

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2020 CHRT 8
Date: April 16, 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

[1] This ruling of the Canadian Human Rights Tribunal (Tribunal) is further to an order issued on March 6, 2020, in which I ordered Correctional Service Canada (Respondent or CSC) as follows:

[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;

[2] The Tribunal received the documents by mail in a sealed envelope, as ordered and within the time allotted.

[3] To ensure proper understanding, it is important to bear in mind that Ms. Constantinescu (Complainant) filed a request for disclosure (item #19) on July 3, 2018, regarding the Respondent's exhibits 91 and 92.

[4] The Complainant received versions of exhibits 91 and 92 from the Respondent, but the versions received were redacted. Without repeating all of the parties' submissions in

this regard (see Tribunal ruling *Constantinescu v. Correctional Service Canada*, 2020 CHRT 4, at paragraphs 113 to 157), suffice it to say that the Complainant was requesting the full version of the documents because she believes them to be arguably relevant to the dispute.

[5] The Respondent, however, considers that the redacted information has no connection with Ms. Constantinescu's complaint. Since there is no arguable relevance, it redacted irrelevant information. It adds that the information was redacted in order to comply with a Tribunal order on the scope of the complaint in *Constantinescu v. Correctional Service Canada*, 2018 CHRT 17.

[6] Now that the Tribunal has been able to review the redacted and unredacted versions of the documents, it can make an informed decision on the matter and determine whether the information that was redacted is indeed relevant to the dispute or not.

[7] For the following reasons, the Tribunal grants the Complainant's request in part and orders the Respondent to disclose certain specific items of its exhibits 91 and 92.

II. Law

[8] The principles of disclosure in our procedure are well established. *Malenfant v. Vidéotron S.E.N.C.*, 2017 CHRT 11, at paragraphs 25 to 29 and 36, provides an overview of these principles:

[25] Each party has a right to a full hearing. In 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 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 party (*Guay v. Royal Canadian Mounted Police*, 2004 CHRT 34, para. 40). The Rules of Procedure of the Canadian Human Right Tribunal (the Rules) provide as follows in Rule 6(1), and more specifically at paragraphs (d) and (e):

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 potentially 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).

III. Analysis

[9] The Respondent's list of exhibits contains exhibits 91 and 92. Exhibit 91 is called [TRANSLATION] "Notes of the Investigators in the Disciplinary Investigation of Reno Ouellet", while Exhibit 92 is entitled [TRANSLATION] "Report on the Disciplinary Investigation of Reno Ouellet (redacted version)".

[10] Upon reading the descriptions of exhibits 91 and 92 prepared by the Respondent, it appears that the investigators' notes enabled them to prepare their report. Therefore, it is reasonable to think that exhibits 91 and 92 are intrinsically related, considering their nature.

[11] Specifically, the notes and the report concern allegations of misconduct by employees and/or recruits of Correctional Service Canada, Quebec Region. In other words, it is an investigation that could be described as a disciplinary one. And one of the

individuals investigated was Reno Ouellet, who is not a defendant in Ms. Constantinescu's complaint, but whose name has come up a number of times in our proceedings.

[12] Regarding Mr. Ouellet's disciplinary investigation, I previously summarized the events surrounding that investigation as follows, in ruling 2020 CHRT 4, at paragraphs 213 and 214:

[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.

[13] It must be added that another ruling in this same matter dealt specifically with the scope of Ms. Constantinescu's complaint and the events surrounding that disciplinary investigation (see ruling 2018 CHRT 17).

[14] In particular, clear guidelines were established regarding the facts surrounding the complaint, and a number of aspects were excluded from its scope. Also in ruling 2020 CHRT 4, I summarized the scope of the complaint as follows:

[226] I have 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 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 any evidence about the legality of the shooting practices on October 4 and 5, 2014, about the number of instructors required to conduct shooting

practices or on 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 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 the 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.

[15] Therefore, the arguable relevance of the Respondent's exhibits 91 and 92 must be analyzed on the basis of the guidelines issued by the Tribunal and the events surrounding Mr. Ouellet's disciplinary investigation, the security breach, the reimbursement of the fees, and so on.

[16] If the items contained in the investigators' report and notes fall within the scope of Ms. Constantinescu's complaint, as set out in both her initial complaint and her statement of particulars, **and above all** within the guidelines developed by the Tribunal in its decisions, these items are therefore arguably relevant to the dispute and will have to be disclosed without redactions.

[17] Conversely, if the items are outside the scope of the complaint and are unrelated to it, they are therefore not arguably relevant to the dispute and will not have to be disclosed.

A. Exhibit 92 – Report on the Disciplinary Investigation of Reno Ouellet (redacted version)

[18] Specifically, the Respondent's Exhibit 92 is in fact the investigation report dated December 8, 2014, written by a board of investigation established to deal with allegations of misconduct by employees and/or recruits of Correctional Service Canada, Quebec Region.

[19] It stands to reason, in my opinion, to start with the investigation report itself, Exhibit 92, since this is the outcome of an entire investigation process. The report, as written, provides an overview of what the investigators' notes (Exhibit 91) contain because the latter were taken during that process and were used to produce that report.

[20] Upon reading the report itself, I note that it contains a number of items that the Tribunal excluded from the scope of the complaint. In addition, the report also pertains to individuals who have nothing to do with the complaint and our proceedings. All of these items are necessarily considered not arguably relevant to the dispute.

[21] For a clearer understanding of this report, I will analyze it page by page and, without disclosing any items not arguably relevant, I will indicate whether the redaction must remain in whole or in part and, in turn, whether certain items must be disclosed unredacted.

- **Title Page (not numbered)**

[22] The redacted item pertains to an individual not included in the complaint. This is not arguably relevant to the dispute, so the redaction remains.

- **Table of Contents (not numbered)**

[23] The table of contents was not redacted and provides a good overview of each part of the report.

- **PART I – Background (page 1)**

[24] I find that the Respondent could have released some specific items in this section to give readers of the fully redacted version a general understanding of the subsequent items of the report that are not redacted.

[25] Some items are arguably relevant to the extent that, without that information, the subsequent items become meaningless; the [TRANSLATION] “Background” section is important because it essentially explains the nature of the report.

[26] I do understand that the Tribunal will not get into the details of the investigation as set out in its ruling 2018 CHRT 17, at paragraph 19, but a document without context, without a minimum of information, loses some of its very essence. Some items could have been released by the Respondent without those items becoming the focus of an analysis by the Tribunal or exceeding the scope of the complaint.

[27] Therefore, I find that some of the background items are relevant and that careful disclosure is sufficient for understanding the nature of the report and the subsequent items, all without exceeding the scope of the complaint or disclosing sensitive information that must remain protected.

[28] As such, the Respondent must remove its redaction for the following items:

[TRANSLATION]

On October 4, 2014, Reno Ouellet, an employee serving as a correctional officer, he He allegedly used firearms and/or other equipment to provide, in a personal capacity, at Correctional Service Canada facilities, training sessions . . . on firearms to Staff College recruits, for compensation.

. . .

The above-mentioned employees . . . and/or recruits may have acted in a manner inconsistent with CSC policies regarding the use of firearms and/or the use of CSC property

. . . issued a convening order on October 17, 2014, and asked Josée Brunelle . . . and Sandro Bartucci . . . to investigate the situation.

. . .

[29] For the remainder, the redaction is maintained because the items are not relevant to the dispute.

- PART II – Purpose of Investigation (page 2)

[30] The same comments as for the background are in order regarding the purpose of the investigation. I will not repeat the comments set out in the previous paragraphs.

[31] That being said, the Respondent could have released certain very specific items so that the reader could understand the scope of the report in general, without exceeding the scope of the complaint or disclosing protected information.

[32] As such, the Respondent must remove its redaction for the following items:

[TRANSLATION]

The purpose of this investigation is to determine whether there is any substance to the allegations of misconduct regarding Reno Ouellet . . . or recruits. . .

[33] The remaining items are not relevant to the dispute, and their redaction is therefore maintained.

- **PART III – Individuals Interviewed or Consulted (page 3)**

[34] It is quite clear from the title that this section contains a list of individuals interviewed or consulted during the investigation.

[35] A number of individuals on that list are not involved in the complaint or the Tribunal's proceedings. The information about them is not relevant to the dispute.

[36] For the other individuals whose names were not redacted by the Respondent (Isabelle Bastien, Yannick Bouthillier, Reno Ouellet and Mr. Parent), they are involved in the facts of the dispute and will all be called as witnesses at the hearing. That being said, it must be pointed out that they personally are not respondents in the case. As such, the items pertaining to them in this part are arguably relevant to the dispute and have not been redacted.

[37] No further action is required for this part.

- **PART IV – Employee Profiles (page 4)**

[38] This section involves information about the employment status of employees involved in the events leading to this disciplinary investigation.

[39] The Respondent rightly redacted all the items in this part.

[40] Indeed, I believe that this information adds nothing further to the dispute and is not relevant in this case.

[41] No further action is required.

- **PART V – Narrative – Testimonies (page 5)**

- **Pages 5, 6 and 7**

[42] The Respondent redacted the title of this section, which starts on page 5. In my opinion, the title of this section, which was not redacted in the table of contents and indicates that this part starts on page 5, should have been disclosed.

[43] The redaction of the title of page 5 [TRANSLATION] “PART V – Narrative – Testimonies” must be removed by the Respondent.

[44] In the same vein, I note that several other titles in the report were also redacted, whereas the table of contents discloses the exact location, the page, where each section begins.

[45] The Respondent has access to the unredacted version of the report. This makes it an informed reader, who can use the structure of the document to help it understand the contents. In the redacted version provided by the Respondent, the document’s structure was greatly affected. I can understand that a reader looking at this redacted document will have difficulty figuring out where they are, and the table of contents, while helpful, does not completely remedy this shortcoming.

[46] I am of the opinion that, since the Respondent disclosed the entire table of contents, all of the document’s titles should also have been disclosed.

[47] Instead, the Respondent removed the pages that were completely redacted and replaced them with blank pages indicating that the content is not relevant. This does nothing to maintain some structure in the report.

[48] For these reasons, the Respondent must remove the redaction from all titles in the report and follow the Tribunal’s directions regarding what items must remain redacted or not.

[49] That being said, the rest of the content on page 5, as well as all of page 6 and the beginning of page 7, concern an individual who is not involved in this dispute. These items are therefore not relevant to the dispute.

[50] Page 7 contains items concerning Mr. Ouellet. I agree with redacting the third paragraph, which is not relevant to the dispute.

[51] Part of the fourth paragraph was not redacted because it is relevant to the dispute. The second part of that paragraph was redacted because the Respondent considered it to be irrelevant to the dispute. After reading it, I am in fact of the opinion that the rest of the fourth paragraph is irrelevant and that it would in no way help with understanding the dispute.

[52] Nevertheless, I am of the opinion that certain passages in the last paragraph on page 7 are relevant for understanding Mr. Ouellet's involvement with the recruits and their participation in the training that he gave.

[53] As such, the Respondent must remove its redaction for the following items:

[TRANSLATION]

He met with the recruits at the shooting range as agreed. . . . The training lasted almost four hours: a theory part and a hands-on part. They left around 1:00 p.m. . . . On Sunday morning, he went straight to the shooting range and apparently left around noon. . . .

[54] These passages are within the scope of the complaint and provide a few details enabling the reader to understand the involvement of Mr. Ouellet and the recruits, like Ms. Constantinescu.

- **Pages 8 and 9**

[55] Pages 8 and 9 were completely redacted. However, they contain items from Mr. Ouellet's testimony.

[56] On page 8, only one passage seems relevant to me for, again, understanding the involvement of Mr. Ouellet and the recruits. Disclosing these items does not exceed the scope of the complaint and will enable a better understanding of the situation. Without the Tribunal taking a position on the legality of the practices, the use of certain weapons, the security breaches, etc., a little information is still needed, but not all the details, in order to

grasp the involvement of Mr. Ouellet and the recruits. In addition, this section of Mr. Ouellet's testimony also refers to the amounts asked for from the recruits, which is relevant to the dispute.

[57] As such, the Respondent must remove its redaction for the following items in the second paragraph:

[TRANSLATION]

Mr. Ouellet He told Daniel Parent to tell the recruits to report to the shooting ranges at the arranged time. One of the recruits, Mr. Bouthillier, then contacted him for more details. He told him that the fee would be \$100 per participant . . .

[58] Regarding page 9, its content is not relevant to the dispute and adds nothing further to the facts of the case.

o **Page 10**

[59] Page 10 is partially redacted. It is the testimony of Daniel Parent, an individual named a number of times in the Tribunal's proceedings, even though he is not a respondent in the dispute.

[60] At the very beginning of the first paragraph, I find that certain items that were redacted by the Respondent could have been disclosed without exceeding the scope of the complaint. Those items pertain to Mr. Parent's position at Correctional Service Canada. Moreover, most of those items were disclosed on page 3 of the report (Exhibit 92) in [TRANSLATION] "Part III – Individuals Interviewed or Consulted", where it states that Mr. Parent is an instructor at the Staff College.

[61] As such, the Respondent must remove its redaction for the following items in the first paragraph:

[TRANSLATION]

. . . Mr. Parent has been an instructor at the College since 2005. He has been responsible for firearms training since 2013.

[62] I also find that the Respondent's handling of the rest of the items on page 10 is correct. What the Respondent redacted is not relevant to the dispute and adds nothing further to the facts of the case.

- **Page 11, 12, 13, 14 and 15**

[63] The rest of Mr. Parent's testimony on page 11 was rightly redacted by the Respondent. In fact, the items on it are not relevant to the dispute and add nothing further to the dispute.

[64] The end of page 11, all of page 12, and the beginning of page 13 contain the testimony of another individual who is not involved in the dispute. That being so, the items on those pages are not relevant to the dispute.

[65] Page 13, starting with the second paragraph, involves Yannick Bouthillier's testimony. The information was not redacted.

[66] Only the last paragraph on page 13 was redacted by the Respondent, and rightly so. The items redacted are irrelevant to the dispute and add nothing further to the facts of the case.

[67] Mr. Bouthillier's testimony ends on page 14 and was not redacted.

[68] Still on page 14, the third paragraph marks the start of a new individual's testimony. That entire testimony, which ends halfway down page 15, was redacted.

[69] In fact, it appears that this individual is not involved in the Tribunal's proceedings and has nothing to do with the dispute. Upon reading the items in the report, I find that the redacted items are indeed irrelevant to the dispute.

[70] On page 15, starting at the third paragraph, the testimony of another individual starts. Once again, that person is not involved in the dispute and, upon reading the evidence contained in his testimony, I find that it is not relevant to the dispute.

[71] On page 16, four testimonies were collected and were completely redacted by the Respondent. Two of those four individuals have no connection with the dispute before the Tribunal. Upon reading the redacted items, I find that they are not relevant to the dispute.

[72] The other two individuals are involved in the Tribunal's proceedings yet are not respondents in the complaint. They are Isabel Morin and Isabelle Bastien.

[73] Although these two people are heavily involved in the process of disclosing documents in the complaint, the items in the report regarding the testimony of those people are still arguably relevant to the dispute. If there is no arguable relevance, disclosure is not required.

[74] After reading the first paragraph on page 16, which involves the testimonies of Ms. Morin and Ms. Bastien, I find that the items of their testimony exceed the scope of the complaint established by the Tribunal and provide no new facts making it possible to decide any matters connected with the dispute currently before the Tribunal. Therefore, no arguable relevance has been established, and the redaction is maintained.

- **PART IV – Review of Documents Consulted and Information Obtained (pages 17, 18 and 19)**

[75] In this section, investigators explain some of the documents they reviewed as well as some other information they received and checked.

[76] That whole section is not relevant to the dispute and adds nothing further to the facts of the case before the Tribunal.

- **VII – Chronology (page 20 and 21)**

[77] Part VII is a table serving as a visual aid for understanding the sequence of the events surrounding the investigation and production of the report.

[78] The entire table was redacted, except for the first line regarding the date of October 3, 2014. This section is indeed relevant to the dispute and was therefore not redacted.

[79] Some items in that table are, in my opinion, relevant to the dispute, and after rereading the other items in the report that had not been redacted by the Respondent (for example, portions of the testimonies of Mr. Ouellet and Mr. Bouthillier on pages 7, 13 and 14), it is easy to cross-reference the items appearing in them and come up with the same items in the table.

[80] In other words, the Respondent redacted items in this table that we can find elsewhere in the same document and that were not, for the most part, redacted.

[81] As such, the Respondent must remove its redaction for the following items in the first paragraph:

[TRANSLATION]

October 4, 2014	Reno Ouellet arrives at the RRC on Saturday morning at 8:00 a.m. . . . He heads to the shooting range. He gives the training from 8:30 a.m. to 1:30 p.m. He is paid \$100 per recruit. . . .
October 5, 2014	Reno Ouellet arrives at the shooting range on Sunday morning to give the 9-mm pistol training to three other recruits and to one who also attended the day before. . . .

[82] The other items on page 20 and all of page 21 are not relevant to the dispute and add nothing further to the facts of the case before the Tribunal.

- PART VIII – Analysis (pages 22 to 24)

○ **Page 22**

[83] Page 22 begins with the investigators' analysis of the information gathered during their investigation. That page was completely redacted by the Respondent.

[84] Although I am of the opinion that the first two paragraphs of the analysis are irrelevant to our dispute, the last paragraph contains items that appear elsewhere in the report and were not redacted. Those items concern Mr. Ouellet, and I find them to be within the scope of the complaint and relevant to the dispute.

[85] Once again, as previously explained, they highlight the relationship between Mr. Ouellet and the recruits who attended the practices, and they concern the reimbursement of money referred to in the complaint. These items are not a surprise because they mostly appear elsewhere in the report. That being said, they are still relevant, and the redaction must be removed.

[86] As such, the Respondent must remove its redaction for the following items in the third paragraph:

[TRANSLATION]

. . . An instructor from the College (Daniel Parent) had instead referred recruits to him for personal coaching to help them pass their shooting re-test, which he had agreed to do. . . . He had them pay him for that training (\$100 per recruit).

[87] The rest of the items on page 22 are not relevant to the dispute and add nothing further to the facts of the case.

○ **Page 23**

[88] Regarding page 23, my reading of it leads me to find that none of the items have any connection with the complaint and that they are definitely not relevant to the dispute. The redaction is maintained.

○ **Page 24**

[89] Lastly, page 24 contains three paragraphs. The first two were completely redacted, and the last one was partially redacted.

[90] Regarding the first two paragraphs and the redacted part of the third paragraph, the items they contain are not connected with the complaint, add nothing further to the facts of the case, and are therefore not arguably relevant to the dispute. Therefore, the redaction is maintained.

- **PART IX – Observations – Findings Regarding the Breaches (Pages 25-30)**

[91] Part IX contains the investigators' findings with respect to the breaches that were observed and analyzed in the report.

[92] I do not intend to write at length about this part because, upon reading the elements in it, I find that this goes far beyond the scope of the complaint as defined by the Tribunal in its rulings 2018 CHRT 17 and 2020 CHRT 4.

[93] Specifically, in ruling 2018 CHRT 17, I wrote as follows:

[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 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 any evidence about **the legality of the shooting practices on October 4 and 5, 2014, about the number of instructors required to conduct shooting practices or on 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 original complaint and are not relevant to the dispute.

[94] I have all I need to determine that pages 25, 26, 27, 28, 29 and 30, which deal with the investigators' findings regarding the breaches committed by certain individuals, exceed the scope of the complaint and therefore not relevant to the dispute.

[95] The redaction of those pages is therefore maintained.

- **PART X – Documents Consulted (page 31 to 33)**

[96] Part X is a list of the evidence that the investigators consulted to enable them to make their findings and write their report.

[97] The Tribunal's purpose is not to review the investigators' work or interfere with the investigation that was done. The documents consulted during their mandate are completely irrelevant to our dispute.

[98] The redaction is maintained.

- **PART XI – Signatures**

[99] This part was not redacted by the Respondent. Therefore, no action is required.

B. Exhibit 91 – Investigators' Notes from the Disciplinary Investigation of Reno Ouellet

[100] Exhibit 91 contains the investigators' written notes used to prepare the report that we dealt with in the section above (Exhibit 92). Thus, the very essence of the report is rooted in those notes.

[101] As such, it seems clear to me that the items that were deemed relevant in the report and that will be, or will have to be, disclosed by the Respondent further to my ruling, set the parameters for what items will have to be disclosed in the written notes.

[102] The arguable relevance test remains the applicable test for disclosure. The notes may contain other information that was not included in the report, but that is just as arguably relevant to the dispute. In which case, these items will also have to be disclosed.

[103] Exhibit 91 contains three sets of written notes: the first set has 20 pages, the second one has 32 pages, and the last one has 4 pages. The same handwriting was used for the first and last sets of written notes. As such, I can infer that the notes are from the same author.

[104] Each set of notes contains initials identifying their author: JB for the first one and SD for the second. Since the report (Exhibit 91) was written by Josée Brunelle and Sandro Bartucci, I can conclude that the first and last sets were written by Ms. Brunelle, while the second set was written by Mr. Bartucci.

[105] Although it is quite possible that Ms. Brunelle and Mr. Bartucci took similar notes, having conducted the investigation together, and that we could find some consistency in their respective notes, it is also possible for the notes to differ in some respects.

[106] That being the case, it is important to avoid drawing hasty, generalized conclusions about the content of either one's notes, and it is therefore important to review their notes separately to determine their arguable relevance.

[107] It should be noted that I will go over the investigators' notes again in their entirety, without changing them, which includes the spelling as well as illegible characters.

(i) Sandro Bartucci's Written Notes

- Disciplinary Investigation (page 1)

[108] To be consistent with the items in the report that will have to be disclosed after this ruling, I consider that a portion of page 1 is relevant to the dispute.

[109] I therefore order the Respondent to disclose the following passage:

[TRANSLATION]

. . . the RRC administration learns who [sic] an employee (Reno Ouellet) returned to the RRC at the PIDS . . . who came to train the CX recruits at the shooting range. They take CSC weapons.

[110] These items provide context for the report, without going into detail, and make it possible to understand the sequence of events. Without that information, the notes make little sense. By disclosing a minimum of information, without disclosing more than is necessary, the reader will be able to understand the situation. I find that this does not exceed the scope of the complaint or the limitations established by the Tribunal in its previous decisions.

[111] The rest of the items redacted by the Respondent are in fact irrelevant to the dispute and add nothing further to the facts of the case before the Tribunal.

- **Employees to be Interviewed (page 2)**

[112] This page contains the various steps, documents and individuals to be interviewed that the investigator noted.

[113] One of the employees the investigators were to meet with is Mr. Parent, and this information is not redacted.

[114] It is also stated that Mr. Ouellet was to be interviewed, but the information was redacted. It is clear, in both the notes and the report, that Mr. Ouellet was interviewed, and the Respondent should not have redacted that information.

[115] The Respondent must remove the redaction for Mr. Ouellet's meeting, as it did for Mr. Parent.

[116] The other items are not relevant to the dispute and include individuals who are not connected with the complaint. The redaction is maintained.

- **Reno Ouellet's File (page 3)**

[117] Page 3 contains information about Mr. Ouellet's employee file. None of the items on this page is relevant to the dispute. The redaction is maintained.

- **Page 4**

[118] Page 4 concerns an individual who is not connected with the complaint before the Tribunal. Therefore, there is no arguable relevance to the dispute, and the redaction is maintained.

- **Page 5**

[119] Page 5 contains items that are not connected with the complaint and therefore not relevant to the dispute. The redaction is maintained.

- **Interview: Reno Ouellet (pages 6 to 8)**

[120] Pages 6 to 8 contain the notes that Mr. Bartucci took during the interview with Mr. Ouellet.

[121] Page 6 was completely redacted by the Respondent. In my opinion, certain items are relevant to the dispute, especially since they were not redacted by the Respondent in the report.

[122] Therefore, the Respondent should have disclosed the title at the very least so that the reader can understand what it is about. It must therefore disclose the following item: [TRANSLATION] “Interview: Reno Ouellet”.

[123] In addition, the [TRANSLATION] “Reno Ouellet’s Version” section is relevant and sheds light on his involvement with the recruits and their training. In the report, these items were disclosed on page 7 by the Respondent. For consistency, CSC should therefore have disclosed the same items in Mr. Bartucci’s written notes.

[124] The Respondent must therefore disclose the following portion:

[TRANSLATION]

Reno Ouellet’s Version

**1- On October 02 or 03, RO speaks to Daniel Parent (DL calls RO)
DL asks RO if he can give extra training to 7 recruits . . .**

. . .

3- On October 04, he arrives at the RRC to give the training . . .

- **Page 7**

[125] Page 7 was almost entirely redacted by the Respondent. Again, I find that it contains items relevant to the dispute. Those items provide context for the relationship between Mr. Ouellet and the recruits.

[126] In addition, when I merge the items in the report, for example the testimonies of Mr. Parent, Mr. Ouellet and Mr. Bouthillier, the sequence of events, etc., I realize that a number of items had already been disclosed by the Respondent and that some items contained in Mr. Bartucci's notes are already available to the reader.

[127] That being the case, the Respondent must disclose the following items:

[TRANSLATION]

- RO leaves with the weapons to go to shooting range. The recruits are waiting there for him. 4 recruits A.M. (Oct. 04) + 4 recruits A.M. (Oct. 05)

- Oct. 05, 2014, he returns to the shooting range [...]

[128] The rest of the redaction is maintained because the other items are not relevant to the dispute and add nothing further to the facts before the Tribunal.

- Page 8

[129] The Respondent redacted almost all of this page, except for the very beginning of Mr. Bartucci's notes.

[130] I find that there is another item on page 8 that needs to be disclosed. It pertains to the reimbursement of the fees charged by Mr. Ouellet, which is relevant to the complaint.

[131] Therefore, the Respondent must disclose the following portion:

[TRANSLATION]

. . . The recruits are to be reimbursed

[132] The rest of the redacted items on this page are not relevant to the dispute.

- Pages 9 and 10

[133] Pages 9 and 10 concern an interview with an individual who is not involved in the complaint before the Tribunal. There is no connection with the dispute, and the redaction is therefore maintained.

- **Pages 11 and 12**

[134] Pages 11 and 12 contain items with no connection to the complaint before the Tribunal. These items are therefore not arguably relevant to the dispute. The redaction is maintained.

- **Daniel Parent (pages 13 and 14)**

[135] Pages 13 and 14 contain the notes taken by Mr. Bartucci during the interview with Mr. Parent.

[136] The Respondent redacted almost all of page 13, except for the last two lines, which concern Mr. Bouthillier's request for training.

[137] I find that other items are relevant to the dispute and were already disclosed in the report and in the investigators' notes. These items are therefore not surprising since they are already disclosed and known. They highlight the connection between Mr. Ouellet and the recruits.

[138] The Respondent must disclose the following items:

[TRANSLATION]

shooting instructor at the College since 2005

RO offers his services to DP for coaching

[139] The rest of the items redacted by the Respondent on page 13 and the items on page 14 are indeed irrelevant to the dispute and add nothing further to the facts before the Tribunal.

- **Page 15**

[140] Page 15 contains Mr. Bartucci's notes regarding the interviews that remained to be conducted, as well as a task schedule.

[141] I find that the items disclosed by the Respondent are relevant to the dispute, but that all the other items are not relevant to the dispute. Some of these items also concern

individuals who are not involved in the dispute and, as such, have no connection to the complaint. The redaction is maintained as is.

- **Disciplinary Investigation – Interview Yannick Bouthillier, Staff College (pages 16 and 17)**

[142] These are Mr. Bartucci's notes during the interview with Mr. Bouthillier. The Respondent disclosed a few lines of these notes, which are indeed relevant to the dispute.

[143] The Respondent redacted the rest of the items on page 16 and all of page 17.

[144] As for page 16, a few items should have been disclosed by the Respondent, since they are arguably relevant to the dispute. In addition, the Respondent did not redact these items in the written report (Exhibit 92) by Ms. Brunelle and Mr. Bartucci. You only have to read page 13 of their report to find most of the information that appears in their notes.

[145] The Respondent must therefore disclose the following passages:

[TRANSLATION]

-19 recruits . . .

- 7 recruits fired the pistol

4 Oct 2014 8:30 – 2:30 shooting range 4 recruits + instructor RO

[146] As for the content of page 17, it is not relevant to the dispute and adds nothing further to the facts before the Tribunal. Therefore, the redaction is maintained.

- **Pages 18 and 19**

[147] Pages 18 and 19 concern a person who is not involved in the complaint before the Tribunal. Therefore, the items on these pages are not relevant to the dispute.

- **Page 20**

[148] Page 20 contains Mr. Bartucci's notes during the interview with Isabelle Bastien and Isabel Morin. The Respondent completely redacted those notes.

[149] Although both Ms. Morin and Ms. Bastien are involved in the complaint, despite the fact that they, personally, are not respondents in the proceedings, arguable relevance is still the applicable test regarding disclosure.

[150] The items on page 20 are not relevant to the dispute and have nothing to do with the complaint before the Tribunal. Therefore, the redaction is maintained.

- **Pages 21 and 22**

[151] These pages contain the notes taken by Mr. Bartucci when interviewing two individuals who are not involved in the Tribunal's complaint. There is no connection with our complaint; therefore, the content has no arguable relevance to the dispute. The redaction is maintained.

- **Pages 23, 24 and 25**

[152] Pages 23, 24 and 25 were completely redacted by the Respondent. They contain questions that Mr. Bartucci placed on hold, and concern individuals who are not involved in the complaint and matters that have no connection to the complaint before the Tribunal.

[153] Therefore, there is no arguable relevance, and the redaction is maintained.

- **Pages 26, 27, 28 and 29**

[154] Pages 26, 27, 28, 29 were also redacted by the Respondent. They contain Mr. Bartucci's notes from a second interview with Mr. Parent and Mr. Ouellet.

[155] Only one item in those pages is relevant, and it appears right on page 28. As we already know, Mr. Ouellet asked the recruits to pay an amount to cover his fees. This item is relevant to the dispute.

[156] As such, the Respondent must disclose the following passage:

[TRANSLATION]

... Same terms as those of October 4/5. Fees for ammunition and travel ...

[157] Regarding the rest of the items on those pages, they are not relevant to the dispute and add nothing further to the facts before the Tribunal. The redaction is maintained.

- **Pages 30 and 31**

[158] Pages 30 and 31 are the notes taken by the investigator during an interview with an individual who is not involved in the Tribunal's complaint. As such, there is no arguable relevance, and the redaction is maintained.

(ii) Josée Brunelle's Written Notes

[159] It must first be mentioned that some parts of Ms. Brunelle's notes are hard to decipher. Without having the author of the notes explain what she wrote, it is sometimes difficult to understand the gist.

[160] However, Mr. Bartucci's notes are legible and clear. They provide excellent insight into the content of the meetings and the conducting of the investigation.

[161] In conjunction with the report, which is also more detailed, and while comparing Mr. Bartucci's notes with Ms. Brunelle's, I am able to draw some inferences about the passages that are more difficult to grasp in order to decide on their arguable relevance. Just to clarify, at this stage, it is not about drawing any findings of fact about these items; instead, it is simply about determining whether these items are arguably relevant to the dispute.

- **Reno Ouellet's Employee File (unnumbered page and pages 1 to 4)**

[162] The first unnumbered page was completely redacted by the Respondent. None of the items in Ms. Brunelle's notes is relevant to the dispute. The redaction is maintained.

[163] Regarding page 1, the Respondent disclosed a passage in the notes that is indeed relevant to the dispute. Regarding the other items on that page, they are irrelevant and add nothing further to the complaint before the Tribunal.

[164] Regarding page 2, the top of the notes contains a relevant item connected with the payment of fees by the recruits.

[165] The Respondent must remove the redaction from the following portion:

[TRANSLATION]

[Illegible] ? [illegible] pay recruits

[166] This item is relevant since the complaint refers to reimbursement of the fees to the recruits for their participation in Mr. Ouellet's training. Without context, these notes do not tell us much. However, the report highlights some aspects surrounding the recruits' payment of fees to Mr. Ouellet.

[167] As for the rest of page 2, the other items are not relevant to the dispute, and the redaction is maintained.

[168] The items on pages 3 and 4 are not relevant to the dispute and add nothing further to the facts of the case. The redaction is maintained.

- Daniel Parent (pages 1 to 6)

[169] This section concerns the meeting between Mr. Parent and the investigators.

[170] Page 1 was almost completely redacted by the Respondent, except for the title of this section.

[171] Even so, there is only one piece of information that I believe is arguably relevant. That information was not redacted from the report (Exhibit 92). It concerns the fact that Mr. Parent has been an instructor at the College since 2005, which is relevant under the circumstances.

[172] As such, the Respondent must remove the redaction for the following passage:

[TRANSLATION]

College 2005

[173] I find that the other redacted items on page 1 are not relevant to the dispute. The redaction is therefore maintained.

[174] The items on page 2 are not relevant to the dispute and add nothing further to the facts before the Tribunal.

[175] Page 3 was partially redacted. The items that were not are actually relevant to the dispute and talk about the recruits and their shooting failures.

[176] As for the other information on that page, just like the items on pages 4, 5 and 6, they add nothing further to the facts of the case and are not relevant to the dispute. The redaction is therefore maintained.

- **First interview R Ouellet (unnumbered page and pages 1 to 8)**

[177] The first page of Ms. Brunelle's notes regarding Mr. Ouellet's interview was redacted by the Respondent. The items indeed add nothing relevant to the dispute.

[178] As for page 1, and for consistency with the items in the report and Mr. Bartucci's notes, certain items must be disclosed. They were already disclosed elsewhere in the documents and are relevant to the dispute.

[179] The Respondent must disclose the following passages:

[TRANSLATION]

October 2-3, spoke with Daniel Parent

DP phoned him

[180] And right at the end of the page, the following passage must be disclosed:

[TRANSLATION]

I went RRC on the 4th

[181] As for the rest of that page, the items are irrelevant and add nothing further to the facts of the case before the Tribunal. The redaction is therefore maintained.

[182] On page 2, all the items were redacted by the Respondent. That being said, and again for consistency with the report and Mr. Bartucci's disclosed written notes, the items at the bottom of the page must be disclosed because they are relevant to the complaint.

[183] The Respondent must disclose the following portion:

[TRANSLATION]

RO recruits at the shooting range

4 sat a.m.

4 sun a.m.

[184] The other items on that page are not relevant to the dispute and must remain redacted.

[185] Page 3 was also entirely redacted by the Respondent. That being said, right at the top of the page, there is a list of several names. Based on the location of this item in Ms. Brunelle's notes, I could infer that they may be the names of some recruits who attended the training. In this list, the name "Cecilia" appears; this is the Complainant's first name. That being said, the list does not seem complete because the information we find in the notes says that seven people attended the training.

[186] Thus, this portion is relevant to the Complainant. The Respondent must therefore disclose this portion of the list with the Complainant's name.

- . . .

- Cecilia

- . . .

- . . .

[187] The names of the other recruits are not relevant to the dispute because they have no connection with the complaint and do not have to be disclosed. In addition, the other items on page 3 are not relevant to the dispute. The redaction is therefore maintained.

[188] Page 4 was rightly redacted by the Respondent because the items on that page are not relevant to the dispute; they add nothing further to the facts of the case before the Tribunal.

[189] Page 5 was also redacted by the Respondent. However, I find that one passage is relevant in this case, namely the one mentioning that a recruit telephoned Mr. Ouellet. That passage also talks about the fees charged for the training. As repeated multiple times, these items are relevant to the dispute.

[190] The Respondent must therefore disclose the following portion of the notes:

[TRANSLATION]

A recruit called him [illegible] Bouthillier

Fees – [illegible], trav

\$100/person

\$400/time

[191] The remaining items must remain redacted because they are not relevant to the complaint.

[192] As for page 6, the notes on it were redacted. The redaction must be maintained because those items are not relevant to the dispute and add nothing further to the facts of the case.

[193] Page 7 was also redacted by the Respondent. That being said, I find that a short passage is relevant to the complaint. I decided that the same passage, in Mr. Bartucci's notes, had to be disclosed. For consistency, this same passage in Ms. Brunelle's notes should be disclosed as well.

[194] The Respondent must disclose the following passage:

**[TRANSLATION]
prepared to reimburse**

[195] Lastly, the items on page 8 are not relevant to the dispute and must remain redacted.

- Yannick Bouthillier (pages 1 to 4)

[196] I understand that the last section of Ms. Brunelle's notes, which concerns Yannick Bouthillier's interview, was not redacted by the Respondent.

[197] That being said, this part of the notes appeared after Mr. Bartucci's notes and was not included after Ms. Brunelle's notes, which would, in my opinion, have been logical. The Tribunal is unaware of the reasons for the notes being out of order. Nevertheless, in the document sent to the Tribunal, no redaction was done on pages 1 to 4 of this part of Ms. Brunelle's notes. I therefore assume that nothing was redacted in the version distributed to the other parties.

[198] However, if this was an error and passages were indeed redacted in the other parties' versions (and not in the Tribunal's version), the parties should inform the Tribunal as soon as possible.

[199] The Tribunal could then deal with the matter and issue an amended order of that decision.

IV. Order

[200] For the above reasons, the Tribunal grants the Complainant's request in part and orders the Respondent to disclose portions of its exhibits 91 and 92.

[201] Specifically, the Tribunal orders it to comply with the orders by removing the redaction from the portions described in the following paragraphs of this decision: 28, 32,

43, 48, 53, 57, 61, 81, 86, 109, 115, 122, 124, 127, 131, 138, 145, 156, 165, 172, 179 and 180, 183, 186, 190 and, lastly, 194.

[202] The Tribunal orders that the amended documents be sent to the other parties in keeping with its orders no later than May 8, 2020.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
April 16, 2020

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2207/2917

Style of Cause: Cecilia Constantinescu v. Correctional Service Canada

Ruling of the Tribunal Dated: April 16, 2020

Motion dealt with in writing without appearance of parties

Written representations by:

Cecilia Constantinescu, for the Complainant

Paul Deschênes and Patricia Gravel, for the Respondent