Federal Court Cour fédérale

Date: 20250918

Docket: T-321-25

Citation: 2025 FC 1537

Montreal, Quebec, September 18, 2025

PRESENT: The Honourable Mr. Deputy Judge Mark Phillips

BETWEEN:

DARLENE CARREAU

Applicant

and

ATTORNEY GENERAL OF CANADA,
LUCIA FEVRIER-PRESIDENT

Respondents

JUDGMENT AND REASONS

I. Overview and background

[1] The matter before the Court takes the form of an application for judicial review of a decision of the Courts Administration Service [CAS] applying the *Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130 [Regulations] following an investigation conducted thereunder.

[2] A creature of statute (*Courts Administration Service Act*, S.C. 2002, c. 8), CAS provides administrative services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada and the Tax Court of Canada.

[3] The Applicant is Chief Administrator of CAS. As such, she is its chief executive officer (s. 7(1) of the Act), in addition to having the "rank and status of a deputy head of a department" (s. 5(4)). She supervises and directs CAS's work, as well as more than 800 staff (Applicant's Record, tab 3, page 29, Applicant's affidavit of February 27, 2025, at para 2).

[4] Individual respondent Lucia Fevrier-President [LFP] is an employee of CAS. She has some 25 years of experience in the federal public sector. At the inception of the events with which we are concerned in this case, she held the position of Manager of Strategic Planning and Reporting at CAS.

[5] Those events began in February 2022, with the appointment of a new director who became LFP's immediate superior [Director]. Relations between LFP and the Director quickly became strained, high demands being placed on LFP. The Applicant was promptly advised of the situation.

[6] Things came to a head in the summer of 2022. That crisis was followed by a formal complaint by LFP on September 6, 2022, against the Director, alleging harassment within the meaning of subsection 122(1) of the *Canada Labour Code*, R.S.C. 1985, c. L-2, which contains the following definition of "harassment and violence":

harassment and violence means any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment;	**harcèlement et violence** Tout acte, comportement ou propos, notamment de nature sexuelle, qui pourrait vraisemblablement offenser ou humilier un employé ou lui causer toute autre blessure ou maladie, physique ou psychologique, y compris tout acte, comportement ou propos réglementaire.

[7] The complaint against the Director contained five allegations.

[8] In June 2023, a third-party investigator was retained, as contemplated by the Regulations (Certified Tribunal Record [CTR] at tab 2: Investigation Mandate dated June 19, 2023). The firm with which she worked had provided extensive materials setting out her qualifications (CTR at tab 1: materials from QMR Consulting & Investigative Services dated March 28, 2023). Her mandate required determining whether there had been a breach of the Regulations or of CAS's own *Policy on Workplace Harassment and Violence Prevention* [Policy] (CTR at tab 2, page 2 ("scope of the investigation"); tab 38Q (the policy itself)).

[9] On August 22, 2023, LFP filed a further complaint for harassment against three CAS executives, among them the Applicant, complaining of their alleged inaction and mismanagement of her initial complaint against the Director and, more generally, of the situation that had spawned that complaint, the whole amounting to what was, in LFP's view, CAS's failure to provide a safe workplace as required under Part II of the *Canada Labour Code*. Her contention was that, in a situation where her health was suffering from the conduct and excessive

demands of the Director, senior CAS management, including the Applicant, did little, leaving her to fend for herself as best she could. The precise allegation, bearing number 6 (there having been five in her initial complaint against the Director), read as follows (Applicant's Record, page 38 (Exhibit A attached to Applicant's affidavit of February 27, 2025, in support of her application for judicial review)):

> [CAS] neglected to take necessary and timely action to minimize or avoid the profound negative impact of the [Director's] actions on [LFP's] emotional, mental and physical health. That such delay in taking action by CAS amounted to reckless disregard for the health and well-being of [LFP] and exacerbated the impact of the [Director's] actions on the emotional, mental and physical health and well-being of [LFP] and other CAS employees.

[10] The Applicant was formally notified of this complaint on November 23, 2023 and of her status therein as a "responding party" (Applicant's Record, page 35 (Exhibit A)).

[11] The investigator whose services had been retained to deal with the initial complaint was then charged with the task of also conducting an investigation into this additional complaint.

[12] The investigator conducted her investigation into both complaints. She met individually with LFP, who, under the Regulations and its definitions, was considered the "principal party." She also conducted individual interviews with the responding parties, that is to say the individuals alleged to have been responsible for the situation giving rise to the complaints, more specifically the Director (responding party in the context of the initial complaint) and the three executives, one of whom was the Applicant, who were responding parties in the second complaint. The investigator also met separately with witnesses who had been identified as people whose input could shed light on the situation.

[13] The Applicant was interviewed by the investigator on January 18, 2024. In the days following, she provided extensive documentation that she felt was responsive to the allegation (Applicant's Record, pages 79-138 (Exhibit D)). Later, she was sent a draft of the investigator's account of the facts as related by her during the interview and was invited to make revisions and corrections thereto, which she did (Applicant's Record, pages 63-70 (Exhibit C); pages 149-53 (Exhibit D)). The Applicant also received a "summary of evidence" summarizing the facts raised against her by LFP and responded thereto as well (Applicant's Record, pages 159-62 (Exhibit D)).

[14] On May 28, 2024, the investigator issued a report, labelled as "final" [Report] (Applicant's Record, pages 50-61 (Exhibit B); CTR at tab 38E.) More accurately, in a situation where there were four responding parties in total, the investigator produced four distinct reports (CTR at tab 38 and certain of its subtabs).

[15] In the case of the Applicant, the investigator found that the evidence gathered had demonstrated that the allegation against her "met the threshold of the definition of harassment and violence in the workplace" (Applicant's Record at page 56 (Exhibit B); CTR at tab 38E at page 7).

[16] In addition to that conclusion, the Report contained 15 recommendations, labelled "A" through "O." None spoke of the Applicant herself, but rather had a very general character. They included addressing the need for further training for CAS management and employees generally, providing all levels of management with an outline of their responsibilities in matters dealing

with health and safety in the workplace, and the need for prompt treatment of all concerns, notably those regarding health and safety, raised by any employee, as well as regular follow-up.

[17] A problematic situation arose when the Report, despite having been presented by the investigator as final, was later treated by CAS as being merely a "preliminary" report, which was therefore to be viewed as being subject to changes and revisions in light of further comments yet to be sent by the principal and responding parties, notably the Applicant, who, in so doing, could potentially influence the outcome of a future, truly final report. More specifics on how those events unfolded will be provided below. As we shall see, the crisis precipitated by CAS's position as to the non-final character of the Report is at the core of the present application for judicial review, in particular with respect to the Applicant's arguments under the rubric of procedural fairness.

[18] On June 19, 2024, the Applicant, working on the assumption that she did indeed have one last opportunity to provide comments before a truly final report was issued, went ahead and provided such comments (CTR at tab 38P: Applicant's letter of June 19, 2024; tab 38O: Applicant's covering e-mail to the designated recipient, attaching said letter; Applicant's record, page 185 (Exhibit F)). As we shall see, this letter from the Applicant to the investigator is important for a number of reasons.

[19] CAS's position as to the possibility of further comments was poorly received by the investigator, who insisted that her Report was indeed final. A sharp dispute arose, with CAS

claiming that the Applicant's procedural rights would be breached if she were to be deprived of the opportunity to comment on the Report. CAS even retained counsel.

[20] There ensued, between August and December 2024, several months of back and forth between CAS, the investigator and, in particular, other senior managers from her firm (CTR at tabs 19, 21, 22, 23, 24, 26, 28A and 29-38). Toward the end of those exchanges, LFP, represented by counsel, joined the fray (CTR at tabs 27, 43, 44 and 46). So did the Applicant, represented by her own counsel. While the investigation firm initially expressed some willingness to seek common ground with CAS, notably in proposing that another investigator review the Report and receive comments on it, it ultimately closed that door and declined to do anything further (CTR at tab 48).

[21] It was in the wake of that dialogue that on January 10, 2025, CAS rendered the decision of which the Applicant now seeks judicial review [CAS Decision] (Applicant's Record, page 248 (Exhibit L)). It took the form of a letter to her from a CAS executive, acting as "designated recipient" within the meaning of the Regulations, stating that, despite what CAS continued to view as a denial of procedural fairness, CAS would nevertheless implement the Report's recommendations. The CAS Decision went on to add that CAS remained intent on finding a way to redress the procedural defect consisting of having denied the Applicant the right to provide comments on the Report and to have those comments considered, with the possibility of ultimately swaying the investigator's position and thereby leading, at the end of the process, to different conclusions and recommendations.

[22] The Applicant nevertheless views the CAS Decision as having implicitly adopted the investigator's conclusion, as stated in her Report, that the evidence gathered had demonstrated that the allegation against her met the threshold of the definition of harassment and violence in the workplace. As such, she views the Report as being an integral part of the CAS Decision.

[23] The principal relief she now seeks is for this Court to quash both the CAS Decision and the Report as together [Decision/Report] constituting a reviewable decision of a "federal board, commission or other tribunal / office fédéral" within the meaning of section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (relying on *Doyle v. Canada (Attorney General)*, 2020 FC 259 at paras 20-24).

[24] If, however, the Court were to be of the view that the Decision/Report does not in fact constitute such a reviewable decision, then, in the alternative, the Applicant seeks relief in the form of mandamus, asking that the Court order CAS "to reject the findings in the Report and retain another investigator to finalize the investigation of the allegation of harassment against the Applicant" (Applicant's Memorandum of Fact and Law at para 54(b)). The Applicant also seeks costs, specifying, in oral argument, an amount of $2,500.00.

[25] Respondent Attorney General of Canada — at first the only named respondent and whose status as respondent remained unaltered following the addition of LFP as a second respondent — defines his role as consisting of assisting the Court in reaching a decision that accords with law. Stressing that he is not acting for CAS, he adds that his intention is to act objectively, independently and in the public interest (Memorandum of Fact and Law of Attorney General of

Canada at para 7, referring to *Kinghorne v Canada (Attorney General)*, 2018 FC 1060 at para 33).

[26] The Attorney General largely supports the application for judicial review. Being of the view, like the Applicant, that the Decision/Report, viewed as a unit, is indeed a reviewable decision in which CAS implicitly accepted the Report's conclusions (relying notably on *D.A. v. Canada (Attorney General)*, 2024 FC 1626 at para 40), and agreeing with her position on procedural fairness, he, like the Applicant, is of the view that the Decision/Report should be quashed. He disagrees, however, with the alternative relief in the form of mandamus, believing it to be incorrect, unsatisfactory and potentially contrary to the Regulations (Attorney General's Memorandum of Fact and Law at paras 35-38).

[27] In asking the Court to quash the Decision/Report, the Applicant specified nothing further. At the hearing, counsel clarified that she is not asking that the Court itself rule on the complaint against the Applicant. Questioned by the Court, she ultimately aligned herself fully with the Attorney General who, in supporting the remedy of quashing the Decision/Report, asks that the Court "remit the matter to the CAS with the direction that it appoint a new investigator to review the evidence and materials gathered in the investigation, consider the submission of the Applicant in relation to the preliminary investigation report and prepare a final report" (Attorney General's Memorandum of Fact and Law at para 40).

[28] Neither the Applicant nor the Attorney General asks that the investigation be redone from the beginning.

[29] LFP — previously, but no longer, represented by counsel — contests the application for judicial review, asking that it be dismissed.

II. Issues

[30] The Applicant has raised the following grounds to attack the Decision/Report.

[31] First, under the rubric of procedural fairness, she argues that the applicable principles were breached in that the Report, which was properly — if not immediately — considered by CAS to have been "preliminary," was not ultimately reconsidered in light of her comments on it. She also argues that, insofar as the Report contained certain statements that she saw for the first time upon reading it, she had not been properly informed of the case to be met.

[32] Second, as a matter of substantive error reviewable on a standard of reasonableness, the Applicant argues that the Decision/Report erred in that the allegation against her, consisting essentially of only delay on her part, did not constitute harassment *prima facie*. She further argues that the Decision/Report lacks intelligible justification of its conclusions.

[33] Prior to addressing those issues, the Court will first address the Applicant's request that certain paragraphs in an affidavit filed by LFP be struck.

[34] Finally, there are also certain issues that have been raised by LFP. These include contesting the application on the following bases: (i) it being out of time; (ii) the existence of a conflict of interest; (iii) problems with the remedy sought.

III. Applicant's request to strike paragraphs from LFP's affidavit

[35] On May 30, 2025, LFP, who had, at that point, only just been granted the status of respondent, filed a lengthy affidavit with numerous exhibits. A corrected version was later submitted, with various corrections, mostly to references to exhibits.

[36] Upon receipt of the initial version of LFP's affidavit, the Applicant filed an interlocutory motion pursuant to Rule 369 asking that three of its paragraphs be struck, that is to say paragraphs 94, 95 and 95 bis (there being two consecutive paragraphs both numbered "95"). That motion was dismissed. At the same time, the Court allowed the filing of LFP's corrected affidavit, but dismissed her request to file an additional affidavit. On the merits, the Applicant now sets her sights on numerous paragraphs — paragraphs 23-40, 48, 52-93, 96-102 and 106-126, with a renewed attack on paragraphs 94, 95 and 95 bis — asking that they be struck or, in the alternative, simply disregarded (Applicant's Memorandum of Fact and Law at paras 22-28).

[37] Citing well-established authority, notably *Lukács v. Canada (Transportation Agency)*, 2019 FC 1256, the Applicant raises various grievances that relate to certain sections of the affidavit, the paragraphs of which are said to be objectionable for one or the other of the following reasons: (i) reference to events unrelated to the complaints and therefore immaterial; (ii) reference to events within the scope of the investigation, objected to as being an attempt to

relitigate them *de novo*; (iii) facts relating to CAS's reaction to the investigator's recommendations; (iv) paragraphs stating a legal conclusion.

[38] The bulk of LFP's affidavit — paragraphs 51 to 126, which include the three paragraphs attacked in the interlocutory motion — consists of a detailed account of the events beginning in March 2022, at which time her health issues began, only to be disregarded, she says. The Applicant's objection to this narrative is that it constitutes an attempt to relitigate the complaint *de novo*.

[39] On matters of procedural fairness, it is necessary that affidavit evidence set out the facts as to how the procedure was conducted, but no more. On matters of alleged substantive error, litigants involved in judicial review are not normally permitted to add to the record that was before the initial decision-maker. In a case such as this one, however, involving an investigation conducted pursuant to the Regulations (the precise mechanics of which will be discussed in detail below), there are confidentiality requirements that restrict the creation of a record as one would normally find in the case of a decision subject to judicial review. In such instances, it is more difficult to be categorical on the exclusion of factual evidence such as that introduced by LFP at paragraphs 51-126 of her affidavit.

[40] That said, the issue here is, to a large extent, moot. Indeed, in dismissing the earlier motion to strike, the Court based its decision, among other factors, on the notion that it was best not to strike only certain paragraphs that made up part of a larger narrative that, at least at that point, was not being expressly targeted for striking, in order that the parties might have the

opportunity to debate those matters in full on the merits. Ultimately, however, LFP, both in her Memorandum of Fact and Law or in her oral arguments as an unrepresented litigant, relied little on her affidavit. As for the Applicant, she elected not to debate the matters raised in the affidavit. In the end, the parties relied almost exclusively on materials that were in the Certified Tribunal Record or in the Applicant's own affidavit and exhibits. In that context, the Court shall, except where indicated otherwise, limit its analysis to those materials. In the circumstances, no further remedy is necessary regarding that part of the affidavit.

[41] There remains another section of LFP's affidavit, consisting of paragraphs 23-40 and 48, that deals with events that arose following the issuance of the Report. In the Court's view, those paragraphs, although sometimes argumentative, are admissible as containing facts that are potentially relevant to the timeliness of the proceedings, the appropriateness of the remedy and other material factors in the exercise of judicial review powers. The Court therefore declines to strike or disregard them.

IV. Procedural Fairness

A. *Further background*

[42] The Report, dated Tuesday, May 28, 2024, was sent by the investigator to the so-called "designated recipient," who, according to the Regulations, is a person designated by the employer, in this case CAS, and who, at the inception of a new matter, is charged with receiving the complaint — which is termed a "notice of occurrence" — and who subsequently acts as the point of contact for all.

[43] On Friday, May 31, 2024, the designated recipient sent the Report to the Applicant (Applicant's Record, pages 166-67 (Exhibit E)). In her covering letter, the designated recipient began by saying that she had "received and reviewed the final report" from the investigator. She referenced subsection 30(3) of the Regulations (to be quoted in full below), which provides that the Applicant, as a responding party, is entitled to receive a copy of the Report from the employer. The designated recipient also referenced subsection 31(1) of the Regulations (also quoted below), which addresses the manner in which the recommendations found in an investigation report are to be addressed by the employer internally. In sum, everything in the covering letter of May 31, 2024, presupposed that the attached report constituted nothing less than the ultimate outcome of the investigation.

[44] On Wednesday, June 5, 2024, there came a radical change. The designated recipient wrote to the Applicant once again, this time indicating to her that, following receipt of additional information, the Report would henceforth be viewed as preliminary only and that her comments and observations were therefore welcome, subject to being received within 10 business days (Applicant's Record, pages 164-65 (Exhibit E); CTR at tab 8). Initially indicated erroneously as being June 26, 2024, the deadline was later corrected to be June 19, 2024 (CTR at tab 38O (e-mail from Julie-Ève Picard of June 5, 2024, at 3:20 p.m.)). The other responding parties and LFP, as principal party, also received similar communications (CTR at tabs 9-12). LFP replied saying that such an additional step as inappropriate (CTR at tabs 13 and 38T).

[45] As we have seen, on June 19, 2024, the Applicant did indeed avail herself of what was being presented to her as a last chance to make representations to the investigator with a view to

having them considered by her and, potentially, to influence and alter the investigator's ultimate conclusions and recommendations (Applicant's Record, pages 185-89 (Exhibit F); CTR at tabs 38O and 38P).

[46] The communication of June 5, 2024 from the designated recipient referred to jurisprudence from the Federal Public Sector Labour Relations and Employment Board. However, at the hearing before the undersigned, a consensus emerged that what was in fact being alluded to was what was then very recent caselaw from this Court (Transcription of hearing of August 20, 2025 at page 130). Indeed, on May 2, 2024, judgment had been rendered in the case of *Marentette v. Canada (Attorney General)*, 2024 FC 676. Shortly thereafter, on May 30, 2024, there followed the case of *Brown v. Canada (Attorney General)*, 2024 FC 823. Both were judgments granting judicial review of decisions of employers — the Canada Border Services Agency and the Treasury Board Secretariat of Canada respectively — in the aftermath of an investigation of the same nature as that which had been conducted in the present file.

[47] The designated recipient at CAS appears to have taken the view that this recent caselaw stood for the proposition that, in an investigation conducted pursuant to the Regulations, a party is entitled to receive and comment on a "preliminary report" and that the Report was therefore henceforth to be viewed as such a preliminary report.

[48] On Monday, June 10, 2024, the designated recipient wrote to the investigator herself, indicating to her that, based on what has just been said, she (the designated recipient) had no choice but to consider the Report as merely preliminary and to invite comment from the parties.

She referred therein to the necessity of "reopening" the investigator's contract, the designated recipient inviting the investigator to kindly oblige and brace herself for further input from the parties, with a view to drafting an additional, perhaps modified, report (CTR at tab 14 at pages 2-3; e-mail from Julie-Ève Picard to Jo-Ann Fennessey of June 10, 2024 at 11:41 a.m.).

[49] The investigator saw things very differently. On Wednesday, June 12, 2024, she did not mince her words in a lengthy e-mail the essential thrust of which can be summarized as follows (CTR at tab 14 at pages 1-2: e-mail from Jo-Ann Fennessey to Julie-Ève Picard of June 12, 2024 at 12:10 p.m. LFP has filed an English translation of this communication as her Exhibit 25).

[50] Having been tasked with investigating six allegations — five, it will be recalled, directed at LFP's Director and one, at three executives, including the Applicant — the investigator, so she wrote, had fully acquitted herself of her mandate. The Report was final, as were the three other reports concerning the other responding parties. (The report dealing with the initial complaint against the Director can be found in the CTR at tab 38J. Those dealing with the two other responding parties in the second complaint are in the CTR at tabs 38G and 38I.) Evidence had been gathered from all parties and witnesses, each of whom had had complete freedom and ample time, including extensions, to provide any and all evidence, comments and questions as each saw fit. All parties had also received summaries of the evidence gathered and had been given the opportunity to comment thereon. That, in the eyes of the investigator, constituted fulfillment of procedural fairness and in that context, the Report, which was indeed final, had been completed. To now invite the parties to react to adverse conclusions found in the Report compromised the integrity of an investigation intended to be conducted by an independent,

neutral third-party, and this gave rise to a conflict of interest. The investigator concluded by saying that she therefore refused to entertain further comments.

[51] At this point, it is worth nothing that, in rebuttal, counsel for the Applicant framed her position very clearly around this communication. In short, everything boils down to the either correct or erroneous character of the principles stated by the investigator, as just summarized (Transcription of hearing of August 20, 2025, at pages 124-25). The Applicant's position therefore has the merit of being very clear. The main thesis of her procedural fairness argument thus stands or falls on this point.

[52] In short, the Applicant purports to be entitled, as a requirement of procedural fairness supported by the caselaw, to receive and comment on a preliminary report and to have those comments considered by the investigator in the drafting of a further report. The investigator was therefore wrong to deny her that opportunity in this situation. This flaw vitiates the Decision/Report and makes it reviewable as being contrary to procedural fairness.

[53] The Attorney General of Canada agrees.

[54] As we have seen, CAS itself had taken the same view, but its best efforts to sway the investigation firm were to no avail.

B. *Analysis*

[55] For the reasons that follow, the Court is of the view that the Applicant's argument on this point fails for two reasons: (i) the investigator's statement of the applicable principles is correct; (ii) the Applicant has failed to show any true prejudice flowing from the supposed lack of opportunity to provide further comment.

(1) Standard of review

[56] But first, a word on standard of review. Despite some hesitation (*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220), it can be said that the caselaw insists less on the idea of applying a given standard of review than on a party's right to know the case to be met and to have a full and fair opportunity to respond (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121 at paras 32-56).

(2) The investigator's position is correct

[57] The following provisions can be found in the Regulations with respect to recourse to an independent, neutral third-party investigator.

23 (1) An employer or designated recipient, the principal party and, if contacted under section 22, the responding party, must make every reasonable effort to resolve an occurrence for which notice is provided under subsection 15(1) and those efforts must begin no later than 45 days after the day on which that notice is provided. However, if the occurrence is also investigated, it cannot be resolved under this section after the investigator has provided their report under subsection 30(1)	**23 (1)** L'employeur ou le destinataire désigné, la partie principale et, si la communication a été établie avec elle en vertu de l'article 22, la partie intimée font tous les efforts raisonnables pour régler l'incident pour lequel un avis est donné en vertu du paragraphe 15(1) et ces efforts doivent commencer au plus tard quarante-cinq jours après la date à laquelle l'avis est donné. Toutefois, si l'incident est également sous enquête, il ne peut pas être réglé en vertu du présent article après qu'un enquêteur a remis le rapport visé au paragraphe 30(1).
(2) For the purposes of subsection (1), the reasonable effort includes a review by the principal party and the employer or designated recipient to determine whether the notice of occurrence provided under subsection 15(1) describes an action, conduct or comment that constitutes harassment and violence as defined in subsection 122(1) of the Act.	**(2)** Pour l'application du paragraphe (1), un effort raisonnable comprend un examen par la partie principale et l'employeur ou le destinataire désigné pour décider si l'avis d'incident donné en vertu du paragraphe 15(1) décrit un acte, un comportement ou un propos qui constitue un incident de harcèlement et violence au sens du paragraphe 122(1) de la Loi.
(3) For the purpose of subsection (1), resolution of the occurrence includes, but is not limited to, a joint determination by the principal party and the employer or designated recipient that the notice of occurrence provided under subsection 15(1) does not describe an action, conduct or comment that constitutes harassment and violence as defined in subsection 122(1) of the Act.	**(3)** Pour l'application du paragraphe (1), la partie principale et l'employeur ou le destinataire désigné peuvent régler l'incident notamment en décidant conjointement que l'avis d'incident donné en vertu du paragraphe 15(1) ne décrit pas un acte, un comportement ou un propos qui constitue un incident de harcèlement et violence au sens du paragraphe 122(1) de la Loi.

24 The principal party and the responding party may attempt to resolve an occurrence for which notice is provided under subsection 15(1) by conciliation if they agree to conciliation and on a person to facilitate it. However, if the occurrence is also investigated, it cannot be resolved by conciliation after the investigator has provided their report under subsection 30(1).

24 La partie principale et la partie intimée peuvent tenter de régler un incident pour lequel un avis est donné en vertu du paragraphe 15(1) par la conciliation s'ils y consentent et choisissent une personne pour la faciliter. Toutefois, si l'incident est également sous enquête, il ne peut pas être réglé par la conciliation après qu'un enquêteur a remis le rapport visé au paragraphe 30(1).

25 (1) Subject to subsection (2), if an occurrence is not resolved under section 23 or 24, an investigation of the occurrence must be carried out if the principal party requests it.

25 (1) Sous réserve du paragraphe (2), s'il ne se règle pas en vertu de l'article 23 ou 24, l'incident doit faire l'objet d'une enquête lorsque la partie principale en fait la demande.

(2) If the occurrence being investigated is resolved under section 23 or 24 before the investigator has provided their report under subsection 30(1), the investigation must be discontinued.

(2) Si l'incident sous enquête est réglé en vertu de l'article 23 ou 24 avant que l'enquêteur ait remis le rapport visé au paragraphe 30(1), l'enquête doit être abandonnée.

26 An employer or the designated recipient must provide the principal party and the responding party with notice that an investigation is to be carried out.

26 L'employeur ou le destinataire désigné avise la partie principale et la partie intimée de la tenue d'une enquête.

27 (1) Subject to subsection (2), an employer or designated recipient must select one of the following persons to act as the investigator:

27 (1) L'employeur ou le destinataire désigné choisit l'une des personnes ci-après pour agir comme enquêteur :

(a) in the case where the employer and the applicable partner have jointly developed or identified a list of persons who may act as an investigator, a person from that list; and

a) dans le cas où l'employeur et le partenaire concerné ont élaboré ou sélectionné conjointement une liste de personnes qui pourraient agir comme enquêteur, une personne de cette liste;

(b) in any other case,

(i) a person that is agreed to by the employer or designated recipient, the principal party and the responding party, or

(ii) if there is no agreement within 60 days after the day on which the notice is provided under section 26, a person from among those whom the Canadian Centre for Occupational Health and Safety identifies as having the knowledge, training and experience referred to in subsection 28(1).

(2) An employer or designated recipient may select a person to act as the investigator only if the person

(a) possesses the knowledge, training and experience referred to in subsection 28(1); and

(b) provides the employer or designated recipient, principal party and responding party with a written statement indicating that the person is not in a conflict of interest in respect of the occurrence.

28 (1) For the purposes of these Regulations, an investigator must

(a) be trained in investigative techniques;

(b) have knowledge, training and experience that are relevant to harassment and violence in the work place; and

b) dans les autres cas :

(i) lorsque l'employeur ou le destinataire désigné, la partie principale et la partie intimée s'entendent à cet égard, la personne qu'ils choisissent,

(ii) lorsqu'ils ne s'entendent pas dans les soixante jours suivant la date à laquelle l'avis est donné en application de l'article 26, une personne parmi celles que le Centre canadien d'hygiène et de sécurité au travail a désignées comme ayant les connaissances, la formation et l'expérience visées au paragraphe 28(1).

(2) Toutefois, l'employeur ou le destinataire désigné peut choisir une personne qui agira comme enquêteur seulement si celle-ci :

a) possède les connaissances, la formation et l'expérience visées au paragraphe 28(1);

b) fournit à l'employeur ou au destinataire désigné, à la partie principale et à la partie intimée une déclaration écrite portant qu'elle n'est pas en conflit d'intérêts en ce qui concerne l'incident en cause.

28 (1) Pour l'application du présent règlement, un enquêteur doit :

a) être formé en techniques d'enquête;

b) avoir des connaissances, une formation et de l'expérience qui sont pertinentes au harcèlement et la violence dans le lieu de travail;

(c) have knowledge of the Act, the Canadian Human Rights Act and any other legislation that is relevant to harassment and violence in the work place.

(2) A person or party referred to in subparagraph 27(1)(b)(i) who proposes that a person act as the investigator must provide the other persons and parties referred to in that subparagraph with the following information about the proposed investigator:

(a) their name;

(b) if they are an employee of the employer, their job title and the name of their immediate supervisor;

(c) a description of their knowledge, training and experience demonstrating that they meet the requirements of subsection (1); and

(d) a description of any experience that they have which is relevant to the nature of the occurrence that is to be investigated.

29 An employer or the designated recipient must provide the investigator with all information that is relevant to the investigation.

30 (1) An investigator's report regarding an occurrence must set out the following information:

(a) a general description of the occurrence;

c) connaître la Loi, la Loi canadienne sur les droits de la personne et tout autre texte législatif lié au harcèlement et à la violence dans le lieu de travail.

(2) Toute personne ou partie visée au sous-alinéa 27(1)b)i) qui propose une personne pour agir à titre d'enquêteur doit fournir aux autres personnes ou parties visées dans ce sous-alinéa les renseignements ci-après au sujet de l'enquêteur proposé :

a) son nom;

b) si elle est une employée de l'employeur, le titre de son poste et le nom de son superviseur immédiat;

c) une description de ses connaissances, de sa formation et de son expérience qui démontre qu'elle répond aux critères du paragraphe (1);

d) une description de toute expérience pertinente qu'elle a en lien avec la nature de l'incident qui doit faire l'objet d'une enquête.

29 L'employeur ou le destinataire désigné fournit à l'enquêteur tout renseignement pertinent relativement à son enquête.

30 (1) Le rapport d'un enquêteur concernant un incident doit contenir les renseignements suivants :

a) une description générale de l'incident;

(b) their conclusions, including those related to the circumstances in the work place that contributed to the occurrence; and

(c) their recommendations to eliminate or minimize the risk of a similar occurrence.

(2) An investigator's report must not reveal, directly or indirectly, the identity of persons who are involved in an occurrence or the resolution process for an occurrence under these Regulations.

(3) An employer must provide a copy of the investigator's report to the principal party, responding party, the work place committee or health and safety representative and, if they were provided with notice under subsection 15(1), the designated recipient.

31 (1) An employer and the work place committee or the health and safety representative must jointly determine which of the recommendations set out in the report are to be implemented.

(2) The employer must implement all recommendations that are determined under subsection (1).

32 The resolution process for an occurrence is completed when

(a) if a work place assessment is required under subsection 6(1), the review and, if necessary, update of the assessment are carried out;

b) ses conclusions, y compris à l'égard des circonstances dans le lieu de travail ayant mené à l'incident ;

c) ses recommandations pour éliminer ou réduire au minimum le risque d'un incident similaire.

(2) Le rapport d'un enquêteur ne doit pas révéler, directement ou indirectement, l'identité des personnes impliquées dans un incident ou dans le processus de règlement d'un incident sous le régime du présent règlement.

(3) L'employeur remet une copie du rapport de l'enquêteur à la partie principale, à la partie intimée, au comité local ou au représentant et, s'il a reçu un avis en vertu du paragraphe 15(1), au destinataire désigné.

31 (1) L'employeur, conjointement avec le comité local ou le représentant, choisit les recommandations formulées dans le rapport qui doivent être mises en œuvre.

(2) L'employeur doit mettre en œuvre toutes les recommandations choisies.

32 Le processus de règlement d'un incident est mené à terme lorsque l'une des situations suivantes survient :

a) si une évaluation du lieu de travail est exigée aux termes du paragraphe 6(1), l'examen et, au besoin, la mise à jour de l'évaluation sont terminés;

(b) the occurrence is resolved under subsection 19(2) or under section 23 or 24;	b) l'incident est réglé aux termes du paragraphe 19(2) ou en vertu de l'article 23 ou 24;
(c) if an investigator has provided a report in accordance with subsection 30(1), the employer implements the recommendations referred to in subsection 31(2).	c) si l'enquêteur a remis un rapport en conformité avec le paragraphe 30(1), l'employeur a mis en œuvre les recommandations visées au paragraphe 31(2).

[58] Several observations flow from a reading of these regulatory provisions. The person serving as an investigator must be competent and trained for the purpose. The process is clearly not like that of a courtroom, avoiding direct confrontation between the actors and preserving confidentiality. It is nevertheless a process that is meant to get to the bottom of things. That is true, in the first instance, of the facts. But the investigator's role does not stop there. He is also to reach "conclusions" and to make "recommendations." While he has no power to impose sanctions of any kind, his recommendations are to some extent binding, in that they cannot be set aside outside of the joint determination that is prescribed in section 31.

[59] The investigator is not a judge, either in the extent of the powers conferred on him or in the exact mechanics of the process followed. There are nevertheless certain similarities in the two functions. Like a judge, the investigator is meant to be independent. He is not connected with either of the parties and is not to be made subject to their influence. Moreover, also like a judge, the investigator is called upon not only to collect various accounts of relevant facts, but also, ultimately, to reach conclusions, which necessarily includes making findings of fact in the presence of potentially conflicting accounts, legally characterizing those facts, and formulating conclusions and recommendations.

[60] The Regulations, adopted by the Governor in Council by virtue of the powers vested in him at section 157 of the *Canada Labour Code*, apply to CAS and, of course, to many other entities subject to that regime. Many other organizations — even among those not subject to the Regulations, notably in the private sector — also frequently have recourse to private, third-party investigators for a variety of reasons. These include the independence, impartiality and neutrality that they procure (characteristics that such investigations share with the judicial process), particularly in situations where recourse to internal human resources personnel could lead to perceived or real bias. In addition (and here, quite unlike a judicial process), they enable fact-finding without there being direct confrontation between parties in what can be very delicate situations, all the while offering certain guarantees as to the rigour of the enquiry.

[61] Such investigators are normally persons who have received special training in the conduct of such investigations and who therefore possess special expertise. In the case of investigations conducted pursuant to the Regulations, that high level of expertise is mandatory (s. 28). There can be no doubt that such expertise was present in this case (CTR at tab 1: the 98-page document in question refers to the investigator's extensive training and experience). Nor has anyone suggested otherwise.

[62] While the Regulations set out no formal procedural requirements, the jurisprudential principles developed in the caselaw on procedural fairness require that a responding party know the case to be met and be provided a full and fair opportunity to meet that case. The Applicant herself states the law in that way, as does the Attorney General (Applicant's Memorandum of Fact and Law at para 33, lines 2 and 3; Attorney General's Memorandum of Fact and Law at

para 9). The key point is having an opportunity to respond to unfavourable statements made to the investigator by others (*Marentette* at paras 37 and 38; *Pronovost v. Canada (Revenue Agency)*, 2017 FC 1077 at para 15). However, as will be shown, this does not extend to contesting the investigator's ultimate findings of fact, conclusions and recommendations.

[63] Here, the Applicant was made aware of the allegation against her. She received a summary of the evidence, which she commented on with annotations (Applicant's Record, pages 159-62 (Exhibit D)). She was able to present her position to the investigator in a private interview. A few days after the initial interview, she sent the investigator copious documents. She later received the investigator's draft notes from the interview and was invited to comment thereon by offering any corrections or additional information, which she did. All of this amounted to approximately 100 pages (Applicant's Record, pages 62-162 (Exhibits C and D)).

[64] What then is to be made of the alleged right to comment on a preliminary report?

[65] In the view of the Court, revendicating such a right, in the precise context of the situation set out above, betrays a fundamental misconstrual of the independent, third-party investigator process. For the reasons that follow, the right to comment and bring both oral and written evidence to the investigator is a strict procedural right at the stage of meeting the case made against one, but not at the stage of the investigator's ultimate conclusions and recommendations.

[66] It is one thing to have a party review a draft of the investigator's account of that individual's position in order to ensure that that position has been properly and understood and,

to that extent, is free from error, and to be able to respond to the evidence presented against one. It is quite another to endow parties with the ability to critique, *ex post facto*, the investigator's conclusions that may not be to their liking, with the prospect of convincing the investigator to change those findings.

[67] Each individual who meets with the investigator — be he a party (principal or responding) or simply a witness — gives his version of the facts, which may be identical, similar or different from the versions of others. The practice followed by the investigator in this case bears witness to the importance of that process. The concern for accuracy is highlighted by the practice of preparing a draft of the interview notes and sending them to the person for comment.

[68] Moreover, the process has safeguards to ensure that where the person is a "responding party," he or she is aware of the case to be met. Here, the Applicant does claim that there were points of which she learned only upon reading the Report and that, had she been given the opportunity to be confronted with those points earlier in the process, she would have had things to say in reply. That specific issue, which is a genuine one, will be addressed separately under the next rubric, below. Under the present rubric, however, the issue to be addressed is whether or not, beyond: (i) knowing the case to be met and (ii) having the possibility to meet it, a party has an additional right to review and comment on an investigator's ultimate conclusions and recommendations and, in that way, potentially influence the final outcome of the investigation.

[69] The answer to that question is no.

[70] Indeed, once an investigator has, in light of the above principles, collected all of the relevant facts, he must make findings of fact. That requires weighing everything received. At this point in the process, there are innumerable possible scenarios. Among these are the following.

[71] For example, having heard five witnesses, four of whom gave the same account of events and one a radically different account, the investigator may determine that the factual account of the larger number should be adopted and the version of the outlier, set aside. Another scenario would be a situation where the testimony, even that of a majority of witnesses, is found, for one reason or another, not to bear scrutiny, the investigator finding it necessary to give credence instead to a different account for one reason or another, such as internal consistency or corroboration from other sources.

[72] In short, the collecting of individual, subjective versions of the facts is one thing. Drawing conclusions from that mass of information is quite another. At the second stage of the process, a third-party investigator requires no less serenity than a judge.

[73] In order to preserve the integrity of such an independent, unbiased investigative process, it is out of the question to expose the investigator to the ire of parties who may be displeased with the conclusions ultimately drawn by the investigator. To do so would put the investigator, at best, in a situation of having to justify and negotiate his findings, and, at worst, in a situation of being attacked by a disgruntled party, be he the principal or responding party. Such a step in the process is antithetical to the very notion of an unbiased, neutral and impartial investigation.

[74] It is difficult to see how any investigator could make findings, draw conclusions and formulate recommendations, with the requisite peace of mind to be able to do so, if, at that time, he were required to contemplate the prospect of subsequently being subjected to the parties' displeasure. Even assuming that an investigator, despite such pressure, was nevertheless able to reach conclusions and make determinations in good conscience, there would nevertheless remain the further risk that, when ultimately subjected to the dissatisfaction of an unhappy party, the investigator might yield to that pressure, later producing a "final report" that would be not so much the product of his skill and conscientious work, but instead, the result of one party's influence.

[75] Nor should it be forgotten that in many such situations, there can be a considerable power differential between the two opposing parties. There is also the fact that the employer itself is the paying customer of the investigator (or his firm), which constitutes yet another reason to shield the investigator from the type of situation that occurred in the present file, particularly in a case where, as here, the responding party is a very senior executive.

[76] Returning to the case at bar, it is worth noting that in her comments of June 19, 2024, the Applicant, writing on CAS letterhead and invoking her status as deputy head, was not content to provide additional information for further consideration. Rather, adopting a sharp tone, she was highly critical of the investigator, raised new legal arguments, contested the conclusion reached in her case and requested that one of the recommendations be removed.

[77] As to CAS itself, from which the Attorney General took pains to distance himself, its attitude too was surprising. It went so far as to retain its own counsel to address insistent correspondence to the investigator's firm, with repeated entreaties to its president and chief executive officer to acquiesce to CAS's demands (CTR at tabs 31-42, 49 and 50). To the firm's credit, it declined to do so.

[78] In short, there can be no better illustration than the present file of the pitfalls that are likely to befall an investigation conducted pursuant to the Regulations if the inspector is made the subject of pressure about his conclusions and recommendations as stated in his report.

[79] But there is more. When questioned, in March 2024 — i.e., two full months prior to the issuance of the Report — with respect to wording in her firm's contract that spoke of an "interim report" (CTR at tab 3, page 3) the investigator indicated that it referred to the "summary of evidence" provided to the parties (CTR at tab 4, page 2).The CAS official promptly understood and agreed (CTR at tab 4, page 1; tab 38C (e-mail from Isabelle Beaudry to the investigator)). And as we have seen, the initial transmission of the Report to the parties by the designated recipient clearly viewed it as the last stage of the investigator's role and the culmination of her contract.

[80] That such was the case is also entirely congruent with the Investigation Mandate issued by CAS's human resources manager at the outset (CTR at tabs 2 and 38A), the relevant sections of which read as follows:

IV. Investigation Process

The investigator will review the allegations accepted by the delegated manager to ensure that all relevant documentation has been identified. The investigator will also review all documentation and responses, as applicable.

The investigator will make all arrangements for interview schedules and meeting locations. The investigator will ensure that the parties have been notified of their right to be accompanied during the investigation process by a representative and of the importance of maintaining confidentiality and that all information collected during the investigation is subject to the provisions of the *Access to Information Act* and the *Privacy Act*.

The investigator will provide the parties and witnesses with the opportunity to be heard and conduct all interviews in a fair, impartial and professional manner. He will ensure that witnesses are asked to sign and date witness statements once they have had an opportunity to review the interview notes to confirm their accuracy.

The investigator will take every reasonable precaution to ensure that the investigative process is carried out with due diligence and respect for the rights of those being interviewed and to perform these duties within the confines of the law.

The investigator will inform the delegated manager in the event that the parties, the persons accompanying them or the witnesses do not fully cooperate in or jeopardize the process.

V. Reporting

The investigator will provide the delegated manager, through the administrative coordinator, verbal progress reports on the status of the investigation at regular intervals or at the request of the delegated manager to allow her to monitor the timeliness of the process and to ensure that the mandate is being adhered to.

Upon completion of the initial interview phase, the investigator will submit a preliminary summary of facts outlining the evidence and the facts of the case to the delegated manager.

The investigator will then provide the parties with a copy of the preliminary summary of facts, once they have been reviewed by the organization to ensure adherence to the *Access to Information Act* and the *Privacy Act*, and provide them with an opportunity to make comments regarding accuracy and completeness and to provide additional relevant information.

> The investigator will examine all the information submitted by the parties as well as the other evidence gathered during the investigation and will provide a thorough analysis of the evidence in the investigation report.
>
> The investigator will review and conclude whether there has been a breach of the policy instruments by establishing whether:
>
> - The allegations are founded in whole or in part; or
> - The allegations are not founded.
>
> The investigator will also provide recommendations to consider in order to restore the workplace.
>
> The investigator will submit the investigation report to the delegated manager in a timely manner. She will complete the investigation report even if the parties or witnesses refuse to cooperate in the investigation process and shall indicate the reason, if any, for such refusal. If applicable, the investigator's report will also include the reasons for which a witness proposed by either of the parties was not interviewed.
>
> Copies of the investigation report will be provided to the parties, by the delegated manager once the report has been reviewed by the organization to ensure adherence to the *Access to Information Act* and the *Privacy Act*.
>
> A final decision to accept or not the conclusions of the report will be made by the delegated manager based on the findings of the investigation report.

[81] The caselaw, properly understood, is in accord with the process as just described, the requirement being that a responding party know the case to be met and that he be able to meet it. No authority has been invoked indicating that an investigator’s ultimate findings of fact, legal characterizations, conclusions and recommendations are to be subjected to criticism from the parties with a view to them then trying to influence the outcome of the investigation.

[82] The Applicant’s contention to the contrary is therefore without merit.

(3) No demonstrable prejudice

[83] There remains one further procedural argument to be examined. As has been mentioned, the Applicant argues that there were certain elements of the case against her of which she claims to have learned only upon reading the Report and that the procedural requirement of knowing the case to be met was therefore not respected.

[84] In her affidavit, she makes only a general assertion to that effect (Applicant's Record: Applicant's affidavit at para 7). However, in her Memorandum of Fact and Law, she sets out the following seven points (Applicant's Memorandum of Fact and Law at paras 9 and 35):

> [LFP] said that in every discussion [she] had with senior managers, [she] was left with the impression that they had no authority and were receiving directives from [the Applicant]...
>
> [LFP] said [she] was never informed by anyone that [the Applicant] had acted on [LFP's] request for help, nor was [LFP] ever contacted by anyone to discuss [her] request for help...
>
> The evidence gathered indicates a lack of due diligence and neglect from [the Applicant] that contributed to creating an environment where psychological injury and/or illness was able to develop…
>
> The evidence gathered indicates that no plan was in effect for [Ms. Fevrier-President's] return to work [following sick leave]...
>
> The evidence gathered corroborates that it was unreasonable for [the Applicant] to have monitored the conflict between [Ms. Fevrier-President] and [her director] through updates from the [director]...
>
> [The Applicant] also monitored the conflict through another source, but the evidence corroborates that there was no action taken by anyone to address the situation...
>
> [The Applicant] did not fulfill their duties under the CAS policies and regulations.

[85] In the view of the Court, this ground also fails.

[86] Given the clear wording of the allegation in LFP's second complaint, the Applicant was fully aware that what was at issue was CAS management's alleged inaction, and, more specifically, her own and that of the two other executives who, with her, had been identified as responding parties. The task before her was therefore to provide as complete a narrative as possible of all the action taken. And that is precisely what she did in her interview and the other materials she sent, as well as in the comments she provided on the "summary of evidence" and on the notes concerning her interview. There is therefore no basis for the Applicant's alleged surprise when reading the above-quoted extracts from the Report.

[87] Moreover, while claiming to have suffered from not having been able to address the points quoted above, the Applicant's Memorandum of Fact and Law contains no indication, beyond simple denial, of what her further input might have been.

[88] Even more telling is her letter of June 19, 2024, written by her with the understanding that the comments contained therein, expressed in a five-page letter, were her last opportunity to make representations of any kind (Transcription of hearing of August 20, 2025 at page 129 lines 15-18). And yet, beyond simply listing those same points, she offered no substantive position as to what she wanted to add (Applicant's Record, page 187 (Exhibit F); CTR at tab 38P, page 3).

[89] This further procedural ground therefore fails.

(4) Legitimate expectation

[90] Before turning to the Applicant's substantive grounds for review, it is necessary to address one last point. The Attorney General of Canada, in supporting the Applicant's procedural grounds, adds the further basis of legitimate expectation (Attorney General's Memorandum of Fact and Law at paras 30-34). For that purpose, he relies exclusively on the designated recipient's e-mail of June 5, 2024, informing the Applicant that she had ten working days to comment on what would henceforth be viewed as a preliminary report, thus creating an expectation that was later frustrated.

[91] This argument fails.

[92] Legitimate expectation can be relevant in determining procedural fairness. Representations by an official in authority can in certain circumstances give rise to a legitimate expectation of certain procedural steps, the analysis in such cases taking into account the relevant statutory and regulatory regime, sometimes also in light of other sources such as guidelines and any applicable contracts (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559; *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504 at paras 68-72; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para 26; *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, 2025 FC 878).

[93] With respect to the facts that are potentially material to this issue here, it is worth stating the following. At no time prior to the communication of June 5, 2024, did the Applicant herself believe that she would have any further opportunity to present further comments or materials to

the investigator (Transcription of hearing of August 20, 2025, at page 77). Thus, when, on April 15, 2024, having previously provided other information and materials in January and February (Applicant's Record, pages 79-138 (Exhibit D): numerous documents and communications sent by the Applicant to the investigator on January 23, 2024; pages 140-48 (Exhibit D): comments on the draft interview notes and additional e-mail exchanges), the Applicant then sent in her last set of comments (Applicant's Record, page 156 (Exhibit D)) — which she did after having sought and obtained an extension of several additional days in order to ensure the completeness of her last submission (Applicant's Record, pages 156-57 (Exhibit D)) — it was her understanding that there would be no additional input by her whatsoever into the investigation, a state of affairs about which she raised no issue at that time. As already stated, she was only advised to the contrary on June 5, 2024, by the designated recipient and not by the investigator herself. The Attorney General does not claim otherwise. Those facts, with that chronology, already greatly weaken any possible expectation she might claim to have had.

[94] Moreover, the designated recipient's assertion of June 5, 2024 ran contrary to the express wording of the Investigation Mandate, quoted above. It also contradicted the contract with the investigation firm, as understood by both parties to it, as discussed above. Such a statement therefore could not give rise to a legitimate expectation. The fact of erroneously creating an expectation cannot procure any additional procedural rights when that non-existent right is not later given effect to.

[95] Nor was CAS's designated recipient an official whose assertions could give rise to legitimate expectations about the procedure. In that context, only the investigator could

potentially have done so, which she did not. The fact that the designated recipient, as well as CAS generally, represented by counsel, both made common cause with the Applicant, against the investigator, only confirms that CAS's position cannot be taken as being susceptible of creating procedural expectations in this context.

[96] In conclusion, the Court finds that the Applicant's procedural grounds are without merit.

V. Substantive error

[97] In addition to taking issue with the procedure, the Applicant also argues substantive error. Here she contends that the Decision/Report fails to stand up to scrutiny on a standard of reasonableness. This ground of review breaks down into two prongs that will now be addressed in turn.

A. *Lack of harassment on the face of the allegation in the complaint*

[98] The first prong of the argument is that, on its face, the allegation in the complaint does not speak of any "action, conduct or comment" — words that, as we have seen, come from the definition of "harassment and violence" in section 122 of the *Canada Labour Code* — but rather merely of delay in acting, which, she argues, is insufficient to meet the threshold (Applicant's Memorandum of Fact and Law at para 43).

[99] When questioned on this point at the hearing, her counsel declined to go so far as to say that harassment can never be a sin of omission, but rather framed her position as being that, at

the very least, mere delay cannot constitute harassment (Transcription of hearing of August 20, 2025 at pages 54 and 55).

[100] This argument is without merit.

[101] Indeed, the prevention of harassment is central to the entire regime. Part II of the *Canada Labour Code* is replete with this idea (s. 125(1)(c), (z.16)-(z.163).), as are the Regulations and CAS's Policy (CTR at tab 38Q), which, as we have seen, is another normative source that the investigator was called upon to apply and which, at subsection 7.1, states that the Chief Administrator "has the overall authority and accountability for the health and safety of CAS employees and the application of the policy." As a result, in the Court's view, the Decision/Report cannot be attacked as unreasonable on this basis.

[102] This argument is particularly surprising in that, fundamentally, the premise that undergirds it is one of complete impunity for the Chief Administrator in the case of her simply doing nothing, even for some arbitrarily long period of time, such blameworthy inaction being euphemized as mere "delay."

[103] That said, it should be pointed out that this argument was raised for the first time by the Applicant in her letter of June 19, 2024, where, among other things, she challenged the Report on the basis that she should have been viewed as not being a proper "responding party" in the first place. That argument has been raised again in the context of her application for judicial review (Applicant's Record: Applicant's affidavit of February 27, 2025, at para 4). In short, the Court

does not understand the Applicant's position to be that she thought that, short of some specific malicious act on her part, she had no possible accountability at all. Indeed, to her credit, during the course of the investigation, she obviously attempted to convince the investigator that she had made reasonable efforts to address and monitor the situation. The ultimate difficulty is that, upon full consideration, the investigator found those efforts wanting. This leads to the Applicant's last argument challenging the reasonableness of the investigator's conclusions, to which we shall turn shortly.

[104] But first, one other argument must be addressed. Under the general rubric of this same point, the Applicant also refers to section 23 of the Regulations, quoted above, which speaks of reasonable efforts being made, prior to a formal investigation being initiated, by the principal party — i.e., the complainant — and the employer or designated recipient to determine whether the complaint ("notice of occurrence") indeed meets the definition of "harassment and violence" (Applicant's Memorandum of Fact and Law at para 44).

[105] This argument does not advance the Applicant's case either, for two reasons. First, there is no evidence in the record of what, if anything, transpired in that regard. Second, according to section 25 of the Regulations, the matter must in any event proceed to an investigation if the principal party requests it, subject only to full resolution of the complaint pursuant to either section 23 or 24, no such resolution having occurred here.

B. *Unintelligible justification*

[106] The second prong of the Applicant's substantive error argument consists of asserting that the investigator's reasoning lacks intelligible justification leading from its evidentiary findings to its conclusions. This argument is supported by a table juxtaposing evidence received from the Applicant, as stated in the Report, in the left-hand column, and the investigator's ultimate conclusions, in the right-hand column (Applicant's Memorandum of Fact and Law at paras 45 and 46).

[107] The Applicant's evidence, as shown in said left-hand column, included stating that, after having received LFP's initial contact asking for help, she, the Applicant, met with appropriate channels and was advised that it was not her role to resolve the issues between LFP and the Director. She had gone on to say that it was not uncommon for employees to experience some problems when there were new employees in the work environment. The Applicant stated that she requested and received regular briefings about LFP from what she felt were appropriate channels, including the Director, and was assured that appropriate actions were being taken, notably the exploration of conflict resolution and mediation. The Applicant said she had not been made aware of any other problems until things came to a head in the summer of 2022, at which time she was away. But despite being away, she says that she immediately contacted the appropriate channels and requested that action be taken. Upon her return, she was informed that conflict resolution and mediation plans were in place. Finally, she had heard that other employees also had concerns regarding the Director, and, in an attempt to gather more perspective, she organized one-on-one meetings with other CAS employees at which no flags were raised. Such was her position as summarized in the Report.

[108] This argument is likewise without merit.

[109] It goes without saying that the investigator was called upon to weigh all the evidence. And yet, the Applicant invites the Court to assess the reasonableness of the ultimate conclusions on the basis of her evidence alone, to the exclusion of that from the complainant (LFP) and other witnesses, which is omitted from her table and nowhere considered by her.

[110] According to that other evidence, there were major concerns with the Director, LFP not being alone in her difficulties. The general work environment was unhealthy, with concerns being raised, notably regarding excessive workload, but remaining unaddressed by management.

[111] All things considered, the investigator found that, in light of all the evidence she had gathered from everyone, there had been a lack of due diligence and neglect by the Applicant that contributed to creating an environment where psychological injury and/or illness was able to develop. A reasonable person would have expected her to follow up with the LFP after the initial contact in early March 2022. Later, no plan was in effect for LFP's return to work, despite her being on extended medical leave and the presence of workplace issues affecting her health, with the Applicant bearing responsibility for ensuring that such a plan was in place. Moreover, the investigator further concluded that, after consideration of all the evidence, it was unreasonable for the Applicant to have monitored the conflict through the Director, given that the latter had been identified as the alleged cause of the issues. The Applicant also monitored the conflict through another source, but the evidence corroborated that there was no action taken by anyone to address the situation, which resulted in an escalation of workplace conflicts and an

environment that allowed for harassment and violence to persist. In light of all of the evidence, in the investigator's view, the Applicant had not discharged her duties under the Policy and the Regulations. Such were the conclusions reached by the investigator.

[112] The Court sees nothing unreasonable in those conclusions when considered in light of all the evidence, and not simply the Applicant's position taken in isolation.

[113] Moreover, the reasonableness of the investigator's conclusions is amply borne out by the position taken by the Applicant during the investigation. Indeed, at her interview with the investigator, as set out in the summary prepared by the investigator (Applicant's Record, pages 65-70 (Exhibit C)) and later submitted to her for accuracy and duly annotated by her (Applicant's Record, pages 149-53 (Exhibit D)), the Applicant spoke at length of her reliance on other executives, of her limited personal engagement in the matter and resulting little knowledge of its progress. At one point in the narrative, recounting a certain debrief from one of the other executives in which she had been reassured that conflict resolution/mediation was being planned, she went on to say that "she did not know who exactly was doing the planning for this" (Applicant's Record, page 68 (Exhibit C)). This statement from the Applicant attracted no correction or other comment from her in the track-changes version she returned to the investigator following review (Applicant's Record, page 151 (Exhibit D)).

[114] In short, the Applicant's overarching thesis with the investigator was that, as deputy head, she did not view it as her role to engage in much direct involvement, relying heavily on delegation (Applicant's Record, page 160 (Exhibit D): marginal annotation in track-changes

format). That speaks fundamentally to her subjective perception of the adequacy of her actions. But it is not through that lens that the investigator was to assess the complaint. LFP's situation was serious. In the investigator's analysis of LFP's initial complaint against the Director, she concluded that four of the five allegations met the threshold of harassment in the workplace (CTR at tab 38J at page 15 of 21). Having fully considered everything, the investigator was of the view that, in light of the relevant norms, including the Regulations and Policy, there were shortcomings in the handling of the situation by the Applicant, as Chief Administrator. The Court finds no lack of logic or justification in the investigator's analysis that would compromise the reasonableness of her conclusions.

[115] The Applicant has thus failed to make out any valid ground of review on the basis of unreasonable substantive error. That conclusion, along with those drawn above regarding procedural fairness, are sufficient to compel dismissal of the application for judicial review. However, for the sake of completeness, the Court will nevertheless address certain other arguments raised by LFP.

VI. Delay

[116] Respondent LFP argues that the 30-day time limit was not respected. She points out that the application, brought on January 29, 2025, ostensibly seeking review of the CAS Decision of

January 10, 2025, should instead have been initiated within 30 days of the Report, dated May 28, 2024 and sent to the Applicant a few days later.

[117] The Applicant retorts that the Report alone, prior to receiving CAS's sanction, was not a reviewable decision, adding that her understanding, over the ensuing months, was that there was an ongoing dialogue between CAS and the investigation firm regarding the matter, during which time she had no choice but to await the outcome.

[118] As indicated by the Attorney General, judicial review in such situations has been deemed valid on the basis of an employer's decision following completion of an investigation report, rather than the report itself (*D.A. v. Canada (Attorney General)*, 2024 FC 1626). In the view of the Court, that is sufficient to dismiss this argument from LFP.

VII. Conflict of interest

[119] LFP raises the existence of a conflict of interest. She invokes the fact that it was only on October 11, 2024 — over a year after her complaint against the Applicant and two others and close to a year after the Applicant was advised of same — that the Applicant formally recused herself from all matters related to LFP (Applicant's Record, pages 234-35 (Exhibit H)). She argues that the resulting conflict of interest results in forfeiture of the right to seek redress by way of judicial review.

[120] The authority invoked by LFP on this point (*Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, 2006 FCA 14) speaks to a different issue, namely that of insincere applicants for immigration.

[121] In the view of the Court, in the present context, although bringing to light what appears to have been tardiness in the Applicant's recusal with respect to her situation, LFP has failed to establish it as a distinct basis for dismissal of the application for judicial review.

VIII. Relief sought and other considerations

[122] Having just set aside two arguments raised by LFP, the Court, in closing, adds that there are nevertheless certain other factors that, in addition to what has already been stated, also militate in favour of dismissal of the application.

[123] The first has to do with remedy. As has been said, no one is asking that the investigation be recommenced from scratch. Rather, both the Applicant (as her primary relief) and the Attorney General are asking that the matter be remitted to a new investigator simply to review the Report, receive the parties' comments and then issue a further report, possibly the same and possibly different in its conclusions and recommendations. And yet, such a mechanism is nowhere contemplated in the Regulations, which casts doubt on its legality.

[124] In any event, it is entirely inappropriate. The investigation process set out in the Regulations calls on the investigator to probe into the facts, draw conclusions and formulate recommendations. That process is necessarily accomplished by the person who met the parties

and witnesses in person and applied his or her investigative skills to the situation. To ask another person, although perhaps equally skilled, simply to review the first person's work, receive criticism of it and, finally, to change the conclusions and recommendations, is to require something for which that person is ill-equipped. It is worth recalling that the firm whose services were retained in this case, having momentarily entertained such a solution, ultimately declined.

[125] Given the outcome of the judicial review, it is not necessary to deal at length with the alternative relief sought, in the form of mandamus (the applicable criteria being those found in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742, 1993 CanLII 3004 (FCA)). Suffice it to say that the Attorney General is quite right to say that an employer subject to the Regulations has no jurisdiction to reject a report.

[126] It is worth adding, however, that in parallel with the dialogue that CAS undertook with the investigation firm, the Certified Tribunal Record reveals that a "draft action plan," dated August 20, 2024, was prepared based on the Report (CTR at tab 18, dated August 20, 2024). Moreover, in October 2024, the Report's recommendations were receiving scrutiny by CAS's Occupational Health and Safety Committee, as contemplated in section 31 of the Regulations, with the involvement of the office of the Minister of Justice (LFP's exhibit 26, relevant at this stage of the analysis and thus filed quite properly). In short, the importance of the recommendations appears to have been understood by several different actors. Of the 15 recommendations formulated by the investigator at the end of her report, the Applicant herself had taken issue with only the last of them — identified by the letter "O" — in her comments to the investigator of June 19, 2024 (Applicant's Record, page 189 (Exhibit F)).

[127] While it is understandable that the Applicant feels the need to attempt to attack the Report, the fact remains that her personal juridical interest in the outcome of this judicial review is but one component and does not justify thwarting the overarching objectives of the Regulations, which aim at fostering a better workplace for all. Prerogative writs are discretionary (*Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326.), and the Court can withhold relief in a situation where the overall circumstances militate in favour of denying it.

[128] In the present case, pursuant to a complaint filed according to the Regulations, an investigation was conducted by an independent, third-party investigator. The Applicant was displeased with the outcome, disagreeing with its conclusion and with one of its 15 recommendations. The employer, having initially quite rightly treated the Report as the final result of the process, later backtracked. Despite that, others, including the Minister of Justice, appear intent on moving ahead, undeterred, with the Report's recommendations, in furtherance of the objectives aimed at securing a better workplace for all.

[129] What is left is the Applicant's subjective offence at having been found to have been insufficiently keen on ensuring adequate oversight of a difficult situation. This she perceives as an injustice. Both she and the Attorney General stress that complaints of this kind affect the lives of all concerned (Applicant's Memorandum of Fact and Law at para 1; Attorney General's Memorandum of Fact and Law at para 1). In the final analysis, however, not only has the Applicant failed to discharge her burden of establishing the existence of a reviewable error, but the overall context militates in favour of the implementation of the Report's recommendations, for the greater good consisting of the betterment of an entire workplace.

IX. Conclusion

[130] The Applicant's application for judicial review is therefore dismissed.

[131] The Attorney General of Canada does not seek costs. In any event, given the outcome, none should be awarded to him. Given his stated role, none will be awarded against him either.

[132] Costs will, however, be awarded to LFP as against the Applicant. Asked what she was seeking, LFP professed to no expertise in such matters, simply asking the Court to exercise its discretion. The amount proposed by counsel for the Applicant, in the event of a favourable outcome for her, that is to say $2,500.00, appears appropriate here.

JUDGMENT in T-321-25

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. Costs are awarded to respondent Lucia Fevrier-President against Applicant Darlene Carreau in the amount of $2,500.00.

"Mark Phillips"
Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	T-321-25
STYLE OF CAUSE:	DARLENE CARREAU v. ATTORNEY GENERAL OF CANADA, LUCIA FEVRIER-PRESIDENT
ORDER AND REASONS:	MARK PHILLIPS, DEPUTY JUDGE
DATED:	SEPTEMBER 18, 2025

APPEARANCES :

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