

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20210603**

**Docket: A-104-20**

**Citation: 2021 FCA 107**

**CORAM: RENNIE J.A.  
MACTAVISH J.A.  
LEBLANC J.A.**

**BETWEEN:**

**JOSEPH D. YUE**

**Appellant**

**and**

**BANK OF MONTREAL**

**Respondent**

Heard by online video conference hosted by the Registry on May 31, 2021.

Judgment delivered at Ottawa, Ontario on June 3, 2021.

**REASONS FOR JUDGMENT BY:**

**RENNIE J.A.**

**CONCURRED IN BY:**

**MACTAVISH J.A.  
LEBLANC J.A.**

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**REASONS FOR JUDGMENT**

**RENNIE J.A.**

[1] The appellant appeals from the judgment of the Federal Court (*per* Diner J.) 2020 FC 468 dismissing the appellant's application for judicial review of the Canadian Human Rights Commission decision not to reactivate his human rights complaint against the Bank of Montreal, his former employer. The Federal Court also rejected the appellant's assertion that the Commission's decision raised constitutional issues under the *Canadian Charter of Rights and*

*Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 (Charter) along with the argument that the Commission's decision making process violated procedural fairness.

[2] I am of the view that the appeal should be dismissed. No error has been demonstrated in either the Federal Court's selection of the standard of review, nor in its application (*Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-47).

[3] In thorough reasons, the Federal Court traced the lengthy litigation history that preceded the current appeal to this Court. By way of summary, the appellant earlier appealed to this Court from a Federal Court decision dismissing his application for judicial review of a decision of an adjudicator made under Division XIV of Part III of the *Canada Labour Code*, R.S.C. 1985, c. L-2. That appeal was dismissed (*Yue v. Bank of Montreal*, 2016 FCA 107, 483 N.R. 375).

[4] The appellant subsequently reactivated a previously filed complaint before the Canadian Human Rights Commission, asserting that the labour adjudicator did not address the question of discrimination on the basis of age and ability. As pointed out by the Federal Court judge at paragraphs 30-31 of his reasons, the Commission decided not to reactivate his complaint for a number of reasons. These reasons include the fact that the allegations of discrimination had been canvassed by the adjudicator and that the appellant had failed to demonstrate any evidence linking the respondent Bank of Montreal's conduct to a protected ground. The allegations were simply bald assertions.

[5] Before this Court, the appellant argues that both the Commission and the Federal Court misapprehended the distinction between the matters that were the subject of his earlier unjust dismissal complaint and the matters that were before the Commission. He claims that the unjust dismissal proceeding concerned his request for medical accommodation, while the Federal Court proceeding concerned his disability accommodation request.

[6] The Federal Court judge rejected this argument and I see no error in his decision to do so. The factual and legal background was accurately summarized and analysed in the Federal Court's reasons at paragraphs 28 to 33. The judge found the Commission's decision that the *Canadian Human Rights Act* complaint "had been appropriately dealt with" in the CLC adjudication to be reasonable. The reasonableness of this conclusion is underscored by the fact that the appellant's previous judicial review seeking to reverse the adjudicator's findings on the key facts and allegations underlying the complaint was dismissed by the Federal Court in T-1687-14 and that decision was sustained on appeal to this Court.

[7] In his memorandum of fact and law, the appellant relies on *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 (S.C.C.) at paragraph 64, to argue that the CLC and CHRA proceedings raise a jurisdictional question with respect to the boundaries between two decision makers, the Commission and the adjudicator.

[8] This principle does not apply in this case. The Commission did not delve into the jurisdictional boundary between decision makers nor was it called on to do so. The Commission

merely concluded that the appellant's discrimination complaint should not be re-activated as, in part, the complaints had largely already been the subject of an earlier administrative process.

[9] In sum, the appellant's submissions, both before us and before the Federal Court, invite us to second-guess the Commission in circumstances where the decision was reasonable. As expressed in *Shoan v. Canada (Attorney General)*, 2020 FCA 174, 2020 CarswellNat 4368 at paragraph 10, “[t]his is not our function in an appeal from the dismissal of a judicial review.”

[10] I would therefore dismiss the appeal with costs which I would fix at \$1,000.00.

“Donald J. Rennie”

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J.A.

“I agree.  
Anne L. Mactavish J.A.”

“I agree.  
René Leblanc J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-104-20

**STYLE OF CAUSE:** JOSEPH D. YUE v. BANK OF MONTREAL

**PLACE OF HEARING:** HEARD BY ONLINE VIDEO CONFERENCE HOSTED BY THE REGISTRY

**DATE OF HEARING:** MAY 31, 2021

**REASONS FOR JUDGMENT BY:** RENNIE J.A.

**CONCURRED IN BY:** MACTAVISH J.A.  
LEBLANC J.A.

**DATED:** JUNE 3, 2021

**APPEARANCES:**

Joseph D. Yue ON HIS OWN BEHALF

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