

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Pereira v. British Columbia (Workers' Compensation Board)*,  
2025 BCCA 379

Date: 20251105  
Docket: CA50393

Between:

**Corrine Pereira**

Appellant  
(Petitioner)

And

**Workers' Compensation Board of British Columbia (WorkSafeBC)**

Respondent  
(Respondent)

Before: The Honourable Madam Justice Fisher  
The Honourable Mr. Justice Grauer  
The Honourable Justice Fleming

On appeal from: An order of the Supreme Court of British Columbia, dated January 17, 2025 (*Pereira v. British Columbia (Workers' Compensation Board)*, 2025 BCSC 65, Terrace Docket L21964).

The Appellant, appearing in person  
(via videoconference):

C. Pereira

Counsel for the Respondent:

J.M. Goosen

Place and Date of Hearing:

Vancouver, British Columbia  
October 17, 2025

Place and Date of Judgment:

Vancouver, British Columbia  
November 5, 2025

**Written Reasons by:**

The Honourable Madam Justice Fisher

**Concurred in by:**

The Honourable Mr. Justice Grauer  
The Honourable Justice Fleming

**Summary:**

*The appellant's application for judicial review of a decision made by the Review Division of the Workers' Compensation Board was dismissed. The Review Decision addressed the appellant's assertion that her former employer failed to properly investigate her complaint of bullying and harassment in the workplace. The former employer was found to have violated s. 21(1)(a) of the Workers Compensation Act, but the review officer declined to impose a penalty. The appellant challenges the correctness of the judicial review and the reasonableness and fairness of the Review Decision. She contends the review officer (1) did not properly assess the risk of serious injury associated with the employer's inadequate investigation and ought to have imposed a penalty, and (2) endorsed the employer's inadequate and partial investigation, demonstrating bias and breaching procedural fairness.*

*Held: Appeal dismissed. The decision of the review officer was reasonable and fair.*

**Reasons for Judgment of the Honourable Madam Justice Fisher:**

**The Facts**

[1] In 2020, Dexterra Group employed the appellant, Corinne Pereira, as a guest service agent and front desk clerk at a lodge in Kitimat, British Columbia.

[2] In June 2020, Ms. Pereira's supervisor informed her that a complaint had been made about her behaviour in the workplace, alleging a lack of respect towards her co-workers. Dexterra issued a verbal warning to Ms. Pereira for violations of its code of conduct without telling her who made the complaint or speaking to her about her version of the events.

[3] Ms. Pereira alleged that the complaint was false. She believed she was the victim of bullying and harassment from certain malicious co-workers. She filed a grievance through her union. She also made a complaint under Dexterra's Respectful Workplace Policy, alleging she was a victim of workplace bullying in the form of "mobbing". She then took a medical leave due to anxiety from the conflict in the workplace.

[4] On June 30, 2020, Ms. Pereira made a complaint to the respondent, the Workers' Compensation Board, also known as WorkSafeBC (the Board), about how Dexterra addressed her complaint of workplace harassment and bullying (the 2020 mobbing complaint). She alleged Dexterra had failed to provide a safe workplace and named the co-workers she believed to be behind the mobbing.

[5] Meanwhile, the union settled Ms. Pereira's grievance on terms that did not satisfy her as there was no determination that she had been the victim of false allegations. Despite this, on September 20, 2020, Ms. Pereira advised Dexterra she wanted to return to work, but on September 23, 2020, Dexterra terminated her employment.

[6] The 2020 mobbing complaint proceeded slowly before the Board. On January 24, 2022, an occupational safety officer found Dexterra's response compliant with the Board's requirements. On May 4, 2022, following an internal review, a review officer confirmed the decision. However, Ms. Pereira was successful in a judicial review, which found the review officer's decision unreasonable for failing to conduct a full investigation into the 2020 mobbing complaint, and the matter was remitted to the Board for reconsideration:

*Pereira v. British Columbia (Workers' Compensation Board)*, 2022 BCSC 1654, aff'd 2023 BCCA 195.

