

Federal Court



Cour fédérale

Date: 20250410

Docket: T-551-24

Citation: 2025 FC 665

Vancouver, British Columbia, April 10, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

NICHOLAS CHRISTOPHER PERON

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision of the Canadian Human Rights Commission [Commission] dated February 27, 2024, wherein the Commission declined to deal with the Applicant's underlying human rights complaint against the Canada Revenue Agency [CRA] because the Applicant submitted the complaint after the statutory deadline for filing had elapsed, and the circumstances did not justify extending the statutory time limit. In his complaint, the Applicant alleged that the CRA discriminated against him based on his disability, contrary to

section 7 of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [Act], by failing to accommodate his mental health needs, resulting in financial loss, emotional suffering and premature retirement.

[2] For the reasons that follow, I am not satisfied that the Applicant has demonstrated any basis for the Court's intervention. Accordingly, the application for judicial review shall be dismissed.

I. Background

[3] The Applicant was an employee of the CRA from March 5, 2001, until his retirement on medical grounds on February 26, 2021.

[4] The Applicant has been diagnosed with Major Depressive Disorder with symptoms of anxiety, Passive Suicidal Ideation and Complex Post-Traumatic Stress Disorder [C-PTSD] and is on the Autism spectrum.

[5] The Applicant states that his medical conditions were exacerbated by noise within his workplace. Between 2014 and 2017, he requested that the CRA accommodate his medical condition by providing him with an enclosed office space or the ability to work from home, which request was refused. As a result, he had to frequently take various forms of leaves of absence from work, including sick leave, vacation leave without pay and leave with income averaging.

[6] In January 2017, the Applicant went on long-term disability. In March 2017, the Applicant attempted to return to work but due to the lack of accommodation, he was only able to complete a portion of the work week and returned to long-term disability status. The Applicant did not return to work and ultimately retired in 2021 on medical grounds.

[7] On November 22, 2018, the Applicant contacted the Commission regarding his discrimination allegations against the CRA.

[8] By letter dated February 6, 2019, the Commission advised the Applicant that as an employee in the public service he had access to a grievance process under the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [*FPSLRA*]. The Commission further advised the Applicant that if, after pursuing the grievance process, he believed that his allegations of discrimination were not addressed, he should contact the Commission to file a complaint within 30 days of being advised of the grievance's final decision.

[9] On March 16, 2021, the Applicant returned to the Commission and asked to reactivate his complaint. His complaint was formally submitted on April 9, 2021 [Complaint]. In his Complaint, the Applicant did not refer to his Autism or C-PTSD diagnoses, but rather listed his medical conditions as Major Depressive Disorder with anxious tendencies and Passive Suicidal Ideation.

[10] The Respondent provided its response to the Complaint on August 16, 2021, requesting that the Complaint be dismissed under paragraph 41(1)(a), (c), (d) and (e) of the *Act* on the basis that the Applicant had not exhausted other recourse available to him, the Complaint was beyond the jurisdiction of the Commission, the Complaint was frivolous and vexatious and the Complaint was untimely.

[11] On October 18, 2021, the Applicant replied to the Respondent's submissions. He maintained that the Complaint was not filed out of time as it was "originally filed in 2017" when he was referred to the process under the *FPSLRA*. He stated that the Commission sent the

Respondent correspondence at the time to inform them that the Applicant had made a complaint. He asserted that the Commission kept his complaint “on hold in the event that [he] could not reach an agreeable solution with the [R]espondent.” The Applicant further maintained that by the Commission’s “own rules, the complaint was accepted on the time of receipt and maintained that original receipt date when [he] later moved on with [his] complaint.”

[12] On January 9, 2024, a Human Rights Officer [Officer] at the Commission issued a Report for Decision [Report]. The Officer recommended that the Commission not deal with the Complaint on the basis of paragraph 41(1)(e) of the *Act*, as it was based on acts which occurred more than one year before the Complaint was filed (the last act of discrimination alleged by the Applicant occurred in March 2017 when the Applicant attempted to return to work and claimed his managers refused to meet his accommodation needs) and the Applicant had not provided a reasonable explanation for the delay in filing.

[13] In the Report’s Appendix, the Officer clarified that for the purposes of paragraph 41(1)(e) of the *Act*, a complaint is only considered to be filed once the Commission receives a complaint in an acceptable form. This means that if a complainant contacts the Commission before the one-year deadline but does not provide enough information to allow the Commission to accept the complaint, the Commission can decide not to deal with it. However, the Officer noted two circumstances where the Commission can decide to deal with a complaint even if it is filed more than one year after the last alleged act of discrimination.

[14] The first circumstance is where a complainant was prevented from filing the complaint within the one-year deadline for reasons beyond their control. In such situation, a complainant must explain:

- (1) The situation that prevented them from filing within one year;
- (2) Why the situation was out of their control and what steps they took to reduce the impact;
- (3) How the circumstance prevented them from filing within one year; and
- (4) What actions they took since the last date of discrimination until they filed the complaint, to show that they always intended to file a complaint.

[15] The second circumstance is where a complainant was prevented from filing the complaint within the one-year deadline because they did not find out about the discrimination until later. In this situation, a complainant would have to file the complaint within one year of learning that the negative treatment may have been discriminatory.

[16] The Appendix to the Report included a list of questions for complainants and evidence that should be provided to support a complainant's assertion that one or both of the above-referenced circumstances exist. In a situation where the delay may be attributable to a complainant's disability, the list included the following:

- f. How was the Complainant's disability a factor in the delay in filing? Please provide details.
- g. Did the Complainant's disability prevent the Complainant from filing a complaint with the Commission in the one year after the last alleged act of discrimination?

[...]

j. Complainant: Do you have any documents or other evidence to support that the delay was related to your disability? For example, a doctor's note or letter from a counsellor. If so, please provide this documentation. Please note: This documentation should explain why you could not file your complaint in the one year after the last alleged act of discrimination.

[Emphasis added.]

[17] On January 10, 2024, the Applicant responded to the Report. He explained that the discrimination continued well into 2018. He asserted that the period of 2014–2017 was the period for which he sought compensation and that by mentioning this period in his Complaint, he was not specifying that the discrimination had an end point.

[18] The Applicant argued, in the alternative, that if his Complaint was filed out of time, then it should still be dealt with by the Commission because any delay was entirely based on his disability. He indicated that “2017 and 2018 were very chaotic years” for him and that, during this period, he “could hardly manage day-to-day things like getting out of bed, making [himself] meals, and routine grooming.” The Applicant noted that during this period, he was going on and off various medications to treat his medical conditions and had to deal with strong side effects or increased symptoms.

[19] The Applicant further submitted that he had a lot of mental health barriers that made dealing with CRA and Commission bureaucracies exceedingly difficult. He stated that dealing with invasive thoughts of suicide made it difficult for him to navigate the process. He asserted that the delay in filing his Complaint was due to the fact that his ability to be cognizant that discrimination took place, and his ability to exercise any agency about the discrimination, were exceedingly diminished by the nature of his mental illness.

[20] The Applicant attached a letter from his psychologist, dated December 10, 2020, who had been treating the Applicant since March 2018. The letter was written to address the Applicant's psychological conditions and their impact on his functioning in the context of his ability to return to work. The letter confirmed that the Applicant has been diagnosed with Major Depressive Disorder with symptoms of anxiety. In terms of his daily functioning, his psychologist stated that his symptoms "directly and severely impacted his ability to leave his bed and apartment, prepare meals for himself, engage in appropriate grooming, complete household chores and tasks, and manage his finances." His anxieties are described as having had "a significant impact on restricting/limiting work and personal experiences, and would require several days to recover from after he engaged with anxiety-provoking activities." His psychologist opined that the Applicant should not return to work for the foreseeable future and that return to work may not be possible.

