

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 13
Date: February 14, 2025
File No.: HR-DP-3068-24

Between:

Allen McLearn

Complainant

- and -

Economic and Social Development Canada

Respondent

Ruling

Member: Gary Stein

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I. OVERVIEW

[1] This ruling is about whether I must recuse myself for bias.

[2] Allen McLearn is the Complainant in two human rights complaints that I am assigned to hear. Mr. McLearn cannot read or write due to a disability. Mr. McLearn's complaints allege that federal employees mistreated him and failed to accommodate his requested accommodations.

[3] In March 2024, the Canadian Human Rights Commission (the "Commission") made its first referral of Mr. McLearn's complaints to the Tribunal for inquiry (the "First Complaint"). The Tribunal's file number for the First Complaint is HR-DP-2997-24. In October 2024, the Commission referred Mr. McLearn's second complaint (the "Second Complaint"). There are different respondents named in each of the complaints.

[4] Both complaints are in the "case management" stage of the proceeding. During this stage, the parties prepare their cases for a hearing. The Tribunal holds case management conference calls (CMCCs) with the parties to help them prepare and, if needed, to resolve procedural disputes.

[5] During the first CMCC of Mr. McLearn's Second Complaint held on January 27, 2025, Mr. McLearn requested that I recuse myself, alleging bias based on procedural decisions and other matters related to the First Complaint.

[6] Counsel for the respondent in the Second Complaint submitted that there was no concern about my impartiality and that I should not recuse myself.

II. DECISION

[7] There is no reasonable apprehension of bias. Mr. McLearn's request for recusal is dismissed.

III. ISSUES

[8] This ruling addresses the following issues:

Issue 1: What principles apply in deciding whether a tribunal member should recuse themselves for bias?

Issue 2: Has the Complainant proven that a reasonable apprehension of bias exists?

IV. ANALYSIS

A. **Issue 1: What principles apply in deciding whether a tribunal member should recuse themselves for bias?**

[9] A cornerstone of our judicial system is a presumption of impartiality on the part of members of an administrative tribunal. A tribunal member is presumed to act impartially in the exercise of their quasi-judicial functions until proven otherwise (*Constantinescu v. Correctional Service Canada*, 2020 CHRT 3 at para 31 [*Constantinescu*], citing *Maritime Employers Association v. Longshoremen's Union, Local 375 (Canadian Union of Public Employees)*, 2020 FCA 29 at para 5).

[10] An allegation of bias against a tribunal is a serious allegation. It challenges the integrity of the tribunal and of its members who participated in the decisions in question. It cannot be done lightly (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2025 FC 18 [*Canada (Canadian Human Rights Commission) FC*] at para 57, citing *Arthur v. Canada (Attorney General)*, 2001 FCA 223 at para 8).

[11] A motion for recusal should be brought only where there is a real likelihood or probability of actual or apparent bias, supported by cogent evidence (*Collins v. Canada (Attorney General)*, 2024 FCA 5 [*Collins*] at para 13, citing *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, [2015] 2 S.C.R. 282 at para 25; *Cojocar v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, [2013] 2 S.C.R. 357 at paras 22 and 27).

[12] The test for deciding whether a tribunal member must recuse themselves is whether there is a reasonable apprehension of bias. The test is: what would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude? Would the informed person think it is more likely than not that the tribunal member, whether consciously or unconsciously, will not make a fair decision? (*Canada (Canadian Human Rights Commission) FC* at para 55, citing *Committee for Justice & Liberty v. Canada (National Energy Board)* 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 394).

[13] The onus of establishing a reasonable apprehension of bias is on the party raising it. This party bears a high burden of proof (*Constantinescu* at paras 39–40; *Oleynik v. Canada (Attorney General)*, 2020 FCA 5 at para 57).

[14] The context and the facts of each case, and the tribunal’s procedural requirements, must be considered in a motion for recusal (*Constantinescu* at para 45).

[15] One or more previous rulings that a tribunal member makes against a party cannot, by themselves, demonstrate apparent or apprehended bias. A reasonable, fully informed person appreciates that a tribunal member may rule against a party on a number of occasions. And the reasonable, fully informed person also appreciates that a “losing streak” may be justified by the facts and the law of the individual cases (*Collins* at para 19).

[16] In addition, a party must bring a timely motion for recusal. If a party fails to bring a motion at the earliest opportunity, they may be found to have waived their claim (*Rothesay Residents Association Inc. v. Rothesay Heritage Preservation & Review Board et al*, 2006 NBCA 61 at para 27 [*Rothesay*]).

[17] I will now apply the above legal principles to the facts of this case.

B. Issue 2: Has the Complainant proven that a reasonable apprehension of bias exists?

[18] No. There is no evidence of a reasonable apprehension of bias. I explain this decision below.

C. Background

[19] It is an important point of context that Mr. McLearn is not able to read or write due to a disability and that the Tribunal has implemented accommodations so that Mr. McLearn can fully participate in these proceedings.

[20] I was assigned to the First Complaint in April 2024. During the CMCCs, I asked Mr. McLearn for information about the accommodations he needed to participate in the proceeding. The Tribunal has provided accommodations, including:

- holding CMCCs to allow Mr. McLearn to orally provide information about his complaint and make submissions about procedural requests that arise;
- having a Tribunal Registry Officer read the written summaries of CMCCs and other Tribunal communications to Mr. McLearn;
- having the Tribunal Registry Officer take note of issues that arise for Mr. McLearn between CMCCs so that the parties and I can consider them in a CMCC;
- providing resources to obtain counsel.

[21] I have made two procedural decisions in the First Complaint. They are discussed below.

[22] I was also assigned to hear Mr. McLearn's Second Complaint. On January 27, 2025, the Tribunal held the first CMCC in the Second Complaint. Mr. McLearn requested that I recuse myself because of bias. His view is that I have not been fair to him in the decisions I have made, and in other events that have occurred, in the First Complaint.

[23] In July 2024, Mr. McLearn retained counsel to represent him in the First Complaint. He does not have counsel for the Second Complaint.

[24] I asked Mr. McLearn if he wanted time to seek legal advice about his request for recusal. He wants the recusal request to proceed and for me to make the decision now. Therefore, at Mr. McLearn's request, the recusal request is proceeding without Mr. McLearn having legal assistance.

[25] Because Mr. McLearn cannot read or write, I asked Mr. McLearn to explain the information he relied on to support his request for recusal. Mr. McLearn made oral submissions during the CMCC on January 27, 2025. The submissions are set out below, followed by my reasons on each submission.

[26] Mr. McLearn submits that I am biased because, in the First Complaint, I granted two requests from counsel for the respondent for the extension of deadlines. The details are set out below.

D. Decision to extend the filing deadlines without requesting the Complainant's submissions

[27] The first decision that Mr. McLearn refers to was a request for a one-week extension for the parties to file their Statements of Particulars.

[28] On May 9, 2024, counsel for the respondent in the First Complaint informed the Tribunal that there had been a two-day delay in sending a package of documents to Mr. McLearn and that the documents would arrive after the deadline to provide them to Mr. McLearn. Due to the delay, counsel requested that the deadline for Mr. McLearn to provide his Statement of Particulars be extended by one week and that the parties' further deadlines be correspondingly extended by one week.

[29] On May 13, 2024, I issued a one-sentence decision. It stated that, based on the circumstances that counsel for the respondent described, it was reasonable to extend the deadlines as proposed.

[30] I did not request Mr. McLearn's submissions before issuing the decision. I had sufficient information about this procedural request, and my view was that it was favourable to Mr. McLearn. However, Mr. McLearn objected to the decision because I had not requested his submissions before deciding.

[31] On May 15, 2024, I informed the parties of how the Tribunal would proceed. I explained that Rule 5 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021* SOR/2021-137 (the "Rules") requires that I interpret and apply the Rules to secure the

informal, expeditious and fair determination of every inquiry on its merits and that Rule 8 permitted me to vary or dispense with compliance with a rule if doing so achieves the purpose in Rule 5. I informed the parties that, due to the respondent's delay in providing documents to Mr. McLearn, giving Mr. McLearn an extra week to respond was fair, and the extension of the parties' further deadlines by one week allowed the complaint to proceed expeditiously. However, I informed the parties that, to ensure fairness, I would re-examine my decision by holding a CMCC, allowing the parties to present oral submissions on the extension request, and making a new decision.

[32] On May 22, 2024, I held the CMCC to review my decision. Mr. McLearn participated in it. The written summary of the CMCC confirms that, based on the discussions during the CMCC, a one-week extension of filing deadlines was no longer necessary. The issue was resolved, and no decision was required. I explained this outcome during the CMCC.

[33] I apply the legal test for reasonable apprehension of bias to the above events. I find that an informed person, viewing these events realistically and practically, would not conclude that I cannot make a fair decision in the Second Complaint based on my May 13, 2024, decision and the follow-up to it. Mr. McLearn's view is that it was unfair of me to extend filing deadlines without first requesting his comments. However, the Tribunal's Rules allow for that approach. Second, the request was for a minor and routine administrative matter. Third, holding a CMCC and hearing from the parties was a fair approach to the determination of this issue. Ultimately, the CMCC resolved the underlying issue.

E. Decision to extend a filing deadline for the respondent

[34] My second decision also involved a request for an extension.

[35] On June 6, 2024, counsel for the respondent in the First Complaint requested a further eight-week extension to deliver its Statement of Particulars. Counsel's letter explained the reasons for the request.

[36] On June 7, 2024, the Tribunal informed Mr. McLearn about the respondent's request for an extension.

[37] On June 11, 2024, the Tribunal held a CMCC. Mr. McLearn participated in it. The parties made submissions about the respondent's request.

[38] I considered the parties' comments and their answers to my questions. On June 14, 2024, I issued my decision. I decided that a six-week extension was fair, and it met the requirement to proceed expeditiously with the complaint. The decision addresses Mr. McLearn's objections to the request and explains why I granted the request in part.

[39] On June 18, 2024, the Tribunal Registry Officer read my decision to Mr. McLearn.

[40] I apply the legal test for reasonable apprehension of bias to this decision. An informed person, viewing the events realistically and practically, would not conclude that I cannot make a fair decision in Mr. McLearn's Second Complaint because of my decision to extend a filing deadline for the opposite party. Mr. McLearn was aware of the respondent's request. He made oral submissions about it and responded to my questions during a CMCC. Mr. McLearn disagrees with the decision, but it was fairly made, and nothing in the Tribunal's decision-making process or in the decision itself suggests bias.

F. Previous rulings against a party do not demonstrate bias

[41] As the Federal Court of Appeal decided in *Collins*, referred to above, previous rulings that a tribunal member makes against a party cannot, by themselves, demonstrate apparent or apprehended bias. The Court's reasoning applies to this recusal request.

G. Other submissions to support the recusal request

[42] Mr. McLearn also referred to two further events in support of his recusal request.

(i) Complaint to the Tribunal's Chairperson

[43] In further support of the recusal request, Mr. McLearn referred to a meeting he requested with the Tribunal's Chairperson to complain about my decision to allow the one-week extension of filing deadlines, as discussed above. Mr. McLearn stated that the meeting did not occur for approximately five weeks.

[44] According to the May 22, 2024, CMCC summary, Mr. McLearn had asked for information about how to make a complaint about me. I explained the options. Mr. McLearn could request that I recuse myself for bias, or he could complain to the Tribunal's Chairperson. Mr. McLearn did not want to make a request for recusal. He wanted to complain to the Chairperson about my authority to decide an issue without obtaining his comments in advance. I informed him that a meeting with the Chairperson would not occur until at least the end of June. Mr. McLearn met with the Chairperson on July 3, 2024. The outcome of the meeting is confidential between Mr. McLearn and the Chairperson.

[45] This event does not reference a decision or my involvement. It is not relevant to the request that I recuse myself.

