Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2026 CHRT 10
Date: January 29, 2026
File Nos.: HR-DP-3073-24, HR-DP-3074-24 & HR-DP-3075-24

Between:

John Sargeant

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Correctional Service Canada

Respondent

Ruling

Member: Jo-Anne Pickel

Contents

I. Overview

[1] John Sargeant, the Complainant, alleges that the Respondent, Correctional Services of Canada, discriminated against him based on his race, colour, national or ethnic origin, and sex, contrary to section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the CHRA). Mr. Sargeant identifies as a Black man. Three of his complaints that have been referred to the Tribunal by the Commission are being addressed together in this proceeding.

[2] Broadly speaking, Mr. Sargeant raised the following incidents of alleged discrimination in his complaints:

1) That a parole officer discriminated against him when she made a racially charged remark to a group of Black inmates which included Mr. Sargeant in July 2020 and then acted scared of him and called security when he went to speak to her about it;

2) That his race was a factor when the Respondent denied him a job in the kitchen in 2019;

3) That he was discriminated against when he and others were deprived of the opportunity to celebrate Black History Month at Matsqui Institution in 2020;

4) That the Respondent discriminated against him when it denied grievances he filed while he was at Matsqui Institution (specifically, those identified in Mr. Sargeant's August 21, 2025 response to paragraph75(2) of my scope ruling);

5) That the Respondent discriminated against him in November 2020 when, after being attacked by a white inmate, he was sent to a maximum-security prison while his assailant remained in a medium security institution;

6) That he was discriminated against or stereotyped based on his identity as a Black man in various reports written by his parole officer; and

7) That two parole officers discriminated against him in a meeting in March 2021 in which Mr. Sargeant had asked them to make corrections to reports that they had written about him.

See *Sargeant* v. *Correctional Service Canada*, 2025 CHRT 77 at para 8 ["scope ruling"].

[3] Although Mr. Sargeant stated in his complaint that racism runs rampant and is "systemic" in the correctional system, he did not make allegations about any specific instances of discrimination victimizing other individuals in the correctional system. He also did not include specific allegations in his complaint about any conditions that may exist, or incidents that have taken place across the correctional system generally.

[4] I heard submissions from the parties related to several issues in case management conference calls (CMCCs) on October 24 and November 4, 2025, and received follow-up written submissions from them regarding those issues. This ruling addresses the following issues upon which I reserved judgment during the CMCCs:

(1) Mr. Sargeant's request for the production of grievance documents relating to Correctional Officer Sean Bell;

(2) objections to some of the parties' intended witnesses; and

(3) whether the issue of the admissibility of various third-party reports referred to by the Commission in its Statement of Particulars (SOP) should be determined in advance of the hearing.

II. Decision

[5] For the reasons set out below:

1) I deny Mr. Sargeant's request for certain grievance documents naming Mr. Bell;

2) I deny the Respondent's request that I require Mr. Sargeant's counsellor to comply with the requirements that apply to expert witnesses;

3) I sustain the Respondent's objection to Mr. Sargeant's proposal to call Sheraz Kausar as a witness;

4) I sustain the Respondent's objection to the Commission's proposed witnesses;

5) I deny Mr. Sargeant's objection to one of the Respondent's proposed witnesses at this time. However, I will seek further clarity from the Respondent on the relevance of her intended testimony, if any; and

6) I allow the Respondent's request that I determine the admissibility of certain reports relied upon by the Commission in its SOP in advance of the hearing.

III. Issues

[6] In this ruling, I address the following issues:

1) Should I grant Mr. Sargeant's request for the production of grievance documents relating to Mr. Bell?

2 Should I allow the Respondent's objections regarding two of Mr. Sargeant's proposed witnesses?

3) Should I allow the Respondent's objection to the Commission's intended witnesses?

4) Should I allow Mr. Sargeant's objection to one of the Respondent's witnesses?

5) Should I rule upon the admissibility of various third-party reports relied upon by the Commission in its SOP in advance of the hearing?

IV. Analysis

A. Should I grant Mr. Sargeant's request for the production of grievance documents naming Sean Bell?

[7] No. I do not find that it is appropriate to order the production of any grievance documents regarding Mr. Sargeant that name Mr. Bell.

