

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 88

Date: September 4, 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

I. OVERVIEW

[1] The hearing of this matter is ongoing. Prior to the resumption of the hearing on June 16, 2025, at a case management conference call (CMCC) held on June 5, 2025, Mr. Richards made a request to add a witness named Zya Brown, a filmmaker and community activist who works with Black inmates through research, theatre programs, and advocacy. Mr. Richards said that he removed Ms. Brown from his list of proposed witnesses because he expected that two other inmates, namely Mr. Farrier and Mr. Williams, would be allowed to testify. In *Richards vs Correctional Service Canada*, 2025 CHRT 57, I allowed CSC's motion to exclude Mr. Farrier and Mr. Williams' proposed evidence [the "Witness Ruling"].

[2] The Canadian Human Rights Commission ("the Commission") supports Mr. Richards' request. It says adding Ms. Brown would ensure procedural fairness and support the Tribunal's mandate and would not cause delay or prejudice to CSC. CSC opposes the request, arguing that adding Ms. Brown would raise a number of fairness issues, and that any potential probative value is outweighed by its prejudicial effect.

[3] I am dismissing Mr. Richards' request. This ruling also provides direction to the parties regarding the expert witness the Commission intends to call when the hearing resumes on October 6, 2025.

II. REASONS

The proposed evidence

[4] Mr. Richards submitted a 130-page document entitled "Zya Brown's Will-Say". It states that Ms. Brown would testify about her "relationship with Ryan Richards and incidents she was a witness to" and that she "may also speak to her knowledge of other relevant matters". The will-say does not specify which incidents Ms. Brown witnessed, nor what knowledge she has of "relevant matters", or what those matters might be, nor does it make any reference to allegations set out in Mr. Richards' particulars. The rest of the will-say includes biographical notes about Ms. Brown and a description of Think Twice International,

a non-profit organisation that Ms. Brown founded that provides culturally relevant supports to Black and racialised individuals, including those who are incarcerated and reintegrating into the community. It also describes the organisation's role in the Department of Justice's Black Justice Strategy and Youth Justice Strategy and includes statistics about the rates of incarceration of federally sentenced Black and Indigenous and youth inmates. As part of the will-say, Mr. Richards included a copy of the Black Justice Strategy and the report entitled Black Youth and the Criminal Justice System, both of which were co-authored by the Commission's proposed expert witness, Dr. Owusu-Bempah.

REASONS

[5] For many of the same reasons that I declined to hear evidence from Mr. Farrier and Mr. Williams in the Witness Ruling, I am dismissing Mr. Richards' request to add Ms. Brown.

[6] The Tribunal has the discretion to admit evidence that may not be admissible in a court of law (s.50(3)(c) of the *Canadian Human Rights Act*, RSC 1985, c H-6 [the Act]). It must exercise this discretion in a manner that is consistent with the scheme of the Act, and the principles of natural justice, balancing the rights of all parties to a full and fair hearing (*Clegg v. Air Canada*, 2019 CHRT 4 at para 68 [*"Clegg"*]; ss. 48.9(1), 50(1) of the Act). The fact that the Tribunal has considerable latitude in determining what evidence it can admit, and in determining the appropriate weight to give that evidence if admitted, does not mean it is required to admit all evidence that is tendered before it in every case (*Clegg* at para 73).

[7] In determining whether to admit evidence, the Tribunal may consider whether the evidence is relevant; if its admission is consistent with the principles of natural justice and procedural fairness; whether the probative value of the evidence is outweighed by its prejudicial effect; and if there is any bar to the admission of the evidence, including consideration of s. 50(4) and s. 50(5) of the Act (*Clegg* at para 84).

[8] The will-say Mr. Richards provided for Ms. Brown does not comply with Rule 18(1)(e) of the *Canadian Human Rights Tribunal's Rules of Procedure*, 2021 SOR/2021-137 ("Rules of Procedure"), which requires parties to provide a summary of anticipated testimony. The statement does not tell me or the other parties what Ms. Brown would say at a hearing, noting only that she witnessed "incidents" and that she has knowledge of "other

relevant matters”, without providing any further detail. The will-say is general and vague and does not allow me to evaluate whether the proposed evidence will help the Tribunal to evaluate Mr. Richards’ allegations.

