Federal Court Cour fédérale

Date: 20250812

Docket: T-926-20

Citation: 2025 FC 1370

Ottawa, Ontario, August 12, 2025

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

LOUISE BELISLE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

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Overview

[1] Ms. Louise Belisle, the Applicant, seeks judicial review of the Canadian Human Rights Commission's [Commission] decision dated March 25, 2020, in which the Commission adopted the reasons set out in the investigation report [Investigation Report], decided that further inquiry of Ms. Belisle's complaint was not warranted and dismissed her complaint [Decision]. Ms.°Belisle's complaint relates to allegations of discrimination and harassment on the grounds of her disability, sex, race, national or ethnic origin and family status, contrary to section 7 of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*CHRA*], while on a secondment contract at Crown-Indigenous Relations and Northern Affairs Canada (formerly Indigenous and Northern Affairs Canada) [CIRNAC] [Complaint].

[2] Given that Ms. Belisle is a self-represented applicant with cognitive disabilities, various accommodations were provided to assist her in presenting her application for judicial review, both before and during the hearing, as will be more detailed hereinafter.

[3] In summary, Ms. Belisle essentially argues that the investigator assigned to review her Complaint [Investigator] acted in a procedurally unfair manner by failing to consider all of the evidence, including testimony from witnesses and rebuttal evidence she attempted to provide, and by being biased. She also argues the Decision is unreasonable and that the Commission erred in some of its assessment of the evidence.

[4] In support of her application, Ms. Belisle filed her own affidavit, sworn on April 21, 2023 [Affidavit], and appending 42 exhibits. She also filed a supplementary affidavit, sworn on

October 12, 2023 [Supplemental Affidavit], and appending four exhibits. She was not cross-examined.

[5] The Attorney General of Canada [AGC], the Respondent, essentially submits that there is no reviewable error in the Decision and that it was arrived at in a procedurally fair manner. In the AGC's view, the Commission reasonably found that Ms. Belisle's allegations were unsubstantiated by the evidence, and the Investigator reasonably found that there was no realistic evidence of discrimination. Ms. Belisle's submissions amount to an impermissible attempt to seek a reweighing by this Court of her evidence which is not permitted in the context of a judicial review.

[6] For the following reasons, the application for judicial review will be granted and the matter will be returned for redetermination.

[7] In short, while the Court is well aware of (1) the authority of the Commission to screen complaints; (2) the Commission's entitlement to a high degree of deference; and (3) the fact that the Commission is master of its own processes, it is trite law that procedural fairness requires investigation of human rights complaints to be thorough (*Slattery v Canada (Human Rights Commission) (TD)*, 1994 CanLII 3463 (FC), [1994] 2 FC 574 at 598, aff'd (1996), 205 NR 383 (FCA) [*Slattery*]).

[8] In this case, given that the Commission adopted the findings of the Investigation Report, and that this Investigation Report does not provide much information as to what investigative steps the Investigator took, what evidence they obtained or gathered, what evidence they

considered or discarded, and if so for what motives, the Court is of the view that the Investigation Report and the Decision that ensued lack the transparency needed for the Court to be satisfied that the investigative process was thorough and thus fair.

[9] Moreover, while the Court agrees that the Investigator could elect not to interview all of the witnesses put forward by the parties, given the allegations of the Complaint and the fact that Ms. Belisle alleges she did not have access to her emails once her secondment at CIRNAC had been terminated, the Court is concerned with the fact that the Investigator elected not to interview any of the witnesses suggested by the parties. Instead, the Investigator limited their interviews to only Ms. Belisle and the two CIRNAC employees against whom the Complaint was mainly directed, resulting in a "he said/she said" situation.

[10] Lastly, the Court is of the view that refusing to accept the evidence that Ms. Belisle attempted to provide on January 23, 2020, in response to CIRNAC's submissions, when it had accepted, on January 20, 2020, CIRNAC's evidence in response to Ms. Belisle's submissions, was unfair.

[11] That said, the Court is satisfied that there is no evidence of bias on the part of the Commission or the Investigator.

[12] Given the Court's view on the issue of procedural fairness, it is not necessary for the Court to address the question of reasonableness of the Decision.

I. Statement of Law

[13] Before addressing the specific facts of this case, as Ms. Belisle raised numerous concerns during the hearing, including the lack of jurisdiction of the Commission and of the Court itself, as well as the presence of the AGC as a Respondent instead of the Commission, it is important to first outline the legal framework and constraints relevant to this judicial review.

A. *Jurisdiction of the Canadian Human Right Commission*

[14] The Commission is established by subsection 26(1) of the *CHRA*. Pursuant to subsection 41(1), it is responsible for dealing with any complaint filed with it, including Ms. Belisle's Complaint.

[15] The Commission is an administrative body that performs a "screening function" to determine whether a complaint should be referred to the Canadian Human Rights Tribunal [Tribunal] for adjudication (*CHRA*, ss 49-54; *Rosianu v Western Logistics Inc*, 2021 FCA 241 at para 47 [*Rosianu*]). The *CHRA* confers broad discretion upon the Commission in dealing with human rights complaints and provides the Commission with a high degree of latitude in performing its screening function (*CHRA*, ss 40-44).

[16] Making findings of discrimination is the role of the Tribunal, not the Commission or an investigator (*CHRA*, s 53). Rather, the role of the Commission is to apply the *CHRA* to determine whether there is sufficient evidence to justify referring a complaint to the Tribunal for an inquiry (*CHRA*, s 44(3); *Hoang v Canada (Attorney General)*, 2017 FCA 63 at para 27 [*Hoang*]).

[17] The *CHRA* empowers the Commission to appoint an investigator to investigate and prepare a report. The report produced by an investigator is not the Commission's decision. Further, the Commission is not bound by an investigator's findings or recommendations (*CHRA*, s 44(3); *Canada (Attorney General) v Ennis*, 2021 FCA 95 at paras 59-61).

[18] However, in decisions made pursuant to section 44 of the *CHRA*, when the Commission adopts the investigator's recommendations and provides no reasons or only brief reasons, like in the present matter, the Investigation Report is deemed part of the Commission's reasons (*Rosianu* at para 71 citing *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 37 [*Sketchley*]).

[19] Here, in deciding not to refer the Complaint to the Tribunal, the Commission exercised its discretion under paragraph 44(3)(b)(i) of the *CHRA*. The Commission is entitled to considerable deference from a reviewing Court. On judicial review, Courts must not intervene lightly in the Commission's decisions (*Canada (Attorney General) v Davis*, 2010 FCA 134 at para 5; *Slattery* at 600).

[20] However, the Commission's decisions dismissing complaints should be more closely scrutinized than decisions referring complaints to the Tribunal since they are final decisions that preclude applicants from any statutory remedy (*Gravelle v Canada (Attorney General)*, 2006 FC 251 at para 39 [*Gravelle*], citing *Larsh v Canada (Attorney General)*, 1999 CanLII 7957 (FC) at para 36 [*Larsh*]; *Sketchley* at paras 79-80).

B. *Jurisdiction of the Federal Court*

[21] The jurisdiction of the Federal Court is statutory (*Berenguer v Sata Internacional - Azores Airlines, SA*, 2023 FCA 176 at para 34). In the present matter, the statutory basis of the Court is the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], which, at section 18, provides for the exclusive original jurisdiction of this Court in matters concerning a federal board, commission or other tribunal:

Extraordinary remedies, federal tribunals	**Recours extraordinaires : offices fédéraux**
18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction	**18 (1)** Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :
(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and	**a)** décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;
(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.	**b)** connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

[22] Subsection 2(1) of the *Federal Courts Act* defines a federal board, commission or other tribunal (*office fédéral*) as:

… any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made under a prerogative of the Crown, other than the Tax Court of Canada or any of its judges or associate judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*;	Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges et juges adjoints, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la *Loi constitutionnelle de 1867*.

[23] In 1979, the Federal Court of Appeal held that the Commission fell within the definition of a federal board, commission or other tribunal, such that this Court had the jurisdiction conferred by section 18 of the *Federal Courts Act* (*Canada (Attorney-General) v Canada (Canadian Human Rights Commission)*, 1979 CanLII 4118 (FCA) at 144).

[24] Since then, this Court has exercised its jurisdiction in numerous applications for judicial review relating to decisions made by the Commission and the Tribunal (e.g., *McKenzie v Canadian Human Rights Commission*, 1985 CanLII 5268 (FC); *Egan v Canada (Attorney General)*, 2008 FC 649 [*Egan*]; *Letnes v Canada (Attorney General)*, 2020 FC 636; *Canada (Attorney General) v Canada (Human Rights Commission)*, 2025 FC 1137 [*HRC*]).

C. *The AGC as the Respondent*

[25] At the hearing, Ms. Belisle submitted that the AGC had no jurisdiction and should not be a respondent in this case. She argued that the Commission would be the appropriate respondent, adding that the Commission should be held accountable for its Decision.

[26] As the Court mentioned during the hearing (the Order dismissing Ms. Belisle's request to change the respondent is reproduced in its entirety in the Annex of this decision), Ms. Belisle initially filed her Notice of Application for Judicial Review on August 13, 2020, against both the AGC and the Commission. However, on September 17, 2020, the Commission filed a motion requesting an order to be removed as one of the respondents on the record, per Rule 303 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]. On October 9, 2020, the Court granted the Commission's motion and, in its Order, stated that Ms. Belisle did not oppose the Commission's motion. This Order was not appealed. Accordingly, the AGC has been the sole respondent in this case since October 2020.

[27] Moreover, paragraph 303(1)(a) of the *Federal Courts Rule*, which is binding on this Court and the parties, specifically provides that, subject to subsection (2), "an applicant must name as respondent every person directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought" [emphasis added.] In turn, subsection 303(2) provides that where no other person can be named in an application for judicial review under subsection (1), the applicant must name the AGC as a respondent.

D. *Accommodations of Self-Represented Applicants and Applicants with Disabilities*

[28] From the onset, the Court highlights that the law applies to everyone, even self-represented applicants. Ms. Belisle is thus not exempted from complying with the applicable law, including the *Federal Courts Act* and the *Federal Courts Rules* (*Davis v Canada (Royal Canadian Mounted Police)*, 2024 FCA 115 at para 53 [*Davis*]).

[29] That said, Ms. Belisle indicated in her Notice of Application for Judicial Review that she was a self-represented litigant with a cognitive disability. In her Memorandum of Fact and Law, she also made several submissions on the difficulties persons with cognitive limitations face when being involved in processes such as a discrimination complaint and a judicial review. Further, her affidavit outlines some of the difficulties she met through her Complaint process.

[30] The Federal Court of Appeal has held that "…if a person with a disability is treated in exactly the same way as others, there may still be discrimination. Indeed, identical treatment may in some cases result in serious inequality…. It is therefore sometimes necessary to treat people with disabilities differently than others, in order to achieve substantive equality." (*Haynes v Canada (Attorney General)*, 2023 FCA 158 at para 21 [*Haynes*]) In these circumstances, this Court was required to accommodate her needs (*Davis* at para 32; *Haynes* at paras 18-32) and did so.

[31] Moreover, in *Pintea v Johns*, 2017 SCC 23 at paragraph 4, the Supreme Court of Canada endorsed the *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) (online) established by the Canadian Judicial Council [*Statement*]. The preamble of the *Statement* acknowledges that "the system of criminal and civil justice in Canada is predicated on the expectation of equal access to justice, including procedural justice, and equal treatment under the law for all persons" and that "the achievement of these expectations depends on awareness and understanding of both procedural and substantive law". The preamble also notes that self-represented litigants both face and present special challenges with respect to the court system.

[32] Under the first statement – *Promoting rights of access* –, judges have a responsibility to promote opportunities for all persons to understand and meaningfully present their case, regardless of representation. As such, four principles are established, including the following two, relevant to the case at hand:

> 1. Access to justice for self-represented persons requires all aspects of the court process to be, as much as possible, open, transparent, clearly defined, simple, convenient and accommodating.
>
> 2. The court process should, to the extent possible, be supplemented by processes that enhance accessibility, informality, and timeliness of case resolution. These processes may include case management, alternative dispute resolution (ADR) procedures, and informal settlement conferences presided over by a judge.

[33] Under the second statement – *Promoting equal justice* –, judges have a responsibility to promote access to the justice system for all persons on an equal basis, regardless of representation. Accordingly, four principles relevant to the case at hand are established:

> 1. Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.
>
> 2. Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.
>
> 3. Where appropriate, a judge should consider engaging in such case management activities as are required to protect the rights and interests of self-represented persons. Such case management should begin as early in the court process as possible.
>
> 4. When one or both parties are proceeding without representation, non-prejudicial and engaged case and courtroom management may be needed to protect the litigants' equal right to be heard. Depending on the circumstances and nature of the case, the presiding judge may:

> (a) explain the process;
>
> (b) inquire whether both parties understand the process and the procedure;
>
> (c) make referrals to agencies able to assist the litigant in the preparation of the case;
>
> (d) provide information about the law and evidentiary requirements;
>
> (e) modify the traditional order of taking evidence; and
>
> (f) question witnesses.

[34] With respect to the first of these four principles, the Canadian Judicial Council comments that "[i]t is consistent with the requirements of judicial neutrality and impartiality for a judge to engage in such affirmative and non-prejudicial steps as described in Principles 3 and 4. A careful explanation of the purpose of this type of management will minimize any risk of a perception of biased behaviour."

[35] As noted by the Federal Court of Appeal, these principles are also reflected in the *Ethical Principles for Judges* (Ottawa: The Canadian Judicial Council, 2021) (*Haynes* at paras 24-26).

