

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 51

Date: November 6, 2023

File Nos.: T2218/4017, T2282/3718, T2395/5419 and T2647/2321

Between:

Ryan Richards

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Jennifer Khurana

[1] This is a case management ruling that provides direction to the parties to ensure the conduct of these proceedings remains proportionate, efficient and fair in the challenging circumstances of these complaints.

THE COMPLAINTS

[2] Ryan Richards, the Complainant, is a federally sentenced inmate who identifies as a Black Sufi Muslim. In broad terms, Mr. Richards alleges that the Correctional Service of Canada, the Respondent, subjected him to excessive physical violence, sexual harassment, retaliation and various forms of discrimination and harassment on the intersecting grounds of sex, religion, race, colour and/or disability. The individual and systemic allegations span more than a decade and involve multiple incidents alleged to have occurred in various federal correctional institutions.

[3] The proceeding consists of four complaints that the Canadian Human Rights Commission (the “Commission”) referred to the Tribunal in 2017, 2018, 2018 and 2021 and that the Tribunal consolidated to be heard together on consent of the parties.

[4] I will not detail all aspects of the lengthy and complex procedural history of these complaints. Suffice to say that over the years as Mr. Richards’ four complaints were referred and consolidated, the parties amended their Statements of Particulars (SOPs), disclosure was expanded, and deadlines were extended. All of the parties had representatives who changed, withdrew, or were added at various stages of these proceedings. There have been starts and stops and multiple attempts to keep things on track.

[5] When I took carriage of these files in 2022 following the resignation of the original assigned member, I asked the parties to provide a concise summary of the four complaints, with a view to confirming the issues in dispute and Mr. Richard’s specific allegations. The summary was also to serve as a roadmap for the parties and the Tribunal in case management and at the hearing to help focus the parties and the proceedings.

[6] The Commission prepared the following summary, drawn from the complaints, the Commission's and the CSC's SOPs. Mr. Richards' former representative, Ms. Halls, also provided her own list that overlapped with the Commission's summary.

1. Allegations that the CSC took discriminatory measures that affected Mr. Richards' security classification (excessive institutional charges, improper information in his preventive security file, lack of appropriate correctional programming, unjustified increase in security classification, etc.), CSC's security classification and its impact on Black inmates;
2. Allegations that the CSC repeatedly laid unwarranted institutional charges;
3. Allegations that the CSC repeatedly subjected Mr. Richards to unwarranted segregation placements;
4. Allegations that the CSC practices related to security classification, segregation placement, use of force, programming and institutional charges have a disproportionate adverse impact on Mr. Richards and other Black inmates and their ability to access conditional, gradual, supervised and supported release into the community;
5. Allegations that Mr. Richards was repeatedly sexually harassed by correctional officers (from April to September 2014 at Dorchester, from October to November 2019, etc.);
6. Allegations that the CSC subjected the Complainant to excessive physical violence for requesting a religious diet (water boarding, choking and gassing in September 2013 at Springhill institution);
7. Allegation that the CSC continues to deny Mr. Richards a proper religious and medical diet and refuses to address his health and dietary concerns;
8. Allegation that the CSC systemically subjected him and other Muslim and Black [inmates] to various forms of discrimination and Islamophobia and engages in various forms of racial harassment and discrimination:
 - i. Denial of a place of worship and proper religious diet;
 - ii. Repeatedly denied Muslim access to Friday prayers and was told to go to segregation for attending prayers;
 - iii. When it was announced that Bin Laden was dead, a staff member said to the Complainant: "your leader is dead";
 - iv. During lockdown, Mr. Richards asked if Muslims could use the showers and was told to use sand;
 - v. All Muslim inmates in segregation are placed on the side of the range with no heat;

- vi. When Mr. Richards asked for water for prayer and to drink, he was told to use toilet water;
- vii. He was denied breakfast;
- viii. The CSC staff left his religious items all over the floor, ripped his holy book (Koran) in half and purposely left it on the toilet seat;
- ix. He was told to not wear his religious items and was told his prophet was a pedophile;
- x. During Ramadan, he was denied the ability to coordinate the evening meal with his fellow Muslims, etc.;
- xi. Subjected to numerous racist comments while in Cowansville and Donnacona in 2019;
- xii. During Black Heritage Month (February), the CSC's employees purposely put the institution on lockdown under false pretence to prevent Black inmates from celebrating Black Heritage Month;
- xiii. In May 2013, after a search was conducted of the JUSTUS office, Mr. Richards returned to find the books for the Muslim and Black inmates' groups thrown all over the floor and damaged. He states that he also found two sharpened metal items and a syringe, which he believes were planted.

9. Allegations that the CSC's employees retaliated against him for filing human rights complaints:

- i. March 2015 disk with case confiscated;
- ii. July to December 2017 staff at Cowansville repeatedly opened confidential correspondence from the Commission and delayed providing it to him;
- iii. November 2019 the Commission/ the Tribunal materials disappeared upon his transfer from Cowansville to Donnacona;
- iv. January 2020 denied attendance to the Tribunal's Case Management Conference Call;
- v. Continue to open confidential correspondence, etc.

10. Mr. Richards was repeatedly treated in an aggressive manner by CSC's employees.

[7] The CSC responded that the summary was too vague to serve as a roadmap for the hearing and did not include dates and places where the incidents are alleged to have occurred or specify the complaint to which the allegations were related. The CSC argued that, without those details, the summary would do the opposite of what it was meant to do and just add to the complexity of the case.

[8] It is apparent that Mr. Richards' complaints are broad and that there are details of dates and specifics missing. While I had hoped that a summary would assist in narrowing the issues, the parties have not provided any indication why further efforts to focus the issues

in dispute would be successful when previous efforts have not been. I am therefore of the view that spending more time trying to refine this list is neither an effective nor useful use of the parties' or the Tribunal's resources. Rather, after years of case management, revisions to SOPs, a motion and ongoing disclosure, it is time to start the hearing.

EXPERT WITNESSES

[9] In advance of the most recent case management conference call (CMCC), I directed the Commission and the CSC to submit a joint proposal for the filing of expert reports in preparation for the hearing.

[10] The Commission asked to file its expert report by January 31, 2024. The CSC has not yet decided whether it will call an expert; however, if it does do so, it proposes filing its report by August 31, 2024.

SCHEDULING OF THE HEARING

[11] On the basis of the dates of filing of their proposed expert reports, the Commission and the CSC asked to start the hearing a year from now, in November 2024. Mr. Richards wants to proceed as quickly as possible.

[12] I directed the parties to come to the CMCC prepared to address the scheduling of this hearing, including the possibility of starting with Mr. Richards' evidence before the expert reports are filed to avoid further delay.

[13] During the CMCC, the CSC agreed with this approach. It also advised that it may request up to six months between the end of Mr. Richards' case and the start of its own evidence, with a view to reviewing and reducing its witness list after hearing the specifics of Mr. Richards' evidence. Its list currently stands at 50 witnesses.

[14] The Commission objected to the approach for two reasons. It argued that it is not fair to have to examine Mr. Richards without knowing who the CSC will call and having their willsay statements. It also argues that six months is too long between Mr. Richards' evidence and the opening of the CSC's case and that a two- or three-week break should suffice as

the parties are already aware of the scope of the complaints given that the SOPs have been filed. The Tribunal previously issued a ruling dismissing the CSC's motion to strike portions of the SOPs and exclude the Commission's expert (2020 CHRT 27).

[15] Mr. Richards also objected to such a lengthy delay, arguing that he would need to know in advance who the CSC intends to call and what their witnesses will say.

[16] The CSC confirmed that it can provide a current list of its witnesses and an outline of their intended evidence, though this is subject to change depending on the specifics of Mr. Richards' evidence and the expert report that the Commission intends to file at the end of January.

METHOD OF PROCEEDING

[17] In my view, proceeding in a phased approach in these proceedings is fair and efficient and allows this hearing to start as soon as possible, starting with Mr. Richards' evidence.

[18] With each passing day, the evidence in these complaints grows staler, and memories fade further. There is no basis to postpone the start of these proceedings until after the filing of expert reports. The Commission identified its possible expert and the scope of its intended expertise, at least as early as 2020. This was addressed in the Tribunal's ruling dismissing the CSC's motion to strike portions of the Commission's and Mr. Richards' SOPs and to exclude the Commission's proposed expert evidence (2020 CHRT 27).

[19] While the Commission proposes that its report be filed at the end of January 2024, the subject of its intended expert evidence is already known and would include, among other things, "the application of institutional discipline, the use of force, security classification, segregation/isolated and restrictive conditions of confinement, the availability of culturally relevant correctional programming and their impacts on federally incarcerated black inmates" (2020 CHRT 27 at para 13). Further, the parties did not provide a basis to support waiting another year to start Mr. Richards' evidence beyond the timing of their expert reports.

[20] The hearing will therefore be scheduled as soon as possible, subject to counsel's availability. Mr. Richards will have the opportunity to tell his story. He is representing himself, and I will hear him, listen to his evidence and ask questions.

[21] Once hearing dates are set, I will address deadlines for the filing of witness lists and for summaries of intended evidence, as they now stand, with the understanding that the CSC will refine this list.

[22] In any case, any prejudice to the Complainant or the Commission from proceeding in this manner can be cured through Mr. Richards' reply evidence.

FORM AND TIMING OF HEARING

[23] Mr. Richards asked that this matter proceed in person. The CSC and the Commission do not object, though the CSC submits that the hearing could also proceed via videoconference.

[24] The Tribunal will hear Mr. Richards' evidence in person. I accept Mr. Richards' submission that it is important to hear from him in person where he is incarcerated. I also believe it will be far easier to manage and control proceedings in person in this matter.

[25] I will revisit how the rest of the hearing will proceed after hearing from the parties about other possible witnesses and the timing of this evidence, including that of their experts. Given the locations of the Commission's proposed expert and many of the CSC's witnesses across the country, the parties should be prepared to proceed with at least some portion of the hearing virtually.

[26] The parties agree that the in-person portion of the hearing can be concluded in four to five days, including Mr. Richards' evidence in chief, any questions from the Commission, cross-examination and reply evidence. Counsel appear to only be available as of April 2024, so the Registry will schedule Mr. Richards' evidence accordingly.

PROPORTIONALITY

[27] It is the Tribunal's task to ensure that proceedings are conducted in a fair, informal, and expeditious way (s.48.9 of the *Canadian Human Rights Act* (CHRA)). But achieving this goal also depends on the parties. Making reasonable, proportionate requests, working to reduce witness lists, avoiding unnecessary objections over the course of the hearing, and working together to get the evidence heard as quickly and as efficiently as possible is in the interests of all parties and the public interest.

[28] As the Commission's summary of the complaints set out above makes clear, Mr. Richards' allegations are very broad and cover a number of institutions over more than a decade. The CSC has the right to make its case and to respond fully to the allegations against it. But for this proceeding to be manageable and workable, and for the hearing to start and end in a reasonable timeframe, its current list of 50 witnesses will need to be significantly refined. A proceeding of that scale with 50+ witnesses between the parties, including experts, would paralyse this Tribunal and divert already scarce resources away from most other proceedings, which also involve important individual and systemic allegations of discrimination and harassment. It is untenable to proceed with such a large witness list or without some balancing of the parties' rights to present their cases with the need to work expeditiously. I will provide direction accordingly throughout this proceeding.

[29] The parties are also expected to run their cases in a balanced and proportionate way and to choose their battles wisely. This is an administrative tribunal, and while Mr. Richards' complaints are extensive, this inquiry is not the only one before this Tribunal. Further, administrative tribunals can and should be flexible and informal in their procedures, provided they are fair. The legislature chose to delegate the administration of the CHRA to a tribunal and not to the courts. This is because administrative tribunals are expected to render decisions promptly, flexibly and efficiently and to have the ability to provide simplified and streamlined proceedings that can promote access to justice (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] at para. 29). The parties are in turn expected to do their part to support this flexibility so that this matter moves forward as efficiently as possible.

[30] I will allow the CSC additional time to revisit and confirm its witness list after hearing Mr. Richards' evidence. I will determine what is reasonable after hearing submissions from the parties on this point at the conclusion of Mr. Richards' testimony.

[31] The Commission does not intend to call any fact witnesses but will call an expert.

[32] Mr. Richards has also indicated he intends to call two witnesses who are or were CSC employees and who relate to some of his allegations of sexual harassment. If summonses are required, Mr. Richards will have to advise the Tribunal so that they can be issued as soon as hearing dates are set. Mr. Richards need not send a willsay statement for his own evidence. He has filed four complaints and particulars that set out the general scope of his intended evidence.

ORDER:

[33] The hearing of this matter will begin in April 2024. The hearing will start with Mr. Richards' evidence, to be heard in person over the course of four days at the correctional institution where Mr. Richards resides. This will include any questions from the Commission, cross-examination and reply evidence. Dates will be confirmed by the Registry following confirmation by the CSC of the availability of the requisite facilities for the hearing.

[34] Once hearing dates are set, I will convene a further CMCC. We will address Mr. Richards' remaining witnesses, the CSC's witness lists and summaries of intended evidence, the filing of hearing documents, and the start of Mr. Richards' evidence, including whether the Commission intends to lead Mr. Richards through his evidence or to ask its questions only after reviewing his evidence. We will also address how to reduce hearing time.

[35] The Commission's expert report must be filed no later than January 31, 2024. Following the parties' review of the report, I will set a deadline for the filing of the CSC's report, if it chooses to call an expert in reply.

[36] Should the parties have any further objections to starting the hearing in person with Mr. Richards' testimony in or about April 2024 or any objections to the timeline for expert reports, they must send them in writing no later than November 15, 2023.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
November 6, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2218/4017, T2282/3718, T2395/5419 and T2647/2321

Style of Cause: Ryan Richards v. Correctional Service Canada

Ruling of the Tribunal Dated: November 6, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Ryan Richards, Self-represented

Ikram Warsame, Sameha Omer and Laure Prévost, for the Canadian Human Rights Commission

Dominique Guimond and Sonia Bédard, for the Respondent