

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20241021**

**Docket: A-288-23**

**Citation: 2024 FCA 172**

**CORAM: GLEASON J.A.  
WOODS J.A.  
MACTAVISH J.A.**

**BETWEEN:**

**AAREN JAGADEESH**

**Appellant**

**and**

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

**Respondent**

Heard at Toronto, Ontario, on September 25 and 26, 2024.

Judgment delivered at Ottawa, Ontario, on October 21, 2024.

**REASONS FOR JUDGMENT BY:**

**MACTAVISH J.A.**

**CONCURRED IN BY:**

**GLEASON J.A.  
WOODS J.A.**

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**REASONS FOR JUDGMENT**

**MACTAVISH J.A.**

[1] Aaren Jagadeesh worked as a Financial Services Representative in a call centre operated by the Canadian Imperial Bank of Commerce, where his job required him to spend his days making calls to potential clients. Mr. Jagadeesh asserts that the demands of his job led to him developing severe throat and vocal chord pain, and that the Bank refused to accommodate his disability by offering him an alternate position. Mr. Jagadeesh further claims that he faced

retaliation in his workplace, that he was denied promotions and that his employment with the CIBC was ultimately terminated because he is a heterosexual male who refused to join “the group” of gay and bisexual managers and employees at the Bank.

[2] Mr. Jagadeesh complained to the Canadian Human Rights Commission, alleging that the CIBC had discriminated against him based on his disability and his sexual orientation. The Commission dismissed his complaint, finding that further inquiry into the complaint was not warranted. In *Jagadeesh v. Canadian Imperial Bank of Commerce*, 2019 FC 1224 (*Jagadeesh #1*), the Federal Court quashed this decision because the Commission had only investigated Mr. Jagadeesh’s disability-related concerns and had failed to consider his allegations of discrimination based on his sexual orientation.

[3] Following a second investigation, the Commission once again dismissed Mr. Jagadeesh’s human rights complaint. In reasons reported as 2023 FC 1311 (*Jagadeesh #2*), the Federal Court upheld this decision, finding that Mr. Jagadeesh had been treated fairly by the Commission, and that its decision to dismiss his complaint was reasonable.

[4] Mr. Jagadeesh now appeals from the Federal Court’s decision, asserting that the Court did not treat him fairly, and that the Commission disregarded the Federal Court’s direction in *Jagadeesh #1*, to consider his complaint based on “the full record”. Mr. Jagadeesh further contends that the Federal Court erred in finding that the Commission’s investigation was neutral and thorough, and that it was reasonable.

[5] For the reasons that follow, I would dismiss Mr. Jagadeesh's appeal. In particular, I have not been persuaded that the Commission disregarded the Federal Court's direction in *Jagadeesh* #1. Nor have I been persuaded that the Federal Court erred in *Jagadeesh* #2 in its identification of the standards of review that apply to the Commission's decision to dismiss Mr. Jagadeesh's human rights complaint, or in the way that it applied these standards in this case.

I. Background

[6] Mr. Jagadeesh began working at the CIBC's Outbound Contact Centre in 2014. He says that his job required him to make 60-70 calls each day, during which he was required to read copious amounts of product information and legal disclosures to prospective clients. Mr. Jagadeesh states this caused him to develop a painful vocal condition, which led him to consult his family doctor, who recommended modified duties, including not speaking on the phone, to help alleviate his pain.

[7] In February of 2015, Mr. Jagadeesh submitted a request for accommodation to his employer, asking to work in any capacity other than on the phone. CIBC's Corporate Medical Officer met with Mr. Jagadeesh in early March of 2015, following which Mr. Jagadeesh began working modified hours, with "time control" between calls, in accordance with the accommodation plan prepared by the Corporate Medical Officer. This was to remain in effect until Mr. Jagadeesh could see the specialist.

[8] After seeing Mr. Jagadeesh in June of 2015, the specialist provided a report that stated that Mr. Jagadeesh suffered from “Muscle Tension Dysphonia”. The specialist’s report stated “in addition to direct voice therapy, accommodations for the workplace were also recommended to facilitate progress. [Mr. Jagadeesh] would benefit from minimizing vocal demands... a break from his current telephone position would be ideal...”.

[9] Mr. Jagadeesh asserts that the CIBC started discriminating against him soon after receipt of the specialist’s diagnosis and confirmation of his disability. He says that the Bank refused to provide him with the level of accommodation to which he was entitled. In particular, the Bank refused to provide him with an alternate position that would not place the same demands on his voice, asking him instead to go on short-term disability benefits, following which Mr. Jagadeesh worked reduced hours and received STD benefits for his lost time.

[10] Mr. Jagadeesh also claims that the CIBC cut his pay, denied him incentives and bonuses, and threatened him with disciplinary action for taking essential medical breaks. Mr. Jagadeesh further asserts that the CIBC manipulated his performance statistics, made up warning letters in order to “get rid of him”, and ultimately terminated his employment in May of 2016.

[11] According to Mr. Jagadeesh’s complaint, he met with his manager in September of 2015, and that while discussing his qualifications and medical problems, his manager stated that unless Mr. Jagadeesh joined their “group”, there was no hope for him. Mr. Jagadeesh claims that his manager explained that “every male Manager both here and downstairs are gay/bisexual people”,

and that this was how so many young employees with limited qualifications were getting promoted.

[12] Mr. Jagadeesh states that he had applied for 17 other positions within the CIBC, and that despite his qualifications and experience, the Bank refused to employ him in any position other than the call centre job. He attributes this to the fact that he is a heterosexual male who had refused to join the “gay/bisexual group” at the CIBC. Indeed, Mr. Jagadeesh states in his complaint form that he believes that his refusal to join “the group” “may be the primary reason for all [his] problems & discrimination [at] CIBC”.

[13] Mr. Jagadeesh’s complaint further alleges that the CIBC’s actions caused him financial and emotional harm, including loss of pay, benefits, and advancement opportunities within the CIBC, and that its conduct left him with a disability that rendered him unable to work telephone-based jobs. Mr. Jagadeesh states that he was ineligible for unemployment insurance benefits following the termination of his position with the CIBC, and that he could not find another job because CIBC refused to provide him with a reference. He also claims that the CIBC falsified his record of employment to state that his employment was terminated within his probationary period.

## II. The Procedural History of this Case

[14] Mr. Jagadeesh filed his complaint with the Commission in April of 2017. The Commission appointed an investigator who conducted an investigation and issued a report

recommending the dismissal of Mr. Jagadeesh's complaint. The Commission accepted the investigator's recommendation and dismissed Mr. Jagadeesh's complaint on the basis that further inquiry into his complaint was not warranted.

[15] As noted earlier, Mr. Jagadeesh challenged the Commission's decision, and the Federal Court granted his application for judicial review in *Jagadeesh #1*. The Court found that the investigation into Mr. Jagadeesh's complaint had not been thorough, as the investigator only dealt with his allegations of discrimination based on his disability, and had failed to consider his allegations of discrimination based on his sexual orientation.

[16] In granting Mr. Jagadeesh's application for judicial review in *Jagadeesh #1*, the Federal Court directed that the matter be returned to the Commission "for a fresh investigation, with a different investigator, and a new decision based on the full record".

[17] Following the decision in *Jagadeesh #1*, the Commission appointed a new investigator to investigate Mr. Jagadeesh's human rights complaint. The investigator reviewed both parties' submissions and documentary evidence, and interviewed five witnesses, following which she produced a 35-page investigation report. This report outlined the scope of the investigation, the steps the investigator had taken to investigate Mr. Jagadeesh's complaint, and her analysis of each of his allegations.

[18] After receiving the investigation report, the Commission reviewed the report and Mr. Jagadeesh's post-investigation submissions. The Commission then issued a four-page decision in which it discussed a number of these issues.

[19] The Commission observed in its decision that most of the issues raised by Mr. Jagadeesh in his post-investigation submissions had been discussed and analyzed in the new investigation report, which report was endorsed by the Commission. The Commission concluded that there was "no reasonable basis in the evidence that would warrant referring [Mr. Jagadeesh's] complaint to the Tribunal for an inquiry". Consequently, the Commission once again dismissed Mr. Jagadeesh's complaint.

### III. The Federal Court's Decision in *Jagadeesh #2*

[20] In his application for judicial review of the Commission's second decision, Mr. Jagadeesh alleged that the Commission had failed to follow the Federal Court's direction in *Jagadeesh #1* that the Commission make a new decision with respect to his complaint "based on the full record". He further submitted that the Commission's investigation was biased and was not thorough, and that the Commission's decision was unreasonable. The Federal Court did not accept these assertions, and dismissed Mr. Jagadeesh's application for judicial review.

[21] Before addressing Mr. Jagadeesh's arguments on this appeal, it is helpful to start by examining the role of this Court in an appeal such as this, as well as the nature and extent of the



Commission's obligations when investigating a discrimination complaint brought under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (*CHRA*).

IV. The Role of this Court on an Appeal such as This

[22] 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 Mr. Jagadeesh's human rights complaint, or to reweigh the evidence provided to the investigator and the Commission by the parties. Nor is it the role of this Court to make the decision that it thinks the Commission ought to have made: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 83; *Canada (Attorney General) v. Ennis*, 2021 FCA 95 at para. 48, leave to appeal to SCC refused, 39800 (1 January 2022).

[23] This Court's role is, rather, to determine whether the Federal Court identified the appropriate standards of review to be applied to the Commission's decision – correctness or reasonableness – and whether it properly applied those standards: *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.

[24] This has been described as requiring us to “step into the shoes” of the Federal Court judge, focusing on the administrative decision below: *Agraira*, above at para. 46.

V. The Legal Principles Governing the Commission's Role and Responsibilities

[25] The Supreme Court 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 the facts". That is, "the central component of the Commission's role [...] 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*).

[26] 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 *Ennis*, above, this discretion "derives from judicial recognition of the Commission's expertise in performing its important screening and gate-keeping role": at para. 56, citing *Bergeron v. Canada (Attorney General)*, 2017 FC 57, at para. 74. 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.

[27] 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].

[28] However, when deciding whether further inquiry is warranted in a given case, the process followed by the Commission must be fair. 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.

[29] 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.

[30] The requirement for thoroughness in Commission investigations must 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 complainants’ interests in the fullest possible investigation with the demands of administrative efficacy: *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113, at para. 39.

[31] The jurisprudence has further established that Commission investigations do not have to be perfect, and that investigators are not required to turn every stone in investigating complaints of discrimination. Not every defect in an investigation will be fatal to a Commission decision,

and some defects 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 judicial 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; *Hughes v. Canada (Attorney General)*, 2010 FC 837 at para. 34.

[32] As noted earlier, where, as here, the Commission endorses 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. Thus, the Commission’s reasons for its decision to dismiss Mr. Jagadeesh’s human rights complaint may be supplemented by reference to the investigation report.

[33] However, if the Commission decides to dismiss a complaint based upon a deficient investigation, that decision will be deficient. 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 F.C.T. 687 at para. 70; see also *Sketchley*, above at para. 112.

[34] With this understanding of the Commission’s role and responsibilities in dealing with complaints of discrimination, I will next consider Mr. Jagadeesh’s arguments as to the errors allegedly committed by the Commission and the Federal Court in this case.

VI. Analysis

[35] Mr. Jagadeesh raises many of the same issues before this Court as he did in the Federal Court. He alleges that the Commission failed to follow the Federal Court's direction in *Jagadeesh #1*, as the Commissioners failed to review all of the evidence in his case prior to rendering a decision. He also contends that he was denied procedural fairness in the Commission process as the investigation into his human rights complaint was neither neutral nor thorough, and that the Commission's decision was substantively unreasonable. Mr. Jagadeesh also alleges that the Federal Court treated him unfairly in *Jagadeesh #2*, denying him a full opportunity to present his case to the Court.

[36] While we have carefully considered all of the issues raised by Mr. Jagadeesh, it is only necessary to address some of them in these reasons.

[37] With that in mind, it is first necessary to address Mr. Jagadeesh's submissions with respect to what he says was the unfairness of his hearing before the Federal Court, and the failure of the Commission to follow the directions of the Federal Court in *Jagadeesh #1*.

A. *The Alleged Unfairness of the Federal Court Hearing in Jagadeesh #2*

[38] Mr. Jagadeesh contends that the Federal Court treated him unfairly at the hearing that led to the decision under appeal. That is, he says that the Court failed to have due regard for his

disability, and that it failed to provide him with a reasonable opportunity to make his submissions.

[39] I note firstly that Mr. Jagadeesh did not raise this issue in either his notice of appeal or in his memorandum of fact and law, which precludes him from raising it before us.

[40] Moreover, and in any event, as we explained to Mr. Jagadeesh at the hearing of his appeal, our role in an appeal such as this is to step into the shoes of the Federal Court and to focus on the Commission’s decision, rather than on that of the Federal Court. In other words, Mr. Jagadeesh essentially gets a “do-over” before us – a fresh review of the Commission decision: *Haynes v. Canada (Attorney General)*, 2023 FCA 158 at para. 16, leave to appeal to SCC refused, 41047 (6 June 2024); *Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4.

