Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 99
Date: September 29, 2025
File No(s).: T2516/7320 and T2703/7921

Between:

A.B. and Daniel Gracie

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Aboriginal Legal Services

Interested party

- and -

Correctional Service Canada

Respondent

Ruling

Member: Catherine Fagan

I. INTRODUCTION

[1] The Complainants in this matter include an individual currently in the custody of the Respondent, Correctional Service Canada (CSC), at Bath Institution in Ontario, as well as a former inmate of Bath Institution. Both are Indigenous. They allege that they were discriminated against by CSC by not receiving timely access to culturally appropriate Indigenous programming and services, which they claim is a systemic issue impacting Indigenous inmates in the custody of CSC across Canada.

[2] At the Complainants' request, the Tribunal issued summonses for two Indigenous employees of CSC: Melissa Green and Kristie Scott. Will-say statements were filed for both, and, in response, CSC filed a motion to exclude Ms. Scott's proposed evidence and to limit Ms. Green's proposed evidence on grounds that the evidence is not relevant, would open new lines of inquiry not helpful to resolve the issues in dispute, and would complicate and lengthen the proceedings.

[3] For the reasons set out below, I deny CSC's motion. However, to ensure the hearing remains expeditious and proportionate, I make an order to ensure that the questioning of the witnesses be limited in accordance with the submissions of the Complainants filed in response to the present motion.

II. POSITION OF PARTIES

A. Position of CSC

[4] CSC maintains that Ms. Green and Ms. Scott should not be permitted to testify on the following:

1. their personal employment issues with CSC, including various administrative proceedings commenced against CSC and individual employees/managers related to those issues; and

2. the use of overrides for program referral decisions, including the effectiveness of CSC's risk assessment tools for program referrals.

[5] CSC argues that these issues were not raised in the complaints or in the Complainants' Statement of Particulars (SOP). It states that the complaints cannot continue to evolve as the hearing progresses, particularly to include complex issues that could warrant an entirely separate inquiry.

[6] It notes further that even if the Tribunal considers the evidence to have some minimal relevance, any probative value is outweighed by the prejudicial impact its admission would have on CSC and on the overall conduct of this hearing and would not assist the Tribunal to resolve the central issues.

B. Position of the Complainants

[7] The Complainants state that both witnesses have relevant evidence to provide concerning CSC's inability to meet the needs of its Indigenous custodial population for Indigenous correctional programs and Elder services at Bath Institution, in the Ontario region, and/or nationally.

[8] The Complainants argue that the proposed evidence is within the scope of this proceeding as defined by their complaints, SOP and reply, which were not challenged by CSC. As such, they state it is too late for CSC to object that those issues are out of scope.

[9] In response to CSC's motion, the Complainants acknowledged their intention to limit the scope of the testimony as follows:

1. They will limit their questioning of Ms. Green to avoid questions concerning the nature and status of her employment disputes and public integrity complaints against CSC and will not ask questions regarding the following topics in her will-say statement:

    i. her performance reviews;

    ii. her harassment grievances;

iii. the systemic findings of the independent investigations into these grievances; and

iv. CSC's response to the recommendations made in the ensuing investigative reports.

2. The Complainants do not plan to introduce or rely on the second and third volumes of documents produced by Ms. Green. According to the Complainants, the second volume contains documents related to Ms. Green's own complaints. The third volume includes excerpts of legislation, policy documents and research reports, which are generally publicly available or have already been disclosed by CSC. For the first volume, the Complainants do not intend to introduce or rely on the documents at tabs 16–27, which also pertain to Ms. Green's employment-related grievances.

3. They do not intend to focus on Ms. Scott's employment-related disputes.

[10] However, regarding the witnesses' employment-related disputes with CSC, the Complainants note that while they will not be the focus of the testimony, some direct knowledge or mention of the disputes may be incidentally necessary to bring forward their evidence on access to Indigenous programs and services and their efforts to raise concerns about such access.

