

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 93

Date: September 12, 2025

File No.: HR-DP-2999-24, HR-DP-3025-24

Between:

Ryan Richards

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] Ryan Richards, the Complainant, is a federally sentenced inmate who is currently incarcerated at Warkworth Institution. He filed six complaints with the Canadian Human Rights Commission (CHRC). Mr. Richards' first four complaints allege that Correctional Service Canada (CSC), the Respondent, discriminated against him in the provision of a service. These complaints were consolidated on consent of the parties and are being heard together. The hearing in that proceeding is ongoing.

[2] Mr. Richards filed his fifth and sixth complaints alleging retaliation in 2021 and 2022 (the "retaliation complaints"). The Commission referred them to the Tribunal in 2024. Mr. Richards alleges that CSC retaliated against him for having filed his earlier human rights complaints, contrary to section 14.1 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the "Act").

[3] After Mr. Richards filed his Statements of Particulars (SOPs) in the retaliation complaints, he asked to amend them to include allegations of discrimination under section 5 of the Act, which prohibits discrimination in the provision of services (the "proposed amendment"). The Commission agrees with Mr. Richards and says that the proposed amendment will cause no prejudice to CSC. CSC opposes the request and says the amendment introduces a fundamentally different complaint with a distinct discriminatory practice, and that this change will cause significant delay and prejudice to it and to the proceedings.

II. DECISION

[4] I am dismissing Mr. Richards' request to amend his complaints. I am also consolidating the retaliation files that will be heard together. I have provided further direction to the parties on some outstanding case management issues.

III. CONSOLIDATION OF FILES

[5] Mr. Richards initially opposed consolidating the retaliation complaints unless the allegations I ordered to be struck from complaint HP-DP-3025-24 were allowed to proceed as part of complaint HR-DP-2999-24 (2025 CHRT 5). I set a deadline for him to clarify his position and for the other parties to provide their responses and their positions on the possible consolidation of the retaliation complaints.

[6] Mr. Richards withdrew his request to include the struck allegations as part of HR-DP-2999-24. The parties consent to the consolidation of these files and I agree that they should proceed together.

[7] In my view, consolidating the files will avoid a multiplicity of proceedings, a possible repetition of evidence and overlap in witnesses, and will not result in any prejudice to the parties (*Lattey v. Canadian Pacific Railway*, 2002 CanLII 45928 at paras 11-13). There are common issues of law and fact as both complaints relate to retaliation allegations under s.14.1 of the Act. In my view, consolidating the complaints favours the expeditious and fair conduct of the Tribunal's proceedings (s.48.9(1) of the Act).

[8] Consolidation of the retaliation complaints has no impact on the nature and scope of the allegations that are properly within the scope of each file.

IV. AMENDMENT REQUEST

A. LEGAL FRAMEWORK

[9] The Tribunal must provide parties with a full and ample opportunity to present evidence and make legal representations on the matters raised in the complaint (the Act" s. 50(1)).

[10] The Tribunal's jurisdiction is limited by the scope of the original complaint filed with the Commission and the Commission's decision when referring the complaint to the Tribunal (*Connors v. Canadian Armed Forces*, 2019 CHRT 6 at paras 27–28). The Tribunal can amend, clarify and determine the scope of a complaint to determine the real questions in

controversy between the parties, provided the amendment is linked to the original complaint and does not cause prejudice to the other parties (*Canada (Attorney General) v. Parent*, 2006 FC 1313 at paras 30, 40 [*Parent*]; *Mohamed v Royal Bank of Canada*, 2023 CHRT 20 at para 7). The Tribunal's role is to inquire into complaints referred to it by the Commission (see sections 40, 44(3) and 49 of the Act).

[11] Amendments cannot introduce a substantially new complaint not considered by the Commission, as this would bypass the Commission referral process set out in the Act (*Richards v. Correctional Service Canada*, 2025 CHRT 5 at para 10 [*Scope Ruling*]). The substance of the original complaint and the Commission's mandate must be respected (*Casler v. Canadian National Railway*, 2017 CHRT 6 at para 7).

