Federal Court  Cour fédérale

Date: 20180125

Docket: T-100-17

Citation: 2018 FC 77

Toronto, Ontario, January 25, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

WAGMATCOOK FIRST NATION

Applicant

and

ANNIE OLESON

Respondent

and

CANADIAN HUMAN RIGHTS COMMISSION

Intervener

JUDGMENT AND REASONS

I. Introduction

[1] Wagmatcook First Nation brings this application for judicial review of the Canadian Human Rights Commission's decision to refer a complaint for inquiry by the Canadian Human Rights Tribunal [Decision]. Wagmatcook requests that the Decision be set aside, and seeks an order declaring there to be no basis for inquiry by the Tribunal, or, alternatively, remitting the matter back to the Commission for redetermination.

[2] The only question before this Court is whether the Decision was reasonable. For the reasons that follow, I am of the view that it was.

II. Background

[3] This is an application for judicial review under section 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7. The applicant, Wagmatcook, is a Mi'kmaw First Nation community located on Cape Breton Island, Nova Scotia. The respondent, Annie Oleson, was a member of Wagmatcook and lived on the reserve from about the late 1990s until her death in 2017. What follows is a brief summary of the factual background to this application.

[4] In about 2007 or 2008, Ms. Oleson was allocated a "mini-home" trailer on the reserve by Wagmatcook, in which she then lived with her two sons and granddaughter. Around this time, Wagmatcook also proposed that Ms. Oleson move into a larger, fully accessible home, after the death of its resident. Ms. Oleson alleged before the Commission that she denied this proposal because the home was already "spoken for" by the family of its former resident.

[5] In 2013, Ms. Oleson, who was by then in her eighties and using a wheelchair, requested that Wagmatcook provide her with barrier-free housing. At the time of her death in 2017, Ms. Oleson continued to reside in the mini-home, which was not barrier-free. The dispute underlying this application relates to Ms. Oleson's 2013 request for accessible housing and Wagmatcook's responses to it.

[6] In 2014, Ms. Oleson filed a complaint with the Commission, alleging that Wagmatcook had not provided her with a barrier-free home, most recently following her 2013 request, and thereby discriminated against her on the prohibited grounds of age, disability, family status, and sex in the provision of services contrary to section 5 the *Canadian Human Rights Act*, RSC, 1985, c H-6 [Act]. The complaint was later amended to include section 6 of the Act, which prohibits discrimination in the provision of residential accommodation. At the time of the complaint, Ms. Oleson was 85 years old. On December 28, 2016, following an investigation and conciliation efforts, the Commission decided, under section 44(3)(a) of the Act, that the matter be referred to the Tribunal for inquiry.

[7] Wagmatcook filed its notice of application on January 20, 2017. It named Ms. Oleson as the only respondent. Unfortunately, Ms. Oleson passed away shortly after the filing of the notice of application, and no other party sought standing as respondent at the time.

[8] On the basis that Wagmatcook's application would otherwise be adjudicated unopposed, the Commission sought leave to intervene in the proceeding. By order dated June 1, 2016, Justice Gagné granted intervener status to the Commission for the purposes of making

submissions on the tribunal record, the complaint process, and the applicable standard of review. To set out those positions, the Commission was also authorized to file an affidavit explaining its record, submit a memorandum of fact and law, and present oral submissions.

[9] Two months after Justice Gagné's order, one of Ms. Oleson's sons, Joseph Oleson, who had communicated on her behalf during the complaint process before the Commission, filed a letter seeking leave to appear at the hearing, present evidence, and make submissions in response to Wagmatcook's application. Mr. Oleson explained that he had not been able to respond to the application sooner because he had been devastated by his mother's death. By order dated October 11, 2007, Prothonotary Morneau denied Mr. Oleson's request on the basis that all relevant evidence was already contained in Wagmatcook's and the Commission's application records.

III. Analysis

A. *Is evidence that was not before the Commission admissible in this application?*

[10] In this application, Wagmatcook relies on the affidavit of Brian Arbuthnot, its Director of Operations. The Commission submits that Mr. Arbuthnot's affidavit contains exhibits with documentary evidence that was not before the Commission at the time of its Decision.

