

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2021 CHRT 3

Date: January 25, 2021

File Nos.: T2397/5619; T2487/4420; T2462/1920

Between:

Joey Toutsaint

- and -

West Coast Prison Justice Society

- and -

Complainants

Canadian Human Rights Commission

- and -

Commission

Correctional Service of Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] This ruling grants the Correctional Service of Canada (CSC)'s motion requesting that Joey Toutsaint's complaints be heard at the same time and based on the same evidentiary record as the complaint in *West Coast Prison Justice Society v. The Correctional Service of Canada* ("WCPJS"). Mr. Toutsaint, the WCPJS and the Canadian Human Rights Commission ("the Commission") initially objected to the request. They now consent to CSC's proposed approach, provided the parties continue to work to ensure the process moves forward in an efficient and streamlined way.

II. BACKGROUND

[2] Mr. Toutsaint is Indigenous and is a federal inmate currently serving an indeterminate sentence as a dangerous offender. He is classified as a maximum security inmate. Mr. Toutsaint alleges that CSC has discriminated against him on the grounds of disability, national or ethnic origin, race and/or religion and that individual CSC employees have mistreated and harassed him. He further alleges that a number of CSC policies and practices disproportionately and adversely impact inmates with mental health disabilities generally, and Indigenous inmates with mental health disabilities specifically. These include CSC policies and practices on access to therapy, access to Indigenous cultural and spiritual practices and culturally appropriate treatment, placement in administrative segregation and prolonged periods of isolation, and the use of force. Mr. Toutsaint also filed a separate retaliation complaint. The Commission asked the Tribunal to hold one inquiry into both of Mr. Toutsaint's complaints as the allegations and issues are substantially the same in fact and law.

[3] In addition to individual remedies, Mr. Toutsaint and the Commission seek a number of systemic remedies involving changes to CSC policies and practices that affect inmates with mental health disabilities generally and Indigenous inmates with mental health disabilities specifically.

[4] The WCPJS operates a legal aid clinic for federal and provincial inmates under the name Prisoners' Legal Services, who are also counsel for Mr. Toutsaint. The WCPJS complaint was filed on behalf of prisoners "with mental disabilities under the control of CSC" and alleges that CSC discriminates against prisoners on the grounds of disability, race, national or ethnic origin, and religion in the areas of security classification, access to treatment, the use of administrative segregation and the use of force.. The complaint relies heavily on Mr. Toutsaint's experiences while incarcerated, along with those of two other federal inmates.

ISSUE

[5] Should Mr. Toutsaint's complaint be heard together with the WCPJS complaint on the basis of a consolidated record? Will doing so favour expediency, avoid multiple proceedings, and reduce the risk of inconsistent results without prejudicing the parties?

REASONS

[6] Tribunal proceedings should be conducted as expeditiously as the requirements of natural justice allow (s. 48.9(1) of the *Canadian Human Rights Act* ("CHRA") and Rule 1(1)(c) of the Tribunal Rules of Procedure).

[7] The Tribunal may order that complaints be heard together if it determines it is appropriate to do so on the facts and law (*Lattey v. Canadian Pacific Railway*, 2002 CanLii 45928 at paras 11-12 [*Lattey*])

[8] In deciding whether to hear complaints together, the Tribunal should consider:

1. The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of the witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;
2. The potential prejudice to the respondents that could result from a single hearing, including the lengthening of the hearing for each respondent as issues unique to the other respondent are dealt with, and the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one respondent or the other; and

3. Whether there are common issues of fact or law.

Lattey, supra, at para. 13.

[9] These factors are not exhaustive and the Tribunal will consider whether to hear complaints together on a case-by-case basis (*Karas v. Canadian Blood Services and Health Canada*, 2020 CHRT 12 (CanLII) at para. 17). Complaints also do not need to be identical to proceed together (see *Andrews v. Aboriginal Affairs and Northern Development Canada*, 2011 CHRT 22 at para.10).

[10] CSC argues that the relevant evidence, facts and legal considerations with respect to the alleged CSC policies and practices will be substantially the same in both complaints and that there is a significant overlap with respect to the parties, the evidence and the factual and legal issues. It argues that a joint hearing will avoid the risk of inconsistent outcomes on the same evidentiary, factual and legal issues, will avoid duplication and will be more expeditious and cost-efficient for the parties and for the Tribunal. Finally, CSC submits there is no prejudice in hearing the matters together because the complaints are essentially at the same stage in the Tribunal's proceeding. Hearing dates have not been set.

[11] The Commission and the complainants consent to CSC's request, though they initially had reservations about the WCPJS slowing down Mr. Toutsaint's proceeding.

[12] I find that the application of the *Lattey* factors to these complaints favours holding a single hearing on the basis of a joint record. First, in my view it is in the public interest to avoid duplication at all stages of the proceedings, including during what may be a time-consuming and resource-heavy disclosure process. Two proceedings would mean that the parties and counsel would have to duplicate their efforts in parallel inquiries, with considerable resource and cost implications. It is also in the individual claimant's and the public interest to move these matters forward to a hearing as soon as possible.

[13] I also agree that holding one hearing will avoid the possibility of inconsistent evidence and findings on the same or substantially the same alleged conduct. Based on the information before me, there appears to be significant overlap in the complaints in terms the allegations of systemic discrimination. While the parties have not yet filed Statements of Particulars (SOPs) in the WCPJS complaint, the complaint refers to a number of CSC

policies and practices so that any changes sought through remedial requests would most likely mirror or overlap with those sought by Mr. Toutsaint in his complaints.

[14] Second, the parties consent to proceeding jointly and I do not find any prejudice caused to any party at this stage. The complaints are essentially at the same stage of the Tribunal's process. The parties in Mr. Toutsaint's complaint have filed their SOPs but will have to revise these to include allegations addressing his retaliation complaint. No particulars have been filed in the WCPJS complaint.

[15] Disclosure is already underway in Mr. Toutsaint's complaint related to his individual experiences while incarcerated, and some policy documents have also already been exchanged which will help move things forward in a joint process. One hearing would also avoid requiring Mr. Toutsaint and other witnesses to testify twice at two separate hearings about many of the same allegations.

[16] Third, there are significant overlaps in terms of fact or law, despite some differences between Mr. Toutsaint's complaints and the WCPJS complaint. In my view, these differences do not override the benefits of proceeding together at this stage. As CSC acknowledges in its motion materials, Mr. Toutsaint's complaint involves individual allegations that may be unique to his experience and may not necessarily constitute allegations of systemic discrimination. But Mr. Toutsaint's evidence regarding his experiences while incarcerated may well be relevant for the broader allegations that WCPJS is pursuing in its representative complaint.

[17] In addition, the WCPJS complaint includes allegations about the time taken to process requests for access to information which are not raised explicitly in Mr. Toutsaint's complaint. There may also be issues involving the scope of the Tribunal's jurisdiction in the WCPJS complaint. We will address these matters in case management and consider how to manage any challenges with respect to these differences.

Disclosure

[18] While I am granting the respondent's motion, I will address the complainant and Commission's initial concern that the hearing of Mr. Toutsaint's complaint could be slowed down by the breadth and scope of the WCPJS complaint, including the disclosure process.

[19] As these complaints proceed through the initial stages, a party may make a request to vary this order if it feels that it is being prejudiced and unduly delayed by the joining of these complaints in a single hearing with this shared disclosure process.

[20] The respondent argues that the scope of what has been requested through the disclosure process in Mr. Toutsaint's complaint related to the systemic allegations mirrors the subject matter of the WCJPS complaint. While arguable relevance has yet to be determined and there may be other factors weighing against such broad disclosure, CSC states that it is difficult to imagine what else could be requested in the WCPJS complaint that has not already been asked for in the Toutsaint complaint.

