

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2022 CHRT 6

**Date:** March 7, 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. Background

[1] The complainant, Bernard Schulz, is 75 years old and has autism. Mr. Schulz wanted to open a Registered Disability Savings Plan (“RDSP”). The *Income Tax Act* (ITA) sets an age limit of 59 to qualify for an RDSP and related Canada Disability Savings Grants and Bonds, which are also subject to age limits set out in the *Canada Disability Savings Regulations* (the “Regulations”). Mr. Schulz could not apply for the RDSP and related benefits until his niece helped him, but by that time he had passed the age cut-offs. Mr. Schulz alleges that these age limits in the ITA and in the Regulations disproportionality affect people with disabilities and seniors because of the challenges they face in applying for benefits. He alleges that barriers to accessing the RDSP are a form of systemic discrimination because all other Canadians can contribute to their Registered Retirement Savings Plan (“RRSP”) until the age of 65.

[2] The respondent, ESDC, says that the Tribunal does not have the authority to hear Mr. Schulz’s complaint, which is effectively a challenge to the age limit in the ITA. ESDC argues that the courts are the only appropriate forum to challenge legislation. Since Mr. Schulz did not qualify for an RDSP in the first place because he did not meet the ITA age requirement, ESDC submits that the issue of age eligibility for any grants and bonds set out in the Regulations is not even raised on the facts.

[3] Mr. Schulz acknowledges that a challenge to the ITA is outside the Tribunal’s jurisdiction and he intends to pursue his challenge before the courts. He has applied for funding to support his claim that the age limits in the ITA and in the Regulations are contrary to the equality protections set out in the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). He is asking the Tribunal to defer proceeding with his complaint while his funding application is being processed because the *Charter* challenge is likely to address some, or all the issues raised in this complaint.

[4] The terms “stay”, defer”, “suspend” “adjourn” or “hold in abeyance” are used in the parties’ submissions. I am not going to address what the difference is between these terms, or whether they should be used interchangeably, because doing so is not necessary to

decide the complainant's request. Regardless of the terms used, it is clear what Mr. Schulz is asking for. He wants the Tribunal to put his complaint on hold until he gets an answer to his funding application for his constitutional challenge.

[5] The Commission consents to Mr. Schulz's request. ESDC says that it consents too, but it appears to have qualified its response. It does not agree to an indefinite adjournment and wants Mr. Schulz to advise at the end of the deferral if he is discontinuing his complaint or seeking an amendment to proceed on the parts of his complaint that are within the scope of the CHRA.

## **II. Issue**

[6] Should the Tribunal defer the inquiry into Mr. Schulz's complaint, pending an application for funding for a possible constitutional challenge to the age restrictions in the ITA and the Regulations? If so, for how long?

## **III. Reasons**

[7] I agree that a deferral is warranted in the circumstances and am granting Mr. Schulz's request to defer the inquiry into his complaint for a maximum period of 6 months. I accept that a short-term delay to avoid multiple proceedings and to give Mr. Schulz the chance to pursue his funding application is reasonable and appropriate in the circumstances. At the end of that period, the Tribunal will determine how to proceed after hearing from Mr. Schulz about the status of the funding application, and after hearing from all parties about proposed next steps.

[8] Mr. Schulz wants the Tribunal to defer his whole complaint pending the outcome of his funding application to bring his constitutional challenge to the ITA and the Regulations. He estimates he will get an answer on his application in 3-6 months and says he will update the Tribunal as soon as he hears about his request.

[9] Relying on the Tribunal's reasons in *Bailie et al. v Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 at para. 22 [*Bailie*], Mr. Schulz argues that deferring his complaint

is justified because his case presents exceptional circumstances. He says that the outcome of his complaint could impact an untold number of Canadians who are no longer eligible for RDSP because of their age. Mr. Schulz also submits that this deferral is in the public interest and will save the Tribunal and the courts resources. He relies on *Baillie* and the Tribunal's reasons in *Renaud, Sutton and Morigeau v Aboriginal Affairs and Northern Development Canada*, 2013 CHRT 30, at para 20, where the Tribunal adjourned proceedings pending direction from the courts on the issue raised by the complaints. Mr. Schulz submits that it is in the interests of justice to first seek a judicial determination about the constitutionality of the relevant ITA provisions and Regulations which would be binding on the Tribunal.

[10] Mr. Schulz states that the parties all consent to the deferral request. I am not persuaded, however, that the respondent has consented to what Mr. Schulz is really requesting, at least in part because he has not indicated what he intends to do at the end of the 3-6 month period.

[11] The respondent agrees to a time-limited adjournment of proceedings to avoid multiple proceedings, and because the Tribunal is not the place to challenge legislation. The respondent relies on the Tribunal's adjournment ruling in *Matson, Matson, and Schneider (nee Matson) v. Indian and Northern Affairs Canada*, 2010 CHRT 28 at para 22, noting that it serves no purpose to proceed with the Tribunal claim if the laws which are alleged to be contrary to the *Canadian Human Rights Act* (the "Act") are also challenged as being unconstitutional in the courts. ESDC further submits that following the 3-6 month deferral, Mr. Schulz should advise that he is either discontinuing his complaint before this Tribunal or seeking an amendment to proceed only with what is within the Tribunal's scope.

[12] But that is not what Mr. Schulz has requested. He asks that the Tribunal hold his complaint in abeyance pending determination of his funding application but he has not indicated what he will do if he is granted the funding, or if his application for funding is delayed beyond his estimate, or if it is refused. In other words, if Mr. Schulz receives the funding, is he intending to return to the Tribunal and effectively request an indeterminate stay of proceedings pending final determination of a constitutional challenge? Does he intend to withdraw or amend his complaint before this Tribunal if he gets the funding and proceeds with the constitutional challenge? If his funding request is refused, will he return

to the Tribunal to proceed with his complaint? Is there is a recourse mechanism available to him to challenge a denial of his funding request that would extend the 3-6 month period?

[13] While I agree that a time-limited deferral is warranted in the circumstances, the Tribunal inquiry process is not an insurance policy or fall-back measure. Tribunal proceedings should be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s. 48.9(1) of the *Act* and Rule 5 of the Tribunal Rules of Procedure). I am not granting an indefinite or open-ended adjournment and this ruling should not be perceived as such. Further, Mr. Schulz will have to make a choice at the end of the 6-month period about whether he intends to proceed with his complaint, or some part thereof, before this Tribunal.

#### **IV. ORDER**

[14] The complaint is deferred until September 7, 2022, or until such earlier date on which the complainant has determined whether he is proceeding with his constitutional challenge. The complainant is directed to immediately advise the parties and the Tribunal when he receives an answer on his funding application.

[15] The Registrar will schedule a case management conference call (CMCC) with the parties in the week of September 7, 2022, or as soon as possible thereafter to address next steps. In advance of the call, Mr. Schulz is directed to set out his intentions with respect to his Tribunal complaint. He must provide these submissions to the other parties and to the Tribunal no later than one week prior to the CMCC.

*Signed by*

**Jennifer Khurana**  
Tribunal Member

Ottawa, Ontario  
March 7, 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:** March 7, 2022

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Nick Papageorge, for the Complainant

Sophia Karantonis, for the Canadian Human Rights Commission

Sean Stynes, for the Respondent