

*Case Name:*  
**Sanderson v. Canada (Attorney General)**

**Between**  
**Betty Sanderson, applicant, and**  
**The Attorney General of Canada, respondent**

**[2006] F.C.J. No. 557**

[2006] A.C.F. no 557

2006 FC 447

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Docket T-644-05

Federal Court  
Edmonton, Alberta

**Mactavish J.**

Heard: April 3, 2006.

Judgment: April 6, 2006.

(81 paras.)

*Human rights law -- Administration and enforcement -- Judicial review -- Commissions -- Powers -- Investigation -- Discrimination -- Context -- Employment -- Harassment -- Sexual harassment -- Grounds -- Gender -- Race, colour, ancestry or place or origin -- Application by Sanderson for judicial review of the decision of the Canadian Human Rights Commission dismissing her complaint against the Department of Indian and Northern Affairs allowed -- Sanderson alleged*

*harassment and discrimination in the course of her employment on the basis of sex and because she was Native -- Sanderson was denied procedural fairness because the investigation carried out was not sufficiently thorough and as a consequence, the Commission did not have sufficient relevant information before it to dismiss the complaint -- The decision of the Human Rights Commission was set aside and the matter was remitted to the Commission for redetermination -- Canadian Human Rights Act, s. 65.*

*Application by Sanderson for judicial review of the decision of the Canadian Human Rights Commission dismissing her complaint against the Department of Indian and Northern Affairs for harassment and discrimination in the course of her employment on the basis of sex and because she was Native -- Sanderson alleged that the investigator appointed by the Commission approached the investigation with a closed mind since the investigator and a principle witness were friends -- She also alleged that the investigation was not thorough as the investigator had failed to interview key witnesses and did not address her racial discrimination complaint -- In her complaint, Sanderson alleged that she experienced harassment and discrimination at work from her male supervisor and other male colleagues, was paid less than her male counterparts, was assigned less desirable and clerical tasks, and was denied employment opportunities -- The Commission decision dealt with Sanderson's complaint in a cursory way and stated that further inquiry into the complaint was not warranted -- Neither the investigation report nor the Commission's decision addressed Sanderson's allegations of the investigator's bias -- HELD: Application allowed -- The investigation was insufficient as the investigator failed to interview either of the two male employees against whom Sanderson specifically alleged harassment, failed to investigate the racial or ethnicity aspects of the complaint, and failed to address Sanderson's allegation of bias -- Sanderson was denied procedural fairness because the investigation carried out was not sufficiently thorough and as a consequence, the Commission did not have sufficient relevant information before it to dismiss the complaint -- The decision of the Human Rights Commission was set aside and the matter was remitted to the Commission for redetermination -- Costs were awarded to Sanderson.*

**Statutes, Regulations and Rules Cited:**

Canadian Human Rights Act, s. 7, s. 14, s. 44(3)(b), s. 44(3) (b)(i), s. 65

**Counsel:**

Shasta Desbarats, for the applicant.

Sukhi Sidhu, for the respondent.

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**REASONS FOR JUDGMENT AND JUDGMENT**

**1 MACTAVISH J.:**-- Betty Sanderson seeks judicial review of the decision of the Canadian Human Rights Commission dismissing her complaint against the Department of Indian and Northern Affairs ("DIAND"). Ms. Sanderson's complaint asserted that she had been the victim of harassment and discrimination in the course of her employment by reason of her sex, and because she is Native, contrary to sections 7 and 14 of the *Canadian Human Rights Act*.

**2** Ms. Sanderson argues that the investigation carried out by the investigator appointed by the Commission was neither neutral nor thorough. In particular, she says that the friendship between the Commission investigator and a principle witness led the investigator to approach the investigation with a closed mind.

**3** Moreover, Ms. Sanderson says, the investigator erred in placing undue weight on a report prepared by another investigator in connection with a grievance filed by Ms. Sanderson, in failing to interview key witnesses, and in failing to properly address the race and ethnicity aspects of her complaint.

**4** Finally, Ms. Sanderson says that the Commission erred in law in dismissing her complaint, in the face of the investigator's finding that she had indeed been the victim of sex-based harassment and discrimination. Moreover, Ms. Sanderson says, there was *prima facie* evidence before the Commission that she had also been the victim of race-based discrimination, had been paid less than her male peers, and had been discriminated against in a hiring competition.

**5** For the reasons that follow, I am satisfied that the Commission's investigation did not meet the standards mandated by the jurisprudence, and that, as a result, the Commission's decision must be set aside.

## **Background**

**6** Ms. Sanderson was hired by DIAND on July 3, 2001, to work as a Business Analyst in the Economic Development Unit, in DIAND's Edmonton office. She was initially hired on a one year term contract.

**7** Ms. Sanderson's immediate supervisor was Fred Sacha, who was the Manager of the Business Development Unit. Mr. Sacha reported to Fred Jobin, the Director of Operational Programs and Policy for the Alberta Region.

**8** Mr. Sacha is evidently Caucasian, whereas Mr. Jobin is Métis. Ms. Sanderson identifies herself as "Native".

**9** Ms. Sanderson says that while things initially went very well in her new job, on September 25, 2001, she had a confrontation with Mr. Sacha, which involved him yelling at her and treating her in a hostile and disrespectful manner. Ms. Sanderson met with Mr. Sacha's supervisor, Mr. Jobin, on October 1, 2001, to discuss Mr. Sacha's treatment of her, following up with a letter to Mr. Jobin of

the same date, outlining her concerns regarding Mr. Sacha's conduct.

**10** It is clear from this letter that Ms. Sanderson was of the view that both her sex and her race were factors in Mr. Sacha's treatment of her.

**11** Ms. Sanderson met with Mr. Jobin on December 5, 2001, in order to discuss her complaint. Although Ms. Sanderson says that Mr. Jobin initially seemed to agree with her that Mr. Sacha would not have treated her the way that he did if she had been a white male, he then allegedly became angry, and told her that she would either have to quit or 'deal with it'.

**12** Ms. Sanderson says that over the ensuing months, she continued to experience harassment in the workplace from Mr. Sacha and other colleagues, including another Business Analyst named Johl Ready.

**13** Ms. Sanderson further alleges that she was treated in a discriminatory manner by being paid less than her male counterparts, who, she says, were no better qualified than she was. Ms. Sanderson also says that unlike her white male colleagues, she was assigned less desirable and clerical tasks, and was denied employment opportunities.

#### **Ms. Sanderson's Grievance**

**14** In July of 2002, immediately after the expiry of her probationary period, Ms. Sanderson filed a grievance alleging that she was being harassed in the workplace because of her sex. Although Ms. Sanderson says that she wanted to allege in her grievance that her race was also a factor in the discrimination and harassment that she was experiencing, she was counseled not to do so by Jim Bart, her Union representative. According to Ms. Sanderson, Mr. Bart told her that racial discrimination was very difficult to prove.

**15** An investigator was appointed by DIAND, and an investigation was carried out, culminating in a November, 2002 report which concluded that Ms. Sanderson had indeed been treated in a sexually discriminatory manner. Specifically, the investigator found that Mr. Sacha had not told Ms. Sanderson about the possibility of her term being extended, and had acted in a manner calculated to get her out of the workplace, and that Ms. Sanderson's sex was a factor in Mr. Sacha's conduct.

**16** The investigator also found that Mr. Sacha had allowed Mr. Ready, who was one of Ms. Sanderson's peers, to exert supervisory responsibility over her, including allowing Mr. Ready to be involved in matters of performance evaluation and discipline. Once again, the investigator found that Ms. Sanderson's sex was a factor in Mr. Sacha's conduct.

**17** Finally, Mr. Sacha was found to have allowed Mr. Ready to require Ms. Sanderson to perform clerical tasks not required of male analysts.

**18** Other allegations made by Ms. Sanderson, including her claim that she had been paid less than

her male counterparts, that her training opportunities had been limited, and that she had been unfairly evaluated in her performance, were found by the investigator not to have been established.

**19** Shortly after the investigator's report was released, and prior to any remedial steps having been taken as a result of the investigator's findings, Ms. Sanderson applied for a permanent position as a Business Analyst. The competition was being run by Mr. Jobin.

**20** As part of the competition, Ms. Sanderson wrote an examination and attended an interview. Although this is disputed by DIAND, Ms. Sanderson says that only one other person applied for the position. She also maintains that her education and work experience were superior to those of the other candidate. Nevertheless, on December 20, 2002, Ms. Sanderson was told that the other candidate had got the job.

**21** According to Ms. Sanderson, at this point, the stress of her situation had damaged her physical and mental health, and she resigned from her position with DIAND on December 20, 2002.

### **Ms. Sanderson's Human Rights Complaint**

**22** On August 23, 2003, Ms. Sanderson filed her complaint against DIAND with the Canadian Human Rights Commission, asserting that she had been the victim of adverse differential treatment in the workplace, based upon her national or ethnic origin, her race and her sex. Ms. Sanderson further alleged that DIAND had failed to provide her with a harassment-free workplace.

**23** In her complaint Ms. Sanderson identified those responsible for her treatment as Mr. Sacha, Mr. Jobin and Mr. Ready.

**24** An investigator was appointed by the Canadian Human Rights Commission to investigate Ms. Sanderson's complaint. Following an investigation, the investigator prepared a report which concluded that the evidence demonstrated that Ms. Sanderson had been harassed and treated in an adverse differential manner by Mr. Sacha because she was a woman. However, the Commission investigator also found that once DIAND had been made aware of Ms. Sanderson's concerns, it took appropriate steps to address these concerns, and to remedy the situation.

**25** According to the Commission investigation report, after receipt of the internal investigation report, discussions took place between Ms. Sanderson's union representative and DIAND management with respect to the reimbursement of Ms. Sanderson's sick leave credits, and the destruction of a performance review carried out by Mr. Sacha. It was also agreed that Mr. Jobin would conduct a new performance review in relation to Ms. Sanderson.

**26** The Commission report also indicates that Mr. Sacha received a six day suspension for his misconduct.

**27** The Commission investigator found that the evidence did not support a number of Ms.

Sanderson's other allegations, including her claim to have been paid less than her male peers who were allegedly no better or indeed less well-qualified than she was, finding that Ms. Sanderson was in fact paid more than one male colleague. A second colleague had started higher in the salary range than Ms. Sanderson because he had a Master's degree, whereas Ms. Sanderson only had a Bachelor's degree. A third colleague's salary was protected as a result of a re-organization.

**28** The Commission also found that the evidence did not support Ms. Sanderson's claim that she was denied employment opportunities and was forced to resign. The investigator found that Ms. Sanderson failed the knowledge component, and was thus disqualified from the competition.

**29** The Commission investigator recommended Ms. Sanderson's complaint be dismissed pursuant to paragraph 44(3)(b)(i) of the *Canadian Human Rights Act*, in that having regard to all of the circumstances, further inquiry into the complaint was not warranted.

**30** Both parties were afforded the opportunity to comment on the Commission's investigation report. In her submissions, Ms. Sanderson stated that in her initial interview with the Commission's investigator, the investigator told her that she was a personal friend of Jim Bart, Ms. Sanderson's union representative, and had worked with him on a number of occasions over the years.

**31** When Ms. Sanderson subsequently took issue with Mr. Bart's version of events, she says that the investigator became hostile and rude. Further, the investigator treated her in a sarcastic and demeaning manner, and appeared to have made up her mind at the outset that there was no merit to Ms. Sanderson's complaint.

**32** Ms. Sanderson also provided the Commission with lengthy and detailed submissions in relation to the merits of the investigator's findings.

**33** DIAND provided the Commission with its own submissions. DIAND's submissions commented on Ms. Sanderson's submissions with respect to the merits of the investigator's findings. It is, however, noteworthy that DIAND made no submissions to the Commission with respect to Ms. Sanderson's allegations that the Commission's investigator was biased against her because of the investigator's friendship with Mr. Bart.

### **The Commission Decision**

**34** The Commission decision took the form of a letter dated March 1, 2005. The operative portion of the decision provides that:

Before rendering their decisions, the members of the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to paragraph 44(3)(b) of the *Canadian Human Rights Act*, to dismiss the complaint because:

- having regard to all the circumstances of the complaint, further inquiry into the complaint is not warranted.

**35** Given the cursory nature of the Commission's decision, the investigation report must be read as the reasons of the Commission: see *Sketchley v. Canada (Attorney General)*, [2005] F.C.J. No. 2056, 2005 FCA 404 at para. 37, where the Federal Court of Appeal stated:

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*, [*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). 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** With this in mind, it is noteworthy that neither the investigation report nor the Commission decision address in any way, shape, or form, Ms. Sanderson's allegations with respect to the alleged bias of the investigator.

### **Standard of Review**

**37** Ms. Sanderson's application identifies a number of grounds relating to what she says are deficiencies in the Commission's investigation and treatment of her complaint. However, the grounds which are, in my view, dispositive of this application all relate to matters of procedural fairness.

**38** As the Federal Court of Appeal observed in *Sketchley*, previously cited, at para. 52-53, the pragmatic and functional analysis does not apply where judicial review is sought based upon an alleged denial of procedural fairness. Rather, the task for the Court is to determine whether the process followed by the Commission satisfied the level of fairness required in all of the circumstances.

**39** In answering this question in the context of this case, it is helpful to have an understanding of the obligations on the Canadian Human Rights Commission in investigating complaints of discrimination. This issue will be considered next.

## **The Obligations on the Canadian Human Rights Commission in Investigating Complaints**

**40** As the Supreme Court of Canada noted in *Cooper v. Canada (Human Rights Commission)* (1996), 140 D.L.R. (4th) 193, at para. 53:

The Commission is not an adjudicative body; that is the role of a tribunal appointed under the Act. When deciding whether a complaint should proceed to be inquired into by a tribunal, the Commission fulfills a screening analysis somewhat analogous to that of a judge at a preliminary inquiry. It is not the job of the Commission to determine if the complaint is made out. Rather its duty is to decide if, under the provisions of the Act, an inquiry is warranted having regard to all the facts. The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it.

(see also *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879 ("SEPQA")).

**41** The Commission has a broad discretion to determine whether "having regard to all of the circumstances" further inquiry is warranted: *Mercier v. Canada (Human Rights Commission)*, [1994] 3 F.C. 3 (CA). However, in making this determination, the process followed by the Commission must be fair.

**42** In *Sketchley*, the Federal Court of Appeal considered the non-exhaustive list of factors identified by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, in order to determine the content of procedural fairness owed by the Commission in carrying out its screening function under the *Canadian Human Rights Act*.

**43** The *Baker* factors are:

- (1) the nature of the decision being made and the process followed in making it; that is, "the closeness of the administrative process to the judicial process";
- (2) the role of the particular decision within the statutory scheme;
- (3) the importance of the decision to the individual affected;
- (4) the legitimate expectations of the person challenging the decision; and
- (5) the choice of procedure made by the agency itself.

**44** Applying these factors to the Commission process, the Federal Court of Appeal adopted that the comments in *Slattery v. Canada (Canadian Human Rights Commission)*, [1994] 2 F.C. 574; affirmed (1996), 205 N.R. 383 (F.C.A.), as to the content of procedural fairness required in Commission investigations.

**45** That is, in fulfilling its statutory responsibility to investigate complaints of discrimination,

investigations carried out by the Commission must be both neutral and thorough. Insofar as the requirement of thoroughness is concerned, the Court in *Slattery* stated that:

Deference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly. It should only be where unreasonable omissions are made, for example *where an investigator failed to investigate obviously crucial evidence*, that judicial review is warranted. [emphasis added]

**46** Cases decided after *Slattery* have established that a decision to dismiss a complaint made by the Commission in reliance upon a deficient investigation will itself be deficient as "[i]f the reports were defective, it follows that the Commission was not in possession of sufficient relevant information upon which it could properly exercise its discretion": see *Grover v. Canada (National Research Council)*, [2001] F.C.J. No. 1012, at para. 70. See also *Garvey v. Meyers Transport Ltd.* [2005] F.C.J. No. 1684 (C.A.), *Singh v. Canada (Attorney General)*, [2002] F.C.J. No. 885, 2002 FCA 247 (C.A.) at para. 7 and *Kollar v. Canadian Imperial Bank of Commerce*, [2002] F.C.J. No. 1125, 2002 FCT 848 at para. 40.

**47** With this understanding of the role and responsibilities of the Canadian Human Rights Commission in dealing with complaints of discrimination, I turn now to consider the arguments advanced by Ms. Sanderson.

## **Analysis**

### ***Failure to Interview Key Witnesses***

**48** Ms. Sanderson says that the Commission investigation was inadequate, as the investigator failed to interview a number of key witnesses, including any of the witnesses suggested by Ms. Sanderson herself. In this regard, Ms. Sanderson provided the investigator with a list of eight individuals, who, she says, had information relevant to her complaint. She also provided the investigator with "will say" statements, summarizing what Ms. Sanderson expected the witnesses to be able to address.

**49** In and of itself, the fact that the Commission investigator may not have interviewed every witness suggested by a complainant will not necessarily be fatal: *Slattery*, previously cited, at para. 69.

**50** In this case, a review of the list of witnesses proposed by Ms. Sanderson discloses that seven of the individuals did not have any first-hand knowledge of what had occurred in Ms. Sanderson's case, and each was dependent upon what Ms. Sanderson had herself told them about what had gone on between Ms. Sanderson and Messrs. Jobin, Sacha and Ready.

**51** The one witness who allegedly did have direct knowledge of the treatment that Ms. Sanderson

says that she encountered at the hands of Mr. Sacha and Mr. Ready was interviewed by the investigator looking into Ms. Sanderson's grievance, and was reported not to have any useful information.

**52** In these circumstances, I am satisfied that it was not unreasonable for the Commission investigator not to have interviewed these individuals.

**53** That said, there were other potential witnesses who were evidently not interviewed by the Commission investigator, which omission is much more problematic.

**54** Specifically, it appears that the investigator never spoke to either Mr. Sacha or Mr. Ready. Along with Mr. Jobin, these individuals were the central DIAND players in the events giving rise to Ms. Sanderson's complaint.

**55** Given the key role that these individuals had in the events in issue, it was, in my view, incumbent on the investigator to speak to each of them directly, and not simply rely on what each may have said during the investigation of Ms. Sanderson's grievance.

**56** Moreover, it must be recalled that the grievance only dealt with allegations of sex discrimination and harassment. No examination of these witnesses was ever carried out in relation to Ms. Sanderson's allegations that she had been the victim of discrimination and harassment arising out of her race and national or ethnic origin.

**57** In *Gravelle v. Procureur général du Canada*, [2006] F.C.J. No. 323, 2006 FC 251, Justice Blanchard set aside a Commission decision to dismiss a complaint based, in part, on the failure of the Commission investigator to interview key witnesses, namely those individuals involved in the decision not to renew the complainant's employment contract.

**58** In my view, the failure of the Commission investigator to interview either Mr. Sacha or Mr. Ready is an omission of a similar magnitude to that identified in *Gravelle*, the result of which was that the investigation report in this case was less than thorough. This in turn means that the Commission did not have sufficient relevant information before it when it made its decision to dismiss Ms. Sanderson's complaint.

**59** This oversight was, in my view, compounded by the failure of the Commission investigator to deal properly with Ms. Sanderson's allegations of harassment and discrimination based upon her race and national or ethnic origin. This issue will be considered next.

### ***The Treatment of the Race/Ethnicity Aspects of Ms. Sanderson's Human Rights Complaint***

**60** As was noted above, Ms. Sanderson's human rights complaint was based upon three proscribed grounds of discrimination - namely her sex, her race and her national or ethnic origin. As a consequence, a thorough investigation would have involved consideration of the role that each of

these personal characteristics may have played in the treatment that Ms. Sanderson says that she experienced in the workplace.

**61** A thorough investigation would also have considered what, if any, role Ms. Sanderson's status as a Native woman may have played in the events in issue. That is, consideration would have to be given to the role that the intersection of several grounds of discrimination may have played in the events in question.

**62** A review of the investigation report prepared by the Commission investigator discloses that while the investigator did consider the possible impact that Ms. Sanderson's race and national or ethnic origin may have had with respect to certain of her allegations, no meaningful consideration was given to the racial or ethnicity aspects of Ms. Sanderson's complaint that she had been harassed and treated in an adverse differential manner by Mr. Sacha and Mr. Ready.

**63** Indeed, the investigator's analysis of this issue was confined to a discussion of the fact that Ms. Sanderson's grievance did not allege that her race or ethnicity were factors in the treatment that she was experiencing at the hands of Mr. Sacha. The investigator then goes on to refer to Mr. Bert's opinion that there were no indications of racial bias in this case.

**64** Regardless of the fact that Ms. Sanderson did not allege racial bias in her grievance, the evidence before the Commission investigator clearly demonstrated that as early as October, 2001, Ms. Sanderson had formed the view that her status as a Native woman was behind the treatment that she was encountering in the workplace. Indeed, Ms. Sanderson's initial letter of complaint to Mr. Jobin makes repeated reference to her view that she would not have been treated in such a fashion had she not been a Native woman.

**65** Moreover, Ms. Sanderson provided the investigator with an explanation as to why she did not raise the matter of her race or ethnicity in her grievance. Although her explanation is referred to in the investigator's review of the evidence, it does not appear to have been taken into account in her analysis.

**66** Finally, even though Ms. Sanderson did not allege racial bias in her grievance, she clearly alleged that she had been the victim of harassment and discrimination because of her race and her ethnicity in her human rights complaint. As such, it was incumbent on the Commission investigator to properly consider this aspect of the complaint. It was not sufficient for the investigator to rely on the opinion of a witness that there were no indications of racial bias in this matter.

**67** It should also be observed that the fact that the Commission investigator was satisfied that DIAND had responded appropriately to Ms. Sanderson's allegations of sex discrimination does not mean that DIAND would necessarily be absolved of liability for any race-based discrimination that may have occurred.

**68** Section 65 of the *Canadian Human Rights Act* identifies the circumstances in which an

employer will be held to account for the acts or omissions of its employees. That is, an act or omission of an employee will not be deemed to be an act or omission of the employer where it can be established that the employer did not consent to the commission of the act or omission, exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effects of the discriminatory acts.

**69** Thus the fact that the Commission investigator found that DIAND had acted appropriately in relation to Ms. Sanderson's allegation of sex discrimination does not automatically lead to the conclusion that DIAND had necessarily taken reasonable steps to prevent acts of racial discrimination from occurring.

**70** To illustrate this point, the fact that DIAND may have had a policy in place dealing with sexual harassment, and may also have provided its employees with training in relation to this issue, does not mean that it had a policy in place or had provided its employees with diversity training. These are matters that would have had to be explored in order to determine whether DIAND had satisfied its due diligence obligations, or could be held responsible for the acts or omissions of its employees in Ms. Sanderson's case.

**71** For these reasons, I am of the view that Ms. Sanderson was denied procedural fairness in this matter, as the investigation carried out by the Commission investigator was not sufficiently thorough. As a consequence, the Commission did not have sufficient relevant information before it when it made its decision, with the result that the decision must be set aside.

**72** However, before concluding, it is necessary to address Ms. Sanderson's allegation of bias on the part of the investigator. This issue will be considered next.

### ***The Bias Allegation***

**73** I am very troubled by the apparent failure of the Commission to address Ms. Sanderson's allegation that the investigator assigned to her case lacked the requisite level of neutrality.

**74** A review of the submissions prepared by Ms. Sanderson in response to the report of the Commission investigator discloses that Ms. Sanderson made very serious allegations with respect to possible bias on the part of the investigator.

**75** In light of the non-adjudicative nature of the Commission's responsibilities, it has been held that the standard of impartiality required of a Commission investigator is something less than that required of the Courts. That is, the question is not whether there exists a reasonable apprehension of bias on the part of the investigator, but rather, whether the investigator approached the case with a "closed mind": see *Ziindel v. Canada (Attorney General)* (1999), 175 D.L.R. (4th) 512, at para. 17-22.

**76** With this in mind, it bears noting that the uncontroverted evidence before the Commission

when it made its decision to dismiss Ms. Sanderson's complaint was that the investigator had a personal relationship with one of the key witnesses, and that this relationship had led the investigator to approach the investigation with a closed mind.

**77** It may be that had the Commission looked into Ms. Sanderson's allegations, it might have determined that there is no substance to any of them. However, we have no way of knowing whether this was the case, as there is nothing in the record to suggest that any examination of Ms. Sanderson's allegations was ever carried out by the Commission prior to the decision being made to dismiss Ms. Sanderson's complaint.

**78** The serious allegations made by Ms. Sanderson required consideration by the Commission. The failure of the Commission to address these concerns is a further reason why I am of the view that it would be unsafe to allow the decision of the Commission to stand.

### **Conclusion**

**79** For these reasons, I am satisfied that the decision of the Canadian Human Rights Commission to dismiss Ms. Sanderson's complaint against DIAND must be set aside, and the matter remitted to the Commission for redetermination.

**80** As I have found that the investigation carried out lacked the necessary degree of thoroughness, a fresh investigation will have to be carried out. Prudence would obviously dictate that the investigator assigned to this matter not have any connection to any of the individuals involved in any of the events giving rise to Ms. Sanderson's complaint.

**81** In the circumstances, I am of the view that Ms. Sanderson should have her costs.

### **JUDGMENT**

This application for judicial review is allowed, with costs. The decision of the Canadian Human Rights Commission dismissing Ms. Sanderson's human rights complaint is set aside, and the matter is remitted to the Commission for redetermination, in accordance with these reasons.

MACTAVISH J.

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