Federal Court  Cour fédérale

Date: 20090709

Docket: T-967-08

Citation: 2009 FC 715

Ottawa, Ontario, July 9, 2009

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

ROBYN P. DAVIDSON

Applicant

and

CANADA POST CORPORATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 18(1) of the *Federal Courts Act*, R.S. 1985, Chap. F-7, for judicial review of a decision of the Canadian Human Rights Commission (the Commission) dated May 20, 2008 to dismiss the applicant's complaint of discrimination by the Canada Post Corporation upon the basis that pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, R.S.C. 1985, Chap. H-6 (the Act), the Commission was satisfied that a request

by the Commission to the chairperson of the Canadian Human Rights Tribunal (the tribunal) to institute an inquiry into the complaint was not warranted.

[2] The applicant requests:

1. An order removing the impugned decision into the Court and quashing same;

2. An order directing the Commission to refer the applicant's complaint to the chairperson of the tribunal with a request that the tribunal institute an inquiry into the complaint;

3. A declaration that (contrary to law) the Commission (including its investigation into the complaint and the investigation report, dated June 12, 2007, pursuant thereto) failed to conduct a proper investigation into the evaluation of the applicant's complaint;

4. An order for the costs of this application in favour of the applicant as against the respondent(s);

5. Such further or other order(s) and/or relief as the applicant may request the Court consider and deem appropriate and/or just in the circumstances.

Background

[3] In March 2006, the applicant sent a resume to Canada Post Corporation in Halifax, Nova Scotia, in response to a posting for casual/temporary inside or outside workers at a Canada Post facility plant in Saint John, New Brunswick. The applicant identified herself as a woman, visible minority and a person with a disability which was identified as Asperger Syndrome. The application was placed in Canada Post's Equity Database where applications from equity seeking candidates are identified.

[4] Asperger Syndrome is a high functioning autism spectrum disorder. A person with Asperger Syndrome typically has average or above average cognitive ability but has “extreme social deficits” such as underdeveloped social and communication skills.

[5] On May 10, 2006 the applicant received a letter from Canada Post in Saint John, New Brunswick inviting her to write the Canada Post General Aptitude Test (GAT) as part of the competition for a position on the “Temporary List” Saint John, NB (the competition) as part of the Canadian Union of Postal Workers (CUPW).

[6] The applicant’s mother, Sophia Davidson, a long time employee of Canada Post, subsequently contacted Sue Merritt of Canada Post to find out whether the competition was for inside (Group 1) or outside (Group 2) casual worker positions. The applicant was concerned that she had not been driving for the amount of time required for the outside position as well as other circumstances related to her disability that made her unsuitable for the outside position. The applicant understood from her mother that the competition was for both inside and outside workers and upon successful completion of the competition, the applicant would request to be put on the inside casual worker list.

[7] The applicant wrote the GAT on May 16, 2006 and was advised on May 18, 2006 that she had passed. The applicant requested and received from Canada Post extra time to complete the test because of challenges related to Asperger Syndrome.

[8] On May 24, 2006 the applicant received a notification from Canada Post for an oral job interview in connection with the competition. The applicant's father, Philip Davidson, also a long term employee with Canada Post, telephoned Patsy Dallon of Canada Post, Saint John to inquire about the nature of the job interview in order to assess the applicant's need for accommodation. The applicant's father was provided with the information that the interview would involve situational questions. The applicant's father did not specifically request and/or suggest any form of accommodation for the applicant during the interview but asked whether accommodation would be required for the applicant to fairly compete with the other candidates. The applicant herself, did not speak to anyone prior to the interview. The respondent stated that they would have accepted any "reasonable requests" for accommodations.

[9] On May 30, 2006, the applicant was interviewed by Sue Merritt and Patsy Dallon of Canada Post.

[10] On June 14, 2006, the applicant received a telephone call from Cathy Ollerhead from Canada Post in Halifax advising that a letter offering the applicant employment had been sent in error and the applicant had failed to meet the qualifications.

[11] On June 15, 2006 the applicant received the letter that offered her employment as a temporary casual employee.

[12] On June 16, 2006, the applicant received another letter advising the applicant that she had failed the GAT.

[13] In response to these letters, the applicant's mother called Sue Merritt from Canada Post in Saint John and E. McKiggan from Canada Post in Halifax for clarification of these letters. The applicant's mother was told that the applicant had passed the GAT but failed the oral job interview and that the letters were being corrected. The applicant and her mother subsequently met with Sue Merritt regarding the oral job interview that the applicant had failed.

[14] The applicant also contacted Lucille Bourque Lampier, Canada Post's Human Rights Atlantic Officer on around July 13, 2006 to file an internal complaint with the respondent resulting from her failure to obtain employment as a temporary postal clerk. Ms. Lampier met with the applicant and her mother and subsequently launched an internal investigation.

[15] Ms. Lampier concluded in her investigation that (1) the applicant did not request or suggest accommodation during the oral interview, or suggest an alternative method of assessment; (2) the "competencies and suitability" portion of the oral interview was rationally connected to both the positions of postal clerk and mail carrier; (3) the applicant failed the oral interview because of her lack of work experience, not because of disability, and (4) the respondent's recruitment process includes appropriate efforts to accommodate candidates for employment.

[16] The respondent states that the applicant succeeded in passing the GAT test but not the oral interview in which she scored 39.2% of the 60% required to pass. The interview phase of the competition involves a "standardized interview process that is designed to assess and compare a series of skills and competencies for all candidates of Canada Post's bargaining unit positions, including the temporary positions of postal clerk that the applicant had applied for". The oral interview involves evaluation in three areas: a) work skills; (b) map reading exercise; and (c) competencies and suitability. The "competencies and suitability" area means "the knowledge, skill, ability or behavioural attributes associated with high performance on the job". The competencies that Canada Post states are necessary for the proper performance of bargaining unit positions, including the temporary positions of postal clerk and mail carrier are the following: (a) customer orientation; (b) commitment to excellence; (c) relationship management; (d) decision making/judgment; and (e) oral communication.

[17] After the issues regarding the hiring process had not been resolved internally, the applicant filed a complaint with the Commission on July 21, 2006 alleging that Canada Post discriminated against her in the hiring process and that the standards applied to the applicant based on her disability were in contravention of sections 7 and 10 of the Act. The applicant stated that she sought an evaluation by Canada Post based on the individual circumstances of her syndrome and based on the specific job requirements of an "inside postal clerk" for which she sought employment instead of being assessed for the requirements of both an "inside" and "outside" postal clerk.

