were unconsciously biased by a racial prejudice which nevertheless did not rise to a latent intent to discriminate by any one individual employed by CSC or a group conspiracy among several CSC employees.

[67] While it is undoubtedly true that racial stereotypes can be unintentionally and unconsciously established and reinforced, an inference of racial stereotyping nevertheless requires an adequate amount of evidentiary support.

[68] The Tribunal found that the Applicant failed to provide sufficient evidentiary support that would make an inference of racial discrimination more probable than not (Decision at para 187).

[69] The CHRC specifically objected to the Tribunal's finding that it required evidence of "something more than [the Applicant's] own belief" that STO Brand's May 8th notation was racially motivated (Decision at para 60). Counsel for the CHRC argued that this imposed an improperly high burden of proof on the Applicant.

[70] The Applicant had the onus of proving *prima facie* discrimination on a balance of probabilities (*Bombardier* at para 65). Requiring evidence exceeding subjective belief is not an improper elevation of this standard.

[71] Nor is *Turner* a proper analogy to the case at bar. The Tribunal observed that complainants are not required to prove an intent to discriminate to establish a *prima facie* case (*Turner* at para 48). However, the evidence in that case included emails with negative

commentary about the complainant (*Turner* at paras 22–23). These were treated as strong circumstantial evidence of discrimination based upon unconscious bias. In the present case, the Tribunal found that the evidence presented in support of allegations made against STOs Brand and Davie was inadequate for proving the Applicant's claim.

[72] The CHRC additionally argued that the Tribunal did not seriously investigate the role of racial dynamics in the overall level of scrutiny faced by the Applicant. The CHRC alleged that the Tribunal gave inadequate weight to the volume of entries on his assessment file as proof of disproportionate scrutiny.

[73] Specifically, the CHRC argued that the Tribunal failed to consider CSC's historical lack of implicit bias training and improperly dismissed an incident where the Applicant was questioned about whether he was taking photos at a gun range.

[74] The Tribunal reviewed all the notations in the Applicant's performance log and compared them with the notations made for other recruits (Decision at paras 166–171). The decision maker found that the entries were neither individually discriminatory nor leaving a discriminatory impact in their sum total (Decision at para 171).

[75] The CHRC argued that the Tribunal's finding "fails to account for the cumulative impact and detailed nature of the numerous notations." But the Tribunal clearly considered the notations at length, and it reasonably found that the Applicant's numerous notations had a basis in the facts: the Applicant failed more tests than other recruits, sought additional time for testing, requested sick leave, and challenged his release after the Shotgun Test (Decision at para 164).

[76] Similarly, the Tribunal analysed the alleged photo incident at the gun range in detail (Decision at paras 66–73). The CHRC disputes the Tribunal's finding and again alleges that an "unreasonably high threshold" was set by an expectation that the Applicant provide evidence that amounted to "something more than abstract belief or suspicion" (Decision at para 71). Again, a requirement for evidence exceeding subjective belief is not an unreasonable elevation of the standard of proof on a balance of probabilities.

[77] In both these instances, the Tribunal reasonably declined to draw an inference without evidence proving it on a balance of probabilities.

(d) *The Tribunal reasonably considered the risk of subjective discrimination in scoring the "Shotgun Test"*

[78] The CHRC argued that the Tribunal failed to adequately examine the subjective element of the Shotgun Test and whether racial bias played a role in the Applicant's failing score.

[79] In doing so, the CHRC asks this Court to draw adverse inferences from the Tribunal's unwillingness to make a finding of discrimination without supporting evidence.

[80] The Tribunal found that the Applicant admitted that he had failed to apply the shotgun's safety mechanism three times but argued — without evidence — that STO Davie improperly docked him 10 points rather than six points for these failures (Decision at paras 118, 120, 126–127).

[81] The CHRC argued that the Tribunal made a critical error by recognising that some subjective element exists in the Shotgun Test but failing to analyse what the subjective element was and whether it was tainted by racial bias in this case. However, the Applicant himself alleged that the subjective element was the improper scoring.

[82] The Applicant's score was ultimately higher than his objective performance would have warranted (Decision at para 119). It was reasonable for the Tribunal to find that the Shotgun Test was properly scored and that there was not sufficient evidence to find that STO Davie discriminated against the Applicant in scoring his performance as a failure.

(e) *The Tribunal reasonably addressed escalations in the allegations of Mr. Banda's aggressive behaviour*

[83] The CHRC alleged that the Tribunal failed to critically examine the escalating allegations that the Applicant behaved aggressively at the conclusion of the Shotgun Test, including, most significantly, the allegation in CSC's statement of particulars that the Applicant pointed a shotgun at STO Davie.

