Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2022 CHRT 13
Date: April 20, 2022
File No.: T2207/2917

[ENGLISH TRANSLATION]

Between:

Celia Constantinescu

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Gabriel Gaudreault

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I. Introduction

[1] This is a ruling of the Canadian Human Rights Tribunal (the "Tribunal") on an abuse of process caused by the conduct of the Complainant, Cecilia Constantinescu, in her complaint against the Respondent, Correctional Service Canada. This proceeding, brought by the Tribunal, was made necessary by the Complainant's actions and conduct.

[2] Ms. Constantinescu filed a complaint with the Canadian Human Rights Commission (the "Commission") in October 2015, and this complaint was referred to the Tribunal on May 31, 2017.

[3] Ms. Constantinescu alleges that the Respondent discriminated against her in the course of employment under section 7 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the "CHRA") and that she was harassed in matters related to employment under paragraph 14(1)(c) of the CHRA, because of her sex or her national or ethnic origin.

[4] In July 2017, the Tribunal and the parties began the case management process and, more specifically, the process for disclosing documents potentially relevant to the dispute, which continues to this day.

[5] Following the last correspondence from Ms. Constantinescu, dated January 22, 2021, the Tribunal considered it necessary to address the issue of a potential abuse of process in the case, which could result in the Tribunal dismissing and closing the complaint. The Tribunal therefore asked the parties to make representations on the subject, which they did.

[6] The Tribunal received the Complainant's written representations on February 23, 2021, and those of the Respondent on March 23, 2021. Ms. Constantinescu then made her first request to extend the time to file her reply, which was granted. Next, she required the assistance of a lawyer, Kwadwo D. Yeboah, who appeared in the Tribunal case on June 29, 2021. Mr. Yeboah requested an extension of time to file his client's reply so that he could familiarize himself with the case, and the request was granted. The reply was filed accordingly on September 30, 2021.

II. Background

[7] First, the Tribunal would like to note that it is not possible to read this ruling in isolation; it has to be read in light of all the interlocutory decisions preceding it in this case.

[8] It is absolutely necessary to become fully acquainted with this case and its long, complex history to properly understand the major issues in dealing with this complaint, which includes the following interlocutory decisions by the Tribunal:

1. *Constantinescu v. Correctional Service Canada*, 2018 CHRT 8 [*2018 CHRT 8*]
    - Ruling on the disclosure of documents
2. *Constantinescu v. Correctional Service Canada*, 2018 CHRT 10 [*2018 CHRT 10*]
    - Ruling on a stay of proceedings
3. *Constantinescu v. Correctional Service Canada*, 2018 CHRT 17 [*2018 CHRT 17*]
    - Ruling on expanding the scope of the complaint
4. *Constantinescu v. Correctional Service Canada*, 2019 CHRT 49 [*2019 CHRT 49*]
    - Ruling on amending 17 previously rendered or non-existent interlocutory decisions and ruling on abuse of process
5. *Constantinescu v. Correctional Service Canada*, 2020 CHRT 3 [*2020 CHRT 3*]
    - Ruling on the motion for recusal
6. *Constantinescu v. Correctional Service Canada*, 2020 CHRT 4 [*2020 CHRT 4*]
    - Ruling on the disclosure of documents combining six different applications
7. *Constantinescu v. Correctional Service Canada*, 2020 CHRT 8 [*2020 CHRT 8*]
    - Ruling on the disclosure of documents
8. *Constantinescu v. Correctional Service Canada*, 2020 CHRT 30 [*2020 CHRT 30*]
    - Ruling on the disclosure of documents

[9] In addition to these rulings, there are those that the Tribunal rendered orally throughout the proceedings during case management conference calls (the “CMCCs”), as

well as those in the correspondence and written directions the Tribunal sent to the parties. There are also the warnings given to the Complainant during the CMCCs she took part in and in the correspondence the Tribunal exchanged with her, some of which will be addressed later on in this ruling.

III. Decision

[10] Having considered the parties' representations and reviewed the entire case, its background and its full context, the Tribunal, is now able to rule on whether an abuse of process may have occurred.

[11] For the reasons that follow, the Tribunal finds that the Complainant's repeated and unsubstantiated allegations of bias against the decision maker are an abuse of process that justifies dismissing the complaint.

IV. Issues

[12] The issues are the following:

1. Was there an abuse of process in the proceedings related to this complaint?
2. If so, what is the appropriate remedy in this case?

V. Legal Framework

A. Abuse of Process

[13] This Tribunal already considered the issue of abuse of process at another stage in these proceedings, in its ruling in *2019 CHRT 49*. The Tribunal refers the reader to its analysis at paragraphs 108 and following of that ruling.

[14] To recap, the doctrine of abuse of process engages the inherent power of the Tribunal to prevent the misuse of its procedure in a way that would "bring the administration of justice into disrepute" (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para 37 [*Toronto*]).

[15] More specifically, an abuse of process involves proceedings that are unfair to the point that they are contrary to the interest of justice and amount to oppressive treatment. There may be an abuse of process where the proceedings are oppressive or vexatious and violate the fundamental principles of justice underlying the community's sense of fair play and decency (*Toronto*, at para 35).

[16] Furthermore, the Federal Court of Appeal has clearly stated that unsubstantiated allegations of bias may be considered an abuse of process. In this regard, in *Rodney Brass v. Papequash*, 2019 FCA 245 [*Rodney Brass*], that court wrote the following at paragraph 17:

> [17] The Supreme Court of Canada recently reiterated that there exists a strong presumption of judicial impartiality (*Yukon Francophone School Board, Education Area # 23 v. Yukon (Attorney General)*, 2015 SCC 25, [2015] 2 S.C.R. 282). Allegations of judicial bias are extremely serious as they attack the integrity of the entire administration of justice in general and the reputation of the judge at issue, in particular. For these reasons, **unfounded allegations of bias may fall, in some instances, under the ambit of the doctrine of abuse of process** (*Abi-Mansour v. Canada (Aboriginal Affairs)*, 2014 FCA 272, [2014] F.C.J. No. 1145 (QL); *Joshi v. Canadian Imperial Bank of Commerce*, 2015 FCA 105, 474 N.R. 215).
>
> [Emphasis added]

[17] A few years before, that same court also wrote the following in *Abi-Mansour v. Canada (Aboriginal Affairs)*, 2014 FCA 272 (CanLII) at paragraphs 13 to 15 [*Abi-Mansour 2014*]:

> 13] In *Coombs v. Canada (Attorney General)*, 2014 FCA 222 at paragraph 14, this Court characterized **repeated allegations of bias as attacks on the "integrity of the entire administration of justice."** In *McMeekin v. Minister of Human Resources and Skills Development*, 2011 FCA 165, at para. 32, Sharlow J.A. stated that **unsupported allegations of improper conduct constituted an abuse of process. Such conduct comes within the ambit of the doctrine of abuse of process** which, as the Supreme Court of Canada observed in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paragraph 43 focuses on "the integrity of the adjudicative functions of courts."
>
> [14] I am therefore of the view that Mr. Abi-Mansour's repeated unsupported allegations of bias are an abuse of process. **Persons who**

> **invoke the court's assistance in its capacity as an independent arbiter of disputes and who then repeatedly allege bias when the court's decisions do not meet their expectations are not using the judicial system in good faith. The Court is entitled to decline to lend its assistance to such litigants.**
>
> [15] Going forward, Mr. Abi-Mansour should know that unsubstantiated allegations of bias **expose him to the dismissal of his proceedings as an abuse of process**, either at the request of the opposing party **or on the Court's own motion**. He should govern himself accordingly.
>
> [Emphasis added]

[18] And in a case involving the same applicant, *Abi-Mansour v. Canada (Passport)*, 2015 FC 363 (CanLII) [*Abi-Mansour 2015*], the Federal Court wrote the following at paragraphs 47 and 48:

> [47] The Applicant claims that tensions arose with Prothonotary Tabib in file T-550-13 and that the Order is a form of reprisal against him. In other words, he claims that she was biased and even urges the Court to presume bad faith on the part of Prothonotary Tabib.
>
> [48] Those are very serious allegations which the Applicant has failed to establish to any appreciable degree. As the Respondent points out, **the Applicant has been cautioned not to make unfounded allegations against members of the Court.** In its decision dated November 13, 2014 affirming the order of Justice Roy referred to above, the Federal Court of Appeal went as far as to warn the Applicant that unsubstantiated **allegations of bias "expose him to the dismissal of his proceedings as an abuse of process, either at the request of the opposing party or on the Court's own motion", and directed him to "govern himself accordingly"** (*Abi-Mansour v Department of Aboriginal Affairs*, 2014 FCA 272, at para. 15).

[19] In that same decision, the Federal Court, relying on the cautions that Federal Court of Appeal judges had given to the appellant to rein in his allegations of bias, dismissed the applicant's application solely on the basis of his unfounded allegations and reprehensible conduct regarding a prothonotary, since the applicant was once again attacking the integrity of the adjudicative function of the courts.

[20] The Federal Court concluded as follows, at paragraph 50:

> [50] Clearly, the message of the Federal Court of Appeal has not been heard by the Applicant. By making unsupported allegations of improper

> conduct against Prothonotary Tabib, he is again attacking the integrity of the adjudicative function of the courts. **This, in and of itself**, given the unequivocal caution given by the Court of Appeal, **is sufficient to dismiss the Applicant's appeal as an abuse of process**.
>
> [Emphasis added]

[21] Similarly, in *Dove v. Canada*, 2016 FCA 231 (CanLII) at paragraph 5, the Federal Court of Appeal, too, gave an appellant a clear warning in similar circumstances:

> [5] Mr. Dove and his co-litigants should know that, while they are entitled to be heard, **they are not entitled to blame their lack of success on the bad faith and corruption of the judges who hear and decide their cases and on collusion between the lawyers who represent the Crown and the judges and prothonotaries who have heard their cases. Such allegations have consequences and if Mr. Dove continues in his present vein, he will have to deal with those consequences**: see *Abi-Mansour v. Canada (Department of Aboriginal Affairs*), 2014 FCA 272, [2014] F.C.J. No. 1145, at paragraphs 9-15.
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> [Emphasis added.]

B. Remedies for Abuse of Process

[22] The decision to dismiss a proceeding (or to order a stay of proceedings) must not be taken lightly, as the consequences are necessarily final and irreversible; it is "that ultimate remedy", in that it is final and brings any proceedings to an end (*Canada (Minister of Citizenship and Immigration) v. Tobiass*, 1997 CanLII 322 (SCC) at para 86 [*Tobiass*]; *R. v. Regan*, 2002 SCC 12 (CanLII) at para 53 [*Regan*]).

[23] However, the Supreme Court has recognized that such a remedy is discretionary and that a reviewing court cannot interfere lightly with a decision maker's exercise of this discretion (*Tobiass*, at para 87; *Elsom v. Elsom*, 1989 CanLII 100 (SCC) at 1375; *R. v. Carosella*, 1997 CanLII 402 (SCC) at para 48).

[24] In a criminal law context, the Supreme Court has stated that a stay of proceedings (in other words, stopping the proceedings) normally aims to remedy some unfairness to an individual resulting from misconduct by the state, which is in practice, in that context, the prosecution (*Tobiass*, at para 89).

[25] That said, there is another, “residual” category in cases where staying (in other words, stopping or dismissing) a proceeding could be justified, where the panoply of diverse and unforeseeable circumstances in which a prosecution is conducted are unfair or vexatious to such a degree that they contravene fundamental notions of justice and undermine the integrity of the judicial process (*Tobiass*, at para 89).

[26] In the case at hand, the second category is the relevant one, as will be explained later on in the Tribunal’s reasons.

[27] That said, when the integrity of the justice system is harmed like this, a stay of proceedings—in our case, it is, rather, a matter of dismissing the complaint and closing the file—is only appropriate when two criteria are met:

1. the prejudice caused by the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; and
2. no other remedy is reasonably capable of removing that prejudice.

   (*R. v. O’Connor*, 1995 CanLII 51 (SCC) at para 75 [*O’Connor*]; *Regan*, at para 54)

[28] The Supreme Court has noted that the first criterion is important because it concerns, rather, the prospective nature of a stay of proceedings. The idea is that the remedy must not only redress a wrong that has already been done (the past wrong, or the retroactive nature of the remedy), but also prevent the perpetuation of a wrong that, if left alone, will continue to trouble the parties and the community as a whole (*Tobiass*, at para 91; *Regan*, at para 54). It must therefore be determined whether the abuse could continue or reoccur, which is why it is important to analyze the prospective nature of this remedy, namely, a stay of proceedings.

[29] The Supreme Court has stated that only in rare cases will the alleged past misconduct be so egregious that the mere fact of going forward in the light of it would be offensive (*Tobiass*, at para 91).

[30] Only once the court or tribunal has determined that carrying on the proceeding will plague the judicial process, and that no remedy other than a stay is available, can the decision maker exercise their discretion (*Regan*, at para 56). And if any doubt remains after

analyzing these two criteria, the Supreme Court instructs us that the decision maker may apply a third criterion, the balancing of interests, which it describes as follows:

> "[I]t will be appropriate to balance the interests that would be served by the granting of a stay of proceedings against the interest that society has in having a final decision on the merits". In these cases, "an egregious act of misconduct could [never] be overtaken by some passing public concern [although] . . . a compelling societal interest in having a full hearing could tip the scales in favour of proceeding".
>
> [*Regan*, at para 57, citing *Tobiass*, at para 92]

[31] Bearing in mind these principles, as well as those in its decision in *2019 CHRT 49*, the Tribunal will now analyze the issue of the abuse of process caused by the Complainant in this case.

VI. Positions of the Parties

[32] The Tribunal has read the representations of the Complainant and those of the Respondent, as well as their supporting documents, in particular the affidavits of Christian Pierre Fradin, Isabelle Bastien and Éric Tessier.

[33] The Tribunal will focus on those arguments of the parties that are necessary, essential and relevant to its decision (*Turner v. Canada (Attorney General*), 2012 FCA 159 at para 40).

A. Position of the Complainant

[34] The Complainant is of the view that the representations requested by the Tribunal concern, in her own words, a [TRANSLATION] "potential measure" of an "exceptional nature" that is "unfair, disproportionate, forced and contrary to the spirit of justice being done, the principles of natural justice, the interests of the public" and the CHRA, and the rules of procedure.

[35] She adds that she believed, for a certain time during the proceedings, that the member hearing the case was simply inexperienced, but then concluded that he was simply

biased against her case, which led to her requests for disclosure of documents being rejected and to the member tolerating certain irregularities on the part of the Respondent and its representatives.

[36] She finds it unfair that in other cases before the Tribunal, disclosure requests and other measures were granted while this was not done in her case.

[37] She adds that starting the debate over from the beginning to justify that she did not abuse the process would be a long exercise. She argues that it is not up to her to prove that she did not abuse the process; rather, the Tribunal itself must show that there was such an abuse.

[38] Ms. Constantinescu also tried to justify the statements in her communication dated January 22, 2021. She states that she sent this communication in a context where she had recently learned that the Respondent had investigated her after she took part in target practice sessions with Mr. Ouellet and had failed to inform her of this. She writes that this fact should have been in the summary of the conference call on December 4, 2020, which was not the case, adding in passing that the Commission, for its part, has not taken part in the proceedings for more than a year.

[39] The Complainant also argues that on January 20, 2021, a few days before her correspondence, the Respondent had applied to the Federal Court to have it strike out her application for judicial review of the Tribunal's decision concerning recusal. In her view, the respondent's application to the Federal Court was inappropriate and concerning in terms of justice being done, in asking again that her application for judicial review be struck out, even though the hearing date had already been set.

[40] In her view, the Respondent's application to strike was based on saving judicial resources. She adds [TRANSLATION] "that an army of lawyers" from the Department of Justice is involved in her various proceedings against Correctional Service Canada, and that these lawyers charge and bill the Department and taxpayers [TRANSLATION] "unbelievable" sums of money.

[41] The Complainant writes that on that same day, January 20, 2021, she asked the Respondent to disclose to her some documents concerning one individual in particular. The Respondent asked the Tribunal to add this subject to the agenda for the CMCC to be held on January 26, 2021.

[42] She adds that she had asked to examine this same individual, now deceased, on discovery. She had been requesting this since the beginning of the proceeding, but the Tribunal never dealt with her request. She also states that she objected to the Respondent's request that this disclosure request be discussed during the CMCC.

[43] In addition, the Complainant argues that the Respondent failed to comply with a Tribunal order to provide, before the CMCC, certain information as directed by the Tribunal. The Respondent also allegedly failed to offer any excuses before the CMCC to justify this delay. According to the Complainant, this was the first time the Complainant had failed to comply with a Tribunal order without providing an explanation.

[44] The Complainant also states that the summary of the CMCC on January 26, 2021, should contain a note mentioning that the complaint proceedings had come to a halt, but it does not, not to mention that she received this summary a week later, on February 3, 2021. In her view, she should have received the summary [TRANSLATION] "immediately".

[45] Finally, Ms. Constantinescu repeated every point in the correspondence dated January 22, 2021, and tried, for each point, to justify why she had written it. Her claims include the following:

- The CMCC summaries do not fully reflect all the issues in the case and how it has been conducted.

- These efforts to obtain certain documents, particularly the positions held by the Respondent's witnesses or employees, are not being supported by the member assigned to the case.

- She was investigated by the Respondent in connection with shooting practice sessions with Mr. Ouellet, which is a violation of her rights under the charters.

- It is her firm conviction and position that the member is biased, and she will keep believing that such is the case so long as higher authorities fail to deal with this issue.

- She was forced to take part in the management of her case.

- In another Tribunal case (*Davis v. Canada Border Services Agency*, 2011 CHRT 6), the member preferred to withdraw from a case in which a recusal motion had been filed, which is not what happened in her case.

- She raised bias at the first opportunity.

- She is entitled to ask that a disclosure request be made in writing, which is in accordance with the rules of practice.

B. Position of the Respondent

[46] The Respondent focuses on two major arguments overarching its representations.

[47] First, it is of the view that the Complainant's vexatious behaviour, including the repeated, unsubstantiated allegations of bias made against the member, are in and of themselves an abuse of process and that, for this reason alone, the complaint should be dismissed.

[48] Second, it adds that the Complainant complicated her complaint for no good reason when there had been nothing complicated about in the first place. As a result, the Complainant caused excessive delays in the proceeding, which undermined the Respondent's ability to respond to the complaint and caused direct harm to its witnesses, both psychologically and in terms of their reputations.

(i) Argument Regarding Vexatious Behaviour

[49] First, the Respondent is of the opinion that the case law recognizes the Tribunal's power to dismiss a complaint for abuse of process.

[50] It adds that the Complainant's representations regarding this decision and her vexatious behaviour in them support finding an abuse of process. In its view, she does not grasp the magnitude of what the Tribunal is asking of her with regard to the minimum of civility necessary for the proceeding to go ahead smoothly. More importantly, it argues that the Complainant has shown, in addition, that she has no intention of correcting her behaviour.

[51] The Respondent adds that on March 13, 2018, in a published decision, the Tribunal was quick to caution the Complainant to correct her behaviour (see *2018 CHRT 8*, at para 32).

[52] The Respondent adds that in a piece of correspondence dated December 3, 2018, the Complainant accused the Tribunal of favouritism, an accusation which it denounced. On December 4, 2018, the Tribunal therefore intervened by issuing a direction in which it asked her to exercise restraint and rein in her allegations of bias. The Tribunal also noted that the Complainant's disrespectful behaviour towards it, its administration and the other parties had been going on for some time now.

[53] The Respondent argues that the Complainant criticized the Tribunal again in her correspondence dated August 28, 2019. She had also gratuitously attacked the professional integrity of the Respondent's lawyers.

[54] Then, on December 15, 2019, one year after having been formally notified by the Tribunal in its direction dated December 4, 2018, that she had to file a motion for recusal, the Complainant asked the Tribunal to issue directions to change the member assigned to the case as soon as possible.

[55] The Respondent adds that on December 16, 2019, the clerk sent a Tribunal decision (*2019 CHRT 49*) in which the Tribunal dismissed Ms. Constantinescu's request to reconsider 17 interlocutory decisions, as this was an abuse of process. The Respondent

notes that the Complainant mentioned at that time that this confirmed that the member had wanted to punish her for having sought to recuse him the day before.

[56] The Respondent notes that the Tribunal, again in *2019 CHRT 49*, had also issued an order to have the Complainant correct her vexatious behaviour. The Tribunal had also determined that the Complainant lacked restraint, used inflammatory, abusive and at times difficult to understand language, and made unsubstantiated allegations. It had also pointed out that this was not the first time it had asked her to correct her behaviour and that her comments sometimes crossed boundaries that should not be crossed. Finally, the Respondent adds that, at that time, the Tribunal was not about to dismiss Ms. Constantinescu's complaint for abuse of process, but that it noted that she had less and less latitude in the proceeding.

[57] The Respondent argues that, despite these various warnings, the Complainant continued to exhibit vexatious behaviour, particularly in her correspondence dated May 20, 2020, and June 5, 2020, in which she made baseless accusations and insinuations contrary to the Tribunal's order (*2019 CHRT 49*). The Respondent categorically rejects the Complainant's claim that her statements are always supported by facts and evidence, and it is of the view that the Complainant's accusations and insinuations are gratuitous and baseless.

[58] Moreover, the Respondent states that the Complainant, in an open letter dated June 8, 2020, wrote that she had no choice but to reluctantly proceed with her complaint, even though she thought that it was illegitimate to continue with the proceeding while a higher authority (the Federal Court) was supposed to rule on the member's recusal. In that same correspondence, the Respondent states that the Complainant once again accused the Tribunal of rendering a biased decision.

[59] In the same vein, the Respondent notes that the Complainant attacked it and its representatives again in her representations dated November 27, 2020.

[60] The Respondent argues that on January 20, 2021, the Complainant filed a request for disclosure of documents when she learned how an individual involved in the complaint had died. In that request, Ms. Constantinescu asked that if this individual, at the time of their

death, had left behind a letter or any evidence that talked about her or referred to her assault or intimidation, or that referred to CTP-5, the security breach on October 4 and 5, 2014, or any other facts concerning CTP-5, it should be disclosed to her.

[61] The Respondent, because of the context and the nature of the request, had asked in correspondence dated January 22, 2021, that this subject be added to the agenda of the CMCC scheduled for January 26, 2021. That same day, the Complainant objected to this request in correspondence that ultimately led to this ruling on her abuse of process.

[62] The Respondent argues that, in her representations regarding this ruling, the Complainant merely tried to justify the comments she had made in her correspondence dated January 20, 2021, and once again accused the member of bias. The Respondent states that this is the context in which the Tribunal asked that the issue of a possible abuse of process be debated.

[63] It adds that Ms. Constantinescu's representations are themselves proof of her abuse of process and notes that procedural fairness demands that Ms. Constantinescu be the first to file her representations, contrary to what she claims (*Dugré v. Canada (Attorney General)*, 2021 FCA 8 at paras 27 and 29 to 31).

[64] The Respondent also notes that disagreement with a tribunal's or a court's decision alone is incapable of supporting an allegation of bias on the part of a decision maker, adding that a party cannot raise groundless and wholly unsupported allegations of bias because of the damage they cause to the administration of justice (*Dixon v. TD Bank Group*, 2021 FCA 101 at paras 9 and 15 [*Dixon*]).

[65] The Respondent, citing the Federal Court of Appeal's teachings in *Rodney Brass*, states that allegations of bias are serious because they cause damage to the administration of justice in general and to the decision maker's reputation in particular. Therefore, allegations of bias may sometimes fall under the abuse of process doctrine. The Respondent is of the opinion that Ms. Constantinescu's allegations that the Tribunal is biased against her are based on her dissatisfaction with unfavourable rulings or with how the Tribunal is managing the proceeding, which in its view is incapable of supporting an allegation of bias (*Dixon*, mentioned above).

[66] Moreover, the Respondent notes that the Tribunal already rejected the Complainant's allegations of bias in its decision dated February 28, 2020, on the basis of waiver, but nonetheless considered her other arguments in the interests of justice and found no reasonable apprehension of bias.

[67] The Respondent also notes that on March 9, 2021, Justice Mosley of the Federal Court dismissed the Complainant's appeal from Prothonotary Molgat's decision to strike out the judicial review of the member's decision not to recuse himself (*Constantinescu v. Canada (Attorney General)*, 2021 FC 213 [*Constantinescu 2021 FC 213*]).

[68] The Respondent believes that, in filing an application for judicial review with the Federal Court even though the case law confirms that she cannot apply for a review of an interlocutory ruling, the Complainant simply undermines the smooth conduct of the complaint proceedings by putting undue pressure on the member and the parties by constantly repeating these unsubstantiated allegations of bias. This, in its view, is an abuse of process.

[69] It adds that Ms. Constantinescu continues to abuse the process by using inflammatory, abusive and at times difficult to understand language, directed at both the Tribunal and the other parties. It alleges that, despite numerous warnings from the Tribunal, her behaviour has not changed, and she constantly repeats her baseless allegations of bias. It argues that the Complainant has also demonstrated that she has no intention of correcting her vexatious behaviour and that the Tribunal has no choice but to dismiss her complaint on this basis.

[70] Finally, the Respondent notes that Ms. Constantinescu behaved similarly in another proceeding before the Federal Court, an access to information case. The Respondent cites the comments of Justice Pamel concerning the Complainant's behaviour, the judge writing that the Complainant "could have better served her cause by focusing on the real issues rather than fanning the flames with caustic language, regardless of her feelings" (*Constantinescu v. Canada (Correctional Service)*, 2021 FC 229 at para 139 [*Constantinescu 2021 FC 229*]).

[71] The Respondent confirms that, for this reason, Justice Pamel did not award the Complainant costs, since this was the only remedy available to him to punish this conduct, which is something the Tribunal, unlike the Federal Court, is not empowered to do.

[72] The Respondent also relies on *Poplawski c. Association accréditée du personnel non enseignant de l'Université McGill*, 2012 QCCRT 430 [*Poplawski*], in which the Commission des relations de travail du Québec (Quebec's labour relations board, "CRTQ") dismissed the applicant's proceeding, in particular because of his disrespectful behaviour and his failure to comply with the CRTQ's instructions. The Respondent argues that his proceedings were dismissed because of conduct similar to that of the Complainant.

(ii) Argument Regarding the Unnecessary Complexity of the Complaint

[73] The Respondent also alleges that the Complainant is unnecessarily complicating her complaint before the Tribunal, which is lengthening the delays in the proceedings, whereas the hearings have still not begun even though the complaint was referred to the Tribunal in the fall of 2014. The delays are undermining its ability to make full answer and defence and are causing its witnesses harm, which is an abuse of process.

[74] The Respondent is of the view that the Complainant is using the Tribunal's procedure in a vexatious and abusive way that brings the administration of justice and the human rights system into disrepute.

[75] The Respondent considers the last email from the Complainant, dated January 22, 2021, to be inappropriate. In that email, she asked, upon learning how one of the Respondent's witnesses had died, for the disclosure of documents that had allegedly been in the witness' possession at the time of his death. Considering such a request, the Respondent had asked that this issue be dealt with on appeal, to which the Complainant objected. The Respondent is of the view that this request shows just how far the Complainant is prepared to go to with the disclosure of documents.

[76] It adds that the Complainant's case is not inherently complicated and is based primarily on credibility issues. Although the complaint is a delicate matter because of certain

allegations, the Respondent considers that if the Complainant had not complicated her complaint to such a degree, the proceedings could have been completed long ago.

[77] The Respondent also argues that the Complainant cannot use disclosure to try to corroborate her allegations and obtain fresh evidence so that she could apply to the Tribunal to expand the scope of her complaint after the fact. On this point, it notes that the Complainant has already announced that she will be filing a second application to expand her complaint.

[78] In addition to the never-ending disclosure requests, the Complainant had also filed a motion for a stay of proceedings, and she admitted in her representations that she had used that motion to advance her goals (see *2018 CHRT 10*). She also filed a motion to reconsider 17 interlocutory decisions, which the Tribunal found to be abusive.

[79] The Respondent adds that Ms. Constantinescu also announced that she was going to ask that certain witnesses for the Respondent be required to take lie detector tests, and that she was also going to examine other witnesses for discovery. It views these requests as being highly unusual and doubts their usefulness, such that motions would have to be filed to deal with these issues. Regarding the examinations for discovery, the Respondent notes that they would go against the principles establishing that proceedings before the Tribunal should be conducted informally and expeditiously. As for the lie detector tests, the Respondent notes in passing that assessing the credibility of witnesses is the Tribunal's job, and that, for this reason, it is uncertain whether the results would be admissible.

[80] All of this, according to the Respondent, would draw out the complaint proceedings by once again preventing the Tribunal from hearing evidence and witnesses and considering the merits of the complaint.

[81] Relying on *2018 CHRT 8*, the Respondent adds that the Tribunal had already cautioned the parties, in a context where the Complainant had filed a motion regarding issues that had already been decided, that the multiplication of motions (including motions on issues already decided) could lengthen the complaint process and be considered abusive.

[82] Relying on another Tribunal decision (*2019 CHRT 49*), the Respondent further argues that the Tribunal had also cautioned the parties that the proliferation of superfluous arguments, irrelevant to the issues to be addressed, prevented focusing on the merits of the case, the objective being to move to a hearing as quickly as possible. On this point, the Respondent considers that Ms. Constantinescu's many disclosure requests and the proliferation of motions prevent focusing on the merits of the complaint and unnecessarily impede the case's progress, which is an abuse of process.

[83] In addition to this, the Respondent writes, there are all the Complainant's proceedings before the Federal Court and the Federal Court of Appeal. It cites Justice Mosley, at paragraph 24 of *Constantinescu 2021 FC 213*, in which the judge wrote the following:

> [24] This appeal is one of the ten applications for judicial review or appeals filed by the applicant with the Federal Court or Federal Court of Appeal since 2018. All have required the use of public funds and judicial resources and have detracted from the handling of the applicant's complaint.

[84] According to the Respondent, all these factors lead to the conclusion that Ms. Constantinescu has abused the process. This finding having been made, the Respondent alleges that we must now assess whether the excessive delay undermines the fairness of the proceeding by compromising its ability to defend itself. And if the Tribunal finds that the excessive delay does not undermine the fairness of the proceeding, then the Respondent alleges that it should assess whether it has directly caused psychological or reputational harm to the witnesses, to the point of bringing the human rights system into disrepute.

[85] Regarding the excessive delay, the Respondent relies on, among other authorities, *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*], a leading Supreme Court decision, and the Tribunal's decision in *Cremasco v. Canada Post Corporation*, 2002 CanLII 61852 (CHRT).

[86] The Respondent notes that the events giving rise to the complaint date back to the fall of 2014, and that the complaint was referred to the Tribunal in the spring of 2017, which it considers to be [TRANSLATION] "still acceptable" as a timeframe. However, given the abuse

of process caused by Ms. Constantinescu, the delay became excessive and compromised its ability to defend itself.

[87] Furthermore, the Respondent states that one of the main witnesses took his own life in February 2020, which also compromised its ability to defend itself, especially since the Commission referred the complaint to the Tribunal because of the irreconcilable testimonies. It notes that nearly six years later, Ms. Constantinescu has still not given her version of the events to the Tribunal, which means that her credibility has not been assessed. It adds that the Complainant has spread her version of the facts as if they had been proved, not only in the Tribunal case, but also before the federal courts, and even to politicians.

[88] The Respondent states that the delays affect the witnesses' memories and their ability to testify. In addition, several witnesses (at least seven) have since left Correctional Service Canada to take retirement or for other reasons. Consequently, as the Complainant has been constantly repeating her version of the facts to every authority, the Respondent believes that she is the only one benefitting from the passage of time.

[89] The Respondent refers to *Manoir Archer inc. c. Tribunal des droits de la personne*, 2010 QCCS 4410, a decision of the Superior Court of Québec affirmed on appeal (2012 QCCA 343). It was decided that it was unreasonable for the Tribunal des droits de la personne du Québec, Quebec's human rights tribunal, not to order a stay of proceedings because of delays in the investigation. The investigation took 65 months, two witnesses had died, and several witnesses no longer worked for the defendant. In the present case, the Respondent claims that a delay of more than 72 months is excessive and undermines its ability to defend itself. In addition, one of its main witnesses has died, and the other witnesses' memories are fading with time.

[90] The Respondent adds that it is also recognized in *Blencoe* that abuse of process can include cases other than those involving excessive delay compromising the fairness of the proceeding. On this point, it argues that psychological harm caused by the excessive delay is one such case, particularly with regard to unproven allegations of sexual harassment and sexual discrimination, which have the power to "destroy lives". On this point, the Respondent relies on *Cassidy v. Canada Post Corporation and Raj Thambirajah*, 2012 CHRT 29.

[91] Ms. Constantinescu had made such allegations against the Respondent's witness who took his own life in February 2020. In his affidavit dated March 22, 2021, Christian Pierre Fradin, who knew this witness, states that these allegations were devastating for him. The Respondent notes that when it announced the death of this witness to the Tribunal and the Complainant during a CMCC, it did not disclose the cause of death. The Complainant discovered the real reason for the death in another legal dispute. The Respondent states that she then used this new information to make a new disclosure request to the Tribunal. The Respondent believes that the Tribunal should consider this factor in determining whether there has been an abuse of process, since Ms. Constantinescu crossed boundaries that she should not have crossed.

[92] Another witness for the Respondent, Éric Tessier, also stated in an affidavit that he had been impacted psychologically by the Complainant's allegations. In this regard, allegations of a sexual nature made against him led him to tell his spouse of the situation. More than six years later, he has still not been able to give the Tribunal his version of the facts and inform his spouse of the case's outcome, which is affecting his psychological state.

[93] The Respondent is of the view that Ms. Constantinescu's allegations, the evidence of which has yet to be tested, are harming the reputations of all the persons named in them. It notes that the Complainant is not content to raise her allegations in her proceedings before the Tribunal; she is also spreading them in the public domain, in correspondence with politicians and in other legal proceedings. Moreover, the Attorney General of Canada had to ask the courts to disregard her allegations, which she had also disseminated.

[94] The Respondent argues that these individuals' reputations have been damaged by Ms. Constantinescu's actions, and that they are prevented from giving their version of the facts to the Tribunal and therefore unable to clear their names. She has thus taken these witnesses hostage, leaving them without any means of defending themselves.

C. Complainant's Reply

[95] In her reply, the Complainant alleges that her motion to expand the complaint was meant to address discrimination that the Commission did not cover in its investigation. She

states that she also made requests for disclosure and that the Tribunal repeatedly asked her to file written motions, even though the Tribunal's procedure is informal, and she is unfamiliar with legal writing. She admits that her motions were [TRANSLATION] "long-winded" but believes that they were neither abusive nor vexatious.

[96] She points out that the Tribunal member also caused delays in the proceedings by not processing some of her disclosure requests until March 2020.

[97] The Complainant discusses, for several pages, the motion for recusal she filed in December 2019. She states that her motion for the recusal of the Tribunal member was neither frivolous nor abusive. She further states that, in its ruling of December 16, 2019, the Tribunal failed to readdress the fact that she had courteously asked the day before for instructions on how to request a different Tribunal member. She finds it unfortunate that her attempt to be cooperative was not noted in that ruling.

[98] For several more paragraphs, she explains why she returned to her motion for recusal in her reply. Her lawyer writes that she wishes to [TRANSLATION] "refocus her motion for recusal in a manner consistent with the law", that the motion was not vexatious, and that the Complainant filed it at the earliest opportunity, on December 15, 2019.

[99] The Complainant then states that, because the Tribunal is flexible and informal and because it is a governmental body, it could have assigned another member to the case to [TRANSLATION] "change the dynamics of the case". Nevertheless, Ms. Constantinescu's lawyer expresses an intention to cooperate in the proceedings with the current Tribunal member.

[100] The Complainant also notes that the Respondent does not refer in its arguments to any interventions by the Tribunal regarding the alleged vexatious behaviour, inconsistent statements, accusations or gratuitous insinuations. She writes that, had the Respondent's allegations been supported by the Tribunal, the Respondent would have referred to them. But it has not.

[101] Ms. Constantinescu argues that the Tribunal member is also adding to the delays in the case, in particular by requiring a ruling on the issue of abuse of process.

[102] She further states that she has retained the services of a lawyer so that she can reframe her requests in accordance with the rules of proportionality and decorum before the Tribunal. In her opinion, because she had been representing herself, the Tribunal had an obligation to help her follow all the rules, but the Tribunal member failed to provide satisfactory assistance. In addition, the Commission could have assisted the Complainant, as it does in other circumstances, but it did not.

[103] As for the Respondent's reference to *Poplawski*, Ms. Constantinescu argues that the facts in *Poplawski* are quite different from those in her case, and the cases therefore cannot be compared. She admits to being persistent but points out that all her requests were made in accordance with practice, that she did not write to individuals she was not allowed to write to, and that her fears of bias are based on considerations related to the dispute.

[104] She refers to *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 39 (CanLII), *Blencoe* and other cases, arguing that a stay of proceedings is a significant measure that carries a heavy burden of proof, given the public's interest in having the case heard on the merits.

[105] She believes that abuse of process, in itself, is not enough to stay the proceedings—a stay of proceedings must be the only possible remedy, and this remedy must be used only in the most serious cases. Other possible remedies should therefore be considered before a stay of proceedings.

[106] The Complainant states that the Respondent failed to establish a link between the length of the delays and actual harm to the individuals named in the complaint to a degree that would offend the public's sense of justice and decency. The Respondent's arguments are hypothetical and are not supported by any actual, documented harm.

[107] The Complainant further states that the Respondent has also added to the delays by claiming labour relations privilege in relation to a number of documents that she had requested to be disclosed. These documents were withheld for three years before the Respondent finally waived its privilege. She also argued that the Tribunal should have requested an explanation for this unexpected about-face.

[108] Given that the complaint contains serious allegations against a large public institution, namely Correctional Service Canada, Ms. Constantinescu believes that the complaint should be heard on the merits and not be dismissed for abuse of process. She argues that there is a power imbalance between her and the institution, and that she is very sensitive to this imbalance. She notes that the gap has been narrowed now that she is being represented by a lawyer.

[109] Finally, the Complainant believes that it would be premature to dismiss the complaint, considering the other remedies available, besides dismissal, including the involvement of her lawyer, who can respectfully help the parties and the Tribunal move the case forward.

VII. Analysis

[110] Determining whether there is an abuse of process that could ultimately lead to the dismissal of a complaint is a difficult exercise for a court or tribunal. As the Tribunal mentioned above, this issue cannot be taken lightly.

[111] As the Complainant points out in her reply, it is true that there is generally a public interest in having a case being heard on the merits. However, this principle has its limits, one of which is abuse of process. Simply put, there is a limit where the process is so oppressive or vexatious that to continue it would violate the fundamental principles of justice underlying the community's sense of fair play and decency (*Toronto*, at para 35).

[112] The Tribunal will focus, as it should, on making a reasonable ruling based on an inherently coherent and rational chain of analysis that is justified in relation to the relevant facts and law (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras 85 and 99; *Christoforou v. John Grant Haulage Ltd.*, 2021 CHRT 15 at para 31).

A. Abuse of Process

[113] The first question for the Tribunal is whether there is an abuse of process in this case.

[114] The Tribunal points out that, for the purposes of this ruling, it is necessary to consider all the other interlocutory decisions that the Tribunal has rendered in this case, which are

set out above, under “Background”. It is particularly important that this ruling be read in the context of the following rulings:

- Most notably *2019 CHRT 49*, where the Tribunal found that the Complainant’s motion to have the Tribunal reconsider 17 interlocutory decisions that had been made or were to be made was an abuse of process. Drawing on the teachings of the Honourable Justice Russell of the Federal Court in *Canada v. Nourhaghighi*, 2014 FC 254 [*Nourhaghighi*], the Tribunal reminded the Complainant that her actions were vexatious and abusive, urged her not to cross the boundaries of acceptable conduct but rather to focus her energy on the substance of her case, and warned her that she had less and less latitude in the proceedings and that her behaviour would no longer be tolerated. The Tribunal issued clear orders to stop this behaviour and to ensure that the proceedings ran smoothly.

- *2020 CHRT 3*, where the Tribunal dismissed the Complainant’s motion seeking the member’s recusal because of bias. This ruling highlights a number of difficulties and even obstacles in the proceedings caused by the Complainant’s behaviour.

- *2018 CHRT 8*, where at the very beginning of these proceedings, the Tribunal requested that the parties exercise restraint, and show respect and courtesy, and avoid making comments concerning the integrity of the persons involved in the case, including their professional integrity.

[115] This ruling must also be read while keeping in mind the multiple warnings given to the Complainant during CMCCs to refrain from vexatious behaviour and from making inflammatory, caustic statements and comments both in writing and orally during the CMCCs.

[116] Lastly, this ruling must be read in light of the repeated warnings in the Tribunal’s correspondence and instructions to the Complainant to correct her behaviour and refrain from allegations of bias, including the following:

- In a written communication dated December 4, 2018, the Tribunal intervened with respect to the allegations of bias made by the Complainant in an email sent on

December 3, 2018, and asked her to file a motion for recusal at the earliest opportunity or to stop alleging that the Tribunal member was biased.

- In a written communication dated September 13, 2019, the Tribunal again reminded the Complainant to exercise restraint, and show respect and decorum.

- In a written communication dated June 9, 2020, in response to another allegation of bias made by the Complainant on June 8, 2020, the Tribunal reminded the Complainant that the issue of recusal had already been ruled upon and asked her to refrain from making allegations in that regard.

[117] The Court would also point out that this ruling comes after a very lengthy, complex case management process that required a large number of CMCCs.

[118] Indeed, the Tribunal held no less than 26 CMCCs in the period of approximately 41 months from August 9, 2017, to January 26, 2021, or roughly one CMCC every month and a half.

[119] This amounts to the Tribunal and the parties spending close to 27½ hours advancing the proceedings, dealing with the disclosure of documents and making oral rulings on the multiple motions filed by the Complainant.

[120] All this time spent exclusively on case management is equivalent to almost five days of non-stop Tribunal hearings. It does not include the time spent on the numerous email exchanges between the parties and the Tribunal and on all the instructions and directions issued by the Tribunal member, nor does it include the time spent by the Tribunal in dealing with Ms. Constantinescu's requests for access to information and access to other Tribunal files.

[121] The sheer number of requests for disclosure by the Complainant, both in writing and during CMCCs, is striking and clearly unusual for a Tribunal proceeding. The oral rulings made by the Tribunal at CMCCs and as part of directions are, for all practical purposes, hard to quantify.

[122] The Tribunal ensured that case management was addressed on all these fronts, both orally and in writing, simultaneously, in order to expedite the process. Therefore, in addition to all the motions ruled on orally by the Tribunal at CMCCs, a number of other motions filed by the Complainant were dealt with in writing, resulting in the large number of rulings in this case.

[123] Moreover, although the Complainant states in her reply that she raised the member's bias at the earliest opportunity, in December 2019, the Tribunal reiterates that Ms. Constantinescu did not file her motion for recusal at the earliest opportunity.

[124] The Tribunal had already dealt with this issue at paragraphs 4 to 30 of its ruling in *2020 CHRT 3*, concerning recusal, where it ruled that Ms. Constantinescu had waived her right to file a motion for recusal by failing to file her motion at the earliest opportunity.

[125] The Tribunal will not repeat all the reasons for its ruling but wishes to point out that it intervened very quickly in the proceedings in response to the allegations of bias raised by the Complainant.

[126] On December 4, 2018, the Tribunal issued a direction to the Complainant in response to the allegations of bias she had raised the day before, telling her, on the basis of the Federal Court of Appeal's decision in *Zündel v. Canada (Human Rights Commission)*, 2000 CanLII 16575 (FCA), to file a motion for recusal at the earliest opportunity. The Tribunal clearly warned her that, if she failed to do so, she would have to refrain from making allegations of bias and exercise restraint. The Tribunal had assigned this case to the member in late summer 2017. This meant that the Complainant was already raising unfounded allegations of bias against the member only a few months into the case management process.

[127] Although she had been asked to file a motion for recusal, Ms. Constantinescu made an informed, conscious decision not to file a motion.

[128] The Tribunal again warned the Complainant to correct her vexatious and frustrating behaviour in its ruling in *2019 CHRT 49*, dated December 16, 2019, in which it dismissed

the Complainant's motion for the reconsideration of 17 interlocutory decisions, finding that it was an abuse of process.

[129] It reiterated the Federal Court's reasons in *Nourhaghighi*, in which the Honourable Justice Russel listed the behaviours that may lead to a finding of vexatious litigant, vexatious behaviour or abuse of process. Accusing decision makers of obvious bias and professional misconduct are among the behaviours that may lead to such a finding.

[130] In *2019 CHRT 49*, Ms. Constantinescu was also warned again that such allegations could result in an abuse of process and, ultimately, the dismissal of her case if she did not correct her behaviour. At the time, the Tribunal felt that that point had not yet been reached; therefore, it continued the proceedings as required under the CHRA.

[131] However, on December 15, 2019, the Complainant again raised the issue of bias on the part of the Tribunal member. She asked the Tribunal for instructions on how to request a different member. The Tribunal asked her to file a motion for recusal, which she did on January 17, 2020.

[132] As mentioned above (*2020 CHRT 3*), the Tribunal dismissed her motion for recusal for waiver on February 28, 2020, but nonetheless chose to deal with all her allegations, in the best interests of justice. The Tribunal concluded that there was no basis for recusal, and the motion was dismissed.

[133] The Complainant filed an application for judicial review of that ruling with the Federal Court, but the application was struck by Prothonotary Molgat on February 12, 2021. Ms. Constantinescu appealed the decision to strike the application, but the decision was confirmed on appeal by the Honourable Justice Mosley of the Federal Court on March 9, 2021 (see *Constantinescu 2021 FC 213*).

[134] The Complainant appealed the Honourable Justice Mosley's decision to the Federal Court of Appeal, which dismissed the appeal on January 18, 2022 (*Constantinescu c. Canada (Procureur général)*, 2022 CAF 9 (CanLII)).

[135] Despite the Tribunal's ruling dismissing Ms. Constantinescu's motion for recusal, despite the decisions of Prothonotary Molgat and the Honourable Justice Mosley of the

Federal Court, and despite the Tribunal's numerous interventions and its warnings to refrain from making unsubstantiated allegations of bias, the Complainant decided to keep going, deliberately ignoring all these warnings.

[136] A few months later, on June 8, 2020, Ms. Constantinescu came back with more allegations of bias on the part of the Tribunal member. The Tribunal once again intervened, issuing a direction on June 9, 2020. It informed her that the issue of recusal had already been decided and that she was required to refrain from making unfounded allegations of bias.

[137] Despite this final warning, the Complainant relapsed and again raised the question of bias on the part of the Tribunal member in correspondence dated January 22, 2021. She went on to state that she was being forced to participate against her will in proceedings from which the member was refusing to withdraw.

[138] It was this final correspondence that prompted the Tribunal's intervention in the CMCC of January 26, 2021. The Tribunal member, who controls the proceedings and who must ensure that they are not abusive, found it necessary to review the issue of a potential abuse of process in the investigation of the complaint because of the Complainant's actions.

[139] Ms. Constantinescu's repeated allegations of bias against the Tribunal member and her inability to refrain from allegations and to correct her behaviour, despite repeated warnings from the Tribunal in its directions, instructions and formal rulings, are an abuse of process (*Rodney Brass*, at para 17).

[140] As the Federal Court of Appeal stated in *Abi-Mansour 2014*, mentioned above, at paragraph 14:

> Persons who invoke the court's assistance in its capacity as an independent arbiter of disputes and who then repeatedly allege bias when the court's decisions do not meet their expectations are not using the judicial system in good faith. The Court is entitled to decline to lend its assistance to such litigants.

[141] The Court found that repeated allegations of bias attack the integrity of the entire administration of justice (*Abi-Mansour 2014*, at para 13). This Tribunal concludes, as the

Court did in that case (*Abi-Mansour 2014*, at para 14), that the Complainant's repeated allegations of bias are an abuse of process. Ms. Constantinescu was well aware, following the Tribunal's repeated warnings, that her repeated unfounded allegations of bias exposed her to the possible dismissal of her case. The Tribunal gave her a number of opportunities to correct her behaviour, but to no avail. The Tribunal certainly had the power to safeguard its proceedings against potential abuse of process and to raise the issue itself (*Abi-Mansour 2014*, at para 15).

[142] Given all of the above, the Tribunal finds that Ms. Constantinescu's repeated unfounded allegations of bias are vexatious to such a degree that they contravene fundamental notions of justice, undermine the integrity of the judicial process and are an abuse of process (see *Rodney Brass*, at para 17, and *Tobiass*, at para 89).

B. Remedies

[143] Having found that there is an abuse of process, the Tribunal must now decide on the appropriate remedy. Note that the entire complaint may be dismissed if (i) the abuse in question will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; and (ii) no other remedy is reasonably capable of removing that prejudice (*O'Connor*, at para 75; *Regan*, at para 54).

[144] Despite the Tribunal's unequivocal warnings to stop making unfounded allegations of bias each time the Complainant raised them, despite warnings in the Tribunal's directions and interlocutory decisions, despite a final ruling dismissing her motion for recusal, and despite the Federal Court decisions of Prothonotary Molgat and the Honourable Justice Mosley, Ms. Constantinescu continued to raise unfounded allegations of bias against the Tribunal member.

[145] Ms. Constantinescu has demonstrated and continues to demonstrate that she is unable to follow the directions and instructions of the Tribunal and refrain from making unfounded allegations of bias. Ms. Constantinescu is unable to abide by final rulings and the principle of *res judicata*. She repeatedly reopens the same debate and is unable to focus her energy on the substance of her case.

[146] As a result, she cannot correct her vexatious and abusive behaviour. She has shown that she is perfectly capable of ignoring any instructions from the decision maker to abide by its rulings and the decisions of supervising courts.

[147] Like the Federal Court in *Abi-Mansour 2015*, the Tribunal finds that this is sufficient to dismiss Ms. Constantinescu's complaint in its entirety as an abuse of process. The Tribunal finds that Ms. Constantinescu's past conduct is so egregious that the mere fact of going forward in the light of it would be offensive (*Tobiass*, at para 91).

[148] Moreover, the arguments submitted by the Complainant for the purposes of this ruling bode ill for the future of the proceedings. They are particularly telling at page 6, where the Complainant writes that, until the final court in this country—the Tribunal understands this to be the Supreme Court—decides the issue of bias on the part of the Tribunal member, she will not stop asserting that her allegation of bias on the part of the member is well-founded. This is not the first time the Complainant has made this kind of immoderate statement.

[149] Consequently, if the proceedings were to go forward, the Tribunal is not confident that the Complainant would be able to refrain from making her allegations. She is likely to continue in the same way as long as she has not been heard by the Supreme Court.

[150] Moreover, although the Complainant is now represented by a lawyer, the Tribunal does not believe that sufficient safeguards exist for it to be satisfied that the prejudice will not be perpetuated or aggravated if the proceedings go forward. In addition, the Tribunal believes that there is no other remedy available to it that is reasonably capable of removing that prejudice (*Regan*, at para 54).

[151] Indeed, even though Ms. Constantinescu was represented by a lawyer for the filing of her reply, a part of her representations was meant to prove, yet again, that the Tribunal member was biased, or at least to justify her actions. Although the lawyer stated that he would cooperate with the Tribunal and that he did not intend to dwell on the allegations of bias, he dealt again with this issue over several pages (approximately one third of the representations), reopening the debate on bias on the part of the member.

[152] The Complainant believes that her claim that the Tribunal member is biased is neither frivolous nor abusive. To be clear, it is not the motion for recusal itself that is abusive; what is abusive is the Complainant's unending unsubstantiated allegations of bias, despite the Tribunal's repeated warnings and cautions, its final rulings and the final decisions of the Federal Courts. And although her lawyer stated that the Complainant was not going to continue in this way, the arguments in her reply show that she refuses to respect the principle of *res judicata*, even though she is now represented by a lawyer.

[153] The Complainant's lawyer, as an officer of the court, is (or should be) well aware of the principle of *res judicata* in relation to *2019 CHRT 49*. The debate on this matter is closed, yet the Complainant cannot resist reopening the debate in her reply. Considering the history of the case, the Tribunal is not persuaded that the issue would not be raised again if the proceedings were to continue. The prejudice caused by the abuse in question would therefore necessarily be perpetuated or aggravated through the conduct of the proceedings, or by its outcome (*Regan*, mentioned above).

[154] The Complainant proposes an alternative. She argues that, since the Tribunal is an administrative body and since its procedure should be flexible and informal, the Tribunal could have simply decided to replace the member to change the dynamics of the case.

[155] This proposal in Ms. Constantinescu's reply by her lawyer is surprising, to say the least.

[156] It is not for the complainant or any other party to a Tribunal inquiry to decide which member will be assigned a complaint or whether a complaint should be reassigned. It is the responsibility of the Tribunal's chairperson to assign complaints to members. In other words, it is the prerogative of the Tribunal's chairperson to assign a member to inquire into a complaint and that of the member to agree to the assignment (CHRA, s. 49(2). See also *Hugie v. T-Lane Transportation and Logistics*, 2020 CHRT 25 (CanLII) at para 33).

[157] That being said, the Tribunal also cannot accept the Complainant's suggestion that it could have quickly replaced the member conducting the proceedings without causing prejudice to anyone.

[158] The complexity of this case is obvious. The large number of CMCCs and written and oral interlocutory decisions, and the rigour required to stay focused on the elements to be dealt with would have made it difficult to replace the member in the midst of the proceedings.

[159] Moreover, the Complainant is effectively asking to do indirectly what the member refused to do directly. In other words, it amounts to the recusal of the member without cause or basis, whereas the motion for recusal was decided and the member refused to withdraw.

[160] What the Complainant is proposing would in fact open the door to something the Supreme Court has firmly opposed, namely the practice of trying to select a more favourable decision maker. This practice has been described as unacceptable, and the courts and tribunals have dubbed it "judge shopping" (*Regan*, at para 61).

[161] This practice consists of one of the parties to the dispute using various tactics to try to change the judge assigned to their case in the hope of getting a judge who is more favourable to them. The tactics may include a request to change the decision maker, a complaint against the decision maker or an unfounded motion for recusal.

[162] Along these lines, the Complainant states in her arguments that the member could have done the same thing that Member Bélanger did in a different case (see *Davis v. Canada Border Services Agency*, 2011 CHRT 6 [*Davis*]). In *Davis*, the member dismissed a motion for recusal but nonetheless chose to withdraw from the case.

[163] With all due respect for Member Bélanger and his ruling, the undersigned deems that that is not the right approach to take regarding the recusal of a decision maker. The Tribunal is in full agreement with the comments of the Honourable Judge Hudon of the Court of Québec in *R. c. Hakim*, 2013 QCCQ 11052 (CanLII), who wrote the following in this regard:

> [TRANSLATION]
>
> [17] It would be easy for any judge who is the subject of a motion for recusal to grant the motion and refer the case to another judge.
>
> [18] However, **this is not the attitude to adopt when dealing with such a request**, because to do so would be to create a situation that would open the door to abuse and to judge shopping by one of the parties. Judges must

> avoid taking the easy way out and recusing themselves when they do not have to.

[164] In the Complainant's reply, her lawyer came back to this: he reiterated that the Tribunal could simply have replaced the member during the proceedings.

[165] The arguments of the Complainant and her lawyer, what they are asking for, are in effect and in a thinly veiled way a form of "judge shopping". Going down this road could lead to undesirable situations in a judicial or quasi-judicial proceeding and would be detrimental to the administration of justice in general. This proposal opens the door to dangerous precedents.

[166] One party could simply make repeated unfounded allegations of bias to put undue pressure on the decision maker so that, eventually, the decision maker simply withdraws from the case and has another judge take over. This is not a desirable situation in a process such as ours.

[167] The fact that the Tribunal is administrative in nature and generally more flexible than a court of law does not change the nature of the Complainant's proposal. Accepting this proposal would still undermine the administration of justice in general, despite the administrative nature of the Tribunal and the flexibility it can offer.

[168] The Tribunal is firm: this type of manoeuvre is unacceptable and vexatious. For these reasons, the Tribunal cannot consider it to be an alternative or a remedy to remove the prejudice within the meaning of *Regan*, at paragraph 54.

[169] That being said, the arrival, albeit late, of a lawyer representing the Complainant is also not an alternative remedy to remove the prejudice. There is no guarantee that Ms. Constantinescu's representative will remain on the case until the end of the proceedings. This decision rests entirely on the shoulders of the Complainant, and the Tribunal cannot guarantee that the lawyer will remain on the case. Therefore, the Tribunal is not convinced that the abuse of process would not be perpetuated if the proceedings were to continue, even though the client is represented.

[170] Another avenue might have been for the Tribunal to order the Complainant to pay costs, had it had the power to do so. However, as the Respondent points out in paragraph 49 of its arguments, the Tribunal lacks this remedy to sanction the Complainant's behaviour, unlike the Federal Court. The Supreme Court of Canada confirmed this lack of authority in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII) [*Mowat*], stating that the Tribunal cannot award costs under paragraphs 53(2)(c) and (d) of the CHRA.

[171] The Tribunal wishes to cite the Federal Court of Appeal's decision in *Tipple v. Canada (Attorney General)*, 2012 FCA 158, although the parties did not raise it in their arguments. In that case, which involved a decision of the federal Public Service Labour Relations Board, the Federal Court of Appeal found that a tribunal's inherent authority to control its own process includes the right to require the reimbursement of expenses incurred as the result of abusive or obstructive conduct by an opposing party. It should be noted that the circumstances of this case, as the Court pointed out, were highly unusual.

[172] Even assuming that the Tribunal could have such authority—which is hypothetical and which, in any event, the Tribunal will not address because the parties have not argued it—the Tribunal is not persuaded by the history of this case that any monetary penalty could reasonably be expected to remove the prejudice within the meaning of *O'Connor* and *Regan*, mentioned above.

[173] In conclusion, the Tribunal finds that Ms. Constantinescu's complaint should be dismissed solely on the basis of the Complainant's repeated unsubstantiated allegations of bias against the member, in light of the foregoing and the multiple warnings the member gave regarding these allegations, the impact of these allegations on the judicial system as a whole and on the member's reputation, and the Complainant's inability to follow the Tribunal's orders and directions.

[174] The Tribunal also concludes that there is no other means in its toolbox, other than dismissing the proceedings, to remove the prejudice caused by the Complainant's actions. There is also no other means by which it can prevent or remove the prejudice that would be perpetuated if the proceedings were to continue.

[175] There is no need for the Tribunal to analyze the third criterion, balancing of interests, since the Tribunal's analysis of the first two criteria leaves no doubt (*Regan*, at para 57; *Tobiass*, at para 92).

C. Other Vexatious Behaviour and Excessive Delays

[176] Since the Tribunal has already concluded that the complaint should be dismissed on the basis of the repeated unfounded allegations of bias, and although it heard all of the parties' arguments, it finds it unnecessary to rule on the Complainant's other vexatious behaviour.

[177] Moreover, the Tribunal will not consider the excessive delays that may have been caused by the Complainant's complicating her complaint or the prejudice that may have resulted from it.

[178] That said, the Tribunal wishes to point out that, throughout the inquiry, the Complainant engaged in inappropriate behaviour and was asked to correct it on numerous occasions by the Tribunal. For example, in a great deal of correspondence, during CMCCs and even in submissions regarding motions, she engaged in personal and professional attacks, made accusations of irregularities and bad faith against those involved in the case, and accused those involved of lying or protecting liars when the evidence had yet to be considered. She ignored the Tribunal's rulings, flouted its authority, and was disrespectful to the representatives of the other parties, both orally and in writing.

[179] The Tribunal cannot ignore the fact that Ms. Constantinescu knowingly used inflammatory, caustic language throughout the proceedings. The Tribunal is not alone in making this observation. The Honourable Justice Pamel of the Federal Court, who observed the same behaviour in his proceedings, wrote the following in *Constantinescu 2021 FC 229*, at paragraph 139:

> On balance, there is no basis for awarding costs. While I understand that Ms. Constantinescu feels cheated by the applicant, this does not justify her personal attacks. Ms. Constantinescu could have better served her cause by focusing on the real issues rather than fanning the flames with caustic language, regardless of her feelings.

[180] It is indeed unfortunate that Ms. Constantinescu was unable to focus on the substance of her case.

VIII. Order

[181] For all the reasons above, the Tribunal dismisses Ms. Constantinescu's complaint for abuse of process and orders that the file be closed, effective as of the date of this ruling.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
April 20, 2022

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 20, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Cecilia Constantinescu, for herself

Kwadwo D. Yeboah, for the Complainant

Paul Deschênes and Nadia Hudon, for the Respondent