Federal Court  Cour fédérale

Date: 20110421

Docket: T-1433-09

Citation: 2011 FC 485

Ottawa, Ontario, April 21, 2011

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DETRA BERBERI

Applicant

And

CANADIAN HUMAN RIGHTS TRIBUNAL AND ATTORNEY GENERAL OF CANADA (RCMP)

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] Ms. Detra Berberi (the "Applicant") seeks judicial review of the decision of the Canadian Human Rights Tribunal (the "CHRT" or the "Tribunal"), dated July 27, 2009. The Attorney General of Canada (the "Respondent") represents the Royal Canadian Mounted Police (the "RCMP") in this proceeding.

[2] In its decision of July 27, 2009**,** the Tribunal granted an award to the Applicant, pursuant to paragraph 53(2)(e) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the "Act") for pain and suffering, in the amount of $4,000, together with the amount of $5,814 for legal costs, in connection with a complaint that she had filed against the RCMP. The Applicant now seeks the following relief:

> The applicant makes application for: the discriminatory complaint against the RCMP to be fully presented as the Applicant did not have her "day in court." The Applicant will be representing herself and wishes to present the original complaint in precise detail. All the evidence was not presented.
> A job offer was made to a RCMP office other than the one the Applicant was originally to be employed at however, the time and distance to the other job location are significantly longer.
> There was no compensation nor any kind of relief offered in order to travel the extra distance to the Milton office.
> Also, the Pain and Suffering aspect of the complaint needs to be re-addressed as the monetary compensation of $4,000 was not justifiable considering what the Applicant has had to deal with for the past 4 years.
> Finally, the income loss, the Applicant suffered, from 2005 to 2009 was not taken into consideration. The Applicant should have been allowed to provide Income Tax Returns.

[3] The hearing of this application for judicial review was heard on October 20, 2010. In a letter dated October 22, 2010, the Applicant sought to supplement the arguments that she had made during the hearing. The Respondent was given the opportunity to make submissions concerning the Applicant's letter and advised the Court that no further comment would be made.

[4] The Court did not request further submissions from the Applicant and she did not obtain leave to file a supplementary record pursuant to Rule 312 of the *Federal Courts Rules*, SOR/98-106. As such, the Applicant's letter of October 22, 2010 will not be considered.

Background

[5] The relevant facts are taken from the Affidavit, including the several exhibits attached thereto, filed by the Applicant in support of this application. In addition to her Affidavit, the Applicant also filed some 22 tabbed documents, some of which are also attached to her Affidavit. Documents that are not attached to an affidavit will not be considered. Likewise, the Court will not consider evidence that was not before the Tribunal. In this regard I refer to the Federal Court of Appeal's decision in *Ontario Assn. of Architects v. Assn. of Architectural Technologists of Ontario,* [2003] 1 F.C. 331 (F.C.A.).

[6] The Applicant included the following request for the production of documents from the Tribunal in her application for judicial review:

> The applicant requests The Canadian Human Rights Tribunal to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Canadian Human Rights Tribunal to the applicant and to the Registry: All documents that pertain to complaint T1311/4108 and that may have been submitted, without the Applicant's knowledge, particularly on or after June 01, 2009.

[7] The Court file contains a letter dated September 9, 2009 from Mr. Gregory M. Smith, Registrar of the CHRT, objecting to the production of the documents requested by the Applicant. In part, the letter provides as follows:

> In addition, the Applicant, pursuant to Rule 317(1) of the Federal Court Rules has requested the Tribunal to send to the Court, as well as to the Applicant, a certified copy of the full record of proceedings related to the Tribunal hearing.

> This is to advise that pursuant to Rule 318(2) of the Court Rules, the Tribunal objects to the provision of these documents.
>
> Rule 317(1) of the Federal Court Rules states:
>
> > "A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested." (emphasis added)
>
> The Tribunal is of the opinion that Rule 317(1) applies only to those documents which are not in the possession of the Applicant.
>
> It is the Tribunal's understanding that the documents requested in the Notice of Application **are** in the possession of the Applicant (Detra Berberi). Accordingly, pursuant to Rule 317(1), the Tribunal is not obliged to present these documents to the Court and the Applicant. This responsibility rests with the Applicant.
>
> Having said this, the Tribunal understands that during the course of hearings documents are sometimes written on, or are otherwise marked, making them unsuitable for filing with the Federal Court. The Tribunal is prepared to provide copies of these documents, at cost, upon request [emphasis in original].

