

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 32

Date: August 21, 2023

File No: T2679/5521

Between:

Christopher Garnier

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service of Canada

Respondent

Ruling

Member: Paul Singh

I. RULING

[1] The Complainant, Christopher Garnier, a federal inmate incarcerated in an institution operated by the Respondent Correctional Service of Canada (CSC) alleges that CSC failed to accommodate his disability contrary to section 5 of the *Canadian Human Rights Act* RSC, 1985, c. H-6 (*CHRA*).

[2] CSC denies discriminating and has filed a motion to strike parts of Mr. Garnier's Statement of Particulars (SOP), and in particular paragraphs 8-25, 28-29, 30 and 32-40 (Paragraphs), on the basis that they raise allegations not included in Mr. Garnier's initial complaint (Complaint) filed with the Canadian Human Rights Commission (Commission).

[3] Mr. Garnier opposes the motion and the Commission takes no position.

[4] For reasons that follow, CSC's motion is allowed and the Paragraphs are struck.

II. CONTEXT

[5] Mr. Garnier alleges he experienced disability-related discrimination by CSC while incarcerated in Atlantic Institution in Renous, New Brunswick, contrary to section 5 of the *CHRA*. Specifically, Mr. Garnier makes the following allegations in his Complaint filed with the Commission in June 2019:

- a. CSC denied him the right to access proper mental health treatment for Post-Traumatic Stress Disorder (PTSD) because CSC did not consider his disability a contributing criminogenic factor to his offence; and
- b. Although Mr. Garnier received psychological assistance on admission to federal custody in September 2018 until April 2019, the treatment providers at Atlantic Institution did not have the "knowledge, education, training or expertise" to provide PTSD treatment.

[6] In his Complaint, Mr. Garnier states that he "does not have any complaint against the staff and management at [Atlantic Institution]. The complaint is in relation to the corporate policies and procedures that form the basis for the institution's practices".

[7] The Commission attached its Record of Decision dated June 2, 2021 to its referral letter to the Canadian Human Rights Tribunal (Tribunal). In the Record of Decision, the Commission says that the Complaint “specifically alleges that the Respondent has pursued a discriminatory policy or practice in relation to the provision of mental health treatment and resources for inmates”.

[8] In Mr. Garnier’s SOP filed with the Tribunal in November 2022, he repeats the above allegations from his Complaint. He also makes additional allegations in the Paragraphs sought to be struck by the CSC, which include the following:

- a. Mr. Garnier was transported to/from Atlantic Institution and a local hospital for back surgery in June 2022 in a CSC vehicle with poor health and safety conditions. On his return to Atlantic Institution following back surgery, CSC provided him improper post-operative health care and treatment which caused him physical and mental suffering.
- b. Mr. Garnier developed a lung ailment during his incarceration at Atlantic Institution, and CSC provided him improper health care and treatment which caused him physical and mental suffering.

III. ANALYSIS

[9] The Tribunal’s jurisdiction is limited by the content of the original complaint filed with the Commission and the Commission’s decision when referring the complaint to the Tribunal for inquiry: *Connors v. Canadian Armed Forces*, 2019 CHRT 6 at para. 28.

[10] The Tribunal has authority to amend a complaint for the purpose of determining the real questions in controversy between the parties. However, an amendment cannot introduce a substantially new complaint, as this would bypass the Commission referral process required by the *CHRA*. Where a proposed amendment falls outside the scope of the complaint referred by the Commission, the Tribunal lacks jurisdiction to include it in its inquiry: *MacEachern v. Correctional Service of Canada*, 2014 CHRT 4 at para. 9-12.

[11] Additionally, the Tribunal will generally not grant an amendment if it is plain and obvious that the amendment cannot succeed in proving discrimination: *Saviye v. Afroglobal Network Inc. and Michael Daramola*, 2016 CHRT 18 at para. 15.

