

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 86

Date: June 19, 2024

File Nos.: T2394/5319 and T2458/1520

Between:

Frank Halcrow and Johnny Awasis

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service of Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] This ruling grants Correctional Service of Canada (CSC)'s request for a publication ban of information that is the subject of a court ordered bans that could identify a complainant or witness in Mr. Halcrow's or Mr. Awasis' criminal proceedings.

II. BACKGROUND

[2] Johnny Awasis and Frank Halcrow are both serving indeterminate sentences in federal custody and are classified as Dangerous Offenders. Mr. Awasis and Mr. Halcrow allege that CSC, the respondent, uses culturally biased psychological and actuarial risk assessment tools to make decisions about Indigenous prisoners. They allege that the continued use of these tools to assess Indigenous prisoners' risk deprives them of opportunities for release and limits their ability to access proper rehabilitative programming.

[3] The Tribunal consolidated these complaints and the hearing in this matter started on June 10, 2024. At the outset of the hearing, CSC asked the Tribunal to issue a publication ban to mirror the language of any publication bans the courts may have ordered in the Mr. Halcrow's and Mr. Awasis' criminal proceedings.

[4] The other parties consent to the request.

III. DECISION

[5] The request is allowed.

IV. ANALYSIS

[6] Human rights proceedings are intended to be public (s. 52(1) of the Canadian Human Rights Act (the "Act")). The presumptive openness of Tribunal proceedings is not absolute, however, and the Tribunal may make any order necessary to ensure the confidentiality of the inquiry in certain circumstances.

[7] Subsection 52(1) of the Act sets out the criteria to be met for the Tribunal to order confidentiality measures:

- There is a real and substantial risk that matters involving public security will be disclosed;
- There is a real and substantial risk to the fairness of the inquiry;
- There is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent their disclosure outweighs the societal interest that the inquiry be conducted in public; or
- There is a serious possibility that the life, liberty or security of a person will be endangered.

[8] In criminal proceedings involving the complainants, the courts issued publication bans under relevant provisions of the *Criminal Code*. These court orders restrict the publication, broadcasting or transmission in any way of any information that could identify the victim, complainants or a witness in those proceedings (see, for example, *R. v. Awasis*, 2020 BCCA 23 (CanLii), *R v. Halcrow*, 2018 ABCA 127 (CanLii)). The publication bans apply indefinitely unless otherwise ordered.

[9] I am allowing CSC's request for a publication ban that mirrors the court ordered bans in the criminal proceedings involving Mr. Halcrow and Mr. Awasis. The Tribunal is bound by the courts' indefinite order in any event and must follow that authority to the extent that any of the complainants or witnesses from the criminal proceedings are identified or named in the Tribunal's proceedings, whether in the official record or in oral evidence.

[10] While the courts ordered those bans subject to provisions of the *Criminal Code*, in my view, allowing CSC's request also falls within the exceptions set out in s. 52(1) of the Act, namely that disclosure of personal or other matters would cause undue hardship to the persons involved (s. 52(1)(c) of the Act). Further, the societal interest that the hearing be conducted in public is maintained. Anyone can watch and listen to the hearing. However, this Tribunal order prevents anyone observing the hearing from publishing or otherwise transmitting information about witnesses, victims or complainants from any of Mr. Halcrow's

and Mr. Awasis' criminal proceedings in keeping with existing, indefinite court orders and with the Tribunal's discretion to make confidentiality orders under s. 52(1) of the Act.

V. ORDER

[11] No party or observer of the proceedings may publish, broadcast or transmit in any way information that is the subject of a court-ordered ban on publication of information that could identify a complainant, victim or a witness from Mr. Halcrow's or Mr. Awasis' criminal proceedings.

[12] The parties must redact any documents they file in the Tribunal record of any information that is the subject of a court-ordered ban on publication and that identifies a complainant, victim or witness from Mr. Halcrow's and Mr. Awasis' criminal proceedings.

[13] The audio recording of the Tribunal hearing shall not be disclosed to anyone other than the parties and their counsel. Where there is a public access request for the recording, it will be addressed by the Tribunal.

[14] This ban applies indefinitely unless otherwise ordered.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
June 19, 2024

Canadian Human Rights Tribunal

Parties of Record

File Nos.: T2394/5319 and T2458/1520

Style of Cause: Frank Halcrow and Johnny Awasis v. Correctional Service Canada

Ruling of the Tribunal Dated: June 19, 2024

Date and Place of Hearing: June 10 – June 18, 2024

Videoconference

Appearances:

Johnny Awasis, Self-represented

Sarah J. Rauch, Nicole C. Gilewicz and Chantelle van Wiltenburg, for Frank Halcrow

Genevieve Colverson and Laure Prévost, for the Canadian Human Rights Commission

Banafsheh Sokhansanj, Malcolm Palmer, Lysandra Bumstead, and Andrew Scarth, for the Respondent