[21] The remedies sought by Mr. Toutsaint and the Commission are broad and may potentially lead to a lengthy and complex disclosure process in both cases. The Commission has confirmed that Mr. Toutsaint and the Commission have refined and narrowed their disclosure requests with a view to the matter proceeding as expeditiously as possible and to avoid voluminous production of documents that are not arguably relevant to the complaint.

[22] I acknowledge that the disclosure requests have been narrowed in Mr. Toutsaint's complaint(s). But if those same requests are reintroduced in the context of the WCPJS complaint, Mr. Toutsaint will be no further ahead.

[23] I acknowledge that CSC's request for a joint hearing is premised on a single record and common document disclosure process. From this I understand that the parties will not seek to introduce significantly broader disclosure requests in the context of the WCPJS complaint. They agree that the complaints overlap, and they have all consented to proceed this way, including the parties who had previously expressed concern about delays for Mr. Toutsaint. The Commission also advises that given Mr. Toutsaint's vulnerability and the need to move to a hearing as quickly as possible in the interests of his health, their consent

to join the matters is premised on the assumption that the parties will continue to look for procedural efficiencies and to carry out the disclosure process in a streamlined way. Further, CSC notes that it is not requesting that the files be fully consolidated or merged into a single proceeding with consolidated SOPs. These factors should safeguard against the very concerns that Mr. Toutsaint initially raised in relation to hearing the files together.

[24] In light of the parties' stated commitment to proceed in as streamlined a manner as possible, I am prepared to grant CSC's motion. But Mr. Toutsaint's complaint must proceed. If it turns out that the joining of these matters will prejudice Mr. Toutsaint or another party in advancing to a hearing, I may revisit this decision, depending on the stage of the proceeding and the other factors I must consider. The scope and breadth of the WCPJS complaint, brought "on behalf of prisoners with mental disabilities under the control of the Correctional Service of Canada" should not overtake Mr. Toutsaint's interests in having his complaint heard and determined. In my view, it is also in the public interest to ensure that individual complaints of alleged human rights violations are heard and decided in a timely way.

[25] Based on the foregoing and on the consent of the parties, the Tribunal will hear Mr. Toutsaint's complaints together with the WCPJS complaint. I also agree to the terms proposed by the respondent and agreed to by the other parties, set out in the order below.

Next steps

[26] In the Commission's response to this motion, it proposes that the parties meet to discuss a new procedure and timelines for a joint process. The parties are asked to send their proposal, including dates for filing SOPs and disclosure, **by no later than February 5, 2021**. The parties' proposed timeline should reflect the fact that both the complainant and the Commission have asked that the matter proceed as quickly as possible in light of the complainant's vulnerability and health concerns.

III. ORDER

[27] CSC's motion is granted. Mr. Toutsaint's complaints and the WCPJS complaint will be heard together, on the basis of the following terms:

1. Mr. Toutsaint and WCPJS will file their own sets of particulars;
2. A single document disclosure process should apply in both complaints. The parties will look for procedural efficiencies and carry out the process in as streamlined and efficient a manner as possible; and
3. The matters will be scheduled and heard together, based on the same evidentiary record.

[28] The parties' joint proposal, including timelines for the filing of SOPs and disclosure, **is due February 5, 2021.**

[29] Following receipt of the SOPs, or upon request of the parties, the Tribunal will schedule a CMCC to address outstanding disclosure issues, witness lists and timing of the hearing, as well as any procedural issues the parties may wish to address to ensure the matter proceeds efficiently.

[30] This ruling can be revisited and the motion reopened if there are concerns about delay because these complaints have been joined in the manner set out above. The parties may make a request to revert to separate inquiries if they are concerns about delay.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
January 25, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2397/5619; T2487/4420; T2462/1920

Style of Cause: Joey Toutsaint v Correctional Service Canada and West Coast Prison Justice Society v Correctional Service Canada

Ruling of the Tribunal Dated: January 25, 2021

Motion dealt with in writing without appearance of parties

Written representations by:

Jennifer Metcalfe and Nicole Kief, for the Complainants

Daphne Fedoruk, for the Canadian Human Rights Commission

Banafsheh Sokhansanj, for the Respondent