[12] In *Moore v. British Columbia*, 2012 SCC 61 (*Moore*), the Supreme Court of Canada affirmed the requirements to prove discrimination. The Court held that complainants must show that they have a characteristic protected from discrimination, that they experienced an adverse impact in a protected area, and that the protected characteristic was a factor in the adverse impact. If the complainant proves these elements, then the burden shifts to the respondent to justify their conduct. If the conduct is justified, there is no discrimination.

[13] In this case, Mr. Garnier submits that although his Complaint only addresses the issue of CSC's alleged mistreatment of his PTSD, the Tribunal should not preclude him from adding to his SOP CSC's alleged subsequent mistreatment of his physical health issues. Mr. Garnier states that "mental and physical health is indisputably entwined" and cites statements from the World Health Organization and the Canadian Mental Health Association which refer to mental and physical health as being "fundamentally linked".

[14] While there is no dispute that physical and mental health can be connected, this issue is not of particular relevance in addressing CSC's motion to strike.

[15] There must be a clear connection between the amendments sought and the complaint that was investigated and referred to the Tribunal by the Commission. In this case, there is no such connection.

[16] CSC's alleged improper treatment of Mr. Garnier's PTSD (raised in the Complaint) arises from entirely separate factual circumstances and time periods than CSC's alleged improper transport of Mr. Garnier to the hospital and improper care of his physical ailments (raised in the SOP).

[17] Additionally, regarding the third element of the *Moore* test, there is no allegation that Mr. Garnier's mental disability or other protected characteristic was a factor in his alleged improper transport or in CSC's care for his physical ailments. Mr. Garnier states that CSC's mode of transport was a risk to "all inmates" (no prohibited characteristic identified) and that CSC made him feel as though he was not equal to persons that are not inmates (status of incarceration is not a prohibited ground under the *CHRA*).

[18] Even if Mr. Garnier experienced exacerbation of mental health issues from CSC's alleged mistreatment of his physical ailments, exacerbation alone is generally insufficient to establish adverse or differential treatment on the basis of a prohibited ground as required in *Moore*.

[19] Mr. Garnier makes extensive submissions regarding CSC's purported awareness of legal concerns raised by the Office of the Correctional Investigator (OCI) about CSC's prisoner security escort vehicles. He cites OCI reports regarding injuries arising from the negligent transport of inmates to support his position that CSC is in violation of its duty of care to inmates.

[20] The safe transport of inmates is undoubtedly an important issue. However, the OCI's information is not relevant to CSC's motion to strike as the transport issue is unrelated to the subject matter of Mr. Garnier's Complaint, which is CSC's alleged discriminatory treatment of his PTSD.

[21] Finally, in Mr. Garnier's response submission to CSC's motion to strike, he raises the prospect of retaliation as a possible justification for expanding the scope of the Complaint. Specifically, he submits that it may be possible that CSC's improper transport and mistreatment of his physical ailments could be in retaliation to his Complaint.

[22] However, Mr. Garnier makes no allegation in his SOP that CSC's alleged improper transport or mistreatment of his physical ailments was in retaliation for him filing the Complaint. Similarly, there is no allegation that CSC engaged in retaliation in Mr. Garnier's Complaint or in the Commission's referral record to the Tribunal.

[23] In these circumstances, it is not sufficient for Mr. Garnier to raise a bald assertion of retaliation, without particulars, in a response argument to a motion to attempt to link otherwise unrelated and disparate factual circumstances. To permit this would be to create a procedurally unfair moving target that allows allegations to be raised in argument that are not otherwise tied to an initial complaint or statement of particulars.

IV. CONCLUSION

[24] CSC's motion is allowed. The Paragraphs are struck from Mr. Garnier's SOP.

Signed by

Paul Singh
Tribunal Member

Ottawa, Ontario
August 21, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2679/5521

Style of Cause: Garnier v. Correctional Service of Canada

Ruling of the Tribunal Dated: August 21, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Vince Garnier for the Complainant

Aby Diagne for the Canadian Human Rights Commission

Kelly A. Peck for the Respondent