KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 44**

Date: **2026 02 23**
File No.: KBG-SA-01560-2024
Judicial Centre: Saskatoon

BETWEEN:

VANESSA CASILA

APPLICANT

- and -

SASKATCHEWAN HUMAN RIGHTS COMMISSION

RESPONDENT

- and -

SASKATCHEWAN HEALTH AUTHORITY

RESPONDENT

Counsel:

Vanessa Casila	on her own behalf
Brandon P. Friesen	for the respondent, Saskatchewan Human Rights Commission
Scott R. Spencer	for the respondent, Saskatchewan Health Authority

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JUDGMENT
February 23, 2026

R.S. SMITH J.

Introduction

[1] Vanessa Casila [Ms. Casila] filed a complaint with the Saskatchewan Human Rights Commission [Commission]. According to her complaint, the Starbucks at Royal University Hospital [RUH], operated by the respondent, Saskatchewan Health Authority [SHA], has a blanket "English only" policy that applies to its employees. This, Ms. Casila says, is discriminatory against her as a Filipina customer.

[2] The Commission dismissed Ms. Casila's complaint without investigation. This is a judicial review of that decision.

Background

[3] The pertinent facts of this matter are largely undisputed. Essentially, Ms. Casila was a customer at the RUH Starbucks location and attempted to order in Tagalog. To her dissatisfaction, the employee at the kiosk informed Ms. Casila that the transaction was required to take place in English, and doing otherwise would result in that employee receiving a formal reprimand from the manager. Needless to say, Ms. Casila, contrary to her preference, did not place her order in Tagalog.

[4] Ms. Casila then took it upon herself to file a complaint with the Commission, alleging that SHA's "English only" policy results in discrimination based on race or perceived race, colour, ancestry, place of origin, and nationality.

[5] Ms. Casila says that the policy amounts to discrimination against her as a Filipina customer. As she set out in her complaint, Ms. Casila was born and raised in the Philippines, and her first language is Tagalog. Speaking her first language, she explained, is intimately tied to her Filipina identity. It is how she expresses and preserves her minority culture here in Canada. A number of employees at the RUH Starbucks are also Tagalog-speaking Filipinos.

[6] The policy itself was not put before the Commission, although Ms. Casila provided a general description of its content. In sum, according to Ms. Casila, the policy prohibits employees from communicating with each other or the public in any language other than English or French, without exception. Ms. Casila also alleged that the policy was based in part on customer complaints about having to hear Starbucks employees speak non-English languages.

[7] The Commission sent a reply to Ms. Casila dismissing her complaint.

Citing s. 29(1)(b) of *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2 [*Code*], the Commission rather summarily stated that Ms. Casila had not provided sufficient evidence that there were reasonable grounds to believe that there had been discrimination based on a prohibited ground, with reference to the *Moore* (*Moore v British Columbia (Education)*, 2012 SCC 61) [*Moore*] criteria which I will comment on later.

[8] The Commission invited Ms. Casila to submit additional material to support her complaint, and she did so. In response, Ms. Casila sent the Commission a letter arguing that her complaint did meet the *Moore* criteria. She cited case law in support of the proposition that language can be a factor in discrimination based on grounds such as race or ethnic origin. She argued that not being permitted service in Tagalog constituted an adverse impact on her and that this impact was intentional, or at least indirect, discrimination against the Filipino community in particular.

[9] Much of Ms. Casila's argument, however, was fixated on the allegation that the "English only" policy was linked to racist customer complaints. As evidence, she attached as part of her complaint an email sent to SHA in December 2022, which (amid some uncouth and intolerant commentary) asked that SHA enforce a strict English-only policy for its employees.

[10] Ms. Casila also argued that Filipinos were disproportionately affected by the policy due to the high number of Tagalog-speaking Filipino employees at the RUH Starbucks. In turn, Ms. Casila herself, as a Tagalog-speaking Filipina, was indirectly impacted as a customer, being unable to converse with employees in Tagalog. She also contended that, in characterizing non-English languages as disrespectful, the policy implicitly labelled Tagalog speakers, i.e., Filipino customers, as rude.

[11] Although Ms. Casila again did not provide the Commission with the actual policy, she did attach a copy of a letter sent by SHA regarding the policy. The

letter appears to be directed toward an employee of the RUH Starbucks and states that employees must always speak only in English at the kiosk so as to not exclude coworkers and customers. In her complaint, Ms. Casila claimed this policy to be all-encompassing, with no exceptions. While SHA has now provided me with the relevant portions of its policy, I do not see how I can consider it. The policy was not before the Commission – it chose not to investigate Ms. Casila's complaint.

