

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231012

Docket: A-50-21

Citation: 2023 FCA 208

**CORAM: MACTAVISH J.A.
MONAGHAN J.A.
BIRINGER J.A.**

BETWEEN:

**HESAMEDDIN ABBASPOUR
TAZEHKAND**

Appellant

and

BANK OF CANADA

Respondent

Heard at Ottawa, Ontario, on September 20, 2023.

Judgment delivered at Ottawa, Ontario, on October 12, 2023.

REASONS FOR JUDGMENT BY:

MACTAVISH J.A.

CONCURRED IN BY:

**MONAGHAN J.A.
BIRINGER J.A.**

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REASONS FOR JUDGMENT

MACTAVISH J.A.

[1] Hesameddin Abbaspour Tazehkand is a permanent resident in Canada of Iranian origin. When his application for a position at the Bank of Canada was rejected without his having been interviewed for the job, Dr. Tazehkand filed a complaint with the Canadian Human Rights Commission alleging that he had been the victim of discrimination based on his race and his national or ethnic origin.

[2] After investigating his complaint, the Commission concluded that further inquiry into Dr. Tazehkand's complaint was not warranted. In concluding that his complaint should be dismissed, the Commission found that Dr. Tazehkand did not possess the essential qualifications for the position for which he had applied. The Commission further found that he had not provided evidence supporting his claim that his race or his national or ethnic origin were factors in the Bank's decision not to interview or hire him.

[3] In a decision reported as 2020 FC 1193, the Federal Court dismissed Dr. Tazehkand's application for judicial review of the Commission's decision. The Court was satisfied that he had been treated fairly in the Commission process, and that its decision to dismiss his human rights complaint was reasonable.

[4] Dr. Tazehkand now appeals from the Federal Court's decision, asserting that the Court erred in finding that he had been accorded procedural fairness by the Commission and in finding that the Commission's decision was reasonable. The Federal Court further erred, Dr. Tazehkand says, in refusing to consider a document relating to a complaint against the Bank that he had filed with the Privacy Commissioner, and in finding that his arguments with respect to the conduct of the Bank were not "real issues", and that they did not advance his claim or were irrelevant.

[5] For the reasons that follow, I am not persuaded that the Federal Court erred in its identification of the standards of review to be applied to the Commission's decision to dismiss Dr. Tazehkand's human rights complaint or that it erred in the way that it applied these standards in this case. Nor am I persuaded that the Federal Court erred in excluding the Privacy

Commissioner's report, or in rejecting Dr. Tazehkand's arguments with respect to the Bank's conduct. Consequently, I would dismiss Dr. Tazehkand's appeal.

I. Background

[6] In 2016, Dr. Tazehkand applied for one of nine positions as an "Analyst (Master's Degree, Recent Graduates)" at the Bank of Canada. The educational requirements for the positions identified in the job posting stated that candidates were required to have a "Master's degree in finance or a Master's degree in a related subject such as: economics, computer science, mathematics, statistics, business administration (MBA)". The job posting further stipulated "[f]or your candidacy to be considered, the graduation date for your Master's degree must be between January 2015 and December 2017".

[7] While there were other key requirements identified in the job posting such as communication skills and analytical and technical skills, Dr. Tazehkand's arguments before both the Federal Court and this Court centered on the educational requirements for the positions and whether he satisfied those requirements.

[8] According to the *curriculum vitae* he provided to the Bank with his job application, Dr. Tazehkand received a Master's in Public and International Affairs from the University of Ottawa in 2015. He also held a PhD in Mathematics from the University of British Columbia, which he received in 2012, as well as a Master's in Mathematics granted by Simon Fraser University in

2007. In addition, Dr. Tazehkand graduated with a Bachelor's of Science in Mathematics from Sharif University of Technology in 2004.

[9] Having heard nothing with respect to his application for several weeks, Dr. Tazehkand contacted the Bank to see what was happening with it. Following several email exchanges, the Bank advised Dr. Tazehkand that it had "received applications from more experienced candidates, some with extensive experience in our opened position". After Dr. Tazehkand questioned the Bank's comment about experience, pointing out that the position was aimed at recent graduates only, a Bank representative advised him that "some candidates showcased extracurricular activities and strong grades".

