

Federal Court



Cour fédérale

**Date: 20200228**

**Docket: T-1770-18**

**Citation: 2020 FC 315**

**Ottawa, Ontario, February 28, 2020**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**JEAN-JACQUES DESGRANGES**

**Applicant**

**and**

**ADMINISTRATIVE TRIBUNALS SUPPORT  
SERVICES OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Jean-Jacques Desgranges, [Mr. Desgranges], seeks judicial review of the decision of the Canadian Human Rights Commission [the Commission], dated August 29, 2018. The Commission dismissed Mr. Desgranges' complaint of discrimination on the basis of age in the area of employment against the Administrative Tribunals Support Services of Canada [ATSSC].

[2] For the reasons that follow, the Application is dismissed. The Commission conducted a thorough investigation and reasonably concluded that there was no evidence of age discrimination by the ATSSC. The Commission reasonably found that Mr. Desgranges' secondment to the ATSSC ended due to a lack of work. As a result, further investigation into the complaint was not warranted. The Commission did not err by failing to consider sections 8 or 10 of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [CHRA]. The Commission investigated and determined the complaint as it was described by Mr. Desgranges. The Commission did not err in failing to consider statistical evidence. Statistical evidence was not provided and may not even exist. Moreover, statistics on the age of those hired at ATSSC would not address the factual finding that Mr. Desgranges' secondment ended, as scheduled, and was not renewed, due to a lack of work. Nor did the Commission err in adopting the Investigator's findings and recommendations, after considering the complaint and Mr. Desgranges' submissions in response to the Investigator's Report. The Commission's reasons – which adopt those of the Investigator – demonstrate that the Commission's decision is coherent and rational and that the decision is justified, transparent and intelligible.

[3] The Commission also dismissed a complaint made by Mr. Desgranges against Elections Canada, which is based on the same alleged discriminatory conduct, with respect to a competitive process for a LP-01 (legal counsel) position. In that process, one of Mr. Desgranges' references, Mr. Choquette, made the age-related comment that is at issue in both the complaint against ATSSC and Elections Canada. In *Desgranges v Elections Canada*, 2020 FC 314 [*Desgranges I*], the Court found that the Commission's decision to dismiss the complaint was reasonable and that the investigation was thorough.

[4] Although Mr. Desgranges sincerely believes that his employment opportunities have been negatively impacted due to age discrimination, the role of the Court is not to make such determinations, nor to reweigh the evidence before the Commission or second-guess the Investigator. The Court has considered whether the Investigation was thorough and whether the Commission's decision is reasonable, as guided by the jurisprudence and based on the evidence on the record before the Commission. No error can be found.

I. Background

A. *The Applicant's secondment at ATSSC and application to Elections Canada*

[5] Mr. Desgranges was seconded at the LP-01 level (legal counsel) to the Public Servants Disclosure Protection Tribunal (PSDPT) from May 2014 until May 2015. The PSDPT became part of the Administrative Tribunal Support Services of Canada (ATSSC) in November 2014.

[6] The Court's understanding of a secondment, as confirmed by the Respondent, is that an employee holds a position in a particular Government department or agency and is loaned or assigned to another Government department or agency for a finite period of time at the end of which the employee would return to their home department or agency.

[7] Near the end of the period of Mr. Desgranges' secondment, the Executive Director of the ATSSC, Ms. Rachel Boyer, and Senior Counsel, Mr. François Choquette, informed Mr. Desgranges that his secondment would not be extended due to insufficient work at the

ATSSC. Mr. Desgranges recounts that Ms. Boyer and Mr. Choquette indicated that they would call him back if the ATSSC's workload increased.

[8] Mr. Desgranges recounts that in March 2016, he asked Mr. Choquette whether he would provide a reference for him in his applications for other positions. Mr. Desgranges recounts that Mr. Choquette agreed, but commented that Mr. Desgranges might have difficulty obtaining an LP-01 position, stating, "ton âge joue contre toi" ("your age plays against you").

[9] Mr. Desgranges asserts that ATSSC later hired Mr. K as counsel to address ATSSC's increasing workload. Mr. Desgranges recounts that he then contacted Mr. Choquette and Ms. Boyer to inquire why he had not been asked to return to the ATSSC position now occupied by Mr. K. Ms. Boyer replied by email, stating that she was satisfied with Mr. Choquette's selection of Mr. K and that, in matters of hiring, the ATSSC must also examine the present and future needs of the organization.

[10] Mr. Desgranges further recounts that in June 2016 he met with Mr. Choquette to confirm whether Mr. Choquette would still be a reference and to inquire why he was not called back for the ATSSC position. Mr. Desgranges recalls that Mr. Choquette commented that: Mr. K was not hired as an LP-01; Mr. Desgranges' personal relationship with Ms. Boyer did not help him; and, Mr. Desgranges' age was an obstacle to him being hired as legal counsel.

[11] Mr. Desgranges applied for an LP-01 position at Elections Canada in June 2016. He provided two references: Mr. Choquette, from ATSSC, and Ms. Charron, Manager of Policy and Communications at the Canada Revenue Agency.

