

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2023 CHRT 24

**Date:** June 21, 2023

**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, wanted to open a Registered Disability Savings Plan (“RDSP”) but the *Income Tax Act*, R.S.C. 1985, c.1, s.146.4 (ITA) sets an age limit of 59 to qualify for an RDSP, which is required to be eligible for Canada Disability Savings grants and bonds. Grants and bonds are also subject to age limits set out in the *Canada Disability Savings Regulations* (the “Regulations”). Mr. Schulz alleges that Employment and Social Development Canada (ESDC) discriminated against him on the grounds of age and disability because he could not apply for an RDSP and related benefits until his niece helped him, by which time he was more than 59 years old. Mr. Schulz says that the age limits in the ITA and the Regulations disproportionately affect seniors and persons with disabilities because of the challenges they face in applying for benefits and that this is a form of systemic discrimination.

[2] The respondent, ESDC, is the department of the Government of Canada that develops, manages, and delivers social programs and services. ESDC says that the Tribunal does not have the authority to hear Mr. Schulz’s complaint because it is an impermissible challenge to legislation that must be brought before the courts.

[3] Mr. Schulz concedes that a challenge to the ITA is outside the Tribunal’s authority to decide. He is also pursuing the challenge before the courts and 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*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c.11 (the “Charter”). He argues, however, that the Tribunal can still hear his challenge to the Regulations. He may also have a third component to his complaint, namely that ESDC allegedly administered and promoted the RDSP in a discriminatory way (the “residual allegations”).

[4] Mr. Schulz wants the Tribunal to put his complaint in abeyance for an additional year while he develops his court challenge and reapplies for funding to litigate his case. I previously granted two abeyance requests in *Schulz (on behalf of Bernard Schulz) v. Employment and Social Development Canada*, 2022 CHRT 6 [*Schulz* 1] and *Schulz (on*

*behalf of Bernard Schulz) v. Employment and Social Development Canada*, 2022 CHRT 33 [*Schulz 2*] in this matter.

[5] The Commission takes no position on Mr. Schulz's request.

[6] ESDC opposes a further 12-month request. It agrees that a shorter adjournment is warranted but should be tied to the release of the Tribunal's decision in related complaints. In those cases, ESDC filed a motion to strike the complainants' allegations challenging the Regulations because it said they are beyond the scope of the *Act*. It argues that the outcome of that motion may settle the question of the Tribunal's jurisdiction to decide a challenge to the statutory scheme governing RDSPs. It asks that the Tribunal schedule a case management conference call (CMCC) with the parties within 40 days of the release of the decision in the related cases. Depending on the outcome, Mr. Schulz may decide to discontinue his complaint, ESDC may move to strike his complaint, or the parties may be prepared to file their Statements of Particulars (SOPs).

## II. DECISION

[7] I am dismissing the complainant's request for a further 12-month abeyance. The Tribunal has issued its ruling in the related complaints and decided that challenges to the Regulations are not a service under the *Act* and have no reasonable prospect of success. In light of that decision, I will grant a 45-day adjournment to allow the parties to review the ruling and determine their positions. Mr. Schulz must confirm whether he intends to proceed with his Tribunal complaint, and if so, on what basis.

## III. BACKGROUND

[8] Mr. Schulz applied for funding to the Court Challenges Program (the "Program") to start a court challenge to the ITA and the Regulations under the *Charter*. I granted his request to defer his Tribunal proceeding for 6 months while he pursued his funding application (*Schulz 1*). The Program denied his application. He then requested a further abeyance while he sought funding to further develop his court challenge.

[9] I allowed Mr. Schulz's second request, extending the abeyance by a further 6 months until April 2023 (*Schulz 2*). I also set deadlines for the parties to file their SOPs at the end of the abeyance period.

[10] Mr. Schulz is asking the Tribunal to extend the abeyance until April 5, 2024. He was granted funding to develop his case for a 12-month period but did not receive financial support to start litigating the matter. He wants the Tribunal to hold his complaint for another year while he develops his case and reapplies for funding to start the court challenge. He says the Court Challenges Program Expert panel meets three times a year and that he hopes to have a final decision on his request by April 5, 2024.

[11] The ruling in the related proceedings (*Jamus Dorey, Karolin Alkerton, David Huntley and Roderick McGregor v Employment and Social Development Canada* CHRT 2023 CHRT 23) was issued on June 15, 2023 [*Dorey*].

