

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: HUMAN RIGHTS COMPLAINT INVESTIGATION WAS SENT BACK TO TRIBUNAL FOR LACK OF THOROUGHNESS

Administrative law – Decisions of administrative tribunals – Human Rights Commission; Human rights complaints – Harassment – Discrimination – Age – Marital status – Inadequate investigation; Judicial review – Procedural requirements and fairness – Standard of review – Correctness

Southern Chiefs Organization Inc. v. Dumas

[2016] F.C.J. No. 808

2016 FC 837

Federal Court, Winnipeg, Manitoba

July 20, 2016

Diner J.

This was an application for judicial review of a decision by the Canadian Human Rights Commission to refer a complaint to the Human Rights Tribunal for further inquiry rather than dismissing it after the investigation. The complainant had submitted a complaint to the Commission about her former employer alleging harassment and discrimination in the workplace by her superior on the basis of her age, sex and marital status. An investigator designated by the Commission investigated the complaint to assess whether it ought to be dismissed or proceed to be heard by the Tribunal. Following the investigation, the Commission decided that the complaint should be referred to the Tribunal for inquiry.

The employer sought judicial review of the decision to direct the matter for inquiry on several bases, including that the investigator and the Commission breached the employer's right to procedural fairness by failing to conduct a sufficiently thorough investigation. The standard of review applicable to the question of the investigator's thoroughness was correctness. The court noted that while the Commission's role was limited to carrying out an administrative and screening function, and to determine whether there was a reasonable basis in the evidence regarding the complaint for proceeding to the next stage, this screening and investigation process must still abide by certain principles of procedural fairness, including a sufficiently thorough investigation.

The court concluded that the investigator failed to conduct a sufficiently thorough investigation for a number of reasons, including that she interviewed only former (and not current) employees of the employer and because she imputed a former employee's knowledge of the harassment and discrimination to the employer when it was unclear whether that employee was sufficiently senior in the employer's organization and whether she was working for the employer at the material time. The question of whether the employer was aware or should have been aware of the alleged misconduct was central to the complaint.

The court held that while under normal circumstances deference is owed to decisions of the Commission, both in terms of the investigation process selected and the conclusions drawn from the interviews, where there are fundamental issues with the thoroughness of the investigation, it cannot stand. The court granted the application for judicial review and returned the matter to the same investigator for further consideration.

This case was digested by [Kara Hill](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at khill@harpergrey.com or review her biography at <http://www.harpergrey.com>.