[11] Finally, the Complainants argue that the Tribunal should not disallow the introduction of any parts of the witnesses' CSC prisoner grievance files in advance because portions of those files may be relevant and proportionate.

C. Position of the Commission

[12] The Canadian Human Rights Commission (the "Commission") argues that the evidence CSC is seeking to exclude is relevant and probative to the issue of whether CSC treats Indigenous prisoners in an adverse differential manner in its provision of culturally appropriate programs and services to Indigenous prisoners. It also states that the evidence would be of use to the Commission to help it advance its public interest mandate and in

providing recommendations on how CSC can address any deficiencies that hinder its ability to deliver these services.

D. Position of Aboriginal Legal Services

[13] Aboriginal Legal Services (ALS) supports the position taken by the Complainant. As an interested party, ALS notes that they are particularly concerned with the systemic issues related to the availability of appropriate programming for Indigenous people in CSC's custody and which remedies would be necessary if the complaints are substantiated.

[14] ALS asserts that the evidence from Ms. Green and Ms. Scott will be valuable in highlighting the systemic nature of the issues and offering insights into potential remedies. ALS also emphasizes the importance of the Tribunal hearing from Indigenous CSC staff who have not been chosen by CSC to testify as witnesses in these hearings. ALS believes that the experiences of these two individuals, who have worked directly on the front lines of program delivery, will provide crucial context for these complaints.

III. LEGAL FRAMEWORK

[15] In *Clegg v. Air Canada,* 2019 CHRT 4 at para 84 [*Clegg*], this Tribunal indicated that there are four key principles the Tribunal will consider in determining whether to admit a piece of evidence:

a. Is the evidence relevant?

b. Is the admission of the evidence consistent with the principles of natural justice and procedural fairness?

c. Does the probative value of the evidence outweigh its prejudicial effect?

d. Is there any bar to the admission of the evidence?

[16] To be relevant, there must be a link between the evidence and a fact, a question of law, or a remedy that the Tribunal must decide. Beyond relevance, the Tribunal must also

take into account the other principles outlined in *Clegg*. Additionally, as pointed out by CSC, the purpose of a hearing is not to have access to all relevant evidence, regardless of the impact that admitting that evidence may have on the proceedings or the rights of other parties.

IV. ANALYSIS

A. Evidence respecting the witnesses' personal employment issues

[17] The Tribunal agrees with CSC that it is not within the scope of the current complaints to consider or make findings regarding discrimination in Ms. Green's or Ms. Scott's employment. The Complainants also agree and confirm they are not seeking a finding that CSC discriminated against or harassed Ms. Green or Ms. Scott. As such, as mentioned above, the Complainants do not intend to focus their questions on the nature and status of the witnesses' personal employment and public integrity complaints against CSC. However, the Complainants also note that it may be necessary for the witnesses to mention the specific disputes when giving evidence about their awareness of Indigenous inmates' access to Indigenous programs and services and their efforts to raise concerns about access to CSC.

[18] The witnesses are both CSC staff who have worked providing Indigenous and non-Indigenous programming. Given this, the Tribunal agrees with the Complainants that testimony regarding the witnesses' awareness and experiences with Indigenous inmates' access to Indigenous programs and services, as well as their efforts to raise concerns about access to CSC, is relevant to the issues to be decided by the Tribunal.

[19] The witnesses also intend to testify to the role and workloads of Indigenous Correctional Program Officers (ICPOs). On this point, the Tribunal agrees with CSC that such evidence is not directly relevant to whether the Complainants experienced adverse differential treatment in respect to the provision of a service, and whether there is a systemic issue regarding the provision of that service to Indigenous inmates. However, as argued by the Complainants, this evidence could provide context for understanding the main issues, including **why** CSC has been unable to provide Indigenous inmates with the same level of

access to Indigenous programming and services as non-Indigenous inmates. ALS and the Commission also noted that this testimony may be relevant when considering appropriate remedies if a finding of discrimination is made.

[20] The two witnesses are scheduled to testify during the week of October 13, 2025. As such, there is sufficient time for CSC to prepare for cross-examination. CSC is scheduled to begin its evidence that same week and further hearing dates are scheduled over the coming months. Therefore, there is time for CSC to call any witnesses or produce any documents it deems appropriate in response to any evidence provided by the witnesses.

[21] Considering the above and the Complainants' submissions clarifying a narrower scope for both testimonies and a significant reduction in the number of documents to be produced, the Tribunal agrees that the proposed testimonies are relevant and proportionate and will not prejudice CSC.

[22] The Tribunal also notes that it would be inappropriate to make an order at this point to exclude all documentary evidence related to the witnesses' disputes with CSC without knowing the context and purpose for which each document would be produced. If, during the testimonies, objections are made to the production of specific documents, the objection will be dealt with at that time.

B. Evidence respecting program placement decisions, including the use of risk assessment tools

[23] CSC argues that evidence regarding the use of risk assessment tools in program placement decisions and whether or when program overrides should be utilized should not be allowed. Essentially, it argues that these issues were not raised in the SOPs and are not relevant, as this case has never concerned whether CSC accurately determines the intensity of programming an individual inmate should receive.

[24] In response, the Complainants argue that the evidence is relevant and within scope. They clarify in their submissions that they are not challenging the validity of CSC's risk assessment tools. However, they maintain that the context of the implementation and impact of the Criminal Risk Index (CRI)—the risk assessment tool CSC currently uses to assess

program needs—is relevant and within the scope of these complaints, as it explains the rapid rise in Indigenous program needs (particularly high-intensity program needs), which CSC has been unable to meet.

[25] The Complainants also argue that these topics were addressed in paragraphs 200–201 of the Complainants' SOP and were not challenged at the time as out of scope. The Tribunal agrees. These paragraphs of the SOP state the following:

> 201. CSC attributes the dramatic increase in assessed Indigenous program need to its adoption of a different tool for assessing the risk/needs of Indigenous prisoners at intake, switching from the Custody Rating Scale (CRS) to the Criminal Risk Index (CRI). For example, with the switch to the CRI, the percentage of Indigenous men not requiring a program dropped from 21% to 12%, while the percentage requiring a high-intensity program increase from 21% to 51%.
> 202. In August 2019, CSC acknowledged in its internal *ICPO Workforce Plan* report (obtained by the Complainants through the ATIP process) that its capacity to deliver Indigenous correctional programs has not kept pace with these increasing program needs of its growing Indigenous population and that the situation was likely to deteriorate further without significant investment:
>
> > This increase in programming needs will have a direct impact on CSC's capacity to provide correctional interventions as well as culturally appropriate interventions to offenders in a timely manner to assist in their rehabilitation and reintegration into the community (linked to two OAG reports). Anticipated impacts for the Service include an increased number of offenders on waitlists as well as additional resources (human, financial and space) required to meet this increased programming demand of Indigenous offenders. Although CSC will continue to monitor the program demand and the results of this research through an established multi-sector working group, the impact of their [sic] being a greater program demand through the utilization of the CRI has been established. Considering this increase in program demand, and that CSC has not been meeting its performance results pertaining to correctional programs as planned, a need to increase human resources is evident.

[26] These topics are not directly related to the main questions before the Tribunal. However, the Tribunal agrees with the Complainants that the proposed testimony could provide context for understanding those questions before the Tribunal and, as such, are relevant and within scope.

[27] Specific to the intended testimony of Ms. Green on the use of program referral overrides, the Complainants argue that the relevancy goes beyond context but is relevant to a "core systemic issue in these Complaints: the rising rates of unmet Indigenous high-intensity program needs". The Complainants intend for Ms. Green to testify on the program assessment and override process and specifically on "her efforts to promote a more robust and proactive consideration of ISH factors when assessing program needs, and a pragmatic approach in which CSC should consider whether it could meet an individual's program needs in custody before dooming them to a referral for high-intensity programming that did not exist". The Tribunal agrees that this evidence is of arguable relevance, including, as argued by the Commission and ALS, to questions of appropriate remedies if a finding of discrimination is made.

C. Note on proportionality for contextual evidence

[28] Since much of the evidence to be provided by the witnesses is for contextual purposes, specifically the workloads of ICPOs or CSC's risk assessment tools, it is important that such testimony remains proportionate and does not significantly prolong the hearing. Considering that the length of the proposed testimonies is less than a day for each witness, the Tribunal is satisfied that the intended testimonies are proportionate.

[29] CSC argues that the proposed evidence is not proportionate because CSC will need to respond to the factual allegations of each witness with its own witnesses and other evidence, which could significantly lengthen the hearing. Of course, as a respondent, CSC has a right to respond to all allegations against it and be given a full and ample opportunity to present its case, as set out in sections 48.9(1) and 50(1) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6. However, in presenting its evidence, CSC must also be proportionate. Given that the Complainants are not seeking findings regarding the workload of ICPSOs or the validity of CSC's risk assessment tools and that such evidence is provided for context to understand why programming needs have increased for Indigenous inmates, it is important for CSC to ensure its own evidence on such topics is also proportional. While the allowance of the proposed testimony may lengthen the hearing somewhat, given the relevance and probative value of the testimony, the principles of natural justice and fairness

are maintained. Here again, as there is ample time for CSC to prepare for the cross-examinations and to prepare its own evidence, the Tribunal finds there is no prejudice.

D. Is it opinion evidence?

[30] CSC contends that much of the anticipated testimony of Ms. Green and Ms. Scott consists of opinion evidence. For example, it states that Ms. Green will provide her opinion that CSC should be using overrides more frequently and that both witnesses will offer their opinion that ICPOs have a heavier workload than Correctional Program Officers. As fact witnesses, the Tribunal agrees that it is important for the witnesses to avoid providing inappropriate opinion evidence. As such, the witnesses may provide evidence based on their observations informed by their own experience gained through their roles with CSC. However, they should refrain from offering opinions or conclusions that require specialized expertise outside of their own experience.

V. CONCLUSION

[31] Given the above, the Tribunal denies CSC's motion to exclude the proposed evidence of Ms. Green and Ms. Scott. The parameters of the proposed evidence, as outlined in their will-say statements and further clarified and narrowed in the Complainants' submissions in response to CSC's motion, meets the requirements set out in *Clegg* for admissibility. The evidence is arguably relevant and proportionate and would not cause prejudice to CSC given the timelines to respond, and admitting the evidence is consistent with the principles of natural justice and procedural fairness.

[32] However, this finding is contingent on the testimonies being limited in the ways laid out by the Complainant in their submissions. To ensure the testimonies remain proportionate and relevant, I make the following order:

[33] In the questioning of witnesses Ms. Green and Ms. Scott, the parties will comply with the following:

1. Refrain from asking questions to Ms. Green, as much as reasonably possible, concerning the nature and status of her employment disputes and public integrity complaints against CSC;

2. Refrain from asking Ms. Green questions regarding the following topics:

    i. her performance reviews;

    ii. her harassment grievances;

    iii. the systemic findings of the independent investigations into these grievances; and

    iv. CSC's response to the recommendations made in the ensuing investigative reports.

3. Refrain from asking questions to Ms. Scott, as much as reasonably possible, concerning her employment-related disputes with CSC; and

4. Refrain from introducing into evidence any documents included in Ms. Green's second and third volumes of documents, as well as documents at tabs 16–27 of her first volume of documents.

Signed by

Catherine Fagan
Tribunal Member

Ottawa, Ontario
September 29, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2516/7320 and T2703/7921

Style of Cause: A.B. and Daniel Gracie v. Correctional Service Canada

Motion dealt with in writing without appearance of parties

Written representations by:

Paul Quick, for the Complainants

Julie Hudson, for the Canadian Human Rights Commission

Jonathan Rudin, for the Interested party (Aboriginal Legal Services)

Kevin Palframan, for the Respondent