

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Citation: 2024 CHRT 21

Date: April 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 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] This hearing is scheduled to start on April 23, 2024. CSC filed a motion requesting that the Tribunal order that six proposed exhibits be treated as confidential, not form part of the public record or be accessible to the public, subject to further order by the Tribunal. The proposed exhibits consist of an affidavit that references medical information about Mr. Richards, four exhibits with extracts from his medical file and a letter regarding disciplinary measures imposed on a CSC employee for conduct towards Mr. Richards (the “discipline letter”).

[3] Mr. Richards opposes the request. He says all information that relates to him and that does not place any current or former living inmate or CSC staff member in danger should be publicly accessible. He wants other human rights organisations and inmate support groups to have unrestricted access to his health information. He also opposes sealing the discipline letter. Generally speaking, Mr. Richards says that the Canadian public should know how and where CSC is spending their tax dollars for his care and custody for the past 20 years.

[4] The Commission takes no position on the extracts from Mr. Richards’ medical file. It opposes the request with respect to the discipline letter.

II. DECISION

[5] The motion is dismissed. The request is premature. Proposed hearing exhibits are not part of the official record. The documents have not been admitted into evidence and are not accessible to the public. CSC may renew its request if any of the proposed exhibits are admitted as evidence.

III. ANALYSIS

[6] Rule 47 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 [Rules of Procedure] set out what is in the official record. Subject to any confidentiality measures or orders under s.52 of the *Canadian Human Rights Act*, RSC 1985, c H-6 [the “Act”], the public may access the Tribunal’s official record under such terms and conditions as specified by the Chairperson (s.47(2)).

[7] The official record contains:

- (a) the complaint;
- (b) the request to institute an inquiry by the Commission;
- (c) the statements of particulars and any responses or replies;
- (d) any motion materials;
- (e) any correspondence between the Registrar and the parties;
- (f) any summaries of case management conferences;
- (g) any book of authorities;
- (h) any written submissions;
- (i) any orders, rulings or decisions;
- (j) any exhibits;
- (k) any recordings of the hearing and any transcripts of those recordings; and
- (l) any other documents that are designated by the Panel.

(Rule 47(1))

[8] Although motion materials are part of the official record under Rule 47(1) of the Tribunal Rules of Procedure, CSC did not append the proposed exhibits that it wants the Tribunal to seal from public access due to the size of the documents.

[9] CSC may renew its request if and when it seeks to introduce the six proposed exhibits into evidence at the hearing.

Confidentiality requests must be specific and the parties must focus their exhibits

[10] Should CSC renew its confidentiality request, it must also specify which pages or parts of its proposed exhibit it is seeking to have sealed. R-500, the affidavit of Martin Turcotte, is 68 pages. The accompanying exhibits are 1414 pages. Proposed exhibits R-504 and R-505 are 361 pages and 483 pages in length, respectively. As the Commission says, some of those materials may include what CSC submits is sensitive information, but many other pages do not. For example, R-501 includes versions of Commissioner's directives, a user guide and what appears to be publicly available information on nutrition management programs.

[11] If CSC only intends to introduce a few pages of the proposed exhibits, the rest of the documents, currently filed with the Registry, will be deleted and will not form part of the official record.

[12] Also, to the extent that the proposed exhibits relating to Mr. Richards' medical file do contain what CSC says are sensitive information about his health, CSC will need to set out why they are requesting a confidentiality order on the Complainant's health records, particularly when Mr. Richards himself has said he has no concerns about information regarding his own health being publicly available.

The parties must focus their cases and any proposed evidence

[13] Beyond framing any confidentiality requests in a specific way with grounds, the Tribunal will require the parties to focus the exhibits they seek to introduce into evidence. For example, they should not expect to introduce 1400+ pages of materials as a single exhibit, where potentially only a fraction of those materials is even relevant to the issues in this case. It is their job to present their evidence in a proportionate, efficient way. Failure to respect the Tribunal's direction on this point will further delay and lengthen what are already complex proceedings and will not serve anyone's interests, nor the public interest.

[14] These are broad complaints that cover a number of allegations. They raise important public interest issues. However, the Commission's proposed exhibits, which include those it seeks to introduce in leading Mr. Richards' evidence, comprise 717 documents. CSC's current proposed exhibit list stands at 525 documents. Just as it is untenable to proceed with witness lists that currently total over 70 witnesses between the parties, the parties will also need to make choices in terms of their proposed documentary evidence to balance their right to present their cases fairly with the need to work expeditiously. This hearing is not an unlimited process, and neither are the Tribunal's resources.

[15] I appreciate that the parties may not introduce the majority of the hundreds of proposed hearing documents they filed with the Tribunal in preparation for this hearing as required by the Tribunal Rules of Procedure. The Commission may also have cast the net wide and erred on the side of inclusion given that it is taking the lead in questioning Mr. Richards.

[16] But having reviewed the volume of the proposed exhibits, I remind the parties of the direction I provided in 2023 CHRT 51 (the "case management ruling") about the conduct of this hearing. While it is the Tribunal's task to ensure that proceedings are conducted in a fair, informal and expeditious way under the Act, achieving this goal also depends on the parties (case management ruling at paras 27-29).

[17] Further, Mr. Richards and the other parties are all interested in starting and ending this hearing as soon as possible. That will not happen with the current witness lists, with the scope of the intended evidence and without significant effort on the part of all parties to refine, reduce and focus their approaches rather than preparing an exhaustive exposition of any and all potential pieces of tangentially relevant evidence and documents. As I also directed in the case management ruling, this is an administrative tribunal, and while Mr. Richards' complaints are extensive, this inquiry is not the only one before this Tribunal. Mr. Richards' evidence is scheduled for four days, after which we will move to the rest of his evidence. He is only the first witness in these proceedings. The parties do not have a right to infinite hearing time.

The Commission's request for an unredacted copy of the discipline letter

[18] In addition to opposing CSC's confidentiality request with respect to the discipline letter, the Commission seeks an unredacted version of the document. The Commission wrote to CSC and requested an unredacted copy of the letter, which CSC did not provide.

[19] CSC acknowledges that it erred in not providing a complete response to the Commission's questions. It agrees that any Tribunal decision on proposed redactions should be made after the parties have had the opportunity to make submissions on the nature and scope of the proposed redactions. It confirms it will not be seeking to introduce the discipline letter during cross-examination of Mr. Richards and proposes postponing any submissions and decision on a redacted version of the discipline letter until the issue comes up during the hearing.

[20] As already set out above, the discipline letter is a proposed exhibit and is not accessible to the public until it is evidence. It was not appended to the parties' motion materials, which are part of the official record and publicly accessible.

[21] Although CSC confirmed that it will not seek to introduce the letter at the hearing in April, in the event that the letter is part of the Commission's proposed exhibits, CSC should bring unredacted copies for the Tribunal and each of the parties to the hearing, and I will hear from the parties if there is a dispute about proposed redactions.

Redactions on other documents

[22] CSC submits that the parties have been exchanging documents in these proceedings since at least 2020. Some documents have been redacted for security reasons or because they contain third-party information not relevant to the proceedings. CSC states that it intends to introduce some documents as exhibits that contain redactions. In most cases, it argues that the reasons behind the redactions are self-evident and that it does not anticipate that these should present an issue for the parties or the Tribunal.

[23] CSC proposes that any issues that may arise regarding redacted documents that it seeks to introduce be dealt with during the hearing, on a case-by-case basis, if the need should arise.

[24] I agree. If there are objections to the admissibility of the proposed evidence or regarding any proposed redactions, I will hear from the parties at the relevant time. As CSC notes, however, the parties have been exchanging documents through the disclosure process for years. If there had been an issue about redactions, this should have been raised at the earliest possible opportunity when the disclosure was being reviewed. It should not be raised on the eve of a hearing, thereby putting long-standing hearing dates into jeopardy.

IV. ORDER

[25] The motion is dismissed.

Signed by

Jennifer Khurana
Tribunal Member

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