[41] Mr. Jagadeesh acknowledged at the conclusion of the hearing before us that he had a full and fair opportunity to present his case to this Court. Thus, while we do not agree that Mr. Jagadeesh received an unfair hearing in the Federal Court, any unfairness that might have occurred in that process would be cured by our review of the Commission’s decision.

B. *The Alleged Failure of the Commission to Follow the Direction of the Federal Court in Jagadeesh #1*

[42] Mr. Jagadeesh notes that in *Jagadeesh #1*, the Federal Court remitted his case to “the Commission” with the direction that it was to carry out “a fresh investigation, with a different

investigator”, following which the Commission was to make “a new decision based on the full record” [my emphasis].

[43] According to Mr. Jagadeesh, this meant that the individual Commissioners making the decision with respect to his complaint were required to review all of the evidence collected by the investigator, prior to deciding whether to refer his case to the Tribunal for a hearing. This they had failed to do.

[44] In support of this contention, Mr. Jagadeesh points out that the Commission decision states that the Commissioners had reviewed “the Complaint Form, the Report for Decision [the investigation report], the Federal Court’s decision and the submissions of the parties filed in response to the Report for Decision”. There is no suggestion in the Commission decision that the Commissioners had reviewed the 102 pages of material that Mr. Jagadeesh had provided to the investigator. This included various emails between himself and his managers at the CIBC, and two workplace accommodation request forms that Mr. Jagadeesh had provided to the Bank wherein he expressed his ongoing need for accommodation.

[45] I do not accept Mr. Jagadeesh’s argument.

[46] It is true that, as this Court stated in *Canada (Minister of Citizenship and Immigration) v. Yansané*, 2017 FCA 48, instructions explicitly stated in a judgment will bind a subsequent decision-maker and must be followed: at para. 19. That said, regard must be had to what it was that the Federal Court actually directed in *Jagadeesh #1*.

[47] Once again, the operative portion of the Federal Court’s Order in *Jagadeesh #1* stated, in full, that “[t]he matter is returned to the Commission for a fresh investigation, with a different investigator, and a new decision based on the full record”.

[48] The Commission is composed of a panel of Commissioners, who are appointed under subsection 26(1) of the *CHRA*. Subsection 43(1) of the *CHRA* authorizes the Commissioners to designate individuals to investigate human rights complaints. In investigating a complaint, the investigator acts as an extension of the Commission: *Sketchley*, above at para. 37.

[49] After completing an investigation, the investigator is required to submit a report of the findings of the investigation to the Commissioners. The Commissioners then make a decision as to whether, amongst other things, to dismiss the complaint or to send the complaint on to the Canadian Human Rights Tribunal for a hearing.

[50] In other words, the process outlined in the *CHRA* calls for an investigator to collect and review all of the information submitted by the parties to the complaint and to prepare a report for the Commissioners. The Commissioners do not play as active a role in the screening process. It is their role to review the investigation report and to come to a decision with respect to the complaint: *Pedroso v. WestJet Airlines*, 2019 FC 878 at paras. 28-30. Procedural fairness requires that the Commissioners also review any submissions filed by the parties in response to the investigation report before arriving at a decision: *Carroll v. Canada (Attorney General)*, 2015 FC 287 at paras. 68-71.



[51] The Federal Court was well aware of the fact that Commissioners act through investigators when it comes to reviewing the evidence relating to a complaint of discrimination. We know this because the Federal Court stated at paragraph 55 of *Jagadeesh #1* that in deciding whether to adopt the recommendations contained in an investigation report, the Commission (*i.e.*: the Commissioners) are “not obliged to consider underlying evidence submitted to the Investigator”.

[52] Thus, read in context, it is clear that in *Jagadeesh #1*, the Federal Court did not intend to establish a unique procedure for Mr. Jagadeesh’s case, and to require the Commissioners to review all of the evidence amassed by the investigator. The Court returned the matter to the Commission because the first investigator did not examine Mr. Jagadeesh’s allegations of discrimination based on his sexual orientation. All the Federal Court did in *Jagadeesh #1* was to remit the matter to the Commission with the direction that it investigate all of Mr. Jagadeesh’s allegations of discrimination, and that a new decision be made in relation to the complaint, based on the results of that investigation. As will be explained further on in these reasons, that is precisely what happened.

C. *The Alleged Unfairness of the Commission Process*

[53] Mr. Jagadeesh has made numerous arguments with respect to the alleged unfairness of the Commission investigation process in dealing with his human rights complaint. To the extent that Mr. Jagadeesh’s arguments raise questions of procedural fairness, the Court must examine the process followed by the Commission, and determine for itself whether that process satisfied

the level of fairness required in all of the circumstances. In other words, we must in effect apply the correctness standard of review: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, paras. 44-56; see also *Girouard v. Canada (Attorney General)*, 2020 FCA 129 at para. 38.

i. Improperly Narrowing the Scope of the Complaint

[54] Mr. Jagadeesh’s first argument is that the Commission investigator improperly limited the scope of his complaint, by refusing to consider allegations of discrimination that he made in the documentary evidence he submitted to the investigator in support of his complaint, rather than in the complaint form itself.

[55] In support of this contention, Mr. Jagadeesh points out that the complaint form directs complainants to describe their situation in the body of the form, further stating that “[i]f you have any supporting documents, keep them with you. You may be asked for them at a later date during the process”.

[56] Mr. Jagadeesh stated at the beginning of the narrative portion of his complaint that “I have tried to give as much detail as possible – within the 3 page limit. I have kept all ORIGINAL, dated, emails, doctor reports, medical records & supporting documents”. He went on to state “As advised by you, I am NOT attaching any of these documents at this time, & plan to show you all the details in the future”.

[57] As I understand Mr. Jagadeesh's argument, it is that his reference to his 102 pages of supporting documentation in his complaint form essentially incorporates those documents by reference into his human rights complaint. As a result, he says that the investigator was required to consider any additional allegations of discrimination that he raised in those documents.

[58] These additional allegations include, amongst other things, his claim that his employer had him followed and photographed, as a means of intimidating him, and his claim that senior CIBC managers were sexually exploiting junior employees in exchange for favours.

[59] I cannot accept this argument. There is a distinction between *allegations* of discrimination, which must be identified in the complaint form, and the *evidence* by which a complainant hopes to establish the veracity of their allegations, which can be provided later in the investigation.

