

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140513

Docket: A-62-13

Citation: 2014 FCA 124

**CORAM: TRUDEL J.A.
NEAR J.A.
SCOTT J.A.**

BETWEEN:

MOHIE EL DIN ALI

Appellant

and

**ATTORNEY GENERAL OF CANADA
and
THE TORONTO-DOMINION BANK**

Respondents

Heard at Ottawa, Ontario, on April 29, 2014.

Judgment delivered at Ottawa, Ontario, on May 13, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

THE COURT

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REASONS FOR JUDGMENT OF THE COURT

Background and proceedings

[1] This is an appeal of a decision of the Federal Court, dated January 15 2013, in which Rennie J. (the Judge) dismissed Mr. Mohie El Din Ali's (the appellant's) application for judicial review of a decision of the Canadian Human Rights Commission (the Commission) to not refer his complaint to the Canadian Human Rights Tribunal. The appellant alleged that The Toronto-

Dominion Bank (TD Bank) denied him banking services and discriminated against him because he is Arab and Muslim (Reasons at paragraph 2).

[2] The appellant had attempted to cash a cheque in the amount of \$2,448.00 at a TD Bank branch in Ottawa but was notified that a hold would need to be placed on this deposit for five days. A bank employee explained that the hold was necessary in case the cheque was found to be fraudulent or was dishonoured, but that he could have access to these funds immediately if he obtained a certified cheque or money order. The appellant alleges that TD Bank's employees asked him inappropriate questions about the source of the cheque and his employment and that they decided to hold the funds because he is Arab and Muslim and because the company who had issued the cheque had a Muslim name. He thus filed a complaint with the Commission alleging that TD Bank's decision to hold the funds, as well the bank's employees' conduct towards him, constituted discrimination on the basis of race and religion.

[3] The Commission dismissed the appellant's complaint pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Right Act*, R.S.C. 1985, c H-6. Its investigator failed to find a link between TD Bank's conduct and a prohibited ground of discrimination. Rather, the Commission concluded that TD Bank had been acting in conformity with its Hold Funds Policy when it exercised its discretion to place a hold on the appellant's cheque. More specifically, it found that the bank's decision to hold the cheque was based upon the appellant's banking and credit history and a concern that if the cheque were to be dishonoured, the appellant would have insufficient funds to cover the amount of the cheque.

[4] The appellant consequently applied for judicial review before the Federal Court, alleging that the Commission's decision was unreasonable, and that the Commission was biased and breached the rules of procedural fairness.

Federal Court's decision

[5] Applying a standard of correctness, the Judge found that there was no breach of procedural fairness and nothing in the record to support the appellant's allegations regarding the existence of an apprehension of bias.

[6] The appellant had argued that the Commission acted unfairly as it did not notify him promptly that TD Bank had made additional submissions in response to the Commission's preliminary assessment report. After the preliminary report was issued, the parties were given the opportunity to file written submissions with a deadline set for November 29, 2010. The Bank filed further submissions on November 25, 2010 and thus within the deadline. However, the Commission only notified the appellant on December 3, 2010 about these additional submissions and thus the appellant complained that this was unfair, as he did not have the opportunity to respond. The Judge explained that there was no unfairness in these circumstances. The Commissioner notified the appellant of TD Bank's submissions soon after they were filed and the Commission granted the appellant the opportunity to file additional submissions, and he did so on December 20, 2010.

[7] The appellant also alleged that certain pieces of evidence and submissions were not disclosed to him and mentioned specifically the Hold Funds Policy and his banking history.

However, the Judge explained that the record shows that these documents were, in fact, disclosed to the appellant.

[8] In addition, although the appellant argued that the Commission did not conduct a thorough investigation, the Judge held that he did not see any evidence to support this contention. Rather, the investigator interviewed both parties and requested information from TD Bank. Moreover, both parties were given the opportunity to present evidence and make written submissions.

[9] In reviewing the Commission's decision, including the investigator's report, the Judge applied a standard of reasonableness and held that there was no link that could be established between the appellant's complaints and a prohibited ground of discrimination. Rather, he found that all the evidence was reflective of a fair and reasonable application of TD Bank's Hold Funds Policy.

Analysis

[10] At the hearing of this appeal, the appellant essentially repeated the submissions he had made to the Federal Court inviting our Court to intervene and to set aside the decision below and allow his application for judicial review.

[11] Having carefully considered the appellant's oral and written submissions, the Judge's reasons, and the record before us, we have not been persuaded that our Court's intervention is warranted. The Judge, at paragraph 11 of his reasons, identified the proper standard of review

and applied it correctly to the Commission's decision (*Telfer v. Canada (Revenue Agency)*, 2009 FCA 23 at paragraphs 18-19, leave to appeal to S.C.C. refused, 33095 (June 11, 2009)). We agree with the Judge's findings that nothing in the record or in the appellant's submissions support a claim that the decision of the Commission was unreasonable or that there was a breach of procedural fairness or a reasonable apprehension of bias.

Conclusion

[12] As a result, the appeal will be dismissed with costs payable to TD Bank. The Attorney General did not participate in the appeal. TD Bank's request that costs be fixed by the Court was dismissed at the hearing. Counsel for the respondent was invited to make his submissions as to costs to the Assessment Officer per Rule 405 of the *Federal Courts Rules* (SOR/98-106).

"Johanne Trudel"

J.A.

"David G. Near"

J.A.

"A.F. Scott"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-62-13

STYLE OF CAUSE: MOHIE EL DIN ALI v.
ATTORNEY GENERAL OF
CANADA AND THE TORONTO-
DOMINION BANK

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: APRIL 29, 2014

REASONS FOR JUDGMENT OF THE COURT BY: TRUDEL J.A.
NEAR J.A.
SCOTT J.A.

APPEARANCES:

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