

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 139

Date: December 13, 2024

File No.: HR-DP-3012-24

Between:

Larissa Thomas

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Anthony Morgan

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I. OVERVIEW

[1] The Respondent, Correctional Service Canada (CSC), has filed a Motion to strike certain paragraphs in the Statement of Particulars (SOP) of the Complainant, Ms. Larissa Thomas.

II. DECISION

[2] The Motion to strike the impugned paragraphs in the Complainant's SOP is granted.

III. MOTION

[3] Ms. Thomas is a former employee of CSC. She alleges that CSC discriminated against her as a casually employed member of the kitchen staff and has continued to discriminate against her post-employment, all based on her age and/or sex.

[4] In accordance with Rules 18 to 20 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the Rules of Procedure), the parties are required to file their SOPs wherein they set out their positions on the issues and facts of the complaint.

[5] In its Motion, CSC claims that the SOP of the Complainant, Ms. Thomas, unnecessarily expands and goes beyond the scope of the Complaint that is properly before this Tribunal, as referred by the Canadian Human Rights Commission (the Commission). CSC argues that certain particulars in the Complainant's SOP have no or insufficient connection in law, or in fact, to the Complaint, and should therefore be struck from the Complainant's SOP as they constitute substantially new complaints.

[6] The original Complaint filed with the Commission, writes CSC, raised allegations of discrimination in employment wherein the Complainant argued that she had been subjected to adversely differential treatment, including harassment and bullying from other members of the kitchen staff, based on her age and/or sex. This discriminatory treatment, the Complainant alleged, culminated in her being unfairly disciplined and ultimately having her employment with CSC terminated for cause.

[7] The SOP of the Complainant, Ms. Thomas, includes allegations of differential treatment by CSC post-employment, specifically in connection with a relationship with an inmate that she started during the spring of 2022, after her termination as a CSC employee. The Complainant and the inmate got married in March 2023. Relatedly, the Complainant's SOP raises an additional ground of discrimination based on family status, primarily arising out of how she states she has been treated by CSC staff when she has visited her husband. Among the allegations is that Ms. Thomas has been wrongly accused of drug smuggling into the correctional facility.

[8] The Complainant's SOP also includes arguments for an order that the CSC cease all discriminatory practices and provide remedies to address the alleged acts of discrimination arising from the Complainant's post-employment experiences with CSC.

[9] Ultimately, the Respondent seeks to strike paragraphs from the Complainant's SOP which raise what the Respondent CSC views as substantially new complaints, for having no reasonable or sufficient connection with the original Complaint. Indeed, they would introduce family status as a prohibited ground of discrimination; they arose after the complaint was accepted by the Commission; they relate to events which occurred after the Complainant's employment with CSC, thereby falling outside of the timeframe of the Complaint referred to this Tribunal by the Commission. Additionally, the Respondent argues that the Complaint did not explicitly or implicitly raise the application of section 5 of the CHRA to the allegation, whereas the Complainant's SOP aims to do so.

[10] The Respondent relatedly argues that the Tribunal should also exercise its discretion to strike portions of the Complainant's SOP that requests remedies that relate to alleged facts that are beyond the scope of the present Complaint.

IV. ANALYSIS

A. Legal framework

[11] The Tribunal's jurisdiction to conduct inquiries into complaints flows from the Commission requesting, under section 49 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "Act"), that the Tribunal Chairperson institute an inquiry where the Commission has determined that such an inquiry is warranted based on the circumstances of the complaint. Once the Commission makes this request, the Tribunal must proceed with an inquiry into the complaint (s. 49(2) of the Act).

[12] The same legal principles used to determine the scope of a complaint are to be applied to addressing motions to strike (*Levasseur v. Canada Post Corporation*, 2021 CHRT 32, at para 7 [*Levasseur*]; *AA v. Canadian Armed Forces*, 2019 CHRT 33, at para 55). The overview of these core legal principles in *Levasseur*, at paragraphs 9 to 17 and 22, provides guidance on how a complaint under the Act properly moves through the process from initial receipt by the Commission to being subject to an inquiry by way of a hearing conducted by this Tribunal.

[13] The Commission's letter to the Chairperson of the Tribunal requesting that an inquiry be instituted into a complaint determines the scope of the complaint. However, this Tribunal has recognized that SOPs may be used to clarify, refine and elaborate on what was submitted in the initial complaint, as new facts or new circumstances related to the complaint may unfold or be uncovered after the initial complaint (*Levasseur* at para 13).

[14] Though an SOP can clarify, refine and elaborate on a complaint, this does not allow a complainant to use the SOP to introduce allegations or incidents that have no logical connection to the complaint filed. In other words, the SOP must reasonably respect the factual foundations of the allegations raised in the original complaint (*Levasseur* at para 15).

[15] When the Tribunal receives submissions that appear to amend, modify, or expand the scope of the complaint before it, the Tribunal must determine whether there is a sufficient connection or nexus between what is alleged in the SOP and what was submitted in the original complaint before the Commission.

[16] Where there is a sufficient or reasonable nexus between the original complaint and the allegations as detailed in the SOP, the proposed adjustment to the scope of the complaint is permissible. Without this reasonable nexus, the new allegations raised in the SOP may be regarded as an entirely new complaint (*Levasseur* at para 16).

[17] Addressing issues of scope and motions to strike is also informed by a consideration of the principle of proportionality. This principle is expressed in subsection 48.9(1) of the CHRA which obligates the Tribunal to conduct its proceedings as informally and expeditiously as the rules of natural justice and the Rules of Procedure allow. (*Temate v. Public Health Agency of Canada*, 2022 CHRT 31 [*Temate*] at para 13).

[18] The Tribunal's Rules also reiterate the importance of proportionality. Rule 5 states that the Tribunal is to interpret and apply its rules in a manner that allows each matter before the Tribunal to be determined informally, expeditiously and fairly.

[19] I interpret these provisions to mean that the parties in each matter and the Tribunal itself are to avoid making proceedings unnecessarily or unreasonably lengthy, complex, or costly. This commitment to proportionality aims to balance procedural fairness and natural justice for the parties while also maintaining access to justice for other parties seeking to have their matters determined by the Tribunal (*Temate* at paras 8-15).

B. The Disputed Allegations in the Complainant's SOP

[20] As referred to in paragraph 9 of this ruling, the Respondent seeks to have the following paragraphs (the "Disputed Allegations") struck from the Complainant's SOP for being substantially new complaints:

- a. Facts – paragraphs 26 to 28;
- b. Issues & Position – paragraphs 1(e) and 2(e) to 2(g); and
- c. Orders – paragraphs 6(a) to 6(e).

[21] These paragraphs are summarized below:

- Facts
 - Ms. Thomas claims that CSC has made false allegations that she has smuggled drugs into the institution through access gained for her Private Family Visits with her husband, and that CSC has illegally restricted her family visits.
 - These stated actions of CSC have harmed Ms. Thomas' health, and have negatively impacted her husband's eligibility for parole, the timing of his potential release, and his chances of being moved to a minimum-security institution.
 - Ms. Thomas continues to face post-termination discrimination from CSC as a justification for her termination and which is based on the ground of family status.
- Issues & Position
 - Whether, post-termination, CSC has discriminated against Ms. Thomas based on family status and contrary to Commissioner's Directives.
 - Whether CSC subjected Ms. Thomas to ongoing discrimination following her termination by:
 - Continuing to deny her pay in lieu of notice and maintaining that she was fired for cause once they learned months after her termination that she had entered into a relationship with her now husband;
 - Unfairly denying and delaying her access to Private Family Visits with her husband without providing them with an opportunity to make submissions to CSC prior to these decisions being made;
 - CSC making multiple attempts to falsely suggest that Ms. Thomas began her relationship with her husband while employed as CSC staff.
 - Whether Ms. Thomas' wrongful termination and ongoing treatment by CHC has caused serious harm to her health;
 - Whether Ms. Thomas has experienced ongoing harassment from CSC in the context of seeking or accessing personal family visits with her husband, including being subjected to intrusive searches, and, whether this has had an impact on her husband's remaining sentence.
- Orders
 - Seeking to have the Tribunal order that CSC cease all discriminatory practices towards her.
 - Seeking to have this Tribunal order the Respondent to amend Ms. Thomas' visitation record and her husband's institutional record to reflect alleged

breaches by CSC of CSC procedure which led to actions that led Ms. Thomas to be deemed a threat to the penitentiary.

- Seeking to have this Tribunal order the Respondent to correct or clarify Ms. Thomas' visitation record and her husband's institutional record, especially in relation to decisions of the Visitor Review Board, where it is argued by the Complainant that such records are false and/or inaccurate and allow Ms. Thomas to be regarded as a threat for bringing drugs into the institution.

[22] In response to the Respondent's Motion, Ms. Thomas agrees that reference to "her protected ground of family status" should be removed from paragraph 28 of the Facts section of her pleading but maintains that nothing else in paragraphs 26 to 28 in her Facts submissions should be struck.

[23] With respect to the Issues & Position section of her SOP, Ms. Thomas agrees that paragraph 1(e)(ii) should be struck so that her SOP does not include a question of whether CSC's post-employment treatment of Ms. Thomas constituted a contravention of any of CSC's Commissioner's Directives. She submits that the remainder of the Disputed Allegations in that section should not be struck.

[24] Ms. Thomas also argues that none of the Disputed Allegations in her Orders section of her SOP should be struck.

[25] The Complainant asserts that no other parts of the Disputed Allegations should be struck from her SOP.

[26] The Complainant further states that post-termination conduct of the Respondent is not relevant for a determination of whether discrimination has occurred as alleged. However, she argues that it is still sufficiently connected to the original Complaint because they are relevant to the Complainant's position on what the appropriate remedies are that the Tribunal should order to account for the ongoing damages suffered by the Complainant.

[27] The Complainant also states that the ongoing actions of the Respondent towards Ms. Thomas have a direct connection to the discriminatory treatment Ms. Thomas suffered as an employee of CSC, and that Ms. Thomas would not be subjected to this discriminatory treatment post-employment if she was not a former employee of CSC that had been terminated.

[28] Further, the Complainant claims that the ongoing actions of the Respondent are relevant because they negatively impact Ms. Thomas' ability to recover from the alleged discriminatory experience she had as a CSC employee as alleged in her original Complaint.

[29] Finally, the Complainant asserts that because the Disputed Allegations are meant to go to the remedies portion of Ms. Thomas' complaint, it would be premature to strike the Disputed Allegations at this point in the proceedings.

[30] The Respondent, CSC, agrees that the Complainant should remove allegations of discrimination on the ground of family status from her SOP and asserts that this then means that there is no discriminatory basis for CSC's conduct towards Ms. Thomas post-employment. The Respondent states that this would also mean that there is no connection between Ms. Thomas' post-employment treatment and her alleged treatment as a CSC employee. Because of this, the Respondent asserts, there is also no connection between the Complainant's post-employment treatment by CSC and the damages she aims to claim arising from her original Complaint that is now before this Tribunal.

[31] The Respondent addresses the Complaint's argument that the Disputed Allegations are relevant to remedies by contending that the remedies sought in the Complainant's Orders section have no nexus with Ms. Thomas' employment at CSC and raise elements that are of a different nature than the original Complaint referred to this Tribunal by the Commission.

C. My Reasons

[32] I am persuaded by CSC's arguments. I find that the Disputed Allegations should be struck from the Complainant's SOP.

[33] The Disputed Allegations are insufficiently connected to the Complaint referred to the Tribunal. They do not clarify, refine or elaborate on the initial complaint, but amount to the submission of entirely new complaints. I find this for several reasons outlined below.

[34] First, the original Complaint was submitted under section 7 of the Act, based on discrimination in the context of Ms. Thomas' employment at CSC. In the Disputed

Allegations, however, the Complainant frames her allegations of discriminatory practices by the CSC by reference to activities that she claims occurred after her employment had ended, wherein such activities seem more relevant to a complaint under section 5 of the Act. Section 5 addresses discriminatory practices in the provision of goods, services, facilities or accommodation. The Complainant, in so doing, introduces a new discriminatory practice.

[35] Second, although the Complainant ultimately changed her position and agreed that her SOP should not include the ground of family status as it originally did, this does not take away from the reality that this ground is still at the core of the Disputed Allegations. I find that these allegations introduce an entirely new ground of discrimination.

