Federal Court  Cour fédérale

Date: 20111005

Docket: T-727-10

Citation: 2011 FC 1128

Ottawa, Ontario, this 5th day of October 2011

Present: The Honourable Mr. Justice Kelen

BETWEEN:

SAMEH BOSHRA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of two decisions by the Canadian Human Rights Commission (the Commission), both dated March 31, 2010: the first, pursuant to paragraph 41(1)(*d*) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act), not to deal with the Applicant's complaint because it is trivial; and the second, pursuant to paragraph 41(1)(*b*) of the Act, not to deal with the Applicant's complaint at that time because another statutory procedure was available to deal with the human rights issues raised by the complaint.

FACTS

Background

[2] The Applicant, Sameh Boshra, began his employment at Statistics Canada (the employer) on November 26, 2007, as an Analyst Recruit in the Income Statistics Division. Because he bicycled to work, the Applicant regularly used the men's change room in the basement of the Main Statistics Building before and after work to change clothes.

[3] On August 7, 2008, shortly after 6 p.m., the Applicant was changing in the men's change room, when a female security guard entered the change room (it was disputed whether the guard followed the protocol of knocking first). When she discovered the Applicant was in the change room, she quickly apologized and left the room.

[4] As a Coptic Orthodox Christian, the Applicant states that a woman other than his wife viewing him undressed violates his religious beliefs regarding modesty. The Applicant reported this incident to the employer and asked that steps be taken to ensure it did not occur again. Unsatisfied with the response he received, the Applicant submitted an internal grievance regarding this incident on August 26, 2008.

[5] The Applicant asked that the employer ensure he would never have to see this female security guard again, and also that the employer establish a policy prohibiting guards from entering change rooms for persons of the opposite sex.

[6] The employer did not consider these solutions appropriate, and instead offered other accommodations, including:

a. Posting signs in washrooms and change rooms to alert workers to the possibility that guards and cleaning staff may enter for cleaning or inspection purposes;
b. Adding curtains to shower stalls in the change rooms for additional privacy;
c. Suggesting that the Applicant change in one of the lockable unisex washrooms located on every floor, or in a washroom cubicle or a curtained shower stall;
d. Ensuring that guards do not inspect change rooms during regular business hours (and the employer moved the start time of these inspections from 6 p.m. to 7 p.m., to accommodate those who may leave work slightly late).

[7] The Applicant disputed that the employer offered some of these solutions, stating that the employer in fact refused to post signs about guards of the opposite sex entering the change rooms. The employer stated in its written position to the Commission that these signs are now posted in the building.

[8] In its submissions to the Commission dated January 7, 2010, the employer stated that it was not aware of the Applicant's religious beliefs or any need for accommodation prior to the incident on August 7, 2008. After that incident, the employer offered the accommodation measures described above to the Applicant, and implemented several of them, despite the fact that the Applicant rejected them all as inadequate.

[9] In its cross-disclosure submissions dated January 26, 2010, the employer provided the Commission with a summary of all the actions taken and accommodations offered or implemented up to that date in response to the change room incident, which stated in part:

> - The Agency apologized to Mr. Boshra for any personal embarrassment he felt.
> - We suggested he consider changing in the men's washrooms; in the individual and lockable handicapped washrooms located on every floor; or in one of the numerous lockable conference rooms located on every floor.
> - We instructed all commissionaires to take additional measures to confirm if anyone is in the change rooms and washrooms before entering.
> - Signs were posted in every change room and every washroom in the complex to advise employees that the rooms may be entered for cleaning, repairs, or inspection purposes.
> - Curtains were installed on all shower stalls in all change rooms.
> - To offer additional privacy, an additional curtain was installed separating the showers from the change area.
> - In accordance with the Security Policy, floor inspections began at 6:00 which is the commencement of silent hours. After that time, only employees with special permission should be in the building. Some, like Mr. Boshra, do not have such permission but may occasionally be late in leaving the building. To accommodate these people, the starting time of inspection rounds was changed to 7:00 p.m.
> - Mr. Boshra justified his refusal to change in any location other than the change room on the fact that other facilities do not have showers. Employees riding their bicycles to work shower in the morning when they arrive, not at the end of the workday. During working hours when he would be showering, there are no inspections of washrooms or change rooms.
> - Handicapped washroom [*sic*] have been provided for the convenience of our handicapped employees but there is no rule preventing other employees from using these facilities as long as priority is always given to those with special needs. The suggestion to use these washrooms was not an insult; they are used by many employees every day.
> - Each evening two guards carry out two floor inspections of our three buildings (equivalent to approximately 70 floors).

