

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150414**

**Docket: A-308-14**

**Citation: 2015 FCA 92**

**CORAM: RYER J.A.  
NEAR J.A.  
RENNIE J.A.**

**BETWEEN:**

**NAVIN JOSHI**

**Appellant**

**and**

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

**Respondent**

Heard at Toronto, Ontario, on Monday, April 14, 2015.

Judgment delivered at Toronto, Ontario, on April 14, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NEAR J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on April 14, 2015)

**NEAR J.A.**

[1] In a decision dated October 31, 2012, the Canadian Human Rights Commission (Commission) dismissed a complaint made by Mr. Joshi (the appellant) against his former employer, the Canadian Imperial Bank of Commerce (the respondent).

[2] After investigating the complaint, the Commission determined that having regard to all of the circumstances, an inquiry into the complaint by the Canadian Human Rights Tribunal was not warranted. It therefore dismissed the complaint under subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

[3] On June 6, 2014, Justice Kane of the Federal Court (the Judge) dismissed Mr. Joshi's application for judicial review of the Commission's decision (2014 FC 552). In careful and thorough reasons, the Judge concluded that the Commission had treated Mr. Joshi fairly, had investigated his complaint thoroughly, and had rendered a reasonable decision in dismissing his complaint (Federal Court Decision, at para. 116).

[4] Mr. Joshi now appeals to this Court from the decision of the Federal Court. For the reasons that follow, we would dismiss the appeal.

[5] The threshold question for this Court is to determine whether the Judge correctly chose and properly applied the standards of review to the Commission's decision (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 47, [2013] 2 S.C.R. 559).

[6] The Judge correctly chose the applicable standards of review (Federal Court Decision, at para. 52). Issues of procedural fairness, including whether the Commission displayed bias and whether its investigation was sufficiently thorough, are reviewable on the standard of correctness (*Mission Institution v. Khela*, 2014 SCC 24 at para.79, [2014] 1 S.C.R. 502). Otherwise, the

Court's task is to determine whether the Commission's decision, viewed as a whole, was reasonable (*Keith v. Correctional Service of Canada*, 2012 FCA 117 at para. 47, 431 N.R. 121).

[7] The Commission adopted the investigator's conclusion that the evidence did not support that the respondent had done any of the following on the basis of the appellant's disability or perceived disability (undiagnosed back pain):

- Failed to provide the appellant with a job opportunity, promotion, or acting assignment;
- Treated the appellant in an adverse differential manner; or
- Terminated the appellant's employment.

[8] Put another way, the investigator had not found sufficient evidence to support the notion that the respondent's conduct about which the appellant had complained was motivated or caused by the appellant's disability or perceived disability. This conclusion was supported by a thorough and cogent report, described in detail by the Judge.

[9] The appellant advances before this Court largely the same arguments as those which he made before the Federal Court. Having reviewed the record, it is our view that the Commission's decision should stand. The appellant has not shown that the Commission breached its duty of procedural fairness, or that its decision to dismiss his complaint fell outside the scope of reasonable outcomes, defensible on the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190).

[10] In addition to his submissions on the decision of the Commission, the appellant has argued that the Judge demonstrated bias in favour of the Commission and the respondent. This allegation is completely devoid of merit. As explained by the Judge in addressing the allegations of bias the appellant made against the Commission, bias is a term with a precise legal definition. Allegations of bias are of a very serious nature and should not be made without proof (Federal Court Decision, at para. 112). Such allegations are particularly egregious when made against judges, as they attack one of the pillars of the judicial system, namely the principle that judges are impartial as between the parties who appear before them (*Abi-Mansour v. Canada (Aboriginal Affairs)*, 2014 FCA 272 at para. 12, [2014] F.C.J. No. 1145 (QL)). The appellant has not provided any evidence to support his bald allegation of bias.

[11] The appeal will be dismissed, with costs, set in the amount of \$2,500.00.

"D.G.Near"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**(APPEAL FROM THE JUDGMENT OF THE HONOURABLE MADAM JUSTICE KANE DATED JUNE 6, 2014, IN FEDERAL COURT DOCKET NO. T-270-13)**

**DOCKET:** A-308-14

**STYLE OF CAUSE:** NAVIN JOSHI v. CANADIAN  
IMPERIAL BANK OF  
COMMERCE

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** APRIL 14, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** RYER J.A.  
NEAR J.A.  
RENNIE J.A.

**DELIVERED FROM THE BENCH BY:** NEAR J.A.

**APPEARANCES:**

Navin Joshi FOR THE APPELLANT  
(SELF-REPRESENTED)

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