Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

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Date: June 15, 2023
File No.: HR-DP-2817-22; T2686/6221; T2685/6121/ T2687/6321

Between:

Jamus Dorey, Karolin Alkerton, David Huntley and Roderick McGregor

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Employment and Social Development Canada

Respondent

Ruling

Member: Jennifer Khurana

I. OVERVIEW

[1] Jamus Dorey, Karolin Alkerton, David Huntley and Roderick McGregor ("the Complainants") opened Registered Disability Savings Plans (RDSPs) at financial institutions between 2015 and 2019. They no longer qualify for grants and bonds under the *Canada Disability Savings Act*, SC 2007, c 35, s 136 (CDSA) and the *Canada Disability Savings Regulations*, SOR/2008-186 (CDSR or "the Regulations") because they are all over 49 years of age. The Complainants say that there are two parts to their complaints. First, they allege that the eligibility requirements and age-based distinctions set out in legislation and regulations that govern disability savings plans are a discriminatory practice in the provision of a service under s.5 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the *Act*). Second, they allege that Employment and Social Development Canada (ESDC) discriminated against them on the grounds of disability in the way it administered and promoted the RDSP (the "administration allegations"). They say their complaints have always had these two elements to them.

[2] The Respondent, ESDC, is the department of the Government of Canada that is responsible for developing, managing and delivering social programs and services. ESDC argues that it is not a service provider within the meaning of the *Act* in these complaints because a challenge to eligibility requirements set out in legislative instruments must be brought before the courts under the *Canadian Charter of Rights and Freedoms*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11. ESDC also denies that it is a service provider to individuals with disabilities who wish to open an RDSP because those services are provided by registered financial institutions.

[3] ESDC filed a motion asking the Canadian Human Rights Tribunal ("the Tribunal") to dismiss the complaints. First, it says that the complaints the Canadian Human Rights Commission ("the Commission") referred to the Tribunal are impermissible challenges to legislation and regulatory instruments that are beyond the scope of the *Act* and that it is plain and obvious that they have no reasonable prospect of success. Second, it asks that the Tribunal strike the administration allegations because they are new and were added after

the Commission referred the complaints to the Tribunal. ESDC says that allowing the administration allegations to proceed would prejudice it and would be an abuse of process that circumvents the system for human rights referrals set out in the *Act*.

[4] The Commission initially took the legal position that the Regulations could be challenged before the Tribunal. The Commission reversed its position after it referred the complaints to the Tribunal and now agrees with ESDC that challenges to the non-discretionary Regulations at issue in these complaints do not fall within the scope of the *Act*. But the Commission says that the administration allegations are within the scope of the initial complaints it referred to the Tribunal and should proceed.

[5] The Complainants filed a joint response to ESDC's motion. They largely agree with the Commission's submissions, though they added some individual aspects to their submissions. Some of the Complainants do not agree that a challenge to the Regulations is beyond the scope of the *Act*. They are asking the Tribunal to deny ESDC's request to strike their allegations because they say it would be in the public interest to proceed to hear them.

[6] This motion requires me to first determine the nature and scope of the complaints that the Commission referred to the Tribunal. After deciding what these complaints are really about and how to characterize them, I can decide whether the Tribunal can proceed to hear them, in whole or in part.

[7] In its response to the motion, the Commission added its own request, with no prior notice. It wants me to dismiss the motion and to decide whether the Tribunal can hear the Complainants' challenges to the Regulations on their merits as a preliminary issue. I am dismissing this request. I address this new issue below before turning to the substance of the motion.

II. DECISION

[8] I am allowing ESDC's motion and dismissing these complaints in their entirety. The complaints challenge mandatory age-based limitations in the statutory scheme for disability savings plans. The allegations target the substance of the legislation and the Regulations, and these non-discretionary entitlements are not a service held out by ESDC to the public.

The Tribunal has no authority to award the payment of benefits or compensation. It is plain and obvious that these allegations have no reasonable prospect of success.

[9] The administration allegations do not have a sufficient nexus to the complaints the Commission referred to the Tribunal. Allowing those to move forward would bypass the process for receiving and screening complaints set out in the *Act* and cause prejudice to ESDC.

III. STATUTORY CONTEXT OF DISABILITY SAVINGS PLANS

[10] Before turning to the issues raised in the motion, I have outlined some of the legislative and regulatory framework that governs registered disability savings plans because it is relevant to how I have characterized these complaints.

[11] The *Income Tax Act,* R.S.C. 1985, c.1, s.146.4 (ITA), the CDSA and CDSR are the legal instruments that govern how registered disability savings plans work in Canada. Some eligibility requirements are set out in the ITA, but many are also included in the CDSA and in the CDSR.

[12] RDSPs are registered savings plans intended to help support the long-term savings and financial security of Canadians with disabilities and their families. They are established under a provision of the ITA (s.146.4) and were first made available to disabled Canadians in 2008. They allow funds to grow tax-free in accounts that must be registered with the Canada Revenue Agency and opened through participating financial institutions. Contributions can be made until the end of the year an individual turns 59 and withdrawals must start at the age of 60 (s.146.4 of the ITA). These and other eligibility requirements are generally set out in s.146.4 of the ITA but are also found in the CDSA and CDSR.

[13] The Government of Canada offers matching grants and bonds for low-income Canadians with disabilities that are paid directly into an RDSP. Canada Disability Savings Grants (“grants”) and Canada Disability Savings Bonds (“bonds”) are established under the CDSA. The Government of Canada will pay a matching grant of 100%, 200% or 300% of an eligible individual’s contributions, depending on the beneficiary’s adjusted family net income and the amount contributed. These rules are set out in the CDSA and the CDSR

(s.2). Bonds are additional amounts paid directly into the RDSP by the Government of Canada for low-income Canadians with disabilities. No contributions have to be made to receive the bond. Bonds can be up to $1000 a year with a lifetime bond limit of $20,000. Eligibility requirements for bonds are set out in the CDSA and the CDSR (s.3).

[14] The CDSA also allows an individual to carry forward unused entitlements of grants and bonds from the previous 10 years, also known as an “allocation of contribution”. These can be paid on contributions and bond requests made by a beneficiary up until December 31 of the year they turn 49. There are annual limits on carried forward grants and bonds and a lifetime grant limit. These provisions and the caps are set out in the CDSA.

IV. ISSUES

1. Should I determine whether challenges to the Regulations are within the scope of s.5 as a preliminary matter at a hearing instead of deciding the issue on this motion to strike?

2. Are the complaints within the scope of the Act?

i) Do the complaints challenge legislation and regulations? If so, do they also allege discrimination in how a service was provided to them?

ii) If the complaints are a challenge to legislation and regulations only, is it plain and obvious that the allegations have no reasonable prospect of success?

3. Can the administration allegations proceed?

i) Do the administration allegations have a sufficient link to the complaints that the Commission referred to the Tribunal?

V. REASONS

1. Should I determine whether challenges to the Regulations are within the scope of s.5 as a preliminary matter at a hearing instead of deciding the issue on this motion to strike?

[15] No. I am rejecting the Commission's request to argue the same issues as a preliminary matter at a hearing. The request is wasteful of all parties' resources, including the Tribunal's. Deciding this issue by way of written motion is fair and efficient and favours the Tribunal's statutory obligation to conducts its proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s.48.9(1) of the *Act*).

[16] The Tribunal has the authority to determine the scope of these complaints by way of motion to strike (*Richards v Correctional Service Canada,* 2020 CHRT 27 at para 85 *[Richards]; Cushley et al. v. Veterans Affairs Canada*, 2022 CHRT 21 at paras 16-18).

[17] On a motion to strike, the Tribunal assumes the facts to be true, and evidence is not admissible. The Tribunal must exercise caution when striking a claim in advance of a hearing and must do so only in the "clearest of cases" (*Richards* at para 86). The approach must be generous and err on the side of permitting a novel but arguable claim to proceed (*R. v. Imperial Tobacco Ltd*., 2011 SCC 42 at para 21). Even a complex and novel legal claim may properly be struck from a pleading if on a proper analysis of the law it is plain and obvious that the claim cannot succeed (*Callan v. Cooke*, 2012 BCSC 1589 at para 19).

[18] The parties do not dispute that I have the authority to decide this motion to strike. Rather, in its response to the motion, the Commission asks that I hear the first issue raised by ESDC as a "preliminary matter" on the merits instead. The Commission also reminds the Tribunal that it may "use flexibility to ensure fairness" and that I can choose to conduct an oral hearing.

[19] But the Commission has not explained what difference it could make to the outcome to decide what it describes as "a purely legal question" as a preliminary matter. While striking the allegations before a full hearing requires the higher standard of "plain and obvious", it is up to ESDC to persuade me that the standard has been met. If I do not find that the allegations impugning the Regulations meet that higher threshold, I will dismiss ESDC's motion on this point, and we will proceed to a full hearing in any event.

[20] If the Commission did not believe that it was plain and obvious that the allegations challenging the Regulations could not succeed, it could have made submissions countering

ESDC's claim that these allegations have no reasonable prospect of success. Rather, the Commission agrees with ESDC that the Complainants must bring their challenge to the courts and that they are outside the ambit of the *Act*. It nevertheless wants the Tribunal to dismiss ESDC's motion, presumably so that the parties can make the same legal arguments again or repeat them orally at a hearing that no one asked for, albeit with a lower threshold for dismissing the allegations. It argues that doing so would be more efficient, recalling the Tribunal's obligations to proceed informally, expeditiously and fairly.

[21] But holding a hearing or bifurcating the issues to determine the same question I can answer right now—with hundreds of pages of Statements of Particulars (SOPs), motion materials and legal argument the Commission acknowledges I already have before me—is at odds with the requirement for expediency and informality set out in s.48.9(1) of the *Act*. Further, the Commission's decision to raise this issue now—for the first time—undermines our collective efforts in case management, the purpose of which was to find efficient and fair ways of proceeding.

[22] I have briefly outlined some of the procedural background and case management history in these complaints because it is relevant to my decision to reject the Commission's request and to proceed as previously agreed with the parties.

[23] The Commission initially held Ms. Alkerton, Mr. Huntley and Mr. McGregor's complaints in abeyance pending the decision of the Supreme Court of Canada ("the Court") in *Canada (Human Rights Commission) v. Canada (Attorney General),* 2018 SCC 31 [*Andrews/Matson*]. In *Andrews/Matson*, the Court determined that the alleged adverse impacts arising exclusively from legislation do not engage a service customarily available to the public.

[24] The Commission decided to refer the complaints to the Tribunal because *Andrews/Matson* did not address challenges to regulations. They were referred together as a single inquiry. When the Commission referred Mr. Dorey's complaint to the Tribunal, the parties consented to joining it because it had common factual and legal issues with the other complaints.

[25] Early on in case management, ESDC raised the preliminary issue of the Tribunal's jurisdiction to hear complaints that challenge legislative and regulatory provisions. At that point the Commission indicated that its position was now that *Andrews/Matson* applies to the non-discretionary Regulations at issue in these complaints. After the parties filed their SOPs, ESDC added a second preliminary issue. It said that the administration allegations were beyond the scope of the complaints the Commission referred to the Tribunal and should not be allowed to proceed.

[26] I worked with the parties in case management to determine how to efficiently and fairly address the two issues ESDC raised. After hearing from the parties, I set deadlines for ESDC's motion to strike, and for responses, and replies.

[27] Before the Commission filed its response to this motion, neither the Commission nor the complainants were opposed to proceeding by way of motion to strike filed by ESDC. No one asked to make oral submissions or to argue these legal issues at a merits hearing rather than making written submissions on whether the allegations could be struck. When the Tribunal sent a summary of the October 12, 2022, case management conference call (CMCC) that included deadlines for the filing of written motion materials, the Commission did not object to the way I characterised the process or argue that the Tribunal should bifurcate the issues and decide the merits of the issue or hear oral submissions.

[28] Administrative tribunals are masters in their own house. They can be flexible, provided the processes they establish are fair. "The aim is not to create 'procedural' perfection but to achieve a certain balance between the need for fairness, efficiency and predictability of outcome." (*Knight v Indian Head School Division No. 19*, 1990 CanLii 138 (SCC), [1990] 1 SCR 653 at p.685, citing *de Smith's Judicial Review of Administrative Action*, (4th ed., (1980), at p.240)).

[29] Postponing my decision on this question serves no one. I am not prepared to dismiss the motion and to require the parties to spend more time and resources to repeat their arguments as a "preliminary issue" at a merits hearing. I find no basis for deferring this question any further.

[30] The parties have had ample opportunity to argue whether the complaints can proceed in their motion materials and have made many of the same points in their SOPs. Until the Commission raised it in its response to this motion, the Complainants had not expressed a concern about proceeding in writing by way of a motion to strike. They have ably and articulately participated throughout the case management process and coordinated written submissions on this motion. It is not clear why delaying the determination of these questions would be fairer to them or to any of the parties, particularly since in the Commission's own words, this is a "purely legal question".

[31] I find no compromise between fairness and efficiency in deciding the issue now. Delaying a decision on this issue is unfair not only for the parties to these complaints who will spend more resources and time preparing to address the very same issue as a "preliminary matter", but also to parties in other cases who are waiting for their files to progress. Granting the Commission's request would divert some of the Tribunal's scarce resources away from other cases, which would also contribute to institutional delay. There is no basis for doing so when I can fully and fairly address the issue right now for these parties.

[32] Administrative tribunals also have an obligation to use their resources efficiently. Parliament chose to delegate decision-making in specialized areas such as human rights to administrative tribunals and expects them to proceed expeditiously and efficiently (*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at paras 46 and 64).

[33] The Commission also argues that I should determine this issue as a preliminary matter—and possibly allow for oral submissions—because a ruling on this issue is in the public interest, will provide some finality for the Complainants, is significant for them, and will provide guidance for future complaints that raise similar issues. But the Commission has not explained why my decision on the motion could not do the same thing. I am deciding the very questions that the Complainants—and all the parties—have asked me to answer, namely: can these complaints move forward in our process, in whole or in part? This ruling gives the parties finality even if it is not the answer that the Complainants were hoping for.

[34] If there has not been a Tribunal determination of the specific issue of challenges to regulations since *Andrews/Matson*, then this ruling will be the first. But that would also be the case if I were to decide this same issue as a preliminary matter at a hearing as the Commission suggests. If the Commission thought that something would change at a hearing when applying a lower standard than the "plain and obvious" threshold to dismiss a complaint before a hearing, it has not articulated what that would be. Rather than telling me why these complaints *do* have a reasonable prospect of success and should proceed, the Commission has agreed with ESDC that the challenges to the Regulations are outside the scope of the *Act* and that the principles developed in *Andrews/Matson* apply to these complaints.

[35] Finally, the Commission argues that ESDC's motion is an impermissible collateral attack on its decision to refer these complaints to the Tribunal and that ESDC should have sought judicial review of the decisions to refer.

[36] ESDC says that it is not asking the Commission to overturn its referral decision. Rather, it is asking the Tribunal to determine the merits of the complaints based on a preliminary motion because it believes the complaints have no reasonable prospect of a success. It says that this is squarely the job of the Tribunal. The Commission performs a screening function. Its referral decision is water under the bridge.

[37] I agree. Regardless of what the Commission determined through its investigation and referral process, it is the Tribunal's task to adjudicate the merits of a complaint, including whether the allegations have any reasonable prospect of success.

[38] The Tribunal clearly has the authority to address the issues raised by ESDC in this motion to strike. It can also control its own process, as long as the process is fair. I am determining these issues by way of written motion materials because this is the most efficient way to proceed in these complaints, as discussed with *all* the parties in case management. I see no need for oral submissions that no one requested, nor has the Commission persuaded me that doing so is required to "ensure fairness".

2. Are the complaints within the scope of the *Act*?

[39] To establish whether the allegations are within the scope of the *Act*, I must first characterize the complaints and determine what actions or practice they impugn.

[40] Not everything done by someone working for or with the Government of Canada is a "service" within the meaning of s.5 of the *Act*, and I must look at the source of the alleged discrimination (see *Watkin v Canada (Attorney General)*, 2008 FCA 170 [*Watkin*] at paras 24-33 and *Forward v Canada (Minister of Citizenship and Immigration)*, 2008 CHRT 5 [*Forward*] at paras 37-38).

[41] If a respondent that provides services customarily available to the general public does so in a way that effectively denies access or makes an adverse differentiation based on a prohibited ground, the complaint could fall within s.5 of the *Act*. But if a respondent is applying legislated criteria, the challenge is not to the provision of services but to the legislation itself (*Andrews/Matson* at para 97, citing *Murphy*, at para 6).

[42] I have considered each of the complaints in turn because, while they have similarities, I must consider each Complainant's allegations individually to determine whether the actions complained of are truly "services" within the meaning of the *Act*. In other words, what is the behaviour or practice that the Complainants say was discriminatory? Was it the way they were treated by ESDC staff? Do they suggest that ESDC applied the law in a discriminatory manner? Was it the fact that they were denied benefits because of the age cut-offs found in the legislation and the regulations? Are the Complainants really taking issue with the relevant laws and Regulations?

i) Do the complaints challenge legislation and regulations? If so, do they also allege discrimination in how a service was provided to them?

[43] In my view, these complaints all challenge the relevant legislative and regulatory framework. All four Complainants take issue with age-based distinctions and the eligibility criteria set out in the CDSA, the ITA and under ss. 2 and 3 of the CDSR. They say it is unfair that 49 is the cut-off age for grants and bonds under the CDSA and the Regulations. Some of the complaints also challenge the carry-forward and retroactivity provisions set out in the

CDSA. Further they all seek as remedies the payment of benefits they were not entitled to under the existing statutory scheme, and some hope that the legislation or Regulations could be changed. They do not allege discrimination in how a service was provided to them.

[44] I have set out below the details of the four complaints and the Commission's Report for Decision. Despite some differences in their complaints, my conclusion is the same for all. Whether or not the Complainants cited the grounds of age and disability, or just age, the essence of all the complaints is the fact that they were treated differently than other individuals due to the mandatory wording found in the relevant Regulations and legislative provisions.

James Dorey

[45] Mr. Dorey opened an RDSP with the Toronto Dominion Bank in 2019. Once his RDSP was registered, the Canada Disability Savings Program determined his eligibility for bonds and grants for 2019 and the previous 10 years, going back to 2009. He received a total of $1,041.12 in bonds for 2012 and 2013 because in those years he fell under the income thresholds under the CDSA and CDSR. He was eligible to receive grants in 2019, 2020 and 2021 and received a total of $31,500 of matching grants based on his yearly contributions under the terms of the statutory scheme. As Mr. Dorey is over 49 years of age, he is no longer eligible for grants and bonds. The money in his RDSP will continue to grow tax-free, but he will need to begin to withdraw those funds when he turns 60.

[46] Mr. Dorey filed his complaint with the Commission on February 28, 2020, when he was 48 years old, alleging discrimination on the basis of age. In his complaint, he notes that he will cease to be eligible for grants and bonds as of December 31, 2021, the year in which he turned 49 years of age. He takes issue with the fact that as of that date, he would no longer be able to take advantage of any retroactivity or carry forward. Due to the caps on grant amounts that can be paid in any given year, he cannot use his entire carry-forward amount to take advantage of the matching grants before losing his eligibility at the age of 49.

[47] In its Report for Decision, the Commission described Mr. Dorey's complaint as follows:

> 2. …[T]he complainant alleges that certain provisions of the Canada Disability Savings Regulations (CDSR) are discriminatory based on age. He alleges that the respondent is discriminating against him by denying him matching grants and bonds, available to the beneficiaries of the Registered Disability Savings Plan (RDSP), because the respondent limits the eligibility of the plan to persons less than 49 years of age…
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> 31. The complainant alleges that the respondent is using the age-based restrictions in the CDSRs to deny him services and that this is discriminatory.
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> 45. The crux of this present complaint seeks to challenge regulations and not the nondiscretionary application of legislation passed by Parliament…

Karolin Alkerton

[48] Ms. Alkerton opened an RDSP through TD Waterhouse in 2017. She was 53 years of age at the time. She was found to be ineligible for grants and bonds because she was over the age of 49. She filed her complaint in January 2018, but her complaint was held in abeyance at the Commission pending the outcome of the *Andrews/Matson* decision. In her complaint, Ms. Alkerton explains that when she applied for the RDSP, an ESDC agent told her that she was not eligible for any grants or bonds because she was over the age of 49. She alleges this is discriminatory on the ground of age.

[49] In its Report for Decision, the Commission described Ms. Alkerton's complaint as follows:

> 2. …[T]he complainant alleges that certain provisions of the *Canada Disability Savings Regulations* (CDSR) are discriminatory based on age. She alleges that the respondent discriminated against her by refusing to provide her with the Registered Disability Savings Plan (RDSP) carry forward grants and bonds, available to the beneficiaries of the RDSP, because the respondent limits the eligibility of the plan to persons less than 49 years of age…
>
> 33. The complainant alleges that the respondent is using the age-based restrictions in the CDSRs to deny her services and that this is discriminatory.
>
> 49. The crux of this present complaint seeks to challenge regulations and not the non-discretionary application of legislation passed by Parliament.

> 56. The complainant states that the age restriction is discriminatory because it suggests that individuals living with disabilities have a limited lifespan. She alleges that the use of the age 49 as the cut-off is arbitrary and does not take into account the individual's specific circumstances…[A]t the time the respondent introduced the CDSP she would have been 44 years of age and would have been eligible for the benefit; however, she was not aware of the program until 2017. She states that there is no retroactive mechanism in the CDSP like under the DTC regime.

Roderick McGregor

[50] Mr. McGregor became disabled at the age of 48 and opened an RDSP in 2018, when he was 53 years of age. He states that, when he was 48 and 49 years of age, he was fully to partially incapacitated and that he believes the discrimination happened to him because of his disability. He was not eligible for grants and bonds because he was over 49 years of age and says that, when he opened an RDSP at his financial institution, he was told that he could not receive the matching grant and bond components using the 10-year carry-forward provisions because he applied past his 49th birthday.

[51] Mr. McGregor argues that it is discriminatory on the grounds of disability "when the individual is not provided the same reasonable interval as others (who were disabled well before age 49 and had ample time to react and apply), to discover the RDSP benefits and deadline limitations because it coincides with incapacity period associated with that very disability."

[52] In its Report for Decision, the Commission described Mr. McGregor's complaint as follows:

> 2. …[T]he complainant alleges that certain provisions of the *Canada Disability Savings Regulations* (CDSR) are discriminatory based on age. He alleges that the respondent discriminated against him by refusing to provide him with the Registered Disability Savings Plan (RDSP) carry forward grants and bonds, available to the beneficiaries of the RDSP, because the respondent limits the eligibility of the plan to persons less than 49 years of age. He further alleges that the respondent is discriminating against those individuals, like himself, who become disabled later in life and cannot apply and contribute before the age restriction takes effect.

> 33. The complainant alleges that the respondent is using the age-based restrictions in the CDSRs to deny him services and that this is discriminatory.
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> 49. The crux of this present complaint seeks to challenge regulations and not the non-discretionary application of legislation passed by Parliament…

David Huntley

[53] Mr. Huntley opened an RDSP in 2015 and was assessed for the previous 10 years. He received the maximum annual cap in grants for the years 2008 to 2014 as well as a bond. Mr. Huntley stopped being eligible for grants and bonds after 2015, the year he turned 49 years of age. He filed his complaint with the Commission in 2016, but the Commission held it in abeyance pending the *Andrews/Matson* cases which were proceeding through the courts. He described the Canada Disability Savings Program as complex and confusing.

[54] In its Report for Decision, the Commission described Mr. Huntley's complaint as follows:

> 2. Specifically, the complainant alleges that certain provisions of the *Canada Disability Savings Regulations* (CDSR) are discriminatory based on age. He alleges that the respondent discriminated against him by refusing to provide him with the matching grants, available to the beneficiaries of the RDSP, because the respondent limits the eligibility of the plan to persons less than 49 years of age. He further alleges that the use of the age 49 is arbitrary.
>
> 33. The complainant alleges that the respondent is using the age-based restrictions in the CDSRs to deny him services and that this is discriminatory.
>
> 49. The crux of this present complaint seeks to challenge regulations and not the non-discretionary application of legislation passed by Parliament.
>
> 55. The complainant states that he is living with a disability and that the respondent is discriminating against him solely based on his birth year. He states that he would benefit from the program.
>
> 56. The complainant states that the age restriction is discriminatory because if he was younger he would receive more income.

[55] As the Commission submits, deciding whether a regulation, legislative provision or other provision falls within the definition of a s. 5 service, requires an individualized

assessment of the allegations in a complaint and the act, action or activity in question. I am not bound by how the Complainants and the Commission characterized their complaints.

[56] The Complainants argue that the Canadian Disability Savings Program ("the Program") is a service administered by ESDC under their mandate to "deliver programs and services to each and every Canadian throughout their lives in a significant capacity".

[57] But the Complainants do not claim that they were not paid benefits to which they were entitled under the ITA, CDSA or CDSR, or that ESDC exercised its discretion to withhold those benefits that is in some way linked to a prohibited ground. They do not allege that someone treated them in a discriminatory manner or denied them a service because of a protected characteristic, whether disability or age. Rather, they take issue with the fact that ESDC staff used criteria that the legislation and regulations obligated them to apply.

[58] The complaints do not claim that the legislation or regulations could have been interpreted in a non-discriminatory manner, though they appear to argue that ESDC could have exercised some discretion in applying the rules. This is to be distinguished from the situation in *Beattie v. Aboriginal Affairs and Northern Development Canada*, 2014 CHRT 1 [*Beattie*]) where the respondent had the option of interpreting the legislation that was most consistent with human rights principles. In *Beattie*, the respondent initially denied the service on the basis of legislation but then later accepted the complainant's interpretation. The ability to grant the core remedy without modifying the existing legislation distinguished the case from *Andrews/Matson* and these complaints. Here the Complainants do not allege that ESDC misinterpreted legislation or regulatory provisions. Rather, the essence of their complaints is a challenge to the text of the provisions themselves.

[59] The complaints the Commission referred were not directed at the conduct of ministerial officials, the exercise of discretion, or the implementation of departmental policies and practices (*Forward*, at para 37). As the Federal Court of Appeal (FCA) held in *Watkin*, the fact that actions are undertaken by a public body for the public good cannot transform what is ostensibly not a service into one (*Watkin* at para 33).

[60] While Mr. Huntley and others refer at times to the complexity of the system or to a difficult application process, they do not allege that this is the reason that they lost their

eligibility or explain how an adverse impact is connected to their disability or age. Rather, the Complainants challenge the Regulations, which is the "crux of their complaints" as the Commission described in each of their Reports for Decision. They dispute the provisions that made them ineligible for grants and bonds after turning 49 years of age or that limited other entitlements they may have enjoyed but for those statutory or regulatory caps.

[61] But as ESDC submits, all public servants must base their actions in the law, and their authority comes from the statutes and regulations that ESDC administers. There is no authority to pay benefits not provided in statutes or regulations.

[62] In light of my finding that the source of the alleged discrimination in these complaints is the legislative and regulatory framework, I must now decide if these allegations are within the scope of the *Act* and have any reasonable prospect of success.

ii) If the complaints are a challenge to legislation and regulations only, is it plain and obvious that the allegations have no reasonable prospect of success?

[63] Yes. It is well established that the Tribunal does not have the jurisdiction to decide complaints that are challenges to legislation. Section 5 of the *Act* requires that services customarily available to the general public be provided in a non-discriminatory manner (*Beattie* at para 102]. However, law-making is not a service customarily offered to the public and legislation does not in and of itself constitute a "service" (*Andrews/Matson at paras 57-62*).

[64] To the extent that some of the complainants continue to challenge provisions of the CDSA or other legislation, these allegations clearly fall outside the scope of the *Act* and must be dismissed.

[65] Similarly, I find that the Complainants' challenges to the Regulations have no reasonable prospect of success and cannot proceed.

[66] The Commission submits that the general principles underlying *Andrews/Matson* and other case law about complaints that challenge mandatory entitlement provisions in legislation are equally applicable to the Regulations.

[67] I agree. Just as the Tribunal dismissed the complaints in *Andrews/Matson* as direct attacks on legislation, the Complainants argue that the Regulations themselves are discriminatory. They do not claim that a service was being delivered in an unequal way, but rather dispute the fact that they could not access grants and bonds or take advantage of other benefits due to non-discretionary age-based requirements found in the Regulations. In my view, the making of the Regulations at issue in these complaints does not have the transitive connotation necessary to identify as a service customarily offered to the public [*Andrews/Matson* at para 62].

[68] The Complainants are not challenging the way ESDC processed their applications but substantively targeted the eligibility criteria that the Respondent had no choice but to apply. The source of the alleged discrimination is the Regulations themselves.

[69] Although I find that the analysis in *Andrews/Matson* is applicable to the Regulations at issue in these complaints, ESDC has also relied on authorities that predate the Court's finding with respect to law-making. In my view, these authorities provide further support for the conclusion that a challenge to the Regulations does not engage a service. This is not the first time that the Tribunal and the courts have considered this question, and I find no basis to diverge from this approach in the complaints.

[70] In *Bouvier* the FCA upheld the motions judge's finding that the Commission had no jurisdiction to consider, inquire into and refer challenges to the Railway Vision and Hearing Examination Regulations (Canada *(Attorney General) v. Bouvier*, 1998 CanLii 7409 (FCA) at paras 1 and 4-5). In *Murphy* the FCA upheld the Federal Court and the Tribunal's finding that a challenge to the *Unemployment Insurance Act* and its *Regulations* "does not come within any of the practices that may form the object of a complaint under the CHRA" (*Public Service Alliance of Canada v. Canada (Revenue Agency),* 2012 FCA 7. Finally, in *Mishibinjimi*, the FCA held that the *Act* does not contain a provision equivalent to s.47(2) of the *Ontario Human Rights Code* which expressly permits challenges to acts and regulations (*Mishibinijima v. Canada (Attorney General),* 2007 FCA 36 at para 40*)*.

[71] ESDC also submits that the courts have held that regulations are part of the law-making process and that the promulgation of regulations by the executive is a legislative act.

It relies on *Reference re Pan-Canadian Securities Regulation*, in which the Court held that "the legislature has the authority to enact laws on its own and the authority to delegate to some other person or body certain administrative or regulator powers, including the power to make binding but subordinate rules and regulations" (*Reference re Pan-Canadian Securities Regulation,* 2018 SCC 48 (CanLII), [2018] 3 SCR 189) at para 73*).* The Court goes on to say that this is sometimes referred to as a "subordinate law-making power" and that statutory schemes often merely set out the basic objects of the legislature, such that "most of the heavy lifting [gets] done by regulations, adopted by the executive branch of government under orders-in-council" (*Pan-Canadian*, citing (B. McLachlin, P.C., *Administrative Tribunals and the Courts: An Evolutionary Relationship*, May 27, 2013 (online), see also Hogg (5th ed.), at pp. 14-1 and 14-2) at para 73).

[72] In the RDSP framework, the regulations do some of the "heavy lifting" and contain the details about eligibility, without which the disability savings scheme could not be implemented or operationalized. While the age-based requirements are found in the CDSR and not in an Act of Parliament, I accept that the power to enact them has been delegated by the legislature and that these are "binding but subordinate rules and regulations" as the Court described the regulations in *Reference re Pan-Canadian Securities Regulation.*

[73] The source of the authority to enact the CDSR also supports the finding that a challenge to the Regulations is not a service. The Regulations are made under the terms of their governing legislation, the CDSA, which provides that "[t]he Governor in Council may make regulations for carrying out the purpose and provisions of this Act." (s.17, CDSA). Section 17 of the CDSA enumerates a non-exhaustive list of what the Regulations may provide, including establishing requirements that must be met by a registered disability savings plan before grants or bonds may be paid in respect of the plan, the manner of determining the amounts of the grants and bonds, and regulations governing the repayment of those amounts.

[74] In my view, it would lead to an absurd result if only a complaint targeting the legislation (the CDSA or ITA in these complaints) was considered outside the Tribunal's scope to decide, whereas a challenge to the Regulations enacted by virtue of that same legislation, without which the purpose and intentions of Parliament could not be carried out,

was considered within the Tribunal's ambit and a "service" customarily available to the public. Parliament intended to delegate this authority to enact Regulations, which derives from the CDSA, and the regulatory provisions complete the statutory scheme to carry out the system of eligibility for disability savings plans. I also find the FCA's guidance in *Bouvier* relevant to my analysis, namely that a government department—in this case ESDC—cannot be held accountable for a regulation "simply because it has been given by Parliament the responsibility of administering the Act on the authority of which the Regulation was validly enacted by the Governor in Council" (*Bouvier* at para 4).

[75] The Complainants argue that if I apply the *Andrews/Matson* line of reasoning to the Regulations, I would be sheltering the operations of federal administrative entities like ESDC. They submit that while the making of legislation is subject to extensive checks and balances in our democratic systems, regulations, which were not mentioned at all in *Andrews/Matson*, are authored by the non-elected executive. They argue that applying the reasoning in *Andrews/Matson* to regulation-making could create an incentive for parliamentarians and government actors to load up controversial human rights aspects of a policy to regulations to shield them from scrutiny under s.5 of the *Act*. They argue that this would represent a setback for human rights and was not the intended consequence of *Andrews/Matson*.

[76] But as ESDC argues, the Regulations are not authored by non-elected executive with less democratic checks and balances, as the Complainants submit. The Regulations were enacted by the Governor in Council, made up of the executive level of government (the Prime Minister and the Cabinet), who are elected and accountable to Canadians. Further, the authority to enact those Regulations was delegated by Parliament in the enabling legislation. This is not a situation where arbitrary rules were set up without any authority and that adversely impact persons possessing a particular characteristic.

[77] The Regulations may reflect policy choices with which the Complainants disagree, but it is not the Tribunal's task to second-guess the choices made by the Governor in Council. I have no authority to change the Regulations created through "subordinate law-making power" in these complaints, just as I have no authority to amend laws enacted by

the legislature. I also cannot order the benefits to be paid contrary to the relevant law or Regulations.

[78] I empathize with the Complainants' frustration that they cannot challenge the legislative framework before this Tribunal. They have spoken and written about aspects of the Program they find unfair and difficult to access. But I cannot make an order to change the system created by Parliament. To do so would be to exceed my own authority and would be an error in law. As the Commission argues, the Complainants must pursue their challenge to these provisions before the courts.

[79] For these reasons, it is plain and obvious that the allegations impugning the legislative framework and eligibility criteria, found in both legislation and the Regulations, have no reasonable prospect of success and must be dismissed.

3. Can the administration allegations proceed?

[80] Complaints can evolve. The evolution must still respect the essence of the complaint, however, and cannot introduce a substantially new complaint that was not considered by the Commission (*Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969 at para 215 [*Caring Society*] and *Casler v. Canadian National Railway*, 2017 CHRT 6, paras. 7–11).

[81] The scope of a complaint is determined not just by the complaint form, but also by the SOPs which serve the function of pleadings in CHRA proceedings (*Caring Society* at para 153). The substance of the SOP must reasonably respect the factual foundation and original allegations of discrimination as set out in the original complaint (*Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2 at para 24; *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 at paras 69-70).

i) Do the administration allegations have a sufficient link to the complaints that the Commission referred to the Tribunal?

[82] No. The Commission referred complaints that challenge the age limits and retroactivity provisions in the Regulations. The administration allegations appeared for the

first time in the Commission and the Complainant's SOPs, when the Commission began to characterize these complaints as having two components, namely allegations about how ESDC promoted and administered the RDSP, in addition to the challenges to the Regulations that were the essence of the complaints the Commission referred.

[83] In the four SOPs the Commission filed in these complaints, the Commission alleges that the complainants had difficulty accessing the Program due to, among other things, "Canada's discretionary program design choices and actions", a complex, multilayered application process, inadequate publicity of the Program, lack of communication and, more generally, delays in what was described as an onerous application process.

[84] The Commission also claims that the complaints involve systemic discrimination. It says that there is clear and consistent evidence that persons with disabilities were disproportionately negatively impacted by ESDC's design and delivery of the Canada Disability Savings Program and that their inability to fully participate in the program increased their level of marginalization and financial disadvantage. It states that a large majority of eligible Canadians living with disabilities aged 18 to 49 did not apply for a savings plan or grants and bonds between 2008 and 2016.

[85] In Mr. Huntley's SOP, he alleges that ESDC and the government have made the application process cumbersome and weighty for disabled and non-disabled persons and that the Government of Canada and ESDC already knew through the Canada Revenue Agency who qualified so that there was no need for this complexity. He states that there was low uptake, total confusion as to how to apply and that *Andrews/Matson* is now being used as a *carte blanche* to avoid disputes about government services.

[86] In her SOP, Ms. Alkerton references her disability but largely takes issue with the fact that she cannot benefit from grants and bonds due to "restrictions inherent in the program", noting the age restrictions and that a financial officer at her financial institution did not have much information. She too described the application process as complex and not well promoted. She argues there is no benefit to opening the RDSP because there are not the same benefits as there are for those under 49.

[87] Mr. McGregor's SOP alleges discrimination on the grounds of disability because he could not access benefits as this coincided with a period of incapacity due to his disability. He claims that the system of grants and bonds and the carry-forward provisions discriminate against those who experience a disability or trauma later in life and closer to the age of 49.

[88] Mr. Dorey writes in his SOP that when he learned about RDSPs he contacted his bank and investment manager and found it difficult to get information. He refers to the age-based limitations and its impact on retroactivity, and on caps for grants and bonds. He goes on to say that when "you apply the exact same policies to two different people, one being 36 and one being 46, despite the situation being identical in every other respect, based on AGE ALONE, these two people are receiving different benefits and that is discriminatory based on the prohibitive grounds of age".

[89] The complainants and the Commission submit that the complaints filed with the Commission always included the administration allegations. The Commission argues that the allegation that the administration of the Program is discriminatory is a "core aspect of each complainant's experience of discrimination".

[90] I do not accept this characterization. To the extent that the administration allegations are anything more than challenges to the eligibility requirements now termed allegations about the "administration" of the Program, they cannot proceed because they do not have a sufficient connection to what the Commission referred to the Tribunal. While the Complainants, and in particular Mr. Huntley, may have written about the Program being confusing and hard to apply to and understand, that is not the essence of their complaints, nor what the Commission chose to refer.

[91] The Commission relies on Tribunal cases that stand for the proposition that it is not obligated to investigate or scrutinize every aspect of a complaint nor to amend a complaint before referring it to the Tribunal (*Connors v Canadian Armed Forces*, 2019 CHRT 6 at paras 39-40; *Jorge v Canada Post Corporation*, 2021 CHRT 25 [*Jorge*]). The Commission argues that the SOPs elaborate upon and complete the complaints and set the scope of the hearing. It denies ESDC's claim that the screening process has been circumvented by what it characterizes as "details" provided in the Commission and the Complainants' SOPs. It also

relies on *Letnes v Royal Canadian Mounted Police*, 2019 CHRT 41 at para 5 [*Letnes*] in claiming that human rights proceedings are open to refinement as new facts and circumstances come to light and that amendments may be allowed at any stage to ensure they properly and fairly reflect the issues in dispute between the parties to a complaint. It argues that the administration allegations, far from opening a new and unanticipated route of inquiry, elaborate on previously raised allegations.

[92] I do not accept the Commission's submissions on this point. This is not a situation where a detail or peripheral aspect that was not scrutinized has been added to the SOPs. ESDC argues that the allegations in the SOPs are vague and suffer from other issues as set out below. But in my view the fundamental problem is that they open a whole other line of inquiry about ESDC's alleged failures to promote or properly administer the RDSP that discriminates against the Complainants on the grounds of disability. The Commission claims the complaints include systemic allegations of discrimination that impact persons with disabilities writ large. These are very broad claims. But these are not the complaints that the Commission referred to the Tribunal.

[93] The Commission states that there is no abuse of process in allowing the administration allegations because the SOPs set out the "entirety of the allegations against ESDC stemming from the complaints filed by the complainants". Even if that were the case, that is not the point. The point is not whether the SOPs are "complete". It is whether the administration allegations, set out in the SOPs, have a sufficient nexus to the complaints the Commission referred. In my view the SOPs open up a new and unanticipated route of inquiry and should not be allowed (*Gaucher v. Canada (Armed Forces),* 2005 CHRT 1, cited in *Letnes*, at para 8).

[94] The Commission argues that ESDC's submissions are based on a misunderstanding of the Commission's role pre-referral versus that of the Tribunal. It relies on *Jorge* where the Tribunal explained that the complaint form is an overview of the complaint and that it need not be a complete recitation of an extended series of perceived discrimination, given the limitation of space for content and the fact that parties may be self-represented. The complaint form is not a pleading and is not intended to be strictly or narrowly interpreted.

Expecting precise details at the time of the original complaint may unfairly prejudice the complainant (*Jorge* at paras 67 to 83].

[95] These submissions about the fundamental roles of the Commission and the Tribunal do not assist in the circumstances. There is no dispute that the Commission must investigate complaints and decide whether to refer them and that, once referred, the Tribunal conducts an inquiry into the complaint that was referred. But the Tribunal cannot hear complaints that are not sufficiently related to what the Commission sent its way, nor open up a new avenue of allegations that appear for the first time at the Tribunal.

[96] Further, the facts and circumstances in *Jorge* are distinguishable. While the Tribunal allowed the proposed amendments in *Jorge*, the Tribunal found that the facts were part of the storyline of the complaint's narrative and that they constituted "more of the same" alleged facts, namely additional examples of the same type of discriminatory practice(s) that were identified in the complaint (*Jorge* at para 100).

[97] I do not find that the administration allegations are "more of the same". They do not constitute new examples of additional facts that complete or build on the history of what occurred. As set out above, the crux of the complaints the Commission referred was the challenge to the age-based limitations in the Regulations. The administration allegations are not part of that same story and are not merely "refining" what amounts to an attack on Regulations.

[98] The Commission submits that the Complainants are all persons with disabilities and that all made references to disability in their complaint form and during the investigation. But mentioning that they are persons with disabilities—which is not contested—does not define the essence of the complaint. Other than baldly asserting that the administration allegations were part of the original complaints, the Commission does not substantiate its claim that there is a sufficient nexus to the original complaints. Rather, as reproduced above, the crux of these complaints was a challenge to the Regulations, which at the time the Commission believed were allegations the Tribunal could hear.

[99] While Ms. Alkerton may have written that the Program was "designed and supposed to be offered to a person with an eligible disability", I accept ESDC's submission that what

she takes issue with are the eligibility requirements, writing that “age restrictions are what present the barrier and discriminate based on my age”. Similarly, while Mr. McGregor became disabled later in life and alleges that he was discriminated against on the grounds of disability because he could not apply while he was incapacitated, it is the statutory scheme that has limited his eligibility. In the case of Mr. Huntley, his original complaint did describe the Program as “complex and confusing”, but he did not particularize how this is related to his disability. Even if I accept the Commission’s argument that disability was implicit as a ground, that is not sufficient to link these allegations to the original complaints, which were about a challenge to the Regulations.

[100] It is conceivable that the Complainants could have alleged they were adversely impacted by the way a service was delivered or by virtue of actions taken by ESDC in its administration and promotion of the Program, but that is not what the Commission referred.

[101] Far from being “part of the same storyline”, the Commission is attempting to take the unchallenged fact that the Complainants are all persons with disabilities and use that to draw a nexus from the administration allegations to the complaints they actually referred.

[102] I have also considered the remedies sought by the Complainants with a view to determining whether the administration allegations are within the scope of what the complaints the Commission referred. I accept ESDC’s submission that the remedies that all of the Complainants seek are for the payment of benefits. They would like to see the CDSA and CDSR changed to entitle them to the grants they could have received. Mr. Dorey seeks amendments to relevant provisions, including ongoing retroactivity or reverse eligibility that cannot cease or be revoked, the ability for an individual to purchase the full amount, and he also wants to ensure that contributors can withdraw money penalty-free whenever they desire.

[103] Ms. Alkerton is asking that the maximum lifetime cap of grants and bonds be paid to reflect the full ten years since the inception of the RDSP Program and for her time spent pursuing the complaint.

[104] Mr. McGregor is seeking $2,000 in grants for the years he was 48 and 49, in addition to general and special damages. He calls for systemic changes to the RDSP Program to change the carry forward provisions and age-related constraints.

[105] Finally, while Mr. Huntley refers to ‘the policy and wording being changed’, what he is seeking is an amendment to the regulatory provisions so that he and others can carry forward bond and grant application entitlement up to age 49 but from an application submission date after age 49 up to the age limit or carry forward time limit, whichever comes first. He also asks for $2,000 in bonds to be paid.

[106] I agree with ESDC that these remedies target the statutory age limits and ask me to order the payment of benefits the Complainants were not entitled to. These are not remedies tied to allegations about something other than challenges to the legislative and regulatory framework. In seeking the lifetime maximum cap of grants and bonds, Ms. Alkerton is challenging the Regulations and her ineligibility for grants and bonds. Mr. McGregor’s remedial requests similarly show how his complaint is about the Regulations themselves, and Mr. Huntley is explicitly seeking amendments to the text of the provisions. Finally, while Mr. Dorey’s requests relate to the wording of the CDSA and the Regulations, he also seeks a remedy relating to the promotion of the Program, though this necessarily entails third parties. He includes a letter from his financial advisor, but this only raises concerns related to his financial advisor and TD Bank and does not impugn ESDC.

[107] I also do not accept the Commission’s claim that allowing the administration allegations to proceed would not cause any prejudice to ESDC. The administration allegations do not elaborate on the challenges to age-based eligibility requirements in the Regulations.

[108] I agree with ESDC’s statement that these complaints have proceeded in a very unusual manner. The Commission argues that the administration allegations should proceed, while at the same time submitting that they are connected to complaints which they say cannot be pursued before this Tribunal. The Commission may well believe this is what they referred to us, but I need to satisfy myself of the Tribunal’s ability to proceed. Bald statements that the administration allegations were a “core aspect of each complainant’s

experience of discrimination" are not sufficient to draw a nexus or to bring these administration allegations within the four corners of the initial complaints.

[109] Allowing these allegations to proceed would prejudice ESDC. The administration allegations are not connected in fact and law to the complaints the Commission referred. This is unfair and the prejudice to ESDC cannot be cured as ESDC was not able to anticipate or present its arguments before the Commission and exhaust the mechanisms provided for under the *Act*, such as applying for judicial review of the Commission's actions and decisions or asking the Commission not to deal with the complaint (*Karas*, at 140).

[110] The Commission submits that there is no prejudice to ESDC as it has been aware for years about problems with the promotion of the Program and that Mr. Huntley and Mr. McGregor mention disability in their complaints. It also says that the SOPs address the entirety of the complainants' and the Commission's allegations in any event.

[111] I also cannot bypass the existing framework for human rights complaints, simply out of expediency. It is an error in law and does not respect the legislative framework and the respective role of the Commission and the Tribunal that Parliament has adopted.

[112] I empathise with the Complainants' frustration on this point and with this result. They want to challenge age cut-offs and eligibility rules they believe are discriminatory and that adversely impact them as well as other Canadians with disabilities. They also want to change what they see as a convoluted and complex application system that they say was not properly promoted or administered. But I cannot circumvent the statutory authority that governs the Tribunal and its mandate, nor can I ignore binding law or choose to set aside legal principles to expedite a process and hear the merits of their complaints.

[113] The parties are free to ask a court to judicially review my decision, and if the Court finds an error in what I have done, they will tell the Tribunal as much. But I cannot commit what I believe is a clear reviewable error, in the name of expediency. The Tribunal is a creature of statute. I would not be doing my job if I did not work within the confines of the law that governs the work I do as an administrative decision-maker in the system for human rights that Parliament has established.

[114] The Commission argues that finding that the administration allegations are outside the scope of the present complaints would "prevent self-represented parties form having their experiences of discrimination heard, adjudicated and if substantiated, remedied by this Tribunal". But as the Commission well knows, the Tribunal is not a forum that complainants can directly access to make clams of discrimination. Under the federal human rights system, the Commission is the body empowered to "accept, manage and process complaints of discriminatory practices" (*Canada (Human Rights Commission) v. Warman*, 2012 FC 1162 at 55). Its investigations must be thorough to fulfill its statutory investigate responsibility (*Oleson v. Wagmatcook First Nation*, 2019 CHRT 35 at para 30). Other than a general statement recalling that it is not obligated to investigate every detail or aspect of a complaint, the Commission did not respond in any meaningful way to ESDC's claim that it did not investigate the administration allegations.

[115] The Tribunal also cannot deal with all allegations of unfairness. The Tribunal can only hear and decide cases that the Commission refers. Just as I cannot circumvent binding case law, authority and jurisprudence, I cannot assume part of the role Parliament intended for the Commission to play. As I do not find that these issues were properly before the Commission, I cannot, of my own initiative or because the parties asked me to do so, ignore the four corners of what the Commission referred to the Tribunal.

[116] I also cannot cure the fact that the allegations the Commission referred are outside the Tribunal's scope by now adding allegations that I do not find are sufficiently connected to the complaints the Commission referred.

[117] ESDC sets out a number of other reasons why I should not allow the administration allegations, including: they are vague and unclear; they impugn the wrong service provider (i.e., Banks) which open RDSPs for individuals and provide them with financial advice; they raise factual allegations that go back more than a decade; they are based on a faulty premise that "ignorance of the law" gives rise to a claim of discrimination; and they do not relate to the remedies sought. I need not address all these issues as I have already found that the administration allegations were not sufficiently linked to the complaints the Commission referred. I agree with ESDC, however, that the Commission did not address several of those problems in any substance in response to the ESDC's motion.

[118] Finally, while I must dismiss these complaints because I am required to follow the legal principles and statutory framework that guide the Tribunal's work, I commend the Complainants who have represented themselves through a long and challenging process before the Commission and the Tribunal. They have brought the important issues underlying these complaints and their impact on persons with disabilities to the fore. Through their submissions they have made individual and collective proposals for improving the Canada Disability Savings Program which add an important voice to any policy discussions on supports for Canadians with disabilities and their families. While the Tribunal is not the mechanism to effect the change they seek, I hope that their voices will be heard and considered outside this process.

VI. ORDER

For the reasons set out above, the complaints are dismissed in their entirety.

Signed by

Jennifer Khurana
Tribunal Member

Ottawa, Ontario
June 15, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-2817-22; T2686/6221; T2685/6121; T2687/6321

Style of Cause: Jamus Dorey, Karolin Alkerton, David Huntley and Roderick J. McGregor v. Employment and Social Development Canada

Ruling of the Tribunal Dated: June 15, 2023

Motion dealt with in writing without appearance of parties

Written representations by:

Karolin Alkerton, Jamus Dorey, David P. Huntley and Roderick J. McGregor, the Complainants

Anshumala Juyal, Luke Reid & Sophia Karantonis, for the Canadian Human Rights Commission

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