

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2022 CHRT 22

**Date:** July 15, 2022

**File Nos.:** T2327/8218, T2292/4718, T2293/4818, T2294/4918,  
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T2305/6018, T2306/6118, T2307/6218, T2308/6318, T2309/6418,  
T2310/6518, T2328/8318, T2378/3719, T2379/3819

**Between:**

**Louise Packer**

**Complainant**

**Aleksandra Besirovic et al.**

**Complainants**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service of Canada et al.**

**Respondents**

**Ruling**

**Member:** Colleen Harrington

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## I. Introduction

[1] In March of 2016, Louise Packer (Complainant) filed a human rights complaint with the Canadian Human Rights Commission (Commission) against her employer, Correctional Service of Canada (CSC or Respondent). The complaint alleges discrimination, harassment and the publication of discriminatory notices on the basis of her age, sex and sexual orientation, contrary to sections 7, 14 and 12 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (*CHRA*).

[2] On August 17, 2018, the Commission referred Ms. Packer's complaint to the Canadian Human Rights Tribunal (Tribunal) for an inquiry. Between June 29, 2018 and May 3, 2019 the Commission referred 24 complaints made by 9 complainants against 9 different respondents to the Tribunal for a single inquiry. The complainants are all female employees of CSC, and allege discrimination and harassment by various respondents, including CSC, the Union of Canadian Correctional Officers (UCCO), and several individuals. CSC is the only common respondent for all 9 complainants. Ms. Packer's complaint against CSC was referred to the Tribunal as part of this group. Ms. Packer also filed a complaint against UCCO, which was referred as part of this group; however, this complaint was dealt with through mediation and the settlement is awaiting approval by the Commission pursuant to section 48(1) of the *CHRA*.

[3] The majority of complaints in this group have been in the Tribunal's mediation process since being referred by the Commission. Recently another complainant, Ms. Mercier, was successful in her application to sever her complaint against CSC from the group (see *Mercier et al. v. CSC et al.*, 2022 CHRT 19 [*Mercier*]).

[4] Ms. Packer filed a Motion to sever her complaint from the group on June 15, 2022. She wants her complaint to proceed through case management and to a hearing on its own. The Tribunal reached out to all 9 of the respondents involved in this group of complaints, as well as the other 7 complainants and the Commission, inviting their submissions on Ms. Packer's Motion to sever her complaint.

[5] Only the Commission, UCCO and CSC responded to the Motion. All three indicated that they do not oppose Ms. Packer's Motion to sever her complaint.

## II. Decision

[6] I agree to sever Ms. Packer's complaint against CSC from the group of complaints referred by the Commission for a single inquiry, so that it may continue through the Tribunal's process on its own.

## III. Legal Framework

[7] Human rights complaints against federally regulated respondents made pursuant to the *CHRA* are filed with the Commission, which screens the complaints to determine whether they should be referred to the Tribunal for an inquiry. Section 40(4) of the *CHRA* gives the Commission the authority to refer more than one complaint against a common respondent to the Tribunal for a single inquiry if it is satisfied that they involve substantially the same issues of fact and law. This is what the Commission did with this group of complaints, including Ms. Packer's.

[8] The Tribunal has previously decided that it has the jurisdiction, as master of its own proceedings, to consider an application to sever complaints referred to it jointly under section 40(4) of the *CHRA*. "If it becomes apparent, after a single inquiry has been instituted, that continuing to proceed jointly would not be expedient or procedurally fair, the Tribunal should have the discretion to consider an application to sever the complaints" (*Gullason and Attaran v. Tri-agency Institutional Programs Secretariat*, 2018 CHRT 21 (CanLII) [*Gullason*] at para 41).

[9] All parties agree that, when a request to sever a complaint is received, the Tribunal should consider and apply the following non-exhaustive list of factors to determine whether the complaints should continue to proceed together:

- i. The public interest in avoiding a multiplicity of proceedings, including consideration of expense, delay, the convenience of the witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;
- ii. The potential prejudice to the complainants that could result from a single hearing, including the lengthening of the hearing for each complainant as issues unique to the other complainants 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 complainant or the other;

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

(*Lattey v. Canadian Pacific Railway*, 2002 CanLII 45928 (CHRT) at para 13; *Gullason* at para 51).

[10] The balancing of these factors should be done on a case-by-case basis.

#### **IV. Positions of the Parties**

##### **A. Ms. Packer**

###### **(i) Human rights complaint**

[11] Ms. Packer's human rights complaint was received by the Commission on March 16, 2016. The complaint states that, while she was working as a manager at the medium security site of the Beaver Creek Institution (BCI), a federal prison in Ontario, she was harassed by correctional officers who worked there. She alleges that, although the warden's investigation into 9 separate incidents supported her concerns, CSC management did not hold the staff accountable by way of discipline and so the bullying and harassment continued. Ms. Packer says she finally filed a harassment complaint against the UCCO and a union executive but CSC asked her to withdraw her complaint and refused to convene an investigation. Ms. Packer says she filed a grievance against the warden and senior management for failing to provide her with a healthy and safe work environment. She also filed a harassment complaint against a staff person she believed had posted hateful graffiti messages about her in the workplace. She was told her concerns would be resolved by a local steering committee that had been visiting BCI for about a year, trying to restore a healthy work environment.

