

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 114

Date: October 24, 2024

File Nos.: T2394/5319 and T2458/1520

Between:

Frank Thomas Halcrow

Complainant

- and -

Johnny Awasis

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service of Canada

Respondent

Decision

Member: Jennifer Khurana

I. OVERVIEW

[1] Johnny Awasis and Frank Halcrow, the Complainants, are both serving indeterminate sentences in federal custody. Mr. Awasis and Mr. Halcrow allege that the Correctional Service of Canada (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.

[2] The hearing in this matter started on June 10, 2024. Mr. Awasis testified and began his examination-in-chief but stopped participating before completing his evidence, including cross-examination. He has not responded to Tribunal or party correspondence since then. When Mr. Awasis did not attend the resumption of his hearing on October 23, 2024 and advised that he would not be participating, CSC filed a motion asking the Tribunal to dismiss Mr. Awasis' complaint and to strike his evidence from the record.

[3] Mr. Halcrow and the Canadian Human Rights Commission (the "Commission") take no position on the motion.

II. DECISION

[4] I am allowing CSC's motion in part and dismissing Mr. Awasis' complaint as abandoned. The Tribunal will proceed with Mr. Halcrow's complaint and the style of cause will be amended accordingly. Although Mr. Awasis did attend the hearing and began his evidence, he has consistently declined to return to complete his testimony and be cross-examined. The Tribunal provided adequate notice of his required participation to advance his case, and the consequences for failing to do so. CSC must provide further submissions on their request to strike Mr. Awasis' evidence so that I can determine that part of their motion.

III. CHRONOLOGY

[5] The Tribunal convened a case management conference call (CMCC) on June 7, 2024 prior to the start of the hearing but Mr. Awasis did not attend. The Tribunal wrote to Mr. Awasis, warning that if he failed to participate in his complaint or appear at the hearing, his complaint could be dismissed as abandoned. Mr. Awasis attended the hearing on June 10, 2024, but did not participate on June 11, following which the Tribunal wrote to Mr. Awasis as follows:

As you know, the hearing of your human rights complaint is this week. Mr. Halcrow continued testifying today and he will finish his evidence tomorrow, Wednesday June 12, 2024.

This means that you would be scheduled to start giving the Tribunal your evidence on Thursday, June 13, 2024. CSC will give you a copy of this letter and also read it out to you to ensure that you know what is happening in your case.

You should also know what the consequences of not participating in your hearing may be. If you do not appear or otherwise participate in your hearing, your complaint may be dismissed.

If you want to ask for more time to do something, like more time to review what happened in the hearing today, or even to prepare for your own evidence, you can do so. The Tribunal will listen to your request, and then will give everyone else a chance to tell the Tribunal what they think about your request before the Tribunal makes a decision on your request. But you need to come to the hearing to be able to do that or write to us or communicate in some way.

[6] Mr. Awasis did not return to the hearing on June 12, 2024 and wrote a note saying he did not want to attend the hearing until it was his turn. He asked for recordings of the hearings, which the Tribunal sent. Mr. Awasis did attend the hearing on June 13 and the Commission conducted his direct examination on June 13 and the afternoon of June 14 but did not complete it. Mr. Awasis did not return to the hearing on June 17, after which the Tribunal sent him the following:

You were scheduled to continue your evidence today, including being cross-examined.

Please note that the Tribunal has stopped the hearing today until 1p.m. PT today to see if you will return. This is your chance to have the Tribunal hear

your evidence, which is what will support your claim of discrimination against the Correctional Service of Canada.

Please note that if you do not appear, I will ask the other parties to make submissions on how to proceed. The Tribunal may also consider splitting your complaint from Mr. Halcrow's.

We will return to hear your evidence at 1 p.m. PT. Please tell the Tribunal and the other parties whether you intend to appear and to provide any other evidence to the Tribunal and to be cross-examined.

[7] Mr. Awasis did not return on June 17, 2024, and the Tribunal again wrote to him:

Your Tribunal hearing was supposed to continue today, June 17, 2024. The Tribunal contacted Mission Institution twice and they told us that you did not want to come to the hearing.

We also sent a letter explaining that we would pause the hearing and wait until 1 p.m. to allow you to continue your evidence. You did not appear at the hearing and so we stopped for the day.

Your hearing is scheduled to continue on Tuesday, June 18, 2024. If you want to give the Tribunal more evidence to support your claim of discrimination, you must attend the hearing on June 18, 2024. We are starting at 9 a.m. Pacific Time. Ms. Genevieve Colverson from the Canadian Human Rights Commission will finish her questions for you, and then the other parties, including Correctional Service Canada (CSC), can ask you questions.

Please note that if you choose not to appear, this can have a significant impact on the outcome of your case. It means that the Tribunal will make a decision without any further evidence from you and may dismiss your case.

[8] Mr. Awasis again did not return to the hearing on June 18, 2024.

[9] The hearing was not scheduled to resume until October 23, 2024, which was when the parties were first commonly available. CSC wrote to Mr. Awasis on September 13, 2024 and told him that it would file a motion to dismiss his complaint and have his evidence struck from the record if he did not return to the hearing to complete his evidence, including his cross-examination.

[10] The Tribunal convened a CMCC to prepare for the resumption of the hearing on September 23, 2024. Mr. Awasis did not attend and the Tribunal sent the parties a summary of the call.

IV. REASONS

[11] The Tribunal must conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s.48.9(1) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the “Act”). The Tribunal’s Rules of Procedure are to be interpreted and applied to secure the informal, expeditious and fair determination of every inquiry on its merits (*Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the “Rules of Procedure”).

[12] Administrative tribunals are masters in their own house. The Tribunal can dismiss a complaint if a party does not comply with its Rules (Rule 9) and can make any order it considers necessary against vexatious conduct or abuse of process (Rule 10).

[13] It is the responsibility of complainants to advance their cases and to participate in their complaint process. The other parties are also entitled to have their complaints addressed in a timely way (*Rivard v. Nak’azdli Whut’en First Nation* 2021 CHRT 21 at para 39). Failing to appear or to otherwise participate in the process can result in a complaint being dismissed as abandoned (*Sewap v. Correctional Service Canada*, 2024 CHRT 97).

A. Should the Tribunal dismiss Mr. Awasis’ complaint?

[14] Yes. The Tribunal has written to Mr. Awasis on multiple occasions and CSC has confirmed the delivery of its communications.

[15] While Mr. Awasis did begin his evidence, CSC argues that the evidentiary record is not complete for Mr. Awasis and that it would be prejudicial to the Respondent and contrary to procedural fairness to proceed in his absence at this stage.

[16] I agree. CSC has not had the opportunity to challenge Mr. Awasis’ evidence, and I am persuaded that Mr. Awasis has received notice of the proceedings as well as the consequences of failing to participate. Mr. Awasis has consistently declined to participate in the hearing and has effectively abandoned it, despite starting his evidence.

[17] I acknowledge that Mr. Awasis has a number of health issues which may have been exacerbated by the evidence he heard when he attended the hearing, or by giving evidence about past trauma in his life. The Tribunal attempted to contact Mr. Awasis on a number of occasions, stood down the hearing with the consent of the parties to allow him time to return, and has also explained that he could request more time if needed. The Commission, who led his evidence, also attempted to contact him and work with Mr. Awasis on his return to the hearing.

[18] While the lengthy delay from June until the resumption of the hearing in October was due to scheduling challenges, this additional time did not change things. Mr. Awasis did not participate either before the hearing at the CMCC in September or return to the hearing yesterday, even after being presented with notice by CSC that it would file this motion if he did not come back.

[19] Delaying the continuation of the proceedings in the hopes that Mr. Awasis may return at some stage would not be fair to the other parties and I have not been presented with any evidence to suggest that Mr. Awasis intends to return to complete his evidence. On the contrary, after repeated attempts to communicate with Mr. Awasis, he has received notice of the proceedings and consistently refused to participate in the hearing of his complaint, despite being made aware of the consequences of his non-participation.

[20] Ultimately it is a complainant's responsibility to participate in their own complaint process. While the outcome is unfortunate after the considerable efforts Mr. Awasis invested to advance his case to this point, I find he has abandoned his complaint and dismiss it.

B. Should the Tribunal strike Mr. Awasis' evidence from the record?

[21] Not at this stage. The Tribunal requires further submissions from CSC before it can determine this issue.

[22] CSC argues that if I dismiss Mr. Awasis' complaint, it would be appropriate to strike all his evidence, including all documents marked as exhibits by Mr. Awasis, from the hearing record. CSC also seeks leave to make submissions at the end of the hearing about any evidence that is relevant solely to Mr. Awasis' complaint, including identifying that evidence.

[23] The Tribunal granted CSC's motion to consolidate and hear the two complaints on the basis that there were common issues of fact and law (*Halcrow and Awasis v. Correctional Service of Canada*, 2021 CHRT 5). Among the factors it considered was the need to avoid duplication at all stages of the proceedings, including the possible repetition of testimony, in recognition of the fact that the evidence for both Complainants could well overlap.

[24] CSC did not identify which exhibits or aspects of Mr. Awasis' evidence relate solely to his complaint. CSC must provide further details of its request, including identifying the exhibits or aspects of the evidentiary record it is asking to be struck. It must also support its request and explain how the evidence it proposes be struck relates solely to Mr. Awasis and has no overlap with Mr. Halcrow. I will set a deadline for these submissions at the hearing.

V. ORDER

[25] Mr. Awasis' complaint is dismissed. The style of cause will be amended accordingly.

[26] The Respondent must identify the evidence it proposes be struck from the record that only pertains to Mr. Awasis' complaint, support its request and explain how that evidence is solely relevant to Mr. Awasis' complaint. The Tribunal will hear from the parties before determining the second part of CSC's motion and will set deadlines for CSC's submissions at the hearing.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
October 24, 2024

Canadian Human Rights Tribunal

Parties of Record

File Nos.: T2394/5319 and T2458/1520

Style of Cause: Johnny Awasis v. Correctional Service Canada

Frank Halcrow v. Correctional Service Canada

Decision of the Tribunal Dated: October 24, 2024

Date and Place of Hearing: June 10-18, 2024, and October 23, 2024

Zoom Videoconference

Motion dealt with in writing

Written representations by:

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