Federal Court  Cour fédérale

Date: 20171220

Docket: T-343-17

Citation: 2017 FC 1167

Ottawa, Ontario, December 20, 2017

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

SUZANNE DEMITOR

Applicant

and

WESTCOAST ENERGY INC.
(O/A SPECTRA ENERGY TRANSMISSION)

Respondent

JUDGMENT AND REASONS

[1] The applicant, Suzanne Demitor, brings a judicial review application, pursuant to sections 18 and 18.1 of the *Federal Courts Act* (R.S.C. 1985, c. F-7), of a decision made by the Canadian Human Rights Commission [the "Commission"].

[2] The decision, dated January 31, 2017, is made on the basis of 43(3)(b)(i) of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) [the "Act"]. It reads as follows:

44(3) On receipt of a report referred to in subsection (1), the Commission	**44(3)** Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :
(b) shall dismiss the complaint to which the report relates if it is satisfied	**b)** rejette la plainte, si elle est convaincue :
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or	**(i)** soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,

In effect, Mrs. Demitor made a complaint to the Commission which was investigated. The investigator, Mr. Stephen Worth [the investigator], submitted his report of the findings of the investigation conducted (subsection 44(1)) and recommended against referring the matter to an inquiry before the Canadian Human Rights Tribunal. The recommendation was endorsed by the Commission in its decision of January 31, 2017:

> Before rendering the decision, the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, to dismiss the complaint because the respondent has provided an explanation for its action which is not a pretext for discrimination on the basis or age and/or marital status.

[3] The Commission serves a screening purpose. The reasons and recommendations of an investigator, when the Commission does not give its own reasons and rather adopts the investigator's recommendations, are treated as constituting the Commission's reasoning for the purpose of the screening function (*Sketchley v Canada (Attorney General)*, 2005 FCA 404; 2006

3 FCR 392, at para 37). In this case, the applicant does not take issue with the decision itself, but rather finds fault with the investigation conducted, thus violating procedural fairness principles.

I. Facts

[4] The facts of this case are relatively simple.

[5] The applicant is Suzanne Demitor. She is 53 years-old and married with 2 children, ages 11 and 13. The applicant was an employee of the respondent until approximately 1996 when her employment was terminated. Following her termination, the applicant provided services on a continuing basis to the respondent under a series of contracts involving various entities (Cicada Systems Inc., Cicada Systems, Demitor Holdings Inc.) until 2013, when her last contract, presented as that of a consultant, was terminated.

[6] It is that last contract which is the source of the complaint to the Commission made by the applicant. The respondent's agreement is with Demitor Holdings Inc. DBA Cicada Systems. The agreement included a termination clause at the sole discretion of the respondent, but the applicant claims that she was treated in an adverse differential manner on the basis of her age and her marital status, two prohibited grounds under section 3 of the Act. For our purposes, I will insist on the facts which are directly relevant to the allegations of violations of procedural fairness. Nevertheless, the general context in which these allegations are presented is of some relevance.

[7] In the early 1990s, the applicant started developing with other Westcoast Energy Inc. [Westcoast Energy] workers, including Marion Johansen, a database that would assist to manage the respondent's waste and chemical inventory. Ms. Johansen would continue to be involved with the applicant both as a co-employee and as the Westcoast Energy's responsible for managing the contracts that kept the applicant involved until 2013.

[8] From this database, a more robust system was developed in large part due to the expertise of the applicant. This system was referred to as the Environmental Management Information System [EMIS]. Such system proved useful as it enabled the company to satisfy regulatory reporting obligations.

[9] In 2002, the applicant formed Cicada Systems Inc. [Cicada Systems] and she registered the company in the United States in 2011. In 2013, the applicant began contracting with the respondent through Demitor Holdings Inc. The applicant provided services and support of the respondent's EMIS and Environmental and Chemical Inventory [ECI] system.

[10] In 2004, Westcoast Energy was purchased by Duke Energy, to be shortly thereafter renamed Spectra Energy [Spectra]. Spectra had its own system for tracking the same kind of information, which resulted in the wish for Westcoast Energy to migrate its EMIS system into Spectra's EPASS. As the transition progressed, all that remained under the management of Westcoast Energy, which is relevant to this case, was the ECI. The applicant was thereafter chiefly involved in the management of the ECI, which had yet to be migrated into EPASS.

[11] Ms. Johansen, who was interviewed by the investigator, explained that the ongoing need for ECI as a stand-alone system diminished over time, and that there were several points where the program appeared to be a casualty of budget restrictions and management decisions. Until 2013, ECI was kept within the division but the migration to EPASS was to continue. That would result in the transfer of the function to the Houston (Texas) headquarters of Spectra.

[12] According to Ms. Johansen, it was the respondent's intention that the applicant be instrumental in the transition of the program to the Houston headquarters. However, the applicant's contention that she was being replaced by someone younger than her, one Mr. Moreno, of Houston, was simply untenable given that Mr. Moreno was "in charge" of the entire EPASS system, compared to the applicant's role which was in helping manage what would have become a single module of the EPASS system.

[13] Understandably, it is in the context of the uncertainty about her future involvement with Westcoast Energy that the events that led to the cancellation of her contract were to take place.

[14] In fact, the applicant spoke at some length to the investigator about the precariousness of her situation going as far back as 2005. Thus, during the period between 2005 and 2013, the respondent was non-committal with respect to the long-term prospects of ECI and her continued involvement. On multiple occasions over this period, she felt she would have her responsibilities removed due to the non-committal approach to the programs in which she was most directly involved.

[15] In the notes of the investigator's interview conducted with the applicant, it is reported that the applicant's husband was asking her about what was happening about contracts, and why she was not working. She would be indicating that she would be doing hours of work fighting for her job and the applicant's husband would vent that too much work was being done without being paid. The applicant thought that her husband would be restless and that he would get in touch with people at the company. Indeed, in her second interview with the investigator, she acknowledged that she knew her husband was speaking with a manager at Westcoast Energy, one Rob Conrad, but did not know that her husband would send the email which resulted in the termination of her relationship with Westcoast Energy. The email is at the heart of this case.

[16] The email sent on July 16, 2013, which is reproduced in his entirety in the Investigation Report (and also reproduced in Appendix A of these reasons) is, in my view, clearly threatening. Mr. Demitor presents himself as a representative of Cicada Systems. The email goes through the history of underfunding for ECI and claims that a proposal developed by Cicada in order to deal with the major deficiencies of ECI and MSDS was not accepted, with the consequence that "Cicada was asked to essentially limp the system along in an attempt to meet NPRI deadlines only". The email claims that Cicada recommended "resuming reporting as it did with BC Hydro to ensure that the MSDS database was current and credible". Showing his displeasure with how the matter had been handled, the email continues by stating:

> Being that you were responsible for ECI during the period being discussed, I would like to know what members of management were involved in the decision process outlined above and who was given the *ECI Executive Summary*, dated November 2010, which I have included. Rob is currently working point for ECI and I am confident he has good understanding of what was needed to get things right.
>
> (my emphasis)

[17] Continuing to speak as a Cicada Systems' representative, the email continues:

> As a consultant who specializes in regulatory chemical accountability, part of our function, and responsibility is to inform our clients if they are doing things that would be looked upon unfavourably in the event of a regulatory audit. Part of our due diligence involves assigning accountability to certain decisions regarding regulatory issues so that we can better serve our clients and advised them moving forward.
>
> (my emphasis)

[18] The email then makes things very personal:

> Cicada is integral to ECI. Suzanne helped develop it and has the knowledge that is crucial to its success whether or not it remains a stand-alone system. If Spectra's desire is to integrate ECI into EPASS, having Cicada onboard is essential to avoid development setbacks similar to the ones experienced during air emissions development.

The email then concludes by setting an element of urgency by stating that "(g)iven that budgets are currently being discussed and Matthew was put in charge of evaluating ECI and its possible integration into EPASS, this matter needs to be dealt with immediately so that we can avoid any further setbacks in ECI and MSDS. These systems need to be current and credible, regardless of whether or not ECI is integrated into EPASS."

[19] This email was cc'd to executives in Houston and it is signed by Tim Demitor, who presents himself as speaking on behalf of Demitor Holdings Inc. DBA Cicada Systems.

[20] When interviewed, Mr. Demitor stated that he sent the email in order to ensure his family's "financial stability". He felt that the applicant's work was being compromised by her manager and he was concerned by her lack of compensation, and the company's regulatory compliance. He claimed that his goal was to start a dialogue.

[21] Most of the recipients of the email did not know Mr. Demitor as he had had no previous dealings with them. Nevertheless, the email was not well received by the respondent's representatives. It was seen as accusatory, overreaching and aggressive, to the point of perhaps constituting blackmail. In addition, the respondent claimed that the email meant there had been a breach of the confidentiality obligations by the applicant in view of the information contained in the email. Thus, within a week, the contractual relationship was terminated. It appears that it was one Rob Conrad, an employee of Westcoast Energy, whose responsibility it was to terminate the contractual relationship.

[22] Whether or not this case constitutes a labour law matter or a breach of a contractual relationship leading to liability is not before this Court. Indeed, the applicant did not take issue with the merits of the investigative report, which was endorsed by the Commission. As we shall see, the Commission disposed of the complaint on a narrow basis and that is not disputed. To put it another way, the reasonableness of the decision is not raised as an issue. Rather, the applicant takes issue with the manner in which the investigation was conducted.

II. Preliminary objection

[23] The complaint was filed on June 24, 2014, close to one year after the events that concluded in the termination of the contractual relationship, but within the limitation period.

[24] However, the respondent filed a preliminary objection to the complaint, submitting that it was beyond the Commission's jurisdiction to consider the matter because there was not an employer/employee relationship, but rather the relationship was between two corporate entities. In a letter dated September 8, 2014, the applicant was invited by the Commission to submit her position on the jurisdictional issue.

[25] The September 8, 2014, letter is signed by a Commission's staff member, Pascale Lagacé, who is presented as an Early Resolution Team Leader. Its purpose is to raise the jurisdictional issue. The complainant, as a corporation, would not have standing to file a complaint. Submissions to address the issue are invited.

[26] Mrs. Demitor contacted Ms. Lagacé the day after she received the notice. In the affidavit before this Court, the applicant claims that she was immediately concerned because she felt Ms. Lagacé had made up her mind without hearing her side of the story. The applicant sent her submissions on the jurisdictional issue on October 20, 2014. She then tried to communicate again with Ms. Lagacé, without success.

[27] It is on February 5, 2015, that they connected. Ms. Lagacé advised that the matter had been referred for a report to another officer, Mr. Jamie Masters. Despite that, Mrs. Demitor sought contact again with Ms. Lagacé. She was successful on March 19, 2015. According to notes made contemporaneously, Ms. Lagacé confirmed that she still thought the Commission did not have jurisdiction but indicated twice that it was her view; that is because the complainant is a corporation as opposed to an individual. The Commission staffer then explained how long the process typically takes if the matter is investigated by the Commission on its merits.

[28] In her own notes, the applicant documents her follow-up conversation with Mr. Masters who, following a cursory review of the file, would be inclined to see the relationship between the applicant and the respondent as a business relationship, contract after contract, with the respondent not exercising control over the applicant; the notes state that Mr. Masters is "not seeing anything that indicates an employee relationship - individual to business" (Suzanne Demitor's affidavit, exhibit J). Nevertheless, Mrs. Demitor seems to express some optimism because Mr. Masters appears to be sympathetic to her case ("He indicated that based on my surprising rebuttal of their accusations, he is very much interested in investigating").

[29] Despite the early misgivings of Ms. Lagacé and Mr. Masters, the report on the jurisdictional issue which was issued on August 13, 2015, recommended that the complaint be dealt with on its merits: it was prepared by Mr. Masters, a member of the Resolutions Services Division. The Commission, following submissions by the parties, endorsed the report of Mr. Masters on November 16, 2015.

III. The investigation

[30] Followed the investigation of the complaint by Mr. Stephen Worth. Before an interview with the applicant was arranged, the applicant insisted on sending 3000 pages of evidence on September 2, 2016. Counsel for the respondent indicated during the hearing of this case that it has not had access to that evidence; in fact, it was not before this Court. Counsel for the applicant simply noted that the evidence covered the relationship of the applicant with Westcoast Energy. It is not readily apparent why that much "evidence" would be submitted on what is a relatively straight forward matter. As I observed at the hearing of the case, it seems that the parties proceeded as if this is a labour law case or a general breach of contract issue. The reality is that the applicant was arguing discrimination with respect to the termination of the contract on the grounds of age and marital status. That is where one would have expected the focus to be. Following the investigation, the Commission found that "there was no evidence presented which substantiated the allegation that the complainant's age was a contributing factor to the respondent's decision to terminate her contract…" (Investigation Report of October 21, 2016, para 35) and that "(o)ther than the complainant's bald assertion that there is a link between the respondent's actions and her marital status, there is nothing to suggest that the respondent acted in a discriminatory manner" (para 76).

[31] Nevertheless, the applicant faults the investigation for what she alleges are procedural fairness violations.

[32] The investigator interviewed four persons as well as reviewing the documentation submitted by the parties: Mrs. Demitor, Mr. Demitor, Marion Johansen and Bruce Kosugi. Ms. Johansen is the Industrial Waste Specialist for the respondent and worked closely with the applicant while directly employed by the respondent. Later on, she managed contracts with the applicant; she was the prime point of contact between the applicant and the respondent. As for Bruce Kosugi, he was the manager of the EHS system in British Columbia and Ms. Johansen's manager.

[33] Mrs. Demitor was interviewed twice by telephone: on October 5, 2016, for approximately 30 minutes, and on October 12, 2016, for another 10 minutes. As for Mr. Demitor, he was interviewed for about 20 minutes on October 7, 2016. The interview notes taken by the investigator are on record before the Court. Are also on record the interview notes with respect to the interviews of Ms. Johansen and Mr. Kosugi.

[34] The Investigation Report is dated October 21, 2016, and requires that submissions of the parties on the report be made by November 14, 2016. It is signed by Mr. Worth. However, it was transmitted on October 31, 2016, by Ms. Lagacé who had become "Manager, Investigations" by that time. It appears that Mr. Worth had left the Commission by October 28, 2016.

[35] The parties provided their submissions on two different dates, on November 3 (respondent) and November 14, 2016 (applicant) without having access to each other's submissions. Thus, the applicant's submissions of November 14 did not take into account the respondent's submissions filed 10 days earlier. Similarly, the replies were not coordinated, the

respondent's reply coming on November 30, 2016, and the applicant's reply on December 9, 2016.

[36] In her submissions of November 14, 2016, the applicant took issue in particular with the allegation that her husband was in possession of confidential information. She stated that she did not have access to the respondent's confidential information since May 31, 2013, a full six weeks before the July 16, 2013 email which resulted in her contract being terminated. In the applicant's contention, Mr. Demitor had been speaking with various respondent's employees before writing his email and he would have been able to gather some information. Nevertheless, the applicant refers to emails received claiming that the respondent was sharing with her confidential information as late as July 15, the day before her husband communicated with various respondent's officials. The fact that the respondent would be communicating confidential information to her outside secure channels would somehow affect the alleged use of confidential information by her husband (in fact, that may explain why Westcoast Energy quickly resolved after the July 16 email to cut off communications).

[37] Mrs. Demitor also argued that the investigator had overlooked evidence and that the interviews with the Demitors had been rushed, especially that of Mr. Demitor. The applicant also indicated that she would expect Rob Conrad, who would have made the ultimate decision to end the contractual arrangement, to be interviewed. Finally, the applicant attempted to make hay out of her contention that she did not hold her husband out to be her agent until after the email was sent, despite the evidence which indicates numerous conversations between him and Westcoast Energy officials in which, evidently, he would be speaking on her behalf. Mr. Demitor claims his

information came from officials, which suggests he was not unknown to Westcoast Energy. Indeed, the contracts with Westcoast Energy were made through corporate entities including Demitor Holdings Inc. and Cicada Systems.

[38] The respondent's submissions of November 3, 2016, were basically in support of the Investigation Report, although the respondent continued to argue that the applicant was not one of its employees.

[39] The more extensive respondent's reply to the applicant's submissions of November 14 goes on to argue that the applicant's submissions speak of various issues, but do not speak much of the issues germane to the complaint, whether age or marital status were factors in the decision to terminate the contract. Whether the applicant had held Mr. Demitor out to be a representative or not prior to the email of July 16, 2013, is of no significance because he held himself out to be a representative of and speaking for Demitor Holdings Inc. Dba Cicada Systems. It was noted that Mr. Kosugi, of whom the applicant was particularly critical in her complaint to the Commission, had new responsibilities since January 2013, such that he did not have any longer the responsibility for approving or terminating contracts involving the applicant. At the end of the day, the issue is whether age or marital status were factors in the termination, not whether the respondent was right to terminate the contract. Finally, the respondent seized on the applicant's claim that she did not have system access after May 31, 2013. That claim, said the respondent, was "demonstrably false and, as illustrated below, was known by the complainant to be false". The point of the matter was that the applicant had indicated on May 31 that she ought to be

excluded from having access to the confidential information held in a secure manner, but the access was continued until June 30, 2013.

[40] The applicant had not seen the respondent's reply of November 30, 2016 when she produced her own reply. She did not know that the respondent had taken issue with the assertion the applicant had lost direct access to confidential information on May 31, 2013. In her reply's submissions of December 9, 2016, the applicant focused on her alleged status as an employee of the respondent.

[41] It is only on January 5, 2017, when the applicant received the respondent's reply that she noted that her assertion that she did not have access to the respondent's information system since May 31, 2013, was inaccurate. Thus, she immediately sought to correct her mistake by sending an email to Ms. Lagacé on January 9, 2017.

[42] In the January 9 email, Mrs. Demitor acknowledges her innocent mistake, noting that the evidence to the investigator showed that she was aware of still having access as of June 30, 2013. That would tend to show that this constitutes an innocent mistake. More importantly for this case, the applicant was adamant that the mistake made "no difference whatsoever to anything else in my submission." She added that "(j)ust the date needs to be corrected. As to the issues at hand, the date makes absolutely no difference. The change is immaterial to my submission" (Suzanne Demitor's affidavit, exhibit O).

[43] In spite of an assurance being given by Ms. Lagacé that the correction had been communicated to the Commission, the certified tribunal record did not turn up the email of January 12, 2017. I note, however, in the second supplementary rule 318 certificate of April 18, 2017, two emails, one dated January 9, 2017, and the other dated January 12, 2017, that are instructions given by Ms. Lagacé concerning "date correction to first submission" with as an attachment "Evidence of having system access June 18 - no access June 30.docx". On January 9, the instruction appears to be to put on file ("svp mettre au dossier") the email of Mrs. Demitor of the same day. However, the matter is not without some doubt as the time on the emails would require some explanation. As for the instruction given on January 12, it appears to be part of a chain which includes Mrs. Demitor's email of January 9, and where the instruction is again to put on file the email of January 9, but also that of January 11 where the applicant wishes to have confirmation of the communication of the date correction to the Commission. This second chain of emails include one from Ms. Lagacé to one Julie Fortier and one from Ms. Fortier to one Maria Stokes with the instruction, "Could you please print a copy of this email and the attachment and p/a on file". The attachment is again identified as "Evidence of having system access June 18 – no access June 30.docx".

[44] As the Commission did not take part in this Court's proceedings, the Court does not have the benefit of a complete explanation.

[45] At any rate, the applicant pursued the matter with the manager of the registrar services in February 2017, after the negative decision by the Commission rendered earlier on January 31.

[46] What was a mistake that made “no difference whatsoever to anything else in my submission” and “(a)s to the issues at hand, the date also makes absolutely no difference” before the Commission’s decision seems to have become a matter of significant importance after the decision in the view of the applicant. Indeed, in an email dated February 21, 2017, the applicant sought to have the Commission reverse its decision. She also made allegations about Ms. Lagacé’s “conflicts of interest” and inquired about Commission employees being vetted for conflicts of interest with any federally regulated companies.

[47] That takes us to the proceedings before the Court where the applicant alleges violations of procedural fairness.

IV. The decision under review

[48] The Commission endorsed the Investigation Report reaching the conclusion that the explanation given by the respondent for the termination of the contractual relationship with the applicant was not a pretext for discrimination on the basis of age or marital status. The decision is dated January 31, 2017, while the report, signed by the investigator, is dated October 21, 2016. In the period between the report and the decision, the applicant and the respondent offered their submissions and replies to each other submissions.

[49] The preliminary objection to the jurisdiction of the Commission had already been rejected on August 13, 2015, the Commission having concluded that “when examining the relationship between the complainant and the respondent through the control and dependency lens it appears that it could be considered employment for the purposes of the Act.” That is

despite having acknowledged that "it is clear that the complainant was not in the traditional employer/employee relationship with the respondent" (para 38).

[50] The jurisdictional issue having been disposed of earlier, the Commission went on to be satisfied, on a low threshold, with the allegation that she was "fired because of [her] husband's misdeed" as it was acknowledged that the termination involved the complainant's spouse (para 14). Similarly, the Commission was willing to pursue the analysis further on the low threshold that "a younger employee of the respondent may have been involved in carrying out the duties of the respondent [*sic*] after her departure" (para 15). Accordingly, the Commission saw enough to take it to the step 2 where a closer examination of the explanation offered by the respondent takes place.

[51] Given that the applicant is not challenging the merits of the Commission's decision, a close analysis of the decision is not required. It will suffice to say that the Investigation Report/Decision reproduces in its entirety the email sent by Mrs. Demitor's husband on July 16, 2013. It is literally the centerpiece. The Commission finds that no link to age was established by the applicant as the evidence "would appear to demonstrate that the respondent elected to centralize the management of its environmental chemical inventory with a system that was developed by its parent company" (para 41).

[52] Similarly, the marital status allegation was not established. The Commission was careful not to delve into labour law issues concerning whether or not the termination was justified: that may explain why the issue is decided on narrow grounds. Thus, the motivation for the

termination is the respondent's perception that the email sent on behalf of Mrs. Demitor, or as her representative, was threatening as suggesting that the respondent was in a state of regulatory non-compliance that only the applicant could ensure would be rectified. Moreover, the respondent had a reasonable basis to perceive a breach of the contract because of a breach of confidentiality.

[53] The Commission was interested in assessing whether the termination was discriminatory, not whether it is justified as a matter of labour law or contract law. It did not matter whether or not the information used in the email came from the applicant. The threatening nature of the email with the clear connexion to Mrs. Demitor ("Cicada is integral to ECI. Suzanne helped develop it and has the knowledge that is crucial to its success whether or not it remains a stand-alone system"), together with the perception that confidential information had been illicitly accessed were the reasons for termination, not marital status or age. The outcome would have been the same had a professional written the email. I reproduce in their entirety the crucial paragraphs of the Investigation Report which are the heart of the decision:

> [76] It matters not whether Mr. Demitor intended for this email to be threatening, or as he states, an attempt at opening a dialogue with management. The respondent perceived his actions to be threatening, and to be coming from a representative of the complainant. Similarly, whether Mr. Demitor obtained the information he alluded to in the email from his spouse also matters not. The respondent had a reasonable basis to perceive a breach of the terms of the complainant's contract, and acted in a way it deemed appropriate. Other than the complainant's bald assertion that there is a link between the respondent's actions and her marital status, there is nothing to suggest that the respondent acted in a discriminatory manner. The respondent acted on the assumption, whether rightly or wrongly, that the complainant breached her confidentiality requirements, and not on the basis of her marital status. This assumed breach created a breach of trust in the

> employment relationship and the complainant's contract was terminated.
>
> [77] It is not the place of this Commission to investigate whether the complainant was justly dismissed. Rather, the Commission needs only be satisfied that the respondent has not discriminated against the complainant pursuant to a protected ground under the Act. In the present circumstances, whether the respondent's explanation for its actions is a pretext for discrimination on the basis of marital status is at issue, and it appears as though the respondent's explanation is reasonable. Were the complainant to have been in a professional rather than personal relationship with the individual that wrote to the respondent's senior managers and suggested the organization was non-compliant with its regulatory requirements, it is reasonable to believe that the respondent would have acted in the same manner. On a balance of probabilities, the respondent's explanation appears to be an accurate account of the events which transpired.
>
> (my emphasis)

In effect, the Commission was interested solely in the reasons for termination. It was enough if there was a reasonable basis for concluding that the email was threatening and used confidential information. If that constitutes the basis for the termination, there is no discrimination. Indeed, there were only bald assertions of discrimination.

V. Standard of review and analysis

[54] No one disputes that the standard of review for allegations of procedural fairness violations is correctness (*Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502, para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 [*Khosa*], para 43).

[55] The applicant raises three procedural fairness issues:

a) The commission is in breach of procedural fairness because it failed to consider the date correction made by the applicant after the submissions have been completed;

b) The investigation was not thorough; and

c) Commission staff, and in particular Ms. Lagacé, demonstrated a closed mind.

The Court will address these alleged breaches *seriatim*.

A. *Date correction*

[56] As pointed out earlier, what was presented as merely a mistaken statement about the date on which the applicant lost access to the respondent's confidential information became in this Court "critical to the Applicant's argument in her November 14 Submission that she had no system access in the month her husband sent his email" (memorandum of fact and law, para 41). To say the least, this is completely at odds with the January 9, 2017, email where the applicant says that "I can assure you that the date makes no difference whatsoever to anything else in my submission…the change is immaterial to my submission."

[57] As the Court heard during the hearing of this case, the applicant did not even copy the respondent on her email of January 9, 2017, which, in the view of the respondent at least, constituted submissions that were not admissible since the exchange of submissions was closed

by the end of December 2016: the investigation into the complaint was completed as of December 28, 2016 as the Investigation Report was transmitted to the Commission by staff.

[58] The applicant may well have been right on January 9, 2017, that her mistake made no difference whatsoever to the submission. After all, her point, and it is a limited one, was that her husband did not have access to confidential information because her own access had been denied prior to the email of July 16, 2013. That argument was at any rate a weak one. Whether access was denied on May 31 or June 30, that would not have prevented the applicant from sharing confidential information that would have been used by Mrs. Demitor's husband. Indeed, the applicant argued that respondent's officials were in breach of security when they communicated to her on July 15, 2013, confidential information, which goes to show that there was confidential information reaching her the day before the July 16 email was sent. The applicant claimed that the mistake did not change the argument that the husband did not have access to confidential information. Actually, it is difficult to see how sharing confidential information is predicated on losing access to networks shortly before the email was sent unless it is proven that the confidential information used was accessible only in the first two weeks of July 2013. No such evidence was proffered.

[59] The whole confidential information issue is a red herring in view of the Commission's decision. It did not matter that the information was confidential or that it came from Mrs. Demitor. What mattered, says the Commission, is that the respondent "acted on the assumption, whether rightly or wrongly, that the complainant breached her confidentiality requirements, and not on the basis of her marital status" (Investigation Report, para 76). The merits of the decision

are not challenged and the Court takes the decision as it is: the Commission was focused on whether or not there was discrimination. If the respondent terminated the contractual arrangement because of the tone of the email and the reasonable basis to perceive a breach of the contract's terms, the termination was not by reason of the marital status or age. Whether or not the respondent is mistaken in its belief matters not. The Commission opined exclusively on whether the termination involved discrimination. It concluded that the termination was because of the email and the respondent's belief that some of the information contained therein was its confidential information transmitted to Mr. Demitor. To put it another way, the Commission excluded discrimination as a factor in the termination, whether or not termination was justified.

[60] The same can be said of the attempt made by the applicant to give significance to the fact that the date correction, concerning when access to confidential information was lost, was not communicated to the Commission. It matters not. I accept, for the purpose of the argument, that it is more probable than not that the correction was not communicated to the Commission in spite of the information that the email of January 9, 2017 – that is the email by which Mrs. Demitor corrected the date on which she lost access to confidential information – was filed by Commission's staff. It is possible that the correction had some importance in the eyes of the applicant because she is concerned with her credibility. The fact remains that the credibility of the applicant was not in issue with the Commission whose intention was focused on whether the respondent had discriminated against the applicant using a pretext. There were no findings about the applicant's credibility because none was needed. To put it bluntly, it appears that the email of July 16, 2013, did it. The Commission found that it did not matter that it was the applicant's husband who sent the email. Had it been a professional who would have written the email,

suggesting that the organization was not compliant with its regulatory requirements, the result would have been the same. The termination was because of the message and the use of confidential information, not because of the marital status of the sender. The date on which direct access to confidential information was not even alluded to in the October 21, 2016, Investigation Report. It was immaterial.

[61] The applicant relied heavily on the judgment of my colleague Brown J. in *Bergeron v Canada (Attorney General)*, 2017 FC 57 [*Bergeron*]. In that case, the Commission considered the wrong submissions which had been placed before it. The error was egregious. No wonder the Court found that the parties had not been heard: they had not.

[62] In the case at bar, there is nothing that can be compared to the situation in *Bergeron*. In *Bergeron*, it was the whole submission which was not before the Commission because a mistake had been made and, obviously, a party was not heard at all as the proper submissions were not put before the Commission. In my view, the situation in this case is more a matter of a case where there was no effect on the decision made if the date correction did not find its way before the Commission. In *Khosa*, the majority was commenting on the grounds of review of subsection 18.1 of the *Federal Courts Act*, the provision invoked in this case.

[63] With respect to paragraph 18.1(4)(b), the majority wrote:

> [43] Judicial intervention is also authorized where a federal board, commission or other tribunal

> *(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;*
>
> No standard of review is specified. On the other hand, *Dunsmuir* says that procedural issues (subject to competent legislative override) are to be determined by a court on the basis of a correctness standard of review. Relief in such cases is governed by common law principles, including the withholding of relief when the procedural error is purely technical and occasions no substantial wrong or miscarriage of justice (*Pal*, at para. 9). This is confirmed by s. 18.1(5). It may have been thought that the Federal Court, being a statutory court, required a specific grant of power to "make an order validating the decision" (s. 18.1(5)) where appropriate.

The paragraph cited with such empathic approval is from *Pal v Canada (Minister of Employment and Immigration)* (1993), 24 Admin LR (2d) 68:

> [9] The question to be answered, then, is whether the breach of natural justice was one which could have little or no effect on the outcome of the decision as a whole. A decision of this Court to grant relief under section 18.1(4) of the *Federal Courts Act* is discretionary. This is reflected in the text of that subsection which provides that the Court "may grant relief if it is satisfied that" the Board has "failed to observe a principle of natural justice [or] procedural fairness". This wording reflects the discretionary nature of the old prerogative writs which section 18.1(4) replaces. Thus, if no prejudice is caused by an erroneous procedure or decision an order quashing the decision will not normally be given. If no real purpose will be served by requiring another hearing, one will not be ordered.
>
> (my emphasis)

The date on which the applicant lost direct access to the respondent's confidential information is immaterial. Nothing of substance rides on that date. It can even be seen as being irrelevant. I cannot see what prejudice can be caused to the applicant. If she wishes to raise a credibility

issue, that was also irrelevant and was not considered by the decision-maker. It is not clear whether the date correction had to be put before the Commission after the investigation was completed, having received the submissions of the parties. But even if it did, it could not have had any effect on the outcome because it was irrelevant to the issues being considered by the investigator and, later, by the Commission. The date on which direct access was lost was not even alluded to as it was so far removed from the true issues before the Commission. The date correction may be an issue if the mistake made in the November 14 submissions is made an issue by the Commission. It was not.

B. *The investigation was not thorough*

[64] The applicant contends that the investigation fell short of the mark concerning three aspects. In her view, the investigation lacked thoroughness and neutrality:

i. Date correction: it is for all intents and purposes the same argument as before. The applicant states that "(t)he Commission had a duty to consider the Applicant's submissions on this issue before rendering its decision" (memorandum of fact and law, para 63);

ii. Mrs. Demitor takes issue with the comment in the Investigation Report that "it is reasonable that the respondent assumed that Mr. Demitor was speaking on behalf of the complainant, as she previously held him out to be her representative on contract and other business matters" (Investigation Report, para 75). Mrs. Demitor claimed that it made a difference when she established her husband as her agent because the investigator relied on a mistaken understanding that she had held out her husband to

be her business representative earlier than July 17, 2013, date on which she sent an email to Ms. Johansen advising her that her husband would be representing her;

iii. Failure to interview Mr. Conrad, the respondent's official responsible for the termination of the contractual arrangement. Furthermore, the applicant complains that she and her husband were interviewed for only 40 and 20 minutes respectively. More time, says the applicant, was needed to develop a fuller understanding of the evidence.

[65] It is less than clear how some of those complaints are not merely a disagreement with some findings. It is not so much the thoroughness of the investigation that is challenged, when the applicant contends that her husband was declared by her as her representative only on July 17, 2013, as it is the investigator's conclusion that Mr. Demitor was speaking on her behalf. This would appear to be more a challenge to the reasonableness of the conclusion than a procedural fairness issue. At any rate, one is hard pressed to see an argument as to the thoroughness of the investigation on that basis.

[66] Be that as it may, the thoroughness argument on its merits fails. The applicant relies on *Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574 for the proposition that an investigation must be neutral and thorough in "order for a fair basis to exist for the CHRC to evaluate whether a tribunal should be appointed pursuant to paragraph 44(3)(a) of the Act" (p 590). However, the Court qualifies in *Slattery* the degree of thoroughness required:

> In determining the degree of thoroughness of investigation required to be in accordance with the rules of procedural fairness, one must be mindful of the interests that are being balanced: the

> complainant's and respondent's interests in procedural fairness and the CHRC's interests in maintaining a workable and administratively effective system.
>
> […]
>
> Deference must be given to administrative decision-makers to assess the probative value of evidence and to decide to further investigate or not to further investigate accordingly. It should only be where unreasonable omissions are made, for example where an investigator failed to investigate obviously crucial evidence, that judicial review is warranted. Such an approach is consistent with the deference allotted to fact—finding activities of the Canadian Human Rights Tribunal by the Supreme Court in the case of *Canada (Attorney General) v. Mossop* [1993] 1 S.C.R. 554.
>
> (p 600)
>
> (my emphasis)

[67] I have not been persuaded that there was anything crucial about the email sent by Mrs. Demitor on July 17, 2013. The applicant contends that the date on which she presented her husband as her business representative is of fundamental character. However, the point made was that Mr. Demitor was clearly presenting himself as her representative, in his email of July 16, 2013, but also in other contacts with the respondent's officials, including Mr. Conrad, certainly before the termination, but also before the email of July 16. There had been contacts between officials and Mr. Demitor. As the notes of the interview conducted with Mr. Demitor show, the respondent knew who he was and that he was communicating on behalf of Mrs. Demitor. There has not been a demonstration that there is a failure to investigate obviously crucial evidence. It is obvious that Mr. Demitor was understood to speak on behalf of Suzanne Demitor on July 16, 2013, and before. It is not clear what else of a crucial nature that should have been investigated further once it was established that Mr. Demitor was speaking on behalf of Mrs. Demitor. Once again, the email of July 16, 2013, speaks for itself.

[68] In *Tahmourpour v Canada (Solicitor General)*, 2005 FCA 113 [*Tahmourpour*], Evans J.A. made clear that deference is owed to investigations of the Commission, which is the master of its own process:

> [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.
>
> (my emphasis)

[69] It is possible that the failure to interview some witnesses may constitute a violation of procedural fairness, but only in exceptional cases because that would be a failure to investigate obviously crucial evidence (*Tahmourpour*, para 40). To put it slightly differently, in the words of the Court in *Slattery*, "the investigator, much like the CHRC, must be master of his own procedure, and judicial review of an allegedly deficient investigation should only be warranted where the investigation is clearly deficient" (p 605).

[70] The applicant claims that the investigator had to interview Mr. Conrad. She speaks in terms of a reasonable person expecting that "useful evidence could possibly be gained by interviewing…" (memorandum of fact and law, para 71), words borrowed from paragraph 24 in *Egan v Canada (Attorney General)*, 2008 FC 649 [*Egan*] where the Court reckons first that there is no duty to interview every witnesses listed by a complainant. In *Egan*, the Court acknowledges

that only the failure to investigate crucial evidence would constitute a reviewable error. Hughes J. first established why in that case the testimony of a number of persons constituted critical omissions (para 21 to 23). These are highly fact-specific findings. Given the facts in *Egan*, it can be understood why the failure to interview would constitute a breach of procedural fairness. A similar demonstration has not been made in this case.

[71] Here, the applicant's request falls rather in the category of "turn every stone" (*Tahmourpour*, para 39). The fundamental issues raised by the complaint were considered by the investigator; this is not a clearly deficient investigation (*Slattery*, p 604-605) or a case of a failure to investigate "obviously crucial evidence" (*Tahmourpour*, para 40). There was no indication given as to what was expected of an interview of Mr. Conrad, as had been the case in *Egan*. Rather, the applicant would have wanted to see the investigator go on a fishing expedition, irrespective of recognition of the considerable latitude the investigator must have and the need for the Commission to be the master of its process. There was no violation of a procedural fairness principle in not interviewing Mr. Rob Conrad. Indeed, the applicant was unable to identify what else Mr. Conrad could have brought to this case, contrary for instance to the specificity in *Egan*.

[72] The applicant noted that the applicant and her husband were interviewed for some 60 to 70 minutes, supporting somehow the proposition that the investigation was not thorough. The submission has no merit. The case was a simple one. The applicant had provided considerable documentation. Obviously, it was for the investigator to clarify with the applicant the more relevant aspects of her evidence. The bold allegation that the investigation may be measured by

the length of some interview runs counter to the rule that the investigator is the master of his process. Without more, such bold allegation cannot succeed.

[73] Finally, there is no need to elaborate further on the date correction issue. There was no omission to investigate obviously crucial evidence because the evidence was not crucial. In January 2017, the applicant contended forcefully that the date error did not matter whatsoever. It has not been demonstrated how the passage of time changed anything. The issue with the date correction is not that the investigation was not thorough, but rather that information that was deemed unimportant to the submissions was not passed on to the Commission. It has not been shown what was important with the date correction. What was important was the use of confidential information, not when it was acquired. The fact that the applicant lost access to confidential information on May 31 or June 30, or July 15, 2013, had little importance as long as the respondent's belief that confidential information was used by Mr. Demitor was reasonable. And that was not challenged.

C. *Commission's staff, in particular Ms. Lagacé, demonstrated a closed mind*

[74] The applicant dealt early on in the process with Ms. Lagacé. Commission staff was dubious that the Commission had jurisdiction to deal with the applicant's complaint.

[75] Basically, Ms. Lagacé, as the Earlier Resolution Team Leader, was concerned that the applicant, "as a corporation", did not have standing before the Commission. When the applicant discussed the issue with Ms. Lagacé, the applicant worried that Ms. Lagacé would have an undue influence on the decision that would be made by the Commission, in spite of Ms. Lagacé having

indicated that the lack of employer/employee relationship was what she thought, as well as indicating that the decision was that of the Commission (affidavit of Suzanne Demitor, Exhibit J, the applicant's notes of her conversation with Ms. Lagacé).

[76] The view expressed by Ms. Lagacé was obviously not agreed to by the Commission (decision of August 13, 2015). Nevertheless, Mrs. Demitor continued to entertain doubts about Ms. Lagacé as her name appeared during the investigation process, including the fact that she transmitted the final recommendation on December 28, 2016, to the Commission and that, in spite of her assurance that the date correction had been passed on to the Commission, the record shows that the email exchange to that effect was not on the file reviewed by the Commission.

[77] The test for bias that is applicable at the investigation stage was authoritatively discussed in *Zündel v Canada (Attorney General)*, [1999] 4 FC 289 [*Zündel*], a judgment rendered by Evans J., as he then was. In order to prevail, it must be shown that investigators or Commission members had a closed mind:

> [19] In my opinion, the standard of impartiality required of investigators and members of the Commission is at the low end of the spectrum, at least when the basis of the allegation of bias is that they have expressed views that indicate a pre-judgment of the issues under consideration. In order to succeed in his challenge in this case the applicant must show that Ms. Falardeau-Ramsay had a closed mind when she participated in the Commission's decision to refer the complaint against Mr. Zündel to a Tribunal. I base this conclusion on the following three considerations.

[78] That is not to be confused with the reasonable apprehension of bias which is the standard applicable to courts or other adjudicative bodies. Marc Noël J., then of this Court, wrote in

Canadian Broadcasting Corp. v Canada (Human rights Commission), 71 FTR 214 [*CBC*] at p 225 when he considered the appropriate test for the Commission:

> The test, therefore, is not whether bias can reasonably be apprehended, but 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.

[79] What constitutes a closed mind is therefore more difficult to establish than the reasonable apprehension of bias test. It is a higher test to meet for she who claims closed mind on the part of an investigative body. Rather, the test is that which was articulated by the Supreme Court of Canada in *Newfoundland Telephone Co. v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 [*Newfoundland Telephone Co.*]:

> During the investigative stage, a wide licence must be given to board members to make public comment. As long as those statements do not indicate a mind so closed that any submissions would be futile, they should not be subject to attack on the basis of bias.
>
> (p 642)

[80] There are two reasons why the applicant's submissions are not persuasive. First, there is no evidence that Ms. Lagacé had a mind so closed that submissions were futile. Second, there is no evidence that Ms. Lagacé plays a role in the investigation or that she is responsible for the ultimate recommendation made to the Commission by the investigator who has reviewed the evidence and interviewed witnesses. In fact, the two investigations gave in this case the benefit to the applicant all the way through, except, of course, when the second investigation concluded

that the explanation for the termination of the contractual arrangement given by the respondent was more likely than not accurate and excluded that the termination occurred for discriminatory reasons. The respondent was put to the test of justifying its action of terminating someone who was in a relationship that was not the traditional employer/employee relationship and where the allegations as to age and marital status remained thin.

[81] The initial contact with Ms. Lagacé occurred in September 2014 after the applicant had been advised that the Commission staff was raising an issue with respect to the Commission's jurisdiction. It is not surprising that staff would express the view that it believes the Commission lacks jurisdiction; if it did not believe that there is an issue, there would not have been any reason to raise it. In spite of the applicant's early misgivings, the Investigation Report concludes that the matter should be examined on its merits and the Commission agrees that it has jurisdiction in the circumstances.

[82] Accordingly, the complaint was investigated. There is no evidence that Ms. Lagacé played any role or that the integrity of the investigator, who signed the Investigation Report, can be questioned. Had there been any indication of a closed mind, it is very doubtful that the investigation would have gone beyond step 1. Not only did the investigation conclude that the applicant was employed by the respondent and that the employment was terminated, but there had to be a conclusion that there was a link to family status or age for the investigation to go to step 2. The applicant was given the benefit of a positive determination up to step 1. That takes the investigator to consider whether there is a reasonable explanation for what happened that is not a pretext for discrimination on a prohibited ground, which puts the burden on the respondent.

In other words, the applicant had the benefit of a full investigation, not one shortened on jurisdictional issue or because the discrimination allegations were so thin. The applicant was given a full opportunity to present her case and she had the advantage that the respondent had to explain its actions.

[83] There is no evidence that Ms. Lagacé would have influenced unduly the investigation process. I fail to see where the closed mind might be. In *Newfoundland Telephone Co.*, a commissioner of the Public Utilities Board had made numerous and strong public comments regarding the appellant Newfoundland Telephone Company, yet the Court did not find a closed mind:

> What then of the statements made by Mr. Wells? Certainly it would be open to a commissioner during the investigative process to make public statements pertaining to the investigation. Although it might be more appropriate to say nothing, there would be no irreparable damage caused by a commissioner saying that he, or she, was concerned with the size of executive salaries and the executive pension package. Nor would it be inappropriate to emphasize on behalf of all consumers that the investigation would "leave no stone unturned" to ascertain whether the expenses or rates were appropriate and reasonable. During the investigative stage, a wide licence must be given to board members to make public comment. As long as those statements do not indicate a mind so closed that any submissions would be futile, they should not be subject to attack on the basis of bias.
>
> The statements made by Mr. Wells before the hearing began on December 19 did not indicate that he had a closed mind. For example, his statement: "[s]o I want the company hauled in here -- all them fat cats with their big pensions -- to justify (these expenses) under the public glare... I think the rate payers have a right to be assured that we are not permitting this company to be too extravagant" is not objectionable. That comment is no more than a colourful expression of an opinion that the salaries and pension benefits seemed to be unreasonably high. It does not indicate a closed mind. Even Wells' statement that he did not think

> that the expenses could be justified, did not indicate a closed mind. However, should a commissioner state that, no matter what evidence might be disclosed as a result of the investigation, his or her position would not change, this would indicate a closed mind. Even at the investigatory stage statements manifesting a mind so closed as to make submissions futile would constitute a basis for raising an issue of apprehended bias. However the quoted statement of Mr. Wells was made on November 13, three days after the hearing was ordered. Once the hearing date had been set, the parties were entitled to expect that the conduct of the commissioners would be such that it would not raise a reasonable apprehension of bias. The comment of Mr. Wells did just that.
>
> (p 642-643)

Nothing of the sort happened in this case. Even the notes made by the applicant show that Ms. Lagacé was indicating that it was her view concerning the jurisdictional issue and not that of the Commission, showing no animus towards the applicant other perhaps than the applicant's own perception that Ms. Lagacé was not sympathetic to her case. That does not reach the test of "closed mind".

[84] The burden was on the applicant to demonstrate on a balance of probabilities the closed mind (*Zündel*, para 31) of Ms. Lagacé, "as a matter of fact" (*CBC*, para 48). The closed mind test requires that it be demonstrated that it is "so closed that any submissions would be futile" (*Newfoundland and Telephone Co.*, p 642). The evidence in this case shows the opposite. In *CBC*, the Commission staff had framed the complaint and decided that, in spite of being filed out of time, it had to proceed to an investigation. The report to the Commission had failings. The Court found:

> [51] Both the Regional Director and the investigator participated in the preparation of the report. Its failings have been previously

> identified. It is clear to me that the Regional Director and the investigator had set minds as to the recommendation which was to be embodied in the report. They had predetermined the issue and invited Ms. Paul to go forth on that basis. Ms. Paul did so at some apparent cost to her private life and both the Regional Director and the investigator were aware of the repercussions for Ms. Paul. Against this background, it is clear that the officers, after having advised Ms. Paul that her complaint would be investigated, lost the objectivity inherent in their function which was to make a fair and unbiased representation on the issue of timeliness for the benefit of the Commission.
>
> [52] The Commission adopted the recommendation embodied in the report. It gave no reasons. It adopted the report on the obvious assumption that it reflected a fair and unbiased presentation of all the relevant facts. While the objectivity of the members of the Commission is not in issue, it seems clear that, by adopting the flawed report, the Commission rendered a decision without the benefit of the relevant facts.

[85] Again, nothing of the sort is even alleged in this case. At best, the applicant merely stated that Ms. Lagacé played a role in this matter, which cannot be denied, and exhibited a closed mind but without showing how. The significance of the role and having a closed mind are speculations. Following the conversation between the applicant and Ms. Lagacé in March 2015, there was not any other personal contact with the applicant. I have read the cross-examination on the applicant's affidavit. She concedes at questions 321 to 324 that there is no evidence offered of improper influencing by Ms. Lagacé on the investigator. The Investigation Report was concluded on October 21, 2017. It does not appear that it was amended afterward. On December 28, 2016, Ms. Lagacé advised the registry of the Commission that the case was ready for the next Division II Commission meeting. She relays to the Commission the recommendation made in the Investigation Report, and nothing more.

[86] Actually, the cross-examination establishes in my view that the conversations of February and March 2015 dealt with the jurisdictional issue. The applicant seems to have read in what she saw as a dismissive attitude on the part of Ms. Lagacé on the jurisdictional issue, an opinion that her complaint had no merits (re-examination, Q363). The cross-examination makes it unpersuasive that, in fact, Ms. Lagacé expressed a view other that the Commission did not have jurisdiction because of a lack of an appropriate employer/employee relationship. As we know, the Investigation Report did not share that view and the Commission agreed. Without any evidence of involvement in the investigation after the Commission had concluded it had jurisdiction, there is simply no evidence of a mind so closed that any submissions would be futile.

[87] Even the episode about the date correction would tend to show that Ms. Lagacé asked that the email exchange be put on file. As I have tried to show, the importance of that mistake on when the access to confidential information proved to be insignificant. That was in fact what the applicant asserted in her email on January 9, 2017. The evidence is rather to the effect that an investigation was conducted and the investigation led to the conclusion that the termination was because of the email of July 16, 2013, not on account of age or marital status. That was the only decision made. As the report states at paragraph 77, “(i)t is not the place of this Commission to investigate whether the complainant was justly dismissed”. The investigation was limited to the complaint made and that is not disputed before this Court. There is no evidence of a mind so closed that any submissions would be futile and there is no evidence either that Ms. Lagacé played a role in the investigation resulting in a possible conclusion that a closed mind existed.

VI. Conclusion

[88] The facts of this case are relatively simple. The contractual relationship which allowed Mrs. Demitor to offer her services to Westcoast Energy was terminated one week after her husband, Mr. Demitor, wrote an email to officials at Westcoast Energy. The email was seen as threatening and was containing confidential information which should not have in the hands of Mr. Demitor.

[89] The applicant alleged that age and marital status discrimination occurred. She complained to the Canadian Human Rights Commission.

[90] In spite of early misgivings about the Commission's jurisdiction on the part of some staff members, the investigation of the jurisdictional issue concluded that the Commission had jurisdiction. The Commission agreed. The investigation of the complaint on its merits ensued. The Commission endorsed the Investigation Report which gave the applicant the benefit of a finding, at step 1 of the investigation, to the applicant that Westcoast Energy had to justify its action. This is not insignificant.

[91] The Commission was satisfied of two things:

- the respondent perceived that the email was threatening and that it was coming from someone acting as a representative of the applicant;

- the information used in the email was perceived to have been received in breach of the terms of the applicant's contract.

The respondent acted in a way it deemed appropriate in view of its own findings respecting the threatening nature of the email and the use of confidential information. Furthermore, the Commission found that the allegations of discrimination were bald assertions.

[92] The Commission concluded that its role is a limited one: it need only be satisfied that Westcoast Energy did not discriminate against Mrs. Demitor pursuant to the Act, and not whether the termination was justified. Having accepted the explanation for the termination as being reasonable, and not as being a pretext for discrimination, the Commission dismissed the complaint.

[93] The applicant did not challenge the merits of the conclusions as being unreasonable. She chose instead to argue that the process was flawed and that procedural fairness had been violated. In my view, such was not the case and there is no reviewable error. In spite of the applicant's attempt to make the date correction an important issue, it is largely a non-issue: nothing turned on whether or not the correction was before the Commission. As the applicant asserted herself, that error on her part did not change her submissions whatsoever. Furthermore, the explanation for the termination of the contract was persuasive and the applicant "was, however, unable to provide any information to support that her age or marital status was a consideration in the decision of the respondent" (Investigation Report, para 78). The date on which Mrs. Demitor lost direct access to the respondent's confidential information was of little or no importance.

[94] The applicant also argued that the investigation was not thorough. She complained that the investigator did not interview Rob Conrad who was the official at Westcoast Energy who was responsible for the termination. It is simply not enough to satisfy the legal test to speculate that "useful evidence could possibly be gained by interviewing" Mr. Conrad. The applicant also claimed that Mr. Demitor was identified by her as her agent on July 17, 2013, the day after the email. However, the evidence is clear that Mr. Demitor was presenting himself as the applicant's representative in the July 16, email and that, in the past, he had had contacts with Westcoast Energy officials: it cannot be seriously doubted that he was acting on behalf and as a representative of the applicant on those occasions.

[95] Finally, it is asserted that the Commission staff had a closed mind. This argument is meritless in view of the evidence. Not only was the investigation pursued in spite of an initial uncertainty as to the Commission's jurisdiction to entertain the complaint, but the investigation was brought all the way to step 2 where the burden in on the respondent's shoulders to provide a reasonable explanation. Even the applicant had to concede on cross examination on her affidavit that she did not offer any evidence of the involvement of a particular staff member in the investigation of her complaint or its merits.

[96] As a result, the judicial review application must be dismissed, with costs granted to the respondent in accordance with rule 407 of the *Federal Courts Rules*, SOR/98-106.

JUDGMENT in T-343-17

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed;

2. Costs in accordance with rule 407 are awarded to the respondent.

"Yvan Roy"
Judge

APPENDIX A

Hi Bruce,

Tim Demitor from Cicada Systems here. We talked briefly on the phone last week. I have been going over some documentation that was given to me recently and had a few questions pertaining to ECI (Environmental Chemical Inventory) going back to 2005.

Back in 2005, we were told that 50 was going into EPass and as a result, adequate funding was not made available to keep the system up to date and compliant. If you can remember the management team that was actively involved it would be helpful moving forward so that there is no confusion or miscommunication between Cicada and Spectra regarding this issue. Some of you that were cc'd may want to chime in if you were involved with ECI 2005-present.

By 2010, it was apparent that EPass was not going to be developing anything for ECI and we were asked to provide a proposal to get the major deficiencies of ECI and MSDS of the previous 5 years dealt with and up to regulatory standards. That proposal was not accepted and Cicada was asked to essentially limp the system along in an attempt to meet NPRI deadlines only. At the same time Spectra was brining on a new MSDS provider (Safetec) and it was also strongly recommended to you that Cicada resume reporting as it did with BC Hydro to ensure that the M505 database was current and credible. Funding for this was also denied and now we have what seems to be major issues with MSDS credibility. We have also done subsequent evaluations of Safetec, of which the latest recommendation has yet to be approved. Being that you were responsible for 50 during the period being discussed, I would like to know what members of management were involved in the decision process outlined above and who was given the ECI Executive Summary, dated November 2010, which I have included. Rob is currently working point for ECI and I am confident that he has a good understanding of what was needed to get things right.

As a consultant who specializes in regulatory chemical accountability, part of our function, and responsibility is to inform our clients if they are doing things that would be looked upon unfavorably in the event of a' regulatory audit. Part of our due diligence involves assigning accountability to certain decisions regarding regulatory issues so that we can better serve our clients and advise them moving forward.

Cicada is integral to ECI. Suzanne helped develop it and has the knowledge that is crucial to its success whether or not it remains a stand-alone system. If Spectra 's desire is to integrate ECI into EPASS, having Cicada onboard is essential to avoid development setbacks similar to the ones experienced during air emissions development.

Given that budgets are currently being discussed and Matthew was put in charge of evaluating ECI and its possible integration into EPass, this matter needs to be dealt with immediately so that we can avoid any further setbacks in ECI and MSDS. These systems need to be current and credible, regardless of whether or not ECI is integrated into EPass.

Regards,
Tim Demitor
Demitor Holdings, inc.
Dba Cicada Systems

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-343-17
STYLE OF CAUSE:	SUZANNE DEMITOR v WESTCOAST ENERGY INC., (O/A SPECTRA ENERGY TRANSMISSION)
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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JUDGMENT AND REASONS:	ROY J.
DATED:	DECEMBER 20, 2017

APPEARANCES:

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David Wong Gosia Piasecka	FOR THE RESPONDENT

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