[36] Keeping in mind the *Statement* and the *Ethical Principles for Judges*, Rule 55 of the *Federal Courts Rules* as well as the guidance from the Federal Court of Appeal in *Davis* and *Haynes*, this Court thus provided accommodations for Ms. Belisle both prior to and during the hearing. Here are some of the steps taken to ensure that Ms. Belisle was able to fully present her case and receive a fair hearing (*Haynes* at para 33).

(1) Accommodations prior to the hearing

[37] Without listing all the accommodations granted prior to the hearing, the Court notes that since August 2020, there has been numerous extensions granted in favor of Ms. Belisle, to accommodate her needs, and allow her to complete her file. Moreover, a case management judge was appointed in November 2020 to assist the parties, and several case management conferences were held.

[38] For example, the record shows that during case management conferences held on June 24, 2024, July 17, 2024, and September 23, 2024, Ms. Belisle raised certain issues, including confidentiality issues, and that the case management judge, Associate Judge Duchesne (as he was then), provided Ms. Belisle with guidance as to the steps she would need to follow to obtain a confidentiality order. This guidance is further described hereinafter. In the interim, Associate Judge Duchesne ordered that the Applicant's Record be filed as a presumptively confidential document pending further Order of the Court.

[39] Associate Judge Duchesne also waived procedural requirements such as filing three paper copies of her Applicant's Record.

[40] Lastly, although the AGC submitted that the hearing was unlikely to exceed one day, Ms. Belisle was granted a three-day hearing to allow her all the time she needed to present her case.

[41] The Court also wishes to acknowledge the cooperation of the AGC's in assisting Ms. Belisle to prepare for the hearing. The record shows that the AGC (1) consented to numerous extensions sought by Ms. Belisle; (2) proposed to include the entirety of the certified tribunal record [CTR] in his Respondent's Record so that Ms. Belisle could refer to those documents at the hearing of her application even though the documents were not included in her own Applicant's Record; and (3) communicated with Ms. Belisle in an attempt to resolve the confidentiality issue prior to the hearing. Although the confidentiality issue was ultimately not resolved, the AGC's cooperation is of note.

(2) Accommodations during the hearing

[42] Once again, without listing all the accommodations put in place, the Court notes that Ms. Belisle was allowed to be accompanied by a friend at the counsel table during the hearing to assist her with some of her submissions and the finding of documents. She was also granted several breaks to confer with her friend and to rest, whenever she needed. She was allowed to remain seated at counsel table during her submissions.

[43] At the start of the hearing, Ms. Belisle insisted to be allowed to replead her Notice of Motion for a continuance, filed the day before the hearing, without an affidavit nor a motion record, and which had already been denied by the judge on duty, Justice Grammond. While the Court informed her that a decision had already been made and it would not sit in appeal of Justice Grammond's decision, she insisted that, as a self-represented person with a cognitive disability, it would be procedurally unfair not to provide her with an opportunity to properly

explain her reasons for the requested continuance. Under reserve, the Court allowed Ms. Belisle to make her representations. However, in the end, given that these representations were not supported by any evidence, the Court denied her request for continuance and read the Order during the hearing. This Order (with a few minor changes) can be found in Appendix A.

[44] Subsequently, the Court explained the hearing process and the applicable legal framework of a judicial review to Ms. Belisle in greater detail. The Court asked Ms. Belisle to advise if any of its questions needed clarification, or to ask to repeat or re-phrase any questions that she did not understand. Ms. Belisle was also permitted to interrupt the AGC's submissions if counsel spoke too fast or if she did not understand.

[45] Moreover, notwithstanding the law on impermissible new evidence and new arguments, which was explained to her during the hearing, the Court allowed Ms. Belisle to present all her arguments, under reserve of the Court's decision to accept them or not. To facilitate her submissions on the merits of her application, the Court advised Ms. Belisle to review her Applicant's Record page-by-page, which Ms. Belisle accepted, and allowed her to read some of her written submissions.

[46] As it will be more fully detailed in the Confidentiality Order section of this decision, although Ms. Belisle had not prepared the required materials for her confidentiality motion and despite the Court's guidance during the case management conferences of June, July and September 2024, the Court also allowed Ms. Belisle to prepare a last-minute motion record,

under reserve. The Court also allowed the AGC to provide email exchanges they had had with Ms. Belisle regarding this issue.

[47] In the end, Ms. Belisle's representations occupied the better part of the three-day hearing, during which she raised several arguments not set out it her Memorandum of Fact and Law, including challenges to the jurisdiction of both the Commission and this Court. Notwithstanding these issues, the Court allowed Ms. Belisle to present her submissions entirely.

E. *Procedural Fairness in Complaint Investigations under the CHRA*

[48] It is trite law that procedural fairness requires the investigative process of human rights complaints to be neutral and thorough (*Wong v Canada (Public Works and Government Services)*, 2018 FCA 101 at paras 14, 20 [*Wong*]; *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at para 74 [*Bergeron*]; *Richards v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 341 at paras 9 [*Richards*]; *Sketchley* at paras 115-125; *Tahmourpour v Canada (Solicitor General)*, 2005 FCA 113 at para 8 [*Tahmourpour*]; *Slattery* at 598; *Harvey v VIA Rail Canada Inc*, 2019 FC 569 at para 20 [*Harvey*]; *Egan* at para 5).

[49] Notably, the Federal Court of Appeal confirms in *Richards* that an investigation is not thorough if an investigator fails to investigate obviously crucial evidence or to address crucial submissions by one of the parties:

> [7] In making a decision pursuant to subsection 44(3) of the Act, the function of the Commission is analogous to that of a judge at a preliminary inquiry in the sense that the Commission does not adjudicate a complaint, but determines on the basis of the

investigator's report, and any submissions by the complainant and other parties, whether there is a reasonable basis in the evidence for proceeding to an inquiry (*Cooper v. Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC), [1996] 3 S.C.R. 854, at paragraph 53; *Syndicat des employés de production du Québec et de L'Acadie v. Canada (Canadian Human Rights Commission)*, 1989 CanLII 44 (SCC), [1989] 2 S.C.R. 879, at page 899).

[8] The work of the investigator is treated as part of the work of the Commission. If the Commission accepts the recommendation of an investigator without giving separate reasons, as in this case, it is presumed to have adopted the reasons of the investigator (*Sketchley v. Canada (Attorney General)*, 2005 FCA 404 (CanLII), [2006] 3 F.C.R. 392 at paragraph 37; *Syndicat des employés de production du Québec et de l'Acadie,* cited above, at pages 902 and 903).

[9] Generally, the Commission is entitled to deference in relation to the scope and depth of the investigation upon which it relies in deciding whether a complaint should be dismissed or referred to the Tribunal for an inquiry. However, as a matter of procedural fairness, a decision of the Commission may be quashed if it is based on an investigation that is not neutral or not thorough. (*Slattery v. Canada (Human Rights Commission) (T.D.)*, 1994 CanLII 3463 (FC), [1994] 2 F.C. 574 at paragraph 56, affirmed (1996), 205 N.R. 383 (F.C.A.)).

…

[11] The cases dealing with the thoroughness of an investigation have established that an investigation is not thorough if the investigator fails to investigate obviously crucial evidence or to address crucial submissions by one of the parties (see, for example, *Sketchley* (cited above), *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113, and *Public Service Alliance of Canada v. Canada (Treasury Board*) (F.C.), 2005 FC 1297 (CanLII), [2006] 3 F.C.R. 283, at paragraph 42). It is an open question whether there are any other grounds upon which the thoroughness of an investigation may be challenged.

[Emphasis added.]

[50] As recently noted by Justice Brown, "obviously crucial" witnesses are "witnesses who were directly involved with an applicant's work and related experiences" (*HRC* at para 124 citing *Harvey* at para 39).

[51] That said, in *Bergeron*, Justice Stratas nuanced the criterion of thoroughness:

> [74] … While an investigation must be thorough, an investigator need not pursue every last conceivable angle:
>
> • The degree of thoroughness required of an investigation depends on the circumstances of each case. In some cases, one or more facts may resolve the issue under investigation to the investigator's satisfaction, rendering continued investigation unnecessary.
>
> • Perhaps related to the last point, thoroughness must also be qualified by the need for a workable and administratively effective system for reviewing complaints under the Act: *Slattery* (T.D.), above at paragraph 55, aff'd C.A., above; *Shaw v. Royal Canadian Mounted Police*, 2013 FC 711, 435 F.T.R. 176 at paragraph 31. In some cases, at some point, the utility of further investigation is nil.
>
> • Only "fundamental issues" need be investigated so that complaints can receive the "broad grounds" of the case against them. Put another way, a deficient investigation warranting relief is one where there has been an "unreasonable omission" in the investigation or the investigation is "clearly deficient": *Slattery* (T.D.), above at paragraphs 56 and 67-69, aff'd C.A., above. For example, a failure to investigate obviously crucial evidence where an omission has been made that cannot be compensated for by making further submissions will result in a finding of lack of procedural fairness: *Sketchley*, above.
>
> • In a section 41 matter, the extent of investigation is limited. An investigator is not to weigh evidence. Rather, the investigator's task is to uncover the facts relevant to the section 41 matter. See generally *McIlvenna v. Bank of Nova Scotia*, 2014 FCA 203, 466 N.R. 195.

[52] At paragraph 76 of *Bergeron*, Justice Stratas further stressed that an investigator is not required to refer to everything and that "[t]he investigator's report need not be an encyclopaedia of everything submitted".

[53] As for the neutrality condition, *Slattery* states that a reviewable error occurs when the Commission "simply adopts an investigator's conclusions without giving reasons, and those conclusions were made in a manner which may be characterized as biased". This would include cases where the Commission pre-determines an issue and invites the complainant to proceed on this basis, or where several relevant facts are omitted from the investigation report (*Slattery* at 598-599).

F. *Allegation of Partiality*

[54] The applicable test for impartiality is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude" (*R c Chouhan*, 2021 SCC 26 at para 195 citing *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC) at 394).

[55] A presumption of integrity and impartiality applies to decision-makers. This presumption is not easily rebuttable, and mere suspicion is insufficient (*Li v Canada (Citizenship and Immigration)*, 2022 FC 542 at paras 14-15). As noted by the Supreme Court of Canada in *Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30°:

> [22]°The basic framework for assessing a claim that the judge failed to decide the case independently and impartially may be summarized as follows. The claim is procedural, focussing on

> whether the litigant's right to an impartial and independent trial of the issues has been violated. There is a presumption of judicial integrity and impartiality. It is a high presumption, not easily displaced. The onus is on the person challenging the judgment to rebut the presumption with cogent evidence showing that a reasonable person apprised of all the relevant circumstances would conclude that the judge failed to come to grips with the issues and decide them impartially and independently.
>
> (See also *Samson c Canada (Procureur général)*, 2021 FCA 212 at para 4)

G. *The Law on Impermissible "New" Evidence and "New" Arguments on Judicial Review*

[56] It is well established law that in the context of a judicial review, the Court should normally not examine evidence which was not previously examined by the administrative decision-maker (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14 citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*]; *Tsleil-Waututh Nation c Canada (Procureur général)*, 2017 FCA 128 at para 97–98 [*Tsleil-Waututh*]; *Lapointe v Canada (Attorney General)*, 2024 FC 172 at para 12 [*Lapointe*]).

[57] As stated at paragraph 19 of *Access Copyright*, citing the Federal Court of Appeal in *Gitxsan Treaty Society v Hospital Employees' Union*, 1999 CanLII 7628 (FCA) at pages 144-45: "the essential purpose of judicial review is the review of decisions, not the determination, by trial de novo, of questions that were not adequately canvassed in evidence at the tribunal or trial court."

[58] There are a few exceptions to this rule. New evidence can be received by the Court if it (1)°provides general information and background susceptible to assist the Court to understand

the issues raised by the judicial review; (ii) shows procedural vices or violation of procedural fairness principles; or (iii) shows the complete absence of evidence in front of the decision-maker when they made a particular finding (*Tsleil-Waututh* at paras 97–98; *Access Copyright* at para 20; *Lapointe* at para 12).

[59] Further, an argument is “new” and therefore impermissible on judicial review when a party has failed to present its factual underpinning or legal reasoning to the administrative decision-maker, despite having had adequate notice and a reasonable opportunity to do so. Jurisprudence identifies two main rationales for this prohibition.

[60] First, that respect for the separation of powers and legislative intent demands that courts defer to the tribunal designated by the legislature as the primary decision-maker. This approach ensures that “the tribunal [has] the opportunity to deal with the issue first and to make its views known.” (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 24 [*Alberta Teachers*]) Second, principles of fairness and maintaining the integrity of the record require that parties not be ambushed by new, last-minute arguments, nor should courts be tasked with adjudicating disputes based on incomplete or inadequately developed records (*Alberta Teachers* at para 26).

[61] This prohibition bars parties from raising entirely new legal grounds on judicial review that were never advanced before the administrative decision-maker. The prohibition also applies to attempts to reframe issues by introducing additional factual material. As confirmed by the Federal Court of Appeal in *Access Copyright* at paragraphs 19–20, such efforts offend the principle that judicial review is not a forum for fact-finding on the merits of the case.

[62] This prohibition further applies even when the evidence invoked on judicial review was in the record before the administrative decision-maker. If the Applicant did not clearly link specific portions of the record to a live issue during the administrative proceedings, the decision-maker would not have had the opportunity to assess that evidence properly. A reviewing court may only assess whether the decision-maker was responsive to the central issues and concerns raised by the parties (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 94, 127 [*Vavilov*]; see also *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 74 [*Mason*]).

[63] Further, if the Court considered this evidence and related arguments for the first time on review, it would improperly engage in first-instance fact-finding and evidence-weighing, which are tasks expressly reserved for the administrative decision-makers rather than reviewing courts (*Vavilov* at para 125).

[64] Thus, parties are expected to clearly present their factual basis and legal theories during the administrative process itself. Judicial review is not meant to be an opportunity for parties to supplement or refine arguments after the administrative decision-making process has concluded.

H. *Applicable Standard of Review*

[65] The Supreme Court of Canada's landmark decision in *Vavilov* established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason* at para 7). The role of the Court is such a context is well

summarised by Justice Gascon in *Choudhry v Canada (Attorney General)*, 2023 FC 1085 [*Choudhry*]:

> [23] … Reasonableness focuses on the decision made by the administrative decision-maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at para 85). The reviewing court must therefore consider whether the "decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).
>
> [24] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention," and seeking to understand the reasoning process followed by the decision-maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).
>
> [25] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for a reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100). When the reasons contain a fundamental gap or an unreasonable chain of analysis, a reviewing court may have grounds to intervene.

[66] Further, when conducting a reasonableness review, the Court must show deference towards administrative decision-makers considering their expertise. The reason for this is clear. Parliament (the legislator) has chosen that administrative decision-makers would be at the front line of decision making. Given their roles, they develop the required expertise and therefore,

except in rare cases, where their decision is found to be unreasonable, this Court should refrain from intervening (*Vavilov* at para 93; *Choudhry* at paras 31, 34).

[67] As such, the question before this Court is not whether the Court might have reached a different conclusion on the evidence submitted by the parties, but whether the Commission's reasons and outcome are reasonable in light of its factual and legal constraints (*Vavilov* at paras 83, 85).

[68] With respect to procedural fairness, although no standard of review is applied, the Court's exercise of review is "best reflected in the correctness standard" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]; see also *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57). The Court must ask whether the process was fair in view of all the circumstances and, as stated by the Federal Court of Appeal: "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond." (*Canadian Pacific Railway* at paras 54, 56).

II. Facts

A. *Events Leading to the Complaint*

[69] Ms. Belisle is a public servant whose substantive position at the time of her Complaint was with the Department of National Defence [DND]. There, it appears that she benefited from accommodations to assist her with her tasks, including the use of a computer and of a specialized software.

[70] On February 16, 2016, she accepted a secondment agreement with CIRNAC, which began on March 9, 2016, and was supposed to end on September 2, 2016 [Secondment]. Her Secondment was however terminated by CIRNAC on May 16, 2016. The end date was later adjusted to June 7, 2016, because CIRNAC owed Ms. Belisle overtime.

[71] Between March 9 and May 2, 2016, Ms. Belisle reported to Ms. Christine Duong and between May 2 and 16, 2016, she reported to Ms. Nathalie Bloskie.

B. *The Complaint*

[72] On July 26, 2017, Ms. Belisle filed the Complaint to the Commission.

[73] Although her Complaint was filed after the one-year delay provided in paragraph 41(1)(e) of the *CHRA*, and while the Commission could have elected to decline to deal with the Complaint, the Commission exercised its discretion and proceeded to investigate the Complaint.

[74] The Commission's Complaint form indicates the following:

> Please explain your situation by answering the following questions in the space provided. You may also choose to answer these questions using a separate document (maximum three (3) pages). If you have any supporting documents, keep them with you. You may be asked for them at a later date during the process.

[75] Ms. Belisle detailed her claims within the three pages limit. She alleged that her managers and others at CIRNAC treated her in an adverse differential manner based on her

disability (cognitive limitations), race (Metis), national or ethnic origin, sex and/or family status, contrary to section 7 of the *CHRA*. Ms. Belisle raised approximately ten incidents, namely:

1. When Ms. Belisle stated she was Metis, Ms. Duong questioned it and stated that she didn't look aboriginal with green eyes and her hair colour;

2. She was asked by supporters of Ms. Duong to prove her family members were aboriginal by showing them her status card;

3. Ms. Duong would not provide her with family accommodations nor with accommodations for her disability by refusing to let her start work at 6:30 AM, by giving her additional time to meet deadlines and by making her work in the afternoon although Ms. Duong knew she was not at her best late in the day and that she had a child with a disability who had medical appointments;

4. Ms. Duong refused to assist her in obtaining her special software to accommodate her limitations even though it had been tested by another government department;

5. Ms. Duong did not resolve the issue of her staff calling Ms. Belisle derogatory names to her face or behind her back, with some people even screaming and humiliating her in front of others;

6. When Ms. Belisle started reporting to Ms. Bloskie, the latter attempted to say that if Ms. Belisle did not advise of her need for accommodations beforehand, then she wasn't entitled to them;

7. Her Secondment was ended prematurely because of her disability, limitation and the fact that she had asserted herself;

8. When she was let go of her Secondment, Ms. Bloskie packed up Ms. Belisle's personal items, her computer was immediately disabled and she was unable to send herself her Excel spreadsheet of overtime, she was escorted out the door and security was called to walk her out;

9. While Ms. Duong advised her to keep track of her overtime in an Excel spreadsheet, Ms. Belisle was not fully paid for her overtime; and

10. Even though the Secondment contract provided for a notice of 30 days of termination or modification, her Secondment was terminated abruptly for discriminatory reasons.

[76] In short, Ms. Belisle alleged she was harassed and discriminated daily in a toxic work environment created by Ms. Duong and upheld by Ms. Bloskie. Moreover, Ms. Belisle was of the view that both managers failed to accommodate her needs.

[77] While she indicated that her work computer was taken at the time of the termination of the Secondment, Ms. Belisle mentioned in her Complaint form that some of the issues she raised could be supported by emails and by witnesses.

C. *The Investigator's Process and the Investigation Report*

[78] The CTR is silent as to what exactly occurred between July 2017 and July 2019, except to say that an investigator was appointed to investigate Ms. Belisle's Complaint. The Investigation Report, dated July 24, 2019, briefly describes the investigation process as follows:

> 14. The investigator reviewed the parties' positions and all documentary evidence submitted during the course of the investigation.
>
> 15. The officer also interviewed the following:
>
> - Ms. Louise Belisle, the complainant;
> - Ms. Christine Duong, Director; and
> - Ms. Nathalie Bloskie, A/Well-being Manager.
>
> 16. Both parties suggested more witnesses for the officer to interview. However, based on the evidence gathered, these witnesses are not critical to the assessment that follows.

[79] Except for the explicit reference to six documents, the Investigation Report is silent as to what "documentary evidence" was submitted during the course of the investigation or as to what

evidence was actually gathered by the Investigator. The only elements of "documentary evidence" explicitly identified in the Investigation Report are the following:

> (1) Email from Ms. Belisle to Allison Shatford, Manager, Corporate Labour Relations, dated May 17, 2016 (at para 27);
>
> (2) Excel sheet tracking Ms. Belisle's hours (at para 28);
>
> (3) Excel sheet tracking Ms. Belisle's overtime hours (at paras 29, 57);
>
> (4) Email between Ms. Belisle and Sylvie Ouellette, Manager, Occupational Health and Safety, dated February 22, 2016 (at para 46);
>
> (5) Secondment agreement (at para 66); and
>
> (6) Affidavit of Mr. Luc Lacroix, dated May 18, 2016 (at para 76).

[80] With respect to the background to the Complaint, the Investigation Report states that the parties agree that:

> - [Ms. Belisle]'s main task was to manage [CIRNAC]'s Deputy Minister's Recognition Awards Ceremony;
>
> - between March 9 and May 2, 2016, [Ms. Belisle] reported directly to Christine Duong, Director;
>
> - between May 2 and 16, 2016, [Ms. Belisle] reported to Nathalie Bloskie, A/Well-being Manager, who became the acting manager around this time;
>
> - before the start date of the secondment agreement, [CIRNAC] informed [Ms. Belisle] that due to the nature and responsibilities related to the position, [CIRNAC] expected [Ms. Belisle] to work overtime, including on weekends. The parties agree that [Ms. Belisle] tracked her overtime hours on an Excel sheet and communicated her hours to Ms. Duong; and
>
> - [CIRNAC] ended [Ms. Belisle]'s secondment agreement early, on May 16, 2016. However, [CIRNAC] adjusted Ms. Belisle's end date to June 7, 2016, because it owed her overtime.

[81] The Investigation Report then summarizes Ms. Belisle's allegations of adverse treatment and indicated that CIRNAC:

(1) Asked her to provide information to support her Indigenous ancestry;

(2) Denied her accommodation due to her disability (cognitive limitations), including denying her a laptop, computer software and flexible work hours and deadlines;

(3) Denied her accommodation due to sex and/or family status, including denying flexible work hours;

(4) Did not pay her for all of the overtime hours she worked; and

(5) Ended her secondment agreement prematurely and did not provide her with 30-day notice.

[82] Furthermore, the Investigation Report outlines that during an interview held on July 8, 2019, with the Investigator, Ms. Belisle would have raised new allegations, including that (1) a student employee of CIRNAC made a disrespectful comment to her during a smudging ceremony; (2) CIRNAC treated Indigenous employees as incompetent; and (3) shortly after disclosing to colleagues that she was Indigenous, she felt uncomfortable and mocked because other colleagues also disclosed that they were Indigenous. These were incorporated in the Complaint and considered by the Investigation Report.

[83] The Investigator found, in summary, that Ms. Belisle's evidence did not support her allegations. More specifically, regarding the allegation that CIRNAC asked Ms. Belisle to provide information to support her Indigenous ancestry, the Investigation Report indicates that although the parties' version of events differ, even if Ms. Bloskie did in fact ask Ms. Belisle to show a status card, Ms. Belisle had not clearly described how this affected her.

[84] As for the allegation that CIRNAC denied her accommodation due to sex and/or family status, including denying flexible work hours, here too the Investigator found that the parties' version of events differed. However, given the documentary evidence (May 17, 2016, email and Excel spreadsheet of hours worked), the Investigator was of the view that Ms. Belisle regularly started work at 6h30 a.m. regardless of Ms. Duong's preference that she start work later. Therefore, the analysis of this part of the allegation did not proceed.

[85] With respect to the allegation that Ms. Belisle required extra time, a computer software and/or a laptop due to a disability, and whether Ms. Belisle communicated her need for accommodation to CIRNAC or should CIRNAC have known of her need for accommodation from the circumstances, the investigation continued. The Investigator appears to have determined that Ms. Belisle advised CIRNAC of her needs and that certain steps were taken by Ms. Duong regarding the obtention of a laptop, but that this took time.

[86] However, the Investigator found that Ms. Belisle did not cooperate with CIRNAC in the search for accommodation, namely that Ms. Belisle did not provide an accommodation plan or medical evidence proving her needs for accommodation.

[87] Regarding the allegation that CIRNAC did not pay her for all of the overtime hours she worked, the Investigator found that Ms. Belisle and CIRNAC had an overtime tracking and payment agreement, that there were calculation errors in Ms. Belisle overtime Excel tracking sheet, i.e., she added 50 hours instead of 0.83 hour (50 minutes), and that the parties had agreed on 112.5 hours of overtime in the form of leave instead of payment. The Investigator therefore

considered that this had effectively changed the end date of her secondment to June 7, 2016. Given the above, the Investigator reached the conclusion that the alleged negative treatment had not occurred.

[88] With respect to the allegation that CIRNAC ended her Secondment Agreement prematurely due to her disability and did not provide her with 30 days notice, the Investigator found that Ms. Belisle had not established that her Secondment had ended due to her disability. Instead, the Investigator emphasized CIRNAC's assertion that the termination was due to various sources of conflict in the department involving Ms. Belisle.

[89] Although the Investigator does not *per se* reach a conclusion as to what the true reasons were for Ms. Belisle's termination, the Investigator found that Ms. Belisle had also not explained what negative treatment she had endured due to this premature termination of her Secondment, given the fact that Ms. Belisle's had received 22 days of notice (taking into account the overtime payment received in the form of leave) and had returned to her substantive position with DND after June 7, 2016.

[90] As to the new allegations raised through the investigation process, the Investigator found that Ms. Belisle had not provided any information to suggest that:

(1) She suffered a negative consequence as a result of the student employee's alleged comment that he disliked the smell associated with the smudging ceremony. Moreover, while insensitive and disrespectful, this allegation did not amount to adverse differential treatment liked to race and/or national or ethnic origin;

(2) CIRNAC treated Indigenous employees as incompetent or gave preferential treatment to other employees; and

(3) Other employees were mocking her when they disclosed that they were Indigenous during a team meeting.

[91] As such, the Investigator found that the Complaint did not warrant further inquiry and recommended that the Commission dismiss the Complaint.

[92] The Investigation Report was subsequently forwarded to the parties who were afforded an opportunity to make submissions.

D. *Submissions on the Investigation Report*

[93] On August 12, 2019, CIRNAC sent a two-pages letter to the Investigator submitting that there had been an error in the Investigation Report regarding the issue of the computer and software accommodations sought by Ms. Belisle. More specifically, this letter stated that Ms. Belisle received a laptop and a monitor approximately within two weeks of her arrival, a time frame which was considered normal for CIRNAC in handling such requests for new employees.

[94] It is unclear when Ms. Belisle submitted her response, as it is undated [Response Submissions]. Therein, while Ms. Belisle provides much more details regarding her Complaint, she also appears to make new allegations. Further, while Ms. Belisle refers to numerous emails and evidence, she supposedly has in support of her submissions, this evidence is not in the record.

[95] On January 20, 2020, CIRNAC sent a three-page letter to the Investigator, in reply to Ms. Belisle's Response Submissions, which they indicated they received on December 31, 2019. This letter encloses a copy of the Secondment agreement signed by the parties [CIRNAC's Reply].

[96] On January 23, 2020, Ms. Belisle sent two emails to the Investigator, wishing to rebut CIRNAC's Reply, enclosing some documents to support her claims [Rebuttal]. The first email, at 11:08 a.m. provided her Rebuttal. The second, at 6:40 p.m., attached her Health Canada Assessment and her request for accommodations.

[97] On January 28, 2020, Ms. Belisle followed up with the Investigator to validate that they had received her Rebuttal and attachments.

[98] On January 29, 2020, the Investigator confirmed the receipt of her Rebuttal and indicated:

> This confirms receipt of your three emails, sent on January 23 (two) and January 28, 2020.
>
> We are currently reviewing the information that you sent.
>
> I ask that you please do not send me any more information at this time until we have had a chance to review your most recent emails.
>
> I will write to you as soon as I consult with my manager about next steps. Please understand that this may take time because we have ongoing priorities.

[99] On January 29, 2020, Ms. Belisle briefly responded to the Investigator.

[100] On January 31, 2020, the Investigator informed Ms. Belisle of the following:

> This message is to inform you that although we have placed the information that we received on January 23, 2020 on file, the information that we received from you on January 23, 2020 will not be presented to the Commissioners for consideration for the following reasons;
>
> - In our letter dated January 22, 2020, we sent you a copy of the respondent's cross-disclosure submissions in response to your comments on the investigation report for your information only. We did not invite you to provide additional information because it is not our practice to request additional information after the cross-disclosure of submissions.
>
> - Throughout the investigation process, you had many opportunities to raise allegations and you did in fact rase some additional allegations which were investigated.
>
> We have been exceptionally flexible throughout the complaint and investigation process:
>
> - Throughout the handling of the complaint and the investigation process, we have continuously provided you with flexibility and accommodated your request to participate in the complaint process. This included allowing you to participate in the investigation process over the phone and by email and also included exceptionally extending our normal timelines on more that one occasion.
>
> - In addition, we have been exceptionally flexible with regard to the number of pages that we accepted from you in response to investigation reports.
>
> For example, our normal standard is to accept a maximum of 10-pages, printed on letter-sized paper (8.5 x 11"). However, we allowed you to submit 37-pages, on legal-sized paper (8.5 x 14") due to your circumstances.
>
> As a result, only the following information will be presented to the Commission:
>
> - the Complaint Form;
> - the Investigation Report;
> - the parties' submissions to the report; and

- the respondent's cross-disclosure submissions to your comments on the report.

[101] The same day, i.e., January 31, 2020, Ms. Belisle responded by email, indicating that she found the Investigator's decision unfair:

> I do find this unfair as it seems to be favoritism given to the respondent as they could reply a last time bringing up new things that obviously I would need to challenge and for you to allow them to have their last submission included and not mine I feel is biased.
>
> …
>
> However, the fact that very important information and the attachments would allow the board to make an informed decision is not only unfair but is unjust. I feel that those emails and the attachments must be there as they will show what INAC had and even though the regulations are known I should as the complainant have the last response not the respondent. I get the sense of bias.

III. Decision under Review

[102] On March 25, 2020, the Commission decided that further inquiry was not warranted for the reasons set out in the Investigation Report and dismissed the Complaint. The Commission also indicated the following:

> In response to [Ms. Belisle]'s additional submissions, it is well established in law that the Commission is not obliged to interview every witness identified by the parties in order to carry out its function as a screening body. The Commission also finds no evidence to support [Ms. Belisle]'s allegation that the investigator was biased, with the Commission needing more from [Ms. Belisle] to support a complaint of bias that her disagreement with the results of the investigation or the conclusions drawn by the investigator. [Ms. Belisle] refers in detail to mismanagement in the workplace, as well as a claim of unpaid overtime and an unmet notice period, but the Commission is tasked with investigating complaints of discrimination and no evidence was provided by

> [Ms. Belisle] to support any suggestion that discrimination underpinned these workplace matters. The Commission also rejects [Ms. Belisle]'s assertion that the investigation should have examined matters that occurred before [Ms. Belisle] joined [CIRNAC]'s workplace, with the investigation rightly focused on whether evidence had been provided to show that [Ms. Belisle] suffered discrimination in that workplace.

[103] On April 29, 2020, the Decision was communicated to Ms. Belisle by email.

[104] On August 17, 2020, Ms. Belisle filed her Notice of Application for Judicial Review against both the AGC and the Commission. As previously mentioned, on October 9, 2020, the Commission was removed as a respondent further to its Motion as per section 303 of the *Federal Courts Rules*, which Ms. Belisle did not oppose at that time.

IV. Submissions to this Court

A. *Ms. Belisle's Submissions*

[105] During the hearing, Ms. Belisle raised several arguments relating to jurisdictional issues and conflicts of interests of the Court, amongst others. These new arguments are not only procedurally unacceptable (as they were not included in her Notice of Application for Judicial Review nor her Memorandum of Fact and Law) but appear to be Organized Pseudolegal Commercial Arguments [OPCA] strategies. Associate Chief Justice Rooke in his very detailed and informative decision *Meads v Meads*, 2012 ABQB 571 [*Meads*], which decision the Court strongly invites the parties to read, states, amongst others:

> [1] This Court has developed a new awareness and understanding of a category of vexatious litigant. (…) [OPCA litigants] employ a

> collection of techniques and arguments promoted and sold by ‘guru’ (as hereinafter defined) to disrupt court operations and to attempt to frustrate the legal rights of governments, corporations, and individuals.
>
> [2] Over a decade of reported cases have proven that the individual concepts advanced by OPCA litigants are invalid. What remains is to categorize these schemes and concepts, identify global defects to simplify future response to variations of identified and invalid OPCA themes, and develop court procedures and sanctions for persons who adopt and advance these vexatious litigation strategies.
>
> (…)
>
> [4] OPCA litigants do not express any stereotypic beliefs other than a general rejection of court and state authority; nor do they fall into any common social or professional association. (…) This category of litigant shares one other critical characteristic: they will only honour state, regulatory, contract, family, fiduciary, equitable, and criminal obligations if they feel like it. And typically, they don’t.
>
> (…)
>
> [6] Naturally, my conclusions are important for these parties. However, they also are intended to assist others, who have been taken in/duped by gurus, to realize that these practices are entirely ineffective; to empower opposing parties and their counsel to take action, and as a warning to gurus that the Court will not tolerate their misconduct.

[106] These OPCA strategies were not considered on the merits of this judicial review; nonetheless, the Court will address some of them in the Obiter section of this decision.

[107] In her written materials, Ms. Belisle raises issues of procedural fairness and reasonableness of the Decision, which can be summarized as follows:

(1) The investigative process was unfair and not thorough as not all the information and evidence she submitted was considered by the Investigator, none of her witnesses were

interviewed while the Investigator considered affidavit evidence from witnesses on behalf of CIRNAC and her Rebuttal was dismissed;

(2) The investigative process was biased as the Investigator suppressed information she provided, allowed CIRNAC to file additional responses while dismissing her Rebuttal, and the Commission quickly made a decision without considering her Rebuttal; and

(3) The Investigator and the Commission failed to accommodate her as it was difficult to obtain assistance from them to understand what was being asked and required to ensure she was providing what they needed to assess her Complaint.

[108] More specifically, in her written Complaint and at the hearing, Ms. Belisle explained that once her Secondment was abruptly terminated, she no longer had access to her work computer and emails. She further claimed that many of these emails could have supported her allegations of harassment and discrimination against CIRNAC. Ms. Belisle submitted that she advised the Investigator of this issue and that in the context of a thorough investigation, the Investigator should have used their investigative powers to obtain all relevant evidence from CIRNAC and ensured full disclosure.

[109] Moreover, at the hearing Ms. Belisle claimed that, at the time of the filing of her Complaint, she was restricted to three pages and was asked not to provide any documents. She therefore expected the Investigator to let her know what evidence she needed and what she was allowed to file. She stressed the Investigator never advised her she could file evidence to support her Complaint, including witness affidavits.

[110] Ms. Belisle also explained in detail the basis of her Complaint, particularly Ms. Duong and Ms. Bloskie's involvement in her alleged adverse treatment.

[111] It is trite law that arguments must be based on admissible evidence, which, following Rules 306 and 307 of the *Federal Courts Rules*, is to be filed by affidavit (*Access Copyright* at paras 20-21). As noted by the Federal Court of Appeal: "the rule that evidence is to be provided by affidavits is not a mere question of technicality; it ensures that no one is hurt by allegations which one does not have a chance to challenge" (*IBM Canada Ltd v Deputy Minister of National Revenue (Customs & Excise)*, 1991 CanLII 13584 (FCA), [1992] 1 FC 663 (FCA) at 678)

[112] The Court reviewed Ms. Belisle's affidavits as well as the CTR, which included her Complaint form and Response Submissions, and is satisfied that Ms. Belisle's claims and submissions at the hearing appear from the record, although they were not always framed identically in her Memorandum.

[113] For example, in her Complaint form, she stated that she was more than willing to provide her doctors notes with the limitations or directions on how to assist her, but Ms. Duong and Ms. Bloskie were unwilling to hear what she had to say. Further, in her Response Submissions, Ms. Belisle stated that Ms. Duong never asked for supporting documentation and that when she was transferred to Ms. Bloskie, the latter claimed that Ms. Belisle was supposed to be transferred with an accommodation plan.

[114] In her Affidavit before the Court, Ms. Belisle submits at paragraph 87 that she contacted CIRNAC and provided them with medical information in paper, contrary to Ms. Duong and Ms. Bloskie's claims to the Investigator. And, in her Memorandum, she argues at paragraph 64, amongst others, that CIRNAC was wilful and reckless by intentionally ignoring her requests for accommodations for disability and family, and that the Commission was provided factual evidence of this, but it was ignored and not considered in the Decision.

[115] As such, aside from the various inadmissible OPCA strategies discussed in the obiter section of this decision, the Court is of the view that the AGC was not surprised by Ms. Belisle's claims on the merits at the hearing.

[116] That said, Ms. Belisle did raise several arguments that are inadmissible before this Court as they lack the necessary evidentiary record. For example, she stated that she took numerous steps to attempt to obtain evidence from CIRNAC, to no avail, and filed multiple access to information and privacy [ATIP] requests to have access to her emails while at CIRNAC but again had issues obtaining full disclosure. Moreover, Ms. Belisle explained that it is only when she read the Investigation Report that she realized that she could file evidence and supporting affidavits. However, she stated that when she asked the Investigator if she could file affidavits, she was discouraged from doing so. Ultimately, Ms. Belisle stated that the delays caused by her ATIP requests, in conjunction with her disability and self-represented status, explained why she needed the numerous extensions she requested (and obtained) before this Court.

[117] While the Court does not doubt that Ms. Belisle may have taken steps to attempt to obtain this evidence, there is no evidence in the record of any of the steps she may have taken to obtain information from CIRNAC or of the ATIP requests themselves. Nor is there any evidence as to the various problems she allegedly faced along the way. Therefore, the Court has no choice but to disregard these allegations.

[118] Further, Ms. Belisle claims that the Investigator discouraged her from filing affidavits is not supported by any evidence. In addition, this claim is not addressed in her Affidavit, Supplemental Affidavit and Memorandum. Therefore, the Court will also disregard this allegation.

B. *The AGC's Submissions*

[119] The AGC essentially submits that the Decision is reasonable as (1) the Commission had the legislative authority to dismiss the Complaint; (2) the Applicant made no substantive submissions on reasonableness; and (3) the Decision to dismiss the Complaint is supported by the Investigation Report.

[120] The AGC also raised an evidentiary issue in that a reasonableness review is strictly based on the record that was before the decision-maker. In his view, numerous documents in Ms. Belisle's Affidavit and Supplementary Affidavit are not relevant to the reasonableness analysis and, in any event, it is not apparent which, if any, of these documents were before the Investigator.

[121] As for procedural fairness, the AGC submits the record shows that Ms. Belisle knew the case she had to meet and had a full and fair opportunity to respond within the Commission's processes. More specifically, the AGC argues that the investigation was neutral in that the CTR shows no biased treatment of Ms. Belisle's Complaint; rather, her allegations relating to the unfairness of the investigation process are speculative and unsupported by evidence since she has not identified evidence of impartiality or coercion by the Commission.

[122] Further, the AGC argues that the investigation was thorough as the Investigator was not required to interview specific witnesses. On this, the AGC submits that an interview is only required where a reasonable person would expect evidence useful to the investigation would be gained as a result of the interview, or information not addressed by the evidence would be provided (*Tinney v Canada (Attorney General)*, 2010 FC 605 at para 28).

[123] The AGC adds that the Commission accommodated Ms. Belisle and provided her with an opportunity to meaningfully participate, including by allowing her to raise new allegations and to make submissions almost five times longer than the usual limit. (i.e., 37 pages on legal-sized paper as opposed to its standard 10 pages on letter-sized paper).

[124] As it will be further discussed below, the Court expressed its concerns to the AGC with the contents of the CTR produced in this case. The Court further noted that the AGC themselves indicated in their Memorandum that "it was not apparent which, if any, of these documents were before the Investigator". In fact, the Court noted that the CTR is so limited that it does not even

include a copy of the Decision under review, nor the documents specifically referred to by the Investigator in the Investigation Report.

[125] The AGC responded that the documents contained in the CTR were the only documents that were before the Commission prior to rendering the Decision. The AGC added that in its view, there was no indication in the law or jurisprudence to suggest that the Commission must have all documentary evidence that an investigator had when it decides to refer or not a complaint to the Tribunal for inquiry. The AGC provided no caselaw to support this view.

[126] In any event, what this means is that if the Investigator used any other documents or information to prepare the Investigation Report, the Commission was not privy to them. For instance, save for the Secondment agreement, which was included in CIRNAC's Reply, the documentary evidence referred to by the Investigator in the Investigation Report was not included in the CTR and thus, not provided to the Commission.

V. Analysis

[127] As mentioned above, there are many issues with Ms. Belisle's representations. First, many are based on personal opinions, or even, in some cases, are OPCA ill-founded strategies. That said, when the Court removes itself from all the "noise", and focuses of the real issues at hand, namely, (1) whether the Commission violated the principles of natural justice and procedural fairness by failing to conduct a neutral and thorough inquiry into Ms. Belisle's Complaint; and (2) whether the Decision is reasonable, it is not satisfied that the investigation process was thorough.

[128] In concluding as such, the Court is particularly sensitive to the fact that the Decision was a final decision that precluded Ms. Belisle from any statutory remedy. Like Justice Blanchard outlined in *Gravelle*:

> [39] In my view, Commission decisions dismissing complaints should be more closely scrutinized than decisions referring complaints to the Tribunal. In this respect, I agree with Evens J. in *Larsh v. Canada* (1999) F.C.J. No. 508. At paragraph 36 of his reasons, he wrote:
>
> > A dismissal is, after all, a final decision that precludes the complainant from any statutory remedy and, by its nature, cannot advance the overall purpose of the Act, namely protection of individuals from discrimination, but may, if wrong, frustrate it.
>
> Furthermore, this principle was recognized and adopted by the Federal Court of Appeal in *Sketchley*, *supra*, at paragraphs 79 and 80.
>
> [Emphasis added.]

[129] That said, as previously outlined, one of the other issues with Ms. Belisle's file is the lack of evidence. Many if not most of her claims and submissions are not supported by any evidence. This was the conclusion reached by the Investigator and the Commission, and unfortunately, it is also the conclusion of this Court with respect to several aspects of her submissions.

A. *The Investigator and the Commission were not biased*

[130] In *Jagadeesh v Canadian Imperial Bank of Commerce*, 2024 FCA 172 [*Jagadeesh*], a case involving a complaint filed with the Commission, the Federal Court of Appeal reiterated that procedural fairness "requires the Commission and its investigators to be free from bias." (at para 68) The Federal Court of Appeal then outlined the applicable test:

[69] The test for determining whether actual bias or a reasonable apprehension of bias exists in relation to a particular individual is well known: the question is what an informed person, viewing the matter realistically and practically–and having thought the matter through–would conclude. That is, would he or she think it more likely than not that the individual, either consciously or unconsciously, would not decide the matter fairly: see *Committee for Justice and Liberty v. Canada (National Energy Board)*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at p. 394, 68 D.L.R. (3d) 716; *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at paras. 20-21, 26.

[70] That said, the non-adjudicative nature of the Commission's responsibilities means that the standard of impartiality required of Commission investigators is something less than that required of the Courts. The question is thus not whether there exists a reasonable apprehension of bias on the part of the investigator, but rather, whether the investigator approached the case with a "closed mind": *Zündel v. Canada (Attorney General)* (1999), 1999 CanLII 9357 (FC), 175 D.L.R. (4th) 512 (T.D.), at paras. 17-22, aff'd 2000 CanLII 16731 (FCA), [2000] F.C.J. No. 2057, 195 D.L.R. (4th) 394.

[71] As the Federal Court stated in *Canadian Broadcasting Corp. v. Canada (Canadian Human Rights Commission)*, (1993), 1993 CanLII 16517 (FC), 71 F.T.R. 214, [1993] F.C.J. No. 1334 (F.C.T.D.), the test in cases such as this is thus "whether, as a matter of fact, the standard of open-mindedness has been lost to the point where it can reasonably be said that the issue before the investigative body has been predetermined": at para. 43.

[72] The burden of demonstrating bias rests on the person alleging bias. An allegation of bias is a serious allegation, and challenges the very integrity of the individual whose conduct is in issue. Consequently, a mere suspicion of bias is not sufficient: *R. v. R.D.S.*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193 at para. 112; *Arthur v. Canada (Attorney General)*, 2001 FCA 223, at para. 8. Rather, the threshold for establishing bias is high: *R. v. R.D.S.*, above at para. 113. Mere disagreement with the findings of the investigator does not amount to evidence of bias.

[131] In sum, the presumption of integrity and impartiality applicable to decision-makers is not easily rebuttable. It was not sufficient for Ms. Belisle to claim bias; she had the burden of proving it. She did not meet this burden.

[132] The Commission addressed Ms. Belisle's allegations of bias concerning the Investigator in its Decision. It found no evidence to support her allegation that the Investigator was biased, noting that more was required from Ms. Belisle to support a complaint of bias than mere disagreement with the results of the investigation or the conclusions drawn by the Investigator. The Court agrees with this conclusion.

[133] Further, and contrary to Ms. Belisle's claims, the Court is of the view that the Commission and the Investigator took numerous steps to accommodate Ms. Belisle.

[134] For instance, the Commission had the discretion to refuse to deal with the Complaint, given that it was filed outside the prescribed delays to do so (*CHRA*, s 41(1)(e)) and yet, elected to proceed with the investigation.

[135] Moreover, as indicated in the Investigator's letter of January 31, 2020, throughout the investigation process, Ms. Belisle raised additional allegations which were investigated. The letter also indicates that the Investigator had been exceptionally flexible throughout the investigation process, including with respect to the number of pages that they accepted in response to the Investigation Report.

[136] There is thus nothing in the record to suggest that the Investigator and/or the Commission had predetermined the issue of Ms. Belisle's Complaint.

B. *The Investigation Was Not Thorough*

[137] As detailed below, the Court is not satisfied that the investigative process was thorough. This conclusion is made despite the evidentiary issues that appeared from Ms. Belisle's submissions to this Court, as the Court found determinative flaws in the Investigation Report, as well as in the CTR itself. It is thus relevant to first outline what was effectively before the Investigator when they reviewed Ms. Belisle's Complaint.

(1) Admissible Evidence before this Court

[138] Ms. Belisle claims that she had provided substantial evidence to the Investigator to support her Complaint. Before this Court, Ms. Belisle enclosed with her Affidavit some of the documents she had in her possession. She submits that these documents support some of her allegations and show discrepancies (if not lies), in CIRNAC's submissions to the Investigator. However, there is no indication in the CTR (including in the Investigation Report) to confirm (or deny) this to be the case. This claim is also contradictory to her previous submission that it is only when she read the Investigation Report that she realized that she could file evidence and supporting affidavits.

[139] In this context, the AGC submits that Ms. Belisle's exhibits constitute inadmissible new evidence and that therefore the Court should not consider them in the context of this judicial

review as they are not relevant to the reasonableness analysis. While the Court agrees with the AGC that these exhibits would not be relevant to the reasonableness analysis, the Court notes that these documents are key to Ms. Belisle's procedural fairness arguments.

[140] On this, Ms. Belisle explained at the hearing that all her evidence was remitted to the Investigator and therefore should have been included in the CTR. She added that as a self-represented person with a disability, she did not understand that she needed to prove on judicial review which documents she had provided to the Commission, as she expected them to be included in the CTR. Given this, under reserve of the Court's eventual decision on the admissibility of new evidence at this very late stage, the Court invited Ms. Belisle to provide any evidence that she might have had, such as emails she sent to the Investigator or to the Commission that could confirm what exactly she may have provided to the Investigator. Ms. Belisle did not provide any evidence to that effect.

[141] Thus, the Court can only base itself on the Investigation Report to attempt to confirm what evidence was before the Investigator and was considered by them. As previously outlined, the only elements of "Documentary evidence" explicitly identified in the Investigation Report are the following:

(1) Email from Ms. Belisle to Allison Shatford, Manager, Corporate Labour Relations, dated May 17, 2016 (at para 27);

(2) Excel sheet tracking Ms. Belisle's hours (at para 28);

(3) Excel sheet tracking Ms. Belisle's overtime hours (at paras 29, 57);

(4) Email between Ms. Belisle and Sylvie Ouellette, Manager, Occupational Health and Safety, dated February 22, 2016 (at para 46);

(5) Secondment agreement (at para 66); and

(6) Affidavit of Mr. Luc Lacroix, dated May 18, 2016 (at para 76).

[142] Except for the Secondment agreement, that was later included in CIRNAC's Reply to the Investigation Report, these documents are not found in the CTR. Therefore, it appears that these documents were not provided to the Commission prior to it rendering the Decision.

[143] The Court is well aware that Rule 317 of the *Federal Courts Rules* allows an applicant to receive relevant documents that were before the decision maker at the time it made its decision and that are not in the possession of the applicant (*Girouard v Canadian Judicial Council*, 2019 FCA 252 at para 17). Here, the fact that the CTR solely contains (1) Ms. Belisle's summary of Complaint form; (2) Ms. Belisle's Complaint form; (3) the Investigation Report; (4) CIRNAC's two-pages letter dated August 12, 2019; (5) Ms. Belisle's Response Submissions; and (6) CIRNAC's Reply, is in line with the documents listed by the Investigator in their email to Ms. Belisle on January 31, 2020, refusing to provide Ms. Belisle's Rebuttal to the Commission.

[144] The Court recognizes that in some cases, the complaint form, the investigation report and the parties' submissions in response to the report are the only documents provided to the Commission (e.g., *Hoang* at para 18; *Bergeron* at para 31; *Richards* at 6; *Syndicat des employés de production du Québec et de L'Acadie v Canada (Canadian Human Rights Commission)*, 1989 CanLII 44 (SCC), [1989] 2 SCR 879 at 888-889). However, the Court finds it odd that the CTR would not include the evidence submitted by the parties or gathered by the Investigator, especially in a case such as Ms. Belisle's, where the Commission dismisses the Complaint based

on the reasons set out in the Investigation Report and where the lack of evidence is amongst the reasons given. As the Federal Court of Appeal highlighted in *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268:

> [13] Rule 317 reflects the reality today that the permissible grounds for judicial review are broader than they once were. It entitles the requesting party to receive everything that was before the decision maker at the time it made its decision and that the applicant does not have in its possession: *Access Information Agency Inc. v. Canada (Attorney General)*, 2007 FCA 224, 66 Admin. L.R. (4th) 83, at paragraph 7. This allows parties "to effectively pursue their rights to challenge administrative decisions from a reasonableness perspective" and "have the reviewing court [that is engaged in reasonableness review] consider the evidence presented to the tribunal in question": *Hartwig v. Commission of Inquiry into matters relating to the death of Neil Stonechild*, 2007 SKCA 74 (CanLII), 284 D.L.R. (4th) 268, at paragraph 24 (commenting on a rule similar to rule 317).
>
> [14] This excerpt from *Hartwig* recognizes the relationship between the record before the reviewing court and the reviewing court's ability to review what the administrative decision maker has done. If the reviewing court does not have evidence of what the administrative decision maker has relied upon, the reviewing court may not be able to detect reviewable error. In other words, an inadequate evidentiary record before the reviewing court can immunize the administrative decision maker from review on certain grounds. See *Canada (Attorney General) v. Slansky*, 2013 FCA 199, [2015] 1 F.C.R. 81, at paragraph 276 (dissenting reasons, but not opposed on this point).
>
> [Emphasis added.]

[145] Moreover, when reading the Investigation Report, it appears clear that the Investigator had other documents in their possession, that are not listed or specifically mentioned in the Investigation Report. For example, Exhibit 26 of Ms. Belisle's Affidavit is a letter from CIRNAC addressed to a previous investigator of the Commission, providing some of their submissions in response to the Complaint. The Court assumes that this letter was in the

possession of the Investigator since it describes CIRNAC's response to the allegations raised by Ms. Belisle in her Complaint and specific sentences from this letter are reproduced in the Investigation Report.

[146] For instance, in response to the allegation of discrimination based on race, CIRNAC indicated that "[t]he Learning and Well-Being Directorate, where the Complainant was working, has a high ratio of Indigenous employees". Paragraph 18 of the Investigation Report, which describes CIRNAC's position as to Ms. Belisle's allegation that she was asked to provide proof to support her Indigenous ancestry, partially reads that "the directorate where the complainant worked has a high ratio of Indigenous employees." Yet, this letter is not explicitly referred to in the Investigation Report as part of the "documentary evidence" used by the Investigator.

[147] The Court further highlights that it is far from clear that Ms. Belisle would have understood that the CTR provided in response to her Rule 317 request would not include any evidence she allegedly submitted to the Investigator, such that she would not be required to provide evidence to this Court that she had submitted to the Investigator in the first place. In any event, the limited CTR does not assist the Court in determining whether the exhibits Ms. Belisle enclosed to her Affidavit were effectively provided to the Investigator and thus considered (or not) by them in the context of their investigation.

[148] Therefore, while the Court agrees with the AGC that these exhibits may not be considered in the context of the reasonableness of the Decision, the Court is satisfied that the exhibits enclosed in Ms. Belisle's Affidavit and Supplementary Affidavit are relevant to her

procedural fairness submissions. More specifically, they relate to the determinative issue of whether Ms. Belisle knew the case she had to meet and had a full and fair chance to respond.

[149] As for the four exhibits Ms. Belisle included in her Supplementary Affidavit, the Court notes that they postdate the Investigation Report. For example, Exhibit 2 to Ms. Belisle's Supplementary Affidavit shows that she provided documents to the Investigator on January 23, 2020, but these documents were not provided to the Commission, per the Investigator's email of January 31, 2020. Ms. Belisle submits that this impacted the procedural fairness of the Decision as the Commission did not have a complete record when rendering the Decision. She further submits that this supports her claim that the analysis by the Investigator was not thorough, was not transparent and was biased.

[150] The Court is of the view that while these exhibits were not before the Commission, they fall within the exception against impermissible new evidence since they are filed in support of Ms. Belisle's claim that the process followed by the Commission and the Investigator was unfair (*Access Copyright* at para 20(b)).

(2) The Investigator failed to sufficiently outline the investigative process

[151] The AGC submits that there are no guiding regulations to determine how investigations should be conducted and that an investigator is master of their own procedure. Thus, judicial review should only be warranted where the investigation is clearly deficient (*Slattery* at 578, 605).

[152] Ms. Belisle submits that if the Investigator is "master of their own procedure" and therefore can basically do (or not do) whatever they want, how can anyone know if what they did was fair or not? How can anyone know if the investigation was deficient or thorough?

[153] The Federal Court of Appeal stated in *Tahmourpour*: "A reviewing court owes no deference in determining the fairness of an administrative agency's process" (at para 7 citing *Canadian Union of Public Employees v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100).

[154] Further, in *Slattery*, the Federal Court outlined:

> In *Radulesco*, investigation procedures were initiated by the [Commission] and the complainant's case was eventually dismissed as unsubstantiated under subparagraph 36(3)(*b*) (the equivalent to the current 44(3)(*b*)) of the Act. … Lamer J. (as he then was) held that procedural fairness requires that the complainant be provided with an opportunity to make submissions, at least in writing, before any action is taken on the basis of an investigator's report and, in particular, in order to ensure that such submissions are made on an informed basis, the [Commission] must, prior to its decision, disclose the substance of the case against the complainant.
>
> In *S.E.P.Q.A.* a copy of the investigator's report, which explained his methodology, was sent to the complainant and the complainant was invited to make written submissions in response to the report prior to the [Commission] making its final decision. … Sopinka J. held that in order to satisfy the duty of fairness, the [Commission] had to inform the parties of the substance of the evidence obtained by the investigator, and which was put before the [Commission]. As well, the [Commission] was required to give the parties the opportunity to respond to this evidence and make all relevant representations in relation thereto. …
>
> At first blush, it would appear that the [Commission], by providing the applicant with a copy of the investigator's report and by allowing the applicant to respond to the report, was in conformity with the formal wording of the requirements set out in the above cases. <u>However, underlying these requirements is the assumption</u>

> that another aspect of procedural fairness—that the [Commission] had an adequate and fair basis on which to evaluate whether there was sufficient evidence to warrant appointment of a tribunal—existed.
>
> …
>
> Although Noël J. acknowledged that *S.E.P.Q.A.* permitted the [Commission] to render a decision without reasons, by adopting the conclusions in the investigator's report, Noël J. refined this analysis to the extent that [at page 20], "If the report which the [Commission] adopted in making its decision is flawed, it must follow that the decision itself is equally flawed."
>
> The requirement of thoroughness of investigation stems from the essential role that investigators play in determining the merits of particular complaints. This essential role was recognized by the Supreme Court in the *S.E.P.Q.A.* case. In the words of Sopinka J. (at page 898):
>
> > In general, complainants look to the Commission to lead evidence before a tribunal appointed under [section 49], and therefore investigation of the complaint is essential if the [Commission] is to carry out this role.
>
> [Emphasis added.]

[155] Here, Ms. Belisle argues that the investigation of her Complaint was insufficiently thorough to justify its dismissal and that as such, the Commission breached the duty of fairness.

[156] The Court agrees with Ms. Belisle and finds that the Investigation Report provides little information as to (1) the Investigator's methodology or what investigative steps they actually did; (2) what evidence they obtained and from whom; (3) what evidence they considered relevant or not; and (4) why they were of the view that, given the evidence they had (or did not have), without indicating what evidence they are referring to, interviewing other witnesses (not personally concerned by the Complaint) was not required. In other words, the Investigator's

failure to sufficiently outline their investigative process leads the Court to be unable to conclude that the process was thorough, therefore making the Decision equally flawed.

[157] In the context of a self-represented applicant with cognitive disabilities, the Court would have expected the Investigator to provide, at the very least, a summary or list of the documentary evidence they considered, and detailed steps taken in the context of their investigation. Further, given that Ms. Belisle's time at CIRNAC had been limited to a few weeks, it appears that her emails were evidence that could have easily been gathered by the Investigator. Instead, the Investigation Report appears to be nothing more than a summary of each side's position, without any indication of an actual investigation having been conducted.

[158] As such, there is just not enough in the Investigation Report for the Court to determine if the Investigator fulfilled their essential role of thoroughly investigating Ms. Belisle's Complaint. Given this, the Court is not surprised that Ms. Belisle felt she needed 37 pages of submissions to respond to what she clearly believed was an incomplete Investigation Report.

[159] The bottom line is that given the very brief description of "The Investigation Process" contained in the Investigation Report, the absence of evidence in the CTR and the absence of a list of documentary evidence obtained, gathered or considered, the Court is unable to know (1) what documentary evidence was submitted by the parties to the Investigator; (2) what documentary evidence was obtained by the Investigator themselves, if any; (3) what steps were taken by the Investigator to gather evidence (especially given that Ms. Belisle no longer had access to her CIRNAC work computer and emails, a fact she raised in her Complaint form and in

her Response Submissions), if any; and (4) why, based on the evidence allegedly obtained but not mentioned, the Investigator determined that interviewing other witnesses other than those personally impacted by the Complaint was not critical to their assessment. This last point is, in and of itself, a second flaw in the Decision.

(3) The Investigator failed to consider obviously crucial evidence

[160] As stated in *Harvey* at paragraph 39, the term “obviously crucial” evidence has been used to describe witnesses who were directly involved in an applicant’s work and related experiences, including similarly situated co-workers.

[161] For example, in *Tahmourpour*, a case involving a former Royal Canadian Mounted Police's cadet that had filed a complaint against his former employer, the investigator had not interviewed any of the other 23 cadets in the complainant’s troop. Instead, the investigator had only interviewed the officers concerned by the complaint, and officers who had worked with them. The Federal Court of Appeal held that “[e]vidence from cadets who were present might have been particularly valuable in the investigation” and that the investigator's failure to interview any of the other cadets in the complainant’s troop about the allegations was unjustifiable, since they were potentially an important source of information (*Tahmourpour* at paras 30-31, 34).

[162] Here, the Investigation Report states: “Both parties suggested more witnesses for the officer to interview. However, based on the evidence gathered, these witnesses are not critical to the assessment that follows.”

[163] While the Court agrees with the Commission's reasons that "it is well established law that the Commission is not obliged to interview every witness identified by the parties, in order to carry out its function as a screening body" (*Rosianu* at para 33), the Court is of the view that this should not be interpreted as meaning that the investigative process will be considered thorough even when the investigators chose not to interview any witnesses, and this, especially in the context of "he said/she said" scenarios, like in the present matter.

[164] In these scenarios, this Court has previously recognized that conflicting evidence or credibility issues do not always warrant a full hearing as the evidence as a whole may dissipate any issues (*Tekano v Canada (Attorney General)*, 2010 FC 818 at para 32), However, in the case of Ms. Belisle, given that she no longer had access to key evidence, i.e., her CIRNAC emails, a fact she clearly stated in her Complaint form, the Investigator should not have limited their analysis to reciting conflicting positions. On this, the Court shares the view of Justice Evans (as he was then) outlined in *Larsh*:

> [33] Indeed, in my opinion it would be irresponsible of the Commission not to assess the evidence before it simply because the complainant and the person complained against gave contradictory accounts of the events on which the complaint was based. The Commission is entitled and obliged to subject the evidence to a hard look before deciding whether in the circumstances of the complaint a Tribunal hearing is warranted.

[165] Here, the fact that the Investigator only interviewed Ms. Belisle and the two managers against whom the Complaint was lodged, without hearing any third-party witnesses that may have provided a different light on the events, is questionable. From reading the Investigation Report, it appears that the Investigator simply took Ms. Belisle's allegations and faced them with

the version of the two individuals she was filing the Complaint against, resulting in a “he said/she said” type of investigation.

[166] Moreover, given that Ms. Belisle no longer had access to her work emails and that the Investigator refused to interview any of her proposed witnesses, this placed Ms. Belisle in a very difficult position in terms of providing evidence to support her claims. This is even more troubling when the Investigator concludes that Ms. Belisle did not have sufficient evidence to support her claims.

[167] The Court raised this issue with the AGC. However, except for pointing to the general principle that there was no need for the Investigator to question “all the witnesses” put forward by the parties, the AGC did not address the Court’s concern that none of the proposed witnesses had been interviewed.

[168] Furthermore, the Court notes that at the very first page of her Response Submissions, Ms. Belisle stated that “the toxic and negative work environment existed before [her] secondment and continued to exist after [she] left.” Ms. Belisle then referred to an email dated March 22, 2017, stating that there had been several complaints against Ms. Duong and Ms. Bloskie, and that a formal investigation was ongoing.

[169] The Court recognizes that if other people faced issues, that does not mean that Ms. Belisle herself was discriminated against. However, interviewing witnesses that possibly had similar issues in the past, as well as those that had issues after Ms. Belisle left CIRNAC, might

have demonstrated a pattern that could have been relevant to support Ms. Belisle's "reason to believe" that she was the subject of discrimination, thereby warranting further inquiry into her Complaint.

[170] However, none of her proposed witnesses were interviewed. The Investigator did not concede that their testimony would have been favorable (or not) to Ms. Belisle, and it is unclear why the Investigator chose not to interview any of her proposed witnesses, particularly when they concluded that Ms. Belisle did not provide sufficient evidence to support several of her allegations.

[171] Considering the above, the Court is satisfied that although Ms. Belisle knew the case she had to meet, she was not fully and fairly heard by the Investigator. The Decision, which is based on the Investigation Report, is thereby equally flawed.

(4) The Investigator failed to share Ms. Belisle's Rebuttal with the Commission

[172] Lastly, while the Investigator allowed the parties to provide their submissions in response to the Investigation Report, the Investigator's refusal to share Ms. Belisle's Rebuttal, provided only three days after CIRNAC's Reply to the Commission, also raises concerns. The Court understands that an investigation must end at some point, however, it is unclear on what basis the Investigator decided to refuse Ms. Belisle's Rebuttal or why CIRNAC should have the last word in this matter.

[173] For example, in *Bergeron*, the complainant had requested another opportunity to file submissions on the investigator's report although the parties had already exchanged submissions. In that case, the Commission granted the complainant's request, and the latter filed a further ten pages of submissions on the report.

[174] Why such an accommodation was not granted in the present matter is debatable. The only reasons provided by the Investigator were that they sent CIRNAC's Reply for Ms. Belisle's information only and that they did not invite her to provide additional information as it was not their practice to request additional information after the cross-disclosure of submissions. However, given all the circumstances of this matter, the Court is not satisfied that refusing Ms. Belisle's short Rebuttal and some of her evidence was fair. This prevented Ms. Belisle from being effectively heard by the Commission.

C. *The Reasonableness of the Decision*

[175] In view of the above, and given the Court's decision on procedural fairness, it is not necessary for the Court to assess the reasonableness of the Decision.

[176] That said, the Court is far from convinced that the following conclusions of the Investigation Report were reasonable and invites the Commission to re-analyze these findings:

(1) While the Investigation Report "summarized" the Complaint, the Court finds the Investigator's summary lacking and seemingly incomplete as they do not address all the incidents raised by Ms. Belisle.

(2) The record appears to show that Ms. Belisle already benefited from accommodations for her disability while at DND. It also shows that she was proactive in her attempts to have these accommodations follow her at CIRNAC. One would therefore expect the Commission to validate what additional steps Ms. Belisle needed to follow to have these accommodations put in place at CIRNAC. It is unclear if CIRNAC's request for additional information was in fact warranted and just how much collaboration CIRNAC gave to Ms. Belisle on this matter. CIRNAC appears to have put a lot of the burden on Ms. Belisle, the person needing the accommodations, which seem contrary to the concept of accommodation.

(3) While it appears that Ms. Belisle often started her work at 6:30 a.m., the record does not appear to show that this was an accommodation on the part of CIRNAC. She was still expected to work during the regular work hours of others at CIRNAC. Her early hours appear to have only been considered as part of her permitted overtime and not in the context of any accommodation for her disability and family status; and

(4) The Court is far from convinced that Ms. Belisle's overtime payment should have been considered in the analysis of the notice period. That said, the Court agrees with the Commission that the only issue for it on this question is whether a prohibited ground of discrimination underpinned this issue.

VI. Confidentiality Order

[177] During one of the case management conferences, Ms. Belisle raised an issue regarding the sensitive nature of some of the documents she had filed in her Applicant's record. Per the minutes of the case management conference held on June 24, 2024, Ms. Belisle asked if her file could be dealt with confidentially. Justice Duchesne, the case management judge, informed Ms. Belisle that she would be required to bring a motion pursuant to Rule 151.

[178] During a subsequent case management conference held on July 17, 2024, Ms. Belisle asked if some parts of a document could be redacted. In response, Justice Duchesne explained what a confidentiality order was. He also confirmed to Ms. Belisle that her file was public, which meant that any member of the public could see her file. The next day, July 18, 2024, Justice Duchesne ordered that the Applicant's Record be filed as a presumptively confidential document and not included in the public record until further order of this Court.

[179] Finally, during a case management conference held on September 23, 2024, Justice Duchesne advised Ms. Belisle of the Supreme Court of Canada's decision in *Sherman Estate v Donovan*, 2021 SCC 25 [*Sherman*]. Still, Justice Duchesne invited the parties to attempt to collaborate and agree on what could possibly be kept confidential.

[180] Despite Justice Duchesne's guidance, Ms. Belisle did not file the suggested motion for a confidentiality order; instead, she verbally requested at the hearing that a confidentiality order be issued. She claimed that she had understood from Justice Duchesne's directions that a motion

was not necessary if the parties agreed on what needed to be kept confidential and that she had had numerous exchanges with the AGC regarding same.

[181] She further explained that in her view, the Commission colluded with her union, the human resources departments (it is unclear from which service) and CIRNAC to ensure she would not be heard by the Tribunal, to force her to proceed to a judicial review, with the intent that she would need to file sensitive and personal information that would then be part of a public record, exposing her to more harm.

[182] The AGC objected to this last-minute verbal request for a confidentiality order and advised that while there had been discussions between the parties with respect to same, no agreement had been reached. The AGC further explained that there were numerous email exchanges with Ms. Belisle where she had been advised of the AGC's position and where she was invited to make the required motion, which she had not done prior to the hearing.

[183] The Court, under reserve of its decision on the objection of the AGC, invited Ms. Belisle to file a motion record, accompanied by an affidavit, requesting a confidentiality order, if she wanted any chance to be heard on the matter, which was far from certain. The Court also invited the AGC to present any relevant email exchanges with Ms. Belisle on this topic.

[184] On the last day of the hearing, Ms. Belisle filed her Motion Record for a Confidentiality Order [Confidentiality Motion]. As for the AGC, it provided this Court with a copy of email exchanges between the parties on the topic of confidentiality.

[185] It is abundantly clear from these email exchanges that while discussions took place between the parties, including the fact that Ms. Belisle provided the AGC with what she wanted to be kept confidential in the form of a list referring to the tabs filed in her Applicant's Record, no agreement was reached. Discussions about Ms. Belisle bringing a confidentiality motion appear to have started around October 31, 2024. The AGC followed up with Ms. Belisle on February 7, 10 and 14, 2025. Discussions appear to have been held on February 20, 2025, which was again followed by emails from the AGC on February 24, March 13 and April 25, 2025, but no agreement was reached. The last email provided by the AGC, which was sent by the AGC's previous counsel to Ms. Belisle, is telling:

> However, I am unable to obtain instructions from my client without you specifying the exact information (for example, if there is an instance of Topic A on Tab X, please indicate that for me in writing so that I can understand you request and relay it accurately to my client). As stated in my email of March 13, as counsel for the Respondent I cannot search each of the tabs you have identified in an attempt to place them in the various categories of confidential information. Furthermore, this would be a speculative exercise and may not accurately capture your request.

[186] Yet, Ms. Belisle did not provide the AGC with the information requested and she did not file the necessary motion record prior to the hearing.

[187] In the context of this last-minute Confidentiality Motion, Ms. Belisle submits that she did not understand that anything she filed into the Federal Court record in support of her application for judicial review would become public.

[188] While she is of the view that the evidence filed was required to show how the Commission missed critical information that was submitted by her, she did not expect that some

of her personal information would become public, such as her full name (she would accept that her last name or L. Belisle be used but not her first name), residential address, contact information (phone numbers), her incumbent position and employer in all circumstances, her personal email address and her medical information and physician information. She submits that her personal data is her private property and that it ought not to be made public. She therefore requests that any documents in the Court's record that include her personal information be redacted or removed.

[189] Moreover, Ms. Belisle seeks to remove all her personal medical records and physician information (Exhibit 13 of her Affidavit), as well as to remove the email and the affidavit of Mr. Luc Lacroix (Exhibits 19 and 20 to her Affidavit).

[190] Ms. Belisle states that she takes privacy extremely seriously and takes measures in the ordinary course of her life to keep her personal information confidential. She is of the view that if her personal information would become part of the public domain, it would cause significant harm to her and her family and would infringe on her interests.

[191] She claims that CIRNAC directly or indirectly, within her surroundings, has targeted her and her family in situations she considers too sensitive to discuss or share with the Court, but that would place her at additional risk and harm.

[192] As previously mentioned, the AGC objects to the late filing of Ms. Belisle's Confidentiality Motion. The AGC adds that even if the Court considers Ms. Belisle's Motion, her Motion Record is not in conformity with the *Federal Courts Rules*, that her affidavit does not

support her Motion and that her request does not satisfy the *Sherman* test for the information to be kept confidential.

[193] While the Court understand that Ms. Belisle is a self represented applicant with cognitive disabilities, she must still abide by the *Federal Court Rules*. Per Rule 362(1), on a motion other than a motion in writing under Rule 369, a notice of motion and any required affidavit must be served and filed at least three days before the day set out in the notice for the hearing of the motion. Rule 364(3) provides the same as it pertains to the motion record. Per Rule 362(2), the Court may hear the motion on less than three days' notice (a) where the motion is made on notice, if all parties consent; or (b) in any case, if the moving party satisfies the Court of the urgency of the motion.

[194] In this case, as Ms. Belisle's Confidentiality Motion is not made with the AGC's consent and there was clearly no urgency, this procedural defect would suffice to dismiss Ms. Belisle's motion. Procedural fairness applies to all parties. Moreover, given Justice Duchesne's guidance as early as June 2024 and the email correspondence submitted by the AGC, the Court is of the view that it would be unfair to the Respondent to grant Ms. Belisle's Confidentiality Motion this late in the process.

[195] In any event, the Court agrees with the AGC that, as presented, Ms. Belisle's Motion Record does not comply with the *Federal Courts Rules* and is procedurally flawed on many aspects. For instance, it does not include written representations as provided in Rule 364(2)(e) and it does not specifically show what part of the Applicant's Record Ms. Belisle wishes to

redact. Even on the merits, the Court agrees with the AGC that most of what Ms. Belisle is pleading does not meet the *Sherman* test.

[196] This test, which builds upon the Supreme Court of Canada's decision in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, provides that a person asking a court to exercise its discretion to limit the open court presumption must establish three prerequisites, namely that:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> (*Sherman* at para 38)

[197] Here, the Court is not satisfied that Ms. Belisle's full name, residential address, contact information, her incumbent position and employer, and her personal email address, are highly sensitive information whose dissemination "would occasion an affront to [her] dignity that society as a whole has a stake in protecting." (*Sherman* at para 33) Ms. Belisle has provided no evidence on the record to show that the disclosure of this information would put "at serious risk" the dignity dimension of her privacy such that it would satisfy the first prerequisite of the test.

[198] The Court considered the fact that aside from the Applicant's Record and the Respondent's Record which were presumptively filed as confidential documents, Ms. Belisle's court file is public and has been as such since she filed her Notice of Application for Judicial

Review in 2020. Thus, all the information provided in this Notice is already part of the public domain (*Sherman* at para 81).

[199] Furthermore, once again, Ms. Belisle has provided no evidence other than her beliefs that harm would come to her and her family. She alleged conspiracies and collusion on the part of various governmental entities that she believes aim to hurt her without a single tread of evidence.

[200] As the Supreme Court of Canada outlines in *Sherman*, while evidence of physical harm is not always required, there must be more than speculation:

> [97] At the outset, I note that direct evidence is not necessarily required to establish a serious risk to an important interest. This Court has held that it is possible to identify objectively discernable harm on the basis of logical inferences (*Bragg*, at paras. 15-16). But this process of inferential reasoning is not a licence to engage in impermissible speculation. An inference must still be grounded in objective circumstantial facts that reasonably allow the finding to be made inferentially. Where the inference cannot reasonably be drawn from the circumstances, it amounts to speculation (*R. v. Chanmany*, 2016 ONCA 576, 352 O.A.C. 121, at para. 45).
>
> [98] As the Trustees correctly argue, it is not just the probability of the feared harm, but also the gravity of the harm itself that is relevant to the assessment of serious risk. Where the feared harm is particularly serious, the probability that this harm materialize need not be shown to be likely, but must still be more than negligible, fanciful or speculative. The question is ultimately whether this record allowed the application judge to objectively discern a serious risk of physical harm.

[201] The Court notes that the events at the basis of her Complaint occurred nearly 10 years ago. Moreover, although she filed her Notice of Application for Judicial Review in 2020,

Ms. Belisle presented no evidence that her and/or her family suffered harm since then. There is thus no reasonable inference that can be made that Ms. Belisle's feared harm would materialize.

[202] As for the evidence of Mr. Lacroix, provided by CIRNAC, it is relevant evidence in the record and cannot be removed or put under seal simply because it may cause some embarrassment to Ms. Belisle. In the context of her Complaint, she has made numerous allegations against various individuals. She must accept that others may make allegations against her. As the Supreme Court of Canada outlines: "upholding the presumption of openness has meant recognizing that neither individual sensibilities nor mere personal discomfort associated with participating in judicial proceedings are likely to justify the exclusion of the public from court" (*Sherman* at para 31).

[203] Notwithstanding the above, the Court will exercise its judicial discretion and issue a limited Confidentiality Order with respect to Ms. Belisle's medical information as it is an example of sensitive personal information recognized by the Supreme Court of Canada (*Sherman* at para 77). Exhibit 13 will thus remain in the record but will be kept under seal.

VII. Conclusion

[204] For the reasons outlined above, the application for judicial review is granted. In sum, the Court abides with the conclusions of the Federal Court of Appeal in *Tahmourpour,* with the appropriate adaptations needed for Ms. Belisle's case:

> [39] Any judicial review of the Commission's procedure must recognize that the agency is master of its own process and must be afforded considerable latitude in the way that it conducts its

> investigations. An investigation into a human rights complaint cannot be held to a standard of perfection; it is not required to turn every stone. The Commission's resources are limited and its case load is heavy. It must therefore balance the interests of complainants in the fullest possible investigation and the demands of administrative efficacy: see, for example, *Slattery v. Canada (Human Rights Commission)* at para. 55; Canadian Human Rights Commission, *Annual Report for 2001* (Ottawa: Minister of Public Works and Government Services, 2002), p. 33.
>
> [40] Nonetheless, I am satisfied that this is an exceptional case. In failing to investigate and analyse the statistical data, and to interview other cadets in Mr. Tahmourpour's troop or Mr. Solomon, the investigator failed to investigate "obviously crucial evidence". The investigation of Mr. Tahmourpour's complaint thus fails to meet the test of thoroughness prescribed in *Slattery*. Accordingly, the Commission's dismissal of the complaint should be set aside as being in breach of the duty of fairness.

[205] Here too, the Court is satisfied that this is an exceptional case. In the Court's view, by failing to outline how they investigated Ms. Belisle's allegations, by failing to interview potentially relevant third-party witnesses, and by refusing to share Ms. Belisle's Rebuttal with the Commission, the investigation fails to meet the test of thoroughness prescribed in *Slattery*.

[206] Given the caselaw that has established that a deficient investigation taints the Commission's decision when that decision is based upon the investigation report, the Court is satisfied that the Decision in the present matter is also deficient as "the Commission was not in possession of sufficient relevant information upon which it could properly exercise its discretion" (*Garvey v Myers Transport Ltd*, 2005 FCA 327-at para 23).

[207] Let's not forget that the Commission's discretion comes with great responsibilities, as it is the gateway to decide if a complaint should proceed in front of the Tribunal. The impact on an

applicant is very important and must therefore be exercised wisely (*Gravelle* at para 39 citing *Sketchley* at paras 79-80).

[208] Given all of the accommodations that have been provided to Ms. Belisle by this Court and the AGC which have required the expenditure of public funds and judicial resources, including the last-minute filing of her Confidentiality Motion despite this Court's guidance and the new improper arguments that took up a non-negligeable amount of time during her submissions at the hearing, the Court is of the view that no costs should be awarded (Rule 400(1), (3) of the *Federal Courts Rules*).

[209] Finally, a Confidentiality Order will be granted with respect to Ms. Belisle's medical information contained in Exhibit 13 which will remain in the record but will be filed under seal.

VIII. Obiter

[210] While the comments below had no bearings on this judgment and reasons, given Ms. Belisle's clearly stated intentions, the Court notes the following.

A. *Accommodation is a Two-Way Street*

[211] The morning of the first day of hearing, Ms. Belisle refused to go through the electronic security measures (electronic door or electronic wand) of the Court. She insisted that she had the right to a pat down instead, and only from a female officer. Given that no female officer was present that day, she refused to proceed.

[212] The Court met with Ms. Belisle at security and explained that while the Court was not suggesting that she presented a security risk, the Court would not by-pass standard security measures (which are publicly available on the Courts Administration Service website). The Court offered that the hearing proceed virtually, until a female officer was made available, but Ms. Belisle refused and requested that the matter be postponed. The Court refused the requested postponement, given the Direction Order of Justice Grammond rendered the day before denying Ms. Belisle's request for a continuance. The Court therefore advised that her file would proceed, as scheduled, and requested that she wait at security until arrangements with a female officer could be made.

[213] Because the Court disagreed with Ms. Belisle, she immediately requested to know who had named the undersigned judge and when she understood that my appointment came from the federal government, she indicated that in her view, I was in a conflict of interest and had no jurisdiction over her.

[214] The Court notes that although litigants are entitled to accommodations, the search for accommodation is a two-way street. As the Federal Court of Appeal highlighted: "It is the responsibility of the disabled individual to bring the facts relating to the discrimination they are experiencing to the attention of the employer or service provider". The individual also has the obligation to assist in securing the appropriate accommodative measures (*Davis* at para 33; see also *Hayne* at para 30).

[215] In this case, there is no indication in the record that Ms. Belisle advised the Court she preferred not to undergo security screening through the electronic door or electronic wand, or that solely a female officer could proceed with a pat down. There was thus no means by which the Court could secure appropriate accommodative security measures for Ms. Belisle prior to the hearing.

B. *OPCA Strategies*

[216] At the beginning of the hearing, Ms. Belisle requested that she be provided with a certified proof of the license for practicing law of the lawyer appearing for the AGC, with her certified proof of her insurance bond carrier with her law society and a certified copy of the oath she signed to become a lawyer. She also requested a certified proof of the oath taken by the undersigned as a judge. These requests were denied and the Court informed Ms. Belisle that both the undersigned's appointment and the AGC's counsel's credentials were publicly available.

[217] During the hearing, Ms. Belisle claimed on several occasions that as a "living individual" or a "living natural woman", she had non-alienable human rights, that go beyond the jurisdiction of this Court. She explained that since God created people on earth and that people created governments to serve the people and that governments created laws, it is clear that people are in this hierarchy, above the laws. To quote Ms. Belisle, "private natural women reign supreme" and this keeps her "internationally isolated and protected from the law and a corrupted system of commercial legal slavery". In her view, the rules of law, created by Parliament, are meant for administration purposes only and do not apply to natural living beings. Moreover, the

Commission, the AGC and this Court are all in conflict of interest as they are all paid by the federal government and therefore have no jurisdiction over her.

[218] Ms. Belisle also challenged the fact that the Commission and the Tribunal are corporations and have no legal jurisdiction as they are not governed by common law. And since common law must develop in accordance with *Charter* values (referring to *M(A) v Ryan*, 1997 CanLII 403 (SCC), [1997] 1 SCR 157), a trespass of common law equals an infringement or denial of her fundamental rights and freedoms listed in the *Constitution Act, 1982*, s 35, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, and the *Universal Declaration of Human Rights, 1948*.

[219] The Court understands from the various arguments made by Ms. Belisle that she does not recognize the right for Parliament to have given the Commission the power to screen her Complaint to determine if it should be remitted to the Tribunal for analysis or not, and that, in any event, the Tribunal would not have jurisdiction to determine if her Complaint is valid or not, since the Tribunal is not a court of common law.

[220] From the onset, the Court notes these arguments do not appear anywhere in the record, which is a sufficient basis to dismiss them. The Federal Court of Appeal has explicitly stated that Rule 301 of the *Federal Courts Rules*, which, at paragraph (e) require an applicant to set out a complete and concise statement of the grounds intended to be argued, is mandatory (save for limited exceptions). This Rule ensures that a respondent has adequate notice of the case being brought against them so that they may meaningfully respond (*Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at paras 38, 41).

[221] Further, the case law of this Court is clear that "unless the situation is exceptional, new arguments not presented in a party's Memorandum of Fact and Law should not be entertained as to do so would prejudice the opposing party and could leave the Court unable to fully assess the merits of the new argument." (*Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 at para 81).

[222] Notwithstanding the above, the Court highlights that several of these arguments appear to be OPCA strategies that have been consistently rejected by Canadian courts since Associate Chief Justice Rooke of the Court of Queen's Bench of Alberta's landmark decision in *Meads,* who clearly stated that these strategies are all nonsense. This decision has been cited with approval on several occasions by this Court and the Federal Court of Appeal. (e.g., *Nadeau v Canada*, 2019 FCA 246 at para 6; *Kibalian v Canada*, 2024 FC 141 [*Kibalian*]).

[223] For example, Ms. Belisle made comments relating to her name and identification, stating that her name belonged to a person and not a corporation, and that her God-given name only belonged to her in the jurisdiction of God. Her Confidentiality Motion also contains several references to "Louise of the family name Belisle" and her "private to public affidavit" identifies her as "Louise of the family Belisle, CREDITOR, Beneficiary". These are indicia of OPCA litigants (*Meads* at paras 209, 245).

[224] The Confidentiality Motion also contains several thumbprints in red ink, an indication that appears restricted to OPCA documents and presumably intended to represent blood, a kind of arbitrary symbolism (*Meads* at paras 212, 215).

[225] Further, at paragraphs 221 and 222 of *Meads*, Associate Chief Justice Rooke outlined common status or characteristics of OPCA litigants, numerous of which can be recognized in Ms. Belisle's submissions. Of note, that she is a natural person, not a corporation, was created by God and is only subject to a category of law, i.e., "common law" or "God's Law", as well as her claim that Canada is a corporation. These arguments were also reproduced in the affidavit she enclosed with her Confidentiality Motion.

[226] At paragraphs 242 and 243 of *Meads*, Associate Chief Justice Rooke noted that OPCA litigants often engage in unusual in-court conduct as they seemingly follow a script in which demands are made. Several of these demands were made by Ms. Belisle, including that of seeing the oath of office of the undersigned and the certified proof of the license of counsel appearing for the AGC, while seemingly reading a written statement. And, on more than one occasion during the hearing, Ms. Belisle asked the Court to confirm its authority to proceed in this matter.

[227] What is perhaps the most evident example of OPCA strategies in this matter is Ms. Belisle's jurisdictional arguments concerning the Commission, the Tribunal and this Court, in addition to her repeated reference to the supremacy of God and the common law (*Meads* at paras 276-282). She also made references to the *Uniform Commercial Code* [UCC], i.e., US commercial legislation that has no application in Canada although it is "a significant element in much OPCA mythology" (*Meads* at para 150).

[228] OPCA litigants often deny that a court has jurisdiction or authority over them (*Meads* at para 248). They also refer to obsolete, foreign or otherwise irrelevant legislation, such as the *UCC* (*Meads* at para 228). Here, Ms. Belisle not only referred to the UCC at the hearing, but she

also included the following mention in the affidavit she filed with her Motion for a Confidentiality Order: “Explicitly without prejudice, all rights reserved, UCC 1-308”. (*Meads* at para 248)

[229] None of these arguments have any value in Canadian law. As Associate Chief Justice Rooke aptly summarized in *Meads*:

> [374] The inherent jurisdiction of Canada’s superior courts defeats almost all OPCA pseudolegal strategies. No person can claim to be outside court authority because they are subject to no court or law, or a restricted kind of law. No ‘magic hat’ can ever create an exemption from court supervision. All these arguments are defective and fail as a consequence.

[230] The Court highlights these OPCA strategies as Ms. Belisle indicated her intention to sue (1) CIRNAC as well as Ms. Duong and Ms. Bloskie personally; (2) the Commission and the Investigator, Ms. Christy Pitt personally; (3) the AGC and Me Petra Sbeiti, counsel of the AGC, personally; and even (4) “everyone in the courtroom” during the hearing. In her view, the process from the beginning did not accommodate her needs, lacked transparency, and full and frank disclosure. Further, the process was an obstruction of justice, illegal and even criminal (citing section 122 of the *Criminal Code*, RSC 1985, c C-46 for what she claims is a criminal breach of ethics and trust of public officials), and a violation of her rights. She believes that there is conspiracy between the various federal government departments that she has had to deal with her Complaint since the beginning.

[231] Ms. Belisle indicated that many consider her to be a “litigious” person. However, she views herself as someone who fights for what she believes to be her rights. While the Court fully

agrees that Ms. Belisle is entitled to fight for her rights, that does not give her the right to threaten legal proceedings against those who disagree with her. The Court will not condone these types of threats. Instead, the Court invites Ms. Belisle to focus her time and energy on the important aspects of her claims, taking the statement of the law of this decision as guidance.

[232] The Court's invitation is also a warning as some of Ms. Belisle's actions and comments come dangerously close to being considered vexatious proceedings per subsection 40(1) of the *Federal Court Act*. As stated by the Federal Court of Appeal in *Canada v Olumide*, 2017 FCA 42, vexatiousness comes in all shapes and sizes:

> [32] …**Sometimes it is the litigant's purpose, often revealed by the parties sued, the nature of the allegations against them and the language used**. Sometimes it is the manner in which proceedings and motions are prosecuted, such as multiple, needless filings, prolix, incomprehensible or intemperate affidavits and submissions, **and the harassment or victimization of opposing parties**.
>
> [Emphasis added]

[233] The Court thus advises Ms. Belisle to be aware that OPCA strategies have been strongly rejected by Canadian courts, including this Court which has declared some OPCA litigants as vexatious litigants (e.g., *Kibalian*; *Rooke v Williams*, 2020 FC 1070; *Holmes v Canada*, 2016 FC 918).

JUDGMENT in T-926-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The AGC's email correspondence provided during the hearing is deemed part of the Court record.

3. Ms. Belisle's Motion for a Confidentiality Order is denied. However, using the Court's discretion, Exhibit 13 of Ms. Belisle's Affidavit will remain in the record but will be filed under seal.

4. No costs are awarded.

"Danielle Ferron"
Judge

APPENDIX A

On June 9th, 2025, the day before the hearing in the present matter had been scheduled to take place for a duration of three days, the Applicant filed a Notice of motion requesting a continuance of 30 days.

This Notice of Motion was not accompanied by an affidavit nor a Motion Record and contained very few explanations as to why this continuance would be warranted in the circumstances.

Justice Grammond, the judge on duty, denied the Applicant's request, and rendered the following direction:

> The Court is in receipt of documents entitled "Notice of Motion for Continuance" and "Notice of Motion Ordered" filed by the Applicant. In substance, the Applicant is asking for an adjournment of the hearing of this application, scheduled to begin tomorrow, June 10, 2025. The Applicant provides no clear reasons for this request, other than vague assertions that new evidence was discovered. The request for an adjournment is dismissed. There is no clear reason in support of the request, and new evidence is not admissible on judicial review in any event. Moreover, this matter has been going on for five years and has required several case management conferences and numerous extensions of time. A postponement on the eve of the hearing would cause prejudice to the Respondent and a waste of the Court's resources. The hearing of this matter will proceed as scheduled, beginning on June 10, 2025.

On June 10th, 2025, at the onset of the hearing, the Applicant requested that her Notice of Motion for continuance be heard again by the presiding judge, explaining that she wanted to make further representations to better explain her requested continuance.

While a decision had already been rendered by this Court, the Applicant was given an opportunity to explain why she requested such a continuance.

The Applicant made numerous submissions for more than one hour, including, but without limitation, the fact that she needed time to present an affidavit and a Motion Record that would provide in detail the reasons for the requested continuance. She also, for the first time at the hearing, indicated that she was sick.

However, the Applicant did not submit any evidence regarding her new claim that she was sick but mentioned to the Court that she should not be forced to provide any such evidence supporting this claim.

The Applicant further stated that in her view, the Canadian Human Rights Commission had no jurisdiction over her rights, that the laws of this land including the *Federal Courts Rules* did not apply to her and questioned whether the Federal Court had in fact jurisdiction to hear this matter.

She further claimed that evidence in the record supports her position, and that she needs time to compile and adapt her record in front of this Court accordingly.

Moreover, the Applicant submits that the Attorney General of Canada has no jurisdiction and should not be a Respondent in this case. She argues that the Canadian Human Rights Commission should be the appropriate respondent as they should be held accountable for their illegal and unlawful jurisdiction, process and decision.

On the request for a continuance, considering that:

i. The Notice of Application for judicial review filed in August 2020;

ii. there have been numerous extensions granted in this matter to accommodate the Applicant;

iii. there have also been several case management conferences, during which the Court provided substantial guidance to the Applicant who is a self-represented applicant with a disability;

iv. on March 26, 2025, the Chief Justice of the Federal Court ordered that the hearing would be heard on June 10, 2025, for a duration of three days;

v. the tardiness of the request, the impact on judicial resources and the lack of sufficient reasons and evidence supporting the request for continuance; and

vi. Justice Grammond's Direction of June 9, 2025.

The Court agrees with the Directive already rendered Justice Grammond of this Court and will not grant the requested continuance.

On the request for the Attorney General of Canada to be removed from the record and replaced by the Canadian Human Rights Commission, considering:

i. The Notice of Application for judicial review filed by the Applicant in August 2020, against both the Attorney General of Canada and the Canadian Human Rights Commission;

ii. the Motion Record of the Canadian Human Rights Commission dated September 10, 2020, requesting an order removing it as one of the respondents on the record, per Rule 303 of the *Federal Courts Rules*;

iii. the Order of this Court dated October 9, 2020, granting the Canadian Human Rights Commission' Motion, which order specifically states that the Applicant did not oppose the Commission's motion, and this Order was not appealed;

iv. the Attorney General of Canada has been the sole Respondent of record ever since; and

v. Rule 303 of the *Federal Courts Rule* which is binding on this Court and the parties;

The Court denies the Applicant's claim that the Attorney General of Canada is not the appropriate Respondent and allows the Attorney General of Canada to remain on the record.

The Court reserves its right to provide more detailed reasons in its decision on the merits.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-926-20
STYLE OF CAUSE:	LOUISE BELISLE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO QUEBEC, QUEBEC
DATE OF HEARING:	JUNE 10 TO 12, 2025
REASONS FOR JUDGMENT AND JUDGMENT:	FERRON J.
DATED:	AUGUST 12, 2025

APPEARANCES:

Louise Belisle	ON HER OWN BEHALF
Petra Sbeiti	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA

SOLICITORS OF RECORD:

Petra Sbeiti Department of Justice Ottawa, Ontario	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA