

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation: 2023 CHRT 54  
Date: November 16, 2023  
File No.: HR-DP-2829-22**

**Between:**

**Clifton Starr**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**BMO Financial Group**

**Respondent**

**Decision**

**Member: Edward P. Lustig**

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## I. OVERVIEW

[1] Mr. Starr alleges that when he visited its main branch in Winnipeg on April 18, 2018 (“the main branch”), the Bank of Montreal (“BMO”) discriminated against him on the basis of his race by denying him access to a secured credit card and by refusing to allow him to meet with the main branch Manager, contrary to section 5 of the *Canadian Human Rights Act*, R.S.C. 1985, c.H-6 (“CHRA”).

[2] BMO denies that it discriminated against Mr. Starr. It says that at all material times it did not issue or deny a secured credit card to Mr. Starr or anyone based on their race and that it treated Mr. Starr respectfully and in accordance with its non-discriminatory policies.

[3] BMO’s secured (collateralized) credit cards were only available to persons, regardless of their race, who were new to Canada and to non-permanent residents who had not yet been able to establish a credit history and therefore had no credit history to be assessed in order to be able to obtain a regular non secured (non-collateralized) credit card. A secured credit card was not available to anyone, regardless of race, who had a poor credit score and wanted to rebuild their credit score to obtain a regular non secured credit card.

[4] Mr. Starr met with both a Customer Service Representative (“CSR”) and the branch Assistant Manager when he visited the main branch on April 18, 2018. BMO’s customer complaint escalation process did not provide for an Assistant Manager to elevate a customer complaint from an Assistant Manager to a branch Manager but did provide for a customer to escalate a complaint to a non-branch official of the bank, regardless of the customer’s race. Mr. Starr chose not to elevate his complaint in accordance with BMO’S customer complaint escalation process.

[5] In reviewing the evidence and submissions in this case, I find that Mr. Starr has not substantiated his complaint and that it is therefore dismissed.

## **II. ISSUE**

[6] The sole issue to be determined in this case is whether BMO discriminated against Mr. Starr on the basis of his race by denying him access to a secured credit card and by refusing to allow him to meet with the branch Manager when he visited its main branch on April 18, 2018, contrary to section 5 of the CHRA.

## **III. BACKGROUND**

[7] Mr. Starr self identifies as follows “I am an Indigenous Canadian. I am First Nations. More specifically, I am Anishinaabe. Even more specifically, I am Ojibway. My ancestry is clearly reflected in my appearance.”

[8] At the hearing, Mr. Starr testified about a number of difficult personal experiences he endured during his life leading up to the event that gave rise to his complaint. He said that he faced many challenges and difficulties in his relationships with both family members and friends and in his work experiences. At one point he turned to drugs but testified that later he was directed by God to go to Winnipeg to help people. Mr. Starr appeared to be a mainly credible witness and was diligent and professional in his self representation at the hearing.

[9] Mr. Starr describes himself as an entrepreneur pursuing economic stability and advancement. He aspires to be a filmmaker. He went to the main branch in Winnipeg at 335 Main Street on April 18, 2018 because he wanted to open up an account and obtain a BMO secured credit card to rebuild his credit score in order to appear more attractive to investors. Although he didn't actually make an application for a regular non secured BMO credit card, he testified that he had a credit history and assumed that his credit score, if he applied, would not have been be good enough to obtain a regular non secured credit card. He said that he had set aside \$1000 to deposit into an account as collateral to obtain a secured credit card from BMO.

[10] Secured credit cards require a cash deposit or a GIC as collateral in the amount of the maximum amount that may be charged on the card. The minimum monthly charges on a secured credit card must be paid on the due date or else interest on unpaid amounts will

accrue and be owing and the bank may be able to take the collateral to satisfy the unpaid amounts.

[11] To obtain a BMO secured credit card a person had to first apply for a regular unsecured credit card and be refused either because the person had a credit history with a poor credit score or because the person had no credit history. On April 18, 2018, any Canadian, regardless of their race, could apply for a regular BMO unsecured credit card. However, regardless of race, only persons new to Canada with less than 5 years of residency or non permanent residents with an official temporary resident document (hereinafter together referred to as “new Canadians”), could be offered a secured credit card and only if they had not yet established a credit history. These restrictions (“the restrictions”) were set out in BMO policy 910-13, titled “BMO Credit Card Applications—New to Canada/Non-permanent Residents” published as at July 10, 2017 (“the policy”) parts of which Mr. Starr stated were “fake”. Mr. Starr also believes that BMO offered secured credit cards to anyone without the restrictions at other branches and discriminated against him because of his race by not offering him a secured credit card at the main branch without the restrictions.

[12] In 2018, BMO’s secured credit card policy was only intended to allow eligible new Canadians to obtain a secured credit card to establish a credit history in Canada where such persons were declined for an unsecured credit card from BMO and had no credit history, regardless of their race. It was not intended to rebuild credit standing for persons who had a credit history. Mr. Starr believes that this is a fake policy and that anyone could access a secured credit card at other branches than the main branch but that he was denied one at the main branch because he is Indigenous.

[13] A regular non secured credit card does not require a cash deposit or a GIC as collateral, however, a person’s ability to be approved for a regular non secured credit card can be influenced by the person’s credit history and credit score. A “credit history” is a record issued by a credit bureau demonstrating how financially responsible a person has been over a period of time with their debt obligations and informs lenders of the potential risks of lending to the person. A “credit score” is a numeric representation of a person’s creditworthiness. A credit score, typically ranked from poor to excellent, is a snapshot of how

financially responsible a person is when it comes to paying back their debt and hence can influence their ability to get approved for a new credit facility such as a regular non secured credit card, a mortgage or a line of credit and on what terms and interest rates a lender is willing to offer the credit facility.

[14] Mr. Sean Frame, BMO Gaming Relations Specialist, was called as a witness by Mr. Starr and he gave credible evidence about matters relating to establishing, building and rebuilding credit. He noted in his evidence that a person establishes credit by applying/obtaining/using credit. He was able to reference his comments to the policies in place at the relevant time period in this case.

[15] A person builds good credit history and score by demonstrating that they can responsibly use credit and repay their debts on time and conversely builds poor credit history and score by not using credit responsibly and by not repaying debts on time. A person may wish to rebuild their credit history and score but BMO does not offer secured credit cards to anyone, regardless of their race, with a poor credit history for the purpose rebuilding their credit history. Only new Canadians, regardless of their race, with no credit history yet upon which to establish a credit score were offered secured credit cards for the purpose of allowing them to build a good credit history and score in order to obtain a regular non secured credit card requiring no collateral.

[16] Mr. Starr disputes that BMO's policies respecting the issuance of secured credit cards excludes rebuilding credit scores and points to a contradictory BMO piece of information available on the internet that says that using a secured credit card is also a great way to rebuild your credit score, especially if you're having trouble with getting approved for a new credit card.

[17] By virtue of its policies, an Indigenous person, who was a newcomer to Canada, held an official document proving the status and recency of their residence in Canada, and did not have a credit history in Canada, could apply for a BMO secured credit card according to BMO. Mr. Starr believes that this is a fabrication by BMO developed specifically in response to his complaint.

[18] Ms. Kristin Kennedy, BMO Vice President for Manitoba and Ms. Amada Mosher, main branch Manager gave credible and helpful evidence about services offered to all customers. All credit facilities that BMO offers are offered without regard to race and it is not a factor in any application for a credit facility. There are a wide variety of credit facilities offered by BMO to customers that assist with building or rebuilding their credit and Indigenous customers can access all of these products and will be assessed in the same manner as other customers without regard to race.

[19] As noted by Mr. Frame and Ms. Kennedy, access to a credit facility does not guarantee that a person with a poor credit will rebuild their credit. Debt usage and repayment habits are the ultimate determinants in a person's credit score. In fact, the general ability to access credit is not necessarily beneficial to a person being provided a credit facility for a person who has demonstrated poor financial habits in their existing credit history because it could further damage their credit.

[20] Ms. Kennedy testified about BMO's Code of Conduct that applies to all employees and sets standards for behaviour with the first principle being honesty and respect. The Code includes statements requiring employees to maintain integrity, empathy and responsibility in all decisions and actions; to uphold high standards of operation; and to be inclusive, welcoming and supportive to individuals from diverse backgrounds, perspectives and communities. The Code prescribes consequences up to and including termination and legal action for failure to comply. Each employee annually completes training and evaluation and provides an attestation to comply with the Code.

[21] BMO also has an Anti-Harassment Operating Procedure. It states that "Diversity is a top business priority, and embracing it is an established core value. We know true diversity is a strength that drives better performance, more engaged employees and a sustained competitive advantage." This Procedure sets out that employees must respect the dignity and human rights of their coworkers and clients and provides for corrective measures up to termination for employees who engage in harassment.

[22] When Mr. Starr initially visited the main branch on April 18, 2018 he was met by Mr. Southonh Khouvongsavanh who testified that he was helping out there for the first time

as a CSR, as it was not his main assigned branch and that he did not know the branch Manager Ms. Mosher or where her office was. He testified in a forthright and credible manner that Mr. Starr requested a secured BMO credit card and that he told Mr. Starr that he was not eligible to apply for a secured credit card as it was only available to persons who are new to Canada. Mr. Starr did not indicate that he was a new Canadian. Mr. Khouvongsavanh testified that after he advised him that he could not qualify for a secured credit card, Mr. Starr reacted by accusing him of discriminating against him because he was an Indigenous person and that he would be hearing from his lawyer. He testified that he denied agreeing with Mr. Starr that Mr. Starr was being discriminated against, but because of Mr. Starr's reaction he went to find the Assistant branch Manager Ms. Chenee Lubi to speak to Mr. Starr, however, when they returned Mr. Starr had left the main branch but returned later to speak to Ms. Lubi.

[23] Mr. Starr's version of the facts about the above meeting are somewhat different. In his view he did not suggest that he would hire a lawyer and believes that Mr. Khouvongsavanh agreed with him that it was discriminatory not to provide him with a secured credit card. Mr. Starr also stated in his evidence that he did not mention then that he needed the secured card to rebuild his credit. He also said that he spoke to Ms. Lubi when he was initially at the main branch rather when he returned to the main branch later. He testified that the main branch is a branch that caters to people of higher socio-economic standards than in other areas of Winnipeg and in other BMO branches and that he would have appeared to the BMO employees at the main branch as being Indigenous when he met with them.

[24] Mr. Starr testified that he returned on April 18, 2018 to the main branch after visiting another Winnipeg BMO branch at 330 Portage Avenue ("the Portage Avenue branch"). He testified that this branch generally served customers who were lower socio-economically than those who were served at the main branch. He said that he spoke with a CSR at the Portage Avenue branch who advised him that BMO offered secured credit cards customers and she offered to open a new account to start the application process but that he did not apply for one. He did not obtain the name of the CSR he spoke to and didn't advise her that he was or was not a new Canadian. It is on the basis of this event at the Portage Avenue



branch that Mr. Starr alleges that the policy is fake and that BMO actually offers secured credit cards to anyone. He stated that: "The purpose of relating my experience at 330 Portage Avenue is to demonstrate that the Respondent offered secured credit cards to everybody at branches that serve a lower socio-economic class. The problem is that the Respondent won't serve Indigenous persons at the main branch which serves business customers and a higher socio-economic class." There was no evidence that BMO had actually offered anyone else a secured credit card without the restrictions in the policy.

[25] Ms. Lubi was a forthright and credible witness. Her evidence was that she met with Mr. Starr when he returned to the main branch not on his first visit as Mr. Starr alleges. She met with him because Mr. Khouvongsavanh elevated the concerns that Mr. Starr had expressed about being discriminated against as a result of not being able to obtain a secured credit card. She testified that she did not tell Mr. Starr that BMO does not offer secured credit cards or that no banks in Canada offer secured credit cards as alleged by him. Her recollection was that she was aware and advised Mr. Starr that secured credit cards were only offered to new Canadians in order to help newcomers alleviate financial difficulties by establishing credit.

[26] Mr. Starr says that he asked to speak to the Branch Manager Ms. Mosher on his second visit to the main branch on April 18, 2018 but the BMO witnesses deny that this request was made to any of them. Ms. Mosher, a credible witness, gave evidence that she had not spoken to or seen Mr. Starr and did not know what he looked like on April 18, 2018. Ms. Lubi's evidence was that when she could no longer satisfy Mr. Starr's complaint at the branch level about not being eligible for a secured credit card as it was only available to new Canadians to help establish a credit history, she escalated the matter by providing him with the "We're here to help" brochure ("the brochure").

[27] Evidence was provided by the BMO that its customer complaint escalation process, which was in effect at the relevant time, was complied with in this case in accordance with the brochure and in the same manner as it would have been for any customer regardless of their race who had a complaint.

[28] The process described in the brochure (“the escalation process”) describes the same steps that were taken in this case ie) escalating the complaint from the CSR to the Assistant branch Manager and if not resolved there providing the brochure to the customer to allow him to escalate his complaint beyond the branch to a Senior Officer of BMO. There is no provision or requirement in the process as described in the brochure for a complaint to be escalated to a branch Manager in a branch that has an assistant branch Manager. Mr. Starr makes the point that there is nothing in the escalation process to prevent a complaint being escalated from an Assistant branch Manager to the branch Manager if the customer has concerns about the Assistant branch Manager. He alleges that in this case such an escalation was appropriate and should have taken place but didn’t because of his race.

[29] The escalation process provides for an unresolved complaint at the Assistant Manager level in a branch to be escalated by the customer above the branch to the business group’s Senior Officer, not to the branch Manager. There are contact numbers provided for these purposes but after allegedly phoning one of the numbers Mr. Starr did not leave a voice mail and took no other further steps described in the brochure and did not file his human rights complaint until almost a year later.

[30] It is absolutely true that Indigenous persons have been the targets of racism and discrimination in Canada over many years but both Mr. Starr and BMO take the position that this case is not about systemic discrimination. Mr. Starr stated “I’m not alleging systemic discrimination. I’m alleging differential treatment. My claim is that the Respondent gives secured credit cards to everyone regardless of their citizenship status with the exception that the main branch in Winnipeg will not provide them to Indigenous customers who don’t look like their typical clientele.”

[31] BMO provides a range of special offers to Indigenous customers and businesses including free service charges on an account for a year, preferred rates on investments, loans and mortgages and on-reserve lending for both home renovation and home purchases which has provided a total of \$200 million under the loan program. More importantly to the facts of this case, BMO’s policy allows Indigenous persons the same right of access to secured credit cards as any other Canadian, regardless of race as the policy is the same for persons of all races who wish to obtain a secured credit card from BMO.

#### IV. COMPLAINANT'S SUBMISSIONS

[32] Mr. Starr submits that parts of BMO'S policies introduced into evidence in this case, restricting access to secured credit cards to new Canadians who have no credit history and have been refused an unsecured credit card, are fake and intended to provide BMO with a defence to this case. He says "I am arguing that BMO should have given me a secured credit card at the main branch in Winnipeg on April 18, 2018 because the credit cards are available to anyone. To support my allegations, I testified that a teller at the 330 Portage Avenue branch offered to open an account and begin the application process for a secured credit card. And further, I submitted a screenshot from the Respondent's website which advises customers to speak to a BMO advisor about secured credit cards...My main allegation is that the Respondent treated me differently at the main branch in Winnipeg by not giving me a product that is available to all customers."

[33] Mr. Starr further contends that some of BMO's internet information contradicts its policies and indicates that secured credit cards allow for rebuilding credit which was something that he wanted to obtain a secured credit card to do. He cited a part of a BMO internet piece entitled "How to build credit history in Canada" which states: "Using a secured credit card is also a great way to rebuild your credit score, especially if you're having trouble getting approved for a new credit card. A secured credit card requires a cash deposit equal to your credit limit. This will prevent you from spending more than you can afford to." Mr. Starr contends that this shows that the BMO policy that a secured credit card is not available to rebuild credit is fake and intended to provide BMO with a defence in this case. He argues that the secured credit card was actually available to anyone at other branches to rebuild their credit score but refused to him at the main branch because of his race.

[34] Mr. Starr argues that BMO discriminated against him when it refused him access to a secured credit card at the main branch on April 18, 2018 because he is an Indigenous person who dresses "blue collar" like others who frequent the area while the main branch caters to persons of higher socio-economic status than other branches including the Portage Avenue branch that he says offered to provide him access to a secured credit card on April 18, 2018.

[35] Mr. Starr submits that he also suffered racial discrimination in not being permitted to meet with the branch Manager Ms. Mosher when he was at the main branch on April 18, 2018. He argues that it would have been appropriate for him to have such a meeting to escalate his complaint after his unsuccessful meetings first with the CSR and then with the Assistant branch Manager. He argues that if he had not been Indigenous his complaint would have been escalated from the Assistant branch Manager to the branch Manager. He contends that he made the request to the CSR to meet Ms. Mosher who he could see in her office from where he was and that the Ms. Mosher refused to meet him because he was Indigenous and he was left waiting by her. He disputes the position of the BMO witnesses who testified that there was no such request made by Mr. Starr and therefore no refusal to meet Ms. Mosher.

[36] Mr. Starr further contends that all of BMO's witnesses including the two he called as witnesses and the four who were called by BMO are not credible witnesses, based on his belief that their version of the facts are not correct and his are. He disputes the claim that he accused the CSA of being racist or that he said he would be hire a lawyer or that he became irritated with the CSA's response to his request for a secured credit card or that the CSA did not agree with him that the policy was discriminatory. He maintains that he has consistently has opposed the policy not any of the BMO people individually.

[37] Mr. Starr contends that at the main branch there is no credit facility that BMO makes available to Indigenous persons like him who are not new Canadians and have a poor credit score that they wish to rebuild and have been refused a non secured credit card. At the same time he contends that at other branches like the Portage Avenue branch, in less affluent areas, BMO offers secured credit cards to anyone without the restrictions who can use the secured credit card to rebuild their credit score and who then have an advantage over Indigenous persons like him who have been refused a secured credit card at the main branch that caters to more affluent people. He maintains that this is the adverse differentiation that he suffered in this case at the main branch when he was refused a secured credit card because he was Indigenous.

[38] Mr. Starr states that "Discrimination did occur in the denial of financial products. Discrimination did occur in the Branch Manager's failure to address my concerns. The

discrimination was both wilful and reckless, and I did suffer emotionally, psychologically, and though I can't specify a specific amount, they have hindered the growth of my film production business, and have hindered my ability to create personal wealth." He claims that he is seeking \$80,000. He testified that he was prepared to deposit \$1000 in an account at the main branch to provide the collateral for the secured credit card he wanted.

## **V. RESPONDENT'S SUBMISSIONS**

[39] BMO argues that all of its employees who were witnesses in the hearing, including the two witnesses called by Mr. Starr, were credible and that they testified in a consistent and coherent manner without any contradictions and discrepancies in their own accounts of the facts. It says that Mr. Starr's allegations that the witnesses were not credible is solely based on his belief that his version of the facts was correct, including his allegation that Policy 910-13 was fake and that the witnesses provided a wrong account of the facts, but these are inaccurate assumptions on his part and demonstrate the flaws in his reasoning.

[40] BMO states that the banking product at issue in this case is a secured credit card designed for the purpose of allowing new Canadians to establish credit not to rebuild their credit, whether Indigenous or not. It was also not designed to allow new Canadians to rebuild their credit. In 2018, any person who requested a secured credit card from BMO would be ineligible for the product if they were not a new Canadian. Any person who had a credit history in Canada including new Canadians was also ineligible for a secured credit card and would not be prompted by the system to apply for a secured credit card in-branch after first having been refused for a non-secured credit card. BMO says that Mr. Starr did not qualify for a secured credit card and he was treated in an entirely non-discriminatory manner at the main branch on April 18, 2018 when he was denied a secured credit card.

[41] BMO disputes Mr. Starr's allegations that he experienced an adverse impact and differential treatment in its handling of his complaint as the BMO employees who interacted with him at the main branch applied the correct procedures when handling his complaint without his race playing any factor in the application of these procedures which were laid

out in the brochure. Mr. Starr chose not to elevate his complaint above the branch level as provided for in the brochure.

[42] BMO points out that Mr. Starr did not make an application for a secured credit card at the Portage Avenue branch even though he claims that he was offered one. BMO also contends that none of the employees at the main branch where Mr. Starr returned to after allegedly being offered a secured credit card at the Portage Avenue branch were asked by him to meet with the branch Manager. The brochure does not provide for the escalation of a complaint from the Assistant branch Manager to the Manager as an Assistant branch Manager is equivalent to a “manager/supervisor” according to step 1 in complaint escalation process referenced in the brochure.

[43] BMO argues that Mr. Starr was not treated in a discriminatory manner by any of its employees’ interactions with him at the main branch on April 18, 2018 as none of those interactions had any connection to his race or any other prohibited ground under the CHRA. As such, the Tribunal is without jurisdiction to make a finding of a violation of the CHRA and his Complaint ought to be dismissed in its entirety.

[44] BMO submits that Mr. Starr’s allegation that he was told he was eligible for a secured credit card at the Portage Avenue branch, even if true, is not evidence of discrimination. The information he alleged to have received at the Portage Avenue branch was inaccurate and did not reflect the eligibility requirements for a secured credit card. He was provided correct information about his eligibility at the main branch.

[45] BMO states that Mr. Starr was denied access to a secured credit card because he was not a new Canadian pursuant to the policy. The non-discriminatory nature of the denial to Mr. Starr of access to a secured credit card is further apparent from the fact that based on BMO’s secured credit card policy, an Indigenous person (as defined in the policy) who was a newcomer to Canada, held an official document proving the status and recency to Canada (i.e. within the last 5 years) and did not have a credit history in Canada could apply for a secured credit card from BMO. Given that the same eligibility criteria were applied to Mr. Starr without any consideration of his race, it could not have been the case that he was denied a secured credit card on the basis of his race.

[46] As Ms. Mosher testified that she didn't speak with, see, know or was ever asked to meet with Mr. Starr on April 18, 2018, it is not possible that the adverse treatment that he alleges to have received by her not meeting him was in any way related to his race. BMO also argues that Mr. Starr's allegations of discrimination are not based on any credible evidence that he was actually discriminated against either by the policy or by the actions of any of the BMO employees, but rather solely on the basis of his self-identification with a prohibited ground of discrimination. BMO says that mere self-identification with a prohibited ground and bald assertions of discrimination are not evidence that Mr. Starr faced discriminatory treatment.

## VI. LEGAL FRAMEWORK

[47] Section 5 of the CHRA provides, in part, that it is a discriminatory practice in the provision of services customarily available to the general public to a) deny or deny access to any such service to an individual, or b) to differentiate adversely in relation to any individual on the basis of the individual's race or any other protected characteristic. It is common ground in this case that the provision of credit cards by banks is a "service" or "services" within the meaning of the terms pursuant to section 5.

[48] A complainant alleging an infringement of the CHRA bears the onus of showing a *prima facie* case of discrimination. A *prima facie* case is "one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent." *Ontario Human Rights Commission and O'Malley v Simpsons-Sears* [1985] 2 SCR 536 at para 28. The applicable standard of proof is the civil standard of a balance of probabilities. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39, [2015] 2 SCR 789 at para 65.

[49] Once a *prima facie* case has been established, the burden shifts to the respondent to refute the allegations of discrimination or demonstrate that the conduct was justified, within the framework of the exemptions provided under the CHRA. If the conduct cannot be refuted or justified, discrimination will be found to have occurred. *Dulce-Crowchild v*

*Tsuut'ina Nation (Dulce-Crowchild)*, 2020 CHRT 6 at para 10-11; *Ontario Human Rights Commission and O'Malley v Simpsons-Sears* [1985] 2 SCR 536 at para 28; *Moore v British Columbia (Education)*, 2012 SCC 61, [2012] 3 SCR 360 at para 33.

[50] The *prima facie* test is necessarily flexible and contextual because it must be applied in cases with many different factual situations and based upon various grounds of discrimination. *Canada (Attorney General) v Johnstone*, 2014 FCA 110 at para 83.

[51] It is not necessary that discriminatory considerations be the sole reason for the employer's actions or decisions at issue. It is sufficient that the discrimination be a factor, even if other factors were also at play. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at para 44-52; *Khiamal v Canada*, 2009 FC 495 at para 80-84. In addition, complainants are not required to prove that the respondent *intended* to discriminate. It is, rather, the effect of the discriminatory action that is significant. *Bombardier, ibid.*, at para 40-41.

[52] Human rights case law recognizes that in many cases there is no direct evidence of discrimination because discrimination is not a practice often displayed overtly. Therefore, the role of a tribunal is to examine all of the circumstances of the complaint and determine if there exists a "subtle scent" of discrimination. *Basi v Canadian National Railway*, 1988 CanLII 108 (CHRT); *Turner v Canada Border Services Agency*, 2020 CHRT 1 at para 48. Circumstantial evidence can assist decision-makers in drawing an inference of discrimination where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses. *Nielsen v Nee Tahi Buhn Indian Band*, 2019 CHRT 50 (CanLII) at para 46; *Peel Law Association v Pieters (Pieters)*, 2013 ONCA 396 (CanLII) at para 72-73, 111. In this regard, social context evidence may also assist decision-makers in determining what inferences to draw. *R v Le*, 2019 SCC 34; *Peart v Peel Regional Police* 2006 ONCA 296 (CANLII) at para 96; *McCarthy v Kenny Tan Pharmacy* 2015 HRTO 1303 at para 56.

[53] Courts and tribunals have recognized that racial discrimination may be challenging to prove given that it often manifests in very subtle ways and because "racial stereotyping



will usually be the result of subtle unconscious beliefs, biases and prejudices.” *Pieters, supra* at para 111.

[54] In cases involving allegations of racial discrimination, the following five principles have been summarized and repeatedly emphasized by courts and tribunals as being of particular importance:

- a) the prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct; it is sufficient if they are a factor;
- b) there is no need to establish an intention or motivation to discriminate; the focus of the enquiry is on the effect of the respondent’s actions on the complainant;
- c) the prohibited ground or grounds need not be the cause of the respondent’s discriminatory conduct; it is sufficient if they are a factor or operative element;
- d) there need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference; and
- e) racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices. *Davis v Canada Border Services Agency*, 2014 CHRT 34, citing *Radek v Henderson Development (Canada) Ltd.*, 2005 BCHRT 302; and *Phipps v Toronto Police Services Board*, 2009 HRTO 877.

[55] There are no particular forms of evidence that must invariably be filed in order to prove a *prima facie* case. Each case will turn on its facts.

[56] Where a Complainant has a complaint that is not linked to an enumerated prohibited ground of discrimination under the CHRA, the complaint cannot succeed. *Ozcevik v. Canada (Revenue Agency)*, 2021 FC 13 (CanLII) at para 20.

## VII. ANALYSIS

[57] To succeed in this case Mr. Starr must prove on the balance of probabilities that because of his race he was denied access to a secured BMO credit card or treated adversely and denied the opportunity to meet a branch Manager at the main branch on April 18, 2018. He has failed to do so based on the evidence in this case.

[58] The evidence in this case does not establish that the policy or the interactions of the BMO employees with Mr. Starr on April 18, 2018 at the main branch were discriminatory.

[59] The policy was clearly in effect when Mr. Starr visited the main branch on April 18, 2018. It was not a fake policy as alleged by Mr. Starr. It was a real policy, intended to give new Canadians (as referred to in paragraph 11 above) who had no credit history in Canada, an opportunity to establish credit in Canada after first applying for and being refused a non secured credit card. These were the restrictions in place on April 18, 2018 for being offered a secured credit card by BMO.

[60] Nothing in the policy was related to race. Any Canadian of any race, including Indigenous persons, who met the restrictions of the policy could be offered a secured credit card without any reference to their race or any other protected characteristic under the CHRA. Any Canadian of any race, including Indigenous persons, who did not meet the restrictions would not be offered a secured credit card without any reference to their race or any other protected characteristic under the CHRA. Regardless of whether Mr. Starr feels that his appearance would have identified him to the BMO employees at the main branch as Indigenous he did not meet the restrictions in the policy and that is why he was advised that he was ineligible for a secured credit card not because he was Indigenous.

[61] The evidence of Mr. Starr that he was offered a secured credit card at the Portage Avenue branch without the restrictions after he was refused one at the main branch on April 18, 2018 because of the restrictions, does not appear to be credible. If he really was offered a secured credit card by a CSR at the Portage Avenue branch he could have obtained the name of the person and subpoenaed them to testify as he did with the Mr. Khouvongsavanh and applied for the secured credit card being offered to him. He did neither and his evidence of what was actually said to him at the Portage Avenue branch (see paragraph 24 above) is vague at best as to whether a secured credit card without the restrictions was available to anyone. Even if he was really offered a secured credit card at the Portage Avenue branch without the restrictions, I accept the evidence of BMO that it would have been a mistake as it is clear to me that the restrictions for a BMO secured credit card were in effect on April 18, 2018 at all BMO branches and wouldn't have been effective only at the main branch.

Further, there was no evidence that BMO ever issued a secured credit card to anyone without the restrictions.

[62] Nothing in the evidence of any of the BMO employees who testified indicated to me that they would have denied Mr. Starr a secured credit card because of his race. All of the witnesses appeared to me to be credible and consistent in their testimonies and without any racist behaviour or tendencies that would have made them make up the restrictions to deny Mr. Starr a secured credit card because he was Indigenous.

[63] While there was an inconsistency in the BMO piece of information on the internet referred to in paragraph 16 above about using a secured credit card to rebuild credit, I am of the view that was an error and hardly a reason to find discrimination took place in this case as the evidence was far more clear and consistent about rebuilding credit not being a purpose of the secured credit card.

[64] I accept the evidence of BMO about what happened at the main branch on April 18, 2018 regarding Mr. Starr's allegation that he was discriminated against in being refused a meeting with Ms. Mosher the branch Manager. I accept her evidence that she did not then speak to him, see him, know him or receive a request to meet with him and could therefore not have refused a meeting with him. As such, there could have been no discrimination against Mr. Starr based on his race for allegedly being refused a meeting by Ms. Mosher. Further, I am satisfied that the escalation procedure and brochure were fair, reasonable, clear and not discriminatory. The escalation procedure was followed in this case by virtue of the meetings first with the CSR and then with the escalation to the Assistant Manager and then with the handing to him of the brochure by Ms. Lubi which provided information respecting further escalation opportunities above the branch that Mr. Starr failed to follow up on. He was not discriminated against by BMO with respect to his allegation that he was refused a meeting with Ms. Mosher because he was Indigenous.

[65] For the foregoing reasons, based on the evidence before me and in accordance with the law, Mr. Starr's allegations of discrimination in this case are not linked to an enumerated prohibited ground of discrimination under the CHRA and cannot succeed. He has failed to substantiate his complaint and it must be dismissed.

**VIII. ORDER**

[66] Mr. Starr's complaint in this matter is dismissed.

*Signed by*

Edward P. Lustig  
Tribunal Member

Ottawa, Ontario  
November 16, 2023

# Canadian Human Rights Tribunal

## Parties of Record

**Tribunal File:** HR-DP-2829-22

**Style of Cause:** Starr v. BMO Financial Group

**Decision of the Tribunal Dated:** November 16, 2023

**Date and Place of Hearing:** September 25, 2023 – September 27, 2023

Videoconference

### **Appearances:**

Clifton Starr, Self-represented Complainant

Sunny J. Khaira and Armin Sohrevardi for the Respondent