

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2024 CHRT 19

Date: April 9, 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. In broad terms, Mr. Richards alleges that Correctional Service 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 set out in four consolidated complaints span more than a decade and involve multiple incidents alleged to have occurred in various federal correctional institutions.

[2] In 2024 CHRT 12, I dismissed Mr. Richards' motion requesting that the Tribunal order CSC to provide him with a laptop computer and other devices (the "laptop ruling"). I found that while Mr. Richards has the right to prepare for his hearing and to have reasonable access to the tools required to do so, the solutions CSC proposed to provide Mr. Richards with paper copies of the disclosure were reasonable and do not jeopardize procedural fairness. Security considerations in the carceral setting must be balanced with Mr. Richards' right to prepare for his hearing.

[3] On March 19, 2024, Mr. Richards requested that I reconsider the laptop ruling. According to Mr. Richards, proceeding in any other way will further delay a complicated case that has already spanned a decade. The Canadian Human Rights Commission (the "Commission") supports Mr. Richards' request for reconsideration and says that there has been a substantial change in circumstance that merits varying my ruling. CSC opposes the request.

II. DECISION

[4] The reconsideration request is dismissed. Mr. Richards was not denied natural justice, and there has been no substantial change in circumstances justifying a change in the ruling. If Mr. Richards cannot fairly prepare for his hearing or requires accommodation

on religious, medical or other grounds, he may seek other relief. Providing a laptop to use in his cell is not the only way of ensuring he can fully and fairly participate in this proceeding.

III. ANALYSIS

[5] Administrative tribunals can reconsider their own decisions when they are made without regard to natural justice (*Harrison v Curve Lake First Nation and Canada Post Corporation*, 2019 CHRT 36 at para 15, citing *Aubut v. Minister of National Revenue*, [1990] FCJ No. 1100, 126 N.R. 381 (FCA) at p.2). But there must still be something in the record to disclose such breaches (*Aubut* at para 8).

[6] Tribunals are masters of their own procedure and can reexamine their own decisions; however, reconsidering, re-examining or determining issues already judged is an extraordinary remedy. It is generally not the Tribunal's practice to reexamine an issue that has already been resolved. Otherwise, this type of motion could negatively affect the finality of decisions made by courts and tribunals as well as the integrity of the administration of justice (*Constantinescu v. Correctional Service of Canada*, 2018 CHRT 8, at paras 5-6).

[7] Mr. Richards says that he is not appealing the Tribunal's ruling and that it was the correct one under the circumstances. He says the fault was his for not responding to CSC's submissions and assuming that the Tribunal would rule in his favour. But Mr. Richards says that the warden's affidavit, submitted together with CSC's submissions, was filled with falsehoods. He also argues that there was a delay in delivering mail to him and that he is fasting because it is Ramadan, which means he has low energy and is not sleeping well. He says that any extra time in his cell should be spent researching and preparing his case on a laptop and that he should have access to a laptop without restrictions, as another inmate had. According to Mr. Richards, proceeding in any other way would breach his right to procedural fairness and cause him undue hardship.

There has been no denial of procedural fairness or natural justice

[8] The Tribunal received Mr. Richards' motion for a laptop and other devices on January 11, 2024, and set a schedule for responses and replies. CSC's response was due on February 9, 2024. Mr. Richards and the Commission's replies were due on February 16, 2024.

[9] CSC couriered its response to the correctional facility on February 8, 2024. The institution provided the response to Mr. Richards in the morning of February 9, 2024, as confirmed by records from the institution. This included the affidavit of the institution's warden, David Dunk.

[10] In his request for reconsideration, Mr. Richards says that while he advised the Commission on March 18, 2024, that he did not receive the affidavit, that statement was inaccurate. Mr. Richards admits that he did not read CSC's material and assumed the Tribunal would rule in his favour. He says that he was focused on his overall mental health and that if CSC had made a table of contents, he would have clearly seen the warden's affidavit, which he would have read.

[11] Mr. Richards' reply was due on February 16, 2024. He did not file a reply by the deadline. Ten days later, on February 26, 2024, out of an abundance of caution and to ensure that Mr. Richards had ample opportunity to respond, the Tribunal contacted him to ask if he would be filing a reply. The Commission wrote to the parties and to the Tribunal and confirmed that Mr. Richards would send a reply on March 4, 2024. Mr. Richards did not file a reply.

[12] Mr. Richards argues that although it is his fault that the Tribunal dismissed his motion, the Tribunal should reconsider its ruling in the name of procedural fairness because CSC breached its code of discipline, he has been through a lot of trauma and must protect his mental health, and because he has other obligations such as his correctional plan, his job, his religion, programming and other legal cases. He also asks that I consider that he has low energy and is fasting because it is Ramadan and that together these factors constitute undue hardship to which he is subject.

[13] I find no breach of natural justice or procedural fairness. There is no basis for any claim that CSC’s response and the affidavit were provided late to Mr. Richards or were incomplete, as Mr. Richards’ own submissions and the confirmations of delivery provided by CSC confirm. Mr. Richards acknowledges he received CSC’s response, including the affidavit, on time. While he chose not to read the submissions, at least in part due to his mental health and well-being, he did not request an extension for that or any other reason. The Tribunal gave him extra time when the deadline to file his reply passed—of its own initiative—and while the Commission advised the Tribunal that Mr. Richards would file a reply by March 4, 2024, he chose not to do so.

[14] There was also no overlap between the observance of Ramadan and the motion for a laptop that would have impacted Mr. Richards’ ability to file a reply. As set out above, Mr. Richards’ motion for a laptop and other devices, CSC’s response and replies were all due in the month of February. Even with the additional time the Tribunal granted to Mr. Richards to file a reply on March 4, 2024, submissions were all due before the start of Ramadan.

[15] In my view, failing to read CSC’s response does not give rise to a procedural fairness or natural justice issue. If Mr. Richards required accommodation for religious observance, health or any other reason beyond the extension the Tribunal already gave him, he did not advise the Tribunal of these needs. Further, he admits that he did not read CSC’s response because he thought the Tribunal would rule in his favour.

There is no substantial change in circumstances that justifies varying the ruling

[16] The Commission submits that it is “abundantly clear that there exist substantial changes of circumstances warranting the Tribunal’s reconsideration of its prior ruling”. It says that “new circumstances during Ramadan underscore the necessity for the Tribunal to recognize and address these material changes, thereby ensuring fairness, equity and respect for Mr. Richards’ fundamental rights.” The Commission argues that the Tribunal can take judicial notice that this month marks the Holy month of Ramadan and that fasting may lead to fatigue, particularly when engaging in mentally demanding tasks like reviewing extensive evidence or analysing legal documents. According to the Commission,

Mr. Richards may need to prioritise tasks like his correctional plan, programming and other religious observances, which leaves limited time for rest and recovery, further complicating his participation in legal proceedings. It states that Ramadan started on March 11, 2024, and that “no party turned its mind to the impact that fasting and additional religious duties on the complainant will have on his ability to review a paper copy of over 31 boxes of documents”.

[17] The Commission further submits that it was only upon receiving the 31 boxes that Mr. Richards realised the sheer amount of materials he would need to review, which he had not anticipated when he initially submitted his motion.

[18] In his reply submissions, Mr. Richards states that he has issues with his feet and back which impede his mobility and that he needs health care. He adds that he will continue fasting after the end of Ramadan.

[19] I do not accept the Commission’s submissions that there has been a substantial change in circumstance that merits a change in my ruling. The start of this hearing was set several months ago, based on the parties’ and counsel’s availability. Mr. Richards has repeatedly said that he wants to start his hearing as soon as possible given how long these proceedings have been ongoing. The Tribunal issued a ruling about the conduct and dates of hearing several months ago, in November 2023 (2023 CHRT 51).

[20] In other words, everyone involved in these proceedings has known for months when this hearing is scheduled to start, and the dates were set with the input of the parties. Disclosure has been ongoing for years. The volume of documentation should come as no surprise. The fact remains that there is a lot to prepare before a hearing of this scope, and that is not a new or material change in circumstance. While I acknowledge that Mr. Richards was previously represented by a family member who received the disclosure, the Tribunal also explicitly held at paras [36] and [53] of its ruling that Mr. Richards could seek other relief—like an extension of time to review his disclosure and prepare submissions, if need be.

[21] Further, as CSC confirms, not all of the 31 boxes constitute new materials. They include the second copy of documents previously provided to Mr. Richards, as well as two copies of the Commission's disclosure.

[22] The Tribunal must ensure that all parties' needs on the basis of a protected characteristic—including religion and disability—are reasonably accommodated and met so that they can fully and fairly participate in their proceedings. But that accommodation does not automatically equate to granting Mr. Richards' request for a laptop in his cell, as Mr. Richards and the Commission appear to argue.

[23] In case management conference calls (CMCCs), I raised the issue of any requests for accommodation. We ended our last CMCC early and rescheduled the rest of the call because Mr. Richards explained he was observing Ramadan and was very tired and weak. If Mr. Richards is unable to review the volume of materials and cannot do so because of health reasons or religious observance as he suggests in his reply submissions, he may raise this and ask for an adjournment. I will then hear from the other parties before deciding how to proceed. To date, when asked if he requires more time given the issues he has raised about fasting and his health, Mr. Richards confirmed that he wants to start the hearing as scheduled.

[24] I also do not accept the Commission's argument that the fact that CSC provided a laptop for viewing the video recordings that are part of disclosure on CD-ROMs constitutes a material change in circumstance. This does not constitute a material change or exceptional circumstances warranting a reconsideration of my ruling or an order for 24-hour access to a laptop in a cell. In my view, the security considerations CSC raised remain, and there is no basis to reconsider my ruling simply because CSC provided access to a computer to view video recordings.

[25] Finally, even if Mr. Richards had filed reply submissions that included the arguments he now makes in his request for reconsideration, my decision would have been the same. Whether or not inmates had access to CD-ROMs outside their cells in other institutions does not impact my decision about allowing access to a laptop in a cell. As I have already found, even in criminal cases, the courts have recognised that conditions may not be ideal for

inmates seeking to prepare their cases. CSC's provision of paper copies of documents is fair and reasonable. While Mr. Richards argues that the warden is retiring, that fact is irrelevant to my ruling. I have not been presented with any evidence that Mr. Dunk was lying as Mr. Richards alleges.

IV. ORDER

[26] Mr. Richards' request for reconsideration of the Tribunal's ruling is dismissed. The parties must respect and comply with the Tribunal's direction and rulings and prepare for the hearing on April 23, 2024.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, ON
April 9, 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: April 9, 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, Sonia Bédard and Penelope Karavelas for the Respondent