Date: 20070914

Docket: T-1770-06

Citation: 2007 FC 919

Montréal, Quebec, the 14th day of September 2007

PRESENT: THE HONOURABLE MR. JUSTICE MAURICE E. LAGACÉ

BETWEEN:

CHARLOTTE RHÉAUME

Applicant

and

THE ATTORNEY GENERAL OF CANADA
(Canadian Human Rights Commission)

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review submitted by Charlotte Rhéaume under section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, of the decision by the Canadian Human Rights Commission (the Commission) dated September 1, 2006, in which the Commission declined to deal with the applicant's complaint.

Facts

[2] The applicant began her career in the Canadian public service on February 19, 1985, at Immigration Canada and has worked for the former Department of National Revenue, now the Canada Revenue Agency (the Agency) since May 25, 1987.

[3] In 1999, the Agency started reorganizing the GST/HST Technical Interpretation Service, the applicant's place of employment. This reorganization transferred the services provided by the Technical Interpretation Service in Quebec to the Border Issues Unit at Headquarters in Ottawa, as well as to the Quebec Ministère du Revenu.

[4] On April 4, 2002, the applicant learned of the elimination of her position and her transfer to an equivalent position within the Agency. She challenged this decision, which she considered to be discriminatory, and, on January 6, 2003, she filed a complaint with the Commission.

[5] On January 10, 2003, a Commission officer informed the applicant in writing that the Commission could not assist her because the situation described did not come under one of the prohibited grounds of discrimination set out in the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act). In response to this letter, the applicant wrote again to the Commission in order to further explain her complaint.

[6] On January 17, 2003, a second Commission officer informed the applicant in writing that, in his opinion, even with the additional information, the file that she had submitted still did not

contain the elements necessary to constitute a complaint under the Act. In the same breath, the officer added, [TRANSLATION] “Lastly, it is important to note that it is your decision whether or not to file a complaint with the Commission”.

[7] More than two years later, on April 27, 2005, the applicant renewed the process with the Commission and, to show cause for the delay, cited the recent agreement between a male co-worker and the Agency, an agreement reached through mediation of which she was aware when she filed her complaint in January 2003.

[8] On June 23, 2006, a Commission investigator submitted her report to the parties and recommended that the Commission decline to deal with the applicant’s complaint for the reasons that the facts alleged did not constitute a discriminatory practice under the Act and that the complaint was based on acts that had occurred more than a year before the filing of the complaint.

[9] On August 10, 2006, the file was submitted to the Commission for a decision and, on September 1, 2006, the Secretary of the Commission informed the applicant in writing that the Commission had decided not to deal with her complaint for the reasons that, first, the facts alleged could not constitute a discriminatory practice under the Act and, second, the complaint was based on acts that had occurred more than a year before the filing of the complaint.

[10] The applicant is now challenging the Commission’s decision.

Issues

[11] The applicant submits a number of somewhat repetitive issues. The Court prefers the respondent's more precise statement of the issues:

1. Did the Commission err in declining to deal with the applicant's complaint because [TRANSLATION] "the facts as alleged could not constitute a discriminatory practice", pursuant to paragraph 41(1)(*c*) of the Act?

2. Did the Commission err in declining to deal with the applicant's complaint because [TRANSLATION] "the acts that it was based on had occurred more than one year before the complaint was filed", pursuant to paragraph 41(1)(*e*) of the Act?

3. Did the Commission breach the principles of natural justice or procedural fairness in its review of the applicant's complaint?

Reasons for judgment in accordance with the facts and the law

[12] In its decision, the Commission cited the following two reasons under section 41 of the Act for declining to deal with the applicant's claim:

> (1) the facts alleged could not constitute a discriminatory practice, and
>
> (2) the complaint was based on acts that had occurred more than a year before the complaint was filed.

For her application for judicial review to be allowed, the applicant must satisfy the Court on both components of the decision at issue.

The *Canadian Human Rights Act*

[13] The Commission's decision was made in accordance with paragraphs 41(1)(*c*) and (*e*) of the Act, which state the following:

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 :
…	[…]
(*c*) the complaint is beyond the jurisdiction of the Commission;	*c*) la plainte n'est pas de sa compétence;
…	[…]
(*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.	*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.

Issue 1

Did the Commission err in declining to deal with the applicant's complaint because [TRANSLATION] "the facts as alleged could not constitute a discriminatory practice", pursuant to paragraph 41(1)(*c*) of the Act?

[14] The applicant complained of being treated differently in her employment because of her sex. She claims that she and a male co-worker filed comparable grievances regarding the same

work situation. She claims that the Agency treated the matter differently and more favourably for her co-worker, which is in itself discriminatory. The fact that her union refused to represent her on the same basis also constitutes a discriminatory practice against her.

[15] The Commission's decision is based on the investigation report of June 23, 2006, which stated that the applicant's only evidence of discrimination was the agreement between a co-worker and the Agency reached through mediation. Consequently, without an apparent linkage between the ground of discrimination and the treatment received by the applicant, the complaint is beyond the jurisdiction of the Commission.

[16] Even if we agree that the applicant did file two complaints, the Commission still could not have accepted them. The first complaint was based solely on the fact that the Agency carried out a non-uniform reorganization of its employees and not on any of the grounds set out in the Act. In addition, as the Commission correctly observed, a complaint under the *Canadian Charter of Rights and Freedoms* (the Charter) should not be heard by the Commission but by a court of competent jurisdiction.

[17] As for the fact that a male co-worker was able to reach an agreement with the employer, the Commission found that there was not sufficient evidence available to support the applicant's discrimination complaint.

[18] Before this Court, the applicant has reiterated the same argument and has not identified a single error made by the Commission in its analysis nor any evidence that it failed to consider. Therefore, the Court does not see how the Commission erred in declining to deal with a discrimination complaint that was not supported by the evidence submitted.

[19] The Court notes that the applicant and her male co-worker both filed grievances before both opting for mediation. The co-worker, for his part, chose to compromise in the mediation in order to reach an agreement that was satisfactory to him and the Agency, which she, no doubt, should also have done.

[20] The fact that no agreement was reached between the Agency and the applicant during mediation but that one was reached by the co-worker does not in itself prove discrimination against the applicant. On the contrary, all this proves is that the applicant and the Agency were not in agreement because, as the applicant admitted, she considered the Agency's offers to be unreasonable.

[21] However, we note that the applicant had her chance in mediation just like her male co-worker. Only the results of the mediation differ. The success of the mediation for one and the failure of it for the other does not on its own constitute discrimination; there needs to be more.

[22] The Federal Court of Appeal, in *Ramlall v. Canada (Attorney General)*, 2002 FCA 494, recognized that under paragraph 41(1)(*c*) of the Act, the Commission has the power to decline to

deal with a complaint when the evidence in the file does not support the allegations of discrimination, as in this case.

[23] Considering the evidence in the file, the Court finds that the Commission's decision not to deal with the complaint was warranted.

Issue 2

Did the Commission err in declining to deal with the applicant's complaint because [TRANSLATION] "the acts that it was based on had occurred more than one year before the complaint was filed", pursuant to paragraph 41(1)(*e*) of the Act?

[24] The applicant maintains that her complaint to the Commission was filed within the time prescribed by the Act. She stresses that the discriminatory practice, namely, eliminating her position on April 4, 2002, and the withdrawal of the grievance by the union on October 8, 2002, preceded the filing of her complaint, on January 6, 2003, by less than a year.

[25] She adds that the Commission's decision did not show what facts were referred to to find that the acts had occurred more than one year before the complaint had been filed. Therefore, the Commission was unaware that the complaint concerned two distinct bodies and was based on distinct acts.

[26] When the Commission adopts the recommendations of an investigator, as in this case, without adding anything further, the investigator's report is presumed to constitute the Commission's reasons. See *Ouellet v. Canada (Attorney General)*, 2006 FC 1541, at paragraph 27. Therefore, it is in the investigation report adopted by the Commission that the applicant will find the explanations to which she is entitled.

[27] The Court does not see how the Commission incorrectly exercised its discretionary power under paragraph 41(1)(*e*) of the Act, nor does it see how it breached the principles of natural justice or procedural fairness. This decision is not based on inappropriate reasons or reasons contrary to the purpose of the Act and, therefore, must be respected.

[28] The applicant claims to have filed a complaint on January 6, 2003, but, unfortunately for her, the correspondence does not support this argument. On January 10, 2003, a Commission intake officer informed her that the Commission could not accept the complaint for the reason that it was not based on any of the prohibited grounds of discrimination set out in the Act. Despite subsequent communication, a second intake officer gave the applicant the same answer.

[29] This same officer took the opportunity to clearly inform the applicant that despite the Commission's conclusion, the applicant could still file a complaint with the Commission: [TRANSLATION] "Lastly, it is important to note that it is your decision whether or not to file a complaint with the Commission". The applicant did not make this decision, and, contrary to her claim, her complaint was never suspended pending an internal procedure.

[30] Under paragraph 41(1)(*e*) of the Act, a complaint cannot be accepted if it is filed after the time limit of one year has passed since the last of the acts on which the complaint is based has occurred. However, the Act gives discretionary power to the Commission to accept a complaint filed outside this time limit.

[31] The Commission and the applicant corresponded three times with regard to the complaint. The first was on January 6, 2003, to inform the Commission that the applicant wanted to file a complaint against the Canada Revenue Agency and against her union. The second was on January 13, 2003, at which time the applicant provided additional information. She clearly referred to the fact that her co-worker had reached an agreement with the Agency following mediation, but, at that time, she made no allegation of discrimination on the basis of sex or anything else. The Commission refused to accept the complaint in responses dated January 10 and January 17.

[32] It was not until April 27, 2005, that the applicant informed the Commission for a second time of her intention to file a complaint against the Agency and the union. She added that she had suffered discrimination on the basis of her sex, since a male co-worker had obtained an agreement through mediation.

