

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2022 CHRT 33

Date: October 14, 2022

File No.: T2729/10521

Between:

Katheryne Schulz (on behalf of Bernard Schulz)

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Employment and Social Development Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] The complainant, Bernard Schulz, could not open a Registered Disability Savings Plan (“RDSP”) because he had passed the age limits set out in the *Income Tax Act* (ITA). He also did not qualify for Canada Disability Savings Grants and Bonds, which are subject to age limits in the *Canada Disability Savings Regulations* (the “Regulations”). Mr. Schulz alleges that the age restrictions in the ITA and in the Regulations are a form of systemic discrimination and disproportionality affect seniors and persons with disabilities because of the challenges they face in applying for benefits.

[2] The respondent, ESDC, says that Mr. Schulz is effectively challenging the age limit set out in the ITA, and that the courts are the only appropriate forum to challenge legislation.

[3] Mr. Schulz concedes that a challenge to the ITA is outside the Tribunal’s jurisdiction. I previously granted his request to defer this proceeding for 6 months while he applied for funding to start his court challenge under the *Canadian Charter of Rights and Freedoms* (*Schulz (on behalf of Bernard Schulz) v. Employment and Social Development Canada* 2022 CHRT 6) [*Schulz*]. The Court Challenges Program (the “Program”) denied his application.

[4] Mr. Schulz is now asking the Tribunal to extend the abeyance until April 2023 while he seeks funding to further develop his court challenge. ESDC does not oppose the request. The Commission takes no position on the request at this time.

II. ISSUE

[5] Should the Tribunal grant Mr. Schulz’s abeyance request, and if so, for how long?

III. REASONS

[6] I am granting the abeyance request until April 2023. I accept that this time-limited extension is in the interests of justice. It will avoid fracturing Mr. Schulz’s case, duplicating

the parties' resources and effort, and reduces the possibility of multiple proceedings on similar issues.

[7] I allowed the first abeyance request in *Schulz* but held that the Tribunal process is not an insurance policy or fall-back measure. I was not prepared to grant an indefinite or open-ended adjournment and found that Mr. Schulz would have to make a choice at the end of the abeyance period about his complaint and decide whether he is proceeding before this Tribunal. He had not previously indicated what he would do if he received the funding, nor if he would proceed with his Tribunal complaint if the funding were denied, or on what basis [see *Schulz* at paras 12-13].

[8] Mr. Schulz has since addressed the Tribunal's concerns. He will proceed in only one forum and submits that it will be more efficient and just to do so. If he does not get the funding to bring his application before the courts, he intends to return to the Tribunal and challenge those parts of his complaint that he believes are within our jurisdiction to decide. While Mr. Schulz agrees that the challenge to the ITA must proceed before the courts, he argues that the remaining allegations, which include a challenge to the Regulations as well as allegations about the way the program was administered, can be brought in either forum.

[9] If Mr. Schulz successfully obtains funding to start his constitutional application, he will withdraw his complaint before the Tribunal. He does not have the means to mount two legal proceedings, which he will have to do if I deny the abeyance extension request.

[10] Granting this request means that by April 2023, 15 months will have passed since Mr. Schulz first raised the issue of an adjournment in January 2022. While this delay is significant, I am satisfied that Mr. Schulz's request is reasonable and limited in the circumstances. He has confirmed that he will not be requesting an indeterminate stay of proceedings pending final determination of his constitutional challenge and that he will withdraw his Tribunal complaint if he obtains the funding. The other parties do not oppose the request and have not raised any concerns about delay. Rather, ESDC submits that as there are other complaints before the Tribunal that raise similar issues, whether Mr. Schulz's complaint proceeds or is held in abeyance, some of the issues he has raised may be

addressed in part by the other complaints and there is an interest in avoiding a multiplicity of proceedings.

[11] I am also persuaded by Mr. Schulz's compelling arguments about access to justice, particularly in light of the broader systemic allegations and issues Mr. Schulz raises. Mr. Schulz is represented by counsel who can advance his challenge and provide advice. However, as he submits, having to pursue his Tribunal complaint now, while potentially proceeding before the courts later, would likely put justice out of reach for Mr. Schulz. I accept that by proceeding with his Tribunal complaint now Mr. Schulz would have to dilute his resources and those of the other parties, particularly as there are multiple complaints proceeding on the same or similar issues before the Tribunal. Compelling Mr. Schulz to proceed with his Tribunal complaint now would not be beneficial to any party to the proceedings, nor would it favour the interests of justice.

IV. ORDER

[12] The complaint is deferred until April 14, 2023, or until such earlier date on which the complainant has determined the outcome of his application for funding to pursue his court challenge.

[13] The complainant is directed to immediately advise the parties and the Tribunal when he receives an answer on his funding application.

[14] The parties' Statements of Particulars are due as follows:

- Mr. Schulz and the Commission: May 26, 2023
- ESDC: June 23, 2023
- Replies: June 30, 2023

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
October 14, 2022

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2729/10521

Style of Cause: Katheryne Schulz (on behalf of Bernard Schulz) v. Employment and Social Development Canada

Ruling of the Tribunal Dated: October 14, 2022

Motion dealt with in writing without appearance of parties

Written representations by:

Ashley Wilson, for the Complainant

Sophia Karantonis, for the Canadian Human Rights Commission

Sean Stynes, for the Respondent