

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 3
Date: January 26, 2023
File No.: T2180/0217

Between:

The Estate of Annie Oleson

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Wagmatcook First Nation

Respondent

Decision

Member: Colleen Harrington

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I. Overview and Decision

[1] Annie Oleson was an Elder and a member of the Respondent Wagmatcook First Nation when she filed her human rights complaint with the Canadian Human Rights Commission (Commission) in 2014. Her complaint alleges that Wagmatcook discriminated against her on the basis of disability when it failed to provide her with accessible, barrier free housing, contrary to sections 5 and 6 of the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA].

[2] On December 28, 2016 the Commission asked the Tribunal to inquire into Ms. Oleson's complaint. Sadly, Ms. Oleson passed away in February of 2017. The Estate of Annie Oleson is the Complainant in this matter now. Ms. Oleson's son Joseph Oleson represents the Estate.

[3] Since early 2018, the Tribunal has been dealing with this complaint through its Case Management process. This process involves the exchange of Statements of Particulars, witness lists and arguably relevant documents, as well as resolving issues to ensure the hearing of the complaint can occur as expeditiously as possible.

[4] The Tribunal has held over fifteen Case Management Conference Calls (CMCC) with the parties and has also issued two Rulings. One Ruling is about the scope of the complaint (2019 CHRT 35 (CanLII)) and the other relates to the types of remedies the Tribunal may award even though the Complainant Ms. Oleson is deceased (2020 CHRT 29 (CanLII)).

[5] Wagmatcook and the Commission also signed Minutes of Settlement regarding the public interest issues and remedies the Commission was pursuing in respect of this complaint. Ms. Oleson's Estate is not a party to those Minutes of Settlement. The parties did make efforts to settle the individual aspect of the complaint through two Tribunal-assisted mediations, but no settlement was reached.

[6] A hearing into the complaint, expected to last three weeks, has been scheduled three times. Each time Mr. Oleson has asked for an adjournment, for various reasons. The last time the Tribunal agreed to adjourn the hearing, Mr. Oleson was directed to provide certain information to the Tribunal and the parties by May 30, 2022. He was warned that, if he did

not provide the required information by this date, the Respondent could file a Motion to dismiss the complaint. Mr. Oleson failed to comply with the Tribunal's direction and the Respondent brought this Motion asking that the complaint be dismissed.

[7] Wagmatcook says Mr. Oleson has repeatedly failed to comply with the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 [*Rules of Procedure*] and the Tribunal's orders and directions, and that he has demonstrated a wholesale disregard for the Respondent's procedural fairness rights. It argues that allowing this claim to continue would constitute an abuse of process.

[8] Mr. Oleson disagrees that the complaint should be dismissed. The Commission takes no position with respect to Wagmatcook's Motion to dismiss the complaint.

[9] I agree with Wagmatcook that Mr. Oleson's conduct, including his non-compliance with the Tribunal's *Rules*, timelines and directions, and the delay this has led to, constitutes an abuse of the Tribunal's process. I grant Wagmatcook's request to dismiss the complaint.

II. Issue

[10] There is only one issue to decide in this Decision: does Mr. Oleson's failure to meet the Tribunal's deadlines and follow its directions and *Rules of Procedure* warrant the dismissal of this complaint?

III. Analysis

A. Submissions of the Parties

(i) Respondent's Motion

[11] Wagmatcook moves to dismiss this complaint pursuant to section 9 of the *Rules of Procedure*, which grants the Tribunal the authority to dismiss complaints for non-compliance with the *Rules*, or with a Tribunal order or a time limit established under the *Rules*. Wagmatcook also notes that the Tribunal, like a Court, is "entitled to prevent abuse of its process" (*Johnston v CAF*, 2007 CHRT 42 (CanLII) [*Johnston*] at para 31) and refers to

section 10 of the *Rules of Procedure*, which allows the Tribunal to dismiss a complaint for abuse of its process.

[12] Wagmatcook says the Tribunal should dismiss this complaint because the Complainant's representative Mr. Oleson has repeatedly failed to comply with the Tribunal's *Rules of Procedure* and its orders and directions. It argues that allowing this claim to continue would result in an abuse of the Tribunal's process.

[13] With regard to what might be described as the triggering events for this Motion, the Respondent says it was in the final stages of preparing for a three-week hearing scheduled to start on April 25, 2022 when the hearing was cancelled for the third time. In its April 21, 2022 decision granting Mr. Oleson's request to adjourn the hearing, the Tribunal directed Mr. Oleson to provide information regarding the course of his ongoing medical treatment by May 30, 2022. Although he was reminded of this deadline by the Tribunal on May 26, 2022, the May 30 deadline passed without any update from Mr. Oleson or any explanation about why the information was not forthcoming.

[14] Wagmatcook submits that, as Mr. Oleson's failure to comply with the May 30 deadline is only the most recent example of his disregard for the Tribunal's process and the Respondent's rights, this Motion should be evaluated in the context of the entire proceeding and all parties' actions relating to the conduct of the proceeding.

[15] The Respondent says that, in addition to his three requests to adjourn the hearing, Mr. Oleson has rarely met deadlines and has had them extended many times, for example: to file his Statement of Particulars, witness lists and will-say statements; to reply to motions; to provide disclosure to the Respondent; and to provide his comments or approval regarding the Joint Book of Documents and Agreed Statement of Facts prepared by the Commission. The Respondent says each delay has caused the process to expand over years, adversely affecting its procedural fairness and resources, and the integrity of the process.

[16] Wagmatcook notes that the Tribunal has developed two approaches or tests to apply when determining applications to dismiss complaints for delay or a failure to comply with deadlines. The Tribunal decides which test is appropriate depending on the circumstances of the case (see *Johnston* at paras 29-31 and *Chisholm v HEA*, 2019 CHRT 38 (CanLII))

[“*Chisholm*”] at paras 17-19). These tests are referred to in the Tribunal’s case law as the “classic test” and the *Seitz* test. Only one of these two tests has to be met to dismiss a matter for delay.

[17] The Respondent acknowledges that the bar is high to dismiss a complaint due to delay or failure to comply with deadlines, “particularly in the case of an unrepresented complainant who has had significant medical issues” (*Chisholm* at para 2). However, it argues that, in this case, the bar has been met and surpassed. Wagmatcook further argues that both the “classic” test and the *Seitz* test have been met in this case.

[18] In order to determine whether to dismiss a matter for delay using the “classic test”, the Tribunal must determine: (1) whether there has been an inordinate delay; (2) whether the delay is inexcusable; and (3) whether the Respondent is likely to be seriously prejudiced by the delay (see *Chisholm* at para 18). The Respondent submits that all three parts are met in this case.

[19] First, it says that the delay in dealing with the complaint has been inordinate. It says Mr. Oleson’s conduct has caused numerous and significant delays. Not only has the matter been adjourned three times at his request, but the proceedings have been unreasonably extended as a result of his non-responsiveness and late responses.

[20] Second, Wagmatcook argues that the delay is not excusable. Mr. Oleson has provided a variety of reasons for his requested adjournments and failures to meet deadlines. However, many of his instances of non-compliance with the *Rules* or with Tribunal directions have been without any explanation or were otherwise unsupported by credible and reliable documentation.

[21] Third, the Respondent argues that it has been enormously prejudiced by Mr. Oleson’s conduct throughout the course of the complaint. Wagmatcook has retained legal counsel and says it has incurred the cost of preparing for a lengthy and complex hearing three separate times, in addition to the time and cost of responding to Mr. Oleson’s many other requests. It says: “Due to Mr. Oleson’s unpredictable behaviour and repeated failure to adhere to deadlines and obligations, the Respondent has been left in a prolonged state of uncertainty. It is unclear when or if this claim will be heard on its merits and, even if

so, many details of Mr. Oleson's proposed claims are still unknown to the Respondent, including whether it will be possible for a hearing to proceed (including via videoconference), and what, if any, witnesses will be participating."

[22] The Respondent also argues that the *Seitz* test applies. When applying that test (set out in *Seitz v Canada*, 2002 FCT 456 (CanLII) ["*Seitz*"] at paragraphs 16-18), the Tribunal has to consider whether there has been "wholesale disregard" for the Tribunal's time limits and *Rules* in cases that have remained static for an unreasonable length of time and where the complainant appears to have no intent to bring the case to a conclusion (see *Chisholm* at para19).

[23] The Respondent argues that Mr. Oleson has clearly demonstrated a "wholesale disregard" for the Tribunal's process which amounts to an abuse of the administration of justice and has affected the Respondent's right to procedural fairness. It submits that the Tribunal has made significant efforts to accommodate Mr. Oleson throughout this process but, despite the many adjournments and extensions he has been granted, he has failed to adhere to the deadlines and directions given by the Tribunal.

[24] The Respondent argues that Mr. Oleson has not demonstrated that he is willing to diligently pursue his case. It says that, "to continue litigation with no intention to bring it to a conclusion can amount to an abuse of process" (*Seitz* at para 19).

[25] While the Respondent sympathizes with Mr. Oleson's health challenges, it notes that he has also not been diligent in pursuing his own healthcare. At the time the Respondent filed its Motion to dismiss on June 1, 2022, it was still unknown if Mr. Oleson had attended his mental healthcare appointment on May 25, which was the premise for the April 2022 hearing adjournment. It argues that, even amidst the challenges of ongoing health treatments, Mr. Oleson must take reasonable steps to participate in the Tribunal's process and move the complaint forward.

(ii) Complainant

[26] Mr. Oleson sent two different emails in relation to the Respondent's Motion. Neither replies to the Motion in any substantive way.

[27] The first email was sent on June 17, 2022, which was the Complainant's deadline to reply to the Motion. Mr. Oleson confirms that he attended his May 25, 2022 appointment and says he attended a follow up appointment on June 14, 2022. He says both of these appointments were with a counselor, who was scheduling an appointment for him to see a psychiatrist in the near future.

[28] Mr. Oleson also submitted what he describes as a "referral by a clinical therapist from July 31st 2019 stating I was having PTSD like symptoms and still am having PTSD like symptoms". The July 31, 2019 letter is from a therapist who says he met with Mr. Oleson twice in July of 2019. The therapist says that he would like to continue seeing Mr. Oleson on a regular basis and that they planned to attend a telepsychiatry appointment at the Cape Breton Regional Hospital together "for a medication consultation and/or best practices with regard to PTSD like symptoms".

[29] Mr. Oleson says in his June 17, 2022 email that he has been and presently is under medical treatment for anxiety. He says PTSD is an anxiety disorder and that he was referred to a psychiatrist for treatment for PTSD a couple of times before the Covid-19 pandemic, but that neither of the psychiatrists he was referred to was taking new patients. He says he will provide the Tribunal with the name of the psychiatrist he will be seeing once he knows this. However, he refuses to provide this information to the Respondent because the Respondent's counsel contacted his physician about whether he wrote an April 12, 2022 letter in support of Mr. Oleson's hearing adjournment request. Mr. Oleson describes this action as "aggressive" and "a reprehensible violation of my privacy" which has had a "negative affect (*sic*) on my health care workers and our relationships."

[30] Mr. Oleson then says he will be asking for an investigation of harassment of witnesses having to do with this human rights case and says he will be sending evidence of this alleged harassment shortly.

[31] Finally, in his June 17, 2022 email submission, Mr. Oleson says that, in the winter of 2021, he was attacked in his children's home while he was working on his mother's human rights case. He describes this as "a home invasion that turned bloody" and says this added to his stress and anxiety. He further attached to his June 17, 2022 email some photos of

injuries he says he incurred after being attacked at a pizza parlor with his family. He felt this attack had to do “with a set up because of the Human Rights complaint.” He does not say when this event happened.

[32] In addition to the June 17, 2022 submissions, Mr. Oleson also sent an unsolicited email on June 27, 2022. The Respondent had the opportunity to respond to this email, so I will summarize it here. Mr. Oleson said he was actively looking into his appointment with a psychiatrist and reiterated that he would only provide their name to the Tribunal and not to the Respondent.

[33] Mr. Oleson also reiterated that he was going to send some evidence “for filing a witness intimidation and harassment investigation complaint” and asked for some “leeway concerning admitting evidence” due to his “lack of legal knowledge” and his “psychological health issues”. He repeated his belief that he and his family had been attacked and harassed in relation to the human rights complaint and that these events have had a detrimental impact on his mental health. He attached to this email some photos he says are from the “home invasion” that occurred while he was working on his human rights case, but that he did not want shared with the Respondent.

(iii) Respondent’s Reply

[34] The Respondent replied to Mr. Oleson’s June 17 and June 27 emails. It says that despite telling the Tribunal he attended his May 25, 2022 appointment and a June 14 follow up appointment, he has not provided any supporting documentation to confirm his attendance or the recommended next steps, including a treatment plan. The Respondent says no timeline has been proposed on which the Tribunal and Respondent can meaningfully rely.

[35] In the absence of such information, the Respondent asserts that its procedural fairness rights are significantly compromised. There is no indication as to how or when this matter will move forward and no assurance as to whether Wagmatcook will be forced to continue incurring significant costs associated with further delays.

[36] With regard to the July 31, 2019 letter from the clinical therapist provided by Mr. Oleson with his June 17, 2022 email, the Respondent points out that the letter recommends he continue with clinical therapy on a regular basis and based on his own submissions, it appears he did not do so. The Respondent submits that this failing shows a lack of diligence on Mr. Oleson's part in pursuing his own mental health treatment.

[37] The Respondent says the information about attacks against Mr. Oleson and his family and suggestions that the Respondent was somehow involved are not relevant to the Motion to dismiss and have no place in response submission. Wagmatcook denies the allegations of witness intimidation or harassment, the particulars of which have not been provided by Mr. Oleson.

[38] Wagmatcook submits that Mr. Oleson continued to disregard procedural fairness requirements and the Tribunal's *Rules of Procedure* by failing to copy the Respondent on his June 27, 2022 correspondence and by attaching photos that he intends to rely on as part of the complaint that were not disclosed as part of the hearing preparation.

[39] The Respondent argues that Mr. Oleson has not demonstrated any intention to bring this matter to a conclusion. Instead, he continues to say he has more evidence forthcoming. Wagmatcook reiterates that, to continue litigation with no intention to bring it to a conclusion can amount to an abuse of process (*Seitz* at para 19).

[40] The Respondent submits that Mr. Oleson's submissions fail to provide any path forward for the litigation and that he continues to employ delay tactics which have caused significant harm to the Respondent to this point.

B. Reasons For Dismissing the Complaint

[41] I am of the view that the Tribunal should apply the *Seitz* approach to determine whether to dismiss this complaint. While the Respondent argues that there has been inordinate delay in this case such that the "classic test" could also be applied to the facts, I do not agree that this is the appropriate approach to apply in the circumstances of this case.

[42] The “classic test” requires a finding that there has been inordinate delay. The Tribunal may need to consider – in the appropriate case – whether the “classic test” still applies, given the Supreme Court of Canada’s recent decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 (CanLII) [*“Abrametz”*], which was issued following the Respondent’s final submissions relating to its Motion. In *Abrametz*, the Supreme Court considered the issue of inordinate delay in administrative proceedings, which the Court had previously considered in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII). In both cases the Supreme Court endorsed a three-step test to determine whether delay that has not affected the fairness of a hearing nonetheless amounts to an abuse of process. That test is slightly different from the “classic test.”

[43] In any event, the present Motion is more about the Complainant’s failure to comply with the Tribunal’s *Rules of Procedure* and directions than it is about the case taking a very long time in the Tribunal’s process. To the extent that there is no end in sight to this proceeding, due to Mr. Oleson’s conduct, there likely could be an eventual finding of inordinate delay. However, the abuse of process that has occurred in this case is distinct from that alleged in *Abrametz* (and I note that the Supreme Court found the delay in that case to be long but not inordinate).

[44] The *Seitz* approach requires the Tribunal to find that there has been “wholesale disregard” for the Tribunal’s time limits and *Rules of Procedure*, in a case that has remained static for an unreasonable length of time, and that the Complainant appears to have no intention of bringing the case to a conclusion. This test is appropriate given that this Motion has been brought pursuant to section 9 of the *Rules of Procedure*. Section 9 grants the Tribunal the authority to dismiss complaints for non-compliance with the *Rules*, or with a Tribunal order or a time limit established under the *Rules*.

(i) Wholesale disregard for the Tribunal’s time limits and *Rules*

[45] In accordance with section 2(2) of the *Rules*, all parties have consented to the Tribunal’s 2021 *Rules of Procedure* applying to this case. Section 5 states that the “Rules are to be interpreted and applied so as to secure the informal, expeditious and fair

determination of every inquiry on its merits.” This section reflects the legislative requirement that proceedings before the Tribunal “be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow” (section 48.9(1) of the *CHRA*).

[46] The *Rules of Procedure* also state that the Tribunal controls the conduct of the inquiry, from case management to motions to the hearing (section 3(2)), and they provide the Tribunal with the authority to establish time limits in order to keep the process moving forward to a hearing. As such, all time limits imposed by the Tribunal in relation to case management, motions and hearing preparation are established under the *Rules*, for the purposes of section 9.

[47] Throughout the five years that this matter has been in the Tribunal’s Case Management process, Mr. Oleson has failed to comply with directions and has either missed, or requested extensions of, nearly all of the timelines established by the Tribunal pursuant to its *Rules of Procedure*. In addition, each time the complaint has been scheduled for a hearing, Mr. Oleson has asked for an adjournment. The following facts relating to Mr. Oleson’s conduct since the matter was first scheduled for a hearing support a finding that Mr. Oleson has exhibited wholesale disregard for the Tribunal’s timelines and *Rules of Procedure*.

[48] In April of 2021, Mr. Oleson asked to adjourn the June 2021 hearing dates because he was scheduled to have surgery in May of 2021, and he said he would require time to recover from the surgery. He asked to reschedule the hearing to the fall of 2021. Mr. Oleson agreed to provide confirmation of his surgery date and recovery time from his surgeon or doctor by April 16, 2021. However, he did not provide this information until late April. Once this information was received, all parties consented to adjourn the hearing and the hearing dates were rescheduled for October and November of 2021.

[49] At the next CMCC in July of 2021, Mr. Oleson advised that he had not yet had his surgery, although he was not responsible for the delay. In order to be ready to begin the hearing in October of 2021, Mr. Oleson was given a deadline of August 25, 2021 to request any further disclosure of documents from the Respondent, and to provide his own remaining

documents, photos or videos to the Respondent and Commission. Instead, he waited until his deadline of August 25 to request a three-week extension because he was “very sick.” He was granted an extension and was given a new, peremptory, deadline of September 8, 2021. The Tribunal stressed to Mr. Oleson that any delays so close to the hearing date have an effect on the ability of the other parties to prepare for the hearing.

[50] Mr. Oleson had not provided a doctor’s note in support of his August 25, 2021 extension request. As this was not the first time he had indicated that health issues were preventing him from meeting deadlines, the Tribunal directed that any further requests for extensions or delays by Mr. Oleson that were based on illness would only be considered if they were supported by medical documentation.

[51] On September 8, 2021 Mr. Oleson made a very broad and lengthy request for further information and documents from the Respondent, some of which related to matters outside of the scope of the complaint, an issue that had been decided by the Tribunal in 2019 (in 2019 CHRT 35 (CanLII)).

[52] As part of his September 8, 2021 request, Mr. Oleson also asked that all disclosure that had been provided to him previously by the other parties be re-sent to him. This was the second time he had made a request to be provided with disclosure he had already received. In addition, Mr. Oleson added several new witnesses to his witness list and said he still had videos and other disclosure that he intended to provide later, despite being ordered to provide all such information by September 8, 2021.

[53] As a result of this lengthy request from Mr. Oleson so close to the hearing, the Respondent requested to vacate the October hearing dates to allow it to respond, while keeping the week in November of 2021 for the hearing. This was agreed to by all parties and the Tribunal. The Respondent acted diligently and quickly to respond to Mr. Oleson’s request.

[54] The next CMCC was scheduled for October 13, 2021. Mr. Oleson did not join the call and when contacted by the Tribunal’s Registry Officer, he advised that he did not feel well and would not be calling in. The CMCC was rescheduled to October 15, 2021.

[55] During the October 15 CMCC, Mr. Oleson asked to adjourn the November 2021 hearing dates. He said he had been having a hard time preparing for the hearing because he had anxiety and PTSD, although he failed to provide medical documentation in support of this assertion as required. At this time, he assured everyone on the call that he was feeling better and was in a position to get everything ready for a hearing in mid-January of 2022.

[56] The other issue he raised in support of his request to adjourn the hearing was the fact that the Commission had recently indicated it was no longer going to participate in the hearing of the complaint. Up until that point the Commission had been participating as a full party and planned to assist Mr. Oleson with his examination in chief, as well as to cross-examine the Respondent's witnesses. The Commission had also planned to call four witnesses of its own. The Commission's late withdrawal from the hearing meant more responsibility was placed on Mr. Oleson's shoulders that he was not prepared for. Although the Respondent was frustrated with his delays, it noted that he was obviously not ready to proceed in November with the hearing.

[57] The Commission and Respondent both expressed their concerns about Mr. Oleson's commitment to the process. They noted that he had been repeatedly unprepared during the case preparation process, had missed deadlines and had asked for multiple extensions. They also questioned whether Mr. Oleson had the documents that had been disclosed to him by the other parties at various times during the Case Management process even though they had sent their documents to him more than once.

[58] Although they were no longer participating in the hearing, the Commission's legal counsel were still providing some assistance to the parties by preparing a Joint Book of Documents, as well as an Agreed Statement of Facts. The Commission indicated that, while the Joint Book of Documents was ready, Mr. Oleson continued to take issue with the disclosure provided by the Respondent and he was still talking about expanding the scope of the complaint, even though that issue was decided by the Tribunal in 2019. The Commission suggested that, if the hearing was adjourned, Mr. Oleson's further deadlines should be peremptory.

[59] I agreed that the case was taking a very long time to be heard and that it was unfair to the Respondent to have to prepare for the hearing only to face uncertainty about whether Mr. Oleson would be ready. I acknowledged that much of the delay to that point was attributable to Mr. Oleson. However, I understood that the Commission's withdrawal at this late date placed considerable responsibility and pressure on Mr. Oleson that he was not prepared for.

[60] At the October 15, 2021 CMCC, I agreed to adjourn the November 2021 hearing dates on the condition that Mr. Oleson must be ready by January of 2022 to proceed to hearing, meaning he must have resolved all of his outstanding issues by then. I established November 2021 deadlines for Mr. Oleson to comply with regarding disclosure. I agreed that these and any future deadlines would be peremptory on Mr. Oleson, meaning he must meet the deadlines established to ensure he would be ready for the hearing and if he did not, he would have to proceed anyway without further extensions. He was warned that he might also face a Motion to dismiss by the Respondent if he continued to fail to meet deadlines and to follow the Tribunal's directions. Finally, I reiterated that any further health-related delays would only be considered if Mr. Oleson provided medical proof and support for such a request.

[61] During the October 15, 2021 CMCC the parties also discussed the possibility of another Tribunal-assisted mediation process with a different Tribunal Member. To avoid further delay, I required Mr. Oleson to advise the other parties by October 22 if he agreed to try mediation again. However, he did not meet this deadline. Rather, on November 8 he stated that he had not ruled out the possibility of trying mediation again.

[62] On November 8, 2021 Mr. Oleson asked for an extension of at least a month and a half to meet the November deadlines established at the October 15 CMCC. He stated that he was dealing with another legal case relating to his mother, that he had his own court case coming up, and that he needed to request more of his mother's medical records from a hospital for her human rights case.

[63] On November 10, 2021 I declined to grant Mr. Oleson's extension request, stating: "The parties and Tribunal have heard Mr. Oleson make many excuses over the last nearly

four years about why he has not met deadlines or why he cannot proceed within timelines he previously agreed to. He needs to start taking this case more seriously and make it a priority.” I stated that if he failed to meet the deadlines established at the October 15, 2021 CMCC, he would not be permitted to ask for further documents from the Respondent or to disclose any further documents himself without the Tribunal’s permission, which would only be granted in exceptional circumstances.

[64] At a CMCC in February of 2022, while the mediation was ongoing with a different Tribunal Member, hearing dates were scheduled in case the mediation was not successful. The hearing was scheduled to start on April 25, 2022.

[65] As the matter did not settle, a CMCC was held on April 6, 2022 to ensure the parties were prepared for the hearing. At this CMCC, Mr. Oleson asked to adjourn the hearing dates. During the CMCC he mentioned an upcoming appointment with a psychologist that he felt he needed to attend before he could proceed with the hearing because he was experiencing various mental health issues that were impacting his ability to prepare for the hearing. I indicated that I would not consider a request to adjourn the hearing without medical evidence from a physician, which accords with my previous directions of August and October of 2021 requiring Mr. Oleson to provide medical documentation to support any further health-related adjournment or extension requests.

[66] On Saturday, April 16, 2022, Mr. Oleson sent an email to the Tribunal and Commission only, requesting an adjournment of the April 25 hearing until after his appointment with a psychologist on May 25, 2022. He did not send his request to the Respondent as required. As a result, the Respondent did not receive his email until April 19. The request was accompanied by a letter from his physician dated April 12, 2022.

[67] The physician’s letter says he had referred Mr. Oleson to the Nova Scotia Health Authority (NSHA) in April of 2021 because he was presenting with PTSD symptoms. Mr. Oleson also provided a letter from the NSHA dated saying this referral had been closed because the NSHA had been unable to reach Mr. Oleson, but that he could contact them for service without a further referral. It appears that Mr. Oleson did not do this.

Instead, his physician referred him to the NSHA again on March 11, 2022, and an appointment was scheduled for May 25, 2022.

[68] The April 12, 2022 physician's letter says that Mr. Oleson was "presently being treated for stress and anxiety and it is my strong recommendation as a Physician that he be granted an extension on his Human Rights hearing that was dated and scheduled for April 25th, 2022. Until after his appointment with a Psychologist on May 25th, 2022, so that you may better understand and accommodate his disability" [as written].

[69] Mr. Oleson's April 16, 2022 adjournment request noted that, although he had been able to participate in mediation calls over the past several weeks, he was asking the Tribunal to adjourn the hearing to after May 25 so he could have the "tools" to allow him to proceed, and so the Tribunal could accommodate his disability.

[70] I agreed to adjourn the hearing based on Mr. Oleson's letter from his physician. I accepted that Mr. Oleson had the support of his doctor, who strongly recommended the hearing be adjourned to allow him to seek treatment. However, I also agreed with the Respondent's submission that it did not appear that Mr. Oleson had been diligently pursuing mental health care over the past year despite having been initially referred by his doctor in April of 2021.

[71] I noted in my decision to adjourn that Mr. Oleson had sought many extensions from the Tribunal over more than four years of Case Management as well as three adjournments, and that he had presented many excuses for his delays which had caused frustration for all involved. I stated that he had little regard for the time and expense required of the Respondent each time it had to prepare for a hearing, only to have it adjourned. I pointed out that, when the Tribunal and counsel set aside three weeks in their calendars for this hearing, we cannot schedule anything else, which affects other parties before the Tribunal as well." I quoted *Constantinescu v Correctional Service Canada*, 2018 CHRT 10 (CanLII) [*Constantinescu*] in which the Tribunal stated: "The more time that passes, the greater the prejudice for the public. It is not in the public interest for complaints related to discrimination to remain unresolved over a long period of time" (para 38).

[72] I agreed to adjourn the April and May 2022 hearing dates but said that, if further delays were caused by Mr. Oleson's failure to participate in his own healthcare, he could expect a motion to dismiss to be filed by the Respondent. Mr. Oleson was directed to confirm with the Tribunal and Respondent by May 30, 2022 that he had attended his May 25, 2022 appointment and advise whether he had a follow up appointment scheduled and, if so, advise of the date of the appointment.

[73] After I issued my decision to adjourn on April 21, 2022, the Respondent's counsel advised that she had contacted Mr. Oleson's physician when she realized that his April 12, 2022 letter was not on letterhead and that his name was misspelled. Although they did not discuss Mr. Oleson's healthcare, the doctor told counsel that Mr. Oleson had presented him with the April 12 letter already typed up and he just signed it.

[74] In responding to counsel's concern about the physician's letter, I noted that I had no evidence that the doctor disagreed with the content of the letter he signed. I concluded my May 26, 2022 correspondence to the parties by saying: "I note that Mr. Oleson has been directed to confirm with the Tribunal and Respondent by May 30, 2022 that he attended his May 25th appointment with a mental healthcare provider and advise whether he has a follow-up appointment scheduled and the date of this appointment. If he fails to do so, the Tribunal will consider proposals from the parties about how to proceed."

[75] Mr. Oleson did not comply with the Tribunal's clear directive to provide an update on his May 25, 2022 mental healthcare appointment by May 30, 2022. As such, on June 1, 2022, the Respondent filed this Motion to dismiss the complaint. I established timelines for the parties' submissions on the Motion.

[76] After receiving the Respondent's Motion, Mr. Oleson sent an email on June 7, 2022 saying that he had attended the May 25, 2022 appointment. He also said he intended to go forward with the complaint. On June 9, 2022 he wrote again to confirm he attended the May 25 appointment and that he had a follow up appointment on June 14, 2022. He stated that he was "hoping to gather ... coping skills for [his] PTSD and anxiety".

[77] Mr. Oleson has offered many excuses for failing to meet his deadlines. He is constantly promising to provide information and saying he will get organized if he is given

more time. However, I agree with the Respondent that Mr. Oleson has been provided many generous opportunities and allowances by the Tribunal already and he must be held accountable for his failure to adhere to the directions and deadlines set by the Tribunal. If not, as the Respondent submits, the *Rules* and directions of the Tribunal will effectively be rendered meaningless, placing the Respondent in a position where it cannot rely on them or expect they will be enforced.

[78] The Tribunal's record reflects a pattern of behaviour that has led to significant delay on Mr. Oleson's part. When viewed together, Mr. Oleson's conduct demonstrates a "wholesale disregard" for the Tribunal's time limits and *Rules of Procedure*.

(ii) The case has remained static for an unreasonable length of time

[79] In applying the *Seitz* test, I do not have to find that the delay in the case has been inordinate. Rather, I must find that, for a time period that is unreasonable in the circumstances, the case has remained static, which I interpret to mean as not having progressed or advanced in any meaningful way.

[80] I find that the case has been static for approximately two years. The facts set out in the previous section support this finding, as they confirm that the case has not advanced or progressed in any meaningful way since the hearing was first scheduled to take place in April of 2021. The April 2021 hearing was adjourned on the basis of a surgery that Mr. Oleson has yet to have. While he may not be responsible for the delay in the surgery taking place, he could have utilized this time to prepare for the hearing. Nearly two years later, nothing has changed and, as discussed in the next section, I have no reason to believe anything will change in this regard.

[81] The time period during which the complaint has remained static is unreasonable in the circumstances of this case. The Tribunal has an obligation to ensure that its proceedings are conducted both expeditiously and in fairness to all parties, not just the Complainant. At this point, the Respondent has had to prepare for the hearing three times yet has no indication if or when a hearing will actually take place. Such uncertainty does not accord

with the Tribunal's obligation to proceed expeditiously, and to permit this situation to continue would be unfair to the Respondent.

(iii) Mr. Oleson appears to have no intention of bringing the case to a conclusion

[82] The Tribunal agreed to adjourn the spring 2022 hearing dates based on Mr. Oleson's specific request to permit him to seek mental health care in order that he could participate in the hearing, possibly with accommodations as recommended by a medical professional. The adjournment was conditional on Mr. Oleson's providing an update by May 30, 2022 about his May 25 appointment with a psychologist as well as providing details about his ongoing treatment plan. He did not provide the required update by May 30, 2022, so the Respondent filed this Motion.

[83] Instead of replying to the Motion, Mr. Oleson raised new issues and referenced new evidence. Also, rather than providing current and relevant medical documentation, he provided a note from a clinical therapist dated July of 2019 which said he was being referred for a consultation with PTSD-like symptoms. At the time he submitted this note in June of 2022, it was already 3 years out of date.

[84] I note that Mr. Oleson sent an email to the Tribunal and the parties on October 11, 2022, confirming that he had seen a psychiatrist on October 4, 2022 and that he had been diagnosed with "anxiety, depression and compounded PTSD" and that he would be seeing his primary doctor. He says he hopes accommodations for his disabilities will be honored but provides no information about what accommodations are required or whether these diagnosed conditions would affect his ability to participate in the Tribunal proceeding.

[85] I acknowledge that Mr. Oleson has been participating in the Case Management of his mother's complaint while dealing with many personal issues as well as the grief of losing his mother, whom he lived with and cared for in her final years. While I have no reason to doubt his assertion that he has been diagnosed with PTSD, anxiety and depression, he has still failed to provide the Tribunal with any evidence that he is receiving treatment from a medical professional. He has similarly provided no evidence from a medical professional

about the effects of his conditions on his ability to participate in the Tribunal's proceedings, either with or without accommodation. If he does have a treatment plan, he has provided no timeline indicating when he may be able to participate in the hearing of this complaint.

[86] It was up to Mr. Oleson to provide the Tribunal with the information that would assist it to "understand and accommodate" his disability, as he stated in his April 2022 adjournment request. Eight months after the May 25, 2022 appointment, he has still not done so. I agree with the Respondent that the limited information Mr. Oleson has provided does not give rise to a path forward. His October 11, 2022 email provides no information that would allow the Tribunal and Respondent to assess how or when the matter can proceed. If Mr. Oleson were serious about pursuing this complaint, he should have acted with diligence in providing the parties and Tribunal with information that would assist them to proceed to a hearing expeditiously, as required by the *CHRA*.

[87] I also note that, in his October 11, 2022 email, Mr. Oleson says he opposes the Respondent's Motion "and will do so in writing hopefully this coming week which I already have in draft." He also says he has "new evidence" that will be provided once it is assembled. He concludes by saying that he will send the appropriate information to get the case moving forward. He has sent nothing further since then. Mr. Oleson's deadline to reply to the Respondent's Motion was June 17, 2022. His assertion in October of 2022 that he intended to reply to the Motion at some future date is a further example of Mr. Oleson's disregard for the Tribunal's *Rules* and directions.

[88] Mr. Oleson has not provided the Tribunal and the parties with anything that would indicate that he has any real intention of advancing this complaint to a hearing. His past promises and assurances to move the case forward have not been realized. It appears to the Tribunal that Mr. Oleson has no real intent to bring the complaint to a conclusion.

(iv) Abuse of Process

[89] Mr. Oleson's failures to comply with the Tribunal's *Rules* and directions, his requests for extensions of nearly every deadline, and his requests to adjourn the hearing dates, as well as his continual reference to further issues and evidence he intends to introduce, have

resulted in unfairness and costs to the Respondent, which has retained legal counsel and has had to prepare repeatedly for the hearing and to respond to Mr. Oleson's various requests.

[90] However, the *Seitz* approach requires the Tribunal to consider the impact of Mr. Oleson's delays and failures to comply with the Tribunal's *Rules of Procedure* and directions not only from the perspective of the parties, but also in terms of an abuse of the administration of justice, "separate and apart from any prejudice caused by inordinate and inexcusable delay. These sorts of cases can give rise to a finding of an abuse of process" (*Chisholm* at para 19; see also *Mattice v Westower Communications Ltd.*, 2014 CHRT 32 (CanLII) [*"Mattice"*] at para 41).

[91] As the Tribunal has previously stated, it is not in the public interest for human rights complaints to remain unresolved over a long period of time. The Tribunal is mandated to conduct its proceedings informally and expeditiously in accordance with its *Rules of Procedure* and the requirements of natural justice. "The more time that passes, the greater the prejudice for the public" (*Constantinescu* at para 38).

[92] The human rights complaint process is designed to ensure respect for the rights of complainants, some of whom are very vulnerable members of society. However, the Tribunal is also obliged to respect the principles of natural justice, meaning the Tribunal owes a duty of fairness to all parties. "While the Tribunal gives due consideration to accommodating the needs of self-represented parties to allow them the full and ample opportunity to present their case, it will not do so to the detriment of the other parties or the Tribunal" (*Mattice* at para 51).

[93] The proceeding, as it is being conducted by Mr. Oleson, constitutes an abuse of the Tribunal's process. It is unfair not only to the Respondent First Nation, but also to the Tribunal and Commission, both of which are funded by taxpayers and which have many other complaints that are equally entitled to their time and resources. The *CHRA* requires a reasonably quick resolution of human rights complaints, and that has not and will not happen in this case.

[94] I have also considered the prejudice to the Complainant in having the complaint dismissed. In this case, the Complainant herself is deceased and Mr. Oleson represents her Estate. The public interest aspect of the complaint has already been settled between the Commission and the Respondent. When considering the facts of the case, the need for efficiency and economy and the importance of bringing finality to human rights complaints, the duty of fairness to all parties, and any prejudice to the parties and to the administration of justice, I conclude that the balance clearly weighs in favour of dismissal of the complaint.

IV. Order

[95] The complaint is hereby dismissed.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
January 26, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2180/0217

Style of Cause: The Estate of Annie Oleson v Wagmatcook First Nation

Decision of the Tribunal Dated: January 26, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Joseph Oleson, for the Complainant

Bryna Hatt, for the Respondent