[12] In *Dorey*, the Tribunal allowed ESDC's motion and dismissed the complaints, finding that they were direct attacks on legislation and the mandatory requirements set out in the Regulations. The Tribunal held that the complaints were outside the Tribunal's jurisdiction because the non-discretionary entitlements in the Regulations, like the provisions found in legislation, were not a service held out by ESDC. The Tribunal also found that the allegations about ESDC's administration and promotion of the Canada Disability Savings Program (the "Program") were not within the scope of what the Commission referred and could not proceed.

[13] When the Commission referred Mr. Schulz's complaint to the Tribunal, it did so under its simplified process whereby parties can provide submissions directly to a Commission member. The Commission applied subsection 49(1) of the *Canadian Human Rights Act*, RSC 1995, c H-6 (the "*Act*") and referred the complaint to the Tribunal because it could not resolve the allegations through a Commission assessment. Under subsection 49(1) of the *Act*, the Commission may refer a complaint to the Tribunal at any stage after the filing of the complaint. The Commission stated in its Record of Decision accompanying the referral letter that "it appears that the issues raised in this Complaint are essentially the same issues as those raised in three other complaints for which investigation reports were completed and

disclosed to the Respondent” (Alkerton, Huntley and McGregor). It also wrote in its referral that Mr. Huntley was alleging discrimination based on age with respect to the provision of a service against ESDC.

[14] The Commission decided that further inquiry by the Tribunal was required to determine if the age limit for participation in the grants and bonds is discriminatory. It listed several reasons for its referral, including the fact that it previously assessed and referred other complaints raising the same allegations as those raised in Mr. Schulz’s complaint.

#### **IV. REASONS**

[15] The parties have not yet filed SOPs in this case, so I only have the complaint form and the Commission’s referral letter and accompanying Record of Decision to try to understand what this complaint is about and what the Commission referred to the Tribunal. Mr. Schulz’s complaint challenges the ITA and non-discretionary provisions in the Regulations as did the complainants in *Dorey*. The Commission’s referral letter and Record of Decision also explain that Mr. Schulz raises essentially the same issues as in the other proceeding. The Tribunal dismissed those allegations as having no reasonable prospect of success in *Dorey*. Mr. Schulz must therefore confirm what parts of his complaint he intends to pursue before I can consider whether there would be any merit in allowing a further adjournment or extension of the abeyance if he is moving forward with the same allegations that were dismissed in *Dorey*.

[16] ESDC also argues that a 12-month abeyance is not consistent with the Tribunal’s previous two rulings in this case. I agree. In *Schulz 1*, I held that the Tribunal inquiry process is not an insurance policy or fall-back measure. But by asking me to put his complaint in abeyance for another year and to wait and see if he receives funding by April 5, 2024, Mr. Schulz is doing just that. If Mr. Schulz does not receive the funding a year from now, will he continue only with the residual allegations before this Tribunal, and if so, what is he alleging and is that what the Commission referred?

[17] Mr. Schulz previously told the Tribunal that if he did not receive funding to bring his application before the courts, he would return to the Tribunal and challenge those parts of

the complaint he believes are within our jurisdiction to decide. At that time, Mr. Schulz argued that the remaining allegations, which include a challenge to the Regulations as well as the residual allegations, could be brought in either forum (*Schulz 2* at para 9).

[18] Until I know what the complainant intends to pursue before this Tribunal and consider the parties' respective positions in light of *Dorey*, I cannot determine how to proceed fairly and efficiently in the proceeding. I will adjourn the proceedings for 45 days and set aside any deadlines previously set for the filing and delivery of SOPs to allow the parties to consider the implications of the Tribunal's ruling in *Dorey* and for counsel to seek instruction. The Registry will schedule a CMCC to occur after the expiration of these 45 days.

[19] The parties will provide their positions and proposed next steps in writing in advance of the CMCC so that we use our time efficiently.

## **V. ORDER**

[20] The complainant's 12-month abeyance request is denied. The proceedings are adjourned for 45 days. All previous deadlines for the filing and exchange of SOPs are suspended pending the next CMCC in this matter.

[21] The Registrar will schedule a CMCC to occur no sooner than 45 days from now to address next steps with the parties. Once the CMCC is set, the Tribunal will set deadlines for the parties to provide their position on proposed next steps in advance of the CMCC.

[22] The Registrar will send a copy of *Dorey* to the parties together with this ruling.

*Signed by*

**Jennifer Khurana**  
Tribunal Member

Ottawa, Ontario  
June 21, 2023

## **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:** June 21, 2023

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

**Written representations by:**

Ashley Wilson and Wade Poziomka, for the Complainant

Christine Singh and Luke Reid, for the Canadian Human Rights Commission

Sean Stynes and Clare Gover, for the Respondent