

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 19

**Date:** March 18, 2025

**File No.:** T2566/12320

**Between:**

**Marcus Williams**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Bank of Nova Scotia**

**Respondent**

**Ruling**

**Member:** Edward Lustig

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## **I. OVERVIEW**

[1] The Complainant, Marcus Williams, was a casual employee with the Respondent, the Bank of Nova Scotia (BNS) from February 9, 2015, until October 26, 2017, when his employment contract came to an end. Mr. Williams alleges in his complaint that the BNS discriminated against him on the basis of his race, national or ethnic origin, colour, age and sex by terminating him, denying him an annual bonus and raise and denying him other employment opportunities with the bank, contrary to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA).

[2] A hearing on the merits of the complaint has been scheduled from May 12 to May 27, 2025.

[3] A disagreement between the parties has arisen regarding the format for the hearing. Mr. Williams, who is self-represented, wants the hearing to be held virtually while the BNS wants the hearing to be held in-person in downtown Toronto or alternatively in a hybrid format with the evidence to be given in-person and arguments to be made virtually.

[4] Mr. Williams feels that it is unnecessary and would not be fair to him and other witnesses to have to travel to downtown Toronto every day for an in-person hearing both from a cost and a convenience perspective. The BNS argues that an in-person hearing would provide a better forum for the Tribunal to assess the credibility of the many witnesses that it intends to call and that it would also enhance possible settlement prospects if the parties were together in person.

## **II. DECISION**

[5] The hearing will be held in a virtual format (as it is more convenient and cost efficient to do so). The Tribunal will be able to properly assess the credibility of the witnesses in a virtual format, as it has done successfully on many occasions in the past. A virtual hearing format can also be used to have private discussions towards possible settlement between the parties.

### **III. ISSUE**

[6] The sole issue to be determined is whether the hearing of this inquiry should be held in-person or in a virtual format or partly in-person and partly in a virtual format?

### **IV. BACKGROUND**

[7] By email to the parties on January 17, 2025, the Tribunal requested the parties to indicate their preference(s) for the format of the hearing.

[8] On January 20, 2025, Mr. Williams responded to the request by email stating that his first preference was for the hearing to be held virtually and his second preference was for the hearing to be held in a hybrid (partly in-person and partly virtual format). He did not provide any other preference and did not give his reasons for his preferences, nor did he describe what his understanding was of a hybrid hearing.

[9] By email to the parties on January 23, 2025, the Tribunal indicated that its preference was for a virtual hearing. This email predated the BNS's response to the Tribunal's request for the parties' preference(s).

[10] On February 6, 2025, the BNS responded to the request by email stating that its "strong" preference would be for the hearing to be held in person in downtown Toronto. It cited Rule 33 of the *Canadian Human Rights Tribunals Rules of Procedure, 2021* (the "Rules") as the presumptive format for in-person hearings by the Tribunal. It also submitted that the Tribunal's assessment of the credibility of witnesses and the possibilities for potential settlement discussions between the parties would be enhanced by a hearing held in person. The BNS requested the opportunity to make further submissions on the issue.

[11] By email to the parties on February 19, 2025, the Tribunal requested the parties to provide any further submissions that the parties had in order that it could rule on the issue.

[12] On February 27, 2025, the BNS provided further submissions by email to the parties. It continued to rely on its submissions in its February 6 correspondence. In addition, it referred to the Guidelines of the Ontario Superior Court for determining the mode of civil

proceedings effective February 1, 2024, and the Notice to the Community published by the Ontario Labour Relations Board in April 2024 in support of the return to in-person hearings once again (following COVID-19) as the presumptive norm for courts and tribunals.

[13] While the BNS in its further submissions acknowledges that virtual hearings may be preferable in certain circumstances, it does not feel that those circumstances are present in this case for the following reasons: a) given that the Mr. Williams is self represented and in need of direction, it will be easier to control and manage the proceedings in an expeditious manner in person rather than virtually; b) an in-person hearing in Toronto would not be prohibitively expensive or inconvenient for Mr. Williams as he resides and works in the Greater Toronto-Mississauga and Hamilton area; c) as most of the evidence will be *viva voce*, including importantly the cross-examination of Mr. Williams, an in-person hearing will be more effective in presenting and challenging this evidence and, as a result, a virtual hearing would prejudice the BNS' ability to mount its best defence.

[14] On March 7, 2025, Mr. Williams provided responsive submissions by email. Above all, he raised various obstacles for him and other witnesses in having to unnecessarily travel to attend in person in Toronto in terms of cost and convenience. Among the additional expenses and inconveniences, Mr. Williams cited vehicle gas costs or alternative vehicle travel costs, exorbitant parking costs in downtown Toronto, risks of traffic accidents and delays while travelling, extra food and related costs and other incidental costs related to extra unnecessary expenses.

[15] In addition, Mr. Williams disagreed with the BNS that as a self represented litigant he needed to be more managed and controlled by the Tribunal which would work better and more expeditiously at an in-person hearing rather than at a virtual hearing. He also contested the suggestion that there would be few documents at the hearing and mainly *viva voce* evidence or that the BNS would be prejudiced by not being able to examine and cross-examine witnesses in person if the hearing was virtual. He added that an in-person hearing would be a waste of public funds.

## V. LEGAL FRAMEWORK

[16] Rule 33(1) of the Rules provides that, subject to subrule (2), a hearing is conducted in person. Rule 33(2) provides that the panel may order that a hearing be conducted in whole or in part by means of a telephone conference call, a videoconference or any other form of electronic communication.

[17] Rule 5 of the Rules provides that the Rules are to be interpreted and applied so as to secure the informal, expeditious and fair determination of every inquiry on its merits.

[18] Rule 6(1) of the Rules provides that the Rules are to be interpreted and applied so as to reasonably accommodate the needs of all participants in an inquiry.

[19] Rule 8 of the Rules provides that the panel may on the motion of a party or on its own initiative vary or dispense with compliance with a Rule, if doing so achieves the purpose set out in Rule 5.

[20] Section 48.9 (1) of the CHRA provides that proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the Rules allow.

[21] Section 50(1) of the CHRA provides, in part, that the Tribunal ensure that all parties have a full and ample opportunity, on their own behalf or through counsel, to present evidence and make representations at a hearing.

[22] Requests for in-person hearings are assessed on a case-by-case basis, with the Tribunal considering the preferences and interests of the parties, the fairness and accessibility of the form of hearing, and health and safety requirements. Proportionality is also a factor, meaning the Tribunal will consider the cost, time and effort for the parties and for the Tribunal relative to the nature of the proceeding (*Woodgate et al v. RCMP*, 2023 CHRT 42 at para 22 [*Woodgate*]).

[23] The Tribunal has determined that videoconferencing is an entirely appropriate alternative to an in-person hearing, one that is fair, informal, expeditious and equitable and

protects the principles of natural justice and procedural fairness (*Hugie v. T-Lane Transportation and Logistics*, 2020 CHRT 25 at paras 20–29; *Woodgate* at para 20).

## VI. ANALYSIS

[24] While the BNS is correct to state that in-person proceedings are presumed, this (rebuttable) presumption exists because of Rule 33, not in spite of it. Ultimately, the goal of the rule (as with most of the CHRT rules) is to provide the Tribunal members flexibility to address the individual circumstances of each case before them, and this is underscored by the interpretive principles of the Rules referred to above.

[25] Clearly, the CHRA and the Rules provide the Tribunal with a discretion to rule on the procedural aspect of the hearing format as it sees fit on a case-by-case basis, provided that this discretion is exercised judicially in accordance with the law.

[26] As pointed out by the Tribunal in *Hugie* at para 29, “When the Tribunal has to decide whether a videoconference is possible alternative in proceedings, the Tribunal balances the various interests against the prejudice that might result, guided by principles set out in its enabling legislation”. This is also applicable when Courts and other Tribunals have to make such a determination.

[27] In balancing the interests of Mr. Williams and the BNS in this matter, I find that the reasons for the interest that he has expressed for a virtual hearing are more compelling than the reasons for the interest that the BNS has expressed for an in-person hearing.

[28] Unquestionably, there will be additional costs and inconveniences that would occur if the hearing takes place for 12 days in person in downtown Toronto, compared to connecting from elsewhere over the internet remotely with a computer. These additional costs and inconveniences could be significant especially for Mr. Williams but likely for other witnesses and for the Tribunal, its staff and any members of the public as well. In that regard, I accept Mr. Williams’ assessment of the potential additional costs and inconveniences of an in-person hearing in downtown Toronto.

[29] As referred to in *Woodgate* at para 21 "... in certain circumstances the Tribunal may decide that the use of videoconferencing would not be appropriate, such as cases in which a person has certain disabilities, where the matter is highly complex or where the available technologies cannot provide sufficient videoconferencing quality. These examples are not exhaustive and the Tribunal should assess the circumstances and make decisions on a case-by-case basis".

[30] In the circumstances in this case, I do not accept the BNS' assessment of potential prejudice to it of having a virtual rather than an in-person hearing with respect to the Tribunal being able to properly assess the credibility of witnesses, whether or not there are many witnesses and few documents. Nor do I accept the idea that a virtual hearing in this case would impede the BNS counsel's ability to examine or cross-examine witnesses if counsel are using the equipment properly.

[31] As far as my assessment of the credibility of witnesses is concerned, in my more than 17 years on the Tribunal, I have held many section 7 CHRA hearings virtually, including after COVID-19, and do not feel that I am less able to properly assess the credibility of witnesses in a virtual hearing than in an in-person hearing.

[32] In particular, I find that the camera pointed directly on the face of a witness including the witness's upper body, gives me at least as good a vantage point to observe the subtleties in expression, position, full demeanour and body language of the witness as if the witness was before me in person in a typical hearing room. The audio is normally clear enough to properly hear and understand witnesses, counsel and others speaking at a virtual hearing and as good as if they were before me in person in a hearing room. Finally, documents screen shared at a virtual hearing are the same to read and understand as they would be if they were submitted in person at a hearing. This, of course, all assumes the hearing is not interrupted by technological problems, but these are always eventually resolved.

[33] As the case now factually involves Mr. Williams' termination and five alleged instances of postings that he was unsuccessful in obtaining, it is not of such a complex nature as to justify it being held in person rather than virtually.



[34] Further, the parties could engage in settlement discussions in a secured private room virtually if they wanted to in the same manner as if they were together in person at the hearing. If the parties decided that they wanted to continue settlement discussions in person, they could certainly agree to do so, and the Tribunal could easily adjourn the virtual hearing to allow them to meet in person without holding up everyone else.

[35] As such, on balance, I find that it is more likely that Mr. Williams would be prejudiced by the additional expenses and inconveniences he could incur and experience in having to travel to and attend at a downtown Toronto hearing in person as opposed to virtually participating than the BNS would experience in having the hearing held virtually rather than in person.

[36] As observed in *Woodgate* at paragraph 38, testifying in person is not a prerequisite to satisfying the requirements of section 50(1) of the CHRA. As further observed at paragraph 20 of the same case and referred to in paragraph 23 above, the Tribunal has determined that videoconferencing is an entirely appropriate alternative to an in-person hearing, one that is fair and equitable and that protects the principles of natural justice and procedural fairness.

[37] In exercising my discretion in this case and balancing the interests of both parties in the issue at hand, I find that holding the hearing virtually will meet the standards of the CHRA and the Rules for a fair, informal, expeditious and open hearing process, where each party is given a full and ample opportunity to appear and present evidence and make representations. I find that videoconferencing in this case is an entirely appropriate alternative to an in-person hearing in satisfying the requirements of the CHRA and the Rules.

**VII. ORDER**

[38] The hearing in this inquiry will be held virtually.

*Signed by*

Edward Lustig  
Tribunal Member

Ottawa, Ontario  
March 18, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** T2566/12320

**Style of Cause:** Marcus Williams v. Bank of Nova Scotia

**Ruling of the Tribunal Dated:** March 18, 2025

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

**Written representations by:**

Marcus Williams, Complainant

Tiffany O'Hearn Davies, for the Respondent