[18] The applicant filed several subsequent additions to her complaint thereafter.

[19] The applicant also requested a copy of her interview guide from Canada Post pursuant to privacy legislation that she feels was never completely provided. The respondent states that they provided as much information as necessary to assess the complaint.

[20] In the fall of 2006, the applicant and respondent participated in the Commission's mediation process but a resolution was not found. The matter then proceeded to the Commission's Investigation Division.

[21] In April of 2007, the Commission sent a letter to the applicant detailing Canada Post's response to the complaint with a request for her comments. The applicant sent a response in early May of 2007 as well as four other additional letters outlining the applicant's comments on Canada Post's defence.

Investigator's Decision

[22] The Commission sent the applicant the Commission Investigation Report into the complaint in June of 2007. The investigator recommended that the Commission dismiss the complaint because "the evidence does not indicate that the respondent failed to accommodate the complainant; and the evidence indicates that the respondent's recruitment process included appropriate efforts to accommodate applicants" (Canadian Human Rights Commission, Investigation Report).

[23] The investigator made the following findings: that the applicant required accommodation in the hiring process based on disability; that the evidence indicates that accommodation was provided for the GAT and that no accommodation request was made by the applicant for the oral interview; that the respondent has suggested other accommodations for the applicant for the interview portion but the applicant has refused these options without suggesting alternatives because the applicant believes any measure of social skill assessment is discriminatory; the respondent acknowledges that it uses situational questions during the interviews for inside and outside postal workers but they are flexible in considering other options; that the duty to accommodate is not limitless and that the evidence suggests that the respondent has made such an effort; and that the applicant must cooperate to facilitate the accommodation process.

[24] This report was referred to the Commission for review and a decision was made to refer the complaint to conciliation. In September of 2007, conciliation was attempted but the parties were unable to reach a settlement.

[25] On May 20, 2008, the applicant was notified that her complaint would not proceed to the tribunal stage pursuant to subparagraph 44(3)(b)(i) of the Act stating that "having regard to all the circumstances, an inquiry by the tribunal was not warranted".

Issues

[26] The applicant raised the following issues:

1. The Commission erred in law by failing to consider that the respondent did not establish that it adopted relevant standards at the hiring stage rationally connected to the particular job sought by the applicant.

2. The Commission erred in law by failing to consider that the respondent had not adopted its evaluation standards in a good faith belief that the standards were necessary to fulfill a legitimate work related purpose with respect to the position applied for by the applicant.

3. The Commission erred in law by failing to consider the respondent did not demonstrate to any point of 'hardship' that it could not accommodate the applicant's disability by adopting evaluation standards more appropriate to her needs and the position applied for.

4. The Commission erred in law by failing to consider that the respondent had not established that the evaluations standards at the hiring stage were *bona fide* occupational requirements for the particular type of job being sought by the applicant.

5. The Commission erred in law by failing to exercise jurisdiction to obtain and consider the relevant evidence from the respondent (being an unedited copy of the interview guide of the applicant) and further, by so failing to obtain such evidence denied the applicant of the opportunity to rebut any issue relating to the interview guide with knowledge of the contents thereof.

6. The Commission erred in law by failing to consider the impact of sections 7 and 10 of the Act as had been raised in the applicant's complaint as amended.

[27] I would rephrase the issues as follows:

1. What is the standard of review?

2. Did the Commission err in not referring the applicant's complaint to the tribunal based on discrimination contrary to sections 7 and 10 of the Act in the respondent's hiring practices?

3. Did the Commission err in not considering relevant evidence in its investigation of the complaint?

Applicant's Submissions

Standard of Review

[28] In her written submissions, the applicant argues that the question before the Court is one of fact and law but because there is "no substantive issue with the facts as set out in the record, only with the application of the law to those facts", the applicant argues that the standard of review is correctness. In support of this argument, the applicant states that Mr. Justice Harrington in *Donovan v. Canada*, 2008 FC 524 (CanLii) makes the following points about determining the standard of review, one, that "much depends on whether the issue is one of law, mixed fact and law, or pure fact", two, that "generally questions of law are reviewed on a correctness standard", three, that the existence of a privative clause is one guideline towards determining the correct standard and the Act does not have one, and four, that issues of jurisdiction and statutory interpretation warrant a correctness standard.

[29] At the hearing, the applicant based her submissions on the appropriate standard of review on the jurisprudence set forth in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[30] The applicant does concede, however, that there is jurisprudence indicating a reasonableness standard as in *Khanna v. Canada (Attorney General)*, 2008 FC 576 (CanLii).

Discrimination in hiring practices

[31] The applicant argues that the respondent discriminated against her out of ignorance of what is required to accommodate someone with her disability. She points to both her own experience in the hiring process as well as a recent decision of the Canadian Human Rights Tribunal in *Dawson v. Canada Post Corporation*, 2008 CHRT 41 as evidence that the respondent does not fully appreciate the manner in which its policies discriminate. On October 3, 2008, Chairperson Deschamps wrote about the challenges that Canada Post's was having with Ms. Dawson, a long time employee at Canada Post. The applicant felt that the following paragraphs were particularly important in relation to her complaint:

> [240] At the end of her testimony, Ms. Daoust acknowledged that it was the first time that Canada Post had to deal with an employee who was autistic, that in all probability, Canada Post mismanaged the case but that in the end, Canada Post learned from this experience.
>
> [241] According to Ms. Daoust, Canada Post took different measures to increase its understanding of autistic people and be better managers, such as organizing a meeting with Dr. Poirier. Canada Post had to adapt itself to Ms. Dawson's thought process. According to her, Canada Post tried to accommodate Ms. Dawson but that there are rules at Canada Post that must be followed and to try to accommodate Ms. Dawson given these rules was not always easy. Canada Post did its best, according to her, with the knowledge it had of autism.
>
> [242] [...] An employer has a duty to ensure not only that all employees work in a safe environment but also that ill perceptions about an employee's condition due to poor or inadequate information

> about his disability lead other employees to have negative and ill-founded perceptions about him.
>
> [...]
>
> [245] Autistic people, if they want to be able to accomplish themselves in a workplace or in society, need to be reassured that everything possible short of undue hardship will be done in order to ensure that misperceptions and misconceptions about their condition are properly handled by their employer, so that co-workers have a proper understanding of their condition and are not inclined to discriminate against them or harass them.
>
> [...]
>
> [247] The Tribunal is of the opinion, in view of the evidence, that the Respondent needs to review its policies in relation to discrimination and harassment and put in place educational programs that will sensitize its employees as well as management to the needs of disabled individuals in the workplace, notably autistic individuals, so that individuals such as Ms. Dawson will not have to suffer from a lack of knowledge and understanding of their condition...

[32] The applicant argues that the points enunciated by Chairperson Deschamps are similar to her own experience and note that one, the issues involved human resources personnel from the same Halifax office of the respondent in both *Dawson* above, and in the case at bar; two, the respondent stated in *Dawson* above, that it was the first time they had to deal with an autistic employee; three, that Canada Post admitted that it had mismanaged the case; and four, rigid corporate rules made it difficult for the respondent to accommodate employees like Ms. Dawson and potential employees like the applicant. The applicant argues that the same obligations attach to employers when dealing with existing employees or potential employees.

[33] The applicant states that the respondent and the Commission in making its decision did not attempt to identify what might be appropriate modifications for a job applicant with the applicant's disability. They argue that the attempts at settlement, mediation and conciliation did not involve any legitimate suggestions that actually identified the proper measures to accommodate someone with the applicant's disability.

[34] The applicant states that there was no evidence that suggested that the respondent truly understood the applicant's disability and how it could properly fulfill its duty to accommodate. The applicant argues that this accommodation is not only supposed to be suited to the particular disability but once that is established, it is to be fulfilled up to a standard of undue hardship.

[35] Furthermore, the applicant argues that the method of assessment is not rationally connected to the position applied for, which is part of the test that came out of the Supreme Court of Canada case in *Meiorin (Public Service Employee Commission) v. B.C. Gov. And Service Employees Union* [1999] 3 S.C.R. 3. The applicant contends that there were questions in the interview that were outside of the necessary aptitudes of the position she applied for as an inside worker and that this discriminates against her as a person with a disability. It is also in contravention of section 10 of the Act which prohibits discriminatory policies and practices. The applicant contends that the investigator did not consider this issue at all in her reasons.

Relevant evidence considered

[36] The applicant argues that the investigator did not consider fully the relevant facts and law in this case. There are two issues that she asserts. One, the applicant states that without the interview guide by Canada Post, the investigator was not fully equipped to evaluate the hiring process. And two, that the investigator made her decision based too heavily on the applicant's refusal to accept a mediated solution instead of placing the weight of its decision on whether the conduct of the respondent in the hiring process was in violation of the Act.

Refusal to send to Tribunal

[37] The applicant argues that the tribunal erred in not sending the complaint to a tribunal for a hearing. The applicant suggests that the Commission must be held to the highest standard of review because of the importance of upholding human rights as well as the fact that the applicant will have no further redress if the Commission does not continue with a tribunal investigation of the complaint.

Respondent's Submissions

Standard of Review

[38] The respondent argues that the standard of review to be applied to Commission cases based on facts and law is reasonableness. *Dunsmuir* above, is used to illustrate the manner in determining the

standard of review to be applied. The respondent argues that jurisprudence that has already stated the standard of review in cases of similar circumstances will be determinative. If jurisprudence has not been settled on the standard of review, then a two step approach will be applied, as in *Dunsmuir* above.

[39] In reference to the standard of review to be applied with respect to a decision of the Commission under subsection 44(3) of the Act, the respondent states that several cases have previously considered this issue prior to *Dunsmuir* above. They point to the findings of several cases that apply a reasonableness standard. In *Bastide v. Canada Post Corp*., [2005] F.C.J. No. 1724, Mr. Justice de Montigny concludes that the Commission must apply the facts of the complaint to the legal standards in order to determine if a further review would be warranted. Post-*Dunsmuir*, Mr. Justice Martineau in *Bateman v. Canada (Attorney General)*, 2008 FC 393 stated that the Commission's task was "clearly a question of mixed fact and law".

[40] The respondent argues that the reasonableness standard also applies to how the Commission applied sections 7 and 10 of the Act. Investigators are charged with processing complaints of discriminatory practice and decisions are part of a specialized and broad system of remedying human rights. The respondent argues that the facts of the complaint are intertwined with the legal analysis and as such, *Dunsmuir* above, warrants a review on the standard of reasonableness.

Discrimination in hiring practices

[41] The respondent states that the proper beginning to an analysis on whether or not the Commission's decision to dismiss the applicant's complaint was unreasonable begins with a review of the general principles of subsection 44(3) of the Act. The respondent points to *Syndicat des employes de production du Quebec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879 and *Cooper v. Canada (Canadian Human Rights Commission*, [1996] 3 S.C.R. 854 for the proposition that before a complaint goes to a tribunal, the investigation is analogous to that of a judge at a preliminary hearing and as such, it is not the function of the Commission to determine if the complaint has been made out. Rather, the cases state that the Commission's duty is to determine if an inquiry is warranted, giving consideration to all facts, and to assess the sufficiency of the evidence.

[42] Additionally, the respondent argues that a review of the jurisprudence suggests that the Court owes the Commission deference as a result of its expertise and the fact that it is afforded a considerable degree of discretion in making decisions under section 44 as in *Owen v. Canada (Attorney General)*, [1995] F.C.J. No. 1661; *Wang v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2005] FC 654; and *Bastide* above. The respondent argues that the mandate of the Commission is not to give an opinion on the merits of a complaint or to determine if it is justified but to give an opinion on whether there is sufficient evidence to proceed. It is this basis of the decision where the respondent argues that the reasonableness standard applies.

[43] The respondent points out that the decision of the investigator is by extension a decision of the Commission. This relationship between the Commission's decision and the investigator's report was addressed in *Sketchley v. Canada (Attorney General)*, [2006] 3 F.C.R. 392.

[44] The respondent argues that the investigator's decision not to refer the applicant's complaint to the tribunal was reasonable. The material given to the investigator by the respondent made many points clear, making it reasonable to conclude that the respondent did not fail to accommodate the applicant that the evaluation standards were not discriminatory as they were rationally connected to the job and that they were adopted in good faith.