[11] An application for judicial review must be determined on the record before the decision-maker. At the hearing of this application, counsel for Wagmatcook conceded that there are only limited exceptions to this general rule (*Love v Canada (Privacy Commissioner)*, 2015 FCA 198

at paras 17-18), none of which apply here. As a result, I find that those portions of Mr. Arbuthnot's affidavit which were not before the Commission are inadmissible, and I have not considered them in reaching my decision.

B. *What is the standard of review?*

[12] Wagmatcook and the Commission both submit that the standard of reasonableness applies to this Court's review of the Decision. However, they take different views on what that standard requires.

[13] Wagmatcook relies only on *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], submitting that this Court should examine whether the Decision was reasonable in terms of its justification, transparency, and intelligibility, when considered in light of the evidence before the Commission (*Dunsmuir* at para 47).

[14] The Commission agrees that *Dunsmuir* provides the starting point, but principally relies on *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 [*Halifax*], where the Supreme Court of Canada developed the reasonableness standard for the Nova Scotia Human Rights Commission's decision to refer a complaint to a board of inquiry under the *Human Rights Act*, RSNS 1989, c 214. *Halifax* held that a reviewing Court should interfere "[o]nly where there is no reasonable basis in law or on the evidence to support the Commission's decision that an inquiry by a board of inquiry is warranted in all the circumstances" (at para 51). In so holding, the Supreme Court endorsed at paragraphs 46 and 47 of *Halifax* the earlier approach of Justice Evans in *Zündel v Canada (Attorney General)* (1999),

175 DLR (4th) 512 (FC), aff'd 195 DLR (4th) 394 (FCA), the relevant paragraph of which is as follows:

> 49 Accordingly, I should only quash the Commission's decision and prohibit the Tribunal from continuing to inquire into the complaints against Mr. Zündel if I am satisfied that there is no rational basis in law or on the evidence to support the Commission's decision that an inquiry by a Tribunal is warranted in all the circumstances of the complaints. Any more searching examination of the questions of statutory interpretation or application raised by Mr. Zündel should, in my opinion, be deferred until the Tribunal has completed the hearing and rendered a reasoned decision.

[15] The Federal Courts have consistently applied *Halifax*, which involved provincial human rights law, to the federal equivalent (*Keith v Canada (Correctional Service)*, 2012 FCA 117 at para 44 [*Keith*]; *Canada (Attorney General) v Skaalrud*, 2014 FC 819 at para 39 [*Skaalrud*]; *Canada (Attorney General) v Emmett*, 2013 FC 610 at para 33).

[16] In sum, I agree with the Commission that the standard of review as articulated in *Halifax* governs this application. This highly deferential approach flows from (i) the nature of the Commission's role in making a decision to refer, as well as (ii) the preliminary stage of the administrative decision-making process at which such a decision occurs.

[17] First, it is well-established that the Commission's decision to refer a complaint to the Tribunal is highly discretionary. Under section 44(3)(a)(i) of the Act, the Commission may request that the Tribunal institute an inquiry into the complaint where it is satisfied that such an inquiry is warranted, having regard to all the circumstances of the complaint (see *Halifax* at

para 25; *Skaalrud* at para 29).The reviewing court thus owes a "significant degree" of deference in respect of the Commission's exercise of its discretion (*Skaalrud* at para 23).

[18] Second, the Commission is not an adjudicative body, and its decision to refer a complaint to the Tribunal does not end the administrative process. The Commission's function is to screen, not to determine the substance of the complaint (*Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 (SCC) at para 53; *Halifax* at para 23). When the Commission decides that an inquiry is warranted, it undertakes only a limited assessment of the merits of the complaint, and its conclusions are not a final determination (*Halifax* at paras 24 and 50).

[19] Indeed, the Commission may only consider the sufficiency, not the weight, of the evidence before it (*Soullière v Canadian Blood Services Health Canada*, 2017 FC 689 at paras 89-90 [*Soullière*]). The parties may then raise any arguments and submit any appropriate evidence when the matter is decided by the Tribunal (*Keith* at para 46). As a result, reviewing courts should be reluctant to intervene at the preliminary, referral stage, before the merits of the complaint have been adjudicated in the administrative process (*Halifax* at paras 41 and 51).

