

Federal Court



Cour fédérale

Date: 20150902

Docket: T-1948-14

Citation: 2015 FC 1035

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Fredericton, New Brunswick, September 2, 2015

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

**CANADIAN BROADCASTING
CORPORATION**

Applicant

and

**SYNDICAT DES COMMUNICATIONS DE
RADIO-CANADA (FNC-CSN)**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, for judicial review of a decision by the Canadian Human Rights Commission (Commission), in accordance with paragraph 44(3)(a) of the *Canadian Human Rights Act*,

RSC 1985, c H-6 (Act), to request the Chairperson of the Canadian Human Rights Tribunal (Tribunal) to institute an inquiry into a portion of the complaint filed by the respondent on April 28, 1999.

II. Facts

[2] The facts giving rise to this application for judicial review go back to 1995. At that time, the Syndicat des communications de Radio-Canada (SCRC) had recently been certified by the Canadian Labour Relations Board and represented the salaried employees of the Canadian Broadcasting Corporation (CBC) in Quebec and in the City of Moncton, New Brunswick. The SCRC then found an alleged wage differential between the employees who belonged to five supposed occupational groups (production assistants and assistant directors; closed captioning employees; documentation employees; research employees; and assignment assistants) and one comparison group (level 9 technicians represented by the Syndicat des technicien(ne)s et artisan(e)s du réseau français). The alleged wage differential was in favour of the comparison group, which was composed of primarily male staff, whereas the group represented by the SCRC was composed of primarily female staff.

[3] Over the next five years, various exchanges took place between the Commission, the SCRC and the CBC regarding the complaint. On April 5, 2004, the Commission decided to refer the complaint to the Tribunal. Subsequently, CBC filed an application for judicial review of that decision. On April 12, 2005, the Federal Court allowed the application for judicial review. Justice Shore stated in his reasons that “[t]he matter is referred to the Commission so that it can resume its investigation of the complaint, with regard to a comparative evaluation of the duties

concerned and the question of whether the groups compared are part of the same establishment within the meaning of the Act”, see: *Canadian Broadcasting Corp. v Syndicat des communications de Radio-Canada (FNC-CSN)*, 2005 FC 466 at para 52.

[4] On November 24, 2008, further to an investigation, a report was prepared by Sylvie St-Onge (St-Onge Report). That report, which was more than thirty pages long, recommended that the Commission request the Chairperson of the Tribunal to institute an inquiry into the complaint. Between January and April 2009, the SCRC and the CBC sent the Commission their submissions on the St-Onge Report.

[5] In January 2012, the Commission retained the services of a consultant, Paul Durber, to complete an analysis of the comparator group. He rendered his report on March 15, 2012 (Durber Report), and it was submitted to the parties in December 2012. In the report, Mr. Durber found that the primarily male comparison groups that made up the comparison group did not constitute just one occupational group. He found that six primarily male occupational groups should be grouped together as one comparator group. Between March and September 2013, the parties sent various submissions to the Commission concerning the Durber Report.

[6] In February 2014, the Commission received a supplementary report, prepared by Nathalie Dagenais (Supplementary Report). The objective of the Supplementary Report was [TRANSLATION] “to provide the Commission with the additional information collected further to its decision dated February 22, 2010, requesting a more in-depth investigation” and to provide [TRANSLATION] “a chronology of subsequent events”. Following a summary of the relevant facts

and an analysis, Ms. Dagenais recommended that the Commission request the Chairperson of the Tribunal [TRANSLATION] “to institute an inquiry into the portion of the complaint that pertains to the “research” group because: having regard to all the circumstances of the complaint, an inquiry into the complaint by the Tribunal is warranted”. Between April and June 2014, the parties provided various submissions to the Commission concerning the Supplementary Report.

[7] On August 13, 2014, the Commission rendered the impugned decision. The decision consisted of only the following:

[TRANSLATION]

Before making this decision, the Commission studied the reports that were previously submitted to you as well as all of the subsequent submissions made in respect thereof. After reviewing that information, the Commission has decided, under paragraph 44(3)(a) of the *Canadian Human Rights Act*, to request the Chairperson of the Canadian Human Rights Tribunal to institute an inquiry into the portion of the complaint pertaining to the “research” group because:

- having regard to all the circumstances of the complaint, an inquiry into the complaint by a tribunal is warranted.

III. Issues

[8] The following two issues arise in this case:

- (1) Did the Commission provide adequate reasons for its decision?
- (2) If it did provide adequate reasons for its decision, is the decision reasonable?

IV. Standard of review

[9] The applicant challenges the Commission's decision on the ground that it does not contain adequate reasons. It contends that the decision consists in only one sentence and fails to explain how the Commission came to the decision to request the Chairperson of the Tribunal to institute an inquiry into a portion of the complaint. Consequently, it argues that the lack of explanation contravenes the key rules of justice and procedural fairness. In these circumstances, the case law of this Court states that the correctness standard of review applies; see:

Dubé v Canadian Broadcasting Corporation, 2015 FC 78 at para 23, *Attaran v Canada (Attorney General)*, 2013 FC 1132 at para 39, *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 and *Sketchley v Canada (Attorney General)*, 2005 FCA 404 (*Sketchley*) at para 53.