[33] The only issue to resolve is whether the earlier correspondence from the applicant constitutes a complaint under the Act. It should be noted that a person can file a complaint with the Commission, but, under subsection 40(1) of the Act, it must be "in a form acceptable to the

Commission". It is clear that in this case the Commission never accepted the complaint, based on the Commission's second letter, which states the following:

> [TRANSLATION]
>
> A review of your whole case brings us to the conclusion that it does not have the necessary elements to constitute a complaint under the *Canadian Human Rights Act*. We are satisfied that these explanations will allow you take these matters to the appropriate courts.
>
> Lastly, it is important to note that it is your decision whether or not to file a complaint with the Commission. However, we want to emphasize that under subparagraph 41(1)(*c*) of the Act, the Commission can decline to deal with any complaint that it considers to be beyond its jurisdiction.
>
> [Emphasis added]

[34] The applicant maintains that her complaint was not subject to any time limit because the harm she suffered was continuous and had an impact on her career by negatively affecting her opportunities for advancement and her retirement pension.

[35] This argument stems from a confusion between the act on which the complaint filed on a specific date was based and the possible consequences of this act over time.

[36] In *Good v. Canada (Attorney General)*, 2005 FC 1276, which concerned an application for judicial review of a decision not to deal with a complaint pursuant to paragraph 41(1)(*e*) of the Act, this Court established that it was the date on which the dismissal took place that must be used in calculating the one-year time limit set out in the Act. In the same way, the elimination of the applicant's position was an act that happened at a precise moment, namely, April 4, 2002, when the applicant was informed in writing of the elimination of her position. This is the last so-called

discriminatory act, and marks the start of the one-year time limit prescribed by paragraph 41(1)(*e*) of the Act.

[37] In her correspondence in 2003, the applicant merely noted that a co-worker had reached an agreement without making any allegation of discrimination. The Commission was, therefore, right to refuse this complaint not only because it did not involve a discriminatory act but also because of the time limit.

[38] Time and again, this Court has recognized that the appropriate standard of judicial review for a decision by the Commission not to deal with a complaint pursuant to paragraph 41(1)(*e*) of the Act is patent unreasonableness.

[39] The decisions made under this provision stem from a discretionary power. Considering the circumstances in this case, the Court finds nothing unreasonable in the Commission's refusal to exercise its discretion and accept the complaint after the expiry of the time limit prescribed by paragraph 41(1)(*e*) of the Act.

Issue 3

Did the Commission breach the principles of natural justice or procedural fairness in its review of the applicant's complaint?

[40] The applicant claims that important documents were not presented to the Commission while it was making its decision, including the original complaints of January 6 and 13 and the Commission's responses, the summary of the telephone conversations, the submissions from the applicant on the issues of timeliness and jurisdiction, a copy of the applicant's grievance, as well as other communications between the parties.

[41] However, the applicant had every opportunity to make written submissions and to provide any documents that could offer a better understanding of the case. It appears from the investigation report making up part of the Commission's decision that the Commission considered all the applicant's submissions. The procedure respected the requirements stated by the Federal Court of Appeal in *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1999] 1 F.C. 113. In that case, Mr. Justice Décary, writing for the Court of Appeal, described the procedure that the Commission must follow in its investigation:

> With respect to procedural fairness, the Commission did precisely what the jurisprudence of this Court, as recently as in *Slattery v. Canadian Human Rights Commission* (1996), 205 N.R. 383 (F.C.A.), has told it to do. The Commission gave Bell a copy of the Draft Investigation Report, of the Investigation Report and of the Revised Investigation Report. It gave Bell the full opportunity to respond to each of these reports and Bell seized the opportunity every time. Following the receipt of the submissions by the parties on the Investigation Report, the Commission circulated each party's submissions to the other parties. Following the

> release of the Revised Investigation Report, all parties were provided with an opportunity to comment on the submissions of the other parties to the Revised Report. The Revised Report examined each and every argument that had been raised by Bell in its written comments. The Commission considered the Revised Report, Bell's submissions on it and further submissions by Bell before finally reaching its decision. What more could it have done?

[42] The Commission followed this procedure in the present case. The applicant had all the necessary opportunities to submit to the Commission the information that she considered important, and she was able to submit her comments on the investigator's report to the Commission before the Commission integrated the report into its decision.

[43] The applicant has not shown that there were any exceptional circumstances in this case or any unreasonable omissions made by the Commission. Nothing warrants modifying the decision not to deal with the applicant's complaint.

[44] In *Canada (Attorney General) v. Sketchley*, 2005 FCA 404, the Federal Court of Appeal found that the Court must always undertake the pragmatic and functional analysis, regardless of the similarity between the issue before the Court and the existing caselaw. In this case, the Court has undertaken the analysis despite the facts that the applicant did not raise any argument deserving consideration and that the application must be dismissed outright, whatever the appropriate standard of review.

[45] For these reasons, the Court finds that the application for judicial review is ill-founded in fact and in law, thereby resulting in its dismissal with costs awarded to the respondent, who is seeking them, whereas the applicant did not give the Court any reason to waive them.

JUDGMENT

THE COURT ORDERS that:

The application for judicial review be dismissed with costs to the respondent.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Gwendolyn May, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1770-06
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