[10] Not satisfied with the Bank's response to his inquiries, Dr. Tazehkand requested a meeting with the Bank's Chief Operating Officer, who forwarded his request to the Assistant Director of the Bank's Recruitment Division for response. This individual advised Dr. Tazehkand that the requirements for the positions in question were based on forecasted departmental needs and that, while his academic background was extensive, it "did not have the particular relevancy that the Financial Sector Departments were looking for this year". It was on this basis that Dr. Tazehkand's application did not proceed to the interview stage.

[11] Unbeknownst to Dr. Tazehkand, the Assistant Director then arranged for a "blind review" of his application to ensure that the initial assessment had been fair. Dr. Tazehkand's name and all identifying characteristics were removed from his application, which was then distributed to managers not involved in the initial screening. This review confirmed the results of the initial

assessment, finding that Dr. Tazehkand did not have a Master's degree in an area specific to economics, nor had he written a thesis on a topic relevant to monetary policy, as had other applicants.

[12] When Dr. Tazehkand continued to question the Bank's decision not to proceed with his application, the Assistant Director of the Recruitment Division advised him that it had received many more applicants than available positions, and that the hiring committee gave preference to candidates "with deeper backgrounds in monetary policy, evidenced through course and thesis work."

[13] Frustrated by what he saw as the Bank's continuously changing explanations as to why his application had not proceeded to the interview stage, Dr. Tazehkand filed his complaint with the Canadian Human Rights Commission. He brought his complaint under section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (*CHRA*), which makes it a discriminatory practice to refuse to employ an individual on a prohibited ground of discrimination – in this case, his race and his national or ethnic origin.

II. The Commission Decision

[14] Following an investigation, a Commission investigator concluded that Dr. Tazehkand was not qualified for the analyst positions at the Bank. The investigator found that his failure to provide evidence in his résumé or covering letter of any academic focus or experience in matters relating to monetary policy or the stability of the financial system was the sole reason for his lack

of success. The investigator further found that the evidence did not establish that Dr. Tazehkand's failure to obtain a position was linked to his race or to his national or ethnic origin. Consequently, the investigator recommended that Dr. Tazehkand's human rights complaint be dismissed.

[15] Dr. Tazehkand was afforded the opportunity to respond to the investigation report. He provided the Commission with detailed submissions regarding what he saw as the errors and shortcomings in the report, requesting that his complaint be referred to the Canadian Human Rights Tribunal for hearing. The investigation report and Dr. Tazehkand's response to it were before the Commission when it considered his complaint.

[16] The Commission accepted the recommendation of the investigator and dismissed Dr. Tazehkand's complaint, finding that it was clear that he did not possess the essential qualifications for the positions in question. The Commission further found that Dr. Tazehkand had failed to provide any other evidence to support his claim that the failure of the Bank to interview or hire him was based on his race or his national or ethnic origin.

[17] Dr. Tazehkand then sought judicial review of the Commission's decision in the Federal Court.

III. The Federal Court's Decision

[18] Dr. Tazehkand sought to file a report from the Office of the Privacy Commissioner in support of his application for judicial review. This report related to his attempt to obtain information from the Bank regarding his job application. Dr. Tazehkand had initially received just three emails from the Bank in response to his request for information under the *Privacy Act*, R.S.C., 1985 c. P-21. He was, however, party to more than a dozen emails between him and Bank representatives. This led Dr. Tazehkand to file a complaint with the Privacy Commissioner, which ultimately resulted in the Bank releasing nearly 150 pages of redacted internal emails.

[19] As a result of the Bank's disclosure, the Office of the Privacy Commissioner determined that Dr. Tazehkand's complaint was "well-founded" but "resolved".

[20] Dr. Tazehkand submitted to the Federal Court that this Report should be considered in relation to his application for judicial review as it demonstrated misconduct on the part of the Bank. The Court refused to admit the document on the basis that it had not been before either the Investigator or the Commission, and it did not come within any of the recognized exceptions to the rule that judicial review is to be conducted based on the record that was before the original decision maker.

[21] In response to Dr. Tazehkand's procedural fairness arguments, the Federal Court noted that disagreement with the results of an investigation is not a procedural fairness argument. The

Court further found that there was no basis for Dr. Tazehkand's claim that he had been treated unfairly as both the investigator and Commission had thoroughly considered the record.

[22] Insofar as the merits of the application for judicial review were concerned, the Court provided a lengthy and detailed analysis leading to its conclusion that the decision to dismiss Dr. Tazehkand's human rights complaint was justified in light of the facts of the case and the constraining law. The Court found, moreover, that the decision was transparent and intelligible, containing a rational and coherent chain of reasoning, without any fatal error.

[23] The Federal Court further found that Dr. Tazehkand's allegations of misconduct on the part of the Bank did not advance his claim. Consequently, Dr. Tazehkand's application for judicial review was dismissed.

IV. Issues

[24] Dr. Tazehkand raises many of the same issues before this Court as he did in the Federal Court. He alleges that he was denied procedural fairness in the Commission process as the investigation into his human rights complaint was neither neutral nor thorough. He further submits that the Commission's decision was substantively unreasonable. Finally, Dr. Tazehkand argues that the Federal Court erred in excluding the Privacy Commissioner's report, and that its treatment of his arguments with respect to the Bank's alleged misconduct was unreasonable.

[25] While we have carefully considered all of the issues raised by Dr. Tazehkand, it is only necessary to address some of them.

V. The Role of this Court and the Standard of Review

[26] On an appeal such as this from a decision of the Federal Court, this Court's task is not to dive into the facts underlying Dr. Tazehkand's human rights complaint, or to reweigh the evidence submitted by the parties. Nor is it the role of this Court to make the decision that it thinks the Commission should have made: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59.

[27] This Court's role is, rather, to determine whether the Federal Court identified the appropriate standard of review to be applied to the Commission's decision, and whether it properly applied that standard: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47. This has been described as requiring us to "step into the shoes" of the Federal Court judge, focusing on the administrative decision below.

VI. Legal Principles Governing the Review of Commission Decisions

[28] Before addressing the issues raised by Dr. Tazehkand, it is helpful to start by examining the nature and extent of the Commission's obligations when investigating a discrimination complaint brought under the *CHRA*.

[29] The Supreme Court of Canada discussed the Commission's role in *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, 140 D.L.R. (4th) 193. There, it 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. The Commission's duty is, rather, "to decide if, under the provisions of the *CHRA*, an inquiry is warranted having regard to all 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, [1989] S.C.J. No. 103 [SEPQA].

[30] The Supreme Court further tells us that the Commission has a broad discretion in determining whether, having regard to all of the circumstances, further inquiry into a complaint is warranted: *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at paras. 21 and 25. As this Court recognized in *Canada (Attorney General) v. Ennis*, 2021 FCA 95, this discretion "derives from judicial recognition of the Commission's expertise in performing its important screening and gate-keeping role": at para. 56. This Court further observed in *Ennis* that the open-ended nature of the relevant statutory language provides minimal constraint on the Commission: above, at para. 56.

[31] Indeed, in *Bell Canada v. Communications, Energy and Paperworkers Union of Canada* (1998), [1999] 1 F.C. 113, [1998] F.C.J. No. 1609, this Court noted that "[t]he Act grants the Commission a remarkable degree of latitude when it is performing its screening function on receipt of an investigation report": at para. 38 [my emphasis].

[32] However, when deciding whether further inquiry is warranted, the process followed by the Commission must be fair.

[33] In *Slattery v. Canada (Canadian Human Rights Commission)*, [1994] 2 F.C. 574, [1994] F.C.J. No. 181, aff'd 205 N.R. 383 (F.C.A.), the Federal Court confirmed that in fulfilling its statutory responsibility to investigate complaints of discrimination, the Commission's investigations must be both neutral and thorough.

[34] That said, the Federal Court also observed in *Slattery* that “[d]eference 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”: at para. 56.

[35] The Commission is, moreover, the master of its own process, and it must be afforded considerable latitude in the way that it conducts its investigations: *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113 at para. 39.

[36] The jurisprudence has further established that Commission investigations do not have to be perfect, and that Commission investigators are not required to turn every stone in investigating a complaint. Indeed, as this Court observed in *Tahmourpour*, above: “[a]ny judicial review of the Commission's procedure must recognize that the agency is master of its own process and must be afforded considerable latitude in the way that it conducts its investigations”: at para. 39.

[37] 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 also noted that the Commission has limited resources and a heavy caseload, and that it has to balance the interests of complainants in the fullest possible investigation and the demands of administrative efficacy: *Tahmourpour*, above at para. 39.

[38] The case law has further established that not every defect in an investigation will be fatal to a Commission decision. Some defects in Commission investigations may be overcome by providing the parties with the opportunity to make submissions with respect to the investigation report: *Slattery*, above at para. 57. 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": *Sketchley v. Canada (Attorney General)*, 2005 FCA 404 at para. 38.

[39] As was noted earlier, where the Commission adopts the recommendations of an investigator and provides limited reasons for its decision, the investigation report will be viewed as constituting the Commission's reasoning for the purpose of a decision under subsection 44(3) of the Act: see *SEPQA*, above at para. 35; *Bell Canada*, above at para. 30. Here, the Commission provided brief reasons for its decision to dismiss Dr. Tazehkand's human rights complaint, and those reasons may thus be supplemented by reference to the investigation report.

[40] However, if the Commission decides to dismiss a complaint based upon a deficient investigation, that decision will be deficient because if an investigation report is defective, "it

follows that the Commission was not in possession of sufficient relevant information upon which it could properly exercise its discretion”: see *Grover v. Canada (National Research Council)*, 206 F.T.R. 207, 2001 FCT 687 at para. 70; see also *Sketchley*, above at para. 112.

[41] With this understanding of the Commission’s role and responsibilities in dealing with complaints of discrimination, I will next consider Dr. Tazehkand’s arguments as to the unfairness of the process followed by the Commission investigator and the inadequacy of the investigation in this case.

VII. Was Dr. Tazehkand Denied Procedural Fairness in the Commission Process?

[42] Some of Dr. Tazehkand’s arguments regarding what he says was procedural unfairness on the part of the Commission are really directed at the reasonableness of the decision to dismiss his human rights complaint. An example of this is found at paragraph 25 of his memorandum of fact and law. There, Dr. Tazehkand takes issue with use of the word “enumerated” in the Commission’s decision, stating that the Federal Court’s decision “never explains *how* the word choice does not result in procedural unfairness given how the brief Decision ends with another false statement”.

[43] The Commission’s use of the word “enumerated” was central to Dr. Tazehkand’s argument as to the types of Master’s degrees that should qualify candidates for the analyst positions at the Bank. Without detracting in any way from the importance of the argument to Dr.

Tazehkand, it does not relate to a question of procedural fairness, but goes rather to the substantive reasonableness of the Commission's decision and will be considered in that context.

[44] To the extent that Dr. Tazehkand's arguments do raise questions of procedural fairness, the Court must examine the process that was followed by the Commission in this case and determine for itself whether that process satisfied the level of fairness required in all of the circumstances. In other words, we must apply the correctness standard: *Girouard v. Canada (Attorney General)*, 2020 FCA 129 at para. 38.

[45] As noted earlier, procedural fairness requires that a Commission investigation be both neutral and thorough, and "that the parties be given an opportunity to respond to [the investigator report]": *Canada (Attorney General) v. Davis*, 2010 FCA 134 at para. 6.

[46] In arguing that the Commission investigation in this case was insufficiently thorough, Dr. Tazehkand notes that the Commission investigator never interviewed him, meaning that the investigation could hardly be said to have been thorough. I do not agree.

[47] The Commission investigator was provided with Dr. Tazehkand's human rights complaint, which outlines, in detail, his allegations of discrimination on the part of the Bank in handling his job application.

[48] The investigator sought a written response to Dr. Tazehkand's complaint from the Bank. This was appropriate, given that what the Bank did with Dr. Tazehkand's job application was a

matter solely within the knowledge of the Bank. A copy of the Bank's response was then provided to Dr. Tazehkand for comment. He thus had an opportunity to provide the investigator with whatever information and documents he had in his possession that he believed were relevant to his complaint, and he provided the investigator with a fulsome response to the Bank's statement.

[49] After receiving input from both sides, the investigator prepared the investigation report, a copy of which was provided to both Dr. Tazehkand and the Bank. Dr. Tazehkand was given the opportunity to provide the Commission with written submissions in response to the investigation report. Dr. Tazehkand once again availed himself of this opportunity, providing the Commission with detailed submissions regarding what he viewed as being the flaws in the investigation report.

[50] In my view, the opportunities afforded to Dr. Tazehkand to provide the Commission investigator with information respected his participatory rights and were sufficient to satisfy the requirement of procedural fairness. He was made aware of the Bank's position with respect to his human rights complaint, and he had a chance to tell the investigator why he did not agree with what the Bank had said. Dr. Tazehkand was subsequently provided with the investigation report, and he was able to tell the Commission what he saw as being the shortcomings in the investigation, the errors in the investigation report and why he disagreed with its conclusions. Indeed, subject to the comments in the next three paragraphs, Dr. Tazehkand has not identified any information that he was unable to provide to the investigator and the Commission through the avenues that were available to him.

[51] Dr. Tazehkand also submits that it was unfair of the Commission not to delay its decision until such time as his complaint to the Office of the Privacy Commissioner was resolved.

[52] Dr. Tazehkand mentioned his *Privacy Act* complaint in the submissions that he provided to the Commission in response to the investigation report, where he referred to “ongoing proceedings in the Office of the Privacy Commissioner of Canada ... directly related to this complaint”. Dr. Tazehkand then briefly summarized the status of those proceedings. At no time, however, did he ask that the Commission delay making its decision with respect to his human rights complaint until the *Privacy Act* process was completed. The Commission thus cannot be faulted for dealing with Dr. Tazehkand’s human rights complaint when it did, and he was not denied procedural fairness in this regard.

[53] While this is sufficient to dispose of this aspect of Dr. Tazehkand’s procedural fairness arguments, I would also note that he has not suggested that there was anything in any of the documents that he obtained through the *Privacy Act* process that would have been of any assistance to him in relation to his human rights complaint against the Bank.

[54] Finally, Dr. Tazehkand argues that the Commission process was not thorough as both the investigator and the Commission failed to consider his submissions. There is no merit to this submission. Dr. Tazehkand’s position is summarized by the investigator at paragraphs 9-12 and 17-23 of the investigation report. Paragraphs 35 and 36 of the report quote from material filed by Dr. Tazehkand, and paragraphs 37 and 38 of the investigation report are based on submissions

made by Dr. Tazehkand and the Bank, as well as the job posting and Dr. Tazehkand's application for the position.

[55] Moreover, the Commission's decision to dismiss Dr. Tazehkand's human rights complaint expressly references his post-investigation submissions, and what he perceived to be errors in the investigation report. The fact that the Commission may not have accepted Dr. Tazehkand's submissions does not mean that they were not considered, and no breach of procedural fairness has been demonstrated in this regard.

[56] As far as the neutrality of the investigation is concerned, Dr. Tazehkand questioned why we should trust the investigator, given what he says were errors in the investigation report. While Dr. Tazehkand may take issue with some of the investigator's findings, I see nothing in the record that would support a finding that the investigator lacked neutrality.

[57] Having found that Dr. Tazehkand was treated fairly in the Commission process, the next question is whether its decision was reasonable.

VIII. Was the Commission's Decision to Dismiss Dr. Tazehkand's Complaint Reasonable?

[58] Dr. Tazehkand's central argument is that the Commission erred in finding that the list of acceptable Master's degrees contained in the job posting was intended to be exhaustive rather than illustrative.

[59] It will be recalled that the job posting stated that candidates for the analyst positions had to have a “Master’s degree in finance or a Master’s degree in a related subject *such as*: economics, computer science, mathematics, statistics, business administration (MBA)” granted between January 2015 and December 2017 [my emphasis]. Dr. Tazehkand submits that since the list of acceptable degrees follows the phrase “such as”, it is illustrative rather than exhaustive.

[60] Dr. Tazehkand says that this distinction is important, because it means that the job posting does not have an “enumerated list of subjects”, as stated in the Commission’s decision. The result of this, he says, is that it is no longer “clear” that he “did not possess the essential qualifications of the position advertised”. That is, if the Commission’s finding with respect to the “enumerated list of subjects” is erroneous, its conclusion that he did not have a relevant master’s degree is necessarily flawed.

[61] The Federal Court agreed with Dr. Tazehkand that the list in the job posting was illustrative rather than exhaustive, but found that it was nevertheless not an open-ended one, and that an acceptable degree had to be one in a “related subject” to a Master’s degree in Finance. The Court further found that nothing material turned on the Commission’s use of its word “enumerated” in its decision.

[62] The Supreme Court of Canada tells us that reasonableness review does not involve a “line-by-line treasure hunt for error”: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 102. We are also not to assess the reasons of administrative bodies

such as the Canadian Human Rights Commission against a standard of perfection: *Vavilov*, above at para. 91.

[63] Reasons are, rather, to be “read holistically and contextually” in “light of the record and with due sensitivity to the administrative regime in which they were given”: *Vavilov*, above at paras. 97 and 103. A reviewing court must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic. The Court must, moreover, be satisfied that there is a line of analysis contained in the reasons that could reasonably lead the decision maker from the evidence before it to its conclusion: *Vavilov*, above at para. 102.

