Federal Court  Cour fédérale

Date: 20110518

Docket: T-378-10

Citation: 2011 FC 570

Ottawa, Ontario, this 18th day of May 2011

Present: The Honourable Justice Johanne Gauthier

BETWEEN:

PAULINE KAUR GOSAL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Ms. Pauline Kaur Gosal, who represents herself, seeks judicial review of the decision of the Canadian Human Rights Commission (the Commission) dismissing her complaint against the Royal Canadian Mounted Police (the RCMP) pursuant to paragraph 44(3)(*b*) of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the Act) on the basis that the evidence did not support the allegation that the RCMP failed to provide a harassment-free work environment nor did

it support the allegation that the complainant was refused employment because of her sex and/or national or ethnic origin.

[2] For the reasons that follow, the Court finds that the decision is reasonable and that the applicant has failed to establish a breach of procedural fairness.

[3] I have no doubt the applicant will be deeply disappointed by my findings. She may not fully appreciate that the Commission can only focus on conduct based (even if only in part) on a prohibited ground of discrimination (sections 7 and 14 of the Act). Furthermore, the Commission's role is not to review generally matters that fall outside of her current complaint. This means that even if she, and others like Corporal (Cpl) Dave Reichert, may have been "rejected by certain individuals at Port Mann" and subjected to a "vindictive" work environment, such difficulties unrelated to her complaint, which alleged that her application to become a Regular Member of the RCMP was rejected on prohibited grounds of discrimination in the Act, are not relevant.

I. Background

[4] The applicant has worked as a Federal Public Service employee ("PSE") since 1990 (Canada Customs). She has been a PSE with the RCMP since April 1995, working in various administrative positions in different departments such as: the Integrated Proceeds of Crime Unit, the "E" Division Staffing and Personnel (recruiting clerk) and at the Border Integrity Unit (support clerk) where she remained for more than three years. She voluntarily transferred, in December 2002, to the Lower Mainland District Traffic Services – Port Mann Freeway Patrol Office as a detachment

clerk (CR-04 classified position) and worked there until February 2006. The applicant also worked as an active peace officer with the Surrey RCMP Auxiliary Constable Program since 2000.

[5] As mentioned above, the applicant alluded to the fact that she experienced much stress and difficulties at Port Mann. Since in her October 2009 submissions to the Commission, she mingles the internal complaint that she filed against a female co-worker in December 2004 with the racist and sexist comments disclosed in her complaint to the Commission, it is worth saying a few words about this situation. Obviously, it is not my intention to fully describe everything that the applicant went through during that period.

[6] It appears that for some time, there were operational difficulties at Port Mann in that there was enough work for two full-time CR-04 positions, if not three. For various reasons, the applicant became overloaded and had issues with co-workers particularly Ms. Bobbi Bodden, also a CR-04, who used to be assigned to the tasks now performed by the applicant. In early December 2004, the casual PSE clerk working with the applicant indicated that she could no longer work with her. Then, the area service manager, Staff Sergeant (S/Sgt) Jim McVey, allegedly received a report from Informatics showing that Port Mann had a very high error rate in the OSR reports (later in the CPICs) which prompted him to attend Port Mann on December 13, 2004 to meet with all those concerned including the applicant, who was involved in such tasks. During this meeting, Ms. Gosal allegedly raised the issue of unfairness in the work distribution.

[7] On December 17, 2004, the applicant wrote to S/Sgt McVey to formally complain about her work situation and more particularly the fact that she was being bullied by Ms. Bodden who,

according to her, was obsessed that she complete her work in the exact same way Ms. Bodden used to perform these tasks.[1] She further indicated that problems between her and the casual clerk referred to above were in fact the result of interference by Ms. Bodden. After explaining in detail the situation prevailing at Port Mann, the applicant asked S/Sgt McVey to put an end to the bullying by Ms. Bodden which, in her view, also impacted on other PSEs, by relocating Ms. Bodden to the Surrey office where her direct line supervisor was located (Inspector (Insp.) Derek Cooke). According to later comments on file from Insp. Cooke, this was not possible because of lack of space in Surrey and the fact that Ms. Bodden's job related to a whole area, where Port Mann was centrally located and one of the busiest units in the said area.

[8] According to the documents filed by the applicant, Port Mann was determined, at the beginning of 2005, to be the fifth worst unit in "E" Division and the fifteenth worst in all of Canada in respect of current OSR error reports, a task for which the applicant was responsible at least in part, as mentioned above. It is worth noting here that it also appears that the applicant had not received any particular training for this task,[2] and that after receiving some support from Informatics she quickly improved and materially reduced the level of errors within a few months.

[9] However, the difficulties experienced by the applicant with Ms. Bodden did not go away. She states that after she filed her complaint against Ms. Bodden, even the demeanour of her direct

[1] A Performance Log found at Exhibit K, page 3 of the Applicant's affidavit refers to complaints made against the applicant by another CR-04 in addition to that filed by a casual employee. It is not known if this additional complaint was filed before or after the applicant complained about Ms. Bodden.
[2] It is not clear if this lack of training also applied in respect of the entries for CPIC.

line supervisor (acting Sgt (Cpl) Robert Nordlund)[3] changed, when previously the applicant did not find him to be "particularly unpleasant or disagreeable" (Applicant's affidavit at paragraph 21). After Insp. Cooke listed all the options open to Ms. Gosal to address this situation, and only in an effort to settle the matter, the applicant accepted Insp. Cooke's offer to transfer her to a new unit in Langley. This is the background which led to the applicant's voluntary transfer to the unit under the command of Sgt Jim Dallin, who later intervened to seek a review of her recruitment application file.[4]

[10] In her November 28, 2005 e-mail to Insp. Cooke regarding this transfer, she notes that she still feels strongly that even after her departure "a review of the unbalanced duties for the two CR-04 positions is still imperative." Again, this aspect is clearly not a matter that the Commission was asked to investigate.

[11] While the above was going on, in September 2004, the applicant applied to become a Regular Member of the RCMP, a fact she did not publicize. On October 19, 2005, she was notified that her application had been rejected.

[3] Except when citing someone else, Robert Nordlund will be referred to throughout these reasons as Sgt which appears to be his current rank. That said, the Court well understands that he was in fact a Cpl at the relevant time.
[4] In her submissions the applicant complained that it took more time than is normally necessary to transfer her within the RCMP. Again, she claims that this showed a failure of her employer to diligently deal with her complaint. The respondent answered this statement in its own reply and this issue does not warrant further comments from the Court.

[12] It is not clear exactly when she learned from two former colleagues at Port Mann, Constable (Cst) Marvin Wawia and Cst Ken McKinny,[5] that Sgt Nordlund had made sexist and racist comments about her in November 2004. Certainly, there is no mention of such conduct in her exchange with Insp. Cooke at the end of November 2005. Nevertheless, she notes in her written complaint to the Commission that these comments were brought to her attention around November 2005.

[13] Be it as it may, on May 1, 2006, the applicant filed a formal harassment complaint with Insp. Cooke in respect of Sgt Nordlund's conduct.

[14] In September 2006, the applicant first contacted the Commission about the matters that would later become the subject of the complaint at issue here, but she was advised that she should first exhaust the grievance or review procedures otherwise available to her (see paragraph 41(1)(*a*) of the Act). A year later, after pursuing the internal mechanisms available to her, she contacted the Commission again. On January 29, 2008, the Commission sent a letter acknowledging that it would deal with her complaint.

[15] Although there were not many details, either before the decision-maker or before the Court, concerning the complaints or grievances Ms. Gosal filed, it appears from her complaint to the Commission that at least two of the five complaints[6] she made within the RCMP were found to be

[5] Cst McKinny's name is spelled several ways by the applicant, but the Court will use the version as signed by Cst McKinny in his letter at Exhibit S of the Applicant's affidavit.

[6] In her submissions dated October 28, 2009, Ms. Gosal states that the other three complaints should also have been investigated by the Commission. As mentioned, it is not clear what these complaints were about and how they relate to the facts included in the actual complaint before the Commission. Certainly, there was no mention at any time of these other three complaints in her complaint before the Commission.

substantiated enough to warrant an internal investigation by the Assistant Commissioner and ultimately resulted in a reprimand to Sgt Nordlund, a recommendation for special sensitivity training and finally the loss of his job at Port Mann.

[16] On November 23, 2007, the applicant filed the complaint that started the process ending with the decision under review.

[17] In the said complaint against the RCMP, the applicant notes that while working she was "subject to discrimination and harassment due to my sex and ethnic background [self-identified as East Indian]." She states that she feels "that these derogatory, racial and sexual comments … were made against [her] gender, against [her] ethnic background, and against [her] personally".

[18] The applicant then refers to her work at Port Mann Traffic Service in Burnaby where, for the most part of her four years' employment she was under the direct supervision of Sgt Nordlund. She then refers to her September 2004 application to become a Regular Member of the RCMP and the fact that it was rejected in October 2005. She further notes that in November 2005 she canvassed numerous co-workers and previous line supervisors for reference letters to "re-savor" her recruitment file. This was allegedly done in the hopes of having a full review of her application file. She then states, as discussed above, that around November 2005, she learned from the two colleagues mentioned earlier that Sgt Nordlund had made "racial and direct sexual comments about [her] in around November, 2004." After quoting the said remarks, she adds:

> I believe these malicious, demeaning, distasteful racial and sexual comments and the baise [*sic*] opinion of my line supervisor

> subsequently quashed my career opportunity in becoming a member of the Royal Canadian Mounted Police.

[19] The applicant goes on to note that she has now exhausted all the internal avenues and alternate redresses within the RCMP and refers specifically to the two complaints that were investigated. She mentions that in April 2007 she was only informally advised by e-mail from the investigator that "Sgt Nordlund was given a formal reprimand (written) with a recommendation for specialized training." She further mentions that "her concerns for personal recourse" had not been addressed by the RCMP in relation to Sgt Nordlund's conduct given that no damages were awarded to her. In that respect, she says:

> In its completion of these two investigations, the RCMP has not addressed the corrective action that I was seeking. The ever presence of the environment attitude lead me to suffer psychological and financial hardship. My character has suffered irreparable damage, consequently due to these false and malicious comments made by this individual who held a position of power of authority. As a result of this inflicted damage it has greatly affected my views of RCMP management practices.
>
> My experiences in this Detachment has left me very unhappy, discouraged, lack of self-esteem and confidence has been greatly been affected. Harassment, racism, discrimination, and personal vendetta appear to be tolerated and even supported by the RCMP.
>
> As of this date, there has been no correspondence of any sort nor any communication as to how I may be compensated.

[20] On May 8, 2008, the parties were informed that the Commission would investigate the complaint.

[21] The report of this investigation was issued on October 2, 2009 and circulated to the parties on October 8, 2009. As the applicant contests the results of the investigation and the treatment given

to her comments to the Commission after receiving a copy of the report, the Court will describe in some detail the investigation and the applicant's response to it.

[22] The investigator interviewed the following six witnesses: Ms. Gosal; Cst Richard Chow, the person from the "E" Division Recruiting Unit who reviewed Ms. Gosal's application file; Inspector Davis Wendell, Commander of the Pacific Region Recruiting Section; Sgt Robert Nordlund; and Cpl Dave Reichert and Cst Patricia Yiendrys, two witnesses cited by Ms. Gosal.

[23] In his report the investigator lists the documentation received from the respondent. The investigator also consulted "documents provided by the complainant in support of her position, mainly exchange of correspondence, work assessments, positive comments from various individuals, and personal notes."

[24] It appears from the applicant's affidavit that the investigation file comprised about 800 pages including all the material she had sent to the first investigator.[7]

[25] The analysis is under two distinct headings: whether the respondent failed to provide a harassment-free work environment; and whether the complainant was refused employment because of her sex and/or national or ethnic origin.

