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IN THE MATTER OF THE *HUMAN RIGHTS CODE,*
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Jessica Yaniv

COMPLAINANT

AND:

Various Waxing Salons

RESPONDENTS

REASONS FOR DECISION
APPLICATION FOR RECONSIDERATION
Rule 36

Tribunal Member:	Devyn Cousineau
On her own behalf:	Jessica Yaniv
For the Respondents:	No submissions sought

[1] Jessica Yaniv filed complaints against a number of waxing providers, alleging that they discriminated against her on the basis of her gender identity. Those complaints were heard in July 2019. In *Yaniv v. Various Waxing Salons (No. 2),* 2019 BCHRT 222 [**Final Decision**], I dismissed Ms. Yaniv's complaints and ordered her to pay costs to three of the Respondents. Ms. Yaniv now applies for reconsideration that decision. She argues that a number of the findings in that decision are wrong and unfair towards her, and that she cannot afford to pay the amount of costs I have ordered.

[2] I have not found it necessary to seek submissions from the Respondents. For the reasons that follow, the application is denied.

[3] As a preliminary matter, Ms. Yaniv asks that this application be decided by a different member of the Human Rights Tribunal [**Tribunal**]. However, the practice of the Tribunal is that reconsideration applications are decided by the member who made the original decision. That member is most familiar with the evidence and issues in the complaint, and best placed to efficiently determine whether there is a basis to reconsider the original decision: *Karbalaeilali v. BC (Human Rights Tribunal),* 2010 BCSC 1130 at para. 65; see also *University of British Columbia v. University of British Columbia Faculty Assn.,* 2007 BCCA 210 at para. 84.

[4] There is an exception to this principle where the member who decided the original decision recuses themselves because of a reasonable apprehension of bias. In order for me to grant this request, Ms. Yaniv would have to lead evidence to displace the weighty presumption of impartiality: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General),* 2015 SCC 25 at para. 20; *Stein v. British Columbia (Human Rights Tribunal),* 2017 BCSC 1268 at para. 155, upheld in 2018 BCCA 264. The question is whether "an informed person, viewing the matter realistically and practically – and having thought the matter through" would conclude that "it is more likely than not that [I], whether consciously or unconsciously, would not decide fairly": *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 at 394; *Stein* at para. 164.

[5] Ms. Yaniv speculates that I did not decide the Final Decision fairly, and could not decide this application fairly, because I was being "harassed" by members of the public via Twitter and my email account. She suggests that I have been, and would be, influenced by public pressure to decide against her.

[6] It is my ethical and legal obligation as a member of this Tribunal to decide cases based on the evidence before me and not based on public sentiment. The law presumes that I do so. I can assure Ms. Yaniv I have never felt personally harassed about her case or pressured to reach a certain result. She has pointed to no evidence to support such an argument. Human rights complaints are frequently the subject of public interest, scrutiny, and debate. That fact alone could not create a reasonable apprehension that a decision maker could not decide a matter fairly. I deny Ms. Yaniv's request to recuse myself from this application.

[7] I turn now to the merits of the application.

[8] Generally speaking, once the Tribunal decides an issue, that decision is final. The Tribunal's jurisdiction to consider that issue is "spent": *Fraser Health Authority v. Workers' Compensation Appeal Tribunal,* 2014 BCCA 499 at para 160, upheld on this point in 2016 SCC 25 [***Fraser Health***]. The decision "cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances": *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848. Rather, the Tribunal has a limited jurisdiction to reconsider its own decisions in the interests of fairness and justice: *Zutter v. British Columbia (Council of Human Rights)* [1995], 122 DLR (4th) 665 (BCCA); *Fraser Health* at para. 160; *Chandler*. The Tribunal exercises this power sparingly, giving due consideration to the principle of finality in administrative proceedings: *Grant v. City of Vancouver and others (No. 4),* 2007 BCHRT 206 at para. 10. The burden is on the person seeking to have a decision reconsidered to show that doing so is in the interests of fairness and justice: *Grant* at para. 10.

[9] In her application for reconsideration, Ms. Yaniv primarily seeks to reargue the merits of her complaint. She takes issue with my assessment of her credibility, and argues that the following findings of fact are wrong:

a. That a brazilian wax is the removal of genital hair from a person with a vulva;

b. Most of the Respondents to her complaints presented as racialized, with English not their first language;

c. That she targeted certain ethnic groups;

d. That the Respondents denied her services because she had a scrotum;

e. That the Respondents did not customarily provide the services of waxing scrotums;

f. That she was trying to make Ms. Benipal feel uncomfortable by asking whether she would wax around a tampon string;

g. That she holds stereotypical and negative views towards immigrants;

h. That her explanation about the timing of her travel to Ms. DaSilva was "unlikely"; and

i. That she deliberately manufactured the conditions for each of her complaints and engaged in deception.

[10] These are not arguments that could support a reconsideration of my decision. The findings in the Final Decision are final. Aside from her general disagreement with my findings, Ms. Yaniv has not explained how fairness or justice warrants reconsideration. To challenge my findings of fact and assessment of credibility, Ms. Yaniv must file a petition for judicial review and argue that those findings are unreasonable in light of the evidence before the Tribunal. I do not have jurisdiction to now re-weigh the evidence and reach the conclusions that Ms. Yaniv wants.

[11] Next, Ms. Yaniv raises a new argument: that she, or maybe other transgender women, required genital hair removal in preparation for surgery. This was not an issue raised at any

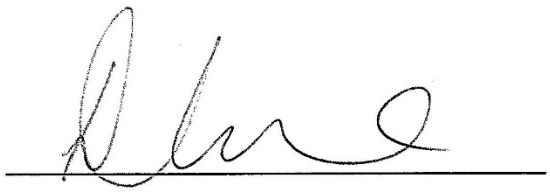
time in her complaints and it is not open to me to consider it now. In any event, this would not have affected my analysis of any of the issues in her complaints.

[12] Third, Ms. Yaniv argues that Ms. Hehar could not justify the denial of service based on a *bona fide* reasonable justification. This is not a basis for reconsideration. It is the law. I made no finding about whether Ms. Hehar had met that burden in this case. My decision does not have the implication that Ms. Yaniv suggests it does, which is to "[open] a dangerous window of opportunity for people to engage in discrimination". Even if it did, that is not a basis for reconsideration.

[13] Fourth, Ms. Yaniv asks that I add the words "at the time" after "she was not menstruating" in para. 51. I have previously told Ms. Yaniv that reconsideration is not an opportunity to edit or wordsmith a decision: letter decision dated June 2, 2019. This is not a change necessitated by the interests of justice and fairness.

[14] Finally, Ms. Yaniv asks that I reduce the amount of costs I awarded against her, explaining that she cannot afford to pay such a high award and has already suffered because of anti-trans harassment and attacks. I am sympathetic to her difficulties. However, the time to make these arguments has passed. In their application, the Represented Respondents expressly sought an order of $15,000 in costs. Ms. Yaniv had the opportunity to explain her financial circumstances to the Tribunal and did not. Instead, she focused her argument on her position that she had not engaged in improper conduct. She was not denied any fairness in the process. To allow her to re-open and re-argue this issue would undermine the finality of the Tribunal's proceedings and is not justified in this case.

[15] Ultimately, Ms. Yaniv strongly disagrees with most of my conclusions in the Final Decision and thinks that I was driven to rule against her because of public pressure. She wants a different result. However, she has not shown why considerations of fairness or justice, viewed objectively, require the Final Decision to be re-opened and reconsidered. In my view, doing so would run counter to the principle of finality in administrative proceedings. If she wants to challenge the Final Decision, she must do so in court.



Devyn Cousineau, Tribunal Member