

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 16

**Date:** March 12, 2025

**File No.:** T2696/7221

**Between:**

**Lloyd Kirlew**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service Canada**

**Respondent**

**Ruling**

**Member:** John Hutchings

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## **I. OVERVIEW AND DECISION**

[1] Correctional Service Canada (CSC) asks me to strike claims in Lloyd Kirlew's Statement of Particulars because they are out of scope. They relate to alleged discrimination in Mr. Kirlew's performance management and termination process when he was a Correctional Officer and to individual Edmonton Institution employees who, he says, harassed him on the job. CSC says that the complaint only includes systemic harassment that it is allegedly responsible for, not individual harassment or job discrimination.

[2] CSC also asks me to limit Mr. Kirlew's remedies. It says that because job discrimination and individual harassment are out of scope, there should be no reinstatement or damages for lost wages. Instead, Mr. Kirlew can obtain, at most, the \$40,000 in damages for pain, suffering and wilful or reckless discrimination available under the law.

[3] Mr. Kirlew opposes striking claims and limiting remedies. The Canadian Human Rights Commission (the "Commission") supports striking claims but opposes limiting remedies.

[4] I allow CSC's motion in part. The job discrimination and individual harassment claims are out of scope. While reinstatement is out of scope, Mr. Kirlew may continue to seek lost wages and interest. I strike out-of-scope allegations from Mr. Kirlew's particulars and allow him an opportunity to provide further support for his harassment claim against CSC, including any remedies that may flow from it.

## **II. ISSUES**

[5] I must decide the following issues:

- i. Are job discrimination and individual harassment within the complaint's scope?
- ii. If not, should Mr. Kirlew's potential remedies be limited accordingly?
- iii. Must Mr. Kirlew strike allegations, and may he amend them?

### III. ANALYSIS

#### A. The job discrimination and individual harassment claims are out of scope.

[6] Only the harassment claim against CSC is before me. In its screening decisions, the Commission decided to deal only with the allegations of harassment at Edmonton Institution that CSC is responsible for, including its alleged failure to provide a harassment-free workplace. These decisions limit the scope of the complaint before me.

[7] Neither the employment discrimination claim about performance assessments and termination nor the on-the-job harassment claim against individual Edmonton Institution employees are before me. The Commission decided not to deal with these claims. After a separate hearing, the Federal Public Sector Labour Relations and Employment Board (the “Board”) said that Mr. Kirlew did not prove discrimination during his assessments or in his dismissal: *Kirlew v. Deputy Head (Correctional Service of Canada)*, 2017 FPSLRB 28 at para 152. I cannot revisit the Board’s finding of no job discrimination. That said, details about harassment from other employees remain within the scope of this complaint because they are potentially relevant to CSC’s alleged liability for harassment. Mr. Kirlew may include them in his particulars, but only for the purpose of arguing that CSC is responsible for the harassment.

[8] Put another way, Mr. Kirlew may advance his claim about CSC’s liability for its employees’ alleged harassment because the Commission referred this claim to the Tribunal. His allegations about what the employees did are within the complaint’s scope, and he is allowed to mention their alleged actions in his particulars and at the hearing. However, Mr. Kirlew may not advance claims about the employees’ own liability for their alleged actions or about his performance assessments and termination because the Commission did not refer these claims to the Tribunal.

[9] I cannot accept Mr. Kirlew’s submission that the complaint should be amended to add allegations of wrongful dismissal. Amendments cannot create a substantially new complaint because this would bypass the Commission’s referral process: *Itty v. Canada Border Services Agency*, 2013 CHRT 33 at para 19. Any amendments must respect the

Commission's decision to screen out allegations. Here, the Commission limited the complaint to harassment at Edmonton Institution that CSC is responsible for and noted that the Board did address or could have addressed wrongful dismissal. As such, because I lack the legal ability to change the Commission's decision, I am unable to consider these allegations.

**B. Reinstatement is out of scope, but lost wages and interest are available.**

[10] Mr. Kirlew cannot seek reinstatement. I have already found that his termination is not before me. There must be a causal connection between discrimination and remedies: *Chopra v. Canada (Attorney General) (F.C.A.)*, 2007 FCA 268 at para 32. Because I cannot consider Mr. Kirlew's termination from his job, I cannot order him reinstated to that job.

[11] Mr. Kirlew may claim lost wages in connection with his harassment complaint against CSC, but he may wish to more fully articulate a legal theory to support this remedy. Mr. Kirlew may or may not be able to prove a claim of lost wages, and it will be for him to discharge his burden of proof at the hearing: *Constantinescu v. Correctional Service Canada*, 2020 CHRT 4 at para 204. I am unprepared to find at this preliminary stage that lost wages are precluded or to otherwise limit my discretion to determine remedies if the complaint is upheld. I agree with CSC's submission that any lost wages must result from discrimination (*Duverger v. 2553-4330 Québec Inc (Aeropro)*, 2019 CHRT 18 at paras 245–255), and I recall my earlier finding that Mr. Kirlew's termination is out of scope. I acknowledge that lost wages are most often awarded where an employee establishes that their termination was discriminatory. However, it does not necessarily follow that an upheld harassment complaint could not give rise to lost wages, and I note that CSC has not identified any case law that precludes lost wages in such circumstances.

[12] Even where discrimination plays no part in a termination, previous on-the-job harassment on prohibited grounds may cause post-employment difficulties for employees. Mr. Kirlew may amend his particulars to identify if he is claiming lost wages because of harassment that CSC is responsible for and to briefly explain how those lost wages are connected to this harassment, not his performance evaluation or termination.

[13] Mr. Kirlew may seek interest. The final paragraph of his particulars seeks interest, and CSC asks that it be struck alongside his claim for lost wages. As such, CSC's implicit position may be that interest cannot be awarded for damages for pain and suffering or wilful and reckless conduct alone. However, CSC has neither explicitly stated this position nor provided supporting case law. In fact, the Tribunal has awarded interest on damages for pain and suffering and wilful and reckless conduct: *Luckman v. Bell Canada*, 2022 CHRT 18 at para 119. Mr. Kirlew may continue to claim interest on the lost wages and other damages he seeks.

**C. Mr. Kirlew must strike allegations relating only to his job discrimination claim, but he may amend his particulars to support his harassment claim against CSC.**

[14] Mr. Kirlew must strike out-of-scope allegations from his particulars. I agree with CSC and the Commission that focused particulars will help the parties and the Tribunal.

[15] The table below applies the findings I have already made to the information in Mr. Kirlew's particulars. My instructions are organized under the section headings used in his particulars. Where I strike out-of-scope material that mentions case law, the parties may still rely on these cases at the hearing if they are otherwise relevant.

[16] Where I am unable to accept CSC's submissions that certain particulars be struck, I instruct that there be "no change" to the particulars in question and make findings about their potential relevance to Mr. Kirlew's harassment claim against CSC.

[17] If Mr. Kirlew wants to provide further support for his harassment claim against CSC and any remedies flowing from it, he can amend his particulars.

Para	Instructions
<b>Overview</b>	
1	<u>Strike second sentence.</u> This sentence has out-of-scope job discrimination allegations:

	<p>“The Complainant, Lloyd Kirlew, is a fifty-seven-year-old individual who resides in Kingston Ontario. Mr. Kirlew is black and of Jamaican descent. <del>He is alleging discrimination and adverse differential treatment against Correctional Services of Canada (“CSC”) arising out of his employment...</del>”</p>
2	<p><u>No change.</u> This paragraph states that Mr. Kirlew was “terminated while under probation for alleged performance issues”. I find that this reference to Mr. Kirlew’s job performance and termination is useful context (<i>Murray v. Immigration and Refugee Board</i>, 2018 CHRT 32 at para 64) without amounting to an out-of-scope job discrimination allegation.</p>
3	<p><u>Strike first sentence.</u> This sentence has out-of-scope job discrimination allegations:</p> <p><del>The Complainant’s position is that his termination was causally related to protected grounds under section 7 of the Canadian Human Rights Act, specifically, race, colour, and national/ethnic origin. He further submits that during the course of his employment he was subjected to ongoing and repeated acts of harassment...</del>”</p>
4	<p><u>Strike all but first sentence.</u> The rest of this paragraph has out-of-scope job discrimination allegations:</p> <p>“The Complainant affirms that there was a toxic work environment at EI and a pervasive culture of bullying, intimidation, and harassment of both inmates and Correctional Officers. <del>It manifested itself in being singled out and discriminated against ... to have him terminated. [...]</del>”</p>
6–11	<p><u>No change.</u> These paragraphs describe a report on Edmonton Institution’s corporate culture and criticize the Board’s decision to exclude it from evidence. I find that this passage falls short of an out-of-scope job discrimination allegation and instead suggests that I should consider the report in assessing CSC’s alleged liability for harassment.</p>
12	<p><u>No change.</u> This paragraph describes Mr. Kirlew’s emotional state and mental health after termination. I find that while termination itself is outside the scope of the complaint, Mr. Kirlew’s emotional state and mental health in the period following termination may be relevant to CSC’s alleged liability for harassment.</p>
<p><b>Material facts</b></p>	

6–11	<u>No change</u> . These paragraphs describe Mr. Kirlew's training, including a trainer's alleged comments about his hair. I find that they may be relevant to CSC's alleged liability for harassment.
12–16	<u>Strike</u> . These paragraphs have out-of-scope job discrimination allegations.
17–22	<u>No change</u> . These paragraphs describe Mr. Kirlew's training, including an officer's alleged racial slur. I find that they may be relevant to CSC's alleged liability for harassment.
23–26	<u>No change</u> . These paragraphs describe Mr. Kirlew's performance management and termination process, including his placement in work he found humiliating. I find that they may be relevant to CSC's alleged liability for harassment.
28–31	<u>No change</u> . These paragraphs describe Mr. Kirlew's training, including a manager's alleged racial slur. I find that they may be relevant to CSC's alleged liability for harassment.
32–33	<u>No change</u> . These paragraphs describe Mr. Kirlew's training, including a manager's alleged adverse comments. I find that they may be relevant to CSC's alleged liability for harassment.
34–36	<u>Strike</u> . These paragraphs have out-of-scope job discrimination allegations.
<b>Legal issues – issue #1</b>	
3, 6, 7 (all but last sentence)	<u>No change</u> . These paragraphs describe other employees' alleged racial slurs and adverse comments. I find that the employees' names and alleged actions are relevant to CSC's alleged liability for harassment because CSC, as the employer, may be held liable for their actions. CSC may seek a confidentiality order if it wishes to protect their names.
7	<u>Strike end of last sentence</u> . The end of this sentence contains out-of-scope job discrimination allegations:  “ <del>and conspiring... to have Mr. Kirlew terminated...</del> ”
<b>Legal issues – issue #2</b>	
1–3	<u>Strike</u> . These paragraphs have out-of-scope job discrimination allegations.
5–6	<u>Strike</u> . These paragraphs have out-of-scope job discrimination allegations.
7	<u>No change</u> . This paragraph describes case law about racial job discrimination. I find that it may also be relevant to CSC's alleged liability for racial harassment.



8	<p><u>Strike all but first sentence.</u> The rest of this paragraph has out-of-scope job discrimination allegations:</p> <p>“In the present case, there is flagrant and direct evidence of racism in the form of derogatory racist slurs. <del>The indirect evidence... was disguised in the form of lengthy on-the-job training and finally, his dismissal...</del>”</p> <p>The first sentence describes allegations of racist slurs. I find that it may be relevant to CSC’s alleged liability for harassment.</p>
9	<p><u>Strike all but the first two sentences.</u> The rest of this paragraph has out-of-scope job discrimination allegations:</p> <p>“While it is conceded that there were numerous complaints about his job performance, Mr. Kirlew asserts that he was set up by Correctional Officers who conspired with one another to create incidents to portray him as dangerous, incompetent, and mentally slow. This was discussed in paragraph which described the two incidents involving the count. <del>Accordingly, Mr. Kirlew asserts that his many negative performance reviews...</del>”</p> <p>The first two sentences describe alleged efforts to portray Mr. Kirlew as dangerous, incompetent and mentally slow. I find that they may be relevant to CSC’s alleged liability for harassment.</p>
10–12	<u>Strike.</u> These paragraphs have out-of-scope job discrimination allegations.
13–14	<u>No change.</u> These paragraphs describe alleged views about Mr. Kirlew being slow and confused. I find that they may be relevant to CSC’s alleged liability for harassment.
15	<u>No change.</u> This paragraph describes stereotypes about Black people in the workplace. I find that it may be relevant to CSC’s alleged liability for harassment.
16–18	<u>No change.</u> This paragraph describes case law about racial job discrimination. I find that it may also be relevant to CSC’s alleged liability for racial harassment.
<b>Relief sought</b>	
2	<u>Strike.</u> This paragraph relates to out-of-scope job discrimination allegations and seeks reinstatement. I have found reinstatement to be out of scope.

3, 6	<u>No change.</u> These paragraphs claim lost wages and interest. I have found that Mr. Kirlew may seek lost wages and interest. However, he may wish to amend his particulars to provide a legal theory for his lost wages claim.
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#### IV. ORDER

[18] For the reasons above, I allow the motion in part. I allow the motion to declare the job discrimination claim, the individual harassment claim and the reinstatement remedy out of scope, and I fix the scope of the complaint to include only CSC's responsibility for harassment. I dismiss the motion to bar a claim for lost wages and interest.

[19] I will schedule a case management conference to complete the particulars and disclosure phase of this complaint—including giving Mr. Kirlew an opportunity to amend his particulars as discussed above—and to set dates for the hearing.

*Signed by*

John Hutchings  
Tribunal Member

Ottawa, Ontario  
March 12, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** T2696/7221

**Style of Cause:** Lloyd Kirlew v. Correctional Service Canada

**Ruling of the Tribunal Dated:** March 12, 2025

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

**Written representations by:**

Adriana Van Veggel, for the Complainant

Aby Diagne, for the Canadian Human Rights Commission

Jon Khan and Anamaria Baboi, for the Respondent