[7] Applicant's affidavit at para 7. According to Ms. Gosal, she often spoke and sent documentation to the first investigator assigned to this file, who left the employ of the Commission and was replaced by the investigator who actually issued the report referred to herein.

[26] In the section dealing with the harassment, the investigation into the conduct itself was limited given that the RCMP acknowledged through its various internal investigations that the conduct had taken place. The words used by Sgt Nordlund left no doubt that they were based on a prohibited ground.

[27] Thus, pursuant to subsection 65(2) of the Act, the real issue left to be determined was whether the RCMP, Sgt Nordlund's employer, could be exempted from responsibility for the act or omission of its employee. To benefit from such exemption, the RCMP had to establish that (a) the act took place without the employer's consent;[8] (b) the employer exercised all due diligence to prevent the act or omission; and (c) the employer subsequently exercised all due diligence to mitigate or avoid the effect thereof. From the documentation referred to above including particularly the report of the two investigations carried out by Sgt Nelson Aranguiz as well as the measures taken (letter of reprimand, <u>further</u> sensitivity training and ultimately removal of Sgt Nordlund from his Port Mann office), the investigator concluded that the employer's reaction "appears to be prompt, effective and proportional to the particular situation of harassment."

[28] On this basis, he recommended that this part of the complaint (the racial sexual comments made in November 2004 by Sgt Nordlund) be dismissed because the evidence gathered did not support the allegation that the employer failed to provide a harassment-free work environment within the meaning of section 65.

[8] It was not really disputed that the RCMP had a policy against harassment based on discriminatory grounds and sexual conduct. In fact, even Cst Wawia in his letter of support for Ms. Gosal clearly states that "[t]he RCMP policy for discrimination, harassment is zero-tolerance and should be adhere [*sic*] to with no exceptions allowed".

[29] In her ten-page reply submissions filed on October 28, 2009, the applicant addresses her comments to the paragraphs of the investigation report. The comments most relevant to this first issue are those in respect of paragraphs 12 to 30, 50 and 53. After raising some questions as to the meaning of paragraph 14, the applicant focuses on the fact that the investigator should have interviewed additional witnesses, and strongly disagrees with the finding that the RCMP took appropriate action to deal with the conduct.

[30] This is where the applicant inter-mingles the complaint made on May 1, 2006 with the bullying reported to S/Sgt McVey on December 17, 2004. She also notes that all employees of the RCMP had to take an online harassment workshop course along with a test and so she questioned what "other specialized training course" would Sgt Nordlund have had to complete considering that this general course basically covers all aspects of harassment, discrimination and sexual conduct. Moreover, she notes that the fact that he was removed from office had no effect on her given that she had already left the office at Port Mann. Finally, with respect to the reprimand, she notes that this would only have an impact if Sgt Nordlund applied for a promotion or a transfer to a new unit. It did not translate in any loss of wages or monetary hardship for him. The applicant also adds as mentioned that the other complaints she made within the RCMP process, that were found to be unsubstantiated and therefore not investigated, should have been investigated by the Commission. She then refers to parties nowhere mentioned in her complaint, such as Cpl Paulo Baptista[9] and Cpl Dan Boyer, alleging that both gentlemen were found guilty of complaints by third parties.[10]

[9] Frankly, there was no evidence that this individual met with Mr. Beitel or had anything to do with her application file.
[10] For example, Cpl Boyer was directly involved in the case involving Mr. Tahmourpour when he worked at Depot.

[31] Under the heading "Was the complainant qualified or otherwise eligible for the employment?", the investigator notes that the applicant stated that Sgt Nordlund encouraged other members to negatively influence her effort to become a regular RCMP member. She adds that he was very influential on the recruiting file so much so that all positive reports from other members at Port Mann and all positive reports from previous units she had worked with were ignored.

[32] Ms. Gosal apparently identified the following individuals as having detrimentally affected her application process under the influence of Sgt Nordlund: S/Sgt McVey, Cst Richard Chow, Acting Sgt Joe Lew and Inspector Sutherland. In her rebuttal to the RCMP submissions to the investigator, it appears that Ms. Gosal also cited negative comments made by the individuals mentioned above that were part of the field investigation done to assess her suitability. The investigator mentions that she insisted on saying that her assessment was based solely on comments from this small group of individuals.[11]

[33] After reviewing the details of the first investigation into the applicant's suitability (a crucial step in the application process), the investigator states that the retired member of the RCMP who carried out this investigation had interviewed 38 individuals. Excluding those mentioned by the applicant as having detrimentally affected her application, the investigator notes that 17 individuals raised issues either with her work performance or as a character witness that could impact on the applicant's overall suitability.[12]

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[11] It is worth noting that the submissions made to rebut the RCMP's comments to the investigator were not included by the applicant as part of the documentation attached to her affidavit in support of her allegation that the investigation was not thorough.

[12] At paragraph 89 the Court will refer to some of these comments to illustrate this.

[34] He then considered the review of the applicant's application filed by Cst Chow on November 2, 2005 (approved by A/Sgt Lew, a gentleman assumed by Ms. Gosal to be an acolyte of S/Sgt McVey, and therefore of Sgt Nordlund, because he signed one e-mail addressed to the said S/Sgt McVey with the following remark: "Joe (the rookie back in 1995 at Coquitlam)").

[35] The investigator also interviewed Cst Chow who explained the various steps and the independent reviews during the selection process as well as the overall picture emanating from the comments made by a large number of witnesses that led him to the conclusion that the applicant was not suitable for enrolment as a Regular Member. During his interview, Cst Chow stated that he knew Sgt Nordlund by name and did not know S/Sgt McVey or Cpl Boyer. The investigator then consulted the report of the final review of Ms. Gosal's application file conducted by Cpl Lana Jardine who was appointed by Inspector Wendell to review this matter again in April 2007.[13] Inspector Wendell explained to the investigator among other things, that Cpl Jardine had been chosen because she was new to the Recruiting Section and therefore totally uninvolved with the prior investigations.