[12] As described in *Desgranges I*, Ms. Savard, Senior Counsel at Elections Canada, conducted the competitive process for the LP-01 position. Among other criteria, the candidates' adaptability and thoroughness were assessed. Ms. Savard noted a comment made by Mr. Choquette in relation to Mr. Desgranges' adaptability, "limite qui vient avec l'âge ≠ forte." With respect to thoroughness, Ms. Savard noted several comments made by Mr. Choquette and other references unrelated to Mr. Desgranges' age.

[13] Mr. Desgranges received a passing score on the adaptability criteria but did not receive a passing score on the thoroughness criteria. As a result, he was eliminated from the competitive process at Elections Canada. Mr. Desgranges obtained Ms. Savard's interview notes pursuant to an Access to Information and Privacy [ATIP] Request and discovered that an age-related comment had been made by Mr. Choquette.

B. *The Complaint to the CHRC*

[14] On December 22, 2016, Mr. Desgranges filed a complaint with the Commission against the ATSSC, alleging that his secondment at ATSSC had not been extended (and that he had not been called back) on the basis of age discrimination. The Commission assigned an investigator.

C. *The Investigation of the Complaint*

[15] The Investigator completed the investigation and issued her report [Investigator's Report] on June 1, 2018. The Investigator set out her findings and recommended that the complaint be dismissed.

[16] The Investigator's Report states that she considered the complaint and all written submissions. The Investigator conducted interviews with Mr. Desgranges, Mr. Choquette, Ms. Savard (who conducted the competitive process at Elections Canada), and Ms. Charron (the other reference for the Elections Canada position).

[17] The Investigator's Report notes, among other things, the role of the Commission and the purpose of the Investigation, the complaint made by Mr. Desgranges, the investigation process, and the information gathered from the interviews with the witnesses.

[18] The Investigator set out the following key findings:

- 1) The evidence supports the Respondent's contention that Mr. Desgranges' secondment at ATSSC was not renewed or extended because of a lack of work.
- 2) The position that subsequently became available at the ATSSC was a research position, and not a legal counsel position as Mr. Desgranges maintains.
- 3) The evidence shows that Mr. Choquette made a comment about Mr. Desgranges' age during his reference check with Ms. Savard for the LP-01 position at Elections Canada.

- 4) Mr. Choquette's age-related comment was made many months after the conclusion of Mr. Desgranges' secondment at ATSSC. Accordingly, there does not appear to be a link between the comment and the non-renewal of Mr. Desgranges' secondment.
- 5) The evidence does not support Mr. Desgranges' complaint that the ATSSC's decision to not extend Mr. Desgranges' secondment was based on the prohibited ground of Mr. Desgranges' age.

[19] Mr. Desgranges provided submissions in response to the Investigator's Report on June 27, 2018. Mr. Desgranges reiterated his complaint of age discrimination and asserted that there was no other reason for ATSSC to have not recalled him for work. He asserted that the Investigator should not have considered the investigation conducted or the conclusion reached with respect to his complaint against Elections Canada. Mr. Desgranges disputed that Mr. K had been hired as a researcher. He also asserted that the tasks performed by Mr. K were essentially those he had performed. He noted that he had previously received positive feedback from Mr. Choquette about his work. He also questioned the authority of Ms. Boyer to place him in a pre-qualified pool of candidates for a LP-01 position. He noted that he had not refused mediation, but had concluded that it could not resolve his complaint.

[20] The ATSSC submitted a response to the Investigator's Report and provided additional documents, including a letter from the Director of Human Resources at ATSSC confirming that Mr. K occupied the position of research analyst, not legal counsel.

## II. The Decision under Review

[21] The Commission found, in accordance with subparagraph 44(3)(b)(i) of the *CHRA*, that having regard to all the circumstances of the complaint, an inquiry into the complaint by the Canadian Human Rights Tribunal was not warranted. The Commission noted that, before making its decision, it had considered all the information, including the complaint forms, the Investigator's Report that had been disclosed, and both parties' submissions in response to the Investigator's Report.

[22] The Commission acknowledged that Mr. Choquette had made certain age-related comments in the context of providing a reference for Mr. Desgranges in a competitive process at Elections Canada, but concluded that the comments were not a factor in the decision of ATSSC to not extend or renew the secondment of Mr. Desgranges or in the decision of Elections Canada with respect to the competitive process (see *Desgranges I*). The Commission found that the evidence did not support Mr. Desgranges' position that he had been the victim of age discrimination.

## III. The Issues

[23] Mr. Desgranges has raised several specific arguments, as detailed below, which can be grouped into two key issues:

1. Whether the Commission erred by failing to conduct a thorough investigation; and,
2. Whether the Commission's decision, which found that there was insufficient evidence to warrant a further inquiry and to dismiss the complaint, is reasonable.



#### IV. The Standard of Review

[24] The parties agree that the reasonableness standard of review applies to the merits of the decision and that the guiding principles enunciated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] SCJ No 65 [*Vavilov*], apply to determine if the decision is reasonable. The pre-*Vavilov* jurisprudence had established that decisions by the Commission to dismiss a complaint under paragraph 44(3)(b) of the *CHRA* are reviewed on the standard of reasonableness. *Canada (Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 27, [2018] 2 SCR 230; *Georgoulas* at para 58, 298 ACWS (3d) 826 [*Georgoulas* ]). This remains the standard of review and is reinforced by *Vavilov*,

[25] The issue of the thoroughness of the investigation is a matter of procedural fairness (*Joshi v CIBC, Joshi v Canadian Imperial Bank of Commerce*, 2015 FCA 92 at para 6, [2015] FCJ No 454). This approach is not changed by *Vavilov*.