[8] Mr. Sargeant requested production of various documents from the Respondent. The only request that remained outstanding after the October 24 and November 4, 2025,

CMCCs was his request for all grievance documents relating to him that name Mr. Bell. In the October 24, 2025, CMCC, Mr. Sargeant said there was an email exchange from 2021 between Mr. Bell and Parole Officer Hilary Kozak that he says is relevant to the issues I must decide in this case. I provided the parties with the opportunity to make further submissions on the issues in writing following the CMCC. By letter dated October 31, 2025, Mr. Sargeant argued that any materials and records naming Mr. Bell and Ms. Kozak were relevant to the issues in this case as they establish a continuous and escalating pattern of anti-Black racism, harassment, and reprisal that started before his complaint and continued after the complaint. Mr. Sargeant argued that the email exchange demonstrates reprisal and collusion to influence decisions about his placement and treatment. On November 5, 2025, Mr. Sargeant filed with the Tribunal a copy of an August 2021 email exchange about him by Mr. Bell and Ms. Kozack that he obtained through an access to information request as well as an October 2024 response to a grievance he filed against Mr. Bell in June 2024. The grievance and the response relate to various interactions that Mr. Sargeant had with Mr. Bell at Kent Institution in 2021.

[9] The Respondent argues that Mr. Sargeant is seeking to advance new allegations based on the exchange between Mr. Bell and Ms. Kozak which occurred in August 2021. It argues that any grievances relating to Mr. Bell are not relevant for the issues I must decide in this case. The Commission did not make any submissions in response to Mr. Sargeant's request.

[10] I agree with the Respondent that any grievance documents naming Mr. Bell have little probative value to the issues I must decide in this case. Mr. Sargeant has other complaints pending before the Commission. It is unknown to me whether any of those complaints raise allegations against Mr. Bell. The key for my present purposes is that the three complaints before me do not raise any allegations against Mr. Bell. There was also no mention of Mr. Bell in the Commission's referral of Mr. Sargeant's grievances to the Tribunal. The grievance that Mr. Sargeant submitted against Mr. Bell in June 2024 does not mention any incidents that are raised in this proceeding. Meanwhile, the allegation that Mr. Sargeant made regarding Ms. Kozak related to a meeting in March 2021 and there is no allegation against her regarding the August 2021 emails. Any grievances naming Mr. Bell or any

exchanges between Mr. Bell and Ms. Kozak in August 2021 post-date all of the allegations in this case and they have little probative value to the allegations I must address. Moreover, the Complainant's counsel confirmed that they will not be seeking to call Mr. Bell as a witness, which is a further indication that the allegations in this case have no connection to Mr. Bell.

[11] I find that any grievance documents naming Mr. Bell lack any probative value for the issues I must decide in this case. Any probative value they may have is outweighed by the prejudice that would be caused to this proceeding by allowing it to be sidetracked by allegations against Mr. Bell that do not form part of this case.

[12] For the above reasons, I decline to order the Respondent to produce any grievance documents naming Mr. Bell.

B. Objections to the parties' intended witnesses

(i) The Respondent's objections to Mr. Sargeant's intended witnesses

[13] Mr. Sargeant filed a witness list that contained 23 witnesses. The Respondent objected to several of Mr. Sargeant's witnesses. I provided to the parties the opportunity to discuss the Respondent's objections and to explore whether it would be possible for them to agree to certain facts or the admission of particular documents to reduce the need to call some of the witnesses. The parties have been able to resolve most of the Respondent's objections. In this ruling, I only address the two objections that remain unresolved.

(a) No need to satisfy Rule 22 to call Leita McInnis

[14] Leita McInnis is a counsellor who counselled Mr. Sargeant during the time period relevant to this complaint. Mr. Sargeant wants to call her to testify to:

- His mental health state during the relevant incidents;
- Long-term trauma from racism, assaults, and grievance failures; and
- Her clinical insight into how the Respondent's actions affected his functioning.

[15] The Respondent argued that, to call Ms. McInnis as a witness, Mr. Sargeant needs to satisfy the requirements for calling an expert witness set out in Rule 22 of the *Canadian Human Rights Tribunal Rules of Procedure,* 2021 (SOR/2021-137) (the "Rules of Procedure"). Mr. Sargeant's counsel argued that Ms. McInnis does not meet the definition of an expert witness. They argued that Ms. McInnis has special training, knowledge, and expertise; that she was not engaged by or on behalf of her party; and that her opinions are based on observations she made in the course of her interactions with Mr. Sargeant.

[16] Rule 22 sets out the requirement to file a report for each "expert witness" whom a party intends to call. The Tribunal has a general power to vary or dispense with compliance with any Rule, including Rule 22, if doing so achieves the informal, expeditious, and fair determination of an inquiry on its merits (see Rules 5 and 8 of the Rules of Procedure). In addition, the Tribunal has the power to accept any non-privileged evidence even if that evidence would not be admissible in a court of law (see section 50(3)(c) of the CHRA).

[17] The Rules of Procedure do not define the term "expert witness." However, at a minimum, expert witnesses are witnesses who are called to provide expert opinion evidence. The classic role of an expert is to provide a decision-maker with a ready-made inference based on scientific, medical, psychiatric, engineering, or similar learning, on which the decision-maker can draw if certain identified underlying facts are demonstrated to exist (see *Peart* v. *Peel Regional Police Services*, 2003 CanLII 42339 (ON SC) at para 23; and *Woodgate et al.* v. *RCMP*, 2023 CHRT 9 at para 53). The Tribunal generally requires a party to comply with Rule 22 when they are seeking to call independent experts whom the party retained to provide opinion evidence about issues in the litigation, but who were not otherwise involved in the underlying events. This category of experts has been referred to by courts either as "litigation experts" (see *Westerhof* v. *Gee Estate*, 2015 ONCA 206 at para 6 [*Westerhof*]) or "independent experts" (see *Kon Construction Ltd.* v. *Terranova Developments Ltd*., 2015 ABCA 249 at para 36 [*Kon Construction*]).

[18] It is less clear whether Rule 22 applies more broadly to all witnesses with special expertise who are called to provide evidence that includes both fact-based evidence and opinion evidence. This broader group includes treating health professionals, such as family doctors, or counsellors such as Ms. McInnis, who form opinions based on their participation

in the underlying events. Some courts have referred to such experts as “participant experts” (see *Westerhof* at para 6).

[19] In *Westerhof*, the Ontario Court of Appeal held that the equivalent to Rule 22 in the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 does not apply to witnesses giving opinion evidence who have special skill, knowledge, training, or experience, and who have not been engaged by or on behalf of a party where:

- The opinion is based on the witness’ observation of or participation in the events at issue; and
- The witness formed the opinion to be given as part of the ordinary exercise of their skill, knowledge, training, and experience while observing or participating in such events (see *Westerhof* at para 60).

[20] Not all courts are in complete agreement with this approach. For example, the Alberta Court of Appeal commented in *obiter* in one of its decisions that, where witnesses with expertise are called to testify about events within the scope of their expertise, “it is generally prudent” to have them formally qualified as expert witnesses. The Court stated that this was particularly the case when the witness is being called to express an opinion on collateral issues like the employment prospects of a patient (see *Kon Construction* at para 37).

[21] The Respondent has not provided me with any decision of this Tribunal or any other administrative tribunal that has required parties to comply with requirements relating to expert witnesses when calling health professionals to testify regarding their treatment of one of the parties in a case.

[22] The Ontario Court of Appeal’s decision in *Westerhof* involved an interpretation of the relevant provisions of the Ontario *Rules of Civil Procedure* and it is not binding on this Tribunal. However, in my view, the principles and distinctions made by the Ontario Court of Appeal in that case are useful for determining the circumstances in which the Tribunal should exercise its discretion to dispense with compliance with Rule 22. This is the case even if, as pointed out by the Respondent, the wording of the relevant provisions of the Ontario *Rules of Civil Procedure* differs from the wording of Rule 22. Specifically, the provision of the Ontario *Rules of Civil Procedure* that sets out the duty of expert witnesses

refers to “expert engaged by or on behalf of a party” (see Rule 4.1.01 of the Ontario *Rules of Civil Procedure*) and such language does not appear in Rule 22.

[23] In my view, it is not necessary to determine whether Ms. McInnis is an “expert witness” within the meaning of Rule 22. Even if she did fall within the meaning of that term, I would find that it is appropriate to dispense with compliance with Rule 22, as she will only be providing testimony regarding any facts she observed or opinions she formed in the ordinary exercise of her skill, knowledge, training, or experience while treating Mr. Sargeant.

[24] In my view, dispensing with compliance with Rule 22 is appropriate in this case as it furthers the Tribunal’s mandate of achieving the informal, expeditious, and fair determination of the inquiry on its merits. Dispensing with the obligation to draft and file an expert report removes an onerous and technical procedural step and saves time. Moreover, fairness is not impaired, as a proper witness statement is still required regarding her proposed testimony, as I will discuss further below.

[25] In its submissions, the Respondent argued that creating an exception to Rule 22 for participant experts, as defined in *Westerhof*, would not further the informal and expeditious determination of inquiries. It argued that such an exception would only lead to disputes between parties over the application of the exception. However, in this case, I am not finding that there exists any formal “exception” to Rule 22 for treating professionals such as counsellors. Instead, I am applying the discretionary power provided to me to dispense with compliance with Rule 22 as it is appropriate to do so in this case.

[26] In my view, requiring expert reports every time a treating health professional testifies about their treatment of a patient would unnecessarily burden and delay the Tribunal’s proceedings. That said, in some circumstances, it may well be prudent for the Tribunal to have a treating health professional formally qualified as an expert witness. This may especially be the case, as suggested by the Alberta Court of Appeal in *Kon Construction*, when the health professional is being called to express an opinion on collateral issues. However, that is not the case here as Mr. Sargeant’s counsel has confirmed that Ms. McInnis will be testifying only to any opinions formed based on her knowledge, training, and expertise as applied to observations made in the course of her role as Mr. Sargeant’s counsellor. I

agree with the judgment in *Westerhof* that there are important differences between litigation experts and participant experts, such as Ms. McInnis, and that these differences can justify the imposition of fewer procedural formalities in the case of the latter.

[27] In light of the above, I permit Ms. McInnis to provide testimony on the following issues without complying with Rule 22:

- any facts she observed or opinions she formed about Mr. Sargeant's mental health in the ordinary exercise of her skill, knowledge, training, or experience while counselling Mr. Sargeant; and
- her opinion on how the Respondent's actions that fall within the scope of this case affected Mr. Sargeant's functioning.

[28] Ms. McInnis' witness statement indicates that she is expected to testify about "Long-term trauma from racism, assaults, [and] grievance failures." In my view, this formulation is overly broad. Ms. McInnis is permitted to testify to any facts she observed or opinions she formed about any long-term trauma that Mr. Sargeant has experienced from the instances of discrimination alleged in this case. Any opinions expressed by Ms. McInnis must arise from the ordinary exercise of her skill, knowledge, training, or experience in observing or counselling Mr. Sargeant.

[29] If Mr. Sargeant were proposing to call Ms. McInnis to testify about long-term trauma from racism, assaults, or grievance failures beyond what she observed in her counselling of him, he would need to comply with Rule 22. However, that is not the case here as Mr. Sargeant's counsel has confirmed that Ms. McInnis will be testifying only to any opinions formed based on her knowledge, training, and expertise as applied to observations conducted in the course of her role as Mr. Sargeant's counsellor.

[30] For all of these reasons, Mr. Sargeant is not required to comply with the requirements in Rule 22 of the Rules of Procedure to call Ms. McInnis as a witness. However, Ms. McInnis' testimony must not extend beyond the limits set out in paragraphs 27 and 28 above. I also find it appropriate to require Mr. Sargeant to file an amended witness statement for Ms. McInnis which summarizes the substance of her expected testimony in greater detail. Ms. McInnis' witness statement must provide more detail about:

- Mr. Sargeant's mental health during the relevant time period;
- the effect on him of the alleged instances of discrimination raised in this case; and
- any long-term trauma he has experienced as a result of them.

[31] In addition to having the benefit of this more detailed witness statement, all parties will have the opportunity to make any arguments they wish regarding the weight I should give to Ms. McInnis' evidence, as they do regarding the evidence of all other witnesses.

[32] The Respondent stated that, if I permit Ms. McInnis to testify without submitting an expert report, it should receive production of all documents related to her evidence, including copies of Mr. Sargeant's clinical records. The Respondent argued that the production of such records is necessary to avoid surprise, and to allow it to effectively test Ms. McInnis' evidence. Mr. Sargeant's counsel has not responded to this request.

[33] Parties have an obligation to disclose all documents within their possession that relate to the facts, issues, or remedies sought in the inquiry (see Rules 18(1)(f), 19(1)(e), and 20(1)(e) of the Rules of Procedure). A complainant has the right to privacy and confidentiality regarding their medical records. However, these rights may cease if a complainant puts their health in issue in a proceeding (see *Clegg* v. *Air Canada*, 2019 CHRT 3 at para 52). Mr. Sargeant has put his health in issue by arguing that the Respondent's actions negatively affected his mental health, and by seeking financial compensation for such effects.

[34] In my view, any materials related to Ms. McInnis' evidence must be produced, including copies of any clinical or other records or notes relating to any health effects experienced by Mr. Sargeant because of the allegedly discriminatory practices listed in paragraph 2 above. If Mr. Sargeant is in possession of the above materials, he must produce them. If only Ms. McInnis is in possession of them, Mr. Sargeant must request copies of them from her and provide them to the Tribunal and the other parties. If Ms. McInnis were to refuse to disclose the materials, a party would need to request a *subpoena duces tecum* for her to disclose the materials to the Tribunal prior to the hearing (see *Palm* v. *International Longshore and Warehouse Union, Local 500 et al*., 2013 CHRT 1 at paras 8–15).

[35] I remind the parties that any clinical or other records or notes produced are subject to the implied undertaking of confidentiality that applies to the other materials disclosed in legal proceedings. Pursuant to this undertaking, parties must only use the materials for the purposes of this proceeding and for no other purpose. Therefore, the parties are not permitted to disclose the materials to anyone who is not directly involved in this proceeding (see *Richards* v. *Correctional Service Canada,* 2025 CHRT 107). It is also open to Mr. Sargeant's counsel to seek any confidentiality orders that they consider necessary to prevent any portions of the materials from being made public where the need for confidentiality outweighs the interest in public access (see section 52 of the CHRA; the Canadian Human Rights Tribunal access to official records policy).

(b) Sheraz Kausar

[36] The Respondent objected to Mr. Sargeant calling Sheraz Kausar as a witness. Mr. Kausar is an investigator for the Office of the Correctional Investigator of Canada. The Respondent argued that Mr. Kausar is not compellable as a witness pursuant to section 189 of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the CCRA). Mr. Sargeant's counsel indicated that they would not seek to call Mr. Kausar as a witness if the Respondent produced a copy of any investigative report that Mr. Kausar prepared related to any complaint made by Mr. Sargeant.

[37] Section 189 of the CCRA provides as follows:

> The Correctional Investigator or any person acting on behalf or under the direction of the Correctional Investigator is not a competent or compellable witness in respect of any matter coming to the knowledge of the Correctional Investigator or that person in the course of the exercise or performance or purported exercise or performance of any function, power or duty of the Correctional Investigator, in any proceedings other than a prosecution for an offence under this Part or a prosecution for an offence under section 131 (perjury) of the Criminal Code in respect of a statement made under this Part.

[38] This provision makes Mr. Kausar non-compellable as a witness to testify regarding any matter coming to the knowledge of the Correctional Investigator or his own knowledge in the course of the exercise or performance or purported exercise or performance of any function, power, or duty of the Correctional Investigator (see *Kelly* v. *R*., 1994 CanLII 19044).

[39] I encourage the parties to resolve the question of whether there exist any investigative reports that Mr. Kausar prepared related to any complaint made by Mr. Sargeant and whether any such report should be produced. If the parties cannot resolve the matter on their own, they may request my involvement to rule on the matter.

(ii) The Respondent's objections to the Commission's intended witnesses

(a) The parties' arguments

[40] The Respondent objected to the Commission's proposed witnesses on the basis that their evidence is not relevant to the specific allegations that I must address in this case.

[41] Prior to my October 24, 2025, CMCC with the parties, the Commission advised the Tribunal and the other parties that it would be seeking to call as witnesses three individuals who filed their own complaints with it alleging racial discrimination by the Respondent. The Commission referred all three complaints to the Tribunal for inquiry. Two of the complaints remain pending before other Members of the Tribunal and one of the complaints has been settled by the parties. The Commission asked to consolidate Mr. Sargeant's complaint along with those of the three proposed witnesses. That request was denied by the Tribunal Chairperson with reasons to follow.

[42] The Commission provided the same general summary of intended evidence for each of the proposed witnesses. Specifically, it stated that each proposed witness was expected to testify about:

- his experiences of anti-Black racism, racial profiling, stereotyping, differential treatment based on prohibited grounds, systemic discrimination, and barriers within the Respondent;
- discriminatory institutional policies or practices that caused an adverse impact on him and individuals with similar protected characteristics;
- the Respondent's lack of accountability, including inadequate responses to grievances raising human rights concerns, and the minimization of his experiences; and

- the cumulative effect of the discriminatory treatment on his mental health and well-being.

[43] The Commission argued that the three proposed witnesses were similarly situated to Mr. Sargeant in that they are all Black men who are or were incarcerated and experienced anti-Black racism from the Respondent. It argued that calling these witnesses is necessary for the Commission to fulfill its statutory mandate to represent the public interest, for it to have a full and ample opportunity to present evidence, and to enable the Tribunal to make a fully informed decision. The Commission argued that it is necessary to call these witnesses for the Tribunal to get the full picture of racism within the correctional system. Mr. Sargeant agreed with the Commission. He argued that racism is rampant in the corrections system and therefore the proposed testimony of the witnesses was relevant to the systemic issues raised in his case.

(b) Ruling

[44] The Respondent's objection to the Commission's proposed witnesses is sustained.

[45] To begin, the evidence that would be provided by the Commission's proposed witnesses would take the form of allegations regarding their experiences of anti-Black racism by the Respondent. None of these allegations has yet been proven before this Tribunal, or any other tribunal or court, as the proposed witnesses' cases either remain pending before the Tribunal or they have been the subject of a settlement. If these proposed witnesses were to testify in this case, I would need to provide the Respondent with the opportunity to call its own witnesses to provide its side of the story regarding the allegations made by the three witnesses.

[46] There are several obvious problems with this situation. First, it would take me far outside the scope of the case before me, as I would need to assess and make findings regarding the allegations being made by these proposed witnesses. Second, it would lead to a significant duplication and waste of resources, as I would be hearing evidence that would also be presented in each witness' own case before the Tribunal. Finally, it would create the risk of inconsistent results if the Tribunal Members hearing the complaints filed

by the proposed witnesses and I were to reach different conclusions as to their credibility or the facts that have been established by the evidence relevant to their cases.

[47] The above problems associated with the Commission's proposed witnesses, on their own, are sufficient to sustain the Respondent's objection to them.

[48] However, even if the proposed testimony of these proposed witnesses consisted of proven facts, rather than unproven allegations, I would nonetheless exclude them. In my view the testimony of the three proposed witnesses carries minimal probative value in my determination of whether Mr. Sargeant has established the discriminatory practices he has alleged in this case.

[49] The issues in this case are the issues I listed at paragraph 8 of the scope ruling which I have reproduced in paragraph 2 above. All of the incidents that Mr. Sargeant challenged as being discriminatory occurred at Matsqui Institution and involved Respondent staff at that institution. As noted above, despite saying the racism was rampant in the correctional system, Mr. Sargeant did not make allegations about any specific instances of discrimination victimizing other individuals in the correctional system. He also did not include specific allegations in his complaint about any conditions that may exist, or incidents that have taken place across the correctional system generally.

[50] I am acutely aware that racial discrimination can be subtle and that adjudicating such allegations may require a consideration of the broader context. However, I do not find that the expected evidence of the Commission's proposed witnesses is probative of the questions before me in this case, which relate to Mr. Sargeant's allegations against the Respondent. As Mr. Sargeant has already pointed out many times in this proceeding, there is generally no dispute that the various incidents raised in his complaints occurred, although the parties have different accounts of the specifics and context surrounding the incidents. The key issue in this case will be whether the evidence establishes that it is more likely than not that Mr. Sargeant's race was a factor in the various incidents. Even if it were proven, which it has not been, that the Commission's proposed witnesses were subject to racial discrimination from the Respondent, such incidents involved distinct types of differential treatment and stereotyping, different individuals, and occurred at different times, in different

institutions, and under distinct circumstances. Therefore, I do not agree with the Commission that these individuals are sufficiently similarly situated for their evidence to be probative of whether Mr. Sargeant's race was a factor in the various incidents he has raised in his complaints that are before me.

[51] For the above reasons, the Respondent's objection to the Commission's proposed witnesses is sustained. The Commission is not permitted to call its three proposed witnesses in this case.

(iii) Objections to Respondent's intended witness, Dr. Danika Overmars

[52] Mr. Sargeant objected to one of the Respondent's intended witnesses, Dr. Danika Overmars, on the basis that her proposed testimony was irrelevant as she was on a leave of absence during the relevant time period.

[53] Dr. Overmars was a psychologist at Matsqui Institution in 2019 and 2020. According to her witness statement, she is expected to testify to:

> Inmates' access to counseling and psychological services at Matsqui in 2019 and 2020, including Mr. Sargeant, and how Mr. Sargeant was generally provided as much access as other inmates. The restrictions that were placed on access by all inmates to psychological services at Matsqui due to COVID. How Mr. Sargeant and other inmates could also access counseling services outside of Matsqui Institution if they applied and obtained the necessary funding.

[54] I, myself, had questioned the relevance of Dr. Overmars' testimony in my November 4, 2025, CMCC with the parties as Mr. Sargeant has made no allegation in this case about discriminatory access to counseling and psychological services. The Respondent's counsel replied by indicating that Dr. Overmars' testimony was relevant to the remedies sought by Mr. Sargeant.

[55] I decline to strike Dr. Overmars from the Respondent's witness list for the moment. However, I will seek additional details from the Respondent's counsel in a future CMCC to ensure that any evidence Dr. Overmars is intended to provide is actually relevant to the remedies sought by Mr. Sargeant.

V. Third-party reports cited by the Commission in its SOP

[56] The Respondent has asked that I rule, in advance of the hearing, on the admissibility of certain reports upon which the Commission intends to rely at the hearing.

[57] In its SOP, the Commission referred to reports on anti-Black racism issued by the Office of the Correctional Investigator, the Auditor General of Canada, and the steering group for Canada's Black Justice Strategy. I refer to these reports collectively in this ruling as "the Third-Party Reports." In the scope ruling, I denied the Respondent's request to strike all references to the Third-Party Reports in the Commission's SOP. However, I found that the Commission could not use the Third-Party Reports as a vehicle to add any specific allegations of systemic discrimination across the correctional system generally.

[58] In the scope ruling, I indicated that the Reports (or portions of them) may be admissible as social context evidence. I then stated as follows:

> [28] Social context evidence is often defined as "social science research that is used to construct a frame of reference or background context for deciding factual issues crucial to the resolution of a particular case": *R. v. Spence*, 2005 SCC 71 at para 57. See also *Woodgate et al. v. RCMP*, 2023 CHRT 9 at paras 25–27. Whether the category of social context evidence may extend beyond social science research to reports like the Third-Party Reports is an issue best addressed at the hearing.
>
> [29] Admissible social context evidence may assist decision-makers in determining whether to draw inferences in particular cases (see for example *Banda v. Correctional Service Canada*, 2024 CHRT 89 at para 181 [*Banda*]; *Peart v. Peel Regional Police*, 2006 CanLII 37566 (ON CA) at para 96 [*Peart*]). However, there are also limits on the use of social context evidence (see *Banda* at para 190; *Woodgate* at para 27; *Peart* at para 96).

[59] I stated in the scope ruling that I would hear the parties' full submissions at the hearing on whether the Third-Party Reports—or portions of them—are admissible as social context evidence and, if so, the weight that should be given to them and the purpose for which any admitted portions may be used.

[60] Having given additional thought to the matter of the timing of submissions on the admissibility of the reports, I find that it would be most appropriate to determine the issue in advance of the hearing.

[61] The Commission argued that the issue of the timing of submissions on the admissibility of the reports is *res judicata,* meaning that it has already been decided and should not be reopened. I disagree. That doctrine generally applies to decisions regarding substantive issues in a case. It does not apply to bar a Member from reconsidering the best time to receive submissions on, and to decide, a particular issue.

[62] The hearing of this case will not begin until the end of March 2026.Therefore, there is sufficient time to address the issue of the admissibility of the reports in writing before the start of the hearing. Doing so would allow the Tribunal and the parties to avoid spending time on the issue at the hearing and to ensure that the scheduled hearing time proceeds as efficiently as possible so that the Tribunal will hear all of the parties' evidence in the time allotted.

[63] The issues to be addressed by the parties in their submissions related to the Third-Party Reports include the following:

1) Are all or part of the Third-Party Reports admissible in this proceeding?
2) If so, should the Tribunal admit all or parts of them into evidence?
3) If so, are there any limits on the purposes for which these reports may be used?

[64] I have set deadlines below for the parties to file submissions regarding the above issues.

VI. ORDERS AND DIRECTIONS

[65] For the above reasons, I make the following orders and directions:

1) Mr. Sargeant's request for certain grievance documents naming Mr. Bell is denied;

2) The Respondent's request that I require Ms. McInnis to comply with the requirements of Rule 22 is denied. However, any materials that relate to her

evidence must be produced, including copies of any clinical or other records or notes relating to any health effects experienced by Mr. Sargeant because of the allegedly discriminatory practices listed in paragraph 2 above:

a. By February 6, 2026, Mr. Sargeant must file an amended witness statement for Ms. McInnis which summarizes the substance of her expected testimony in greater detail. Ms. McInnis' witness statement must provide more detail about Mr. Sargeant's mental health during the relevant time period, the effect on him of the instances of discrimination alleged raised in this case, and any long-term trauma he has experienced as a result of them.

b. I encourage the parties to work together to ensure the disclosure of the materials described in paragraph 34. If Mr. Sargeant is in possession of the materials described in paragraph 34, he must produce them by February 6, 2026. If only Ms. McInnis is in possession of these materials, Mr. Sargeant must request copies of them from her and provide them to the Tribunal and the other parties as soon as possible and no later than February 10, 2026. If Ms. McInnis were to refuse to disclose the materials, the Respondent or any other party must request a *subpoena duces tecum* as soon as possible and no later than February 12, 2026, so that Ms. McInnis discloses the materials to the Tribunal prior to the hearing.

3) I sustain the Respondent's objection to Mr. Sargeant's proposal to call Mr. Kausar as a witness:

a. I encourage the parties to resolve the question of whether there exist any investigative reports that Mr. Kausar prepared related to any complaint made by Mr. Sargeant and whether any such report should be produced. If the parties cannot resolve the matter on their own, they may request my involvement to rule on the matter.

4) I sustain the Respondent's objection to the Commission's proposed witnesses;

5) I deny Mr. Sargeant's objection to the Respondent's proposal to call Dr. Danika Overmars at this time. However, I will seek further clarity from the Respondent at a future CMCC on the relevance of her intended testimony, if any;

6) I allow the Respondent's request that I determine the admissibility of the Third-Party Reports relied upon by the Commission in its SOP in advance of the hearing:

   a. By February 11, 2026, the Respondent must file concise submissions in support of any objections it has to the admissibility to the Third-Party Reports;

   b. By February 25, 2026, the Commission and Mr. Sargeant's counsel must file their concise responding submissions;

   c. By March 4, 2026, the Respondent must file any concise submissions it wishes to make in reply to the responding submissions filed by the Commission and Mr. Sargeant's counsel.

7) Any party who is unable to meet any of the deadlines above must contact the other parties as soon as possible to work out an alternate timetable to which all parties agree. The parties must propose any such alternate timetable, by February 6, 2026, for me to consider and approve, if reasonable in light of the hearing dates that have been scheduled for this case and which will not be adjourned.

8) The Registry will contact the parties to schedule one last CMCC for this case. I will issue directions to the parties as to information that they will need to produce before the call, including proposed time estimates for each of their witnesses. I will discuss these proposed time estimates with the parties in the CMCC and set reasonable and proportional time limits for the examination in chief and cross-examination of each of the parties' witnesses.

Signed by

Jo-Anne Pickel
Tribunal Member

Ottawa, Ontario
January 29, 2026

Canadian Human Rights Tribunal

Parties of Record

File Nos.: HR-DP-3073-24, HR-DP-3074-24 & HR-DP-3075-24

Style of Cause: John Sargeant v. Correctional Service Canada

Ruling of the Tribunal Dated: January 29, 2026

Motion dealt with in writing without appearance of parties

Written representations by:

Kareem Guimba and Demar Hewitt, for the Complainant

Anshumala Juyal, for the Canadian Human Rights Commission

Francois Paradis, for the Respondent