

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 15

Date: March 5, 2025

File Nos.: T2349/0819 & T2350/0919

Between:

Brook McCargar

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Decision

Member: Colleen Harrington

Contents

I.	OVERVIEW.....	1
II.	DECISION.....	2
III.	ISSUE	2
IV.	FACTS	3
V.	RESPONDENT’S MOTION TO DISMISS	10
	A. Vexatious Conduct and Abuse of Process	10
	(i) Vexatious Conduct.....	10
	(ii) Abuse of Process.....	12
	B. In the Alternative Argument Relating to Delay	13
	C. Commission’s Submissions	13
VI.	ANALYSIS	14
	A. Mr. McCargar’s conduct has been vexatious and amounts to an abuse of process.....	15
	B. Dismissal is the appropriate remedy for Mr. McCargar’s vexatious conduct and abuse of the Tribunal’s process	16
VII.	ORDER	22

I. OVERVIEW

[1] In 2016 and 2017, Brook McCargar (Complainant) filed two human rights complaints with the Canadian Human Rights Commission (Commission) against the Respondent, Correctional Services Canada (CSC). The Commission referred both complaints to the Tribunal for an inquiry in January of 2019. The parties engaged in Tribunal-assisted mediation for a period of time, which was unsuccessful. Since then, the matter has been in the Tribunal's case management process.

[2] The case management process is intended to ensure that all parties are prepared for a hearing. As part of this preparation, the *Canadian Human Rights Tribunal Rules of Procedure, 2021* SOR/2021-137 [Rules] require parties to file Statements of Particulars (SOP) setting out the facts, issues and remedies they will rely on, as well as the witnesses they intend to call at the hearing (Rules 18-21). Parties also disclose to one another all arguably relevant documents in their possession (Rules 23,24). All of this helps to ensure that the parties understand the case they must meet, in accordance with the principles of procedural fairness.

[3] Throughout the case management process, Mr. McCargar has failed to comply with the Tribunal's Rules and directions. He missed all of the deadlines established by the Tribunal to file his SOP. After deciding to adopt the Commission's SOP and to rely on the allegations set out in his two human rights complaints, he was required to advise the other parties and the Tribunal about which witnesses he intended to call at the hearing, as well as what remedies he was seeking if discrimination is proven. Mr. McCargar's witness list, when he finally provided it, included nearly 400 names. His list of remedies was over 200 pages long and included remedies that were unrelated to his complaints and which the Tribunal does not have the jurisdiction to award.

[4] Mr. McCargar was given the opportunity to provide a revised version of both lists, with clear instructions about ensuring that there was a connection to his complaints, and with a reasonable page limit. However, Mr. McCargar's revised witness list contained over 800 names and his revised remedies list included nearly 600 remedies. Again, most were unrelated to his complaints.

[5] CSC has now filed a motion asking the Tribunal to dismiss Mr. McCargar's complaints. CSC says these complaints should be dismissed either on the basis that Mr. McCargar's actions have amounted to an abuse of the Tribunal's process or, in the alternative, because his actions have led to unreasonable delay in the proceedings.

[6] CSC argues that Mr. McCargar has "demonstrated a wholesale disregard for" the Tribunal's Rules and for the orders and directions made by the Tribunal during case management. CSC also submits that Mr. McCargar has delayed his case for an unreasonable amount of time and that he has no intention of bringing his complaints to a conclusion. CSC describes Mr. McCargar's actions as "oppressive and vexatious to such a degree that they contravene fundamental notions of justice, undermine the integrity of the process and are an abuse of process."

[7] Mr. McCargar has not filed a response to CSC's motion to dismiss his complaints. The Commission takes no position with regard to whether the complaints should be dismissed but has provided a short submission setting out some principles arising from Tribunal case law that it says may be considered when determining whether to dismiss these complaints.

II. DECISION

[8] CSC's motion is substantiated. Mr. McCargar has repeatedly failed to comply with the Tribunal's directions, timelines and Rules. His vexatious conduct amounts to an abuse of process in that it has affected the Tribunal's ability to conduct a fair proceeding. I am satisfied that the only way to remedy Mr. McCargar's abusive misuse of the Tribunal's process is to dismiss his complaints.

III. ISSUE

[9] The only issue for the Tribunal to determine is whether it should dismiss Mr. McCargar's complaints in their entirety as requested by CSC, either because his actions

in these proceedings have been vexatious such that they constitute an abuse of process or, in the alternative, because of abusive delay.

IV. FACTS

[10] CSC filed a lengthy affidavit setting out the history of Mr. McCargar's two human rights complaints from the time they were filed with the Commission to the date of its motion to dismiss. While most of the allegations set out in CSC's affidavit align with the Tribunal's record, the Tribunal has no direct knowledge of the events that occurred prior to the Commission asking the Tribunal to institute an inquiry into the complaints. However, the allegations set out in CSC's affidavit are largely supported by documentary evidence and are unchallenged by either Mr. McCargar or the Commission. As such, I accept these allegations, along with some additional information from the Tribunal's record, as facts for the purposes of considering this motion to dismiss.

[11] Mr. McCargar filed his first complaint with the Commission in April of 2016, alleging that CSC discriminated against him on the grounds of perceived sexual orientation and age by treating him in an adverse differential manner and failing to provide him with a harassment-free environment during his incarceration in a CSC correctional facility in Alberta. He filed his second complaint in February of 2017, alleging that CSC retaliated against him for filing the first complaint.

[12] In January of 2019, the Commission asked the Tribunal to conduct an inquiry into both complaints. For a period of over 3 years, the parties participated in Tribunal-assisted mediation. For approximately half of the time the complaints were in mediation, Mr. McCargar was unresponsive to communication attempts by the parties and the Tribunal. During at least some of this time, Mr. McCargar was not incarcerated.

[13] When mediation efforts were exhausted, the Tribunal wrote to the parties, advising that the complaints would be moved into its case management process.

[14] In a letter dated November 18, 2022, the Tribunal directed Mr. McCargar to file a SOP that complies with Rule 18 of the Tribunal's Rules. His deadline to do so was January

9, 2023. On January 17, 2023, the Tribunal sent an email to the parties noting that Mr. McCargar did not file his SOP as required, although he had left a message for the Tribunal's Registry Officer saying his SOP would be late.

[15] On January 18, 2023, the Tribunal's Chairperson suspended the parties' SOP deadlines *sine die* until Mr. McCargar could be contacted, as he had apparently been transferred to a new correctional facility.

[16] In July of 2023, the Tribunal emailed the parties to advise that I had been assigned by the Chairperson to case manage these complaints to help move them forward, and that the Tribunal had located Mr. McCargar. He was directed to file his SOP by August 14, 2023. Instead, on August 15, 2023, he requested an extension until August 31, 2023 to do so. Although CSC objected, the extension was granted. Mr. McCargar did not file his SOP by August 31, 2023.

[17] The Tribunal convened a Case Management Conference Call (CMCC) with all parties on September 12, 2023, at which time the Tribunal asked the Commission to file its SOP first so that Mr. McCargar would have an example to refer to when completing his own SOP. Mr. McCargar was advised by the Tribunal that he had the option of indicating that he agreed with some or all of the Commission's SOP, and could then add anything important that he thought was missing, including the remedies he was seeking and any witnesses he intended to call, to try to prove he was discriminated against. The Complainant's new deadline for his SOP was November 7, 2023.

[18] The written summary of the September 12, 2023 CMCC contains the full text of section 53 of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6 [CHRA] for Mr. McCargar's reference. It also highlights Rule 18 of the Rules of Procedure, which includes the requirement that he provide a summary of each witness's intended testimony.

[19] Also, at the September 12, 2023 CMCC, CSC indicated that it was considering filing a motion to dismiss the complaints because Mr. McCargar had missed deadlines in the past. While I indicated that it would be a better use of everyone's time to focus on moving the complaints forward, I stressed to Mr. McCargar that, given CSC's intention to file a motion

to dismiss should he continue to miss his deadlines, he must take his complaints and the deadlines seriously and make every effort to meet them. Mr. McCargar agreed to do so.

[20] On November 2, 2023, Mr. McCargar wrote to the Tribunal to say that the conditions of his provincial incarceration in Manitoba were imposing barriers to his ability to complete his SOP. Another CMCC was scheduled for November 10, 2023, during which time a new deadline of November 23, 2023 was set for Mr. McCargar to file his SOP. He did not meet this deadline.

[21] On November 30, 2023, the Tribunal advised the parties that, on November 28, Mr. McCargar had contacted its Registry Office to say that he had injured his hand and asked for an extra month to provide his SOP. On the consent of CSC, the Tribunal set a new deadline of January 5, 2024. Mr. McCargar did not file his SOP on January 5. On January 11, 2024, the Tribunal wrote to the parties to advise that Mr. McCargar had been transferred to a different provincial correctional facility and his SOP deadline had been extended to January 17, 2024. In response, CSC wrote to the Tribunal and parties asking that, at a minimum, Mr. McCargar be required to confirm that he would be adopting the Commission's SOP and that he was not making any additional allegations, and that he would provide his list of witnesses and remedies by January 17 as well.

[22] On January 12, 2024, the Tribunal wrote to the parties to indicate that it agreed with CSC's request, and that Mr. McCargar was to provide his list of witnesses and remedies by January 17, 2024. He did not provide his SOP or any indication of whether he would adopt the Commission's SOP, nor did he provide his witness list or list of remedies by January 17, 2024.

[23] Another CMCC was held on February 20, 2024, during which Mr. McCargar confirmed that, rather than filing his own SOP, he would rely on his human rights complaints and adopt the Commission's SOP as his own. The Commission's SOP summarizes Mr. McCargar's complaints as containing allegations that, when he was incarcerated at CSC's Edmonton Institution, CSC employees: made demeaning comments about his age and perceived sexual orientation, used excessive force, executed non-routine searches of his cell, denied him access to legal calls, and cut the electricity to his cell. Mr. McCargar's

first human rights complaint alleges that one particular correctional officer at the Edmonton Institution verbally offended, harassed and threatened him on the basis of his age and perceived sexual orientation. His second complaint alleges unfavourable treatment amounting to retaliation by several correctional officers at the Edmonton Institution.

[24] At the February 20, 2024 CMCC, Mr. McCargar indicated that he had mailed a USB drive to the Tribunal which contained his lists of witnesses and remedies. The Tribunal received the USB drive after the February 20, 2024 CMCC and provided a copy of its contents to CSC and the Commission on February 23, 2024.

[25] Mr. McCargar's witness list was 72 pages long and contained over 370 names. This list included not only the names of the individuals he alleged in his complaints to have discriminated or retaliated against him, but hundreds other people whose connection to the complaints was unclear, including court staff, lawyers with the Alberta public prosecution service, defence counsel, several prisoners who apparently had their own grievances against CSC, medical personnel, reporters, government ministers, the Auditor General, the Prime Minister of Canada, the two Tribunal members who acted as mediators in this matter, and many, many others. The witness list also did not contain a summary of the witnesses' anticipated testimony, as required by Rule 18 of the Rules of Procedure.

[26] Mr. McCargar's list of remedies consisted of two separate pdf documents which, together, were well over 200 pages long. In one of the documents, in addition to the maximum amount of damages that can be awarded under sections 53(2)(e) and 53(3) of the CHRA, Mr. McCargar was seeking very broad remedies that could be characterized as being systemic, although many were vague or difficult to understand, especially in relation to the allegations set out in his two human rights complaints. For example, he was asking the Tribunal to order CSC to "eliminate the aspects of [its] operations/organization that creates an incentive(s) for its staff members/employees to discriminate" including with respect to: its budget and "funding formula"; "organizational structure"; "prisoner rights"; "practices stemming from what is commonly known as CSC's corrupt corporate culture"; doing a "cost- analysis of the real needs of its employee positions"; and, protecting "prisoner intellectual property". He also asked the Tribunal to order: that sections of the *Corrections and Conditional Release Act*, S.C. 1992, c.20 [CCRA] have no application to him and that

they be found to be inconsistent with the CHRA and the *Charter*, that CSC be prohibited from applying to him any and all legislation, regulations, and policies; that CSC implement the recommendations of a coroners inquest into the death of a female inmate in CSC custody; and, that CSC create an oversight body. Mr. McCargar also included what he refers to as a “Make Whole Order”, which states that the only remedy that could even allow him to “start *thinking* about trying to become whole again, if even possible, is the complete abolition of the prison system in its entirety in Canada, (*and abroad*)” [as written].

[27] The second document that made up his remedies list consisted of 190 pages with several remedies listed on each page. While too numerous to list, they consist of things like asking the Tribunal: to order a specific CSC employee to publicly apologize to a different inmate for comments he made to him; to order CSC to stop operating “fight clubs” and to stop refusing to heat up Mr. McCargar’s food; and, to ensure inmates have specific telephone access. I note that most of the listed remedies are meant to apply to CSC as a whole, not just to the Edmonton Institution where Mr. McCargar was incarcerated.

[28] Another CMCC was held on March 6, 2024 to discuss the lengthy witness and remedies lists. During this CMCC, the Tribunal explained to Mr. McCargar that many of the remedies he was seeking were outside of the scope of what the Tribunal could order and outside of the scope of the two complaints referred to the Tribunal for an inquiry. The Tribunal reminded Mr. McCargar that he was limited to the facts set out in his complaints and the Commission’s SOP, and the Tribunal questioned how many of the listed witnesses were relevant to Mr. McCargar’s complaints.

[29] The Tribunal also directed Mr. McCargar to re-file his witness and remedies lists by May 1, 2024. In doing so the Tribunal imposed a page limit of ten pages for the revised list of remedies and two pages for the revised witness list. The Tribunal directed Mr. McCargar to refer to section 53 of the CHRA and to ensure that the remedies he is seeking are directly related to what the Tribunal can order under the CHRA, and that they relate to his complaints of discrimination and harassment on the basis of age and sexual orientation, as well as retaliation. The Tribunal stressed that his witnesses must similarly be able to testify about facts relating to his complaints and that he must indicate what the witnesses were being called to testify about, in accordance with Rule 18.

[30] Also, at the March 6, 2024 CMCC, CSC stated that, if Mr. McCargar did not comply with the Tribunal's directions regarding his revised remedies and witness lists, it would bring a motion to dismiss or to significantly reduce the scope of the complaint. The Commission agreed with this approach.

[31] The Tribunal did not receive Mr. McCargar's revised witness list and list of remedies by May 1, 2024. Rather, it received another USB drive from Mr. McCargar on May 9, 2024, the contents of which were shared with the parties. The revised witness list, while confined to two pages, consists of five columns per page and contains the names of 808 witnesses. The revised witness list does not contain a summary of the proposed evidence of each witness as directed by the Tribunal.

[32] The revised list of remedies contains 596 remedies divided into over 70 categories. In order to comply with the page limits ordered by the Tribunal during the CMCC, Mr. McCargar shrunk the font down significantly and removed all spaces between the lines.

[33] As with the previously filed lists of witnesses and remedies, the revised versions refer to facts, individuals and issues that are not raised in Mr. McCargar's complaints or in the Commission's SOP, and include remedies that the Tribunal cannot order.

[34] On May 16, 2024, CSC wrote to the Tribunal and the parties to indicate that, as it viewed the revised witness and remedies lists filed by Mr. McCargar to be vexatious and abusive in nature, it intended to file a motion to dismiss the complaints. The Tribunal established timelines for the parties' motion submissions. Mr. McCargar's response to the motion was due on July 30, 2024. Prior to that deadline, Mr. McCargar called the Tribunal's Registry Officer to advise that, based on a number of things that were happening at the provincial correctional facility where he was incarcerated, he was having a hard time responding to CSC's motion to dismiss his complaint and he asked to hold another CMCC. A CMCC was scheduled for July 23, 2024.

[35] During the July 23, 2024 CMCC, Mr. McCargar indicated that he was working on a letter relating to his experiences in various Manitoba correctional facilities over the past three years that he believed would support a prosecution under sections 59 and 60 of the CHRA. The Tribunal stressed to Mr. McCargar the seriousness of the motion to dismiss and that he

should be focusing his time and attention on responding to that motion rather than on preparing materials related to commencing an action outside of the Tribunal's jurisdiction. Mr. McCargar's deadline for responding to the motion to dismiss his complaints was extended to August 30, 2024.

[36] In August of 2024, Mr. McCargar advised that, as he had again been transferred to a different Manitoba correctional facility, he did not receive the lengthy affidavit attached to CSC's motion to dismiss. In order to ensure he received the affidavit and had time to review it and respond to the motion, the Tribunal extended his submission deadline to September 30, 2024. Mr. McCargar did not file his response to the motion by this date.

[37] On October 8, 2024, the Tribunal advised the parties that Mr. McCargar had missed his deadline to reply to the motion to dismiss and, in the interest of moving the matter forward, the Commission should file its submissions as scheduled, followed by CSC's reply submissions, if any, following which the Tribunal would issue its decision.

[38] The Commission provided its brief submissions as requested and the Respondent did not file reply submissions.

[39] On November 8, 2024, Mr. McCargar faxed a note to the Tribunal to advise that he was mailing some motion materials to the Tribunal. When these materials (consisting of 254 pages, many of which are handwritten documents) arrived, they specifically indicated that they were not intended to be a response to CSC's motion to dismiss his complaints. Rather, they were the previously referred to materials relating to instituting a prosecution of Manitoba Corrections pursuant to sections 59 and 60 of the CHRA. These materials were shared by the Tribunal with the other parties for their information.

[40] CSC's affidavit states that, based upon a review of the Department of Justice's file management and timekeeping system, the total number of hours spent on Mr. McCargar's complaints up to May 30, 2024 was over 580 hours.

V. RESPONDENT'S MOTION TO DISMISS

A. Vexatious Conduct and Abuse of Process

[41] CSC argues that Mr. McCargar's refusal to comply with the Tribunal's directions and deadlines constitutes vexatious conduct that undermines the integrity of the Tribunal's process and amounts to an abuse of process.

[42] CSC submits that the Tribunal may make an order to dismiss a complaint for non-compliance with the Tribunal's Rules of Procedure, for vexatious conduct or for an abuse of process, pursuant to Rules 9 and 10, which state:

9 If a party does not comply with these Rules, an order of a panel or a time limit established under these Rules, the panel may, on the motion of another party or its own initiative, and having regard to the circumstances, order the party to remedy their non-compliance, proceed with the inquiry, dismiss the complaint or make any other order to achieve the purpose set out in Rule 5.

10 A panel may, on the motion of a party or its own initiative, make any order that it considers necessary against vexatious conduct or abuse of process.

[43] Rule 5 states that the Tribunal's Rules "are to be interpreted and applied so as to secure the informal, expeditious and fair determination of every inquiry on its merits."

(i) Vexatious Conduct

[44] CSC says that a litigant may be considered vexatious where they refuse or fail to comply with rules and orders or fail to act diligently (*Constantinescu v Correctional Service Canada*, 2019 CHRT 49 at para 136 [*Constantinescu 2019*]; *Canada v Nourhaghighi*, 2014 FC 254 at para 47 [*Nourhaghighi*]). It notes that the Federal Court has dismissed actions and applications where litigants have failed to comply with court orders (*Canada v Zbarsky*, 2023 FC 161 at para 22).

[45] CSC argues that Mr. McCargar's extensive witness lists (both the first and revised versions) are vexatious. It points out that he did not comply with the Tribunal's Rules as he failed to provide a summary of the witnesses' anticipated testimony. It also argues that naming, as witnesses, individuals who have nothing to do with the complaints before the

Tribunal, including the Prime Minister, court administration staff, opposing counsel and judges in other proceedings, without any evidentiary basis is vexatious and implies an attempt to harass or intimidate (*Nourhaghighi* at para 52; *McCargar v Canada*, 2017 ABQB 729 at para 25 [*McCargar 2017*]). CSC says the fact that most of the names on the witness lists have nothing to do with Mr. McCargar's complaints indicates that he seeks to "conduct a free-ranging examination of the legislative, judicial and executive branches of government in regards to hundreds of perceived wrongs."

[46] In addition, CSC argues that seeking remedies that a decision maker does not have the power to order is vexatious (*Constantinescu 2019* at para 136; *Nourhaghighi* at para 47). CSC notes that the first list of remedies sent by Mr. McCargar, which is over 200 pages, contains numerous allegations not particularized in (and remedies not related to) Mr. McCargar's complaints, the Commission's investigation report, the Commission's February 1, 2019 referral to the Tribunal, or the Commission's SOP. CSC notes that many of the remedies seek relief for individuals who are not parties to this proceeding and have never been referred to in relation to Mr. McCargar's complaints.

[47] Some of the remedies that CSC says are vexatious include: challenging legislation, including the CCRA; seeking the abolition of the prison system in its entirety in Canada and abroad; seeking the institution of criminal charges against various individuals; and suggesting that all CSC employees should take "a razor blade and cut into their own flesh." CSC submits that the Tribunal does not have jurisdiction to decide complaints that are challenges to legislation (*Nacey v Aboriginal Affairs and Northern Development Canada*, 2024 CHRT 24 at para 20) or that interfere with prosecutorial discretion (*Wood v Canada*, 2024 FC 182 at paras 32 and 34), nor does it have jurisdiction to act as a Commission of Inquiry or Royal Commission (*Moore v British Columbia*, 2012 SCC 61 at para 64) or issue remedies that are plainly unconstitutional and obscene.

[48] CSC also notes that the Tribunal and the Federal Court have recognized that the term "vexatious" is broadly synonymous with the concept of abuse of process (*Constantinescu 2019* at para 135, *Nourhaghighi* at 44,45).

(ii) Abuse of Process

[49] CSC says that the doctrine of abuse of process is a broad concept, characterized by flexibility and unencumbered by specific requirements, that aims to prevent unfairness by precluding abuse of the decision-making process (*Alberta v Canadian Copyright Licensing Agency (Access Copyright)*, 2024 FC 292 at para 246). CSC says that an abuse of process involves proceedings that are unfair to the point that they are contrary to the interests of justice and amount to oppressive treatment (*Holmen v CRA*, 2023 CHRT 36 at para 32 [*Holmen*]). It submits that, in determining whether there has been an abuse of process, the Tribunal should consider the principles of judicial economy, consistency, finality, and the integrity of the administration of justice (*Paton v Spearing Service L.P.*, 2022 CHRT 37 at para 37, citing *British Columbia (Worker's Compensation Board) v Figliola*, 2011 SCC 52 at para 33).

[50] CSC argues that Mr. McCargar has repeatedly and consistently refused or failed to comply with the Rules and directions of this Tribunal, including by failing repeatedly to meet his deadlines. CSC points out that he has missed nearly every deadline ever established by the Tribunal and was out of touch and not actively engaged with his own complaint for much of the time the complaint was before the Tribunal. It further describes Mr. McCargar's behaviour in response to the Tribunal's direction with regard to his revised witness and remedies lists to be willful and defiant, and says it directly challenges the Tribunal's authority.

[51] CSC points out that decisions by administrative decision makers need to be made promptly and efficiently, and inordinate delay in administrative proceedings is contrary to the interests of society and undermines a key purpose for which administrative tribunals were created – expeditious and efficient decision making (*Letnes v RCMP*, 2022 CHRT 32 at para 20, citing *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 46 [*Abrametz*]).

[52] CSC argues that Mr. McCargar's behaviour warrants a stay of proceedings because he has demonstrated a pattern of vexatious behaviour and has refused the Tribunal's offer to remedy this behaviour. It says his non-compliance with the Tribunal's Rules and directions is to the detriment of the Tribunal's ability to make decisions in an expeditious and effective manner, and unfairly monopolizes the time of the Tribunal and the Respondent at the

expense of other proceedings. As an example, CSC points out that the Tribunal convened four CMCCs over a period of seven months solely on the issue of Mr. McCargar's SOP, only for him to refuse to abide by the Tribunal's directions for delivering the revised witness and remedies lists.

[53] CSC argues that there is no reason to believe that Mr. McCargar's behaviour will change, and it is highly likely that this pattern of abuse will reoccur throughout the proceedings.

B. In the Alternative Argument Relating to Delay

[54] In light of my decision to dismiss the complaints pursuant to Rules 9 and 10, on the basis of Mr. McCargar's vexatious conduct which amounts to an abuse of the Tribunal's process, I have determined that I do not need to consider CSC's alternative argument that Mr. McCargar's complaint should be dismissed due to delay. As such, I will not address this argument in this decision.

C. Commission's Submissions

[55] While not taking a position with respect to whether Mr. McCargar's complaints should be dismissed, the Commission stresses that it is ultimately a complainant's responsibility to advance their file (*Mohamed v Royal Bank of Canada*, 2024 CHRT 84 at para 11 [*Mohamed*]; *Vandermeulen v Carry the Kettle First Nation*, 2024 CHRT 9 at para 10).

[56] The Commission also provides a list of factors the Tribunal may wish to consider in making its decision in this case. These factors include: considering the impact on access to justice for other parties and litigants, including whether proceeding with the complaint would prevent the respondent from having the complaint addressed in a timely way (*Rivard v Nak'azdli Whut'en First Nation*, 2021 CHRT 21 at paras 39,40 [*Rivard*]); whether any challenges or personal circumstances faced by a complainant explain their lack of participation in the process such that it would be unfair to dismiss the complaint (*Rivard* at para 38; *Mohamed* at paras 26-34); and, whether a complainant received notice of the steps

required to advance their complaint and the consequences for failing to do so (*Rivard* at paras 3,25).

[57] The Commission draws these factors from cases where the Tribunal was asked to decide whether it should dismiss complaints because the complainants were alleged to have abandoned their complaints, which is not Mr. McCargar's situation. However, the Commission argues that the Tribunal, as master of its own procedure with the ability to protect its process from abuse, may wish to consider these factors when exercising its discretion to dismiss a complaint.

VI. ANALYSIS

[58] I accept that CSC has, in its motion submissions, accurately set out the applicable law with respect to vexatious conduct and abuse of process. I also agree that the factors identified by the Commission are relevant to my analysis, as they relate to fairness, which the Tribunal must consider when deciding a motion to dismiss.

[59] The CHRA requires the Tribunal to conduct its proceedings as expeditiously as the requirements of natural justice allow (s. 48.9(1) of the CHRA). It is well established that the Tribunal has the discretion to control its own process and, in responsibly managing its resources, it must guard against abuse and ensure that parties to its proceedings respect its Rules, deadlines and directions (*Chisholm v Halifax Employers Association*, 2019 CHRT 38 at para 15; *Nienhuis v Correctional Service Canada*, 2023 CHRT 7 at para 20 [*Nienhuis*]).

[60] Rules 9 and 10 of the Rules of Procedure affirm the Tribunal's jurisdiction to determine whether a party's conduct in its proceedings is vexatious or amounts to an abuse of process and, if so, to determine the appropriate remedy for such conduct, which may include dismissal of the complaint. The Tribunal recognizes that dismissal of a complaint is a serious measure that must be exercised with caution and should only be ordered "after fully assessing the relevant factors and considering fairness together with expeditiousness" (*Nienhuis* at para 20).

A. Mr. McCargar's conduct has been vexatious and amounts to an abuse of process

[61] I agree with CSC that the facts of this case support a finding that Mr. McCargar has engaged in vexatious conduct in the Tribunal's process, including by:

- failing to advance his complaints with diligence by not complying with essentially every timeline the Tribunal established for him;
- naming judges, lawyers and court staff from other proceedings as witnesses in this case;
- naming the Tribunal's mediators as witnesses after signing an agreement stating that he would not do so;
- naming as witnesses hundreds of people with no connection to his complaints;
- refusing to abide by Rule 18 of the Tribunal's Rules of Procedure by failing to include the anticipated testimony of his witnesses;
- not heeding the Tribunal's clear direction to make his witness and remedies lists compliant with the CHRA and the Tribunal's Rules of Procedure by relating only to the complaints before the Tribunal;
- claiming relief that the Tribunal has no power to grant;
- using "scandalous language" in his remedies requests by asking the Tribunal to order that every CSC staff member take "a razor blade & cut into their own flesh";
- requesting remedies where no reasonable person would expect to obtain the relief sought, including abolishing the prison system in Canada and abroad;
- flaunting the Tribunal-imposed page limits by including even more witnesses and remedies in his revised lists than the original versions through unusually small font and irregular formatting.

(see *Nourhaghighi* at para 47; *Wilson v Canada (Revenue Agency)*, 2006 FC 1535 at para 31, *Gao v Ontario WSIB*, 2014 ONSC 6497 at paras 14,15 [*Gao*]).

[62] Mr. McCargar's conduct amounts to an abuse of the Tribunal's process in that it has been oppressive and vexatious and has violated 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).

[63] CSC is correct that the Tribunal has the authority to invoke the doctrine of abuse of process to dismiss a complaint where the proceedings are oppressive or vexatious and violate the fundamental principles of justice underlying the community's sense of fair play and decency (*Holmen* at para 32).

B. Dismissal is the appropriate remedy for Mr. McCargar's vexatious conduct and abuse of the Tribunal's process

[64] Rule 9 permits the Tribunal to determine the appropriate remedy in a situation such as this one, where a party has failed to comply with the Tribunal's Rules, directions and time limits. The Tribunal may: order the party to remedy their non-compliance, proceed with the inquiry, dismiss the complaint, or make any other order to achieve the purpose of securing an informal, expeditious and fair determination of the inquiry on its merits. Rule 10 permits the Tribunal to make any order that it considers necessary against vexatious conduct or abuse of its process.

[65] The Supreme Court of Canada in *Abrametz* stated that determining whether a stay of proceedings is an appropriate remedy to an abuse of process requires weighing the harm to the public interest associated with going ahead with the proceeding, against harm to the public interest if the proceeding is halted (at para 102). Considerations include whether the prejudice caused by the abuse in question will be manifested, perpetuated, or aggravated through the conduct of the matter, and if there is no other remedy capable of removing that prejudice (*R. v. O'Connor*, 1995 CanLII 51 (SCC) at para 75). Due to the prospective nature of the remedy, it is important to determine whether the abuse could continue or reoccur (*Constantinescu v CSC*, 2022 CHRT 13 at paras 27, 28).

[66] In my view, there is no point in ordering Mr. McCargar to remedy his non-compliance, because I have already given him an opportunity to do so with regard to the witness and remedies lists. When given the opportunity to revise these lists, Mr. McCargar responded by providing versions that were even more egregious and vexatious than the first. Mr. McCargar included more than twice as many witnesses in his revised version, over 800 people, most of whom have nothing to do with his human rights complaints. He did not include a summary of their anticipated testimony as he was advised to do, and as is required

by the Rules. Further, in order to comply with the two-page limit for his list of witnesses, he used extremely small font and put the names into five columns, with over 80 names per column.

[67] The revised remedies list is no better. It includes mainly remedies that have nothing to do with the complaints before the Tribunal, and that were never previously referred to in relation to his complaints. CSC is correct that, as the Tribunal's jurisdiction over complaints comes from the Commission's referral, the Tribunal has no jurisdiction to address allegations and remedies with no factual nexus to the referred complaints (*Garnier v CSC*, 2023 CHRT 32 at para 10).

[68] In order to comply with the ten-page limit imposed by the Tribunal, Mr. McCargar utilized what the Ontario Superior Court of Justice in *Gao* referred to as "some of the unmistakable hallmarks of querulous litigant behavior" such as "curious formatting" which, in this case, allowed him to condense hundreds of remedies into ten pages, as well as "multiple modes of emphasis" such as highlighting, underlining, and capitalization (at para 15).

[69] I agree with CSC's submission that Mr. McCargar's conduct is not accidental or born of ignorance. Indeed, it is not the first time that Mr. McCargar has behaved in a similar way in legal proceedings, as he was declared to be a vexatious litigant by an Alberta Court in 2017. In that case, the Court warned Mr. McCargar that his litigation practices, including naming unrelated persons, were vexatious and that he must respect judicial timelines and authority (*McCargar 2017* at paras 25, 48, 62). CSC argues that it is evident from Mr. McCargar's conduct in the Tribunal's proceeding that he failed to heed the Court's warning.

[70] I note that, in declaring him a vexatious litigant and placing restrictions on his court access, the Alberta Court found that Mr. McCargar's record before the Court in that matter established a serious pattern of litigation misconduct (*McCargar 2017* at para 48) and concluded that he was "engaging in hopeless and expanding litigation" (para 49). In making the Court access restrictions permanent, the Court considered it to be "foreseeable that Mr. McCargar will abuse ... Alberta court processes" (para 56). The Court noted that, "While

most of his litigation has been in the *habeas corpus* context, he also makes similar complaints in a civil context. He has identified Correctional Service Canada employees and Crown Prosecutors who he considers to have acted illegally. This warrants broad-based control” (para 56).

[71] The Alberta Court also noted that, in submissions to the Court dated November 1, 2017, Mr. McCargar acknowledged he had engaged in “illegal and improper court activities” (para 62). The Court considered this to be “an important first step to him operating in an appropriate way within the Canadian court system” and strongly encouraged him to “follow on what he identified to me as positive steps he has taken, such as engaging in legal research before involving the court, setting reasonable timelines, and respecting judicial authority” (para 62). The Court encouraged Mr. McCargar to establish a “good litigation pattern” (para 63).

[72] Mr. McCargar does not appear to have heeded the Alberta Court’s sage advice with respect to his human rights matters before the Tribunal. Through his witness and remedies lists, he is repeating the conduct that was proscribed by the Court, of engaging in hopeless and expanding litigation.

[73] To be clear, I am not making a finding that, either based on his conduct in another proceeding or because he was found to be a vexatious litigant by a Court, his conduct before the Tribunal is also vexatious. I have arrived at the conclusion that his actions before the Tribunal are vexatious independent of the Court’s decision. I simply note that Mr. McCargar was provided with very clear direction by a superior court judge about his behaviour in legal proceedings, during the same period in which he had filed his human rights complaints with the Commission, and he has not apparently taken that advice and applied all of those directions to the present matter.

[74] I further conclude that it is not reasonable to order Mr. McCargar to remedy his non-compliance, given his conduct in the Tribunal’s proceedings up to this point. Mr. McCargar has been advised on several occasions of the steps required to advance his complaint in the Tribunal’s process and he has been advised more than once of the consequences for failing to do so (see *Rivard* at 3, 25).

[75] He has had access to both the Tribunal's Registry Officer and the Commission's legal counsel for information and assistance in participating in the process, as well as access to the Tribunal through his correspondence and his participation in multiple CMCCs.

[76] Despite this, Mr. McCargar has missed all of the timelines I have ordered and has ignored my directions and the Tribunal's Rules. He has also ignored the advice of the Tribunal to spend his time focussing on the motion to dismiss, given the potential serious consequences of the motion. Instead of providing any response at all to CSC's motion to dismiss, Mr. McCargar appears to have spent his time preparing the very lengthy application he referred to at the last CMCC, relating to a prosecution of Manitoba Corrections under sections 59 and 60 of the CHRA, for interfering with his ability to respond to his human rights complaints. This is consistent with Mr. McCargar's behaviour throughout the case management proceedings.

[77] In its motion submissions, CSC notes that Mr. McCargar's excuses for his delays in the Tribunal's process included health or medical reasons, lack of access to materials or a computer, difficulties formatting documents, a lack of legal representation, being transferred between institutions and the various restrictions placed on him in custody, and being unable to contact the Commission's legal counsel. CSC argues that many of Mr. McCargar's excuses do not accord with the fact that he has apparently been perfectly able to manage his litigation in other proceedings while incarcerated, including his proceedings in the superior Court of Alberta when he was in federal custody (see *McCargar 2017*). I agree with CSC in this regard.

[78] The Tribunal received many phone calls and documents from Mr. McCargar while it was waiting for him to comply with the Tribunal's directions and address his human rights complaints in a timely way. He forwarded to the Tribunal his complaints to the Manitoba Human Rights Commission and Ombudsman relating to his incarceration by Manitoba Corrections, as well as a complaint to the Manitoba Court of King's Bench about a provincial court judge.

[79] I also note that the Tribunal made arrangements with Manitoba Corrections to ensure Mr. McCargar was able to receive and send materials related to his human rights

complaints, even purchasing and sending USB drives for his use, as he was not permitted to print his documents using their printers. The Tribunal and the other parties ensured that their materials were couriered to Mr. McCargar so that he would have hard copies as requested. The Tribunal's Registry Office also followed up with the correctional facilities when Mr. McCargar missed his deadlines in the Tribunal's process and the staff at these facilities assisted by inquiring with Mr. McCargar as to the status of his materials. They often advised the Tribunal that he had indicated to them that he was working on other legal matters rather than his human rights case. This seems evident, given the number of mostly handwritten pages Mr. McCargar forwarded to the Tribunal relating to his various other complaints and legal matters.

[80] Mr. McCargar's reported circumstances or challenges do not lead me to conclude that dismissing his complaint is unfair. While I acknowledge that being incarcerated poses certain challenges for participating in the Tribunal's proceedings, these are not insurmountable. The Tribunal regularly deals with the complaints of incarcerated people who manage to comply with the Tribunal's Rules and directions such that their cases are eventually heard and determined by the Tribunal. Mr. McCargar was able to participate fairly in the process and was given many extensions and perhaps more leeway than most complainants due to his circumstances.

[81] The Tribunal cannot permit a complaint to remain stagnant in its process indefinitely simply because the complainant is self-represented or incarcerated. Nor is there any particular amount of time that must pass before the Tribunal can address a complainant's abusive behaviour or lack of meaningful participation in the Tribunal's process. As the Tribunal stated in *Rivard* at para 38:

[T]he Tribunal's duty to deal with complaints fairly and expeditiously does not favour allowing complaints to languish for years. Further, ... failing to address a party's non-compliance does not promote respect for the Tribunal's process, its deadlines, the other parties, or the public interest.

[82] Proceeding with the inquiry is also not a viable option in this case, because it would be unfair to the other parties and to the Tribunal to do so. It is possible for a hearing to proceed when a complainant's SOP is not perfect or even, as was proposed in Mr. McCargar's case, where a complainant does not file a SOP and proceeds on the basis

of their human rights complaint. However, in the present case this is not possible, nor is it being requested by any of the parties. Mr. McCargar has demonstrated that he will not participate reasonably in the hearing process. A complainant must be able to articulate which witnesses they intend to call, if any, and what remedies they are seeking if their complaint is substantiated. Mr. McCargar has repeatedly shown that he will not do so.

[83] Mr. McCargar's human rights complaints are about him being mistreated and retaliated against in one federal correctional facility. His complaints named certain employees of that facility as the alleged perpetrators of the discriminatory conduct. However, he has listed hundreds of CSC employees as potential witnesses, from across many sectors of this very large national organization, and he has broadened the scope of his complaint through his witness and remedies lists, to the point that he is seeking the abolition of the prison system in Canada and abroad. While I am not minimizing the nature of Mr. McCargar's human rights complaints, they simply do not support the very broad and systemic types of remedies that he is seeking, nor do they implicate the hundreds of people he has listed as witnesses, which include provincial government employees, the Prime Minister and other government ministers and senators, as well as lawyers, judges and court clerks.

[84] It is a fundamental aspect of procedural fairness that respondents have a right to know the case they are expected to meet. Without knowing what evidence will be called and what remedies are being sought, CSC cannot properly prepare for the hearing. CSC has a right to have the complaints against it addressed in a timely way (*Rivard* at para 39). There is no reason to believe this will start to happen now, based on Mr. McCargar's conduct so far.

[85] Mr. McCargar has not taken the case management proceedings nor the motion to dismiss his complaint seriously. Based on Mr. McCargar's behaviour in the Tribunal's process, I have no reason to believe he would heed the Tribunal's directions or orders in such a manner that a fair and expeditious hearing could take place. Nothing in the record indicates this would be the case. There is no other order the Tribunal could make that would allow it to secure an informal, expeditious and fair determination of the inquiry on its merits.

[86] It is the Tribunal's view that dismissing these complaints is the only appropriate remedy to Mr. McCargar's abuse of the Tribunal's process, when I consider the harm to the public interest associated with going ahead with the proceeding, against harm to the public interest if the proceeding is halted. This proceeding has become unfair to the point that it is contrary to the interests of justice and amounts to oppressive treatment of the other parties and the Tribunal (*Holmen* at para 32). It is in the public interest for human rights complaints before the Tribunal, an administrative decision-making body, to eventually end, and not stay in the Tribunal's process indefinitely. I agree with CSC that Mr. McCargar is unfairly monopolizing the time of the Tribunal and the Respondent and Commission at the expense of other proceedings. There is unfairness in continuing this complaint when it impacts the ability of other parties and litigants to access justice from the Tribunal (*Rivard* at para 40).

[87] There is no reason to believe that, if given another chance, Mr. McCargar's abuse of the Tribunal's process would end and he would pursue his complaint in a timely and efficient way while respecting the Tribunal's authority and Rules. To the contrary, the evidence points to the perpetuation and aggravation of the prejudice to the other parties, the Tribunal, and the administration of justice through his ongoing conduct. There is no other reasonable remedy that could be ordered, aside from the dismissal of the complaints, that would be capable of removing the prejudice already caused by Mr. McCargar's vexatious and abusive conduct.

VII. ORDER

[88] The Tribunal orders that Mr. McCargar's two human rights complaints are dismissed, effective immediately.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
March 5, 2025

Canadian Human Rights Tribunal

Parties of Record

File Nos.: T2349/0819 & T2350/0919

Style of Cause: Brook McCargar v. Correctional Service Canada

Ruling of the Tribunal Dated: March 5, 2025

Motion dealt with in writing without the appearance of parties

Written representations by:

Jonathan Bujeau, for the Canadian Human Rights Commission

Colin LaRoche, for the Respondent