Federal Court Cour fédérale

Date: 20250605

Docket: T-605-24

Citation: 2025 FC 1001

Ottawa, Ontario, June 5, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

HEATHER HAMILTON

Applicant

and

ATTORNEY GENERAL OF CANADA
(PAROLE BOARD OF CANADA)

Respondent

JUDGMENT AND REASONS

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I. Overview

[1] Heather Hamilton alleges that the Chairperson of the Parole Board of Canada [the PBC], on February 19, 2024, rendered an unreasonable decision [the Decision or Decision Letter] in a procedurally unfair manner denying her three grievances against the PBC and Deputy Chairperson Daryl Churney.

[2] These grievances allege workplace harassment and discrimination of the Applicant following her return from medical leave in September 2022 [Grievance 68838], contest her 2022–2023 performance evaluation [Grievance 69427], and contest her redeployment from Edmonton to Montreal as Regional Director General of the Québec Region [Grievance 69428]. The Applicant seeks an order setting aside the Chairperson's decision and granting the

grievances with the corrective measures she proposes, or alternatively, remitting the matter for reconsideration with directions from this Court.

[3] The Applicant asserts that the Chairperson relied on information and materials that were not provided to her and concerning which she had no opportunity to respond before the Decision was made. In this regard, she points in particular to documents of her meeting with Deputy Chairperson Churney, regarding performance concerns dating to 2021–2022, which were prepared by the Deputy Chairperson himself.

[4] The Applicant also maintains that the Chairperson approached the grievance process with a closed mind and failed to meaningfully consider evidence that contradicted the key conclusions in the Decision. For the Applicant, these decision-making flaws demonstrate both procedural unfairness and substantive unreasonableness.

[5] The Respondent argues that the Applicant was afforded a procedurally fair process and received reasons that properly outline why the Chairperson found the PBC and its Deputy Chairperson to have acted in good faith and not in a discriminatory manner. The Respondent contends that the Applicant knew the case to meet and had a full opportunity to respond. It suggests that the Applicant was struggling to adjust in face of new projects and positions, and thus required legitimate performance management, project adjustment, and redeployment.

[6] For the following reasons, I find the decision-making process procedurally unfair and the Decision unreasonable. The Applicant's application for judicial review will be granted.

II. Facts

[7] The facts set out are taken from the parties' factual submissions in their respective memoranda of fact and law, with substantial additional detail drawn from the Applicant's affidavit. The Respondent did not cross-examine the Applicant.

A. *Employment background and initial performance at the PBC (2018–2021)*

[8] The Applicant has been employed in the federal public service for more than 32 years, including in executive roles since 2005. In November 2018, she was offered an EX-02 position with the PBC as Regional Director General of the Prairies Region, despite lacking experience in corrections, conditional release, or criminal justice. Her primary strengths upon joining the PBC included communications expertise, strong people management, and problem-solving skills. Her key mandate in this role was to improve a longstanding toxic workplace culture and integrate two regional offices to enhance cooperation and efficiency.

[9] In her role as Regional Director General, the Applicant reported directly to Deputy Chairperson Churney. Initially, the Applicant received positive performance ratings. Her performance rating for 2018-2019 was "Succeeded Plus," while her ratings for 2019-2020 and 2020-2021 were both "Succeeded." In September 2020, the Chairperson formally commended the Applicant for achieving the major milestone of uniting the two offices.

[10] Positive outcomes continued into 2021. In June 2021, the Applicant's previously struggling regional team received recognition, winning more than half of the National Chairperson's Awards of Distinction for excellence. Her mid-year performance review was

conducted in December 2021 and noted no concerns. By March 2022, an independent organizational culture survey demonstrated significant improvements in the toxic workplace under her leadership. Seeing the effectiveness of this survey, the Regional Vice-Chair requested the Applicant expand it due to the demonstrated value.

B. *Performance concerns and ratings (February 2022 – June 2022)*

[11] In February 2022, during a routine meeting, Deputy Chairperson Churney asked if the Applicant was satisfied in her role. Surprised, she confirmed her satisfaction and specifically inquired whether there were any performance issues. He replied that there were none.

[12] Nonetheless, seeking clarity, the Applicant requested a follow-up discussion. During this subsequent meeting, Deputy Chairperson Churney raised concerns about the Applicant's timeliness and engagement at work. In the months that followed, additional concerns emerged, including:

1) Late report and consultation regarding the renewal of the Saskatoon office lease;
2) Requirement for additional support to manage day-to-day tasks, allowing her to focus strategically;
3) Lack of initiative regarding succession planning for the Prairies Region; and
4) Frequent reminders required to resolve delayed approvals for part-time board members' hours, causing payroll disruptions.

[13] The Applicant responded to each concern with explanations at the time of the exchanges:

1) Regarding the Saskatoon lease, she explained that Public Services and Procurement Canada advanced renewal deadlines government-wide and recommended a one-

year extension. This recommendation was documented in a briefing note subsequently approved by Deputy Chairperson Churney.

2) Concerning day-to-day management deficiencies, she noted unexpected vacancies in three management positions, resulting in her supervising line staff, managing recruitment, and working extended daily hours up to 12–14 hours.

3) On succession planning, she pointed to an existing written succession plan developed in consultation with Human Resources, detailing forecasted vacancies, staffing methods, and timelines, which was regularly updated.

4) As to the delayed approval of part-time members' hours, she explained that payroll delays corresponded to statutory-holiday pay periods when the Pay Centre changed approval deadlines without notice. Team members from the Compensation and Finance Offices later acknowledged via email to her, and copying Deputy Chairperson Churney, that the delays were internal errors and confirmed timely submission by the Applicant.

[14] In June 2022, Deputy Chairperson Churney informed the Applicant that she had failed to meet performance expectations for 2021–2022. After the Applicant sought clarification on specific unmet tasks, her performance review was revised to indicate that although she had completed all assigned work objectives, she had inadequately demonstrated core competencies. Consequently, her rating was adjusted to "Succeeded Minus." The Applicant was also placed on a Performance Improvement Plan [PIP], and offered an executive coach.

[15] The Applicant agreed to undertake the PIP and coaching but objected to receiving a negative rating based exclusively on feedback provided at the end of the assessment period.

Noting the general and ambiguous nature of the PIP objectives, such as “set challenging goals for self” and “model dedication and high performance,” she requested clearer objectives and performance indicators, and asked that feedback be applied prospectively rather than retroactively. Both requests were denied.

C. *Request for mediation, medical leave, and return to work (June 2022 – September 2022)*

[16] In June 2022, concerned her superiors misunderstood her position, the Applicant requested mediation via Internal Conflict Management Services to occur after her scheduled annual leave between June 13-17, 2022. Deputy Chairperson Churney agreed to mediation following her return.

[17] During her annual leave, the Applicant became seriously ill, requiring immediate medical attention upon arrival at her vacation destination. After emergency room visits and follow-ups with her primary physician, her physician determined that she should temporarily cease work for medical reasons. The Applicant promptly informed Deputy Chairperson Churney and provided medical certificates and regular health updates approximately every two to three weeks over the following three months.

[18] On September 22, 2022, the Applicant notified Deputy Chairperson Churney of her medical clearance to return to work effective September 28, 2022. In response, she received a Letter of Expectations imposing new work conditions: new fixed hours and breaks, mandatory medical certificates for any sick leave, exclusive telework arrangements, and a restriction from involvement in management matters pending the upcoming mediation with Internal Conflict Management Services. It was indicated that non-compliance could result in disciplinary

measures. These restrictions were not applied to other executives in comparable roles and situations.

[19] On September 27, 2022, before the Applicant's scheduled return and before mediation commenced, Deputy Chairperson Churney informed regional staff by email that another individual would assume the Applicant's position through the fall and winter, and indicated that the Applicant would return to the PBC in a new supportive role. The Applicant was not notified directly and only learned of this decision through another employee prior to mediation.

D. *Mediation and Special Deployment (October 2022 – November 2022)*

[20] The Internal Conflict Management Services mediation occurred on October 17, 2022. Following mediation protocol, the Applicant spoke first, asking for clarification regarding the Letter of Expectations. Deputy Chairperson Churney responded with lengthy remarks, expressing dissatisfaction with the Applicant's decision to request mediation and subsequent medical leave and perceiving these actions as disrespectful. He indicated that these perceived transgressions had irreparably damaged trust, explicitly refusing to allow the Applicant's return to her substantive position as Regional Director General. Additionally, he declined to discuss her 2021–2022 performance evaluation, which was the initial reason for mediation.

[21] Although the mediator recommended terminating the session due to escalating tension and concern over the Applicant's psychological safety, the Applicant opted to continue with the aim to determining an exit strategy. The discussion ended with parties agreeing to convene again in a second "brainstorm" meeting to explore interim project options while the Applicant sought other employment. However, that second meeting began with Deputy Chairperson Churney

informing the Applicant that he had already selected a project without consulting her. He refused to consider alternatives, despite the Applicant's indication that the chosen project required technical expertise and software proficiency beyond her skill set.

[22] Following mediation, the Chairperson issued a Letter of Offer to the Applicant on October 24, 2022, proposing a Special Deployment to lead the pre-selected project. This project was categorized by the PBC as a Tier 3 priority, discretionary and non-essential, previously rejected and unfunded as a business case due to its low priority, although other similar Tier 3 projects received funding. The role demanded technical skills the Applicant did not possess and did not align with her professional strengths. Moreover, the project leadership was initially intended for a position four levels junior to the Applicant's substantive role.

[23] On November 7, 2022, the Applicant wrote to the Chairperson, asserting the Special Deployment violated Treasury Board guidelines as it did not align with departmental priorities or match her skills and career aspirations. She requested a meeting to further address her concerns, including issues with the performance management process. The Chairperson responded on November 8, 2022, asserting the project's priority status and revising the deployment offer into a directive. The Chairperson did not respond to the Applicant's request for further discussion.

E. *New working conditions and performance management (November 2022 – June 2023)*

[24] Following her return from medical leave, the Applicant's working conditions significantly changed due to the directives outlined in the Letter of Expectations. After four years as Regional Director General, she was instructed to refrain from involvement in management activities, removed from all executive committees, meetings, training, and stripped

of budgetary, financial, and staffing authority. She no longer supervised employees, was barred from on-site work without explicit permission, and was required to vacate her office despite ample available office space. Additionally, her access to routine operational information was curtailed by removing her from email distribution lists and the Government Employee Directory Service, where she had been listed for over three decades. She was also warned of potential disciplinary actions for any non-compliance.

[25] During daily operations, the Applicant was routinely presented with situations where it was difficult or impossible to meet expectations. She was told to limit consultation with regional offices, then criticized for not consulting enough; instructed to submit draft work immediately, then reprimanded for its incompleteness; and directed to follow an approved work plan, then reproved for doing so. Moreover, although the Deputy Chairperson approved her full-time training, she was assigned work during that period and later faulted for missing a meeting scheduled while she was in training. These circumstances led to frequent criticism of her performance.

[26] Following her Special Deployment in November 2022, the Applicant was assigned performance objectives without clear performance indicators. Despite requesting clarification, she was redirected to the existing vague PIP. On November 8, 2022, she was instructed by the Chairperson to sign both the unclear performance agreement and PIP. She signed under protest, noting her request for clarification, which was acknowledged but not addressed by the Chairperson. Subsequently, in December 2022, an executive coach declined involvement due to precisely the absence of such defined indicators.

[27] In March 2023, the Applicant reiterated her concerns regarding unclear performance indicators but was advised that clarifying objectives was her responsibility. Although instructed to sign the performance agreement electronically, she could not complete this action because the PBC's digital system required defined indicators for successful submission, which the Applicant's PIP lacked. Despite this documented impediment that required IT assistance to overcome, in June 2023, Deputy Chairperson Churney expressed disappointment in her purported lack of engagement in the performance management process, suggesting she might not qualify for performance pay. This occurred despite written correspondence from January 31 and April 5, 2023, where the Deputy Chairperson had indicated satisfaction with her performance.

F. *Redeployment to Québec and performance assessment (October 2023 – November 2023)*

[28] On October 16, 2023, the Applicant was directed to accept redeployment to a Regional Director General role in Québec within only two weeks, commencing October 30, 2023. No explanation was given for the redeployment or the short notice. The redeployment required relocation from Edmonton to Montreal by March 31, 2024, and mandatory monthly attendance of at least five consecutive days in the Montreal office, beginning October 30, 2023. The Applicant was prohibited from travelling during working hours

[29] Between October 29 and December 16, 2023, the Applicant made eight cross-country trips, primarily during personal time, causing significant physical and mental strain. As a result, her physician recommended a week of medical leave, but due to prior negative experiences, she took only three days. On November 23, 2023, she formally requested a salary adjustment to account for higher living costs, per employment guidelines, but received no substantive response for over two months.

[30] On November 3, 2023, the Applicant was directed to attend an in-person performance assessment meeting on Tuesday, November 14, 2023, in Ottawa. This necessitated travel from Edmonton on a statutory holiday. Despite expressing concerns about feeling threatened, her request to have an observer present at the meeting was denied. The meeting lasted approximately 11 minutes, during which the Applicant was reported that she had been discouraged from engaging in discussion and received a performance rating of "Did Not Meet."

G. *Grievance process (June 2023 – February 2024)*

[31] On June 22, 2023, the Applicant filed the first grievance, Grievance 68838, alleging harassment and discrimination by her supervisor and the PBC following return from medical leave. On November 15, 2023, she submitted two additional grievances. Grievance 69427 challenging her 2022–2023 performance assessment and the requirement to travel to Ottawa on a statutory holiday for an in-person evaluation meeting. Grievance 69428 contested the Respondent's decision to redeploy her to Montreal, which she alleged was made unilaterally, in bad faith, and constituted disguised discipline and retaliation for filing the earlier harassment and discrimination grievance.

III. Decision Below

[32] On February 19, 2024, the Chairperson of the Respondent denied all three of the Applicant's grievances in a single letter titled "Third Level Grievance Response." An internal document titled "Case Analysis," prepared by the PBC Labour Relations Unit, offered additional substantive reasoning and recommendations. The Chairperson explicitly confirmed that the Case Analysis was considered in reaching the decision, and the Respondent submits that such précis forms a part of the decision materials. As established by the Federal Court of Appeal in *Canada*

(Attorney General) v Sketchley, 2005 FCA 404 at paragraphs 37 to 39, reviewing courts may take into account the reasons and recommendations prepared by separate entities for the ultimate decision-maker when assessing the decision under review. Accordingly, both the Decision Letter and the Case Analysis constitute the decision that is now before this Court for the purposes of judicial review.

A. *The Decision Letter*

[33] The Decision Letter outlines the Chairperson's conclusions on all three grievances, asserting consistently that PBC management acted in good faith without harassment, discrimination, disguised discipline, or retaliation in making all decisions that the Applicant found to be problematic.

[34] Responding to the allegations of harassment and discrimination advanced in Grievance 68838, the Chairperson outlined a timeline of performance issues dating back to June 2021, concluding that concerns about the Applicant's performance as Regional Director General began well before her medical leave. Identified deficiencies included inadequate engagement, poor planning and prioritization, delayed decision-making, and ineffective management practices that reportedly created stress among regional employees and board members. Specific examples cited include delays approving part-time board member hours, leading to payroll issues, and lack of succession planning resulting in significant management vacancies and regional capacity concerns.

[35] The Chairperson rejected the Applicant's assertion that the Special Deployment constituted harassment or discrimination related to disability, maintaining the decision was based

solely on the Applicant's inability to effectively manage the Prairies Region, not her medical condition or leave. The Chairperson further wrote in the Decision Letter that the deployment was not a demotion, as the Applicant was deployed at the EX-02 executive level consistent with her previous substantive position. Although acknowledging the Applicant's view of the project as a Tier 3 priority, the Chairperson categorized the National Staff Training Project as aligned with the Chairperson's priority to develop a comprehensive Learning Operating Model that would support national harmonization of PBC operations.

[36] Responding to allegations of isolation suffered by the Applicant during the Special Deployment, the Chairperson attributed these perceptions to her own lack of engagement, rather than deliberate employer actions. As a senior executive leading a national project, explained the Chairperson, the Applicant was expected to proactively seek resources, collaborate across government departments, and demonstrate leadership competencies. The Chairperson found the Applicant's removal from certain regional distribution lists and committees appropriate given her changed responsibilities, but did concede that her temporary removal from the Government Employee Directory and Senior Management Committee list was an unfortunate "administrative oversight" promptly rectified after the issue was raised.

[37] Responding to complaints regarding the performance evaluation in Grievance 69427, the Chairperson upheld the "Did Not Meet" rating as consistent with the Applicant's demonstrated performance. The Decision Letter emphasizes the Applicant's resistance and perception that the project was beneath her skill level, reflected in the minimal two-page document delivered at year-end. The Chairperson defended Deputy Chairperson Churney's implementation of a PIP, asserting that specific areas of improvement and support resources were clearly identified. The

Chairperson explained in the Decision Letter that the Applicant's performance deficiencies were substantial enough to justify the negative rating.

[38] As for the requirement to attend an in-person performance evaluation meeting in Ottawa, the Chairperson justified it by citing the seriousness of the situation and the appropriateness of face-to-face discussions at senior executive levels. Importantly, the Chairperson held the position that executives like the Applicant should expect and accommodate short-notice travel, including during weekends or statutory holidays, and that all relevant expenses were reimbursed upon completion of the expense report.

[39] With respect to the dissatisfaction of redeployment to the Québec Region voiced in Grievance 69428, the Chairperson stated that following the Applicant's Special Deployment, the organization had committed to identifying another EX-02 level position. Since the Prairies Region's Regional Director General position was already filled and no other suitable positions identified following consultations within the Deputy Minister community, the Québec role was presented as the sole available EX-02 vacancy.

[40] The Chairperson further situated this decision within the Treasury Board of Canada Secretariat's [TBS] Directive on Terms and Conditions of Employment for Executives [the TBS Directive]. The Chairperson presented the Québec Region redeployment as beneficial for the Applicant, noting its smaller size, single regional office structure, and availability of experienced staff to support her given previously documented performance gaps. According to the Chairperson, the position matched the Applicant's bilingual linguistic profile, did not require immediate relocation, and provided a reasonable two-week notice period. Additionally, the

Chairperson defended the requirement for physical presence in Montreal at least one week per month while reviewing relocation options as reasonable, reiterating that senior executives are expected to travel when required and that being in the office would facilitate relationship-building with regional staff and partners.

B. *The Case Analysis*

[41] The PBC had a Case Analysis prepared for the Chairperson to assist in her response to the Grievances. The document is formatted as a structured table that provides detailed reasoning and internal recommendations concerning the Applicant's grievances. The document summarizes the positions of both the Applicant and Respondent, examines each grievance separately, references applicable jurisprudence and policy frameworks, and concludes with a recommendation to deny all grievances and the requested corrective measures. Given the substantial overlap in content and analysis between the Case Analysis and the Decision Letter, only key aspects of the Case Analysis will be outlined.

[42] Most significantly, the Case Analysis contains explicit acknowledgments of problematic conduct that are notably absent from the Decision Letter. The Case Analysis concedes that, from a third-party perspective, concerns could be raised about the timing of the Letter of Expectations and the removal of the Applicant from committees and distribution lists. The document also acknowledges that the Applicant "did receive a different treatment than her colleagues (e.g. Mr. [vG] which [*sic*] was also a Special Advisor to the DC at the time)" and admits that such differential treatment "remains difficult to justify." Despite these admissions, the Case Analysis dismisses associated concerns by stating that these issues alone may not constitute harassment

and were not amplified sufficiently to overcome management's legitimate performance management authority. It offers little substantive analysis to support this conclusion.

[43] The Case Analysis also references specific legal frameworks and past decisions that inform its recommendations, including TBS guidance on harassment and PSLREB decisions such as *Raymond v Treasury Board*, 2010 PSLRB 23 and *Green v Deputy Head (Department of Indian Affairs and Northern Development)*, 2017 PSLREB 17. Additionally, the document concludes by noting potential alternative recourses available to the Applicant, including filing under PBC's *Harassment and Violence Prevention Policy*, seeking judicial review at this Court on unreasonableness grounds, or filing a discrimination complaint with the Canadian Human Rights Commission.

IV. Issue

[44] As noted, both procedural fairness and reasonableness are disputed in this judicial review.

[45] Before turning to the substantive analysis, it is necessary to first determine the appropriate lens through which this Court should examine the Chairperson's decision: whether it is to be treated as a single, integrated decision comprising three components, or as three separate and independent decisions that were simply addressed together in one document.

[46] After I raised this question during oral submissions, the Respondent submitted that the decision should be divided because there are distinct lower-level decisions for different grievances, whereas the Applicant explained that the grievances are so factually intertwined that the Chairperson's decision must be reviewed as a single, integrated decision.

[47] I agree with the Applicant. The factual connections between the three grievances are too substantial to justify treating them in isolation, which would serve to undermine meaningful review. The evidence, reasoning, and outcomes of each grievance are deeply interconnected, such that deficiencies in one grievance can compromise the integrity of the entire decision-making process. The harassment and discrimination allegations in the first grievance form the factual backdrop for assessing whether the subsequent performance management and deployment actions were legitimate exercises of managerial discretion or continuations of the alleged discriminatory conduct. The performance evaluation grievance builds directly on the harassment allegations by claiming the "Did Not Meet" rating represents escalated retaliation, while the redeployment grievance directly stems from the Applicant's view that the Québec reassignment constitutes retaliation for her first grievance-filing and raises issues of ongoing harassment.

[48] Moreover, the temporal progression of events establishes a chain of events in which meaningful review of later actions depends on a proper understanding of earlier ones. For instance, issues of procedural fairness, particularly around proper notice and disclosure, are common to all three grievances, as they concern largely the same batch of allegedly undisclosed information. Shared decision-makers, overlapping evidence, and a common and continuous documentary record further support treating the decision as a unified whole. To fragment the review would risk distorting the context of the decision-making process and impair a comprehensive assessment of both procedural fairness and reasonableness.

[49] It does not escape the Court's attention that the Respondent, in delivering one response to all three grievances, has itself treated them as interrelated.

[50] Accordingly, this Court will assess whether the Chairperson's overall decision-making process was procedurally fair and whether the reasons provided for dismissing the three grievances satisfy the standards of justification, transparency, and intelligibility required under *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 *[Vavilov]*. The three grievances stand or fall together as parts of an indivisible whole.

V. Standard of Review

[51] The Respondent submits that procedural fairness is reviewed on the correctness standard. While some decisions of this Court have framed the standard in that way, I find that this does not fully capture the essence of a procedural fairness review. I agree instead with the Applicant's articulation of the standard: one that resembles the correctness standard but shifts the focus from determining the correct procedure to assessing "whether the procedure was fair having regard to all of the circumstances:" *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at para 54; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. The goal of the procedural fairness review should always be to determine "the ultimate question [of] whether the applicant knew the case to meet and had a full and fair chance to respond": *Canadian Pacific* at para 56.

[52] For substantive review, I agree with the parties that the Decision is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Vavilov*.

[53] Reasonableness review is one single deferential yet robust standard: *Vavilov* at paras 12-13 and 89. The Court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized

knowledge and understanding of the "purposes and practical realities of the relevant administrative regime" and "consequences and the operational impact of the decision" that the reviewing court may not be attentive towards: *Vavilov* at para 93. Judicial intervention is warranted only when the flaws or shortcomings are "sufficiently serious… such that [the decision] cannot be said to exhibit the requisite degree of justification, intelligibility and transparency:" *Vavilov* at para 100. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[54] However, reasonableness review is not a mere "rubber-stamping" process: *Vavilov* at para 13. It is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

VI. Analysis

A. *The Chairperson's decision was procedurally unfair*

[55] For the following reasons, I conclude that the Chairperson breached procedural fairness by relying on prejudicial facts and by characterizing previously resolved performance issues as ongoing deficiencies without providing the Applicant sufficient notice or an adequate opportunity to respond. The Applicant could not know the case to meet because prior informal exchanges and formal documentary evidence reasonably led her to believe that these issues had been resolved in her favour. Having general knowledge of facts underlying an administrative proceeding, even one with an informal and non-adversarial process, does not equate to knowing the specific case to meet.

[56] The parties agree that the level of procedural fairness owed to grievors lies at the lower end of the spectrum, as articulated in paragraph 28 of *De Santis v Canada (Attorney General),* 2020 FC 723. Their disagreement centres specifically on whether this minimal standard was breached. Specifically, the dispute centres on whether the Chairperson relied on key factual information without adequately informing the Applicant, thereby depriving her of notice and effectively preventing her from understanding the case she needed to address.

[57] The Applicant argues that procedural fairness was breached because the Chairperson relied on information alleging deficiencies that the Applicant reasonably believed had already been settled. Chief among such information was Deputy Chairperson Churney's notes from February 16, 2022, summarizing the meeting with the Applicant and referencing performance concerns dating back to early 2021. Neither the content of these notes nor the fact that they would be considered by the Chairperson was disclosed to the Applicant, not even during the grievance hearing. This lack of transparency, the Applicant contends, prevented her from understanding or directly addressing prejudicial allegations involving payment processing delays, succession planning failures, and other performance deficiencies integral to the Chairperson's ultimate decision.

[58] The Respondent counters that the Applicant knew the case she had to meet because she initiated the grievance process herself. The Respondent further contends that the key concerns contained in the undisclosed notes had already been communicated to the Applicant through earlier email exchanges and direct conversations with the Deputy Chairperson. On this basis, the Respondent submits that the Applicant was given sufficient notice of the relevant facts and a meaningful opportunity to respond.

[59] With respect, I find the Respondent's argument puzzling. To presume that an applicant automatically knows the case to meet merely because they initiated administrative proceedings would eviscerate procedural fairness requirements in administrative decision-making. Accepting such a presumption would effectively exempt decision-makers from their obligation to disclose specifically which facts or materials are being relied upon to reach a decision, based solely on the assumption that initiating the process equates to full awareness of the case to meet. Such a presumption is not supported by jurisprudence and cannot be fair.

[60] As clearly set out in *Canadian Pacific,* the ultimate question for the procedural fairness inquiry here is whether the Applicant knew the case to meet and had a full and fair chance to respond, rather than simply having general awareness of past performance concerns. The Supreme Court also cautioned in paragraph 55 of *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, that a person "may know nothing of the case to meet, and although technically afforded an opportunity to be heard, may be left in a position of having no idea as to what needs to be said." Although grievance proceedings are indeed informal and non-adversarial, this informality does not relieve the decision-maker of the duty to inform the affected party adequately about the essential evidence and analytical framework underpinning their decision. The informal nature of the proceeding may affect the extent of disclosure necessary, but it does not eliminate the fundamental obligation of providing sufficient notice. Accordingly, while I accept the Respondent's position that procedural fairness in this context does not require the full disclosure of Deputy Chairperson Churney's meeting notes and all related materials, I find that the Applicant was nonetheless entitled to be informed of the substance of any prejudicial facts contained therein, particularly given their central role in shaping the Chairperson's final decision.

[61] There is a crucial distinction between having general awareness of past discussions about work performance and having specific knowledge of how those discussions will be characterized and used, if at all, in the decision-making process. This distinction matters because the inclusion and framing of factual narratives in the decision-making process can fundamentally alter the nature of the issues under consideration and, as a result, the reasoning and outcome that follows. When applicants are not informed about the inclusion and framing of such narratives, they may be misled about the true nature of the issues at stake, and thus are effectively prevented from knowing the case they must meet and from responding in a meaningful way: *Gill v Canada (Citizenship and Immigration)*, 2021 FC 741 [*Gill*], citing *Therrien v Canada (Attorney General)*, 2017 FCA 14 at para 6. Indeed, this Court has recognized that an applicant's "understanding of the scope of the [issue] would [inform] the [a]pplicant's evidentiary decisions—which documentary evidence to file and which questions to ask when examining witnesses:" *Gill* at para 35. I am of the view that this principle directly supports the Applicant's core position: had she been made aware that the scope of the issue had been expanded to include Deputy Chair Churney's record and interpretation of performance concerns, concerns she believed had already been resolved, she would have submitted counter-evidence and made responsive submissions before the Chairperson.

[62] Scrutinizing the record, I find substantial factual support for the Applicant having reasonable belief that the performance concerns referenced by the Chairperson had already been favourably resolved. For example, regarding delayed approval of part-time board member hours, her 2021–2022 performance assessment explicitly stated that she had approved Phoenix transactions in a timely manner throughout the rating period and had met the requirements for timely managerial approvals. She also had evidence demonstrating that any delays were due to

procedural changes at the Pay Centre, changes not communicated to managers, along with an email from the Finance Team, which was copied to Deputy Chairperson Churney, acknowledging responsibility and apologizing for the oversight. Given this explicit documentation and acknowledgment in her performance assessment, I find that it was reasonable for the Applicant to conclude that this issue would not later be framed as an ongoing deficiency.

[63] A similar conclusion applies to the succession planning issue within the regional office. The same 2021–2022 performance assessment, explicitly approved and signed by Deputy Chairperson Churney, recognized the Applicant's satisfactory performance in developing both a succession and organizational redesign plan. The assessment confirmed that she developed and adjusted a strategic human resources plan to fill both anticipated and unanticipated vacancies. Given this documented recognition, the Applicant reasonably believed this matter was resolved with a positive outcome and, by logical extension, would not subsequently reappear as evidence of deficient performance. In my view, it is unreasonable to expect the Applicant to somehow learn about, let alone meaningfully respond to, Deputy Chairperson Churney's undisclosed characterizations of her work performance in the meeting note, particularly since these characterizations conflicted directly with the Deputy Chairperson's earlier documented and favourable evaluations of her performance.

[64] The Respondent's argument that prior emails and conversations provided adequate notice fundamentally misunderstands the procedural fairness requirement in this context. Again, the key issue here is not whether the Applicant was generally aware of past performance concerns, but whether she received specific notice that these concerns, previously resolved and explicitly acknowledged as satisfactory, would be presented again as ongoing deficiencies central to the

Chairperson's ultimate decision. Respectfully, I cannot accept that some email exchanges and informal conversations about this matter constituted sufficient notice that the concerns documented in Deputy Chairperson Churney's meeting notes would be presented to the Chairperson and influence the final decision.

[65] In sum, I determine that there is a clear breach of procedural fairness in the present case. In dismissing the Applicant's grievances, the Chairperson explicitly relied on issues that the Applicant reasonably believed to have been resolved, yet never informed her that these same issues would underpin the final decision, even during the grievance hearing. The Decision specifically cites the part-time board member hours and succession planning as prime examples supporting conclusions that "concerns were raised by employees and board members on your ability to manage your region effectively" and that "key members of your management team left the organization, and no succession plan was in place to backfill their positions." These conclusions are directly at odds with Deputy Chairperson Churney's own documented assessments acknowledging the Applicant's satisfactory performance. Regrettably, the Applicant neither received notice that these issues would be resurrected and reframed in a negative light, nor was she afforded the opportunity to present counter-evidence or arguments in response.

B. *The Chairperson's decision is unreasonable*

[66] The Chairperson's reasoning is flawed, and whether those flaws are considered individually or collectively, they render the decision unreasonable.

[67] I will begin by identifying each major flaw and explaining how it, on its own, leads to an unreasonable outcome. Rather than adopting the Applicant's approach analyzing defects based on the specific grievance from which they arise, I will structure the analysis by aligning the identified flaws with two constraints established by *Vavilov*: internally coherent reasoning and engagement with contradictory evidence and central submissions. After demonstrating how each flaw independently breaches these constraints, I will explain why, even if individually these flaws might not result in unreasonableness, their cumulative effect undermines the overall reasonableness of the Chairperson's decision.

(1) Individual Reasoning Flaws Render the Decision Internally Incoherent

[68] While reasonableness review cannot devolve into a "line-by-line treasure hunt for error," the reviewing court must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived:" *Vavilov* at paras 102-103. In my view, the Chairperson's reasoning suffers from two fundamental flaws, each preventing this Court from tracing a coherent analytical path from the evidence presented to the conclusions reached.

[69] The first reasoning flaw is the contradictory and inadequately explained characterization of the priority level of the Special Deployment project that Deputy Chairperson Churney assigned to the Applicant without consulting her. Specifically, I find that the Decision contains an unreconciled logical contradiction regarding the priority level of the Special Deployment project that undermines the entire rationale provided for the Applicant's assignment to said project. The Chairperson states that "this project was and remains one of my priorities as Chairperson as it falls under the development of a comprehensive Learning Operating Model

supporting national harmonization of PBC activities." This characterization serves as a cornerstone of the Chairperson's reasoning for why the Special Deployment was legitimate rather than discriminatory, and why the Applicant's alleged resistance to the project is yet another piece of evidence showing her ongoing poor work performance.

[70] However, the Respondent's own internal evidence contains materials directly contradicting this characterization. The Applicant highlighted evidence from the PBC explicitly classifying the Special Deployment project as a "Tier 3" imitative, defined as being "linked to corporate priorities, but not essential and discretionary in nature." More significantly, the PBC's internal business case for this project was rejected due to its low priority and did not receive funding, even though other projects within the same Tier 3 category were approved and funded. This evidence clearly indicates that even within the Respondent's established organizational priorities, the Special Deployment project was among the lowest-ranked initiatives and considered sufficiently non-essential that funding was explicitly denied.

[71] While the Chairperson briefly acknowledges the Respondent's Tier 3 classification, the Decision provides no meaningful explanation of how the same project can simultaneously be portrayed as a personal priority of the Chairperson warranting the assignment of a senior executive like the Applicant, while also be officially categorized as an unfunded, low-priority discretionary initiative. I am mindful of the risks associated with judicial overreach, particularly in areas where an administrative decision-maker's demonstrated expertise "may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime:" *Vavilov* at para 93. However, the Federal Court of Appeal has also cautioned in

Vancouver International Airport Authority v Public Service Alliance of Canada, 2010 FCA 158 [*Vancouver International Airport Authority*], that reviewing courts cannot accept merely a "trust us, we got it right" rationale as a substitute for demonstrated expertise, especially when decision-makers can "address fundamental purposes" with only "a sentence or two" on the matter at hand: paras 21-25. Where administrative expertise is not demonstrated, it attracts no judicial deference: *Vavilov* at paras 92 and 93.

[72] In my view, no such expertise or rational explanation has been provided here. The flaw at hand is simply not a question of different weighing of evidence, which could warrant deference, but rather a basic logical inconsistency. The Chairperson relies solely upon a subjective assertion of priority, without engaging or resolving the inherent contradiction created by the organization's own internal classifications and decisions. In such absence of a reasoned explanation or contextual clarification, it is unreasonable to conclude that a project can simultaneously be characterized as a high priority warranting senior executive leadership and a low priority unworthy of organizational funding. The Decision provides no analytical link or reasoning to reconcile these contradictory positions.

[73] This logical flaw fatally undermines the Chairperson's overarching reasoning throughout the Decision, because the project's priority status is central to multiple key conclusions. For instance, the depiction of the project as a high priority justifies the determination that the Special Deployment was a legitimate managerial decision rather than harassment, and it supports the claim that the Applicant's alleged resistance indicates deficient work performance. Without a coherent explanation clarifying the project's actual priority status, the reasoning underlying these key conclusions collapses.

[74] The second reasoning defect arises from the conclusion that the Applicant's workplace isolation did not amount to harassment or discrimination because it resulted primarily from her own failure to engage with colleagues and the organization. This position is directly contradicted by the Chairperson's own acknowledgment of institutional actions systematically excluding the Applicant from meaningful workplace participation: she was removed from regional and national executive committees, excluded from executive-level meetings, barred from on-site work, vacated from her office space, removed from distribution lists, and removed from the list on Government Employee Directory Service. These measures were clearly organizationally imposed rather than personally chosen or caused by the Applicant. Collectively, these institutional actions created substantial and objective barriers to meaningful workplace participation and leadership, significantly hindering the Applicant's capacity to fulfill her duties regardless of seniority, position, aptitude, or attitude.

[75] Framing the Applicant's isolation as predominantly self-inflicted, without substantively addressing or reconciling it with these acknowledged structural exclusions, creates a stark inconsistency within the Chairperson's reasoning. Despite explicitly recognizing these objective barriers, the Chairperson nevertheless concludes that "the reason you felt like you have been working in isolation is because you did not take the project seriously and did not make any effort to engage with the rest of the organization." With respect, this line of reasoning is as illogical as it is troubling. It attributes, without any justification, institutional consequences to individual failings, while completely disregarding the direct causal relationship between organizational exclusionary actions and their isolating effects.

[76] This is unreasonable victim-blaming. Apart from general assertions that the Applicant should have been more proactive given her position and seniority, the Decision Letter offers no plausible explanation of how an individual, senior executive or not, could overcome through personal effort alone being institutionally excluded from office spaces, meetings, committees, email distribution lists, and even the government's employee directory. This reasoning falls apart further in light of the Case Analysis, which concedes that the Applicant suffered from differential treatment and admits that such differential treatment "remains difficult to justify." Yet, neither the Decision Letter nor the Case Analysis adequately addresses why this acknowledged disparity does not amount to harassment or discrimination, aside from a terse and speculative remark that "this issue alone may not be harassment."

[77] The internal inconsistency is further accentuated by the Chairperson's admission that certain exclusionary measures were inappropriate. The Chairperson acknowledges specifically that the Applicant "should not have been removed from the Government Employee Directory Service (GEDS) and from the Senior Management Committee distribution list," attributing this to an "unfortunate administrative oversight for which the Deputy Chairperson had no idea." Setting aside the fact that the Applicant's grievance is directed not only at the Deputy Chairperson but also at the PBC as an institution—making the Deputy Chairperson's personal awareness or intent largely irrelevant—the reasoning fails entirely to reconcile how this acknowledged administrative oversight impacts the broader conclusion attributing the Applicant's isolation primarily to her own lack of initiative. If the acknowledged removal from key systems and groups such as the Government Employee Directory Service contributed to the Applicant's isolation, it becomes logically untenable to blame her for not overcoming these barriers that the organization itself characterizes as improperly imposed. This contradiction is

deepened again by the Case Analysis, which states that "Ms. Hamilton's absences to these meetings should have been sufficient to make the employer realizes that she did not get invited or that there was an issue with the distribution lists," but provides no explanation for why institutional failures in communication and inclusion should be attributed to the affected individual's personal failings rather than recognized as organizational deficiencies.

[78] Based on the foregoing analysis, I conclude that this second flaw in reasoning creates precisely the kind of internal incoherence that *Vavilov* warns about. It prevents this Court from tracing a rational, analytical path from the established facts to the conclusion reached. The record clearly demonstrates institutional exclusion through actions such as differential treatment, inappropriate removals from key distribution lists, and restricted access to office space. But the conclusion overwhelmingly attributes the resulting isolation to the Applicant's subjective feelings and alleged failure to reach out and lead. This line of reasoning effectively implies to the Applicant, and certainly to this Court, that her experience of exclusion "was all in her head." It offers no intermediate analysis explaining how institutional exclusion could have been overcome through proper personal effort, how differential treatment should affect the analysis, or how institutional acknowledgment of inappropriate exclusion measures should affect the attribution of fault.

[79] Again, per *Vancouver International Airport Authority*, such intermediate reasoning need not be extensive. A few substantive lines may suffice. However, general statements that apologies were offered and corrections were made, along with vague exhortations like "you should do better," fall squarely short of what is required. Indeed, I take the view that the Chairperson's reasoning can only hold if one accepts the absurd premise that individuals

experiencing unexplained systematic exclusion are themselves primarily responsible for overcoming institutional barriers imposed on them, even when some of those barriers are quickly removed for being recognized by the organization itself as inappropriate and "difficult to justify."

[80] Given how central these two flawed lines of reasoning are to the Chairperson's ultimate decision, each individually renders the decision unreasonable. One line of reasoning improperly elevates the Special Deployment to a high-priority personal project of the Chairperson without reconciling this characterization with the Respondent's own organizational documentation categorizing the same project as a low-tier, unfunded initiative. The second flawed line of reasoning unjustifiably attributes the Applicant's isolation primarily to subjective personal failings, despite clear institutional evidence of systematic and inappropriate exclusion.

(2) Individual Failures to Address Contradictory Evidence and Key Submissions Render the Decision Unreasonable

[81] A reasonable decision must be justified in light of the facts, and the administrative decision-maker must take the evidentiary record into account: *Vavilov* at para 125. The principles of justification and transparency require that decision-makers meaningfully account for the central submissions raised by the parties: *Vavilov* at para 127. While reviewing courts cannot expect decision-makers to "respond to every argument or line of possible analysis" or survey each and every piece of evidence, decision-makers' failure to meaningfully confront key issues or evidence that contradicts the outcome may cast doubt on whether the decision-makers were actually alert and sensitive to the matter before them: *Vavilov* at para 128. In the present

case, the Chairperson's decision reveals deficiencies in engaging with both contradictory evidence and central arguments that undermine its reasonableness.

[82] First, regarding the assessment of factual evidence, I find the Chairperson's reasoning reveals a systematic pattern of selectively highlighting evidence supportive of what appears to be predetermined conclusions while ignoring or failing to meaningfully engage with directly contradictory evidence provided by both the PBC itself and the Applicant. This reflects both a fundamental misapprehension of the evidentiary record and a failure to meaningfully engage with central evidence that directly contradicts the decision's findings. The Chairperson's selective approach is particularly apparent in the treatment of evidence relating to the Applicant's alleged performance deficiencies. Here, the Chairperson repeatedly relies on historical performance concerns without addressing documented resolutions of those same concerns.

[83] The most egregious example involves the Chairperson's treatment of the Applicant's alleged failure to timely approve part-time board member hours. The Decision Letter cites this as a prime example supporting the conclusion that "concerns were raised by employees and board members on your ability to manage your region effectively," stating that "on numerous occasions, you failed to approve part-time board members hours on time which led to pay issues." This claim further forms a central justification for concluding that performance management interventions were legitimate rather than harassing or discriminatory. However, the evidentiary record contains substantial and directly contradictory documentation that challenges this narrative.

[84] The Applicant's own 2021–2022 performance assessment, which is a part of the organization's record and signed by Deputy Chairperson Churney himself, explicitly states that the Applicant approved "Phoenix transactions… on time… in every pay period of that year" and ensured "that section 34 managers approve[d] Phoenix transactions in a timely manner." This formal performance documentation directly contradicts the Decision Letter's recitation of reoccurring approval failures. Moreover, the Applicant provided evidence demonstrating that pay delays were caused by procedural changes at the Pay Centre that were not communicated to managers, along with an email from Finance Team, which was copied to Deputy Chairperson Churney, that acknowledged responsibility and apologized for the oversight. This evidence suggests not only that the Applicant was not responsible for the delays, but also that the root cause had been identified, explained, and rectified at an institutional level.

[85] Regrettably, the Chairperson's reasoning provides no explanation for how the same Deputy Chairperson could, on one hand, approve of the Applicant's satisfactory and timely approvals as reported in the formal performance assessment, yet, on the other hand, still treat past approval concerns as evidence of ongoing performance deficiencies. The Chairperson simply appears to not have recognized the existence of the contradictory evidence, let alone explain why it should be disregarded in favour of the claims that the Applicant has failed on these tasks. With respect, this represents a fundamental misapprehension of the evidence that goes beyond mere weight assessment, and instead reflects either a seriously negligent review or a selective omission of directly relevant and contradictory documentation.

[86] A similar pattern emerges with the Chairperson's assessment of succession planning. The Decision Letter states that "key members of your management team left the organization,

and no succession plan was in place to backfill their positions," citing this as evidence of performance deficiency. However, the same 2021–2022 performance assessment document again explicitly recognizes the Applicant's satisfactory performance in "develop[ing] a senior management succession and organizational redesign plan for the Region" and specifically noted that the Applicant successfully "developed an HR strategy to recruit new managers to fill known and anticipatory vacancies," adjusting the strategy "numerous times due to emerging developments." This formal assessment clearly affirms that succession planning was not only in place but actively managed by the Applicant in response to unforeseen challenges, yet the Chairperson somehow presents the situation as if no planning had occurred.

[87] This highly selective treatment of essential evidence fundamentally undermines the reasonableness of the decision. It impedes the Court's ability to understand whether the identified performance concerns were genuine and unresolved, and therefore obstructs meaningful judicial review. The reasonableness of a decision may be jeopardized where the decision-maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at para 126. Here, I conclude that the Chairperson has done both: misapprehending the significance of the formal performance assessments and failing to account for evidence that directly contradicts the factual foundations of her conclusions. The systematic nature of this evidentiary failure suggests that the Chairperson was not actually alert and sensitive to the matter at hand, as required by *Vavilov*.

[88] Second, concerning the decision-maker's engagement with key submissions, I find the Chairperson failed to adequately address the temporal dimension underlying the Applicant's harassment and discrimination claim. The Applicant's grievance fundamentally rests upon the

timing of certain key events that connects her medical leave in June 2022 with the series of subsequent adverse and allegedly retaliatory management actions. This timing-based argument is supported by a detailed chronology: medical leave in June 2022, followed by what she found to be a punitive Letter of Expectations upon return, systematic isolation measures, negative performance evaluation, and forced redeployment. The Applicant contended that her medical leave was the only intervening factor between the Deputy Chairperson's willingness in June 2022 to continue her in her role with performance support and his complete refusal in September 2022 to allow her return "under any circumstances" to her role as Regional Director General. This sequence of events was the heart of the Applicant's discrimination grievance, which also runs through her entire grievance process, and thus required serious and reasoned consideration by the decision-maker.

[89] However, the Decision Letter fails to meaningfully engage with this critical submission on timing. Instead, it relies on conclusory assertions. The Chairperson simply states that "under no circumstances was the decision to assign you to the National Staff Training Project related to your medical condition or your decision to go on medical leave. In fact, this decision was made because of your inability to manage the Prairie Region." This conclusion is presented as an established fact without addressing how it aligns or conflicts with the clear temporal sequence of events or providing a rationale for dismissing the timing of the adverse actions as irrelevant to the analysis of discrimination.

[90] The evidentiary record reveals that, prior to the Applicant's medical leave, the PBC had intended to continue employing her in her substantive role with performance improvement support. Deputy Chairperson Churney had agreed to mediation to address performance

concerns, and a PIP had been established with executive coaching offered. However, upon the Applicant's return from medical leave in September 2022, Deputy Chairperson Churney abruptly and completely reversed his previous position, despite the absence of any new performance incidents or additional evidence of deficiency. The Decision Letter provides no substantive analysis explaining this sudden shift, nor does it address the possible inference that the medical leave constituted the intervening factor. The absence of any meaningful explanation regarding how or why the medical leave did not influence this marked reversal in managerial position is both puzzling and troubling.

[91] This analytical deficiency is further exacerbated by the Case Analysis, which acknowledges that "the timing of some actions and decisions could be questioned (e.g., the letter of expectation, decision to remove Ms. Hamilton from committees and distribution list)" and raises concerns about "the fact that the letter of expectations was given to Ms. Hamilton before she returned to the office and without having held a conversation before hand on the issues outlined in the letter." Yet, despite recognizing these issues, neither the Decision Letter nor the Case Analysis provides any substantive rationale for disregarding the temporal connection between the medical leave and the subsequent adverse actions, nor do they offer any explanation of why the sudden shift in the Deputy Chairperson's position is unrelated to the timing of the medical leave.

[92] To conclude, the Chairperson's failure to adequately address this temporal dimension is particularly troubling for two reasons. First, the temporal relationship between the medical leave and subsequent adverse actions was a central and recurring theme throughout the Applicant's grievance submissions. Second, although temporal proximity alone does not necessarily

establish discrimination, it is undeniably a relevant factor requiring careful consideration and explanation by the employer and decision-maker: *Amerato v TST-CF Solutions LP*, 2022 ONSC 5339 at para 44. Furthermore, the Supreme Court has clearly instructed that discrimination need not be the sole cause of an adverse action, as it is enough for it to be a contributing factor or have a connection to the action: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at paras 40-56. In view of this jurisprudence and the centrality of the Applicant's temporal submission, I find the Chairperson's conclusory dismissal of the medical leave's connection to subsequent adverse actions, without adequately explaining why this timing does not give rise to at least an inference of discrimination, represents a fundamental failure to grapple meaningfully with a key submission. This omission raises serious concerns about whether the decision-maker approached the matter with the degree of alertness and responsiveness required by *Vavilov* in paragraph 128.

(3) The Cumulative Effect of the Flaws Renders the Decision Unreasonable

[93] Even if I were to conclude that the above surveyed flaws do not independently establish unreasonableness, their cumulative effect unquestionably renders the Chairperson's decision unreasonable. Reading the decision materials as a whole, I simply cannot accept that the Chairperson adequately addressed the Applicant's circumstances, engaged meaningfully with the applicable legal and policy frameworks, or properly considered the substantive merits of the administrative proceeding.

[94] Cumulative unreasonableness occurs where multiple errors, although individually insufficient to render a decision unreasonable, collectively undermine the decision's justification

to such an extent that the outcome and reasons are no longer acceptable and defensible given the relevant facts and law: *Li v Canada (Public Safety and Emergency Preparedness),* 2021 FC 358 [*Li*] at paras 12-14. Jurisprudence shows that courts consider three primary factors when assessing cumulative unreasonableness: materiality, interconnectedness, and impact on justification.

[95] The first factor is materiality, which requires that the errors in question relate to central aspects of the decision. For example, in *Li*, the decision-maker's erroneous finding that the applicant signed a "blank form" to renew his permanent residency was central to its adverse credibility assessment. This materiality of this error meant that it was important enough to be reviewed in combination with other misstatements about the applicant's undeclared income and medical prognosis, which cumulatively tainted the administrative decision-maker's evaluation of relevant humanitarian and compassionate factors: *Li* at paras 34–51. Materiality ensures that only errors impacting the decision's core rationale are considered in a cumulative analysis, avoiding nitpicking over peripheral issues that leads reviewing courts down the forbidden path of "line-by-line treasure hunt for error."

[96] Interconnectedness is the second factor. It requires examining whether identified errors compound and mutually reinforce each other to distort the factual weighing or legal reasoning. Errors that "pervade and bleed into some of the other factors" under consideration by the administrative decision-maker should be "added to the mix" of a cumulative unreasonableness assessment, because they affect not only the analysis at hand but also the integrity of the decision as a whole: *Li* at para 47. For example, in *Elfar v Canada (Citizenship and Immigration),* 2012 FC 51 [*Elfar*], the decision-maker misunderstood the limitations of a travel document issued to

the applicant, erroneously concluding that Egyptian authorities would not question his identity. This error was interconnected with the decision-maker's dismissal of corroborating medical evidence and misinterpretation of testimony regarding post-departure harassment. This Court observed that these errors collectively "fatally tainted [the decision-maker's] assessment of the totality of the evidence," rendering its credibility findings unreasonable: *Elfar at* para 46. Interconnectedness thus examines how individual errors interact, amplify each other's impact, and collectively undermine the coherence and validity of the decision-maker's reasoning process.

[97] The third factor involves evaluating the impact of flaws on the decision's overall justification. In *Li*, this Court emphasized at paragraph 14 that while individual errors might not alone justify intervention, their cumulative effect may create a flawed analysis. Similarly, in *Elfar*, the administrative decision-maker's speculative inferences about the applicant's medical treatment during detention, coupled with its misapprehension of corroborative letters, rendered its evidentiary evaluation unreasonable: at para 46. These examples demonstrate that cumulative unreasonableness is assessed not merely by counting errors, but by evaluating their qualitative, combined impact on the overall logic, coherence, and justifiability of the decision.

[98] Applying the above legal framework to the facts at hand, I find that, even when considering the privileged fact-finding position of the Chairperson and the unique institutional setting of the PBC, the overall effect of the multiple identified defects results in cumulative unreasonableness.

[99] Materiality is clearly established here. As illustrated in my analysis above, each identified flaw pertains directly to core aspects of the Chairperson's decision-making process.

The contradictory project priority characterization undermines the core justification for both the Special Deployment and the performance assessment that followed. The illogical attribution of isolation to the Applicant's conduct forms the foundation of the harassment and discrimination analysis. The selective treatment of performance assessment evidence directly impacts the reasonableness of the upholding of the performance management process and the "Did Not Meet" rating. The inadequate engagement with timing argument goes to the heart of the discrimination claim. These are not peripheral issues. They are exactly the type of material errors that warrant cumulative consideration.

[100] The interconnectedness among these flaws is pronounced, as each error compounds and reinforces the others throughout the decision. For example, the contradictory project priority characterization pervades multiple aspects of the reasoning: it supports the conclusion that Special Deployment was non-discriminatory and justifies the finding that alleged resistance to the project demonstrated additional poor performance, providing the foundation for dismissing the Applicant's harassment allegations. This single error therefore permeates multiple parts of the decision, influencing conclusions on both harassment and performance assessments and resulting in a distorted analytical approach across the entire decision.

[101] Similarly, the selective treatment of evidence creates a pervasive distortion that undermines the factual foundation of multiple findings. The failure to account for documentary evidence showing resolution of performance concerns affects both the legitimacy of citing those concerns as ongoing deficiencies and the reasonableness of concluding that performance management was justified rather than pretextual. When combined with the inadequate analysis

of temporal evidence, these evidentiary oversights reinforce each other, forming a pattern of analytical avoidance.

[102] The impact of these connected flaws seriously compromises the Chairperson's reasoning. They so obscure the rationale that this Court cannot discern whether the Chairperson meaningfully engaged with the record and rationally arrived at key conclusions. This cumulative impact is most evident in the discrimination analysis. The illogical victim-blaming attribution of isolation, the refusal to grapple with timing evidence, and the selective performance documentation coalesce into a self-reinforcing narrative. Each flaw supports and amplifies the others: selective treatment of evidence supports a narrative that adverse work conditions were due to poor performance; timing analysis failure sidesteps the connection between medical leave and adverse actions that led to isolation; and attributing isolation to personal failings creates an illusory, alternative explanation diverting attention away from the more troubling possibility of institutional exclusion rooted in harassment or discriminatory exclusion. Considering the centrality of harassment and discrimination concerns throughout the grievance process, these cumulative analytical failures clearly render the overall decision unreasonable.

[103] Another example of cumulative effect arises from the multi-level repetition of these analytical flaws across different stages of the decision-making process. The flaws I have identified permeate both the Chairperson's Decision Letter and the Case Analysis prepared by the Respondent's Labour Relations Unit. Both documents exhibit similar worrisome patterns: unresolved internal inconsistencies, systematic disregard of contradictory evidence, inadequate engagement with timing concerns, victim-blaming attribution of institutional obstacles to individual conduct, and conclusory reasoning without proper analytical support. Such repetition

is significant because it illustrates that the identified analytical shortcomings were not isolated oversights by a single decision-maker, but rather flaws embedded within the entire administrative review process. For instance, the Case Analysis explicitly acknowledges that the Applicant received "different treatment than her colleagues" that "remains difficult to justify," yet this important admission is neither substantively addressed in the Case Analysis nor even mentioned in the Decision Letter. It simply vanishes from the reasoning. Similarly, both documents note the problematic timing of certain management actions following the Applicant's medical leave but fail entirely to grapple substantively with the implications of this timing. When analytical gaps and evidentiary omissions appear consistently across different levels of review, it creates a cumulative failure that is far more serious than the sum of its individual parts. The multi-level reinforcement of these defects prevents the corrective function that might otherwise occur through the review process and instead compounds the analytical failures, making the overall decision fundamentally unreasonable in a way that separately examining individual errors cannot reveal.

[104] In conclusion, the materiality of the errors, their interconnected and mutually reinforcing nature, and their combined impact on the overall justification of the Chairperson's decision strongly indicate cumulative unreasonableness. Even if none of these flaws were individually sufficient to render the decision unreasonable, their combined effect clearly does so, producing a systemic breakdown in reasoning and evidence weighing. As a result, the decision fails to meet the justification, transparency, and intelligibility requirements established by *Vavilov*.

VII. The Appropriate Remedy is to Quash and Remit the Decision for Reconsideration

[105] The Applicant asks that this Court to not only quash the Chairperson's decision, but also directly grant her grievances and order the corrective measures she seeks. These requested remedies include cancellation of her reinstatement as Regional Director General for the Prairies Region or deployment to a suitable alternative position; cessation of discrimination, harassment, and retaliation; removal and destruction of specified negative performance documents; amendment of performance evaluations to "Succeeded" ratings along with associated performance pay; compensation for travel, pain and suffering, wilful misconduct, and legal fees; implementation of harassment and violence training for PBC executives; and the issuance of a written employment reference as requested by the Applicant. In essence, this is an ask for direct substitution.

[106] The Respondent argues that if the application is allowed, the appropriate remedy is to remit the matter for reconsideration rather than directly granting the extensive corrective measures requested. The Applicant also raises this as an alternative remedy. In the circumstances, I find remitting the matter for reconsideration to be the more appropriate course of action.

[107] The law is clear that remedies amounting to substitution of the reviewing court's view for that of the administrative decision-maker are rarely available. They "remain appropriate only in exceptional cases:" *Canada (Citizenship and Immigration) v. Tennant*, 2019 FCA 206 [*Tennant*] at para 90. As Justice Deschamps observed in paragraph 66 of her dissenting reasons for *Giguère v Chambre des notaires du Québec*, 2004 SCC 1, substitution is generally justified only

where “returning the case to the administrative tribunal would be pointless,” where “only one interpretation or solution is possible,” or where the decision-maker “is no longer fit to act, such as in cases where there is a reasonable apprehension of bias.” This position has “since been accepted and relied on in a number of cases, involving both direct and indirect substitution:” *Tennant* at para 82, referencing *Groia v Law Society of Upper Canada*, 2018 SCC 27 at para 161.

[108] Although I have identified breaches of procedural fairness and substantive flaws in the Chairperson’s reasoning, I cannot say that the outcome of the grievances is a foregone conclusion. With fair procedures and proper analysis, different reasonable outcomes could and should emerge, depending on the evidence presented and the analytical framework applied. Furthermore, the Respondent confirmed at the hearing that the current Chairperson is not the same individual who issued the impugned decision. I am therefore satisfied that this change sufficiently addresses the Applicant’s concern regarding potential bias or closed-mindedness, and that reconsideration would not be futile.

[109] The Court expects that the new Chairperson will approach these grievances with a fair and open mind that is unbiased by the Respondent’s previous determinations, after having provided the Applicant with an opportunity to discuss them with the Chairperson. Additionally, it is expected that the new Chairperson will not engage in victim blaming and will reject any input previously provided by the Deputy Chairperson, unless the Applicant is given a fair opportunity to respond to it. The Court remains very troubled by the conduct and behaviour of Deputy Chairperson Churney that immediately followed the Applicant’s supported medical leave. In particular, his statement that he found her medical leave, which was recommended by

her doctor and communicated to him on time with regular updates, to be “disrespectful” is shocking.

[110] Accordingly, the appropriate remedy is to quash the Chairperson’s decision dated February 19, 2024, and remit all three grievances to the new Chairperson for reconsideration in accordance with these Reasons. Specifically, the reconsideration shall provide the Applicant with proper notice of prejudicial facts to be relied upon, particularly those relating to performance concerns she reasonably believed as having been resolved, and must meaningfully engage with the contrary evidence and central submissions identified by this Court or raised by the Applicant, including her arguments regarding the temporal relationship between her medical leave and subsequent adverse management actions.

VIII. Conclusion

[111] I conclude that the Chairperson’s decision of February 19, 2024, was both procedurally unfair and unreasonable. Either ground alone would warrant judicial intervention by this Court.

[112] The procedural fairness breach is clear. The Respondent’s argument that the Applicant knew the case to meet because she initiated the grievances fails to appreciate the critical distinction between general knowledge of underlying workplace events and specific understanding of how those events would be characterized and relied on in the decision-making process. The Applicant reasonably believed that performance concerns cited by the Chairperson had been resolved based on formal performance assessments signed by Deputy Chairperson Churney himself. She never received any notice that these apparently settled matters would be resurrected and characterized as ongoing deficiencies.

[113] On the merits, the substantive unreasonableness is equally apparent. The Chairperson's decision exhibits a troubling pattern that pervades the entire reasoning process: repeatedly acknowledging significant flaws, contradictions, and problematic actions, yet consistently arriving at what seems to be predetermined conclusions that dismiss the Applicant's concerns with minimal analytical support. This pattern recurs across multiple levels of review and in several key areas, such as the contradictory characterization of project priorities, the illogical attribution of institutional isolation to individual failings, the selective treatment of performance evidence, and the inadequate engagement with discrimination timing arguments. In most instances, the decision recognizes underlying problems but fails entirely to grapple substantively with their implications. Whether viewed individually or collectively, these substantive defects render the decision unreasonable.

[114] Accordingly, I grant this application for judicial review. Since the Applicant's situation does not fall into one of the rare circumstances warranting direct or indirect substitution, I decline to grant the extensive corrective measures she requests. Instead, I quash the decision of the previous Chairperson and remit the three grievances to the current Chairperson for reconsideration in accordance with these Reasons.

[115] Costs of $2,500 shall be awarded to the Applicant, the successful party, as the parties have agreed.

JUDGMENT in T-605-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted, with costs of $2,500 to the Applicant, as agreed upon by the parties;
2. The decision of the Chairperson of the Parole Board of Canada dated February 19, 2024, denying the Applicant's grievances #68838, #69427, and #69428, is set aside; and
3. All three grievances are remitted to the current Chairperson of the Parole Board of Canada for reconsideration in accordance with these Reasons, including the following directions:
    a. The current Chairperson shall approach the grievances with a fair and open mind, unbiased by previous determinations;
    b. The Applicant shall be provided with proper notice of any prejudicial facts to be relied upon in the decision-making process, particularly those relating to performance concerns she reasonably believed had been resolved;
    c. The current Chairperson must meaningfully engage with the contrary evidence and central submissions identified by this Court and raised by the Applicant, including her arguments regarding the temporal relationship between her medical leave and subsequent adverse management actions; and

d. Any input from Deputy Chairperson Churney or references to his previous assessments shall only be considered, if at all, after the Applicant has been given a fair opportunity to respond.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-605-24
STYLE OF CAUSE:	HEATHER HAMILTON v ATTORNEY GENERAL OF CANADA (PAROLE BOARD OF CANADA)
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MAY 1, 2025
JUDGMENT AND REASONS:	ZINN J.
DATED:	JUNE 5, 2025

APPEARANCES:

Kim Patenaude	FOR THE APPLICANT
Chris Hutchison	FOR THE RESPONDENT

SOLICITORS OF RECORD:

RavenLaw LLP Barristers and Solicitors Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT