Date: 20060517

Docket: T-1710-05

Citation: 2006 FC 608

Ottawa, Ontario, May 17, 2006

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

MR. JOSHUA K. COHEN, B.A., M.A.

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Joshua Cohen, is a bright, educated person who suffers from hearing disability. He applied for a Management Training Position (MTP) with the federal government but did not succeed securing that position. The Applicant believed that such failure was due to discriminatory practices having regard to his disability whereupon he pursued the matter through the Human Rights Commission. The Commission rejected his complaint. Some fifteen months later the Commission received a further complaint from the Applicant arising out of the same failure to secure the position, which complaint was dismissed as being out of time, no extension of time was allowed. The Applicant seeks judicial review of this latter decision, asking that the matter be

referred back to the Commission for review by a different person. For the reasons that follow, I am dismissing this application but without costs.

[2] It is best to begin with a chronological review.

1. Events transpiring in the period from January 14, 2004 to February 6, 2004 are those giving rise to the complaints. These events are only briefly referred to in the Record but appear to relate to the Applicant's unsuccessful attempt in securing a Management Training Position. The Applicant believes that his lack of success was due to failure to give proper consideration to his hearing disability and, possibly, to religious bias.

2. On February 14, 2004 the Applicant contacted the Canadian Human Rights Commission and, on March 25, 2004 submitted a complaint form. This form was revised and supplemented in a further form submitted April 6, 2004.

3. On July 5, 2004 the Commission sent the Applicant a letter rejecting his complaint, it said, among other things "*I have carefully reviewed your document and must advise you that the Canadian Human Rights Commission cannot offer you assistance in this matter*." This letter referred the Applicant to the Court Challenges Program as a possible ally in dealing with issues he might wish to raise.

4. The Applicant did apply to the Court Challenges Program in October 2004. The Program declined to assist the Applicant in a letter dated December 16, 2004 stating that it "*cannot provide funding to assist people with human rights complaints*."

5. By letter dated April 22, 2005 directed to the Commission, the Applicant inquired as to whether an appeal within the Commission, was possible. He was advised that no appeal was provided.

6. Following what appears to be at least two telephone conversations, the Applicant filed a further complaint with the Commission on May 9, 2005. The basis for this is set out in a Memorandum to File from Hannya Rizk of the Commission dated May 3, 2005 which records her version of her telephone conversations with the Applicant. The Applicant has his own, brief, note of that conversation. Essentially the Applicant wanted to submit statistical information as to the lack of job opportunities for those with hearing disabilities. The Applicant believed that Rizk said that data would not be considered. Rizk says that she said that such data could not form the basis of a complaint but could support a complaint.

   In any event the Applicant did submit this statistical material with his complaint filed May 9, 2005. The complaint was based on the same event namely the Applicant's failure to secure an MTP.

7. On June 15, 2005 the Commission wrote to each of the Applicant and the Public Service Commission of Canada, stating that a recommendation would be made that the complaint not be dealt with since more than one year had elapsed from the date of the event and the filing of the complaint of May 9, 2005. Further comments were solicited.

8. On July 4, 2005 and again on July 27, 2005 the Applicant submitted a detailed response giving his representations as to why the complaint should be heard. The Public Service Commission in a letter dated July 5, 2005 took the position that the Commission should not deal with the complaint of May 9, 2005.

9. By letter dated September 2, 2005 the Commission advised the Applicant that it would not deal with his complaint since it had been made more than one year after the event upon which the complaint was based, occurred. This is the decision under review.

[3] The Applicant says that he is entitled to a duty of fairness, a right of "*audi alterem partem*" so that his side of the story may be heard. He relies upon *Tiedeman v. Canadian Human Rights Commission* (1993) 66 F.T.R. 15 and in particular on a statement by Justice McGillis at paragraph 11:

> *In rejecting the complaint of discrimination on the basis of non-compliance with the statutory time limit, the Commission failed to consider the submissions of Mr. Tiedeman dated April 26, 1990 addressing this specific issue. In conducting itself in this fashion, the Commission breached a basic principle of procedural fairness and acted unfairly. To solicit the representations of a party and, subsequently, to fail to consider them, renders hollow the hallowed principle of the right to be heard. The Commission therefore erred in law in exercising its discretion under subsection 41(e) of the Act and, in doing so, committed a reviewable error.*

[4] The Applicant says that his submission of May 9, 2005 was simply a revision of his application filed April 6, 2004. In doing so he is relying on *Tiwana v. Canadian Human Rights Commission* (2001), 197 F.T.R. 282 per Justice Pelletier (as he then was) at paragraphs 32 and 33:

> *While it is true that there is no explicit statutory recognition of the right to amend a complaint, the Federal Court of Appeal recognized in Bell Canada v. Communications, Energy, and Paperworkers Union of Canada, [1999] 1 F. C. 113 at para. 45 that human rights claims can and, in certain circumstances, ought to be amended:*
>
> > *Where, therefore, an investigator in the course of investigating a complaint is provided with some evidence, not of her making, that there is a possible ground for discrimination which the complaint, as formulated, might not have encompassed, it becomes her duty to examine that evidence ... and even to suggest that the complaint be amended. To require the investigator in such a case to recommend the dismissal of the complaint for being flawed and to force the filing of a new complaint ... would serve no practical purpose. It would be tantamount to importing into human rights legislation the type of procedural barriers that the Supreme Court of Canada has urged not to be imported.*
>
> *On the basis of the very same logic, and in the absence of a statutory proscription, there is nothing to prevent an amendment being made to a claim at the claimant's request*

[5] The Applicant says that his earlier complaint was simply amended and should not have been rejected as out of time, but considered on its merits. Accordingly, as in *Arnold v. Canadian Human Rights Commission* (1996), 119 F.T.R. 241 the Applicant argues, there is a duty to accommodate the disabled and the matter should be sent back for redetermination.

[6] The Applicant's argument is flawed as it overlooks the fact that his original complaint was dismissed, on its merits, as set out in the Commission's letter July 5, 2004. At that point the matter was over.

[7] The Applicant sought out the Court Challenges Program to see if a different avenue was available, it was not. In April 2005 the Applicant made inquiry of the Commission as to whether an avenue of appeal was available, there was not. In May 2005 the Applicant filed another complaint, which he called a revised complaint, providing other information beyond that set out in his original complaint but based on the same event. This additional material comprised essentially of statistics as to job losses suffered by the hearing disabled. The Commission accepted this material for filing but cautioned him that it would be subject to scrutiny and rejection if it was determined that there was no basis for an extension of time.

[8] The Commission afforded the Applicant ample opportunity to make submissions as to why an extension of time should be granted. He made those submissions and, after receiving them, the Commission refused to grant the extension. Thus the matter that was already decided against the Applicant more than one year previous, was not further considered on the basis that the "*revision*" or "*new matter*" was out of time.

[9] The Commission, in making decisions of this kind is entitled to considerable deference by the Court. As stated by Justice Snider in *Johnson v. Canada Mortgage and Housing Corp*. [2004] F.C.J. No. 1121, 2004 FC 918, a decision directly within the discretion of the Commission should only be disturbed if it is patently unreasonable. The Commission dismissed the Applicant's original

complaint. The Commission also dismissed the Applicant's request to supplement or revise the complaint as it was out of time. They did so after affording the Applicant an opportunity to make submissions which he did. It was not patently unreasonable to dismiss that "*revised*" complaint.

[10] While I have no doubt that the Applicant is well meaning in his attempts to seek redress in respect of which he perceives to be prejudice in respect of his hearing disabilities, those attempts have been misguided and haphazard. He does not appear to have received, or if received, followed, sound legal advice. Instead he has been guided to some extent by the well intentioned efforts of the Commission in leaning over backwards to assist him or at least suggest approaches to be considered. Matters however, must come to a resolution. The Applicant has been afforded two opportunities to make his case, the Commission has provided ample opportunity for the case to be made out and considered what the Applicant had to offer. The Commission's decisions were appropriate and cannot be set aside.

[11] While it would be in order to award costs to the Commission in this case, I do have some sympathy with the Applicant in his efforts, largely misguided, in pursuing what he perceived as his remedies. No costs will be ordered.

JUDGMENT

UPON APPLICATION made on Monday, the 15th day of May, 2006 for judicial review of a decision of the Canadian Human Rights Commission dated September 2, 2005;

AND UPON reviewing the Records filed herein and hearing from the Applicant in person, and from Counsel for the Respondent;

AND FOR the Reasons delivered herewith;

THIS COURT ADJUDGES that:

1. The application is dismissed; and
2. No order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1710-05
STYLE OF CAUSE:	MR. JOSHUA K. COHEN v. THE ATTORNEY GENERAL OF CANADA
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APPEARANCES:

Mr. Joshua K. Cohen	SELF REPRESENTED
Mr. Alexander Gay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Joshua K. Cohen Ottawa, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT