

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 35

Date: May 7, 2025

File Nos.: T2218/4017, T2282/3718, T2395/5419, T2647/2321

Between:

Ryan Richards

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Jennifer Khurana

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I. OVERVIEW

[1] The hearing in this matter is scheduled to resume on June 19, 2025. The complainant, Mr. Richards, is asking – for the third time – for the Tribunal to order the Correctional Service of Canada (CSC), the respondent, to provide him with a laptop to use in these proceedings. Mr. Richards says that he cannot fairly prepare for or continue the hearing without access to a laptop because it is too difficult to use paper copies of documents.

[2] In 2024 CHRT 12, I dismissed Mr. Richards' first motion requesting a laptop computer and other devices. I found that while Mr. Richards has the right to prepare for his hearing and to have reasonable access to the tools required to do so, the solutions CSC proposed to provide Mr. Richards with paper copies of the disclosure were reasonable and do not jeopardize procedural fairness. Security considerations in the carceral setting must be balanced with Mr. Richards' right to prepare for his hearing.

[3] In 2024 CHRT 19, I dismissed Mr. Richards' request that I reconsider the laptop ruling (the "reconsideration ruling"), finding that there was no substantial change in circumstances justifying a change in the ruling. I found that if Mr. Richards could not fairly prepare for his hearing or required accommodation on religious, medical or other grounds, he could seek other relief. Providing a laptop to use in his cell was not the only way of ensuring he could fully and fairly participate in this proceeding.

[4] The Commission filed its voluminous submissions in support of Mr. Richards' request. It argues this request is different because it is about the continuation of the hearing, rather than preparations for it. It also says that the request is not about whether Mr. Richards should have a laptop, but about whether CSC's refusal to allow Mr. Richards in-cell use of a laptop is reasonable. According to the Commission, Mr. Richards requires a laptop in his cell so that he can review evidence and prepare for each hearing day in the evenings. While CSC takes the position that the Tribunal ruled on this issue twice before, it was nevertheless willing to accommodate Mr. Richards and place a laptop computer in the hearing room for his use when the virtual hearing resumes in June. The Commission submits that this proposal fails to address the critical challenges faced by a self-represented, incarcerated

complainant. The Commission maintains that CSC's previous concerns about security no longer apply because it could provide an e-disclosure or read-only laptop to Mr. Richards, and that CSC has previously allowed other inmates to use these devices in their cells.

[5] CSC disagrees and submits that renewing this request for a third time is an abuse of process. It argues that the Commission's attempt to reframe the question should fail. It says that the Tribunal knew there would be a hearing - and not just preparations for a hearing - when it dismissed Mr. Richards' previous requests.

[6] Together with its motion materials, the Commission included a January 19, 2024 email communication that CSC asserts is protected by settlement privilege. CSC asks that the Tribunal disregard the letter in determining the motion. It also wants the Tribunal to make an order for the parties not to share the documents outside of this litigation and asks that the Commission's motion material be sealed and not be accessible to the public.

II. DECISION

[7] Mr. Richards' and the Commission's requests are dismissed. While I am dismissing CSC's requests to declare the January 19, 2024 email communication privileged and to seal the Commission's motion materials, I have not considered the email in my decision to dismiss Mr. Richards' request. The Commission's approach does not favour good faith attempts to resolve preliminary issues and is inimical to the expeditious and informal resolution of an inquiry.

III. ANALYSIS

[8] I do not accept Mr. Richards' and the Commission's arguments that I should vary my past order because this request is in the context of the continuation of what will now be a virtual hearing, or because CSC could provide a limited functionality e-disclosure laptop. The Commission's attempts to reframe the issue do not change the character of the request which remains the same: Mr. Richards wants CSC to allow him to use a laptop in his cell.

[9] While the Commission submits that would not be security concerns if CSC provided Mr. Richards with a read-only e-disclosure laptop, it has not provided any evidence in support of that claim beyond its assertions that CSC has allowed these devices in other cases. I am not prepared to reopen my past ruling at this stage in the proceedings, nor to invite new submissions and evidence from the parties on the security risks inherent in providing in-cell access to an e-disclosure laptop as opposed to a fully functional device particularly when a reasonable alternative already exists. As I have already found in these proceedings, the provision of two paper copies of all disclosure to Mr. Richards is a reasonable solution. Mr. Richards has had over a year to review the documentation and there has been ample time to prepare for this next phase of the hearing.

[10] I also reject the argument that the fact that this hearing is now proceeding remotely means Mr. Richards requires a laptop in his cell. Mr. Richards has a right to participate meaningfully at his hearing, not a right to a laptop. Mr. Richards and the Commission also appear to rely on the fact that that during the in-person portion of the hearing when the Commission was leading his evidence, he struggled to flip through his binders to find the documents he was being referred to. CSC has already offered to place an e-disclosure computer in the hearing room when the hearing resumes in June.

[11] Finally, preparing and participating in a hearing requires preparation, for all parties, and counsel. This includes extensive review of the materials, ensuring documents are ready to be introduced as evidence, that they are cued up (whether in paper form or on a screen), that a party is ready with questions to examine its witnesses and for cross-examination of an opposing party's intended witnesses. Parties must also know where to situate themselves in their own materials – that is the job of any participant, and of counsel leading witnesses. Having a laptop does not absolve parties of this responsibility and access to a laptop is not a panacea if a litigant or their counsel is not prepared.

[12] Further, the Commission's assertions that it is 'highly prejudicial' and 'procedurally unfair' for Mr. Richards to have to examine witnesses via Teams or Zoom with paper copies of all materials are speculative and unfounded at this stage. I have not been provided with any evidence of actual prejudice, only claims about potential prejudice. In any event, the provision of an in-cell laptop is not the only way to cure prejudice, if established.

[13] For example, if, at the end of a day of hearing, Mr. Richards argues that he needs more time to prepare for the next day and to review his materials, I will hear from him and the other parties to ensure he can participate fully and fairly. But a laptop is not a right - neither for an incarcerated individual, nor for other participants in other hearings. It is not because a respondent and the Commission have access to a laptop that the Tribunal must order respondents to provide complainants with devices for their evening use in order to ensure a fair and effective hearing. I will hear from Mr. Richards if there are actual concerns about prejudice. But I will not entertain bald and unfounded assertions and accusations about prejudice.

[14] Finally, while both Mr. Richards and the Commission argue – yet again - that the documents in this proceeding are voluminous, they are a function of the breadth and scope of these complaints. Mr. Richards has had paper copies of all disclosure for over a year. As I have previously held, the fact remains that there is a lot to prepare before a hearing of this scope, and that is not a new or material change in circumstance (2024 CHRT 19 at para 20).

A. Allegations that the Commission shared privileged information with the Tribunal and CSC's requests

[15] The Commission filed lengthy submissions in support of Mr. Richards' request for a laptop which included a January 19, 2024 email communication from CSC counsel that he previously indicated was not to be shared with the Tribunal. CSC takes the position that the email includes a settlement privileged proposal that was exchanged among the parties in an attempt to resolve the dispute related to Mr. Richards' first request for a laptop. CSC asks the Tribunal not to consider the January 19, 2024 email and argues that doing so could have a significant effect on the ability of parties to attempt to resolve issues before asking the Tribunal to decide them. It also asks that the Commission's motion materials be sealed and that I order the parties not to share the communications outside of this litigation.

[16] The Commission submits that the email is not protected by settlement privilege for a number of reasons. For example, it argues that the email was not exchanged in an attempt to negotiate a final settlement of the complaint. While it appears to acknowledge that CSC

provided explicit instructions not to share this part of its communications, it maintains that there was no agreement that the discussion was privileged, confidential, or off-the-record. It further argues that CSC expressly and impliedly waived any claim to privilege by agreeing to share other aspects of the communication. Finally, the Commission disagrees with CSC that it was acting in good faith, and argues that even if privileged, an exception should apply because CSC is trying to misrepresent or misguide the Tribunal on the issue of the laptop.

[17] CSC's requests for an order that the parties cannot share these documents outside of this litigation and that the motion materials be sealed are dismissed. A request to seal the record must be made under s.52 of the *Canadian Human Rights Act* and I have not been presented with a legal basis for ordering the parties not to share a document that they already have in their possession outside of s.52.

[18] I have not, however, considered the disputed email in my decision to dismiss Mr. Richards' and the Commission's motion. In my view, interpreting the law of privilege in the way the Commission suggests condones behaviour that the Tribunal has no interest in rewarding in this or any other case. I agree with CSC that the Commission's disclosure of another party's proposal sent in an attempt to resolve an issue – whether procedural or not – should not be encouraged by the Tribunal. This type of practice falls short of what the Tribunal expects of parties who have been directed to work together to resolve procedural issues and who are trying to negotiate in good faith.

[19] I previously directed the parties to recall the principle of proportionality and to choose their battles wisely (see, for example, 2023 CHRT 51, at paras 27–29). The parties are expected to focus their efforts, not to inflame one another over communications that were shared in an atmosphere of trust to resolve a procedural matter - whether formally privileged or not. The dispute between the parties that followed the Commission's decision to include the email has diverted the resources of counsel – and those of the Tribunal - at a time when all should be preparing for the hearing that is set to resume in just over a month. Such an approach, which will discourage settlement or attempts to negotiate in the future, does not favour the interests of Mr. Richards or other litigants, whose files are waiting while the Tribunal expends resources in dealing with this dispute.

IV. ORDER

[20] Mr. Richards' request is dismissed. The parties must respect and comply with the Tribunal's direction and rulings and prepare for the resumption of the hearing in June. The Tribunal will not entertain further motions or other requests for an order for a laptop.

[21] CSC's requests to seal the Commission's motion materials is dismissed. Its request for an order directing the parties not to use materials already in their possession is also dismissed.

[22] The Registry will contact the parties to schedule a case management conference call (CMCC) in advance of the resumption of the hearing in this matter in June. All parties are expected to prepare accordingly.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, ON
May 7, 2025

Canadian Human Rights Tribunal

Parties of Record

File Nos.: T2218, T2282, T2395, T2647

Style of Cause: Ryan Richards vs Correctional Service Canada

Ruling of the Tribunal Dated: May 7, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Ryan Richards, Self-represented

Ikram Warsame and Sameha Omer for the Canadian Human Rights Commission

Dominique Guimond, for the Respondent