[20] I note that, on the basis of these considerations, the Federal Court of Appeal has, for the purposes of the standard of review, distinguished between those cases where the Commission refers a complaint to the Tribunal, and those where the Commission decides to dismiss the complaint. The latter is subject to a more "probing" review than the highly discretionary approach articulated in *Halifax* (*Keith* at para 45), because a decision to dismiss terminates the

matter (see *Attaran v Canada (Attorney General)*, 2015 FCA 37 at para 14 [*Attaran*]; *Moors v Canada (National Revenue)*, 2015 FC 446 at para 19).

[21] Today's key question is therefore whether the Commission, in these circumstances, reasonably concluded that an inquiry was warranted (*Halifax* at para 40). The highly discretionary nature of the Decision, coupled with the reality that the decision-making process is effectively ongoing, means that I must not interfere with the Decision unless I find that there was no reasonable basis in law or on the evidence for it (*Halifax* at para 45).

[22] Finally, before concluding my analysis on the standard of review, I will address Wagmatcook's submission that the "plain and obvious" test has some bearing on this application. In short, Wagmatcook argues that the Commission should have dismissed Ms. Oleson's complaint because it is "plain and obvious" that the complaint has no merit.

[23] In my view, I need neither consider nor apply the "plain and obvious" test to decide this application. My task is to determine whether the Decision was reasonable, which turns on whether there was no reasonable basis in law or on the evidence to support it. That is the test articulated by the Supreme Court in *Halifax* and adopted for the purposes of the Act by the Federal Court of Appeal.

[24] The "plain and obvious" test is applied when the Commission dismisses a complaint without an investigation under section 41 of the Act (see *McIlvenna v Bank of Nova Scotia*, 2014 FCA 203 at paras 13-14 [*McIlvenna*]). Here, an investigation was conducted and the complaint

was referred to the Tribunal. Therefore, the "plain and obvious" test does not apply to these circumstances.

C. *Is there no reasonable basis in law or on the evidence to support the Decision?*

i. Decision under review

[25] In its Decision, the Commission expressly accepted the conclusions of the investigation report [Report], but otherwise provided limited reasons. The Commission concluded that although the evidence did not support Ms. Oleson's allegations of sex, family status, or age-based discrimination, Ms. Oleson's evidence indicated (i) her need for accessible, barrier-free housing, (ii) that she cooperated in the search for such housing, and (iii) that Wagmatcook did not provide it.

[26] The Commission further accepted the Report's conclusion that the evidence did not support Wagmatcook's numerous reasons for its various responses to Ms. Oleson's housing request. In particular, the Report concluded that Wagmatcook had not explained (i) the specifics of the housing allotment process that took place in 2013, (ii) why other members had received barrier-free housing on the reserve, or (iii) what financial hardship Wagmatcook would experience if barrier-free housing were to be provided to Ms. Oleson. The Report also concluded that certain of Wagmatcook's submissions were contradicted by the evidence, namely that (i) Ms. Oleson did not really require a wheelchair, and (ii) her current residence would, in fact, be wheelchair-accessible if it were cleared of clutter.

ii. Issues raised by Wagmatcook

[27] Wagmatcook challenges the Decision from several angles. As a preliminary point, it submits that the Commission unreasonably adopted the Report and failed to conduct an "independent" analysis.

[28] Wagmatcook next argues that the Commission erred by referring the complaint to the Tribunal without actually finding that Ms. Oleson was subject to differential treatment on the basis of her disability.

[29] Relatedly, Wagmatcook submits that the Report's conclusions on differential treatment erroneously refer to the mini-home that Ms. Oleson received in 2007 or 2008. In support of this argument, Wagmatcook points to paragraph 36 of the Report, which states that: "[i]n providing a home for [Ms. Oleson] that she cannot effectively access when she is using a wheelchair, [Wagmatcook] has treated [Ms. Oleson] in a different manner from community members who have been provided a home they can physically access".

[30] Wagmatcook submits that there was no evidence before the Commission that Ms. Oleson required a wheelchair at the time she received the mini-home, which was suitable to Ms. Oleson's needs at the time, and that its provision could therefore not have amounted to differential treatment. Wagmatcook further submits that there was insufficient evidence before the Commission to support Ms. Oleson's allegation that Wagmatcook discriminated against her in 2013, and that the Decision unreasonably "telescopes" the chronology of all of these events.

Wagmatcook further argues that the Decision actually treats the 2013 housing decision as a failure to "accommodate" Ms. Oleson. It submits that, since there was no discrimination at the time Wagmatcook provided the mini-home, there was no duty to accommodate in 2013.

[31] Wagmatcook then argues that, in any event, the provision of housing on the reserve is not available to Wagmatcook members on a customary basis, but rather that housing allocation is a complex process that balances the needs of the Wagmatcook community against available federal funding. It submits that the Commission erred in proceeding on the assumption that Wagmatcook had a "duty" to provide accessible housing to Ms. Oleson, or that, because it had provided some members with accessible housing in the past, it would not be fiscally constrained from providing an accessible home to Ms. Oleson during the relevant period.

[32] Finally, Wagmatcook submits that the Commission made certain "reversible findings of fact" in accepting the Report's conclusions, including that (i) Ms. Oleson was indeed confined to a wheelchair, had cooperated with Wagmatcook, and had not refused renovations to her mini-home in favour of a brand new home, and that (ii) Wagmatcook had given contradictory or unreasonable explanations to the Commission for its housing allocation decisions.

iii. Analysis of Wagmatcook's arguments

[33] I will deal first with Wagmatcook's preliminary argument regarding the Commission's adoption of the Report. In short, I am not persuaded by this argument, which I note was raised for the first time at the hearing, and without reliance on any authorities.

[34] It is well-established that, where the Commission agrees with an investigator's recommendations and adopts an investigator's report or conclusions in its decision, the investigation report will constitute the Commission's reasons and form part of the decision for the purposes of judicial review (*Majidigoruh v Jazz Aviation LP*, 2017 FC 295 at para 31; *Attaran* at para 36).

[35] Wagmatcook, on the other hand, appeared to suggest in oral argument that, in adopting the Report, the Commission unreasonably failed to perform an "independent" analysis. This argument runs counter to the relationship between the Commission and the investigator, and the prevailing jurisprudence as noted in *Canada (Attorney General) v Sketchley*, 2005 FCA 404:

> 37 …In my view, the appellant's argument on this issue must fail. While it is true that the investigator and Commission do have "mostly separate identities" (*Canada (Human Rights Commission) v. Pathak* (1995), 180 N.R. 152, [1995] 2 F.C. 455 at para. 21, per MacGuigan J.A., (Décary J.A. concurring)), it is also well-established that, for the purpose of a screening decision by the Commission pursuant to section 44(3) of the Act, the investigator cannot be regarded as a mere independent witness before the Commission (*Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879 at para. 25 [*SEPQA*]). The investigator's Report is prepared for the Commission, and hence for the purposes of the investigation, the investigator is considered to be an extension of the Commission (*SEPQA*, supra at para. 25). When the Commission adopts an investigator's recommendations and provides no reasons or only brief reasons, the Courts have rightly treated the investigator's Report as constituting the Commission's reasoning for the purpose of the screening decision under section 44(3) of the Act (*SEPQA*, supra at para. 35; *Bell Canada v. Communications, Energy and Paperworkers Union of Canada* (1999) 167 D.L.R. (4th) 432, [1999] 1 F.C. 113 at para. 30 (C.A.) [*Bell Canada*]; *Canadian Broadcasting Corp. v. Paul* (2001), 274 N.R. 47, 2001 FCA 93 at para. 43 (C.A.)).

[36] I also note that, in its Decision, the Commission stated that it had considered not only the Report, but also the conciliation report, complaint form, and the parties' submissions. I find that the Commissions did not fail to independently consider the material before it, and I find no error in the Commission's adoption of the Report, which forms the bulk of the Commission's reasons for the purposes of this application.

