Federal Court Cour fédérale

Date: 20210105

Docket: T-133-19

Citation: 2021 FC 13

Ottawa, Ontario, January 5, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

OZKAN OZCEVIK

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ozkan Ozcevik, complains the Canada Revenue Agency's hiring policy giving preference to Canadian citizens is discriminatory. He seeks judicial review of the Canadian Human Rights Commission's decision not to deal with his complaint because it is frivolous: *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*], s 41(1)(d).

[2] For the more detailed reasons below, I dismiss this application for judicial review. I am not persuaded that the Commission breached procedural fairness and that its decision in this matter was unreasonable. Further, there is a lack of evidentiary foundation to ground a constitutional challenge to the validity of *CHRA* s 3(1) under section 15 of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982* [*Charter*].

II. Background

[3] Given the paucity of evidence in this matter, the factual underpinnings are scant. Mr. Ozcevik is a Convention refugee and a Canadian permanent resident. His complaint alleges that because the CRA advertises its staffing procedure gives preference to persons of Canadian nationality, non-citizens accordingly receive lowest priority. Mr. Ozcevik further asserts that a direct consequence of giving lowest priority to applicants who have lawful but non-citizen residence status is discrimination against immigrants and refugees. He argues that the CRA's act of giving lowest priority to his job applications, despite the applications' merits and his success in CRA's assessment tests, infringes his section 15 equality rights guaranteed by the *Charter*, and discriminates on the prohibited grounds of race, national origin or ethnicity: *CHRA* s 3(1). He provided no additional information or evidence, however, concerning the position(s) he applied for, his qualifications, when he applied, the results of his assessments by CRA and, more importantly, that CRA did not hire him specifically because he was not a Canadian citizen.

[4] He further argues the policy is discriminatory on the "analogous grounds" of residence status, of having the status of a Convention refugee, and of being virtually stateless. Finally, Mr. Ozcevik notes that because the CRA is not governed by the *Public Service Employment Act*, SC

2003, c 22, ss 12, 13 [*PSEA*], the discrimination is not saved by *PSEA* s 39(1), which contemplates prioritization based on citizenship, among other bases.

[5] Mr. Ozcevik's complaint was investigated by a Human Rights Officer, who issued a Section 40/41 Investigation Report. The Officer noted the issue for the Commission's decision was whether to deal with the complaint under subsection 41(1) of the *CHRA* or not to deal with it under paragraph 41(1)(d). The Officer concluded that the complaint is not linked to a prohibited ground and recommended that the Commission not deal with it because it is "frivolous" in the legal sense as opposed to the colloquial meaning of the word.

[6] The Officer gave four reasons:

1) Citizenship is not a prohibited ground of discrimination; the Commission can deal only with complaints linked to a prohibited ground of discrimination under the *CHRA*.
2) Unlike the *Charter*, analogous grounds of discrimination cannot be read into the *CHRA*; the Commission has no authority to add or change these grounds.
3) The Commission does not have the authority to deal with any allegations of *Charter* violations.
4) The Applicant was not treated differently because of <u>his</u> particular national or ethnic origin or race. Rather, he was treated differently because of his citizenship status, which is not a prohibited ground of discrimination under the *CHRA*.

[7] Mr. Ozcevik submitted a response to the Section 40/41 Report in which he states that he emphasized the "statutory basis of [his] complaint is the enumerated ground of national origin, not citizenship." He further submits that the CRA hiring policy inflicts or tends to inflict discriminatory impact or differential treatment on a group of people characterized by national origin including naturalized Canadian citizens, as opposed to Canadian citizens by birth or *jus*

sanguinis, and thus is contrary to section 10 of the *CHRA*. He notes that the Canadian Food Inspection Agency's hiring policy specifically does not give preference to Canadian citizens.

[8] Mr. Ozcevik also argues that the Report is underinclusive of a section 15 analogous ground that is citizenship. He admits that the Commission cannot read in an analogous ground to the *CHRA*, but that as an administrative body, it is obligated to act in accordance with the Charter "and therefore must strive to achieve a broad and 'inclusive' (in the sense of 'not underinclusive') reading of its enabling legislation."