[64] Dr. Tazehkand’s argument turns on the use of a single word in the Commission’s two-paragraph decision. However, as was noted earlier, we cannot just look at the decision rendered by the Commission in isolation, but must also have regard to the reasoning in the investigation report.

[65] The investigation report states that the Bank’s position was not that the list in the job posting was exhaustive, and that Dr. Tazehkand lacked a recent Master’s degree in economics, computer science, mathematics, statistics or business administration. Its position was, rather, that he lacked a recent Master’s degree in a field that was relevant to the positions in issue. Dr. Tazehkand has not attempted to establish before us that his Master’s degree in Public and International Affairs (received in 2015) was relevant to the job responsibilities of analysts at the Bank.

[66] Assuming that the list in the job posting was intended to be illustrative rather than exhaustive, Dr. Tazehkand also has not demonstrated that it was unreasonable for the Commission to accept that the Bank's determination that his Master's degree in Public and International Affairs was not a degree in a field that related to the positions in issue.

[67] Moreover, the investigation report does not just consider Dr. Tazehkand's educational qualifications, but also examines the other job requirements identified in the job posting, comparing them to the qualifications identified in Dr. Tazehkand's job application. After discussing the educational requirements, the investigator goes on to observe that Dr. Tazehkand's application had not addressed a number of the key job requirements, including "communication skills", "learning and development" (that is, the ability to motivate one's self and demonstrate commitment to continuous learning), "teamwork and collaboration", and "innovation".

[68] This analysis led the investigator to conclude that Dr. Tazehkand's "lack of many of the essential qualifications required, and his failure to provide evidence in his résumé and covering letter of any academic focus on, or experience in matters relating to monetary policy, or to the stability of the monetary system were the sole reasons for his lack of success" [my emphasis]. This was a conclusion that was reasonably open to the investigator on the record before her.

[69] There is also a more fundamental problem with Dr. Tazehkand's arguments. Even if the Commission erred in describing the list of degrees in the job posting as being an enumerated one rather than an illustrative one, he still had not provided the Commission with evidence

demonstrating that his race and/or his national or ethnic origin were factors in the Bank's decision not to interview him.

[70] This takes us to Dr. Tazehkand's next argument, which relates to the alleged failure of the Commission to consider the statistical information that he provided regarding the immigration and citizenship status of the applicants who were interviewed for the analyst positions and those who were ultimately hired for the jobs in question.

[71] Dr. Tazehkand evidently filed an Access to Information request to obtain this information from the Bank. However, the Bank refused to provide Dr. Tazehkand with statistics regarding its eventual hires. This required him to file a complaint with the Office of the Information Commissioner in order to obtain the data.

[72] I will return to the fact that Dr. Tazehkand had to make a complaint to the Office of the Access to Information Commissioner to get this information later in these reasons, as it forms part of what Dr. Tazehkand characterizes as the Bank's misconduct in this case.

[73] Insofar as the substance of the statistical data is concerned, the data indicated that while Canadian citizens made up 55% of the overall applicants for the analyst positions, 80% of the eventual hires were Canadian citizens.

[74] Dr. Tazehkand provided this information to the Commission in the submissions that he made in response to the investigation report. He says that not only did the Commission fail to

consider this evidence, but that the Commission's decision contained a "false statement" in this regard.

[75] In support of this argument, Dr. Tazehkand noted that the Commission discussed the educational requirements of the job in its decision, concluding that he did not possess the essential qualifications for the analyst jobs. The Commission then stated that he had "not provided any other evidence to support his claim that the failure to interview or hire him was based on his race or national or ethnic origin". From this, Dr. Tazehkand says, it is evident that the Commission was not paying attention to the record before it and that it failed to have regard to the statistical evidence that he had provided.

[76] I do not accept this argument.

[77] The statement by the Commission that Dr. Tazehkand had not provided "any other evidence to support his claim" that the failure to interview or hire him was based on his race or national or ethnic origin has to be read in context. The first sentence in the operative paragraph of the Commission's decision specifically references Dr. Tazehkand's post-investigation submissions, making it clear that it was aware of those submissions, including the statistical information that he had provided. It was after discussing the educational requirements of the job, that the Commission went on to state that Dr. Tazehkand had not provided "any other evidence" to support his discrimination claim. Read in context, the Commission appeared to be saying that there was no other evidence, apart from that contained in Dr. Tazehkand's post-investigation submissions, to support his claim of discrimination.

[78] The Commission's decision was internally coherent, it was justified in relation to the facts and law that constrained it, and it followed a rational chain of analysis. It is, moreover, clear from the Commission's decision precisely why it decided not to deal with Dr. Tazehkand's human rights complaint, and its decision was justified, transparent and intelligible. It also falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and law. Dr. Tazehkand has thus failed to establish that the Commission's decision to dismiss his human rights complaint was unreasonable.

IX. The Bank's Conduct and the Exclusion of Evidence

[79] Dr. Tazehkand has made a number of serious allegations, both before this Court and before the Federal Court, with respect to what he characterizes as misconduct on the part of the Bank. With one exception, most of these allegations relate to matters that occurred after the Commission made the decision in issue in this appeal.

[80] To the extent that the alleged misconduct took place during the Commission process, Dr. Tazehkand's primary assertion is that the Bank referred to the wrong job requirements in its April 24, 2018, letter to the Commission responding to his human rights complaint. These requirements, which included matters such as "advanced knowledge of financial markets and financial risk management", "relevant work experience" and "experience in formulating policy advice", did not appear in the job posting. The Commission investigator nevertheless referred to them in the investigation report.

[81] In the response to the investigation report that he provided to the Commission, Mr. Tazehkand identified and discussed his concern with respect to the inclusion of these job requirements in the Bank's letter.

[82] The Federal Court found that even if the Bank had submitted incorrect information regarding the essential qualifications of the position in its response, the discrepancies between the essential requirements as presented in the job posting and the Bank's response were "immaterial". This was because the Commission's decision was based on the finding that Dr. Tazehkand did not possess a requirement that was common to both the Bank's response and the job posting: namely, the requirement for a Master's degree granted between 2015 and 2017 in finance or a related subject.

[83] As the educational requirements described in the Bank's response to Dr. Tazehkand's human rights complaint were the same as those contained in the job posting, the inclusion of this additional information in the Bank's response does not appear to have put the Bank in a better position. Dr. Tazehkand has also failed to demonstrate that there was anything nefarious in the Bank's reference to job requirements that did not appear in the job posting, and this does not provide a basis for interfering with the Commission's decision. Indeed, I do not understand Dr. Tazehkand to be suggesting otherwise.

[84] Most of Dr. Tazehkand's arguments with respect to what he says was misconduct on the part of the Bank relate to matters that occurred in other proceedings such as those he initiated under the *Access to Information Act*, R.S.C. 1985, c. A-1, and the *Privacy Act*. Other matters

arose in the course of the Federal Court process. As I understand Dr. Tazehkand's position, the Federal Court should have expressed its disapproval of the Bank's conduct through an order of costs in his favour.

[85] Before this Court, Dr. Tazehkand (who was self-represented both before the Federal Court and on this appeal) asks that the Federal Court's costs order of \$2,500.00 in favour of the Bank be set aside, and that he be awarded \$1,000.00 to \$2,000.00 for costs in the Federal Court and \$5,000.00 for the costs of this appeal. In addition, Dr. Tazehkand sought punitive damages against the Bank in the amount of \$100,000.00 to sanction its alleged misconduct. When the Court advised Dr. Tazehkand that damages are not available on judicial review, he modified his request to ask for \$100,000.00 in what he calls "punitive costs", once again to sanction the Bank for its actions.

[86] The "misconduct" identified by Dr. Tazehkand in the Federal Court process included the Bank's choice of affiant, namely the fact that the Bank chose someone who was not the Bank employee who had originally rejected his job application. He also relies on the attachment of the wrong job posting to the affidavit filed in support of the Bank in the application for judicial review. In addition, Dr. Tazehkand cites the multiple explanations provided by the Bank for its failure to interview or hire him, and the refusal of the Bank to provide him with the statistical information that he had requested regarding the citizenship status of job candidates interviewed and those who were ultimately hired. As noted earlier, this forced him to file an Access to Information request to get this information. Dr. Tazehkand also refers to the fact that he had to

file a complaint under the *Privacy Act* to get the internal Bank documents relating to his application for an analyst position.

[87] It was in relation to this last matter that Dr. Tazehkand argues that the Federal Court erred in excluding the Privacy Commissioner's Report. According to Dr. Tazehkand, the Federal Court should have admitted the Report as it illustrated the Bank's poor conduct towards him, and proves that the Bank forced him to go to the Privacy Commissioner to get information regarding his job application, rather than just giving him the information he sought. The Report also shows that the Privacy Commissioner sided with him regarding the Bank's conduct.

[88] Dealing with this last issue first, Dr. Tazehkand has not persuaded me that the Federal Court erred in excluding the Report of the Privacy Commissioner.

[89] The Privacy Commissioner's Report was released shortly after the Commission dismissed Dr. Tazehkand's human rights complaint. As a result, it had not been before either the investigator or the Commission when they dealt with Dr. Tazehkand's complaint. Dr. Tazehkand nevertheless included the Report in his Applicant's Record in the Federal Court, which led to an objection from the Bank as to its admissibility.

[90] In refusing to admit the Report, the Federal Court observed that, subject to limited exceptions, judicial review is ordinarily to be conducted based on the record that was before the administrative decision maker. The Federal Court found that Privacy Commissioner's Report did

not come within any of the recognized exceptions identified in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency*, 2012 FCA 22.

[91] Dr. Tazehkand has not identified a reviewable error in the Federal Court’s decision to exclude the document, which relates to a different proceeding under a different statute to that under consideration in this appeal.

[92] Insofar as the Federal Court’s costs award is concerned, awards of costs are “quintessentially discretionary”: *Nolan v. Kerry (Canada) Inc.*, 2009 SCC 39 at para. 126. Appellate courts should not interfere with costs awards unless the Court below “made an error in principle or if the costs award is plainly wrong”: *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at para. 247, citing *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9 at para. 27.

[93] The Federal Court considered Dr. Tazehkand’s various arguments with respect to the alleged misconduct of the Bank and found that there was no merit to any of them.

[94] As noted, some of Dr. Tazehkand’s concerns did not relate to his application for judicial review of the Commission’s decision, but related instead to proceedings under different legislation, including the *Privacy Act* and the *Access to Information Act*.

[95] Insofar as the Bank’s choice of affiant was concerned, the Federal Court found that this was a matter of witness preference on the part of the Bank. The Court further found that Dr.

Tazehkand's argument in this regard did not assist him, particularly as he did not challenge the Bank's choice of affiant on the basis that the witness was an improper or impermissible witness as he could have done under the *Federal Courts Rules*, SOR/98-106.

[96] Dr. Tazehkand also took issue with the fact that the wrong job posting was appended to the affidavit that the Bank filed in support of its position with respect to Dr. Tazehkand's application for judicial review. The Federal Court considered this argument, and accepted the Bank's explanation that the posting in question had been drawn from an internal Bank database, finding that its inclusion in the affidavit seemed, at best, nothing more than "an innocent error".

[97] Dr. Tazehkand has also not identified any conduct on the part of the Bank that would come within the factors identified in Rule 400(3) of the *Federal Court Rules*. For example, he has not identified any conduct on the part of the Bank that tended to lengthen the duration of the proceeding in the Federal Court unnecessarily. Similarly, he has not shown that the Bank failed to admit anything that should have been admitted. Dr. Tazehkand also failed to demonstrate that the Bank took any steps in connection with his application for judicial review that were improper, vexatious or unnecessary, nor did he assert that any step taken by the Bank in the course of the Federal Court litigation had been taken through negligence, mistake or excessive caution.

[98] In light of this, Dr. Tazehkand has not persuaded me that the Federal Court erred in principle in awarding costs in favour of the Bank, nor has he persuaded me that its costs award was plainly wrong.

X. Conclusion

[99] Dr. Tazehkand has thus failed to demonstrate that the Commission's decision was arrived at through a process that was unfair or that its decision was unreasonable. Nor has he demonstrated that the Federal Court erred in its selection of the appropriate standard of review to be applied to the Commission's decision, or that it failed to properly apply that standard in reviewing that decision.

[100] Dr. Tazehkand has also failed to establish that the Federal Court erred in excluding the Report of the Privacy Commissioner or that it erred in relation to its costs award. Consequently, I would dismiss his appeal, with costs to the Bank fixed in the amount of \$2,500.00.

“Anne L. Mactavish”

J.A.

“I agree.
Siobhan Monaghan”

“I agree.
Monica Biringer”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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TAZEHKAND v. BANK OF
CANADA

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DATE OF HEARING: SEPTEMBER 20, 2023

REASONS FOR JUDGMENT BY: MACTAVISH J.A.

CONCURRED IN BY: MONAGHAN J.A.
BIRINGER J.A.

DATED: OCTOBER 12, 2023

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