[21] The Respondent did not provide submissions in response to the Report.

II. Decision under Review

[22] By way of a Record of Decision dated February 27, 2024, the Commission decided not to deal with the Complaint on the basis that it was filed more than one year after the last act of alleged discrimination took place and that the circumstances did not justify extending the time limit. The Commission noted that, in reaching their decision, they had reviewed the Complaint, the Report, and the submissions of the parties filed in response to the Report.

[23] The Commission agreed with the analysis in the Report regarding the last act of alleged discrimination. Accordingly, the last act of adverse differential treatment was deemed to be the

Respondent's refusal to meet the Applicant's accommodation needs, which occurred in March 2017. The Commission further explained that the refusal to reimburse the Applicant's leave credits (the events after March 2017) did not amount to the last act of discrimination because it was a result of the refusal to accommodate the Applicant. Accordingly, the events after March 2017 are relevant to a potential remedy for the discrimination and are the consequence of the refusal to accommodate the Applicant's disability, but do not constitute the actual adverse differential treatment.

[24] The Commission then considered the evidence and submissions before them related to whether the circumstances justified an extension of time to bring the Complaint. The Commission reviewed the letter from the Applicant's psychologist dated December 10, 2020, and acknowledged that the letter described a diagnosis of Major Depressive Disorder with symptoms of anxiety. The Commission noted, however, that it was unclear at what point the diagnosis was carried out. Although the Commission sympathized with the asserted struggles faced by the Applicant due to his disability, they concluded that the Applicant was nonetheless able to carry out relatively extensive communications and negotiations with both his union and the Respondent after he went on long-term disability in March 2017, about the very issues that underpin his Complaint. The Commission noted that these efforts included: (a) making an access to information request to obtain copies of his personnel file and records relating to his absences; (b) reviewing the terms of a job offer with the Ottawa Tax Centre and accepting it sometime around March 2018; (c) having multiple discussions with CRA management regarding accommodations since the Respondent was willing to accommodate an office and the addition of a service animal; (d) continuing communication with the Respondent because he was informed that his personnel

file and records were lost and possibly destroyed; and (e) providing documents to the CRA to support his arguments in favour of crediting back his leave.

[25] The Commission noted that, while the Applicant faced serious struggles in his daily living, he was able to accomplish numerous tasks during the time that he went on long-term disability (after March 2017) that related directly to the allegations in his Complaint.

[26] For these reasons, the Commission found that the explanations the Applicant provided for the delay in filing his Complaint were unreasonable. If the Applicant was able to accomplish all of the aforementioned tasks, the Commission found that he should have been able to fill out a complaint form and submit it within a one-year time limit.

[27] The Commission also dismissed the Applicant's argument that his delay in filing the Complaint was due to his reduced ability to be cognizant that he had faced discrimination. The Commission noted that the Applicant did not explain how he became cognizant of the fact that he was discriminated against, when this cognizance occurred and the reasons why he did not suspect that the acts were discriminatory at the time.

III. Preliminary Issues

A. Style of Cause

[28] The Applicant named as the Respondent in this proceeding the CRA. The Respondent has requested an order amending the style of cause to name the Attorney General of Canada as the sole Respondent. Pursuant to Rule 303 of the *Federal Courts Rules*, SOR/98-106, the appropriate

Respondent in this application is the Attorney General of Canada and as such, the style of cause shall be amended accordingly.

B. Admissibility of the Applicant's Affidavit Evidence

[29] In support of his application for judicial review, the Applicant filed an affidavit sworn July 29, 2024 [Disputed Affidavit]. In the Disputed Affidavit, the Applicant describes his C-PTSD and Autism (mental health conditions which were not before the Commission) and states that these impairments directly affected his ability to file his Complaint. Appended to this affidavit are several exhibits, including: (a) a letter from the Applicant's psychologist dated April 16, 2024; and (b) a letter from his ex-partner and advocate for workplace neurodiversity dated June 17, 2024.