[12] Retaliation is a separate discriminatory practice (*Millbrook First Nation v. Tabor*, 2016 FC 894 at para 60 [*Millbrook*]). A complainant alleging a breach of s. 14.1 of the Act must establish a *prima facie* case of retaliation on a balance of probabilities by showing that a) they previously filed a human rights complaint under the Act; b) they experienced an adverse impact following the filing of their complaint; c) the human rights complaint was a factor in the adverse treatment. The test for retaliation is not purely or totally subjective because there still must be at least a reasonable perception that retaliation has occurred. At a minimum, this requires evidence showing it is reasonable for a complainant to perceive that an act of retaliation has occurred, which injects the necessary objective element into the test (*Millbrook* at paras 26, 62-64).

B. REASONS

[13] I am dismissing Mr. Richards' request to amend the retaliation complaints to add allegations that CSC engaged in a discriminatory practice under s.5 of the Act.

(i) The proposed amendment is a different discriminatory practice and distracts from the core allegations of retaliation

[14] CSC submits that Tribunal proceedings "should not resemble a voyage on the *Flying Dutchman* with a crew condemned to roam the seas interminably with no set destination

and no end in sight”, citing *Lax Kw'alaams Indian Band v. Canada (Attorney General)*, 2011 SCC 56, [2011] 3 SCR 535, at para. 41).

[15] I agree. These proceedings are not a moving target, and the Tribunal must respect the statutory scheme of the Act (see also the *Scope Ruling* at para 16). Mr. Richards filed his complaints under s.14.1 of the Act in 2021 and 2022, and the basis for his allegations - for the past 3 and 4 years - has been that of alleged retaliation by CSC. Mr. Richards did not file complaints alleging that CSC discriminated against him in the provision of services on the basis of a protected ground of discrimination. He did not request an amendment to his complaints in the years that his complaint was before the Commission, nor did he draft his SOP to include allegations under s.5.

[16] As the Commission and CSC set out in their SOPs, retaliation is an independent discriminatory practice (*Millbrook* at para 60). It is founded on the fact that a previous human rights complaint was filed, rather than on a prohibited ground of discrimination (see s.14.1 and *Millbrook* at paras 26, 60).

[17] In the *Scope Ruling*, I held that while the Tribunal can be flexible in assessing the four corners of a complaint given the remedial nature of the Act and its task to examine the real issues between the parties, this does not mean permitting an elasticity in the scope of a complaint that stretches the bounds of that complaint further and further, adding new allegations that a respondent has to defend, all purportedly in the name of refinement, clarification or context. Doing so is not only unfair to the respondent in a particular case, but it also undermines the legislative framework by allowing a party to sidestep the Commission process and to add what is substantially a new complaint at the SOP phase (*Scope Ruling* at para 16).

[18] Yet Mr. Richards' reply submissions confirm that his proposed amendment would do just that – expand the scope of the inquiry, change the legal basis and theory of his case, and transform the fundamental nature of the retaliation complaints he filed. For example, Mr. Richards argues that if I do not add the proposed amendment, “the Tribunal's inquiry risks being artificially constrained to whether specific acts were retaliatory”. He further submits that by adding s.5, I would be able to “examine whether the Respondent's conduct

reflects systemic discrimination.... And to craft appropriate remedies that address not only retaliation also institutional discrimination”.

[19] While the Commission argues that the Tribunal should allow an amendment at any stage for the purpose of determining the real questions in controversy between the parties, relying on *Parent*, at para 30, the “real question in controversy” is whether CSC retaliated against Mr. Richards. The proposed amendment does not help determine that question and distracts the focus from the core issue of retaliation to a new theory of the case with a different legal test and foundation. I agree with the Commission that my task is to consider the “full scope of issues raised in the complaints”, which in this proceeding is the full scope of allegations of *retaliation*. As CSC submits, there is no ambiguity in either Mr. Richards’ or the Commission’s SOPs that the focus is his claim that CSC retaliated against him as a result of his previous human rights complaints.