[8] There is no record in the Index of Recorded Entries or in the Court file that the Applicant brought a motion to compel the production of any documents or transcripts from the Tribunal.

[9] The Applicant is employed with Human Resources and Skills Development Canada ("HRSDC") as a Client Service Consultant. In December 2004 she applied for a permanent Administrative Assistant deployment position with the RCMP. At the request of Corporal Mark DuPuy, she attended an interview for the position on March 8, 2005.

[10] On March 10, 2005, the Applicant was advised by one Diane Mallett that she was the successful candidate for the position.

[11] On May 18, 2005, Corporal DuPuy advised the Applicant that a new staff sergeant had been hired and that the new staff sergeant wanted to meet her. The Applicant attended at the RCMP office on May 25, 2005 to meet new Staff Sergeant Mabee. She was interviewed about past absenteeism and about any injuries that she suffered. The Applicant, in response to an inquiry as to her willingness to disclose her personnel leave file from HRSDC, agreed to such disclosure.

[12] By letter dated August 10, 2005, attached as part of Exhibit 6 to the Applicant's Affidavit filed in support of this application for judicial review, the RCMP advised the Applicant that her application for the position would not be given further consideration. The operative part of the letter provides as follows:

> We regret to inform you that your request for deployment to the above noted position will not be given further consideration due to the fact that affected employees have been identified and will, therefore, be given priority consideration.

[13] The Applicant claims that she did not receive this letter until much later, that is in December 2005.

[14] The Applicant subsequently filed a complaint with the Canadian Human Rights Commission (the "CHRC" or the "Commission") in August 2006, alleging a discriminatory practice, that is "refuse to employ", on the basis of the prohibited ground of disability, contrary to section 7 of the Act. In her narrative supporting her complaint the Applicant outlined the history of

her job application and interviews with the RCMP, leading up to the letter of August 10, 2005, quoted above. The Applicant's narrative, in part, reads as follows:

> I am a "duty to accommodate" and due to 2 motor vehicle accidents (in 1998 + 1999) I have been off and on due to my injuries….
>
> On March 10, 2005 I was advised that I was successful and was thus offered the position .by [sic] Diane Mallett. Staffing Officer – London, Ont….
>
> On May 25, 2005 I was requested to meet with the S/Sgt at the time. During this meeting the S/Sgt expressed his concerns regarding my past illness and the times I had been off because of it. He asked me to give my personnel officer, Marie Casey (SDC) permission for him to go and look over my whole leave personnel file. I in fact complied with this request and S/Sgt went to the Etobicoke SDC office and sat in an office with Marie Casey and reviewed my whole leave file.
>
> On August 10, 2005 a letter was mailed to me advising me that I was in fact not being deployed to the RCMP CR 04 position.
>
> I believe I was denied the CR 04 position because of my disability and past absentism [sic].

[15] By letter dated May 25, 2009, Counsel for the RCMP advised the Tribunal as follows:

> Prior to the commencement of the hearing in this matter scheduled to commence June 1, 2009, the respondent wishes to admit the issue that the Tribunal would inquire into at that time: whether the decision not to employ the complainant was in part based on a perceived disability. The hearing could then proceed with the issue of damages alone and significantly shorten the number of hearing days required.

[16] A hearing took place on June 1 and 2, 2009 before the Tribunal Member J. Grant Sinclair. In its decision, the Tribunal reviewed the history of the Applicant's complaint. It noted that the RCMP had admitted that the decision to not employ the Applicant "was based in part on a perceived disability". It noted that the hearing could proceed on the issue of remedy alone, and set out the Applicant's position as follows:

> [32] At the hearing, the RCMP offered Ms. Berberi an indeterminate CR-04 finance/administrative position at the RCMP detachment in Milton, which is one of her preferred locations. The only condition was that Ms. Berberi obtain a top secret security clearance. The RCMP also offered to conduct a functional ability assessment and provide the necessary accommodations to ensure that she succeeds in this position.
>
> [33] Ms. Berberi accepted this offer and agreed that this satisfied her remedy request for a permanent position with the RCMP. The parties agreed that no order from the Tribunal was necessary.