> They check washrooms and change rooms for water leakage and ensure the health and safety of employees working alone at night. They also confirm that employees on site have permission to be there. If we were to provide a man and a woman per floor, we would have to hire two additional commissionaires in order to have two teams of two commissionaires. Hiring just one additional commissionaire would not be sufficient. During the day we have up to 5000 employees in the building; during silent hours when inspections are carried out, this number drops to approximately 100 employees spread throughout the complex.
> - There is no record and no recollection of anyone raising this concern previously. We clearly responded quickly and in good faith to Mr. Boshra; if there had been others who raised this issue, we would have responded to their concerns as well…

[10] On July 8, 2009, the Applicant filed complaint 20090598 (the first complaint) with the Commission.

[11] During this same period, several events occurred affecting the Applicant's employment status, and the motivation behind these events was disputed by the Applicant and the employer. The Applicant was subjected to a disciplinary hearing on June 11, 2009, for allegedly making threats during a phone call (this call related to the Applicant's request for information about the investigation into the change room incident). This disciplinary hearing resulted in a one-day suspension.

[12] On June 23, 2009, the Applicant received a performance evaluation that included negative comments regarding his personal suitability. The Applicant refused to sign the evaluation, asserting that the comments were unsubstantiated, but the evaluation was submitted as final unsigned.

[13] On July 15, 2009, the Applicant was informed that his current assignment was terminated, and he was reassigned to another department. The Applicant states that the discipline and negative performance evaluation were the reasons given for this reassignment. The Applicant was also denied leave, and denied a request to attend a training course.

[14] The Applicant grieved the discipline, the performance evaluation, the reassignment and the denials of the leave and the training course – all these grievances were denied by the employer.

[15] The Applicant reported receiving an email during this period from an unknown sender. The email stated that he should stop what he was doing, because it would "negatively affect" his employment – he interpreted this email as a threat if he did not end his human rights complaint. The employer denied any knowledge of this email in its written position.

[16] On July 31, 2009, the Applicant's employment was terminated. The Applicant alleges that this termination, as well as the events that preceded it, constituted retaliation for his first complaint to the Commission. The Applicant grieved the termination on August 12, 2009. Pursuant to section 209 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (PSLRA), the Applicant referred his grievances to the Public Service Labour Relations Board (the PSLRB) for adjudication. At the hearing, the Applicant stated that the hearing for this adjudication occurred, and the decision of the PSLRB is now subject to a separate application for judicial review.

[17] In its written position to the Commission, the employer maintained that the discipline, performance evaluation and termination of the Applicant were wholly unrelated to the incident giving rise to his human rights complaint.

[18] On September 3, 2009, the Applicant filed complaint 20090982 (the second complaint) with the Commission.

Decisions Under Review

Complaint 20090598 – Religion

[19] The first complaint alleged that the employer discriminated against the Applicant on the ground of religion, contrary to sections 7 and 10 of the Act, by pursuing a discriminatory policy or practice, by treating him in an adverse, differential manner, and by failing to accommodate him.

[20] A Commission investigator completed a Section 40/41 Report (Report 1) to assist the Commission in deciding whether to pursue the complaint. The investigator found that the issue for the Commission to decide was whether it ought to refuse to deal with the complaint because it was trivial, pursuant to paragraph 41(1)(*d*) of the Act.

[21] In Report 1, the investigator set out the factors to be considered in determining whether a complaint is trivial within the meaning of paragraph 41(1)(*d*):

a. What is the nature of the dispute between the parties? Is it a purely private dispute or are there public interest issues raised in the complaint? Are there allegations of systemic discrimination?

b. Does the complaint raise serious or relatively trifling issues? How serious was the adverse impact of the alleged discriminatory practice(s) on the complainant?

c. Do the alleged discriminatory practices constitute significant or merely technical breaches of the Act?

d. Has the respondent already addressed the complainant's concerns? Have substantial and comprehensive remedies been provided by the respondent?

e. Would pursuing the complaint constitute a waste of public resources?

[22] Report 1 summarized the position of the Applicant based on telephone conversations with him, because he did not submit a written position. The report reproduced the employer's written position in full. The report then summarized each party's position on each of the factors listed above.

[23] The report emphasized the fourth factor: whether the employer had already addressed the Applicant's concerns. The report reiterated the employer's position that several accommodations were offered and implemented in relation to this incident.

[24] The report stated the Applicant's position that all of the offered accommodations were inadequate, and that the only acceptable solution was to prohibit guards entering change rooms for persons of the opposite sex. The report noted the employer's position that to institute such a policy may amount to discrimination against female guards and cleaning staff.

[25] The report concluded, at paragraph 19:

> It appears that the respondent has offered several options that would reasonably accommodate the complainant. While these options are not the complainant's preferred accommodation, it would appear that some of the options would assure him of privacy while changing clothes.

[26] The Commission considered this report, the Applicant's complaint, and further submissions by the Applicant and the employer. In its decision dated March 31, 2010, the Commission decided not to deal with the complaint pursuant to paragraph 41(1)(*d*) of the Act, because the complaint is trivial, frivolous, vexatious or made in bad faith. In its decision, the Commission adopted the conclusion of Report 1, specifically quoting paragraph 19, reproduced above.

Complaint 20090982 – Retaliation

[27] The Applicant's second complaint alleged that the employer retaliated against the Applicant for making the first complaint, contrary to section 14.1 of the Act, by disciplining him, giving him a negative performance evaluation, reassigning him, denying him leave, denying him a training course, and by terminating his employment.

[28] A Commission investigator completed a Section 40/41 Report (Report 2) on January 28, 2010. The investigator found that the issue to be decided by the Commission was whether it ought to refuse to deal with the complaint under paragraph 41(1)(*b*) of the Act, because the complaint could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than the *Canadian Human Rights Act*.

[29] Report 2 set out the factors relevant to determining whether to refuse to deal with a complaint under paragraph 41(1)(*b*):

a. Is there another statutory procedure that is available to the complainant to deal with the human rights issues raised by the complaint, either initially or completely?

b. If there is another statutory procedure available to the complainant, what is it? For example, is it a review mechanism or a grievance? What other statute is involved?

c. Can the other statutory procedure deal with the human rights issues raised by the complaint and, if so, can those issues be dealt with initially or completely? Specifically:

   i. What remedies are potentially available under the other statutory procedure?

   ii. Will the parties be able to raise all of the human rights issues that are in dispute between them through the other statutory procedure? If not, what issues cannot be dealt with through the other statutory procedure?

   iii. What steps have been taken by either of the parties to use the other statutory procedure?

   iv. If the parties have not begun to use the other statutory procedure, why not?

   v. If the parties have begun to use the other statutory procedure, what is the status of the complaint or grievance under the other procedure?

[30] Report 2 reproduced the written positions of both parties, and then analyzed the complaint by applying the factors listed above. The report stated that the grievance procedure under section

208 of the PSLRA was available to the Applicant to deal with the issues raised by the complaint. The report noted that a grievance can be referred to the PSLRB for adjudication under section 209 of the PSLRA. The report also stated that the PSLRB has the authority to interpret and apply the Act, and to award the same remedies as those available under the Act, pursuant to section 226 of the PSLRA.

[31] The report stated that the Applicant had referred the grievances related to the alleged retaliation to the Board for adjudication. As a result, the report concluded that the complaint "could more appropriately be dealt with initially or completely according to a procedure provided for under an Act of Parliament other than the [Act]."

[32] The Applicant stated in his submissions to the Commission that the employer was challenging the jurisdiction of the PSLRB to hear the grievances he had referred for adjudication.

[33] In its submissions to the Commission, the employer pointed out that the Applicant's grievances were scheduled to be presented to the PSLRB the week of June 7-11, 2010, and that a pre-hearing meeting was scheduled for March, 2010.

[34] The Commission considered the complaint, the Section 40/41 Report, and the submissions from the Applicant and employer. In its decision dated March 31, 2010, the Commission decided not to deal with the complaint at that time, pursuant to paragraph 41(1)(*b*) of the Act, and the decision adopted the conclusions of the Section 40/41 Report, as described above. The

Commission's decision noted that, at the end of the other procedure, the Applicant could ask the Commission to reactivate the complaint.

LEGISLATION

[35] Section 3 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, sets out the prohibited grounds of discrimination for the purposes of the Act:

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.

[36] Sections 7 and 10 of the Act prohibit discrimination in relation to one's employment:

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.
10. It is a discriminatory practice for an employer, employee organization or employer organization (*a*) to establish or pursue a policy or practice, or (*b*) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,	**10.** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale : *a*) de fixer ou d'appliquer des lignes de conduite;

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

b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

[37] Section 14.1 of the Act prohibits a person against whom a complaint has been filed from retaliating against the person who made the complaint:

14.1 It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

14.1 Constitue un acte discriminatoire le fait, pour la personne visée par une plainte déposée au titre de la partie III, ou pour celle qui agit en son nom, d'exercer ou de menacer d'exercer des représailles contre le plaignant ou la victime présumée.

[38] Section 41 of the Act sets out certain grounds on which the Commission can decide not to deal with a complaint:

41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that
…
(*b*) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;
…
(*d*) the complaint is trivial, frivolous, vexatious or made in bad faith; or
…

41. (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :
…
b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;
…
d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;
…

[39] Subsection 208(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2, permits an employee to present an individual grievance under certain circumstances:

208. (1) Subject to subsections (2) to (7), an employee is entitled to present an individual

208. (1) Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief

grievance if he or she feels aggrieved

(*a*) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or
(ii) a provision of a collective agreement or an arbitral award; or

(*b*) as a result of any occurrence or matter affecting his or her terms and conditions of employment.

individuel lorsqu'il s'estime lésé :

a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;

b) par suite de tout fait portant atteinte à ses conditions d'emploi.

[40] Subsection 209(1) of the PSLRA permits an employee to refer an individual grievance to adjudication if it has not been dealt with to the employee's satisfaction:

209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to
…
(*b*) a disciplinary action resulting in termination, demotion, suspension or financial penalty;
…

209. (1) Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire peut renvoyer à l'arbitrage tout grief individuel portant sur :
…
b) soit une mesure disciplinaire entraînant le licenciement, la rétrogradation, la suspension ou une sanction pécuniaire;
…

[41] Subsection 226(1) of the PSLRA empowers an adjudicator to interpret and apply the Act, and grant remedies under the Act:

226. (1) An adjudicator may, in relation to any matter referred to adjudication,
…
(*g*) interpret and apply the *Canadian Human Rights Act* and any other Act of Parliament relating to employment matters, other than the provisions of the *Canadian Human Rights Act* related to the right to equal pay for work of

226. (1) Pour instruire toute affaire dont il est saisi, l'arbitre de grief peut :
…
g) interpréter et appliquer la *Loi canadienne sur les droits de la personne*, sauf les dispositions de celle-ci sur le droit à la parité salariale pour l'exécution de fonctions équivalentes, ainsi que toute autre loi fédérale relative à l'emploi, même

equal value, whether or not there is a conflict between the Act being interpreted and applied and the collective agreement, if any;

(*h*) give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the *Canadian Human Rights Act*;
…

si la loi en cause entre en conflit avec une convention collective;

h) rendre les ordonnances prévues à l'alinéa 53(2)e) et au paragraphe 53(3) de la *Loi canadienne sur les droits de la personne*;
…

ISSUES

[42] The Applicant argues that the following issues are raised:

a. Did the Commission fail to exercise its jurisdiction by dismissing the complaints submitted to it, despite its mandate in section 2 of the Act?

b. Did the Commission breach the principles of natural justice and procedural fairness by dismissing the Applicant's representations and accepting the employer's representations in whole without benefit of evidence or a hearing?

c. Did the Commission err in law by dismissing the complaints submitted to it, despite the complaints meeting the grounds for a complaint under the Act?

d. Did the Commission base its decision on erroneous findings of fact by dismissing the complaints as "trivial, frivolous, vexatious or made in bad faith" despite support of the complaints by Applicant's church and union?

e. Did the Commission fail to act by reason of fraud or perjured evidence in dismissing the referenced complaints based on accepted misrepresentations by the employer regarding its policies, practices and actions?

[43] However, based on the parties' submissions, the Court finds that the following issues are raised:

a. Was there a breach of procedural fairness in the decisions?

b. Were the Commission's decisions not to deal with the Applicant's complaints reasonable?

STANDARD OF REVIEW

[44] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Canada (M.C.I.) v. Khosa*, [2009] 1 S.C.R. 339, per Justice Binnie at paragraph 53.

[45] The standard of review of the Commission's decision under section 41 of the Act not to deal with a complaint is reasonableness: *Bateman v. Canada (Attorney General)*, 2008 FC 393, per my colleague Justice Luc Martineau at paragraph 20. The questions of whether the Applicant's first complaint was trivial, and whether the Applicant's second complaint could be more appropriately dealt with through a procedure under another Act, are questions of mixed fact and law, and are due considerable deference.

[46] In reviewing the Commission's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, above, at paragraph 47; *Khosa*, above, at paragraph 59.

[47] The Commission's decisions will be reviewed in terms of their procedural fairness on a standard of correctness: *Bateman*, above, at paragraph 20.

ANALYSIS

Issue #1: Was there a breach of procedural fairness in the decisions?

[48] In cases where the Commission adopts the conclusions of the Section 40/41 Report and provides no reasons or only brief reasons, this Court has held that the Section 40/41 Report can be treated as the Commission's reasons for the decision: *Sketchley v. Canada (Attorney General)*, [2006] 3 F.C.R 392 (F.C.A.). Thus, for the principles of procedural fairness to have been followed, the Section 40/41 Reports must have been completed in a procedurally fair manner.

[49] The Section 40/41 Report will be procedurally fair if the investigation upon which it is based is neutral and thorough: *Slattery v. Canada (Human Rights Commission)*, [1994] 2 F.C. 574 (T.D.). The parties must be informed of the substance of the evidence obtained by the investigator which will be put before the Commission, and must have an opportunity to respond to that evidence and make relevant submissions: *Deschênes v. Canada (Attorney General)*, 2009 FC 1126 at paragraph 10; *Lusina v. Bell Canada*, 2005 FC 134 at paragraph 30.

[50] The Applicant submits that the Commission's decisions not to deal with his complaints lacked procedural fairness in two respects: first, because the Commission limits the length of submissions, and he was therefore forced to cut part of a letter of support from his priest; second, because the Commission did not conduct an oral hearing. The Court finds that these arguments have no merit, and the decisions were procedurally fair.

[51] The Commission followed the usual process in the Applicant's complaints: the investigator sought information from both parties and completed the Section 40/41 Report. That report was then provided to the parties and each party was given the opportunity to make submissions. Each party was also given the opportunity to review the other party's submissions, and make additional submissions. All of these materials were considered by the Commission before it rendered its decision.

[52] The page limit on the first set of submissions thus did not deny the Applicant the opportunity to present his case. In addition to those ten pages of submissions, the Applicant was able to submit its position to the Commission investigator, and to make an additional set of written submissions following the employer's submissions. Thus, the Applicant had ample opportunity to fully present his case to the Commission.

[53] Also, the Commission did not decide not to deal with the complaints because it doubted the sincerity of the Applicant's religious beliefs. The Applicant made his religious beliefs clear in all his submissions, and they appear to have been accepted by the Commission. Therefore, the absence of the first page of his priest's letter of support could not have affected the Commission's decision.

[54] The lack of an oral hearing also does not constitute a breach of procedural fairness. The content of procedural fairness depends upon the overall context of the particular decision. In this case, there were no factors militating in favour of an oral hearing, such as an issue of credibility: *Singh et al. v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177. The parties were well informed of the evidence upon which the decision was based, and given the opportunity to respond

to that evidence. Thus, there are no grounds for the Court's intervention on the basis of procedural fairness.

Issue #2: Were the Commission's decisions not to deal with the Applicant's complaints reasonable?

First decision: Complaint 20090598 - Religion

[55] The Commission decided, pursuant to paragraph 41(1)(*d*) of the Act, not to deal with the first complaint because it was trivial. The Commission adopted the conclusion of the investigator in the Section 40/41 Report, specifically quoting the following conclusion:

> It appears that the respondent has offered several options that would reasonably accommodate the complainant. While these options are not the complainant's preferred accommodation, it would appear that some of the options would assure him of privacy while changing clothes.

[56] The Court finds that the Commission's decision not to deal with the first complaint was reasonable. The decision-making process and the outcome satisfied the requirements of the *Dunsmuir* analysis.

[57] *Dunsmuir*, above, requires that the reasoning process be intelligible, transparent, and adequately justified. In this case, there were no defects in the analysis. The Section 40/41 Report set out the factors relevant to determining whether a complaint is trivial – one of those factors is whether the respondent to the complaint has already addressed the complainant's concerns, or substantial and comprehensive remedies have been provided by the respondent. The Section 40/41 Report concluded that several possible accommodations were offered to the Applicant. The

Applicant disputed whether some of the accommodations were actually offered; however, the employer's cross-disclosure submissions dated January 26, 2010, catalogue the offered and implemented accommodations up to that date. This evidence was before the Commission, and the Court cannot re-weigh that evidence.

[58] This Court is not entitled to substitute its opinion for that of the Commission if the Commission's decisions were reasonably open to it based on the evidence. The Court appreciates the importance of this matter to the Applicant in relation to his religion as a Coptic Orthodox Christian. It was so important, in fact, that the applicant's priest from Montreal attended the Court hearing. The Applicant referred to a number of emails not before the Commission as to whether the concerns of the applicant would be accommodated by, for example, delaying the time of inspections to 7 p.m., by installing curtains on the shower stalls, by the posting of signs, etc. The Commission had evidence before it from the employer that these changes were made and the Court must conclude that there was evidence upon which the Commission could find that the Applicant's concerns had been accommodated. The Court therefore has no basis upon which to intervene.

Second decision: Complaint 20090982 – Retaliation

[59] The Commission decided, pursuant to paragraph 41(1)(*b*) of the Act, not to deal with the second complaint at that time because "the complaint is one that could more appropriately be dealt with initially according to a procedure provided for under an Act of Parliament other than this Act." The decision noted that the Applicant could ask the Commission to reactivate the complaint at the end of the other procedure.

[60] The Court finds that this decision was also reasonable. The Section 40/41 Report reproduced the Applicant's position letter, which stated that he was pursuing the grievance adjudication process under the PSLRA for the termination of his employment. The report noted that the PSLRB is empowered to award the same remedies as the Commission. Thus, the report's conclusion that the complaint could more appropriately be dealt with initially under the PSLRA procedure was justified by the analysis, and reasonably open to the investigator to conclude.

[61] In response to the report, the Applicant's submissions pointed out that the employer was challenging the jurisdiction of the PSLRB to hear the Applicant's grievances. However, as the employer's further submissions stated, those grievances had been referred to a hearing for June 7-11, 2010. At the hearing, the Applicant acknowledged that the hearing of these grievances before the PSLRB did occur. Thus, at the time of the Commission's decision, the facts giving rise to the complaint were going to be subject to adjudication under the PSLRA. At the hearing, the Applicant stated that the hearing before the PSLRB had occurred, and its decision is currently subject to a separate application for judicial review.

[62] Therefore, the Court finds that the Commission's decision was justified based on the record, and reasonably open to it based on the facts and the law. There is, therefore, no basis upon which to intervene.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael A. Kelen"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-727-10
STYLE OF CAUSE:	SAMEH BOSHRA v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	September 22, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	Kelen J.
DATED:	October 5, 2011

APPEARANCES:

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Me Korinda McLaine	FOR THE RESPONDENT

SOLICITORS OF RECORD:

	THE APPLICANT ON HIS OWN BEHALF
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT