IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Moradi v. British Columbia (Human Rights Tribunal),* 2025 BCSC 1377

Date: 20250718
Docket: S235867
Registry: Vancouver

Between:

Faranak Moradi

Petitioner

And

The British Columbia Human Rights Tribunal and Whole Foods Market

Respondents

Before: The Honourable Justice Underhill

On judicial review from: a Decision of an Adjudicator of the British Columbia Human Rights Tribunal, dated June 26, 2023 (*Moradi v. Human Rights Tribunal*, decision No. CS-00825).

Reasons for Judgment

The Petitioner appearing in person:	F. Moradi
Counsel for the Respondent, Human Rights Tribunal:	H. Hoiness
Counsel for the Respondent, Whole Foods Market:	K. Liset
Place and Date of Trial/Hearing:	Vancouver, B.C. May 14-15, 2025
Written Reply Submissions of the Petitioner	May 21, 2025
Written Sur-reply Submissions of the Respondent, Human Rights Tribunal	May 23, 2025
Written Sur-reply Submissions of the Respondent, Whole Foods Market.	May 23, 2025
Place and Date of Judgment:	Vancouver, B.C. July 18, 2025

Table of Contents

INTRODUCTION 3
BACKGROUND 3
ANALYSIS 7
The Prematurity Principle 7
Are the Impugned Decisions Final or Interlocutory? 8
Are There Exceptional Circumstances? 9
Strength of the Case and Prejudice 9
The Amendment Leave Decision 11
The June 26, 2023 Decision 12
Fairness or Bias Arguments 17
Other Factors 18
COSTS 19
CONCLUSION 22

Introduction

[1] This petition for judicial review challenges multiple decisions of the British Columbia Human Rights Tribunal ("Tribunal") regarding applications to amend the petitioner's human rights complaint and for pre-hearing disclosure.

[2] The scope and grounds of the amended petition, filed July 15, 2024, are very difficult to determine given that extensive portions of it are prolix and liable to being struck under Rule 9-5. In addition to Rule 9-5, the respondent Whole Foods Market ("WFM") raised a number of other preliminary issues or objections to the amended petition, including: (a) virtually all of the relief sought falls outside the Court's jurisdiction; (b) it seeks judicial review of decisions that are time-barred; (c) the supporting affidavits contain inadmissible evidence; and (d) it is premature.

[3] For the reasons that follow, I have concluded that the amended petition impugns decisions which are interlocutory in nature, and under the prematurity principle, there are no exceptional circumstances which would warrant the exercise of my discretion to entertain a review of those decisions. Accordingly, the amended petition is dismissed in its entirety as premature.

[4] It is therefore unnecessary to deal with WFM's other preliminary issues, and I will only address the merits of the petition to the extent it is necessary to do so in the prematurity analysis.

Background

[5] The petitioner worked for WFM in the prepared foods department of its North Vancouver store from November 9, 2018 to January 23, 2019, when her employment was terminated for cause because she failed an evaluation during her probationary period.

[6] On January 23, 2020, the petitioner filed a complaint with the Tribunal, alleging that WFM and certain individual respondents had discriminated against her in the area of employment on the basis of mental disability, physical disability, race, sex, and sexual orientation (the "Complaint").

[7] On December 15, 2021, after seeking further information from the petitioner, the Tribunal held that the Complaint could proceed based on the grounds of mental disability, physical disability, and race, and as an alleged continuing contravention of the British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210 [*Code*]. However, the claims of discrimination on the basis of sex and sexual orientation were rejected. On March 28, 2022, the Tribunal denied the petitioner's request for reconsideration. A second request for reconsideration was denied on July 7, 2022 (collectively, the "Screening Decisions").

[8] While the amended petition appears to take issue with the Screening Decisions, the petitioner confirmed in her written reply submissions that they are only referenced for "procedural context" and are not being challenged.

[9] Similarly, the amended petition also references the Tribunal's decision of May 30, 2022, denying the petitioner's application to "fast track" the Complaint. The petitioner also confirmed in her reply submissions that this decision is not being challenged.

[10] On November 18, 2022, the Tribunal issued a letter confirming that the petitioner would be required to seek leave to amend the Complaint, having previously accepted the amended Complaint for filing on November 4, 2022 (the "Amendment Leave Decision"). The Tribunal did so on the basis that it had accepted the amendments without having considered WFM's objections contained in correspondence from September 9, 2022. The petitioner confirmed in her reply submissions that the Amendment Leave Decision is being challenged, although no relief is sought in respect of it in the amended petition.

[11] On June 26, 2023, the Tribunal released a decision addressing three applications:

a) the Tribunal dismissed the petitioner's application to amend the Complaint, holding that the proposed amendments were distinct new allegations of a different character, were untimely and not part of a continuing contravention, and it was not in the public interest to accept them;

b) the petitioner's application for further pre-hearing disclosure from WFM was dismissed on the basis that the requests were either irrelevant or speculative, and that the petitioner could make arguments about insufficient disclosure or falsified documents at the hearing of the Complaint; and

c) the Tribunal allowed WFM's application for disclosure of the petitioner's medical records, on the basis that the petitioner had agreed to that disclosure (but took the position that the Tribunal needed to issue an order), and directed the records be released to the petitioner for listing and subsequent disclosure to WFM.

[12] This decision (the "June 26, 2023 Decision") is expressly challenged in the amended petition. The petitioner confirmed in her reply submission that the Tribunal's reconsideration decision of August 9, 2023 is also being challenged. In that decision, the Tribunal denied the petitioner's application for reconsideration on the basis that it was grounded in the petitioner's dissatisfaction with the outcome of the June 26, 2023 decision, and repeated arguments that had already been considered and rejected.

[13] There is a somewhat complex and unfortunate procedural history in this Court, which I will briefly summarize here and address in more detail in my analysis of costs below.

[14] The petitioner set down her original petition for a one-day hearing on May 31, 2024, by way of a notice of hearing delivered on April 10, 2024.

[15] On May 2, 2024, the petitioner sought the respondents' consent to make amendments to her petition. For its part, WFM was not prepared to consent to any amendments without the opportunity to review them.

[16] This ultimately led to the delivery of a draft amended petition on May 14, 2024, following which WFM advised the petitioner it was not prepared to consent to the amendments, and they would not be in a position to address them at the hearing on May 31 (and there would not be sufficient hearing time in any event). While the

Tribunal did not take a position on the amendments, it also advised the petitioner that there would not be sufficient hearing time to deal with the proposed amended petition at the scheduled hearing, and that the petitioner would need to seek leave of the Court for her amendments if she wanted to proceed forward with them at the May 31 hearing.

[17] The parties then began discussing a potential adjournment of the May 31 hearing, but on May 17, 2024, the petitioner attempted to serve a notice of application with respect to her proposed amendments that did not include a hearing date. After a further exchange of correspondence, the petitioner applied on May 24, 2024, to have her notice of application heard by a specific justice of this Court, Justice Sharma, and also filed and served a second supporting Affidavit. The respondents raised various objections to these steps, but for present purposes, it is sufficient to note that Justice Sharma denied the petitioner's request to appear before her on May 28, 2024.

[18] The parties continued to exchange correspondence and materials regarding the upcoming hearing date of May 31. In particular, the petitioner served an index to a book of authorities containing a large number of new authorities not referenced in the original petition, twenty-two of which are listed as decisions of this Court with "BC Human Rights Tribunal" as a defendant, but for which no case with that name or citation exist (two examples are "Jones v. BC Human Rights Tribunal, 2018 BCSC 1234" and "Smith v. BC Human Rights Tribunal, 2017 BCSC 5678"). The petitioner later admitted that the index was generated by the application ChatGPT and, in her own words, "turned out to be incorrect". The petitioner also failed to deliver a petition record index in advance of the hearing.

[19] On May 31, 2024, the parties appeared before Justice Masuhara, who granted WFM's application to adjourn the hearing, and ordered that the petitioner reschedule the hearing date and provide a proper amended petition record index to the respondents.

[20] The parties were unable to settle the terms of Justice Masuhara's order, with the petitioner raising a number of objections and concerns, and she ultimately

applied to appear before Justice Masuhara regarding the terms of his order on June 21, 2024. That application included allegations that WFM had "altered" facts which had an effect on Justice Masuhara's decision, that the respondents had "forced" the petitioner to sign the draft form of order and that the draft order was "not written correct". She requested a "sanction imposed regarding waste of time and fair order".

[21] Justice Masuhara advised the parties on July 17, 2024 that he would not entertain further submissions on the adjournment order, and to date, I understand the parties have not settled the form of order.

[22] The amended petition was brought on for hearing before me on May 14 and 15, 2025. At the time her oral reply submissions were to commence on May 15, the petitioner indicated she was feeling unwell, and I subsequently granted leave for the filing of written reply and sur-reply submissions.

Analysis

The Prematurity Principle

[23] Justice Stratas described the prematurity principle in *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61 [*CB Powell*]:

> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.
>
> [Emphasis added.]

[24] There is a sound policy rationale underlying the prematurity principle, as Justice Willcock explained in *British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite*, 2014 BCCA 220:

> [30] The Supreme Court of Canada, in *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission*), 2012 SCC 10 at para. 33 . . . described practical and theoretical reasons for the rule that restraint should be exercised in hearing appeals from administrative tribunals before they have completed their work:
>
> > [36] While such intervention may sometimes be appropriate, there are sound practical and theoretical reasons for restraint… Early judicial intervention risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a "correctness" standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes…Thus, reviewing courts now show more restraint in short-circuiting the decision-making role of the tribunal, particularly when asked to review a preliminary screening decision such as that at issue in *Bell* (1971).
> >
> > [Citations omitted.]

[25] To summarize, the prematurity principle provides that if the decision being challenged is interlocutory rather than final, then the parties cannot seek a different decision from this Court unless there are exceptional circumstances. The burden to demonstrate exceptional circumstances lies on the petitioner (*British Columbia Teachers' Association v. Neufeld*, 2023 BCSC 1460 at para. 30), and the factors to be considered were outlined in *Chu v. British Columbia (Police Complaint Commissioner)*, 2021 BCCA 174:

> [66] Factors to consider in determining whether the Court's discretion to intervene early, which have been described under the rubric of "special" or "exceptional circumstances", may include hardship or prejudice to the applicant; waste of resources; delay if judicial review proceeds; fragmentation of proceedings; the strength of the case; and the statutory context: *Thielmann v. Association of Professional Engineers and Geoscientists of the Province of Manitoba,* 2020 MBCA 8 at para. 50; *ICBC v. Yuan,* 2009 BCCA 279 [*Yuan*] at paras. 23–24. The analysis is flexible and does not necessarily turn on a single factor: *Workers' Compensation Appeal Tribunal v. Hill,* 2011 BCCA 49 [*Hill*] at para. 36; *Thielmann* at para. 49.
>
> [Emphasis added.]

Are the Impugned Decisions Final or Interlocutory?

[26] As discussed in *Chu*, the first question in the prematurity analysis is to determine whether the impugned decisions are final or interlocutory. Leaving aside descriptions or labels that may be given to a particular decision, the fundamental

question is whether the decision maker has finished their work (*Chu* at paras. 74, 76 and 81).

[27] The petitioner did not address the issue of prematurity or the nature of the decisions under review in her initial submissions to the Court. However, in her written reply, obviously prepared with some degree of legal assistance, the petitioner said this:

> Judicial review may be granted before a tribunal completes its process where procedural decisions have a final or prejudicial effect. That is the case here. The Tribunal's refusal to allow amendment excluded core allegations, including retaliation and disability discrimination. The denial of disclosure blocked access to critical evidence such as workplace documents, CCTV footage, and internal communications. These are not interlocutory in any meaningful sense—the prejudice is complete.
>
> [Underlined emphasis in the original.]

[28] I understand this to be an argument that there are exceptional circumstances which would justify judicial review of the impugned decisions, and the petitioner acknowledges that the Tribunal process has not run its course. In any event, in light of the fact that the complaint has not yet been heard on its merits, it is clear that the impugned decisions are all interlocutory in nature and the Tribunal has not finished its work. I will address the argument regarding "final and complete prejudice" below in the analysis of exceptional circumstances.

Are There Exceptional Circumstances?

Strength of the Case and Prejudice

[29] In *Sefcikova v. Read Jones Christoffersen Ltd*., 2024 BCSC 2266, a recent decision that is very similar on its facts, Justice Shergill observed at para. 88 that the strength of the case may be the predominant factor in some cases, citing *Independent School Authority v. Parent*, 2022 BCSC 570 at para. 53.

[30] Justice Shergill also noted that arguments about prejudice to rights are closely related to the analysis of the strength of the case (at paras. 85-87), and I consider it appropriate to address them together as I believe they are the determining factors in this case.

[31] The starting point in considering the strength of the case is the standard of review (*Sefcikova* at para. 89). The standards of review applicable to the Tribunal are set out in s. 59 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*]:

> **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.

[32] For discretionary decisions, the patent unreasonableness standard is defined in s. 59(4) of the *ATA*. A patently unreasonable decision has also been described by the Court of Appeal as one that is "clearly irrational", "evidently not in accordance with reason", or "so flawed that no amount of curial deference can justify letting it stand": *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para. 45.

[33] In my view, all of the impugned decisions are properly seen as discretionary decisions, and to the extent the petitioner is challenging those decisions on their merits (as opposed to challenging them on procedural fairness grounds), the patently unreasonable standard applies.

[34] However, I must note that WFM did raise the line of authority in this Court which has held that the issue of "arguable relevance" in disclosure applications is an extricable question of law to which the correctness standard applies (see in particular *C.S. v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268 at paras. 170—175).

[35] I conclude below that the petitioner's case is sufficiently weak such that the standard of review for the disclosure decisions is immaterial. It is therefore unnecessary to directly address the reasoning in *C.S.*, but I do wish to state that I do not find it to be persuasive for a number of reasons, including that it stands in contradiction to this Court's decision in *Qin v. British Columbia (Human Rights Tribunal)*, 2005 BCSC 1662, and it does not address changes to the Tribunal's Rules of Practice and Procedure regarding applications for document disclosure that were introduced in 2014 (see Rule 23). Under those changes, the Tribunal's test for document disclosure no longer relies exclusively on relevance, but also involves considerations of efficiency. Further, as noted in *Sefcikova* at para. 95, it is difficult to reconcile *C.S.* with the line of cases which has applied the patent unreasonableness standard to the Tribunal's assessment of whether a party is engaging in a "fishing expedition".

[36] To the extent the petitioner is raising any procedural fairness issues, s. 59(5) of the *ATA* provides that the standard of review is whether, in all of the circumstances, the Tribunal acted fairly: see also *Kinexus Bioinformatics Corporation v. Asad*, 2010 BCSC 33 at para. 24.

The Amendment Leave Decision

[37] Turning first to the Amendment Leave Decision, to the extent that the merits of that decision are challenged (which is not clear from the amended petition), the Court of Appeal has confirmed that the Tribunal's exercise of its power to reconsider a decision is discretionary and subject to the patent unreasonableness standard: *Gichuru v. Vancouver Swing Society*, 2021 BCCA 103 at para. 97.

[38] I understand the petitioner's main argument to be one of procedural unfairness; namely, that she was not provided an opportunity to make submissions before the Tribunal determined that she would need to seek leave for her proposed amendments, including the filing of a reply within a "21-day window" after the decision. She also says that WFM was not required to file the proper form for its objections.

[39] With respect, I see little merit to these arguments. The Amendment Leave Decision was a result of the Tribunal recognizing that it had allowed the amendments without considering WFM's objections, in particular that the amendments raised new and late-filed allegations of discrimination. Had the Tribunal's previous decision stood, that would have constituted an obvious error and a significant breach of procedural fairness for WFM. I also note that there is no "21-day window" for a reply to the decision under the *Code*, nor any form for WFM to use in stating its objections to the proposed amendments.

[40] Accordingly, I am of the view that the petitioner has an extremely weak case to challenge the Amendment Leave Decision. Further, the petitioner suffered no prejudice, let alone "final" or "complete" prejudice, from this decision, as she was provided a full opportunity to make submissions on her amendments, which culminated in the June 26, 2023 decision.

The June 26, 2023 Decision

[41] For convenience, I will repeat the three components of the June 26, 2023 Decision: (a) the petitioner's application to amend her Complaint was dismissed; (b) the petitioner's application for further disclosure from WFM was dismissed; and (c) the Tribunal made an order for the petitioner to disclose her medical records to WFM.

[42] With respect to the petitioner's application to amend the Complaint, I first note that the Tribunal correctly set out the applicable legal principles for such an application:

> There is a one-year time limit for filing a complaint under the *Code*: s.22(1). If a complaint alleges a continuing contravention, it must be filed within one year of the last alleged instance of the contravention: s.22(2). A continuing contravention is a succession or repetition of separate acts of discrimination of the same character.
>
> Rule 24(4)(a) states that a complaint must apply to amend a complaint if the amendment adds allegations that occurred outside of the time limit for filing the complaint under s.22 of the Code.
>
> If all or part of the proposed amendment is late filed, the Tribunal has the discretion to accept late filed complaints under s.22(3). The onus is on Ms. Moradi to persuade the Tribunal that it would be in the public interest to accept the late-filed amendments, and that no substantial prejudice will result

> to any person because of the delay in filing: *A by Parent v. Interior Health Authority and others*, 2019 BCHRT 213 at para. 30.

[43] The Tribunal held the proposed new amendments were of a distinct and different character than the accepted complaint, and did not constitute a continuing contravention:

> In my view all of Ms. Moradi's proposed amendments are distinct new allegations that are of a different character than the accepted complaint. I am not persuaded by Ms. Moradi's submission that because she encountered all of the alleged negative experiences during the time that she was employed, they are necessarily part of a continuing contravention. The allegations include discrete medical conditions that were not part of the original complaint, specific incidents during her employment that Ms. Moradi characterizes as discrimination and general complaints about Whole Foods and her supervisors. I am not able to reasonably see that the proposed amendments are similar in nature to the accepted complaint beyond the fact that they all involve Ms. Moradi. I find the allegations in Ms. Moradi's proposed amendments are not part of a continuing contravention and untimely.

[44] The Tribunal then went to consider whether it would be in the public interest to accept the late-filed complaints, and found that Ms. Moradi's explanation for her substantial delay in bringing forward the application to amend was vague and not persuasive, and further there was nothing particularly novel, unique or unusual about the late-filed allegations. Accordingly, the Tribunal concluded it would not be in the public interest to allow the amendments.

[45] It is difficult to determine the grounds upon which the amended petition seeks to challenge this aspect of the June 26, 2023 decision. The amended petition references the fact that there are a number of "errors" with the decision, but they appear to be immaterial to the Tribunal's core analysis, such as typographical errors referring to the petitioner as "Mr.". Similarly, the bare allegation that the Tribunal "incorrectly ignored the impact of the Petitioner's sexual orientation and feminine characteristics on her dismissal" does not support the conclusion that the Tribunal made any error in the analysis set out above.

[46] In addition, it appears that some new arguments are advanced in the amended petition that were not advanced before the Tribunal, which are not properly considered on judicial review. In any event, the arguments concerning the petitioner

having an exemption under the *Limitation Act*, S.B.C. 2012, c. 13 as a result of her disabilities, incorrect information received from a lawyer who was providing her assistance, and promises from the Tribunal to effectively allow her to amend her petition, have no discernable merit.

[47] In sum, I see no error in the Tribunal's analysis, let alone one that would meet the criteria in s. 59(4) or could otherwise be described as "clearly irrational" or "evidently not in accordance with reason". Accordingly, I conclude that the strength of the petitioner's case in challenging the Tribunal's decision not to grant leave for her amendments is weak, as is the petitioner's claim of prejudice.

[48] I turn next to the strength of the case in respect of the challenge to the Tribunal's decision to dismiss the petitioner's application for further pre-hearing disclosure from WFM, which included an application for the following documents:

a) the petitioner's interview letter;

b) the petitioner's employment agreement;

c) an air pollution report from December 5, 2018;

d) a handwritten letter that the petitioner drafted titled "something about Wilson";

e) documents indicating that the petitioner was given a copy of the General Information Guide;

f) an email sent to her shift manager, Kristin Down, on December 12, 2018;

g) CCTV footage of the petitioner working; and

h) sales information for the salad bar from November 13, 2018 to January 23, 2019.

[49] The petitioner later sought to add a request for additional pay stubs.

[50] Again, the Tribunal correctly set out the relevant legal principles:

> Rule 20 of the Tribunals' Rules of Practice and Procedure provides that parties are obliged to disclose all documents in their possession or control that may be relevant to the complaint or response to the complaint. The obligation to disclose is ongoing. The test is where a document may be relevant or arguably relevant to a fact in issue. There must be some nexus between the document in question and a fact in issue. There must be some nexus between the document in question and a fact in issue: Brady v. Interior Health Authority, 2005 BCHRT 200 at para. 53. The threshold is low, but the Tribunal's process should not be used as a fishing expedition; Gichuru v. The Law Society of British Columbia (No. 5), 2010 BCHRT 137 at para. 11. Parties are not required to create documents that do not already exist. Disclosure should, like all aspects of the Tribunal's process, serve the goals of efficiency and fairness in the administration of justice and remain proportional to the issues the Tribunal is required to resolve.

[51] WFM's position was that it had already disclosed documents (a), (b), (d) and (e); documents (c) and (f) did not exist; and documents (g) and (h) were irrelevant. The Tribunal reached this conclusion:

> Under the circumstances, I find no basis for an order against Whole Foods for further disclosure. The onus is on Ms. Moradi to point to a specific document, or category of documents that she says exists, is relevant to the issues, and has not been disclosed. Ms. Moradi's submissions consist of speculation that certain documents must exist because they would support her complaint, such as air pollution reports. Some requests are for documents Ms. Moradi confirms do not exist, such as a signed employment agreement, and appear to be asking Whole Foods to create documents where none exist. As I have said, they are not required to do this.
>
> The requests for CC footage and sales information are broad and not related to the allegations of discrimination accepted by this Tribunal. In particular, much of Ms. Moradi's submissions are focused on her complaints about Whole Foods' management, commercial decisions, and business practices.
>
> At a hearing, Ms. Moradi is free to make any argument she would like about her belief that documents have been altered, contain false information or that she disagrees with their contents; this is not a basis for me to order further disclosure from the Respondents.

[52] Once again, it is difficult to glean from the amended petition the grounds upon this decision is challenged. It appears the main ground or allegation is one of procedural unfairness or bias arising out what is said to be "differential treatment" between her disclosure application and that of WFM seeking the petitioner's medical records. I address that allegation below.

[53] The petitioner also raises an alleged error in the description of the email of December 12, 2018 (document (f) above – see Amended Petition, paras. 20, 76-74,

121 and 123). The Tribunal referred to it as an email sent by the petitioner, when the petitioner says it was sent by another manager to her shift supervisor. Nothing turns on any alleged error in describing the sender of the email. The Tribunal accepted the respondent's evidence and submissions that it was not in possession of that email, and concluded that it was not being withheld to "gain an advantage in litigation" as the petitioner alleged. The sender of the email does not affect that analysis.

[54] Accordingly, even if the correctness standard were to be applied, I consider the strength of the petitioner's case to review the Tribunal's rejection of her disclosure application to be very weak. With respect to the issue of prejudice, as the Tribunal expressly noted, the petitioner remains free to raise arguments at the hearing of the Complaint on its merits about WFM's document production, including the alteration of documents or that they may contain false information, such that there is no issue of prejudice to the petitioner's rights.

[55] The last component of the June 26, 2023 decision is WFM's application for disclosure of the petitioner's relevant medical records, including documents disclosed in the petitioner's proceedings at WorkSafeBC regarding workplace safety and workers' compensation. The Tribunal set out the position taken by the petitioner in a March 1, 2023 email:

> I agree to disclose my medical documents at the discretion of the Tribunal. So you have my consent to use my medical records if the Tribunal deems it necessary.

[56] The Tribunal also noted the petitioner's mistaken belief that "…to obtain new documents from my physician and cardiologist, I need a Tribunal order. They will only disclose my medical information upon court order."

[57] In light of the petitioner's consent, and the fact that the records are plainly relevant, I do not see any basis for judicial review of this decision, particularly on the patent unreasonableness standard. As best as I can determine, it appears the only ground to challenge this decision in the amended petition is one of unfairness or bias, in that the Tribunal denied the petitioner's disclosure application while allowing WFM's application. I address that argument in the next section of my analysis.

[58] As noted above, the petitioner confirmed in her written reply submission that she also challenges the August 9, 2023 reconsideration of the June 26, 2023 decision. The normal approach in judicial review is that the reconsideration decision informs judicial review of the original decision, rather than being subject to its own separate review: *Sefcikova* at para. 70, citing *Moody v. Scott*, 2012 BCSC 657 at paras. 30 and 34. However, for the sake of completeness, the following is the Tribunal's conclusion in the reconsideration decision:

> There is nothing in any of the materials before me that suggests any unfairness in the process. Ms. Moradi's reconsideration submissions repeats arguments that were considered and rejected in the original decision. She repeats her arguments that her proposed amendments should be allowed because she believes they are all a continuing contravention and that it is in the public interest to accept them. She submits that the original decision was unfair because she provided evidence and materials, but the outcome was not in her favor.
>
> Based on the materials before me, I find Ms. Moradi's submission on this reconsideration application reargue the same issues as considered in the original decision. Rearguing issues that have been considered and decided is not an appropriate basis for reconsideration.

[59] In my view, there is no apparent error in the analysis or conclusion of the Tribunal, and accordingly, no strength to the petitioner's case to challenge the reconsideration decision on its merits.

Fairness or Bias Arguments

[60] From the amended petition and the petitioner's oral submissions, it is apparent she puts considerable emphasis on the procedural unfairness allegation I addressed above in connection with the Amendment Leave Decision; namely, that she was not provided adequate opportunity to make submissions. In addition, the petitioner appears to allege that the June 26, 2023 decision gives rise to a reasonable apprehension of bias because the petitioner's disclosure application was denied, while the respondent's application was granted.

[61] First, it is well-established that there is a strong presumption of impartiality for administrative decision-makers. Proving bias in this context requires substantial evidence, such that a reasonable and informed person would conclude that the evidence gives rise to a reasonable apprehension of bias: *Kinexus* at paras.

134-135; *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 37.

[62] In *C.S.*, Justice Watchuk observed that the fact that a decision-maker makes a ruling against a party is not evidence of bias:

> [164] The fact that the Tribunal made rulings 'against' Ms. S. and ultimately dismissed her human rights claim is not evidence of bias. Adjudicators must reach decisions. Where one party's case is stronger than the other's, the first party may enjoy a greater 'pattern of success' throughout a proceeding. In an adversarial dispute, one or more of the parties may be dissatisfied with the result. None of this, on its own, suggests bias. As Madam Justice Gray put it in *Millar,* "the fact that Mr. Millar's arguments failed does not establish bias. To use a baseball analogy, an umpire is not biased because the umpire called a strike. The judge, like the umpire, must make a call" (para. 46; see also paras. 27-30 and 40).

[63] In my view, that reasoning extends to the allegation advanced here. Simply because the petitioner's disclosure application was denied, and the respondent's application allowed, is not, without more, a foundation for establishing a reasonable apprehension of bias. I accordingly conclude the strength of the petitioner's case with respect to this allegation of procedural unfairness is weak, and the petitioner has suffered no appreciable prejudice to her rights.

[64] In sum, none of the arguments advanced by the petitioner in her amended petition come close to rising to the level of demonstrating errors that are "so clear cut" or "so deeply flawed" that the exceptional circumstances test is met: *Grimsmo v. Jones*, 2021 BCSC 575 at para. 71; *Chu* at para. 92.

Other Factors

[65] The other factors discussed by the Court of Appeal in *Chu* reinforce the conclusion that there are no exceptional circumstances in this case. The petitioner's choice to pursue this judicial review, which I have found has very little merit, has already resulted in substantial delay, the fragmenting of the Tribunal's process and piecemeal proceedings. Further pursuit of this judicial review would only reinforce those problems.

[66] Like in *Sefcikova*, the concerns discussed in *Grimsmo* are at play here. First, a decision on this judicial review would not finally dispose of the issues, and may well "put the process back to the beginning and open the door for further applications for judicial review on other issues as the process winds to conclusion": *Grimsmo*, para. 64. In addition, allowing this judicial review to proceed would be inconsistent with the Tribunal's statutory mandate of addressing human rights complaints in a just and timely manner.

[67] As there are no exceptional circumstances justifying review of the impugned interlocutory decisions, the amended petition should be dismissed as premature.

Costs

[68] Consistent with the normal practice in petitions for judicial review of its decisions, the Tribunal did not seek costs, and there is no basis for any award of costs against it.

[69] For its part, WFM seeks an award of increased costs. In the alternative, it seeks regular costs and also says that a special costs award is justified.

[70] The principles governing increased costs were summarized by Madam Justice Fitzpatrick in *Boissonnault v. Marler*, 2021 BCSC 678:

> [54] Such costs arise under Appendix B of the *Supreme Court Civil Rules:*
>
> > 2(5) If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3 (1).
> >
> > (6) For the purposes of subsection (5) of this section, an award of costs is not grossly inadequate or unjust merely because there is a difference between the actual legal expenses of a party and the costs to which that party would be entitled under the scale of costs fixed under subsection (1) or (4).
>
> [55] Unlike special costs, which are intended to be punitive, the purpose of increased costs is to provide an indemnity: *National Hockey League v. L.A. Kings* (1995), 2 B.C.L.R. (3d) 13 (C.A.) at para. 32.
>
> [56] As stated in *Lim* at para. 123, there are two pre-requisites before such a costs award may be made: firstly, there must be unusual circumstances;

and, secondly, those unusual circumstances would result in a grossly inadequate or unjust award of costs at the fixed scale.

[57] In *Globalnet Management Solutions Inc. v. Aviva Insurance Company*, 2020 BCSC 1361, Justice Blok discussed what factors may be found to be "unusual circumstances":

> [30] Factors which may be relevant to "unusual circumstances" include positions or behaviour which have added to the complexity of the litigation, the importance of the matter to a party, misbehaviour by a party that added to the expense incurred by the party claiming costs, and the degree of disparity between costs calculated at Scale B and actual legal fees incurred: *On Call Internet Services Ltd. v. TELUS Communications Company,* 2010 BCSC 1031, at paras. 11-12 [*On Call*]. See also *Monenco Ltd. v. Commonwealth Insurance Co.*, 1999 BCCA 133; and *National Hockey League v. L.A. Kings* (1995), 2 B.C.L.R. (3d) 13 (C.A.). In the latter case, the Court of Appeal noted that the misconduct in question need not be "reprehensible":
>
> > [33] But where one party to an action is guilty of misconduct in the litigation, and the innocent party is required to spend time and effort responding to such conduct, in most cases it would be unjust if the latter was not adequately indemnified for the costs associated with defending against that which should never have happened. It is in that sense that, whether reprehensible or not, the misconduct of one party is relevant when a court is considering or exercising the discretion to award increased costs to the other.

[58] Similarly, in *Berthin v. British Columbia (Registrar of Land Titles)*, 2017 BCCA 181 at para. 43, the court described common reasons to award increased costs as including "actions taken in bad faith, disobedience of court processes, incivility, frivolity, and impertinence".

[71] WFM says that the following conduct of the petitioner justifies an award of increased costs:

a) the improper service of a notice of application to amend the petition eight working days before the May 31 hearing;

b) the application to appear specifically before Justice Sharma to argue that notice of application;

c) the late service of an additional affidavit that that did not properly exhibit the documents upon which the petitioner intended to rely;

d) the failure to serve a copy of the petition record index in advance of the May 31 hearing despite multiple requests from the respondents;

e) the late delivery of an index of authorities containing close to thirty authorities not referenced in the original petition, twenty-two of which turned out to be generated by ChatGPT and were not real cases;

f) the efforts to rely on the improper amendments and affidavit evidence up until the May 31 hearing date despite the respondents' objections;

g) that these procedural breaches resulted in the adjournment of the hearing on May 31;

h) the refusal to sign or settle Justice Masuhara's adjournment order;

i) the subsequent application to appear before Justice Masuhara, which was grounded in false and vexatious allegations that counsel had misrepresented facts at the May 31 hearing and forced the petitioner to sign the draft order;

j) the filing of the amended petition which is replete with patently false, unnecessary and irrelevant allegations; and

k) the making of unfounded allegations at the hearing before me regarding WFM's failure to deliver its notice of application for pre-hearing disclosure and the documents listed in its document disclosure form, which required WFM to deliver a further responding affidavit.

[72] I am satisfied that a partial award of increased costs is appropriate in this case. The circumstances outlined above in subparagraphs (a) to (j) regarding the amendments to the petition, as well as the petitioner's conduct before and after the May 31 hearing before Justice Masuhara, are in my view unusual, and would lead to an unjust result if costs were fixed at the ordinary scale.

[73] While the petitioner has resiled from relying on some of the amendments in her written reply, including in particular the vast majority of the orders sought, WFM was required to expend considerable resources in attempting to address what are fairly described as prolix amendments in order to provide a proper amended response to petition.

[74] I also wish to emphasize that the petitioner's use of ChatGPT to produce a significant number of fraudulent authorities, and the serious and unfounded allegations made against counsel in the application to appear before Justice Masuhara, came close to justifying an award of special costs. The fact that the petitioner was self-represented is not an excuse for such conduct, and it is only her improved conduct in the hearing before me that led to the exercise my discretion not to award special costs.

[75] I acknowledge that the petitioner did make allegations about not receiving certain documents in the hearing before me, as outlined in para. (k) above, but I do not think WFM's production of a further responding affidavit to address that allegation is the kind of additional expense that would justify an award of increased costs for the hearing before me.

Conclusion

[76] In summary, I conclude that there are no exceptional circumstances which warrant the exercise of my discretion to entertain judicial review of the impugned interlocutory decisions, and I dismiss the amended petition in its entirety as premature.

[77] I also make the following costs order:

(a) WFM is awarded increased costs (being 1.5 times the value of the units in Appendix B) for all units in connection with the amendments to the petition (including the filing of WFM's amended response to petition), the hearing before Justice Masuhara on May 31, 2024, and the requested hearings before Justice Sharma and Masuhara.

(b) WFM is awarded costs at the regular scale for the balance of the applicable units in Appendix B.

"Underhill, J."