[36] Third, the Complaint focuses on alleged bullying, harassment, adverse differential treatment and being accused of inappropriate conduct towards inmates while an employee of CSC, leading to her termination. The Disputed Allegations, however, concern the Complainant being classified as a potential or actual smuggler of drugs into the institution as a general member of the public.

[37] Fourth, there is a strong difference in the nature and substance of the events alleged relating to Ms. Thomas' time as a CSC employee, and the occurrences raised in the Disputed Allegations concerning her challenges and alleged mistreatment while seeking to access visitation with her husband as a member of the public.

[38] For the purposes of resolving the Complaint before the Tribunal, I find that the Disputed Allegations have minimal and insufficient connection to the Complaint referred to the Tribunal and that they do not reasonably respect the factual foundations of the allegations raised in the original Complaint filed with the Commission (*Levasseur* at para 15, 16).

[39] Additionally, at paragraph 12 of the Complainant's Motion materials, the Complainant argues that Ms. Thomas would not be continually subjected to adverse treatment from CSC if she was not a former employee who had been terminated. I do not find that this claim provides the necessary factual foundation to dismiss the present Motion to strike. In other words, this claim alone is not sufficient to fold into a single complaint both the Complainant's

post-termination allegations on one hand, and the original Complaint that was made to the Commission and referred to the Tribunal, on the other.

[40] Finally, the Complainant argues that the Disputed Allegations are relevant and should not be struck from the Complainant's SOP because they provide an indication of the appropriate remedies that this Tribunal should order if it finds that the Complaint is substantiated. I am not persuaded that this point is enough to overcome the four reasons that I discussed earlier in this ruling for finding that the Disputed Allegations do not establish a sufficient nexus or connection to the original Complaint.

[41] Finally, I would not be adhering to the principle of proportionality if I were to allow the Disputed Allegations to form part of the Complaint before the Tribunal. The Disputed Allegations would make the present proceedings unnecessarily lengthy, complex, and costly, quite likely involving many more pre-hearing motions, case management conference calls, hearing days, witnesses, volumes of exhibits, and a needlessly wide range of types of evidence. By excluding the Disputed Allegations, the parties' rights to procedural fairness and natural justice are appropriately balanced with considerations of access to justice for other parties aiming to have their matters determined by the Tribunal in a timely fashion (*Temate* at paras 8-15).

D. Added Clarification

[42] In the Issues & Position section of the Complainant's SOP, specifically at paragraph 2(e), the Complainant states that the Respondent, CSC, has continued "denying [Ms. Thomas] proper pay in lieu of notice" based on incidents related to her time as a CSC employee, including up to her termination. My order to strike excludes this portion of the Complainant's SOP because I find that this allegation is sufficiently connected to the original Complaint.

[43] Similarly, at paragraph 2(f) of the Issues & Position section of the Complainant's SOP, the Complainant argues that she has "suffered significant and severe medical problems directly related to her wrongful termination..." My order to strike excludes this

portion of the Complainant's SOP because there is enough of a nexus between this claim and the original Complaint.

[44] As a closing consideration, based on the nature and timing of the facts and issues raised in the Disputed Allegations, while the Tribunal has no authority with respect to such, it remains open to Ms. Thomas to engage with her counsel to explore the viability of submitting the Disputed Allegations as the substance of an entirely new set of Complaints to the Commission.

E. Closing Consideration

V. ORDER

[45] CSC's Motion to strike the following paragraphs from the Complainant's SOP is granted:

- a. Facts – paragraphs 26 to 28;
- b. Issues & Position – paragraphs 1(e) and 2(e) to 2(g) (with the exceptions noted in paragraph 42 and 43 of this ruling); and
- c. Orders – paragraphs 6(a) to 6(e).

Signed by

Anthony Morgan
Tribunal Member

Ottawa, Ontario
December 13, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-3012-24

Style of Cause: Larissa Thomas v. Correctional Service Canada

Ruling of the Tribunal Dated: December 13, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Jesse Langlier, for the Complainant

Andrew W. Scarth and Adrienne Jarabek, for the Respondent