Federal Court  Cour fédérale

Date: 20250415

Docket: T-2625-23

Citation: 2025 FC 697

Ottawa, Ontario, April 15, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

CLIFTON STARR

Applicant

and

BMO FINANCIAL GROUP
and THE CANADIAN HUMAN RIGHTS COMMISSION

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by the Canadian Human Rights Tribunal ("CHRT") dated November 16, 2023, that dismissed his complaint against BMO Financial Group ("BMO"), which alleged discrimination based on race, pursuant to paragraphs 5(a) and 5(b) of the *Canada Human Rights Act*, RSC 1985, c H-6 [*CHRA*] ("Decision").

[2] BMO denies that it discriminated against the Applicant. They argued that the Applicant was treated with respect and in accordance with its product policies. They argue that the Decision was reasonable and procedurally fair.

[3] As per their correspondence dated January 16, 2024, the CHRC did not participate in this application nor did they appear at the hearing for this application.

[4] For the reasons that follow, this application is dismissed.

II. Background

[5] The Applicant, Mr. Clifton Starr, is an Ojibway (Anishinaabe) man from Manitoba.

[6] Some of the events related to his complaint are in dispute. The following is a summary of the key facts related to the Applicant's *CHRA* complaint.

[7] On April 18, 2018, the Applicant went to the BMO Main Branch ("Main Branch") in Winnipeg with the intention to open a new account and apply for a secured credit card. A customer service representative ("CSR") advised Mr. Starr that he was not eligible to apply for a secured credit card because it is a product that is only available to persons who are new to Canada. The Applicant did not indicate that he was a new Canadian.

[8] The eligibility restrictions for secure credit cards are set out in BMO policy 910-13, "BMO Credit Card Applications – New to Canada/Non-permanent Residents," published on July 10, 2017 ("Policy").

[9] After being told he did not qualify for a secured credit card because he was not a new Canadian, the Applicant alleged he had been discriminated against, on the basis that he is an

Indigenous person. The evidence from the CSR is that the Applicant then stated that "[BMO] would be hearing from his lawyer." The Applicant denied making this statement.

[10] Because of the allegations of discrimination, the CSR then went to find the Assistant Branch Manager ("ABM") for help. When they returned to talk to the Applicant, they learned he had left the Main Branch. The Applicant said he spoke to the ABM at this time, that he did not leave and then return to the Main Branch to speak to the ABM.

[11] The Applicant then went to the BMO Portage Avenue Branch ("Portage Branch"). The Applicant stated that a CSR at this location told him BMO offered secured credit cards to customers and the CSR offered to open an account to start the application process with him. The Applicant did not apply for a secured credit card or open an account at the Portage Branch. The alleged events at the Portage Branch underpin the Applicant's belief that the Policy is "fake." The Applicant asserted that BMO offers secured credit cards to anyone, not just new Canadians.

[12] Later that same day, the Applicant returned to the Main Branch where he met with the ABM. The ABM also advised the Applicant that secured credit cards were only offered to new Canadians.

[13] The ABM was unable to resolve the Applicant's complaint at the branch level, so, following BMO procedures, she provided the Applicant with the "We're here to help" brochure ("Brochure"), which describes the BMO Complaint Resolution Process ("Resolution Process"). The Resolution Process states that if a complaint is not resolved after it is escalated from a CSR to the ABM, a customer is provided the Brochure to allow them to escalate the complaint beyond the branch level to a BMO Senior Officer. There is no provision in the Resolution Process or Brochure that states a complaint is to be escalated to a branch manager.

[14] The Applicant stated that he phoned one of the contact numbers provided in the Brochure. He did not leave a voice mail and took no other steps in the Resolution Process.

[15] On February 5, 2019, the Applicant filed a complaint of discrimination against BMO with the Canadian Human Rights Commission ("Commission"), alleging a denial of services and adverse differential treatment of under section 5 of the *CHRA* ("Complaint"). Specifically, the Applicant alleged that the Policy is fake and intended to provide BMO a defence to the case, that BMO racially discriminated against him when it refused him access to a secured credit card, and that he suffered racial discrimination in not being permitted to meet with the Branch Manager.

[16] BMO provided a written response to the Complaint on December 3, 2019. The Applicant provided comments on BMO's position on November 24, 2020.