[84] The Tribunal found that the Applicant did not point a gun at STO Davie. Although there was a lack of contemporaneous notes indicating that the Applicant had behaved aggressively or threateningly at the conclusion of the Shotgun Test, the evidence suggested that a verbal altercation did take place (Decision at paras 134–135).

[85] Counsel for the AGC admitted in oral submissions that the allegation that the Applicant pointed a gun at STO Davie was originally included in pleadings that he had drafted.

[86] While this allegation may have perpetuated a harmful stereotype about the Applicant by suggesting without evidence that he had committed a violent and criminal act, it is not attributable to CSC's employees and at any rate transpired years after the incidents under review.

[87] It was reasonable for the Tribunal not to infer adverse differentiation based on a protected characteristic at the time of the Shotgun Test based on the untruth of an allegation that was made later and expressly found to be false at the hearing.

VI. Conclusions

[88] Administrative justice does not always take the same appearance as judicial justice (*Vavilov* at para 92).

[89] While the Applicant and CHRC raise multiple points which may invite a decision maker to draw a conclusion other than what was drawn by the Tribunal in this case, they do not successfully demonstrate that the Tribunal's decision as a whole was unreasonable in the sense that it failed to demonstrate an internally coherent and rational chain of analysis that is justified in relation to the factual and legal constraints (*Vavilov* at para 85).

[90] For the reasons above, the Tribunal's decision is reasonable and the application for judicial review should be dismissed.

VII. Costs

[91] The AGC sought costs in the amount of $6,000, not including expenses for travel incurred to attend the hearing. The AGC indicated that counsel would normally seek costs in the range of $5,000 but sought more in this case given the extra work involved in responding to two arguments: that of the Applicant and that of the CHRC.

[92] The Applicant argued that the range of $3,000 to $4,000 would be suitable for an award of costs, with Mr. Banda not being personally responsible for any costs. The CHRC argued that there should be no costs awarded against it, as it acts in the public interest (CHRA, s 51). Counsel for the CHRC submitted that they agreed to a virtual hearing to minimize costs and avoided duplication of the Applicant's arguments.

[93] The AGC disputed the CHRC's argument that they were acting in the public interest and therefore should not have costs awarded against them. The AGC disagreed and saw the CHRC act more in an advocate's role on behalf of the Applicant. Accordingly, the AGC suggested a portion of the costs should be awarded against the CHRC.

[94] Pursuant to Rule 400(3)(a), (g), and (h) of the *Federal Courts Rules*, SOR/98-106 [*FC Rules*], I have considered the result of this proceeding, the amount of work, and the public interest in having the proceeding litigated as factors in determining the appropriate quantum of costs.

[95] In my discretion under rule 400(1) of the *FC Rules*, I will award the Respondent AGC a lump sum of $4,000 plus taxes and disbursements. This is to be paid forthwith and proportionally, with $3,000 of costs and 75% of disbursements and taxes being paid by the Applicant to the Respondent AGC, and the remaining $1,000 plus 25% of the disbursements and taxes paid by the Respondent CHRC to the Respondent AGC.

[96] The CHRC taking the role of an advocate for the Applicant increased the complexity of the matter. On these facts, the case was more a personal interest and not necessarily an advancement for the public interest. Both the CHRC and the Applicant's arguments often were more appropriate to a trial *de novo*. Another factor is that the Applicant naming the CHRC as a Respondent made the matter more complex.

[97] The same parties have been litigating this dispute for many years, and it was evident that there was a hint of animosity between them. This may have led to less cooperation and streamlining of the application which is never what the Court wishes. But in the end, this was an important matter for the Applicant. Neither the Applicant nor the CHRC should be unduly burdened with a large sum of costs.

[98] Therefore, as noted, I will award a lump sum of costs payable to the Respondent the AGC (para 95, above).

JUDGMENT in T-1952-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. The Applicant shall pay the Respondent, the Attorney General of Canada, costs in the amount of $3,000 as a lump sum and 75% of disbursements and taxes, payable forthwith.

3. The Respondent, the Canadian Human Rights Commission, shall pay the Respondent, the Attorney General of Canada, costs in the amount of $1,000 as a lump sum and 25% of disbursements and taxes, payable forthwith.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1952-24
STYLE OF CAUSE:	SIMON BANDA v CANDIAN HUMAN RIGHTS COMMISSION AND ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	WINNIPEG, MANITOBA AND HELD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 16, 2025
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	OCTOBER 9, 2025

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