[12] Again, the Commission stated that it could not accept a complaint where the requirements of s. 29(1) were not met and that Ms. Casila's evidence filed was insufficient to support a possible *Code* violation.

[13] The Commission acknowledged that some interpretations of the *Code* have protected language where it is a conveyor of culture, nationality and ethnicity because these grounds are usually inextricably tied to language. However, it went on, language was not a protected ground in all cases, such as where it is used in a transactional means of communication. Moreover, Ms. Casila had not met the requirements of ss. 9 to 19 of the *Code*. She had not been denied service as required by s. 12, and s. 16 was inapplicable as she was not an employee of SHA or RUH.

[14] Ms. Casila applied for judicial review of the Commission's decision.

Standard of Review

[15] The parties are in agreement that the applicable standard of review is reasonableness. The commandments enunciated in the governing decision *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], were more recently and succinctly set out by this Court in *Lince v Saskatchewan Human Rights Commission*, 2024 SKKB 58:

> [53] *Vavilov* identifies two types of fundamental flaws that render a decision unreasonable. The first is a failure of rationality internal to the reasoning process, which is the

opposite of internally coherent reasoning. The second arises when a decision is untenable in light of the relevant factual and legal constraints.

[54] The Court of Appeal summarized the framework for a reasonableness review in *Andritz Hydro Canada Ltd. v The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179*, 2023 SKCA 69, quoting as follows from the dissenting reasons given by Barrington-Foote J.A. in *Service Employees International Union – West v Saskatchewan Health Authority*, 2020 SKCA 113, 454 DLR (4th) 363:

> [102] … In [*Vavilov*], the majority confirmed the reasonableness standard requires the reviewing court to answer two questions; that is, "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir* [2008 SCC 9, [2008] 1 SCR 190], at paras. 47 and 74; [*Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2, [2012 1 SCR 5] at para. 13" (at para 99). For analytical purposes, the Court described two kinds of fundamental flaws as a convenient way to discuss the issues that may show a decision to be unreasonable (at para 101). First, is there "a failure of rationality internal to the reasoning process"? Second, is the decision "in some respect untenable in light of the relevant factual and legal constraints that bear on it"? (at para 101). The Court emphasized that in order to justify setting aside a decision, the flaws must be "sufficiently central or significant", not superficial or peripheral (at para 100).
>
> [103] The first category of flaws reflects the principle that a reasonable decision must be based on internally coherent reasoning; that is, reasoning that is both rational and logical. As the majority put the matter, "the reviewing court must be able to trace the decision-maker's reasoning without encountering any fatal flaws in its overarching logic" (*Vavilov* at para 102). A decision will be unreasonable if it fails to reveal a rational chain of analysis or exhibits an irrational chain of analysis. While administrative decision makers must not be held "to the formalistic constraints and standards of academic logicians", a decision may be unreasonable if it exhibits "clear logical fallacies, such as

> circular reasoning, false dilemmas, unfounded generalizations or an absurd premise" (*Vavilov* at para 104).
>
> [104] As to the second category, "a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision … Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers" (*Vavilov* at para 105). The relevant constraints depend on the facts. In *Vavilov*, the majority discussed what they characterized as "a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies" (at para 106). The Court cautioned that these elements are not a checklist and vary in significance depending on the context.
>
> [105] I would finally note that reasonableness is a deferential standard and must be sensitive and respectful of the role of the delegated decision maker. It is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). The court's function is to "ensure the legality, the reasonableness and the fairness of the administrative process" (*Dunsmuir v New Brunswick*, 2008 SCC 90 at para 28, [2008] 1 SCR 190). However, reasonableness review must also be robust. …
>
> [Emphasis added]

[55] It follows that I owe deference in reviewing the *Decision*.

[56] To summarize, two main questions must be asked in a reasonableness review here. First, is the *Decision* rational, logical and internally coherent, and is the reasoning transparent? Second, in the context in which the *Decision* exists, are the determinations reasonable? The second question focuses on the outcome and the smaller decisions made along the way that led to it. The first question is more focused on the coherence and transparency of the analytical process.

[Emphasis in original]

See also *Andritz Hydro Canada Ltd. v The United Association of Journeymen and*

Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 179, 2023 SKCA 69 at paras 53-56; and *Saskatchewan Health Authority v Kenny*, 2021 SKQB 203 at paras 8-10 and 86.

[16] As an exception to this general rule, issues of procedural fairness are reviewed on the standard of correctness. Simply put, was the process fair or not? See *SNC-Lavalin Inc. v Saskatchewan Power Corporation*, 2022 SKKB 242 at para 31.

Law

[17] The Commission declined to accept Ms. Casila's complaint on the basis of insufficient evidence, citing s. 29 of the *Code*. That provision states, in part, as follows:

> **Complaints**
> 29(1) A person may file a complaint with the commission, in the form prescribed by the commission, if:
>
> (a) the complaint falls within the jurisdiction of the commission; and
>
> (b) the person provides sufficient evidence that reasonable grounds exist for believing that a person has, with respect to a person or class of persons, contravened:
>
> (i) this Act; or
>
> (ii) any other Act administered by the commission.
>
> …
> (3) The commission may initiate a complaint if the commission has reasonable grounds for believing that a person has, with respect to a person or class of persons, contravened:
>
> (a) this Act; or
>
> (b) any other Act administered by the commission.

[18] This provision, and the limitations it imposes on the filing and initiation of complaints, is part of a larger filtering scheme within the *Code*. Beginning with s. 29, the *Code* sets out the process for bringing complaints before the Commission. The *Code* requires that the claimant (1) file a form with the Commission describing a complaint

within its jurisdiction, and (2) provide sufficient evidence to establish on reasonable grounds that there has been a contravention of the *Code*: *Yashcheshen v Law School Admission Council Inc.*, 2021 SKCA 149. The Commission's role in this process is that of a gatekeeper, representing the public interest. It ensures these criteria are met, filtering out complaints when they are not: *Saskatchewan (Human Rights Commission) v Crowe*, 2023 SKKB 71 at para 35.

[19] Ms. Casila relies on paras. 39 to 42 of *Canada (Attorney General) v Mohawks of the Bay of Quinte First Nation*, 2012 FC 105, to say that the proper approach in this filtering process is to dismiss complaints (or decline to accept them) only where it is "plain and obvious" that a complaint falls outside the jurisdiction of the Commission. That was a decision interpreting the pre-investigative dismissal provisions of the *Canadian Human Rights Act*, RSC 1985, c H-6, although it was later adopted in the context of the Yukon *Human Rights Act*, RSY 2002, c 116: *Bachli v Yukon Human Rights Commission*, 2022 YKSC 49 at paras 77 and 92.

[20] Fortunately, this issue has been decided already in Saskatchewan, by this Court, albeit in the context of *The Saskatchewan Human Rights Code*, SS 1979, c S-24.1 (since rep). In *Robin Hood Management Ltd. v Gelmich*, 2014 SKQB 347, Justice Barrington-Foote (as he then was) considered the nearly identically worded former s. 27(1):

> [45] [There being no issues of jurisdiction], a person alleging such discrimination is entitled to file a complaint pursuant to s. 27(1). The SHRC is then obliged to receive and review that complaint for the purpose of determining whether there are reasonable grounds for believing that any person has contravened the *Code*. If it finds that reasonable grounds exist, it is entitled - but not obliged - to initiate a complaint pursuant to s. 27(3). If it does so, the Chief Commissioner is obliged by s. 28(1) of the *Code* to attempt to resolve the complaint by mediation, to investigate, or to investigate after an unsuccessful attempt at mediation, subject to the right to dismiss the complaint pursuant to s. 27.1(2).

[46] Counsel for Ms. Sigurdson and the SHRC submit that the SHRC has very limited jurisdiction to refuse to initiate a complaint that is within jurisdiction. He relies in that respect on the decision in *Canada (Attorney General) v Mohawks of the Bay of Quinte*, 2012 FC 105, 404 FTR 173, which finds, at para. 40, that the Canadian Human Rights Commission should decline to deal with a complaint only where it is plain and obvious that the matter is beyond its jurisdiction.