[30] In the psychologist's letter, his psychologist states:

It is my clinical opinion that Mr. Peron was experiencing significant emotional distress during the period of time he was engaged with his former employer about his mental health status and his return-to-work/accommodation process. His communication (via email, telephone) with his former employer was emotionally and physically taxing on him, in that his capacity to engage in any additional daily tasks (e.g., self-care, paying bills, etc.) was seriously and significantly compromised following communication with his former employer. I do not believe he was capable of filing a complaint with the Canadian Human Rights Tribunal within the appropriate time frame due to the significant impact his dealings with his former employer had on him on a daily basis. I do believe that Canadian Human Rights Tribunal should re-consider his complaint, in light of the psychological impairment he was experiencing at the time that prevented him from filing within the appropriate time frame.

[Emphasis added.]

[31] In the ex-partner's letter, she speaks to various issues experienced by the Applicant in dealing with the CRA as a result of his medical condition, as well as the unique challenges faced by neurodivergent individuals and the systemic barriers that contributed to the Applicant's delay in filing his Complaint.

[32] The Respondent opposes the Court's consideration of the following portions of the Disputed Affidavit on the basis that it constitutes new evidence that was not before the Commission and does not fall within one of the exceptions to the general rule against the admission of new evidence: (a) section 2, paragraphs 1–6; (b) section 4 under the subtopic "Pursuing Other Remedies and Good Faith Efforts", paragraph 1; (c) Section 4 under the subtopic "The Public Good", paragraph 1; (d) section 5, paragraphs 1–3; (e) Exhibit A; and/or (f) Exhibit B. The Respondent also asserts that portions of this evidence are duplicative of evidence that was before the decision-maker and is therefore unnecessary.

[33] As a general rule, materials that were not before the decision-maker are not admissible on judicial review [see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19]. There are certain recognized exceptions to this general rule, such as where the new evidence: (i) provides general background that might assist the Court in understanding the issues relevant to the judicial review; (ii) is necessary to bring procedural defects to the Court's attention; or (iii) highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding [see *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98; *Maltais v Canada (Attorney General)*, 2022 FC 817 at para 21].

[34] I agree with the Respondent that the following evidence was not before the Commission and does not fall within any of the exceptions for new evidence:

- A. The letter from the Applicant's psychologist dated April 16, 2024;
- B. The letter from his ex-partner and advocate for workplace neurodiversity dated June 17, 2024;
- C. Section 2, paragraph 1; and
- D. Section 4 under the subtopic "The Public Good", paragraph 1.

[35] Accordingly, this evidence shall be struck. I find that the balance of the evidence that the Respondent seeks to strike is merely duplicative of evidence that was already before the Commission and there is no prejudice to the Respondent in leaving those paragraphs and exhibits before the Court.

[36] The Respondent also opposes the Court's consideration of the following additional paragraphs of the Disputed Affidavit, on the basis that they are not confined to facts within the Applicants knowledge and instead include argument: (a) section 3, paragraph 2; (b) section 4 under the subtopic "Pursuing Other Remedies and Good Faith Efforts", paragraphs 2–3; (c) section 4 under the subtopic "Administrative Delays by the Commission due to COVID-19", paragraph 2; (d) section 4 under subtopic "The Commissioner's Qualification", paragraphs 1–3; (e) section 4 under subtopic "The Public Good", paragraphs 2-4; (f) section 7, paragraphs 1–7; and (g) section 8, paragraphs 1–2.

[37] It is certainly open to the Court to strike or disregard parts of an affidavit where they contain opinions, arguments or legal conclusions, or facts that go beyond an affiant's personal knowledge [see *Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18]. In this case, the Applicant has comingled his evidence and his legal submissions. However, I am not inclined to strike these portions of the Disputed Affidavit but rather, will treat them as forming part of the Applicant's legal submissions.

IV. Issues and Standard of Review

[38] The issues for determination on this application are as follows:

- A. Whether the Commission's finding that the Applicant's complaint was untimely pursuant to paragraph 41(1)(e) of the *Act* was reasonable; and
- B. Whether the Applicant's procedural fairness rights were breached.

[39] The applicable standard of review for the first issue is reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[40] With respect to the second issue, breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a “reviewing exercise [...] ‘best reflected in the correctness standard’ even though, strictly speaking, no standard of review is being applied” [see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54]. The duty of procedural fairness is “eminently variable”, inherently flexible and context specific. It must be determined with reference to all the circumstances, including the *Baker* factors [see *Vavilov, supra* at para 77]. A court assessing a procedural fairness question is required to ask whether the procedure was fair, having regard to all of the circumstances [see *Canadian Pacific Railway Company, supra* at para 54].

V. Analysis

A. The Commission’s decision was reasonable

[41] Paragraph 41(1)(e) of the *Act* provides that the Commission must deal with a complaint unless it appears to the Commission that said complaint is out of time. In the event where the Commission concludes that a complaint is out of time, it may still, in the exercise of its discretion, consider a complaint [see *Tse v Federal Express Canada Ltd*, 2005 FC 598].

[42] In order to determine the reasonableness of the Commission’s decision, the first question to be decided is whether its decision that the Applicant’s Complaint was, in fact, made beyond the one-year time limit prescribed by paragraph 41(1)(e) of the *Act*, was reasonable. In his memorandum of fact and law, the Applicant did not dispute that his Complaint was filed out of time and I note that in his affidavit in support of this application, the Applicant stated that the last act of alleged discrimination occurred in March 2017.

[43] In any event, I am satisfied that the Commission's determination that the limitation period ran from March 2017 (the last act of adverse differential treatment) and that the Complaint was not filed until April 2, 2021 (just over three years after the expiry of the limitation period), were reasonable. While the Applicant did contact the Commission in November 2018 (within the one-year limitation period), the date when a complainant first contacts the Commission regarding a possible complaint does not "stop the clock" for the one-year limitation period [see *Good v Canada (Attorney General)*, 2005 FC 1276 at para 26]. Moreover, the Commission's direction that the Applicant pursue alternative measures of redress did not displace the Applicant's duty to submit his Complaint within the one-year time frame while seeking such remedies [see *Arias v Canada (Royal Canadian Mountain Police)*, 2014 CanLII 13155 (FC) at para 14, citing *Bredin v Canada (Attorney General)*, 2007 FC 1361 at para 40].

[44] The second question is whether it was reasonable for the Commission to refuse to exercise its discretion to grant the Applicant a longer period of time to file his Complaint [see *Tse, supra*; *Paranthaman v Rogers Communications Inc*, 2019 FC 916 at para 37].

[45] One of the factors for the Commission's consideration is the reason for the delay and the burden rests on a complainant to establish a satisfactory explanation for their delay [see *Bredin, supra* at para 39]. The parties agree that the Commission was under a duty to consider whether the Applicant's failure to file his Complaint within the one-year time period could be explained by his disability [see *Paranthaman, supra* at para 38; *Hicks v Canadian National Railway*, 2015 FCA 109 at para 13].

[46] In his response to the Report, the Applicant asserted that the delay in filing his Complaint was “entirely based on [his] disability.” A review of the Commission’s reasons reveals that the Commission was alert to the Applicant’s submission that the delay was attributable to his disability and that the Commission considered the evidence before it regarding the Applicant’s mental health, including the letter from his psychologist dated December 10, 2020. However, the Applicant asserts that the Commission’s decision was unreasonable as it failed to meaningfully consider the evidence before it, and in particular, the medical evidence. He further asserts that the Commission lacked sensitivity to, and an understanding of, his limitations due to his medical condition and improperly viewed the evidence before it from a neurotypical perspective rather than from the Applicant’s neurodivergent perspective.

[47] A review of the Applicant’s response to the Report reveals that the Applicant was aware of the Appendix to the Report, as he structured a portion of his response so as to mirror the structure of the Appendix. However, the Applicant did not include medical evidence that explained why he could not file his Complaint within the one-year time limit, as requested in the Appendix. The Applicant included the December 10, 2020 letter from his psychologist and stated in his submissions that “[i]t outlines all of my limitations during this entire process.” Unfortunately, the letter did not address the Applicant’s inability to file his Complaint between March 2017 and March 2018, and instead appears to have been prepared for a different purpose — namely, to address his inability to return to work in 2020.

[48] In the absence of evidence from his psychologist addressing the reason for his inability to file his Complaint on time, I find that the Commission reasonably found that the various tasks the

Applicant completed during the period directly relevant to the allegations in his Complaint demonstrated that he should have been able to submit the Complaint within that same period of time. Consideration of a complainant's ability to seek other forms of redress during the relevant period (as the Commission did here) has been found by this Court to be a relevant consideration to the exercise of the Commission's discretion under paragraph 41(1)(e) [see *Choudhry v Canada (Attorney General)*, 2023 FC 1085; *Donoghue v Canada (National Defence)*, 2010 FC 404 at para 33].

[49] While the Applicant has now provided the April 2024 letter from his psychologist that explains why the Applicant's medical conditions prevented him from filing his Complaint on time, that letter was not before the Commission and therefore cannot be considered by the Court in assessing the reasonableness of the Commission's decision. I am sympathetic to the Applicant and the difficulties that he has endured in bringing forward his Complaint. However, in reviewing discretionary decisions of the Commission, the courts have afforded considerable deference to the Commission and have not readily intervened [see *Good, supra* at para 22]. A reviewing court cannot conclude that a decision is unreasonable simply because it is not pleased with the result, because the result does not seem generally just, or because it would have ruled differently. In cases such as this, where the factual context of a request raises a great deal of sympathy, the reviewing court must resist the temptation of deciding an application for judicial review on the basis of the conclusion it would have reached [see *Choudhry, supra* at para 32, citing *Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at paras 51–52].

[50] Based on the evidence that was before the Commission, I find that the Commission's decision contains an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain it. As such, I find that its refusal to exercise its discretion was reasonable.

[51] The Applicant also asserts that it would be in the public interest to set aside the Commission's decision as he states that his experience reflects systemic issues within the CRA regarding disability accommodation. However, the public interest is not a relevant consideration in the Court's assessment of the reasonableness of the Commission's decision.

B. The Applicant's procedural fairness rights were not breached

[52] The Applicant asserts that the decision-maker who made the decision on behalf of the Commission lacked the specific qualifications to deal with disability discriminations cases and that a different decision-maker, with specific expertise in accessibility and disability issues, should have been assigned to his case. This assertion, however, is not substantiated by any evidence.

[53] There is nothing in the record before me that would support an assertion that the Applicant's procedural fairness rights were breached by the Commission in the handling of his complaint.

VI. Conclusion

[54] As the Applicant has failed to demonstrate that the Commission's decision was unreasonable or that his procedural fairness rights were breached, the application for judicial review shall be dismissed.

[55] The Respondent has sought their costs of this application in the amount of \$1,000. In the circumstances of this matter, however, I am not satisfied that an award of costs is warranted.

JUDGMENT in T-551-24

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended with immediate effect to name the Attorney General of Canada as the sole Respondent.
2. The application for judicial review is dismissed.
3. There shall be no order as to costs.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-551-24

STYLE OF CAUSE: NICHOLAS CHRISTOPHER PERON v THE
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DATE OF HEARING: APRIL 9, 2025

JUDGMENT AND REASONS: AYLEN J.

DATED: APRIL 10, 2025

APPEARANCES:

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ON HIS OWN BEHALF

Ashley Gardner

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FOR THE RESPONDENT