[60] As this Court stated in *Manfoumbi-Mouity v. Canada (Attorney General)*, 2017 FCA 240, the Commission does not violate the principles of procedural fairness by limiting its analysis to allegations contained in the complaint form, as filed. Nor does the Commission treat a complainant unfairly by limiting the number of pages in the complaint form: at para. 2.

[61] Consequently, there is no merit to Mr. Jagadeesh's argument with respect to the allegedly unfair limiting of the scope of his complaint.

ii. Not Giving Mr. Jagadeesh a Sufficient Opportunity to Put His Evidence Before the Investigator and the Commissioners

[62] Mr. Jagadeesh further submits that he was treated unfairly as he was unable to put his allegations of discrimination fully before the investigator and the Commissioners. This was because the investigator cut his interview short, and because the Commission limited the number of pages of submissions that he could provide in response to the investigation report.

[63] As noted earlier, Mr. Jagadeesh had some 102 pages of evidence that he believed supported his complaint. He provided these to the investigator. While his interview with the investigator may not have lasted as long as he wanted it to, the investigator offered Mr. Jagadeesh the opportunity to provide her with any other documents, evidence and witness information that he believed supported his complaint, beyond that he had already provided. Mr. Jagadeesh has not identified any specific information or evidence that he was unable to put before the investigator. Indeed, he confirmed to the investigator that he had provided the Commission with everything that he had with respect to his allegations of discrimination against the CIBC.

[64] Insofar as Mr. Jagadeesh's response to the investigation report is concerned, fairness requires that parties be given an opportunity to respond to such reports: *Radulesco v. Canadian Human Rights Commission*, [1984] 2 S.C.R. 407 at pages 410-411, [1984] S.C.J. No. 48, *Canada (Attorney General) v. Davis*, 2010 FCA 134 at para. 6. Such opportunity does not, however, have to be unlimited, and it is not unfair to limit the number of pages that a party can

file with the Commission commenting on an investigation report: *Manfoumbi-Mouity*, above at para. 2.

[65] In my view, the opportunities afforded to Mr. Jagadeesh to provide the Commission investigator with additional information and to respond to the investigation report respected his participatory rights and were sufficient to satisfy the requirements of procedural fairness.

iii. Conducting a Biased Investigation

[66] Mr. Jagadeesh further asserts that the second investigation into his human rights complaint was not a neutral one, and that the investigator was biased against him.

[67] Mr. Jagadeesh says that this is demonstrated by the fact that the investigation report was “procedurally unfair, biased, under inclusive, unreasonable, and also unethical, because many of his crucial evidences were ignored, overlooked, and misconstrued and, many critical details of central importance were not even considered”. He goes on to state that “[t]here were fundamental flaws in the analysis. It also included most irrelevant peripheral details to distract and misguide the Commission’s final decision makers”.

[68] The Commission is clearly subject to the duty of fairness when exercising its statutory power to investigate human rights complaints: *SEPQA*, above. Amongst other things, this requires that the Commission and its investigators be free from bias.

[69] The test for determining whether actual bias or a reasonable apprehension of bias exists in relation to a particular individual is well known: the question is what an informed person, viewing the matter realistically and practically—and having thought the matter through—would conclude. That is, would he or she think it more likely than not that the individual, either consciously or unconsciously, would not decide the matter fairly: see *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, at p. 394, 68 D.L.R. (3d) 716; *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at paras. 20-21, 26.

[70] That said, the non-adjudicative nature of the Commission’s responsibilities means that the standard of impartiality required of Commission investigators is something less than that required of the Courts. The question is thus not whether there exists a reasonable apprehension of bias on the part of the investigator, but rather, whether the investigator approached the case with a “closed mind”: *Ziindel v. Canada (Attorney General)* (1999), 175 D.L.R. (4th) 512 (T.D.), at paras. 17-22, aff’d [2000] F.C.J. No. 2057, 195 D.L.R. (4th) 394.

[71] As the Federal Court stated in *Canadian Broadcasting Corp. v. Canada (Canadian Human Rights Commission)*, (1993), 71 F.T.R. 214, [1993] F.C.J. No. 1334 (F.C.T.D.), the test in cases such as this is thus “whether, as a matter of fact, the standard of open-mindedness has been lost to the point where it can reasonably be said that the issue before the investigative body has been predetermined”: at para. 43.

[72] The burden of demonstrating bias rests on the person alleging bias. An allegation of bias is a serious allegation, and challenges the very integrity of the individual whose conduct is in issue. Consequently, a mere suspicion of bias is not sufficient: *R. v. R.D.S.*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193 at para. 112; *Arthur v. Canada (Attorney General)*, 2001 FCA 223, at para. 8. Rather, the threshold for establishing bias is high: *R. v. R.D.S.*, above at para. 113. Mere disagreement with the findings of the investigator does not amount to evidence of bias.

[73] The Commission addressed Mr. Jagadeesh's allegations of bias and unethical conduct on the part of the investigator in its decision. It observed that he "did not provide any concrete examples that would lead the Commission to find that the [investigation report] or investigation was 'biased or unethical' or that a reasonably informed person, viewing the matter realistically and practically, would draw such a conclusion".

[74] I will address Mr. Jagadeesh's allegations as to the thoroughness and reasonableness of the Commission decision further on in these reasons. Insofar as his allegation of bias on the part of the investigator is concerned, however, suffice it to say that there is no evidence before us that would support such an allegation.

#### iv. The Failure to Consider Compound Discrimination

[75] Mr. Jagadeesh also says that the Commission treated him unfairly, as its investigation was insufficiently thorough in a number of respects. In particular, he says that both the investigator and the Commissioners failed to consider the compounding effect that the multiple

grounds of discrimination asserted in his complaint had for the treatment he encountered at the Bank.

[76] Citing this Court’s decision in *Turner v. Canada (Attorney General)*, 2012 FCA 159, Mr. Jagadeesh states that the Commission erred by analyzing whether there was discrimination on the basis of his disability and on the basis of his sexual orientation separately, without considering what was in fact compound discrimination.

[77] When we asked Mr. Jagadeesh whether he had raised the issue of compound discrimination before the Commission, he pointed to one paragraph in his post-investigation submissions that states “[s]ections of [the] *CHRA* [that] apply to my case: 7, 10, and 14. (Discrimination based on: disability, sexual orientation, *the combination of both*, & harassment – including sexual harassment) ...” [emphasis added].

[78] Mr. Jagadeesh also pointed to section 3.1 of the *CHRA*, which states “[f]or greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on *the effect of a combination of prohibited grounds*” [my emphasis].

[79] In my view, this was not sufficient to put the issue of compound discrimination in play before the Commission.

[80] As this Court observed in *Turner*, the concept of intersecting grounds of discrimination (also known as compound discrimination) is based on the recognition that where multiple



grounds of discrimination are present, their combined effect may be more than the sum of their individual effects. It recognizes that analyzing multiple grounds separately – as if they existed in discrete silos – can sometimes ignore the compounding effect that intersecting grounds can have.

[81] In other words, there are cases where a finding of discrimination may not be justified when each ground of discrimination is considered by itself, but where a picture of discrimination may emerge when the grounds are considered together: *Turner*, above at para. 48; *Djubok v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 497, at para.18.

[82] In *Turner*, the issue of the compounding effect of the multiple grounds of discrimination asserted was squarely raised by the complainant and was argued before the Tribunal. However, the issue was not addressed in the Tribunal’s decision, which resulted in the decision being set aside.

[83] In contrast, Mr. Jagadeesh’s human rights complaint makes no mention of any compounding effect arising out of the grounds of discrimination asserted in his case, nor does the issue appear to have been raised in the course of the Commission investigation. The brief reference to “disability, sexual orientation, the combination of both” in his post-investigation submissions was insufficient to trigger any duty on the Commission to pursue the issue of compound discrimination.

[84] Nor does the existence of section 3.1 in the *CHRA* assist Mr. Jagadeesh. It simply recognizes that discriminatory practices include those based on one or more prohibited grounds

of discrimination, as well as those arising out of the combined effect of multiple prohibited grounds. It says nothing about the potential existence of compound discrimination in Mr. Jagadeesh's case.

[85] Mr. Jagadeesh has also not explained how the two grounds of discrimination identified in his human rights complaint intersected to result in compound discrimination in his case.

[86] Consequently, Mr. Jagadeesh has not persuaded me that the Commission and/or the Federal Court erred in failing to consider the potential existence of compound discrimination in this case.

v. The Failure to Consider Mr. Jagadeesh's Charter Argument

[87] Mr. Jagadeesh further submits that the Commission investigation was insufficiently thorough, as it failed to consider or address his arguments under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

[88] That is, Mr. Jagadeesh claims that in addition to violating his rights under the *CHRA*, the failure of the CIBC to accommodate his medical needs also violated his equality rights under section 15 of the Charter.

[89] Mr. Jagadeesh made only passing reference to the Charter in his submissions to the Commission. Moreover, quite apart from the fact that the Charter does not apply to the CIBC, as

a non-state actor, Mr. Jagadeesh has also not explained how a section 15 Charter analysis would lead to a different result in his case. Consequently, there is no merit to this argument.

vi. The Failure to Consider Mr. Jagadeesh's Allegations of Harassment

[90] Mr. Jagadeesh also contends that the Commission investigation was insufficiently thorough, as the investigator did not consider his allegation that he was harassed by CIBC managers. Mr. Jagadeesh says that his managers harassed him by, amongst other things, failing to accommodate his disability, refusing to promote him because of his sexual orientation, issuing letters warning him that his employment was in jeopardy, and terminating his employment based on both his vocal disability and his sexual orientation.

[91] Mr. Jagadeesh's post-investigation submissions to the Commission asserted that despite repeated requests on his part, the investigator did not include any discussion of harassment in her investigation report, and that she never even referred to the relevant section of the *CHRA* dealing with harassment.

[92] Section 14 of the *CHRA* makes it a discriminatory practice to harass an individual on a prohibited ground of discrimination in matters related to employment. It is true that the investigator did not specifically refer to section 14 of the Act in her investigation report. She did, however, carefully examine the allegations in Mr. Jagadeesh's complaint that related to the conduct on the part of CIBC managers that he considered to constitute harassment. The investigator did so in her analysis of whether there had been workplace discrimination. The investigator explained in her investigation report why the evidence did not support Mr.

Jagadeesh's allegations of workplace discrimination, which included his allegations of harassment on the part of Bank managers.

[93] There is thus no merit to Mr. Jagadeesh's claim that the investigation was insufficiently thorough because the investigator overlooked the issue of harassment.

[94] Having determined that Mr. Jagadeesh has not established that he was treated unfairly in the Commission process, I will next consider whether its decision to dismiss his human rights complaint was reasonable.

D. *Whether the Commission's Decision was Reasonable*

[95] Where, as here, a Commission decision involves the assessment of the facts of the case, that decision should be accorded deference: *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 at paras. 29-30; *Halifax (Regional Municipality)*, above at para. 17. This means that this Court is to use the reasonableness standard in assessing the Commission's decision.

[96] The Supreme Court of Canada tells us that reviewing a decision under the reasonableness standard of review does not involve a "line-by-line treasure hunt for error": *Vavilov*, above at para. 102. We are also instructed not to assess the reasons of administrative bodies such as the Canadian Human Rights Commission against the standard of perfection: *Vavilov*, above at para. 91.

[97] Reasons for a decision are, rather, to be “read holistically and contextually”, in light of the record before the reviewing court, “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.

[98] It is not for the Federal Court (or this Court on appeal) to ask whether there was sufficient evidence before the Commission to warrant the referral of a complaint to the Tribunal for inquiry. This would be to ask whether the Commission was correct in its assessment of the evidence – applying correctness review rather than reasonableness review: *Ennis*, above at para. 50.

[99] In assessing the reasonableness of a Commission decision to dismiss a human rights complaint, our job is, rather, to ask ourselves whether the Commission’s decision was one that it reasonably could have made, based on the record before it: *Ennis*, above at para. 53.

[100] As noted earlier, in determining whether the Commission’s decision to dismiss Mr. Jagadeesh’s human rights complaint was reasonable, we cannot just look at the decision rendered by the Commissioners in isolation, but must also have regard to the reasoning contained in the investigation report.

[101] With this in mind, I turn next to consider Mr. Jagadeesh's submissions as to why he says that the Commission's decision to dismiss his human rights complaint was unreasonable.

i. The Alleged Failure of the CIBC to Accommodate Mr. Jagadeesh's Disability

[102] The core of Mr. Jagadeesh's argument with respect to the alleged failure of the CIBC to accommodate his vocal disability properly appears to be that he was left in his call centre position, and was not provided with an alternate job that did not impose the same demands on his voice.

[103] As noted earlier, the CIBC first became aware of Mr. Jagadeesh's vocal issue when he submitted his initial request for accommodation in February of 2015, which he supported with a note from his family doctor.