[7] On December 15, 2022, in its reconsideration of the matter, the review officer found Dexterra's investigation into the 2020 mobbing complaint did not meet the applicable requirements and referred the matter back to the Board. On January 23, 2023, the Board issued an order that Dexterra had violated s. 21(1)(a) of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 [WCA] by inadequately investigating the 2020 mobbing complaint, thereby failing to ensure the health and safety of its workers. It ordered the company to conduct a new investigation of the 2020 mobbing complaint (the 2020 mobbing violation order), which it did in February and March 2023.

[8] On July 26, 2023, the Board found Dexterra's 2023 investigation into the 2020 mobbing complaint sufficient to comply with the requirements. No penalty was issued in respect of the 2020 mobbing violation order.

[9] The Board also investigated Dexterra's response to the 2020 complaint made by Ms. Pereira's co-workers about her conduct and found it non-compliant. It issued orders under ss. 21(1)(a) and 21(2)(e) of the *WCA* related to deficiencies in the investigation and inadequacies in Dexterra's bullying and harassment policies and procedures (the 2020 co-workers' violation orders). No penalty was issued in respect of these violation orders either.

[10] On December 4, 2023, another internal review confirmed the 2020 mobbing violation order and the 2020 co-workers' violation orders (the Review Decision). On December 21, 2023, a reconsideration request was denied by the Board's chief review officer, who found the grounds for such a reconsideration were not met (the Reconsideration Decision). Ms. Pereira's subsequent application for judicial review was dismissed. Hence, this appeal.

### **Legislative framework**

[11] The Board's mandate under the *WCA* includes the regulation of occupational health and safety (OHS) standards in the workplace. Section 21(1) requires employers to ensure the health and safety of their workers and comply with OHS provisions, regulations and applicable orders. Relevant to this case, employers are required to establish OHS policies and programs in accordance with the regulations and provide their workers with the information, instruction, training and supervision necessary to comply with s. 21(1) (ss. 21(2)(c) and (e)).

### **Harassment policy**

[12] The Board's harassment policy is set out in the *Prevention Manual (Workers Compensation Board, 2020)* P2-21-2 and P2-22-1 (*Prevention Manual*). Policy P2-21-2 requires employers to "take all reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment" and acknowledges that "[w]orkplace bullying and harassment can lead to injury, illness or death". The policy sets out what the Board considers to be reasonable steps to prevent or minimize workplace bullying and harassment, which include:

- (1) developing a policy that workplace bullying and harassment are not acceptable or tolerated;
- (2) taking steps to prevent or minimize bullying and harassment;
- (3) developing and implementing procedures for workers to report incidents or complaints;

- (4) developing and implementing procedures for employers to deal with incidents or complaints;
- (5) informing workers of the policy and the steps taken to prevent or minimize bullying and harassment; and
- (6) training supervisors and workers on recognizing and responding to bullying and harassment.

**Orders**

[13] The Board and its officers have authority under the *WCA* to make orders necessary to enforce the OHS provisions or the regulations, which include requirements for compliance reports (ss. 84, 85, 88 *WCA*).

[14] Under Board policy, an OHS officer who investigates a complaint about bullying and harassment issues an inspection report that records any breaches of OHS requirements and makes orders, if necessary, requiring an employer to take certain actions (*Prevention Manual P2-84-1 and P2-85-1*).

[15] The Board may also impose administrative penalties where an employer fails to comply with an OHS provision or regulation (s. 94 *WCA*). Higher penalties may be imposed where an employer fails to take sufficient precautions to prevent work-related injuries or illnesses, has not complied with an OHS provision or order, or the workplace or working conditions are unsafe (s. 95 *WCA*).

[16] Under Board policy, penalties (or OHS Citations) imposed under s. 94 are limited to circumstances that are not high risk (*Prevention Manual P2-94-1*). They may be imposed for failure to comply with an order or to provide a compliance report. Higher penalties under s. 95 are imposed for the main purpose of motivating the employer and employers generally to comply with the *WCA* and the regulations (*Prevention Manual P2-95-1*). These administrative penalties must not be imposed where the employer establishes it exercised due diligence by taking all reasonable steps to comply. They must be considered where an employer committed specified

types of violations, which include a violation that resulted in “a high risk of serious injury” or where the employer intentionally committed the violation. Factors that must be considered include the “potential for serious injury, illness or death in the circumstances, based on the available information at the time of the violation” and the likelihood that the penalty will motivate the employer and other employers to comply in the future (*Prevention Manual P2-95-1 A, B*).

[17] Board policy designates certain violations as high risk and sets out the following criteria to determine whether other violations are high risk (*Prevention Manual P2-95-2*):

1. the likelihood of an incident or exposure occurring; and
2. the likely seriousness of any injury or illness that could result if that incident or exposure occurs.

### **Review process**

[18] OHS decisions are subject to an internal review by the Board’s Review Division (s. 268 *WCA*). Review Division decisions that do not impose administrative penalties under s. 95 of the *WCA* may not be appealed to the Workers Compensation Appeal Tribunal, or WCAT (s. 288(2)(b)(i) *WCA*). They are, however, subject to judicial review.

[19] Decisions by the Review Division that are not appealable to WCAT may also be reconsidered by the chief review officer, but only in exceptional circumstances (s. 273(1) *WCA* and the *Review Division Practices and Procedures (Workers Compensation Board)*, 2020).

### **On appeal**

[20] Ms. Pereira raises two main grounds of appeal:

- (1) in declining to impose penalties under s. 95 of the *WCA*, the Board failed to properly assess the risk of serious injury associated with the employer’s failure to adequately investigate the 2020 mobbing complaint; and

(2) the Board effectively endorsed the employer's inadequate and partial investigation of the 2020 mobbing complaint thereby breaching procedural fairness and demonstrating bias.

[21] She challenges the Review Decision on these main points, but also takes issue with the findings on intentionality as it relates to the basis on which the review officer declined to impose penalties. She seeks as a remedy that the matter be remitted to the Review Division to consider administrative penalties in respect of both the 2020 mobbing violation order and the 2020 co-workers' violation orders.

[22] The Board submits that it properly assessed the risk of serious injury, intentionality and other factors in concluding that administrative penalties were not warranted for the violations in issue. It also submits the review officer conducted an impartial review of Dexterra's procedures for investigating both the 2020 mobbing complaint and the 2020 co-workers' complaint. It says there is no basis for this Court to interfere.

**Standard of review and the decision under review**

[23] There is no dispute that this Court owes no deference to the decision of the judge on judicial review and effectively steps into his shoes to assess the original decision in accordance with the applicable standard of review: *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 at para. 41.

[24] There is also no dispute that the standard of review of the original decision in issue here is reasonableness. However, in respect of matters of procedural fairness, the court does not owe deference to the decision maker, and the standard is whether, in all the circumstances, the decision maker acted fairly: *Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia*, 2022 BCCA 247 at para. 71; *Blanke v. West Vancouver (District)*, 2025 BCCA 90 at para. 86.

[25] While the reasoning of the judge in the judicial review may be instructive, I find it is not so in this case, in part due to the apparent confusion as to which decision was under review—the Review Decision or the Reconsideration Decision. In his reasons, the judge below addressed both decisions in response to Ms. Pereira’s submissions, which to be fair, were much less focused than those made before this Court.

[26] Ms. Pereira’s petition sought judicial review primarily of the Review Decision. The Board’s factum addresses primarily the Reconsideration Decision, but acknowledges that it is open to the court on judicial review to consider both decisions given the issues in dispute. In other words, the decisions will stand or fall together; if the appeal is allowed, the order should remit the matter to the Board for reconsideration by the Review Division.

[27] The Review Decision directly addressed the adequacy of Dexterra’s investigation of both the 2020 mobbing complaint and the 2020 co-workers’ complaint, while the Reconsideration Decision declined to reconsider the matter because the grounds to do so were not satisfied. I will therefore focus my analysis primarily in relation to the Review Decision.

### **1. Unreasonable assessment of risk and other factors**

[28] Ms. Pereira’s primary ground of appeal is that the review officer’s refusal to impose penalties following the 2020 mobbing violation order and the 2020 co-workers’ violation orders was unreasonable because an employer’s failure to properly investigate a bullying and harassment complaint creates a high risk of serious injury to a worker. She also says the review officer’s conclusions on intentionality, and the need for specific and general deterrence, were unreasonable.

#### **The Review Decision**

##### ***The 2020 mobbing violation***

[29] The review officer first assessed Dexterra’s 2023 investigation of the 2020 mobbing complaint. Although Ms. Pereira has complaints about this second

investigation, she made no oral submissions and no clear written argument challenging this aspect of the Review Decision. Therefore, I do not consider this to be in issue in this appeal.

[30] However, this assessment provides some context for the review officer's refusal to order a penalty in addition to the 2020 mobbing violation order. Despite Ms. Pereira's numerous objections as to how that 2023 investigation was handled, the review officer concluded that it met the criteria in the relevant Board policies. She found the investigation was undertaken promptly after the 2020 mobbing violation order and was as thorough as possible given the passage of time and unavailability of several witnesses. She also found the investigation was fair and impartial. The review officer was therefore satisfied that Dexterra had taken reasonable steps to comply with the 2020 mobbing violation order.

[31] More relevant is the review officer's denial of Ms. Pereira's request that a penalty be issued for the 2020 mobbing violation. In doing so, she applied Policies P2-95-1 and P2-95-2 (cited above).

[32] The review officer first considered Ms. Pereira's argument that all violations involving bullying and harassment have the potential to end in serious injury or death. The review officer recognized that the 2020 mobbing complaint was "arguably not investigated at all" in 2020, and Ms. Pereira "may not have been treated fairly" in the investigation process. She acknowledged that Dexterra's failure to adequately investigate the complaint "could have created a risk of psychological injury to the worker", but she did not consider the risk to be high.

[33] The review officer disagreed with the submission that it was necessary to assess the merits of the complaint to determine whether the violation was a high risk. Instead, her focus was on the specific facts of the violation—the employer's response to the worker's complaint—and whether that created a high level of risk. She concluded that the 2020 mobbing violation created a low risk of serious injury or death.

[34] The review officer went on to consider whether Dexterra's conduct was intentional within the meaning of Policy P-2-95-1. She defined "intentional" as "purposeful behaviour done deliberately and consciously, with the full awareness of a violation", a meaning equivalent to "wilful" used in a previous policy. She found the evidence of Dexterra's state of mind insufficient to characterize the 2020 mobbing violation as intentional. She referred to the context of Dexterra having conducted some investigation of the complaints against Ms. Pereira before receiving and investigating the mobbing complaint, and even though both investigations were inadequate, the circumstances of the multiple complaints were complex.

[35] The review officer was unable to conclude that the violation was intentional, but found that Dexterra did not exercise due diligence in investigating the 2020 mobbing complaint.

[36] Although the review officer found no basis for the Board to consider a penalty, she went on to explain that if there were a basis to do so, she would find a penalty was not warranted. She outlined her reasons in addressing the 2020 co-workers' violation.

***The 2020 co-workers' violation***

[37] Because the 2020 co-workers' violation consisted of repeated violations of s. 21(1)(a) of the *WCA*, the review officer found herself bound to consider a penalty under Policy P2-95-1. In doing so, she noted that penalties are not imposed automatically where there is a violation or a repeat violation; rather the policy directs her to consider all relevant factors to determine if a penalty is warranted in a particular case.

[38] The review officer first assessed whether the 2020 co-workers' violations resulted in a high risk of serious injury. The underlying factual basis for this violation was threefold: (1) Dexterra did not interview Ms. Pereira or give her an opportunity to respond to the co-workers' complaints about her; (2) its harassment policies and procedures were not adequate; and (3) it failed to train its workers on adequate bullying and harassment policies and procedure. The review officer found these

were violations with a low risk of serious injury or death, in essence because Dexterra was dealing with a complex situation where it was required to take care of the interests of all the workers involved and the inadequacies identified in the policies and procedures did not make the violations a high risk.

[39] The review officer then addressed other relevant factors. She found that Dexterra failed to establish that it exercised due diligence to prevent the violations. While technically, these were repeated violations, she found it appropriate to consider them as a single failure since they arose out of the same incident and occurred close in time. Finally, she did not find that the violations required a penalty to motivate Dexterra or other employers to comply going forward:

While I recognize that the employer's violations were serious from the worker's perspective, I do not consider the gaps in the employer's procedures and their failure to investigate these multiple complaints with sufficient thoroughness as serious. Rather, the employer was faced with a very complicated situation and did not handle it with due diligence. This resulted in the Board issuing the orders under section 21(1)(a) of the *Act*. However, I do not consider that the violations before me warrant enforcement action beyond the orders that have been issued.

[40] She therefore concluded that a penalty was not required and the orders under s. 21(1)(a) were the appropriate enforcement action.

### **Analysis**

[41] As determined in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, a reasonableness review starts from a posture of judicial restraint and focuses on the decision and the justification offered for it: *Vavilov* at paras. 13–15. Read holistically and contextually, a reasonable decision is one that makes sense in light of the law and the facts. A decision is unreasonable if it is internally incoherent or not justified given the relevant legal and factual constraints. Internally incoherent reasons are those where the overarching logic is not traceable based on the evidence before the decision-maker, or where there are fatal flaws in the logic: *Vavilov* at paras. 94, 96–97 and 101–103.

***Risk of serious injury***

[42] Ms. Pereira takes issue with the review officer's reasoning about the risk of serious injury, more specifically this passage:

High risk violations generally involve the risk of immediate, serious physical injury or death, such as working 10 feet above ground without an effective fall protection system. In this case, I acknowledge that the failure to adequately investigate the complaints could have created a risk of psychological injury to the worker, but I do not see it as high. One would expect that the worker might feel resentment and anger regarding the employer's investigation, particularly as she considered that the complaints were unjustified and she had been mobbed. However, this does not make the violation high risk.

[Emphasis added.]

[43] Ms. Pereira says it makes no sense to treat psychological injury the same as physical injury, and because the 2020 mobbing violation was "not investigating" her complaint, the safety risk was the bullying itself, and the improper handling of that complaint caused additional harm to her. She relies on *Pickering v. Workers' Compensation Board*, 2025 BCSC 376 to support this submission.

[44] Ms. Pereira also takes issue with the Board's submission that the approach taken by the review officer simply meant that Dexterra's investigation into the 2020 mobbing complaint "could not prevent [that complaint] from happening". She says the Board is required to evaluate the risk of injury and not merely whether the employer could have prevented an incident. She interprets the Board's reasoning to say that investigations are not preventative and therefore employers should not be fined if the incident has already occurred, asserting that this is illogical because it assumes the risk ends with the initial incident. She submits this reasoning is not internally coherent, rational and logical and does not meet the standard of reasonableness as defined in *Vavilov*.

[45] The Board submits Ms. Pereira has misinterpreted the Review Decision. It agrees that an employer can cause harm by the way it addresses bullying and harassment, but points out that the Board's OHS authority is limited to ensuring that employers meet the requirements in the policies. In assessing risk for the purpose of considering penalties, the Board says its approach appropriately focuses on the

specific actions of the employer (here the failure to adequately investigate the 2020 mobbing complaint) and how that failure can be prevented going forward. This, it submits, does not suggest that bullying and harassment do not pose a risk to health and safety. Nor does it suggest that good practices in responding to these complaints cannot help to prevent future incidents.

[46] Policy P2-95-2, on assessing high risk violations, focuses on physical injury, but it is not restricted to physical injury. I accept that a failure to properly investigate a bullying and harassment complaint could result in a high risk of serious injury to a worker, especially when the allegations involve very serious conduct. I also accept that such a failure to investigate can cause additional harm to a worker beyond the underlying conduct.<sup>1</sup>

[47] I do not accept Ms. Pereira's submission that this kind of violation will, in all cases, result in a high risk, or that the review officer's reasoning was incoherent, irrational or illogical. While the review officer may have chosen her words more carefully, a reasonableness review is not a "line-by-line treasure hunt for error": *Vavilov* at para. 102.

[48] The review officer assessed risk in accordance with Board policy in the context of her role to do so in the circumstances of the case, not at large, as suggested by Ms. Pereira. Those circumstances included the entire context of the complaints and cross-complaints, Dexterra's obligations to protect all its workers, the fact that a new investigation into the 2020 mobbing complaint was ordered, carried out and determined to have been compliant, and, ultimately, the finding that the violation orders already imposed for the 2020 mobbing complaint and the 2020 co-workers' complaint constituted sufficient enforcement action. I do not interpret the reasons to suggest that the Board considered only the risk of harm caused by the

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<sup>1</sup> *Pickering* is of limited assistance here. It involved the Board's handling of mental disorder claims and an argument that certain provisions of *WCA* infringed the claimant's rights under s. 15 of the *Charter of Rights and Freedoms*. The passages Ms. Pereira relies on are statements from a lawyer who provided expert evidence about a "labour relations exclusion" that applied to chronic mental disorders, but not physical injuries. In that context, the court accepted the lawyer's evidence that employers can risk causing additional harm by improperly handling bullying and harassment complaints. This proposition is undisputed.

inadequate investigation. To do so takes the entire context of the bullying and harassment complaints out of the equation.

[49] In my view, the review officer reasonably assessed the risk of serious harm in the context of the facts before her and the policy she was required to apply.

***Intentional violations***

[50] Ms. Pereira also challenges the review officer's conclusion that the 2020 mobbing violation was not intentional, particularly as set out in this passage:

... I acknowledge that the worker requested that the employer investigate her complaint on multiple occasions. However, a worker does not direct the extent of an employer's investigation, and while I have found that the employer was negligent in this regard, I am not satisfied that the violation was intentional.

[51] Ms. Pereira submits this reasoning dismissed substantive evidence demonstrating Dexterra's deliberate decision to ignore its obligations and instead speculated about negligence without any evidentiary basis. She says her requests to Dexterra to investigate were not an attempt to direct the investigation, but simply to hold Dexterra accountable. She asserts that the review officer's approach on this issue "effectively excused Dexterra's blatant disregard for their legal obligations".

[52] The Board submits it was open to the review officer to find Dexterra's 2020 mobbing violation either intentional or negligent. In any event, it says a finding of intentionality would have required the officer to consider a penalty, which she did, and therefore this issue has no bearing on the outcome.

[53] In my view, the review officer's assessment of intentionality was reasonable. I do not agree with Ms. Pereira that the finding of negligence was speculative. I agree with the Board that this was a finding open to the review officer based on the record before her.

***Consideration of penalties***

[54] Ms. Pereira's first ground of appeal ultimately rests on the review officer's consideration of penalties under Policies P2-95-1 and P2-95-2.

[55] As the review officer pointed out, penalties are not imposed automatically. Policy P2-95-1 gives officers the discretion to impose penalties for the purpose of motivating the employer receiving the penalty and other employers to comply with the *WCA* and the *OHS* regulations—in other words, to address specific and general deterrence. The Policy directs officers to consider all relevant circumstances to determine if a penalty is warranted in a particular case. These circumstances must include the potential for serious injury, illness or death, and the likelihood that the penalty will motivate the employer and other employers to comply in the future. In assessing the latter, officers are to take into account:

- (a) the extent to which the employer was or should have been aware of the hazard,
- (b) the extent to which the employer was or should have been aware that the *Act* or *OHSR* were being violated,
- (c) the compliance history of the employer,
- (d) the effectiveness of the employer's overall approach to managing health and safety, and
- (e) whether other enforcement tools would be more appropriate ...

[56] The review officer assessed the evidence in light of the policy as follows:

In this case, I have already found that the potential for serious injury or death was low at the time of the violations.

The low potential for serious injury or death weighs against the need for a penalty.

With regard to the likelihood that the penalty will motivate the employer and other employers to comply going forward, I note that the December 15, 2022 violation was with respect to the worker's mobbing complaint and the first July 26, 2023 violation addressed the complaints against the worker. The gaps in the employer's policies and procedures were brought to light when the Board officer reviewed them during the follow up to the investigation of the mobbing complaint. All of the violations resulted out of the same conflicts at work that occurred in May and June 2020 involving the worker and a number of her coworkers. The mobbing complaint was the worker's response to the complaints against her, as she considered that she had been "mobbed" by the complainants. Both July 26, 2023 orders highlighted the fact that the employer did not interview the worker regarding these complaints, and therefore the investigations were not reasonably adequate.

As such, while these are technically repeated violations, they both arise out of the same incident and occurred close together in time. Repeated violations ordinarily occur separately from each other, and may lead to the inference that the employer did not take sufficient steps to prevent the violation from

happening again. In this case, I find it more appropriate to look upon these orders as representing a single failure which occurred in the summer of 2020. I also note that the employer's overall occupational health and safety compliance history is reasonably good.

Another relevant circumstance is the extent of the violation. I recognize that the worker considers that the employer should be held criminally liable for its failure to thoroughly investigate these circumstances. However, I note that the employer had a bullying and harassment policy in place (the Respectful Workplace Policy) and had a process for workers to report their concerns. The employer received a number of complaints in a short period of time, pointing to some potential violations of the Respectful Workplace Policy. These complaints were dealt with informally at Steps 2 and 3 of the employer's escalation procedure. Managers and HR representatives were involved, and the employer's policies did not explain in detail how these informal investigations were to be conducted.

[57] These reasons show that the review officer applied Board policy to the circumstances and clearly explain why she exercised her discretion not to impose penalties on Dexterra for either the 2020 mobbing violation or the 2020 co-workers' violations. In my opinion, this decision and the reasoning behind it meet the reasonableness standard.

## **2. Endorsing an inadequate and partial investigation**

[58] Ms. Pereira's second ground of appeal asserts that the Board endorsed Dexterra's inadequate investigation by accepting speculative findings that the 2020 co-workers' complaint was substantiated. This, she says, breached procedural fairness, shows bias by the Board, and effectively supports the notion of discipline without investigation.

[59] It is well known that the rules of natural justice and procedural fairness include the right to an impartial decision maker. The test for establishing a reasonable apprehension of bias was described in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 at 394:

...“what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly”.

[60] And as this Court stated in *A.T. v. British Columbia (Mental Health Review Board)*, 2023 BCCA 283, there is a high threshold for a finding of bias:

[91] ... Suspicion is insufficient to support an allegation of bias. The presumption of impartiality may only be rebutted by “substantial evidence” to the contrary...

[61] Ms. Pereira refers to passages from the Review Decision that refer to Dexterra accepting the co-workers’ version of events and finding “some merit” to their complaint:

In this case, the employer appeared to accept the complainants’ version of events and did not interview the worker about the complaints before issuing discipline, in the form of a verbal warning to the worker.

...

While their investigation was not sufficiently thorough, they did conclude that there was some merit in the complaints and gave the worker a verbal warning... While the employer did not conduct a separate investigation into the mobbing complaint, the employer already had some information from the complainants and may not have considered it necessary or appropriate to investigate further at the time.

...

In this case, the employer appeared to accept the complainants’ version of events and did not interview the worker about the complaints before disciplining the worker with a verbal warning. This was not a situation in which the employer failed to conduct any investigation, but rather they determined that the complaints against the worker were substantiated and took disciplinary action against the worker.

[62] The Board submits these statements do not endorse the employer, but simply describe what it did and why. It says the first passage explains why Dexterra failed to interview Ms. Pereira before accepting the 2020 co-workers’ complaint, the second explains why the review officer did not find Dexterra’s failure to properly investigate to be intentional, and the third, made in considering the level of risk, acknowledges that Dexterra took some action, but is not a finding that this was sufficient, nor does it exonerate its breaches of policy.

[63] I agree with the Board’s submission. These passages must be read in the context of the issues being considered. As I read the Review Decision, the officer was assessing what Dexterra did or failed to do in addressing the 2020 mobbing

complaint. She was not making findings of fact on the merits of the 2020 co-workers' complaints, nor was she endorsing Dexterra's apparent acceptance of those complaints. The reasons make it clear that the Board's focus throughout was on ensuring employers have appropriate systems and processes for handling and investigating bullying and harassment complaints, not on assessing the merits of individual complaints.

[64] In my view, the review officer acted fairly.

**The Reconsideration Decision**

[65] It is not necessary to address the Reconsideration Decision in any detail because my conclusions above are dispositive.

[66] The chief review officer's authority to reconsider a Review Division decision is circumscribed by the *WCA* and the Review Division Practices and Procedures. Under s. 273(1) of the *WCA*, the chief review officer may direct a review officer to reconsider a decision in either of the following circumstances:

- (a) on the chief review officer's own initiative;
- (b) on application from a party to a completed review of a decision that may not be appealed to the appeal tribunal, if the chief review officer is satisfied that new evidence has become available or been discovered that
  - (i) is substantial and material to the decision, and
  - (ii) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.

[67] The Review Division Practices and Procedures provide three avenues for reconsideration by the chief review officer: (1) the common law, where there has been fraud, an error of law "going to jurisdiction" or a breach of procedural fairness; (2) s. 273 (1)(a) on the chief review officer's own initiative, where it is apparent a Review Division decision contains a clear error of law or policy or where implementing the decision would result in an immediate danger likely to result in serious injury, illness or death; and (3) s. 273(1)(b) on application by a party, on the basis of new evidence that is substantial and material and did not exist at the time of

the review or could not have been discovered with reasonable diligence, and where the Review Division decision may not be appealed to WCAT.

[68] In this case, the chief review officer considered all applicable avenues and concluded that none of the grounds had been met. She found no breach of procedural fairness in the Review Decision, no clear error of law or policy, and no substantial and material new evidence. Given my conclusion that the Review Decision was both reasonable and fair, there is no basis on which to find the Reconsideration Decision unreasonable.

**Conclusion and disposition**

[69] I understand Ms. Pereira's frustration with the process that was undertaken by her former employer, which never concluded with a proper assessment of the merits of any of the complaints. However, this process has been reviewed by the Board several times now and Ms. Pereira has not established that the review officer's refusal to impose penalties on Dexterra for any of the 2020 violations was unreasonable, nor has she established that the review officer was biased in favor of the employer or otherwise breached procedural fairness.

[70] I would therefore dismiss the appeal.

"The Honourable Madam Justice Fisher"

I AGREE:

"The Honourable Mr. Justice Grauer"

I AGREE:

"The Honourable Justice Fleming"