[37] Moving now to Wagmatcook's other arguments, I repeat that it was neither the Commission's role to determine the merits of Ms. Oleson's complaint (*Halifax* at para 50), nor is it this Court's role to opine on them (*Halifax* at para 54). As Justice Roy held in *Skaalrud*, the Court must "come back to what the Commission is actually doing" (at para 29).

[38] In this case, the Commission was not applying the same legal test that the Tribunal would apply at an adjudication (*Richards v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 1100 at para 24), but merely deciding whether, having regard to all the circumstances of a complaint, an inquiry was warranted.

[39] Nevertheless, in my view, it is useful to keep in the background the general legal framework which would govern any adjudication on the merits. To succeed in her complaint before the Tribunal, Ms. Oleson would have to first establish a *prima facie* case of discrimination under either section 5 or 6 of the Act, following which the onus would shift to Wagmatcook to either provide a reasonable explanation or a *bona fide* justification for the discrimination. To establish a *bona fide* justification, Wagmatcook would need to demonstrate that accommodating Ms. Oleson's needs would impose undue hardship on Wagmatcook (*Attaran* at paras 24-29).

[40] I have considered the Decision in light of the general legal background set out above and the evidence before the Commission, and assessed Wagmatcook's arguments against the test stipulated in *Halifax*. For the reasons that follow, I find that the Commission's Decision to refer Ms. Oleson's complaint to the Tribunal was reasonable. I am not persuaded by Wagmatcook's various arguments, which are each addressed below.

(a) *Differential treatment*

[41] First, I do not accept Wagmatcook's argument that the Commission made no finding that Ms. Oleson was differentially treated on the basis of disability, or, alternatively, that its conclusions in this regard related to 2007 or 2008 and not to 2013 and, consequently, could not disclose any discrimination. First, it is not the Commission's role to adjudicate the dispute and make a "finding" of differential treatment or otherwise decide whether discrimination took place. Rather, the Commission only considers the sufficiency of any evidence before it to determine whether an inquiry is warranted in all of the circumstances (*Soullière* at para 89-90).

[42] Further, the theory of Ms. Oleson's complaint is evident in the Decision and the underlying Report. The Report specifically referred to the alleged "negative treatment" at issue as being Wagmatcook's decision not to provide Ms. Oleson with an accessible home in 2013, the consequence of which is that she remained in her mini-home. This part of the Decision relates to the discrimination Ms. Oleson alleged took place, contrary to sections 5 and 6 of the Act — i.e., that, unlike other members living on the reserve, Ms. Oleson's home was not suitable for her physical needs. I disagree that the Commission erroneously drew any conclusions on the basis of the provision of the mini-home in 2007 or 2008.

[43] The Commission also clearly considered Wagmatcook's various reasons for not providing Ms. Oleson with an accessible, barrier-free home in 2013. These reasons related to (i) the offer and rejection of the other home that was allegedly "spoken for" in 2007 or 2008, (ii) the proposed renovations of the mini-home in 2013 and onward, and (iii) Wagmatcook's asserted financial inability to construct a new residence for Ms. Oleson in or after 2013. These three considerations are relevant to whether there indeed was a discriminatory practice, and, if so, whether Wagmatcook faced undue hardship in accommodating Ms. Oleson's disability. It was open to the investigator and the Commission to conclude that Wagmatcook's explanations justified referral to the Tribunal, in light of contradictions between these explanations and other evidence in the record, including in relation to accessible housing provided to Wagmatcook's other members.

(b) *Factual findings*

[44] With respect to Wagmatcook's arguments based on the Commission's factual findings, I observe first of all, that the Commission's role is not to resolve factual disputes, but to consider whether an inquiry is warranted, based on the sufficiency of the evidence and all the circumstances before it (*Canada Post Corporation v Canadian Postmasters and Assistants Association (CPAA)*, 2016 FC 882 at para 72 [*Canada Post*]). Thus, when the Commission decided to refer Ms. Oleson's complaint to the Tribunal, all it concluded was that the evidence before it required consideration and weighing by the Tribunal (*Canada Post* at para 78).

[45] Second, the Federal Court of Appeal has held that, in the context of judicial reviews of the Commission's decision to dismiss a complaint, deference is owed to the Commission's

factual findings arising out of an investigation (*Keith* at para 48). As explained above in paragraph [20], even greater deference is owed where the Commission allows a complaint to proceed to the Tribunal level.

[46] With these principles in mind, I will address the factual issues Wagmatcook raises.

[47] I find that there was sufficient evidence before the Commission relating to Ms. Oleson's use of a wheelchair on which to refer the complaint to the Tribunal. In respect of the Commission's conclusions on Ms. Oleson's cooperation with Wagmatcook — including in respect of proposed renovations to her mini-home — the Commission identified a live dispute. Further, even if the Commission could be said to have framed Ms. Oleson's position generously on these points, the Commission's job was not that of deciding or weighing evidence, but only ensuring its sufficiency.

[48] Wagmatcook takes issue with the Report's observation that Wagmatcook's explanations for denying Ms. Oleson's housing request in 2013 were "numerous and appear[ed] at times, to be contradictory". Here, Wagmatcook submits that while its explanations may have been contradicted by evidence in the record, its explanations were not themselves contradictory — whether considered internally, or in relation to one another. Wagmatcook points to this part of the Decision as being both conclusory and prejudicial, and submits that it constitutes a fundamental error justifying this Court's intervention.

[49] Wagmatcook is in effect asking this Court to send back the Commission's Decision on the basis of a "line-by-line treasure hunt for error" of the type precluded by the Supreme Court (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). I agree that the phrasing on this narrow point is awkward and not expressly substantiated when viewed in isolation. However, it was open to the investigator and, the Commission, to not accept the adequacy of Wagmatcook's explanations regarding Ms. Oleson's barrier-free housing request. In my view, that is what is, in substance, being communicated by the investigator's comment on the "contradictory" nature of Wagmatcook's explanations.

[50] Moreover, bearing in mind the deferential standard mandated in the case law reviewed above — which discourages judicial interference with the Commission's fact-finding — even if the Commission could be said to have adopted a misstatement going to the nature of Wagmatcook's arguments, I do not find that the gravity of the misstatement is such that it taints the entire Decision (see also *Canada Post* at para 66). I make this conclusion in light of the apparent contradictions between Wagmatcook's explanations and the evidence in the record, which the Report identified in concluding that Wagmatcook's explanations were not supported by the evidence. This is precisely the type of fact-finding to which the Court owes deference and, in my view, provides a reasonable basis for the Commission's Decision to refer the complaint for inquiry, even when considered in light of the potential misstatement Wagmatcook identifies. Again, fact finding for the purpose of deciding the merits of a complaint is the role of the Tribunal, not the Commission.

[51] I conclude that none of the factual issues raised by Wagmatcook merit this Court's intervention.

(c) *Duty to provide housing*

[52] I turn now to Wagmatcook's submissions that (i) it had no "duty" to provide Ms. Oleson with accessible housing to begin with, (ii) the complexities of its housing allocation processes are a complete defence to Ms. Oleson's complaint, and (iii) the Commission unreasonably identified a contradiction between its asserted financial constraints and provision of accessible housing to some members. I find that these arguments echo the kinds of arguments made by the appellant and rejected by the Supreme Court in *Halifax*.

[53] In that case, which involved funding for French-first-language schools, the appellant submitted that the Nova Scotia Human Rights Commission erred in referring the complaint for inquiry for a constellation of reasons, including that the appellant's funding regime was neither discriminatory nor arbitrary, that the appellant lacked the statutory authority to provide supplementary funding, and that language was not protected under the relevant legislation. The Supreme Court held that the appellant's submissions in this regard, "whatever their ultimate validity", were "largely beside the point":

> 58 With respect, Halifax's submissions on Mr. Comeau's complaint, whatever their ultimate validity, are largely beside the point in a judicial review of a referral decision such as the one before the Court in this appeal. It is not this Court's role to assess the complaint. This Court's role is limited to assessing the Commission's decision to refer the complaint to a board of inquiry. In making its referral decision, the Commission had the investigator's reports before it. Without expressing any opinion on the merits of Mr. Comeau's complaint, I am of the view that these

> reports, along with the surrounding circumstances, provided a reasonable basis for the Commission to refer Mr. Comeau's novel and complex complaints to a board of inquiry which, of course, would be entitled, among other things, to enter into a detailed consideration of the merits of Halifax's objections.

[54] Wagmatcook's arguments in respect of the content of and constraints upon its legal duties go well beyond the scope of this Court's task on judicial review of the Decision.

(d) *Efficiency in the administration of justice*

[55] Finally, I wish to comment briefly on Wagmatcook's submission that upholding the Decision in this case will create inefficiencies in the administration of justice and require Wagmatcook to commit resources to a lengthy hearing.

[56] First, the origins of this dispute go back ten years. The administrative process behind the Decision took three years. It included an investigation, lengthy investigation Report, conciliation efforts, and multiple submissions on both sides. It strains credulity in these circumstances, when the matter is ripe for adjudication by the Tribunal, to argue that sending this matter back for redetermination by the Commission would somehow be more efficient.

[57] Further, in my view, Wagmatcook's comment on this point speaks to the nature of the controversy between the parties. The record discloses a live dispute, involving diametrically opposed views on the facts of Ms. Oleson's 2013 request for accessible housing, as well as Wagmatcook's legal duties and efforts in response to that request. In that regard, this case bears some similarities to *Canada Post*, in which Justice Gleeson held that: "The long-standing

protracted dispute between the parties formed the context for the CHRC's referral decision from a factual, legal and policy perspective" (at para 80, see also para 87). It is not the Commission's role in such circumstances to resolve disputed matters of fact and law (*Canada Post* at paras 72-74).

[58] As in *Halifax*, I am satisfied that the evidence before the Commission provided it with a reasonable basis for referring the matter to the Tribunal. The Commission had the benefit of a lengthy and detailed investigation Report, a conciliation report — which included, somewhat unusually, and with the parties' consent, the rejected settlement offers — as well as multiple submissions from both sides in relation to these reports. The Commission made its Decision after reviewing all that material in the context of a protracted dispute. Finally, I note that I have not been referred to a single decision where a First Nation's housing allocation has been the subject of a discrimination complaint. I agree with the conclusion in the Report that the subject-matter of Ms. Oleson's complaint engages the public interest, which further supports the Commission's Decision to refer the complaint to the Tribunal (see *Canada Post* at para 80).

IV. Conclusion

[59] In sum, having regard to the deferential approach mandated by the Supreme Court and reflected in the Federal Courts' jurisprudence, Wagmatcook has not persuaded me that the Decision should be disturbed.

[60] *Halifax* is a complete answer to Wagmatcook's arguments (*Skaalrud* at para 39). In deciding to refer a complaint to the Tribunal for inquiry, the Commission has a very narrow

function and has been conferred very broad discretion in performing it (*Skaalrud* at para 29). I do not find that there was no reasonable basis in law or on the evidence to support the Commission's Decision to refer Ms. Oleson's complaint to the Tribunal. To the contrary, the Decision was eminently reasonable.

[61] The application for judicial review is dismissed. Costs were not sought and none are awarded.

JUDGMENT in T-100-17

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

There is no award of costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-100-17
STYLE OF CAUSE:	WAGMATCOOK FIRST NATION v ANNIE OLESON AND CANADIAN HUMAN RIGHTS COMMISSION
PLACE OF HEARING:	HALIFAX, NOVA SCOTIA (VIA VIDEO CONFERENCE WITH OTTAWA, ONTARIO)
DATE OF HEARING:	JANUARY 10, 2018
JUDGMENT AND REASONS:	DINER J.
DATED:	JANUARY 25 2018

APPEARANCES:

Gary A. Richard	FOR THE APPLICANT
Giacomo Vigna Sasha Hart	FOR THE INTERVENER

SOLICITORS OF RECORD:

Burchell MacDougall LLP Barristers and Solicitors Truro, Nova Scotia	FOR THE APPLICANT
Legal Services Division Canadian Human Rights Commission Ottawa, Ontario	FOR THE INTERVENER