

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2024 CHRT 12

Date: March 12, 2024

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

Between:

Ryan Richards

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] Ryan Richards, the Complainant, is a federally sentenced inmate who identifies as a Black Sufi Muslim. He resides at Warkworth Institution, a medium-security facility. In broad terms, Mr. Richards alleges that the Correctional Service of Canada (CSC), 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. The Tribunal consolidated his four complaints to be heard together on consent of the parties.

[2] The hearing in this case is scheduled to begin on April 23, 2024. Mr. Richards filed a motion asking the Tribunal to order CSC to provide him with a laptop computer with all relevant legislation, CSC policies and other directives, a personal printer with paper, USB drives with all disclosure, legislation or other relevant materials for his case, as well as unrestricted access to a scanner or photocopier. He says he needs these devices to prepare for his hearing.

[3] The Canadian Human Rights Commission (the “Commission”) agrees that CSC should provide Mr. Richards with a laptop and that he be given access to a printer and photocopier without undue restrictions. The Commission takes no position on Mr. Richards’ request for USB drives or a scanner.

[4] CSC opposes Mr. Richards’ request for security reasons. It says that subject to limited exceptions, computers are not authorized as personal effects in any institution. Although an inmate was given access to a laptop during the pandemic in a civil proceeding, it is generally only when an inmate is involved in criminal proceedings that read-only laptops have been provided on an exceptional basis. As an alternative to what Mr. Richards is seeking, CSC says it will provide two hard copies of all disclosure and will arrange for Mr. Richards to view any videos. He can also use computers in the library and print materials, as needed.

II. ISSUES

[5] Does procedural fairness require Mr. Richards to be provided with a laptop, USB drives, and full access to a printer and scanner to be able to fully and fairly participate in his Tribunal proceeding?

III. DECISION

[6] No. Mr. Richards has the right to prepare for his hearing and to have reasonable access to the tools required to do so, but procedural fairness is not jeopardized in this case. Security considerations in the carceral setting must be balanced with Mr. Richards' right to prepare for his hearing. I am not persuaded that the solutions CSC proposes deny Mr. Richards' procedural fairness.

IV. ANALYSIS

[7] Parties before Tribunal proceedings must be given a full and ample opportunity to present evidence and make legal representations on the matters raised in the complaint (s.50(1) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [the "Act"]). The Tribunal must also conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s.48.9(1) of the Act).

[8] Administrative tribunals are masters in their own house. They can be flexible provided the processes they establish are fair. The aim is not to create 'procedural' perfection but to achieve a certain balance between the need for fairness, efficiency and predictability of outcome (*Nedelec et al. v. Air Canada and Air Canada Pilots Association*, 2022 CHRT 30 at para 13, citing *Knight v Indian Head School Division No. 19*, 1990 CanLii 138 (SCC), [1990] 1 SCR 653 at p.685, and *de Smith's Judicial Review of Administrative Action*, (4th ed., (1980), at p.240)) .

[9] Mr. Richards argues that he needs the devices and tools requested because his case involves four complaints and voluminous disclosure and evidence. While he used to have a non-legal representative acting on his behalf, he now represents himself. He says that to

avoid conflicts with CSC staff he has made his submissions by longhand. He relies on s. 50(1) of the Act and Rule 1(1) of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, as well as the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, in support of his claim that he needs these devices to preserve his right to a fair hearing. He also argues that s. 97(3) of the *Corrections and Conditional Release Regulations*, SOR/92-620 requires CSC to ensure he gets access to legal materials.

[10] The Commission agrees that Mr. Richards should have full access to a fully functional laptop because he is self-represented, his case is complex and involves voluminous disclosure. It says there is no blanket prohibition that prevents CSC from providing Mr. Richards with a fully functioning laptop and CSC has provided laptops to other inmates in the past. According to the Commission, CSC has not presented evidence to prove that Mr. Richards would misuse the laptop or that he poses a security risk.

The courts have repeatedly recognised that there are security risks associated with computers in cells

[11] CSC relies on the sworn affidavit evidence of Warkworth's warden, Mr. Dunk, who detailed the security concerns related to computer use in cells and changes made in correctional policy in response to those concerns.

[12] Until 2002, inmates could purchase a desktop computer for their cells. CSC changed this policy following a risk assessment that concluded that computers in cells created a high level of security risk. The assessment included recommendations that no inmate ownership or in-cell computer use be permitted, and that highly monitored and controlled rooms equipped with CSC computers be provided to inmates who required access. That policy became permanent in 2003 and is contained in Commissioner's Directive (CD) 566-12 that sets out the personal property inmates are allowed to have in their possession.

[13] Computers and hard disks are not authorized as personal effects in any institutions, nor are burned CDs, with the exception of digital media of a known origin that the inmate is reasonably required to review for the preparation of a legal matter. In the context of criminal

proceedings, inmates can exceptionally be loaned a laptop. Mr. Dunk explains that some institutions may have provided laptops in other exceptional circumstances, but it is not the norm and the directive is not to do so.

[14] Mr. Dunk's affidavit also states that the security issues that led to the change in policy are still relevant today. Possession of an in-cell computer, combined with the smuggling of USB keys, cell phones and other accessories, can increase security risks. In 2022 and up to September 2023, CSC seized 159 cell phones, 46 USB keys, 83 cell phone chargers and a Wi-fi HUB at Warkworth Institution. Internet access can enable inmates to contact individuals outside the institution, coordinate other criminal activities, enable breaches of restraining orders, or gather information on another inmate, among other possible concerns.

[15] As CSC argues, both the Federal Court and the Federal Court of Appeal have recognised the serious security and operational risks that computers in penitentiaries can present, which justifies as a general rule that inmates can only access computers in controlled environments like the library (*Lill c Canada*, 2023 CAF 87 [*Lill* at para 19]). In *Pengelly*, the Federal Court found that the predecessor to CD 566-12 was related to security matters and was not unreasonable (*Pengelly v. Canada (Attorney General)*, 2005 FC 693 at para 19).

[16] Further, as CSC submits, the courts have dismissed motions like Mr. Richards'. In *Barkley v. Canada*, 2017 FCA 7 [*Barkley*], the Federal Court of Appeal dismissed Mr. Barkley's appeal of the Federal Court's decision denying his request for access to a computer, printer and case law, among other things. The FC had determined that legitimate concerns regarding the security of the institution justified the refusal to provide Mr. Barkley with a personal computer in his cell and held that access to case law may be subjected to reasonable limits (*Barkley* at paras 3-4). The Federal Court of Appeal upheld the ruling, finding that the FC "considered the limitations imposed by the prison environment" (*Barkley* at para 9).

[17] The Commission says that in *Barkley* the inmate was in a maximum-security institution, unlike Mr. Richards, and that CSC has not proven that Mr. Richards currently poses a security risk for other inmates or to the institution.

[18] According to Mr. Dunk, security issues cannot be managed on a case-by-case basis or be based on an inmate's history of behaviour. The dynamics of the institutional population, including muscling and intimidating by other offenders to gain access to the computer for the wrong purpose, can compromise and the safety and security of the institution.

[19] Mr. Dunk also states that CSC's policies must be applied consistently, and while the risk to have a computer in a cell may seem minimal, if multiple inmates have computers, the ability to exchange and share information can impact the safety of other inmates and staff. At present, at least 7 inmates have active human rights complaints at Warkworth, and others have ongoing civil or criminal matters. If they were to all be granted a laptop, the risk could materialize.

[20] I accept CSC's submissions on this point. I am not prepared to second-guess correctional policy that was informed by a risk assessment. I am also not prepared to doubt the veracity of the statistics from Warkworth about the seizure of items that increase security risks and other concerns. CSC provided a sworn affidavit from the warden at Warkworth that set out why and how some security risks can arise. While the Commission bases its argument on the fact that Mr. Richards represents no individual threat, it is clear that the security challenges and issues go beyond Mr. Richards. The courts have recognised these security considerations and that restrictions may be placed on an inmate's ability to access technological devices. I am not prepared to depart from that guidance or the CD prohibiting computers in cells on the basis of the information before me, particularly when I find a reasonable alternative is available that still allows Mr. Richards to prepare for his hearing.

Human rights proceedings may be subject to limits just as criminal proceedings are

[21] CSC's position is that even in a criminal context, the courts have recognised that the right to a full answer and defence does not mean that correctional authorities have to provide ideal conditions to prepare for a legal proceeding. It is not sufficient to show that the preparation of a defence would be "more difficult" without access to a laptop. A defendant would have to demonstrate that preparation of a defence is "almost impossible" (*Fabbricino c. Attorney General of Quebec*, 2022 QCCS 3411 at para 32 [*Fabbricino*] and *R c Ste-Marie*,

2021 QCCS 2634 at para 51 [*Ste-Marie*]). According to CSC, advancing civil rights cannot go further than the fundamental right to make full answer and defence in the criminal context, which benefits from a constitutional and quasi-constitutional protection.

[22] The Commission says CSC is wrong to compare the criminal and civil contexts, arguing that the Act is quasi-constitutional law and is not subordinate to other legislation. It submits that human rights legislation is the “final refuge of the disadvantaged and disenfranchised” and the “last protection of the most vulnerable members of society”, citing the Supreme Court of Canada’s decision in *Tranchemontage v. Ontario (Director, Disability Support Program)*, 2006 SCC 14 at para 49. It says that refuge can be rendered meaningless by introducing barriers.

[23] The Commission also submits that in *Fabbricino* the Court found that it was a “very simple case” without voluminous evidence, in contrast to Mr. Richards’ human rights complaints. I am not persuaded by the Commission’s arguments. While the Court in *Fabbricino* may have commented that it was a “very simple case”, the criminal proceedings in that case involved counts of assault and uttering threats. The evidence may not have been voluminous, but the ability to prepare full answer and defence involving criminal charges obviously carries profound implications for an accused, who benefits from constitutional protections.

[24] Although the Commission argues that the *Act* is not subordinate to other legislation, it does not follow that the rights of a complainant in a civil proceeding exceed the constitutionally-protected rights of an accused or an inmate in criminal proceedings. The consequences of criminal proceedings necessarily engage the loss of liberty, conditions of detention, the stigma of a criminal conviction or continued incarceration, among other things. If the courts have held even in criminal proceedings that there are limits in the carceral context in making full answer and defence – clearly such restrictions are also justified in civil proceedings.

[25] The Commission relies on cases which are entirely distinguishable from Mr. Richards’ situation, not the least of which is because they concern criminal proceedings.

[26] The Commission relies on a criminal proceeding in which the Court ordered CSC to comply with its own offer to provide the appellant with a functional laptop (*Chemama c. R.*, 2021 QCCA 1158). This was an appeal from a criminal proceeding and yet even in that context, the Quebec Court of Appeal later dismissed Mr. Chemama's application to order CSC to conform to the Court's 2021 judgment, stating that "[detention] will inevitably impose, at times, obstacles in achieving legal work such as filing an appeal brief. However, it is not for this Court to oversee the rules of a detention centre ..." (*Chemama c. Commissioner of Correctional Services of Canada*, 2022 QCCA 248 at para 5).

[27] Similarly, the Commission relies on *Galup v. Canada (Attorney General)*, 2008 FC 862. The facts in that case are markedly different and do not assist or support Mr. Richards' motion request. First, it was a criminal proceeding where the applicant was convicted of murder and wanted to pursue his legal recourse including an appeal to the Supreme Court of Canada and had over 7000 pages of documents. The Court did return the matter for reconsideration, but because there was a misunderstanding of what was meant by "computer". The inmate did not request a laptop in his cell – what he wanted was to use a CD reader.

[28] In *Boulachanis v. His Majesty the King* (unreported decision of the Federal Court dated October 23, 2023, T-1119-20) the Court dismissed a similar motion for a laptop in a cell. The applicant had filed a claim against CSC, alleging violations of her human and civil rights in connection to her status as a transgendered person. CSC had previously loaned Ms. Boulachanis a laptop in the appeal process of her criminal case which she was allowed to use in her cell. The laptop was taken away a few months after the end of her criminal proceedings. She argued the right to be treated with dignity and to a full and complete defence, yet her motion was denied (*Boulachanis* at pages 4, 7 and 10). Further, in dismissing the motion, the Court referred to CD 566-12 and to the fact that the applicant's criminal case was over and her right to make full answer and defence was thus no longer at play, noting that she otherwise had access to electronic equipment to prepare her action. In addition, an inspection of the laptop led to the discovery of alleged unauthorized software programs, and the fact that the applicant had administrator status. CSC cites this as evidence of the fact that the security concerns it raises are not speculative.

[29] The Commission relies on *Boulachanis* in support of its argument that Mr. Richards should have full access to a laptop, noting that the inmate in that case had full access in her cell for the duration of her legal proceeding. The Commission's submissions fail to acknowledge, however, that the inmate had access during the criminal proceeding, and that the laptop was taken away thereafter. The Court found that the applicant did not demonstrate how the benefit she was seeking – mainly to have the laptop in her cell – was required in order for her to advance her case or how the lack of that benefit would deprive her of the capacity to do so. It denied her motion to have the laptop reinstated for her civil proceedings.

[30] The Commission further argues that the *Act* must be given a large, liberal interpretation to ensure its purposes are attained. It says that requiring Mr. Richards to show that preparation of his case without the requested tools would be impossible would undermine the Tribunal's inherent and flexible process, compromise procedural fairness and hinder inmates' access to justice and their right to participate in human rights proceedings.

[31] I agree with the Commission that the Tribunal can make procedural decisions to allow for a fair, flexible and efficient hearing process. But that does not mean that because these are human rights proceedings, I cannot weigh any other considerations such as safety and security. As the courts have recognised, there are limits to access to technology in the carceral setting, even in criminal proceedings. Those limits clearly exist in civil proceedings, even when one considers the purposes of the *Act* and the Tribunal's mandate.

Other inmates received laptops only in exceptional circumstances

[32] Mr. Richards and the Commission argue that other inmates have received a laptop and other devices and that it is only fair that he be granted the same. This includes Christopher Lill, who had a civil proceeding and human rights complaints and who was given access to a laptop and printer, among other things.

[33] CSC acknowledges that Mr. Lill was given a laptop during the pandemic when access to common areas like the library was restricted. The laptop was seized at the end of 2022. Mr. Lill was later found to have been using the computer for an unauthorized activity and

several contraband computer peripherals were found during a search. Mr. Lill filed two motions seeking similar relief as Mr. Richards, namely access to some legislation, a printer and external drives. His second motion was filed after his computer was seized, when he sought renewed access to a laptop in his cell. Both motions were dismissed (see *Lill c. Her Majesty the Queen*, unreported decision dated July 7, 2022 in Federal Court of Appeal File A-109-22 and *Lill* at paras 2-3). CSC also says that the *Lill* case demonstrates that its security concerns are not merely speculative.

[34] CSC clarified that at the time his affidavit was sworn, Mr. Dunk believed that the two e-disclosure laptops were issued for criminal matters at Warkworth. On February 22, 2024 Mr. Dunk corrected this and said he learned that in fact one was issued in a civil proceeding and should not have been issued. The warden was going to take steps to correct the situation.

[35] In my view, while a laptop and other access was allowed in Mr. Lill's case during the pandemic, and has also been granted in criminal settings, I am not persuaded that exceptional circumstances exist in this case to warrant departing from the rule prohibiting computers in cells. I am not prepared to order CSC to go against its CD or make an exception in this case given that there are alternatives.

[36] Further, it is open to Mr. Richards to seek other relief – an extension of time to review his disclosure, and prepare submissions, for example, if need be. Ordering CSC to provide him a laptop, printer and other devices is not the only way to address any concerns about his ability to prepare, should they arise.

CSC's proposed alternative is procedurally fair

[37] In my view the options presented by CSC represent a fair and reasonable alternative to what Mr. Richards has requested. CSC proposes to print two copies of all the materials to give Mr. Richards a back up and the ability to verify materials if he is concerned about documents in his custody.

[38] Although the Commission suggested paper would not be an acceptable alternative due to a fire hazard, CSC advises that Mr. Richards could have as many binders of

documents in his cell as he could fit into a metal footlocker, and that he can exchange documents at the Admission and Discharge department every week after making a written request. Mr. Richards could also be provided with additional lock boxes to store materials at the Admission and Discharge department, which would permit access to the material in his cell.

[39] Inmates can use computers in the library on a first-come, first-served basis. There are two stand-alone computers and eight networked computers that connect to the Inmate Local Area Network. While inmates can save documents on a local drive on the ILAN server, CSC cautions against doing so for legally related documents. The library is open Monday and Tuesday from 1:30 p.m. – 3:15 p.m. and from 6:30 p.m. to 7:50 p.m. It is open Wed-Fri from 9:30-10:50 a.m. and from 1:30-3:15 p.m. Inmates can print at the library at a cost of \$0.10 a page but cannot scan documents. Copies of legal reference material such as the Charter, the CCRA, the Act, CDs and associated guidelines are available at the library and can be photocopied and printed at a fee.

[40] In my view, paper copies of the disclosed documents will provide Mr. Richards with reasonable access within the limitations imposed by the correctional environment and minimise the involvement of CSC personnel, which is a concern Mr. Richards has raised. Mr. Richards can access the inmates' computers in the library where he can type, save and print his work and photocopy materials if needed. If he does not want to save or print, he can write his notes by hand, like any person in the community who does not have a computer.

[41] On the information before me, I am not persuaded that procedural fairness requires Mr. Richards to be provided with a laptop in his cell, or the other tools he requested. Granting the relief requested would represent a departure from the CD and the approach adopted by the courts. The solution may not be ideal but it is a reasonable alternative in light of the security considerations which have been recognised by the courts. Those considerations are not speculative, as Mr. Dunk's affidavit highlights. Procedural fairness does not require CSC to provide a laptop in the absence of proof that Mr. Richards will personally present a security risk or that he will misuse the equipment.

[42] As the Commission acknowledges in its submissions, in administrative proceedings, the aim is not to create 'procedural' perfection but to achieve a certain balance between the need for fairness, efficiency and predictability of outcome. Beyond those considerations, in the correctional context, these considerations also have to be balanced with security concerns.

[43] The Commission argues self-represented complainants or offenders who are not incarcerated can consult disclosure and prepare for a hearing on their own "without the constraints imposed by the requirements of institutional security". They say there is an imbalance between Mr. Richards' ability to prepare compared to other complainants who are in the community or who are represented by counsel who do not face these restrictions.

[44] The Commission is correct. Mr. Richards does not have the ability to prepare his case the same way as another complainant in the community. Preparation may be more difficult as the courts have repeatedly recognised, but that is the corollary of incarceration.

[45] However, I agree that CSC must confirm how and where Mr. Richards will be able to view the videos, and how quickly he can consult the paper copies if there are limits on what he may keep in his cell. If indeed it takes weeks for Mr. Richards to be able exchange binders and to review the disclosure given that CD-ROM access has been deactivated in the library, I will hear from Mr. Richards and the other parties about whether an extension of time or postponement is warranted to allow him to prepare for this hearing, with a view to retaining the hearing dates and avoiding any delay to the start of the hearing.

V. Next steps

[46] In their submissions, CSC raised the fact that Mr. Richards' former representative received the first four instalments of CSC's disclosure electronically, and that Mr. Richards was sent CD copies. CSC acknowledges that Mr. Richards does not have access to the materials sent to his former representative. He was sent disclosure #5 in paper form as well as any protected documents.

[47] CSC proposed that paper copies and CD-ROMs of the first four batches of disclosure be sent to Mr. Richards before this ruling was issued to ensure that Mr. Richards could review them as soon as possible. I allowed this request, and Mr. Richards has been sent the first two batches of CSC's disclosure to start. CSC was also to deliver the final two batches as soon as possible.

[48] On March 4, 2024 Mr. Richards wrote to the Tribunal stating that Warkworth had since disabled access to USB and CD-ROMs in the inmate library, and that this was a breach of his right to prepare for his hearing. CSC advised that they removed that access on February 2, 2024 to align with surrounding institutions where the common practice is to disable these drives for better data management and as a preventative security measure.

[49] In light of the disabling of CD-ROM access in the library, CSC is asked to confirm that only paper copies can be viewed by Mr. Richards. CSC is also asked to confirm in writing that it has a reasonable solution to afford Mr. Richards' privacy to view any videos from the disclosure on a stand-alone computer without other inmates present and with only CSC staff who must be on hand for security purposes when an inmate is using a computer. CSC is also asked to confirm that Mr. Richards has access to the library during inmates' movement hours. Both the Commission and CSC will need to confirm in writing that their disclosure has been provided to Mr. Richards in paper form, with two copies.

VI. ORDER

[50] The motion is dismissed in its entirety.

[51] If not already completed by the time this ruling has been issued, two copies of all disclosure must be provided to Mr. Richards in paper. If the Commission has not already done so, it must provide its disclosure to CSC **by no later than March 14, 2024** so that CSC can make copies and provide them to Mr. Richards.

[52] By no later than **March 18, 2024**, CSC must respond to the following in writing:

- How and where Mr. Richards will be able to view videos that are part of the disclosure; and
- How quickly Mr. Richards is able to exchange documents that he is not able to keep in his cell; and
- Whether Mr. Richards has access to two paper copies of the Commission and CSC's disclosure.

[53] The Registry will schedule a case management call with the parties (CMCC). I will hear from Mr. Richards and the other parties about whether an extension of time or postponement is warranted to allow Mr. Richards to prepare for this hearing, with a view to retaining the hearing dates and avoiding any delay to the start of the hearing.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, ON
March 12, 2024

Canadian Human Rights Tribunal

Parties of Record

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

Style of Cause: Ryan Richards v. Correctional Service Canada

Ruling of the Tribunal Dated: March 12, 2024

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, for the Respondent