Federal Court Cour fédérale

**Date: 20250609**

**Docket: T-2441-23**

**Citation: 2025 FC 1032**

**Toronto, Ontario, June 9, 2025**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**TIMOTHY WILSON**

**Applicant**

**and**

**RYDER TRUCK RENTAL CANADA LTD.**

**Respondent**

# JUDGMENT AND REASONS

[1] The Applicant, Mr. Wilson, seeks judicial review of a decision made by the Canadian Human Rights Commission [Commission] on October 19, 2023, dismissing Mr. Wilson's human rights complaint [Complaint], pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*]. In its decision, the Commission held that it was not in the public interest to proceed with Mr. Wilson's Complaint in light of a settlement offer he had received from the Respondent, Ryder Truck Rental Canada Ltd [Ryder]. For the reasons below this application will be granted.

## I. Background

[2] Mr. Wilson was employed by Ryder as a full-time truck driver between November 2011 and September 2022. On June 2, 2017, Mr. Wilson suffered a shoulder injury in a workplace accident. As a result, he was placed on modified duties between June 2017 and April 2018, which included a change to his usual route and a reduction of his hours from approximately 60 to 40 hours per week.

[3] Mr. Wilson took a medical leave of absence from April 2018 to May 2019 to undergo and recover from surgery. He returned to full-time driving duties with Ryder in May 2019. His employment was ultimately terminated without cause in September 2022.

[4] On October 12, 2018, Mr. Wilson filed a Complaint with the Commission under section 40 of the *CHRA*, alleging he was subject to discrimination on the ground of disability contrary to section 7 of the *CHRA*, due to adverse differential treatment in employment. In brief, he alleged Ryder caused him a financial loss by failing to allow him to return to his usual driving account and denying him overtime hours, as well as injury to his feelings, dignity, and self-worth. Other allegations included differing physical requirements between him and his colleagues, failing to provide him with adequate accommodations, assistive devices, or assistants, and harassment by his supervisor. Mr. Wilson later amended his Complaint to include allegations of retaliation by Ryder for filing the Complaint.

A. *Investigation*

[5] The Commission appointed a Human Rights Officer to investigate the Complaint [Investigator]. Between November 2021 and September 2022, the Investigator reviewed the materials submitted by the parties and conducted interviews with Mr. Wilson and other employees of Ryder.

[6] The Investigator's Report dated September 23, 2022 [Investigation Report] comprehensively canvassed the history of the Complaint. After having done so, it recommended that the Commission refer the parties to conciliation, and that if conciliation was unsuccessful, the Complaint should be referred for a hearing by the Canadian Human Rights Tribunal [Tribunal]. The Investigation Report excluded certain aspects of the Complaint which the Investigator determined were outside the scope of, or not relevant to, its assessment.

[7] On December 29, 2022, following a review of the Investigation Report and the submissions of the parties filed in response to the Investigation Report, the Commissioner issued a "Record of Decision" referring the Complaint to a conciliator [Record of Decision]. A Conciliator was appointed under section 47 of the *CHRA*.

B. *Conciliation*

[8] Subsequent to the Record of Decision, and as part of the conciliation process, the parties exchanged settlement offers in March and April 2023. Ryder's Minutes of Settlement — which it qualified as being made on a "without prejudice" and "no admission of liability" basis — offered

Mr. Wilson $20,000 and an employment confirmation letter. Mr. Wilson did not accept Ryder's settlement offer.

[9] On May 8, 2023, the Conciliator issued its report [Conciliation Report], and returned the Complaint to the Commission, since the matter was not resolved. The Conciliation Report states that the parties were advised that if the Complaint was not resolved it would be returned to the Commission, which could either (a) dismiss the Complaint if it felt that an inquiry by the Tribunal was not warranted under subparagraph 44(3)(b)(i) of the *CHRA*, or (b) refer the matter to a Tribunal for a hearing to inquire into whether the allegations contained in the human rights Complaint were substantiated and if so, issue an order including terms described in sections 53 and 54 of the *CHRA*. The Conciliation Report attached Ryder's proposed Minutes of Settlement, noting that Ryder agreed to disclose its offer for the Commission's information.

[10] Mr. Wilson's former representative, who he had engaged to assist him before the Commission, was suspended administratively in May 2023. Mr. Wilson filed his own submissions in response to the Conciliation Report in June 2023, disagreeing with a number of points related to the conciliation process. He also stated that Ryder's Minutes of Settlement "should not be included with the Conciliation Report as they are outside the Conciliation Process."

## II. Decision Under Review

[11] In a decision dated October 19, 2023, the Commissioner dismissed the Complaint – this is the impugned decision in this judicial review [Decision]. The Commissioner noted that, having

regard to all the circumstances, (i) an inquiry was not warranted as a reasonable settlement offer remained open, per subparagraph 44(3)(b)(i) of the *CHRA;* (ii) there was no evidence to conclude that other remedies were required to prevent or address the allegations found in the Complaint; and (iii) Ryder's settlement offer was consistent with the remedies that Mr. Wilson would obtain at the Tribunal if he were successful. The Decision concluded that it would not to be in the public interest to proceed with an inquiry, given the Tribunal's limited resources.

## III. Parties' positions

[12] Mr. Wilson argues that the Commission erred in dismissing his Complaint on the basis of a reasonable offer under subparagraph 44(3)(b)(i) of the *CHRA*, providing several grounds for his argument.

[13] First, Mr. Wilson submits that the Commissioner who decided the Record of Decision – which his counsel described as the "initial decision" – found the evidence showed adverse differential treatment, consistent with the Investigation Report. He notes the Investigation Report clearly recommended the matter should be referred to the Tribunal if conciliation was unsuccessful. Mr. Wilson argues that the Commission does not provide adequate justification for departing from its initial Record of Decision.

[14] During the hearing of the judicial review, Mr. Wilson's counsel characterized the impugned Decision of October 2023, as an "*ad hoc* reconsideration." He contends that the Commission committed a jurisdictional error in making its decision in two ways. First, the Commission lacked jurisdiction to "reconsider," since it had already decided that the matter

should be referred to the Tribunal. Mr. Wilson's counsel went as far as stating at the hearing that once the Commission issued the Record of Decision it had become *functus officio* when deciding not to refer the Complaint to the Tribunal. In a similar vein, Mr. Wilson, relying on *Halifax Employers Association v Farmer*, 2021 FC 145, argues that the Commission unreasonably failed to provide adequate justification for departing from the earlier recommendation to refer to the Tribunal.

[15] Mr. Wilson also argues that the Decision's interpretation of the settlement offer was unreasonable, because the Commission didn't take its entire contents into consideration, including the very broad waivers and indemnities Mr. Wilson would be providing. He says the Commission also failed to take into account the full breadth of the remedies — financial and other — the Tribunal could have ordered had the matter been referred to an inquiry. He claims that the Decision failed to provide transparent, justifiable or intelligible rationale as to why it concluded that the terms of the Minutes of Settlement, including the quantum offered, were reasonable.

[16] Finally, Mr. Wilson asserts that the Commission failed to review his July 2023 reply [Reply] to Ryder's submissions regarding the Conciliation Report [Ryder's Response]. The Reply was not included in the Certified Tribunal Record [CTR] provided to the Court. As a result, Mr. Wilson argues that the Commission breached his rights to procedural fairness.

[17] Ryder, on the other hand, argues that the Decision was both reasonable and procedurally fair. It emphasizes that the Commission is an administrative body that performs a screening function to determine whether a complaint should be referred to the Tribunal for adjudication

(*Bell Canada v Communications, Energy and Paperworkers Union of Canada*, 1998 CanLII 8700 (FCA) at paras 35, 38 [*Bell Canada*]; *CHRA*, sections 4044, 4954). Ryder emphasizes that making findings of discrimination is the role of the Tribunal, not the Commission or Investigator (*CHRA*, section 53), and further observes that the Commission is not bound by an investigator's findings or recommendation (*Canada (Attorney General) v Ennis*, 2021 FCA 95 at paras 59–61 [*Ennis*]).

[18] In short, Ryder contends that the Tribunal is the master of its own procedure, and was justified under section 47 of the *CHRA* firstly to refer the matter to conciliation, and subsequently to dismiss the Complaint on the basis of a reasonable settlement offer. It contends that the Decision addresses the contents of the settlement offer by examining the Terms of Settlement and providing a justifiable and transparent rationale as to its reasonability. It also asserts that no breach of procedural fairness arose: even if the Commission did not have the Reply before it, the Respondent argued at the hearing (as Mr. Wilson's counsel raised this particular argument orally) that Mr. Wilson raised nothing new in his submission. Rather, Ryder says that the Reply simply repeated arguments that had already been raised to the Commission by the Applicant.

## IV. Standard of Review

[19] Mr. Wilson submits that the Court should apply a correctness review, since he says that errors in law apply, in addition to the procedural fairness concerns he raises. However, he says that the Commission provided an inadequate and unreasonable Decision, thus committing reviewable errors under either standard of review.

[20] The Respondent counters that reasonableness applies to the Decision under review, and that any procedural fairness question should be reviewed by considering whether the process before the Commission provided the Applicant a full and fair chance to respond.

[21] I agree with Ryder: the case law reviewing Commission decisions invoking subparagraph 44(3)(b)(i) of the *CHRA* states that the reasonableness standard of review applies (*Zavarella v Canada (Attorney General)*, 2024 FC 87 at para 44 [*Zavarella*], citing *Ennis* at paras 38, 48–53).

[22] A reasonable decision is one that is based on an internally coherent and rational chain of analysis, and which is justified in relation to the relevant factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85, 99 [*Vavilov*]. The Federal Court of Appeal has consistently noted that *CHRA* places minimal constraints on the Commission, such that their screening decisions should be accorded considerable deference on judicial review, dating back to *Bell Canada* at para 38, and since (see, for instance *Ennis* at para 56; *Bergeron v Canada (Attorney General)*, 2022 FCA 209 at para 30 [*Bergeron*]).
I provide further comment on the constraints underlying this Court's review of Commission decisions in the Analysis section that follows.

[23] As for the duty of procedural fairness, it is eminently variable, inherently flexible and context-specific (*Vavilov* at para 77), the ultimate question being whether the applicant knew the case to meet and had a full and fair chance to respond, "best reflected" on a correctness standard (*AB v Canada (Attorney General)*, 2024 FC 1442 at para 17 [*AB*], citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56 and *Vavilov*). The

same kind of deference as pointed out for the reasonableness review is not required in respect of fairness review by this Court (*Ennis* at para 37).

## V. Analysis

[24] Ryder objects, on a preliminary basis, to the scope of Mr. Wilson's arguments raised on judicial review. I will address that argument first.

### A. *Preliminary issue*

[25] Ryder argues Mr. Wilson's submissions about his termination of employment are beyond the scope of this judicial review because his amended Complaint was submitted nearly 14 months before the Applicant was terminated, and the Complaint was not further amended to include his termination. Ryder submits that the Commission cannot therefore be criticized for limiting itself to the Complaint before it (see *Manfoumbimouity v Canada (Attorney General)*, 2016 FC 988 at paras 6, 19, 41, aff'd 2017 FCA 240 [*Manfoumbimouity*]; *Givogue v Canada (Attorney General)*, 2023 FC 864 at para 55).

[26] Ryder further asserts that the Court must limit its review of the Decision to the evidentiary record that was before the Commission (*Manfoumbimouity* at paras 41–42, 17; *Zavarella* at para 23). However, to the extent procedural fairness is impugned, those issues can be informed by evidence that came after the hearing, such as affidavit evidence of the individual explaining the situation and revindicating his rights to natural justice (*Manfoumbimouity* at para 43; see also *Rosianu v Western Logistics Inc*, 2021 FCA 241 at para 28 [*Rosianu*], citing

*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20 [*Access Copyright*]).

[27] Ryder is correct on this preliminary point. The evidentiary record is usually limited to what was before the administrative decision-maker, to which there are few exceptions including providing background information necessary to determine whether there has been a breach of procedural fairness (*Rosianu* at para 28 citing *Access Copyright* at paras 19–20).

[28] My review will thus be restricted to the matters and circumstances that took place before the Commission at the time of its Decision, and whether that Decision contained any reviewable errors — with two caveats. The first is relevant evidence relating to the procedural fairness breach. The second is that the Minutes of Settlement constitute a central element for which the Commission dismissed the Complaint. To the extent that Ryder itself raised termination and the post-Complaint period in these Minutes, they are relevant to this judicial review.

B. *Was the Decision Reasonable?*

[29] *Vavilov* instructs that what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review (at para 90).

[30] In terms of the legal constraints, they include the Commission's: important gatekeeping role; ability to manage its own process to limited adjudicative resources; broad discretion; and significant latitude to dismiss cases at the screening stage. The mere possibility of discrimination

is not enough to warrant further inquiry before the Tribunal (*Rosianu* at paras 34, 47–49; *Ennis* at paras 56–58).

[31] The Commission's key duty is to decide if an inquiry is warranted having regard to all the facts, assessing the sufficiency of the evidence before it, and having a broad discretion to do so (*Jagadeesh v Canadian Imperial Bank of Commerce*, 2024 FCA 172 at para 26, citing *Cooper v Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC), [1996] 3 SCR 854; *Syndicat des employés de production du Québec et de l'Acadie v Canada (Human Rights Commission)*, [1989] 2 SCR 879); and *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10.) The Commission is not ultimately bound by an investigator's findings or recommendation (*Ennis* at paras 59–61).

[32] The case law also makes it clear that the Commission is an administrative body that performs a "screening function" to determine whether a complaint should be referred to the Tribunal for an inquiry and, ultimately, adjudication (*Rosianu*; *Bell Canada* at paras 35, 38; *CHRA*, sections 40–44, 49–54). The Commission is not an adjudicative body (*Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at paras 53–54). Making final determinations of discrimination is the role of the Tribunal, not the Commission or Investigator (*CHRA*, sections 41, 44, 53).

[33] It is the factual circumstances of this case which make it unusual, and in particular, the long and circuitous route that the Complaint took, including the various above-described decisions and processes which took place before the Commission issued its final Decision in

October 2023. I will review some of the key factual constraints leading to my conclusion that this final Decision was flawed and must be remitted to the Commission.

[34] First, the Investigator, after conducting her investigation, recommended that the Commission refer the parties to conciliation to try to resolve the Complaint, then noted: "This report also recommends that if conciliation is unsuccessful, the complaint should be referred for a hearing by the Canadian Human Rights Tribunal" (Investigation Report at p 1). The Investigator set out the reasons for which she arrived at this conclusion, as follows:

> 60. The evidence supports that the Respondent provided accommodations that respected the Complainant's medical limitations and restrictions. The Respondent suggested that that returning the Complainant to the North Star account would constitute a financial and logistical hardship, but such impressionistic evidence is not enough to reach that conclusion. The Respondent has not provided sufficient evidence that the standards to which it adhered in restricting the Complainant's modified work were reasonably necessary and that it was not possible to accommodate the Complainant short of undue hardship.
>
> 61. The Respondent has not provided sufficient information to demonstrate that it made a reasonable effort to accommodate the Complainant in his original position and there is some indication that other drivers provided the accommodation that was not made available to this Complainant. The Respondent is invited to provide more information to resolve this issue and support its assertion that modifying the Complainant's duties in his position would constitute an undue hardship for it.
>
> 62. The Tribunal may ultimately determine that the Complainant's insistence that the Respondent ensure he worked overtime is not a reasonable accommodation request or one that the Respondent is ultimately required to meet. However, this is not determinative regarding whether the Respondent met its duty to accommodate given the conclusion and recommendation in relation to the co-lift requirement imposed on the North Star account.

[35] The Investigation Report of 12 October 2018 went on to state at paragraph 63:

> 63. Given the facts of this complaint, conciliation is recommended. If conciliation does not bring about a resolution to the complaint, it is recommended that the complaint proceed to an inquiry at Tribunal, where the parties can present additional evidence and witnesses can be questioned to determine whether the Respondent's actions constitute discrimination based on disability.

[36] Subsequently in the Record of Decision, the Commission concurred with the Investigator's recommendation:

> The Commission decides, pursuant to section 47 of the *Canadian Human Rights Act* (*"CHRA"*), to appoint a conciliator to attempt to bring about a settlement of the complaint.
>
> The Commission further decides, pursuant to paragraph 44(3)(a) of the *CHRA*, to request that the Chairperson of the Canadian Human Rights Tribunal (the Tribunal) institute an inquiry into the complaint, because having regard to all the circumstances of the complaint, further inquiry is warranted.

[37] Explaining the latter recommendation, the Commissioner wrote:

> While the Respondent maintains in their response that having a driver that cannot unload will cause undue hardship on certain accounts, the Respondent goes on to describe various situations in which drivers do not necessarily need to unload. It remains unclear from the Respondent's response whether the accommodation sought by the Complainant would cause undue hardship.

[38] The Commissioner concluded the Record of Decision by noting that the Complaint will be dealt with as follows:

> i. Should the parties fail to reach a settlement within one hundred and twenty (120) days of the date of receipt of the decision letter, or within such reasonable time thereafter provided negotiations are ongoing, the Commission requests the Chairperson of the Canadian Human Rights Tribunal to institute an inquiry into the complaint pursuant to paragraph 44(3)(a) of the *CHRA*.

> ii. If, during the course of the conciliation, the respondent has made an offer to settle the complaint that has not been accepted by the complainant, but remains open for acceptance for a period of thirty (30) days following the Commission's final decision, the complaint and related materials, as well as the terms of settlement, will be referred to the Commission to determine whether such terms of settlement are reasonable in all the circumstances of the complaint and render a decision under section 44 of the *CHRA*.
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> iii. If the parties reach a settlement, the terms of the settlement will be referred to the Commission for approval or rejection, pursuant to subsection 48(1) of the *CHRA*.

[39] After the conciliation process, the Conciliator then recommended one of two outcomes for the Commission, namely that the Commission either:

> a) request the appointment of a Human Rights Tribunal to inquire into the complaint, pursuant to section 49 of the *Canadian Human Rights Act*, or
>
> b) dismiss the complaint because, having regard to all the circumstances of the complaint, an inquiry by a Tribunal is not warranted, pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*. [Conciliation Report at para. 12]

[40] Turning to the impugned Decision of October 2023, the Commissioner decided that the settlement offer, which had remained open for 30 days, was reasonable. The key paragraph of the Decision, setting out the Commission's rationale for its conclusion that the offer was reasonable, reads as follows:

> The Respondent's offer is reasonable in that it considers damages and addresses loss of income as well as future employment prospects for the Complainant. Even if the Complainant were successful at the Tribunal, the damages he would receive would be very modest. Contrary to his argument, the Ontario Human Rights Code does not apply at the Tribunal and the relevant legislation is the CHRA in determining damages. It is well established that the maximum amount for pain and suffering pursuant to the CHRA is $20,000. The calculations made by the Respondent in determining lost wages provide a reasonable amount that is without deductions

> or withholdings to the Complainant. Considering this, any modest amount that the Complaint would have received in pain and suffering at the Tribunal is encompassed therein. Furthermore, the offer provides a confirmation of employment to cover the Complainant's future employment prospects. The Respondent points that this was an important consideration for the Complainant.
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> …
>
> There is no evidence before the Commission to conclude that other remedies are required to prevent or address the allegations found in the Complaint Form.
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> For these reasons, the Commission decides that this offer is consistent with the remedies the Complainant would obtain at the Tribunal if he were successful. In light of this, and considering the Tribunal's limited resources, it is not in the public interest to proceed to an inquiry.

[41] In so deciding, Mr. Wilson contends that the Commission failed to adequately address the potential remedy, or acknowledge the full amount that could have been ordered by the Tribunal, thus failing to consider whether the outcome was reasonable.

[42] Mr. Wilson further argues that the Decision lacks intelligibility because the Minutes of Settlement do not fairly compensate or consider the impact of the settlement on him. This includes the failure to take into account the possibility of non-monetary compensation that Mr. Wilson could have received if his Complaint was ultimately successful at the Tribunal, including job opportunities and remedies addressing broader public interest issues.

[43] Specifically, Mr. Wilson argues that the Decision focused on the two significant ($20,000) remedies available under the legislation, but failed to mention the various other monetary and non-monetary remedies that could be ordered under the *CHRA*. It is of note that

the Conciliator had specifically outlined these potential remedies in the Conciliation Report, which the Commissioner had before him, and which formed a central part of the Decision. The Conciliation Report contained the following enumeration of remedies that the Tribunal could order:

> 5. Section 53 of the Canadian Human Rights Act sets out the remedies that a Human Rights Tribunal can order if it concludes that a complaint is substantiated. These remedies, monetary and non-monetary in nature, are intended to restore the complainant to the situation in which he or she would have been had discrimination not occurred. In general, remedies:
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> - recover for the complainant what he or she has lost as a result of the discrimination; and
> - prevent discrimination from occurring in the future by addressing systemic discrimination issues.
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> 6. Victims of discrimination are often entitled to monetary remedies that can represent general or specific compensation.
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> 7. There are two types of general compensation under the Act. Compensation can be awarded in recognition of
>
> - the pain and suffering caused by the discriminatory acts, and
> - wilful and reckless discriminatory practice.
>
> 8. Compensation for wilful or reckless discrimination has rarely been awarded by the Tribunal.
>
> 9. Specific financial compensation can be awarded for:
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> - lost wages, including cost-of-living adjustments, annual experience increments, and other periodic, non-discretionary salary increments;
> - future earnings for a reasonable time in cases where the relationship between the employer and the complainant has deteriorated to the point that reinstatement or continued employment is not an appropriate remedy;
> - loss of employment benefits; and
> - expenses and costs incurred by the complainant because of the discrimination.

> 10. The Tribunal can also award non-monetary compensation, including
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> - the position, service or accommodation that was lost, and
> - job opportunities such as promotions, training and transfers.
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> 11. Finally, the Tribunal can order remedies addressing broader public interest issues. These remedies can include:
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> - an order to cease the discriminatory practice or policy;
> - an order to take measures, such as revising or developing a policy or procedure, to prevent the same or a similar practice from occurring in the future; and
> - the establishment of a special program under section 16 of the Act.

[44] I also note that Mr. Wilson had put these remedies to the Commission in his Response to the Conciliator's Report, which included reference to various non-monetary requests, including his position, that the Minutes of Settlement did not address.

[45] I agree with Mr. Wilson that the Commission failed to reasonably consider the remedies claimed and available to him. He was entitled to an assessment of why the Commission concluded the settlement offer was reasonable. However, the Commission failed to explain itself in an intelligible, justifiable and transparent manner.

[46] As noted above by the Conciliator, there are a variety of remedies available under the *CHRA*. Justice Turley of this Court recently commented on these in *Parkdale Community Legal Services v Canada*, 2025 FC 912 at paras 17–18:

> … subsection 53(2) of the CHRA provides for a wide range of remedies. The CHRT may order that the respondent: (i) cease the discriminatory practices and take remedial measures: s 53(2)(a);

> (ii) make the rights, opportunities, or privileges that were denied available to the victim: s 53(2)(b); (iii) compensate the victim for wages deprived and expenses incurred as a result of the discriminatory practice: s 53(2)(c); (iv) compensate the victim for the additional costs of obtaining alternative goods, services, facilities, or accommodation and for any expenses incurred as a result of the discriminatory practice: s 53(2)(d).
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> In addition to these remedies, the CHRT may order that the respondent pay the victim damages for pain and suffering: s 53(2)(e), and special compensation for wilful and reckless discriminatory conduct: s 53(3). The maximum amount that may be awarded is $20,000 for each head of damage

[47] Ryder points out that a $20,000 award is not commonplace for pain and suffering under paragraph 53(2)(e), a position consistent with Tribunal's jurisprudence, which has noted that it "tends to reserve the maximum amount of $20,000 for the very worst cases or the most egregious of circumstances" (*Luckman v Bell Canada*, 2022 CHRT 18 at para 99, citing *Grant v Manitoba Telecom Services Inc*, 2012 CHRT 10 at para 115; see also *Alizadeh-Ebadi v Manitoba Telecom Services Inc*, 2017 CHRT 36 at para 213 and *Hugie v T-Lane Transportation and Logistics*, 2021 CHRT 27 at para 274).

[48] As for the other section that can award up to $20,000, subsection 53(3) of the *CHRA* states that the Tribunal may also order "special compensation," prescribing as follows:

> (3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory
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> (3) Outre les pouvoirs que lui confère le paragraphe (2), le membre instructeur peut ordonner à l'auteur d'un acte discriminatoire de payer à la victime une indemnité maximale de 20 000 $, s'il en vient à la conclusion que l'acte a été délibéré ou inconsidéré.

> practice wilfully or recklessly.

[49] I acknowledge that awarding damages under subsection 53(3) for wilful or reckless conduct is uncommon. This Court has noted that this "is a punitive provision intended to provide a deterrent and discourage those who deliberately discriminate. A finding of wilfulness requires the discriminatory act and the infringement of the person's rights under the *CHRA* is intentional. Recklessness usually denotes acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly" (*Canada (Attorney General) v Johnstone*, 2013 FC 113 at para 155, aff'd 2014 FCA 110; cited with approval in *Canada (Attorney General) v Douglas*, 2021 FCA 89 at para 8). Indeed, the Conciliation Report notes at paragraph 8 that "[c]ompensation for wilful or reckless discrimination has rarely been awarded by the Tribunal."

[50] Still, I agree with Mr. Wilson that notwithstanding the unlikelihood he would receive both $20,000 awards from the Tribunal, the Commissioner did not address how he calculated loss of income, or determined that Ryder's settlement offer was reasonable. The Commissioner failed to address any of the four areas of specific financial compensation listed in paragraph 43 above. Nor did he appear to consider the non-monetary damages the Tribunal could order. All of this rendered the Decision unreasonable, given everything that had transpired over the previous five years, including prior conclusions in the process, and culminating in a settlement offer which the Commissioner found to be reasonable, without properly explaining why. Simply put, the reasons provided in the Decision do not bear the hallmarks of a reasonable decision – in that they lack justification, intelligibility and transparency (*Vavilov* at para 99).

[51] To compound what appears to be short shrift that the Commissioner gave to the potential damages Mr. Wilson might have been entitled to, there is no discussion in the Decision of the very broad release terms included in the settlement offer. The Minutes of Settlement, which contained the settlement offer, included the following release clause in respect of Mr. Wilson:

> [66] Wilson releases Ryder and any other person or corporation who might or could claim contribution or indemnity from Ryder from all claims, debts, demands, actions and liabilities of any kind or nature whatsoever in law, in equity or otherwise, against Ryder or any other person or corporation who might or could claim contribution or indemnity from Ryder, existing up to the date of execution of these Minutes of Settlement by Wilson, including those which are not now known or anticipated but which may arise in the future and which relate to the issues raised and incidents alleged or could have been raised or alleged in the Complaint.
>
> [My emphasis]

[52] Turning back to *Vavilov*, the majority wrote that the reviewing court must read the decision in light of the history and context of the proceedings in which they were rendered (at para 94). In terms of assessing the reasonableness of a decision, one must also be mindful of the particular circumstances of the claimant. Here, prior to his termination, Mr. Wilson spent nearly twelve of his prime working years employed by Ryder.

[53] As reviewed above, the file had a long history before the Commission, with various procedures and processes having taken place over the five years that it took to adjudicate the Complaint. Given this history, and in particular the conclusions in the Record of Decision and the Conciliation Report that if the case did not settle through the conciliation process, it should be referred to a Tribunal, it was unreasonable for the Commission to not take this context into account in its Decision.

C. *Did the Commission exceed its jurisdiction?*

[54] Mr. Wilson submits the Commission exceeded its jurisdiction when it made the October 2023 Decision due to the fact that it did not have grounds to reconsider its December 2022 Record of Decision that stated that the Complaint should be referred to the Tribunal, and that the Commission strayed into the domain of the Tribunal when considering the merits of the settlement offer.

[55] Offers to settle are a relevant and legitimate consideration in the Commission's screening analysis, and have been accepted for this purpose going back many years: see, for instance *Garnhum v Deputy Canada (Attorney General),* 1996 CanLII 3874 (FC) [*Garnhum*]. In that case, Justice Noël of this Court held "the terms of an offer of settlement made during the conciliation stage of a complaint, even if conciliation is unsuccessful, are one of the 'circumstances of the complaint'" outlined in paragraph 44(3)(b) of the *CHRA* (*Garnhum* at para 30). *Garnhum* also held the Commission may dismiss a complaint following unsuccessful conciliation under subsection 44(3) of the *CHRA*, contrary to the position of Mr. Wilson in this case.

[56] I therefore do not take issue with the three options set out in the Decision. It was also open to the Commissioner to pick option (ii), assuming that the Decision was reasonable.

D. *Is the Settlement Offer protected by privilege?*

[57] Mr. Wilson also argued that the settlement offer should not have been disclosed because it was subject to settlement privilege, and he never consented to its release. Mr. Wilson relies on

*Canadian Broadcasting Corp v Paul*, 2001 FCA 93 at paras 23–38 [*CBC*] and *Kleysen Transport Ltd v Hunter*, 2004 FC 1413 at paras 19 to 20 [*Kleysen*] for this argument.

[58] I do not agree with this particular point of Mr. Wilson's arguments. He has not established settlement privilege exists in this case, just as it did not in analogous situations: see, for instance, *Canada (Privacy Commissioner) v Facebook, Inc*, 2021 FC 599 at para 56; *R v Delchev*, 2015 ONCA 381 at para 24. Subsection 47(3) of the legislation itself is determinative: "[a]ny information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed except with the consent of the person who gave the information" [My emphasis].

[59] In this case, unlike those that Mr. Wilson relies on, Ryder voluntarily provided the Minutes of Settlement to the Conciliator as noted in the Conciliation Report. Ryder thus fully consented to its disclosure according to the terms of subsection 47(3). In *CBC* and *Kleysen*, the two cases cited by Mr. Wilson above, the parties who made the offer did not consent to disclosure, and thus those situations differed from the present one.

[60] Indeed, the disclosure of the offer of settlement is well accepted as an appropriate step in the *CHRA* context (see, for instance, *Wong v Canada (Public Works and Government Services)*, 2018 FCA 101 at paras 10–11 [*Wong*], and more recently *AB*, cited above). In *Wong* and *AB*, as here, the settlement offer was disclosed by the respondent to the Commission. The Court in both situations took no issue with that disclosure.

[61] Where those cases differed from the outcome here, however, was that in both *Wong* and *AB*, the Commission's analysis of the offer was deemed to be reasonable in that the Commission had reasonably concluded that the remedies offered in the settlement were consistent with those that could be awarded by the Tribunal if they had decided to send the complaints to it for further inquiry. Here, the reasons were deficient in that regard.

E. *Did the Commission breach its duty of procedural fairness?*

[62] Given my conclusions that the Decision fell short substantively due to the Commission's deficient reasons vis-à-vis the reasonability of the Settlement Offer, there is no need for me to comment on the bulk of procedural fairness arguments raised by Mr. Wilson in his written materials regarding the sufficiency of evidence presented and why he felt that the Commission's process was unfair from an evidentiary standpoint. For instance, Mr. Wilson states that he was precluded from submitting documents that would support the issue of pain and suffering, because he was told this evidence would be considered at the Tribunal level, and that the Investigator did not investigate all of his complaints, but ultimately, his Complaint ended at the Commission.

[63] Having said that, I will address one procedural fairness issue raised by Mr. Wilson that is clearly problematic. The CTR does not contain Mr. Wilson's July 2023 Reply (to Ryder's Response to the Conciliation Report). The CTR contains all other key documents put before and issued by the Commission. Thus, there is no evidence that the Reply was placed before the decision-maker. As Mr. Wilson stated in his Affidavit for this Judicial Review sworn on January 8, 2024 [Wilson Affidavit], "I provided additional submissions which were raised to the Conciliator, but not put before the Commission."

[64] First, Ryder does not contest the CTR's omission of the Reply. Second, I am not persuaded by its argument that the fact it was not put before the Commission did not breach Mr. Wilson's rights to a fair process for its failure to raise no new arguments, rather simply resubmitting what he had previously argued before the Commission. I agree that some — but not all — of the arguments were redundant.

[65] Mr. Wilson advanced four arguments in his detailed Reply, which can be summarized as follows:

1. Ryder's submissions on the Conciliation Report breached procedural fairness because they raised issues not contained in the Report, and in fact did not make submissions on the Conciliation Report itself (a new argument).
2. Ryder did not make any offer or counter offer during Conciliation, which Mr. Wilson previously raised at paras 9 and 14 of his Response to the Conciliation Report [Wilson Response];
3. Ryder's offer to settle should not be included in the Conciliation Report (previously raised at para 16 of the Wilson Response); and
4. The Minutes of Settlement are unreasonable (previously raised at paras 17-22 of the Wilson Response).

[66] As noted in this summary, while arguments #2-4 had been made earlier in the Commission process, argument #1 had not: it countered submissions made in Ryder's Response, and thus, would constitute new submissions to the Commission by Mr. Wilson.

[67] In essence, Mr. Wilson contended in his Reply argument #1 that Ryder's Response breached procedural fairness because it included submissions raised during the investigative stage that go to the merits of the case. Mr. Wilson pointed out that this was contrary to the Conciliator's instructions that submissions in reply to the Conciliation Report "should address the reasonableness of the settlement offer and any information in the report" and "should not include documents that have been provided and reviewed during the investigation, or any information related to confidential settlement discussions during conciliation."

[68] More particularly, Mr. Wilson argued that Ryder included facts and issues that were materially in dispute (Reply at paras 17–18) and/or speculative (Reply at paras 20–25). The Applicant concluded at paragraph 43 that:

> […] the Respondent's submissions were a vexatious tactic to manipulate the conciliation process by mis-characterizing, distorting, creating confusion, misrepresenting, and inaccurately addressing the issue(s) for the Commission/Tribunal. The Respondent knowingly or ought to have known their actions, not addressing the Conciliator's report and instead re-raising merits and referencing documents in the Investigator's report, would cause additional time, energy, and cost to the complainant, cloud the truth, and provide bias to the Commission.

[69] In *Ennis*, the Federal Court of Appeal found that "the reply added nothing of substance that Mr. Ennis had not already alleged in his complaint and his original submissions to the Commission, it matters not whether the reply was before the Commission" (at para 29). The situation here clearly differs from what occurred in *Ennis.*

[70] Finally, by way of an aside, Mr. Wilson noted the challenges he faced at the time of his Reply in the summer of 2023 when he wrote his own legal submissions to the Commission, in paragraph 48 of the Wilson Affidavit:

> In or around May 2023, my counsel at the Conciliation, [CS], was suspended administratively. Accordingly, I did not have the opportunity to have his counsel or counsel that knew the full history of the matter. I had a lot of difficulty finding legal counsel given the complexity of the legal matter and the short time in which I had to do so. I did not find alternate counsel. I was forced to make both of the submissions relating to the Conciliator's Report myself. I do not have prior experience with the Commission as this is the first complaint I have ever filed.
>
> [My anonymization.]

[71] In sum, since Mr. Wilson's Reply does not appear in the CTR and it appears that it was not before the decision-maker, I find that Mr. Wilson's right to procedural fairness was breached: see *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 at paras 16–17; *Construction Gauthier Entrepreneur Général Inc v Canada (Attorney General)*, 2024 FC 1131 at para 33, citing *Kotowiecki v Canada (Attorney General)*, 2022 FC 1314).

## VI. Remedy

[72] Mr. Wilson contends that because the outcome would be inevitable should this matter be remitted to the Commission, this Court should order that the Complaint go directly for inquiry before the Tribunal. Citing *Vavilov* at para 142, the Applicant argues this would be the appropriate remedy in light of "concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources."

[73] Mr. Wilson's primary argument is that the decision to refer his Complaint to the Tribunal was already effectively made in the Record of Decision, given that conciliation did not resolve the matter, and the Commissioner lacked jurisdiction to 'reconsider' the matter the following October. Specifically, Mr. Wilson's counsel argued at the hearing that the Commissioner stated that the matter would be referred to the Tribunal if there was no settlement, and indeed, there was no settlement.

[74] Applicant's counsel conceded that the general outcome if a judicial review is granted would be to send the matter back to the decision-maker (in this case, the Commission), but noted that the circumstances here justified directing this to the Tribunal, including that it would address concerns about ongoing delay in the case, meeting the urgency to provide a resolution, accounting for the parties' costs, and ensuring the efficient use of public resources.

[75] Ryder argued that if judicial review was granted, the proper remedy would be to send the matter back for redetermination, as the outcome is not inevitable.

[76] I agree with Ryder that redetermination is the appropriate measure in this matter. Despite the weaknesses in the Commissioner's analysis, and the information that did not appear to make it to the decision-maker's attention, in this situation, the Commission still has more than one available outcome on review. If I had agreed that the matter was *functus officio* or otherwise beyond the jurisdiction of the Commissioner who made the Decision — which I did not — then there may have only been one possible outcome.

[77] Given that the issue here was a lack of responsiveness in addressing the details of the remedies available to Mr. Wilson in light of the Minutes of Settlement, along with Reply submissions not being included in the CTR, I do not feel that this is an appropriate case for the Court to issue the equivalent of a directed verdict. Indeed, that has been the outcome in the majority of post-*Vavilov* human rights cases which have requested it: this Court has consistently rejected requests to remit the matter directly to Tribunal inquiry, in favour of sending the matter back to the Commission. Each such request has been rejected, failing to support the notion of an inevitable result, and/or that no useful purpose would be served in remitting the matter (see *Curtis v Bank of Nova Scotia*, 2025 FC 207 at paras 90–97; *Canadian Nuclear Laboratories Ltd v Adams*, 2024 FC 1697 at para 60; and *Komleva v Canada (Attorney General)*, 2024 FC 1562 at para 49).

[78] And, as Justice Turley recently held — albeit in a non-CHRA context — "as the jurisprudence makes clear, a directed verdict is an exceptional remedy" (*Ismail v Canada (Attorney General)*, 2024 FC 310 at para 3).

[79] I note that one case acceded to the request to send the matter directly to the Tribunal, thus granting the remedy presently sought by Mr. Wilson (*McIlvenna v Bank of Nova Scotia (Scotiabank)*, 2019 FC 1610 at paras 25–27). However, Justice Barnes clearly described *McIlvenna*'s unique features at paragraph 25, including having come to the Federal Court yet again, after two previous judges of this Court had twice remitted the matter to the Commission for reconsideration, in *McIlvenna v Bank of Nova Scotia (Scotiabank)*, 2017 FC 699 and *McIlvenna v Bank of Nova Scotia (Scotiabank)*, 2013 FC 678. On the third go-round in 2019, Justice Barnes held:

> Mr. McIlvenna also seeks to have his complaint referred directly to the Tribunal. I am satisfied that this is one of those rare situations when the Court must direct the Commission to refer the complaint for adjudication. Mr. McIlvenna's complaint has been in the hands of the Commission for almost a decade. The Commission has, in that time, summarily dismissed the complaint on three occasions on essentially the same basis. Notwithstanding several material evidentiary disagreements between the parties that the Commission had no ability or authority to resolve it has, repeatedly, purported to do so. For reasons that have not been expressed it is apparent that the Commission does not like this complaint and wants to be rid of it. In my view, the Commission has shown itself to be unfit to resolve this matter such that the Court must now direct it to act: see *Giguère v Chambre des notaires du Québec*, 2004 SCC 1 at para 65, [2004] 1 SCR 3.

[80] Indeed, the unusual fact situation described by Justice Barnes fit very well with *Vavilov*, which was published only two days after its release — namely that an "intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision-maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose" (*Vavilov* at para 142).

[81] Here, the "merry-go-round" scenario has not occurred. Justice Gascon's recent comments in *Pothier v Canada (Attorney General)*, 2024 FC 478 at para 86, also in a non-*CHRA* context, are apropos of Mr. Wilson's situation:

> The Supreme Court's brief remarks in *Vavilov* on the exercise of discretion in remedies do not constitute an opening for reviewing courts to substitute themselves for the administrative decision maker and interfere with the merits of the decision to be rendered, if it is conceivable that the decision maker could arrive at a decision that is both different and reasonable. It would be ironic, to say the least, if the discretionary remedy associated with the

> standard of reasonableness, a standard anchored in the recognition of and respect for the role of administrative decision makers, were to become the cause for transferring those decision makers' powers to the courts of justice responsible for their supervision.

[82] Certainly, I agree with Mr. Wilson that the Complaint process took a lot of time in its five years before the Commission. Mr. Wilson is accordingly justified in his concern about further and unnecessary delays. As a result, I will order that the Commission complete its redetermination of the Complaint within six months from the date of these reasons, including an abridged timeline for any follow-up submissions required resulting from these Reasons.

## VII. Costs

[83] The Court is very grateful that the parties were able to arrive at a common ground on costs: namely a lump sum of $10,000 inclusive of taxes, to be paid to the successful party. Unlike the Decision under review, this agreement is both reasonable and fair.

## VIII. Conclusion

[84] As *Vavilov* states as paragraph 81, "where reasons are required, they are the primary mechanism by which administrative decision makers show that their decisions are reasonable — both to the affected parties and to the reviewing courts. It follows that the provision of reasons for an administrative decision may have implications for its legitimacy, including in terms both of whether it is procedurally fair and of whether it is substantively reasonable." Ultimately, in this case, the Decision falls short of the mark required both substantively and procedurally for the reasons explained above. The application for judicial review is accordingly granted. Costs are

payable by Ryder to Mr. Wilson in the total amount of $10,000. The matter will be remitted to the adjudicator.

**JUDGMENT in T-2441-23**

**THIS COURT'S JUDGMENT is that**:

1. The Judicial Review is granted.

2. The matter is returned to the Commission for reconsideration within six months of this decision.

3. A lump sum of $10,000, inclusive of taxes and disbursements, is awarded to the Applicant, payable forthwith by the Respondent.

"Alan S. Diner"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-2441-23 |
| **STYLE OF CAUSE:** | TIMOTHY WILSON v RYDER TRUCK RENTAL CANADA LTD. |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEOCONFERENCE |
| **DATE OF HEARING:** | MAY 6, 2025 |
| **JUDGMENT AND REASONS:** | DINER J. |
| **DATED:** | JUNE 9, 2025 |

**APPEARANCES:**

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| John J. Wilson | FOR THE RESPONDENT |

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