[9] Further, I agree with CSC that Mr. Richards’ request is not supported by facts. Contrary to what Mr. Richards now claims, Ms. Brown was not previously on any witness list and was not removed from his list to be replaced by Mr. Williams and Mr. Ferrier. In a December 2023 case management conference call (CMCC), Mr. Richards alluded to a potential witness that could have been Ms. Brown and counsel for the Commission indicated they would assist in finalising Mr. Richards’ witness list. Mr. Richards did not ultimately add Ms. Brown to his list. After he concluded his testimony, Mr. Richards sought to add Mr. Williams and Mr. Farrier, but not because he was replacing Ms. Brown. It is only after I allowed CSC’s motion excluding Mr. Williams and Mr. Farrier as witnesses that Mr. Richards indicated that he wanted to add Ms. Brown. CSC argues that the chronology of these events demonstrates that Mr. Richards is trying to circumvent the Witness Ruling.

[10] While the Commission argues Mr. Richards was self-represented at the time he confirmed his witness list, and was navigating the difficult constraints of incarceration, Mr. Richards had ample opportunity to confirm his proposed evidence, and years to prepare for this hearing. If Ms. Brown was important to his case, he could have included her. Instead, Mr. Richards proposed adding Ms. Brown after I issued the Witness Ruling.

[11] The Commission has not provided any explanation for why Ms. Brown was not added to its own witness list if it now takes the position that she would “contribute meaningful evidence” and “valuable insight”. While Mr. Richards was self-represented when witness lists were finalised, the Commission was not. Further, as both Mr. Richards and the Commission take the position that Ms. Brown was on a previous witness list, this is not a situation where a late-breaking witness suddenly came to light. On the contrary, they argue that she was on a list or discussed as far back as December 2023.

[12] While the Commission says this proposed addition of a witness for Mr. Richards is not an attempt to circumvent the Witness Ruling, I disagree. While making that assertion, the Commission also submits that Ms. Brown’s evidence is “particularly important given the

exclusion of witnesses who might otherwise have supported the Complainant's claims of a pattern of mistreatment".

[13] The Commission argues that Ms. Brown would provide "valuable insight into the broader context in which the Complainant's allegations arise", contribute "meaningful evidence" and "support a more complete understanding of the issues" that is important for the Tribunal in assessing systemic claims of discrimination. But the Commission does not explain how, or in what way she would do so. As the will-say fails to provide a summary of her proposed evidence that would allow me to evaluate its potential value, it is unclear on what basis the Commission makes these claims. Without further context of how it relates to Mr. Richards, any evidence Ms. Brown might give about programs available to Black inmates or experiences of Black inmates is of minimal, if any, value.

[14] I previously found that general evidence of the kind Ms. Brown would presumably give is not necessary for the Tribunal to address allegations of systemic discrimination (Witness Ruling at para 22). Further, the Commission intends to call an expert witness to provide an opinion on the experience of Black federally incarcerated inmates, including conditions of confinement, access to correctional services and correctional outcomes for Black inmates, access to prison services and culturally relevant programming, and security classification. According to the expert report the Commission filed in January 2024, Dr. Owusu-Bempah will also testify about how Mr. Richards' individual experience aligns with the broader experience of Black inmates. The Commission has not argued that its expert's evidence would be contingent on that of Ms. Brown.

[15] Mr. Richards' hearing is not a commission of inquiry into alleged discrimination across the federal correctional system. As I held in the Witness Ruling, the main issues in this case center around Mr. Richards and the alleged discrimination he personally faced (Witness Ruling at para 15). The systemic character of some of the allegations does not absolve the Tribunal of its duty to balance the relevance and potential probative value of the proposed evidence with its possible prejudice (Witness Ruling at para 17).

[16] Neither Mr. Richards nor the Commission have demonstrated that the probative value of Ms. Brown's evidence in determining the central issues in dispute outweighs any

potential prejudice to CSC and to the proceedings, including the impact on hearing time and diversion from the focus of the inquiry.

[17] The Commission submits that there is no prejudice to CSC in allowing Ms. Brown to testify because Mr. Richards' case is not yet closed, and the Commission has not concluded its evidence. It says Ms. Brown's evidence will not delay proceedings, whereas excluding her evidence would risk limiting the Tribunal's understanding of the broader systemic issues raised in this complaint. The Commission maintains that adding one witness is a modest increase compared to CSC's proposed 30 witnesses, and that the addition supports fairness and proportionality, particularly as Mr. Richards is self-represented and the Tribunal must fairly and fully consider allegations of systemic racial discrimination.

[18] I do not accept the Commission's submissions. As CSC argues, the proposed addition of Ms. Brown demonstrates the shifting nature of the allegations raised against CSC and raises other fairness issues. The will-say statement does not allow the other parties or the Tribunal to know what evidence Ms. Brown would give or what its probative value might be. It also refers to situations outside the temporal scope of these complaints (i.e. an alleged lack of COVID-19 measures). This would significantly impact CSC's ability to know the case it has to meet, to cross-examine Ms. Brown and prepare any rebuttal evidence (Witness Ruling at para 20). The hearing is not a discovery process, where the parties and the Tribunal get to learn about the scope of evidence for the first time.