[26] As in *Desgranges I*, Mr. Desgranges highlighted several passages of *Vavilov* with respect to how a reasonableness review should be conducted. All the relevant guiding principles in *Vavilov* have been considered and applied to the decision under review.

[27] In *Vavilov*, the Supreme Court of Canada provided extensive guidance on what constitutes a reasonable decision, and on the conduct of a reasonableness review. A hallmark of a reasonable decision remains that the decision is justified, transparent and intelligible. A reviewing

court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with respectful attention, seeking to understand the reasoning process followed by the decision maker to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker.

[28] The role of the Court on judicial review is to determine if the Commission's decision to dismiss – i.e. screen out – the complaint is reasonable. It is not the role of the Court to reweigh the evidence or remake the determination with respect to the nature of the complaint and whether it should be pursued by the Tribunal. As noted in *Vavilov*, at para 125, absent exceptional circumstances, a reviewing court will not interfere with the decision maker's factual findings.

#### V. The Jurisprudence Regarding the Role of the Commission and the Investigator

[29] As noted in *Desgranges I*, the role of the Commission is to determine whether the complaint should be forwarded to the Tribunal (*Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 [*Cooper*]; *Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574 at paras 14-15, 46 ACWS (3d) 923, aff'd [1996] FCJ No 385 (CA), 62 ACWS (3d) 761 [*Slattery*]; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paras 37-38, 144 ACWS (3d) 509). The Commission performs a screening function, not an adjudicative function.

[30] In *Georgoulas*, the Court provided an overview and summarised the relevant principles from the jurisprudence (including *Hughes v Canada (Attorney General)*, 2010 FC 837 at paras 30-34, 323 DLR (4th) 699 [*Hughes*]; *Cooper*; *Slattery*; *Sketchley*; *Bergeron v Canada (Attorney*

*General*), 2015 FCA 160, 474 NR 366; and, *Ritchie v Canada (Attorney General)*, 2017 FCA 114, 19 Admin LR (6th) 177), all of which apply equally in the present case. At para 87 of *Georgoulas*, the Court noted:

87 To summarize the relevant principles from the jurisprudence which have been applied in the present case:

- The role of the Commission is not adjudicative, rather the Commission’s role is to decide if an inquiry into the complaint is warranted. The Commission’s role is to assess the “sufficiency of the evidence before it” – in other words, it plays a screening role;
- The Commission has broad discretion to determine whether further inquiry is warranted in the circumstances;
- The duty of procedural fairness requires that the process followed by the Commission to determine whether further inquiry is warranted must be fair, neutral and thorough;
- In assessing the thoroughness of the investigation, deference is owed to the decision-maker to assess the probative value of evidence and to decide whether to further investigate. Only fundamental issues need to be investigated; the Investigator need not refer to everything;
- The Commission has considerable latitude in the way that it conducts its investigations; and,
- An investigation into a human rights complaint cannot be held to a standard of perfection.

VI. The Relevant Provisions of the CHRA

**Employment**

7 It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any

**Emploi**

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

individual, or

individu;

(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

b) de le défavoriser en cours d'emploi.

**Employment applications, advertisements**

**Demandes d'emploi, publicité**

8 It is a discriminatory practice

8 Constitue un acte discriminatoire, quand y sont exprimées ou suggérées des restrictions, conditions ou préférences fondées sur un motif de distinction illicite :

(a) to use or circulate any form of application for employment, or

a) l'utilisation ou la diffusion d'un formulaire de demande d'emploi;

(b) in connection with employment or prospective employment, to publish any advertisement or to make any written or oral inquiry that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.

b) la publication d'une annonce ou la tenue d'une enquête, oralement ou par écrit, au sujet d'un emploi présent ou éventuel.

[...]

[...]

**Discriminatory policy or practice**

**Lignes de conduite discriminatoires**

10 It is a discriminatory practice for an employer, employee organization or employer organization

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) to establish or pursue a policy or practice, or

a) de fixer ou d'appliquer des lignes de conduite;

(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, 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.

## VII. The Commission did not err in adopting the findings in the Investigator's Report

[31] Mr. Desgranges' submission that the Investigator exceeded her jurisdiction and that the Commission misapprehended its role under section 44 by "rubber-stamping" the Investigator's findings and recommendation ignores the well-established principles in the jurisprudence, as set out above.

[32] Mr. Desgranges is mistaken in his argument that the Commission's investigators are limited to making findings of fact and are precluded from making recommendations in their reports. Investigators routinely make recommendations (*Slattery* and *Canadian National Railway v Casler*, 2015 FC 704 at para 25, 255 ACWS (3d) 170, and by the FCA in *Sketchley* at para 37; *Ritchie* at paras 41-42).

[33] Mr. Desgranges is also mistaken in his argument that the Commission may not rely on the Investigator's Report and recommendations in its decision. The longstanding principle that

the Commission may adopt the Investigator's Report as its reasons was noted in *Sketchley*, at para 37:

When the Commission adopts an investigator's recommendations and provides no reasons or only brief reasons, the Courts have rightly treated the investigator's Report as constituting the Commission's reasoning for the purpose of the screening decision under section 44(3) of the [*CHRA*].

[34] This principle was recently reiterated in *Wagmatcook First Nation v Oleson*, 2018 FC 77 at para 34, 289 ACWS (3d) 158.

[35] Contrary to Mr. Desgranges' characterization, the Commission did not "rubber stamp" the Investigator's Report. The decision letter makes it clear that the Commission considered the complaint, the Report, the documentary evidence and the submissions in response before making its decision.

[36] Mr. Desgranges' reply submissions, which challenged the Investigator's reliance on the investigation conducted with respect to the Elections Canada complaint, disputed that Mr. K had been hired as a researcher by ATSSC, argued that the Investigator was negligent in not verifying Mr. K's position, and challenged Ms. Boyer's authority to place him in a pool of prequalified candidates for future LP-01 positions at ATSSC amount to disputes with the Investigator's findings. The Commission considered these submissions, but did not agree that there was sufficient evidence to pursue the complaint.

[37] Mr. Desgranges' submission that the Commission's reasons are too sparse, i.e., inadequate, is based on his mistaken belief that the Commission erred in adopting the Investigator's Report.

VIII. Was the Investigation Thorough?

A. *The Applicant's Submissions*

[38] Mr. Desgranges does not dispute that he was on a secondment to ATSSC for a fixed period, which ended. However, he submits that Mr. Choquette promised to recall him if further work became available, but did not.

[39] Mr. Desgranges submits that the age-related comment made by Mr. Choquette in the context of providing a reference in the Elections Canada competition, demonstrates that Mr. Choquette held this same view with respect to the renewal of Mr. Desgranges' secondment at ATSSC the previous year. Mr. Desgranges submits that a "mindset" existed at ATSSC about his age. He suggests that Mr. Choquette was responsible for hiring legal counsel at ATSSC and that when work came available he hired Mr. K, instead of Mr. Desgranges, because Mr. K was younger, although less experienced.

[40] Mr. Desgranges raises many specific arguments, including that:

- The investigation was not thorough because the Investigator failed to consider paragraph 8(b) of the *CHRA* (which addresses the advertisement and publication

of applications for employment and written and oral inquiries). In addition, the Investigator failed to explain her interpretation of section 8 in the reasons.

- The investigation was not thorough because the Investigator failed to consider section 10 of the *CHRA* (which addresses discriminatory policies or practices).
- The investigation was not thorough because the Investigator failed to consider and refer to statistical evidence regarding age trends (not pursued in oral arguments).
- The investigation was not thorough because the Investigator did not probe the evidence provided by the witnesses or interview Mr. K.
- The Commission's reasons are too sparse to permit the Court to conclude that the decision is reasonable, taking into account the guidance of the Supreme Court of Canada in *Vavilov*.

[41] Mr. Desgranges submits, as he did in *Desgranges 1*, that his complaint engaged paragraph 8(b) of the *CHRA* and, therefore, should have been considered under that provision rather than only under section 7. He submits that a layman should not bear the responsibility of determining what section of the *CHRA* applies. He also notes that he checked two boxes on the complaint form under the heading “Indiquez dans quel(s) domaine(s) vous croyez qu’il y a eu de la discrimination: cochez uniquement les domaines qui s’appliquent à la plainte” (indicate in which area you believe there has been discrimination: check only those areas that apply to the complaint). Mr. Desgranges marked the box “emploi” and “demande d’emploi ou publicité” (employment and employment applications and advertisements). He submits that it is obvious



that section 8 should have been considered given that he indicated that the discrimination arose in the context of an employment application or prospective employment.

[42] Mr. Desgranges offers an interpretation of paragraph 8(b) based on a dictionary definition of the word “inquiry”. The dictionary offers two meanings; to make an inquiry (i.e. pose a question) or to inquire into facts (as in conduct an inquiry into an event). He submits that an inquiry into facts is contemplated by paragraph 8(b) and that once the age-related comment made by Mr. Choquette was recorded by Ms. Savard in the context of the Elections Canada reference check, it became an inquiry into facts.

[43] Mr. Desgranges submits that, although Mr. Choquette made the age-related comment in the context of the Elections Canada reference check almost a year after his secondment at ATSSC had ended, Mr. Choquette’s comment shows that Mr. Choquette held this same view when considering the renewal of his secondment at ATSSC. Mr. Desgranges alleges that the Commission failed to consider how Mr. Choquette’s age-related comment coloured the ATSSC’s decision. He submits that ATSSC did not provide an explanation for why he was not called back as promised, and that the only possible explanation is his age.

[44] For similar reasons, Mr. Desgranges now submits that section 10 should have been considered by the Investigator. Mr. Desgranges reiterates that Mr. Choquette’s age-related comment showed his pre-existing mindset, shared by Ms. Boyer. This bias, in combination with Mr. Choquette’s decision not to extend Mr. Desgranges’ secondment or to call him back to

ATSSC, amounts to a discriminatory policy or practice that deprived him of employment opportunities contrary to paragraph 10(a) of the *CHRA*.

[45] Mr. Desgranges further submits that the Commission should have considered statistical data relating to trends in the hiring of legal counsel at the ATSSC. He submits that the failure to examine such relevant information constituted a failure to conduct a thorough analysis (relying on *Canada (Attorney General) v Walden*, 2010 FC 490 at paras 78, 114-116, 368 FTR 85 [Walden]).

[46] As elaborated on in his oral arguments, Mr. Desgranges submits that the Investigator failed to conduct a thorough investigation because: she did not probe who was actually responsible for hiring at ATSSC; she did not probe the organisational needs of ATSSC; she did not interview Mr. K to determine his position; and, she did not probe Ms. Savard's conduct in noting the age-related comment made by Mr. Choquette (at the time of the Elections Canada reference check).

[47] Mr. Desgranges explains that he noted the conflicting information about who was responsible for hiring at ATSSC in his complaint. He argues that Mr. Choquette made the decision not to extend his secondment, not to call him back later, and to hire Mr. K. He also states that Mr. Choquette told him this was Ms. Boyer's decision, yet Ms. Boyer's email stated that Mr. Choquette had selected Mr. K. Mr. Desgranges submits that Ms. Boyer's comment that the present and future needs of the organization were a consideration in the hiring of Mr. K also

supports his allegation of age discrimination. Overall, he submits that this conflicting information should have prompted the Investigator to conduct a more probing examination.

B. *The Respondent's Submissions*

[48] The Respondent submits that the Commission's investigation into Mr. Desgranges' complaint was fair, thorough, and neutral, in accordance with the established requirements set out by the Federal Court in *Slattery* at paras 14-15.

[49] The Investigator's Report addressed the fundamental issue of whether the ATSSC decided not to renew his secondment or not call him back for other employment on the basis of his age. The Respondent notes that the Investigator reviewed all of the documents provided to her by the parties and conducted interviews with the key witnesses.

[50] The Respondent submits that the Investigator did not err by not addressing paragraph 8 (b) of the *CHRA*, as that provision focuses on what is published and on oral inquiries. The Respondent submits that paragraph 8(b) could only apply in the context of a complaint against Elections Canada, if at all.

[51] The Respondent acknowledges that Mr. Desgranges ticked both boxes on the complaint form – employment and applications/advertisements for employment – but notes that there was no application, advertisement, or inquiry by ATSSC. More importantly, the complaint as described by Mr. Desgranges in his narrative was fully addressed by the Investigator, regardless of any boxes checked.

[52] The Respondent further submits that the Commission did not err by not addressing section 10 (regarding alleged discriminatory policies and practices). There is no evidence, other than Mr. Desgranges' assertion, that Mr. Choquette was responsible for hiring decisions at ATSSC and there is no evidence that the hiring practices of the ATSSC were affected in any way by Mr. Choquette's alleged age bias. Therefore, there is no evidence of a discriminatory policy or practice by the ATSSC.

[53] The Respondent adds that Mr. Desgranges fails to acknowledge that Ms. Boyer (Executive Director of ATSSC) prequalified Mr. Desgranges for an LP-01 position in December 2016 in a secretariat within ATSSC. This is inconsistent with Mr. Desgranges' current submission that ATSSC engaged in age-related discriminatory policies or practices.

[54] With respect to Mr. Desgranges' argument that statistical evidence should have been considered, the Respondent submits that even if statistical evidence existed, it would not be obviously crucial evidence relevant to Mr. Desgranges' complaint. Failure to seek out or consider such evidence was not unreasonable or procedurally unfair.

C. *The Investigation was Thorough*

[55] The Court finds that the Commission's investigation was fair, neutral and thorough.

[56] The test for thoroughness considers whether the investigator failed to investigate "obviously crucial evidence" or "fundamental or essential aspects" of the complaint. In *Bergeron*, the FCA emphasised that the duty of thoroughness is contextual and does not require

investigators to “pursue every last conceivable angle” of a complaint. In the present case, the Commission did not fail to consider any crucial evidence or fundamental issues.

[57] The Investigator identified Mr. Desgranges’ key allegations: that Mr. Desgranges is advanced in age for an LP-01 candidate; that he was not called back for employment at ATSSC following the end of his secondment; and, that an age-related comment made by Mr. Choquette, one of his references for a competition at Elections Canada, revealed an age bias that “coloured” the ATSSC’s decision not to extend or renew Mr. Desgranges’ secondment.

[58] The Investigator understood and succinctly captured the complaint at the outset of her Report, considered both parties’ written submissions, conducted interviews of the key people involved in the complaint (i.e., Mr. Choquette, Ms. Boyer, Ms. Charron, and importantly, Mr. Desgranges) and made findings based on her assessment of all the evidence.

[59] The Investigator addressed the issue of why the secondment was not renewed at paragraphs 13-14 of her Report. The Investigator considered whether Mr. K was hired as a counsel or a researcher at paras 15-20. The Investigator inquired into Mr. Choquette’s age-related comment made in the context of the Elections Canada competitive process. The Investigator interviewed Ms. Savard, who had conducted the Elections Canada competitive process, and noted the information provided at paras 26-27. The Investigator also noted that Mr. Desgranges was placed in a pool of prequalified candidates by Ms. Boyer.

[60] Mr. Desgranges had ample opportunity in his interview and reply submissions to raise his concerns about the thoroughness of the investigation. Mr. Desgranges' reply submissions primarily disputed the findings of the Investigator.

[61] Contrary to Mr. Desgranges' view, the Commission did not err in considering his complaint in the context of section 7 of the *CHRA*, which is a broad provision that clearly fits the circumstances he described in his complaint.

[62] Section 8 of the *CHRA* does not capture the conduct described in Mr. Desgranges' complaint. Mr. Desgranges' unique interpretation of paragraph 8(b) – that the recording of the age-related comment by Ms. Savard (at Elections Canada) triggered an “inquiry” regarding his age – does not accord with principles of statutory interpretation.

[63] In *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 SCR 27 at para 21, [1998] SCJ No 2 [*Rizzo*], citing E. A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87, the Supreme Court of Canada set out the governing principles:

. . . the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[64] Applying these principles, on a plain reading, paragraph 8(b) addresses the publication of any advertisement for employment or the making of any written or oral inquiry that expresses or implies a limitation, specification or preference based on a prohibited ground of discrimination.

In other words, it addresses the conduct of the party (e.g. a prospective employer) seeking an employee.

[65] The Court finds that the term ‘written or oral inquiry’ in paragraph 8 (b) is understood in the context of the *CHRA* and within section 8 as asking a question, not as conducting an inquiry into facts. Mr. Desgranges’ interpretation is not supported by any principle of statutory interpretation and he did not point to any jurisprudence in support of his interpretation or with respect to section 8 at all.

[66] In the present case, ATSSC did not advertise or publish any advertisement for employment, nor did ATSSC make any inquiry about Mr. Desgranges. The age-related comment by Mr. Choquette was made in the context of his reference for Mr. Desgranges in the Elections Canada process, not in any ATSSC employment process. Moreover, there was no inquiry about Mr. Desgranges’ age in the Elections Canada process. The comment was gratuitously offered by Mr. Choquette in the assessment of Mr. Desgranges’ adaptability, which was a criterion on which all candidates were assessed.

[67] Even if paragraph 8(b) could be interpreted to capture the conduct complained of – which it cannot – the Investigator did not overlook any evidence or any aspect of the complaint by considering it in light of section 7 of the *CHRA*. Mr. Desgranges was unable to point to any evidence that would have been different if the focus of the investigation had been paragraph 8(b).

[68] Section 7 provides broader protection and is the “best fit” for the conduct described in the complaint because it addresses refusals to employ or to continue to employ and adverse differential treatment in the course of employment. In addition, it addresses direct and indirect discrimination.

[69] With respect to section 10, Mr. Desgranges did not allege systemic discrimination in his complaint and there is no evidence of discriminatory policies or practices at ATSSC.

[70] Moreover, if the Investigator had considered section 10, the evidence and the investigation would have been the same. The Investigator focussed on the complaint as described by Mr. Desgranges. The same conclusion would result: the secondment was not renewed because there was no work. In addition, the fact that Mr. Desgranges was prequalified for another position at ATSSC is inconsistent with his belief that ATSSC discriminated against him due to age.

[71] The Commission did not err in failing to set out its interpretation of section 8 or 10 as neither were applicable.

[72] Mr. Desgranges’ argument that the Investigator erred by not considering statistical evidence about the age of those hired at the LP-01 level at ATSSC, is rejected for the same reasons as in *Desgranges I*.



[73] The Commission cannot be faulted for not considering statistical evidence that was not provided and which likely does not exist. Mr. Desgranges acknowledged that he did not know whether statistics existed, but argued that such statistics should have been gathered and considered. Mr. Desgranges has not demonstrated how statistics about the age of persons hired as LP-01 at ATSSC (which apparently only had one Senior Counsel and one counsel at the relevant time) would have been “obviously crucial evidence” for his complaint. Mr. Desgranges’ reliance on *Canada (Attorney General) v Walden*, 2010 FC 490 at paras 109-118, 368 FTR 85 [*Walden*], for the proposition that statistical evidence is useful for detecting discrimination overlooks other relevant passages in that decision, including that statistical evidence, on its own, is not sufficient to establish discrimination. There must be other evidence linking the complainant’s ground of discrimination with the alleged adverse treatment (*Canada (Human Rights Commission) v Canada (Minister of Social Development)*, 2010 FC 1135 at para 18, 194 ACWS (3d) 1222; *Stukanov v Canada (Attorney General)*, 2018 FC 854 at paras 17-18, 295 ACWS (3d) 823; *Davidson v Canada (Attorney General)*, 2019 FC 877 at para 35, 307 ACWS (3d) 587).

[74] With respect to Mr. Desgranges’ allegations that the Investigator did not go far enough in probing the evidence, as noted above, the Commission has a wide degree of latitude in conducting investigations. The Investigator is not required to pursue every possible tangential or unrelated issue. The Investigation can be thorough without being exhaustive. In the present case, the Investigator gathered and considered the relevant evidence to address the allegations.

[75] In *Wong v Canada (Public Works and Government Services)*, 2018 FCA 101 at para 14, 293 ACWS (3d) 129 [*Wong*], the Federal Court of Appeal confirmed that in addressing

allegations that an investigation was not thorough, the issue is whether obviously crucial evidence has been overlooked:

On the procedural fairness point, the Federal Court noted that, in accordance with *Slattery v. Canada (Canadian Human Rights Commission)*, [1994] 2 F.C. 574, [1994] F.C.J. No. 181 (*Slattery*), a CHRC investigation may be set aside for being procedurally unfair only where unreasonable omissions are made, such as where the investigator failed to examine obviously crucial evidence. The Federal Court also noted, in accordance with *Sanderson v. Canada (Attorney General)*, 2006 FC 447, [2006] F.C.J. No. 557 and *Gravelle v. Canada (Attorney General)*, 2006 FC 251, 60 Admin. L.R. (4th) 179, that a failure to interview key witnesses who were “obvious players” may amount to a failure to examine obviously crucial evidence, but that, in accordance with *Slattery*, an investigation will not be found to be lacking in thoroughness merely because the investigator did not interview each witness put forward by a party.

[76] It was not necessary for the Investigator to determine who was responsible for hiring at ATSSC. The Investigator interviewed the two key people at ATSSC who were most aware of Mr. Desgranges’ secondment. Nor was it the Investigator’s responsibility to probe the organizational needs of ATSSC or to interview Mr. K to determine his position. The evidence before the Commission established that Mr. K was hired as a researcher, not legal counsel. The Investigator was not remiss in not questioning Ms. Savard about why she wrote down Mr. Choquette’s comment for the purpose of the Elections Canada reference check or why she did not ask further questions of the references. The evidence showed that Mr. Desgranges’ secondment ended as scheduled and was not renewed due to lack of work. The role of the Court is to determine whether the Investigation of the complaint was thorough, not to scrutinize the conduct of Ms. Savard in checking references for the Elections Canada competition.

[77] Although Mr. Desgranges argues that some elements and circumstances of his complaint were not investigated, he has not identified what was missed. His complaint as described was addressed, as were his submissions in reply to the Investigator's Report, which did not raise any new information

IX. Is The Commission's Decision Reasonable?

A. *The Applicant's Submissions*

[78] Mr. Desgranges relies on similar arguments to those advanced in support of his submission that the Investigation was not thorough to argue that the decision was not reasonable.

[79] Mr. Desgranges submits that the Investigator failed to consider all the elements of his detailed complaint and failed to probe the evidence provided by the witnesses interviewed. He submits that the Commission paid little attention to his Reply submissions. He also argues that the Commission failed to apply the "Bona Fide Occupational Requirement" [BFOR] test to the facts of the complaint, in particular with respect to the ATTSC research position for which Mr. K was hired.

[80] Mr. Desgranges further submits, as noted above, that the Commission failed to explain its interpretation of the relevant provisions of the *CHRA* and failed to justify why other provisions were not considered. He argues that this demonstrates that the statutory scheme of the *CHRA* was ignored, contrary to the principles set out in *Vavilov*.

[81] More generally, Mr. Desgranges submits that the reasons for the decision do not show a rational chain of analysis, also contrary to the guidance of the Supreme Court of Canada in *Vavilov*.

[82] Mr. Desgranges points to *Jagadeesh v Canadian Imperial Bank of Commerce (CIBC)*, 2019 FC 1224, 311 ACWS (3d) 139 [*Jagadeesh*], where the Court found that the Commission erred by failing to consider all the grounds for the complaint and the applicant's reply submissions. He submits that the Commission committed the same error in his case and as a result, the decision is not reasonable.

B. *The Respondent's Submissions*

[83] The Respondent submits that the Commission fulfilled its mandate to investigate the complaint, to assess and weigh the evidence presented, and reasonably found that there was insufficient evidence to support the complaint. The evidence supports the finding that there was insufficient work at the LP-01 level at ATSSC to continue the secondment or to call Mr. Desgranges back. Moreover, there was no obligation on ATSSC to call Mr. Desgranges back at all.

[84] The Commission's reasons are transparent and intelligible and are justified by the facts which support the conclusion. The reasons and the outcome point in the same direction – that there is insufficient evidence to warrant further inquiry.

[85] The Respondent further submits that Mr. Desgranges' reliance on *Jagadeesh* is misplaced because it is not analogous.

C. *The Decision is Reasonable*

[86] Mr. Desgranges directed the Court's attention to several passages of *Vavilov* in support of his specific arguments and in support of his overall argument that the decision is not reasonable. However, some of the passages relied on were taken out of context. The Court has considered the relevant principles of *Vavilov* in determining if the Commission's decision is reasonable.

[87] The Court notes that reasonableness review focuses on both the decision making process and its outcome. The reasons must be carefully examined to understand the reasoning process that led to the outcome (*Vavilov* paras 83-84). In the present case, the reasons demonstrate how the Investigator approached the investigation of the complaint, the assessment of the relevant evidence and the logic of the findings made.

[88] As noted in *Vavilov* at para 85, the decision as a whole is assessed to determine if it is reasonable. Picking apart some aspects is not the approach directed by the Supreme Court of Canada.

[89] Mr. Desgranges' argument that the Commission erred by not setting out its interpretation of the statutory scheme – contrary to paras 106-107 of *Vavilov*, which requires that the governing statutory scheme be considered in evaluating whether a decision is reasonable – overlooks the long list of relevant “elements” that *Vavilov* set out to be considered. The context will guide

whether these ‘elements’ are *indicia* of a reasonable decision. Moreover, the passage relied on directs the Court to consider the statutory scheme – which the Court has done. The Investigator’s Report describes the role of the Commission in plain language and the approach to the investigation of a complaint of discrimination in plain language – which reflects the governing statutory scheme. It is very clear that the statutory scheme was not ignored.

[90] The Investigator and the Commission reasonably concluded from the evidence that Mr. Desgranges’ secondment was not renewed because there was a lack of work at ATSSC and he was not called back for the same reason. It was not because of his age. The evidence supports the finding that the ATSSC hired Mr. K as a researcher (EC-05), not a legal counsel (LP-01). As noted by the Respondent, it is apparent that despite Mr. Desgranges’ belief that Mr. Choquette promised to call him back if work became available, Mr. Desgranges was not entitled to be recalled. The Commission reasonably concluded that the documents provided by Mr. Desgranges (a list of names for a mock hearing as a training exercise and an outdated government employee directory) did not demonstrate that Mr. K was hired as a legal counsel at ATSSC. The evidence provided by the Director of Human Resources at ATSSC confirmed that Mr. K was hired as a researcher, as did the evidence of Ms. Boyer and Mr. Choquette.

[91] Mr. Desgranges relies extensively on *Jagadeesh* to argue that the Commission erred by not considering all the elements and circumstances of his complaint, and in particular erred in not considering section 8 or section 10 given that he checked off the relevant boxes on the complaint form.

[92] In *Jagadeesh* the Court applied the same well-established principles in the jurisprudence to the particular facts of *Jagadeesh*. The Court found the allegations of discrimination based on sexual orientation and disability which were set out in the complaint and highlighted in his reply submissions were not sufficiently addressed (see paras 61-63) and as a result, the Investigation was not thorough and the decision was not reasonable because it was based on a deficient investigation.

[93] Unlike *Jagadeesh*, the Investigator did not fail to consider the complaint of age discrimination as described by Mr. Desgranges. Regardless of what boxes were checked on the complaint form, the role of the Investigator is to investigate the complaint as described and to consider all the evidence and determine if there is sufficient evidence for the complaint to proceed. This is exactly what the Investigator did. The Commission did not fail to consider Mr. Desgranges' reply submissions. Mr. Desgranges' reply submissions did not raise new information or new grounds for his complaint, rather they disputed the Investigator's approach to the investigation and some of the Investigator's findings. All the points raised in the reply submissions were addressed, as noted above.

[94] Mr. Desgranges' argument that the Commission erred in not considering the BFOR in assessing his complaint overlooks the steps in the process of the investigation of a complaint. As the Respondent noted, the BFOR criteria arise only after a finding of discrimination has been made. Once discrimination is found, the employer has the onus to establish that BFOR justify their otherwise discriminatory conduct. In the present case, no discrimination was found. The Investigator's Report notes this at para 41; that it was not necessary to proceed to the second

stage of analysis because Mr. Desgranges failed to provide sufficient evidence of *prima facie* discrimination at the first stage.

[95] As noted in *Vavilov* at para 125:

It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court’s deferring to a lower court’s factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

[96] In the present case, the Investigator made factual findings based on the evidence as assessed by her – in particular that Mr. Desgranges’ secondment was not renewed due to lack of work. No errors can be found in the Investigator’s assessment and there is no basis for the Court to interfere with the factual findings.

[97] The Commission did not ignore or misconstrue any evidence nor did it ignore the submissions of the parties in determining that there was insufficient evidence to warrant further inquiry into the complaint.

[98] *Vavilov* confirms that a hallmark of a reasonable decision remains that the decision is justified, transparent and intelligible. The Court also considers whether the decision is justified in



relation to the relevant factual and legal constraints that bear on it (at para 99). In the present case, the reasons are transparent and intelligible and convey that the Commission followed a rational chain of analysis and that the decision is justified by the facts and the mandate of the Commission.

[99] In conclusion, the Application is dismissed. The Investigation was thorough and the Commission's decision is reasonable; the complaint as described was fully investigated, no evidence was overlooked, the Commission assessed the complaint in light of their role as a screening body and reasonably concluded that it did not warrant further inquiry. The reasons explain how the decision was arrived at and fully comply with the relevant principles as enunciated by the Supreme Court of Canada in *Vavilov*.

**JUDGMENT in file T-1770-18**

**THIS COURT'S JUDGMENT is that**

1. The Application for Judicial Review is dismissed.
2. The Respondent is entitled to costs in the amount of \$1000.

"Catherine M. Kane"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1770-18

**STYLE OF CAUSE:** JEAN-JACQUES DESGRANGES v ADMINISTRATIVE  
TRIBUNALS SUPPORT SERVICES OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JANUARY 17, 2020

**REASONS FOR JUDGMENT  
AND JUDGMENT:** KANE J.

**DATED:** FEBRUARY 28, 2020

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