III. Issues and Applicable Standards of Review

[9] The issues that arise in this matter are three-fold:

A. *Did the Commission breach procedural fairness by not conducting a thorough and neutral investigation?*

B. *Was the Commission's decision not to deal with the Applicant's complaint pursuant to CHRA s 41(1)(d) unreasonable?*

C. *Does the exclusion or omission of citizenship as an enumerated ground in the CHRA s 3 violate section 15 of the Charter? If the answer is yes, is the exclusion or omission demonstrably justified under section 1 of the Charter?*

[10] Breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise … 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The duty of procedural fairness "is 'eminently variable', inherently flexible and context-specific":

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 77. In sum, the focus of the reviewing court is whether the process was fair and just.

[11] Regarding the merits of the Commission's decision, the presumptive standard of review is reasonableness: *Vavilov*, above at para 10. It is not a "rubber-stamping" exercise, but rather a robust form of review: *Vavilov*, above at para 13. Courts should intervene only where necessary. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, at para 99. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at para 100.

[12] The reasonableness presumption will be rebutted where the rule of law requires that the standard of correctness be applied, such as in respect of constitutional questions: *Vavilov*, above at para 17. More specifically, where the decision under review involves an issue of whether a provision in the decision maker's enabling statute violates the *Charter*, the decision maker's interpretation of the issue should be reviewed for correctness: *Vavilov*, above at para 57.

IV. Relevant Provisions

[13] See Annex "A" for applicable provisions.

V. Analysis

A. *Did the Commission breach procedural fairness by not conducting a thorough and neutral investigation?*

[14] I am not persuaded that there has been a breach of procedural fairness. In my view, the investigation resulting in the Section 40/41 Report was sufficiently thorough and neutral in the circumstances.

[15] The role of the Commission is to accept, manage and process complaints of discriminatory practices; it is a screening body with no appreciable adjudicative role: *Lusina v Bell Canada*, 2005 FC 134 [*Lusina*] at para 26. Its function is to decide whether to deal with a complaint and it has broad discretion to do so. The Commission's role in making such a decision is described in *CHRA* s 41(1) in subjective terms [emphasis added]: "the Commission shall deal with any complaint filed with it unless in respect of that complaint **it appears to the Commission** that… ." Accordingly, I find procedural rights afforded to Mr. Ozcevik fall on the low end of the spectrum: *Konesavarathan v University of Guelph Radio*, 2018 FC 1217 [*Konesavarathan*] at para 20, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28.

[16] The legal test for determining whether a complaint is frivolous within the meaning of the Act is "whether, based upon the evidence, it appears to be plain and obvious that the complaint cannot succeed": *Hérold v Canada (Revenue Agency)*, 2011 FC 544 at para 35; see also *Keith v Canada (Correctional Service)*, 2012 FCA 117 at para 50. Where the Commission adopts a

Section 40/41 Report, the Report forms the reasons for the Commission's decision: *Klimkowski v Canadian Pacific Railway*, 2017 FC 438 at para 35.

[17] Mr. Ozcevik argues he was denied procedural fairness because the Section 40/41 Report is neither thorough nor neutral. Thoroughness and neutrality are two conditions required to ensure the Commission had an adequate and fair basis on which to evaluate the Report: *Lusina*, above at paras 30-31. He submits the Report is not thorough because it omits two key elements of his complaint: (1) his allegation of systemic discrimination based on national origin contrary to section 10 of the *CHRA*; and (2) his allegation of individual discrimination contrary to section 7 of the *CHRA*. Mr. Ozcevik also submits that the Report is not neutral, for three reasons: (1) it mischaracterizes or changes the basis of his complaint from "national origin" to "citizenship;" (2) a reasonable apprehension of bias arises from this change; and (3) it ignored his submissions. I disagree on all counts.

[18] From a procedural fairness standpoint, I find the Section 40/41 Report specifically acknowledges Mr. Ozcevik's argument that he experienced differential treatment not because of his citizenship status but rather because of his national or ethnic origin and race. The Commission, however, simply rejected it. The Commission explained in clear terms why it concluded the complaint was rooted in citizenship and why individual discrimination was not established [emphasis in original]:

> 15. Finally, the complainant contends that the Act applies to his complaint because he has experienced adverse differential treatment based on his national or ethnic origin and race, which are prohibited grounds of discrimination under the Act. It appears, however, that the complainant was not treated differently because of <u>his</u> particular national or ethnic origin or race. Rather, he was treated differently because of his citizenship status, which as noted above, is not a prohibited ground of discrimination

> under the Act. In order for the Act to apply to a complaint, the alleged discriminatory conduct must be based on a prohibited ground of discrimination under the Act.

[19] I note that nowhere in his complaint or in his response to the Section 40/41 Report does Mr. Ozcevik indicate his national origin, ethnicity or race, nor does he allege that he was discriminated against because of how he identifies himself in these respects. His allegations of discrimination on the bases of national or ethnic origin and race are couched in general terms with reference to "non-citizens" and the impact of the CRA's staffing procedure on persons with "lawful, but non-citizen residence status." In other words, he conflates national or ethnic origin and race with citizenship; while they may overlap in certain circumstances, they are not necessarily the same. Further, Mr. Ozcevik's response to the Section 40/41 Report underscores the emphasis on citizenship with reference to naturalized Canadian citizens and the potential impact of CRA's hiring policy on them until they actually attain citizenship. Once that occurs, they will be treated the same under the CRA's hiring policy as those who are citizens by birth or *jus sanguinis*.

[20] Thus, I find the Commission's decision is sufficiently thorough and neutral. The Commission did not ignore his submissions nor change the basis of his complaint which, as noted above, conflates national or ethnic origin and race with citizenship. It is "plain and obvious" that Mr. Ozcevik's complaint is not founded on any enumerated grounds of discrimination under *CHRA* s 3(1) and therefore cannot succeed. Because both sections 8 and 10 of the *CHRA* require that a claimant demonstrate a *prima facie* case of discrimination linked to one of the enumerated grounds of discrimination listed under *CHRA* 3(1), and citizenship is not one of those enumerated grounds, in my view Mr. Ozcevik failed to meet the test required for

further inquiry. To demonstrate a *prima facie* case of discrimination, Mr. Ozcevik was required to adduce sufficient evidence to demonstrate a link between his individual treatment and a prohibited ground of discrimination, which he did not do. Mr. Ozcevik did not provide any affidavit evidence, including in connection with his judicial review application; rather, he largely provided legal arguments based on sparse facts.

[21] Regarding the allegation of bias, I find given the paucity of evidence that Mr. Ozcevik has failed to demonstrate that the Commission was closed-minded and not open to persuasion. I refer to Justice Strickland's articulation of the test for a reasonable apprehension of bias. It is this: "what would an informed person, viewing the matter realistically and practically and having thought the matter through conclude [- w]ould [they] think it is more likely than not that the decision-maker whether consciously or unconsciously would not decide fairly?": *Sandhu v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 889 at para 61, citing *Yukon Francophone School Board, Education Area No. 23 v Yukon Territory (Attorney General)*, 2015 SCC 25. There is a rebuttable presumption that a tribunal member will act fairly and impartially. Suspicion alone of bias is not enough; a real likelihood or probability of bias must be demonstrated (by the person alleging bias) and the threshold for a finding of real or perceived bias is high. Mr. Ozcevik's strenuous disagreement with the Commission's determination in itself is insufficient to meet this high threshold.

B. *Was the Commission's decision not to deal with the Applicant's complaint pursuant to CHRA s 41(1)(d) unreasonable?*

[22] A decision by the Commission under paragraph 41(1) of the Act whether to deal with a complaint is discretionary and generally is entitled to significant deference: *Konesavarathan*, above at para 19; *Georgoulas v Canada (Attorney General)*, 2017 FC 446 at para 17. Where the Commission decides to dismiss the complaint, however, the decision should be subject to a more "probing" review: *Keith v Canada (Correctional Service)*, 2012 FCA 117 at paras 45-46; *Wagmatcook First Nation v Oleson*, 2018 FC 77 at para 20. Having concluded the Commission did not breach procedural fairness, in that its investigation of Mr. Ozcevik's complaint was sufficiently thorough and neutral, I further find that its decision not to deal with the complaint was not unreasonable.

