

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bonnefoy v. British Columbia (Human Rights Tribunal)*,  
2025 BCSC 1192

Date: 20250625  
Docket: 12520  
Registry: Prince Rupert

Between:

**Linda Alice Bonnefoy**

Petitioner

And

**British Columbia Human Rights Tribunal and  
Northern Health Authority**

Respondents

Before: The Honourable Mr. Justice Brongers

On judicial review from: A decision of the British Columbia Human Rights Tribunal, dated January 29, 2025 (*Bonnefoy v. Northern Health Authority operating as Wrinch Memorial Hospital*, 2025 BCHRT 20)

## Reasons for Judgment

The Petitioner, appearing in person:

L.A. Bonnefoy

Counsel for the Respondent British  
Columbia Human Rights Tribunal:

K.A. Hardie

Counsel for the Respondent Northern  
Health Authority:

M.S. Desmarais

Place and Date of Hearing:

Prince Rupert, B.C.  
May 5–6, 2025

Place and Date of Judgment:

Prince Rupert, B.C.  
June 25, 2025

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**OVERVIEW**

[1] This is a petition for judicial review of a decision of the British Columbia Human Rights Tribunal (the “Tribunal”).

[2] The petitioner is Linda Alice Bonnefoy (“Ms. Bonnefoy”). She filed a discrimination complaint against her former employer, Northern Health Authority (“NHA”), under the British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210 [Code].

[3] The Tribunal scheduled a 10-day hearing to consider Ms. Bonnefoy’s complaint. Ms. Bonnefoy only attended on the first day, during which she presented some testimonial and documentary evidence. She did not attend on the second day, informing the Tribunal by email that she viewed its process as unfair. The Tribunal encouraged Ms. Bonnefoy to return, and warned her that the likely consequence of non-attendance would be a dismissal of her complaint. Ms. Bonnefoy did not come back.

[4] The Tribunal then issued its decision. It is indexed at *Bonnefoy v. Northern Health Authority operating as Wrinch Memorial Hospital*, 2025 BCHRT 20 (“Tribunal Decision”). It has two main aspects to it. First, the Tribunal dismissed the complaint, finding that Ms. Bonnefoy had not met her burden of proof. Second, the Tribunal ordered Ms. Bonnefoy to pay NHA \$3,000 in costs as a sanction for improper conduct during the Tribunal proceedings.

[5] Ms. Bonnefoy now seeks judicial review of the Tribunal’s decision, on both substantive and procedural fairness grounds. She asks for a wide variety of relief, including court orders that would quash the Tribunal’s decision, declare that her rights were violated by the Tribunal and NHA, refer this matter to other organizations for investigation and adjudication, and award her millions of dollars in damages. Ms. Bonnefoy also takes issue with the Tribunal’s refusal to remove its published reasons for decision in her case from the Tribunal’s website.

[6] Ms. Bonnefoy represented herself during these proceedings. I felt that she did so ably and respectfully. It is apparent that she feels strongly that she was mistreated by NHA and the Tribunal, and disagrees adamantly with the latter's dismissal of her complaint and the costs sanction imposed upon her. She is particularly distressed by the Tribunal's refusal to address, within the context of her discrimination complaint, her allegation that NHA denied medical services to her husband.

[7] However, a court's authority on judicial review applications of Tribunal decisions is limited. It does not hear human rights complaints anew and decide them afresh. Instead, as their name suggests, such applications involve a judge reviewing the Tribunal's record to ensure that the decision was made in accordance with the law, in a procedurally fair manner, and on the basis of reasonable findings of fact grounded in the evidence.

[8] Having reviewed the Tribunal's record and the evidence filed by the parties, I am not persuaded that the Tribunal's decision to dismiss Ms. Bonnefoy's complaint is substantively or procedurally flawed. I reach the same conclusion regarding the Tribunal's refusal to retract the published reasons for decision. With respect to the Tribunal's costs order, it is discretionary and there is no basis for me to set it aside, even if I might have exercised that discretion differently if I had that authority at first instance. As for the other relief sought, I find that it cannot and ought not to be considered in the context of a judicial review application.

[9] Ms. Bonnefoy's petition will therefore be dismissed. My detailed reasons for reaching these conclusions are as follows.

## **BACKGROUND**

### **The Complaint and the Tribunal Proceedings**

[10] Ms. Bonnefoy began working for NHA in July 2018. Her job title was "Life Skills Support Worker", and her primary place of employment was at the Wrinch Memorial Hospital ("Wrinch") in Hazelton. While employed, she also rented a room

at the Wrinch staff residence. On November 27, 2019, Ms. Bonnefoy resigned from her job.

[11] On December 19, 2019, Ms. Bonnefoy filed a discrimination complaint under the *Code* in relation to her employment and tenancy at Wrinch. It was subsequently amended several times. In its final form, the complaint was directed solely at NHA, although other respondents had been named previously.

[12] NHA applied to have the complaint dismissed without a hearing pursuant to s. 27(1) of the *Code*. That application was denied by the Tribunal on February 9, 2024 by means of a decision rendered by Tribunal Member Anika. Reasons for this decision are indexed at *Bonnefoy v. Northern Health Authority operating as Wrinch Memorial Hospital*, 2024 BCHRT 38. Paragraphs 6 to 36 of these reasons helpfully summarize Ms. Bonnefoy's complaint, and I adopt them for present purposes.

[13] In particular, the Tribunal described the background to the complaint in these words:

[6] Ms. Bonnefoy is a visibly Indigenous woman who identifies as Inuit and Mi'kmaq. She is also an artist and creates political art which has exhibited internationally.

[7] Ms. Bonnefoy was employed by NHA between July 2018 and November 2019 as a Life Skills worker. This position is a Unionized position within the Union. Her duties consisted of providing support to clients who received out-patient care with daily living activities such as escorting clients to appointments, assisting with skill developments, and conducting support programs. A majority of Ms. Bonnefoy's clients were Indigenous from the Gitksan and Wet'suwet'en Nations. Many of them resided in an assisted living facility.

[14] As for the specifics of the complaint, Tribunal Member Anika summarized them under nine headings at paragraphs 8 to 36 of her decision. The first seven reference employment discrimination incidents and issues. The eighth sets out a tenancy discrimination issue. The ninth references systemic discrimination issues. These nine aspects of the complaint can be further summarized in this way:

(a) The Facility Incident: Ms. Bonnefoy says she was wrongly suspected of having filed an anonymous complaint about the state of an assisted living

facility where she provided care to and advocacy for its clients, which damaged her working relationship with the facility's staff. NHA then did not take steps to resolve the issue of the impact this had on Ms. Bonnefoy's ability to support her clients at the facility.

(b) Painting of the Table Issue: Ms. Bonnefoy says she was directed by NHA to paint a table in the Wrinch doctors' and nurses' lounge with the four crests of the Gitxsan nation. While she complied with the direction, she did so under protest since the crests are the intellectual property of the Gitxsan. Ms. Bonnefoy objected to painting the table because of her cultural and political beliefs about duplicating Indigenous cultural and artistic property without first obtaining proper consent.

(c) Phone Issue: Ms. Bonnefoy says that NHA took away her work-issued smart phone because it felt the phone was too complicated for her to learn and would not provide her with training on how to use it. NHA issued her a flip phone instead. NHA also purported to justify its decision because Ms. Bonnefoy had not received any calls on the smart phone for three months. She views this explanation as disingenuous since NHA had been calling her on her personal phone for work-related business and check-ins.

(d) Tires Issue: Ms. Bonnefoy says that NHA refused to install snow tires on the minivan she used to drive clients to appointments, thereby subjecting her to dangerous driving conditions in the winter.

(e) Communications Issues: Ms. Bonnefoy says she was having communications issues with another NHA employee who was aggressive towards and intimidated her. The other employee continued his behaviour in spite of Ms. Bonnefoy's efforts to have NHA address this issue. In addition, Ms. Bonnefoy was told that she had communicated rudely and aggressively with NHA management and others, and was denied access to staff meetings and to client files without permission from management.

(f) Flex Hours Issues: Ms. Bonnefoy says that NHA denied her the flexible work hours she needed to be available for her clients' needs, insisting that she take only scheduled coffee breaks and a 30-minute lunch break.

(g) Vacancy Issue: Ms. Bonnefoy says that her supervisor discouraged her from applying for a Mental Health and Addictions Clinician position with NHA, by emphasizing that she did not have a master's degree. The supervisor did so even though NHA had hired staff for mental health positions who did not have such qualifications in the past.

(h) Smudging Incident: Ms. Bonnefoy says that she would smudge from time to time as a spiritual practice while renting a room at the Wrinch staff residence. NHA representatives associated the smudging smell with marijuana smoke and told Ms. Bonnefoy not to smudge in her bedroom.

(i) Systemic Allegations: Ms. Bonnefoy says that the overall climate at NHA perpetuated stereotypes associated with Indigenous people, including not being smart enough to use a smartphone, not being worthy of safety or proper care, and needing to be over-managed and disciplined as compared to non-Indigenous employees. NHA's lack of understanding created a work environment that was hostile to Indigenous employees generally and to her in particular, where she was not supported and could not effectively advocate for her clients. All of these incidents and issues led to Ms. Bonnefoy resigning from her employment on November 27, 2019.

[15] It should also be noted that on December 15, 2022, Ms. Bonnefoy filed a retaliation complaint against NHA, which names the British Columbia General Employees' Union ("BCGEU") as a co-respondent. It includes an allegation that NHA retaliated in relation to Ms. Bonnefoy's discrimination complaint by denying medical services to her husband and thereby contributing to his death. That complaint is still outstanding and has yet to be heard or adjudicated.

[16] On March 14, 2024, the Tribunal held a conference call with the parties. Ms. Bonnefoy was informed by the Tribunal that her retaliation complaint would not

be combined with her discrimination complaint because the retaliation complaint was at an early stage of the Tribunal's process and the BCGEU had yet to file a response to the complaint. Following the conference call, the Tribunal directed that the discrimination complaint be heard over 10 days in the fall of 2024.

[17] The hearing commenced on October 21, 2024. It was presided over by Tribunal Member Takayanagi. Ms. Bonnefoy was self-represented. The NHA was represented by legal counsel. The proceedings took place by videoconference.

[18] After delivering introductory remarks, the Tribunal dealt with a preliminary objection by NHA to Ms. Bonnefoy's intention to enter certain evidence into the record by means of videotaped recordings of witness statements. The Tribunal dismissed NHA's objection, thereby allowing Ms. Bonnefoy to introduce the videos if she wished. Ms. Bonnefoy then opened her case and, after providing a solemn oath to tell the truth, began to give evidence through her own oral testimony and certain documents which she identified. At the end of that first day, the Tribunal indicated that the hearing would resume the next day with Ms. Bonnefoy continuing to provide her evidence in chief.

[19] The Tribunal reconvened on the morning of October 22, 2024. Ms. Bonnefoy was not present. Attempts were made by Tribunal staff to contact her, but they were unsuccessful. Then, at 12:52 p.m., Ms. Bonnefoy sent an email to the Tribunal indicating that she had concerns about the fairness of the process and would not be attending until they were resolved. The Tribunal wrote back to say that the hearing would resume again on October 23, 2024, and that non-attendance will be interpreted as disinterest in participating in the hearing. This sequence of events was described in the Tribunal Decision as follows:

[8] Ms. Bonnefoy did not attend on the second day, October 22, 2024, at the scheduled starting time of 9:30am. In accordance with the Tribunal's practice, I delayed the start of the hearing and did not hear submissions or evidence from Northern Health. The Case Manager phoned and left Ms. Bonnefoy a message but did not receive a response by phone or email.

[9] I stood the hearing down to be resumed at 11:00am. The Case Manager called Ms. Bonnefoy again and left another message. The Case Manager also emailed Ms. Bonnefoy informing her that the hearing would resume at 11:00am. Ms. Bonnefoy did not attend the hearing or contact the Tribunal. I

stood the hearing down further to be resumed at 1:00pm on the same day. The Case Manager again sent an email to Ms. Bonnefoy informing her of the schedule.

[10] Ms. Bonnefoy sent an email to the Tribunal at 12:52pm.

[11] In her email Ms. Bonnefoy says, “Rather than continue to subject myself to the privileged lawyers including and not limited to LANG LLP, Northern Health rep, and Member Takayanagi I’ve been invited to compile my correspondence to the Human Rights and have it reviewed for fairness.”

[12] I wrote to Ms. Bonnefoy and Northern Health to confirm my understanding of her email. I informed the parties I would reconvene the hearing the next day, October 23, 2024, at 9:30am. I wrote:

If Ms. Bonnefoy wishes to participate in the Tribunal’s hearing process she can attend at that time. If she does not attend, I will understand that Ms. Bonnefoy no longer wishes to participate in the hearing. Because the burden is on her to prove her complaint, the likely consequence will be that her complaint is dismissed.

[20] Ms. Bonnefoy did not attend the hearing on October 23, 2024 either. The Tribunal did not make any further attempts to reconvene.

### **The Tribunal Decision**

[21] The Tribunal Decision was issued on January 29, 2025. Its analysis contains two sections. The first is titled “Should Ms. Bonnefoy’s discrimination complaint be dismissed?”. The second is titled “Costs for improper conduct”.

[22] The Tribunal’s answer to its first question was yes, the complaint should be dismissed. Paragraphs 7 and 14 of the Tribunal Decision summarize the nature of Ms. Bonnefoy’s evidence and the rationale for the dismissal of her complaint as follows:

[7] Ms. Bonnefoy attended and participated in the hearing on the first day. During the first day Ms. Bonnefoy testified about her employment with Northern Health and introduced evidence of correspondence she had with employees of Northern Health. A one hour and six minutes audio recording of a meeting between Ms. Bonnefoy and her supervisors was entered into evidence by consent without being played in full. Much of Ms. Bonnefoy’s submissions were on issues unrelated to her discrimination complaint. The first day of the hearing ended and Ms. Bonnefoy was scheduled to continue giving her direct evidence on the following day.

...

[14] The burden of proof lies with a complainant to prove their allegations of discrimination. Ms. Bonnefoy was not in attendance to provide evidence in

support of her complaint after the first day. As noted above, on the first day of the hearing Ms. Bonnefoy gave some evidence about her employment at Northern Health. Ms. Bonnefoy testified about providing patient care services and her working relationship with her supervisors. Ms. Bonnefoy testified that she was not provided proper tires for her vehicle, that her work phone was taken away, and that she was told to take her lunches inside her vehicle. With the limited information before me, I find I have insufficient evidence on which I could base a decision finding that Ms. Bonnefoy's complaint of discrimination in employment and tenancy was made out. As such, Ms. Bonnefoy has not met her evidentiary burden, and I dismiss the complaint pursuant to s. 37(1) of the *Code*.

[23] The Tribunal then turned to the issue of whether Ms. Bonnefoy should be sanctioned for improper conduct. Written submissions had been solicited from the parties on this question. NHA urged the Tribunal to order Ms. Bonnefoy to pay it \$12,000 in costs. Ms. Bonnefoy submitted that she should not have to pay any costs, and that NHA's legal expenses should be borne by the taxpayer.

[24] After setting out in some detail examples of Ms. Bonnefoy's communications and behaviour during the complaint process and the hearing itself, the Tribunal ordered Ms. Bonnefoy to pay costs to NHA in the amount of \$3,000. The Tribunal refused NHA's further request that Ms. Bonnefoy's other outstanding complaints be stayed until she pays this award.

[25] On March 11, 2025, Ms. Bonnefoy wrote to the Tribunal to ask that it remove the Tribunal Decision from its website. She argued that such publication prior to completion of the judicial review process is procedurally unfair and constitutes defamation. By letter dated March 13, 2025, the Tribunal informed Ms. Bonnefoy that her request was denied. The Tribunal explained that it makes its final decisions accessible to the public in accordance with s. 50(4) of the *Administrative Tribunals Act*, SBC 2004, c. 45 [ATA].

### **The Petition**

[26] Ms. Bonnefoy filed the present petition for judicial review on March 28, 2025.

[27] The specific relief Ms. Bonnefoy seeks is multifaceted. Its key aspects are:

(a) an order quashing the Tribunal Decision;

- (b) an order that the complaint not be remitted to the Tribunal, but referred instead to other entities such as the Supreme Court of Canada, the Attorney General of British Columbia, and the Chief Coroner;
- (c) an order retracting the published Tribunal Decision;
- (d) declaratory relief, including declarations that:
  - (i) the Tribunal violated Ms. Bonnefoy’s rights under ss. 2(b), 7, 8, and 15 of the *Canadian Charter of Rights and Freedoms* [*Charter*];
  - (ii) the Tribunal failed to discharge its obligations under the *Code* and the British Columbia *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c. 44;
  - (iii) the publication of the Tribunal Decision constitutes defamation and abuse of public authority;
  - (iv) the cumulative conduct of NHA, the Tribunal, the Insurance Corporation of British Columbia (ICBC), Interior Health, the BC Ombudsperson, and associated legal actors, constitutes a pattern of systemic negligence, institutional collusion, and state retaliation;
  - (v) Ms. Bonnefoy’s experience and the death of her husband warrant recognition as potential violations of international human rights law;
- (e) an order directing or recommending that the Government of British Columbia convene a public inquiry;
- (f) an award of *Charter* damages payable by the Tribunal to Ms. Bonnefoy in the amount of \$500,000; and
- (g) an award of damages payable by NHA to Ms. Bonnefoy in the amount of \$10,000,000.

[28] At the same time she filed her petition, Ms. Bonnefoy also filed an application for a stay of enforcement of the Tribunal's costs order pending the outcome of the judicial review.

[29] Responses to Ms. Bonnefoy's petition and application were filed by the Tribunal and NHA. Supporting affidavits were filed by the parties as well.

[30] The petition and application came on for hearing before me in Prince Rupert chambers on May 5 and 6, 2025. At the outset of the hearing, Ms. Bonnefoy also filed an application to strike the Tribunal's supporting affidavits, as well as the written submissions of the Tribunal and NHA.

[31] At the conclusion of the chambers hearing on May 6, 2025, I granted Ms. Bonnefoy's application for a stay of the requirement to pay the Tribunal's costs award, pending the issuance of this decision. I did so after counsel for NHA and the Tribunal indicated that they were ultimately not opposed to the interim stay.

[32] I then took the matter under reserve so that I could review the parties' submissions and the voluminous material filed before me.

[33] This material includes two audio recordings of the October 21, 2024 hearing before Tribunal Member Takayanagi. One was prepared by Ms. Bonnefoy, and the other was prepared by the Tribunal. There was some controversy regarding their admissibility. The Tribunal took issue with Ms. Bonnefoy's recording because it had been made surreptitiously and contrary to the Tribunal's policies. Ms. Bonnefoy took issue with the Tribunal's recording because she was concerned that it may have been altered and not reflective of what occurred.

[34] I decided to accept both of these lengthy recordings into evidence, and have now listened to both of them in their entirety. Their content is the same, except that Ms. Bonnefoy's recording runs continuously from the start of the October 21, 2024 hearing until its conclusion, while the Tribunal's recording was paused during the morning, lunch, and afternoon breaks. I have disregarded the portions of Ms. Bonnefoy's recording made during these breaks, as they consist of just silence

and some personal conversations that Ms. Bonnefoy was having with another unidentified individual. Since the two recordings of what was said during the actual hearing are identical, however, I reject Ms. Bonnefoy's assertions regarding the reliability of the Tribunal's recording.

[35] I also note that this evidence of what transpired during the Tribunal hearing is highly relevant here, given Ms. Bonnefoy's allegations of procedural unfairness and because the Tribunal's justification for its costs award is based in large part on Ms. Bonnefoy's statements and behaviour at the Tribunal hearing. The recordings were also necessary because no written transcript of the October 21, 2024 proceedings before the Tribunal was prepared for this petition. As I noted to the parties when they were before me, this is regrettable. Now, I appreciate counsel for the Tribunal's comment that her client is concerned about the cost of preparing transcripts for the court when it responds to judicial review applications. In my view, however, the issue of which party should bear that expense can be dealt with at the petition itself. It should not be an impediment to providing the court with the evidence it needs for effective and efficient adjudication of such applications. This is particularly so where the conduct of a litigant at a complaint hearing forms a significant basis for a Tribunal decision to impose a costs sanction, and that decision is then challenged on judicial review.

### **ISSUES**

[36] Given the manner in which Ms. Bonnefoy framed her position, this petition raises the following issues:

- a) Should any of the Tribunal and NHA's evidence and submissions be struck?
- b) What is the applicable standard of review?
- c) Should the portion of the Tribunal Decision dismissing Ms. Bonnefoy's complaint be quashed?

- d) Should the portion of the Tribunal Decision ordering Ms. Bonnefoy to pay costs be quashed?
- e) Should the Tribunal be ordered to remove the published Tribunal Decision from its website?
- f) Should any declaratory or directive relief be issued?
- g) Should any damages be awarded?

**ANALYSIS**

**Admissibility of the Respondents' Evidence and Submissions**

[37] In her May 5, 2025 document titled “notice of motion to strike” filed the morning of the start of the hearing of this petition, Ms. Bonnefoy seeks an order striking all of the Tribunal’s supporting affidavits, as well as the written submissions of the Tribunal and the NHA.

[38] The Tribunal’s supporting affidavits were prepared by B. Ho, a paralegal employed by the Tribunal. They are effectively clerical affidavits, filed for the purpose of tendering evidence of information that was before the Tribunal when it made the decisions that are now being challenged by Ms. Bonnefoy. That information is set out in documentary exhibits that are attached to the affidavits. This evidence is relevant and necessary for the court to decide Ms. Bonnefoy’s application for judicial review. Furthermore, the affiant does not depose to any substantive facts regarding the particulars or the merits of Ms. Bonnefoy’s complaints brought under the *Code*. As such, I can see no basis for a valid objection to the admissibility of these affidavits. They will not be struck from the petition record.

[39] As for the written submissions made by the Tribunal and NHA within their petition and application responses, I will not strike them either. They are argument, not evidence. The respondents are entitled to present arguments to the court, just as the petitioner is, and the court is free to accept or reject them further to an assessment of their merits.

[40] Ms. Bonnefoy’s May 5, 2025 “motion to strike” is therefore dismissed.

**Standard of Review**

[41] The starting point for ascertaining the standard of review is the applicable provincial legislation. In this case, that legislation is the *Code*.

[42] Section 32(q) of the *Code* provides that the standards of review set out at s. 59 of the *ATA* apply to decisions of the Tribunal. The latter provision reads as follows:

59(1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

- (a) is exercised arbitrarily or in bad faith,
- (b) is exercised for an improper purpose,
- (c) is based entirely or predominantly on irrelevant factors, or
- (d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

[43] This provision references four standards of review. Which standard applies is dependent upon the nature of the alleged error. Guidance on this issue can be found in several decisions of our Court of Appeal. They include: *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132 at paras. 45–49; *J.J. v. School District 43 (Coquitlam)*, 2013 BCCA 67 at paras. 23–28; and *Forsyth v. Coast Mountain Bus Company*, 2013 BCCA 257 at paras. 24, 54.

[44] The first standard of review is correctness. By operation of s. 59(1) of the *ATA*, it applies to errors of law, and errors of mixed fact and law. However, it is important that courts not be too quick to brand a question as one of mixed fact and law and therefore subject to a standard of correctness. If there is an extricable issue of fact involved in the “mixed” question, the court must defer to the Tribunal in respect of that issue in accordance with s. 59(2) of the *ATA*: *J.J.* at para. 28.

[45] This second standard - the one prescribed by s. 59(2) - is fundamentally a reasonableness standard. It provides that the court must not set aside findings of fact unless there is no evidence to support it, or, if in light of all the evidence, the finding is otherwise unreasonable.

[46] The third standard is patent unreasonableness. Subsection 59(3) states that it applies to all discretionary decisions of the Tribunal. Subsection 59(4) defines patent unreasonableness for the purposes of s. 59(3) as discretion that is exercised arbitrarily, in bad faith, for an improper purpose, on the basis of irrelevant factors, or in a manner that fails to take statutory requirements into account.

[47] The fourth standard is fairness. Pursuant to s. 59(4), it applies to questions of procedural fairness and the application of common law rules of natural justice.

### **Tribunal Dismissal of the Discrimination Complaint**

[48] The grounds upon which Ms. Bonnefoy challenges the Tribunal’s dismissal of her discrimination complaint are essentially threefold. I will address each in turn.

### ***Substantive Assessment of the Evidence***

[49] The first ground is Ms. Bonnefoy’s assertion that the Tribunal’s decision is substantively flawed. She says that the Tribunal was wrong to dismiss her complaint even though she had persuasive evidence that NHA had discriminated against her.

[50] The difficulty with Ms. Bonnefoy’s argument, however, is that she only presented a portion of her evidence to the Tribunal during the one day she chose to attend at and participate in the Tribunal hearing.

[51] As noted in the Tribunal Decision, while Ms. Bonnefoy gave some evidence about her employment at NHA, it was insufficient to make out her complaint of discrimination under ss. 10 and 13 of the *Code*. In order to have done so, she would have to have shown that (1) she had a characteristic protected from discrimination, (2) she experienced an adverse impact with respect to employment and/or tenancy, and (3) that the protected characteristic was a factor in the adverse impact: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33. In the absence of such a demonstration, s. 37(1) of the *Code* mandates that the complaint be dismissed. That is what the Tribunal did in this case.

[52] On my review of the Tribunal record, and being mindful of the applicable standards of review under ss. 59(1) and (2) of the *ATA*, I see no basis for interfering with the Tribunal's conclusion. In particular, I have listened carefully to both recordings of Ms. Bonnefoy's testimony given October 21, 2024, and have reviewed the written and recorded documentary evidence that was tendered that day. While there can be no dispute that Ms. Bonnefoy has characteristics protected from discrimination, she did not identify in her submissions before me all of the aspects of her limited evidence that was tendered on October 21, 2024 which show that these characteristics were factors in the specific adverse employment impacts she experienced. I also note parenthetically that there was no indication of any evidence led in relation to adverse tenancy impacts. Even on my own review of Ms. Bonnefoy's evidence, and accepting that it was not contradicted through cross-examination or evidence led by NHA, I cannot say that the Tribunal's assessment of this factual record was unreasonable, or that the Tribunal's conclusion that violations of ss. 10 and 13 of the *Code* had not been made out was incorrect.

[53] I therefore cannot accept this aspect of Ms. Bonnefoy's application for judicial review as being well-founded.

#### ***Procedural Fairness and Bias***

[54] The second ground for Ms. Bonnefoy's challenge to the dismissal of her complaint was that the process was procedurally unfair, especially since there were

delays in having her complaint heard, and Ms. Bonnefoy did not receive support while NHA had assistance from legal counsel. Ms. Bonnefoy also says that the Tribunal officials and staff were biased against her, particularly the case manager and deciding member who were assigned to her complaint.

[55] The standard of review to be applied here is fairness, and I must inquire whether, in all of the circumstances, the Tribunal acted fairly: s. 59(5) ATA. As was noted recently by our Court of Appeal in *Skerry v. British Columbia (Human Rights Tribunal)*, 2024 BCCA 54 at para. 54, “to be unfair in a way that raises concern on appeal or review, the tribunal’s process must be fundamentally flawed in the sense that it denies a party the right to participate in the process”.

[56] I do not agree that the Tribunal process was fundamentally flawed or that Ms. Bonnefoy was in any way denied the right to participate in the process by the Tribunal, its officials, or its staff. To the contrary, it is apparent that the Tribunal was conscious of the difficulties Ms. Bonnefoy faced as a self-represented litigant, afforded her a full opportunity to participate, and made reasonable attempts to accommodate her while still maintaining its neutrality and independence. Also, while it is troubling that it took five years for this complaint to be heard, Ms. Bonnefoy did not persuasively explain how this delay impacted on procedural fairness in terms of her ability to present her complaint: *Skerry*, at para. 57.

[57] I also do not accept Ms. Bonnefoy’s allegation of bias. This is a very serious allegation given the presumption of impartiality, and cannot be accepted unless it is supported by substantial evidence to rebut that presumption: *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at paras. 47–48 and 76. The test for setting aside a decision on the grounds of bias is whether a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, would think that is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly: *R. v. S. (R.D.)*, [1997] 3 SCR 484 at para. 31. Ms. Bonnefoy’s evidence does not come close to meeting this standard, and her bias allegation must therefore be rejected.

[58] In sum, the procedural fairness aspect of Ms. Bonnefoy's application also lacks merit.

***Retaliation Allegations***

[59] Thirdly, Ms. Bonnefoy takes issue with the Tribunal's refusal to consider within the context of her discrimination complaint the allegations she makes concerning the death of her husband. She alleges in particular that NHA is responsible for his death because he was refused certain medical treatment, a refusal that was motivated by NHA's animus towards Ms. Bonnefoy for having brought a complaint against it under the *Code*.

[60] In considering this argument, it must be kept in mind that Ms. Bonnefoy's retaliation complaint filed December 15, 2022 is still outstanding and has yet to be heard or decided. As such, I consider that Ms. Bonnefoy's real concern is that the Tribunal did not consolidate her retaliation complaint with the discrimination complaint. While the Tribunal has the authority to effect such a joinder pursuant to s. 21(6) of the *Code*, this is a discretionary procedural decision. As such, it can only be set aside on judicial review if it is patently unreasonable: *ATA*, s. 59(3).

[61] At para. 25 of the Tribunal Decision, the Tribunal's rationale for dealing with the two complaints separately was explained as follows:

[25] Ms. Bonnefoy insisted that this complaint should be combined with a retaliation complaint she had filed against Northern Health and her Union. Ms. Bonnefoy alleges in her retaliation complaint that Northern Health denied medical services to her husband and contributed to his death. I informed Ms. Bonnefoy that her retaliation complaint would not be combined with her discrimination complaint because the retaliation complaint was at an early stage of the Tribunal's process and the Union had not yet filed a Response to the Complaint. I repeatedly told the parties that because the hearing would only deal with Ms. Bonnefoy's discrimination complaint, submissions and evidence should be on the allegations in that complaint exclusively.

[62] I find this rationale for the Tribunal's exercise of its discretion to be cogent, and not patently unreasonable as that standard is defined by s. 59(4) of the *ATA*.

[63] This argument is therefore dismissed as well.

**Conclusion**

[64] In sum, none of the grounds raised by Ms. Bonnefoy to challenge the Tribunal’s dismissal of her discrimination complaint are well-founded. Accordingly, the court will not quash this aspect of the Tribunal Decision on judicial review.

**Tribunal Costs Award**

[65] Extensive and detailed reasons were provided at paragraphs 16 to 59 of the Tribunal Decision for ordering Ms. Bonnefoy to pay NHA \$3,000 in costs as a sanction for her improper conduct. The following paragraphs are of particular assistance for understanding why the Tribunal issued the award in this specific amount:

[39] I find the cumulative effect of Ms. Bonnefoy’s conduct before the Tribunal is improper. It is one of the rare instances where a party’s conduct in the Tribunal’s process is worthy of censure and rebuke. I find that Ms. Bonnefoy’s improper conduct warrants an award of costs.

...

[47] Under the circumstances, I find that a substantial award of costs is appropriate. Ms. Bonnefoy repeatedly disregarded the Tribunal’s rules of appropriate communication and made unfounded allegations about virtually every party involved in the complaint process, including the Tribunal’s staff. She made disrespectful personal attacks which seriously impacted the integrity of the Tribunal’s process. Further, from her correspondence and statements in the hearing, I understand Ms. Bonnefoy ignored the Tribunal’s direction and allowed members of the public to surreptitiously observe the hearing.

[48] Ms. Bonnefoy’s conduct has had a serious effect on the integrity of the Tribunal’s processes and has caused the Tribunal and Northern Health to expend time and resources they would not have had to had Ms. Bonnefoy conducted herself appropriately in the complaint process.

[66] The Tribunal’s authority for making costs orders is set out at s. 37(4) of the Code:

37(4) The member or panel may award costs

(a) against a party to a complaint who has engaged in improper conduct during the course of the complaint, and

(b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3 (2) or an order under section 27.3 (3).

[67] As was noted by our Court of Appeal in *Forsyth* at paras. 51 to 56 a Tribunal decision to impose costs is discretionary. By virtue of s. 59(4) of the *ATA*, such decisions can only be set aside on judicial review if the Tribunal's discretion:

- (a) is exercised arbitrarily or in bad faith;
- (b) is exercised for an improper purpose;
- (c) is based entirely or predominantly on irrelevant factors, or
- (d) fails to take statutory requirements into account.

[68] None of these four conditions are present in the case at bar. To the contrary, the Tribunal Decision reveals that the Tribunal took into account the requirements of s. 37(4) of the *Code* when exercising its discretion, and did not do so arbitrarily, in bad faith, for an improper purpose, or based on irrelevant factors.

[69] Accordingly, this court cannot interfere with the Tribunal's exercise of discretion, even if this court might have exercised it differently if the court had the jurisdiction to do so at first instance, which, of course, it does not.

[70] That said, I do wish to note that I have a concern with some of the observations set out in the Tribunal Decision at paragraph 32. While I will not reproduce it here, this paragraph purports to contain quotes of the words used by Ms. Bonnefoy during the October 21, 2024 hearing. However, after having carefully listened to the two recordings of the hearing, I am of the view that the Tribunal's quotes are incomplete and fail to contextualize what Ms. Bonnefoy was actually saying. Indeed, I fear that by not setting her words fully, the Tribunal may have ascribed to them a meaning that Ms. Bonnefoy may not have intended.

[71] Now, I am not suggesting, let alone finding, that this drafting choice constitutes a reviewable error in this case. However, when the Tribunal sanctions participants for the words they use in a hearing with a costs award, it would be preferable that the Tribunal's reasons set out fully, precisely, and contextually the impugned statements that were made. I also reiterate that this, once again,

illustrates the utility of having a transcript of Tribunal proceedings prepared in circumstances such as the one in the case at bar.

[72] This concern notwithstanding, I nevertheless conclude that the Tribunal's costs award is not patently unreasonable and that there is no lawful basis for setting it aside.

### **Publication of Tribunal Decision**

[73] In its March 13, 2025 letter to Ms. Bonnefoy, the Tribunal explained that it was refusing her request to remove the published version of the Tribunal Decision from the Tribunal's website because of its obligation under s. 50(4) of the *ATA*. That provision states that the Tribunal "must make its decisions accessible to the public".

[74] Accordingly, the Tribunal was under a legislative imperative to deny Ms. Bonnefoy's request, and acted correctly in doing so. Ms. Bonnefoy's challenge to this decision of the Tribunal is unfounded.

### **Declaratory and Directive Relief**

[75] At paragraph 27(d) of these reasons for judgment, I have summarized the declaratory relief Ms. Bonnefoy is seeking on this petition for judicial review. It does not appear that any such relief was sought before the Tribunal. Furthermore, the Tribunal's jurisdiction to make declarations is limited to declaring that conduct complained of is discrimination contrary to the *Code* (s. 37(2)(b)). As such, this aspect of Ms. Bonnefoy's petition is a stand alone request for further relief.

[76] While I accept that the court has inherent jurisdiction to issue declaratory relief, it is a discretionary remedy: *Shot Both Sides v. Canada*, 2024 SCC 12 at para. 67. In my view, this is not an appropriate proceeding for considering declaratory relief of the kind sought by Ms. Bonnefoy. The issues she wishes to have dealt with by means of a declaration are factually and legally complex, and cannot be determined on this petition for judicial review with its limited evidentiary record. I will therefore not be issuing any declarations here, in accordance with my discretion

to refuse relief pursuant to s. 8 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241.

[77] Similarly, I will not “recommend or direct” the Government of British Columbia to convene a public inquiry under the *Public Inquiry Act*, S.B.C. 2007, c. 9 as Ms. Bonnefoy has asked me to do. In any case, such authority is bestowed by the legislation upon the Lieutenant Governor in Council, not the courts.

### **Damages**

[78] Finally, Ms. Bonnefoy seeks damages awards against the Tribunal under the *Charter* in the amount of \$500,000, and against NHA for “general and specific” damages in the amount of \$10,000,000.

[79] As our Court of Appeal held in *Yang v. Real Estate Council of British Columbia*, 2019 BCCA 43 at paras. 34 to 37, damages, including *Charter* damages, are not available on judicial review applications. Ms. Bonnefoy’s request for this relief will not be entertained in this proceeding either.

### **DISPOSITION**

[80] For the reasons set out above, Ms. Bonnefoy’s petition is dismissed.

[81] In its response to petition, the Tribunal expressly states that it does not seek an award of costs for responding to Ms. Bonnefoy’s petition. The NHA’s response to petition is silent on this question. In these circumstances, I have decided, in my discretion, that the parties shall bear their own costs of the petition notwithstanding its outcome.

“Brongers J.”