[17] The Tribunal reviewed the Applicant's claim for lost income that she had calculated on the basis of her earnings in 2007, 2008 and part of 2009, if she had been awarded the RCMP position. She claimed $3,000 for 2007, on the basis that this was the difference between the annual RCMP salary of $44,946 and the amount of $41,474 that she was paid for her employment with the Government of Ontario.

[18] For 2008, the Applicant claimed $14,000, being the difference between the RCMP salary and $30,000 that she received from Sun Life as long-term disability benefits.

[19] The Applicant claimed $4,000 to $5,000 for part of 2009 for the same reason. She also sought recovery of contributions she would have made to her pension, the Canada Pension Plan ("CPP") and Employment Insurance ("EI"), as well.

[20] According to the Tribunal's decision the Applicant argued that the "precipitating event" underlying her claim for lost income for the years 2007, 2008 and part of 2009 was her "anxiety and panic attack on December 29, 2006", which caused her to be off work from that date until April 14, 2009. The Tribunal noted that the Applicant argued that the panic attack was due to the failure of

the RCMP to award her the position for which she had applied, “which failure was based on a discriminatory act”.

[21] The Tribunal rejected this argument and set out several reasons for doing so, in particular the lack of medical evidence to support a causal connection between the panic attack and the failure of the RCMP to offer her the job. The Applicant’s claim for salary loss and collateral claims were denied.

[22] The Tribunal then addressed the Applicant’s request for compensation for pain and suffering as a result of the discriminatory act. This compensation is authorized by paragraph 53(2)(e) of the Act.

[23] The Tribunal referred to relevant jurisprudence, that is the decisions in *Richard Warman v. Kyburz***,** 2003 CHRT 18 and *Woiden et al. v. Dan Lynn*, (2002), 43 C.H.R.R.C/296. In *Warman*, an award of $15,000 was made for pain and suffering, together with another award of $15,000 as special compensation for wilful and reckless conduct. The discriminatory behaviour in that case consisted of the communication of “hate” messages on the complainant’s website. The wilful and reckless conduct included persistent efforts to interfere with the complainant’s employment and threats to his life.

[24] The *Woiden* case, according to the Tribunal, involved sexual harassment of four employees by their supervisor which led three complainants to leave their employment. The Tribunal noted that the complainants in *Woiden* settled with their employer, which included amounts for pain and

suffering, but the Tribunal awarded $8,000 to three complainants, and $6,000 to the fourth, for pain and suffering. The complainants in *Woiden* were also awarded $10,000 for the wilful and reckless conduct of the respondent.

[25] In this case, the Tribunal noted the Applicant's evidence that she was "devastated and depressed" when she learned that she had been rejected for the RCMP position. He found that she had made no argument nor adduced any other evidence that would justify her claim for $12,000 to $15,000 for pain and suffering. At paragraph 55, the Tribunal made the following findings:

> [55] Using the *Warman* and *Woiden* cases as a measure, this is certainly not a case for an award in the upper limit for pain and suffering. It calls for an award in the lower range. Taking into account her evidence of the impact of the refusal of the RCMP to offer her the deployment, and the fact that Ms. Berberi continued to work at the Brampton location after December 1, 2005 until March 2006 within her acceptable commuting distance from her home, I award her the amount of $4,000 for pain and suffering.

[26] The Tribunal then addressed the Applicant's claim for compensation for wilful and reckless conduct by the RCMP, in engaging in a discriminatory practice against her. This claim was rejected as follows, from paragraph 56 of the decision:

> [56] Ms. Berberi also claims that, in denying her application, the RCMP engaged in the discriminatory practise wilfully or recklessly. She claims damages of $12,000-$15,000. It is true that Staff Sergeant Mabee had concerns about her previous work absenteeism and that her back problems could result in further significant absenteeism. This evidence, however, goes to the issue of liability which the RCMP has conceded. It is not enough to show wilful or reckless conduct.

[27] The Applicant also sought recovery of out-of-pocket expenses that she estimated to be in the area of $1,000. These expenses were attributed to photocopying fees and charges for doctors' letters. In the absence of supporting receipts, this claim was denied.

[28] Finally, the Applicant sought recovery of legal expenses. She submitted one account in the amount of $614.25. This item was denied since the Tribunal was not satisfied as to the nature of the legal services nor when they were provided.