[47] With respect, the provisions of the *Code* relating to the initiation or dismissal of a complaint are materially different than those in the *Canadian Human Rights Act,* RSC 1985, c H-6 [*CHRA*]. The Canadian Human Rights Commission is obliged by s. 41 of the *CHRA* to deal with any complaint, unless it appears to the Commission that it is beyond jurisdiction, or is trivial, frivolous, vexatious or made in bad faith. Section 27(3) of the *Code*, on the other hand, says that the SHRC *may* initiate a complaint, while s. 27.1 provides that the SHRC *may* dismiss a complaint on substantially broader grounds than those provided by s. 41 of the *CHRA*. Those grounds include a finding, at any time after the complaint is filed, that the complaint is without merit, or that there is no reasonable likelihood that further investigation will reveal a contravention of the *Code*. They also include a finding that a hearing is not warranted in all the circumstances. **In my view, the SHRC has significantly greater discretion as to whether to initiate or continue a complaint than the Canadian Human Rights Commission.**

[48] That said, I agree that the SHRC, in considering whether there are reasonable grounds for believing that any person has contravened a provision of the *Code* pursuant to s. 27(3), thus establishing a basis for the Commission to initiate a complaint, fulfills a similar function to that of the Canadian Human Rights Commission. That is, and as stated by La Forest J. in *Cooper v Canada (Canadian Human Rights Commission)*, [1996] 3 SCR 854, at para 53 [*Cooper*]:

> 53 ...When deciding whether a complaint should proceed to be inquired into by a tribunal, the Commission fulfills a screening analysis somewhat analogous to that of a judge at a preliminary inquiry. It is not the job of the Commission to determine if the complaint is made out. Rather its duty is to decide if, under the provisions of the Act, an inquiry is warranted having regard to all the facts. The central component of the Commission's role, then, is that of assessing the sufficiency of the evidence before it. ...
>
> [Emphasis added]

[21] In summary then, the Commission's job when it decides whether to accept a complaint under s. 29(1)(b) is to assess the sufficiency of the evidence before it and determine whether that evidence establishes reasonable grounds for believing that any person has contravened the *Code*, *vis-à-vis*, the *Moore* criteria. These were concisely outlined by Justice Kilback (as he then was) in *Desai v North Ridge Development Corporation*, 2023 SKKB 3 at para 90:

> [90] Under the *Moore* test, a complainant must establish:
>
> (a) they have a characteristic protected from discrimination under the *Code*;
>
> (b) they suffered an adverse impact; and
>
> (c) the protected characteristic was a factor in the adverse impact.

See also *Gronvold v Rural Municipality of Baildon No. 131 The Saskatchewan Human Rights Commission,* 2022 SKQB 99 at paras 54-55.

[22] I take "reasonable grounds for believing" to have the same well-established meaning as it does in other contexts, being an objective, evidence-based standard somewhere below the civil standard of proof, "where a credibly based probability replaces suspicion": see e.g., *Canadian Frontline Nurses v Canada (Attorney General)*, 2024 FC 42 at paras 202 and 282, aff'd 2026 FCA 6 at para 229; and *R v Beaver*, 2022 SCC 54 at para 72. I find this to be consistent with the filtering or gatekeeping function of the Commission at this stage. The question is not whether the complaint is made out or whether there is a *prima facie* case but whether there are reasonable grounds to believe, based on the evidence before it, that a contravention has occurred, thereby warranting further inquiry.

[23] Also relevant to this assessment are ss. 9 to 19 of the *Code*, which set out the various forms of discriminatory practices prohibited under the *Code*. Subsection 12(1) is of particular interest for Ms. Casila's purposes:

> **Discrimination in accommodation, service or facility prohibited**
> 12(1) No person, directly or indirectly, alone or with another or by the interposition of another, shall, on the basis of a prohibited ground:
>
> (a) deny to a person or class of persons any accommodation, service or facility to which the public is customarily admitted or that is offered to the public; or
>
> (b) discriminate against a person or class of persons with respect to any accommodation, service or facility to which the public is customarily admitted or that is offered to the public.

[24] Turning to the parties' submissions, however, the bulk of argument before this Court centred on whether discrimination based on language could constitute *Code*-protected conduct. There has been some discussion of this issue in the case law, as cited by the Commission in its decision.

[25] First, there is a previous decision of the Commission that is on point. *Welen v Gladmer Developments Ltd.*, 1990 CanLII 7546, 11 CHRR 348 (SKHRT) [*Welen*], was a decision dealing with denial of housing accommodations due to poor English skills. When the question arose as to whether language-based discrimination was covered under the *Code*, the Commission provided the following reasoning:

> [19] … I am certainly convinced that language is protected. Language is the conveyor of culture, including nationality and ethnicity, and is, on the other hand, shaped by it. Therefore, if nationality is protected by the *Code*, so must the language of that nationality for, in fact, they are usually inextricably bound together.

