

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Clayton Starblanket

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service of Canada

Respondent

Ruling

Member: Sophie Marchildon

Date: October 18, 2013

Citation: 2013 CHRT 28

Table of Contents

	Page
I. Complainant & Motion.....	1
II. Request for electronic documents at the hearing	1
III. Ruling.....	3

I. Complainant & Motion

[1] The Complainant is a federal prisoner in the Respondent's custody. According to the Complainant, he suffers from multiple mental disabilities. He claims the Respondent has pursued policies or practices that are discriminatory to prisoners with mental disabilities and that it does not adequately accommodate their needs. On this basis, the Complainant believes the Respondent has engaged in a discriminatory practice, within the meaning of section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [the *Act*], on the basis of his disability.

[2] In preparation for the upcoming hearing of this matter, the Respondent brought a motion requesting that all documents at the hearing be filed in electronic format. The following ruling deals with the Respondent's motion.

II. Request for electronic documents at the hearing

[3] Usually, at a Tribunal hearing where the Commission is participating, a party wishing to introduce a document into evidence would bring five copies of that document. That is, one for each of the two other parties, one for the witness, one for the Tribunal Registry and one for the Tribunal Member.

[4] The Respondent asks that all documents at the hearing be in electronic form. In the alternative, it asks that instead of providing five copies of the documents it wishes to introduce into evidence, it be permitted to provide only two. This would give the Tribunal the usual two paper copies and the parties and the witness could use electronic documents; or, paper copies should they wish to print the materials that were provided to them electronically at their own cost.

[5] According to the Respondent, it has already produced approximately 5,500 documents and anticipates that it will have produced over 9,000 documents before the start of the hearing of this matter. The Respondent estimates the cost of producing five paper copies of these documents to be approximately \$20,000.00. While it may not be necessary to file all these

documents into evidence, the Respondent claims that even if a fraction of the documents produced were filed, this volume would be significant enough to warrant a departure from the traditional binders and paper format. The Respondent further argues that there would also be added costs for transporting, storing and managing five paper copies of its documents, which could add another few thousand dollars to the overall cost.

[6] In order to reduce these costs, the Respondent offers to provide and pay for a projection screen for all parties to use for the purpose of displaying electronic documents at the hearing. It is also agreeable to providing a computer loaded with all of the electronic documents for use by witnesses. The Respondent also proposes to load “.pdf” copies of all documents on each party’s laptop for their use. All documents, whether in electronic or paper format, would be named and numbered in the same fashion. For example, documents in paper format would have tabs 001, 002, 003 to 10,000, while documents in electronic format would be saved under the names 001, 002, 003 to 10,000; therefore, clicking to open electronic document named 8346 would be no different than opening tab 8346 in a set of binders.

[7] The Respondent submits that there is no prejudice to any of the parties by proceeding with electronic evidence, as each party is free to print, at their own cost, the Respondent’s documents should they wish to do so. Having regard to the principle of proportionality, the maximum allowable order for pain and suffering under subsection 53(e) of the *Act*, and the goal of reducing litigation costs to all, the Respondent claims it is in the interest of justice that it be relieved from the need to produce five copies of its documents at the hearing of this matter.

[8] The Complainant and the Commission oppose the Respondent’s motion. They take the position that not all of the documents disclosed will need to be introduced as evidence. In this regard, the Commission points out that the cost of \$20,000.00 advanced by the Respondent assumes that all the documents it has disclosed need to be filed in evidence, which is not necessarily the case. The same rationale applies to any additional costs the Respondent claims will be incurred for transporting, storing and managing the documents. The Commission is also

of the view that the amount allowable for pain and suffering pursuant to subsection 53(e) of the *Act* is irrelevant with respect to deciding this motion.

[9] The Commission and the Complainant are concerned that the use of electronic documents at the hearing will prejudice their ability to efficiently locate documents during both cross-examination and preparation. The Commission adds that the Respondent's proposal to provide electronic ".pdf" copies of documents does not address the need to easily locate these documents during the hearing. Moreover, the Commission notes that the Respondent has not addressed the issue of technical support should the proposed projector and/or presentation computer malfunction during the hearing.

[10] The Commission argues that the Respondent has not identified any prejudice that the established practice of filing paper exhibits would have on its ability to present its case. Both the Commission and the Complainant propose that the Respondent could reduce its costs by producing an agreed statement of facts, printing documents double-sided and providing only one copy of documents to the Tribunal.

III. Ruling

[11] The Tribunal does not have rules or guidelines pertaining to the use of electronic documents at a hearing. In the absence of such, the Tribunal controls its own procedures, as long as they comply with the rules of fairness (see *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560 at pp. 568-569). In this regard, subsection 48.9(1) of the *Act* also provides for proceedings before the Tribunal to be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

[12] The Respondent's request for the use of electronic documents is based on cost. It has not identified any prejudice to its ability to present its case by using paper documents. On the other hand, both the Complainant and Commission have raised legitimate fairness concerns regarding the Respondent's proposed use of electronic documents. Those fairness concerns cannot be

remedied by simply asking the Complainant and Commission to print hard copies of the materials at their own cost. In any event, asking the Complainant and Commission to do so would only divert cost from one party to the others.

[13] Given that both the Complainant and Commission do not consent to the use of electronic documents at the hearing, that they have raised fairness concerns in that regard and, in the absence of Tribunal rules or guidelines on the use of electronic documents at a hearing, the present motion cannot be granted in its entirety. The Respondent's cost concerns cannot outweigh the Tribunal's mandate to ensure a fair hearing.

[14] The Complainant and the Commission have suggested some practical options to reduce the amount of material that may be required at the hearing of this matter by double-sided printing of documents and by providing an agreed statement of facts and an agreed book of documents. I encourage the parties to pursue these options in order to reduce the potential costs associated with this litigation.

[15] I would also be open to reducing the amount of copies of documents required to be filed at the hearing from five (5) to three (3) (a copy for each opposing party and one for the Tribunal's record). In the event that the Respondent is still interested in presenting its own case electronically, I could follow the Respondent's evidence in electronic format. Should I require a hard copy of specific documents at the end of the hearing, I will ask the Respondent for one.

[16] I would add that, since the hearing is scheduled to take place in intermittent one-week blocks, it is very unlikely that the whole of the Respondent's evidence will be required every week. In transporting only the materials it may need for that specific week, the Respondent may further be able to reduce any costs associated with transporting, storing and managing those documents.

[17] As a result, and for the reasons above, the Respondent's motion to file its evidence in electronic format only is dismissed; however, the possible alternatives outlined above can be explored at the next conference call.

Signed by

Sophie Marchildon
Administrative Judge

Ottawa, Ontario
October 18, 2013