[12] At the time she filed her human rights complaint with the Commission, Ms. Packer was 66 years old. She says the UCCO had been reported as saying that, due to her age, she could be made to leave her job. She characterizes the graffiti, which depicts her

performing “lewd and disgusting sexual acts on [her] manager” as being harassment on the basis of sex or sexual orientation.

[13] Ms. Packer concludes her complaint by saying that the failure of the warden and CSC Regional Management to protect her from bullying and harassment has detrimentally impacted her physical and mental health, affected her relationships with her family, and caused her to be anxious prior to entering the workplace for fear she will encounter the correctional officers who bully her.

**(ii) Statement of Particulars**

[14] Ms. Packer’s Statement of Particulars (SOP), which was filed with the Tribunal on March 9, 2022, describes the alleged discrimination and harassment in more detail.

[15] The SOP states that she retired from her employment with CSC on June 22, 2021. She says she retired 6 months earlier than planned because the work environment had become unbearable due to the harassment and the Respondent’s failure to address it.

**(iii) Motion to sever**

[16] In her Motion, Ms. Packer requests that her complaint against CSC be severed from the group of complaints that were referred jointly to the Tribunal by the Commission. She also seeks an order requiring the Commission and CSC to file their SOPs within a fixed time period.

[17] Ms. Packer submits that severing her complaint will secure the informal, expeditious and fair determination of the merits of her complaint, in accordance with the Tribunal’s *Rules of Procedure, 2021, SOR/2021-137*. She argues that requiring her to remain as part of a single inquiry with the other complaints “will cause unnecessary delays, costs, and harm.”

[18] Ms. Packer submits that her complaint is substantially different from the other complaints in the group as many of them allege sexual assault. Also, none of the other complainants worked at BCI or at an Ontario penitentiary. Six of the other complainants

worked at the Edmonton Institution and one worked at National Headquarters. Ms. Mercier, whose complaint has already been severed, worked in the Pacific Region.

[19] Ms. Packer's SOP contains allegations of harassment she says she experienced at BCI and of the failure of BCI management and CSC Ontario to keep her safe in the workplace. She notes that her SOP does not make any allegations about management at other CSC institutions or regions.

[20] Ms. Packer says that she initially agreed to engage in mediation to address the broader systemic issues that her case raises along with the other complainants prior to addressing her individual remedies with CSC. However, she says that, while she engaged in mediation in good faith, the mediations were "prolonged and fruitless". She attributes much of the delay in mediation to CSC. She notes that she has now been waiting 6 years from the filing of her complaint for a resolution.

[21] Ms. Packer submits that applying the factors set out in *Gullason* to her situation leads to the conclusion that her complaint should be severed from the others.

**(a) Factor 1: Public Interest**

[22] Ms. Packer argues that it is in the public interest to sever her complaint from the others. She submits that, as there is no overlapping evidence or witnesses between her case and the others, there is no efficiency to be gained by maintaining her complaint in the group inquiry. She also argues that the Tribunal's decision in her case will have no bearing on the other complaints, so there is no risk of inconsistent results. She argues that severing her complaint will in fact streamline both her complaint and the remaining grouped complaints, which will maximize the resources of the Tribunal.

[23] Ms. Packer also notes that the subject matter of the other complaints involves sexual misconduct. She argues that it is in the public interest to allow complainants to decide whether or not they wish to hear the experiences of others alleging sexual harassment and assault, as such evidence may be re-traumatizing for complainants.

**(b) Factor 2: Prejudice to the Complainant**

[24] Ms. Packer argues that, if her complaint is not severed from the group, she will have to wait unnecessarily for the Tribunal to deal with the other complaints, without gaining any benefit from that process. She says that CSC has requested multiple extensions in the past and, if this pattern continues across the various complaints, the delays will be multiplied and she will have to wait even longer for a resolution.

[25] Ms. Packer says she has already experienced significant prejudice from the delay to this point. For example, it has been impossible for her to gain closure from the harm she suffered as a result of CSC's alleged "lack of attention to, and condonation of, her suffering." She says the repeated delays have "exacerbated her sense that her personal experience and her wellbeing are not of concern."

[26] Ms. Packer notes that the Tribunal has already recognized the likelihood of delay in this case when it agreed to sever Ms. Mercier's complaint. In that Ruling, the Tribunal noted that a consolidated proceeding "will necessarily be more complex and lengthier" than if Ms. Mercier's complaint proceeds alone (*Mercier* at para 55).

**(c) Factor 3: Insufficient Common Issues of Fact**

[27] Although the complaints all deal with sexual discrimination in a broad sense, Ms. Packer argues that her particular experience is "inextricable from the specific dynamics at BCI and management's approach to the toxic workplace." She says the different provinces have different leadership structures at CSC. Her particular complaint relates to discrimination on the basis of sex and age by CSC management in Ontario, and specifically at BCI.

[28] Ms. Packer argues that the situations of the 6 complainants who worked at the Edmonton Institution have much more in common with each than they do with her complaint. She submits that, given her distinct experience, the Tribunal will not gain a better appreciation for her case from hearing about the workplace dynamics at the Edmonton Institution or at National Headquarters. She notes that the Tribunal agreed to sever



Ms. Mercier's complaint, in part, because hers was the only one where the alleged discrimination took place in the Pacific region.

[29] Ms. Packer submits that there is no benefit or efficiency to be gained from her remaining within the group, given the significant factual and legal differences between her complaint and the others. She argues that it is both in the public interest and her own interest for her complaint to be severed.

## **B. Other parties**

[30] The Commission consents to Ms. Packer's Motion to sever her complaint but asks that it be given three weeks following the Tribunal's decision to file its SOP. The Commission also indicates that it wishes to reserve the right to call witnesses or otherwise tender evidence that may overlap with evidence it will put forward in other related cases, in order to support a request for systemic remedies.

[31] UCCO, against whom Ms. Packer also filed a complaint, does not oppose her Motion to sever. It notes that it is awaiting the Commission's approval of its settlement with Ms. Packer.

[32] The Respondent CSC also does not object to Ms. Packer's Motion to sever her complaint. However, it submits that, should the complaint be severed, the Tribunal's process should be directed at avoiding inefficiencies such as the repetition of evidence, as well as inconsistent conclusions about the systemic allegations (see *Mercier* at para 58).

## **V. Analysis**

[33] I agree with Ms. Packer that it is both in the public interest and in her own interest to sever her complaint from the group referred for a single inquiry. Given the factual differences described - which include Ms. Packer's employment in a different institution and region from the other complainants - I accept that the evidence tendered and witnesses called at her hearing will differ from the others. As in the *Mercier* case, requiring Ms. Packer to receive and review the SOPs and disclosure that will be exchanged as part of a consolidated inquiry

involving 7 other complainants and 9 different respondents, and to deal with any procedural issues that may arise in such an inquiry, could certainly result in further delay, cost and stress for Ms. Packer. She describes the impact that waiting to have her complaint resolved has had on her and the importance of receiving closure with respect to her complaint. The prejudice to Ms. Packer, along with the insufficient common issues of fact, outweighs any public interest in a consolidated hearing. As in Ms. Mercier's case, I do not see the existence of similar systemic issues as being enough to tip the balance in favour of requiring Ms. Packer to remain part of a single inquiry.

[34] To address CSC's concern about inefficiencies that could arise through multiple inquiries that may deal with similar systemic issues, the Tribunal commits to working with the parties to ensure an efficient process is followed with respect to all of these complaints.

## **VI. Order**

[35] The Tribunal makes the following orders:

- a. Louise Packer's complaint against Correctional Service of Canada is hereby severed from the group of complaints referred to the Tribunal for a consolidated inquiry (*Aleksandra Besirovic et al. v. CSC et al.*);
- b. The Canadian Human Rights Commission shall file its Statement of Particulars three weeks following the date this decision is issued;
- c. Correctional Service of Canada shall file its Statement of Particulars six weeks following the date this decision is issued;
- d. The Replies of the Complainant and the Commission, if any, shall be due 8 weeks following the date this decision is issued.

*Signed by*

Colleen Harrington  
Tribunal Member

Ottawa, Ontario  
July 15, 2022

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal Files:** T2327/8218, T2292/4718, T2293/4818, T2294/4918, T2295/5018, T2296/5118, T2297/5218, T2298/5318, T2299/5418, T2300/5518, T2301/5618, T2302/5718, T2303/5818, T2304/5918, T2305/6018, T2306/6118, T2307/6218, T2308/6318, T2309/6418, T2310/6518, T2328/8318, T2378/3719, T2379/3819

**Style of Cause:** Louise Packer and Aleksandra Besirovic et al. v Correctional Service of Canada et al.

**Ruling of the Tribunal Dated:** July 15, 2022

**Motion dealt with in writing without appearance of parties**

#### **Written representations by**

Andrew Astritis, for the Complainant Louise Packer

Sonia Beauchamp, Julie Hudson & Anshumala Juyal, for the Canadian Human Rights Commission

Jessie Caron, for the Respondent UCCO

Isabel Jackson, for the Respondent CSC