

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2024 CHRT 112

**Date:** October 21, 2024

**File No.:** HR-DP-2911-22

**Between:**

**Gregory Last**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service Canada**

**Respondent**

**Ruling**

**Member:** Athanasios Hadjis

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## **I. OVERVIEW**

[1] The Respondent, Correctional Service Canada (CSC), has made a motion to determine the issues of the complaint and strike certain paragraphs in the respective Statements of Particulars (SOP) of the Complainant, Gregory Ernest Last, and of the Canadian Human Rights Commission (the “Commission”).

## **II. DECISION**

[2] The motion to strike the paragraphs in the Commission’s SOP is dismissed. The motion to strike a paragraph from Mr. Last’s SOP is granted.

## **III. BACKGROUND**

[3] Mr. Last is an offender in the custody of CSC. He alleges in his complaint that CSC has discriminated against him during his incarceration based on disability, national or ethnic origin, religion, colour, and race. He states that he is an African-Canadian male from Nova Scotia who is a practising Muslim and has mental health issues.

[4] In accordance with Rules 18–20 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137, the parties filed their SOPs setting out their positions on the facts on which the complaint is based and the issues raised.

[5] CSC claims in its motion that the Commission has included in its SOP broad allegations of systemic discrimination related to CSC’s treatment of racialized offenders and offenders with mental health disabilities that go beyond the scope of the complaint. CSC also contends that Mr. Last’s requested relief in his SOP is beyond the scope of the Tribunal’s jurisdiction.

## IV. ANALYSIS

### A. Legal framework

[6] The Tribunal's jurisdiction to conduct inquiries into complaints is derived from s. 49 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "Act"), according to which the Tribunal Chairperson must institute an inquiry into a complaint upon receipt of a request from the Commission (s. 49(2)). The scope of Tribunal inquiries is thus limited to the matters arising from the complaints accompanying such requests (see *Kowalski v. Ryder Integrated Logistics*, 2009 CHRT 22 at para 7).

[7] When the Tribunal receives a motion to narrow the scope of the complaint or to strike certain items, it is guided by the same principles that the Tribunal has developed to determine the scope of a complaint (see *Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at para 7 [*Levasseur*]). The Tribunal must determine the substance and the scope of the complaint and decide whether there is a sufficient connection or nexus between the allegations in the SOP and the original complaint (*Levasseur* at paras 15–16).

[8] To determine whether an SOP's allegations have exceeded the scope of the original complaint, the Tribunal may consult not only the original complaint but also the Commission's investigation report and the letters sent by the Commission to the Chairperson and the parties and any administrative forms (*Levasseur* at para 17).

### B. The allegations of systemic discrimination in the Commission's SOP

[9] CSC takes issue with the allegations at paragraphs 44–51 of the Commission's SOP (the "Impugned Allegations"). These paragraphs can be summarized as follows:

- Mr. Last believes that there is a disconnect between him and the case management team that CSC has assigned to him. Concerns about him have only been revealed during his parole hearings, which occur every two years and where a significant amount of unfavourable information about him has been disclosed. Mr. Last believes that this has negatively impacted the consideration for his release on parole and his security score, which has led to him being reclassified and transferred to a maximum-security institution. White offenders involved in altercations do not get reclassified in the same way.

- The tools used to assess a Black offender's public safety or recidivism risk do not include a cultural component.
- CSC uses assessment tools, including psychological risk assessment, at various stages of an offender's sentence, to determine security classification and correctional programming.
- These psychological and actuarial risk assessment tools are used to determine an offender's potential for violent behaviour.
- Experts have expressed concern that the tools import cultural biases, in part because Black offenders are likely to present characteristics that correspond to a higher risk due to contextual factors and over-representation of Black persons in poor systemic and correctional outcomes. To the extent that oppressive social conditions do much to bring Black persons in contact with the justice system, the emphasis on static factors tied with criminal history may represent a form of systemic discrimination.
- Reports by the Office of the Correctional Investigator have critiqued CSC's risk assessment tools, including concerns that they are subject to cross-cultural bias. Marginalized groups tend to be assessed at too high a security level.

[10] CSC points out that the complaint did not specifically refer to actuarial risk assessment tools being used on racialized offenders or offenders with mental health disabilities. CSC notes that there are six specific incidents of discrimination alleged by Mr. Last in the complaint:

- He was denied an employment opportunity.
- He was placed in segregation.
- He was denied access to religious items.
- He was subjected to inappropriate language.
- He was denied appointments with a psychologist.
- His security classification was increased based on his disability.

[11] CSC maintains that the Commission, in adding the Impugned Allegations to its SOP, is expanding the complaint to effectively introduce substantially novel complaints.

[12] I am not persuaded by the CSC's argument. I find that Mr. Last raised his concerns about systemic discrimination from the outset, initially in basic terms, but in progressively more detail through the course of the complaint process.

[13] Mr. Last points out that the Commission's rules require complainants to explain their situation on the complaint form in just three pages. Given the limited amount of information that he could include on the form, he concentrated on setting out in detail the above-mentioned six specific incidents to which CSC referred in its motion.

[14] Mr. Last adds, however, that although the complaint does not specifically refer to assessment tools and their discriminatory application and despite the page restrictions, the content of his complaint mentions numerous systemic factors contributing to negative outcomes in racialized incarcerated people's correctional plans and interventions. He identifies various instances where these systemic practices have impacted him specifically.

[15] Thus, several lines into his complaint, Mr. Last alleges that the correctional system is "built on systemic racism." He complains about the discrimination he experienced as having led to him being assigned a higher security score than he should have been. He also speaks extensively about how the case management teams assigned to him have treated him as "less than human" in the way they have managed his case.

[16] The complaint, therefore, does bring up the issue of systemic discrimination in general terms. The complaint is not solely focussed on the six specific incidents detailed in the complaint.

[17] The Impugned Allegations in the Commission's SOP are admittedly more detailed. However, as observed in *Levasseur* at para 13, SOPs are intended and expected to elaborate and expand on the issues raised in the complaint.

[18] In determining the scope of the original complaint, the Tribunal can examine the Commission's investigation report. In Mr. Last's case, the Commission mandated one of its human rights officers (HRO) to investigate the complaint and prepare a report, which was issued on September 21, 2022. The report sets out numerous references to allegations of systemic issues giving rise to discrimination. For instance, according to the report, Mr. Last highlighted, in his submissions to the HRO, a number of reports and articles that shed light on his experience as a Black man in prison.

[19] Mr. Last also reported to the HRO that there is a "disconnect" with his case management team, which has impacted his security score and has resulted in his being transferred to a maximum-security facility. Mr. Last alleges that CSC staff responded to his concerns by saying they have discretion in their decision-making. Mr. Last also claims that the discretion some CSC staff members employed, especially in his case, generally

perpetuates an abuse of power and the systemic barriers that Black and other racialized offenders face.

[20] Mr. Last also told the HRO that his security score was typically reclassified upwards while white offenders involved in altercations remain in medium-security facilities. He alleged that without appropriate cultural consideration and understanding, racialized inmates are systematically held at higher security ratings for a longer time than necessary. Mr. Last also argued that the information brought before the Parole Board of Canada is derived from his case management team that is controlled by CSC. Mr. Last referred to reports from the Auditor General indicating that CSC was planning a validation exercise of its “Custody Rating Scale” for Black male offenders to ensure that it is “culturally relevant.”

[21] I note that the Commission claims in its submissions that security assessments and psychological risk assessments typically form part of the file provided to the Parole Board of Canada alongside a recommendation regarding the risk of recidivism, often based on scores calculated during a risk assessment evaluation. CSC claims for its part that this information is inaccurate, but that is a matter to be determined on the evidence at the hearing.

[22] In reviewing the remedies that Mr. Last was seeking, the HRO noted that Mr. Last wanted a review of the assessment tools (e.g., psychological, custody rating scale, security override, discretion, etc.) used by CSC to determine whether they are relevant and include a cultural component and to assess whether they disproportionately disadvantage racialized offenders.

[23] For these and other reasons, the HRO, in her recommendations to the Commission, commented that the complaint potentially raises systemic issues relating to the adverse differential treatment of Mr. Last as a Black offender with mental health disabilities.

[24] On December 14, 2022, the Commission issued its decision regarding the complaint. After reviewing the complaint form, the HRO’s report and the parties’ submissions in reply to the report, the Commission decided that it should deal with the complaint and refer it to the Tribunal for adjudication.

[25] In sum, during the Commission's investigation, Mr. Last revealed in greater detail his allegations of systemic discrimination that he had only previously outlined in his complaint.

[26] CSC argues that the HRO's report should not be taken into account since it is the complaint that the Commission referred to the Tribunal for inquiry, not the report. However, as I already mentioned, in determining the scope of a complaint, the Tribunal may consult the Commission's investigation report among other items. Besides, the relevant portions of the report are not so much the HRO's recommendations but rather her reporting of what Mr. Last told her, which really are just elaborations of some of the basic allegations that he managed to include on the three-page complaint form.

[27] CSC argues that the only reference to security classification in the investigation report is regarding an allegation that his security level was raised solely due to his disability as a way to transfer him to another facility. CSC submits that psychological actuarial tools have no nexus to this allegation. However, the Tribunal cannot decide at this stage on the validity of this argument as this is a matter to be determined through evidence at the hearing.

[28] CSC also argues that courts have in any event held that reliance on actuarial tools for psychological risk assessment tools is not discriminatory (*Ewert v. Canada*, 2018 SCC 30, [2018] 2 SCR 165; *R v Haley*, 2016 BCSC 1144; *R v Gracie*, 2019 ONCA 658; *R v Durocher*, 2019 NWTSC 37; *R v Penosway*, 2019 QCCS 4016; *R v Awasis*, 2016 BCPC 2019). However, as the Commission correctly points out, the cases that CSC cites relate to dangerous offender hearings or constitutional challenges under s. 15 of the *Canadian Charter of Rights and Freedoms*. They are not findings about whether the use of the tools is discriminatory within the meaning of the Act, and none of them address their impact specifically on Black offenders. Mr. Last and the Commission are therefore not barred from raising their concerns about these tools before the Tribunal.

[29] Mr. Last filed his SOP on March 21, 2023, three weeks before the Commission filed its SOP. Mr. Last elaborated even further on his allegations of systemic discrimination in his SOP. He again highlighted the lack of interaction and engagement from his case management team, adding that he believes these issues are systemic in nature and embedded in practices, policies, and procedures that appear neutral on their face but



disproportionately negatively impact the Black offender population in numerous areas including security scores. Mr. Last reiterated his assertion that, as a Black inmate, he has been reclassified numerous times and sent to a maximum-security facility for non-violent issues, which have held him back further in his correctional plan. He was profiled in a negative way and his health worsened, while white inmates who did similar or worse things were given the benefit of the doubt.

[30] Mr. Last states later in his SOP that his correctional plan lacks culturally responsive programming or other culturally appropriate interventions and that his psychological risk assessments lack cultural consideration.

[31] Therefore, taking into account the complaint form itself, the investigation report, and Mr. Last's SOP, I am satisfied that the Impugned Allegations in the Commission's SOP are within the scope of the complaint.

[32] Overall, CSC contends that it should not be obliged to defend itself against sweeping and unparticularized allegations of systemic racism or allegations that have no nexus with the complaint. The Tribunal is not a commission of inquiry. Requiring CSC to address allegations of systemic racism would violate the principle of proportionality, compelling the parties to devote resources to "new" allegations without a sufficient connection to the complaint.

[33] However, as I have found, systemic racism was alleged in the complaint from the outset, and there is a sufficient nexus between it and the Impugned Allegations. As for the claim that the allegations are too broad, this precisely is why there is a progression in the amount of detail surrounding the systemic allegations from the complaint filing stage to the investigation and from Mr. Last's SOP to the Commission's SOP. If CSC believes there is still insufficient particularization of the allegations, it has the option to request further particulars, which the Tribunal can address.

### **C. The monetary award requests in Mr. Last's SOP**

[34] At paragraph 105(a) of his SOP, under the remedy section, Mr. Last asked the Tribunal to order CSC to pay a \$2,000,000 endowment to a “human rights non-profit” to support the staffing and operations of a legal prison clinic in Atlantic Canada and to support sustainable human rights litigation.

[35] CSC contends that these monetary awards are not available under the Act.

[36] In his response to CSC's motion, Mr. Last was “not opposed to conceding” to CSC's arguments regarding this monetary award.

[37] Accordingly, CSC's request to strike the paragraph is granted.

[38] I note that CSC mentioned in one sentence of its submissions (at paragraph 25) that it was requesting that “paragraph 105” of Mr. Last's SOP be struck, “in particular paragraph 105(a).” Given that CSC's arguments were focussed solely on paragraph 105(a) and that, in its “Conclusion” section, it only asked that paragraph 105(a) be struck, my order relates to this specific clause only.

### **V. ORDER**

[39] CSC's motion to strike paragraphs 44–51 of the Commission's SOP is denied.

[40] CSC's motion to strike paragraph 105(a) of Mr. Last's SOP is granted. The paragraph is struck.

*Signed by*

Athanasios Hadjis  
Tribunal Member

Ottawa, Ontario  
October 21, 2024

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** HR-DP-2911-22

**Style of Cause:** Gregory Last v. Correctional Service Canada

**Ruling of the Tribunal Dated:** October 21, 2024

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

**Written representations by:**

Serena Simms, for the Complainant

Geneviève Colverson, for the Canadian Human Rights Commission

Gwen MacIsaac, for the Respondent