[29] The Tribunal then addressed the issue of fees charged by the lawyer who represented the Applicant in connection with the June 2009 hearing. According to the decision, the lawyer provided a computer printout for legal work provided to the Applicant from May 8, 2009 to June 2, 2009.

[30] The Tribunal noted that the lawyer was a senior Counsel, having been called to the Bar in 1968. It also noted that the senior lawyer was assisted by a junior lawyer whose hourly rate was lower. Finally, the Tribunal took into account the fact that Counsel was not experienced in dealing with complaints under the Act and that he had to familiarize himself with the Act and relevant jurisprudence. At paragraphs 65 and 66 of its decision, the Tribunal made the following conclusion:

> [65] The RCMP admitted liability for the discriminatory act thereby considerably shortening the scheduled hearing time. In terms of the remedy that she was seeking, Ms. Berberi had limited success. At the hearing, the RCMP agreed to provide Ms. Berberi with a CR-04 position at Milton, one of her preferred locations. Other than that, of all the compensation she was seeking, the only compensation that the Tribunal awarded her was $4,000 for pain and suffering, an amount considerably less than the $12,000-$15,000 she asked for.
>
> [66] On the other hand, I agree with Mr. Kostyniuk that the hearing was more efficient and focused than probably would have been the case if Ms. Berberi had appeared unrepresented. Taking all these

> factors into account, I award Ms. Berberi the sum of $5,814 for legal expenses.

Issues

[31] In this application for judicial review the Applicant raises several issues. First, she argues that the Tribunal erred in not postponing the hearing of June 2009. Then she argues that it erred by only addressing the issue of remedies, rather than reviewing her complaint in its totality. Next, she submits that it erred by failing to fully address sections 7 and 53 and in failing to compensate her accordingly.

[32] Further, the Applicant argues that the Tribunal committed an error by assuming that the RCMP would act in good faith in following through with the job offer in Milton and in processing a Security Clearance for her. Finally, she argues that her counsel was incompetent.

Discussion and Disposition

[33] The first matter to be addressed is the applicable standard of review. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, decisions of administrative decision-makers are reviewable on one of two standards, that is correctness or reasonableness. Questions of procedural fairness will be reviewable on the standard of correctness; *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at para. 43. Questions of fact and of mixed fact and law are reviewable on the standard of reasonableness; see *Dunsmuir* at para. 53.

[34] The Applicant argues that the Tribunal erred in failing to address sections 7 and 53 of the Act. Issues dealing with the interpretation of the statute that governs the operation of the

Commission and the mandate of the Tribunal are subject to review on the standard of reasonableness; see *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7.

[35] Further, in its decision in *Dunsmuir*, the Supreme Court of Canada said at para. 57 that where prior jurisprudence has established the applicable standard of review, that standard can be applied.

[36] In the present case, the Applicant raises some issues of procedural fairness and the standard of correctness will apply to those issues. In my opinion, three issues raise questions of procedural fairness and are reviewable on the standard of correctness; that is the postponement issue, the alleged error of the Tribunal in dealing only with the question of remedies, and the competency of counsel.

[37] The matter of granting or denying a postponement of a hearing is a matter wholly within the discretion of the Tribunal. The Tribunal is the master of its own procedure; see *Prassad v. Minister of National Revenue*, [1989] 1 S.C.R. 560.

[38] In this case, there is no evidence regarding the Applicant's request for a postponement. There is no mention of such a request in the decision. There is no transcript of the proceedings before the Tribunal. Although the Applicant's initial request for a transcript was denied by the Tribunal, the Applicant could have brought a motion before the Court, seeking an order for the production of materials by the Tribunal, including a transcript. She did not do so.

[39] In the absence of evidence to support the Applicant's submissions, I am not persuaded that any breach of procedural fairness arose from the Tribunal's refusal to postpone the hearing.

[40] The Applicant submits that the Tribunal erred by dealing only with the remedy, rather than reviewing her complaint in its totality. In other words, the Applicant argues that the Tribunal should have considered whether the actions of the RCMP constituted a discriminatory act.

[41] I have characterized the issue as one of procedural fairness because it relates to the ultimate task before the Tribunal. Did the Tribunal do its job?

[42] In my opinion, that question must be answered in the affirmative.

[43] The record shows that in a letter dated May 25, 2009, Counsel for the RCMP advised the Tribunal that the employer admitted to a discriminatory practice in failing to hire the Applicant. This letter was sent mere days before the commencement of the hearing on June 1, 2009.

[44] The Tribunal referred to this letter in its decision and further noted that counsel "then suggested that the hearing into her complaint could proceed on the issue of remedy". I understand the Tribunal to be saying that Counsel for the RCMP had suggested the hearing address only the issue of remedy.

[45] It is worth noting that the Applicant was represented by Counsel at the hearing in question. In my opinion, if she had disagreed with the proposed manner of proceeding, she could have made her views known through her Counsel.

[46] However, more importantly, the Tribunal's decision to deal only with remedy was correct in light of the fact that the employer, that is the RCMP, had admitted commission of a discriminatory act. In these circumstances, it was unnecessary for the Board to conduct a hearing on the issue of liability. There is no merit in this issue as framed by the Applicant.

[47] The remaining issue of procedural fairness concerns the competency of counsel. The Applicant alleges that her lawyer was unable to properly represent her since he lacked experience in dealing with complaints under the Act.

[48] The Applicant has presented no evidence to support this allegation. She was cross-examined upon the Affidavit that she filed in support of this application for judicial review. The transcript of that cross-examination shows that she had consulted at least three other lawyers before engaging the counsel who represented her before the Tribunal. She expressed little confidence in at least two of those lawyers.

[49] The test to be met when a party alleges incompetence of counsel amounting to a breach of procedural fairness is discussed by the Supreme Court of Canada in *R. v. G.D.B.*, [2000] 1 S.C.R. 520, which held as follows at para. 26:

> …For an appeal to succeed, it must be established, first, that counsel's acts or omissions constituted incompetence and second, that a miscarriage of justice resulted.

[50] In my opinion, the Applicant has failed to establish either element of this test. Her arguments on this ground must fail.

[51] I turn now to the remaining issues. The Applicant argues that the Tribunal erred in failing to address sections 7 and 53 of the Act.

[52] Section 7 of the Act provides as follows:

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

[53] Subsections 53(2) and (3) are relevant and provide as follows:

Complaint substantiated	Plainte jugée fondée
(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or	(2) À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, sous réserve de l'article 54,

panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:

ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :

(a) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including

a) de mettre fin à l'acte et de prendre, en consultation avec la Commission relativement à leurs objectifs généraux, des mesures de redressement ou des mesures destinées à prévenir des actes semblables, notamment :

(i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or

(i) d'adopter un programme, un plan ou un arrangement visés au paragraphe 16(1),

(ii) making an application for approval and implementing a plan under section 17;

(ii) de présenter une demande d'approbation et de mettre en oeuvre un programme prévus à l'article 17;

(b) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;

b) d'accorder à la victime, dès que les circonstances le permettent, les droits, chances ou avantages dont l'acte l'a privée;

(c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;

c) d'indemniser la victime de la totalité, ou de la fraction des pertes de salaire et des dépenses entraînées par l'acte;

(d) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and	d) d'indemniser la victime de la totalité, ou de la fraction des frais supplémentaires occasionnés par le recours à d'autres biens, services, installations ou moyens d'hébergement, et des dépenses entraînées par l'acte;
(e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.	e) d'indemniser jusqu'à concurrence de 20 000 $ la victime qui a souffert un préjudice moral.
Special compensation	Indemnité spéciale
(3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.	(3) Outre les pouvoirs que lui confère le paragraphe (2), le membre instructeur peut ordonner à l'auteur d'un acte discriminatoire de payer à la victime une indemnité maximale de 20 000 $, s'il en vient à la conclusion que l'acte a été délibéré ou inconsidéré.

[54] It is not necessary for me to comment further on the manner in which the Tribunal dealt with section 7 of the Act. The RCMP had admitted the commission of a discriminatory act. As discussed above, no purpose would have been gained if the Tribunal had proceeded to deal with the question of liability, in the face of that admission. The Tribunal correctly went on to deal with the issue of a remedy, including monetary compensation.

[55] In the first place, I note that subsection 53(2) authorizes the Tribunal, in its discretion, to make an order against the person found to have engaged in a discriminatory practice. That order could address several matters, including a directive that the person stop the discriminatory practice; that the person offer the injured party, on the first reasonable occasion, the rights, opportunities or privileges that were denied as a result of the prohibited practice; and/or that the injured person be compensated for lost wages, ancillary damages and for pain and suffering.

[56] Subsection 53(3) allows the Tribunal, again in the exercise of its discretion, to order the payment of special compensation if the discriminatory practice was engaged in a wilful or reckless manner.

[57] The Tribunal specifically addressed all of these elements. At the outset of the body of its decision, the Tribunal recorded that the RCMP had offered the Applicant an indeterminate CR 04 finance/administrative position at the RCMP detachment in Milton, one of the places that the Applicant had designated as a suitable workplace. The offer was accepted by the Applicant and according to paragraph 33 of the Tribunal's decision, the "parties agreed that no order from the Tribunal was necessary".

[58] The Tribunal carefully reviewed the components of compensation that are identified in paragraphs 53(2)(c), (d) and (e). It determined that the Applicant suffered no loss of wages as a result of the discriminatory practice engaged in by the RCMP. The Tribunal provided clear and intelligible reasons in that regard at paragraphs 39 to 45 of its decision.

[59] In the same way, the Tribunal carefully considered the Applicant's claim to recover out-of-pocket expenses. The reasons for rejecting that claim are clear and the Tribunal properly noted that the Applicant had provided no evidence to support this claim.

[60] The Tribunal considered the Applicant's claim for compensation for pain and suffering. It considered relevant jurisprudence. It assessed an award of $4,000. This is less than the Applicant wants but she has not shown that the Tribunal erred in making this award, particularly in light of the fact that paragraph 53(2)(e) of the Act sets a cap of $20,000 on an award for pain and suffering.

[61] The Tribunal also addressed the Applicant's claim for special compensation pursuant to subsection 53(3). Again, the Tribunal reviewed relevant jurisprudence, including the facts at issue in those cases. I am not persuaded that the Tribunal erred in the exercise of its discretion in dismissing this aspect of the Applicant's claim.

[62] Finally, I turn to the last issue raised by the Applicant, that the Tribunal had erred in assuming that the RCMP would act in good faith in honouring the offer of a job in Milton and in facilitating the issuance of a Security Clearance. I have characterized this issue as one of mixed fact and law, reviewable on the standard of reasonableness.

[63] In my opinion, the answer to this issue lies in the Tribunal's acknowledgement at paragraph 33 of the decision that the "parties agreed that no order from the Tribunal was necessary" relative to the job offer that was made by the RCMP and accepted by the Applicant.

[64] The Applicant was represented by counsel at the hearing before the Tribunal. She had the option of requesting an order. She did not do so.

[65] The responsibilities of the Tribunal were discharged once the issues of remedy, including compensation for pain and suffering and a contribution towards legal fees, were adjudicated. The Applicant is at liberty to seek an order from the Tribunal with respect to implementation of the remedy. She has failed to show that the Tribunal made any assumptions on the basis of any error, and this argument is dismissed.

[66] In conclusion, the Applicant is attempting to re-visit the proceedings that were conducted by the Tribunal. She is asking this Court to "second guess" the decision-maker. That is not the purpose of judicial review where the Court is limited to a review of the procedures that were followed by the original decision-maker, in this case the Tribunal. A judicial review application is neither a trial *de novo*, with witnesses, nor an appeal where the Court can substitute its own decision; see *Bekker v. Minister of National Revenue* (2004), 323 N.R. 195 (F.C.A.).

[67] In the result, this application for judicial review is dismissed with costs to the Respondent. If the parties cannot agree on costs, brief submissions can be made as follows:

(i) by the Respondent by April 27, 2011;

(ii) by the Applicant by May 2, 2011.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed, with costs. If the parties cannot agree, brief submissions, not exceeding 4 pages, to be served and filed as follows:

(i) by the Respondent by April 27, 2011;

(ii) by the Applicant by May 2, 2011.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1433-09
STYLE OF CAUSE:	DETRA BERBERI v. CANADIAN HUMAN RIGHTS TRIBUNAL and ATTORNEY GENERAL OF CANADA (RCMP)
PLACE OF HEARING:	Toronto, ON
DATE OF HEARING:	October 20, 2010
FURTHER SUBMISSIONS:	October 22, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	HENEGHAN J.
DATED:	April 21, 2011

APPEARANCES:

Detra Berberi	FOR THE APPLICANT (ON HER OWN BEHALF)
Shelley Quinn	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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