

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2018 CHRT 10

**Date:** April 26, 2018

**File No.:** T2207/2917

**Between:**

**Cecilia Constantinescu**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service Canada**

**Respondent**

**Ruling**

**Member:** Gabriel Gaudreault

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## **I. Background to the motion**

[1] On April 16, 2018, Cecilia Constantinescu (the “Complainant”) filed a Notice of Motion to stay the proceedings before the Canadian Human Rights Tribunal (the “Tribunal”). In the interest of brevity, the Tribunal will not review all of the Complainant’s submissions and will only summarize the key points contained therein.

[2] Ms. Constantinescu alleges that:

- the case should be suspended because she believes that Correctional Service Canada (the “Respondent”) is hiding documents from her;
- some of the documents that had been accepted had no date, no signature, and did not provide any explanation for the context of the production of the documents. In her view, following the conference calls in which she participated, her rights were considerably constrained;
- unlike the Respondent, she disclosed all the documents and information in her possession to the other parties;

[3] Moreover, the Complainant claimed that she was the one suffering prejudice in the context of this situation and that this prejudice was being compounded with each passing day. She claimed to have suffered the following prejudices:

- That she did not get the job she should have obtained;
- That she did not obtain the salary and benefits related to the job position;
- That she did not benefit from career advancement opportunities;
- That she cannot benefit from other funds that are rightfully hers;

[4] Due to the prejudices cited above, she believes that her enjoyment of life was also adversely affected.

[5] She is asking the Tribunal to immediately suspend the proceedings for an indefinite period of time, until all the documents and information that she has requested are provided by the Respondent.

[6] She is also asking the Tribunal to order the Respondent to provide her with all the documents as soon as possible and ensure that these documents are clear.

[7] She is asking the Tribunal to give her a reasonable period of time to review all the requested documents and information, starting from the date on which they are obtained from the Respondent.

[8] Lastly, she asked the Tribunal for a two-week extension so that she can produce and file a brief with the Parliament of Canada.

[9] For the following reasons, the Tribunal is dismissing the motion for a stay of proceedings filed by Ms. Constantinescu on the very face of it.

## II. Law and analysis

[10] First, the Tribunal is the master of its own procedures. As stated by the Supreme Court in 1989 in *Prasad v. Canada ((Minister of Employment and Immigration)*, [1989] 1 SCR 560 [*Prasad*]:

[...] We are dealing here with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness and, where they exercise judicial or quasi-judicial functions, the rules of natural justice. Adjournment of their proceedings is very much in their discretion.

[Emphasis added]

[11] Subsection 48.9(1) of the *Canadian Human Rights Act* (the “CHRA” or the “Act”) provides that proceedings before the Tribunal be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

[12] The Tribunal may establish its rules of procedure in compliance with subsection 48.9(2) of the *Act*. The Tribunal has put rules of procedure in place (see the *Canadian Human Rights Tribunal Rules of Procedure* (03-05-04) (the “*Rules*”).

[13] Following the receipt of a Notice of Motion in compliance with subsection 3(2) of the *Rules*, the Panel:

- (a) shall ensure that the other parties are granted an opportunity to respond;
- (b) may direct the time, manner and form of any response;
- (c) may direct the making of argument and the presentation of evidence by all parties, including the time, manner and form thereof;
- (d) shall dispose of the motion as it sees fit.

[14] However, as provided in subsection 1(4) of the *Rules*, the Panel may, on its own initiative, dispense with compliance with any Rule where to do so would advance the purposes set out in 1(1).

[15] Subsection 1(1) of the *Rules* provides that:

1(1) These Rules are enacted to ensure that:

- (a) all parties to an inquiry have the full and ample opportunity to be heard;
- (b) arguments and evidence be disclosed and presented in a timely and efficient manner; and
- (c) all proceedings before the Tribunal be conducted as informally and expeditiously as possible.

[16] I did not ask the Canadian Human Rights Commission (the “Commission”) or the Respondent to file submissions in response to the motion filed by the Complainant. I believe that, considering the particular circumstances of this case and for the reasons set out in the following paragraphs, it is appropriate for me to dispense with the Tribunal’s Rules of Procedure in order to advance the purposes of subsection 1(1) of the *Rules*.

[17] I am also of the opinion that, in the circumstances specific to this motion, the principle of procedural fairness does not require the Tribunal to invite the Commission and the Respondent to file formal submissions. The parties have had an opportunity to write to the Tribunal since Ms. Constantinescu filed her motion (*Canadian Copyright Licensing Agency (Access Copyright) v. Canada*, 2018 FCA 58 at paragraph 157). The Commission sent correspondence to the Tribunal indicating that [TRANSLATION] “The absence of an

affidavit and the vague and nebulous statements in the motion make the task of responding to the motion difficult.”

[18] Moreover, the following was established in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraph 21:

...the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case. All of the circumstances must be considered in order to determine the content of the duty of procedural fairness.

Lastly, since this motion is being dismissed, I do not believe that this decision creates any negative impact for the Commission and the Respondent, either in the context of the motion or in the broader context of the proceedings related to the complaint. The Commission received Ms. Constantinescu’s complaint in October 2015, and it was referred to the Tribunal on May 31, 2017. To date, the complaint was filed over two and a half years ago.

[19] On January 15, 2018, fifteen days of hearings were scheduled to be held from July 10 to 13, July 17 to 20, October 16 to 19 and from October 22 to 24, 2018. The exercise of establishing hearing dates quickly and consecutively was not a simple endeavor for the parties or the Tribunal.

[20] The Tribunal also rendered a recent decision in this case (see *Constantinescu v. Correctional Service Canada*, 2018 CHRT 8), which, in part, addresses the following elements:

- The undated and unsigned written statement of a witness at the hearing;
- The rules and process relating to disclosure for proceedings before this Tribunal;
- The production of evidence and the rules for admissibility of evidence;
- Protections offered to witnesses under the *Act*;
- Differences between the Tribunal’s process and access requests concerning other federal or provincial agencies.

[21] In the context of this motion, the Tribunal received the Complainant's reply on March 2, 2018. Considering the significance of the allegations in this case, the amount of time that has already elapsed and the hearing dates scheduled in July 2018, I believed that it was necessary to act quickly and to render a decision as soon as possible. The Tribunal was therefore able to forward its decision to the parties a few days later, on March 13, 2018.

[22] The parties also asked the Tribunal to deal with two other very important issues. First, the Complainant had filed a Notice of Motion to expand the scope of the complaint. This motion is still pending. However, the Complainant's reply had still not been filed by April 20, 2018, contrary to the Tribunal's instructions concerning the deadlines for parties to file submissions related to this motion. It should be noted that the Respondent is opposed to the motion to expand the complaint. Second, the Respondent asked the Tribunal to issue a confidentiality order for some of the documents that it was planning to produce at the hearing. The Complainant is in part opposed to this request regarding specific documents. The Respondent also informed the Tribunal that, following its decision on the motion to expand the complaint, it was more than likely that some new documents would have to be disclosed. Consequently, certain documents would potentially have to be included in the application for a confidentiality order, and it was therefore imperative that the Tribunal dispose of the motion to expand the complaint before addressing the issue of the confidentiality of certain documents.

[23] The Tribunal will now have to render a decision on this motion, as well as on two other motions before the hearings start in July 2018. The hearings are scheduled to be held in less than two and a half months.

[24] It is clear to me that this situation requires me to act expeditiously (paragraph 1(1)(c) of the Rules and subsection 48.9(1) of the *Act*). If it had been necessary to file a response and a reply to this motion to stay the proceedings, this would inevitably have delayed the hearings scheduled to be held in July 2018.

[25] In my opinion, this is the main reason justifying my decision to dispense with Rule 3 of the *Rules*, i.e., the need for expeditiousness, and to give the Respondent and the

Commission permission not to respond to this motion. Moreover, without repeating Ms. Constantinescu's arguments and based on a careful reading of her submissions, I believe that it is plain and obvious that this motion does not contain any reasonable cause of action (see most notably *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 SCR 45, 2011 SCC 42, at paragraphs 21 and 22). My decision is also based on a number of other factors which are set out in the following paragraphs.

[26] The Complainant is asking the Tribunal to stay the proceedings for an indefinite period of time until the Respondent provides her with the requested documents and information. She is therefore asking the Tribunal to order the Respondent to provide all the documents and information concerned. Consequently, the Tribunal must determine, among other considerations, whether the challenges related to disclosure warrant a stay of proceedings.

[27] With respect to the issue of staying proceedings, the Tribunal, in *Duverger v. 2553-4330 Québec Inc.*, 2018 CHRT 5, raised the issue of the test to be applied when the Tribunal is required to decide whether it should stay its own proceedings. Paragraphs 58 to 60 clearly articulate this test:

[58] In my opinion, the interest of justice allows for a broader assessment of factors relevant to a motion to stay proceedings, which would **include** the principles of natural justice, procedural fairness and expeditiousness provided under subsection 48.9(1) of the *Act*. Moreover, as articulated by the Federal Court of Appeal at paragraph 26 of *Clayton*, the Tribunal may also consider certain factors developed in *RJR-MacDonald* (a serious issue of fact and/or law to be tried, irreparable harm and a balance of convenience).

[59] It goes without saying that the interest of justice includes the interest of all the parties. It also includes the public interest. It is important to recall that complaints filed before the Tribunal concern individuals who believe that their human rights have been violated. These allegations are serious and require the Tribunal to act expeditiously. Every time allegations of discrimination are made under the *CHRA* the public interest is obviously involved (see *Federation of Women Teachers' Associations of Ontario v. Ontario (Human Rights Commission)* (Ont. Div. Ct.), 1988 CanLII 4794 (ON SC)). There is no question that public interest notably demands that complaints related to discrimination be dealt with expeditiously (see *Bell Canada v. Communication, Energy and Paperworkers Union of Canada* (1997), 127 FTR 44, 1997 CanLII 4851 (FC), [*Bell Canada*], see also subsection 48.9(1) of the *CHRA*).



[60] In short, I recognize that the factors and interests to be taken into consideration by the Tribunal may vary depending on the circumstances...

[28] Lastly, the Tribunal indicated in paragraph 70 of the decision that motions to stay proceedings should be allowed only in exceptional circumstances, because otherwise, the Tribunal's legislative scheme and quasi-judicial process could be frustrated.

[29] That being said, I believe that the Complainant's arguments concerning disclosure, summarized in paragraph 2 of this decision, are not enough, in and of themselves, to discharge the burden of the interest of justice test and do not justify a stay of proceedings.

[30] In her motion, the Complainant does not specify the documents and information that she is requesting from the Respondent. In compliance with the *Rules*, the Tribunal acts on the basis of a Notice of Motion. When a party files a Notice of Motion, it must provide sufficient information and details to enable the Tribunal to render a decision on the matter. It is important to remember that it is the moving party who bears the burden of proof. In this case, the burden rests on Ms. Constantinescu's shoulders because she is the one requesting a stay of proceedings in this case. I am sympathetic to the Complainant's submissions, and it is unfortunate that her motion lacks details. Consequently, I find it difficult to order the Respondent to disclose documents and information without knowing the documents or information to which the Complainant is referring to.

[31] With respect to the disclosure of evidence that is potentially relevant to the dispute, I would like to take this opportunity to remind the parties that the parties and the Tribunal participated in several conference calls to specifically deal with issues of disclosure in a timely manner. Instructions were also provided to guide and inform the parties of the process for disclosing evidence. The disclosure process is still ongoing and the Complainant has submitted several requests that have previously been addressed, assessed and decided. The Tribunal has also asked the Respondent to conduct further checks related to certain documents that are being sought by Ms. Constantinescu and the Respondent has agreed to carry out these additional checks.

[32] I believe that the Complainant's requests for disclosure were decided with due respect for the principles of natural justice, the principles of procedural fairness, the

Tribunal's legislative scheme and its rules of procedure. The Tribunal's proceedings are supposed to be conducted as informally as possible. Addressing issues of disclosure through instructions and conference calls respects the nature of subsection 48(9) of the *Act* and subsection 1(1) of the *Rules*. I believe that the challenges related to the disclosure of evidence must continue to be assessed and decided by the Tribunal on a case by case basis.

[33] Lastly, the disclosure process is not yet complete and is considered ongoing until the commencement of the hearing. As I have already mentioned on several occasions, the parties have an obligation to disclose all documents that are arguably relevant to the dispute that are in their possession. They must also disclose documents that they discover or find or which come into their possession during the inquiry into the complaint.

[34] In passing, I would like to make the following general observation. It has been clearly established in a decision rendered by the Tribunal Chair, David L. Thomas, that there are limits to disclosure. In *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 (*CanLII*), he indicated the following:

[8] This Tribunal has already recognized in its past decisions that it may deny ordering the disclosure of evidence where the probative value of such evidence would not outweigh its prejudicial effect on the proceedings. Notably, the Tribunal should be cautious about ordering searches where a party or a stranger to the litigation would be subjected to an onerous and far-reaching search for documents, especially where ordering disclosure would risk adding substantial delay to the efficiency of the inquiry or where the documents are merely related to a side issue rather than the main issues in dispute (see *Yaffa v. Air Canada*, 2014 CHRT 22 at para. 4; *Seeley* at para. 7; see also *R. v. Seaboyer* [1991] 2 S.C.R. 577 at 609-611).

[9] It should also be noted that the disclosure of arguably relevant information does not mean that this information will be admitted in evidence at the hearing of the matter or that significant weight will be afforded it in the decision making process (see *Telecommunications Employees Association of Manitoba Inc. v. Manitoba Telecom Services*, 2007 CHRT 28 at para. 4).

[35] That being said, does the interest of justice justify staying the Tribunal's proceedings until all the documents and information being requested by the Complainant are provided by the Respondent? Considering that Ms. Constantinescu did not clearly describe the documents she is seeking to obtain, I believe that the answer is no.

[36] Lastly, the Complainant also alleges another factor in support of her motion to stay the proceedings, i.e., the prejudice suffered. On this subject, she indicates that she is the only party to have suffered prejudice in the context of this case and that this prejudice is being compounded with each passing day. The Tribunal summarized the Complainant's arguments in paragraphs 3 and 4 of this decision.

[37] First, I believe that it is important to remind the parties that the inquiry into this complaint has yet to be completed. The parties necessarily have a very clear position on this case. However, until the hearing is concluded and all the evidence has been presented to the Tribunal, it is impossible, at this stage, to take a position on whether or not a party was subjected to acts of discrimination. Correlatively, it is impossible to take a position on the potential remedies that the Tribunal could order. The prejudices cited by the Complainant include arguments concerning damages she allegedly suffered following the alleged acts of discrimination. She will have an opportunity to present evidence in this regard and file submissions at the hearing.

[38] That being said, I concede that time is an important factor under the circumstances. The more time that passes, the more difficult it is to preserve the evidence related to the case, including the memory and recollections of the witnesses. 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 (see *Bell Canada v. Communication, Energy and Paperworkers Union of Canada* (1997), 127 FTR 44, 1997 CanLII 4851 (FC); see also subsection 48.9(1) of the *Act*).

[39] Does the alleged prejudice suffered by the Complainant justify a stay of proceedings, based on the interest of justice test? In my view, the answer is no.

[40] It is important to mention that the Complainant is requesting a stay of proceedings for an **indefinite period of time**, until she receives all the documents and information that she asked the Respondent to send to her. It is clear to me that the **indefinite** characterization of the stay of proceedings is, in itself, problematic. It is difficult to imagine that a case before the Tribunal would be stayed for an indefinite period of time. Sooner or later, the case will conclude, whether it is at the hearing through a decision rendered by

the Panel or by means of a settlement between the parties or a withdrawal of the complaint.

[41] In short, I do not believe that it is in anyone's interest for these proceedings to be stayed for an indefinite period of time.

[42] Lastly, I would like to take this opportunity to mention that the potential filing of a brief with the Parliament of Canada is not a reason that would justify extending or staying the proceedings. The parties are free to engage in parallel initiatives that run concurrently with the Tribunal's proceedings if they choose to do so. However, this would not affect the current proceedings before the Tribunal in any way whatsoever.

### **III. Decision**

[43] The Tribunal is dismissing the motion to stay the proceedings filed by the Complainant on the very face of it.

*Signed by*

Gabriel Gaudreault  
Panel

Ottawa, Ontario  
April 26, 2018

# **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 26, 2018

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Cecilia Constantinescu, for herself