[19] I also reject Mr. Richards' and the Commission's claim that adding Ms. Brown will not add delay or prejudice the proceedings. If new events or issues are raised, it will most certainly create delay and CSC would necessarily have to be given additional time to prepare its cross-examination on evidence it would only hear about for the first time at the hearing, and possibly to add to its own witness list.

[20] Finally, the Commission repeats an argument it made in the Witness Ruling that I rejected, arguing that adding Ms. Brown would only modestly "rebalance the record" as CSC has identified 30 witnesses. Asymmetry in the number of witnesses called by each side is not an indicator of unfairness. This is especially true for a case in the correctional system where the nature of incarceration usually dictates that there are a large number of CSC

employees interacting with the complainant, based on shift, unit and institutional changes. This asymmetry may become more pronounced in cases involving multiple allegations by an incarcerated individual. Litigation is not a contest about who can call more witnesses (Witness Ruling at para 34).

III. THE CLOSE OF MR. RICHARDS' CASE AND THE COMMISSION'S PROPOSED EXPERT WITNESS

[21] Mr. Richards had intended to call a final fact witness, Nicole McGilivray, however she was unavailable. The parties previously consented to continuing with the hearing, including the start of CSC's case, and to scheduling Ms. McGilivray's testimony when and if her availability changes.

[22] As I am denying Mr. Richards' request to add Ms. Brown as a witness, and in the absence of any notice about Ms. McGilivray, we will proceed with the Commission's proposed expert and final witness, Dr. Owusu-Bempah, when the hearing resumes on October 6th. I have provided direction with respect to two issues related to the Commission's proposed expert witness.

Qualifying the expert

[23] During the June 5, 2025 CMCC, I told the parties that the Tribunal would not spend valuable hearing time on a formal qualification process for Dr. Owusu-Bempah and that any questions regarding his qualifications would be reserved for cross-examination. I also recalled that the parties could raise any issues regarding the admissibility of the witness' evidence as expert evidence and/or the weight to be accorded to any such evidence as part of their final submissions. I further directed that I did not need to hear a repetition of what is already in the expert report through the Commission's examination-in-chief and asked the Commission to outline how it intended to use the time it proposed given that the Tribunal has read the report, and its expert can affirm the report as his evidence. The Commission had initially indicated that it needed two days to examine Dr. Owusu-Bempah.

[24] The Commission reduced its initial estimate to one full day for examination-in-chief of its proposed expert, on the understanding that no time would be used for formal

qualification. It opposes the approach I have proposed, however, and argues that I must address the qualification of its proposed expert, even if informally, before the expert begins giving opinion evidence, because it would be procedurally unfair and “inconsistent with established evidentiary practice” to defer the issue of qualification to cross-examination by CSC. It also argues that doing so would leave the admissibility and scope of the expert’s testimony uncertain and “improperly shift the burden to another party to raise foundational issues”. It did not set out what foundational issues it is referring to, or what that burden might be.

[25] The Commission further argues that the Tribunal could confirm the expert’s qualifications right before the testimony begins, without a formal *voir dire* or full qualification process, based on his CV and report and in the absence of any objection. It says this will promote efficiency and preserve the integrity of the record.

[26] Neither Mr. Richards nor CSC objected to the approach I proposed. CSC has not raised arguments about “procedural unfairness”. Further, the Commission has provided no authority for its position that my proposed approach is contrary to “established evidentiary practice”.

[27] Contrary to the Commission’s submissions about “established evidentiary practice”, the Act, which is the statute establishing the statutory scheme the Tribunal works within, provides me with broad discretion to adopt non-traditional procedures that can facilitate the fair, just and expeditious resolution of the merits of this proceeding. Unless protected by privilege or protections afforded to conciliators, the Tribunal may receive and accept any evidence and other information, whether on oath or by affidavit or otherwise that it sees fit, whether or not that evidence or information would be admissible in a court of law. The Tribunal may also decide any procedural or evidentiary question arising during the hearing (see the *Canadian Human Rights Act*, ss. 50(3)(c) and (d)).

[28] CSC submits that while the Commission has not specified Dr. Owusu-Bempah’s proposed field of expertise, it has reviewed his CV and consents to his qualification as an expert on anti-Black discrimination in the Canadian criminal justice system. In CSC’s view, this settles the issues of the proposed expert’s qualification. Should there be any further

issues related to Dr. Owusu-Bempah's qualification, I will address them at the hearing, and I have determined that we will follow the process I proposed to the parties and that we will proceed on that basis.

Scope of Dr. Owusu-Bempah's evidence

[29] In response to my direction that it must outline how it intends to use the day(s) it suggested it needed to examine its proposed expert, the Commission responded that Dr. Owusu-Bempah is expected to testify on:

relevant and emerging issues, including but not limited to, clarifying, explaining and/or elaborating on various aspects of his report pertaining to, **without limitation**, the application of institutional discipline, use of force, security classification, segregation/isolated and restrictive conditions of confinement, racial and religious harassment, conditions of confinement, access to general programming and the availability of culturally relevant programming, delivery of prison services, access to correctional services and correctional outcomes, and their impacts on federally incarcerated Black inmates [emphasis added]. These issues are complex, technical, specialized and nuanced. Allowing sufficient time for this process ensures that the Tribunal can fully and meaningfully understand the expert's evidence and supports procedural fairness.

[30] The Commission goes on to say it provided the outline because I directed as much, but that it is not "intended to confine or limit the scope of the expert's testimony" and that it "reserves the right to lead evidence beyond the matters described [in its outline], including but not limited to, further details, clarifications or additional information that may arise or have emerged during the course of the hearing."

[31] CSC estimates it would need a day to cross-examine Dr. Owusu-Bempah because of the Commission's approach, and because Mr. Richards has not indicated how long he would need to examine the proposed expert. It also notes that the report addresses five areas of Dr. Owusu-Bempah's expertise, whereas the Commission's outline, as set out above, raises at least 9 areas "without limitation".

[32] Calling an expert is not an opportunity to lead expansive, limitless evidence on "relevant and emerging issues". The broad nature of these complaints does not absolve a party – including the Commission – of the requirement to comply with the Tribunal's Rules

of Procedure or the basic tenets of procedural fairness (*Richards v Correctional Service Canada*, 2025 CHRT 47 at para 25). The Commission's approach, essentially reserving itself the right to ask what it wants and expand the scope of the proposed expertise, is at odds with Rule 22(1) and procedural fairness. Rule 22(1) of the Tribunal's Rules requires parties to provide advance notice of their expert's proposed testimony, ensuring all parties know the case they must answer and can prepare accordingly. The Commission duly filed its expert report, but the hearing is not an opportunity to go beyond the bounds of the report, "without limitation", to explore areas for which CSC would not have had notice.

[33] Neither the Commission nor Mr. Richards will be permitted to expand from the bounds of what is already a broad 150-page report as it sees fit or as issues "emerge", as the Commission suggests. As I have repeated over the course of these proceedings, Mr. Richards' complaints do not constitute a generalised inquiry into the entire federal correctional system. The Commission and Mr. Richards should prepare their questions accordingly. One full day still appears excessive for direct examination. Although Mr. Richards did not provide an estimate of the time he would need to examine the Commission's expert, we will schedule one day in total for examination-in-chief by both the Commission and Mr. Richards. The Commission will not be permitted to take the Tribunal through the pages of a report which I have read, and I will not expend valuable hearing time to hear Mr. Richards or the Commission ask questions that Dr. Owusu-Bempeh already answered in the report, which should speak for itself. CSC has indicated it needs a day as well.

[34] Finally, as I previously directed at the June 5, 2025 CMCC, the parties may also raise any issues regarding the admissibility of the witness' evidence as expert evidence and/or the weight to be accorded to any such evidence as part of their final submissions. CSC has advised that it intends to object to parts of Dr. Owusu-Bempeh's report as they argue it encroaches in part on the Tribunal's role as decision maker. I agree that it is not the role of any expert to make findings in this case. However, allowing an expert to give evidence in chief on a particular point is not a determination by me as to the admissibility or weight to be accorded to that evidence, nor will a party's failure to raise an objection during examination in chief be seen as a tacit acceptance of the admissibility of that testimony. As CSC notes,

I have already provided directions on this point, and it will have the opportunity to cross-examine the witness and to address these issues as part of its final submissions.

[35] I will therefore proceed to hear and consider Dr. Owusu-Bempah's proposed expert evidence in accordance with the procedure I have proposed as set out above and as already addressed at the June 5, 2025 CMCC.

IV. ORDER

[36] Mr. Richards' request to add Zya Brown as a witness is dismissed. The hearing will proceed with the Commission's proposed expert witness, Dr. Owusu-Bempeh on October 6, 2025.

[37] The Commission and Mr. Richards will restrict their examination-in-chief to the scope of Dr. Owusu-Bempeh's expert report and should not ask questions that are already answered in the report. They must focus and prepare their questions accordingly.

[38] The Registry will contact the parties to confirm the schedule of the hearing in October, and the start of CSC's case.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
September 4, 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: September 4, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Christopher Karas, for the Complainant

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Dominique Guimond, Counsel for the Respondent