

Federal Court



Cour fédérale

Date: 20180824

Docket: T-1968-17

Citation: 2018 FC 854

Ottawa, Ontario, August 24, 2018

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

IGOR STUKANOV

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns a decision of the Canadian Human Rights Commission (CHRC or the “Commission”) to dismiss a complaint of Igor Stukanov (the “Applicant”) on the grounds that it is frivolous, pursuant to s. 41(1) of the *Canadian Human Rights Act*, RSC 1985 c H-6 (the “Act”). The Applicant claims that the Canadian Intellectual Property Organization (CIPO) discriminated against him on the basis of ethnic identity, place of origin, and/or citizenship when

it denied his application for a patent. The CHRC was of the view that the complaint is frivolous because the Applicant did not demonstrate “a reasonable basis for believing that [CIPO’s] conduct toward him was discriminatory under the Act.” It further found that the allegations were “bald assertions unsupported by facts” and that it was “plain and obvious that this complaint cannot succeed.” The Applicant, who is self-represented in these proceedings, comes before this Court seeking a declaration that the CHRC erred in its decision, an order to return the matter for investigation, costs, and compensation for “losses and damages.”

II. Facts

[2] The Applicant is an inventor. He is a citizen of Canada and self-identifies as a person of mixed identity (Russian and Jewish). In 2007, he applied to CIPO for a patent on his invention titled “[a] method for oral delivery of a healing substance to a target place in gastrointestinal tract of human or animals” (Certified Tribunal Record (CTR), p. 3). CIPO denied his application for the patent. Believing that the decision was in error, the Applicant claims to have written CIPO in August 2015 to contest the decision, but he did not receive a response.

[3] In May 2017, the Applicant submitted a complaint to the CHRC about his treatment by CIPO. This complaint contained no allegation of discrimination on the basis of national or ethnic origin. On June 16, 2017, the CHRC wrote to the Applicant and explained that the complaint did not disclose a link to a prohibited ground of discrimination, but invited him to amend and resubmit it should he wish to proceed.

[4] The Applicant resubmitted his complaint, which identified ethnicity, place of origin, and citizenship as the grounds for differential treatment. The Applicant asserts that his patent application was examined on “form/syntax” instead of “meaning/semantics,” and says that the rejection was “based on the false reasoning that methods of delivery should be considered as methods of medical treatment” (CTR, p. 3). He further notes that he cannot “directly prove that there are links between the different treatment and the grounds [of discrimination],” but offers that popular beliefs, prejudices and stereotypes exist about Russians, and his view that he was discriminated on those beliefs. As evidence of discrimination, the Applicant also states that there are only two reasons for which his patent could have been rejected: error, or “hidden intent to discriminate,” and claims that the former can be ruled out because if that were the case, CIPO could have simply responded to his correspondence (CTR, pp. 4-5). Finally, the Applicant provides a purported list of all similar patent applications examined prior to 2016 along with their respective originating countries, all 8 of which were approved except for that of the Applicant.

[5] The Commission spoke with the Applicant by telephone on June 19, 2017 and advised that his revised complaint provided no evidence of a link between the alleged adverse differential treatment and prohibited grounds of discrimination. On June 21, 2017, the CHRC emailed the complainant to advise him of the same, followed by another email on June 29, 2017, noting that the Commission was not the appropriate venue for his complaint.

[6] On August 24, 2017, Commission Human Rights Officer (the “Officer”) produced a Section 40/41 Report (the “Report”) with respect to the Applicant’s complaint. The purpose of

the Report is to determine whether the CHRC should refuse to deal with the complaint because it is “trivial, frivolous, vexatious or made in bad faith” under s. 41(1)(d) of the *Act*.

[7] The Report begins by outlining the test for “frivolous” complaints, noting that a complaint can be considered as such if 1) the conduct is a discriminatory practice described in s. 5 to s. 14.1 of the *Act*, and 2) there is a link between the conduct and one or more prohibited grounds of discrimination. The Report further notes that the CHRC may refuse to deal with a frivolous complaint, and outlines the factors that may be taken into account when doing so, including: 1) whether the facts suggest that the alleged conduct is a discriminatory practice described in the *Act*, 2) whether the alleged conduct is linked to a ground of discrimination, and 3) whether there is a reasonable basis to believe that the conduct is discriminatory, the latter of which requires more than a statement or bald assertion.

[8] The Officer’s analysis proceeds by outlining the relevant jurisprudence: notably, the Commission should only decide not to deal with complaints under s. 41 of the *Act* in case where it is “plain and obvious” that they cannot succeed, that allegations of fact in the complaint are to be taken as true, and that a complainant must provide “sufficient information” or “some foundation” to show that he or she has a reasonable basis for believing that the impugned conduct is discriminatory under the *Act*.

[9] After reviewing the facts, the Officer decides that the Applicant has not provided sufficient information or facts to support his allegations that CIPO discriminated against him on the basis of his Russian origins, and has not demonstrated that a reasonable person in his

situation would believe that CIPO denied him a patent on the basis of his ethnic origin.

Accordingly, the Officer decides that the Applicant's allegations are bald assertions that are unsupported by the facts, and that it is plain and obvious that this complaint cannot succeed. He further recommends that the CHRC not deal with the complaint because it is frivolous.

[10] The Applicant was provided a copy of the Report and invited to comment upon it. On September 25, 2017, the Applicant responded, noting four "minor" errors and one "major" error. First, the Applicant contends that he did not submit his initial complaint by email, but rather did so by regular mail. Second, the Applicant says that contrary to the Report, he identified three grounds of discrimination (ethnic origin, place of origin and citizenship) while the Report only identified one (national or ethnic origin). Third, the Applicant asserts that the Officer was wrong to say that his patent application belongs to a class of methods of delivery, because it was actually placed into a class of medical treatment methods. Fourth, he says that the Officer was wrong to characterize the complaint as relating to the Applicant's Russian ethnicity, because his complaint actually related to ethnic origin, place of origin, and citizenship. The major error, in the Applicant's view, is the Officer's finding that the allegations of discrimination are bald assertions unsupported by the facts. The Applicant contends that he provided hard facts and statistical data in support of his allegations.

[11] By way of a letter dated November 24, 2017, the CHRC informed the parties of its decision not to deal with the complaint because it is frivolous, and closed the file.

III. Issues

[12] There are two issues arising on this application for judicial review. First, the Applicant contends that the Commission ought to have corrected the errors that he pointed out when he was asked to comment on the Commission's report. Although not characterized as such, this is a kind of procedural fairness argument. The second issue can be summarized as pertaining to the overall reasonableness of the Commission's decision.

IV. Standard of Review

[13] Issues of procedural fairness are reviewable on a standard of correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69.

[14] Where the appropriate standard of review is established in jurisprudence, a full analysis of the standard is unnecessary: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 62. The presumptive standard of review applicable to the Commission's decisions – when it is interpreting its home statute (the *Act*), is reasonableness: *Public Service Alliance of Canada v Canada (Attorney General)*, 2015 FCA 174 at para. 28. The case before me involves the Commission's application of s. 41(1) of the *Act* to a set of facts, and thus I shall adopt the standard of reasonableness in reviewing that decision.

V. Analysis

A. *Procedural Fairness*

[15] As noted above, the Applicant contends that the Commission ought to have corrected its report after he pointed out several errors.

[16] In my view, the Commission's process did not deny the Applicant procedural fairness. After producing the Report, the Commission shared a copy of it with the Applicant and invited him to make submissions, which he did. The purpose of that procedure is to give the Applicant an opportunity to point to out any errors or disagreements, such that the Commission could take those positions into account when arriving at an ultimate decision. That process was precisely followed and thus it cannot be said that the Applicant was denied procedural fairness.

B. *Reasonableness of the Decision*

[17] The Applicant argues that the Commission's decision is unreasonable. He notes that he identified five errors of fact, and that these errors rendered the Report defective. The Applicant submits that, in such circumstances, the Commission should produce a new report that is free of defects, and that the CHRC's failure to do so renders its ultimate decision unreasonable. He further argues that the complaint is not frivolous. He reiterates the point that he was subject to discriminatory treatment by CIPO, and posits that this treatment resulted from negative stereotypes and prejudices held in society against persons with Russian ethnicity. He also recalls the "statistical information" demonstrating that his patent was isolated for rejection, and

performs a mathematical calculation to suggest that the probability that he was discriminated against on the basis of a prohibited ground is greater than 50%. The Respondent concludes by suggesting that he has sufficiently shifted the burden such that CIPO should now demonstrate that it did not discriminate against him.

[18] The Respondent argues that the Commission's decision is reasonable. It recalls the test that is used in determining whether a complaint is frivolous, and notes that the complainant must cite material facts that are capable of establishing a link between the impugned conduct and a prohibited ground of discrimination. Citing *Hartjes v Canada (Attorney General)*, 2008 FC 830, the Respondent contends that a claimant must do more than demonstrate membership in a protected group and the existence of general prejudices to that group; the claimant must put forward sufficient evidence to show a link between his or her individual treatment and the prohibited ground of discrimination. The Respondent submits that the Report reasonably finds that there was insufficient information to support the claim that CIPO denied the Applicant's patent on the basis of his ethnicity, and that the only proof was the so-called statistical evidence concerning the other patents that were granted by CIPO. The Respondent further contends that the Applicant speculates when he suggests that the denial of his patent can only be explained by error or an intent to discriminate, and casts blame upon the Applicant for failing to avail himself of the appeals procedure in the CIPO forum.

[19] I agree with the Respondent. In my view, the Applicant has provided no evidence to link the purported discriminatory conduct with a prohibited ground of discrimination. The Applicant asserts that there are societal prejudices against members of his ethnic group, place of origin and

country of citizenship. Even if those assertions were to be true, the Applicant has provided no evidence that they are linked to the alleged discriminatory conduct that happened to him, namely CIPO's refusal to issue him a patent for his invention. The Applicant asks this Court to infer a connection based on the fact that seven other purportedly similar patents have been issued by CIPO. However, the alleged correlation is not to be confused with causation; in other words, the fact that the Applicant's patent happens to be the only one that was rejected does not mean that it was rejected on the basis of the alleged grounds of discrimination.

[20] Moreover, it is incorrect for the Applicant to assert that there are only two possible reasons for which his patent was rejected: error, or a "hidden intent to discriminate." This is a false dichotomy, as patent applications are complex matters and there are many reasons that an application might be rejected. The Applicant's bald assertion about the exclusivity of these two possibilities – and his subsequent ruling out of the possibility of error – is insufficient to demonstrate the link between the denial of the Applicant's patent and the asserted grounds of discrimination.

VI. Conclusion & Costs

[21] The application for judicial review is dismissed. The Respondent asks that costs be fixed in the amount of \$500.00. This is a modest amount, which I find to be reasonable in the circumstances. As such, a cost award in the amount of \$500.00 is granted.

JUDGMENT in T-1968-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. Costs are awarded to the Respondent Attorney General in the amount of \$500.00.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1968-17

STYLE OF CAUSE: IGOR STUKANOV v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: AUGUST 24, 2018

APPEARANCES:

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Ms. Laura Tausky

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(ON HIS OWN BEHALF)
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