

Federal Court



Cour fédérale

Date: 20200228

Docket: T-1771-18

Citation: 2020 FC 314

Ottawa, Ontario, February 28, 2020

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

JEAN-JACQUES DESGRANGES

Applicant

and

ELECTIONS 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, which dismissed his complaint of discrimination on the basis of age in the area of employment.

[2] For the reasons that follow, the Application is dismissed. The Investigation of the complaint was thorough. The Commission did not err in adopting the Investigator's findings and recommendations. The Commission reasonably concluded that there was no evidence of age

discrimination in the hiring process and, therefore, further investigation of the complaint was not warranted. The Commission did not err in failing to consider section 8 of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [CHRA], or in failing to consider other provisions of the CHRA. The Commission did not err in failing to consider statistical evidence, which was not provided, which may not exist, and which would not address the factual finding that Mr. Desgranges was eliminated from the Elections Canada competitive process because he did not achieve a passing score on one of the essential criteria.

[3] Mr. Desgranges has also sought Judicial Review of the Commission's decision with respect to his complaint against the Administrative Tribunals Support Services of Canada [ATSSC] that age discrimination resulted in the non-renewal of his secondment to ATSSC (see *Desgranges v ATSSC*, 2020 FC 315 [*Desgranges 2*]).

I. Background

A. *Application for a position at Elections Canada*

[4] Mr. Desgranges applied for a position at Elections Canada as Counsel at the LP-01 level. He was excluded from the competitive process because he did not receive a passing score on one of the essential criteria. Mr. Desgranges believes that an age-related comment made by one of his references influenced the overall assessment of his application.

[5] Ms. Karolyn Savard, Senior Counsel at Elections Canada, conducted the competitive process and evaluated Mr. Desgranges' application. In accordance with the standard evaluation

guide, several criteria were assessed in various ways, including the candidates' adaptability [*capacité d'adaptation*] and thoroughness [*rigueur*]. These criteria were assessed through the interview with the candidate and the reference check. Candidates were required to score 6/10 in both adaptability and thoroughness.

[6] Mr. Desgranges provided two references in his application: Mr. François Choquette, Senior Counsel at the ATSSC, and Ms. Anne Charron, Manager of Policy and Communications at the Canada Revenue Agency.

[7] Ms. Savard spoke with Mr. Choquette. Ms. Savard and her colleague, Mr. Philippe Lacoste, spoke with Ms. Charron. Both made brief written notes of the comments of the references.

[8] With respect to the adaptability criterion, Ms. Savard noted Mr. Choquette's comment, "limite qui vient avec l'âge ≠ forte" (limit that comes with age – not strong). With respect to the thoroughness criterion, Ms. Savard noted Mr. Choquette's comment, "≠ le cas de vider la q juridique dans tous ses aspects, souci du détail posait problème, convaincu qu'il écrit de façon parfaite – ce qui est loin d'être le cas, convaincu qu'il peut faire une job de LP-5, commentaires ne passent pas toujours" (does not explore legal issues in all aspects, attention to detail is problematic, convinced he writes well, which is far from being the case, convinced that he is able to do the job of an LP-05, comments not always well received).

[9] With respect to the thoroughness criterion, Ms. Savard noted the comments made by Ms. Charron, “Occasionally [Mr. Desgranges] might not be aware of something. In and out of program learning curve problem; Complex → divergent views.” Mr. Lacoste noted the comment, “[Mr. Desgranges] may have issues to know specifics since lots of in and out of the program, learning curve problem.”

[10] Ms. Savard awarded Mr. Desgranges a passing score for adaptability, based on the interview and reference checks.

[11] Ms. Savard awarded Mr. Desgranges a score of 2.5/5 for thoroughness based on the interview and 2/5 based on the reference checks, for a total of 4.5/10 for thoroughness, which did not meet the required score of at least 6/10.

[12] As a result, Mr. Desgranges’ application to the LP-01 position at Elections Canada was eliminated from further consideration.

B. *Complaint to the Canadian Human Rights Commission*

[13] On January 27, 2017, Mr. Desgranges filed a complaint with the Canadian Human Rights Commission [the Commission] against Elections Canada, alleging that his application for employment had been rejected on the basis of age, a discriminatory ground. The Commission assigned an investigator to investigate the complaint.

C. *The Investigator's Report*

[14] On June 1, 2018, the Investigator provided her report in accordance with subsection 44 (1) of the CHRA, set out her findings and recommended that the complaint be dismissed.

[15] The Investigator first noted the role of the Commission. The Investigator then summarized the complaint based on Mr. Desgranges' description. The Investigator described the steps in the investigation, the context for the complaint, the competition to which Mr. Desgranges applied, the criteria identified for the LP-01 position and how each was evaluated, and the type of information sought with respect to the criteria for adaptability and thoroughness, among other information. The Investigator stated that, in preparing the report, she considered all of Mr. Desgranges' submissions and conducted separate interviews with Mr. Desgranges, Ms. Savard, Mr. Choquette, and Ms. Charron. The Investigator described the results of the interviews.

[16] The Investigator set out her findings:

- 1) The evidence demonstrated that Elections Canada followed a well-defined and multi-step hiring process;
- 2) The evidence confirmed that Mr. Choquette made an age-related comment in the context of Ms. Savard's assessment of Mr. Desgranges' adaptability when speaking with Ms. Savard, but Mr. Desgranges received a passing score for the "adaptability" requirement;
- 3) Mr. Desgranges failed to meet the "thoroughness" (*rigueur*) requirement, which is the reason that he was eliminated from the hiring process/competition.
- 4) The evidence gathered does not support Mr. Desgranges' allegation that he was not hired because of his age. The successful candidates obtained better results than Mr. Desgranges.

[17] On June 27, 2018, Mr. Desgranges made submissions to the Commission in response to the Investigator's Report. Mr. Desgranges alleged that the Investigator erred in not making a link between the age-related comment made by Mr. Choquette to Ms. Savard and the elimination of his application from the competition. He alleged that once the comment was made and noted, it coloured all the other comments made in the reference check. Mr. Desgranges suggested that his evaluation was going well until the age-related comment was made and noted. He stated that the Investigator should have questioned Ms. Savard more extensively about the impact of the age-related comment. He also noted that Mr. Choquette was not an expert on the impact of age on employment. Mr. Desgranges criticized other comments made by Mr. Choquette about his thoroughness and argued that the Investigator should have requested that Mr. Choquette be more specific.

II. The Canadian Human Rights Commission's Decision

[18] 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 was not warranted. The Commission noted that, before making its decision, it had considered all the information, the Investigator's Report and Mr. Desgranges' submissions in response.

[19] The Commission acknowledged that Mr. Choquette made an age-related comment in his reference for Mr. Desgranges, but concluded that this was not a factor in Elections Canada's decision to eliminate Mr. Desgranges' application. The Commission found no evidence of age discrimination in Elections Canada's hiring process.

III. The Relevant Statutory Provisions

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.

Employment applications, advertisements

8 It is a discriminatory practice

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

(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.

[...]

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 individu;

b) de le défavoriser en cours d'emploi.

Demandes d'emploi, publicité

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

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

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

[...]

Report

44 (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

(2) If, on receipt of a report referred to in subsection (1), the Commission is satisfied

(a) that the complainant ought to exhaust grievance or review procedures otherwise reasonably available, or

(b) that the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under an Act of Parliament other than this Act, it shall refer the complainant to the appropriate authority.

(3) On receipt of a report referred to in subsection (1), the Commission

(a) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and

(ii) that the complaint to which the report relates should not be referred pursuant to subsection

Rapport

44 (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.

(2) La Commission renvoie le plaignant à l'autorité compétente dans les cas où, sur réception du rapport, elle est convaincue, selon le cas :

a) que le plaignant devrait épuiser les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

b) que la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale.

(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :

a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :

(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,

(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe (2)

(2) or dismissed on any ground mentioned in paragraphs 41(c) to (e); or	ni de la rejeter aux termes des alinéas 41c) à e);
(b) shall dismiss the complaint to which the report relates if it is satisfied	b) rejette la plainte, si elle est convaincue :
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or	(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,
(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(c) to (e).	(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41c) à e).
(4) After receipt of a report referred to in subsection (1), the Commission	(4) Après réception du rapport, la Commission :
(a) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3); and	a) informe par écrit les parties à la plainte de la décision qu'elle a prise en vertu des paragraphes (2) ou (3);
(b) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under subsection (2) or (3).	b) peut informer toute autre personne, de la manière qu'elle juge indiquée, de la décision qu'elle a prise en vertu des paragraphes (2) ou (3).

IV. The Applicant's Submissions

[20] Mr. Desgranges' arguments are based on his belief that the age-related comment made by Mr. Choquette is discriminatory and resulted in his elimination from the LP-01 competition at Elections Canada and that a more thorough investigation by the Commission would have resulted in such a finding.

[21] Mr. Desgranges argues that the investigation was not thorough because the Investigator did not investigate all the elements of his complaint or more extensively probe the evidence of the witnesses. He submits that the Investigator exceeded her jurisdiction by making recommendations. He also argues that the Commission's decision is not reasonable because the Commission did not provide sufficient reasons, did not consider all the elements of his complaint, and "rubber stamped" the Investigator's Report. He further argues that the decision does not accord with the guidance of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] SCJ No 65 [*Vavilov*].

[22] Mr. Desgranges' key argument is that the Investigation was not thorough because the Commission focussed only on section 7 of the CHRA. He notes that he marked off two boxes on the form – "*emploi*" and "*demande d'emploi*" (employment and applications for employment) – and submits that the latter corresponds to section 8 of the CHRA.

[23] Mr. Desgranges submits that the Investigator and Commission erred by not considering and finding that the age-related comment fell within and was prohibited by section 8, and in particular, paragraph 8(b) of the CHRA.

[24] Mr. Desgranges makes several other arguments based on this same premise. For example, he argues that: the Commission is statutorily mandated to consider section 8; that the Commission should have taken judicial notice of section 8; and, that the Commission's reasons do not address section 8. Mr. Desgranges further argues that the Commission's failure to consider section 8, to explain its interpretation of section 8, and to explain whether the conduct

was prohibited by section 8 demonstrates that its analysis was not thorough and its decision is not reasonable. He argues that section 8 demonstrates the legislative intent of the CHRA and the failure to consider section 8 is an error according to *Vavilov*, at para 68.

[25] Mr. Desgranges offers a particular interpretation of paragraph 8(b) to support his arguments, based on a dictionary definition of the word “inquiry”, which 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, it became a written inquiry into facts.

[26] Based on his own interpretation, Mr. Desgranges argues that Mr. Choquette’s age-related comment during the reference check with Ms. Savard, and noted by her, constituted both a “written and oral inquiry” that occurred “in connection with employment or prospective employment”, which is prohibited by paragraph 8(b).

[27] Mr. Desgranges further submits that the Investigation was not thorough because the Investigator and Commission failed to consider statistical data regarding the age of persons hired at the LP-01 level by Elections Canada. He submits that such entry level positions are rarely given to applicants of “an advanced age.” He argues that the jurisprudence has established that statistics are an essential tool for the Commission in detecting discrimination (*Canada (Attorney General) v Walden*, 2010 FC 490 at para 114, 368 FTR 85 [*Walden*]).

[28] Mr. Desgranges submits that the Investigator should have sought statistics from Elections Canada. He submits that as a signatory to the UN Convention on Human Rights, Canada – and by extension Elections Canada – is required to keep statistics on a range of human rights issues, including statistics that would inform determinations of age discrimination.

[29] Mr. Desgranges further submits that the investigation was not thorough because the Investigator did not further question Ms. Savard about the conduct of the interviews or the comments made by his references about his thoroughness.

[30] Mr. Desgranges also submits that the Commission’s decision is not reasonable.

[31] Mr. Desgranges argues that the Commission failed to consider all the elements of his complaint, in particular the application of section 8. He relies on many of the same arguments advanced in support of his position that the Investigation was not thorough.

[32] Mr. Desgranges relies extensively on *Jagadeesh v Canadian Imperial Bank of Commerce (CIBC)*, 2019 FC 1224, 311 ACWS (3d) 139 [*Jagadeesh*], in support of his argument that all the elements of his complaint were not investigated and the decision is not reasonable because the investigation was deficient. He reiterates that he checked off two boxes on his complaint form, including “applications for employment”, which he argues corresponds to section 8 of the CHRA. He submits that in his reply submissions he explained that he had applied for employment, which brings his complaint within section 8.

[33] Mr. Desgranges also argues that the Commission's decision is not reasonable because it does not reflect the guidance of the Supreme Court of Canada in *Vavilov*.

[34] For example, Mr. Desgranges submits that the Commission's reasons are too brief and fail to meet the *Vavilov* standard to show a logical and coherent line of reasoning.

Mr. Desgranges also argues, relying on *Vavilov*, that the Commission is required to interpret its home statute, the CHRA, to determine how the complaint should be characterized. He argues that the Commission's failure to consider section 8 reflects a failure to address the relevant law or statute, which is an *indicia* of an unreasonable decision (relying on *Vavilov* at paras 100-108).

V. The Respondent's Submissions

[35] The Respondent submits that the Investigator conducted a thorough investigation of the complaint as described and that the decision of the Commission is reasonable.

[36] The Respondent notes that Mr. Desgranges had an opportunity to review the Investigator's Report and that he provided reply submissions. The Respondent submits that the Investigator addressed all the issues raised in the complaint and the issues raised by Mr. Desgranges in his reply submissions. For example, the Investigator addressed Mr. Desgranges' concern that the age-related comment coloured the assessment of his adaptability and thoroughness at paragraphs 18 and 28 of the Report.

[37] The Respondent also notes that the Investigator addressed Mr. Desgranges' assertion that Ms. Savard should have made additional inquiries about the age-related comment at para 31 of

the Report. The Investigator also noted Mr. Desgranges' concern that further examples of his adaptability should have been considered at para 32 of the Report. The Respondent adds that at para 24 of the Report, the Investigator noted Mr. Desgranges' concern that there was no reference to his meeting with Ms. Charron to clarify the information she provided to the Investigator.

[38] The Respondent submits that the Investigator and Commission did not err by not considering issues that were not raised or arguments that were not made.

[39] The Respondent also notes that Mr. Desgranges did not raise the application of sections 8 or 10 of the CHRA or of section 15 of the *Canadian Charter of Rights and Freedoms* in his complaint, his narrative or his reply submissions. The Respondent adds that the summary of the complaint and the Investigator's Report only refers to section 7 of the CHRA and that Mr. Desgranges did not take issue with this in his reply submissions.

[40] The Respondent submits that, regardless, section 8 is not applicable to the complaint as described by Mr. Desgranges. There is no dispute that he applied for a position at Elections Canada, but the advertisement for the position and the questions asked in the interviews did not raise any prohibited ground of discrimination. The questions posed by Ms. Savard to the references for Mr. Desgranges followed the interview guide. The Respondent maintains that neither Ms. Savard nor any other representative of Elections Canada made any inquiry about Mr. Desgranges' age.

[41] The Respondent adds that even if the Court were to find that paragraph 8(b) is relevant to the conduct described, Mr. Desgranges was not prejudiced by the Commission's approach. Section 7 is far broader in scope than paragraph 8(b). The Respondent notes that complaints relating to refusals to hire individuals are consistently dealt with pursuant to section 7 of the CHRA. Moreover, the assessment of the complaint under both provisions would consider the same evidence.

[42] The Respondent also notes that Mr. Desgranges did not present or even mention any statistical evidence regarding trends in hiring LP-01 candidates at any time during the complaint process nor did he establish that this was "obviously crucial evidence". The Respondent points to *Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574 at paras 48-50, 46 ACWS (3d) 923, aff'd [1996] FCJ No 385 (CA), 62 ACWS (3d) 761, where the Court made it clear that it is the failure to consider obviously crucial evidence that may result in a finding that an investigation is not thorough.

[43] The Respondent submits that there was no obligation on the Investigator to inquire whether statistical data was available. However, even if Elections Canada could gather statistics on the age of persons hired at the LP-01 level, such statistics would not provide additional or relevant information about the conduct of the competitive process.

[44] The Respondent submits that the Investigator and Commission reasonably found that the age-related comment was made in the context of assessing the adaptability criterion, which

Mr. Desgranges met. The comment had no bearing on the assessment of the thoroughness criterion, which he did not meet.

[45] The Respondent submits that the Commission's decision is reasonable when assessed against the principles set out in *Vavilov*. The Commission's reasons, which include the reasons of the Investigator, address all the fundamental issues raised in the complaint. The reasons show a coherent and logical chain of analysis. The investigation and the decision are internally consistent.

[46] The Respondent argues that Mr. Desgranges' reliance on *Jagadeesh* is misplaced as it is not analogous. In *Jagadeesh*, the Investigator did not investigate the complaint on the ground of sexual orientation, did not consider the evidence related to that ground and did not address Mr. *Jagadeesh*'s reply submissions. In Mr. Desgranges' case, all his allegations were addressed, as were his reply submissions.

VI. The Issues

[47] Mr. Desgranges has raised several specific arguments as noted above, which can be summarized as:

1. Whether the Investigation was thorough; and,
2. Whether the Commission's decision is reasonable.

VII. The Standard of Review

[48] The parties agree that the reasonableness standard applies to the review of the merits of the decision and that the guiding principles enunciated by the SCC in *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 (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 27, [2018] 2 SCR 230; *Georgoulas v Canada (Attorney General)*, 2018 FC 652 at para 58, 298 ACWS (3d) 826 [*Georgoulas*]). This is reinforced by *Vavilov*.

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

[50] Mr. Desgranges highlighted several passages of *Vavilov* with respect to the indicia of a reasonable decision, including paras 84, 96, 98, 100, 106-108 and 126-128.

[51] The Court has considered and applied the extensive guidance provided by the Supreme Court of Canada in *Vavilov* about 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 and that it is justified in relation to the relevant factual and legal constraints that bear on it (para 99). 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.

VIII. The Jurisprudence on the Role of the Commission

[52] The role of the Commission in responding to complaints in circumstances similar to this case has been the subject of extensive jurisprudence.

[53] In *Hughes v Canada (Attorney General)*, 2010 FC 837, at paras 30-34, 192 ACWS (3d) 943 [*Hughes*], Justice Mactavish provided an overview of the relevant principles from the jurisprudence governing the Commission's role, including the duty of thoroughness:

30 The role of the Canadian Human Rights Commission was described by the Supreme Court of Canada in *Cooper v. Canada (Human Rights Commission)* (1996), 140 D.L.R. (4th) 193. There, the Supreme Court observed that the Commission is not an adjudicative body, and that the adjudication of human rights complaints is reserved to the Canadian Human Rights Tribunal. Rather, the duty of the Commission "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": at para. 53. See also [*Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879.]

31 The Commission has a broad discretion to determine whether "having regard to all of the circumstances" further inquiry is warranted: *Mercier v. Canada (Human Rights Commission)*, [1994] 3 F.C. 3 (FCA). However, in making this determination, the process followed by the Commission must be fair.

32 In *Slattery v. Canada (Canadian Human Rights Commission)*, [1994] 2 F.C. 574; affirmed (1996), aff'd 205 N.R. 383 (F.C.A.) this Court discussed the content of procedural fairness required in Commission investigations. The Court

observed that in fulfilling its statutory responsibility to investigate complaints of discrimination, investigations carried out by the Commission must be both neutral and thorough.

33 Insofar as the requirement of thoroughness is concerned, the Court in *Slattery* observed that "deference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly". As a consequence, "[i]t should only be where unreasonable omissions are made, for example where an investigator failed to investigate obviously crucial evidence, that judicial review is warranted": at para 56.

34 The requirement for thoroughness in investigations must also be considered in light of the Commission's administrative and financial realities. With this in mind, the jurisprudence has established that some defects in the investigation may be overcome by providing the parties with the right to make submissions with respect to the investigation report. As the Federal Court of Appeal observed in [*Canada (Attorney General) v. Sketchley*, 2005 FCA 404], the only errors that will justify the intervention of a court on review are "investigative flaws that are so fundamental that they cannot be remedied by the parties' further responding submissions": at para. 38.

[54] In *Georgoulas*, the Court referred to the same jurisprudence and set out a short summary of the relevant principles at para 87:

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.

56 All of these principles have been applied in the present case.

IX. The Commission Did Not Err in Adopting the Investigator's Report

[55] Mr. Desgranges' argument that the Commission erred in its interpretation of its role under section 44 of the CHRA, by adopting the findings and recommendation of the Investigator as its own reasons, is without merit. Mr. Desgranges' submission that the Commission provided inadequate reasons is also based on his mistaken view that the Commission erred in adopting the Investigator's Report and in so doing, failed to conduct an independent investigation.

[56] Contrary to the Applicant's arguments, the jurisprudence has firmly established that the Investigator's Report constitutes the reasons of the Commission where the Commission issues only brief reasons, as in this case, which are consistent with the Investigator's Report. As noted in *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 37, 144 ACWS (3d) 509:

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].

[57] This same principle was reiterated more recently by Justice Diner in *Wagmatcook First Nation v Oleson*, 2018 FC 77 at para 34, 289 ACWS (3d) 158:

It is well-established that, where the Commission agrees with an investigator's recommendations and adopts an investigator's report or conclusions in its decision, the investigation report will constitute the Commission's reasons and form part of the decision for the purposes of judicial review (*Majidiguruh v Jazz Aviation LP*, 2017 FC 295 at para 31; *Attaran* at para 36).

X. The Investigation was Thorough

[58] The Investigation was fair, neutral and thorough; the Investigation and Investigator's Report reflect all the principles noted above at paras 54-55.

[59] The test for thoroughness is whether an investigator failed to investigate "obviously crucial evidence" or "fundamental or essential aspects" of the complaint. In *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at para 74, 290 ACWS (3d) 544 [*Bergeron*], the Federal Court of Appeal emphasized that the duty of thoroughness is contextual and does not require investigators to "pursue every last conceivable angle" of a complaint, adding:

The degree of thoroughness required of an investigation depends on the circumstances of each case. In some cases, one or more facts may resolve the issue under investigation to the investigator's satisfaction, rendering continued investigation unnecessary.

[60] The Investigator's Report set out the methodology, described the context of the Elections Canada competitive process, summarized Mr. Desgranges' complaint, and noted the basis for the complaint. The Investigator interviewed four witnesses, including Mr. Desgranges, and summarized the evidence provided by the witnesses. The Investigator inquired into Elections

Canada's hiring process and the evaluation scheme, she reviewed Mr. Desgranges' entire application, she obtained the evaluators' notes from the reference checks, and she reviewed and compared the scores of other candidates for the same LP-01 position.

[61] The Investigator did not fail to explore the fundamental aspects of the complaint and did not overlook any crucial evidence. Nor did the Investigator err in her approach to interviewing witnesses.

[62] The Investigator's conclusion that the age-related comment was made in the context of the assessment of Mr. Desgranges' adaptability – a criterion for which he received a passing score – would be sufficient to determine that the age-related comment did not adversely impact his prospective employment. The problematic issue was that Mr. Desgranges received a failing score on the thoroughness criterion, which led to his elimination from the competition. But, the Investigator did not rely only on this fact. The Investigator fully investigated the complaint and gathered all the relevant evidence. Although Mr. Desgranges is of the view that the age-related comment affected all the eligibility criteria, the Investigator explored his concern and did not find any link.

[63] Mr. Desgranges did not dispute the neutrality of the Commission or the Investigator, nor did he dispute that he was given the full opportunity to respond to the Investigator's Report before the Commission made its final decision. Rather, his reply submissions disputed the Investigator's findings and her approach to questioning the witnesses.

A. *The Commission did not err by not considering paragraph 8(b)*

[64] With respect to Mr. Desgranges' argument that the Investigator erred by focussing on section 7 of the CHRA without considering section 8, Mr. Desgranges offers a contrived interpretation of paragraph 8(b) in an effort to find fault with the investigation.

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

. . . 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.

[66] 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 discriminatory advertisements or oral and written inquiries made by employers or prospective employers.

[67] Contrary to Mr. Desgranges' interpretation of paragraph 8(b), the term 'written or oral inquiry' is best understood in the context of the CHRA and within section 8 as asking a question, not as conducting an inquiry into facts. Mr. Desgranges did not point to any jurisprudence in support of his interpretation or with respect to section 8 at all.

[68] Elections Canada did not advertise or publish any advertisement for employment expressing or implying a limitation or preference based on the age of the candidate. Elections Canada did not make any inquiry about Mr. Desgranges' age or any candidates' age. Rather, Elections Canada assessed several criteria, which were made known to the candidates. In the context of assessing the established criteria, Mr. Choquette, the reference for Mr. Desgranges, made the age-related comment at issue. This comment appears to have been provided spontaneously and gratuitously. Ms. Savard, in posing questions in accordance with the interview guide, and in asking for examples about Mr. Desgranges' adaptability, could not have anticipated the comment made by Mr. Choquette.

[69] The fact that Ms. Savard made notes of the comments made by the references, including the age-related comment, does not transform the reference check into a "written inquiry" within the meaning of paragraph 8(b) of the Act.

[70] In response to the Court's questioning about Mr. Desgranges' interpretation of section 8, Mr. Desgranges suggested that there is no proof that Ms. Savard did not ask a question about his age. This suggestion is completely without merit and is again an attempt to find fault where none can be found. The interview guide was provided and followed by Ms. Savard and no questions were asked about age. Ms. Savard confirmed this in her interview with the Investigator.

[71] Mr. Desgranges' action, in checking off boxes on the complaint form that could correspond to both sections 7 and 8, does not determine which provisions apply. As

Mr. Desgranges argued, a layman should not be expected to know the specific provisions of the CHRA.

[72] The Investigator clearly understood the context of Mr. Desgranges' complaint and investigated the complaint as described in Mr. Desgranges' own words. The fact that his complaint is about employment is not in dispute, but this does not, without more, bring the complaint within section 8. Moreover, whether or not he raised the application of section 8, his complaint was thoroughly investigated.

[73] Moreover, the same conduct complained of – which was thoroughly investigated – would inform any inquiry regarding a discriminatory practice contemplated by paragraph 8(b) or any other relevant provision of the CHRA. The Investigator did not overlook any crucial information by conducting her investigation only under section 7 of the CHRA. Both sections would have addressed the same evidence and issue; namely, whether Mr. Choquette's age-related comment was a factor in the decision to eliminate Mr. Desgranges from the competitive process.

[74] As repeatedly noted, the Investigator found that Mr. Desgranges was not hired because of factors unrelated to the adaptability criterion, which was the context in which Mr. Choquette made the age-related comment. The age-related comment did not impact the failing score on the "thoroughness" criterion. Other comments were made by Mr. Desgranges' references with respect to the assessment of his thoroughness, which were noted and considered by Ms. Savard, and also noted by the Investigator.

[75] Mr. Desgranges argued that section 7 and section 8 address different conduct and that different evidence would have been considered with respect to section 8, however he could not identify what the different evidence would be. As noted, the Investigator considered all the evidence that was provided about the complaint as described by Mr. Desgranges.

[76] Mr. Desgranges' argument that he should have been given the opportunity to address the Commission's interpretation of section 8 and its determination that it did not apply in his reply submissions is without merit. He had full opportunity to make reply submissions and did so. As noted, he did not raise the application of section 8. He raises it only now in this Application in an attempt to find fault with the Investigation.

[77] Section 7 provides broad protection against discrimination of any kind, whether directly or indirectly, throughout a hiring process. Section 7 is the "best fit" for the conduct described by Mr. Desgranges in his complaint and narrative.

B. *The Investigator did not err by failing to consider statistical evidence.*

[78] Mr. Desgranges did not provide any statistical evidence to the Investigator nor did he mention statistical evidence in his reply submissions. It was not incumbent on the Investigator to seek data that was not provided and likely does not exist. Mr. Desgranges has not provided any authority for his proposition that because Canada is a signatory to the UN Declaration on Human Rights, Elections Canada had a duty to keep statistics on the age and other characteristics of the work force to demonstrate compliance.

[79] Moreover, even if such statistics existed, it would not be “obviously crucial evidence” in the circumstances.

[80] Mr. Desgranges relies on a passage of Justice Mactavish’s decision in *Walden* at paras 109-118 stating that statistical evidence is useful for detecting discrimination. However, Justice Mactavish also found that statistical evidence, on its own, is not sufficient to establish discrimination. There must be other evidence linking the complainant’s protected ground of discrimination with the alleged adverse treatment. In *Walden*, Justice Mactavish stated at para 108 that:

. . . [s]tatistical evidence of professional occupational segregation, by itself, is not sufficient to establish a *prima facie* case of sex discrimination under either section 7 or section 10 of the *Canadian Human Rights Act*.

[81] This principle was reiterated more recently, in *Davidson v Canada (Attorney General)*, 2019 FC 877, 307 ACWS (3d) 587 [*Davidson*], where Justice Elliott found that the statistical evidence, on its own, was not sufficient to demonstrate discrimination in employment and that evidence of personal discrimination is needed:

35 In Mr. Davidson’s [the applicant] case, he needed to provide some evidence that he was not selected for a senior position in the federal government because of his race. Mr. Davidson provided a list of jobs [...] for which he applied but was not selected. In most instances, he was provided with reasons as to why he was not selected, including but not limited to: he gave incorrect responses to interview questions; there was a lack of evidence regarding the necessary experience required for the job opening; and he failed to provide thorough answers. Beyond these reasons and a list of jobs he applied to, Mr. Davidson provided no evidence that he was personally discriminated against in his job search as a result of his race.

[82] The Investigator recommended the dismissal of Mr. Desgranges' complaint because she found no evidence linking the age-related comment with the reason for his elimination from the competitive process. Instead, she found that Mr. Desgranges' was eliminated because of his failing score on the "thoroughness" criterion, not due to his age. Statistical evidence – even if it existed – would not change this factual finding.

C. *The Investigator did not err by failing to more extensively probe the evidence of the witnesses*

[83] The Investigator's duty of thoroughness does not require an investigator to interview every possible witness, probe everything the witnesses say or probe every possible allegation. As noted in *Murray v Canada (Human Rights Commission)*, 2002 FCT 699 at para 24, 2002 FCT 699;

[24] The principles of natural justice and the duty of procedural fairness with respect to an investigation and consequent decision of the Commission, are to give the complainant the investigator's report and provide the complainant with a full opportunity to respond, and to consider that response before the Commission decides. The investigator is not obliged to interview each and every witness that the applicant would have liked, nor is the investigator obliged to address each and every alleged incident of discrimination which the applicant would have liked. In this case, the applicant had the opportunity to respond to the investigator's report and to address any gaps left by the investigator or bring any important missing witness to the attention of the investigator. However, the investigator and the Commission must control the investigation and this Court will only set aside on judicial review an investigation and decision where the investigation and decision are clearly deficient. See *Slattery, supra.* per Nadon J. (as he then was) and at the Federal Court of Appeal per Hugessen J.A. (as he then was).

[My emphasis]

[84] Mr. Desgranges argued that the Investigator should have questioned Ms. Savard more extensively about the impact of the age-related comment. Mr. Desgranges criticized other comments made by Mr. Choquette with respect to Mr. Desgranges' thoroughness and argued that the Investigator should have requested that Mr. Choquette be more specific. Mr. Desgranges argued that the Investigator should have probed Ms. Charron's comments about his thoroughness. All of these criticisms were raised in Mr. Desgranges' reply submissions, although they had already been canvassed by the Investigator (see for example paragraphs 18, 24, 28, 31 and 32 of the Investigator's Report).

[85] Mr. Desgranges' views about what the Investigator should have pursued overlook that the Investigator has wide latitude in conducting an investigation and need not probe every possible tangential issue (*Bergeron* at para 74, *Murray* at para 24). The investigation was about whether an age-related comment had resulted in Mr. Desgranges' elimination from the competitive process. The Investigator was not required to further probe the evidence of the witnesses or to search for other comments that would have been more favourable to Mr. Desgranges.

[86] The Investigator gathered information from the witnesses that was relevant to the complaint. The Investigator did not ignore Mr. Desgranges' submission that the age-related comment coloured the assessment of the other criteria. At para 35 of the Investigator's Report, she noted the results of her interview with Ms. Savard which probed this allegation. The Investigator noted that Ms. Savard indicated that the reference check about thoroughness was intended to provide an additional opportunity to assess this criterion because Mr. Desgranges had not answered the question in his own interview and because it had not come across as one of

Mr. Desgranges' strengths. The Investigator noted, "[e]lle [i.e. Ms Savard] affirme que le commentaire sur l'âge du plaignant n'a eu aucun impact sur la suite des choses", and later "[l]e commentaire sur l'âge n'a eu aucun lien. Il devait pouvoir faire des recherches juridiques. [...]" Le candidat recherché devait avoir une bonne connaissance juridique et il pouvait être capable de faire des recherches." (Ms. Savard confirmed that the age-related comment had no impact on the next steps; the comment on age had no link; he must be able to do legal research; the candidate sought must have good legal knowledge and be able to do research.) The evidence supports the Investigator's finding that Mr. Desgranges was eliminated from the competition because he did not meet the thoroughness criterion for reasons unrelated to his age.

XI. The Decision is Reasonable

[87] The Commission reasonably found that there was insufficient evidence to warrant further inquiry into Mr. Desgranges' complaint. As noted in *Hughes* at para 31, the Commission has a broad discretion to determine whether further inquiry into a complaint is warranted.

[88] The law is clear that the Commission may rely on the Investigator's Report and, where the Commission adopts the Report, the Report provide the reasons or a significant part of the reasons. The Commission also considered Mr. Desgranges' complaint, his narrative and his submissions in response to the Investigator's report. There is no reason to doubt this statement. Contrary to Mr. Desgranges' submissions, the Commission did not "rubber stamp" the Investigator's Report.

[89] The Commission did not overlook or misconstrue any evidence. All the fundamental aspects of the complaint were investigated. The Commission relied on a thorough investigation. The Investigator set out in detail the evidentiary basis for dismissing Mr. Desgranges's complaint. The Investigator found that Elections Canada adhered to a well-defined hiring process and that Mr. Desgranges failed to meet the "thoroughness" criterion. The reasons of the Investigator and Commission show a logical and coherent chain of analysis pointing to a reasonable decision.

[90] Mr. Desgranges' extensive reliance on *Jagadeesh* does not support his argument that the Commission erred by not considering sections 8 and 10 of the CHRA. In *Jagadeesh* the Court applied the same well-established principles in the jurisprudence that apply in the present case to the particular facts. In *Jagadeesh*, the Court found at para 61 that the Investigation was deficient and, as a result, the decision which relied on the investigation was not reasonable. The complaint, as described by Mr. Jagadeesh, was not investigated; the allegations of discrimination based on sexual orientation and disability, which were set out in the complaint and in the reply submissions were not sufficiently addressed.

[91] The facts of the present case are not analogous. Unlike *Jagadeesh*, the Investigator did not fail to consider the complaint of age discrimination made by Mr. Desgranges. The Commission did not fail to consider Mr. Desgranges' submissions in response to the Investigator's Report. 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 the Investigator's findings.

[92] The Court has considered Mr. Desgranges' arguments that the Commission's reasons and decision do not comply with the principles established in *Vavilov*. The Court has reviewed all the passages noted by Mr. Desgranges, in their proper context, and finds that the Commission's decision reflects the hallmarks of a reasonable decision in accordance with *Vavilov*.

[93] The Court agrees that reasonableness review focuses on both the decision making process and its outcome. In the present case, the reasons demonstrate the Investigator's understanding of the complaint and understanding of the CHRA and the methodology applied to the investigation. The Investigator's findings logically flow from the evidence. The Commission relied on this thorough investigation and, as noted, the Investigator's reasons are the Commission's reasons.

[94] As noted in *Vavilov*, at para 125:

. . . 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.

[Internal citations omitted]

[95] As guided by *Vavilov*, at paras 106-108, the Court has considered the governing statutory scheme in evaluating whether the decision is reasonable. The relevant provisions of the CHRA were not overlooked by the Commission. 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. It is also clear that section 8 is not applicable to the

conduct described in the complaint. There is no reason for the Commission to refer to inapplicable provisions or to offer an interpretation of such provisions.

[96] With respect to Mr. Desgranges' focus on section 8 and on the need to further probe the evidence of the witnesses, *Vavilov* confirms that reviewing courts cannot expect administrative decision makers to respond to every possible argument or line of possible analysis. As noted above, section 8 did not apply to the conduct described in the complaint. The Investigator and the Commission did not fail to address the key issues or Mr. Desgranges' central argument that the age-related comment had affected the hiring process.

[97] A reasonable decision is a decision that is justified, transparent and intelligible and is one that is justified in relation to the relevant factual and legal constraints that bear on it (*Vavilov* 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 law, in particular the CHRA and the duty of procedural fairness, and the relevant facts as found by the Investigator and adopted by the Commission. 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] 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. No errors can be

found in the Investigator's assessment and there is no basis for the Court to interfere with the factual findings.

JUDGMENT in File T-1771-18

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. The Applicant shall pay the Respondent costs in the amount of \$1000.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1771-18

STYLE OF CAUSE: JEAN-JACQUES DESGRANGES v ELECTIONS
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 13, 2020

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

DATED: FEBRUARY 28, 2020

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