Federal Court  Cour fédérale

Date: 20160830

Docket: T-769-12

Citation: 2016 FC 988

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 30, 2016

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

ÉRIC MANFOUMBIMOUITY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Manfoumbimouity [the applicant] has initiated several proceedings before this Court. This time, it is an application for judicial review of a decision rendered by the Human Rights Commission [the Commission], which found that the complaint submitted by the applicant was trivial, frivolous, vexatious or made in bad faith, under the provisions of section 41 of the

Canadian Human Rights Act, R.S.C., 1985, c. H-6 [the Act]. According to the Commission, the matter of the complaint submitted to it had already been adjudicated upon elsewhere.

[2] As a result, the Commission did not rule on the complaint. The applicant therefore seeks judicial review before this Court pursuant to section 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7. As we will see, this case is particularly complex.

II. Overview

[3] The events leading to this application for judicial review occurred over quite a short period in early 2007. The complaint before the Commission explicitly states that the events occurred between April and June 2007, even though the applicant participated in the training provided between January and June 2007. At the time, the applicant was attempting to join the ranks of the Canadian Armed Forces [the Forces].

[4] During his training period, the applicant complained that he had been the subject of an investigation conducted by the military police based on a denunciation by another recruit, according to which the applicant and another black person, also a recruit, had consumed cocaine. The applicant was also displeased with the way in which he was released from the Forces. According to the Commission, these issues have already been adjudicated upon, making the complaint frivolous or vexatious.

[5] As we will see, it was not easy to determine the scope of the complaint and what it involved. According to the applicant, he had been the target of an unfounded investigation because of his race, and his involuntary release had been tainted by racism. In addition, an

instructor apparently treated him so unfairly that his treatment amounted to racial discrimination. What further complicated matters was the applicant's propensity to extend his allegations beyond the scope of the complaint as submitted. This case must be reviewed based on the very specific facts that provide the basis for his complaint before the Canadian Human Rights Commission. The various grievances that the applicant developed over time were not before the Commission. He would have wanted the Commission to review human rights allegations in the broad sense whereas his complaint itself had a much narrower focus. The judicial review proceedings must be limited to the Commission's decision not to rule on the complaint submitted. It is essential to properly define what the complaint that was submitted involves in order to determine the framework of this application for judicial review. The review will respond only to the allegations made. Simply put, the judicial review is limited to the Commission's decision, which itself is limited to the complaint it was addressing.

[6] Because the Commission is charged with ruling on any complaint before it, it would be difficult to see how the Commission could be criticized for limiting itself to the sole complaint before it, and not considering the additional elements that the applicant would have wanted to submit after the fact. It is therefore the complaint that constitutes the basic framework upon which the application for judicial review of the Commission's decision may be addressed.

III. The complaint

[7] The complaint that was ultimately submitted to the Commission has a certain history of its own, which is worth briefly relating because it helps understand the confusion created by the applicant.

[8] The applicant attempted to submit an initial complaint on February 11, 2008. A standard letter explaining the required format, which the applicant failed to use, provided the rationale for refusing to receive the complaint on March 5, 2008. The letter also indicated that the Court can refuse to hear a complaint if other remedies are available.

[9] The second complaint is dated April 18, 2008. A note dated May 5, 2008, in the Commission's files indicated that this second complaint was also inadmissible because it appears that the reference in the complaint form to appended documents increased the number of pages. As a result, the complaint exceeded the number of pages allowed. A complaint must be stated in three pages. The note specified that there was some doubt as to whether [TRANSLATION] "the complainant will send us his new form." The applicant submitted a third complaint.

[10] The Commission officer asked the applicant [TRANSLATION] "why he did not discuss his release." He said [TRANSLATION] "the reason for his release did not appear to be related to his race and colour" (memo dated May 5, 2008). However, in the complaint leading to the application for judicial review, the applicant refers to his release, but does not say how his race was involved.

[11] The applicant submits a new complaint. This third complaint form, dated June 4, 2008, included two and a half pages. The complaint presented two relatively specific allegations:

a) First, the applicant related some of the twists and turns involved in an investigation conducted by the military police pursuant to a denunciation made by another recruit, according to which the applicant allegedly consumed cocaine. The applicant alleged racial profiling without providing any details. According to the complaint, it appears that

the events that the applicant was complaining about occurred on April 23, 2007. His subsequent attempts to ascertain the outcome of the investigation were unsuccessful according to his complaint.

b) The other part of the complaint before the Commission involved his release from the Forces. The complaint provided some details on the interaction between the applicant and a sergeant, from June 22 to 28, 2007, which led to the applicant's release. The sergeant's recommendation was adopted by the Commanding Officer of the Canadian Forces Leadership and Recruit School. The applicant left the military base on July 30, 2007. On the same day, he submitted a grievance, which was ultimately resolved on March 2, 2011, with the Chief of Staff's decision.

The complaint itself contains a specific allegation regarding racial discrimination or profiling with respect to the military police investigation. The complaint alleges that the symptoms experienced by the applicant (sniffles, glassy eyes, handkerchief in hand, trips to the washroom) arouse suspicion if the person is black, but are easily explained away if the person is white. With respect to his mandatory release from the Forces, the applicant did not make any specific allegations of racial discrimination. On the contrary, the applicant only challenged the grounds used to force his release: failure to pass practical exams, lack of physical aptitude, problems with his attitude and difficulty adapting to military life. The applicant used the last of the three pages allocated to him to indicate that his attempts to find employment elsewhere in the Forces or within police forces were met with rejection [TRANSLATION] "given my reputation."

[12] But the case would not end there. On the same day, June 4, 2008, the applicant wrote to the Commission to [TRANSLATION] "add important information regarding my statement that I mailed you this morning (June 4, 2008)." This information consisted of two complaints against a sergeant, which the applicant submitted after his mandatory release on June 28, 2007. These

complaints alleged that the instructor harassed the applicant by often telling him in front of his platoon that he wanted the applicant to leave the Forces, and that an attempt was made to force the applicant to shave although he had skin problems. The applicant said these complaints were destroyed. There is no evidence. The same person at the Commission who had communicated with the applicant on May 5, communicated with him again after June 4. A note in the files dated June 16, 2008, indicated that the applicant had been notified that his letter dated June 4 could not be added to the form dated June 4. The applicant was then offered the option to add the new information in the remaining space on the form. Although the complaint form was not adjusted, as the applicant would have liked, [TRANSLATION] "it was agreed that a note would be placed in the files to explain why the additional information provided by the complainant would not be attached to the complaint." As a result, the allegations are not part of the docket before the Commission.

[13] The only complaint addressed by the Commission was the one dated June 4, 2008. This was the complaint that complied with the Commission's requirement and upon which the Commission would rule on March 7, 2012. The evidence on the record is that the addition made on June 4 was not part of the complaint submitted following the applicant's decision not to modify his complaint again. Nevertheless, the applicant would continue to claim throughout these proceedings that these additions were pursuant to complaints, which were deemed inadmissible due to irregularities or other grievances.

[14] A decision not to rule on this complaint because it was inadmissible under paragraph 41(1)(d) was rendered. This decision regarding this sole complaint is now being challenged in judicial review.

[15] The June 4, 2008 complaint before the Commission was suspended under paragraph 41(1)(a) of the Act to allow the applicant to exhaust "grievance or review procedures otherwise reasonably available." The complaint was reactivated on May 5, 2011, after three military proceedings had rendered their decisions. I note that reactivating the complaint does not provide the option to add allegations. This simply means that the suspended complaint, which had therefore not been heard, would now be heard.

IV. Decision for which judicial review is sought

[16] The decision of the Commission at issue here was rendered on March 7, 2012 (but sent on March 14, 2012), but was only received by the applicant a few days later. As a result, the application for judicial review was initiated on April 16, 2012. The Notice of Application stated that the purpose of the application was related to the fact that the applicant was allegedly disadvantaged during his employment and that he was subjected to harassment from his supervisors in the Forces. The application for judicial review sought judicial review of two specific allegations:

- First, the applicant asked this Court that his allegations of racism / racial profiling against his chain of command (i.e. at least his allegations of racism / racial profiling against Master Corporal Legault and Sergeant Ouellette) be studied by the Canadian Human Rights Commission.

- Second, the applicant asked this Court that his allegations of racial profiling against Police Officer Deschamps be studied by the Canadian Human Rights Commission.

[17] Before we go any further, I would like to make a comment. This application for judicial review, which was repeatedly amended, and this case are both plagued by the same problem. The applicant goes beyond the scope of the complaint that he submitted to the Commission and which was adjudicated upon. He complains of having been harassed by his [TRANSLATION] "chain of command"; however, a very generous reading of his complaint before the Commission reveals no such allegations. The addition of alleged actions of a master corporal was not appropriate with respect to the complaint as submitted. The purpose of an application for judicial review is not to broaden the debate before the administrative tribunal. In this respect, the Court must deal only with the allegation in the application for judicial review and ignore further allegations.

[18] The submissions made by the applicant after he received the initial Report on Sections 40/41, each of which are at least 10 pages long, obviously discuss the military police investigation, but they also seek to broaden the scope of the complaint to deal with incidents that are not part of the allegation that he made. However, the summary of the complaint is very clear and its contents are not contested.

[19] It seems the applicant repeatedly complains that, despite the complaints and grievances he has submitted, he says, all the allegations of discrimination were not studied or were not studied adequately by the Forces. According to the applicant, the Commission's refusal to render a decision would be unreasonable. However, what needs to be done, is to demonstrate that the

decision of the Commission, which is simply studying the complaint before it, is unreasonable when it finds that the complaint, and nothing else, is trivial, frivolous, vexatious or made in bad faith. The complaint before the Commission constitutes the limits of the action that the Commission may take. The Commission could not have made an error by refusing to examine new allegations presented during submissions on its Report on Sections 40/41, which deals only with the complaint as submitted. The applicant was largely exceeding the scope of his own complaint. It seems obvious to me that he wanted to further confront the Forces. But the forum, which the Commission constitutes, is not the right one if the applicant exceeds the scope of his complaint. This approach needlessly complicated the case. We will deal only with the decision for which judicial review is sought, whose scope is defined by the complaint as submitted before the Commission.

[20] A significant portion of the submission delivered by the applicant's counsel dealt with the allegations made in the complaints, which were deemed inadmissible, and the submissions made by the applicant regarding the Report on Sections 40/41, which do not deal with the complaint, but seek to broaden the debate. This attempt failed throughout every step of the proceedings and also failed before this Court.

[21] The text of the March 7, 2012 decision reads as follows:

> [TRANSLATION]
>
> The complainant proceeded with his allegations of discrimination through the impleaded party's review procedures. These procedures determined that the allegations of discrimination had no merit. Nevertheless, the complainant managed to win a favourable change in the release category. In addition, the remedies requested by the complainant in the grievance before the Chief of Staff did not include a request to be readmitted to the Forces. Thus, there do

> not seem to be any other issues that could be more appropriately dealt with by the Commission.

[22] As is often the case, this decision by the Commission is in fact the confirmation of the investigation report prepared and completed on October 27, 2011, and on which submissions were presented by the parties. The report constitutes the reasons for the decision (*Vos v. Canadian National Railway Company*, 2010 FC 713). Largely based on *Canada Post Corp. v. Barrette*, [2000] 4 FC 145, the investigator was of the view that having first examined the decisions of the other organizations, because the allegation before the Commission had undergone internal review within the Forces, it was appropriate to consider the complaint to be trivial, frivolous, vexatious or made in bad faith, in accordance with the provisions of paragraph 41(1)(d) of the Act. This paragraph reads as follows:

41 (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that	41 (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :
. . .	[...]
(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or	d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;

[23] Based on the applicant's complaint, the investigator understood that the applicant was of the opinion that [TRANSLATION] "despite the fact that he had exhausted three settlement procedures, there were still some issues and fundamental allegations that had not been addressed" (paragraph 15 of the Report on Sections 40/41). Three decisions before the military administrative proceedings were at issue according to the complainant before the Commission,

the applicant in this case. According to the complainant, other allegations were not addressed and those that were addressed were not dealt with adequately. How the allegations in the complaint were not dealt with adequately remained very unclear.

[24] The three proceedings are those before the Canadian Forces Provost Marshal, the Military Police Complaints Commission of Canada [the Complaints Commission] and the grievance submitted to the Chief of Staff.

A. *Canadian Forces Provost Marshal (August 20, 2008)*

[25] The complaint before the Provost Marshal was made one year after the investigation conducted by the military police and the applicant's departure from the Forces. The charges against the investigator and a military police officer involved in the investigation they conducted are presented over several pages.

[26] With respect to the Canadian Forces Provost Marshal, the Commission investigator considered that two allegations were under review. First, there was a complaint that an investigation conducted by the military police pursuant to a denunciation, according to which the applicant and a colleague who was also a black person allegedly consumed cocaine, constituted a form of racial profiling. The second allegation suggested that the investigation to which the complaint was subjected was inadequate and unwarranted. With respect to the first allegation, the Provost Marshal's decision stated that there was no racial profiling because the police officer had acted in a logical, non-discriminatory manner toward the two black suspects under investigation by deciding to interview them. As for the second allegation, according to the

Provost Marshal, the investigation was warranted and established the truth in favour of the two persons who were interviewed. It determined that no offence had been committed.

B. *Military Police Complaints Commission of Canada (December 22, 2009)*

[27] Not satisfied, the applicant requested that the complaint submitted to the Provost Marshal be reviewed. His complaint stated that certain events had not been considered by the Provost Marshal.

[28] The Complaints Commission reviewed the Provost Marshal's findings in a 19-page document. The Complaints Commission stated that it was satisfied that the military police had conducted an investigation pursuant to suspicions reported by one of the applicant's colleagues and that the scope of the investigation was reasonable, not having been influenced in any way by abusive considerations such as the suspect's race. As the Commission noted, the denunciation, and therefore the investigation, was based on the observation of symptoms, not racial factors. When allegations were made that a crime had been committed, the military police was required to investigate pursuant to its own policies and the policies of the Canadian Forces Leadership and Recruit School where the applicant had enrolled. As a result, racial profiling could not have been at issue. In other words, the investigation had to be initiated because of the type of allegation in a military context. Contrary to the allegations in the complaint before the Commission on June 4, 2008, the Military Police Complaints Commission of Canada's review found that the applicant had in fact been advised of the results of the investigation because the applicant received this information himself from a master corporal in the days that followed.

C. *Chief of Staff*

[29] Finally, four paragraphs in the report prepared by the Commission investigator were dedicated to reviewing the grievance submitted to the Chief of Staff. The grievance involved a very generic allegation regarding the circumstances surrounding the decision to release the applicant. The assistance that the applicant should have received to prepare for a Progress Review Board [meeting] leading to his release was apparently not provided. The remedy sought was that the involuntary release be overturned and the Initial Assessment Period (IAP) be credited. Because the applicant was not seeking to re-enrol, the option to re-enrol was not requested as a remedy. The applicant now complained that his [TRANSLATION] "chain of command" was guilty of having subjected him to harassment and racial conduct. The applicant demanded that he be granted $1.9 million in damages, which he was in fact demanding in a lawsuit initiated in this Court.

[30] After reviewing the events that occurred at the end of June 2007, which led to the applicant's release, the Chief of Staff believed that some incidents involving the applicant were not as serious as the instructors had indicated in June 2007. According to the investigator, the Chief of Staff's March 2, 2011 decision found that the Progress Review Board (PRB) had been convened prematurely, and this part of the grievance was granted. With respect to the harassment complaint that the applicant alleged that he had submitted, the Chief of Staff was of the view that the burden of demonstrating that a formal complaint had been made in writing had not been discharged, and he could not determine whether the rules in force had been followed. No evidence of such a complaint was found. The remedy granted sought to redress the involuntary

release, since the applicant indicated he no longer wanted to enrol: the file was therefore amended to make the release voluntary and to have the Initial Assessment Period credited. In the investigator's opinion, [TRANSLATION] "this human rights complaint is based on allegations of unfavourable treatment during employment and termination of employment, not harassment. As a result, the Commission cannot review this allegation." (Report on Sections 40/41, paragraph 23).

[31] At any rate, he came to the following conclusion in paragraph 24 of his report:

> [TRANSLATION]
>
> 24. The decision was rendered on March 2, 2011—some remedies were granted: the Initial Assessment Period qualification was granted, and the release item was to be changed (change the reason from Not otherwise advantageously employable to On Request – Other Causes). Regarding the issue of compensation, the decision indicated that the Chief of Staff did not have the authority to grant financial compensation or an *ex gratia* payment.

[32] The investigator subsequently produced paragraph 26 of his report as a review, which he entitled "General comments":

> [TRANSLATION]
>
> 26. This case contains a lot of information, some of which is contradictory, including information discussed in the previous paragraphs of this report. There are also gaps in some of the information: for example, on how this case began as a review of military police conduct, which led to a decision to confirm the complainant's release from the Forces. Nevertheless, with respect to the human rights allegations that the complainant raised during the internal complaint proceedings, it seems that the decision-makers studied these allegations. Although the human rights issues did not undergo the most thorough review possible, the review was adequate. The same can be said of the results: although the complainant did not receive all the remedies he sought, he received some, including an amendment of his release category.

In conclusion, paragraph 27 of the Report on Sections 40/41 was endorsed by the Commission and was reproduced in paragraph 21 of these reasons for the decision.

V. The applicant before this Court

A. *Scope of the application*

[33] The applicant's submissions are limited by his complaint before the Commission. Repeated attempts to expand the scope were unsuccessful. He argues that the Commission's decision must be quashed because all the allegations of discrimination were not studied in the review procedures followed by the Forces. If they were studied, he claims the study was inadequate. However, only what is validly before the Commission, i.e. the complaint dated June 4, 2008, can be cited.

[34] However, the Commission's decision implies that the complaint before the Commission is trivial, frivolous, vexatious or made in bad faith and that this is the sole decision upon which a judicial review can be performed by this Court. It is our understanding that the applicant would have wanted other human rights allegations to be studied because they had not been examined by the Forces. But what makes this conclusion eligible for a judicial review whose scope is circumscribed by a complaint that the Commission had deemed to be frivolous or vexatious?

[35] The applicant has acted without counsel throughout a large part of this case. Counsel has only recently started to act on his behalf, and we can understand to a certain extent that some time has elapsed between the complaint and the Notice of Application signed by the applicant

himself and the memorandum of fact and law signed in November 2015. At any rate, counsel must deal with the existing complaint, which defines the application before this Court.

[36] A significant portion of the memorandum of fact and law is dedicated to a narrative of the facts, which is based on affidavits that were deleted from the docket following judicial decisions. It is a ploy used all too often in this case. As previously indicated, this applicant has constantly attempted to broaden the debate beyond the scope that he set out in his complaint as submitted. The same approach can be observed in the memorandum of fact and law. We also heard it during oral submissions. The Commission gave the applicant two opportunities to comment on the report (directly on the report and on the comments made by the Forces' representative), which should eventually be used by the Commission to render its decision under paragraph 41(1)(d). The report described the complaint; it was absolutely clear. The applicant made submissions (limited to 10 pages each). They were not so much comments on an investigative report regarding a specific complaint as completely new, broader allegations, with the second series of submissions even alleging instances of concealment and irregularities. There were no such allegations in the complaint discussed in the Commission's report. The applicant acted as though the complaints, which were inadmissible because they were noncompliant, were before the Commission.

[37] With respect to the remainder of the applicant's submissions, they appear to me to have some relevance in relation to his original complaint that the military police investigation was tainted with racism. They sought to point out errors during the police investigation; however, most of these errors were of little probative value with respect to the allegation of racism. The

applicant disagrees with the findings of the Provost Marshal and the Complaints Commission. The applicant argues that the military police investigation should have been conducted differently or not at all. But that is not the purpose of the judicial review before this Court.

[38] The Canadian Human Rights Commission's decision indicated that it [TRANSLATION] "had studied the report that was previously disclosed to you, as well as all related submissions sent afterwards." The applicant argued that the investigator's initial report had not been amended after he had provided his submissions. This is yet another example of a refusal to see that the submissions were inadmissible. Clearly, the applicant's attempt to broaden the debate failed, as it should have, because this was not the complaint that the Commission was supposed to review.

[39] With respect to the Commission's decision itself, the applicant argued that his complaint was not trivial, frivolous, vexatious or made in bad faith because the Forces' internal bodies did not arrive at this conclusion (amended memorandum of fact and law, paragraph 25). If I understand this statement, the complaint submitted before the Commission was not frivolous or vexatious because the Forces' internal bodies themselves did not find that the allegations made before them were frivolous or vexatious. The applicant adds, without ever articulating an argument, that the Commission did not render an adequate decision because it based its conclusion on an erroneous finding of fact.

[40] As I have attempted to explain, judicial review proceedings must be conducted with rigour in order to render a decision, based on contradictory debate, on the issues that are raised. The parties, as well as the Court, must operate within the framework created by the proceedings.

It would be unfair to move the goalposts along the way. By adding facts and allegations, the applicant fails to comply with the procedural framework that must prevail.

[41] It is the Commission's ruling on this complaint that is subject to judicial review. The Commission cannot be criticized for not exceeding the scope of the complaint that was submitted. In fact, it could be criticized for going beyond it. Its role is not to study all the human rights issues that the applicant would now want to raise. He is limited to the complaint that he made. As the copy of the minute book submitted by the respondent eloquently demonstrates, this Court rejected the applicant's attempts to submit affidavits or add allegations. Even the amended memorandum of fact and law also refers to evidence, which, incidentally, was rejected. The respondent's counsel submitted an amended memorandum of fact and law to the Court, in which many passages, covering part or all of 21 of the 91 paragraphs, had been redacted.

[42] It is therefore essential that we limit ourselves to the allegations made in the complaint, which were adjudicated upon by the Commission. The applicant is entitled to complain about this adjudication, and this is the sole issue upon which this Court can be asked to adjudicate. The applicant must argue that the decisions of the military proceedings did not deal with the allegations at issue in his complaint or, if they did, they were dealt with so inadequately that the Commission did not act reasonably when it stated that [TRANSLATION] "the complainant proceeded with his allegations of discrimination through the review procedures" and that there [TRANSLATION] "do not appear to be any outstanding issues that could be more appropriately dealt with by the Commission." In other words, the Commission's decision could not be reasonable if only human rights issues raised by the complaint were not dealt with adequately.

B. *Positions of the parties*

[43] A large number of pages in the applicant's memorandum of fact and law focused on discussing the military police investigation into allegations of cocaine possession involving the applicant and another black recruit. I counted no fewer than 31 paragraphs on more than 16 pages dealing with various statements presented as errors of fact. A large number of these statements are found in the additional submissions made by the applicant regarding the Commission investigator's report.

[44] The applicant also makes general allegations of acts of discrimination during his training. Not only are the allegations not covered by the complaint that was submitted, they are sorely lacking in detail. They are general allegations, even in the specific context of his release. I reiterate that the applicant stated that the reasons for his release were apparently not based on race (memo dated May 5, 2008). It would therefore not be surprising that his June 4 complaint before the Commission makes no mention of it. Throughout the proceedings, the emphasis was on other allegations, beyond the scope of the complaint.

[45] It became very clear in reply that the applicant considered himself authorized to deal with other allegations that were not part of the June 2008 complaint. The applicant argued that he could add [allegations] while he was reactivating the complaint after it had been suspended. According to the applicant, submissions that became new allegations were admissible. He did not elaborate on how such new allegations may not have been inadmissible.

[46] With respect to the respondent, he also spent a lot of time in his memorandum of fact and law on considerations whose relevance to the issue at hand was very tenuous. There were complaints regarding the prolixity of proceedings. The respondent insisted that the Court consider only the case as submitted before the Commission. In matters of judicial review, the Court must limit itself to reviewing the legality of the decision that was rendered, not its appropriateness. Therefore, the only evidence that can be germane to the judicial review is evidence that had been considered by the administrative tribunal. In addition, the respondent complained that the applicant did not submit any evidence or arguments demonstrating that the Commission had not examined every aspect of the complaint relating to the Act. The applicant complained of an inadequate study on the part of the Commission without providing any clarifications or details.

[47] Finally, the respondent inferred that the Commission had considered the evidence submitted to it and that the issue that the applicant was actually complaining about was the insufficient weight that the Commission had granted it, according to him. Based on *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, at paragraph 3, [2012] 3 SCR 405, the respondent submitted that the Commission did not have to consider and comment upon every argument raised by the applicant.

VI. Standard of review

[48] The reasonableness standard applies to review of a Commission's decision to refuse to proceed with a complaint because it is considered trivial, frivolous, vexatious or made in bad faith. Not only is the case law of this Court consistent in this matter, but the Federal Court of

Appeal has now disposed of this issue: *Bergeron v. Canada (Attorney General)*, 2015 FCA 160, at paragraph 41 [*Bergeron*], and *Public Service Alliance of Canada v. Canada (Attorney General)*, 2015 FCA 174. With regard to the duty of procedural fairness, the applicable standard is correctness (*Mission Institution v. Khela*, 2014 SCC 24, at paragraph 79, [2014] 1 SCR 502).

VII. Analysis

[49] For a short time in 2007 (from January to July) the applicant attempted to join the Forces. His attempt was unsuccessful. The applicant said he had been subjected to discrimination, and in particular, that he had been subjected to an inappropriate and abusive military police investigation. He alleged that he had been subjected to harassment and the military police investigation because of his race, which meant that he had been subjected to racial profiling.

[50] The applicant's submissions at this stage are not germane to the decision made to consider his application frivolous or vexatious. He is seeking to plead the case on its merits, as though this Court could simply agree with the applicant because it prefers a point of view to that of the Commission. The applicant needs to demonstrate to the Court that the Commission's decision to declare his complaint frivolous or vexatious is not reasonable, within the meaning of administrative case law, and more specifically, within the meaning of paragraph 47 of the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190:

> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of

> possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

As Mr. Justice Binnie says on behalf of the majority in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at paragraph 59, [2009] 1 SCR 339:

> . . . as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

[51] In *Bergeron*, cited above, the Federal Court of Appeal explained the burden to be met by the applicant for judicial review of a decision made under paragraph 41(1)(d) of the Act:

> [45] In the case at bar, the range—or as some cases put it, the margin of appreciation afforded to the Commission—is quite broad owing to the factual and policy-based task of the Commission: *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, 455 N.R. 157, at paragraphs 90 to 99. The Federal Court was correct to state (at paragraph 39) that the Commission gets "great latitude" when courts review decisions such as this. This Court has previously said that very thing: *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C. 392, at paragraph 38 (screening decisions under section 41 are to be "reviewed with a high degree of deference"). This Court is therefore seeking the argument according to which the decision rendered under paragraph 41(1)(*d*) is unreasonable, considering the great deference due to the Commission in these matters.

[52] It appears to me that this approach is confirmed by the Supreme Court of Canada's recent decision in *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, where paragraph 22 of the majority decision reads as follows:

> [22] The reason for the wide range is, as Justice John M. Evans explained, because "[d]eference . . . . assumes that there is no uniquely correct answer to the question": "Triumph of Reasonableness: But How Much Does It Really Matter?" (2014), 27 *C.J.A.L.P.* 101, at p. 108). The range will necessarily vary. As Chief Justice McLachlin noted, reasonableness "must be assessed in the context of the particular type of decision making involved and all relevant factors" and "takes its colour from the context": (*Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5, at paras. 18 and 23, citing with approval *Canada (Citizenship and Immigration) v. Khosa*,, [2009] 1 S.C.R. 339, at para. 59).

[53] The result is, in my opinion, that the applicant will have to demonstrate that despite great latitude, the decision under review is not within a range of possible acceptable outcomes which are defensible in respect of the facts and law. That is the burden. In our case, the applicant initially simply stated that his complaint was not made in bad faith or vexatious because the internal bodies of the Forces made no such finding. However, that is not the issue. It is not because the complaint had already been found vexatious by another instance that it would be vexatious before the Commission. Conversely, it is not because the Commission would come to the conclusion that the complaint is vexatious that it was vexatious when the internal bodies of the Forces studied the issue. Rather, the complaint became vexatious or frivolous because the case had already been considered elsewhere.

[54] As the respondent noted, compelling evidence was not provided before this Court that the Forces' internal proceedings did not deal with the allegations of discrimination related to the complaint, including the fact that an investigation regarding the applicant had been initiated and

conducted by the military police. The conclusion to which the Commission came must be demonstrated to fall outside a range of possible acceptable outcomes which are defensible in respect of the facts and law with respect to the complaint submitted in this case. The question is then whether in the event where a case has already been resolved based on another proceeding, is the Commission acting reasonably when it finds that a new proceeding should not be initiated? The applicant had to demonstrate that it was not reasonable.

[55] We can start with the argument regarding the military police investigation conducted pursuant to an allegation made by one of the applicant's colleagues concerning cocaine use.

A. *The military police investigation*

[56] The applicant tried to point out errors, which he described as errors of fact, to complain about the military police investigation conducted pursuant to a denunciation made by another recruit. Six main errors were alleged:

- The complainant did not have specialized knowledge of drug screening; rather, his knowledge of the symptoms of cocaine use was based on observations made throughout the years.
- There were no eye witnesses.
- The symptoms observed were caused by an allergy, not cocaine use.
- Once the investigation was launched, it had to continue.
- There were complications regarding a third black person.

- The applicant was "invited" to an interview with the military police investigators; it was apparently indicated that it would be preferable to hold the interview at the military police offices to avoid contacts with the other recruits. The applicant claims that the invitation to report to the military police offices was actually made to obtain an incriminating statement. According to him, the invitation was a detention.

[57] The applicant referred to racial profiling as the basis for a criminal investigation, which did not lead to any charges. Therefore, the denunciation was tainted with racism; the fact that an investigation was initiated and proceeded, appeared to arise from racism. If I understand correctly, even the aggressive nature of the investigation was tainted with racism, according to the applicant.

[58] However, the reviews conducted by the Provost Marshal and the Military Police Complaints Commission of Canada both examined the allegations of racial profiling. Both found that the actions of the military police essentially complied with standard practices.

[59] Based on these reviews, the Commission stated that an additional review would in fact constitute a review that had now become frivolous or vexatious: the case had been reviewed twice. As noted above, the Commission has a great deal of latitude in these matters. It has solid expertise in human rights matters. It is not too much to say that the Commission's vocation is to address discriminatory practices (duties and functions of the Commission, subsection 27(1) of the Act). The Act also stipulates that the Commission may initiate a complaint (subsection 40(3) of the Act). A party must discharge a heavy burden to demonstrate that the Commission did not act reasonably in its decision to consider that racial profiling complaints in a police investigation

have been adjudicated upon elsewhere, which engages paragraph 41(1)(d) of the Act. No discretion is absolute. However, the discretion exercised by the Commission is certainly very broad, for which it deserves a high degree of deference as stated in *Bergeron*, cited above.

[60] To meet this burden, the applicant attempted to point out errors of fact in the reports produced by both bodies. With respect, I am afraid that the applicant cannot see the forest for the trees. If there were errors during the investigation, which was not demonstrated, this does not prove that the investigation was launched and conducted based on a prohibited ground of discrimination, including the suspect's race, national or ethnic origin or colour.

[61] It is incontrovertible that a serious allegation, especially in the Forces, such as possession and use of cocaine, was made. It involved black persons. It would have been inappropriate for the military police not to have looked into this allegation. That the applicant was suspected of being the person presenting the symptoms noted by the complainant is reasonable. Moreover, he does not deny having had these symptoms. The investigation demonstrated that these symptoms were in fact caused by the applicant's allergies. From this moment, the applicant was no longer a suspect.

[62] I see nothing unseemly in conducting a police investigation, providing, of course, it ends when the reasons for starting it no longer apply. In other words, the investigation cannot become a witch hunt unless it is suspected of being conducted for ulterior motives. When the investigation demonstrates that the allegation is baseless, it must obviously end. If it were to continue needlessly, it would be reasonable to assume there were ulterior motives. However, I

saw nothing of the sort, and more importantly, neither did the Commission charged with reviewing these issues.

[63] The reviews conducted by the Provost Marshal and the Complaints Commission came to the same conclusion. The errors of fact, if there are any, which the applicant is complaining about, do not change the picture of the evidence in any way. An allegation had to undergo a serious investigation conducted swiftly in accordance with standard practices. The fact that the investigation found that the applicant was not involved in the commission of a criminal offence is not a reason to characterize it as being motivated by racism. It would also have been necessary to demonstrate that there were serious indications of illegal motivation to launch an investigation. I saw no evidence of such despicable motivation. As the applicant's counsel said, we cannot expect to see racist motivations in broad daylight. However, an applicant must at least put forward serious indications to suggest that an investigation was motivated, needlessly continued or conducted with a whiff of racism. I saw nothing of the sort in the evidence submitted. At any rate, the applicant's burden was to convince this Court that the Commission had improperly exercised the broad discretion granted to it, that it had not acted reasonably. The alleged errors of fact, if there should turn out to be any, which has not been established, do not make the Commission's finding unreasonable in any way. They are at best peripheral incidents that in no way undermine the basis of the case, i.e. the reason for holding an investigation or the way it was conducted.

[64] Predicting the outcome of a police investigation in its early stages is seldom possible. Those who hazard a guess may unfortunately be guilty of tunnel vision.

[65] It goes without saying that being the target of a police investigation is troubling. We can hope that matters are handled fairly, discreetly and expeditiously in order to quickly clear away the clouds if need be. In this case, the Commission was satisfied with the reviews conducted by the two bodies charged with reviewing these types of investigations. The Commission benefited from the applicant's submissions twice instead of once. There is no doubt that the applicant made his views known. The Commission stated that it had studied both the investigator's report and the submissions made. That it did not agree with the applicant's submissions was its prerogative if this decision had the hallmarks of reasonableness in the context of a decision which required broad deference. In this case, there was justification, transparency and intelligibility. It was not demonstrated that the Commission had improperly exercised its discretion. This exercise was evidently reasonable.

B. *Discrimination in the "chain of command"*

[66] The second allegation that the Commission failed to exercise discretion in deciding that it was not required to deal with the complaint made by the applicant is related to racism and racial profiling supposedly committed by the "chain of command."

[67] This allegation is particularly tenuous in the docket as submitted. The judicial review involves a decision made by the Commission not to rule on a complaint. The other allegations that were made, which, so to speak, multiplied over time, as well as the proceedings in court, are not part of the complaint as received by the Commission. The review is limited to the complaint received, as it should be.

[68] Now, this complaint is very limited. The summary of the complaint provided at the beginning of the Report on Sections 40/41 is faithful to the wording of the complaint. The complaint revolves around the actions of the deputy commanding officer of the platoon to which the applicant was assigned. The complaint essentially involves the facts that led to his involuntary release from the Forces. In it, the applicant relates interactions with Sergeant Ouellet between June 22 and 28, 2007. But the complaint does not contain a direct allegation based on a prohibited ground of discrimination; at most, the applicant alleges that false statements were made regarding his performance during training. Because it is the only allegation in the complaint, we need to determine whether it was dealt with elsewhere, making it reasonable for the Commission not to rule on the complaint.

[69] The Canadian Human Rights Commission's role is not to render a decision, but rather, to determine where there is a rationale for holding an investigation. As Mr. Justice La Forest said on behalf of the majority in *Cooper v. Canada (Canadian Human Rights Commission)*, [1996] 3 S.C.R. 854 [*Cooper*]: "The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it" (paragraph 53). Can we move on to the next step with the evidence provided?

[70] The applicant's burden was to satisfy the Court that the Commission did not act reasonably in rendering its decision, for which it is entitled to deference and which involves determining whether there is sufficient evidence to send the case before the Human Rights Tribunal. Here, the Commission found that the evidence of the difference between the decision regarding the grievance and the allegation in the complaint did not provide the Commission with

a basis for ruling because it was trivial, frivolous, vexatious or made in bad faith. The Commission did not have to be right. Thus, if the decision is within a range of possible acceptable outcomes which are defensible in respect of the facts and law, it is not appropriate for the reviewing Court to intervene. The decision thus justified, transparent and intelligible is legitimate in that the Court, even if it could have had a different opinion, must not substitute itself for the Commission.

[71] The Court searched the applicant's memorandum of fact and law and his counsel's argument, but could not find how he would have demonstrated that the Commission's decision to allow the case to go to the tribunal was unreasonable. The Commission's role is to verify whether the evidence suffices. The Court's role is to ensure that the decision is not unreasonable in light of the facts submitted by an applicant. A party that does not discharge its burden will not have its case resolved in its favour.

[72] I examined the case and read, and reread, the applicant's arguments both in his memorandum of fact and law and the summary of the memorandum he provided for the hearing before this Court. With respect to the complaints of discrimination, the complaint itself does not deal with this matter explicitly and the submissions did not add anything concrete to this complaint. The applicant focused on his claim that all the human rights issues had not been examined by the military justice proceedings, but these allegations go beyond the scope of his complaint and seek to introduce other allegations that were not before the Commission.

[73] The applicant admitted that his complaint was limited by attempting to use every means to introduce other allegations into his case. These other allegations were the ones he was interested in. However, some of his allegations could have been made in his June 4, 2008 complaint; the evidence indicates the Commission staff had made this suggestion (memo dated June 16, 2008).

[74] The applicant's counsel valiantly attempted to make this memo say what it did not say. The Court could not find any indication in the memo that the Commission had asked the applicant to make new allegations later; on the contrary, the memo indicates that he could have used the remaining space in the complaint form and that the docket will contain a note explaining [TRANSLATION] "why the additional information provided by the complainant will not be attached to the complaint." (My emphasis.)

[75] The applicant wanted to argue that the submissions on the Report on Sections 40/41 provided an opportunity to make new allegations because, he said, his complaint was very incomplete. However, all these new allegations are inadmissible because they go beyond the complaint before the Commission.

[76] The decision report pursuant to Sections 40/41 notes that the Commission examined the submissions made December 6 and 31, 2011, by the applicant. He wanted to have his new allegations taken into consideration by the Commission investigator. However, insofar as these new allegations are out of order because they go beyond the scope of the complaint under study, we do not see how even the submissions could have been of any use.

[77] The Commission therefore concluded that the various issues relating to the complaint as submitted had been addressed. The memorandum of fact and law, the plan of argument, of which there is only a 14-page summary in the memorandum of fact and law, and the oral argument never demonstrate the unreasonable character of the decision, given the Commission's screening role. The applicant, and no one else, was responsible for making this demonstration rather than focusing on other allegations that were not before the Commission. I nevertheless examined the set of facts relating to the complaint and the Commission's decision regarding the aspect of the case relating to the release.

[78] The applicant failed some Initial Assessment Periods starting on January 14, 2007; he started over on April 13, 2007. On June 22, 2007, he was summoned to deal with behavioural problems. He was released on June 28, 2007, on the grounds that he was unable to adapt to military life. The applicant says he complained during training, but the evidence seems to show that his complaints, if there were any, were not made in writing. If they were made in writing, the applicant did not produce them although he is prolific in producing documents and meticulous in preparing cases. In fact, after June 28 he submitted multiple complaints and grievances. He even submitted 11 grievances on February 25, 2011, several years after he had left the Forces. The applicant brought an action in this Court in the summer of 2008 regarding allegations of discrimination.

[79] The Commission found that this episode of the applicant's release, involving various types of complaints, was resolved by the Chief of Staff's March 2, 2011 ruling.

[80] The allegation in the complaint regarding the applicant's release made reference to statements by the deputy commanding officer of the platoon, which were apparently false. The Chief of Staff's decision on the grievance noted a number of actions by the applicant that justified some remedial measures ordered for the applicant. They were said to be in connection with the Progress Review Board where the applicant apparently received unfavourable scores for practical exams and physical aptitudes, as well as for his attitude. The Chief of Staff found that the Progress Review Board had been convened prematurely and that the entire matter had to be remedied by granting the applicant a voluntary release and an IAP (Initial Assessment Period) qualification. Thus the applicant's release from the Forces is "On Request – Other Causes."

[81] Essentially, the Commission found that the allegations made in the complaint regarding unfavourable treatment during employment were addressed by the Chief of Staff. The July 30, 2007 grievance was partially granted in that the remedies requested regarding the involuntary release were ordered. The Chief of Staff was satisfied that the Progress Review Board, which found that the applicant should be released, had acted prematurely. As a result, some remedies were provided (the release category was changed to a favourable release category). Because the applicant did not request to be readmitted, the Commission does not see how this matter could be more appropriately examined by the Commission. The June 4, 2008 complaint noted that the applicant's reputation was damaged by his involuntary release. This issue was remedied by the Chief of Staff. The applicant had to demonstrate that the Commission had committed an unreasonable error and that there was sufficient evidence, making it unreasonable to find that further useful measures could not be taken at this point. However, the applicant limited himself

to claiming that other issues had been raised and not resolved, thereby failing to make the necessary demonstration in a judicial review of a decision under paragraph 41(1)(d) of the Act.

[82] As the respondent has argued, this Court is not conducting a judicial review of the Chief of Staff's decision on the grievance. Moreover, this decision very clearly states that the Chief of Staff is the final authority under the *National Defence Act* and that the decision is therefore "final and binding, except for judicial review under the *Federal Courts Act*." As a result, if the applicant was not satisfied with the Chief of Staff's decision, he had to challenge it before this Court. The Commission, in conducting a proceeding before it, was not allowed to review the Chief of Staff's decision, a type of collateral challenge.

[83] The Report on Sections 40/41 that is before this Court is far from a model of clarity and articulation. Although we should expect better, that is not a sufficient reason to quash a decision, insofar as this decision is entitled to broad deference (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at paragraph 14, [2011] 3 SCR 708). The reasons must "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (paragraph 16).

[84] It is true that the applicant did not see the various allegations that he would have wanted resolved by the Commission. However, it is because they were not before the Commission that they were not addressed. The only matter before the Commission was the complaint which, other than the episode of the military police investigation, related the circumstances of the applicant's

release from the Forces, between June 22 and 28, 2007, when the recommendation that the applicant be released was supported by the Canadian Forces Leadership and Recruit School. That is what the complaint involved.

[85] So there is a relationship between the complaint, which deals with the applicant's release, the grievance decision that grants a remedy regarding the release classification (making it voluntary, the applicant having indicated that he no longer wanted to re-enrol) and the Commission's decision, which must deal only with this release from the Forces. The Chief of Staff examined the applicant's involuntary release, which was the subject of the applicant's complaint, and found that a remedy was appropriate. Not only was this aspect of the complaint addressed, the applicant received redress. The applicant's burden was not discharged. Instead of relentlessly arguing that other human rights issues had not been addressed, he should have examined the real issue, the reasonableness of the decision that the matters raised by the complaint had been addressed in the military proceedings.

[86] As indicated above, a party applying for judicial review of a decision under paragraph 41(1)(d) of the Act has to discharge a heavy burden, given the deference due to the decision-maker. Here, the applicant should have requested a judicial review of the Chief of Staff's decision. He did not. Whereas the Report on Sections 40/41 clearly stated that the Commission considered the complaint redundant, the proposed submissions to the Commission were designed either to challenge the Chief of Staff's decision as though we were conducting a judicial review of the decision on the grievance, or they sought to broaden the debate beyond the allegations in the complaint.

[87] With respect, the applicant did not demonstrate why the Court should not grant the deference due to the Commission in this matter. Claiming that the Commission should have dealt with the complaint (in English, "shall deal with any complaint," in subsection 41(1) of the Act) to go beyond the scope of the complaint is an inherent contradiction. The Commission cannot rule on the complaint as submitted. I see nothing unreasonable in considering only the four corners of the complaint. Rather, the applicant should satisfy the Court that the Commission's finding that there are no further issues to be examined within the scope of the complaint submitted was unreasonable. However, the applicant's proof focused on the other allegations that the applicant wanted to make. This proof was not relevant within the framework of these proceedings. As a result, the applicant did not discharge his burden.

VIII. Procedural fairness

[88] The applicant raised the issue of a breach of procedural fairness both in his application for judicial review and his amended memorandum of fact and law. However, no mention was made of this issue at the hearing and the plan of argument simply referred to the memorandum.

[89] In the plan of argument, the applicant uses the term [TRANSLATION] "principle of procedural fairness" in reference to issues which he does not present as breaches of this principle. The plan of argument discusses patently unreasonable errors, particularly regarding the Commission's refusal to consider the February 2008 document (first complaint), which did not satisfy the conditions issued by the Commission and the letter dated June 4, 2008, that was added to the three pages already granted to submit a complaint to the Commission.

[90] Finally, examination of the application for judicial review, the plan of argument and the respondent's amended memorandum of fact and law revealed that the only issue of procedural fairness involved the limit placed on submitting complaints and submissions.

[91] In fact, the first procedural fairness issue raised was that the summary of the complaint made by the investigator was not complete. The applicant does not indicate how the summary could breach the principle of procedural fairness. Comments were provided on this summary and the remainder of the Report on Sections 40/41 and the applicant was heard. There was no breach of the principle of the right to be heard (*audi alteram partem*). I would add that I have read the complaint and that the summary provided is more than adequate. There is reason to suspect that the applicant is now complaining about the summary because it does not contain any of the other allegations made beyond the formal complaint. If this is in fact the case, it is a baseless criticism.

[92] Nor can the allegations that the applicant would have wanted to make *ex post facto* be introduced based on an error of law. This error would be that the complaint form can be modified to make a simple correction or a minor clarification (memorandum of fact and law, paragraph 67). It had nothing to do with this type of correction or minor correction.

[93] Finally, any tentative arguments must take into account the limitation set out in the Act (paragraph 41(1)(e)). The complaint must be submitted within one year of the last acts or omissions upon which it is based, notwithstanding such longer period of time that may be granted by the Commission. Later allegations can be limited, and those made after June 2008,

and obviously those in December 2011, largely exceed the limitation period set out in the Act. Moreover, particular circumstances may have to be considered and I refrain from deciding.

[94] Nor is there any authority that supports the applicant's contention that limiting the documents to a prescribed number of pages constitutes a breach of procedural fairness.

[95] That may be because the jurisprudence of this Court confirms that it is appropriate for the Commission to limit the number of pages for making a complaint or submissions. In *Zulkoskey v. Canada (Employment and Social Development)*, 2015 FC 1196, my colleague Mr. Justice Manson wrote:

> 42 In summary, when the *Baker* factors are considered as a whole, the procedural fairness to be afforded in the circumstances of applying paragraph 41(1)(d) is on the lower end of the spectrum.
>
> . . .
>
> 45 The Commission carried out its statutory mandate and has complied with its duty of fairness. The Report was neutral and sufficiently thorough. The Applicant had ample opportunity to make submissions and convey her disagreement with the information in the Report. She was provided an opportunity to present her case, and the 10 page limit was not procedurally unfair (*Boshra v. Canada (Attorney General)*, 2011 FC 1128, at paras 50–52). The Report, upon which the Commission's Decision is based, identified the issues, comprehensively canvassed the parties' positions, the factors to be applied in determining if a claim is vexatious, and subsequent information gathered from the parties.

[96] The same finding was stated in *Jean Pierre v. Canada (Citizenship and Immigration)*, 2015 FC 1423, where Mr. Justice Gascon stated the following:

> 42 With respect to the submissions that followed the investigator's report, the instructions showed that Mr. Jean Pierre could include exhibits with his submissions, subject to the ten-page

> limit imposed by the Commission at this stage. This Court has confirmed that the Commission's procedure of putting a cap on the length of submissions at this stage of the complaint process is reasonable (*Donohue v Canada (National Defence)*, 2010 FC 404 [*Donohue*] at para 28; *Boshra* at para 50–52). Such instructions do not raise the issue of procedural fairness.

[97] We can understand why limits must be set on documents submitted before proceedings, including those before this Court (rule 70 of the *Federal Courts Rules*), other courts or before the Commission. It is not particularly difficult to fall into prolixity, and this case is an example. This is not unlike the decision in *Donohue v. Canada (National Defence)*, 2010 FC 404:

> 28 I am satisfied that the applicant was given a fair and meaningful opportunity to take part and make submissions to the Commission. He seemed frustrated that he could not submit the entire contents of his files with the Privacy Commission and Military Police Complaint Commission. The Commission's internal policy of putting a cap on the length of submissions at this preliminary stage seems rational and did not prevent the applicant from summarizing the key contents of those Commissions' findings. In any event, there is no genuine issue of procedural fairness here.

[98] Here, the applicant had two opportunities to make a 10-page submission each time. The problem was not that the number of pages was insufficient. The problem was that the submissions discussed topics unrelated to the complaint before the Commission or got lost in the details. With respect to the complaint itself, the applicant used only two and a half of the three pages to which he was entitled. The proof is that when he attempted to add a letter to his allegations, he was notified by the Commission staff that he had the option to add it at the bottom of the third page of the complaint because there was some unused space available. Given the contents of the June 4 letter, it would have been easy to do. The note in the docket dated June 16, 2008 is clear: [TRANSLATION] "The complainant has chosen not to modify his complaint

and it was agreed that a note would be placed in the docket to explain why the additional information provided by the complainant would not be attached to the complaint." The contemporaneous note is clear.

[99] As a result, there is no breach of the principle of procedural fairness.

IX. Conclusion

[100] The Commission's decision that the Armed Forces' internal review procedures had dealt with the allegations made in the June 4, 2008 complaint and that there were no [TRANSLATION] "outstanding issues that could be more appropriately examined by the Commission" was not demonstrated to be unreasonable. The procedure followed by the Commission limiting the number of pages to be used does not violate procedural fairness.

[101] The application for judicial review must therefore be dismissed, with costs to the respondent. The parties were unable to agree on the amount of the costs, but they nevertheless refused to follow the guidelines set out in rule 407 of the *Federal Courts Rules*, (SOR/98-106). The applicant claimed a $3,500 lump sum. The respondent set his fees and disbursements at $7,519.50. Clearly, the respondent would like the Court to take into account the applicant's behaviour, which needlessly prolonged the proceedings. In my opinion, given the circumstances of this matter, $3,500 in costs would be appropriate in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs in the amount of $3,500, fees and taxes included.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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