[20] The Commission acknowledges that proposed amendments must remain closely connected to the original complaint and to be permitted, must demonstrate a clear factual and legal link to the existing allegations. The Commission also argues that an amendment crosses the line when it effectively introduces a new and unrelated complaint, and that in those cases, the Tribunal lacks jurisdiction because the Commission cannot be deemed to have requested an inquiry.

[21] I agree with the Commission on these points. Particulars may be clarified or refined, but in my view, the proposed amendment crosses the line, changing the legal foundation of the retaliation complaints Mr. Richards filed, and that the Commission referred.

[22] As CSC argues, Mr. Richards is essentially presenting new complaints alleging a new discriminatory practice, relating to a broad list of at least 10 different issues that he has not particularised, related to the use of force, structured intervention units, interactions with staff, access to health care, CSC’s management of COVID-19 and transfers between institutions. Under the proposed amendment, each of these allegations could also be considered under different angles under s.5 of the Act, including personal discrimination and systemic discrimination, which would fundamentally transform the retaliation complaints.

[23] Mr. Richards filed four complaints under s.5 of the Act, yet he made a choice to file the retaliation complaints on the basis of 14.1 and filed his SOPs on that basis as well. This is the inquiry the Tribunal is authorised to conduct, and it is well-established that it is not for the Tribunal to bypass the Commission's referral and screening process. The Tribunal derives its jurisdiction from the Commission's referrals. It is not open to me to change the retaliation complaints the Commission referred into alleged service discrimination cases, even if the facts underlying the claim are the same. While both Mr. Richards and the Commission appear to minimise the proposed amendment, as though it is a matter of switching out one statutory provision for the more "appropriate" one, this is not a matter of simply adding more of the same or refining a complaint. Retaliation is an entirely separate discriminatory practice that has no connection to a protected characteristic. What Mr. Richards is asking is for me to ignore the fact that he filed and committed to a certain theory of the case 3 and 4 years ago, which he now wants to expand by introducing a new alleged discriminatory practice that was never before the Commission.

[24] The Commission argues the Tribunal adopts a flexible approach to amendments and that the Act supports a liberal approach to amendments to ensure its proceedings are fair, efficient, and not overly formalistic. It says the Tribunal should not be constrained by procedural formalities, and that it must advance fairness and respect its broad discretion to manage proceedings effectively. The Commission further submits that because proceedings before the Tribunal are *de novo*, the Tribunal is not restricted to the specific grounds or allegations in the complaint and must decide whether a human right has been infringed on any ground, not only what was specified in the complaint, relying on *Wight v. Ontario*, 1994 CanLII 18432 (ON HRT) at para 31, adopted in *Jeffrey v. Dofasco Inc.*, 2000 CanLII 20864 (ON HRT).

[25] I disagree. Respecting the Act is not "overly formalistic" or a "procedural formality". Allowing the proposed amendment would exceed the Tribunal's authority as set out in the Act, which defines and limits the Tribunal's jurisdiction. While the Commission cites *Wight* and *Dofasco*, these cases from 1994 and 2000, respectively, are from the Ontario Board of Inquiry, the predecessor to the Human Rights Tribunal of Ontario. They do not assist in determining a motion under a separate statutory scheme, namely, the *Canadian Human*

Rights Act. Neither case addresses circumstances where there is a request to add allegations of discrimination in the provision of services to what was referred as a retaliation complaint. Further, while the adjudicator in those cases allowed the amendments, my statutory responsibility is to ensure that this proceeding be fair and move forward as expeditiously as the requirements of natural justice and the rules of procedure allow.

[26] In my view, it is also incumbent on the Mr. Richards to commit to a theory of the case at some point, and I do not accept that even a large and liberal interpretation of the Act was intended to allow a complainant to move and change the focus and scope of their inquiry at any stage, regardless of the impact on the other parties and on the integrity of the proceeding.