[46] I apply the legal test for reasonable apprehension of bias. I provided information that Mr. McLearn requested. An informed person, viewing this event realistically and practically, would not conclude that I cannot make a fair decision in the Second Complaint for having done so.

[47] It should also be noted that parties are required to raise objections to potential bias in a timely manner, at the earliest possible opportunity. Failure to do so can result in a waiver of the right to later challenge an adjudicator's impartiality (*Rothesay* at para 27). In this case, Mr. McLearn, despite being self-represented, is bound by the same principles as represented parties. Bias allegations have serious implications for the reputation of the Tribunal. Parties cannot keep bias claims about past decisions in reserve for challenges later on. They must be raised at the earliest opportunity. Moreover, parties may not raise bias allegations related to matters already addressed in a former recusal motion.

(ii) Request to suspend the First Complaint

[48] In further support of the recusal request, Mr. McLearn submitted that he disagreed with a decision not to suspend the First Complaint until the Tribunal heard other complaints he had made to the Commission. The Commission had not referred Mr. McLearn's other complaints to the Tribunal, but Mr. McLearn hoped the Commission would do so.

[49] This issue was discussed during the March 22, May 22 and June 14, 2024, CMCCs in the First Complaint.

[50] The Tribunal's Chairperson held the March 22, 2024, CMCC with the parties. According to the CMCC summary, Mr. McLearn advised her that he wanted to continue with his complaint before the Tribunal.

[51] According to the May 22, 2024, CMCC summary, Mr. McLearn wanted the First Complaint to be "paused" while the Commission investigated his other complaints and decided whether to refer them. Mr. McLearn had accepted the start of the First Complaint only due to health reasons, and he advised the Tribunal that his previous request for the First Complaint to proceed was made under duress. I made no decision about the request.

[52] According to the June 14, 2024, CMCC summary, Mr. McLearn said he was unhappy that the First Complaint was moving forward before the other complaints he made to the Commission. I explained that the Tribunal proceeds with complaints that the Commission has referred, that the Commission has the authority to decide which complaints it will refer to the Tribunal, and that the Commission has not referred any of Mr. McLearn's other complaints.

[53] During the June 14, 2024, CMCC summary, Mr. McLearn asked again if the First Complaint can be paused. I informed him that the Tribunal does not typically suspend complaints. Mr. McLearn then confirmed that he consented, for health reasons, to move forward with the First Complaint.

[54] There have been no subsequent discussions about this issue.

[55] I apply the legal test for reasonable apprehension of bias to this issue. An informed person, viewing these events realistically and practically, would not conclude that I cannot make a fair decision in the Second Complaint based on the above events. If Mr. McLearn understood my comments during the CMCCs to be a decision, the reasoning in the Federal Court of Appeal's decision in *Collins*, referred to above, also applies.

H. Conclusion: no reasonable apprehension of bias exists

[56] As explained above, a motion for recusal should be brought in a timely manner and only where there is a real likelihood or probability of actual or apparent bias, with support by cogent evidence. With respect, that is not apparent in this request.

[57] The legal test for recusal is whether there is a reasonable apprehension of bias. The questions for determining if there is a reasonable apprehension of bias are as follows:

A) What would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude?

The answer is that an informed person would conclude that there is no evidence to support the submission that I am biased.

B) Would an informed person think it is more likely than not that the tribunal member, whether consciously or unconsciously, will not make a fair decision?

The answer is no.

V. ORDER

[58] Based on the above reasons, an informed person would not conclude that it is more likely than not that, consciously or unconsciously, I will not make a fair decision about Mr. McLearn's Second Complaint.

[59] The request for recusal is dismissed. I will continue as the Tribunal Member assigned to this file.

Signed by

Gary Stein
Tribunal Member

Ottawa, Ontario
February 14, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3068-24

Style of Cause: Allen McLearn v. Economic and Social Development Canada

Ruling of the Tribunal Dated: February 14, 2025

Motion dealt with by teleconference.

Oral representations by:

Allen McLearn, Self-represented

Tengteng Gai, for the Respondent