

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 99

Date: August 29, 2024

File No.: T2566/12320

Between:

Marcus Williams

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Bank of Nova Scotia

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] The complainant, Marcus Williams, has requested that the Tribunal's Chairperson assign a panel of three members to hear and decide this complaint. The matter is currently presided by one Tribunal member.

[2] The respondent, the Bank of Nova Scotia (the "Bank"), opposes the request and says the matter is not sufficiently complex to require the appointment of a three-member panel to hear the case. The Canadian Human Rights Commission (the "Commission") says it does not oppose the request but also argues that a three-member panel is not necessary and will likely cause additional unnecessary delays in scheduling a hearing. The Commission also provided concrete and practical suggestions to support the fair and expeditious hearing of this complaint.

II. DECISION

[3] Mr. Williams' request is denied. The complaint is an employment case involving allegations of discrimination in staffing decisions and is not sufficiently complex to warrant assigning three members to hear and decide the matter. Assigning a three-member panel is not an effective use of the Tribunal's limited resources and will add delay and needless complexity to the proceeding.

III. ANALYSIS

[4] The *Canadian Human Rights Act* (the "Act") sets out the Chairperson's functions. These include supervision over and direction of the work of the Tribunal, including the allocation of work among the members and the management of the Tribunal's internal affairs (ss.48.4(2) of the Act). When the Commission refers a complaint to the Tribunal and asks the Chairperson to start an inquiry into a complaint, the Chairperson assigns a member of the Tribunal to case manage the file and to hear and decide the issues in dispute. The

Chairperson may assign a panel of three members if she considers that the complexity of the complaint requires it (ss. 49(2) of the Act).

[5] Complexity must be assessed on a case-by-case basis. Some of the factors to consider include the nature and scope of the complaint, the specific facts giving rise to the complaint, the legal issues raised, and the potential nature and volume of documentary and witness evidence (*First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada*, 2012 CHRT 16 at para 20 [“Caring Society”]).

[6] Subsection 49(2) and the decision about assignment of a panel cannot be interpreted in isolation from the scheme of the CHRA. In addition to ss. 48.4(2), mentioned above, ss. 48.9(1) of the Act provides that Tribunal proceedings should be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. Accordingly, the decision to assign a panel of one or three members is not only based on the Chairperson’s consideration of the complexity of the complaint, but also the management of the Tribunal (*Caring Society* at para. 22).

[7] On November 17, 2020, the Commission referred the complaint to the Tribunal for a hearing. Since then, the parties have gone back and forth on the possibility of a mediation, there has been a judicial review and a request for an abeyance, which was dismissed. Statements of Particulars (SOPs) were eventually exchanged, amended SOPs were filed and most recently, Mr. Williams filed an amended Reply on August 8, 2024.

[8] In my view, the complaint is not legally or factually complex enough to warrant the appointment of a three-member panel. I agree with the Bank that the complaint involves allegations of workplace discrimination that are very much within the nature of complaints that are regularly heard by a single member panel. The sheer volume or number of allegations, particularly if they are similar, does not necessarily make this is a complex case in fact or law. Mr. Williams has not justified why a challenge to staffing decisions, even if there are many of them, is so complex or novel that it warrants dedicating three members of the Tribunal to hear and decide this case.

[9] While Mr. Williams has raised the lengthy procedural history, including the number of judicial reviews in this case, these factors do not impact the complexity of the legal and factual issues that a decision-maker will have to address in deciding the merits of his complaint. In any event, what happened at the Commission or before the referral to the Tribunal is water under the bridge and is irrelevant to the Tribunal's process. Whether one or three members hear this case will not change that history, nor would adding two decision-makers be an opportunity to revisit the Commission's decisions about the scope of the complaint, which the Tribunal has no authority to change.

Resources and delay

[10] As the Chairperson, among other things, I allocate work among the Tribunal's members to allow the Tribunal to deal with all complaints of discrimination that the Commission refers to it (*Caring Society* at para. 21). The Tribunal has finite resources. Appointing three members of the Tribunal to hear one employment file comes at a cost to taxpayers, but also to other parties waiting for their cases to be heard whose interests I must also consider. While Mr. Williams has made many allegations of discrimination against the Bank, his case is not the only one before this Tribunal.

[11] Mr. Williams expresses concern about delay. But adding two more decision-makers to his case will not speed things up. To move forward expeditiously this case needs to be streamlined, not made more complex than it needs to be. Three members means three adjudicators' schedules need to be coordinated, and three people would need to confer and decide all aspects of the case.

[12] It is the Tribunal's task to ensure that proceedings are conducted in a fair, informal, and expeditious way. But achieving this goal also depends on the parties. Making reasonable, proportionate requests, working to reduce witness lists, avoiding unnecessary objections over the course of the hearing, and working together to get the evidence heard as quickly and as efficiently as possible is in the interests of all parties and the public interest (*Ryan Richards v. Correctional Service Canada*, 2023 CHRT 51 at para. 27). In other words,

by not having due regard for proportionality and cooperation, the parties can make hard things harder, and long things longer.

[13] The parties and the Tribunal have a common interest in moving this case to a conclusion in a fair and expeditious way. To that end, the Commission has made helpful, practical and concrete suggestions that support compliance with s.48.9(1) of the Act. For example, the Commission suggests focusing the allegations on three decisions, as it appears there are 123 staffing decisions at issue in the complaint and 137 proposed witnesses for the hearing. It also suggests agreeing on facts that may not be in dispute, which would also reduce hearing time and allow this file to conclude more quickly. It goes without saying that the broader the complaint, the more allegations that are made, the more witnesses and evidence that are called, the longer the hearing will take. Parties choosing their battles wisely and trying to move forward with a manageable complaint process is what will favour this file being heard and determined expeditiously.

IV. ORDER

[14] Mr. Williams' request to appoint three members to adjudicate this matter is dismissed. The assigned member will continue with the hearing of this matter.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, ON
August 29, 2024

Canadian Human Rights Tribunal

Parties of Record

File No.: T2566/12320

Style of Cause: Marcus Williams v. Bank of Nova Scotia

Ruling of the Tribunal Dated: August 29, 2024

Motion dealt with in writing without appearance of parties

Written representations by:

Marcus Williams, Self-represented

Sarah Chenevert-Beaudoin, for the Canadian Human Rights Commission

Tiffany O'Hearn Davies, for the Respondent