(a) the oral interview phase of the competition for a temporary position is intended to assess an applicant's ability to perform the duties of a postal clerk and that of a mail carrier;

(b) The strict rules surrounding the filling of permanent positions on the basis of seniority means that the oral interview is critical in ensuring that any new hire is capable of meeting the basic requirements of any job in the C.U.P.W. bargaining unit, external or internal;

(c) The required competencies for the positions of postal clerk and mail carrier and the very low level of proficiency required for the same are reasonably necessary for the proper performance of these positions;

(d) The applicant requested and received accommodation during the GAT portion of the evaluation; and

(e) The respondent did not refuse to accommodate the applicant during the oral interview phase of the evaluation. At no time prior to her participation in the oral interview did the

applicant, nor anyone else on her behalf, suggest or request accommodation and/or alternative method of assessment for the applicant.

[45] The respondent also argues that the conduct and positions of the parties after the complaint was filed provides sufficient evidence for the investigator to conclude that the respondent took all reasonable steps to accommodate the applicant. The respondent submitted that the investigator's decision was reasonable in particular because:

(a) on two occasions they offered to re-interview the applicant in an alternate format and to allow her additional time to prepare her responses;

(b) the respondent displayed a willingness to consider other accommodations options, including alternate interview adjustments, so that the applicant would not be disadvantaged during the recruitment process because of her disability;

(c) the applicant refused the respondent's accommodations offers and further refused to be re-interviewed by the respondent in any alternative format; and

(d) the applicant stopped cooperating in the accommodation process; her only position was that she wanted to be hired for her desired position of postal clerk and compensated for any and all lost benefits/privileges.

[46] The respondent argues that the investigation report establishes that the investigator turned her mind to all of the issues related to discriminatory practices in hiring. The respondent argues that the issue of whether the evaluation standards were adopted in good faith, were rationally connected to

the position applied for, and whether the accommodations by the respondent were up to the point of undue hardship were all reviewed by the investigator with a conclusion in the respondent's favour.

[47] Additionally, the respondent disputes the applicant's allegations that the investigator did not consider both sections 7 and 10 of the Act in its evaluation of the hiring practices of the respondent. The respondent states that an analysis was undertaken in respect of the evaluation standards alleged to be discriminatory under section 10 of the Act and the impact of those standards on the applicant pursuant to section 7 of the Act.

[48] The respondent also argues that the applicant's refusal to accept the accommodation offers of the respondent made the investigator's report all the more reasonable. The respondent states that jurisprudence supports the notion that an applicant has a duty to accept reasonable offers. In *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, Mr. Justice Sopinka of the Supreme Court of Canada spoke of the duty of a complainant to assist in securing appropriate accommodations and that another:

> ...aspect of this duty is the obligation to accept reasonable accommodation...The Complainant cannot expect a perfect solution. If a proposal that would be reasonable in all the circumstances is turned down, the employer's duty is discharged.

As well, the respondent argues that the accommodation process fails when the employee does not cooperate with attempts to accommodate as in *McGill University Health Care (Montreal General Hospital) v. Syndicat des employes de l'Hopital general de Montreal*, [2007] S.C.J. No. 4. And an even greater onus on the applicant arises from cases such as *Hutchinson v. Canada (Minister of*

Environment), [2003] 4 F.C. 580 where a further inquiry was found not to be warranted by the Commission when a reasonable alternate accommodation was not accepted by an employee that preferred another arrangement.

Relevant evidence considered

[49] The respondent argues that the explanation offered by them regarding the content and rationale of their evaluation standards, including the interview guide was thorough and did not contribute to any deficit of information in making a decision on the substantive issues in the complaint.

Refusal to send to Tribunal

[50] The respondent points to *Besner v. Canada (Attorney General)*, [2007] FC No. 1076 where the Commission decision to dismiss the complaint was upheld on the basis that the investigation properly focused on the substance of the applicant's complaint and not on the employer's alleged failure to accurately and fully describe actual job requirements.

[51] As well, the respondent points to *Hutchinson* above, for the proposition that the purpose of the investigation report is not to "delve into the minutiae" of a complaint but rather focus on the substance of the complaint.

Analysis and Decision

[52] **Issue 1**

What is the standard of review?

I am of the view that the standard of review to apply is reasonableness save for the question of whether the applicant was afforded procedural fairness in regards to the disclosure of the Canada Post interview questions.

[53] In order to establish the standard of review, the Court must determine whether the degree of deference to be accorded to the type of question in issue has already been identified by the jurisprudence in *Dunsmuir* above. If this has been done, it is not necessary to carry out a complete standard of review analysis. If jurisprudence has not established the standard to be applied, then, a reviewing court must go through a two-stage analysis in order to ascertain which of these standards should apply in a given case as in *Dunsmuir* above.

[54] Soon after the *Dunsmuir* above decision, it was established that the standard of review with respect to questions of fact or mixed fact and law considered by the Canadian Human Rights Commission were reviewable on the standard of reasonableness (see *A.J. v. Canada (Attorney General)*, 2008 FC 591 (CanLII); *Bateman v. Canada (Attorney General)*, 2008 FC 393 (CanLII)).

[55] However, the pre-*Dunsmuir* atmosphere of standard of review analysis in Commission decisions was anything but straightforward. *Bateman* above, recognized at paragraph 19 that there

had been “contradictory jurisprudence from this Court and the Federal Court of Appeal regarding the standard of review applicable to a decision of the Commission to remit or not remit a complaint to the Tribunal for consideration”. In Mr. Justice Martineau’s opinion in *Bateman* above, the cases turned on whether the issue in question was either one of fact or law, or mixed fact and law. The Federal Court of Appeal in *Sketchley* above, also emphasized that a pragmatic and functional analysis should be undertaken with respect to each decision under review, regardless of whether the same or similar issue has been decided in a previous case.” Notwithstanding these cases, *Dunsmuir* above, streamlined the analysis to one of reasonableness.

[56] This is not to suggest however, that the applicant’s submission on the “high purpose behind the Act” is disputed. These “high purposes” as enunciated in the objectives of the Act are considered when evaluating the reasonableness of a decision including the: “justification, transparency and intelligibility of the decision-making process….within a range of possible acceptable outcomes which are defensible in light of the facts and law” (see *Dunsmuir* above at paragraph 47).