[27] I also do not accept that the proposed amendment reflects “issues already raised in the pleadings” as the Commission contends. The paragraphs the Commission relies on from the parties’ SOPs refer to Mr. Richards’ request for remedies in HR-DP-3025 which he first made in February 2025, after being ordered to particularise his remedial requests in that file (*Scope Ruling*, at para 67). At that time, for the first time, he referenced additional discriminatory practices, namely section 5 (services) and s.14 (harassment, for which he does not seek an amendment), in seeking additional financial compensation, among other things. As set out above, his SOP, however, and that of the Commission – are silent on allegations under s. 5.

(ii) Allowing the proposed amendment does not promote efficiency and fairness and will cause delay and prejudice to CSC and to the proceedings

[28] In his reply submissions, Mr. Richards argues that the proposed amendment promotes “clarity and efficiency, not distraction”. He argues that my previous warnings against sprawling, unfocused litigation highlight why I should allow the proposed amendment, and that failing to do so risks inefficiency and duplication of proceedings, requiring Mr. Richards to file another complaint under s.5 later.

[29] I do not accept Mr. Richards’ claim that allowing the proposed amendment promotes efficiency and fairness in the hearing process. As I held in the *Scope Ruling*, allowing such

elasticity in a complaint, and permitting it to continue to morph and evolve as a complainant's – or the Commission's – theory of the case changes, is also at odds with the Act's requirement to proceed expeditiously and fairly. Allowing unrelated allegations that cannot be tied back to the complaint unduly lengthens the hearing process which impacts not only the parties to this case, but all others waiting for their complaints to be heard and adjudicated by this Tribunal (*Scope Ruling* at para 16).

[30] Further, Mr. Richards has not provided any details as to how the many allegations he made under s.14.1 would now be made under s.5, or whether all of his retaliation allegations are also allegations of discrimination on the basis of one or more protected characteristic(s). His motion says little, other than that he wants to add s.5 to clarify his existing claim and includes general and vague references to being subjected to “various forms of discrimination”.

[31] I agree with CSC that it does not know the case it has to meet, and that it is not for a respondent to guess at how exactly s.5 of the Act would fit into the underlying allegations. This does not promote “fairness” as Mr. Richards contends. The retaliation complaints raise more than 25 allegations between them, and the motion includes no details for how those allegations of discrimination in the provision of services would now be framed.

[32] Expanding the scope of the complaints years after Mr. Richards filed them would also prejudice CSC and these proceedings. Beyond the fact that the Tribunal cannot bypass the Commission process in allowing what I find to be a fundamentally different complaint, it is also unfair to allow a change in the foundation of the complaint years after Mr. Richards filed his retaliation complaints, and after the SOPs were filed.

[33] The Commission argues that the proposed amendment poses no risk of surprise or prejudice to CSC and constitutes a “timely and necessary clarification of the issues before the Tribunal”. I reject this submission. The proposed amendment introduces a new legal basis that was not previously mentioned or particularised by either Mr. Richards or the Commission. As set out above, Mr. Richards first mentioned s.5 in February 2025 in requesting additional remedies under that provision of the Act, in addition to remedial requests he made under s.14 and s.14.1, yet made no allegations in his SOP under s.5.

[34] CSC submits that it did not have a chance to exhaust mechanisms provided for under the Act at the Commission stage on allegations that it discriminated against Mr. Richards in the provision of services based on a protected characteristic, relying on *Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2 at para 140. It argues that prejudice cannot be remedied.

[35] I agree. As already set out above, amending the complaints to add a new discriminatory practice is not merely a technical change. It bypasses the statutory framework and is unfair to the responding party who would not have had the opportunity to address these allegations at the Commission stage.

[36] Finally, amending the complaint to add a new theory of the case and foundation to these allegations will invariably add considerable delay. The parties would have to amend and refile their SOPs to include further particulars on this new discriminatory practice, additional grounds of defence and potentially further disclosure, additional witnesses and the possibility of expert evidence.

V. OUTSTANDING PRELIMINARY ISSUES AND NEXT STEPS

[37] In case management, I asked the parties to try and resolve three issues on their own:

1. Mr. Richards' requests for disclosure
2. CSC's request for clarification of the allegation of "staff abuse and retaliation"
3. CSC's proposal to bifurcate the hearing between liability and remedies

[38] I also directed the parties to review their witness lists and estimates of time and told them I would set a new deadline for them to confer and complete these lists after I determined the issue of the possible consolidation of the retaliation complaints. I also asked them to set out their preferred form of hearing.

[39] The parties could not resolve any of the issues set out above. I have provided some direction below and will address the remainder of the issues at the next case management conference call (CMCC) or by way of written direction.

A. Mr. Richards' requests for disclosure

[40] Mr. Richards takes the position that CSC has not provided all arguably relevant materials. In a communication from his representative, Mr. Karas, dated August 18, 2025, he appears to conflate this proceeding with Mr. Richards' other proceeding in the first four complaints. It is not clear which materials Mr. Richards alleges CSC has failed to disclose, if any, related to the retaliation complaints. Should this issue not be resolved, Mr. Richards is directed to advise the Tribunal and the other parties **no later than September 22, 2025**, setting out the specifics of what he believes was not disclosed by CSC.

B. Witness lists

[41] The Tribunal directed the parties to begin preparing this list, including time estimates and total hearing days proposed, on June 26, 2025. The Complainant's list didn't include Mr. Richards, and the Commission did not include time estimates for several witnesses. Neither Mr. Richards nor the Commission completed their estimates of total hearing time required. The Commission also did not confirm if it intends to call an expert, as previously directed.

[42] I also recalled that hearing time is not unlimited, and that the parties are expected to work towards a more efficient hearing process, including reducing hearing days and witness lists, as appropriate. I told the parties I would be asking them to propose ways of doing so. I advised that the parties are on notice that they are expected to work towards this goal, by for example, making use of affidavit evidence or adopting detailed willsay statements as the witness' evidence.

[43] As the retaliation complaints are now consolidated and I have determined Mr. Richards' request to amend his complaints, the parties are directed to review, complete and consolidate the witness charts they previously submitted **by no later than September 22, 2025**. Once I receive the parties' completed witness lists and estimates of total hearing time required, I will provide further direction and require them to submit their proposals for how to reduce hearing time.

C. The parties' preferred form of hearing

[44] Mr. Richards' representative indicated that he prefers to proceed by virtual hearing, whereas Mr. Richards would like to attend in person. The Commission and CSC also prefer to participate remotely. The Commission said Mr. Richards could attend in person with the Tribunal, while it, and all other participants, including Mr. Richards' representative, would participate virtually.

[45] The Tribunal will revisit the form of hearing with the parties at the next CMCC.

D. ORDER

[46] HR-DP-2999-24 and HR-3025-24 are consolidated and will proceed together. The Tribunal's Registry will adjust its records accordingly.

[47] Mr. Richards' motion is dismissed.

[48] Mr. Richards must advise the other parties and the Tribunal no later than **September 22, 2025** if there are outstanding disclosure issues, clearly setting out what he believes remains to be disclosed as they relate to the retaliation complaints only.

[49] The parties are required to submit their revised witness charts, as set out above, by no later than **September 22, 2025**.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
September 12, 2025

Canadian Human Rights Tribunal

Parties of Record

File Nos.: HR-DP-2999-24; HR-DP-3025-24

Style of Cause: Ryan Richards v. Correctional Service Canada

Ruling of the Tribunal Dated: September 12, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Christopher Karas, for the Complainant

Ikram Warsame and Sameha Omer, Counsel for the Canadian Human Rights
Commission

Jean-Simon Castonguay and Francis Legault-Mayrand, Counsel for the Respondent