

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 39
Date: May 12, 2025
File No.: HR-DP-2845-22

Between:

Frank Kim

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Decision

Member: Athanasios Hadjis

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I. OVERVIEW

[1] Frank Kim, the Complainant, is an offender in custody at the La Macaza Institution operated by Correctional Service Canada (CSC), the Respondent. He alleges in his human rights complaint that CSC retaliated against him for having filed two human rights complaints with the Canadian Human Rights Commission (the “Commission”).

[2] Mr. Kim contends that a psychologist working for CSC prepared a report for his parole hearing that raised his risk-level assessment scoring by drawing adverse inferences about his use of the CSC complaint and grievance process. He maintains that his use of the process was inextricably linked to his two human rights complaints. The Parole Board of Canada (PBC) denied his parole application.

[3] CSC contends that the psychologist had no knowledge of Mr. Kim’s human rights complaints and that they were not factors in her report. Her findings were based on her assessment and not in retaliation to the human rights complaints.

II. DECISION

[4] Mr. Kim has not proven that the references to “complaints and grievances” in the psychologist’s report constitute retaliation related to his human rights complaints.

III. ISSUES

[5] Mr. Kim alleges that CSC breached s. 14.1 of the *Canadian Human Rights Act*, R.S.C., 1985 c. H-6 (CHRA) by retaliating against him for having filed human rights complaints against CSC. I must therefore determine the following issues:

- 1) Did Mr. Kim file human rights complaints under the CHRA against CSC?
- 2) Did CSC or anyone acting on its behalf treat Mr. Kim adversely following the filing of his complaints?
- 3) Were the human rights complaints a factor in the adverse treatment?

IV. BACKGROUND

[6] In 1999, Mr. Kim was convicted of multiple sex-related crimes. He was declared a dangerous offender in 2000 and sentenced to an indeterminate term of incarceration. Since 2011, he has been serving his sentence at La Macaza Institution, a medium-security institution in the Laurentian region of Quebec.

[7] CSC is the federal agency established under the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (CCRA), that is responsible for the care and custody of offenders sentenced to more than two years of imprisonment. The Commissioner of Corrections (the “Commissioner”) controls and manages CSC (s. 6(1) of the CCRA). Section 90 of the CCRA requires the establishment of a procedure to fairly and expeditiously resolve offenders’ grievances. Accordingly, a process to address offender complaints and grievances was implemented under Commissioner’s Directive 081 (CD-081). Commissioner’s Directives are identified with the prefix “CD”. As set out at Paragraph 7 of CD-081, the process is comprised of three levels:

- a. Written complaint – submitted by the offender at the institution and responded to by the supervisor of the staff member whose actions or decisions are being grieved;
- b. Initial grievance – submitted to the institutional head, such as a warden.
- c. Final grievance (national level) – submitted to the Commissioner.

[8] If not satisfied with a decision rendered at the final level, grievors may seek judicial review of the decision at the Federal Court (Paragraph 15 of CD-081).

A. Mr. Kim’s first human rights complaint

[9] Sometime prior to 2014, Mr. Kim developed an arm-related injury, which meant that he no longer could perform the income-earning job he had been doing within the institution. He asked for another accommodated position, but he claims none was made available to him, particularly because he did not speak French. He therefore filed an offender complaint with CSC staff in which he sought a number of corrective actions. His offender complaint was for the most part denied.

[10] Mr. Kim followed up with a grievance regarding the issue, in which he alleged he was being discriminated against based on ethnicity, language, and medical disability. The grievance was denied, so Mr. Kim presented a final level grievance, which in December 2014 was also denied.

[11] Mr. Kim then filed a human rights complaint with the Commission (the “2014 Complaint”) about the same issue. A copy of the human rights complaint was not presented at the hearing, but I understand Mr. Kim to have alleged in the complaint that he had been discriminated against based on his disability. Mr. Kim and CSC settled the 2014 Complaint in 2016.

B. Mr. Kim’s second human rights complaint

[12] In June 2014, Mr. Kim filed another offender complaint with staff pursuant to CD-081. He stated that he wanted to convert to the Wicca religion but that La Macaza Institution would not facilitate it. He said he was not allowed to order religious books or to have access to Wiccan services and a priest. Mr. Kim was not satisfied with the response to his offender complaint and filed a first level grievance. The acting warden responded that the matter had been addressed and no further action was required. Mr. Kim was not satisfied with that response and filed a final level grievance, which was partially denied in December 2016.

[13] In October 2017, Mr. Kim filed a human rights complaint with the Commission about this issue (the “2017 Complaint”). He alleged that CSC had engaged in a discriminatory practice based on religion. He mentioned the final level grievance response in the complaint.

[14] The Commission referred the 2017 Complaint to the Canadian Human Rights Tribunal (the “Tribunal”) for inquiry. The parties settled the 2017 Complaint on September 3, 2019.

[15] I will refer to the 2014 Complaint and the 2017 Complaint collectively as the “Human Rights Complaints”.

C. The psychologist's initial assessment report

[16] Mr. Kim had requested a hearing before the PBC for day and full parole. The hearing was scheduled to take place on October 23, 2018.

[17] In advance of the parole hearing, Mr. Kim's Institutional Parole Officer (IPO), Marie-Josée Meloche, referred him to a psychologist for a risk assessment. The psychologist, Dr. Vanessa Leo, has a PhD in clinical psychology and is employed by CSC. She testified that risk assessments are based on interviews with the offender, a file review, and conversations with members of the offender's Case Management Team (CMT), which includes the IPO. Actuarial tools are then used to determine the level of risk that the offender presents for the type of outing being considered.

[18] With respect to matters before PBC hearings, these assessments are intended to guide the PBC and to assist CMT staff when making their own recommendations to the PBC. Risk assessments are considered valid for up to two years. The assessments are not binding on the PBC, and Dr. Leo testified that she has seen instances where the PBC has ruled differently than an assessment's recommendations.

[19] Dr. Leo works out of CSC's Federal Training Centre and interviewed Mr. Kim via videoconference for about 2.5 to 3 hours, on August 7, 2018. She had never met him before. She issued her report on August 13, 2018.

[20] Dr. Leo states in her report that her assessment aimed to better understand the dynamics underlying Mr. Kim's devious acts and the risk of violence. She added that the criterion for the mandatory referral of offenders to psychological assessment is "sexual delinquency". Dr. Leo noted that, aside from her interview of Mr. Kim, she reviewed his institutional file and contacted his IPO.

[21] Three actuarial tools were used to assess Mr. Kim. The first (PCL-R Hare Psychology Checklist Revised, 2nd Edition) is administered to all offenders being assessed. For sex offenders, the following two tools are also used:

- 1) Static-99R (for the assessment of the risk of sexual/violent recidivism based on static factors)

- 2) Stable-2007 (for the assessment of the risk of sexual/violent recidivism based on dynamic factors).

[22] As I explain later in this decision, Dr. Leo's report was eventually amended. Her original report was about 11 pages long and issued on August 13, 2018. Mr. Kim's current human rights complaint centres on Dr. Leo's references in three paragraphs of the report to his history of filing numerous or repeated complaints and grievances. I have excerpted the text of each paragraph below and highlighted the specific references at issue:

Page 8 under the heading "Institutional Performance":

Mr. Kim's institutional charges have either been withdrawn or dismissed, except for one minor offence in 2001 (being in possession of running shoes which his mother had brought in). **It is to be noted that Mr. Kim has a history of filing numerous complaints and grievances since incarcerated (requesting a single cell, requesting a gluten-free diet, requesting English movie channels, requesting changes be made to certain reports, etc.).** He refers himself directly to the warden in his complaints rather than addressing them to the appropriate staff members as requested. During our interview, he explained that it is because they are decisions involving the warden and that he has never been reprimanded for using the grievance process inappropriately.

Page 9 under the heading "Clinical Impressions":

Mr. Kim has successfully completed the sex offender program as well as several maintenance programs. It is not surprising that an intelligent man like him would easily glide through institutional programming. However, when we consider his narcissism and need for control, as well as his apparent difficulty in taking full responsibility for his crimes, we question the impact of this institutional programming on lowering his level of risk. **His narcissism is evidenced by his repeated filing of complaints and grievances, addressing himself directly to the warden rather than to the appropriate staff members as requested.** As so well stated by Dr. Lawson in his dangerous offender assessment completed in September 1999, "It appears to me that Mr. Kim is prepared to cooperate and respect authority as long as it suits his purposes, but that he becomes defiant and demanding when he is thwarted in pursuing his own agenda." In our opinion, Mr. Kim's time and energy would be better spent towards deepening his understanding and accountability of his crimes. **It is rather striking when reading through his file that most of the entries are regarding his various requests/complaints that have absolutely no bearing on reducing his level of risk.** He has participated in the programs asked of him, but has not shown effort in pushing it any further (for example, criminological follow [sic]

with his PO, psychological follow-up to address his narcissist personality and other elements contributive to his crimes). **In our opinion, his repeated complaints and requests are a way for him to avoiding engaging in any serious introspection regarding his contributing factors.** Perhaps his narcissistic traits are too prominent at this time to allow for such self-evaluation.

Pages 10–11 under the heading “Instrument Results and Risk Assessment”:

If we take into account the various dynamic factors that may have an impact on the risk of sexual recidivism, we note the following areas of concern in particular: lack of social influences at the moment (no contact with anyone aside from his sister on occasion), inability to maintain a stable relationship, a certain hostility towards women, certain social rejection/solitude, a lack of concern/empathy for others, certain difficulties with problem-solving skills, certain negative emotions/hostility (**numerous complaints and grievances**), a history suggestive of sexual preoccupations, a history of using sex as a coping mechanism, indications of deviant sexual interests given the number of victims and their age, and a possible lack of cooperation in the context of supervision.

Dr. Leo concluded the report by providing her risk assessment, stating that her impressions were consistent with previous risk assessments administered by other psychologists. She did not recommend any form of release as the level of risk appeared unmanageable and suggested that Mr. Kim progressively earn his way towards a minimum-security institution before considering release.

[23] Mr. Kim took issue with the mention of his use of the complaint and grievance process as well as many of Dr. Leo’s findings, and he reacted quickly. He filed a grievance with the warden the next day, August 14, 2018 (V30R00051797). He pointed out that Paragraph 51 of CD-081 (“Paragraph 51”) states that an offender’s use of the CSC’s offender complaint and grievance process may not be mentioned outside of that process without the authorization of the Institutional Head or District Director.

[24] Mr. Kim noted that a psychologist who had previously assessed him in 2014 and 2016 (Dr. Gilles Beaulieu) had also referred to Mr. Kim’s complaints and grievances in the 2014 report. Mr. Kim grieved that reference at the time and obtained a ruling in his favour from the CSC’s Deputy Commissioner, which directed that staff at La Macaza Institution be reminded of the directive in Paragraph 51. Mr. Kim submitted in his new grievance that Dr. Leo’s unauthorized references to his complaints and grievances, some of which were

about discrimination, breached that prior ruling and showed that the CSC wanted to punish him for filing the 2014 Complaint. Mr. Kim claimed this was harassment and discrimination and demanded \$1,000 for every day that it continued.

[25] On August 18, 2018, Mr. Kim filed another grievance (V30R00051691) with the warden, alleging specifically that Dr. Leo had harassed and discriminated against him.

[26] On August 27, 2018, Mr. Kim sent a correction request to his IPO, as offenders are entitled to do under CD-701, Annex B, Paragraph 3. He raised four points where he claimed Dr. Leo had erred, one of which was the reference to his complaints and grievances.

[27] Mr. Kim reiterated the points he raised in the first grievance about how Paragraph 51 directs that an offender's use of the complaint and grievance process may not be mentioned outside of that process without authorization.

[28] Mr. Kim noted in the correction request that "the batch of complaints" to which Dr. Leo referred in her report "involved discrimination complaints that eventually made [their] way to the [Commission]". He also wrote that it was "apparent that CSC wants to now punish me for it". Mr. Kim contended that Dr. Leo drew negative inferences in her report from his filing of complaints and grievances and elevated his risk ratings compared to Dr. Beaulieu's last psychological assessment from 2016.

[29] Mr. Kim maintained in his correction request that Dr. Leo's report was "contaminated to the core" especially in relying on his use of the complaints and grievance process to infer that he is not sincere in taking responsibility and accountability for his crimes. He claimed her report amounted to harassment and discrimination and asked that she retract it and that it be removed from his files.

[30] In the various grievances and addenda that Mr. Kim filed regarding Dr. Leo's report, he alleged several times that he was being harassed and discriminated against and that Dr. Leo's remarks were retaliatory and an attempt to intimidate him into not filing any more "complaints and grievances".

D. The parole hearing

[31] Mr. Kim was hoping to have Dr. Leo's original report corrected promptly. His parole hearing before the PBC was scheduled to take place in less than two months, on October 23, 2018. He did not want what he considered to be a flawed report to be placed before the PBC. The provisions in CD-701 setting out the procedure for file corrections (Annex B, Paragraph 5) state that the file review and any subsequent changes are "normally" completed within 30 days.

[32] Mr. Kim had another concern relating to his upcoming PBC hearing. The PBC had asked Mr. Kim's CMT to update his file for the hearing to add a valid risk assessment, meaning one that was less than two years old. Ms. Meloche prepared the update in the form of an addendum, which was sent to the PBC on August 22, 2018. Ms. Meloche reiterated Dr. Leo's conclusions about his risk assessment, including the finding that Mr. Kim still had "work to do in terms of authentically acknowledging his crimes". Ms. Meloche stated that the CMT was therefore maintaining its recommendation from 2016 that it would be premature to grant any form of release to Mr. Kim.

[33] On August 23, 2018, Mr. Kim filed a grievance (V30R00052261) about Ms. Meloche's addendum. He alleged harassment and discrimination.

[34] According to Mr. Kim, about three weeks before the scheduled PBC hearing date, Ms. Meloche assured him that the file correction decision would be issued shortly, correcting the errors in Dr. Leo's original report. All that was missing was a signature from a supervisor. If the amended report did not arrive by the hearing date, Ms. Meloche intended to ask the PBC for direction. Ms. Meloche was not called as a witness in the present case, but, according to Mr. Kim, she was worried about how the references to his complaints and grievances were inconsistent with the requirements of Paragraph 51 and the Deputy Commissioner's prior ruling.

[35] The file correction decision was ultimately not issued in time for the PBC hearing. Ms. Meloche asked the PBC for direction. According to the PBC's parole ruling, Ms. Meloche told the panel she did not know when the correction request decision would come or its outcome. Mr. Kim requested a two-month adjournment, but the PBC panel denied it and

proceeded with the hearing. In his testimony before the PBC, Mr. Kim explained his concerns regarding Dr. Leo's report.

[36] The PBC decided to deny Mr. Kim day and full parole. It found that he would present an undue risk to society before the expiry of his sentence and that his release would not contribute to the protection of society by facilitating his reintegration into society as a law-abiding citizen.

[37] The panel referred in its reasons to Dr. Leo's report. It noted, however, that while psychological assessments are of assistance to the PBC, it is not bound by their conclusions. It makes its own risk assessment. The panel added that it had considered Mr. Kim's concerns about Dr. Leo's report and the differences he claimed relative to Dr. Beaulieu's 2016 assessment. The panel nonetheless concluded that Mr. Kim still represented an undue risk pursuant to the CCRA.

[38] Mr. Kim testified that he felt the PBC relied on Ms. Meloche's recommendations, which were in turn based on Dr. Leo's report.

[39] Mr. Kim appealed the PBC decision to the Appeal Division of the PBC. He submitted that the PBC had failed to observe fundamental justice and PBC policy by, among other reasons, not granting his adjournment request and by referring to Dr. Leo's 2018 and Dr. Beaulieu's 2016 psychological assessments.

[40] On March 5, 2019, the Appeal Division affirmed the PBC's decision to deny Mr. Kim day and full parole.

E. The psychologist's amended assessment report

[41] On October 30, 2018, which was one week after the parole hearing, Dr. Leo issued an amended version of her assessment report. She testified that she prepared it after discussing the matter with CSC's Chief, Mental Health Services (Dr. François Querry), who was her supervisor, and with the Chief Psychologist at La Macaza Institution to ensure that the amended version was compliant with CD-081. The changes basically consisted of

replacing any references to “complaints and grievances” with the term “expressions of dissatisfaction”.

[42] Notably, the old references were not deleted in the amended report. The paragraphs at issue were retained but then followed by the amended versions in capital letters. This accords with the amendment procedure set out in Annex B of CD-701, Paragraph 9, which stipulates that if the proposed corrections are accepted, the report’s original information should not be changed. The corrected information must be inserted in capital letters directly below the original. A note must also be added at the beginning of the report explaining the changes that have been made.

[43] Accordingly, the following paragraphs were added in capital letters at the top of the report and under each of the paragraphs I excerpted earlier. I have highlighted the portions that were altered:

The addition at the top of the report:

CORRECTIONS MADE TO REPORT PSYCHOLOGICAL/PBC (2018-08-13) ON 2018-10-30 AT THE REQUEST OF THE INMATE. ACCORDING TO CO 081 PARAGRAPH 51, CERTAIN INFORMATION IN THE SECTIONS "INSTITUTIONAL PERFORMANCE", "CLINICAL IMPRESSIONS", AND "INSTRUMENT RESULTS AND RISK ASSESSMENT" SHOULD NOT HAVE BEEN SHARED IN THE REPORT AND SHOULD BE RETRACTED. MODIFICATIONS MADE BY VANESSA LEO (PS~3) AND APPROVED BY FRANCOIS QUERRY (PS-4) ACCORDING TO CD 701 ANNEXE B. IT SHOULD BE NOTED THAT THESE MODIFICATIONS DO NOT ALTER OUR RISK ASSESSMENT OR OUR INITIAL RECOMMENDATIONS.

At page 8 of the original report:

THE LAST 3 SENTENCES OF THE PREVIOUS PARAGRAH SHOULD BE RETRACTED. WE SHOULD READ THE FOLLOWING INSTEAD: IT IS TO BE NOTED THAT MR. KIM **HAS FREQUENTLY CONVEYED HIS DISSATISFACTION WITH PROFESSIONAL OPINIONS EXPRESSED IN HIS FILE, REPORTS WRITTEN ABOUT HIM, OR DECISIONS MADE CONCERNING HIM. HE TENDS TO REFER HIMSELF DIRECTLY TO THE WARDEN WHEN EXPRESSING HIS DISSATISFACTION** RATHER THAN ADDRESSING **HIMSELF** TO THE APPROPRIATE STAFF MEMBERS AS REQUESTED. DURING OUR INTERVIEW, HE EXPLAINED THAT IT IS BECAUSE THEY ARE DECISIONS INVOLVING THE WARDEN AND THAT HE HAS NEVER BEEN REPRIMANDED **FOR DOING SO**.

At page 9 of the original report:

THE FOURTH SENTENCE IN THE PREVIOUS PARAGRAPH SHOULD BE RETRACTED AND SHOULD READ AS FOLLOWS INSTEAD: HIS NARCISSISM IS EVIDENCED BY HIS **FREQUENT DISSATISFACTION WITH PROFESSIONAL OPINIONS EXPRESSED IN HIS FILE, REPORTS WRITTEN ABOUT HIM, OR DECISIONS MADE CONCERNING HIM.**

THE SEVENTH SENTENCE OF THE PREVIOUS PARAGRAPH SHOULD BE RETRACTED AND SHOULD READ AS FOLLOWS INSTEAD: IT IS RATHER STRIKING WHEN READING THROUGH HIS FILE **TO OBSERVE THE AMOUNT OF TIME AND ENERGY SPENT CHALLENGING PROFESSIONAL OPINIONS EXPRESSED IN HIS FILE OR REPORTS WRITTEN ABOUT HIM, WHICH IS NOT CONTRIBUTING TOWARDS REDUCING HIS LEVEL OF RISK.**

THE SECOND TO LAST SENTENCE OF THE PREVIOUS PARAGRAPH SHOULD BE RETRACTED AND SHOULD READ AS FOLLOWS INSTEAD: IN OUR OPINION, HIS REPEATED **CHALLENGING OF PROFESSIONAL OPINIONS EXPRESSED IN HIS FILE OR REPORTS WRITTEN ABOUT HIM** ARE A WAY FOR HIM TO AVOID ENGAGING IN ANY SERIOUS INTROSPECTION REGARDING HIS CONTRIBUTING FACTORS.

At pages 10–11 of the original report:

THE PREVIOUS PARAGRAPH SHOULD BE RETRACTED AND SHOULD READ AS FOLLOWS INSTEAD: IF WE TAKE INTO ACCOUNT THE VARIOUS DYNAMIC FACTORS THAT MAY HAVE AN IMPACT ON THE RISK OF SEXUAL RECIDIVISM, WE NOTE THE FOLLOWING AREAS OF CONCERN IN PARTICULAR: LACK OF SOCIAL INFLUENCES AT THE MOMENT (NO CONTACT WITH ANYONE ASIDE FROM HIS SISTER ON OCCASION), INABILITY TO MAINTAIN A STABLE RELATIONSHIP, A CERTAIN HOSTILITY TOWARDS WOMEN, CERTAIN SOCIAL REJECTION/SOLITUDE, A LACK OF CONCERN/EMPATHY FOR OTHERS, CERTAIN DIFFICULTIES WITH PROBLEM SOLVING SKILLS, CERTAIN NEGATIVE EMOTIONS/HOSTILITY (**FREQUENT DISSATISFACTION WITH PROFESSIONAL OPINIONS EXPRESSED IN HIS FILE, REPORTS WRITTEN ABOUT HIM, OR DECISIONS MADE CONCERNING HIM**), A HISTORY SUGGESTIVE OF SEXUAL PREOCCUPATIONS, A HISTORY OF USING SEX AS A COPING MECHANISM, INDICATIONS OF DEVIANT SEXUAL INTERESTS GIVEN THE NUMBER OF VICTIMS AND THEIR AGE, AND A POSSIBLE LACK OF COOPERATION IN THE CONTEXT OF SUPERVISION.

[sic throughout]

[44] Dr. Leo testified that she was satisfied with the amended terminology. It reflected the meaning of the original statements. She was highlighting an aspect of Mr. Kim's personality and his file that was clinically relevant to understanding his dynamic and his way of functioning.

[45] These amendments were not what Mr. Kim was seeking in his file correction request. CD-701 provides that, where correction requests are denied, the staff member responsible for the report is to provide reasons for the denial and a memo should be placed on the amended report to indicate that a correction request was denied (Annex B, Paragraph 15). Dr. Leo acknowledged that she did not provide reasons to Mr. Kim and that no explanatory memo was added to her amended report. Her understanding was that her supervisor, Dr. Querry, was to provide the reasons. She acknowledged that the absence of a memo in the amended report did not comply with the directive.

[46] Mr. Kim was not at all satisfied with the amended report. He viewed the new terminology as merely window-dressing by Dr. Leo to comply with CD-701 while still relying in her conclusions on the unacceptable references to his use of the complaints and grievances process, which he viewed as inextricably connected to the Human Rights Complaints. Besides, the original references were still there for all to see. They constituted a "roadmap" from which all CSC staff could draw adverse inferences about him. Mr. Kim was even concerned that the more expansive language in the amended report, referring to his "dissatisfaction," had the effect of broadening the "attack" on his engaging in any type of dissent or expression of dissatisfaction with CSC.

[47] On October 31, 2018, Mr. Kim filed an addendum to his grievance of August 18, 2018, alleging that, even with the amendments, Dr. Leo's conclusions were still based on his use of the complaints and grievance system. He maintained that Dr. Leo was trying to harass him and suppress him from filing complaints and expressing himself. He alleged she was biased.

[48] On November 4, 2018, Mr. Kim filed a similarly argued complaint against La Macaza Institution regarding Dr. Leo's amended report. He asked that her report be removed from

his files. The complaint was denied, and Mr. Kim filed a final level grievance in response. The grievance was denied on March 12, 2020, by the Special Advisor to the Commissioner.

[49] On November 9, 2018, Mr. Kim also filed a harassment and discrimination grievance (VR30R00053476) against Dr. Leo's supervisor, Dr. Querry, for having approved Dr. Leo's amended report. Mr. Kim maintained that the amendments were inadequate and again requested that Dr. Leo's amended report be removed from his file and that he be awarded \$1,000 per day since the date of her original report (August 13, 2018).

[50] On February 6, 2020, CSC's Assistant Commissioner, Policy issued a final level grievance response to the four grievances regarding Dr. Leo's report, which as a reminder were filed on August 14, 18, and 23, 2018, and on November 9, 2018, and about which Mr. Kim had also submitted a total of 10 addenda. The CSC response denied the grievances, though it did remind the Institutional Head of La Macaza Institution to ensure that the prescribed procedures when responding to harassment and discrimination grievances are appropriately followed, as set out in CD-081 and related guidelines.

[51] On March 3, 2020, Mr. Kim filed the present human rights complaint with the Commission. He noted in his complaint that he is Korean, but alleged discrimination on the grounds of disability and religion. He submitted that CSC retaliated against him for the Human Rights Complaints, which were based on those prohibited grounds of discrimination. In May 2022, the Commission requested the Tribunal to institute an inquiry into the complaint pursuant to s. 49 of the CHRA.

V. ANALYSIS

[52] Section 14.1 of the CHRA provides that it is a discriminatory practice for a person against whom a complaint has been filed under Part III of the CHRA, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[53] Accordingly, complainants must prove on a balance of probabilities that:

- 1) they previously filed a human rights complaint under the CHRA;
- 2) they experienced adverse treatment following the filing of their complaint from the person they filed the complaint against or anyone acting on their behalf; and
- 3) the human rights complaint was a factor in the adverse treatment.

[54] With respect to the third element, a complainant must establish a connection between the filing of a complaint and the adverse treatment following the complaint. If this connection is not demonstrated in a complete and sufficient manner, the complainant will not have met the burden of proof. A causal connection is not required, and the previous complaint need not be the sole reason for the adverse treatment. Proof of intention to retaliate is also not necessary, and the Tribunal may rely on a complainant's reasonable perception that the act was retaliation for filing a human rights complaint (see *Iron v. Canoe Lake Cree First Nation*, 2024 CHRT 81 at paras 18–20). Respondents cannot be held accountable for a complainant's unreasonable anxiety or undue reaction (*Wong v. Royal Bank of Canada*, 2001 CanLII 8499 (CHRT) at para 219; *Beattie v. Indigenous and Northern Affairs Canada*, 2019 CHRT 45 at para 160).

[55] I note that the case law in relation to s. 14.1 has referred from time to time to the notion of a complainant having to establish a *prima facie* case of retaliation. These references are likely a legacy of how human rights cases were analyzed prior to the Supreme Court of Canada's decision in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39. As the Tribunal observed in *Emmett v. Canada Revenue Agency*, 2018 CHRT 23 [Emmett] at paras 52–68, the Supreme Court rejected the narrow interpretation of the requisite burden of proof that prevailed to some extent at the time, which held that a human rights tribunal cannot take into account a respondent's explanation in determining whether a complainant has made their threshold (or *prima facie*) case of discrimination.

[56] All the evidence must be considered when determining if a human rights complainant has met their burden of proof. Instead of addressing the parties' submissions on discrimination in silos, as the term *prima facie* was applied in the past, the parties' evidence

must be looked at together as a whole in assessing whether complainants have met their burden.

[57] Although *Emmett* dealt with the discriminatory practices set out in ss. 7 and 10 of the CHRA, its findings should apply equally to other discriminatory practices, including that of retaliation found in s. 14.1.

[58] I will now assess whether Mr. Kim has proven on a balance of probabilities the three required elements to make a case of retaliation.

A. Did Mr. Kim previously file a human rights complaint?

[59] There is no dispute that Mr. Kim had already filed with the Commission the Human Rights Complaints when Dr. Leo issued her original report in August 2018.

B. Did Mr. Kim experience any adverse treatment?

[60] The Federal Court of Appeal has defined the notion of adverse treatment as “something harmful, hurtful or hostile” (*Tahmourpour v. Canada (Attorney General)*, 2010 FCA 192 at para 12), though the Tribunal has held that a fairly broad and permissive definition of “adverse” would still be consistent with the scheme of the CHRA (*Kelsh v. Canadian Pacific Railway*, 2019 CHRT 51 at para 112).

[61] Mr. Kim claimed that Dr. Leo’s report raised his risk-level assessment. He alleged that multiple forms of adverse treatment arose from the increased risk level, including that it interfered with his pathway to a less structured incarceration environment. He also claimed that the increased risk level would require that he repeat certain programs and that its ongoing presence in his file influences future decisions about his incarceration such as any new parole requests. CSC takes issue with these claims, arguing as a basic premise that Dr. Leo’s report did not in fact raise his risk-level assessment when her and Dr. Beaulieu’s conclusions are closely compared.

[62] However, the debate over these questions ignores the core of Mr. Kim’s complaint, which is the impact that Dr. Leo’s report had on his efforts at gaining parole in 2018. In this

context, as I elaborate below, I find that Mr. Kim has established that Dr. Leo's report is "something harmful" and constitutes adverse treatment. Having made this finding, discussion about all the other alleged impacts is moot.

[63] The PBC denied Mr. Kim's parole request in 2018, and the Appeal Board upheld the finding. The PBC made its decision after asking Mr. Kim's CMT to provide an update on his file, which Ms. Meloche presented at the PBC hearing. The CMT maintained its existing recommendation that it would be premature to grant any form of release to Mr. Kim, as the risk of recidivism appeared to be unacceptable. The update was based largely on Dr. Leo's report and highlighted her assessment that the supervision priority level of Mr. Kim remained at a moderate-high level. The PBC panel referred to Dr. Leo's report even though the panel stated that it was not bound by the report's conclusions.

[64] CSC argues that a report not recommending parole, as Mr. Kim's 2014 and 2016 reports had also concluded, does not constitute adverse treatment. There was no substantive change in the 2018 report, and CSC submits that it is not any more unfair to Mr. Kim than the prior reports. Dr. Leo was simply doing what she was asked—prepare a psychological assessment of Mr. Kim. Just because she reached an opinion with which he disagrees does not automatically mean that it is adverse treatment. Whatever the influence it may have had on the PBC panel's decision, the PBC is an independent tribunal, and CSC cannot be held liable for the PBC's decisions. Moreover, it is not my role to sit in review of the PBC's findings.

[65] However, this is not just a matter of Mr. Kim disagreeing with Dr. Leo's findings. Her recommendation, even though not binding on the PBC, nonetheless did not assist him in his efforts to gain parole. Mr. Kim had hoped that the report would be more positive, which could have influenced the outcome at the PBC in his favour. Even if Dr. Leo's report is essentially no different than Dr. Beaulieu's prior reports, it did not help his cause. As such, his hopes for a better outcome were impacted. In this sense, the report was harmful to his chances of getting a positive answer from the PBC. What differed from the prior parole requests was that his alleged discrimination was a factor in the negative report.

[66] The situation is somewhat analogous to an employment process where someone makes two attempts to get hired. The first time around, he is not hired in part because of a negative reference. When the employee tries again, he again gets a negative reference and is not selected due in part to the bad reference. The second failure to be hired is an adverse outcome for him, but what has changed is that he now alleges that discriminatory grounds were factors in the negative reference. This renders it a human rights matter that the Tribunal can address.

[67] Having determined that Dr. Leo's report did have an adverse effect for Mr. Kim, I must now consider if the Human Rights Complaints were factors in her report's findings.

C. Were the Human Rights Complaints factors in Dr. Leo's findings?

[68] No. As I explain below, there is no evidence that Dr. Leo had any knowledge of the Human Rights Complaints when she made her report and they were not factors in her report's findings. In addition, Mr. Kim's perception that they were factors was not reasonable.

(i) Dr. Leo had no knowledge of the Human Rights Complaints

[69] Dr. Leo testified that she did not know anything about Mr. Kim's Human Rights Complaints while preparing the report and, in particular, that Mr. Kim did not make any mention of them during his interview with her. Mr. Kim's account in his testimony about what was said during the interview differed significantly from Dr. Leo's recollection on numerous details. He claims that Dr. Leo told him that he could take a "pill" to deal with memory loss, that no medical records documenting his memory loss exist, and that taxpayers' money was being wasted with his filing of grievances. Dr. Leo denies these allegations.

[70] However, this divergence in their evidence has no bearing on the core issue of whether Dr. Leo knew about the Human Rights Complaints. Mr. Kim acknowledged in cross-examination that he never brought up the Human Rights Complaints at the interview. Although he made sure to write detailed notes about the interview right after it ended, he could not recall if he had said anything about complaints of any sort regarding his religion or his shoulder injury. Basically, Mr. Kim never contradicted Dr. Leo's evidence that he never

told her about his Human Rights Complaints. I am therefore satisfied that the Human Rights Complaints were not brought up at the interview.

[71] Could Dr. Leo have known about the Human Rights Complaints from other sources? Dr. Leo states in her report that, to produce it, she met with Mr. Kim via videoconference, she contacted his IPO, and she “read all the information contained in his institutional file”. Mr. Kim contends that Dr. Leo could have learned about his Human Rights Complaints from the institutional file.

[72] Dr. Leo testified that the institutional file to which she referred consists of the online Offender Management System (OMS) and Mr. Kim’s electronic medical file. She never accessed Mr. Kim’s Case Management File, which is in paper form. Christine Tremblay, Acting Deputy Warden at La Macaza Institution, testified that the Case Management File is kept at the institution’s main office, and she confirmed that, according to the sign-out sheet in the file, Dr. Leo had never accessed it. Ms. Tremblay also testified that inmate complaints and grievances submitted pursuant to the process set out in s. 90 of the CCRA are not freely accessible by CSC staff. They are filed in a separate database called Offender Redress, access to which is restricted to employees in the Offender Redress section, of which Dr. Leo is not a part. Consequently, Dr. Leo did not have access to those records.

[73] Thus, the part of the OMS that Dr. Leo consulted and the medical file did not contain actual copies of the Human Rights Complaints.

[74] The OMS file was voluminous. From the multitude of documents in it, there were only the three following obscure references to the Human Rights Complaints:

- 1) March 29, 2016 - A one-page handwritten Inmate’s Request form from Mr. Kim to the warden asking the warden in English why he had been designated a “Chomeur Volontaire” (or “voluntary unemployed”) in his online file, arguing that this could impact his “present case before the Human Rights Commission of Canada File 20141166 for which CSC wants to settle.” Mr. Kim added on the form that he would be notifying the “Human Rights Commission Investigator” about this development.

- 2) April 1, 2016 – a two-page typed Rapport des registres entrés par ordre chronologique (which is a daily log of staff interactions with inmates) stating in French that the correctional team had informed Mr. Kim that someone named “Mr. Hurpin” from “human rights” (“droit de la personne”) had emailed a correctional officer asking that Mr. Kim call him back. The note also says that Mr. Kim asked the correctional team to verify the status of a document he sent to Mr. Hurpin and that a verification with Canada Post confirmed that the document would be arriving a few days later.
- 3) May 5, 2016 – a two-page typed Rapport des registres entrés par ordre chronologique, completed by several correctional officers, which documents several interactions and events involving Mr. Kim. One of those interactions described in French at the last paragraph of the first page refers to a call received from a “Human Rights Commission” (“Commission des droits de la personne”) mediator. The observation also notes that Mr. Kim had asked to call the mediator back from the correctional officer’s office. The mediator asked to speak to the correctional officer after the call and confirmed that she would be sending a mediation agreement form for Mr. Kim to sign.

[75] As is evident, these three entries are barely indicative of any business Mr. Kim had with the Commission and certainly provide no details about the Human Rights Complaints.

[76] Aside from these types of daily log entries, the OMS contained well over 100 memorandum notes (“memos”) written by CSC staff, including the warden, referring to inmate requests, complaints, and grievances that Mr. Kim had filed. It was Dr. Leo’s review of these memos that led to her observations about his excessive filing of complaints and grievances. Dr. Leo explained that by the term “grievances and complaints” in her report, she was referring to the memos documenting his complaints and dissatisfaction with how things relating to him were being handled and which she coined as “complaints and grievances to his IPO and warden”.

[77] Dr. Leo testified that despite her statement in the report that she had reviewed “all” the information in Mr. Kim’s file, she did not read each and every memo, inmate request,

and logbook entry in the time that she devoted to preparing this report. She skimmed most of those types of documents. This is understandable given the sheer volume of such documents in the file.

[78] Dr. Leo explained that by her statement she meant that she consulted all the relevant risk assessment information in the OMS. She focused on documents such as Mr. Kim's correctional plans, criminal profile, prior risk assessments, and program reports. From the medical file, she looked for any medical issues or mental health assessments.

[79] Among the memos in the OMS was one dated January 24, 2014, dealing with his complaint about the lack of light-duty jobs for anglophones like him in which he could be accommodated for his disability and another dated November 5, 2014, about Mr. Kim's request for books relating to his Wicca faith. The subject matter of these requests would later form the basis for the Human Rights Complaints. Dr. Leo testified that she does not recall reading these memos. They again are two among the 100-plus memos, and there is no specific reference in these memos to any human rights complaint. Both predate the filing of the Human Rights Complaints. Even if Dr. Leo has read these two memos, she clearly could not have learned of the Human Rights Complaints from them. Nothing connects either of these two memos to the OMS's file's three obscure references to the Human Rights Complaints that I highlighted earlier.

[80] Mr. Kim stressed in his final submissions that Dr. Leo wrote in her report that she read "all the information in his institutional file". She testified that she stood by what she wrote in her report. Mr. Kim submits that she is now contradicting herself in testifying that her review of his file was partial. He suspects that this change came about because CSC realized that the two log entries would come to light following the disclosure order that I issued on March 21, 2023 (2023 CHRT 12).

[81] He also points to the fact that, in CSC's initial Statement of Particulars that it filed in November 2022, it alleged that Dr. Leo's references in her report on their face related to the "internal inmate complaint and grievance process". CSC later amended its Statement of Particulars, in July 2023, after my disclosure order, to say that Dr. Leo was referring to "the internal complaints that the Complainant addressed directly to the warden". Mr. Kim argues

that CSC now knew that it would be revealed that there was mention of the Human Rights Complaints in the OMS that Dr. Leo consulted, so the Statement of Particulars was amended to suggest that she was only referring to the memo material and not the other information such as the log entries. He suggests this calls into question Dr. Leo's credibility.

[82] I am not convinced. The Tribunal bases its findings on the evidence before it, not what a party may have alleged in its Statement of Particulars. Dr. Leo's evidence was clear and convincing that she based her remarks on the excessive number of memos, which far exceeded the three obscure and indirect references to the Human Rights Complaints found elsewhere in the file like proverbial needles in a haystack. I also note that the amendments to CSC's Statement of Particulars also coincide roughly with the period in which Dr. Leo testified that she was first contacted by CSC counsel and learned about the present complaint. It was also around the date when CSC filed the summary of Dr. Leo's anticipated testimony (i.e., her will-say statement).

[83] Overall, I am not persuaded by Mr. Kim's argument. Dr. Leo's explanation that she only skimmed certain types of documents in the OMS file is entirely logical given the large number of them in the file.

[84] I am therefore satisfied that Dr. Leo did not read the minute references to his Human Rights Complaints in the two logbook entries and one inmate request among the reams of documents found in his OMS file. Her explanation is entirely reasonable.

[85] Moreover, it is evident from the context of the references to "complaints and grievances" in Dr. Leo's report that they do not relate to his Human Rights Complaints but rather to the dozens of general inmate complaints that Dr. Leo observed while skimming through the OMS. As mentioned, there were well over 100 memos documenting his complaints in Mr. Kim's file, and Dr. Leo testified that in her experience she had never seen so many such memos in an inmate's file before. She described the volume as "striking". They demonstrated such a high level of dissatisfaction by Mr. Kim that it became clinically relevant in her assessment of his dynamic and personality features. This observation therefore became important to mention in her report.

[86] Dr. Leo cited in her report examples of the complaints that she saw when skimming the OMS file, including memos prepared by the warden in response to Mr. Kim's requests for a single cell, a gluten-free diet, and English movie channels on the TV. She noted in the report that Mr. Kim was sending his requests directly to the warden, rather than filing them through the ordinary channel to supervisors. CSC filed in evidence some other examples of memos in the OMS file regarding complaints made to the warden. They include complaints that his cell was left unlocked after a plumber fixed his plumbing, that he was being bothered by other inmates in the library, that he was having computer issues, that he required new shoe insoles, and that the library's printer was not functioning.

[87] As Dr. Leo explained in her report, she found that Mr. Kim's repeated filing of complaints and grievances, which he addressed directly to the warden rather than appropriate staff members, demonstrated Mr. Kim's narcissism. She concluded that these repeated complaints and requests were a way for him to avoid engaging in any serious introspection.

[88] Interestingly, other psychologists who had previously assessed Mr. Kim had also commented on his filing of complaints and grievances. Dr. Beaulieu noted in his 2014 report that Mr. Kim had a history of filing "numerous grievances and complaints", which Dr. Beaulieu referred to as a tendency that could impose a burden on his case management team while complicating the management of his sentence. The psychologist who assessed Mr. Kim in the context of his dangerous offender proceedings in 1999, Dr. David Lawson, wrote that Mr. Kim had repeatedly made formal complaints to authorities including the Supreme Court, the Police Complaints Commission, the Director of Operations, and the warden, and mentioned that Mr. Kim had filed a "plethora of notices of motion" during his trial. Dr. Lawson concluded that Mr. Kim is prepared to cooperate with authority as long as it suits his purposes but becomes defiant and demanding when thwarted in his own agenda.

[89] These observations further support Dr. Leo's claim that in referring to Mr. Kim's complaints and grievances, she was not alluding to the Human Rights Complaints as such (of which she had no knowledge) but generally to his reluctance to engage in any introspection and deal with his narcissistic traits.

[90] Furthermore, from the last of the passages from Dr. Leo's report that I excerpted earlier in this decision, it is evident that her reference to his excessive use of complaints and grievances is really just one of many considerations that she took into account as dynamic factors that may have an impact of risk of sexual recidivism. The list included the lack of social influences, inability to maintain stable relationships, hostility towards women, lack of concern or empathy, difficulties with problem-solving skills, negative emotions or hostility, deviant sexual interest, a lack of cooperation in the context of supervision, among other items.

[91] Indeed, Dr. Leo testified that even if she had not seen the more than 100 memos in the OMS file, her assessment of his risk level would have been unaffected. Her conclusions in the report to be put before the PBC would have been the same.

[92] Mr. Kim put much emphasis on the fact that the first version of Dr. Leo's report did not conform with the requirements of Paragraph 51, by referring to his use of CSC's offender complaint and grievance process. As I've mentioned, Mr. Kim filed grievances about that breach of Paragraph 51 and made a correction request, which CSC did indeed act upon. The report was amended, though not to Mr. Kim's satisfaction. In fact, he considers the modified language to be even worse because the notion of his "frequent dissatisfaction" can be interpreted more broadly than just "numerous complaints and grievances".

[93] Dr. Leo testified that although she was familiar with CD-081 when she wrote the report, she was unaware of the provision in Paragraph 51 preventing any mention of an offender's use of the CSC complaint and grievance process outside of such processes. She learned of it following Mr. Kim's grievance and correction request.

[94] Mr. Kim also takes issue with the fact that the corrected version of the report did not delete the old text that referred to the complaints and grievances. It merely supplemented the new corrected text. He notes that the acting manager of the Offender Redress Division exchanged emails with Dr. Leo starting in October 2019, asking whether the old text could be redacted entirely. Dr. Leo observed in response that her approach was consistent with the requirements of the psychologists' professional order. Dr. Leo sought additional advice afterwards, which confirmed that she could not redact the old text. She shared this

information with the acting manager in February 2020. As I already mentioned, this was also consistent with the requirements of CD-701, Annex B, Paragraph 9.

[95] Mr. Kim complained that these emails were only disclosed after my 2023 disclosure order and that I should draw an adverse inference of some sort from this. I fail to see how or why. This discussion about what is required to be retained or deleted from the original report has no bearing on whether Dr. Leo's references were to the Human Rights Complaints.

[96] Mr. Kim also raises the fact that Dr. Leo took more than the "normal" 30 days to produce the corrected report, which meant that it was not available at the PBC hearing. She did not ask the PBC for an extension. He contends that this demonstrates that Dr. Leo wanted the report's original text to be put before the PBC and consequently that she was biased against him for having filed the Human Rights Complaints. Dr. Leo explained, however, that she could not prepare the corrected report by the 30-day deadline and was under the mistaken impression that her supervisor, Dr. Querry, would ask the PBC for a 30-day extension to file it. In the end, no one ended up asking for an extension. There is no reason to doubt this explanation. It was the PBC panel that ultimately decided to reject Mr. Kim's extension request and not to wait for the revised report.

[97] Moreover, all these concerns about the corrected version of the report are not relevant to the issue at hand, which is whether Dr. Leo's reference to complaints and grievances in the report that went before the PBC was in relation to the Human Rights Complaints. I have already determined that it was not. Even if the amended term ("frequent dissatisfaction") has a broader scope that could encompass complaints filed with the Commission, there is still no evidence that his Human Rights Complaints were factors in the decision to adopt this term. Mr. Kim points out that his 8-page File Correction Request that he presented on August 27, 2018, contained an allegation that the "batch of complaints" to which Dr. Leo referred in her report involved "discrimination complaints" that eventually made their way to the Commission, for which he claimed CSC was trying to punish him. Mr. Kim suggests that the fact that this reference was made in the document that caused Dr. Leo to issue the corrected version of the report means that she was alluding to the Human Rights Complaints when she adopted the amended term.

[98] I am not persuaded by this argument. This statement in the File Correction Request is again only an oblique reference to the Human Rights Complaints. The issue that prompted the correction to the report was not this mention of the Commission but the fact that she referred to the inmate complaints and grievance process, which was in breach of Paragraph 51. There is no evidence that Dr. Leo took any specific notice or specifically was addressing the Human Rights Complaints when she made the corrections. In fact, she testified that she only learned of the Human Rights Complaints about a year before this hearing, when CSC contacted her as a potential witness in this case.

(ii) Mr. Kim's perception of retaliation was not reasonable

[99] Although Dr. Leo did not have any actual knowledge of the Human Rights Complaints, there need not be evidence of subjective knowledge or intent on the part of an alleged wrongdoer to be able to make out a case of retaliation. To make their case, complainants need only prove that they reasonably perceive that an act was in retaliation for filing a human rights complaint. Was Mr. Kim's perception reasonable?

[100] Mr. Kim testified repeatedly that he "felt" Dr. Leo's references to "complaints" were about his Human Rights Complaints and that, through her report, CSC was trying to compel him to abandon the ongoing 2017 Complaint and not file any more. I do not find this perception to be reasonable.

[101] CSC points out that, in the complaint form for the present complaint, Mr. Kim alleged that his complaint "stems" from Dr. Leo's psychological assessment in which she raised his risk-level assessment scoring by drawing adverse inferences from his use of the CSC grievance system, "which included [his] human rights complaints and grievances that evolved into" the Human Rights Complaints. He claims that they are "inextricably linked". Similarly, in his grievance of August 18, 2018, regarding Dr. Leo's report, Mr. Kim took issue with the fact that she referred to his discrimination complaint that eventually made its way to the Commission.

[102] CSC points out that retaliation complaints under s. 14.1 of the CHRA can only be made in relation to human rights complaints that were actually filed with the Commission

under Part III of the CHRA, not in relation to complaints that were made using other processes before a Commission complaint was filed.

[103] It is Mr. Kim's understanding that, under s. 41(1) of the CHRA, a complainant must exhaust all other complaints and grievances processes before being able to file a human rights complaint with the Commission. Thus, even if the reference in Dr. Leo's report did not explicitly mention the Human Rights Complaints and was only referring to CSC's complaint and grievance process, the fact that he was effectively required to use that process before filing a human rights complaint with the Commission meant that he was justified in feeling that Dr. Leo's comments were intended to deter him from filing any further human rights complaints. If he were to do so again, he would face further retribution from CSC. Mr. Kim added that, when he filed the Human Rights Complaints, he was counting on the protection against retaliation that s. 14.1 of the CHRA provided, particularly because, as a racialized English-speaking person of Korean origin, he felt vulnerable being incarcerated in an institution staffed almost entirely by "Caucasian Francophones".

[104] Section 41(1) of the CHRA, however, does not oblige complainants to exhaust alternate grievance processes before filing their complaint. The Commission may opt at its discretion not to deal with a complaint if the other recourses were not pursued. Aside from Mr. Kim's testimony about his understanding, there is no independent evidence that the Commission ever told Mr. Kim that it would never deal with his complaints if he did not first exhaust other complaints and grievances. So, it is inaccurate to suggest that Dr. Leo's reference to the CSC complaints and grievance system is by necessary implication an allusion to the filing of human rights complaints.

[105] Nevertheless, even if Mr. Kim's claim of a link between the CSC complaints and grievance process and the filing of human rights complaints is accepted, and even when taking into account his personal characteristics, his reliance on this notion in the facts of this case is not reasonable.

[106] Mr. Kim's subjective belief that the report's references to "complaints and grievances" encompass the Human Rights Complaints ignores the context of Dr. Leo's statement entirely. It is clear from these passages, which I excerpted earlier in this decision, that no

allegations of discrimination, let alone the Human Rights Complaints, were being highlighted. The text preceding and following the “complaints and grievances” references explains clearly and objectively to any reader that the comments are about the observed narcissistic traits in Mr. Kim’s character. The passages refer to numerous other examples of this characteristic that have nothing to do with complaints or grievances, let alone the Human Rights Complaints.

[107] Mr. Kim testified that he felt that Dr. Leo’s report clearly stated his use of complaints and grievances demonstrated he was not being accountable for his crimes and thus could not rehabilitate himself. He assumed that she was referring to all his complaints, including the Human Rights Complaints, based on her statement that she had read all his file. He felt that if other CSC staff saw him continue to pursue the 2017 Complaint that was still pending, it would further reinforce their perception that he lacked accountability and was unwilling to rehabilitate himself. However, Mr. Kim later acknowledged in cross-examination that, even after reading Dr. Leo’s comments, he did not feel deterred from going forward with the 2017 Complaint. He also conceded that he freely agreed to settle that complaint in 2019.

[108] Mr. Kim also alleges that, even if Dr. Leo and CSC did not appreciate his perception that the references to complaints and grievances related to his Human Rights Complaints, CSC learned of his perception once he alleged retaliation in his harassment grievances against Dr. Leo and others. At this point, CSC should have analyzed his allegations as a matter of retaliation under s. 14.1 and then asked him for more details about the claim.

[109] However, a decision by a respondent not to deal with a retaliation allegation does not in itself constitute retaliation to a human rights complaint filed with the Commission. If a respondent believes there is no merit in such an allegation, it is not under any duty to respond to it. Besides, at no time in those grievances do the retaliation allegations refer specifically to the Human Rights Complaints; rather, they refer to the allegations made in relation to “complaints and grievances”.

[110] Mr. Kim entered into evidence a report from the Standing Senate Committee on Human Rights entitled [Human Rights of Federally-Sentenced Persons](https://sencanada.ca/en/info-page/parl-43-2/ridr-federally-sentenced-persons/) (<https://sencanada.ca/en/info-page/parl-43-2/ridr-federally-sentenced-persons/>) from June

2021, which referred to witness accounts from federally sentenced persons about intimidation and retaliation that they experienced for filing grievances and complaints. Doubtless those accounts are genuine.

[111] However, the fact remains that, in the context of Dr. Leo's report, the reference to his complaints and grievances was not a statement of intimidation or retaliation but rather just an observation of Mr. Kim's state of mind. The fact is that Mr. Kim has had no problem filing complaints and grievances at least since 1999 when Dr. Lawson first commented on his tendency to file many. As for Mr. Kim's claim that he "felt" somehow intimidated from pursuing other complaints, Mr. Kim acknowledged that, in the years following Dr. Leo's report, he has continued to present requests, complaints, and grievances of all sorts to CSC.

[112] In sum, Mr. Kim has not proven on a balance of probabilities that the references to "complaints and grievances" or his "frequent dissatisfaction" were made in retaliation of his Human Rights Complaints or that it was reasonable for him to perceive them as such. He may have felt anxiety relating to Dr. Leo's comments about his propensity to file complaints and grievances, but, viewed objectively, those comments were unrelated to his Human Rights Complaints, and it is unreasonable to associate the comments with those complaints.

[113] Mr. Kim clearly disagrees with Dr. Leo's findings and recommendations, and he has concerns about her compliance with the CCRA, its regulations, and the applicable Commissioner's directives. But it is not my responsibility to address these issues. The only matter before me is whether these references in Dr. Leo's report constitute retaliation for his Human Rights Complaints. The answer is no.

VI. ORDER

[114] The complaint has not been substantiated and is dismissed.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, Ontario
May 12, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-2845-22

Style of Cause: Frank Kim v. Correctional Service Canada

Decision of the Tribunal Dated: May 12, 2025

Date and Place of Hearing: May 6 – 10, 2024

July 17, 2024

By Videoconference

Appearances:

Frank Kim, himself

Erin Morgan and Camille Rochon, for the Respondent