[57] The final issue to be determined is whether the Commission considered all relevant evidence in its investigation and final decision to dismiss the complaint. In *Egan v. Canada (Attorney General)*, 2008 FC 649 (CanLII), the issue to be determined by the Federal Court was whether the Commission had been thorough in its investigation. Mr. Justice Hughes found this to be an issue of procedural fairness warranting a correctness standard, as was the case pre-*Dunsmuir* above. At issue was whether the Commission had been warranted in not referring the complaint to the tribunal

under subsection 44(3) of the Act. Further, *A.J.* above, noted that the Federal Court of Appeal observed in *Sketchley* above, at paragraphs 52 and 53, the pragmatic and functional analysis (since replaced by the standard of review analysis) does not apply where judicial review is sought based upon an alleged denial of procedural fairness in a Commission investigation. Rather, the task for the Court is to determine whether the process followed by the Commission satisfied the level of fairness required in all of the circumstances also in *Sanderson v. Canada (Attorney General)*, 2006 FC 447.

[58] **Issue 2**

Did the Commission err in not referring the applicant's complaint to the tribunal based on discrimination contrary to sections 7 and 10 of the Act in the respondent's hiring practices?

As summarized above, the decision of the Commission was based on the following central findings:

1. That the applicant required accommodation in the hiring process based on disability;

2. That the evidence indicates that accommodation was provided for the GAT but no accommodation request was made by the applicant for the oral interview;

3. That the respondent has suggested other accommodations for the applicant for the interview portion but the applicant has refused these options without suggesting alternatives because the applicant believes any measure of social skill assessment is discriminatory;

4. The respondent acknowledges that it uses situational questions during the interviews for inside and outside postal workers but they are flexible in considering other options; and

5. That the duty to accommodate is not limitless and that the evidence suggests that the respondent has made such an effort; and that the applicant must cooperate to facilitate the accommodation process.

[59] As a preliminary matter, I consider the investigator's report as constituting the Commission's reasoning as in *Sketchley* above. At paragraph 37 the Federal Court of Appeal stated:

> The investigator's Report is prepared for the Commission, and hence for the purposes of the investigation, the investigator is considered to be an extension of the Commission *(SEPQA, [Syndicat des employes de production du Quebec et de L'Acadie v. Canada (Human Rights Commission),* [1989] 2 S.C.R. 879.

[60] I also note the obligations of the Canadian Human Rights Commission in investigating complaints as explained by the Supreme Court of Canada in *Cooper v. Canada (Human Rights Commission),* [1996] S.C.J. No. 115 at paragraph 53, in part:

> The Commission is not an adjudicative body; that is the role of a tribunal appointed under the Act. When deciding whether a complaint should proceed to be inquired into by a tribunal, the Commission fulfills a screening analysis somewhat analogous to that of a judge at a preliminary inquiry. It is not the job of the Commission to determine if the complaint is made out. Rather its duty is to decide if, under the provisions of the Act, an inquiry is warranted having regard to all the facts. The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it.

[61] The discretion afforded the Commission in determining whether an inquiry is warranted "having regard to all of the circumstances" is broad (see *Mercier v. Canada (Human Rights Commission),* [1994] 3 F.C. 3) but must be fair (see *Sanderson* above).

[62] It is the issue of whether the Commission truly had regard to all of the circumstances in this complaint that I find worrisome and ultimately unreasonable.

[63] I am not satisfied that the applicant was afforded an investigation that considered the problems inherent in the applicant ever getting hired at Canada Post given her disability for the following reasons.

[64] As stated, the Commission concluded that the applicant did require accommodation in the hiring process. Providing accommodations without providing an analysis on the interrelationship between the disability and the hiring practices is not true equity seeking, however. In my opinion, in order to be alive to the discriminatory aspects of the hiring practices, it was necessary for the investigator to show that she understood the perspective of each of the parties, and in particular the unique challenges and personalized circumstances of the applicant's Asperger Syndrome. It is only when the investigator has a full understanding of the applicant's disabilities that a determination could be made about whether a further inquiry was warranted. To demonstrate sensitivity, the investigator should have been able to clearly articulate the applicant's individual challenges apart from just a rote generalized paragraph about Asperger Syndrome and autism, which was what was provided. This flaw in the approach by the investigator was prevalent in the various findings that led the Commission to conclude that a tribunal hearing was unwarranted.

[65] The second finding was that the evidence indicated that accommodation was provided for the GAT but no accommodation request was made by the applicant for the oral interview.

[66] I am not satisfied that the investigator's conclusions were reasonable in this respect. I do not agree that the applicant did not ask for any accommodations from Canada Post for the interview portion of the hiring process.

[67] As stated above, the applicant's father telephoned Patsy Dallon of Canada Post, Saint John to inquire about the nature of the job interview in order to assess the applicant's need for accommodation. The applicant's father was provided with the information that the interview would involve situational questions. The applicant's father did not specifically request and/or suggest any form of accommodation for the applicant during the interview but asked whether accommodation would be required for the applicant to fairly compete with the other candidates. The applicant herself, did not speak to anyone prior to the interview. The respondent stated that they would have accepted any "reasonable requests" for accommodations.

[68] I acknowledge that the applicant has a duty to be involved in deciding what kind of accommodations might have been appropriate for her. In my mind, she was doing just that. However, her father's inquiry was not met with a dialogue but simply that the applicant would be asked "situational questions". The respondent was really in the position at that point to offer other methods of assessment. And, it was only after failing the interview and filing a human rights complaint that the respondent seemed to be open to discussing accommodations.

[69] In *Renaud* above, which involved a person seeking accommodation for their religious beliefs, Mr. Justice Sopinka stated that:

> 43 The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation….
>
> […]
>
> Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered…

[70] Further at paragraph 44 of *Renaud* above, Mr. Justice Sopinka states:

> […] [w]hile the complainant may be in a position to make suggestions, the employer is in the best position to determine how the complainant can be accommodated…

[71] The third finding was that the respondent has suggested other accommodations for the applicant for the interview portion but the applicant has refused these options without suggesting alternatives because the applicant believes any measure of social skill assessment is discriminatory.

[72] The respondent submits that the applicant was not only offered accommodation for the interview portion of the hiring process but also afterwards as the parties sought to resolve the complaint. However, the difficulty with the respondent's position and ultimately the Commission's related conclusions is that the accommodations that were put on the table for the applicant always involved an evaluation of her social skill set, which is the very thing she needed accommodation for and what the applicant, who best knows her limitations felt discriminated against her, and ultimately excluded her from employment.

[73] The respondent claimed that they could not accommodate in this respect for two reasons. One, they claimed that agreements with the union meant that the applicant would be eligible to apply for other positions solely based on seniority; other positions that could demand social skill sets beyond that of the position originally applied for. And two, the respondent stated that the internal position, where the applicant hoped to work, demanded social skills with co-workers and supervisors.