[104] While the doctor's note is not in the record before us, the investigation report quotes the note as stating that from "February 11-13, 2015", Mr. Jagadeesh "can do modified duties where he is not talking on the phone. [I]f not, then home for rest treating for laryngitis. [N]eeds rest". Mr. Jagadeesh does not dispute that this is what his doctor's note actually said.

[105] Mr. Jagadeesh took a few days off work at this point, which is what his doctor had recommended. However, it appears that he continued to have issues with his voice.

[106] The CIBC's Corporate Medical Officer met with Mr. Jagadeesh in early March of 2015, and referred him to a specialist. Following the March 2015 appointment, Mr. Jagadeesh began

working reduced hours, in accordance with the accommodation plan prepared by the Corporate Medical Officer. He also began collecting short-term disability benefits, which made up the income he lost because of the reduction in the hours he worked.

[107] There appears to be a dispute between Mr. Jagadeesh and the CIBC as to the duties he performed between March and the end of June 2015. Mr. Jagadeesh says that he continued to perform his telephone duties in the call centre, although he acknowledges that he worked reduced hours and that he was provided with paid medical breaks between calls. In contrast, the CIBC says that Mr. Jagadeesh spent little time actually making calls during this period, and that he spent most of his time taking breaks, sipping water and performing other tasks.

[108] Mr. Jagadeesh submits that the investigator and the Commission ignored the pay stub evidence he had provided which, he says, support his version of the facts. However, the pay stubs were clearly not overlooked by the Commissioners, as they were specifically addressed in the Commission decision.

[109] Moreover, and in any event, the pay stubs merely reflect the reduced hours worked by Mr. Jagadeesh during this period (about which there is no dispute). Contrary to Mr. Jagadeesh's submissions, they shed no light on the duties he performed while at work. Consequently, Mr. Jagadeesh has not established that obviously crucial evidence was overlooked on this point.

[110] More importantly, there was no medical evidence provided to the CIBC stating that Mr. Jagadeesh could not perform *any* activities that required him to use his voice at this point, or that his assignment to an alternate position was medically necessary.

[111] Mr. Jagadeesh says that the investigator and the Commission also ignored an email he wrote to a Bank employee involved in the accommodation process on April 16, 2015. He complained in this email that he was suffering from throat pain, and asked for a change to his outbound calling schedule. While it is true that no specific mention was made of this email by either the investigator or the Commissioners, administrative decision-makers are presumed to have considered all of the evidence before them: *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, at para. 67, leave to appeal to SCC refused, 37793 (17 May 2018).

[112] I am also not persuaded that this email (as well as a second email that Mr. Jagadeesh wrote on July 20, 2015) were of such importance that the failure of the investigator and the Commissioners to make specific reference to them renders the Commission's decision unreasonable.

[113] Mr. Jagadeesh saw the specialist in late June of 2015. It was at this point that he was diagnosed as suffering from "Muscle Tension Dysphonia".

[114] Once again, we do not have the specialist's report in the record before us. However, the investigation report quotes from the report, stating "[i]n addition to direct voice therapy, accommodations for the workplace were also recommended to facilitate progress". The specialist



went on to state that Mr. Jagadeesh “would benefit from minimizing vocal demands ... a break from his current position would be ideal”. Mr. Jagadeesh asserts that the specialist’s report also stated that “without accommodations to reduce vocal demands, it is anticipated that inefficient voicing patterns will continue to be reinforced”, which would impede his recovery.

[115] Following his consultation with the specialist, Mr. Jagadeesh began performing non-telephonic work on June 30, 2015, while still working reduced hours. This continued until his return to full-time duties on September 18, 2015.

[116] The Corporate Medical Officer consulted with the specialist on August 24, 2015, in order to clarify Mr. Jagadeesh’s ongoing accommodation needs. The Corporate Medical Officer advised the investigator that the specialist had stated that Mr. Jagadeesh had “a minor issue”, and that he should be fine with treatment. The specialist further stated that Mr. Jagadeesh should see him again if Mr. Jagadeesh felt that he was not getting better.

[117] Following this, an Accommodation Specialist at the Bank prepared a Workplace Accommodation Report addressing Mr. Jagadeesh’s ongoing accommodation needs. The Report concluded that since Mr. Jagadeesh had received treatment for his vocal condition and had taken a break from his telephone duties, he could return to work with no further accommodation being required.

[118] On his return to full-time duties, Mr. Jagadeesh advised his manager that he did not agree that he no longer required accommodation. The manager passed this information on to Mr.

Jagadeesh's Human Resources Business Partner, who arranged a meeting on September 18, 2015, with herself, Mr. Jagadeesh, an Accommodation Specialist, the Employee Relations Representative and the Corporate Medical Officer. At this meeting, the Corporate Medical Officer confirmed his opinion that the recommendations in the Workplace Accommodation Report were accurate, and that Mr. Jagadeesh no longer required any accommodation.

[119] Importantly, Mr. Jagadeesh was told at this meeting that his situation would be reassessed if he were to provide the Bank with further medical evidence with respect to his condition and his accommodation needs.

[120] Mr. Jagadeesh acknowledges that he never provided the CIBC with any additional medical evidence with respect to his vocal condition or accommodation needs, explaining at the hearing that, in his view, he had no obligation to do so.

[121] According to Mr. Jagadeesh, the Bank was on notice that he had a medical condition that required accommodation, and that his condition would be "reinforced" if he were not accommodated properly. Having failed to provide him with the alternate position he sought, Mr. Jagadeesh says that the Bank knew, or ought to have known, that his vocal condition would require ongoing accommodation.

[122] I do not accept this argument.

[123] An employer is required to provide a disabled employee with *reasonable* accommodation. It does not have to be perfect, and it does not have to be the employee's preferred form of accommodation.

[124] The search for accommodation is, moreover, a "two-way street", and there is an obligation on individuals seeking accommodation to assist in securing the appropriate accommodative measures: *Haynes*, above at para. 30, citing *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, [1992] S.C.J. No. 75 at para. 43.

[125] The medical information that was available to the CIBC in September of 2015 indicated that Mr. Jagadeesh suffered from "a minor issue", and that doctors had anticipated that his condition would resolve itself with time. The Bank had provided Mr. Jagadeesh with reduced hours and modified duties for months, and there was no medical evidence before the CIBC in September of 2015 to substantiate Mr. Jagadeesh's ongoing need for accommodation.

[126] The CIBC was aware that Mr. Jagadeesh did not agree with the assessment in the Workplace Accommodation Report, and he was told that the Bank was willing to reassess the situation, should he provide it with additional medical evidence supporting his position. In the absence of any medical evidence supporting his alleged need for ongoing accommodation as of September of 2015, however, it was entirely reasonable for the Commission to accept the investigator's finding that the evidence did not establish that Mr. Jagadeesh required accommodation at that point.

ii. The Warning Letters and the Termination of Mr. Jagadeesh's Employment

[127] It appears that Mr. Jagadeesh unilaterally continued to take breaks between calls following the September 18, 2015 meeting. These breaks resulted in a reduction in the number of calls he made each day – a number that the Bank used as a measure of employees' productivity.

[128] This led Mr. Jagadeesh's manager to write to him on January 11, 2016, noting his repeated absences from work – something that the manager had evidently raised with Mr. Jagadeesh before. The manager also observed that Mr. Jagadeesh was taking unapproved breaks, which he had linked to his alleged need for accommodation. Noting that Mr. Jagadeesh no longer required any workplace accommodation, the manager indicated that Mr. Jagadeesh had taken 38 unapproved breaks, totalling 17 hours and 17 minutes, since the September 18, 2015 meeting. The manager further stated that the Bank's expectations had been clearly explained to Mr. Jagadeesh, and that "[i]gnoring these expectations and continuing to take unapproved time off the phones is viewed as disrespectful and insubordinate behavior and should not occur again at anytime in the future".

[129] Mr. Jagadeesh's manager noted that his performance level was trending downward, and that he was currently not meeting Bank expectations. The manager's letter went on to inform Mr. Jagadeesh that "[t]his letter is a formal disciplinary warning to you that if there is no immediate and sustained improvement in your attendance, workplace conduct and performance, further disciplinary action will be taken up to and including termination of your employment without notice or payment in lieu of notice".

[130] A Senior Manager wrote to Mr. Jagadeesh a month later, advising that the Bank continued to have significant concerns with respect to his level of performance and his continued taking of unauthorized and unapproved breaks. This letter advised Mr. Jagadeesh that an audit of his work schedule since January 6, 2016, had revealed that he had taken 130 unapproved breaks, totalling 21 hours and 4 minutes of time away from his duties. Mr. Jagadeesh was again informed that the Bank viewed this as disrespectful and insubordinate behavior, and that it should not continue.

[131] The Senior Manager also observed that employees are responsible for providing their employers with sufficient information to substantiate requests for workplace accommodation. Mr. Jagadeesh was again told that “[i]f there has been a change in your workplace accommodation needs and you have information to substantiate the request for a workplace accommodation, please let us know”. Once again, no such information was forthcoming from Mr. Jagadeesh.

[132] The Senior Manager also expressed concerns about Mr. Jagadeesh’s workplace conduct, in particular, a conversation Mr. Jagadeesh had with his manager, which was described as being an “unprofessional and disrespectful conversation”. This appears to relate to the alleged discussion regarding Mr. Jagadeesh’s need to join the “group of gay and bisexual managers” at the Bank if he wanted to get ahead in his career. More will be said about this allegation in the next section of these reasons.

[133] The Senior Manager's letter concluded by advising Mr. Jagadeesh that the CIBC had regrettably "reached a point where [his] workplace conduct and the level of performance can no longer be tolerated. Consequently, this letter constitutes a final disciplinary warning".

[134] On May 10, 2016, Mr. Jagadeesh was advised that his employment with the CIBC was terminated for cause, without payment. He was told at a meeting that day that his employment was being terminated because of performance issues and his overall workplace conduct.

[135] The investigator concluded that the evidence did not establish that Mr. Jagadeesh's vocal disability was a factor in the termination of his employment.

[136] Mr. Jagadeesh's primary argument appears to be that his sexual orientation prompted the disciplinary letters and was the motivating factor in the Bank's decision to terminate his employment as well as its refusal to promote him. As noted, I will address the reasonableness of the Commission's decision on these points in the next section of these reasons. However, to the extent that Mr. Jagadeesh suggests that his vocal disability may have played a role in the termination of his employment, suffice it to say that this argument cannot succeed.

[137] The investigator reasonably determined that the evidence before her did not establish that Mr. Jagadeesh suffered from a disability that required accommodation as of September of 2015. There is also nothing in the record that would suggest that the CIBC perceived Mr. Jagadeesh to be suffering from a disability after the summer of 2015. Given this, it was entirely reasonable for

the investigator to conclude that Mr. Jagadeesh's past disability was not a factor in the CIBC's disciplinary actions or its decision to terminate his employment.

iii. Whether Mr. Jagadeesh's Sexual Orientation was a Factor in his Treatment by the CIBC

[138] As noted earlier, Mr. Jagadeesh claims that his manager advised him that unless Mr. Jagadeesh joined the "group" of gay or bisexual managers and employees, there was "no hope" for him at the CIBC. According to Mr. Jagadeesh, his manager also told him that "every male Manager both here and downstairs are gay/bisexual people", and they would only promote other gay or bisexual individuals.

[139] Mr. Jagadeesh states that he applied for 17 positions within CIBC over the course of his employment there, and despite his qualifications and experience, the Bank refused to employ him in any position other than the call centre position. He attributes this to the fact that he is a heterosexual male who had refused to join the "gay/bisexual group" at the CIBC. Indeed, Mr. Jagadeesh states in his complaint form that he believes that his refusal to join "the group" "may be the primary reason for all [his] problems & discrimination [at] CIBC", including the termination of his employment.

[140] Although Mr. Jagadeesh claims that his refusal to join "the group" of gay and bisexual managers and employees at the CIBC may have been the primary reason for all of the problems and discrimination he experienced at the Bank, he made only brief submissions before us with respect to this aspect of his human rights complaint.

[141] Mr. Jagadeesh is a well-educated individual who was clearly very frustrated by his inability get ahead during his time at the CIBC. Indeed, this frustration is palpable in Mr. Jagadeesh's July 20, 2015 email, and in a second email he wrote to CIBC management on August 21, 2015, where he once again touted his qualifications and emphasized his willingness to serve the Bank in a different capacity.

[142] While Mr. Jagadeesh's frustration may be understandable, the fact that he was unable to progress in his career at the CIBC does not lead inexorably to the conclusion that he was the victim of discrimination based on his sexual orientation or his vocal disability.

[143] It is clear from the investigation report that the investigator fully understood the nature of Mr. Jagadeesh's allegations of discrimination based on his sexual orientation, and she investigated these allegations thoroughly.

[144] The investigator noted in her report that Mr. Jagadeesh's manager denied ever making the comments attributed to him. According to the manager, Mr. Jagadeesh had approached him saying "I know that you are gay and that's why you treat me differently". The manager was sufficiently concerned about Mr. Jagadeesh's comment that he told his own manager what had happened, and documented it in an email.

[145] Mr. Jagadeesh's manager further advised the investigator that Mr. Jagadeesh's allegations were not true. Insofar as hiring and promotions were concerned, the manager stated that the CIBC workplace is competitive, and that it had taken the manager four years to move up into a



new position. The manager further stated that he had not witnessed any Bank employee receiving a promotion because they were gay or bisexual, and that the Bank bases promotions on performance and experience.

[146] The investigator noted that the manager's version of events was corroborated, to some extent, by the contemporaneous notes that the manager had made because of his concerns with respect to Mr. Jagadeesh's conduct at the meeting in question. The manager's version of events was further corroborated to a degree by notes taken at a subsequent meeting between Mr. Jagadeesh, a Senior Manager and a representative from Human Resources.

[147] Over the course of her investigation, the investigator interviewed two former Team Leaders (including Mr. Jagadeesh's manager) and two former Senior Managers. All four denied that they were gay or bisexual, and all four were involved with, or married to women. None of these individuals could identify a single manager working with Mr. Jagadeesh at the time in question who identified as LGBTQ. Moreover, none of these individuals ever observed the Bank favouring the hiring or promotion of gay or bisexual employees over other employees. Indeed, Mr. Jagadeesh was himself unable to identify any individual who received a promotion because of their sexual orientation.

[148] Mr. Jagadeesh applied for three positions during his first year at the Bank. CIBC policy precluded new employees applying for other positions within the first year of their employment, without the express permission of their managers. Consequently, the investigator did not

examine the hiring process followed in these cases, and Mr. Jagadeesh does not now challenge that decision.

[149] The investigator carefully examined the process followed with respect to the other 14 job competitions in which Mr. Jagadeesh participated. This examination revealed that Mr. Jagadeesh's application was screened out at an early stage for 13 out of the 14 positions he applied for because he did not possess the relevant qualifications. None of the individuals screening out Mr. Jagadeesh's applications worked directly with him, and none of the three individuals involved in the screening process who remained employed by the CIBC knew Mr. Jagadeesh, either directly or indirectly. It would be reasonable to assume from this that none of the individuals screening out Mr. Jagadeesh's job applications would have been aware of his sexual orientation.

[150] Insofar as the 14th position was concerned, Mr. Jagadeesh was screened into the competition, but the hiring manager ultimately decided not to interview him. The hiring manager no longer worked for the CIBC at the time of the investigation, but the investigator noted that this individual had worked in Client Account Management, which was a completely separate line of business from Telephone Banking, where Mr. Jagadeesh worked. In addition, the hiring manager and Mr. Jagadeesh never worked directly or indirectly with one another, and they worked in separate buildings that were approximately 15 minutes apart by car. From this, it would once again be reasonable to assume that this individual would be unaware of Mr. Jagadeesh's sexual orientation.

[151] The investigator thus concluded that the evidence did not demonstrate that Mr. Jagadeesh's sexual orientation was a factor in him being denied promotions at the CIBC or in the decision to terminate his employment. This was a conclusion that was reasonably open to the investigator on the record before her, and the Commission did not err in adopting the investigator's findings on these points.

[152] Finally, Mr. Jagadeesh asserts that the CIBC "lied" to Service Canada on his post-termination Record of Employment (ROE). The Bank indicated on this form that the reason for issuing the ROE was "Dismissal/Terminated within probationary period". According to Mr. Jagadeesh, this caused him to lose eligibility for "Ontario Programs for the unemployed". The CIBC further "lied", Mr. Jagadeesh says, by incorrectly issuing two ROEs in the fall of 2015 indicating he was on a leave of absence, when he was actually working.

[153] The CIBC acknowledged that an error was made in the system on September 18, 2015, when it coded Mr. Jagadeesh as having starting a leave of absence on the same date he was returning to full-time duties. The investigator noted that there did not appear to have been any negative consequences for Mr. Jagadeesh resulting from this error.

[154] Insofar as the ROE issued following the termination of Mr. Jagadeesh's employment was concerned, the investigator noted that the Bank erroneously stated on the ROE that Mr. Jagadeesh had been dismissed/terminated during a probationary period. The Bank had, however, used the correct "M" code for dismissal on the ROE. As a result, any possible negative

consequences for Mr. Jagadeesh would have been unrelated to the erroneous notation that his employment had been terminated during his probationary period.

[155] Once again, these were findings that were reasonably open to the investigator on the record before her, and the Commission did not err in adopting the investigator's findings on these points.

## VII. Conclusion

[156] Mr. Jagadeesh has thus failed to demonstrate that the Commission failed to follow the directions of the Federal Court in *Jagadeesh #1*, or that the Commission arrived at its decision through a process that was unfair.

[157] Mr. Jagadeesh has also not established that the investigator failed to consider any of the fundamental issues raised in his human rights complaint. The investigation report in this case was lengthy, detailed and thorough, and it clearly explained why the evidence did not support any of the allegations of discrimination contained in Mr. Jagadeesh's complaint form.

[158] Indeed, I agree with the Federal Court's statement in *Jagadeesh #2* that the investigation report "reveals a methodical, comprehensive, and balanced analysis that provides ample justification supporting the Officer's recommendation that the Commission dismiss the complaint [...] based on insufficient evidence to warrant further inquiry": at para. 35.

[159] 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 Mr. Jagadeesh’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. Mr. Jagadeesh has thus failed to establish that the Commission’s decision to dismiss his human rights complaint was unreasonable.

[160] Consequently, I would dismiss the appeal.

VIII. Costs

[161] The CIBC seeks its costs fixed at \$1,500.00. Mr. Jagadeesh asks that no order of costs be made against him, should his appeal be unsuccessful. The amount requested by the Bank is eminently reasonable. Consequently, I would award the Bank its costs fixed in the all-inclusive amount of \$1,500.00.

“Anne L. Mactavish”

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J.A.

“I agree.

Mary J.L. Gleason J.A.”

“I agree.

Judith Woods J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-288-23

**STYLE OF CAUSE:** AAREN JAGADEESH v.  
CANADIAN IMPERIAL BANK  
OF COMMERCE

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 25 AND 26, 2024

**REASONS FOR JUDGMENT BY:** MACTAVISH J.A.

**CONCURRED IN BY:** GLEASON J.A.  
WOODS J.A.

**DATED:** OCTOBER 21, 2024

**APPEARANCES:**

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