[26] However, the Commission's decision also pointed to the case *Fletcher Challenge Canada Ltd. v British Columbia (Council of Human Rights)*, 1992 CanLII 1119 (BCSC), 97 DLR (4th) 550 [*Fletcher*]. Citing *Welen*, the Court took a more nuanced approach, delineating between language as conveyor of culture versus means of communication:

> [31] …There is no question that language is the conveyor of culture. It shapes and is shaped by culture. A culture cannot survive without the ability of its people to give expression to themselves and the way in which they see the world through the articulation of thought in language. History teaches us that one of the oppressor's most effective tools for maintaining power is the eradication of the language of the oppressed.
>
> [32] One could hardly disagree with the member designate that language is directly related to race, colour, ancestry and/or place of origin. But it cannot be said that it is necessarily related. **Apart from its capacity to convey culture, language is also a communication skill that may be learned, and the ability to learn any language is not dependent on race, colour or ancestry.**
>
> **[33] So too in a work environment, language may simply be a means of communicating to accomplish a task. In that context the important aspect of language is not the expression of culture, but simply a means to communicate. Language is in this context a skill,** not unlike the ability to operate a machine. It is the process by which job-related information is passed back and forth from employee to employee and/or from employee to anyone he or she meets in the course of performing his or her duties.
>
> **[34] Language then, has a dual aspect. It is inextricably bound with culture in one sense, but in another it is a means of communication unrelated to culture. …**
>
> [Emphasis added]

Analysis

[27] In her able written submissions, Casila advanced multiple arguments as to why the Commission's decision was unreasonable. However, the main thrust of the parties' submissions was whether there was sufficient evidence relating to the *Moore* criteria. In other words, is language a protected ground (or rather, inextricably connected to other protected grounds) in these circumstances?

[28] The Commission did address this argument, although I find its explanation somewhat conclusory. In its entirety, the Commission's analysis on this

point was as follows:

> You are correct that employees are protected from discrimination on the basis of colour, ancestry, nationality, place of origin and race or perceived race. Interpretations of the *Code* have protected language where it is a conveyor of culture, including nationality and ethnicity because they are usually inextricably tied to language, *Welen* v. *Gladmer Developments Limited*, 1990 Can LII 7546 (SK HRT). However, language may also simply be a means of communication to accomplish a task, in which case it is not an expression of culture but a skill that may be learned and improved, *Fletcher Challenge Canada Ltd.* v. *British Columbia (Council of Human Rights)* and *Grewal*, 1992 Can LII 1119 (BC SC). …

[29] Respectfully, the Commission's reasons, on their own, do not contain any of the necessary legal analysis as to why and how these authorities apply in these circumstances. It may be that the Commission reconciled these authorities based on the content of the exchange and its transactional context, looking at the evidence and record before it (i.e., communication to accomplish a task). I recognize that I must take care not to cross the Rubicon, leaving the realm of simply "connecting the dots" and entering into the forbidden territory of bolstering reasons. That said, I would not find this alone enough to make the decision an unreasonable one, were this the only issue.

[30] Ms. Casila has also made arguments in relation to the legal and factual constraints upon the Commission. She contends that the Commission erroneously relied on *Fletcher*, where the issue was an inability to communicate in English. That decision's reference to a "skill", she argues, is with regard to one's ability to learn a second language, whereas the issue here is permission to use one's first language.

[31] However, the *Welen* decision, upon which Ms. Casila rests her argument, was decided in that same context. Moreover, there is more recent authority building on the reasoning in *Fletcher* and dealing with the issue of first language use. Similarly to the case at hand, the Tribunal in *Dubois v Farfalla Hair & Esthetics*, 2024 BCHRT 93,

found a claim of linguistic discrimination to have no reasonable prospect of success due to a lack of evidence:

> [32] As set out in *Fletcher Challenge*, speaking one's first language is not in all circumstances connected to culture and therefore ancestry and place of origin. While that case does not set out all the ways in which it may be discriminatory to impose language-based requirements at work, it is clear that in cases where a person's first language is being used to communicate only, it will be "unrelated to culture." Here, the evidence indicates that Ms. Dubois was using French in the workplace to communicate with the other French-speaking member of the salon staff. Ms. Dubois has not provided the Tribunal with any evidence or argument as to how speaking French at Farfalla with another French-speaking employee was related to Ms. Dubois's culture as a French-Canadian person. Without this evidence, I find that Ms. Dubois's complaint has no reasonable prospect of success because she will likely not be able to show at a hearing that speaking French at the salon was connected to her ancestry or place of origin.

I reference this decision not to provide reasoning that the Commission did not, only to show its decision is not out of line with the legal context.

[32] I am by no means required to come to the same decision as the Commission in order to find its decision was reasonable. Having considered the Commission's reasons, the arguments and evidence before it, and the legal framework, I am satisfied that the Commission's decision is not unreasonable in terms of how it addressed the issue of language-based discrimination.

[33] However, another issue arises from the brevity of the Commission's reasons in declining to accept Ms. Casila's complaint. The Commission had before it an allegation pertaining to the English-only policy that claimed it was not only unnecessarily broad and disrespectful but a deliberate act of racism against Filipino employees. Nowhere in its decision does it consider this argument or the supporting evidence provided by Ms. Casila. This is concerning seeing its centrality to Ms. Casila's

complaint, which claimed that the policy was racially motivated, not related to simply ensuring work-related tasks could be performed. Ms. Casila claimed that this then impacted her indirectly as a Filipina customer.

[34] There is also the case of *Macasiab v Cypress Railing and Gates Ltd.*, 2022 BCHRT 69 [*Macasiab*]. The SHA relies on this authority for the proposition that a language policy intended to foster respect for other employees or that applies to all non-official languages: *Macasiab* at para 86. However, that decision also noted that it *may* be discriminatory to prohibit first language use without justification or based solely on unfounded concerns about what non-English speakers might be discussing: at para. 85. These were exactly the allegations Ms. Casila had made.

[35] What is determinative in my view, however, was an argument raised in Ms. Casila's written submissions, as well as by the Commission in oral submissions, regarding s. 12(1)(b) of the *Code*. It is helpful at this point to reproduce the relevant portion of the Commission's decision:

> The *Code* also has several sections (9 to 19) pertaining to discriminatory practices within various areas from property, housing, public services, education, employment, etc. Section 12 prohibits discrimination when someone has been denied accommodation, service or access to a facility that is offered to the public or where the public is customarily admitted.
>
> Unfortunately, this section does not pertain to your complaint as you were not denied access to a facility or the provision of services. According to your information, although you were not able to converse in Tagalog with the Starbucks Customer Service Representative, you were nevertheless able to access services from Starbucks café.

[36] It is true that Ms. Casila was able to access services (albeit only in her second language). However, that reasoning only relates to s. 12(1)(a) of the *Code* which relates to the denial of public services. This is a particular subset of discrimination or its "ultimate signifier": *Friday v Westfair Foods Ltd.*, 2002 CanLII 62874 (SKHRT).

Subsection 12(1)(b), on the other hand, contains a broader, general prohibition of any "[discrimination] against a person or class of persons with respect to any accommodation, service or facility to which the public is customarily admitted or that is offered to the public." Harassment, for example, would fall within this category: see e.g., *Kahsai v Saskatoon Regional Health Authority*, 2005 CanLII 80915 (SKHRT), 55 CHRR 192.

[37] The Commission failed to address forms of discrimination other than the complete denial of services when it assessed whether Ms. Casila's evidence provided reasonable grounds to believe SHA had contravened the *Code*. This is unreasonable.

[38] As a brief aside, I would also note that the Commission also did not address s. 30 of the *Code* in rejecting Ms. Casila's complaint. I pass no judgment on the potential wisdom of doing so in this particular instance, except to say that this Court has considered it prudent on other occasions: *Cyrynowski v Joseph*, 2020 SKQB 289 at paras 30-34.

Conclusion

[39] Considering these deficiencies as a whole, I am unable to find that the Commission's decision was reasonable. Its reasoning could be clearer on key points. It did not deal with an allegation central to Ms. Casila's complaint. In addition, failing to consider s. 12(b) of the *Code* alone is sufficient to make this decision unreasonable.

[40] For these reasons, the decision is quashed and remitted to the Commission for reconsideration. In light of this, there is no need for me to address Ms. Casila's arguments relating to procedural fairness.

J.
R.S. SMITH