[23] As mentioned, the legal test for determining whether a complaint is frivolous within the meaning of the *CHRA* s 41(1) is "whether, based upon the evidence, it appears to be plain and obvious that the complaint cannot succeed": *Hérold*, above at para 35. This threshold is low but "there is a burden on a complainant to put sufficient information or evidence forward to persuade the Commission that there is a link between the complained-of acts and a prohibited ground": *Georgoulas v Canada (Attorney General)*, 2017 FC 446 [*Georgoulas*] at para 23, citing *Hartjes v Canada (Attorney General)*, 2008 FC 830 at para 23. For the purposes of my analysis, Mr. Ozcevik's factual allegations must be taken as true: *Konesavarathan*, above at para 33.

[24] Mr. Ozcevik adduced no documentary evidence to support his claim. The only information provided was in his original complaint and in his response to the Section 40/41 Report, both summarized above. I find it is clear from Mr. Ozcevik's original complaint that the alleged adverse impact he faced with CRA's hiring policy was as a result of his lack of status as

a citizen, and not as a result of his national or ethnic origin or race. Further, that naturalized Canadian citizens also potentially face the same adverse impact does not support his argument, in my view, that the differentiation is based on national origin rather than citizenship. Indeed, once naturalized Canadian citizens become citizens, they cease being subject to any adverse impact from the hiring policy and will be treated identically as any candidates who are Canadian citizens by birth or *jus sanguinis*.

[25] I find the Commission's conclusion that Mr. Ozcevik's complaint is not linked to any prohibited ground of discrimination under the *CHRA*, and hence is frivolous, is not unreasonable in the circumstances.

C. *Does the exclusion or omission of citizenship as an enumerated ground in the CHRA* s 3 *violate section 15 of the Charter? If the answer is yes, is the exclusion or omission demonstrably justified under section 1 of the Charter?*

[26] I note Mr. Ozcevik served and filed the requisite Notice of Constitutional Question in accordance with section 57 of the *Federal Courts Act*, RSC 1985, c F-7 and Rule 69 of the *Federal Courts Rules*, SOR/98-106. None of the 14 Attorney Generals served, responded or took a position in this matter.

[27] I agree with the Respondent that the evidentiary record in this case is insufficient for a determination of the constitutional issues that Mr. Ozcevik raises. There is no question that "citizenship" has been recognized as an analogous ground of discrimination to "national origin," one of the enumerated grounds in subsection 15(1) of the *Charter*: *Andrews v Law Society of British Columbia*, 1989 CanLII 2 (SCC), [1989] 1 SCR 143 [*Andrews*] at page 183; *Lavoie v*

Canada, 2002 SCC 23 [*Lavoie*] at para 41; *Withler v Canada (Attorney General)*, 2011 SCC 12 (CanLII), [2011] 1 SCR 396 [*Withler*] at paras 33-34; *Deegan v Canada (Attorney General)*, 2019 FC 960 (CanLII), [2020] 1 FCR 411 at paras 395, 433-435. Its absence, therefore, from *CHRA* s 3 is notable, especially when one considers that "citizenship" is included in the prohibited grounds or protections enumerated in the *Ontario Human Rights Code* and the *Nunavut Human Rights Act*. This is not uniformly the case, however, in all provinces and territories.

[28] Mr. Ozcevik points to *Vriend v Alberta*, [1998] 1 SCR 493 [*Vriend*] where the Supreme Court determined that Alberta's human rights code was underinclusive because it excluded the analogous ground of sexual orientation. He argues that the Commission's refusal to deal with his complaint is tantamount to acknowledging the underinclusiveness of the *CHRA*, contrary to section 15 of the *Charter*.

[29] I agree with the Respondent, however, that *Vriend* was decided in a very different factual context. Further, not all human rights legislation is required to mirror the *Charter*; "[w]hether an omission is unconstitutional must be assessed in each case, taking into account the nature of the exclusion, the type of legislation, and the context in which it was enacted": *Vriend*, above at para 106. Mr. Ozcevik has provided no contextual, evidentiary foundation in this case and, as I noted earlier, the factual underpinnings are sparse.

[30] Charter decisions must not be made in a factual vacuum nor based on unsupported hypotheses, lest they result in ill-considered opinions: *Bekker v Canada*, 2004 FCA 186 [*Bekker*]

at para 12, citing *MacKay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357 at pages 361-62. As noted in the latter decision, at page 361: "The relevant facts put forward may cover a wide spectrum dealing with scientific, social, economic and political aspects[; o]ften expert opinion as to the future impact of the impugned legislation and the result of the possible decisions pertaining to it may be of great assistance to the courts."

[31] The Supreme Court previously has declined to proceed with a *Charter* challenge to the constitutional validity of government legislation without a proper factual foundation. That foundation must consist of both adjudicative facts (that concern the parties, i.e. who did what, where, when, how and with what motivation or intention) and legislative facts (that establish the purpose and background of legislation, including its social, economic and cultural context): *Danson v Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 SCR 1086 [*Danson*] at page 1099. While legislative facts are considered more general and hence, not subject to strict admissibility requirements, adjudicative facts are more specific and must be proved by admissible evidence: *Danson*, above at page 1099.

[32] Furthermore, the Supreme Court has held that in every case involving alleged breach of the *Charter* s 15(1), the court's central concern will be whether a violation of human dignity has been established, in light of the historical, social, political and legal context of the claim. The claimant is responsible for ensuring the court is made aware of such context in the appropriate manner: *Law v Canada (Minister of Employment and Immigration)*, 1999 CanLII 675 (SCC), [1999] 1 SCR 497 at para 83. As noted in *Law*, there are three key elements to a claim of *Charter* s 15(1) discrimination: differential treatment, an enumerated or analogous ground, and

discrimination in a substantive sense involving factors such as prejudice, stereotyping, and disadvantage. It is fundamentally important that "the determination of whether each of these elements exists in a particular case is always to be undertaken in a purposive manner, taking into account the full social, political, and legal context of the claim": *Law*, above at para 30. I find that such a purposive deliberation cannot occur absent an adequate evidential record.

[33] As noted earlier, Mr. Ozcevik's factual allegations must be taken as true for determining whether a complaint is frivolous within the meaning of the *CHRA* s 41(1). That said, I find there is a complete absence of proven adjudicative facts, and insufficient legislative facts for determining a Charter challenge to the alleged underinclusiveness of the prohibited grounds of discrimination in the *CHRA* s 3(1).

[34] For example, while the alleged underinclusiveness of the *CHRA* is in issue, the genesis of this matter is the CRA's hiring policy further to its "exclusive right and authority to appoint any employees that it considers necessary for the proper conduct of its business" pursuant to paragraph 53(1) of the *Canada Revenue Agency Act*, SC 1999, c 17. Further, although as Mr. Ozcevik notes, *PSEA* s 39(1) is not applicable to the CRA, nonetheless the constitutionality of the latter provision was considered in *Lavoie*. Notwithstanding the provision was held to be a violation of *Charter* s 15(1), ultimately, it was found to be justified under *Charter* s 1.

[35] These examples underscore the need for a more fully developed evidentiary record to consider contextually the constitutional issues Mr. Ozcevik raises in this matter. In addition, I

find the evidentiary shortcomings cast a shadow on the sufficiency of the Notice of Constitutional Question: *Bekker*, above at para 9.

[36] I conclude the absence of a developed evidentiary record, renders Mr. Ozcevik's arguments abstract and theoretical, and prevents the Court from addressing, in a definitive manner, the constitutional issues he raises: *Lessard-Gauvin v Canada (Attorney General)*, 2018 FC 808 at para 19. This is especially so in the context of a judicial review application which by its nature is limited in scope and fact-dependent.

VI. Conclusion

[37] I therefore dismiss this judicial review application. I am not persuaded that the Commission acted in a procedurally unfair manner and that its decision in this matter was unreasonable. Further, there is an insufficient evidentiary foundation to ground a constitutional challenge to the validity of *CHRA* s 3(1) under section 15 of the *Charter*.

[38] The Respondent is entitled to its costs of $1000.00, inclusive of disbursements, payable by the Applicant. For clarity, this sum is in addition to the costs awarded to the Respondent in the amount of $350.00 by Prothonotary Molgat in connection with the Applicant's refused late stage motion for leave to introduce evidence comprised of a news report and transcript of the Prime Minister's statement in September 2019 regarding systemic discrimination in Canada.

JUDGMENT in T-133-19

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.

2. The Respondent is entitled to its costs of $1000.00, inclusive of disbursements, payable by the Applicant, in addition to costs in the amount of $350.00 awarded to the Respondent by Prothonotary Molgat regarding the Applicant's refused motion for leave to introduce evidence.

"Janet M. Fuhrer"
Judge

Annex "A" – Relevant Provisions

***Public Service Employment Act,* SC 2003, c 22, ss 12, 13**

Preference to veterans and Canadian citizens	**Préférence aux anciens combattants et aux citoyens canadiens**
39 (1) In an advertised external appointment process, subject to any priorities established under paragraph 22(2)(a) and by sections 39.1, 40 and 41, any of the following who, in the Commission's opinion, meet the essential qualifications referred to in paragraph 30(2)(a) shall be appointed ahead of other candidates, in the following order:	**39 (1)** Dans le cadre d'un processus de nomination externe annoncé, les personnes ci-après sont, sous réserve des priorités établies en vertu de l'alinéa 22(2)a) ou des articles 39.1, 40 et 41, nommées avant les autres candidats, dans l'ordre indiqué, pourvu que, selon la Commission, elles possèdent les qualifications essentielles visées à l'alinéa 30(2)a) :
(a) a person who is in receipt of a pension by reason of war service, within the meaning of the schedule;	**a)** les pensionnés de guerre, au sens de l'annexe;
(b) a veteran or a survivor of a veteran, within the meaning of the schedule; and	**b)** les anciens combattants, au sens de l'annexe, ou les survivants des anciens combattants, au sens de l'annexe;
(c) a Canadian citizen, within the meaning of the Citizenship Act, in any case where a person who is not a Canadian citizen is also a candidate.	**c)** les citoyens canadiens au sens de la Loi sur la citoyenneté, dans les cas où une personne qui n'est pas citoyen canadien est aussi candidat.

***Canadian Human Rights Act*, RSC 1985, c H-6**

Prohibited grounds of discrimination	**Motifs de distinction illicite**
3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.	**3 (1)** Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'identité ou l'expression de genre, l'état matrimonial, la situation de famille, les caractéristiques génétiques, l'état de personne graciée ou la déficience.

Employment	**Emploi**
7 It is a discriminatory practice, directly or indirectly,	**7** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
(a) to refuse to employ or continue to employ any individual, or	**a)** de refuser d'employer ou de continuer d'employer un individu;
(b) in the course of employment, to differentiate adversely in relation to an employee,	**b)** de le défavoriser en cours d'emploi.
on a prohibited ground of discrimination.	
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	**b)** la publication d'une annonce ou la tenue d'une enquête, oralement ou par écrit, au sujet d'un emploi présent ou éventuel.
that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.	
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.
Commission to deal with complaint **41 (1)** Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that **(a)** the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available; **(b)** the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act; **(c)** the complaint is beyond the jurisdiction of the Commission; **(d)** the complaint is trivial, frivolous, vexatious or made in bad faith; or **(e)** the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.	**Irrecevabilité** **41 (1)** Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants : **a)** la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts; **b)** la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale; **c)** la plainte n'est pas de sa compétence; **d)** la plainte est frivole, vexatoire ou entachée de mauvaise foi; **e)** la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-133-19
STYLE OF CAUSE:	OZKAN OZCEVIK v CANADA REVENUE AGENCY
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	AUGUST 4, 2020
REASONS FOR JUDGMENT AND JUDGMENT:	FUHRER J.
DATED:	JANUARY 5, 2021

APPEARANCES:

Ozkan Ozcevik	FOR THE APPLICANT (ON BEHALF OF HIMSELF)
Taylor Andreas	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT