Federal Court  Cour fédérale

Date: 20180827

Docket: T-2148-14

Citation: 2018 FC 863

Ottawa, Ontario, August 27, 2018

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

OURANIA GEORGOULAS

Applicant

and

ATTORNEY GENERAL OF CANADA
AND
CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondents

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicant asks this Court to set aside a decision [Decision] of the Canadian Human Rights Commission [Commission] dated September 19, 2014, which dismissed a complaint [the Complaint] that the Applicant made against Transport Canada [TC] dated January 12, 2012. The Complaint was dismissed pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights*

Act, RSC 1985 c H-6 [CHRA]. The Applicant named the Canadian Association of Professional Employees [CAPE] as a respondent in this Court, even though CAPE was not a party below.

[2] In dismissing the Complaint, the Commission relied upon an Investigation Report [43/44 Report] dated May 16, 2014, which recommended that the Applicant's Complaint against TC be dismissed. The 43/44 Report was prepared on the basis of interviews with nine individuals including the Applicant, and a review of detailed written material mostly generated by the Applicant. The 43/44 Report concluded: "more importantly, there was no convincing evidence put forward, direct or otherwise, to indicate or even suggest that any of the treatment the [Applicant] received was linked to one or more grounds under" the CHRA. The Applicant challenges this finding in relation to TC, alleging it is flawed by procedural unfairness and unreasonableness.

[3] The Applicant also challenges the Commission's decision not to add CAPE, the Applicant's certified bargaining agent, as a party to her Complaint. The Applicant submits it was unreasonable for the Commission not to add CAPE as a respondent. That said, at no time was CAPE a party to the proceedings before the Commission leading to the Decision at issue here. Notwithstanding it was not added as a party by the Commission, the Applicant, quite improperly in my view, unilaterally added CAPE as a respondent to the present Application for judicial review. CAPE participated in this Application to respond to the arguments raised by the Applicant namely that the Commission breached procedural fairness by refusing to add CAPE as a respondent to her Complaint.

[4] The hearing of this judicial review took place over two days; breaks of ten or fifteen minutes were taken every forty or forty five minutes. The Applicant represented herself with the assistance of another person. These accommodations were requested by the Applicant.

[5] For the reasons that follow, the application for judicial review is dismissed with costs.

II. Background and related litigation

[6] The Applicant was a public servant and a non-practising member in good standing of both the Law Society of Upper Canada (now the Law Society of Ontario) and the Barreau du Québec.

[7] From 2007 to 2016, the Applicant was employed as an Aviation Security Policy Analyst for the Aviation Security Policy Branch of the Aviation Security Directorate of TC. The Applicant was on long-term disability from December 2011 until September 2014. Throughout 2013 and much of 2014, TC and CAPE had numerous discussions about how to accommodate the Applicant's return to work, after which she did return to work in September 2014 for 18 months.

[8] The Applicant has had a number of matters before the Commission and the Federal Court. While this is the third judicial review to be decided by this Court arising out of her employment at TC, this application actually involves the Applicant's first complaint to the Commission against TC, which she filed on January 12, 2012.

[9] On April 11, 2014, the Applicant made a different complaint to the Commission against TC; on that occasion she named CAPE as a party. That complaint began as file #20140234. The Commission separated that complaint into two files, #20140234 (against TC) and #20140564 (against CAPE). The Commission dismissed her complaint against CAPE under sections 40/41 of the CHRA. However, Justice McVeigh granted the Applicant's application for judicial review against CAPE in May 2017. Justice McVeigh found the Commission breached procedural fairness by refusing to allow the Applicant to file a separate complaint kit against CAPE: *Georgoulas v Canada (Attorney General)*, 2017 FC 446 [*Georgoulas I*]. Justice McVeigh otherwise found the Commissions dismissal of the Applicant's complaint against CAPE was reasonable.

[10] The Applicant's complaint against TC, #20140234 above, originally bundled by the Applicant with her complaints against CAPE, concerned harassment, discrimination on the grounds of disability and alleged retaliation by TC. The Commission decided to "deal with" this complaint after reviewing a 40/41 Report. The Commission therefore appointed an investigator. The investigator prepared an Investigation Report pursuant to section 43 which recommended the complaint against TC be dismissed. The Commission, pursuant to section 44 of the CHRA dismissed the complaint against TC. The Applicant sought judicial review of both the Commission's decision to deal with her complaint after the 40/41 Report, and the Commission's decision to dismiss her complaint under section 44. Judicial review was dismissed in respect of both matters by Justice Kane in *Georgoulas v Attorney General of Canada*, 2018 FC 652, [*Georgoulas II*].

III. Issues

[11] The Applicant submits several issues for determination.

1. Did CHRC err when it refused to:

    A. Exercise its jurisdiction to add and investigate the ground of harassment during the preparation of the 40/41 Report and in the Investigation Report despite the Applicant's many requests?

    B. Exercise its jurisdiction to allow the Applicant to file a complaint against CAPE and to provide her with a complaint kit to file a complaint against CAPE?

    C. Amend the complaint during the preparation of the 40/41 Report and in the Investigation Report to allow the Applicant to add additional retaliatory, harassing and discriminatory incidents against her by TC after she filed the Complaint in January 2012?

2. Did CHRC err when it refused to provide the Applicant procedural fairness when it:

    A. Refused to provide her with a complaint kit to file a complaint against CAPE?

    B. Refused/denied to accommodate her to communicate with CHRC via email?

    C. Took the witnesses' testimony at face value disregarding the evidence submitted by the Applicant during the investigation of her complaint?

    D. Ignored or misconstrued the evidence submitted by the Applicant during the investigation of her Complaint?

3. Was CHRC neutral or thorough in dealing with the Complaint?

4. Is CHRC's decision reasonable?

[12] In my view, these issues should be resolved within the following parameters:

i. Was CHRC's decision to dismiss the Complaint against TC reasonable?

ii. In dismissing the Applicant's Complaint against TC, did CHRC breach procedural fairness?

iii. Was CHRC's refusal to add CAPE as a party reasonable?

IV. Standard of Review

[13] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is not necessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." This Court has determined that reasonableness is the standard of review for a decision of the Commission to dismiss an applicant's complaint: *Lafond v Canada (Attorney General)*, 2015 FC 735 per Bell J at para 15.

[14] In cases such as this, the Court's role is limited to reviewing the Commissions dismissal of the Complaint with the record that formed the basis of the dismissal. As the Supreme Court of Canada put in *Cooper v Canada*, [1996] 3 SCR 854: "[T]he other course of action is to dismiss the complaint. In my opinion, it is the intention of s. 36(3)(b) that this occur where there is insufficient evidence to warrant appointment of a tribunal under s. 39. It is not intended that this be a determination where the evidence is weighed as in a judicial proceeding but rather the Commission must determine whether there is a reasonable basis in the evidence for proceeding to the next stage."

[15] Therefore, reasonableness is the standard of review for the first and third issues as I have outlined them in para 11.

[16] In *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness of standard of review:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.

[17] It is well-established that once the Commission is in receipt of a section 43 investigation report, as in the case at bar, the standard of review is a "highly deferential one" per *Lafond* at para 15 and *Ritchie* at para 28. The law is further summarized in *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1999] 1 F.C. 113 (FCA): Parliament does not want the Courts to intervene lightly in decisions of the Commission at this "screening stage":

> 35 It is settled law that when deciding whether a complaint should be referred to a tribunal for inquiry under sections 44 and 49 of the *Canadian Human Rights Act*, the Commission acts "as an administrative and screening body" (*Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854, at page 893, La Forest J.) and does not decide a complaint on its merits (see *Northwest Territories v. Public Service Alliance of Canada* (1997), 208 N.R. 385 (F.C.A.)). It is sufficient for the Commission to be "satisfied that, having regard to all the circumstances of the complaint, an

> inquiry into the complaint is warranted" (subsections 44(3) and 49(1)). This is a low threshold and the circumstances of this case are such that the Commission could have validly formed an opinion, rightly or wrongly, that there was "a reasonable basis in the evidence for proceeding to the next stage" (*Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission), supra*, paragraph 30, at page 899, Sopinka J., approved by La Forest J. in *Cooper, supra*, at page 891).
>
> **Exercise of discretion**
>
> 38 The Act grants the Commission a remarkable degree of latitude when it is performing its screening function on receipt of an investigation report. Subsections 40(2) and 40(4) and sections 41 and 44 are replete with expressions such as "is satisfied", "ought to", "reasonably available", "could more appropriately be dealt with", "all the circumstances", "considers appropriate in the circumstances" which leave no doubt as to the intent of Parliament. The grounds set out for referral to another authority (subsection 44(2)), for referral to the President of the Human Rights Tribunal Panel (paragraph 44(3)(a)) or for an outright dismissal (paragraph 44(3)(b)) involve in varying degrees questions of fact, law and opinion (see *Latif v. Canadian Human Rights Commission*, [1980] 1 F.C. 687 (C.A.), at page 698, Le Dain J.A.), but it may safely be said as a general rule that Parliament did not want the courts at this stage to intervene lightly in the decisions of the Commission.
>
> [Emphasis added]

[18] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[19] Questions of procedural fairness, including those arising in the context of Commission decisions are reviewed on the correctness standard: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. Correctness is generally accepted as the standard of review for the second issue in para 11 above. That said, I wish to note that in *Bergeron v Canada (Attorney General*, 2015 FCA 160 at paragraph 69, the Federal Court of Appeal said a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': Re: *Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42."

[20] In *Dunsmuir* at para 50, the Supreme Court of Canada explained what is required of a court reviewing on the correctness standard of review:

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

V. Complaint to CHRC

[21] I turn to the facts of this case, bearing in mind the legal principles set out above. In this context I will make determinations with respect to the issues raised by the Applicant.

A. *Initial inquiries made in 2010 and 2011*

[22] The Applicant contacted the Commission in August and October, 2010 with allegations of discrimination against her by TC. However, she asked the Commission to take no steps in the

matter. Had she filed a complaint, the Commission would have been bound to advise TC and provide TC with an opportunity to respond. This was not necessary because the Applicant asked the Commission not to file a complaint; at her request, the Commission took no action at that time but did open a file and gave the Applicant a file number. Unremarkably, the Commission closed its file at that time.

[23] About a year later, in August and early September 2011, the Applicant made further inquiries with the Commission, alleging discrimination against her by TC. In response, on September 21, 2011, the Commission wrote the Applicant, providing a copy to TC, and acknowledged that the Applicant had made allegations of discrimination against TC. The Commission's letter noted that before accepting the Applicant's complaint, a report under sections 40/41 of the CHRA would be needed.

[24] The Commission in its letter of September 21, 2011, also suggested to the Applicant that she grieve her complaints. This suggestion was reasonable and certainly not objectionable; the Commission may decline to accept a complaint where other avenues of recourse have not been exhausted as set out in subsection 41(1)(a) of the CHRA. In this context it is necessary to recall that the Applicant was a unionized employee who might have had access to grievance procedures under her collective agreement. The Respondent CAPE was her bargaining agent.

[25] The Applicant replied by letter dated October 31, 2011, addressed to the Commission's Chief Commissioner. In it, the Applicant recounted her dealings and contacts with the Commission. Among other things, the Applicant asked if she could add a complaint for

harassment to her complaint for discrimination. She also asked questions about the qualifications of Commission staff, about whom the Applicant was critical.

[26] The Applicant spends a considerable amount of time on her October 31, 2011, letter, alleging several times at the hearing that she never received a response. Upon review, it appears from this letter that the Applicant believed she had filed a discrimination complaint against TC back in 2010. However, she had not. As noted, the Commission closed its file, and did so at the Applicant's specific request. In this connection, I find as a fact that the Applicant did not file a formal complaint against TC until January 12, 2012.

[27] As noted below, and upon review of the record, I find that the Commission did respond to the Applicant's letter of October 31, 2011, and did so in the Commission's letter dated December 31, 2011, which is more fully outlined below. There is no merit to the Applicant's argument that her letter of October 31, 2011 was never responded to. What she seems to have wanted the Commission to do is to provide her with extraordinary legal support in the matter of filing her Complaint. There is no merit in this suggestion either; the Applicant provided the Commission with no reason to seek any extraordinary accommodation.

B. *The Complaint Kit and the Applicant's Complaint dated January 12, 2012*

[28] In response to the Applicant's numerous contacts and inquiries including her letter of October 31, 2011, the Commission sent the Applicant a Complaint form Kit by letter dated December 13, 2011. The Commission's letter included instructions on how to file a complaint. The letter directed the Applicant to take the time to read all of the enclosed materials, and follow

instructions carefully. The letter included a *Complaint Form.* To further assist the Applicant, the Commission's letter also included an instructional document entitled *Instructions and Tips Sheet*, and a checklist of information she had to provide. In addition, the Commission also sent the Applicant a sample of a completed complaint form. The letter also directed the Applicant to the Commission's website which was provided at www.chrc-ccdp.gc.ca.

[29] The Commission had alerted the Applicant that before processing the matter further, it wanted to know if her union (CAPE) would grieve the matter, and wanted a statement to that effect in writing. In this connection, Commission Early Resolution staff, before sending the December 13, 2011 complaint kit, had reached out to CAPE. In response, Commission staff obtained an email from CAPE to that effect. In the email, CAPE confirmed it had not grieved the discrimination issue with TC because on the facts known to it, there was nothing to grieve, adding that an informal approach would be preferable to deal with the situation [original text is: "L'ACEP n'a pas accepté de déposer un grief de discrimination au nom de Madame Georgoulas parce qu'à la lueur des faits connus au moment de l'analyse du dossier, l'ACEP a conclu qu'il n'y avait pas matière à grief et que l'approche informelle serait préférable pour régler la situation"].

[30] This email from CAPE was included with the other material in the complaint kit sent by the Commission to the Applicant dated December 13, 2011.

[31] Upon review, I have concluded that the Commission, by sending the Complaint form and all the related resources to assist her in completing the form by letter dated December 13, 2011,

fairly and adequately responded to the many questions the Applicant posed in her letter of October 31, 2011 and elsewhere.

[32] Having received the complaint kit, the Applicant proceeded to complete her Complaint form herself; she signed and dated it January 12, 2012, and filed it with the Commission the next day. The period covered was February 2010 to January 12, 2012. The Complaint included three pages detailing the Applicant's allegations of discrimination.

[33] Throughout, and in subsequent submissions, the Applicant referred to TC's conduct as both discriminatory and harassing without distinguishing between the two practices.

[34] The Complaint disclosed numerous incidents over time. The Applicant's narrative included a dispute over her salary, an alleged denial of a promotion, alleged removal of work, alleged negative performance reviews, alleged negative result on an internal competition, and hostile conduct by various managers at TC.

[35] In my view, a number of points arise out of the Applicant's Complaint dated January 12, 2012:

1. The words "discrimination" and "harassment" are used together only three times. Not only are they used without distinguishing one from the other, they are only used together in relation to CAPE's position on her allegations–which was that the Applicant had nothing to grief. I appreciate the Applicant was unhappy with the level of CAPE's assistance, but the Applicant never challenged CAPE under the statutory provisions relating to breach of duty of representation under section 187 of the *Federal Public Sector Labour Relations Act* - S.C. 2003, c. 22.

Unfair representation by bargaining agent	**Représentation inéquitable par l'agent négociateur**
187. No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit	187 Il est interdit à l'organisation syndicale, ainsi qu'à ses dirigeants et représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi en matière de représentation de tout fonctionnaire qui fait partie de l'unité dont elle est l'agent négociateur.

2. The Complaint does not allege that TC discriminated against her by harassing her, which if believed, would contravene section 14 of the CHRA.

3. The Complaint form does not allege that CAPE discriminated against her, which if believed, would contravene section 9 of the CHRA.

4. In my view, the Applicant's Complaint is fairly described as an allegation of "adverse differential treatment" on the basis of "sex, national or ethnic origin, family status, marital status", which, if believed, would be contrary to s section 7(b) of the CHRA. This is how the Commission, in my view correctly and reasonably, characterized the Applicant's Complaint in preparing the Summary of Complaint form.

[36] The CHRA sets out many ways in which discrimination may take place. For the purposes of this case, these different ways are set out in different sections of the CHRA. Three important provisions relevant to this proceeding are subsection 7(b), section 9(1) and subsection 14(1). Each is outlined below.

[37] First, "adverse differential treatment" contrary to section 7(b) of the CHRA is prohibited by subsection 7(b):

Employment	**Emploi**
7 It is a discriminatory practice, directly or indirectly,	7 Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects
[…]	[…]
(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.	b) de le défavoriser en cours d'emploi.
[Emphasis added]	[Nos soulignés]

[38] Second, section 9 of the CHRA prohibits discriminatory practices committed by an employee's union, such as CAPE, in the following terms:

Employee organizations	**Organisations syndicales**
9 (1) It is a discriminatory practice for an employee organization on a prohibited ground of discrimination	9 (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour une organisation syndicale :
[…]	[…]
(c) to limit, segregate, classify or otherwise act in relation to an individual in a way that would deprive the individual of employment opportunities, or limit employment opportunities <u>or otherwise adversely affect the status of the individual</u>, where the individual is a member of the organization or	c) d'établir, à l'endroit d'un adhérent ou d'un individu à l'égard de qui elle a des obligations aux termes d'une convention collective, que celui-ci fasse ou non partie de l'organisation, des restrictions, des différences ou des catégories <u>ou de prendre toutes autres mesures</u>

where any of the obligations of the organization pursuant to a collective agreement relate to the individual.	susceptibles soit de le priver de ses chances d'emploi ou d'avancement, soit de limiter ses chances d'emploi ou d'avancement, ou, d'une façon générale, de nuire à sa situation.
[Emphasis added]	[Nos soulignés]

[39] Thirdly, harassment is made a discriminatory practice and prohibited by section 14 of the CHRA:

Harassment	**Harcèlement**
14 (1) It is a discriminatory practice,	14 (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :
[…]	[…]
(c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.	c) en matière d'emploi.
[Emphasis added]	[Nos soulignés]

[40] In my respectful view, the Applicant could have added allegations of harassment to her complaint if that is what she wished to do. I am not persuaded she was in any way prevented from writing out her complaint to include harassment. The fact is, that is not what the Applicant chose to do; in this respect I see no basis to find the Commission acted unreasonably to this point in time.

VI. Section 40/41 Report

A. *The Commission's section 40 inquiry letter to the parties*

[41] As noted, the Commission required a report per sections 40 and 41 of the CHRA. Preparation of this section 40/41 Report was the next step undertaken by the Commission upon receipt of the Applicant's complaint. This involved input from both the Applicant and the Respondent, and preparation of the 40/41 Report itself. The 40/41 Report once completed would then be sent to the parties so that each had an opportunity to comment on it, prior to it being sent to the Commission for a decision on what should be done with the Complaint.

[42] Thus, by letter dated February 14, 2012, the Commission wrote to the Applicant and TC asking for submissions on issues relating to paragraphs 41(1)(a) and (c) of the CHRA; specifically, to determine whether another complaint or review process could be used to resolve the Complaint (41(1)(a)), and whether the Complaint fell within the Commission's jurisdiction (41(1)(c)).

B. *The Applicant's response to section 40 inquiry*

[43] The Applicant responded with a six page letter dated March 11, 2012. She took the position that the Commission had jurisdiction, and that the Applicant could not grieve her dispute because CAPE would not provide assistance.

[44] In addition to answering the Commission's section 40/41 inquiry, the Applicant described in further detail various interactions with CAPE. She did so in negative terms. She also elaborated on her treatment by TC, also in negative terms, and in some respects over and above what she reported in her detailed Complaint submissions. In addition, she criticized the Commission staff's dealings with her up to that point in time. Briefly, the Applicant was critical of TC, CAPE, and the Commission.

[45] Notably, nowhere in the Applicant's March 11, 2012, response letter to the Commission, did she allege that CAPE had discriminated against her. In my respectful opinion, nothing in this letter, if proven, could form the basis for the Commission reasonably concluding that a section 9 complaint of discrimination was being made against CAPE or that CAPE should be added as a party respondent.

[46] I agree the Applicant said that harassment per subsection 14(1) falls under the Commission's jurisdiction, which she did, and that elsewhere the Applicant alleged she had "been discriminated against, harassed and subjected to a poisoned work environment."

[47] However, the Applicant's letter did not ask to amend her Complaint to include an allegation of harassment discrimination against TC. Moreover, in my respectful view, nothing in the Applicant's March 11, 2012, letter, if proven, could reasonably form the basis for the Commission concluding that the Applicant wished to add a harassment complaint under section 14 to her section 7(b) adverse differential treatment Complaint against TC.

[48] Commission staff completed the 40/41 Report dated July 19, 2012, and sent it to the parties for review and comment.

VII. The 40/41 Report

[49] The 40/41 Report noted the grounds of her complaint were "sex, national or ethnic origin, family status, and marital status." These were the grounds raised in the Applicant's Complaint of January 12, 2012.

[50] The Commission's staff concluded that "the Applicant had demonstrated a link between alleged practices and grounds which provide her with a reasonable basis to believe she was discriminated against," and that "she does not have access to a grievance process to deal with the alleged discrimination." The 40/41 Report recommended that the Commission "deal with her complaint because" it was "not frivolous" and because it was not satisfied "other procedures will address the allegation of discrimination."

[51] The 40/41 Report said that, "if proven," the Applicant had provided information to suggest that the alleged conduct of TC that could constitute discriminatory practices related to "her sex, family status and marital status."

[52] However, the 40/41 Report found there did not appear to be sufficient information to demonstrate how the alleged conduct was related to her "national or ethnic origin."

A. *The Applicant's response to the 40/41 Report*

[53] As noted, the Commission invited the Applicant to respond to the 40/41 Report, which she did.

[54] In fact the Applicant filed three responses. In the first, dated August 10, 2012, the Applicant said she was left in the dark about the process and progress of her complaint. She requested additional information – some of which was provided to her in the Section 40/41 Report.

[55] More materially at this time, and for the first time, the Applicant requested that her complaint be amended to include CAPE as a respondent. In addition she sought information about who was in charge of her complaint against TC. She also asked for copies of all information exchanged between the Commission and TC, and she requested information on procedures to complain against Commission staff.

[56] The Applicant's second response to the 40/41 Report, dated August 24, 2012, requested among other things that her allegations should also be reviewed on grounds of **"National or ethnic origin and harassment"** [emphasis in original]. Elsewhere she bolded and underlined the word "harassment". Thus, it is clear the Applicant wanted her allegation of discrimination on the grounds of national or ethnic origin considered, contrary to the recommendation of the 40/41 Report. And she wanted to add "harassment" as a ground of complaint against TC.

[57] In her response, the Applicant provided very slim details to support her allegations respecting discrimination on the basis of national and ethnic origin.

[58] Her third response was dated September 25, 2012 and took the form of a response to TC's comments on the 40/41 Report. It was critical of CAPE and the Commission, but I am not satisfied it provided information to the Commission that would have entitled it, acting reasonably, to have added CAPE as a respondent. Nor am I persuaded the Applicant provided anywhere near enough information in her third response to justify the Commission, acting reasonably, to do what the Applicant herself had not done, namely to add harassment or retaliation as additional grounds of discrimination against TC.

[59] With respect, neither the Applicant's August 10, 2012, August 24, 2012, nor September 25, 2012 letters, taken in the aggregate, provided any reasonably basis upon which the Commission, acting reasonably, could have either added CAPE as a respondent, or added harassment or retaliation as a separate grounds of Complaint against TC.

B. *Commission agrees to deal with Complaint by investigation*

[60] By decision dated October 10, 2012, the Commission made its decision under section 41(1) of the CHRA: the Commission in fact decided to deal with the Complaint. This is what the 40/41 Report recommended. In broad terms it was also what the Applicant asked for, albeit harassment were not added, and CAPE was not made a respondent.

[61] The Applicant did not seek judicial review of the section 41(1) decision of October 10, 2012, as she could have, notwithstanding the Commission advised her that such was her right. This is an uncontested fact confirmed not only by the Record but in post-hearing submissions of the parties.

[62] In addition, the Applicant did not file a discrimination complaint against CAPE, as she was free to do. She did not file a section 14(1) harassment complaint, and the Applicant did not file a retaliation complaint under section 14.1 of the CHRA.

[63] As matters now stand, and as I understand the Applicant's submissions, she faults the Commission for failing to add CAPE as a respondent. The Applicant also says that the Commission should have amended her complaint to allege harassment and retaliation against TC.

[64] In my view, and with respect, there is no merit in either submission.

[65] I am not persuaded that the Applicant's material filed in preparation for the 41/41 Report, or her responses to the 40/41 Report, if proven, provide a basis for amending the Complaint to add allegations of either harassment or retaliation against TC. There was simply insufficient evidence in both respects. Therefore, the Commission's decision with respect to the 40/41 Report and thus its decision to proceed to the next step are defensible on the record before it. I will consider this issue in the context of the Investigation Report (the 43/44 Report) later in these

reasons. Therefore, the answers to the part of Questions 1 and 3 relating to the 40/41 Report are "no":

1. Did the Commission err when it refused to exercise its jurisdiction to add and investigate the ground of harassment during the preparation of the 40/41 Report [and in the Investigation Report] despite the Applicant's many requests?

3. Did the Commission err when it refused to amend the complaint during the preparation of the 40/41 Report [and in the Investigation Report] to allow the Applicant to add additional retaliatory, harassing and discriminatory incidents against her by TC after she filed the Complaint in January 2012?

[66] In addition, again in my respectful view, neither the Complaint filed by the Applicant, nor her material filed before or after and in relation to the 40/41 Report, if proven, provided a reasonable basis for the Commission to add CAPE as a respondent. Therefore, the answer to the following question (Question 2 below) is "no":

2. Did the Commission err when it refused to exercise its jurisdiction to allow the Applicant to file a complaint against CAPE and to provide her with a complaint kit to file a complaint against CAPE?

[67] I have come to the same conclusion regarding the Applicant's allegation that the Commission breached procedural fairness in not providing her with a complaint kit against CAPE. As such I would answer the following question (Question 4) submitted by the Applicant, in the negative:

4. Did the Commission err when it refused to provide the Applicant procedural fairness when it refused to provide her with a complaint kit to file a complaint against CAPE.

C. *The investigation and the 43/44 Report*

[68] After the Commission agreed to "deal with" the Complaint, an investigation ensued pursuant to section 43 of the CHRA. A series of three investigators interviewed nine persons including the Applicant during the course of the investigation. I note that when the Applicant's file was transferred between the second and third investigators, the third investigator did not receive interview notes regarding two TC managers who were interviewed. As a result, the third investigator re-interviewed those two TC managers. While counsel for TC was, and in my opinion quite properly, present for the first interviews with these two TC managers, TC counsel was not present at their second interviews. The Applicant complains that TC was coaching its witnesses and otherwise obtained an unfair advantage in having its witnesses testify twice; there is no merit or evidence to base either allegation. In my view the process followed to make up for the lack of notes was procedurally fair.

[69] Relatively early in the course of the investigation, on May 10, 2013, the Applicant wrote the Commission and asked about adding CAPE, one of many such letters; just previously the Commission had told her a new complaint was needed. This answer was reiterated. The Applicant also asked if it should be considering issues that had arisen after her Complaint was filed and while she was on sick leave, such as alleged reprisals taken against her by TC. This was also directly responded to: the Applicant was told to contact Early Resolution Staff. This was in my view a reasonable response; the Applicant had filed a Complaint and after a 40/41 Report it had been accepted for investigation. Reprisals had not previously been alleged and formed no part of the Investigator's terms of reference which was the decision of October 10, 2012. The

Applicant decided not to take the Investigator's advice in this connection. I cannot see how the Commission is to be faulted as acting unreasonable or in breach of procedural fairness in these circumstances. It is also the case that requiring the Commission to consider allegations that post-date an initial complaint could result in potentially never-ending inquiries and would significantly delay investigations. I am not persuaded there is merit in the Applicant's complaint that alleged retaliation was not investigated.

[70] After the matter was investigated, the investigator prepared a 43/44 Report dated May 12, 2014. This report essentially recommended that the Complaint be dismissed for lack of evidence. As was the case with the 40/41 Report, the 43/44 Report was sent to the parties for comment, before being sent with those comments to the Commission to exercise its screening function and decide if the matter should go to a further step or be dismissed.

VIII. The 43/44 Report

[71] The stated purpose of the 43/44 Report was to assist the Commission to determine: a) whether a conciliator should be appointed to attempt to resolve the Complaint; b) whether further inquiry by a Canadian Human Rights Tribunal would be warranted; or c) whether the Complaint should be dismissed. The Report concluded the Complaint should be dismissed:

> The [Applicant] listed a number of incidents that she said occurred between the time she was hired in 2007 and the time she went on leave in December 2011. In some cases, the respondent and witnesses disputed the comments or conduct. In other cases, the comments or conduct were admitted by the respondent or witnesses stated that the complainant had taken the situation out of context, or that she was suggesting a motive that wasn't present.
>
> The [Applicant] argued that her differential treatment by the respondent was related to a combination of sex, ethnic origin,

> family status and marital status. She said, "Discrimination and harassment are practiced in a subtle manner therefore, more often than not, direct evidence won't be available." However, the evidence gathered at investigation does not show that the [Applicant] was treated in an adverse differential manner or that she was treated differently than her peers. And more importantly, there was no convincing evidence put forward, direct or otherwise, to indicate or even suggest that any of the treatment the [Applicant] received was linked to one or more grounds under the *Act*.
>
> [Emphasis added]

[72] Copies were sent to the Applicant and TC, both of whom were invited to comment. On July 18, 2014, the Applicant responded with 101 paragraphs of detailed submissions.

[73] I will review the report and the Applicant's comments in more detail.

A. The 43/44 Report re adding harassment

[74] The 43/44 Report acknowledged that the Applicant had raised discrimination and harassment. As quoted above, it reported her saying: "[D]iscrimination and harassment are practiced in a subtle manner therefore, more often than not, direct evidence won't be available." However, in this connection, the 43/44 Report went on to say:

> However, the evidence gathered at investigation does not show that the [Applicant] was treated in an adverse differential manner or that she was treated differently than her peers. And more importantly, there was no convincing evidence put forward, direct or otherwise, to indicate or even suggest that any of the treatment the [Applicant] received was linked to one or more grounds under the *Act*.
>
> [Emphasis added]

[75] In response to the 43/44 Report, the Applicant reiterated her request that harassment be added to her complaint against TC. However, the Applicant furnished no evidence to support this request. Instead, she alleges her allegations were not considered, and from that, she further argues that her harassment complaint was ignored. Further still the Applicant alleges that many of the witnesses interviewed were harassers or hostile to her; however she provided no evidence in support of this allegation. She makes many bald assertions and criticisms of the 43/44 Report regarding harassment including that it did not consider the gravity of the facts underlying the harassment and discrimination and impact on her person. But she provides almost nothing to support these allegations.

[76] The essential determination of the 43/44 Report was its recommendation that the Complaint be dismissed for lack of evidence. In my respectful view, the Applicant was put on very clear notice to provide evidence to support her allegations. In reality, while lengthy, I have concluded that the Applicant's response to the 43/44 Report failed to substantiate her claims; there was almost no substance to her criticisms. In my view, acting reasonably and on the evidence before it, there was no basis for the Commission to reject the 43/44 Report.

[77] Given the foregoing and with the added highly deferential standard of review owed to the Commission when exercising this screening function, I am not persuaded the Commission acted unreasonably in declining to allow the Applicant to amend her Complaint to add harassment against TC.

B The 43/44 Report re CAPE

[78] The Applicant had asked that the Commission add CAPE as a respondent. In response the Commission repeatedly advised the Applicant to contact the Commission's toll free line and make a new complaint against CAPE if that is what she wanted to do. For her own reasons, the Applicant decided not to do as the Commission suggested. I have concluded that the Commission is not to be faulted for the Applicant's decision in this regard.

[79] Reflecting the back and forth between the Commission and the Applicant in relation to adding CAPE as a party respondent, the 43/44 Report fairly and accurately stated:

> 5. The complainant is unionized. She states in her Complaint Form that she sought the assistance of her union (the Canadian Association of Professional Employees) to no avail. On a few occasions while communication with Commission staff, the complainant requested that the union be added to the present complaint as a second respondent. On each occasion, Commission staff informed her that her allegations against the union would have to be addressed in a separate complaint. In the final instance, Commission staff explained to the complainant, in a letter dated April 25, 2013, that she would need to speak to an officer in the Commission's Early Resolution Division about filing a complaint against the union. To date, the complainant has not filed a complaint against the union.

[80] As she was entitled to, the Applicant responded to this aspect of the 43/44 Report dated July 18, 2014, the Applicant outlined why she refused to accept the Commissions guidance to start a new complaint against CAPE:

> 17 Since the Complainant's first contact with the CHRC intake person, Melanie, on August 31, 2010 and after on October 12, 2010 with another intake person Mrs. Caroline Audet, she repeated to her all the facts surrounding the compliant such as: being harassed and discriminated by the employer's managers and by the

> Union. Mrs. Audet provided the Complainant with a file number (i1003738).
>
> ...
>
> 21 The Complainant did not follow up the CHRC recommendations to: file with the CHRC by contacting the intake line again or the PSLRB because the Union and the harassment ground were laid out to the CHRC intake agents on August 2010 and then in October 12, 2010, as above mentioned, the same information was provided to Mrs. Allen when the Complainant got in contact with her in September 2011 and was put forward in the present Complaint. The fact that the CHRC lost that information has nothing to do with the Complainant. It is the responsibility of the CHRC. By the time the CHRC informed the Complainant of their refusal, the timelines to file either with the CHRC or the PSLRB were already prescribed. The mishandling of the Complainant's Complaints is a denial of access to justice.

[81] With respect these are hardly grounds to reject the Commission's guidance on bringing a complaint against CAPE. In my view the Commission's sending her the complaint kit on December 13, 2011, together with all the related precedents, instructions, tip sheet and other information, satisfied the Commission's duty to provide her with assistance in filling out the form as she chose to do. The Commission made it perfectly clear what the Applicant had to do to bring a complaint against CAPE. Simply put, the Applicant disregarded the advice given to her and cannot now avoid the consequences of her decisions.

[82] In addition, adding a party to a proceeding is a serious matter, particularly at the 43/44 Report Stage because the added party would at that stage deprive the added party of its normal right to challenge the complaint, as for example on the ground that it is frivolous, vexatious, or better suited for determination under relevant workplace harassment procedures or grievance procedures, matters contemplated by section 41(1) of CHRA. I note in passing that the

Commission has properly recognized the general principle that separate complaints should be made against separate respondents. This is confirmed by section 3.5.2.7 of the Canadian Human Rights Commission Dispute Resolution – Procedures Manual [the Manual], which provides that: "[i]nstances where two or more respondents are alleged to have played a role in the discriminatory act or practice, separate complaint forms should be taken against each respondent."

[83] In the circumstances, and with respect to the Applicant, I am not persuaded to find either procedural unfairness or unreasonableness in the 43/44 Report.

IX. Decision

[84] Thereafter, by letter dated September 19, 2014, the Commission dismissed the Complaint under section 44 of the CHRA, giving rise to this judicial review. In regard to the Applicant's Complaint against TC, the Commission had before it the 43/44 Report and the Applicant's submissions. The Commission stated:

> Before rendering the decision, the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, to dismiss the [C]omplaint because, based on the evidence:
>
> > It does not appear that [TC] treated the [C]omplainant in an adverse differential manner in employment-related matters based on sex, national or ethnic origin, family status and marital status.
>
> Accordingly, the file on this matter has now been closed.

A. *Conclusions on the main issues: adding harassment and adding CAPE*

[85] Earlier in these reasons, I addressed the Applicant's two main issues considered to the point in time of the Commission's decision to deal with the complaint against TC based on the 40/41 Report.

[86] I now wish to address these two issues in terms of the Commission's decision based on the 43/44 Report. To recall, the issues, briefly put, are whether the Commission erred, i.e., acted unreasonably or in breach of procedural fairness, in not amending the Complaint to add harassment and retaliation, and in not adding CAPE as a party respondent to her complaint against TC.

[87] Based on the totality of the record both with respect to the 40/41 Report and the 43/44 Report, including the Applicant's Complaint itself and her several submissions to the Commission in respect of the two reports, I am not at all persuaded that there was either procedural unfairness or that the Commission acted unreasonably. In my overall assessment, the Applicant was treated fairly for the reasons stated above. In terms of reasonableness, the Commission's decisions respecting the addition of harassment and retaliation against TC fall within the range of possible, acceptable outcomes that are defensible on the facts and law.

[88] Therefore, I would answer each of the Applicant's following questions in the negative, for the reasons given:

1. Did the Commission err when it refused to exercise its jurisdiction to add and investigate the ground of harassment during the preparation of the 40/41 Report and in the Investigation Report despite the Applicant's many requests?

2. Did the Commission err when it refused to exercise its jurisdiction to allow the Applicant to file a complaint against CAPE and to provide her with a complaint kit to file a complaint against CAPE?

3. Did the Commission err when it refused to amend the complaint during the preparation of the 40/41 Report and in the Investigation Report to allow the Applicant to add additional retaliatory, harassing and discriminatory incidents against her by TC after she filed the Complaint in January 2012?

4. Did the Commission err when it err when it refused to provide the Applicant procedural fairness when it Refused to provide her with a complaint kit to file a complaint against CAPE.

[89] I will now deal with the remaining issues submitted by the Applicant.

B. *Refusal to accommodate the Applicant to communicate with the Commission by email*

[90] In this regard, the Applicant submits:

> […] due to the circumstances she was in she needed to be accommodated in order to participate in the process but throughout the process [CHRC] insisted that the Applicant communicate by telephone, which was contrary to her needs.

[91] This complaint is without merit. On the facts of this case, it appears to me that most of the communication and contacts between the investigators and the Commission for the one part, and the Applicant, took place by e-mail. Secondly, in my respectful view, the Commission and its staff have as much right to speak to complainants as they do to speak with those whose conduct is being investigated, i.e., in this case, the other eight individuals. And while the Applicant speaks of accommodation, I am not persuaded she provided sufficient evidence to the Commission staff to give rise to a duty to accommodate embracing a duty to refrain from speaking with the Applicant. I should note a similar complaint was rejected by Justice Kane in Georgoulas II at paragraphs 99, 108 and 109, given that the Commission communicated with the

Applicant in writing and email (as it did in the case at bar), and that the Commission was not required to communicate by email. In the circumstances of this case, mode of communication is a procedural matter that fell squarely within the Commission's mandate to decide. The Applicant has not shown any harm as a result, and in my view, has failed to establish procedural unfairness in this respect.

C. *The Commission erred when it took the witnesses' testimony at face value disregarding the information submitted by the Applicant during the investigation of her Complaint, and, the Commission ignored or misconstrued the evidence submitted by the Applicant during the investigation of her complaint*

[92] These two issues are related and deal with the fact finding and fact assessment role of the Commission. Fact finding is owed deference. These issues are raised in the context of the preparation of the 43/44 Report, that is, after the Commission decided to conduct an investigation. In my view, upon review of the record, there is no merit in the Applicant's submissions in these two respects.

[93] In this connection, a number of issues are raised. Generally, I should observe that many of the Applicant's allegations are simply bald claims to legal entitlement made without sufficient or indeed in some cases, made without any evidence to support them. I will deal with some of the Applicant's allegations as follows:

- The Applicant is concerned with the interview process. No evidence was led to support any impropriety or unfairness. The submissions in this respect are unfounded allegations and baseless assertions;
- There is no evidence one investigator was "controlling the interview process", as alleged;
- There is no evidence of interference in the interview process as alleged;

- The Applicant had no right to know who would be interviewed, as alleged;
- TC had the right to prepare and sit through interviews with its employees; the Applicant's criticism in this respect is misguided;
- The fact a 40/41 Report found a link between alleged practices and grounds does not preclude dismissal of the complaint by the Commission on the basis of no evidence after a 43/44 Report; if it were otherwise there would be no point in 43/44 proceeding;
- There is no unfairness in a Commission deciding against an Applicant after a 43/44 Report where it agreed to investigate after a 40/41 Report; that is a normal and acceptable consequence of the two step screening processes;
- The Applicant had no right to cross-examine TC witnesses, and no right to have them put under oath as she appears to claim; and
- There is no evidence that in re-interviewing witnesses where original notes were lost constitutes "assisting the Respondent to reposition its case".

[94] In terms of fact finding, the Commission's decision is largely based on the 43/44 Report, which is nineteen pages in length and contains very considerable detail. The 43/44 Report is based on Investigator interviews with nine individuals, including the Applicant herself. In fact, the 43/44 Report considers each material and fundamental aspect of the Complaint, and does so in my view with some considerable detail. Essentially, the Applicant complains that evidence unfavourable to her position was accepted and that favourable to her was not. That in my view is an expected and in this case reasonable result of the investigation and recommendation process. In my respectful view, the Applicant had her fundamental complaints reviewed and recommendations were made. The 43/44 Report was in my view fair and reasonable.

[95] There being no merit in these two grounds, I will now consider a further submission of the Applicant.

D. *Was the Commission thorough or neutral in dealing with the Applicant's complaint?*

[96] The Commission has a duty to be thorough. However, in *Bergeron v Canada (Attorney General)*, 2015 FCA 160 [*Bergeron*], Stratas J.A. at paragraph 74 and following emphasizes that the jurisprudence does not require the Commission's investigation to be "thorough and complete" or "as thorough as possible". Specifically, the Federal Court of Appeal held that while an investigation must be thorough, an investigator need not pursue every last conceivable angle. Moreover, the degree of thoroughness depends on the circumstances of each case. Additionally, thoroughness must also be qualified by the need for a workable and administratively effective system for reviewing complaints. Importantly, the Federal Court of Appeal held that only "fundamental issues" need be investigated so that complaints can receive the "broad grounds" of the case against them. Put another way, a deficient investigation warranting relief is one where there has been an "unreasonable omission" in the investigation or the investigation is "clearly deficient." For example, a failure to investigate obviously crucial evidence where an omission has been made that cannot be compensated for by making further submissions will result in a finding of lack of procedural.

[97] It appears the Applicant has fallen into the same mistaken belief on the law as the applicant did in *Bergeron*. What the Applicant seeks in this case is a 43/44 Report that is as complete as possible. However, that is not the law.

[98] So the real question is whether the 43/44 Report dealt with the fundamentals issues, or was it flawed by unreasonable omission or clearly deficient? In my view, the 43/44 Report dealt

with the fundamentals of the Applicant's complaint. In my view the 43/44 Report meets the Federal Court of Appeal's test. It is not flawed by clear deficiency nor unreasonable omission.

[99] I am not persuaded there is merit to the Applicant's criticisms. Dealing with some of the Applicant's specific concerns:

- As I have already concluded, there is not merit to the Applicant's insistence that harassment should have been added to her complaint against TC, nor is there any merit in her submission that CAPE should have been added as a respondent. Those requests were not substantiated on the evidence she elected to put to the Commission. In this respect, as noted above, the 43/44 Report recommended dismissal essentially because the Applicant failed to supply the Commission with evidence to support her case. The Commission, in sending the Applicant the 43/44 Report specifically invited her to respond. Logic indicates she should in her response have supplied the evidence the 43/44 Report found wanting. However, the Applicant chose not to provide missing evidence in her response to the 43/44 Report leading me to conclude she had none to lead;

- The Applicant says that the Commission was under a duty to review "the whole record" before making a decision. The law presumes the Investigators did that. In addition, I am nor persuaded the Investigators did not do that in preparing the 43/44 Report. In addition, the Applicant had the right to, and did file a 101 paragraph response to the 43/44 Report, which was provided to the Commission as decision maker. I see no fairness in this respect;

- It appears to me that the Applicant simply disagrees with the 43/44 Report's findings and conclusions. It is trite to observe that it takes far more than that to interfere with and set aside this screening decision; and

- Contrary to *Bergeron*, the Applicant submits that both the 40/41 and 43/44 Reports "did not contain the totality of the issues and supporting information she raised right from the first moment that she provided the Commission with sufficient information on October 10, 2010." There is no merit in this submission; it is based on a misconception of the Federal Court of Appeal's determinations to the opposite in *Bergeron*.

[100] With respect, I am not persuaded the Commission was not neutral in its handling and determination of the Applicant's Complaint. The test the Applicant must meet to establish lack of neutrality is whether the investigator "approached the case with a closed mind" or has "pre-

determined" the case: *Abi-Mansour v Canada (Revenue Agency)*, 2015 FC 883 per Justice Leblanc at para 51:

> [51] The burden of demonstrating either the existence of actual bias or of a reasonable apprehension of bias rests on the party alleging bias. As an allegation of bias is a very serious allegation since it challenges the integrity of the decision-maker whose decision is at issue, the burden of proof is high. Mere suspicion of bias is therefore not sufficient to establish actual bias or a reasonable apprehension of bias. (*R v RDS*, [1997] SCR 484, at para 112). Furthermore, considering the non-adjudicative nature of its screening function, the Commission is not bound by the same standard of impartiality as are the courts. The applicable test is therefore not whether there exists a reasonable apprehension of bias on the part of the Investigator but whether the Investigator "approached the case with a closed mind" (*Sanderson v Canada (Attorney General)*, 2006 FC 447, 290 FTR 83, at para 75; *Gerrard v Canada (Attorney General)*, 2010 FC 1152 at para 53; *Gosal v Canada (Attorney General)*, 2011 FC 570, at para 51).

[101] As Justice Mactavish put it in *Hughes v Canada (Attorney General)*, 2010 FC 837 at paragraphs 23 and 24:

> [23] That said, because of the non-adjudicative nature of the Commission's responsibilities, it has been held that the standard of impartiality required of a Commission investigator is something less than that required of the Courts. That is, the question is 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": see *Zündel v. Canada (Attorney General)* (1999), 175 D.L.R. 512, at paras.17-22.
>
> [24] As the Court stated in *Canadian Broadcasting Corp. v. Canada (Human Rights Commission)*, (1993), 71 F.T.R. 214 (F.C.T.D.), the test in cases such as this:
>
> [I]s not whether bias can reasonably be apprehended, but whether, as a matter of fact, the standard of open-mindedness has been lost to a point where it can reasonably be said that the issue before the investigative body has been predetermined.

[102] There is no merit to the Applicant's allegation that the Commission was either close-minded or had pre-determined the case. The Applicant also alleges the Investigators and Commissioner were wilfully blind or reckless. These are baseless allegations. Notably, the Applicant's memorandum of fact and law made no material factual submissions in this respect; instead the memorandum makes bald factually unsupported legal assertions. Needless to say the Applicant cannot succeed based on that; far more is required.

[103] In oral submissions the Applicant relied on previously discussed submissions concerning adding harassment and adding CAPE as a respondent. There is, as already decided, no merit in either. Also in oral argument, the Court heard something of a reiteration of the previously rejected submissions concerning the process of interviewing witnesses. In short, the Applicant failed to establish either close-mindedness or pre-determination. This submission must therefore fail.

E. *Is the decision reasonable?*

[104] This is the final issue raised by the Applicant. However, it has already been raised and considered in respect of the issues concerning adding harassment and retaliation to the complaint against TC, and in relation to adding CAPE as a respondent before the Commission. The Applicant's memorandum of fact and law contain but four sparse paragraphs on this point. The Applicant says she was not allowed to fully and fairly present her complete case – which I take to be a reference to these same two issues namely adding harassment and adding CAPE as a party; I need not say more on either. The Applicant says the Commission did not have all the necessary evidence to make a decision; this point falls with the previous. In her oral submissions,

the Applicant argued that the Commission was obliged to but failed to review all the circumstances of the case, a proposition rejected in *Bergeron* as noted above.

[105] I am not persuaded that the Applicant's submissions in this respect are meritorious.

X. Conclusion

[106] I have reviewed the record and the submissions of the parties. In addition there were close to nine hours of oral submissions in this matter, spread over two days (at the Applicant's request and based on the Court's assessment of its duty to accommodate her personal requirements). In my respectful view, the Applicant was not subject to procedural unfairness and in that respect her judicial review must be dismissed. In respect of reasonableness, I am aware that this is not a treasure hunt for error. Nor is it a matter of adding up the plusses and minuses. Instead, the Supreme Court of Canada requires me to step back and review the matter as an organic whole. There is no issue of justification, transparency or intelligibility. Reasonableness also requires that a decision fall within a range of possible, acceptable outcomes that are defensible on the facts and law, per *Dunsmuir*. In my respectful opinion, the Decision falls within this range. Therefore, judicial review must be dismissed as against both TC and CAPE.

XI. Costs

[107] The Respondent, the Attorney General of Canada, requests costs in the all-inclusive amount of $2,800.00 if she succeeds. CAPE requests costs in the all-inclusive amount of $4,500.00 if it succeeds. I see no reason, and received no submissions why the Court should

depart from the normal rule that costs follow the event. The amounts requested are reasonable; CAPE's entitlement while higher was supported by a bill of costs, and it should be remembered CAPE was improperly and unilaterally added to this litigation without having been a party to the proceedings below, and thereby exposed to the resulting expenses of this litigation, solely as a consequence of the unjustified actions of the Applicant. In my view, the amounts requested should be awarded to the Attorney General of Canada and CAPE respectively.

XII. Affidavit

[108] I wish to add that the Respondent, Attorney General of Canada asked the Court to find certain information in the Applicant's affidavits inadmissible, specifically, paragraphs 83-90 of the November 18, 2014 affidavit and paragraphs 1-4 and 7 and Exhibit A of the additional affidavit, dated August 31, 2017, because of the general rule that the evidentiary record before this Court is restricted to the evidentiary record before the decision-maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20. I agree with the general proposition. I have also found the information objected to of little or no relevance and therefore have not relied upon it in these reasons.

XIII. Style of Cause

[109] The Applicant incorrectly named Transport Canada as a Respondent in the style of cause: she should have named the Attorney General of Canada. Therefore, the style of cause is amended

to remove Transport Canada and replace it with Attorney General of Canada as a Respondent effective immediately.

JUDGMENT in T-2148-14

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to remove Transport Canada and replace it with the Attorney General of Canada effective immediately.
2. The application for judicial review is dismissed.
3. The Applicant is ordered to pay all-inclusive costs in the amount of $2,800.00 to the Attorney General of Canada.
4. The Applicant is ordered to pay all-inclusive costs in the amount of $4,500.00 to the Canadian Association of Professional Employees.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2148-14
STYLE OF CAUSE:	OURANIA GEORGOULAS v ATTORNEY GENERAL OF CANADA AND CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 25, 2018 AND JUNE 28, 2018
JUDGMENT AND REASONS:	BROWN J.
DATED:	AUGUST 27, 2018

APPEARANCES:

Ms. Ourania Geourgoulas	FOR THE APPLICANT (ON HER OWN BEHALF)
Mr. Peter Engleman	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA
Mr. Matthew Johnson	FOR THE RESPONDENT CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

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