Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2019 CHRT 49
Date: 16 December 2019
File number: 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. Context of the Motion

[1] Ms. Constantinescu (Complainant) filed a motion on September 27, 2019 to amend certain interlocutory decisions of the Canadian Human Rights Tribunal (Tribunal) that were previously rendered. Correctional Service Canada opposes the motion, considering it an abuse of process.

[2] This is the Tribunal's 4th decision in the file: the other motions concerned an application for the disclosure of documents, an application for a stay of proceedings and an application for the expansion of the scope of the complaint (*Constantinescu v. Correctional Service Canada*, 2018 CHRT 8; *Constantinescu v. Correctional Service Canada*, 2018 CHRT 10; *Constantinescu v. Correctional Service Canada*, 2018 CHRT 17).

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

[4] Ms. Constantinescu's complaint was filed in October 2015 and referred to the Tribunal for inquiry on May 31, 2017. The disclosure process is particularly complex in this file; the disclosure process has been ongoing since July 2017. The parties and the Tribunal have to date conducted 19 case management calls in addition to two years of disclosure process. There has been approximately 20 hours of teleconferencing, which constitute almost four days of hearings, dedicated solely to disclosure. It is clear that there is still much work to be done before a hearing can be held.

[5] On August 28, 2019, the Complainant sent a letter to the Tribunal and the other parties requesting a reconsideration of previous Tribunal decisions. Those previous decisions had to do with the disclosure of documents. The Tribunal found this application to be lacking details. Following this letter from the Complainant, much

correspondence took place between the parties. It is not necessary to repeat the content. Following these exchanges, the Tribunal issued instructions for Ms. Constantinescu to file a motion to clarify her application.

[6] The Respondent responded to the Complainant's motion while the Canadian Human Rights Commission (Commission) did not make any submissions.

[7] For the following reasons, the Tribunal dismisses the Complainant's motion in its entirety.

II. Issues in Dispute

[8] Here are the issues in dispute:

1. Is the Complainant's motion an abuse of process, and if so, should her motion be dismissed on that basis?
2. If the motion is not dismissed for abuse of process, should the motion be allowed and should the Tribunal's previous interlocutory decisions be amended?

III. Analysis

A. Arguments of the Parties

[9] Given the complexity of Ms. Constantinescu's allegations and the technicality of the Respondent's arguments, I find it necessary to provide a brief summary of each party's position before beginning my analysis.

(i) Complainant

[10] In summary, the Complainant is asking that I amend 17 interlocutory decisions that have already been rendered by the Tribunal regarding disclosure. For each of these, she provided a summary of why she believes I should amend my previous decisions.

[11] It is relevant to detail the decisions that Ms. Constantinescu is seeking to amend in order to fully understand the scope of this motion. I would add that some of these decisions were given particular attention by the Respondent in its submissions (e.g. the application regarding Mr. Durdu's written statement).

[12] Ms. Constantinescu is requesting that the following decisions, all related to disclosure, be amended:

1) Respondent's Exhibit 20 regarding Mr. Pierre-Louis Durdu's written statement;
2) Audio recordings of statements made by witnesses during the investigation regarding Mr. Durdu;
3) All testimony from the CTP-5 training recruits;
4) Documents produced for her candidate file before and after October 27, 2015 in the Respondent's computer system and human resources information;
5) The notes of investigators Ms. Annie Poirier and Mr. Francis Anctil during the investigation regarding Mr. Durdu, including correspondence with other Respondent employees;
6) Correspondence between the Respondent and the Commission mediator;
7) Documents concerning Alexandre Bohémier's complaint against Mr. Durdu;
8) Correspondence regarding the Complainant between the Respondent's senior managers and administration;
9) Documents related to the Respondent's security breach;
10) The complete baton training manuals;
11) The investigation reports and findings from the private firm Presidia regarding harassment cases;
12) All documents and correspondence from Ms. Isabel Morin regarding the Complainant's allegations;
13) Documents and correspondence from Ms. Elizabeth Van Allen related to the Complainant's allegations and documents demonstrating whether these documents were saved;
14) Notes and correspondence from Mr. Alain Tousignant related to the Complainant's allegations and the security breach;

15) Documents and correspondence from Mr. Sylvain Mongrain related to the Complainant's allegations;

16) Ms. Louise Laralde's notes, correspondence and reports related to the Complainant's allegations;

17) Mr. Éric Tessier's notes, correspondence and reports related to the Complainant's allegations.

[13] The general narrative of Ms. Constantinescu's arguments is framed by an argument that, both in her motion and reply and the Tribunal's disclosure process, always seems to be the same: she alleges that she does not have access to the evidence relevant to her complaint.

[14] She says that she is making her representations as a victim and a woman, assaulted and humiliated, who was deprived of a job, asking for access to documents that she considers important. According to her, the Respondent is hiding the documents she seeks. She feels that the Respondent is using unfounded reasons and privileges for not providing what she is requesting. Ms. Constantinescu also believes that the Respondent is inappropriately using the concepts of oppressive and vexatious procedures in its submissions.

[15] Ms. Constantinescu also makes other arguments in support of her application. I would like to point out that her arguments are generally sparse and difficult to follow.

[16] Ms. Constantinescu believes that she is the victim who is being harmed in this whole process. She explained that she feels ridiculed by the Respondent when the Respondent suggests that she is looking for imaginary documents.

[17] As mentioned earlier, Ms. Constantinescu believes that the Respondent is hiding documents from her. In this regard, she goes back to the heated disclosure proceedings surrounding the baton training manual as well as the reimbursement of fees that Mr. Reno Ouellet allegedly collected. She also raises disclosure issues related to witness statements made in the course of Mr. Durdu's investigation and Presidia's report.

[18] She argues that the Tribunal should order the full disclosure of the documents she is seeking. She feels that the Respondent is making concerning submissions and

believes that the Tribunal should be concerned by that. She adds that the Tribunal should have and should intervene differently.

[19] For example, regarding Mr. Durdu's undated and unsigned written statement, she believes that the Tribunal should have asked the Respondent to prove the veracity of such a statement. In her view, the Tribunal should have asked the Respondent to provide the date on which the statement was prepared, insisted on a signature, and sought clarification regarding the authorities or persons before whom the statement was made.

[20] Another example is the recordings of witnesses interviewed by the Respondent, where the beginning is missing. Ms. Constantinescu suggests that the Tribunal should have sought expertise from an expert to determine the integrity of the recordings.

[21] Another example is the notes taken by Ms. Annie Poirier and Mr. Francis Anctil that were destroyed by the Respondent. Ms. Constantinescu believes that the Tribunal should have done better to ensure that no record of these notes existed, especially since she believes that the Respondent had no right to destroy them. She believes that the Tribunal should be tougher with the Respondent since the Respondent is "accustomed to hiding facts and documents." She therefore argues that if, after careful research, the Tribunal found that the notes were indeed destroyed, the Respondent should be ordered to disclose the name of the manager who authorized their destruction and file an affidavit. She says that according to her democratic right as a victim, the process should be conducted in this way.

[22] In a different vein, Ms. Constantinescu asks that the Tribunal grant her application for the full disclosure of correspondence between the Respondent and the Commission's mediator, as she believes that the mediator demonstrated questionable behaviour in dealing with her complaint. She asks that, despite the fact that these documents pertain to a mediation process, which, I would like to point out, involves specific protections, the Tribunal should disregard these protections and order the disclosure of these documents.

[23] As for the complaint allegedly filed by Mr. Alexandre Bohémier against Mr. Durdu, Ms. Constantinescu is asking that the Tribunal investigate what happened in that complaint since it could potentially involve harassment.

[24] In connection with correspondence from Mr. Alain Tousignant, the Complainant refers to the submissions made by the Respondent to the effect that Mr. Tousignant's old email box is no longer accessible. She believes that the Tribunal should have tried to gain access to the said box by ordering an external expert to conduct an audit to verify that this is indeed the case.

[25] In addition to her applications for disclosure, the Complainant presents new arguments in her reply in response to the Respondent's abuse of process submissions.

[26] For example, Ms. Constantinescu alleges that the steps taken by the Respondent before the Office of the Information Commissioner of Canada and before the Federal Court constitute an abuse of public funds.

[27] She adds that the Respondent's submissions in response to her motion to amend the Tribunal's decisions constitute threats against her.

[28] She is also asking the Tribunal to order a search of the Respondent's office to obtain documents related to her complaint.

[29] Finally, she writes that the purpose of her motion for a stay of proceedings, filed in April 2018, was to obtain access to additional documents. She goes on to say that one of her applications for judicial review was struck, but that she has achieved her goal, i.e. that the Tribunal hearing not start until the disclosure is complete.

(ii) Respondent

[30] The Respondent, for its part, feels that the Complainant's motion to amend 17 of the Tribunal's interlocutory decisions constitutes an abuse of process and asks that it be dismissed on that basis. It alleges that in filing this motion, the Complainant seeks to reopen the Tribunal's disclosure decisions without presenting any facts or circumstances that could support her application.

[31] It adds that for some of the Tribunal's decisions, she has already gone to the Federal Court and the Federal Court of Appeal, in addition to the Office of the Information Commissioner of Canada, to access the documents sought.

[32] The Respondent feels that since she is dissatisfied with the decisions made by these various authorities, she is coming back to the Tribunal, discrediting its decision-making process, and is submitting the same arguments that were before it when it rendered its 17 decisions in the past.

[33] The Respondent is of the view that the motion is vexatious, against the public interest in a fair and equitable hearing system and contrary to the proper administration of justice.

[34] The Respondent adds that if the motion is not dismissed for abuse of process, reopening these 17 decisions would prolong the Tribunal's process, which could frustrate the fairness of the process. This would result in another abuse of process.

[35] In this regard, the Respondent states that over time, the ability of the Parties to prove and refute the evidence diminishes, while noting that the facts underlying the complaint date from the fall of 2014. The Respondent alleges that the length of the proceedings, which is already lengthy, may compromise its ability to defend itself.

[36] Finally, I understand from the Respondent's submissions that it denounces the fact that Ms. Constantinescu is increasing her recourses before various forums, which it considers to be just as abusive.

B. Specific Applications and Representations by the Complainant

[37] As stated earlier, Ms. Constantinescu raises many arguments, both in her motion and in her reply, which are sometimes difficult to understand. I think it is simpler to address some of the arguments in a preliminary way, in order to facilitate the analysis of the abuse of process issue.

(i) Application for Search and Seizure

[38] First, Ms. Constantinescu believes that the Tribunal should be concerned that Mr. Durdu's statement is a questionable, undated and unsigned document. I have already heard the same argument, which was included in my 2018 CHRT 8 decision, in paras. 14 to 21. I explained why at this stage these types of elements have nothing to do with the disclosure of documents process before our Tribunal. There is no need for me to go over these reasons again since my decision speaks for itself.

[39] The Complainant is also asking the Tribunal to order a search of Correctional Service Canada offices if certain documents are not complete, in order to access the requested documentation. This is a highly unusual request.

[40] Search and seizure powers are, in my view, exceptional. That is why the *Canadian Charter of Rights and Freedoms* provides specific protection for abusive searches and seizures (see section 8).

[41] I am of the view that the Tribunal does not have such powers because the *CHRA* does not provide for them. The Tribunal's authority is to hear complaints, not to investigate (subsection 49(1), *CHRA*); the process is similar to that of a court of law.

[42] Instead, Parliament chose to grant this investigative power to the Commission, and not to the Tribunal, under subsection 43(1) of the *CHRA*. This subsection stipulates that the Commission may direct a person to investigate a complaint. Subsection (2.1) of the same section expressly provides that the investigator, with a warrant issued under subsection (2.2), may enter and search any premises in order to carry out such inquiries as are reasonably necessary for the investigation of a complaint.

[43] Subsection (2.2) is very evocative in that it says who has the authority to issue this type of warrant:

> Where on *ex parte* application **a judge of the Federal Court** is satisfied by information on oath that there are reasonable grounds to believe that there is in any premises any evidence relevant to the investigation of a complaint, **the judge may issue a warrant under the judge's hand authorizing the investigator named therein to enter and search those premises for any such evidence** subject to such conditions as may be specified in the warrant.

[My emphasis]

[44] The warrant set out in subsection (2.1) must therefore be authorized by nothing less than a Federal Court judge. In my opinion, this simply confirms the weight and scope of such an order, which must be made by a higher jurisdiction.

[45] If the higher authority, a judge of the Federal Court, is the one who must issue this type of warrant, then I have no power to order what the Complainant is asking.

[46] For these reasons, it is clear to me that Parliament did not intend to grant this extraordinary power to a Tribunal member and, therefore, Ms. Constantinescu's application is rejected.

(ii) Application for Expert Evidence

[47] The Respondent disclosed the recordings of certain witnesses who were interviewed during the investigation of Mr. Durdu. The Complainant stated that these recordings were irregular, particularly since the beginning is missing. She therefore feels that the Tribunal should have sought an expert opinion on these recordings.

[48] There seems to be a fundamental misunderstanding on the part of Ms. Constantinescu regarding the Tribunal's role in disclosure and evidence management, and this is not the first time I have ruled on this matter (see, for example, 2018 CHRT 8 in paras. 13 to 18).

[49] At the time of disclosure, the Tribunal reiterated many times that it can only order the disclosure of documents (including recordings) that are in the possession of the parties and that are potentially relevant to the dispute (see among others the recent decisions *Shaw v. Bell Canada*, 2019 CHRT 24*; Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2019 CHRT 21; *Nur v. Canadian National Railway Company*, 2019 CHRT 5).

[50] Therefore, during the disclosure process, the parties exchange these documents, nothing more. The documents do not constitute evidence as nothing has yet been filed with the Tribunal. It is at the hearing that the documents are entered into evidence and it

is at that time that the evidence is tested. A party could then raise issues regarding reliability or authenticity with respect to the evidence filed. It is up to the Tribunal to determine the weight to be given to the evidence at the hearing, not during the disclosure process.

[51] In addition, I would like to point out that the role of the Tribunal is not to have the parties' documents reviewed by experts. If Ms. Constantinescu believes that the recordings contain irregularities, it is her responsibility to have the evidence in her possession assessed by an expert at her own expense.

[52] The same comments apply when for example a party files a psychological, medical, social report, etc. The parties then have the responsibility of managing their evidence, including that of conducting the expert assessments and counter-assessments they deem necessary to support their claims. Obviously, the costs are assumed by the party requesting the expert opinion.

[53] If Ms. Constantinescu wants to have an expert assess the recordings in her possession, she is free to do so. That said, it is recommended that she act quickly: expert assessments take time and expert reports must be filed in accordance with the *Tribunal's Rules of Procedure* (see rule 6(3) in particular). The tabling of an expert report also gives the opportunity to file a responding opinion, which also requires time. Finally, the summoning of expert witnesses to the hearing also becomes a possibility, which includes amending witness lists and summaries of evidence.

[54] For these reasons, I cannot grant the Complainant's application.

(iii) Abusive Spending of Public Funds

[55] The Complainant believes that the Respondent is spending public funds in an abusive manner, for example because of the complaint filed with the Office of the Information Commissioner of Canada, the striking of judicial reviews in Federal Court and the so-called abusive use of case law that required research. She therefore believes that instead of disclosing the documents she is looking for, the Respondent is squandering public funds.

[56] This argument is completely irrelevant to the dispute. These types of comments do nothing to assist the Tribunal in deciding anything about disclosure. Ultimately, the proliferation of superfluous arguments, irrelevant to the issues to be addressed, prevents the Tribunal and the parties from focusing on the merits of the case. Our current goal is to move this case to a hearing as quickly as possible as required under the *CHRA*.

[57] As for her statement that she will **never** stop asking where, when and to whom Mr. Durdu's statement was made, it is ultimately irrelevant at this stage. This information will not be available during the disclosure process. The Complainant would be well advised to reread *Constantinescu v. Correctional Service Canada*, 2018 CHRT 8, especially paragraphs 13 to 21, which clearly explain the purpose of questioning and cross-examining witnesses, particularly in relation to the filing of documents.

[58] At the risk of repeating myself, it is during the questioning and cross-examination of witnesses that the documents exchanged during the disclosure will not only be entered into evidence, but will also be tested. The witnesses can be asked questions regarding the documents. In this way, witnesses will be able to testify on what they know about the said documents and explain, for example, what the document consists of, if they wrote the document and when it was created. The witness can also testify about the circumstances surrounding the creation of the document and the people who were present. Ms. Constantinescu will be able to ask her questions to the witnesses in order to obtain the information sought.

(iv) Respondent's Response Constitutes a Threat

[59] In her reply, the Complainant alleges that it was the respondent who is acting improperly. She contends that the mere fact of the Respondent arguing that her motion constitutes an abuse of process amounts to a threat against her. She feels that the Respondent is trying to intimidate her, is abusing the jurisprudence and abusing the words "oppression" and "vexatious".

[60] First, if Ms. Constantinescu believes she is being intimidated, there is a procedure in the *CHRA* under sections 59 and 60 to deal with that. She is free to take steps in this regard, but I should point out that the Tribunal has no jurisdiction under the *CHRA* in this regard.

(v) Complainant's Objective in Filing Certain Motions and Judicial Reviews

[61] In her reply, the Complainant spoke about the filing of her various motions and judicial reviews. She feels that the motions she previously filed with the Tribunal were for very specific purposes. It is surprising that the Complainant would state that the purpose of her motion for a stay of proceedings had been achieved, which she claimed was to obtain additional documents. I dismissed this application for a stay of proceedings and did not order any disclosure.

[62] Also in her submissions, it is equally surprising that Ms. Constantinescu expressly states that one of her applications for judicial review of a Tribunal decision (which was struck by the Federal Court) has also achieved its goal. In her own words, her goal was [TRANSLATION] "...that the hearings not begin until the disclosure was complete".

[63] It is true that a hearing cannot begin without the disclosure process being completed, which goes without saying. However, it is up to the Tribunal to say that the file is complete and that it is ready to proceed with the hearings.

[64] It is equally true that the Federal Court and the Federal Court of Appeal could force the Tribunal to stay its proceedings, when there are exceptional circumstances or an unusual emergency that warrants their intervention, until a ruling on an application for judicial review is made (see *Canadian National Railway Company v. BNSF Railway Company*, 2016 FCA 284. See also *Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2018 CHRT 5, para. 37).

[65] That being said, the purpose of a judicial review is not to lengthen the delays for an administrative tribunal. In fact, that is exactly what the Federal Court wants to avoid:

> This prevents **fragmentation of the administrative process** and piecemeal court proceedings, **eliminates the large costs and delays associated with premature forays** to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway.
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> (*C.B. Powell Limited*, above, para. 32; see also *Ching*, above, para. 36; *Shen*, above, para. 50).

[66] It is clear that the Complainant's submissions, when I read them in their entirety, raise serious questions about her motives and intentions in the various proceedings in which she is engaged.

[67] It is within this context that this judicial admission must be analyzed. Filing applications for judicial reviews to delay the start of the Tribunal's hearings, in light of all her other frivolous, frustrating, oppressive, vexatious arguments and delaying tactics, becomes problematic.

[68] This kind of judicial admission is the very foundation of what I call delaying tactics and frustrating measures, which is precisely the corollary of the general principle of abuse of process.

(vi) Disclosure of Documents Protected by Mediation Privilege

[69] The Complainant is requesting that the Tribunal order the disclosure of documents that were involved in the mediation process offered during the Commission's investigation.

[70] First of all, it is unfortunate that the Commission did not take the time to make submissions in this regard, considering that Ms. Constantinescu is requesting the disclosure of documents that, in my opinion, are protected by privilege and have been exchanged at the Commission's mediation stage.

[71] Ms. Constantinescu submits that there were irregularities in the investigation conducted by the Commission investigator and with respect to the mediation offered to

her and her process. She is asking the Tribunal to disregard mediation privilege and to disclose all documents related to this process.

[72] I have already rejected this application on the basis that not only do I consider these documents to be protected, but also that any irregularities that may have arisen during the Commission's investigation have no bearing on the Tribunal's hearing of the complaint. The Tribunal is not a tribunal that reviews the actions of the Commission, and if Ms. Constantinescu had concerns at that level, she should have gone to Federal Court.

[73] The Complainant has filed this application with the Tribunal on a number of occasions and each time, the same answer has been given. Once again, we are dealing with the same issue and it seems that the Complainant is refusing to accept the Tribunal's order on this application.

C. Characterization of decisions, applications for judicial review and lack of clarity in certain submissions

[74] I think there is a need for further general comments since there is still some confusion about what constitutes an interlocutory decision or a final decision. I also believe that the roles and objectives of judicial review applications need to be clarified. Finally, I want to focus on the lack of clarity of the Respondent's statements and intentions in its written representations.

(i) Interlocutory vs Final Decisions

[75] The parties, at certain times, have sometimes differentiated, sometimes confused, what an interlocutory decision is or what a final decision is. This has led to some confusion, first on the part of the Respondent, which finally changed its mind. The Tribunal invited the Respondent to explain how the principle of *functus officio* applied to disclosure decisions, whereas these are undoubtedly interlocutory decisions. The Respondent explained that this is why it did not make submissions on the matter and changed its position.

[76] That said, the Complainant seems to place particular emphasis on characterizing the Tribunal's decisions to the point that she is asking it to characterize each of its decisions in the future. The Tribunal will not characterize all of its decisions, whether they are interlocutory or final, as this is unnecessary.

[77] However, in order to improve everyone's understanding, I think it would be useful to explain the difference between the two concepts and, by extension, what this implies legally.

[78] The *CHRA* does not provide any specific definition of what is a final or definitive decision (or a final or definitive judgment; they are all synonyms). On the other hand, section 2 of the *Federal Courts Act* provides the meaning of a final judgment.

[79] It describes it as "any judgment or other decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding". In other words, the final decision touches on the central issue of the verdict (*Duhamel v. The Queen* [*Duhamel*], [1984] 2 S.C.R. 555, p. 558).

[80] However, it must be remembered that final or definitive decisions are reviewable by higher courts. That said, final decisions also involve another principle, which stems from common law and is traditionally called the *functus officio* principle.

[81] This is a Latin expression used when a decision-maker (e.g. an adjudicator, member, administrative judge, or even a judge) has fulfilled the mandate that has been assigned to them. In other words, that decision-maker made a decision or issued an order, **and that exhausted his/her authority**.

[82] In the case of our Tribunal, the simplest case would be, for example, when it dismisses the complaint or, on the contrary, judges the merits of the complaint and orders a remedy. This is the purpose of the Tribunal, which is set out in section 53 of the *CHRA.* By making a decision under section 53 of the *CHRA*, the Tribunal will have exhausted its authority: it has completed what the *CHRA* has asked it to do, its ultimate goal, which is to adjudicate the complaint. Once that is done, the Tribunal is removed from the file unless it reserves jurisdiction.

[83] That being said, interlocutory decisions, in my opinion, are all other decisions that do not deal with the essential issue of the verdict, the dispute. In other words, these are decisions that do not absolve the Tribunal of its authority. By its very definition, an interlocutory decision includes anything that is not a final decision (*Duhamel*, above, p. 558).

[84] Interlocutory decisions include endless possibilities. For example, they include procedural decisions: without providing a limited list, we could mention decisions regarding dates, location and duration of the hearing, the use of a specific method of service, the use of video conferencing or telephone calls to hear the parties or witnesses, the exclusion of witnesses, etc. In my opinion, this also includes decisions regarding the disclosure of documents and information.

[85] It should be noted that some interlocutory decisions may be final or definitive. Some interlocutory decisions that end the complaint and divest the Tribunal of its authority are final or definitive.

[86] For example, consider a motion for dismissal or non-suit, or even a motion for abuse of process that would require the complaint to be dismissed in its entirety. These types of decisions that close a file, that dismiss a complaint, result in the Tribunal discharging its authority. Once the decision is made, the Tribunal can no longer adjudicate the complaint; it is once again divested of the file.

[87] Moreover, I believe that the distinction between an interlocutory and final decision is important in Tribunal proceedings since the Federal Court recently reiterated, in two recent decisions, that interlocutory decisions are generally not subject to judicial review in contemporary administrative law (see *Canada (Public Safety and Emergency Preparedness) v. Shen* [*Shen*], 2018 FC 636, para. 49 and following; *Ching v. Canada (Immigration, Refugees and Citizenship)* [*Ching*], 2018 FC 839, paras. 36 and 37).

[88] These two decisions echo the same words, but I think it is appropriate to mention the reasons of one of the Federal Court judges in the *Ching* decision:

[36] Generally, administrative law shields interlocutory decisions from judicial review. A summary of relevant principles was recently provided in *Canada (Public Safety and Emergency Preparedness) v. Shen*, 2018 FC 636 (CanLII) [*Shen* 2018]:

> [49] As the Federal Court of Appeal has observed, there is a substantial body of case law forbidding this Court from hearing premature matters on judicial review: *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245 (CanLII), [2015] 4 F.C.R. 75. The Court went on in *Forest Ethics* to state that Courts "can and almost always should refuse to hear a premature judicial review on its own motion in the public interest – specifically, the interests of sound administration and respect for the jurisdiction of an administrative decision-maker": at para. 22. See also *C.B. Powell*, above at para 30.
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> [50] There are a number of reasons why courts are reluctant to intervene in interlocutory rulings made by administrative tribunals, including the potential fragmentation of the administrative process, and the accompanying costs and delays. There is, moreover, always the possibility that the Board may end up modifying its original ruling as the hearing unfolds, or that the issue may ultimately be overtaken or become moot if the applicant for judicial review succeeds at the end of the administrative process: *C.B. Powell*, above, at para. 32; *Mcdowell v. Automatic Princess Holdings, LLC*, 2017 FCA 126 (CanLII) at para. 26, [2017] F.C.J. No. 621.
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> [51] Moreover, as the Federal Court of Appeal observed in *C.B. Powell*, it is only at the end of an administrative process that a reviewing court will have all of the administrative decision-maker's findings, conclusions that "may be suffused with expertise, legitimate policy judgments and valuable regulatory experience": (above at para 32). Refusing to intervene prior to there being a final decision in a given case is, moreover, consistent with the concept of judicial respect for administrative decision-makers who have decision-making responsibilities to discharge: *C.B. Powell*, above at para 32, citing *Dunsmuir v. New Brunswick,* 2008 SCC 9 (CanLII), [2008] 1 S.C.R. 190 at para 48, [2008] 1 S.C.R. 190.

[37] CB Powell limited the scope of "exceptional circumstances" such that "concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have

> consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted" (at para 33).
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> (*Ching*, above, at paras. 36 and 37).

[89] Thus, interlocutory and final decisions are treated differently by the Federal Court since they do not use the same intervention criteria developed in Federal Court jurisprudence.

[90] I would add that final decisions can not only be judicially reviewed by the Federal Court, but can also be reconsidered by the Tribunal. These are two separate avenues of recourse: a judicial review of a decision by a higher court and reconsideration of a decision by the decision-maker himself/herself. With respect to reconsideration, as the principle of *functus officio* applies to final decisions (i.e. the Tribunal has discharged its authority), it can extraordinarily provide an opening to the application of that common law principle.

[91] The Tribunal is of the view that there is no need for further elaboration on the issue of reconsideration of a final decision. It is enough to understand that reconsideration involves principles and criteria that are specific because of the final and definitive nature of these types of decisions (see *Chopra v. Canada (Attorney General)* for details, 2013 FC 644 at paras. 63 and 64).

[92] As for interlocutory decisions, the Federal Court does not say that interlocutory decisions **can never be reviewed**, and I think this is where Ms. Constantinescu seems to be confusing some key principles.

[93] Instead, the Federal Court explained that interlocutory decisions are reviewable **in rare or exceptional circumstances** (see among others *Ching*, above, at paras. 36 and 37; *Shen*, above, at paras. 49 and following).

[94] In *Canada (Border Services Agency) v. C.B. Powell Limited* [*C.B. Powell Limited*], [2011] 2 F.C.R. 332, the Federal Court of Appeal confirms that a person can only go to court after having exhausted all of his or her avenues of recourse in the

administrative process (at para. 30). Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews (at para. 31). The Court states that:

> All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative process until after they are completed, or until the available, effective remedies are exhausted.

[95] The objective, as stated by the Federal Court in *Ching* and *Shen*, above, is to avoid the fragmentation of the administrative process and piecemeal court proceedings. The goal is also to reduce the costs and delays associated with early intervention by the courts. The Federal Court of Appeal added that it:

> […] avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway.
>
> *(C.B. Powell Limited*, above, at para. 32)

[96] Ms. Constantinescu, in her representations, indicates that she is going to the Federal Court because the Tribunal encouraged her to do this when she disagrees with one of its decisions. That seems to be problematic in that the decisions she is challenging are interlocutory and some of her judicial reviews have been struck down by the Federal Court.

[97] First, for the sake of clarity, section 18.1 *of the Federal Courts Act [Federal Courts Act*], R.S.C. (1985) , c. F-7, provides that any person who is directly affected by

the subject matter of the application may file a judicial review within 30 days after the disclosure of the decision.

> **Application for Judicial Review**
>
> **18.1 (1)** An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.
>
> **Time Limitation**
>
> **(2)** An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

[98] I certainly do not wish to get into a major interpretation of the *Federal Courts Act*. Having said that, it seems to me that subsection 18.1(2) is fairly broad, saying "... after the time the decision or order was first communicated by the federal board, **commission or other tribunal** […] to the party directly affected […]".

[99] Section 18.1 makes no distinction between an interlocutory or final decision made by a federal board.

[100] Certainly, the Complainant does not agree with a multitude of Tribunal decisions. There is nothing problematic about disagreeing with certain decisions rendered by the Member. This is inevitable in any kind of decision-making process. When the parties do not agree on an issue and no agreement is possible, the Tribunal has no choice but to decide the issue in favour of one of the parties.

[101] If a party to the dispute feels that it has grounds to request a judicial review of the Tribunal's decision, it is entirely free to ask the Federal Court to intervene. All litigants have the right to use this supervisory and review process for tribunals by filing an application for judicial review.

[102] I do not see how the Tribunal could say otherwise: if Ms. Constantinescu disagrees with a decision of the Tribunal, she can file an application for judicial review under section 18.1 of the *Federal Courts Act*. However, it is up to the party seeking a review of an interlocutory decision by the Tribunal to demonstrate to the Federal Court that there are rare or exceptional circumstances justifying its intervention, as the Federal Court has said repeatedly.

(ii) Lack of Clarity on the Part of the Respondent

[103] In a different vein, the Respondent feels that the Complainant, in her August 28 letter, attacked the Respondent, its representatives and the Tribunal. According to the Respondent, the serenity of the proceedings is in jeopardy and it believes that the Tribunal has a responsibility to maintain it. It refers to a decision by the Commission des relations de travail du Québec (*Poplawski v. McGill University Non-Academic Staff Association*, 2012 QCCRT 430 (CanLII) in which the Commission rejected the applicant's appeal for, among other things, disrespectful behaviour and failure to comply with instructions and orders.

[104] The Respondent refers to one of its pieces of correspondence, dated September 6, in which it asked Ms. Constantinescu to withdraw her letter of August 28. In the same correspondence, it denounced her disrespect for it, its lawyers and the Tribunal. The Respondent also writes in its submissions that it expected, in response to this letter, that the Tribunal would intervene, even though it did not request the dismissal of the entire complaint or any other action.

[105] I reread this letter and I was unable to understand what the Respondent was looking for in concrete terms. In fact, the Respondent did not request, either implicitly or explicitly, that the Tribunal intervene. Lastly, the Respondent admits in its submissions that it could have been clearer regarding what it expected of the Tribunal.

[106] I would remind the parties that the Tribunal does not have mind-reading capabilities; the role of the Member is not to guess the intentions of the parties. If the parties have applications they wish to submit to the Tribunal, they must do so **in a clear**

and timely manner. And if an application is not clear and lacks clarity, as was the case with Ms. Constantinescu's August 28 application to amend a decision, the Tribunal can ask the parties to clarify their applications.

[107] That being said, the Respondent is now clearly asking the Tribunal to intervene and order Ms. Constantinescu to correct her behaviour, both in her oral and written representations, on condition that her complaint be dismissed if she does not comply with this order. I will come back to that in section IV of this decision.

D. Abuse of Procedure and Dismissal of Motion

[108] The elements I have discussed in the previous sections help to put the issue of abuse of process into context. Ms. Constantinescu's representations are particularly revealing in this regard.

[109] Above all, the Respondent is inviting the Tribunal to question its jurisdiction to dismiss the Complainant's motion to amend interlocutory decisions on the grounds of abuse of process.

[110] I do not intend to dwell on this point because it is not disputed by the Complainant. The Tribunal indeed has the authority to remedy an abuse of process, including the authority to dismiss an application, even an interlocutory application, on that simple basis.

[111] As I have already written, the Federal Court of Appeal has been clear that the Tribunal is "master in its own house", which includes the authority to protect its proceedings from potential abuse (see *Canada (Human Rights Commission) v. Canada Post Corporation*, 2004 FC 81 at para. 15, a decision upheld on appeal in *Canadian Human Rights Commission v. Canada Post Corporation*, 2004 FCA 363. See also *Johnston v. Canadian Armed Forces*, 2007 CHRT 42, at para. 31).

[112] That being said, I am of the opinion that, under the circumstances, Ms. Constantinescu's motion to amend 17 interlocutory decisions that have already been rendered constitutes an abuse of process. This request is oppressive, vexatious and

violates the principles of fairness and fair play, decency and decorum (see *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at para. 35).

[113] I would add that revisiting these 17 decisions would have a major impact on the Tribunal's timelines and that delays throughout the process must not become excessive in themselves (*Blencoe v. British Columbia (Human Rights Commission)* [*Blencoe*], 2000 SCC 44).

[114] I would also like to point out that we are still in the disclosure process of this complaint. It is undeniable that this process is particularly long, complex and arduous. This process has been going on for nearly two years and five months, and there is still much to be done.

[115] Reopening the 17 interlocutory decisions as requested by Ms. Constantinescu, hearing the parties again on this matter and rendering new decisions after all the effort that has been made to move forward in the process: this is totally unrealistic and exaggerated. The application is unreasonable and would frustrate the proceedings considerably.

[116] It is also surprising to note that in the 17 decisions that Ms. Constantinescu has asked me to review, certain decisions had not even been rendered when she filed her application in September 2019. For example, the decision on the issues surrounding the disclosure of Ms. Elizabeth Van Allen's documents and correspondence was rendered by the Tribunal during the November 26, 2019 teleconference only. How could the Tribunal have amended decisions it had not yet rendered in September 2019? Filing a motion that is not applicable is, in itself, vexatious and abusive.

[117] In addition, Ms. Constantinescu's application regarding Mr. Durdu's statement has already been the subject of a written and detailed decision on my part in 2018 (see *Constantinescu v. Correctional Service Canada*, 2018 CHRT 8). What is new in her representations is that she would have liked the Tribunal to order a search and seizure of the Respondent's offices when the Tribunal does not have such powers.

[118] The same comments apply regarding Ms. Constantinescu's request that the Tribunal should retain an expert to validate the audio recordings of the witnesses interviewed during Mr. Durdu's investigation. As I mentioned earlier, it is absolutely not up to the Tribunal to assess the parties' evidence. This application is equally unreasonable.

[119] In summary, Ms. Constantinescu has filed an application with the Tribunal to amend certain decisions and has asked it to issue certain orders that are impossible to make. Filing frivolous and irrelevant motions, as well as asking the Tribunal to issues orders that it does not have the power to make, all support a conclusion of abuse of process.

[120] In addition, the Tribunal notes that the Federal Court has made similar comments, on a number of occasions in its decisions, stating that the Complainant is asking it to issue orders that it cannot make. The Federal Court described the plaintiff's judicial review applications as unnecessary because, for all intents and purposes, it cannot order the remedies sought (see, for example, Justice Sylvie Molgat's decision, *Constantinescu v. Attorney General of Canada*, T-102-19, June 7, 2019, on page 4. *Constantinescu v. Attorney General of Canada*, T-1571-18, November 22, 2018, on page 2.

[121] I would add that it seems that Ms. Constantinescu is duplicating processes in multiple venues because she wants certain documents at all costs. For example, following the Tribunal's decision regarding Mr. Durdu's statement (2018 CHRT 8), she also filed a complaint with the Office of the Information Commissioner of Canada to obtain the same documents that had been refused by the Tribunal. The OICC rejected her application and concluded that the Respondent's searches were reasonable and that no documents matching this request were found.

[122] Following this negative decision, Ms. Constantinescu continued with an application for judicial review before the Federal Court. The Court also rejected her application because Ms. Constantinescu had not filed the relevant documents to prove the existence of the documents sought.

[123] In short, what is determinative in this case is that Ms. Constantinescu has come back in the Tribunal's case and is asking me to amend my earlier decision of March 3, 2018, despite my first decision, as well as decisions rendered by another federal board, tribunal and court of law that also rejected this application.

[124] This is exactly what the Respondent is referring to when it says that the Complainant is coming back to the Tribunal while ignoring its previous decisions or decisions by another body. It is the duplication processes in multiple venues for the same issues and the Complainant's refusal to accept the decisions rendered against her that is problematic and that creates the abuse of process.

[125] The Respondent clarifies that abuse of process can include not only the delay of proceedings, which can create difficulties in terms of evidence, but can also include other situations such as psychological harm and possible damage to the reputation of its witnesses.

[126] The key decision regarding delays leading to abuse of process is the *Blencoe* decision. The Supreme Court reiterated in this case that the principles of natural justice and the duty of procedural fairness are essential foundations for administrative procedures. This inevitably includes the ability of the Respondents to make a full answer and defence. Section 50(1) of the *CHRA* is clear in this regard. The Member shall give the parties "… a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations."

[127] As Member Athanasios D. Hadjis expressed in his decision *Grover v. National Research Council Canada* [*Grover*], 2009 CHRT 1, the delay in proceedings may affect a party's ability to respond to a complaint against it. Indeed, memories become vague, some witnesses may die or can no longer be found, evidence may be lost, etc. The administrative delay thus becomes a basis for challenging the administrative procedure and obtaining a remedy, which may include dismissing the complaint itself.

[128] That said, the Supreme Court is clear that the delay alone does not justify a stay of proceedings (*Blencoe*, above, at para. 101): the delay must be such that it compromises the elements essential to the fairness of the process. The courts and

tribunals therefore agree that evidence must be presented to demonstrate that the harm suffered is significant enough to prejudice the fairness of the hearing (*Blencoe*, above, at para. 104; *Grover*, above, at para. 38; *Ford Motor Co. of Canada v. Ontario (Human Rights Comm.)*, 1995 CanLII 7431 (Ont. S.C.), at para. 16; *Montoya v. Canada (Attorney General)*, 2016 FC 827, at para. 42; *Chabanov v. Canada (Citizenship and Immigration)*, 2017 FC 73 at para. 45).

[129] The Supreme Court recognizes that undue delays can have a negative impact on several aspects of the procedure. In this regard, the Respondent submits that reopening the debate on the 17 issues decided would create an undue extension of the hearing. According to it, this additional delay would not only impair its ability to defend itself, but could also cause psychological harm to its witnesses and negatively impact their reputations.

[130] I understand the Respondent, but at this stage, it is impossible to determine whether the delays caused by reopening 17 previous decisions on disclosure issues would automatically lead to an abuse of process. At this point, without evidence of real and proven harm, this argument remains theoretical. And in any event, since I am dismissing the plaintiff's motion, I do not have to go into these arguments any further.

[131] Lastly, the arguments put forward by Ms. Constantinescu in this motion demonstrate a certain tendency to exhibit behaviours and attitudes that are vexatious, frustrating, impertinent and abusive.

[132] This is illustrated by the seeking of orders that the Tribunal is unable to issue (request for search and seizure, expert assessments, etc.), the presentation of frivolous, impertinent and unfounded arguments (spending of public funds, threats from the Respondent, etc.) the duplication processes in multiple venues, her stubbornness in challenging every decision that is not in her favour and the use of inflammatory, accusatory and disrespectful language (both towards the Tribunal and the other parties).

[133] This brings me to what the Federal Court has to teach in *Canada v. Nourhaghighi* [*Nourhaghighi*], 2014 FC 254 at para. 46, in regards to abuse of process and abusive and vexatious behaviour.

[134] In that decision, the Federal Court assessed the applicant's behaviour to determine whether he should be declared a vexatious litigant. In order to do so, the Court analyzed what was vexatious in the applicant's behaviour.

[135] I find this decision to be very helpful insofar as Judge Russell specifies that the term "vexatious" is broadly synonymous with the concept of abuse of process (*Nourhaghighi*, above, at paras. 44 and 45). This seems to me to be consistent with the *Toronto* decision, above, whereas the Supreme Court points out that abuse of process can occur if the proceedings are considered oppressive or vexatious.

[136] It is clear from the Federal Court's teachings that when the Tribunal assesses whether an application is vexatious or abusive, it may consider a number of factors, including but not limited to:

- Introduction of frivolous motions;
- Expression of unsubstantiated allegations of impropriety against the opposing party, lawyers or court;
- Refusal or failure to comply with rules or orders;
- Use of outrageous, abusive, inflammatory language or the use of nonsensical or unsubstantiated allegations in pleadings or before the Court;
- Introduction of multiple proceedings with no prospect of success;
- Presentation of applications for remedy that the Court does not have the power to order;
- Failure to act diligently;
- Allegations of obvious bias or unprofessional conduct by the decision-maker;
- Disrespectful and disruptive behaviour before the Court.
- Failure or refusal to pay costs awarded in previous proceedings and failure to take legal action in a timely manner;

(see *Nourhaghighi*, above, at para. 42 and following).

[137] The Federal Court also notes that the review of the conduct of a party is not limited to the case in question; the Court may consider the conduct of that party in other courts.

[138] Like the teachings of the Supreme Court of Canada in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, when I use the discretionary powers conferred by my enabling legislation and the *common law*, I can adapt and apply the criteria of the civil courts in a reasonable manner while respecting my legislative scheme (see also *Laurent Duverger v. 2553-4330 Québec Inc.(Aéropro)*, 2018 CHRT 5 at para. 56).

[139] It would seem that certain Federal Court judges have also raised concerns about Ms. Constantinescu's behaviour in their own proceedings. For example, Justice Molgat wrote in *Constantinescu v. Attorney General of Canada*, T-102-19, June 7, 2019:

> [TRANSLATION] While the applicant alleged in the latter proceeding that Correctional Service Canada (the "CSC") was withholding documents from her, she now claims that over the past four years CSC has destroyed or altered several important and relevant pieces of evidence in her complaint.
>
> The Applicant submits that the Respondent's representations are not supported in fact and in law and are solely for the purpose of denying access to documents that are sensitive and compromising to CSC. She seeks the Court's intervention to gain access to the documents she insists are missing. **In my opinion, her allegations about destroying or redressing documents are just bold statements**. …

[140] In *Constantinescu v. Attorney General of Canada*, T-102-19, September 5, 2019, Justice Pamel wrote:

> [TRANSLATION] In her written submissions, Ms. Constantinescu alleges that Prothonotary Molgat granted the Respondent's motion to strike **without examining the file and treating it superficially. I do not see anywhere in the Prothonotary's decision of June 7, 2019, that she handled the matter other than with care and diligence.**

[141] These are the same comments and remarks that Ms. Constantinescu is making and has made with respect to the Tribunal and on more than one occasion. This is what

I would characterize as a lack of respect for the authority of the Tribunal as well as for the authority of the courts.

[142] I do not think anything more needs to be added. Both Ms. Constantinescu's behaviour and her representations in her application and her reply cannot be characterized other than as vexatious and abusive (*Nourhaghighi*, above).

[143] The request itself is equally vexatious and oppressive and directly violates the principles of fairness and fair play, decency and decorum (*Toronto*, supra).

[144] The Complainant's motion is therefore dismissed in its entirety.

IV. Order to Correct Vexatious Behaviour

[145] I agree with the Respondent's representations that where the conduct of a party is characterized as delaying tactics, abusive, vexatious, frustrating or frivolous, dismissing the complaint is one of the remedies available to correct the situation.

[146] The Respondent feels that Ms. Constantinescu, in her letter of August 28, attacked the Respondent, its representatives and the Tribunal. In its view, the serenity of the proceedings is disrupted and it believes that the Tribunal has a responsibility to ensure the serenity of its proceedings.

[147] It refers to a decision by the Commission des relations de travail du Québec (*Poplawski v. McGill University Non-Academic Staff Association*, 2012 QCCRT 430 (CanLII) in which the Commission rejected the applicant's recourse, among other things, for disrespectful behaviour and failure to comply with instructions and orders.

[148] That being said, I am of the opinion that a Member should intervene when he/she deems it appropriate. The Member shall act with serenity, which is an essential component of the principle of impartiality. In my opinion, in order to preserve this serenity and to be able to deal with the matter before him/her, the Member must stand above the fray, despite the moods of the parties.

[149] In the same vein, Ms. Constantinescu argues that she is respectful and polite to the Tribunal and the parties. I admit that the concepts of respect and politeness are subjective. The Complainant is definitely lacking in deference, both in her general representations and in this motion and reply.

[150] As explained earlier, the Complainant uses language that is inflammatory, abusive and sometimes difficult to grasp. It is also very clear that she is making unfounded allegations, for example, by accusing the Tribunal of committing irregular acts.

[151] This is not the first time I have asked the Complainant to correct her behaviour. This issue was addressed in my decision in *Constantinescu v. Correctional Service Canada*, 2018, CHRT 8 at para. 30, but also in my instructions of December 4, 2018, after her comments that the Tribunal was not impartial. I invited her to file a motion for recusal at the earliest opportunity (2000 *Zündel v. Canada (C.D.P.*) 2000 CanLII 16575 (FCA), which was not done. Her unacceptable behaviour has also led to another written intervention by the Tribunal on September 13, 2019.

[152] Therefore, despite the fact that the Tribunal has intervened on several occasions to ask the Complainant to correct her behaviour, her representations in this motion are evidence that she has decided to ignore the Tribunal's instructions. Her comments sometimes cross boundaries that should not be crossed.

[153] Ms. Constantinescu is of the opinion that the Tribunal is treating her case superficially, lightly accepting the Respondent's representations and precipitating the closure of disclosure issues. She feels that her file has been dealt with improperly since the beginning of the process. Lastly, she states that the Respondent's lawyers are making false representations. All of these criticisms are reflected in the letter of August 28, 2019, which led to this motion.

[154] To defend her attitude and her behaviour, Ms. Constantinescu alleges that she has a right to freedom of expression that allows her to say what she wants. With respect, the issue of freedom of expression is not relevant here. In subsection 50(1), the

CHRA stipulates that the parties have the right to a full answer and defence and to make representations.

[155] In this case, I believe the problem is not the violation of her right to freedom of expression, but rather the minimum civility required in a judicial process. It is essential and necessary for all parties to exercise restraint in their interactions with the Tribunal (*Nourhaghigi*, above; *Toronto*, above).

[156] I want to be clear that it is definitely possible for Ms. Constantinescu to present her arguments to the Tribunal. She has every right to disagree with the representations of the Respondent or to disagree with my decisions. However, certain limits must not be crossed.

[157] In this context, I am issuing another clear warning that the Complainant's vexatious behaviour cannot be tolerated in the Tribunal process. She would do well to focus her energy on her arguments regarding the facts and the law surrounding her complaint, rather than on her vexatious manoeuvres.

[158] In this decision, I am not yet at the point of considering that Ms. Constantinescu's behaviour requires the dismissal of her complaint in its entirety. It is not what the Respondent is asking for in its submissions at this stage either.

[159] On the other hand, when reading the Federal Court's teachings on abuse of process and the cues to be considered in order to characterize conduct as vexatious (*Nourhaghigi*, above), it is clear that Ms. Constantinescu has less and less latitude in this matter and is approaching the limits of acceptable conduct in our quasi-judicial process.

[160] **I therefore reiterate my expectations for the Tribunal's process to continue with serenity, respect and decorum**:

- Any written or verbal exchanges, content, comments, representations, observations, etc. must not contain outrageous, abusive, inflammatory or vexatious language;

- No attack on the character of a party, representative, counsel, Tribunal, member, staff, and possibly witnesses is tolerated, nor is the denigration or contempt for those same individuals tolerated;

- Any conduct as enumerated by Justice Russell in the Nourhaghighi decision, above, at para. 46, must be avoided;

[161] All parties therefore understand the potential consequences that could be applied if these expectations are not met. The parties are also aware of the Member's discretion to carry out his mandate, including the possibility of preventing abuse of process and, in the most serious cases, the possibility of dismissing the complaint.

V. Determination

[162] For all these reasons, I dismiss the Complainant's motion.

Signed by

Gabriel Gaudreault
Member of the Tribunal

Ottawa, Ontario
On 16 December 2019

Canadian Human Rights Tribunal

Parties to the File

Tribunal file: T2207/2917

Style of cause: Cecilia Constantinescu v. Correctional Service Canada

Decision of Tribunal dated: Decision on a motion On 16 December 2019

Motion dealt with in writing without appearances by parties

Representations written by:

Cecilia Constantinescu, for Complainant

Paul Deschênes and Patricia Gravel, for Respondent