[74] The applicant is right to point out that the explanations by Canada Post of collective agreements and generalized practices are not in keeping with the developing jurisprudence on accommodations, for example at paragraph 24 of *Renaud* above:

> …In both instances private arrangements, whether by contract or collective agreement, must give way to the requirements of the [human rights] statute. In the case of direct discrimination which is not justified under the Act, the whole of the provision is invalid because its purpose as well as effect is to discriminate on a prohibited ground. Thus, in Etobicoke, a provision in the collective agreement, which required firefighters to retire at age 60, could not be applied because in all of its applications it discriminated by its very terms on the basis of age. This discriminatory effect could not be justified as a BFOR.
>
> 25 On the other hand a provision such as the one in this case is neutral on its face but operates in a discriminatory fashion against the appellant. The provision is valid in its general application. What the human rights legislation requires is that the appellant be accommodated by exempting him from its provisions to the extent that it no longer discriminates against him on the basis of his religion. To suggest that the provision must be applied to include the appellant within its terms is to allow the employer and the union to contract out of the requirements of the Human Rights Act. This they cannot do. This does not mean that the collective agreement cannot contain a formula for the accommodation of the religious beliefs of employees. An employer who avails himself of such a general

> provision must, however, establish that it complies [page987] with the duty to accommodate. See Central Alberta Dairy Pool, at p. 528.
>
> 26 While the provisions of a collective agreement cannot absolve the parties from the duty to accommodate, the effect of the agreement is relevant in assessing the degree of hardship occasioned by interference with the terms thereof. Substantial departure from the normal operation of the conditions and terms of employment in the collective agreement may constitute undue interference in the operation of the employer's business.

[75] Although *Renaud* above, involved accommodations based on religious belief, I do not see a good reason for Canada Post not to have followed the same principles in the hiring of the applicant. At the minimum, a discussion about altering the term of the collective agreement for the applicant was reasonable and was not done. The investigation and ultimate Commission decision failed to identify the interrelationship between meeting the obligations of collective agreements and accommodating an individual like Ms. Davidson to be in accordance with human rights legislation.

[76] *Renaud* above, at paragraph 36, discussed how unions can become complicit in discrimination when "it may cause or contribute to the discrimination in the first instance by participating in the formulation of the work rule that has the discriminatory effect on the complainant". At paragraph 39, Mr. Justice Sopinka continues:

> A union which is liable as a co-discriminator with the employer shares a joint responsibility with the employer to seek to accommodate the employee. If nothing is done both are equally liable. Nevertheless, account must be taken of the fact that ordinarily the employer, who has charge of the workplace, will be in the better position to formulate accommodations. The employer, therefore, can be expected to initiate the process.

[77] The fact that there are clauses in the collective agreement that allow workers, once hired, to apply for other positions based on seniority does not mean that the applicant, who faces significant barriers in our society in getting hired, should be precluded from a position which she ultimately is well suited for because it does not have the social interactions that other positions often demand. Canada Post may be required to alter their collective agreements as an equity seeking employer. I acknowledge that there are distinguishing factors with the *Renaud* above, decision. Accommodating religious belief does not involve actual aptitudes of employment as is the case here. However, this issue, which was raised by the applicant, is an important one. I find it unreasonable that the Commission was willing to accept that the strict rules within the CUPW bargaining unit were acceptable and rationally connected to the position of postal clerk despite the potential for the "rules" to supersede the applicant's human rights. The Commission wrote as follows at page 5 of its decision:

> The respondent states that the interchangeability of jobs within the CUPW bargaining unit and the strict rules surrounding the filling of permanent positions from the pool of temporary employees means that the interview is critical in ensuring that it recruits only qualified candidates for the temporary call-in positions.

[78] The concept of accommodating up to undue hardship has been adopted in the context of employee-employer relations. It may also be necessary to consider whether the negotiations with the union and management that would facilitate this would actually constitute undue hardship in accordance with *Meorin* above. In *Meiorin* above, the Court found that the respondent had not established that its aerobic performance standards were necessary for the safe and efficient performance of the job of a forest firefighter and as such were discriminatory.

[79] The respondent has argued in turn that even an internal position demands social skills as an employee navigates their relationship with co-workers and management. However, the investigator never considered that Canada Post employees could receive sensitivity training and knowledge to assist the successful employment of the applicant. As well, the applicant points out that this position is uniquely suited for her as it has solitude, structure, monotony and consistency which many other people may find challenging. In other words, the applicant's disposition and disability is not a deficit *per se* but a range of skills and aptitudes while different than the non-Asperger Syndrome population are still valuable in positions such as this, nonetheless. The *Dawson* case above, specifically is critical of rigid corporate rules that preclude true inclusiveness of those with disabilities such as the applicants.

[80] The respondent has also argued that it was the applicant's lack of experience and not her social skill set that ultimately led to the rejection of her application. However, again, if Canada Post had truly been alive to her situation as an equity seeking individual, they may have considered that the applicant may have been precluded from other jobs by way of her disability. That said, the applicant suggests that she is not applying for a position where she is unsuited and ill-prepared. She was an honour roll student in high school and is now in first year sciences at university.

[81] The fourth finding by the Commission was that the respondent acknowledged that it used situational questions during the interviews for inside and outside postal workers but were flexible in considering other options. I am somewhat puzzled by this finding given that the concerns regarding the collective agreement provisions for advancement based on seniority were never resolved. The

respondent could not have argued this position if they were truly attempting to accommodate beyond their social skill set competencies and did remain part of the investigator's decision.

[82] In *Bastide* above, sufficient accommodation is discussed at paragraph 48 in part:

> It is true that individualized assessment does not always constitute sufficient accommodation. The assessment must also assess the person based on a realistic standard that reflects his or her true capacities and his or her potential contribution.

[83] The fifth issue was in regards to the Commission's findings that the applicant was unable and/or unwilling to participate in the process of finding suitable accommodation with Canada Post. The jurisprudence is such that there is a duty on the applicant to facilitate the search for an accommodation (see *Renaud* above) quoted from *Boldy v. Royal Bank of Canada*, [2008] F.C.J. No. 135).

[84] I acknowledge the problems that the Commission identified in the process of endeavouring to find a suitable accommodation. However, this process was surely not meant to coerce a complainant into accepting an accommodation that did not provide a genuine solution to the discriminatory practice and accepting a process that was not reflective of the kind of evaluation in hiring suited to someone like Ms. Davidson. It was unreasonable for the investigator not to identify the fundamental problems with the respondent's offers of accommodation. As long as Canada Post refused to evaluate the applicant in relation to her disability in respect to the interview criteria, and without the supposed stranglehold of union rules, the applicant felt that the substance of the complaint had been missed entirely which made her reluctant to participate.

[85] It is also understandable that the applicant was finding it difficult to engage in the accommodations process. Issues like refusing to drop the outside worker evaluation appeared to lead Ms. Davison to believe that Canada Post did not fully appreciate her limitations to interact with the public. Canada Post is an equity seeking employer with the infrastructure and resources to provide a supportive work environment. As well, the applicant has a familiarity with the company because her parents are long term employees of Canada Post. Further, and most critically, the job tasks are uniquely favourable to someone with Asperger Syndrome for their repetitiveness, consistency, and lack of demand socially. The applicant must have felt that she was sure to fail as Canada Post and the Commission did not appear to be alive to the changes that may have been necessary to provide true equity through accommodation for Ms. Davidson.

[86] The other aspect of this duty is the obligation to accept reasonable accommodation. This is the aspect referred to by Mr. Justice McIntyre in *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd*., [1985] 2 S.C.R. 536. The complainant cannot expect a perfect solution. If a proposal that would be reasonable in all the circumstances is turned down, the employer's duty is discharged. The investigator stated:

> It is important to note that the duty to accommodate is not limitless. The respondent's obligation is to make a genuine effort to accommodate the complainant. The evidence indicates that the respondent has made such an effort, and remains open to considering other accommodation options. The complainant, however, must also cooperate to facilitate the accommodation process.

[87] I am not of the view that the applicant should be faulted for refusing the offers of accommodations offered to her. In this case, the concept of accommodation is not necessarily

lessening the demands of meeting a certain standard: it may mean changing the standard altogether which is what the applicant maintained was essential for her to be treated equally according to human rights standards. I am not confident from the respondent's submissions or the investigator's report that this notion was ever fully canvassed. I am further of the view that this kind of accommodation in the context of Asperger Syndrome, presents challenges for employers. Jurisprudentially, the old principles of what makes up accommodations are not easily applied. However, the principles behind the Act are constructive.

[88] I conclude with an analysis of subsection 44 (3) of the Act and the purpose of the inquiry. Because the inquiry is not a tribunal hearing, the Court must review the decision in this step of the process, accordingly.

[89] The respondent argues that the Court's ability to review the decision does not go beyond a duty of fairness analysis as there is an administrative dimension to the inquiry. Whether there was actually discrimination, for example, is beyond the Commission's mandate and as such, it cannot be the determining factor as to whether the decision was unreasonable (see *Bastide* above). The respondent is correct in pointing out that the Commission has a mandate that is multi-faceted involving the greater public interest and efficient use of resources and time, to name a few. The Supreme Court of Canada has even called the first stage of the process before a hearing "a purely administrative decision" (see *Syndicat* above). It is the totality of the evidence that is important (see *Wang* above. Given these parameters, I am still of the view that the manner in which the evidence

was considered was outside of the justified and intelligible outcomes that make up a reasonable decision under *Dunsmuir* above.

[90] In my analysis of this issue, I am not tasked with determining whether discrimination did in fact occur but rather, if the Commission erred in making its decision that there was no basis for a further inquiry. Deference is also owed because of the Commission's interests in maintaining a "workable and administratively effective system" (see *Slattery* above quoted from *Williams v. First Air*, [1998] F.C.J. No. 1844). Having said this, it must be acknowledged that this evaluation cannot be done without some attention paid to the merits of the discrimination case.

[91] *Slattery* above, states:

> Subsection 44(3) does not allow the CHRC to completely divorce such decisions from the merits of the complaint. If purely administrative considerations (i.e. cost, time) were allowed to prevail, it is conceivable that a person's entitlement to relief under human rights legislation would be dependent on the ease of proving human rights violations. Such an approach would be inconsistent with the justice-based purpose of the Act of giving effect to the principle of equal opportunity. Administrative agencies must, in exercising discretionary power, pursue purposes that in no way offend the spirit of the enabling statute. On the other hand, the applicant's submission, that judicial review of the exercise of discretion is warranted for CHRC dismissals of complaints each time that, in the opinion of the reviewing court, the complainant took his case out of the realm of conjecture, went too far the other way. Deference must prevail over interventionism in so far as the CHRC deals with matters of fact-finding and adjudication, particularly with respect to matters over which the CHRC has been vested with such wide discretion, as in the case of the decision whether or not to dismiss a complaint pursuant to subsection 44(3). As the power vested in the CHRC by subsection 44(3) is discretionary, a court should not interfere merely because it might have exercised the discretion differently.

[92] In *Slattery* above, the content of procedural fairness required in Commission investigations according to the statutory requirement of thoroughness was stated:

> Deference must be given to administrative decision-makers to assess the probative value of the evidence and to decide to further investigate or not to further investigate accordingly. It should only be where unreasonable omissions are made, for example where an investigator failed to investigate obviously crucial evidence, that judicial review is warranted.

[93] I note that the *Dawson* above decision by the Commission makes several important findings salient to the issues at hand. This case was decided after the Commission's decision to dismiss the complaint and as such, was not before the Commission when deciding Ms. Davidson's complaint. I do not find it necessary to support the findings, however, the issues resonate: Canada Post had limited experience dealing with persons with Asperger Syndrome; Canada Post had to learn to adapt to the thought process and abilities of a person with Asperger Syndrome or discrimination would invariably occur; unless employees at Canada Post are well educated on the disability, a lack of sensitivity will exist and thereby sabotage any assurance by the autistic individual that their disability is being treated appropriately.

[94] Chief Justice Dickson in *C.N.R. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 spoke to the manner in which human rights legislation should be interpreted:

> 24 Human rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis, in a court of law. I recognize that in the construction of such legislation the words of the Act must be

> given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways and means to minimize those rights and to enfeeble their proper impact. Although it may seem commonplace, it may be wise to remind ourselves of the statutory guidance given by the federal Interpretation Act which asserts that statutes are deemed to be remedial and are thus to be given such fair, large and liberal interpretation as will best ensure that their objects are attained. See s. 11 of the Interpretation Act, R.S.C. 1970, c. I-23, as amended. As Elmer A. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87 has written:
>
> > Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> 25 The purposes of the Act would appear to be patently obvious, in light of the powerful language of s. 2. In order to promote the goal of equal opportunity for each individual to achieve "the life that he or she is able and wishes to have", the Act seeks to prevent all "discriminatory practices" based, inter alia, on sex. It is the practice itself which is sought to be precluded. The purpose of the Act is not to punish wrongdoing but to prevent discrimination.

[95] Mr. Justice de Montigny states in *Bastide* above that:

> 39 "…in the great majority of cases, discrimination results rather from a standard that appears to be neutral; to the extent that the application of such a standard leads to a disproportionate exclusion of certain categories of persons (whether it be on grounds of age, sex, or another characteristic listed in sections 7 and 10 of the Act), it can be determined that there is discrimination that is systemic or which follows from its adverse effects: *O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536; *Binder v. C.N.*, 2 S.C.R. 561.
>
> 40 It is only at the second stage, where it must be considered whether the restrictions, conditions or preferences of the employer are based on a *bona fide* occupational requirement within the meaning of section 15 of the Act, that the nature and individualization of the test are relevant. If the employer can demonstrate that a working condition is a *bona fide* occupational

> requirement, then this condition will not be considered to be a discriminatory act.

[96] *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554 also speaks to the issue of interpreting human rights legislation:

> 94 It is well established in the jurisprudence of this Court that human rights legislation has a unique quasi-constitutional nature, and that it is to be given a large, purposive and liberal interpretation. In this regard, see *Insurance Corp. of British Columbia v. Heerspink*, [1982] 2 S.C.R. 145; *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536; *Bhinder v. Canadian National Railway Co.*, [1985] 2 S.C.R. 561; *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114 ("Action Travail des Femmes"); *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84; Zurich, *supra* (for a general review, see Alan L. W. D'Silva, "*Giving Effect to Human Rights Legislation -- A Purposive Approach*" (1991), 3 Windsor Rev. L. & S. Issues 45). This long line of cases mandates that courts interpret human rights legislation in a manner consistent with its overarching goals, recognizing as did my colleague Sopinka J. for the majority in *Zurich, supra*, at p. 339, that such legislation is often "the final refuge of the disadvantaged and the disenfranchised".

[97] I therefore conclude that my review of the Commission's findings is in accordance with the "general principles governing the discretion afforded to decisions of the Commission pursuant to subsection 44(3) of the Act and the overarching principles of the Act. The investigation and inquiry, for the reasons above, failed to investigate in a manner that was in accordance with the human rights legislation and jurisprudence for two omissions: the lack of an individualized assessment of the interrelationship of the applicant's disability in regards to her social skills and the needed modifications to standards in hiring practices, and how corporate rules and collective agreements, while neutral on their face, served to exclude Ms. Davidson by way of her need of accommodation.

[98] I would therefore allow the judicial review on this ground.

[99] Because of my finding on this issue, I need not deal with Issue 3.

[100] The application for judicial review is allowed and the matter is referred back to the Commission for the applicant's complaints to be reviewed by a different investigator in a manner consistent with these Reasons.

[101] The applicant shall have her costs of the application.

JUDGMENT

[102] **IT IS ORDERED that:**

1. The application for judicial review is allowed the decision of the Commission is set aside and the matter is referred back to the Commission for the applicant's complaints to be reviewed by a different investigator in a manner consistent with these Reasons.

2. The applicant shall have her costs of the application.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

Canadian Human Rights Act, R.S. 1985, C. H-6

2.The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.	2.La présente loi a pour objet de compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne graciée.
3.(1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.	3.(1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.
. . .	. . .

7. It is a discriminatory practice, directly or indirectly,	7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
(a) to refuse to employ or continue to employ any individual, or	a) de refuser d'employer ou de continuer d'employer un individu;
(b) in the course of employment, to differentiate adversely in relation to an employee,	b) de le défavoriser en cours d'emploi.
on a prohibited ground of discrimination.	
. . .	. . .
10. It is a discriminatory practice for an employer, employee organization or employer organization	10. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :
(a) to establish or pursue a policy or practice, or	a) de fixer ou d'appliquer des lignes de conduite;
(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,	b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

. . .

44.(1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

(2) If, on receipt of a report referred to in subsection (1), the Commission is satisfied

(a) that the complainant ought to exhaust grievance or review procedures otherwise reasonably available, or

(b) that the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under an Act of Parliament other than this Act,

it shall refer the complainant to the appropriate authority.

(3) On receipt of a report referred to in subsection (1), the Commission

(a) may request the Chairperson of the Tribunal to institute an

. . .

44.(1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

(2) La Commission renvoie le plaignant à l'autorité compétente dans les cas où, sur réception du rapport, elle est convaincue, selon le cas :

a) que le plaignant devrait épuiser les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

b) que la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale.

(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :

a) peut demander au président du Tribunal de désigner, en

inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied

application de l’article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and

(i) d’une part, que, compte tenu des circonstances relatives à la plainte, l’examen de celle-ci est justifié,

(ii) that the complaint to which the report relates should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(c) to (e); or

(ii) d’autre part, qu’il n’y a pas lieu de renvoyer la plainte en application du paragraphe (2) ni de la rejeter aux termes des alinéas 41c) à e);

(b) shall dismiss the complaint to which the report relates if it is satisfied

b) rejette la plainte, si elle est convaincue :

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or

(i) soit que, compte tenu des circonstances relatives à la plainte, l’examen de celle-ci n’est pas justifié,

(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e).

(ii) soit que la plainte doit être rejetée pour l’un des motifs énoncés aux alinéas 41c) à e).

(4) After receipt of a report referred to in subsection (1), the Commission

(4) Après réception du rapport, la Commission :

(a) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3); and

a) informe par écrit les parties à la plainte de la décision qu’elle a prise en vertu des paragraphes (2) ou (3);

(b) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under subsection (2) or (3).	b) peut informer toute autre personne, de la manière qu'elle juge indiquée, de la décision qu'elle a prise en vertu des paragraphes (2) ou (3).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-967-08
STYLE OF CAUSE:	ROBYN P. DAVIDSON
	- and -
	CANADA POST CORPORATION
PLACE OF HEARING:	Fredericton, New Brunswick
DATE OF HEARING:	January 12, 2009
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	July 9, 2009

APPEARANCES:

E. Thomas Christie, Q.C.	FOR THE APPLICANT
Jamie Eddy	FOR THE RESPONDENT

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