[10] The reasonableness standard of review applies to the second issue, see: *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 SCR 364 (*Halifax*) at para 17; *Dupuis v Canada (Attorney General)*, 2010 FC 511 at para 10.

V. Analysis

A. *Did the Commission provide adequate reasons for its decision?*

[11] I am of the view that the Commission did provide adequate reasons for its decision in light of the wording of the Act and of the case law of the Federal Courts. The wording of the Act does not impose on the Commission an obligation to provide reasons for its decision to request

the Tribunal to inquire into the complaint. Subsections 44(3) and 44(4) of the Act read in part as follows:

<p>44 (3) On receipt of a report referred to in subsection (1), the Commission</p> <p>(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</p> <p>(i) <u>that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and</u></p> <p>(ii) that the complaint to which the report relates should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(c) to (e); or</p> <p>...</p> <p>(4) <u>After receipt of a report referred to in subsection (1), the Commission</u></p> <p>(a) <u>shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3); and</u></p> <p>[Emphasis added.]</p>	<p>44 (3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :</p> <p>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 :</p> <p>(i) <u>d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,</u></p> <p>(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe (2) ni de la rejeter aux termes des alinéas 41c) à e);</p> <p>...</p> <p>(4) <u>Après réception du rapport, la Commission :</u></p> <p>a) <u>informe par écrit les parties à la plainte de la décision qu'elle a prise en vertu des paragraphes (2) ou (3);</u></p> <p>(Non souligné dans l'original.)</p>
--	--

[12] The Act imposes on the Commission only the obligation to inform the parties of its decision concerning the complaint. Justice Martineau noted the following in *Dupuis* at paragraph 12:

The Commission's role is well known. Essentially, it is to assess the sufficiency of the evidence prior to referring a complaint to the Tribunal. The Commission's role is very modest: it is not to determine whether the complaint has merit, but, rather, whether an inquiry is warranted having regard to all the facts. . . .

At that stage, the Commission's role is to determine whether there are grounds for referring the complaint for an inquiry.

[13] Furthermore, the case law of the Federal Court of Appeal confirms that the reasons in the investigator's report (in this case, the Supplementary Report) are the Commission's reasons: see, *Sketchley* at paragraph 37. The Federal Court has followed this case law a number of times; see: *Dubé*, at para 15; *Din Ali v Canada (Attorney General)*, 2013 FC 30 at para 20, upheld by 2014 FCA 124.

[14] A reading of the letter dated August 13, 2014, shows that the reports presented in the framework of the complaint process, including the Supplementary Report, were taken into account. Furthermore, the fact that the Commission cited the recommendation in the Supplementary Report word for word as grounds justifying an inquiry into the complaint testifies to the fact that it relied on that report to make its decision.

B. *If it did provide adequate reasons for its decision, is the decision reasonable?*

[15] The Supreme Court of Canada's comments in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (*Dunsmuir*), at paragraph 47, are helpful with respect to our analysis of "reasonableness":

In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the

decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[16] That key passage of *Dunsmuir* must be read in the context of *Halifax*. It suffices that the Commission “is satisfied that, having regard to all circumstances of the complaint, an inquiry thereinto is warranted”; see: para 21. In determining the reasonableness of the Commission’s decision, the Commission is not required to make “[an] explicit finding[s] on each constituent element” of its reasoning; see: *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at paragraph 16.

[17] With these parameters in mind, I point out that the person who wrote the Supplementary Report noted in her analysis that she considered, *inter alia*, the initial investigation report, the 2010 decision, the additional report as well as the submissions of the parties throughout the investigation process in order to arrive at her final recommendation.

[18] In *Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854, the Supreme Court acknowledged the limited role of the Commission at that stage of the complaint investigation process. In the majority reasons, Chief Justice Lamer stated the following at paragraph 53:

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

[Emphasis added.]

[19] Although the applicant disagrees with the Commission's decision to refer the complaint for inquiry, it is, in my opinion, reasonable in the circumstances. Certainly, there may be contradictions in the evidence; however, those contradictions will be considered by the Tribunal that institutes an inquiry into the matter. It is not up to the Commission to determine whether the complaint has merit, but, rather, whether there is sufficient evidence to refer the complaint to the Tribunal.

[20] As a result of the finding that the impugned decision of the Commission contained adequate reasons and was reasonable, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The applicant's application for judicial review is dismissed;
2. Costs are awarded in favour of the respondent.

"B. Richard Bell"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1948-14

STYLE OF CAUSE: CANADIAN BROADCASTING CORPORATION v
SYNDICAT DES COMMUNICATIONS DE
RADIO-CANADA (FNC-CSN)

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 10, 2015

JUDGMENT AND REASONS: BELL J.

DATED: SEPTEMBER 2, 2015

APPEARANCES:

Frédéric Massé

FOR THE APPLICANT

Maude Pepin-Halle
Mathilde Baril-Jannard

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Frédéric Massé
Borden Ladner Gervais
Montréal, Quebec

FOR THE APPLICANT

François Morin
Union Representative
Syndicat des communications de
Radio-Canada (FNC-CSN)
Montréal, Quebec

FOR THE RESPONDENT