[17] In 2021, the Commission investigated the allegations and accepted the investigator's recommendation to forward the Complaint to the CHRT.

[18] On June 24, 2022, the Applicant filed a Statement of Particulars. On July 18, 2022, BMO filed their Statement of Particulars and a List of Documents. The Applicant replied to BMO's Statement of Particulars on July 20, 2022.

[19] Two Case Management Conferences ("CMCs") occurred on September 27, 2022, and January 31, 2023.

[20] On December 16, 2022, BMO submitted an Amended Statements of Particulars to the CHRT. The Applicant submitted Amended Statements of Particulars on May 25, 2023, and August 8, 2023.

[21] Another CMC occurred on September 15, 2023. The CHRT hearing was held via Zoom on September 25–27, 2023. Twenty-six exhibits were filed by the parties during the CHRT hearing. The CHRT directed the parties to file written closing submissions. The Applicant provided his closing submissions on October 3, 2023. BMO provided their closing submissions on October 6, 2023. The Applicant filed reply submissions on October 11, 2023.

III. Decision Under Review

[22] On November 16, 2023, the CHRT released its Decision.

[23] The sole issue before the CHRT was "whether BMO discriminated against Mr. Starr on the basis of his race by denying him access to a secured credit card and by refusing to allow him to meet with the branch Manager when he visited its main branch on April 18, 2018, contrary to section 5 of the CHRA."

[24] The CHRT determined that the Applicant was "mainly [a] credible witness and was diligent and professional in his self representation." The CHRT then summarized the events of April 18, 2018, and reviewed and clarified information regarding BMO's policies for secured credit cards, regular non secured credit cards, credit history, credit scores, rebuilding credit history, and BMO's Code of Conduct and Anti-Harassment Operating Procedure.

[25] The CHRT found that the Applicant failed to establish, on a balance of probabilities, that he was denied access to a secured credit card or treated adversely and denied the opportunity to meet a Branch Manager because of his race. The evidence did not establish that the Policy or the interactions the Applicant had at the Main Branch on April 18, 2018, were discriminatory.

[26] The CHRT found that the Policy "was a real policy, intended to give new Canadians… who had no credit history in Canada, an opportunity to establish credit in Canada after first applying for and being refused a non secured credit card."

[27] The CHRT determined that nothing in the Policy was related to race. Any person, including Indigenous persons, who met the Policy conditions (that they be a new Canadian and were refused a non secured credit card) could be offered a secured credit card, without any reference to their race or other protected characteristics (*CHRA*, s 3). If an individual did not meet the conditions, they would not be offered a secured credit card, regardless of their race. The CHRT found that the Applicant did not qualify for a secured credit card pursuant to the Policy, he was not denied a secured credit card because he was Indigenous.

[28] The CHRT found that the Applicant's evidence concerning his interaction with a CSR at the Portage Branch was not credible. The CHRT noted that he did not obtain the name of the CSR he spoke with, nor did he subpoena the CSR to testify on his behalf. In addition, he did not apply for a secured credit card at the Portage Branch, despite the offer. That said, the CHRT accepted BMO's evidence that the Portage Branch CSR's advice was mistaken. The CHRT found that the Policy was valid and there was no evidence that BMO issued a secured credit card to anyone that did not meet the Policy conditions.

[29] The CHRT did not find the BMO employees acted in a manner that was discriminatory. The CHRT found the evidence of the BMO employees to be credible. In addition, the CHRT determined that the Resolution Process and Brochure were fair, reasonable, clear, and not discriminatory. Therefore, the CHRT found that the Applicant was not discriminated against with respect to his allegation of being refused a meeting with the Main Branch Manager.

[30] The CHRT concluded that, based on the evidence and in accordance with the law, "Mr. Starr's allegations of discrimination in this case are not linked to an enumerated prohibited ground of discrimination under the CHRA and cannot succeed. He has failed to substantiate his compliant [*sic*] and it must be dismissed."

[31] The Applicant filed the notice of application for this proceeding on December 12, 2023. The Applicant alleged that the CHRT failed to observe procedural fairness and made numerous errors in law and erroneous findings of fact.

IV. Issues and Standard of Review

[32] The issues in this application are:

A. Was the Decision reasonable?

B. Was the Decision procedurally fair?

[33] The standard of review for decisions of the CHRT is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 11, 143; see *Bangloy v Canada (Attorney General)*, 2021 FCA 245 at para 33).

[34] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95).

[35] The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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" (*Vavilov* at para 85).

[36] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100). The Applicant bears the burden of demonstrating that alleged flaws in the Decision are sufficiently central or significant to render the Decision unreasonable (*Vavilov* at paras 100, 125). Generally, save for exceptional circumstances, reviewing courts will not interfere with a decision maker's findings of fact, nor re-weigh or re-assess a decision maker's evidentiary findings (*Vavilov* at para 125).

[37] The standard of review applicable to determining if a decision maker complied with the duty of procedural fairness is generally described as correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The question is: did the Applicant know the case to be met, and did the Applicant have a full and fair opportunity to make submissions?

V. Legislation

[38] The relevant portions of the *CHRA* applicable to this application are:

Prohibited grounds of discrimination	**Motifs de distinction illicite**
3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which	**3 (1)** Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'identité ou l'expression de genre, l'état matrimonial, la situation de famille, les caractéristiques génétiques,

a record suspension has been ordered.

l'état de personne graciée ou la déficience.

…

[…]

Denial of good, service, facility or accommodation

Refus de biens, de services, d'installations ou d'hébergement

5 It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

5 Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

a) d'en priver un individu;

(b) to differentiate adversely in relation to any individual,

b) de le défavoriser à l'occasion de leur fourniture.

on a prohibited ground of discrimination.

…

[…]

Special programs

Programmes de promotion sociale

16 (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by

16 (1) Ne constitue pas un acte discriminatoire le fait d'adopter ou de mettre en oeuvre des programmes, des plans ou des arrangements spéciaux destinés à supprimer, diminuer ou prévenir les désavantages que subit ou peut vraisemblablement subir un groupe d'individus pour des motifs fondés, directement ou indirectement, sur un motif de distinction illicite en améliorant leurs chances

improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.	d'emploi ou d'avancement ou en leur facilitant l'accès à des biens, à des services, à des installations ou à des moyens d'hébergement.

VI. Analysis

A. *Was the Decision reasonable?*

[39] The Applicant argued that the CHRT made several legal errors and did not consider the totality of evidence before it.

[40] BMO argued that the Applicant's submissions are baseless and illustrate that he disagrees with the CHRT Decision, which is not a basis for this Court to intervene on judicial review.

(1) Protected characteristic

[41] The Applicant argued that the CHRT made an error of law in finding that BMO's Policy is not discriminatory. He argued that this finding expands the class of protected characteristics that are prohibited grounds for discrimination pursuant to subsection 3(1) of the *CHRA*, to include "newcomers." The Applicant argued that the Decision creates an advantage for a group that is neither protected nor historically disadvantaged.

[42] BMO argued that the Decision does not make a finding that "newcomers" are a protected group under the *CHRA*. Further, they noted that while they did make alternative arguments with respect to section 16 of the *CHRA*, these were ultimately not addressed by the CHRT.

[43] A careful review of the Decision supports the conclusion that the CHRT did not make a finding that "newcomers" are a new protected class pursuant to subsection 3(1) of the *CHRA*.

(2) Application of the UNDRIP and *UNDA*

[44] The Applicant argued that the Decision is an error of law because it violates the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP") and the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [*UNDA*]. Specifically, the Applicant argued that the Policy is a form of systemic discrimination and the Decision is a violation of Articles 21 and 40 of the UNDRIP.

[45] BMO argued that the Applicant did not make these arguments as part of his original Complaint to the Commission, nor did he make these arguments at the CHRT hearing. They submitted that the failure to advance these arguments cannot be the basis to find the Decision unreasonable.

[46] Generally, "a court will not consider an issue on judicial review where the issue could have been but was not raised before the administrative decision-maker… The reasons for the rule include the risk of prejudice to the responding party, and the potential to deny the reviewing court an adequate evidentiary record" (*Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 71, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 21–26; *Canada (Attorney General) v Valcom Consulting Group Inc*, 2019 FCA 1 at para 36).

[47] A reviewing court is limited to considering the reasonableness of the decision, based on a review of the decision actually made (*Vavilov* at para 83). When a party raises an issue for the first time on judicial review, the reviewing court loses the benefit of the views and expertise of the specialized tribunal entrusted by Parliament to consider the issue (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 875 at para 34).

[48] The Applicant did not make submissions to address why this Court should consider new issues related to the UNDRIP or the *UNDA* in this application. Accordingly, I am persuaded that this is a new issue and will not be considered in this application.

[49] That said, the Applicant is self-represented, and he spent a considerable amount of time at the hearing of this application on this issue. I think it is important to highlight the limited and evolving law concerning the application of the UNDRIP.

[50] As I explained in *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 [*Kebaowek*]:

> [74] The UNDRIP is an international human rights instrument that sets out the collective and individual rights of Indigenous peoples and underscores the importance of self-determination. The rights set out in the UNDRIP represent the "minimum standards for the survival, dignity and well-being of Indigenous peoples around the world" (*UNDA*, Preamble, at para 2). The UNDRIP emphasizes the rights of Indigenous peoples to maintain and strengthen their own institutions, cultures, and traditions, and promotes the pursuit of social and economic development aligned with the collective aspirations. The UNDRIP also advocates for the right of Indigenous people to full and effective participation in matters that concern them within states.

[51] In May 2016, Canada announced its full support of the UNDRIP without qualification and announced that it would "adopt and implement the [D]eclaration in accordance with the Canadian Constitution." The *UNDA* was officially passed and became a part of Canadian law on June 21, 2021 (*Kebaowek* at para 75).

[52] The UNDRIP may be used to interpret Canadian law (*Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 [*Reference*] at para 4; *R c Montour*, 2023 QCCS 4154 at para 1287). In addition, the UNDRIP is the foundational

framework for the "reconciliation initiative by Parliament" (*Reference* at para 3; *Kebaowek* at para 76).

[53] However, the UNDRIP does not create new law or statutory obligations. The UNDRIP is "an interpretive lens to be applied to determine if the Crown has fulfilled its obligations prescribed at law" (emphasis added; *Kebaowek* at para 76).

[54] The Applicant argued that there is an obligation on the CHRT to consider the broader implications of its decisions on Indigenous people. He also argued that the CHRT must consider the application of the UNDRIP in its decisions. The Applicant has pointed to no authority for either proposition. As set out above, the UNDRIP is a tool to assist in assessing the fulfillment of Crown obligations. With respect, it is not clear how the UNDRIP applies in the present application.

(3) Factual errors

[55] The Applicant highlighted numerous factual errors that he argued render the Decision unreasonable. These include findings of the CHRT that: the Applicant did not elevate his complaint in accordance with the Resolution Process; the Applicant's delay in filing his Complaint; the Applicant argued that some of the Respondent's witnesses were not credible; the CHRT failed to highlight contradictory evidence concerning information about prepaid credit cards the Applicant found on the BMO website; and that the Branch Manager at the Main Branch had an office with glass walls. In addition, the Applicant suggested that the reference to some of his negative personal history in the Decision is an illustration of "malice on the part of the [CHRT]."

[56] BMO argued that the CHRT findings of fact were reasonable and supported by evidence. Further, they argued that the Decision and findings of fact are entitled to deference, and the Applicant has not pointed to anything that would warrant this Court's intervention (*Vavilov* at para 125). Further, they argued that the Applicant's characterisation of certain findings, which have been taken out of their proper context, is not an accurate reflection of the Decision.

[57] The Supreme Court of Canada has clearly stated that reasonableness review is not a "line-by-line treasure hunt for error":

> [102] To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14. However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Ryan*, at para. 55; *Southam*, at para. 56. Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment": R. A. Macdonald and D. Lametti, "Reasons for Decision in Administrative Law" (1990), 3 C.J.A.L.P. 123, at p. 139; see also *Gonzalez v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 750, 27 Imm. L.R. (4th) 151, at paras. 57-59.
>
> (Emphasis added; *Vavilov* at para 102.)

[58] As noted above, to intervene a reviewing court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100). The Applicant must demonstrate that the alleged errors made by the CHRT are sufficiently central or significant to render the Decision unreasonable (*Vavilov* at paras 100, 125). A reviewing court will only

interfere with a decision maker's findings of fact, re-weigh or re-assess a decision maker's evidentiary findings in the most exceptional of circumstances (*Vavilov* at para 125).

[59] The Applicant made numerous serious allegations concerning the CHRT making erroneous findings of fact and BMO making up facts.

[60] I have carefully reviewed the Decision, and I am not persuaded by the Applicant's argument. While the CHRT Member ("Member") found the Applicant to be credible, they did not accept all of his evidence and made several findings of fact that aligned with BMO's evidence. I agree with BMO that the Applicant has cherry-picked elements of the Decision out of context.

[61] In my opinion, the Applicant has not demonstrated that any of the alleged errors, flaws or shortcomings in the Decision are sufficiently central or significant to warrant this Court's intervention. The Decision is reasonable and is supported by the evidentiary record. The reasons for the Decision satisfy the hallmarks of a reasonable decision, in that they are transparent, intelligible, justified, and properly grappled with the relevant factual and legal considerations.

B. *Was the Decision procedurally fair?*

[62] The Applicant argued that the Member restricted his ability to present his case. The Applicant argued that the Member advised him not to make an opening statement. In addition, the Applicant argued that his evidence concerning racism in the workforce and discrimination targeted towards Indigenous people in Winnipeg was found to be irrelevant by the Member. Therefore, the Applicant argued he was deprived of the ability to fully present his case to the CHRT.

[63] In support of his argument, the Applicant pointed to the *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 2 [*FNFCSC*] matter, where the CHRT permitted extensive evidence of the history of Indian Residential Schools and the experiences of the students.

[64] BMO argued that the CHRT process in this matter was fair. They argued that the Member did not advise the Applicant not to make an opening statement, nor did they prevent or restrict the Applicant in his ability to present his case.

(1) Opening statement

[65] A review of the record for this application illustrates that the Member did not give advice to the Applicant regarding how he should present his case and if an opening statement was advisable. The Member clearly stated that it was the Applicant's choice if he wanted to make an opening statement.

[66] CHRT members do not provide claimants with legal advice or advice on the way they choose to present their case. The CHRT website has tools for self-represented litigants to assist in the preparation of their case. The tools highlight that "… each party has the option of making an opening statement" (Canadian Human Rights Tribunal, "Hearings and decisions" (nd), online: <https://www.chrt-tcdp.gc.ca/en/human-rights/process/hearings-and-decisions>). I understand the Applicant was not represented; however, this Court has noted that self-represented litigants also have a duty to be self-educated (*Clarke v Canada (Attorney General)*, 2024 FC 1702 at para 12; *Rooke v Canada (Attorney General)*, 2018 FC 204 at para 23, citing *MacDonald v Canada*

(Attorney General), 2017 FC 2 at paras 29–33). This extends to an obligation to be self-educated as to hearing procedures.

[67] The fact that the Applicant regrets not making an opening statement does not render the process unfair. That said, in my opinion, the fact that the Applicant did not make an opening statement to outline the main points of his argument was not fatal to the success of his Complaint. CHRT members are neutral and impartial, and their decisions consider all evidence and argument presented.

[68] The record for this application demonstrates that the Applicant was given multiple opportunities to explain his Complaint and present evidence to the CHRT for consideration. The record for the CHRT proceeding illustrates that the Applicant was provided opportunities to make both written and oral submissions, call witnesses, present evidence, provide reply submissions, and make closing arguments. In other words, the Applicant had a full and fair opportunity to present his case.

[69] The Applicant has not demonstrated that the CHRT did not fully consider his Complaint. The Applicant's disagreement with the Decision does not render it unreasonable or procedurally unfair.

(2) Ability to present evidence at the hearing

[70] BMO argued that the Applicant takes issue with the weight that the Member accorded to evidence concerning racism and how that impacted the Applicant's financial situation. They argued that the weight accorded to this evidence does not render the Decision unreasonable.

They argued that this evidence was not relevant to the issues that were before the CHRT as set out in the Complaint.

[71] A review of the record illustrates that the Applicant was given several opportunities to provide the CHRT with both documentary evidence and oral testimony to support the allegations in his Complaint. This included the ability to ask questions of witnesses related to their direct experiences with and perceptions of Indigenous people in Winnipeg.

[72] The Applicant was permitted time at the CHRT hearing to set out his personal background and evidence concerning the collective challenges faced by Indigenous people. The Member did interrupt the Applicant's submissions to advise that certain evidence he was presenting was likely not relevant to the issues set out in the Complaint. However, in my opinion, the Member did not hinder his ability to present his case. Ultimately, the Member was pointing out that the Complaint was not about systemic issues, but rather the incident on April 18, 2018. Indeed, at paragraph 59 of the Applicant's memorandum of argument, he admitted that "he did not allege systemic discrimination." The Decision clearly states that "[i]t is absolutely true that Indigenous persons have been the targets of racism and discrimination in Canada over many years but both Mr. Starr and BMO take the position that this case is not about systemic discrimination."

[73] Because the systemic issues were clearly not before the CHRT in the Applicant's Complaint, this matter can be distinguished from *FNFCSC*, where evidence of the history and background of the residential school system and the experiences of the students was relevant. With respect, the Applicant's Complaint was narrowly focused on the events of April 18, 2018. Broader issues of systemic racism in the financial industry faced by Indigenous people and

racism in Winnipeg were not properly before the CHRT and it was not necessary for the Member to make findings on those issues to determine the Complaint.

[74] The record for this matter clearly illustrates that the Applicant was provided with an opportunity to fairly and fully present his case for consideration by the CHRT. Indeed, a review of the Decision illustrates that the Member was live to these issues.

[75] The Member did not inhibit the Applicant's ability to present his case. The fact that the Member does not place importance or significant weight on evidence that the Applicant thought was important does not equate to a breach of procedural fairness.

VII. Costs

[76] BMO has asked that the application be dismissed with costs. The general rule is that costs follow the event for the successful party (*Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119 at paras 2–4, 7–9). However, BMO did not provide a draft bill of costs nor did they make submissions on costs.

[77] The Applicant is self-represented. He argued his case before the CHRT and this Court in good faith. His materials were concise and clear. Pursuant to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, this Court has discretionary authority over the awarding of costs. The principal objectives of an award of costs are to provide indemnification to the successful party; penalize a party refusing a reasonable settlement; and sanction behavior that increases the expense of litigation or is otherwise unreasonable or vexatious (*Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at paras 19–20).

[78] Having considered all the factors for an award of costs and the circumstances, I am exercising my discretion to not make an award of costs. In my view, an award of costs in this case would be unfairly punitive.

VIII. Conclusion

[79] The fact that the Applicant has had to deal with experiences throughout his life that were motivated by racism, discrimination, and erroneous stereotypes concerning Indigenous people is not in dispute. He provided significant, compelling evidence of this.

[80] Further, I agree with the Applicant that reconciliation between the Crown and Indigenous peoples is an important national priority. That said, the hard work of reconciliation will take time and will not be achieved in a courtroom. True, enduring reconciliation requires mutual goodwill, respect, and thoughtful responses to issues that have a long history of disrespectful relationships, misunderstanding, neglect, and indifference.

[81] I also agree with the Applicant that the UNDRIP is a part of the Canadian positive law and may be used by tribunals to assess the fulfillment of the Crown's obligations owed to Indigenous peoples.

[82] I also agree with the Applicant that there are serious systemic issues that impact Indigenous peoples, and these issues must be addressed at a national level.

[83] Unfortunately, I do not agree that reconciliation, UNDRIP implementation, and systemic racism issues were before the CHRT in the Complaint advanced by the Applicant. I have no doubt that the Applicant has personally experienced racism and has felt the impacts of the colonial history. I also believe that he is motivated to do good work and make things better for

other Indigenous people. I believe that this motivation has clouded the Applicant's perception of the nature of his Complaint before the CHRT and the present application.

[84] I am not persuaded that the Decision is unreasonable nor that there was a breach of procedural fairness.

JUDGMENT in T-2625-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No order as to costs.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2625-23
STYLE OF CAUSE:	CLIFTON STARR v BMO FINANCIAL GROUP ET AL.
PLACE OF HEARING:	WINNIPEG, MANITOBA
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APPEARANCES:

Clifton Starr	FOR THE APPLICANT ON HIS OWN BEHALF
Sunny J. Khaira	FOR THE RESPONDENT BMO FINANCIAL GROUP

SOLICITORS OF RECORD:

HICKS MORLEY HAMILTON STEWART STORIE LLP Barristers and Solicitors Toronto, Ontario	FOR THE RESPONDENT BMO FINANCIAL GROUP