[36] The two witnesses interviewed by the investigator, because according to Ms. Gosal they could support her allegation, were found to offer only general and vague comments in so far as this particular aspect of the case was concerned. Cpl Reichert explained having experienced "a treatment similar to that of the complainant in that he was '*rejected'* by certain individuals at Port Mann,

[13] Although it would appear that Cpl Jardine's review was done prior to Sgt Dallin's intervention with the Chief Superintendent Watts on behalf of the applicant, it is not clear whether Sgt Ferguson's review was initiated as a result of Sgt Dallin's intervention. C/Sup Watts forwarded Sgt Dallin's letter to Inspector Wendell who replied stating: he was "very confident that the correct decision was made relative to this Applicant and will stand any challenge" (Applicant's affidavit, Exhibit E at p. 1).

namely Sgt Nordlund, S/Sgt McVey and Cpl Boyer" and was falsely charged with not showing up for work because Cpl Boyer allegedly "wanted his job". His views that this group was "dysfunctional" and "very vindictive" were duly acknowledged, but the investigator notes that he could not provide any evidence relating to the potential influence of these individuals on the selection process. Similarly, Cst Yiendrys could not provide such evidence. She mentioned that she had a "perception" that a group of individuals was "setting [Ms. Gosal] up to fail" and that both she and the complainant were under a lot of stress. Most of what she related was hearsay coming from the complainant.

[37] The investigator concluded from his analysis of the material and the initial assessment and the two reviews of the application file all signed by different individuals, that the application was denied because of work performance and a discrepancy in Ms. Gosal's security/reliability interview. Based on his own analysis of the supporting documents and the interviews he conducted, the conclusions in the above-mentioned reports appeared to be supported, whereas the complainant could not offer evidence of her allegation that the initial investigation was based entirely on the comments made by the "Nordlund clique".

[38] The bulk of Ms. Gosal's submissions to the Commission deal with this section of the report. She says and repeats several times that the investigator was not fair and unbiased nor were the individuals who signed the various reports relating to her failed application. In her view, the investigator was naïve in accepting the new and false reasons concocted by Inspector Wendell to

make good on his promise to his superior that the RCMP stood on solid grounds vis-à-vis her complaint.[14]

[39] She also mentions the unfairness of the investigator who failed to provide her with a copy of some documents listed in the report – namely the Pacific Region Recruiting Section Attrition Tables (paragraph 10 j.) and the Applicant Selection Process Maps (paragraph 10 k.). She also attacks the fairness of the investigation in that it was incomplete for the investigator did not interview all the witnesses she referred to in the extensive material submitted. She claims that he obviously did not look at this documentation before concluding that "she was unable to offer evidence to support her position". She also requested copies of the assessment conducted by Sgt Ferguson dated December 5, 2007 (paragraph 10 h.) and the General Applicant File Summary provided by Inspector Wendell (paragraph 10 i.) both documents she argued were produced recently and are intended to distort the original reasons for why her application was denied. Ms. Gosal then goes into the details of her understanding of what really went on and how the comments of Sgt Nordlund and his clique impacted on the initial assessment of her application. In her remarks she essentially covered all the grounds that she presented to this Court in respect of the lack of thoroughness and unreliability of the decision except for the fact that she added in her affidavit in support of this application, that the investigator was biased in light of his background as a career officer in the Canadian Forces. Among other things, Ms. Gosal refers to a series of e-mails that were originally forwarded to the first investigator to support her allegation that Sgt Nordlund and S/Sgt McVey through Alex Bodden (husband of Ms. Bobbi Bodden) and members of the Recruiting unit prevented her from going to Depot (getting accepted to train to become a Regular Member).

[14] This comment was made after Sgt Dallin asked C/Sup Watts to reopen Ms. Gosal's file (see note 13, above).

[40] In its own submissions to the Commission (December 4, 2009) the respondent stated that no new evidence was introduced in Ms. Gosal's response letter to shed further light on her case and it clarified certain paragraphs: i) that becoming a Regular Member was not a promotion within the RCMP, ii) the distinctions between the work of Auxiliary Constables and Regular Members of the RCMP, iii) the fact that disciplinary actions taken are confidential and the details would not normally be disclosed.

[41] The respondent also referred to the various review and accountability checks in place within the Recruiting unit and clarified the fact that Ms. Gosal's transfer out of Port Mann was subject to Treasury Board policies and collective agreements whereas transfer of Regular Members of the RCMP are dictated primarily by operational means. This would presumably explain the alleged delay in her transfer.

[42] On February 3, 2010, the Commission issued its decision. As usual, it is brief. It refers to the submissions received but does not deal expressly with any of the issues commented upon by Ms. Gosal. It essentially adopts the conclusions of the investigation report.

II. Analysis

[43] Ms. Gosal raised the following issues:

1. The Commission breached procedural fairness by providing inadequate reasons and relying on an investigation that was not thorough. Moreover, the investigator was not neutral.

2. The Commission's decision is unreasonable when one considers all the evidence before the investigator.

[44] The relevant provisions of the Act are attached in Annex A.

[45] At the beginning of the hearing, the defendant objected to numerous paragraphs in Ms. Gosal's affidavit on the grounds that they were based on hearsay, conjecture and speculation and to the consideration of the exhibits filed in support of her application. The Court ruled that all the exhibits that were before the investigator could be considered (this excludes Exhibit W and the work assessments dated after the investigation report was issued in Exhibit S) to determine if there was a breach of procedural fairness particularly in respect of the thoroughness of the investigation. They could not normally be considered in assessing whether the overall decision was reasonable (*Niaki v Canada (AG)*, 2006 FC 1104 at paras 25-26; *Canadian Broadcasting Corporation v Paul*, 2001 FCA 93 at para 69; *Canada (Human Rights Commission) v Pathak*, [1995] 2 FC 445 (CA) at para 12). That said, to prevent any injustice and to properly assess the material relied upon by Mr. Beitel, the retired member of the RCMP who assessed Ms. Gosal's application file in August 2005, before making his recommendation to reject her application for recruitment, and referred to in paragraph 35 of the investigation report, the Court did consider the exhibits mentioned above.

[46] The case law is clear that the Commission's power to dismiss a complaint pursuant to subsection 44(3) of the Act is discretionary and that its decisions should be afforded a high degree of deference. The Court will apply the standard of reasonableness to determine the validity of the

decision based on the overall evidence before it, for it involves a mixed question of fact and law (*Niaki*, above, at para 31; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51, 53).

[47] With respect to the alleged breach of procedural fairness, the standard of review is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 and *Dunsmuir*, above).

A. *Breach of procedural fairness*

Principles

[48] It is trite law that the content of the duty of procedural fairness is variable and depends on the context. In *Sketchley v Canada (AG)*, 2005 FCA 404, a brief decision contained in a letter such as the one issued in this case constituted valid reasons when supplemented by the investigation report. When the investigator's conclusions are adopted by the Commission, the report forms part of the Commission's reasons for the purpose of subsection 44(3) of the Act (*Sketchley* at para 37).

[49] It is not disputed that where a party's submissions to the Commission pertaining to an investigator's report allege substantial and material omissions in the investigation and provide support for that assertion the Commission must refer to those discrepancies and indicate, even briefly, why it is of the view that they are either immaterial or insufficient to challenge the investigator's recommendation (*Herbert v Canada (AG)*, 2008 FC 969 at para 26).

[50] The decision in *Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574 (TD), was cited as the leading case on the duty of the Commission to act fairly by the Federal Court of Appeal

in *Tahmourpour v Canada (Solicitor General)*, 2005 FCA 113 at para 8. In *Slattery*, Justice Marc Nadon analyzing the content of the duty of fairness set out by Justice Sopinka in *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 SCR 879 [*S.E.P.Q.A.*] concluded that the parties must be informed of the investigation and have an opportunity to respond and the Commission, in making its decision, is entitled to consider the investigation report, the parties' submissions and any underlying material as deemed necessary in its discretion. In his opinion:

> In order for a fair basis to exist for the CHRC to evaluate whether a tribunal should be appointed pursuant to paragraph 44(3)(*a*) of the Act, I believe that the investigation conducted prior to this decision must satisfy at least two conditions: neutrality and thoroughness. [para 49]

[51] The test for neutrality "is not whether there exists a reasonable apprehension of bias on the part of the investigator, but rather whether the investigator approached the case with a 'closed mind'" as was confirmed by Justice Anne Mactavish in *Sanderson v Canada (AG)*, 2006 FC 447 at para 75 (see also *Zündel v Canada (AG)* (1999), 175 DLR (4^{th}) 512 at paras 17-22).

[52] In determining the degree of thoroughness of the investigation required to meet procedural fairness obligations, Justice Nadon in *Slattery* said at paragraph 55:

> … one must be mindful of the interests that are being balanced: the complainant's and respondent's interests in procedural fairness and the CHRC's interests in maintaining a workable and administratively effective system. …

[53] The view expressed by Justice Nadon in describing what might constitute thoroughness was accepted in *Sketchley*, above at para 121, as an appropriate description of the content of the procedural fairness. The following two paragraphs from *Slattery*, which have been followed thereafter, give additional guidelines to determine whether a particular investigation gives raise to a breach of procedural fairness:

> **56** Deference must be given to administrative decision-makers to assess the probative value of 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. Such an approach is consistent with the deference allotted to fact-finding activities of the Canadian Human Rights Tribunal by the Supreme Court in the case of *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554.
>
> **57** In contexts where parties have the legal right to make submissions in response to an investigator's report, such as in the case at bar, parties may be able to compensate for more minor omissions by bringing such omissions to the attention of the decision-maker. Therefore, it should be only where complainants are unable to rectify such omissions that judicial review would be warranted. Although this is by no means an exhaustive list, it would seem to me that circumstances where further submissions cannot compensate for an investigator's omissions would include: (1) where the omission is of such a fundamental nature that merely drawing the decision-maker's attention to the omission cannot compensate for it; or (2) where fundamental evidence is inaccessible to the decision-maker by virtue of the protected nature of the information or where the decision-maker explicitly disregards it.
>
> [My emphasis]

[54] In *Beauregard v Canada Post*, 2005 FC 1383, this Court recognized that the "obviously crucial test" requires that it should have been obvious to a reasonable person that the evidence an applicant argues should have been investigated was crucial given the allegations in the complaint (at para 21). To determine whether the evidence was obviously crucial, the Court must place itself at

the time of the investigation and consider the information provided by the complainant to the investigator.

[55] That said, it is worth noting that the Court's function is not to assume the role of the investigator and that the investigator does not need to interview each and every witness that the applicant would have liked him or her to interview (*Slattery*, above, at para 69).

[56] In *Tahmourpour*, above, Justice John Evans writing for the Court identified the matter before it as an "exceptional case" where the failure of the investigator to interview certain witnesses was simply unjustifiable.

[57] In that respect and given the arguments raised by the applicant, the Court also notes that an investigator's failure to interview the complainant does not in itself reflect on the thoroughness of the investigation if an applicant had ample opportunity to both make her primary case and to respond to the investigator's understanding of her situation (see *Best v Canada (AG)*, 2011 FC 71 at paras 22-23).

[58] Finally, in respect of the obligation to provide to a particular complainant every piece of documentation exchanged between an investigator and an interested party, the Federal Court of Appeal in *Hutchison v Canada (Minister of the Environment)*, 2003 FCA 133 at paras 49-50, made it clear in reviewing the past jurisprudence that

> [t]here is nothing in any of these cases which would support the proposition that every exchange between an investigator and an interested party must be disclosed to the other party. The right to

> know the case to be met and to respond to it arises in connection with material which will be put before the decision maker, not with respect to material which passes through an investigator's hands in the course of the investigation.

To the extent that the investigation report discloses information contained in a letter or document, the applicant amply exercised her right of response. To the extent that information in a letter or document was not contained in the investigation report, and was not otherwise before the Commission, the right to respond did not arise.

[59] In the same vein, the Federal Court of Appeal in *Gardner v Canada (AG)*, 2005 FCA 284 at paragraph 18, indicated:

> In any event, the Commission was not obliged to produce the new evidence to Ms. Gardner simply because it was never put to the Commission itself. What Ms. Gardner was owed and that which she was accorded, was the opportunity to comment on [the] Treasury Board's submissions which as it turned out, contained the substance of the information in the new evidence.

[60] Finally, administrative tribunals such as the Commission are presumed to have considered all the evidence submitted and are not required to expressly refer to all pieces of evidence upon which their reasons were founded. That said, the more important the evidence that is not specifically mentioned in the tribunal's reasons, the more willing a court may be to infer that the tribunal made an erroneous finding of fact without regard to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35, at paras 14-17).

Application of the Principles

[61] With these principles in mind, the Court has carefully reviewed each and every one of the documents produced by Ms. Gosal in support of her allegation that the investigation was not thorough and that the investigator was not neutral.[15] In fact, the Court read and re-read several times the information that was submitted.

[62] First, it is important to establish what the investigator had to concentrate on. His task was to verify whether there were grounds for the applicant's allegation that the RCMP's rejection of her application in October 2005 was made on the basis of her sex and/or her ethnic origin. As a first step, he had to determine if the applicant was indeed suitable or eligible for the job. The investigator did not have to investigate the ambiance or work atmosphere at Port Mann, he was not concerned with whether or not there were grounds for her complaint that Bobbi Bodden bullied her or that Sgt Nordlund was trying to get rid of her as a CR-04 PSE or whether she was given too much work and too little training to do her job at Port Mann. He also did not have to investigate other complaints filed through her union that are unrelated to the complaint filed against Sgt Nordlund.

[63] In her written submissions to this Court, the applicant only refers to the failure of the investigator to interview Cst Wawia and Cst McKinny. It is thus not clear whether she still insists on the argument raised in her submissions to the Commission that the said investigator should also have interviewed Monalee Rendall or Melissa Bell.

[15] Although this element of bias on the part of the investigator is not made in the written submissions of the applicant, it was raised as an issue in her submissions to the Commission as well as in her affidavit. The Court has thus decided to deal with it considering that at the hearing the respondent had the opportunity to deal with the issue.

[64] From the material produced by Ms. Gosal, it appears that the investigator had a copy of the letters Cst Wawia, Cst McKinny and Monalee Rendell supplied after her application was rejected. It is not clear what more they could have added. It is also worth mentioning again that both Cst Wawia and McKinny were the individuals who appraised the complainant of the discriminatory comments made by Sgt Nordlund. This aspect of their potential evidence had been fully acknowledged and did not need to be further substantiated by the investigator.

[65] There is absolutely no evidence (none was referred to in the submissions to the Commission) that either of these gentlemen or these two ladies would have had anything of value to add in respect of the application process *per se*. In fact, it appears from the documentation provided that these individuals were not interviewed by Mr. Beitel, who carried out the suitability investigation in the summer of 2005. There is no indication that any of these individuals had been asked to provide negative comments to Mr. Beitel. What their evidence appears to relate to are matters, as mentioned above, which were not relevant to the RCMP's refusal of the applicant as a cadet for Depot.

[66] Having carefully considered all that is known about these four witnesses, the Court is not satisfied that the investigator failed to investigate obviously crucial evidence.

[67] As to Sgt Dallin, he also was not involved in the application's investigative process. His intervention on behalf of the applicant was well documented even in Inspector Wendell's summary of Ms. Gosal's file. Once again, considering the guiding principles applicable here, the Court cannot

conclude that there was a breach of procedural fairness by failing to interview this witness who did not even know the applicant at the time her application was rejected by the RCMP.

[68] Finally, although once again this is not raised in her submissions but only in her affidavit, the Court considered the applicant's allegation that the investigator was careless given that he only interviewed her for 15 minutes. The applicant does not give any detail as to what facts or arguments she wished to raise that would have been essential and that were not already before the investigator given that she had, as mentioned, spoken to the previous investigator on several occasions and provided much documentation, which formed part of the 800 pages of material in her file.

[69] This is not a case where the applicant did not have the opportunity to fill in gaps (or deemed gaps) as discussed in *Niaki*, above, and the applicant simply failed to provide any information which would suggest that the investigation was highly deficient. The cases relied upon by Ms. Gosal such as the decisions of Justice Roger Hughes in *Egan v Canada (AG)*, 2008 FC 649, and Justice Russel Zinn in *Herbert*, above, are distinguishable on their facts.

[70] Considering all of the above, the Court is satisfied that this case is not one where procedural fairness was breached, but rather one where the reasonableness of the decision in light of all of the evidence before the Commission is in question. This will be reviewed later on.

[71] With respect to the lack of neutrality alleged by the applicant, there is no evidence other than the fact that the investigator was a former Lieutenant Colonel in the Canadian Forces having served for more than 20 years. It appears from the submissions made on the remedy sought by Ms. Gosal

and her oral representations that in her view, there is an appearance of bias in every case when a person having worked either in the military or in any police force is allowed to review the actions of the RCMP.

[72] Furthermore she notes that the investigator's lack of scrutiny of Inspector Wendell's evidence, his naivety and the conclusions he reached indicate that he was actually biased.

[73] Here again the Court simply cannot agree. It takes more than this for a Court to conclude that the Commission has a closed mind. This Court is certainly not prepared to say that any person with the background of the investigator in this case could not investigate in an impartial manner a complaint against the RCMP or any other police force.

[74] As mentioned, it takes more than a reasonable apprehension of bias to meet the test. As will be discussed later on, the Court finds that the ultimate decision is reasonable. It can therefore not be used as evidence of a closed mind. The Court is not satisfied that it can reasonably be said that the issue before the investigative body had been predetermined (see *Zündel*, above, at para 21).

[75] Finally, the applicant submits that as in *Egan*, the arguments she raised in her submissions to the Commission were of such fundamental character that they should have been dealt with expressly in the reasons. She argues that failure to do so constitutes either a breach of procedural fairness or a lack of transparency in the decision.

[76] As mentioned the principle set out in *Herbert*, above (only in obiter in *Egan*) is not disputed. What is disputed is that, in this case, the applicant's submissions warranted an express response over and above what was said in the investigation report. In effect, for the respondent, Ms. Gosal's submissions to the Commission were simply a restatement of all that she had put before the investigator during the investigation.

[77] To answer this question, the Court does not look at the length or amount of details contained in one's submissions. These are not judged by the pound. Rather, the Court must look at whether the applicant alleges "substantial and material omissions in the investigation and provide[s] support for that assertion" (*Herbert*, above, at para 26). As mentioned, most of the issues raised did not concern the complaint that was at the core of the Commission's mandate. There were no details given to the Commission that would explain in what way the four witnesses referred to therein were crucial to the real issues in dispute.

[78] None of the documents referred to in the applicant's submissions (at paragraphs 10 h, i, j and k) were actually before the Commission.

[79] Ashe made general allegations of unfairness and impartiality of the investigator, for which she offered no cogent basis or support in her detailed argumentation.

[80] With respect to her personal views and opinions as to the validity of the evidence of various people including the lack of "independence" of the investigators who reviewed the original application file such as Cpl Chow and Cpl Jardine, these were simply not supported by anything

tangible, rather they are mere conjecture or speculation. Here it is important to mention that the reviews carried out in respect of the decision to reject Ms. Gosal's application were not meant to be fresh or new evaluations of her suitability based on material that included letters sent to "re-savor [her] recruitment file" after the decision was made in October 2005. It appears to me that the views expressed in her submissions to the Commission relate in fact to the weight the investigator gave to this evidence and as such are answered sufficiently by the Commission's adoption of the conclusions of the investigation report.

[81] In light of the above, the applicant has failed to convince the Court that the Commission breached its duty to act fairly or to be transparent.

B. *Reasonableness of the decision*

[82] It is clear from the investigation report and from the adoption of the investigator's recommendations that the Commission refused to get involved in the interpersonal conflicts and work-related issues other than those especially referred to in the complaint – the disparaging comments and the RCMP's refusal of her application, communicated to the applicant in October 2005.[16]

[83] Because of this, the investigation report focuses on the evidence available to the original decision-maker in 2005. There is no evidence that the original decision was made on any basis other than the investigation of unsuitability carried out by Mr. Beitel and his recommendation.[17] There is

[16] Letter to the applicant from the Commission dated January 29, 2008 (Applicant's affidavit, Exhibit D).
[17] At this time the Court focused on the suitability investigation and Mr. Beitel's recommendation. There is no need to discuss the alleged inconsistent responses given by Ms. Gosal in respect of an incident in her past.

no evidence that the other reviews were influenced by anything not included in the application file at that time or were actually carried out by an investigator who was closed-minded.

[84] Ms. Gosal argues that the approach taken by the Commission's investigator is simplistic particularly considering that none of the individuals involved in the assessment of her application file either in October 2005 or in the subsequent reviews were unbiased.

[85] Ms. Gosal notes that Mr. Beitel, as a retired RCMP officer would feel obliged to make recommendations based solely on the statements made by Sgt Nordlund and his clique. According to her, Mr. Beitel still had friends in the force from whom he hoped to get part-time work. Cst Chow would also have been biased as a member of the Recruiting team and since he was reporting to A/Sgt Lew, who is assumed to be part of the "racist clique" simply because he signed an e-mail directed to S/Sgt McVey "the rookie back in 1995 at Coquitlam".[18] Finally, with respect to Cpl Jardine and Sgt Ferguson, Ms. Gosal says that they were under the command of Inspector Wendell and therefore could not be independent, even if Cpl Jardine was new to the Recruiting unit. According to her, Cpl Jardine would follow the instructions received from her superior. Inspector Wendell who again, in the opinion of Ms. Gosal, was also clearly against her for various reasons described in her submissions.

[86] With all due respect, none of these allegations amount to anything more than speculation, conjecture or personal opinion. The Court cannot, nor is it willing to, infer from these allegations

[18] As this event occurred 10 years before the e-mail was written one could reasonably understand this comment to indicate that in fact there was no contact between these two persons since then.

that the Commission's conclusion was not open to it. This is especially so considering that the investigator confirmed with Cst Chow in his interview that the latter only knew Sgt Nordlund by name and did not know Sgt McVey or Cpl Boyer. In fact, to accept Ms. Gosal's unwarranted profiling of the investigators involved in her file would, in my view, be quite improper.

[87] Ms. Gosal put much emphasis on the fact that Sgt Alex Bodden recommended to A/Sgt Lew to interview Sgt Nordlund and S/Sgt McVey. However, it is clear from the methodology followed by Mr. Beitel that he intended to interview Ms. Gosal's supervisors and some of her co-workers in each of the units or divisions in which she had worked. This would thus necessarily include her direct supervisor at Port Mann (Sgt Nordlund), where she worked at the time she filed her application.

[88] Although there is some indication that Ms. Gosal did suggest names of co-workers to be interviewed in the various units or divisions, there is no evidence that she included any such names or references in respect of Port Mann. There is thus no evidence that any of her suggestions were overlooked.

[89] As mentioned, Sgt Nordlund, who was Ms. Gosal's supervisor for the last two to three years before the filing of her application, was bound to be interviewed. Mr. Beitel did not restrict his investigation to the "Nordlund clique" given that he also spoke with the gentleman at Informatics who had worked with Ms. Gosal to rectify the various errors made at Port Mann in early 2005. This Regular Member totally outside of Sgt Nordlund's clique said that he would not support her

becoming a Regular Member because, among other things, she did not meet the requirement to be able to make quick and appropriate decisions.

[90] Although Ms. Gosal alleges in her submissions to the Commission that the "cookie-cutter similarity" of the negative comments made by various individuals about her work performance at Port Mann is evidence that these individuals were coerced to make such comments, the Court notes that the statements she refers to in fact describe the very issues raised by others who worked with her in other Divisions and who were contacted by Mr. Beitel. Thus the "cookie-cutter similarity" of the comments may well be due to the fact that they all describe her accurately.

[91] There is clear evidence (excluding the comments of Sgt Nordlund and his so-called clique) that the applicant had a long history of interpersonal conflicts particularly with female co-workers. Port Mann was not the first division in which she filed a harassment complaint or threatened to do so. Also, even in the Auxiliary Constable Program where the reports were generally positive, she appears to have had similar conflicts with other Auxiliaries who allegedly filed complaints against her although they were ultimately found to be unsubstantiated.

[92] Again putting aside the comments of Sgt Nordlund and his clique, there was other evidence supporting Mr. Beitel's concern about Ms. Gosal's suitability (and this outside of her difficulty with female co-workers). In more than one Division in which the applicant worked, at least one person raised an objection as to her suitability as a Regular Member. This includes also Port Mann where, as mentioned earlier, a Regular Member totally outside Sgt Nordlund's clique stated that he would not support her becoming a Regular Member.

[93] The applicant's view that the expression "will resort to the 'race card' if offended by others who are trying to help her" necessarily comes from Sgt Nordlund is unsubstantiated.[19] In fact, there is no indication that this expression was used by Sgt Nordlund during his interview (notes of interview included in evidence) and in fact it may have been wording chosen by Mr. Beitel himself to refer to the issue of the applicant's harassment complaints, which was raised by more than one person outside of Port Mann.

[94] In her written submissions, Ms. Gosal only alludes briefly to the unreasonableness of the decision. She appears to be concerned that given all of the evidence on the record, the Commission should have determined that there was a sufficient basis for proceeding to the next stage. I believe that this concern is addressed by the fact that it is not so much a question of evidence that has been ignored, but one of evidence being irrelevant to the complaint before the Commission.[20]

[95] The Court is also satisfied that the comment of Mr. Beitel quoted in paragraph 36 of the investigation report is supported by the comments made by persons interviewed outside of Port Mann.[21]

[96] Finally, Ms. Gosal appears to disagree with the conclusion of the Commission that the actions taken by the RCMP in respect of the disparaging comments of Sgt Nordlund were prompt,

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[19] Passage cited by investigator at paragraph 36 of the investigation report originating from the report of Mr. Beitel.
[20] That is, the derogatory comments of Sgt Nordlund and the rejection of her application on grounds of discrimination set out in the Act. The Court notes that in one of the first letters sent by the Commission to Ms. Gosal in 2008, it clearly noted that it would focus on the events between October 2005 and September 2006.
[21] See note 19, above.

effective and proportional to the particular situation of harassment. This is obviously a matter of opinion and the Court has not been convinced that the conclusion reached by the Commission was not open to it on the evidence.

[97] As explained in *Dunsmuir*, above, and *Khosa*, above, when assessing a decision under the standard of reasonableness, the Court must determine whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. There might be more than one reasonable outcome and it is not open to a reviewing Court to substitute its own view as to a preferable outcome. As mentioned earlier, the Court is satisfied that the Commission's decision, considering the investigation report, met the requirements of justification, transparency and intelligibility.

[98] In light of the foregoing the Court concludes that the decision contains no reviewable error. It was reasonable.

[99] Having carefully considered the matter, the Court believes that no costs should be awarded.

JUDGMENT

The application for judicial review is dismissed.

« Johanne Gauthier »

Judge

ANNEX

The relevant sections of the *Canadian Human Rights Act*, RSC 1985, c H-6, in this case are:

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.
3.1 For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.	3.1 Il est entendu que les actes discriminatoires comprennent les actes fondés sur un ou plusieurs motifs de distinction illicite ou l'effet combiné de plusieurs motifs.
7. It is a discriminatory practice, directly or indirectly, (*a*) to refuse to employ or continue to employ any individual, or (*b*) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.	7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects : *a*) de refuser d'employer ou de continuer d'employer un individu; *b*) de le défavoriser en cours d'emploi.

14. (1) It is a discriminatory practice,
(*a*) in the provision of goods, services, facilities or accommodation customarily available to the general public,
(*b*) in the provision of commercial premises or residential accommodation, or
(*c*) in matters related to employment,
to harass an individual on a prohibited ground of discrimination.

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

14. (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :
a) lors de la fourniture de biens, de services, d'installations ou de moyens d'hébergement destinés au public;
b) lors de la fourniture de locaux commerciaux ou de logements;
c) en matière d'emploi.

(2) Pour l'application du paragraphe (1) et sans qu'en soit limitée la portée générale, le harcèlement sexuel est réputé être un harcèlement fondé sur un motif de distinction illicite.

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 inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and
(ii) that the complaint to which the report relates should not be referred pursuant to subsection (2)

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 application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :
(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,
(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe (2) ni de

or dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*); or
(*b*) shall dismiss the complaint to which the report relates if it is satisfied
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or
(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*).

65. (1) Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.

(2) An act or omission shall not, by virtue of subsection (1), be deemed to be an act or omission committed by a person, association or organization if it is established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof.

la rejeter aux termes des alinéas 41*c*) à *e*);
b) rejette la plainte, si elle est convaincue :
(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,

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

65. (1) Sous réserve du paragraphe (2), les actes ou omissions commis par un employé, un mandataire, un administrateur ou un dirigeant dans le cadre de son emploi sont réputés, pour l'application de la présente loi, avoir été commis par la personne, l'organisme ou l'association qui l'emploie.

(2) La personne, l'organisme ou l'association visé au paragraphe (1) peut se soustraire à son application s'il établit que l'acte ou l'omission a eu lieu sans son consentement, qu'il avait pris toutes les mesures nécessaires pour l'empêcher et que, par la suite, il a tenté d'en atténuer ou d'en annuler les effets.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-378-10
STYLE OF CAUSE:	PAULINE KAUR GOSAL v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	January 12, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	Gauthier J.
DATED:	May 18, 2011

APPEARANCES:

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