

Date: 20090505

Docket: T-528-08

Citation: 2009 FC 453

Ottawa, Ontario, May 5, 2009

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

ELLIOTT MOGLICA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] While Mr. Moglica asks for a broad range of remedies, his plea is essentially for judicial review of the March 13, 2008 decision of the Director of the Investigations Branch of the Public Service Commission (Director) not to investigate his complaint. His complaint relates to his efforts to join the Public Service of Canada (PSC) and, in particular, to an exam that he had to pass.

II. BACKGROUND

[2] Mr. Moglica is of Albanian ethnic background, a fact only made relevant because he claims that everything done to him was motivated in whole or in part by this ethnicity.

[3] The Applicant was invited by the Canada Border Services Agency (CBSA) to write a “knowledge” exam and to attend an interview.

[4] On December 18, 2007, the Applicant wrote the exam, which was graded before he was scheduled to be interviewed. Upon being called in for his interview, he was informed that he had not attained the pass rate for a key segment of the exam. Therefore, he had not met an essential criterion for the position and was eliminated from the pool.

[5] The complaint was filed with the Investigations Branch on January 28, 2008, and the Director’s decision was dated March 13, 2008.

[6] The decision was based on the absence of a breach of any of the *Public Service Employment Act*, the *Public Service Employment Regulations*, PSC policies, or the terms and conditions of delegation.

[7] The Director informed the Applicant that the exam and a rating guide are developed by the manager based on the requirements of the job. The Court takes this to mean that it was within the

authority of the manager to set the exam and determine how it would be marked based on what the job required.

[8] The Director also found that, as regards any claim of discrimination, the proper relief was a complaint to the Canadian Human Rights Commission. It was noted that a complaint had been submitted.

[9] The issues raised in this judicial review are:

- a. Was the decision not to investigate reasonable?
- b. Did the decision adequately represent and consider the relevant issues?

III. ANALYSIS

[10] The standard of review for a PSC decision not to investigate has been held to be reasonableness (*Baragar v. Canada (A.G.)*, 2008 FC 841). For the same reasons as those outlined by Justice Barnes in that decision, I conclude that the reasonableness standard is applicable in this case.

[11] On the issue of the reasonableness of the decision not to investigate, it can be considered in two parts: the appropriateness of the complaint and the merits of the complaint.

[12] Firstly, when the Applicant articulated his real concern, the complaint is about discrimination against him because he is of Albanian background. Whatever the merits of this

claim, it is a matter for the Canadian Human Rights Commission and not for the PSC. This judicial review could be resolved on that point alone.

[13] Secondly, the merits of the complaint on its face are dubious and it is not unreasonable to refuse to investigate. There are four key components of the complaint which I will address:

- (1) The fact that the exam was not proctored or that some candidates did not dress as the Applicant thought suitable is not an issue of procedural fairness. Every candidate was treated in the same manner and the Applicant was not singled out.
- (2) The fact that the exam was divided into two parts did not make it discriminatory or unfair. The Applicant failed one essential part of the exam; there was nothing unreasonable or unfair in not marking the rest of the exam.
- (3) The Applicant's complaint about the absence of a stated pass mark likewise did not disadvantage him. He knew he had to get above 50% which he failed to do.
- (4) It is inaccurate to allege that the exam criteria were a verbatim reproduction of a CBSA document. A review of the Applicant's exam (a sealed copy of which was available to the Court) shows that this was not the case.

[14] While the Director's decision letter was not overly extensive and only obliquely addressed the subject of the exam, given the overall validity of the complaint, this is understandable and reasonable. There is sufficient evidence in the record to satisfy me that the Director turned her mind to the relevant considerations and reached a reasonable conclusion.

[15] On the issue of the adequacy of the representation and consideration of the issues, the Applicant tended to focus on submitting that the Director was selective with the facts on the basis of some type of conspiracy.

[16] While the decision letter was cursory on some subjects, it set out the Applicant's allegations. The reasonableness of the conclusions on those allegations has already been addressed in this decision.

[17] There is no basis for attacking the Director's decision. The Court doubts that this conclusion can or will ever be accepted by the Applicant given his unique perspective on his many troubles in securing not only this job but any other job in the federal public service.

IV. CONCLUSION

[18] For these reasons, this judicial review is dismissed with costs.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed with costs.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-528-08

STYLE OF CAUSE: ELLIOTT MOGLICA

and

ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 17, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: May 5, 2009

APPEARANCES:

Mr. Elliott Moglica	FOR THE APPLICANT
Ms. Gillian A. Patterson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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