Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2020 CHRT 4

Date: March 6, 2020

File No: T2207/2917

[ENGLISH TRANSLATION]

Between:

Cecilia Constantinescu

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Gabriel Gaudreault

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I. Background to the motion

[1] This is the sixth written decision of the Canadian Human Rights Tribunal (Tribunal) in this case involving Ms. Cecilia Constantinescu (Complainant) and Correctional Service Canada (CSC or Respondent).

[2] The purpose of this written ruling is to decide in one ruling on six applications for disclosure filed by Ms. Constantinescu.

[3] This issue was addressed in my ruling in *Constantinescu v. Correctional Service Canada,* 2019 CHRT 49, at paragraph 3:

> The Complainant alleges that she was discriminated against by CSC (Respondent) during her CTP-5 training to become a correctional officer. She claims she was the victim of numerous incidents, both at the hands of her colleagues and the Respondent's managers or instructors. In the end, the Complainant was not given a position as a correctional officer, failing her training. She therefore alleges that she was treated unfavourably during her training (section 7, *CHRA*) and was harassed (section 14(1)(*c*) *CHRA*) on the basis of her sex and national or ethnic origin.

[4] The disclosure process is particularly lengthy and complex in this case (see also *Constantinescu v. Correctional Service Canada,* 2019 CHRT 49, at paragraphs 4 and 114). It has been ongoing since July 2017, and we are at our 20th case management teleconference. The calls add up to more than 20 hours of management time and there is still a long list of topics to be addressed.

[5] I repeat, the *Canadian Human Rights Act* (CHRA) requires the proceedings to be conducted as expeditiously as possible. For this reason, the Tribunal is using two parallel tracks to deal with procedural and disclosure issues in this case: (1) teleconferencing and (2) written decisions.

[6] Now, the six applications filed by the Complainant are as follows:

1) Application for disclosure filed on September 6, 2018;

2) Application regarding the Presidia report;

3) Application regarding the redaction of item #19 from the Respondent's list of documents;

4) Application regarding Mr. Ouellet's fees;

5) Application regarding a screenshot dated November 6, 2018;

6) Application regarding notes from recruits who participated in the September 5, 2018 CTP-5/2014 training.

[7] The parties' final representations were filed by Ms. Constantinescu on May 20, 2019. The parties were well aware that the Tribunal would deal with the six applications in a single ruling once all representations were received.

[8] Still, on August 28, 2019, the Complainant filed another application, in which she was requesting that several Tribunal decisions be amended. Because the application was lacking details, the Tribunal asked the Complainant to file a detailed motion, which she did. The parties' final representations were filed on October 18, 2019.

[9] However, some of the Complainant's requests overlapped with requests for disclosure that fall within the purview of this ruling. It was therefore necessary for the Tribunal to suspend the processing of the six applications while the motion to amend was being processed, in order to avoid duplicating rulings on the same subjects.

[10] The Tribunal, having dismissed the Complainant's motion to amend several of its decisions (*Constantinescu v. Correctional Service Canada,* 2019 CHRT 49), will now deal through this ruling with each of the above applications.

II. Preliminary Remarks

[11] On December 16, 2019, the Tribunal stated in its recent ruling in *Constantinescu v. Correctional Service Canada,* 2019 CHRT 49, that the Complainant's vexatious behaviour would no longer be tolerated in Tribunal proceedings.

[12] However, the applications and representations of the parties were filed before the December 16, 2019 ruling was issued and distributed to the parties.

[13] It is clear that several of the representations made by the Complainant in the various applications – which are dealt with in this ruling – are frivolous, irrelevant and inflammatory. The Complainant clearly lacked restraint in her representations, not to mention that she was directly attacking the Tribunal and its rulings.

[14] These behaviours are similar, if not identical to those identified in the recent ruling 2019 CHRT 49. It is not necessary to go over them again in detail. Suffice it to say that given the chronology of events, that is the filing of the application and the distribution of the ruling dated December 16, 2019, the Tribunal will for this time ignore those comments and remarks of the Complainant that amount to abusive and vexatious representations.

III. Issue

[15] The issue is whether the Tribunal should order the Respondent to disclose the documents sought by the Complainant on the basis of their arguable relevance to the dispute.

IV. State of the law relating to disclosure

[16] The principles of disclosure are well established at the Tribunal. As reiterated in *Malenfant v. Videotron S.E.N.C.,* 2017 CHRT 11, at paragraphs 25 to 29 and 36:

> [25] Each party has a right to a full hearing. To this regard, the *CHRA* provides as follows at subsection 50(1) :
>
> > 50(1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations. [Emphasis added].
>
> [26] This right includes the right to the disclosure of relevant evidence in the possession or care of the opposing parties *(Guay v. Royal Canadian Mounted Police,* 2004 CHRT 34, para. 40). The Rules of Procedure of the

Canadian Human Right[s] Tribunal (the Rules) provide as follows in Rule 6(1), and more specifically paragraphs (*d*) and (*e*) that:

> 6(1) Within the time fixed by the Panel, each party shall serve and file a Statement of Particulars setting out,
>
> . . .
>
> (d) a list of all documents in the party's possession, for which no privilege is claimed, that relate to a fact, issue, or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;
>
> (e) a list of all documents in the party's possession, for which privilege is claimed, that relate to a fact, issue or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties under this rule;
>
> . . .
>
> [Emphasis added.]

[27] Regarding disclosure, the Tribunal has already ruled several times that the guiding principle is probable or possible relevance (*Bushey v. Sharma*, 2003 CHRT 5 and *Hughes v. Transport Canada*, 2012 CHRT 26. See in the alternative *Guay*, *supra*; *Day v. Department of National Defence and Hortie*, 2002 CanLII 61833; *Warman v. Bahr*, 2006 CHRT 18; *Seeley v. Canadian National Railway Company*, 2013 CHRT 18). The Tribunal notes that the parties have an obligation to disclose arguably relevant documents in their possession (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 42, para. 17).

[28] To show that the documents or information is relevant, the moving party must demonstrate that there is a rational connection between those documents or information and the issues in the case (*Warman*, *supra*, para. 6. See for example *Guay*, *supra*, para. 42; *Hughes*, *supra*, para. 28; *Seeley*, *supra*, para. 6). Relevance is determined on a case-by-case basis, having regard to the issues raised in each case (*Warman*, *supra*, para. 9. See also *Seeley*, *supra*, para. 6). The Tribunal notes that the threshold for arguable relevance is low and the tendency is now towards more, rather than less disclosure (*Warman*, *supra*, para. 6. See also *Rai v.*

Royal Canadian Mounted Police, 2013 CHRT 36, para. 18). Of course, the disclosure must not be speculative or amount to a fishing expedition (*Guay*, *supra*, para. 43).

[29] The Tribunal notes that the production of documents stage is different from the stage of their admissibility in evidence at the hearing. Accordingly, relevance is a distinct concept. As Member Michel Doucet stated in *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 (hereafter *TEAM*), at para. 4:

> [4] . . . The production of documents is subject to the test of arguable relevance, not a particularly high bar to meet. There must be some relevance between the information or document sought and the issue in dispute. There can be no doubt that it is in the public interest to ensure that all relevant evidence is available in a proceeding such as this one. A party is entitled to get information or documents that are or could be arguably relevant to the proceedings. This does not mean that these documents or this information will be admitted in evidence or that significant weight will be afforded to them.

[36] Finally, I would remind the parties that the duty to disclose the documents concerns documents in their possession. Accordingly, the duty does not extend to creating documents for disclosure (*Gaucher*, *supra*, para. 17).

[17] However, there are limits to the disclosure of documents, which have been summarized in paragraph 10 of *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada,* 2019 CHRT 21, at paragraph 10:

> [10] There are also limits to the disclosure of documents, as the Chairperson of the Tribunal, David L. Thomas, explained in *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28, at para. 8. For example, disclosure may be denied if the probative value of evidence would not outweigh its prejudicial effect on the proceedings. It may also be denied if the scope of the search and disclosure is particularly onerous and creates disproportionate costs for one of the parties to the litigation (or a third party, if applicable). Lastly, a motion for disclosure may be denied when the documents concern a side issue rather than the main issues in dispute or if such disclosure would risk adding substantial delay to the efficiency of the inquiry. (*Nur v. Canadian National Railway Company,* 2019 CHRT 19, at para. 15).

[18] It is with these principles in mind that I will rule on the applications filed by the Complainant.

V. Analysis of the applications

[19] It should be noted that the Complainant's representations are sometimes difficult to understand and sometimes refer to elements that are not relevant and that do not help the Tribunal in deciding the issues in dispute. This inevitably makes the Tribunal's task more difficult.

[20] Thus, in the interests of brevity and good understanding, I will not repeat all of the representations of the parties and I will focus only on the arguments that are relevant and useful in deciding the disclosure issues.

A. Application for disclosure filed on September 6, 2018

[21] In the September 6, 2018 application, Ms. Constantinescu is submitting two distinct requests for disclosure. The first request is for documents relating to changes allegedly made to the report of the investigators, Ms. Poirier and Mr. Anctil. The second is for records relating to workplace harassment complaints within the Respondent's facilities.

(i) Documents relating to the report of investigators Ms. Poirier and Mr. Anctil

[22] First of all, I understand that Ms. Constantinescu was allegedly sexually harassed by a colleague, Mr. Durdu, during her training, while the recruits were conducting a search and pat-down practice.

[23] Ms. Constantinescu's complaint about this event led CSC to conduct a disciplinary investigation into Mr. Durdu's actions. A report was produced as a result of that investigation, which was prepared by Ms. Poirier and Mr. Anctil.

[24] The Complainant claims that the Respondent, more specifically the management of Collège de Laval, interfered in the investigation. Following a meeting with the investigators, changes were made to the report. She adds that filing of the report was delayed by two

months and that some of the investigation took place without the named investigators having a formal mandate.

[25] She asks the Tribunal for four things in relation to this report:

1) The initial investigation report;

2) Documents showing the date and location of the meeting leading to the changes to the report;

3) Documents showing who was present at that meeting;

4) Documents showing who requested changes to the report;

5) Documents produced following this meeting leading to the changes, such as memoranda, correspondence or notations.

[26] As she argued on multiple occasions, the Complainant believes that the Respondent is concealing evidence, hiding facts and documents from her.

[27] She believes that her request is relevant and legitimate and is asking the Tribunal for the disclosure of these documents.

[28] In an email dated April 8, 2019, the Respondent asked the Tribunal to suspend this request. It explained that those documents and information sought by the Complainant in relation to the disciplinary investigation report concerning Mr.Durdu that do exist, are included in Schedule B of its list of documents. This list of documents is that for which privilege is claimed, as per paragraph 6(1)(e) of the *Canadian Human Rights Tribunal Rules of Procedure* (03-05-04) (the Rules). The privilege claimed by the Respondent is based on labour relations.

[29] To be clear, when a privilege is claimed, the documents in question are not disclosed to the other parties, despite their arguable relevance to the dispute (subsection 6(4) of the Rules*,* argument from the contrary).

[30] The issue of the documents for which the Respondent claimed certain privileges is well-contested in this case. The Complainant strongly opposes **all** privileges claimed by

the Respondent. The Commission, which is not participating in the hearing, also wishes to make representations on the matter.

[31] The Complainant responded to the Respondent's request on April 8, 2019. She reiterated several of the arguments contained in her original application. As to the Respondent's request for a suspension, Ms. Constantinescu's representations are deficient and several arguments are irrelevant to determining the issue. Her representations do not address in detail the request for a suspension. Instead, Ms. Constantinescu reconfirmed her objection to the Respondent's claimed privileges, which is already known.

[32] The Tribunal cannot order the disclosure of documents for which a privilege has been claimed, and rightly so – that is the very purpose of privilege. As the Supreme Court of Canada wrote in *Lizotte v. Aviva, Insurance Company of Canada,* 2016 SCC 52, at paragraph 4 [*Lizotte*]:

> … the latter [privilege] is nonetheless a fundamental principle of the administration of justice that central to the justice system both in Quebec and in the other provinces. It is a class privilege that **exempts** the communications and documents that fall within its scope **from compulsory disclosure**, except where one of the limited exceptions to non-disclosure applies. [Emphasis added.]

[33] I would reiterate that in matters of disclosure, disclosure involves documents that are arguably relevant to the dispute and that arise from facts, legal issues or forms of relief related to the complaint.

[34] Once it is determined that a document does in fact exist, the issue is whether the document is arguably relevant to the dispute (i.e., is it related to a fact, a legal issue, a form of relief?)

[35] If the document is arguably relevant to the dispute, it must be disclosed and included in Schedule A, **unless** a privilege is claimed, in which case the document is not disclosed and is included in Schedule B.

[36] A party can challenge the privilege claimed by another party and it will ultimately belong to the Tribunal to determine the issue.

[37] In this case, the Respondent confirms that documents do exist in relation to Ms. Constantinescu's request. However, the Respondent is claiming a privilege, which exempts the identified documents from disclosure (*Lizotte*, supra, at paragraph 4).

[38] In order to decide whether the documents should be disclosed, the issue of privilege must necessarily be addressed, and the issues surrounding the privileges that the Respondent has claimed have not yet been so addressed.

[39] It should be noted that the Respondent is not asking that the Complainant's application be dismissed; it is asking that the matter be **suspended** until the debates over privilege are addressed by the Tribunal.

[40] Once the Tribunal has determined whether the documents relating to the changes that were allegedly made to the investigation report of Ms. Poirier and Mr. Anctil are in fact protected by privilege, this request may be consecutively addressed.

[41] I have decided that the debates over privilege be addressed after the other disclosure requests have been satisfied, which is not yet the case. This makes sense because as long as the disclosure is not complete, the Tribunal may still order the parties to search for other documents, which in turn may lead to further disclosure of documents. And the prospect of further disclosure of documents might bring a party to claim other privileges, which may also be challenged.

[42] For these reasons, I am suspending this request and it will be addressed when the debates over privileges are discussed by the parties and the Tribunal.

(ii) Documents relating to workplace harassment complaints

[43] Ms. Constantinescu explains that on September 4, 2018, she learned from an article published in a newspaper that 65 investigations had been initiated within the Respondent's facilities on the basis of workplace harassment between 2016 and 2018.

[44] She therefore requests the disclosure of:

1) All workplace harassment complaints received by the Respondent since September 15, 2014, including the location and establishment of the Respondent where these complaints were made;

2) The facts alleged in these complaints;

3) The findings in these complaints;

4) The identity of the investigators who inquired into each of these complaints (whether internal or external).

[45] Ms. Constantinescu alleges that this information is relevant to her endeavour to demonstrate that workplace harassment was being experienced within the Respondent's facilities. She believes that CSC has failed to prevent these discriminatory practices and to protect victims from them.

[46] She also argues that external investigations are not subject to interference by the Respondent, whereas in her case, there would have been interference in the investigation due to the fact, among other reasons, that it was an internal investigation. Specifically, she claims that CSC management has influenced internal investigators by asking them to change their report.

[47] She is asking for access to those documents to find out if the testimony that was gathered in those 65 investigations was altered. In this regard, she believes that, in comparison to the investigation into her allegations, testimony was altered.

[48] She also wants to see whether the investigators, in these other harassment complaints, labelled the victims as "sick", whether they acted with or without a mandate and whether the deadline for filing the reports was met. She also wants to find out if the external investigators had also said, as they did in her file, that they might submit an incomplete report if they did not get an extension.

[49] She has attached to her request emails exchanged between Ms. Poirier and Ms. Bastien in March 2015, as well as what appears to be a media article dated September 4, 2018.

[50] The Respondent opposes this request on the basis that it does not fall within the scope of the complaint before the Tribunal and that the documents sought are not arguably relevant to the dispute.

[51] It notes that the scope of the complaint is comprised of allegations of sexual harassment related to a shooting practice and a search practice, as well as allegations of discrimination based on discussions with recruits, and based on the grounds of sex and national or ethnic origin. The scope of the complaint was expanded by the Tribunal in *Constantinescu v. Correctional Service of Canada*, 2018 CHRT 17. The Respondent adds that this is an individual complaint that relates to specific events, not a systemic complaint.

[52] According to the Respondent, the request is beyond the scope of the complaint. It adds that to file all harassment complaints since September 2014, under both internal and external investigations, in order to ascertain why CSC decided to proceed with an internal disciplinary investigation into the allegations of Ms. Constantinescu, is too broad and has no rational connection with the complaint.

[53] Finally, the Respondent notes that the article dated September 4, 2018 published in a media outlet on which Ms. Constantinescu bases her application, deals with harassment investigations whose nature, magnitude or scope are totally unknown. These investigations could also include confidential information.

[54] The Respondent adds that the Complainant's request is speculative or, as courts and tribunals are prone to say, amounts to a fishing expedition.

[55] The Respondent also relies on the decision of the Tribunal to expand the scope of the complaint, ruling 2018 CHRT 17, at paragraph 28, in which I stated that:

> Although I am open to giving the Complainant some flexibility, the parties are advised that the objective of the Tribunal is not to monitor, supervise, review or even reverse the disciplinary investigation conducted at Collège de Laval. The role of the Tribunal is to determine whether there is a discriminatory

> element in the disciplinary investigation and not to redo the investigation itself. The parties should, in particular, put the disciplinary investigation in context, by explaining the procedure and the choice of internal rather than external investigators. This list is not exhaustive. Through its comments, the Tribunal simply wants to inform the parties that they will have some flexibility in this regard.

[56] The Respondent argues as a result that the documents being sought are unnecessary in order for the Tribunal to perform its function.

[57] Ms. Constantinescu reiterates that, with these documents, she wants to demonstrate that CSC officials could not interfere in investigations or request that investigation reports be changed.

[58] She further wants to demonstrate that the investigators did not approve of the actions allegedly committed by Mr. Durdu and that the audio recordings in other investigations were not altered as they were in the investigation of her allegations. She also wants to know if undated and unsigned written statements have been produced in these other investigations and if the extensions of the investigators' mandates are consistent.

[59] That said, the Tribunal fails to see clearly how information on the workplace harassment complaints received by the Respondent since September 15, 2014, the location and the establishment, the alleged facts and the outcome of these complaints as well as the office that conducted the investigations (internal or external to the establishment), would allow Ms. Constantinescu to demonstrate the elements listed in the previous paragraph.

[60] In fact, Ms. Constantinescu wants a great deal of information on these complaints and the documents she is asking for probably wouldn't answer her questions.

[61] What happened in the other eventual harassment complaints has nothing to do with the complaint currently before the Tribunal. The latter is not charged with analyzing and reviewing investigations conducted elsewhere. It is clear that the Tribunal should not act as a royal commission or as an appellate body (see *Moore v. British Columbia (Education)*, [2012] SCC 61, at paragraph 64; *Dominique*, supra, at paragraph 26).

[62] Rather, the Tribunal's role is to determine whether there is a discriminatory element in the events that occurred during the training, which includes the disciplinary investigation. It is the Respondent's conduct that will be analyzed by the Tribunal. The Tribunal will not redo this investigation at the hearing.

[63] In fact, the parties will be able, among other things, to put the disciplinary investigation into context, discuss its progress, explain the choice of investigators, and so on. The Respondent did agree that the choice of investigators for the disciplinary investigation held at the College be included in the subject of the complaint before the Tribunal (2018 CHRT 17, at paragraph 25).

[64] I reiterate that the Tribunal must analyze the general factual framework of this complaint spread over a specific period, which includes the triggers for the complaint (the alleged touching and comments), and also includes subsequent facts, the conduct of the Respondent following these statements (including the investigation), and other elements. It is clear in Ms. Constantinescu's initial complaint filed in October 2015 that she believes she was eliminated from the program as a result of her denunciation, which, she claims, constitutes adverse treatment under the CHRA.

[65] It is in light of this whole factual framework that the Tribunal may decide whether, on the one hand, Ms. Constantinescu has met the burden of proof for her case under sections 7 and 14 CHRA, and whether the Respondent is able to justify its conduct under section 15 of the CHRA. Moreover, the Respondent has an opportunity to refute the presumption set out in subsection 65(1) CHRA (*Brunskill v. Canada Post Corporation,* 2019 CHRT 22, at paragraphs 64 to 66).

[66] For example, anything that relates to the other harassment complaints allegedly filed since September 2014, including their content (audio recordings, statements), investigators' mandates, duration and expiry date, all of this is not relevant to the dispute.

[67] The Tribunal also understands the Complainant's approach: she wants access to documents relating to the other investigations into harassment in order to demonstrate the Respondent's *modus operandi* (way of operating). She is trying to demonstrate that harassment, including sexual harassment, was being experienced within the

Respondent's facilities and that the Respondent failed to prevent this harassment and protect victims from it.

[68] While the Tribunal is not at the stage of admitting documents into evidence, one point must be made clear: courts must be careful before admitting so-called similar fact evidence. The purpose of similar fact evidence is to demonstrate past patterns or conduct of a defendant.

[69] Similar fact evidence derives from the criminal law and its admissibility is significantly limited and restricted in both criminal and civil law. As the Tribunal noted in *Hewstan v. Auchinleck,* D.T.7/97, August 27, 1997, at pages 2 and 3:

> Past conduct similar to that at issue in proceedings may be admitted as evidence in proceedings provided its probative value exceeds its prejudicial value, R. v. Morin [1988] 2 SCR 345. Such evidence must **be relevant to an issue in the case** apart from its tendency to show propensity on the part of the accused, or it may not be received.
>
> [Emphasis added.]

[70] In the present case, the Complainant's application is too broad and speculative, and the probative value of the information sought does not, in my view, outweigh its prejudicial effect (*Brickner*, supra).

[71] Indeed, authorizing the disclosure of all workplace harassment complaints since September 2014, and all related documents, would only inundate the Tribunal with documents that would considerably, if not irreparably, complicate its task, without adding anything relevant to the specific situation and the specific allegations raised by the Complainant.

[72] It would also result in lengthy and significant delays in the Tribunal process for these documents to be searched, consulted, disclosed and so on. The disclosure process being already long and complex, there is no justification for further complicating and lengthening the case.

[73] In the same vein, Ms. Constantinescu would also like to draw a comparison between CSC's actions in her complaint and its actions in other harassment complaints.

[74] The Tribunal notes that in matters of discrimination and under the CHRA, it is well established that comparative evidence is not required in order to establish adverse treatment. The definition of discrimination does not include comparator groups.

[75] Comparator groups are sometimes useful in establishing discrimination, but in some cases, it is sometimes difficult, if not impossible, to identify an appropriate comparator group. For this reason, comparative evidence is not an essential element to prove (*First Nations Child and Family Caring Society v. Canada (Attorney General),* 2012 FC 445 at paragraphs 290 and 327. See also *Dominique*, supra, at paragraphs 33 to 35).

[76] Thus the Tribunal is of the opinion that comparative evidence is not required especially in Ms. Constantinescu's case. First of all, the facts of the case are specific, individual, and involve alleged discrimination and harassment in a very specific context, for a specific period of time: during training at the Collège de Laval in 2014.

[77] Ms. Constantinescu would also like her complaint to be characterized as systemic. I have already ruled on this issue in my 2018 CHRT 17 ruling, at paragraph 38. I still believe that Ms. Constantinescu's complaint **is not systemic.**

[78] The allegations made in this complaint are individual, quite particular and specific to the Complainant. Ms. Constantinescu alleges that she was discriminated against and sexually harassed during her training in the CTP-5 program. And it is the conduct of the Respondent, during that particular period, in this very specific case, with very specific facts, that will be analyzed by the Tribunal. The Complainant's allegations, in and of themselves, are not systemic in scope and do not need to be compared to other groups in order to be proven.

[79] It is important for Ms. Constantinescu to understand the burden she has to meet, which is specifically related to the facts she is alleging in her complaint: she must demonstrate that (1) she has a prohibited ground of discrimination protected by the CHRA, (2) she was adversely affected and (3) there is a link between the motive and the adverse effect. If these are proven on a balance of probabilities, she meets the burden of proof for her case (*Moore*, supra). It will then be for the Respondent to justify its conduct and limit its liability, if any.

[80] Finally, it is only if the discrimination is founded and remedies must be ordered that the remedies may be systemic in nature (in this regard, see the Tribunal's reasons in *Dominique*, supra, at paragraphs 23 to 26).

[81] For all these reasons, I dismiss the Complainant's application.

VI. Application regarding the Presidia Report

[82] Presidia Security Consulting (Presidia) was contracted to investigate allegations of workplace harassment at the Edmonton penitentiary. As a result of that investigation, the firm produced reports. The Complainant is seeking disclosure of these reports produced by Presidia.

[83] It is important to note that the Tribunal initially ordered the disclosure of the Presidia reports in an interlocutory decision. The order relied on the same reasoning as that of the TLS Enterprises report (see 2018 CHRT 17, at paragraphs 23 and following), i.e., they were arguably relevant to demonstrate that in the cases of the Presidia and TLS Enterprises reports, CSC had decided to outsource the investigations, whereas in the case of Ms. Constantinescu's complaint, CSC decided to entrust the investigation to an internal mechanism. The aim was merely to allow the reports, as containers, not their contents.

[84] Moreover, while in the case of the TLS Enterprises report, counsel for the Respondent and the Tribunal had had the opportunity to review the report, this was not the case for the Presidia reports. Indeed, when they made their representations during a conference call, the Respondent's lawyers had not yet had access to the Presidia report. They therefore made representations based on Ms. Constantinescu's representations, without really knowing what they were about.

[85] However, when the lawyers gained access to that report, which occurred after I made my interlocutory decision, they made additional representations to the Tribunal to indicate that the content of the reports differed significantly from what they originally thought. The reports contained highly personal and confidential information. In addition, it was no longer a single report, but several reports of alleged incidents of harassment at the Edmonton Institution involving several CSC employees.

[86] As a result of the parties' representations and the Respondent's clarification, the Tribunal **had** to amend its interlocutory decision in light of the new facts provided and the potential harm of disclosing these sensitive reports. The Tribunal therefore suspended its decision pending further debate and analysis of the issue.

[87] Although the Tribunal definitely has the power to amend its interlocutory decisions (*Canada (Public Safety and Emergency Preparedness) v. Shen,* 2018 FC 636, at paragraphs 49 and following; *Ching v. Canada (Immigration, Refugees and Citizenship)*, 2018 FC 839, at paragraphs 36 and 37 [*Ching*]; *Canada (Border Services Agency) v. C.B. Powell Limited,* [2011] 2 R.C.F. 332, at paragraph 32; *Constantinescu v. Correctional Service Canada,* 2019 CHRT 49, at paragraphs 87 and following), interlocutory decisions are not altered lightly, or simply for the sake of it.

[88] There must be facts, reasons and circumstances that justify their being amended. That was the case here: further to the Respondent's relevant clarifications, it was necessary to revisit the issue in depth.

[89] When the Tribunal therefore amended its interlocutory decision and suspended its decision on the communication of the Presidia report, it did not categorically decide that the report should never be transmitted; rather, the issue had to be reassessed, with the new information provided by the Respondent. And this is where we are now.

[90] Ms. Constantinescu is still convinced that these reports are relevant. She claims that she was the victim of assault, harassment, discrimination, intimidation, abuse and conspiracy during her CTP-5 training at the Collège de Laval. She feels that she has been subjected to the same actions as the Edmonton employees and that the Presidia reports should be made available to the public. She believes that if the government spent public funds to investigate these allegations of harassment, it was not to then hide the findings.

[91] That is why she is asking for the disclosure of the investigation reports produced by Presidia, which relate to the same acts as those alleged in her complaint. Her objective is to demonstrate that CSC officials treated her differently. She agrees to have the names of the victims and the persons investigated redacted.

[92] She specifies that the threshold for arguable relevance is very low and that the tendency is towards more, not less disclosure (*Gaucher v. Canadian Armed Forces,* 2005 CHRT 42, at paragraph 11).

[93] The Complainant considers that she has a basic right to add all the new elements that have appeared since filing her complaint. She adds that her application is not speculative. She argues that the management of the Collège de Laval did not take appropriate measures in connection with her allegations of harassment.

[94] Ms. Constantinescu believes that the Presidia reports will help uncover CSC's mentality and its intention to conceal serious facts and differentiate adversely in relation to victims of harassment. She adds that the facts are similar between her complaint and the complaints of other victims at the Edmonton penitentiary and that CSC's modus operandi (way of operating) is the same.

[95] Finally, the Complainant raises several irregularities in the investigation conducted by CSC into her allegations of harassment, particularly with regard to the investigators, some alleged management interventions and applications for changes to the report. She believes that the disclosure of the Presidia reports will allow her to bring these irregularities to light. However, as I mentioned in the 2018 CHRT 17 ruling, at paragraph 28, Ms. Constantinescu will have to make such arguments at the hearing.

[96] Meanwhile, the Respondent is of the view that the Complainant is attempting to add new elements to her initial complaint, thereby preventing the expeditious resolution of the complaint by the Tribunal. The complaint, it argues, must find its final form so that it can move forward and be resolved (*Gergoulas v. Canada,* 2018 FC 652, at paragraph 155).

[97] Moreover, there is no rational connection, according to the Respondent, between the initial complaint and the documents sought and that Ms. Constantinescu is continually trying to broaden the scope of her complaint. The Respondent admits that Presidia, an outside firm, conducted an investigation at the Edmonton penitentiary. And that Ms. Constantinescu's allegations that Mr. Durdu had touched her breasts during her CTP-5 training prompted the Respondent to not hire an outside firm to investigate the matter.

[98] The Respondent believes it is speculative to say that CSC officials treated Ms. Constantinescu differently when they entrusted the mandate to the outside firm Presidia.

[99] The Respondent further believes that the Tribunal does not need these reports in order to rule on Ms. Constantinescu's allegations of discrimination and on CSC's actions in this whole matter.

[100] It adds that the Presidia reports contain personal and confidential information as they relate to specific individuals. Accordingly, the persons named in the reports expect these to remain confidential, in compliance with the *Privacy Act.*

[101] In light of the parties' arguments, the Tribunal finds that it is not necessary for Ms. Constantinescu to have access to the Presidia reports to meet the burden of proof for her case. I do believe that the Presidia reports are not relevant or useful to the dispute.

[102] I have already specified in section V(A)(ii) of this ruling (*Documents relating to workplace harassment complaints*) that comparative evidence is not essential to prove discrimination under the CHRA. Moreover, Ms. Constantinescu's complaint is not systemic and her allegations are very particular and specific.

[103] The Tribunal also wrote in this ruling about similar fact evidence and its restricted admissibility. It is not necessary to repeat these reasons here (section V(A)(ii) of this ruling).

[104] The Tribunal does not believe that evidence of past conduct or similar facts is required in the circumstances. As I mentioned, again in the 2018 CHRT 17 ruling, at paragraph 41:

> [41] Every complaint before the Tribunal must be judged based on the **specific and particular facts of the complaint itself that are admitted at the hearing.** As explained by the Tribunal in *Hewstan v. Auchinleck,* 1997 CanLII 699 (CHRT):
>
> > It would be objectionable for a tribunal to uphold a complaint based on past conduct alone and similar fact evidence **must**

> **never become a substitute for evidence supporting the allegations themselves.**
>
> [Emphasis added.]

[105] The Presidia reports, which, according to the Complainant, relate to alleged acts similar to those referred to in her complaint, are not relevant for the Tribunal's discharge of its function.

[106] In addition, the Tribunal has sufficient information on the Presidia reports to understand that they relate to investigations that took place in a different environment (penitentiary as opposed to training college), in a different province (Alberta as opposed to Quebec), with members of a different institution, different investigators and involving different individuals. The Tribunal does not need to consult the reports in order to find that the differences are significant enough to considerably dilute the probative value of these documents, such that their probative value does not outweigh the prejudicial effect of their disclosure (*Brickner*, supra).

[107] If such reports are disclosed for the purpose of presenting comparative or similar fact evidence, as Ms. Constantinescu alleges in her application, that will necessarily divert the debate. For example, the Respondent could attempt to submit as evidence the circumstances surrounding the production of these reports in a specific context, namely the Edmonton penitentiary. That is not the subject of the complaint.

[108] It is the conduct, decisions and actions of the Respondent with respect to the allegations contained in Ms. Constantinescu's specific complaint that will be analyzed by the Tribunal.

[109] This analysis will address a context and circumstances that are very specific, as to alleged events that took place at the Collège de Laval and that pertain specifically to this dispute. There is no question of analyzing or comparing what could have happened elsewhere, in another investigation, in another institution, with other individuals, with another institution, etc. Nor will the Tribunal be able to determine whether these reports serve as foundation for demonstrating how the investigation at the Collège de Laval

should have taken place if it does not hear evidence on the course of the investigations conducted by Presidia.

[110] It is the CHRA and the jurisprudence that serve as foundation and dictate the obligations of employers with respect to discrimination and harassment within their organization.

[111] The Tribunal finds that Ms. Constantinescu's application falls within the limits set out in *Brickner*, supra, and therefore must be dismissed.

[112] Finally, and despite the fact that this application is not really related to the Presidia reports, Ms. Constantinescu asks the Tribunal to publish on its website all the motions she has filed, in the interests of transparency and to allow the public to fully understand the facts contained in her case.

This application is irrelevant and unfounded. Only the Tribunal's decisions are published on its website, as with other courts and tribunals. However, if a member of the public wishes to have access to the submissions of the parties that led to a Tribunal decision, those submissions are available to the public, unless a confidentiality order is issued. The interested person may apply to the Tribunal for access. I therefore also dismiss this application.

VII. Application regarding the redaction of item #19 from the Respondent's list of documents

[113] On July 3, 2018, the Complainant filed an application for disclosure with the Tribunal. This application contained, in fact, a number of requests. Item #19 in her application was a request to receive [TRANSLATION] "copies of all correspondence and documents that were sent to other recruits in CTP-5/Que/2014, regarding the October 4 and 5, 2015 security breach, before the investigations began, during and after those investigations."

[114] According to the Complainant, the documents are part of a chronology of events that justifies their relevance. I will not go over the entire chronology, but suffice it to say

that during her training, a security breach within CSC occurred when shooting practices took place with the unauthorized loan of weapons. The Complainant believes there is a connection between her alleged elimination from the program and the events surrounding this breach.

[115] Item #19 gave rise to the disclosure of documents by the Respondent, which were comprised in its list of documents (Exhibits 91 and 92). However, the documents disclosed were redacted by the Respondent. Ms. Constantinescu believes that she is entitled to have an unredacted version of these documents. In her view, the redaction by the Respondent is excessive.

[116] The Complainant points out that it is not for the Respondent to determine whether or not information is relevant. She adds that the Respondent has destroyed, altered and is still hiding documents she is seeking, and believes that it is still trying to conceal facts by excessive redactions.

[117] Alternatively, Ms. Constantinescu offers that documents be disclosed without redaction and that a confidentiality order be put in place to protect the contents.

[118] Ms. Constantinescu adds that after her request of July 3, 2018, the Respondent also failed to disclose all relevant documents she requested.

[119] More specifically, she states that she wants to know the content of the testimony given by Ms. Bastien and Ms. Morin, two CSC officials, in the investigation into the breach of security. She believes that the breach of security led to her elimination from the program three days before graduation. She also wants to be apprised of the testimony of other recruits who participated in this investigation and who, like her, were involved in illegal shooting practices. She argues that she was not informed that an investigation was being conducted on the matter and that she should have been met with to testify like the other recruits. As a result, she feels that she did not have the same rights as other recruits. She adds that she is requesting this information because her safety was jeopardized when she participated in illegal shooting practices.

[120] Finally, she is of the view that the redaction of the documents prevents her from knowing whether the persons who led her to participate in the shooting practices told the truth (or not) in the course of the investigation. She believes there is a connection between this chain of events and her improper elimination from the program.

[121] The Respondent, for its part, finds that there is no connection between the additional documents requested, the redacted information and Ms. Constantinescu's complaint. The Respondent clarifies that this is why the documents were redacted, to include only what it felt was relevant.

[122] The Respondent adds that the information that has been redacted is excluded, as per the limits stated by the Tribunal, from the scope of the complaint. It relies on the 2018 CHRT 17 ruling (at paragraphs 15, 19 and 20) and the markers included therein.

[123] The Respondent, at paragraph 17 of its response to the application states that [TRANSLATION] "… the Respondent need not disclose what the Tribunal considered in its final decision to be irrelevant to the dispute." I would like to make it clear that I have issued a ruling explaining the difference between a final and interlocutory decision (2019 CHRT 49). It is clear to me that the 2018 CHRT 17 ruling is an interlocutory decision, not a final decision.

[124] Regardless, the Respondent states that it is not trying to conceal facts, but that it only discloses what is arguably relevant to the dispute. This prevents Ms. Constantinescu from having access to information that she ought not be privy to.

[125] The Respondent argues that the Complainant had access to the information concerning the illegal shooting practice and the breach of security following access to information requests. As a result of those requests, the Complainant gained access to information, which should not serve as a basis for her requesting disclosure in the Tribunal proceedings.

[126] The Respondent adds that the disciplinary investigation into Mr. Ouellet, the person who coordinated the illegal shooting practices, is not in the public domain. It states that

Ms. Constantinescu had not been informed of the details surrounding this investigation, and that such details are unrelated to the initial complaint.

[127] Finally, the Respondent considers that Ms. Constantinescu's argument that she is asking for these documents because she was allegedly involved in illegal shooting practices and her safety would have been jeopardized, is not relevant to the dispute. The Respondent notes that the Tribunal excluded these elements from the scope of the complaint.

[128] The Tribunal is of the opinion that some of Ms. Constantinescu's representations argue in favour of excluding what she is seeking from the scope of her complaint.

[129] In fact, everything relating to the safety of the Complainant, the legality of the shooting practices, the investigation of Mr. Ouellet and the details of the national inquiry were excluded from the litigation by the Tribunal (see 2018 CHRT 17, at paragraphs 15, 19 and 20).

[130] That being said, the Respondent argues that [TRANSLATION] "[t]he nature of the information disclosed through access [to information] cannot be used as an argument to order the disclosure of evidence as part of the disclosure process before the Tribunal, which is also subject to its own rules" (Respondent's representations dated February 28, 2019, at paragraph 10).

[131] It is true that the access to information process and the disclosure process of the Tribunal are two completely separate processes. What happens in the access to information process does not concern the Tribunal, and vice versa.

[132] Nevertheless, the Tribunal agrees with the Complainant that the correlation the Respondent is trying to establish between the nature of the information collected in the access to information process and its use in the context of disclosure, is incorrect and inaccurate.

[133] Whether documents were discovered through an access to information process or whether a person had access to the documents through a colleague, an anonymous source, on the Internet, or otherwise, unless there are restrictions or prohibitions on their

use, does not matter much. The Tribunal has repeatedly pointed out that the documents that are arguably relevant to a fact, a legal issue or a form of relief must be disclosed, no more and no less. The origin of the document has nothing to do with its arguable relevance.

[134] The Tribunal need not embark on a wide study of the jurisprudence on this subject: it is sufficient to mention that a certain number of decisions of various courts and tribunals support the idea that the use of information for contentious purposes is not a reason for refusing an access to information request (see for example *Wyndowe v. Rousseau,* 2008 FCA 39; *Canada (Information Commissioner) v. Canada (Minister of Citizenship and Immigration),* 2002 FCA 270; *Waterloo (Regional Municipality) (Re),* Order MO-3278, 2016 CanLII 1758 (ON IPC); *Central Southwestern District School Boards (Re),* Order MO-1924, 2005 CanLII 56386 (ON IPC).

[135] Thus, if Ms. Constantinescu had access to documents through her access requests, and those documents are arguably relevant to the dispute, she is free to use them, unless their use is restricted or limited. In this regard, the Respondent did not present any arguments to support the conclusion that the use of documents and information received in an access to information process should be restricted or limited in a contentious context such as ours.

[136] The Tribunal adds that it is well recognized that complaints before the Tribunal are subject to change. It is during the Tribunal process that complaints can sometimes be refined:

> [13] It is important to remember that the initial complaint does not serve the purposes of a pleading (*Casler v. Canadian National Railway Company,* 2017 CHRT 6 at para. 9 [*Casler*]; see also *Gaucher v. Canadian Armed Forces,* 2005 CHRT 1 at para. 10 [*Gaucher*]). Moreover, as explained in *Casler*:
>
> > [8] … [I]t must be kept in mind that filing a complaint is the first step in the complaint resolution process under the *Act*. … As the Tribunal stated in *Gaucher*, at paragraph 11, "[i]t is inevitable that new facts and circumstances will often come to light in the course of the investigation. It follows that complaints are open to refinement."

> [36] … As explained in *Gaucher* and *Casler*, cited above, the complaint filed with the Commission only provides a synopsis; it will essentially become clearer during the course of the process. The conditions for the hearing are defined in the Statement of Particulars.
>
> (*Polhill v. Keeseekoowenin First Nation,* 2017 CHRT 34, at paragraphs 13 and 36.)

[137] As such, the fact that Ms. Constantinescu learned certain facts following the filing of her complaint with the Commission, through access to information requests, does not prevent her from using these facts at the hearing. Complaints can be refined. And the Tribunal has indeed allowed the complaint to be expanded on certain aspects of the security breach (see 2018 CHRT 17, at paragraphs 15 to 20). The Tribunal also issued clear guidelines on what is excluded from the complaint.

[138] It should be noted that, conversely, **it is recognized that the use and application of documents received in the Tribunal's proceedings are limited.** This issue was addressed in my ruling in *Constantinescu v. Correctional Service Canada,* 2020 CHRT 3, at paragraphs 153 to 155:

> [153] Documents that have been disclosed in court proceedings, such as the Tribunal's, are governed by a well-established common law principle, that of the **implied undertaking of confidentiality**.
>
> [154] This rule restricts the use of documents that have been disclosed to the sole purpose of the proceeding in question. More clearly, a party who received documents at the stage of communication, disclosure, discovery, etc., is **deemed** to have given an undertaking to the Court that said documents will not be used for any purpose other than the judicial proceedings for which they were produced. The use, even ulterior, of these documents for other purposes can constitute contempt of court (*Seedlings Life Science Ventures LLC v. Pfizer Canada Inc.,* 2018 FC 443, at para. 3).
>
> [155] However, when documents are filed as exhibits at the Tribunal's hearing, they necessarily become public unless a confidentiality order is preventing their distribution (subsection 52(1) CHRA). In that respect, a member of the public may file an application with the Tribunal to have access to it.

[139] Unless there is a compelling argument to the contrary, I consider that a member of the Tribunal has no authority to declare contempt of the Tribunal, despite the use of

documents in a manner inconsistent with the implied undertaking of confidentiality. The parties are also aware of my views on this matter.

[140] However, the Supreme Court clarifies that a stay or dismissal is also a remedy available to courts and tribunals if a party breaks the implied undertaking of confidentiality (*Juman v. Doucette,* 2008 SCC 8, at paragraph 29 [*Juman*]). It further points out that this commitment continues even after the end of the proceedings (*Juman,* supra, at paragraph 51).

[141] Finally, it should be noted that the Tribunal has traditionally recognized that the implied undertaking of confidentiality rule applies to its own proceedings (see, among others, *Public Service Alliance of Canada (Local 70396),* 2004 CHRT 38; *Warman v. Canadian Heritage Alliance,* 2006 CHRT 31; *Valenti v. Canadian Pacific Railway,* 2017 CHRT 31).

[142] Now, the Tribunal understands that the documents were redacted by the Respondent and that the Complainant is requesting access to the unredacted versions, believing that the documents are arguably relevant to the dispute.

[143] It is unfortunate that the parties did not include these documents with their representations (Exhibits 91 and 92). As a result, I do not have any physical documents that would allow me to have a good understanding of what the parties are referring to. I have just a brief description from Ms. Constantinescu in her representations, which is not in itself very helpful.

[144] It is difficult to assess the arguable relevance of documents when the Respondent unilaterally decided to redact them. This makes it arduous, if not impossible, to determine whether what has been redacted is relevant or not.

[145] Of course, the Respondent does not actually provide any details in its written representations or any explanation of what was redacted. This makes sense, as otherwise there would be no advantage to redacting the information.

[146] The Tribunal finds itself having to decide a disclosure issue, without really understanding what it is. I find that Ms. Constantinescu's application should be given

further consideration and that the Respondent's arguments do not convince me that Ms. Constantinescu's application should be dismissed.

[147] As I have said many times, it is clear that only documents that are arguably relevant to a fact, a legal issue or a form of relief must be disclosed. However, the Tribunal must have enough information to make an informed decision. Without knowing what the redacted information is, it is difficult to determine whether or not it is relevant.

[148] In that context, it would be imprudent to render a decision at this stage. I will read the documents in question and decide whether or not they are relevant to the dispute, as the Respondent has proposed in the alternative.

[149] For these reasons, I order the Respondent to provide the Tribunal with the documents in question **in hard copy**.

[150] It must submit 2 versions of the documents: (1) the non-redacted version and (2) the redacted version. This will allow the Tribunal to clearly identify what is at stake in this application.

[151] The documents must be sent to the Tribunal Registry **by mail**. The documents must be clear, legible and well divided, as appropriate. Once the Tribunal has ruled on the issue, copies of the documents provided by the Respondent will be destroyed.

[152] Let me be clear: these documents are not part of the Tribunal's official record and will not be distributed. The only purpose of the communication is to allow a ruling on the arguable relevance, in the context of Ms. Constantinescu's application.

[153] I will make a ruling at a later date.

[154] Finally, Ms. Constantinescu specifies in her application that the Respondent has not disclosed all relevant documents relating to item #19 requested in her motion dated July 3, 2018. She explains that some documents are missing but does not identify which.

[155] The Tribunal has no other representation from the Complainant on this issue. She does not specify what other documents she is seeking or which documents are missing. In

this motion, Ms. Constantinescu had the opportunity to make full representations in this regard and she failed to do.

[156] It should also be noted that the application appears to be rather hasty in that a number of elements were redacted by the Respondent in its disclosure of documents relating to item #19. Ms. Constantinescu argues that she is missing documents when she does not yet have the complete and unredacted documents. Consequently, it appears that the Complainant's supplementary application is speculative.

[157] For these reasons, I will dismiss this part of the Complainant's application.

VIII. Application regarding a screenshot dated November 6, 2018

[158] The Respondent included Exhibit 95 in its list of documents. This exhibit is labelled *Screenshot_HRMS 93557*.

[159] In connection with this screenshot, the Complainant requested additional information, including:

1) The meaning of this document;
2) The date this document was created;
3) The conditions of its creation;
4) The relation between this document and the human resources request referenced *HRMS 93557*;
5) Information regarding the *2014-PEN-EA-PRA-93557* selection process;
6) The relation between this selection process and the Complainant, and its date;
7) The relation between this selection process and the 2013-PEN-EA-NAT-68703 selection process.

[160] The Complainant claims that several pieces of information were missing from her CSC application file. She indicates that she asked the Respondent for explanations for the

missing or erroneous information (for example, dates), the confusion surrounding her results and of the human resources request related to a conditional offer of employment at the Edmonton penitentiary.

[161] She considers that the Respondent's screenshot (Exhibit 95), without further documentation, only adds to the confusion. According to her, the Respondent is concealing documents from her. She also wants to prevent the Respondent from destroying or altering documents.

[162] Ms. Constantinescu also claims to have received several documents through her access to information requests. She believes that while the Tribunal's access to information and disclosure processes are different, as I have reminded the parties countless times, the two processes must converge towards a single outcome: full disclosure of all relevant documents and information prior to hearings.

[163] In its representations, the Respondent confirms that it disclosed three additional screenshots in connection with Exhibit 95. It states that this completes all the information it has to date about this exhibit.

[164] Moreover, the Respondent believes that the Complainant is not seeking documents, but rather details about the exhibits. These details will be made available during the examination and cross-examination of witnesses. It argues that the details sought by the Complainant are best addressed in the context of the presentation of the evidence at the hearing rather than the disclosure process.

[165] The Respondent, relying on *Brickner*, supra, at paragraph 10, adds that the disclosure obligation is limited to the documents in its possession, and that the Tribunal cannot order it to produce or create new documents for the purpose of disclosure.

[166] Ms. Constantinescu provided a chronology of events related to her application to a CSC correctional officer position in 2013, examinations and tests, recruitment, liaison with human resources, and other subsequent proceedings, up to 2014.

[167] Ms. Constantinescu alleges that when she was trained at CTP-5 in 2014, the selection process applicable to her had a specific number. However, in 2018, she was

allegedly assigned a new selection number at the same time that the security breaches occurred at the College (for facts on the security breach, see ruling 2018 CHRT 17, at paragraphs 11 and following). I understand that CSC would have given her a number retroactively to 2014, which, in her view, is inconsistent.

[168] The Complainant states that she is not only asking for information, but also for documents, contrary to what the Respondent's claim. She further submits that the Respondent did not deny the existence of the documents she is seeking and is objecting by all means possible to her application in order to avoid disclosing the documents she is requesting. According to her, the Respondent is trying to deny her access to justice, shielding its employees and managers from the abuses they have committed. She also questioned CSC's willingness to offer her a position at the Edmonton penitentiary.

[169] Finally, the Complainant says that for the evidence to be established, she must first have access to that evidence. This is why she is asking for access to the documents she is seeking.

[170] The Tribunal finds that the Complainant's arguments are not convincing. She says that in her application, she is not just seeking clarifications, details and information, but also documents.

[171] However, it is clear to the Tribunal, upon examining Complainant's application, that she is indeed seeking information, details and clarifications on the screenshot, rather than documents.

[172] It is helpful to recall what she is applying for:

1) The meaning of this document;
2) The date this document was created;
3) The conditions of its creation;
4) The relation between this document and the human resources request referenced *HRMS 93557*;
5) Information regarding the *2014-PEN-EA-PRA-93557* selection process;
6) The relation between this selection process and the Complainant, and its date;

7) The relation between this selection process and the 2013-PEN-EA-NAT-68703 selection process.

[173] All of Ms. Constantinescu's requests are in fact for information that will probably come out of the testimonies provided by the various witnesses at the hearing (service, date of creation, conditions of creation, etc.).

[174] It falls to the witnesses to explain the meaning of the screenshot, its date and conditions of creation, the relation to the human resources request and the other selection processes, and so on.

[175] The Respondent also disclosed three additional screenshots in connection with this first one. At this stage, screenshots, without any details from the witnesses who will be able to put these documents in context, remain only screenshots, that is, a simple image of a screen. Without information from a witness, it can be difficult, if not impossible, to understand the content and context.

[176] As I have pointed out many times, at the disclosure stage, documents are not yet evidence. Documents become evidence when they are accepted by the member at the hearing (subsection 9(4) of the Rules).

[177] Generally, documents are put into evidence during the examination or cross-examination of witnesses. A witness is then able to explain the document, put it in context, say what he or she makes of it, and so on.

[178] The Tribunal may also consider, on the basis of the parties' arguments, the authenticity, integrity and reliability of the documents before it. It is after this analysis that the Tribunal may accept a document into evidence (paragraph 50(3)(c) CHRA). This is called the presentation of the evidence (adducing the evidence).

[179] I can understand that the screenshot submitted by the Respondent may raise questions for the Complainant and that is why there will be witnesses at the hearing to enlighten her on this matter.

[180] As for the access to information argument, anything that has to do with access to information is not relevant to the Tribunal's process. If Ms. Constantinescu is making multiple applications to various authorities for access to documents, she is free to do so. The Tribunal is unrelated to the access to information processes, whatever the reasons, grounds or results that a person seeks in making such requests.

[181] I find that what the Complainant is requesting does not fall within the scope of the Tribunal's disclosure process and that she will be able to call any witnesses she wishes to obtain the explanations she is seeking on the screenshots of the Respondent.

[182] For all these reasons, I dismiss this motion of the Complainant.

IX. Application regarding notes from recruits who participated in the September 5, 2018 CTP-5/2014 training

[183] The Complainant requests disclosure of the notes from recruits who participated in the CTP-5-2014 training. In fact, these notes correspond to what we could describe as a logbook or a journal.

[184] It must be understood that trainers maintain logbooks for each recruit participating in the training. In these logbooks, trainers annotate the conduct of recruits and their progress. Recruits do not make notes in these books; they are for the use of trainers only.

[185] Ms. Constantinescu alleges that her logbook contains more negative annotations from the trainers than the other recruits who took the training with her. She argues that after reporting the alleged sexual harassment and the comments from some recruits about her origins, negative annotations in her own book increased, which is what would have led to her failing the training.

[186] The Complainant is asking for access to those logbooks to compare the unfavourable treatment she received with the treatment of other recruits.

[187] The Tribunal understands that Ms. Constantinescu has already received the logbooks of all recruits as a result of an access to information request. These books have been redacted, with the names, photos, and most importantly, the annotations/comments

included in the information that was suppressed. These books include those of two recruits who are more involved in this complaint, that is Mr. Durdu and Mr. Hevey. The Complainant is able to determine that their books contain 2 and 3 annotations respectively, while hers has 14. She is also able to see that the logbooks of other recruits, although redacted, do not contain as many annotations as her own.

[188] The Complainant agreed to receive the entire logbooks of the other recruits without the names being disclosed. According to her, these books could show that the way she was treated during the training was different than for other recruits.

[189] She adds that when Mr. Hevey made comments against her that she considers were discriminatory, other recruits were present. She wonders if these people could have reported such actions to management, in which case there might be annotations in their respective books. Further, some recruits allegedly said they thought that the Complainant was ill, which, she believes, might also have been reported in their logbooks.

[190] She also believes that the first negative annotations were made at a specific time, a few days after the events involving Mr. Durdu and Mr. Hevey and the security breach.

[191] According to the Respondent, the Complainant's application relates to documents that are not relevant to her complaint. It believes that the Tribunal's ruling in *Brickner*, supra, is relevant in that the Complainant's application is speculative, fanciful, disruptive, unmeritorious, obstructive and time-consuming.

[192] It argues that it was the responsibility of the Complainant to demonstrate a rational connection between the documents sought and her complaint, which, in its view, was not done.

[193] The Respondent adds that the redacted version of the logbooks that Ms. Constantinescu received following an access to information request was not subject to the same process. The access division is not looking at the relevance test.

[194] The Respondent clarifies that, in its view, the only argument the Complainant is trying to make with the logbooks is that she was treated differently based on the number of

annotations. This means that the redacted versions are sufficient for this purpose: they show the date of the annotation and the name of the author.

[195] The Respondent adds that the redacted versions were redacted for confidentiality reasons. Names, photos, comments were redacted pursuant to subsection 19(1) of the *Access to Information Act,* [TRANSLATION] "… but also in terms of their relevance in the disclosure process before the Tribunal."

[196] From the outset, the connection made by the Respondent's between redacting personal information and the relevance test in our process is inaccurate. The Tribunal is not subject to the access to information process. If information is redacted in this process, it is redacted to meet the requirements of the legislation governing access to information held by public bodies. It has nothing to do with the Tribunal's process. It is before the Tribunal that the relevance test applies.

[197] And as the Tribunal mentioned earlier, if Ms. Constantinescu receives documents through another process, no one has convinced me that she is prevented from using them to support a fact, a legal issue or a form of relief, in the hearing of her complaint. Caution: the reverse is not true, given the implied undertaking of confidentiality rule.

[198] The Tribunal must simply determine whether the documents sought are arguably relevant to the dispute. The fact that access to information has determined something else does not in any way change the analysis that the Tribunal must do.

[199] Nevertheless, we must remain sensitive to the disclosure of information that would otherwise be personal. In this case, the information concerns third parties, who are not parties to the Tribunal's case. This must be kept that in mind. Ms. Constantinescu agrees that personal information should remain redacted, which is reasonable in the circumstances.

[200] Now, are the logbooks of the recruits, which have been filled out by the trainers, arguably relevant to the dispute? In my opinion, yes.

[201] Ms. Constantinescu denounced alleged touching and discriminatory comments to CSC management. After that denunciation, a series of actions and events followed. The

Respondent, she argues, acted improperly after her denunciation. It allegedly hid events from her, failed to reimburse her, intervened in the investigation that was carried out following the touching, and so on. She believes that the actions and conduct of the Respondent were intended to eject her from the program. As a result, she did not have access to the position of correctional officer.

[202] Going back to Ms. Constantinescu's initial complaint dated October 2015, I note that she clearly mentions the annotations that she considers unfair, exaggerated, and which have increased after her denunciation. She also states that other recruits were aware of or witnessed the events that occurred (alleged touching and comments). She further states that negative annotations increased in an effort to eliminate her from the program.

[203] In light of the initial complaint and the Tribunal's understanding of the recruits' logbooks that are annotated by the trainers, I find that the information they may contain is arguably relevant. The Tribunal must address not only section 14 of the CHRA in relation to the harassment experienced and the maintenance of an environment that is free from it, but also the adverse treatment that Ms. Constantinescu allegedly received in the course of her employment (subsection 7(b)) CHRA). The annotations in the other recruits' logbooks can shed some light on this.

[204] Let me note again that at this stage, the objective is not to engage in a thorough and detailed analysis of the merits of the Complainant's allegations. She will still have to meet the burden of proof for her case at the hearing (see *Moore*, supra).

[205] I hereby order that the logbooks of the recruits who participated in the CTP-5/2014 training with Ms. Constantinescu be disclosed in their entirety, including all comments and annotations, **with the exception of personal information** therein (e.g., name, photo, address, email address, telephone number, other personal identifiers).

[206] With respect to the Complainant's application for notes taken during the CTP-5 training, including notes in the participant's manuals or personal notes, for all recruits, I have already issued an order on the issue on August 31, 2018. In that order, I stated that

the application for notes that may have been taken by other candidates at the CTP-5 training was speculative and amounted to a fishing expedition.

[207] Ms. Constantinescu hereby reiterates her request that certain documents from the recruits themselves, including notebooks used to do their homework.

[208] The Complainant did not show sufficient grounds to justify altering this ruling. There is no reason, no circumstance, that justifies my altering that ruling. I therefore dismiss this request.

[209] Finally, the Complainant also appears to be requesting notes taken at the CTP-5 training, including notes in the participant's manuals and personal notes, for all recruits, taken by CSC or its employees or trainers.

[210] This request is extremely broad, imprecise and speculative. I find that it falls within the limits that the Tribunal may impose on the disclosure of documents (see *Guay*, supra, at para. 43. See also *Brickner*, supra).

[211] On the other hand, I would add that the parties exchanged a great deal of documents, including a number of emails and letters, that come directly from CSC, its employees and management. Thus, this broad request includes several documents that have already been received by Ms. Constantinescu.

[212] For these reasons, I dismiss this application.

X. Application regarding Mr. Ouellet's fees

[213] During her CTP-5 training, the Complainant, along with other colleagues, took part on October 4 and 5, 2014 in private shooting practices organized by a CSC employee and non-member of the College, Mr. Reno Ouellet, for a sum of money. I understand that these practices were in fact not authorized by CSC.

[214] The use of weapons in such practices led to a safety breach at the Armoury of the Regional Reception Centre and investigations into the breach. To be clear, I determined in

my 2018 CHRT 17 ruling that these elements do not form part of Ms. Constantinescu's complaint.

[215] Incidentally, Ms. Constantinescu alleges that the colleagues who took part in the practices and paid money to Mr. Ouellet money were reimbursed, whereas she was not. She would as such have been treated differently.

[216] She is asking for specific information:

(1) Why is the name of another recruit, who was not involved in the shooting practices, on the list of recruits who were reimbursed;

(2) The Respondent's justification as to why she was the only recruit who participated in the shooting practices who was not reimbursed;

(3) Documents showing who made the decision to reimburse these sums;

(4) The method of reimbursement;

(5) The reasons why reimbursement of these sums extended over a period of 3 years;

(6) Documents demonstrating Mr. Ouellet's efforts to reimburse recruits that have been recorded in the appropriate CSC records.

[217] The Respondent claims to have conducted checks in relation to the reimbursement of Mr. Ouellet's fees to recruits who had participated in the shooting practices. It confirms that documents were disclosed.

[218] Nevertheless, according to the Respondent, this disclosure resulted in additional requests for disclosure by Ms. Constantinescu. She would not have established a rational connection between the documents sought and her initial complaint.

[219] The Respondent claims that the Complainant seeks information foremost, not documents. The information that is sought will be available through the testimony of the various witnesses, including Mr. Ouellet.

[220] The Respondent further claims that there are no appropriate CSC records, as sought by the Complainant in item (6). Moreover, certain documents sought by the Complainant would be beyond the scope of her complaint, including documents showing who made the decision to reimburse the recruits.

[221] The Respondent does not believe that the reimbursement of the fees collected has any connection with the initial complaint, nor with the expanded complaint. The Respondent thinks that the Complainant learned that private shooting practices were problematic when she requested information through the access to information process. Thus, the connection she makes between what happened during these practices and her initial complaint does not exist.

[222] Again, some of Ms. Constantinescu's requests are indeed for information, not documents. For example, when she asks why, the justification, the mode, the reasons, it represents a search for information, which is not the objective, at this disclosure stage.

[223] The Complainant believes that naturally, information is contained in documents. That is sometimes true. Nevertheless, documentary evidence is only one form of evidence among many others. As such, testimony at the hearing also forms an important part of the evidence. Testimony equally contains information. It is therefore necessary to qualify.

[224] The Tribunal shall not either repeat the comments made under section VII of this ruling, to the effect that this information will come out of the examination and cross-examination of witnesses, including Mr. Reno Ouellet himself.

[225] Without ruling at this stage on the merits of the allegations, the Tribunal is indeed of the opinion that the question of the reimbursement of Mr. Reno Ouellet's fees, as Ms. Constantinescu contends, may have a connection with the initial complaint.

[226] I have already stated in my 2018 CHRT 17 ruling that:

> [19] In this regard, the Tribunal will not go into the details of the investigation that was conducted regarding Reno Ouellet and the security breach or the details of the subsequent national inquiry. To be clear, I do not intend to allow the complaint to be sidetracked with respect to the composition of the investigations, their mandates, how they were conducted, their conclusions

> or their recommendations. The Tribunal has no jurisdiction to review these investigations. I find that they are not relevant to the issues in dispute in this case.
>
> [20] Similarly, the Tribunal will not hear evidence on the legality of the shooting practices of October 4 and 5, 2014, about the number of instructors required to conduct shooting practices and on the legislative and regulatory standards with regard to the safety of such practices. Neither will the Tribunal hear evidence on the skills necessary to conduct shooting practices. I believe that these aspects are not related to the original complaint and are not relevant to the dispute.

[227] The reasoning still stands. What may be relevant, however, is how the Respondent handled the situation, where Ms. Constantinescu argues that the Respondent treated her differently than the other recruits, since they were reimbursed and she was not. It is this continuum of incidents that occurred between the Complainant and the Respondent that will be the subject of evidence at the hearing.

[228] As I wrote in my 2018 CHRT 17 ruling, at paragraphs 12 to 15:

> [12] The new facts alleged are part of a continuum of incidents that already occurred between the Complainant and the Respondent. I recall that the original complaint began with alleged incidents such as degrading comments made in class by a co-worker and a pat-down search. The alleged incidents are just the beginning of Ms. Constantinescu's complaint. Further to these incidents, the Complainant also alleges that many other incidents occurred, which were allegedly perpetrated by the Respondent and that she considers discriminatory.
>
> [13] The way that the incidents surrounding the security breaches, shooting practices and the investigation were handled by the Respondent is just another part of the plethora of discriminatory allegations made by the Complainant. Once again, she considers that the Respondent, in its handling of the shooting practices, security breach and subsequent investigations, continued in this direction—namely of continuing to commit other discriminatory practices against her. This necessarily constitutes a nexus with the original complaint.
>
> [14] I also agree with Ms. Constantinescu that the Tribunal has jurisdiction to expand and refine the complaint initially filed with the Commission. The Tribunal also has the authority to restrict and limit the scope of the complaint.

> [15] That said, I am open to giving the Complainant flexibility in order to provide evidence of these alleged incidents. For example, the Complainant submits that the Respondent knowingly concealed facts from her about security breaches, but allegedly did not do so with the other recruits. She also submits that the Respondent asked the other recruits not to inform her of the circumstances surrounding those incidents. She also alleges that the way the Respondent acted contributed to her being eliminated from the CTP 5 program. She believes that these are discriminatory practices by the Respondent. Once again, without determining whether these allegations are founded, I am of the opinion that there is a nexus with the original complaint. I authorize the Complainant to adduce evidence regarding this matter.

[229] The same comments apply here. It is not the collection of Mr. Reno Ouellet's fees when the practices were illegal, nor is it the reimbursement in itself of sums that should not have been collected, that is relevant in this case.

[230] Rather, it is the manner in which the Respondent treated Ms. Constantinescu compared to other recruits in relation to these reimbursements and as a result of the events, that is relevant.

[231] However, I agree with the Respondent that the disclosure of documents demonstrating whose decision it was to reimburse recruits is not relevant to the dispute. In support of her application, Ms. Constantinescu filed confirmations (or refusals) of reimbursement to recruits who participated in the practices. That seems sufficient to me. Whether Mr. Reno Ouellet or a CSC officer decided that the money should be reimbursed does not add anything to the litigation. The fact is that reimbursements (or refusals of reimbursement) have taken place.

[232] Finally, the Complainant requests documents demonstrating the steps taken by Mr. Ouellet to reimburse the recruits, which were recorded in the appropriate CSC records.

[233] On the one hand, the Respondent claims that such records do not exist. Indeed, there is nothing in the evidence that allows me to agree that such records do exist. It is also difficult to establish whether it was Mr. Reno Ouellet who directly reimbursed the recruits or whether it was CSC that made the reimbursement. In either case, it is not determinative in this case.

[234] The steps taken by Reno Ouellet to effect reimbursement also appear to me to be irrelevant to this case.

[235] For all these reasons, I dismiss this application of the Complainant.

XI. Ruling

[236] For the above reasons, the Tribunal:

[237] SUSPENDS the request for disclosure of documents relating to the report of investigators Ms. Poirier and Mr. Anctil;

[238] DENIES the request for documents relating to the 65 investigations into workplace harassment complaints between 2016 and 2018;

[239] DISMISSES the application regarding the Presidia reports;

[240] With respect to the application regarding the redaction of item #19 from the Respondent's list of documents, the Tribunal:

- ORDERS the Respondent to forward the documents at issue to the Tribunal in the following manner:
    - in hard copy,
    - the 2 versions of documents must be forwarded: (1) the non-redacted version and (2) the redacted version,
    - the documents must be sent to the Tribunal Registry, by mail, and **be filed with the Tribunal Registry no later than 4:00 p.m. on March 27, 2020**,
    - the documents must be clear, legible and well divided, as appropriate;
- CONFIRMS that once the Tribunal has ruled on the arguable relevance of the redacted documents, copies of the documents provided by the Respondent will be destroyed;

[241] DISMISSES the application regarding a screenshot dated November 6, 2018;

[242] PARTLY GRANTS the application regarding notes from recruits who participated in the CTP-5/2014 training and:

- ORDERS the Respondent to disclose, **by March 27, 2020,** the logbooks of the recruits who participated in the CTP-5/2014 training with Ms. Constantinescu, including comments and annotations, **with the exception of personal information** therein (e.g., name, photo, address, email address, telephone number, other personal identifiers).

[243] DISMISSES the application regarding Mr. Ouellet's fees.

Signed by

Gabriel Gaudreault
Member of the Tribunal

Ottawa, Ontario
March 6, 2020

Canadian Human Rights Tribunal

Parties of the case

Tribunal record: T2207/2917

Style of cause: Cecilia Constantinescu v. Correctional Service Canada

Date of the Tribunal's ruling: March 6, 2020

Motion dealt with in writing without appearance of the parties

Written representations by:

Cecilia Constantinescu, for the Complainant

Paul Deschênes and Patricia Gravel, for the Respondent