

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 22

**Date:** March 20, 2025

**File No(s):** HR-DP-2997-24 & HR-DP-3068-24

**Between:**

**Allen McLearn**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Respondent**

**- and -**

**Employment and Social Development Canada**

**Respondent**

**Ruling**

**Member:** Gary Stein

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## **I. Introduction**

[1] Allen McLearn, the Complainant, filed two separate complaints with the Canadian Human Rights Commission (the “Commission”) on September 22, 2020. The first complaint named the Commission as a respondent. The second named Employment and Social Development Canada (ESDC) as a respondent. Both complaints have substantially similar allegations. Mr. McLearn has a brain injury which affects his ability to read or write. He alleges adverse differential treatment in the provision of services contrary to section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c H-6 (CHRA) based on disability.

[2] Both complaints initially covered the period from July 2017 to August 2020. The form for the complaint against the Commission was later amended to cover January 2016 onward, while the form for the complaint against ESDC was amended to cover 2016 onward. The complaint against ESDC also initially included allegations about spousal death benefits, but these allegations were not referred to the Tribunal and are not part of these proceedings.

[3] On March 11, 2024, the Commission referred Mr. McLearn’s complaint against the Commission to the Tribunal for inquiry. On October 21, 2024, the Commission referred the complaint against ESDC to the Tribunal. Subsequently, on February 21, 2025, the Commission filed a motion requesting that the Tribunal join the complaints and hear them together in a single inquiry.

## **II. Decision**

[4] I grant this motion and join these two complaints for a hearing in a single inquiry.

## **III. Position of the parties**

[5] The Commission submits that Mr. McLearn has made several specific allegations that are identical or substantially the same in both complaints. ESDC agrees. These allegations primarily involve telephone calls Mr. McLearn made to the National Call Centre. According to the Commission, Service Canada staff members, employed by ESDC, operate

the National Call Centre. The Commission also notes that its investigative report about the ESDC complaint confirmed it was based on the same factual matrix as the complaint against the Commission.

[6] The Commission argues that a joint inquiry is appropriate because the complaints arise from connected matters, resulting in common issues of fact and law. Mr. McLearn does not dispute that the complaints share similar facts and law.

[7] The Commission argues that separate inquiries into these complaints would expose all parties to the risk of inconsistent decisions about the same factual nexus. Moreover, if the cases proceed separately, there would be unnecessary duplication of testimony due to common incidents and witnesses. The Commission also says it would be prejudiced by not having access to evidence that only ESDC can provide during a hearing that includes ESDC.

[8] Mr. McLearn asks that the Tribunal dismiss the Commission's motion to join the complaints. The hearing of his complaint against the Commission is scheduled to begin on April 22, 2025, and Mr. McLearn wants to proceed. Mr. McLearn submits that the Commission has had over 11 months to prepare its case, that the procedural delays caused by joining the two complaints would be prejudicial, and that the prejudice that would result from the further delay that joining the complaints would cause cannot be reasonably mitigated.

[9] The Commission acknowledges that the complaint against the Commission is at a more advanced procedural stage than the ESDC complaint. However, the Commission proposes methods to streamline the process of a consolidated inquiry and mitigate potential delays, including expedited disclosure, expedited filing, and active case management. The Commission contends that the benefits of joining the complaints outweigh any prejudice that might result from procedural delays.

[10] ESDC does not oppose joining the two complaints, but it argues that it would be procedurally unfair to join the complaints and start the hearing on April 22, 2025. ESDC also requests that a joint process not proceed to a hearing until December 2025, at the earliest, due to the time it needs to prepare. If a hearing is to begin before then, ESDC argues that the complaints should proceed separately.

#### IV. Legal framework

[11] The Tribunal's jurisdiction derives from the CHRA. The Tribunal must conduct proceedings with both informality and expediency while respecting natural justice principles and procedural rules (section 48.9(1) of the CHRA). The Tribunal maintains the discretion to consolidate separate complaints into a single inquiry (section 50(2) of the CHRA; see also: *Nordhage-Sangster v. Canada Border Services Agency and Mark Pridmore*, 2022 CHRT 1 (CanLII) [*Pridmore*]; *Karas v. Canadian Blood Services and Health Canada*, 2020 CHRT 12 (CanLII) [*Karas*]; *Lattey v. Canadian Pacific Railway*, 2002 CanLII 45928 (CHRT) [*Lattey*]).

[12] The framework for determining whether to join complaints into a single inquiry was established in *Lattey* (at para 13) and reaffirmed in *Karas* (at para 15) and *Pridmore* (at para 19). The *Lattey* factors to be considered and balanced when deciding whether to join complaints into a single inquiry include:

1. The public interest in avoiding a multiplicity of proceedings, including considerations of expense, delay, the convenience of witnesses, reducing the need for the repetition of evidence, and the risk of inconsistent results;
2. The potential prejudice to the respondents that could result from a single hearing, including the lengthening of the hearing for each respondent as issues unique to the other respondent are dealt with, and the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one respondent or the other; and
3. Whether there are common issues of fact or law.

[13] The Tribunal should consider these factors within the unique context and circumstances of each case (*Karas* at para 17). Importantly, these factors are not exhaustive. Additionally, *Karas* expanded the assessment of potential prejudice beyond the respondent's perspective to include the perspective of all parties and of the public (*Karas* at paras 96–98).

## V. Analysis

[14] I have reviewed both complaints. I note that Mr. McLearn's allegations do not indicate whether ESDC or the Commission answered his telephone calls at the relevant times. Mr. McLearn does not have that information, but the two respondents may have it. It is within the context of these phone calls that the alleged discrimination is said to have occurred. Given the overlapping nature of the facts and Mr. McLearn's inability to determine if he allegedly spoke with a Commission representative or an ESDC employee during each of his telephone calls, it would be impractical to conduct separate inquiries. The allegations about what occurred are so intertwined that a unified approach to examining the allegations is necessary.

[15] Mr. McLearn presents a singular narrative of alleged events that cannot be artificially split without substantial risk to the Tribunal's function of truth-seeking through evidence. Adjudicating these matters separately would create an unacceptable risk of inconsistent findings based on duplicative evidence, including witness testimony. I accept ESDC's submission that joining the complaints would allow the respondents to work together to provide a clear evidentiary record of this central issue.

[16] Joining the two complaints means that the complaint against the Commission alone cannot begin on April 22, 2025. I appreciate that Mr. McLearn strongly prefers to start the hearing of this complaint against the Commission. However, on balance, the delays resulting from joining the complaints are preferable to the alternatives of evidentiary duplication, including the duplication of witnesses' testimony and the risk of inconsistent findings if the Tribunal heard these cases separately. Moreover, where discrete issues pertain to a single respondent, such as the Commission's argument that it does not provide a service under section 5 of the CHRA, the Tribunal can establish procedures to not unduly lengthen the hearing for ESDC.

[17] Mr. McLearn relies on *Cruden v. Canadian International Development Agency and Health Canada*, *Wheatcroft v. Canadian International Development Agency*, 2010 CHRT 32 [*Cruden*] to argue that, where one complaint is ready for the hearing, the Tribunal should not join complaints. With respect, I do not agree.

[18] In *Cruden*, Ms. Cruden had two complaints. The Tribunal dismissed the motion to join Ms. Cruden's complaints to another complainant's case because of the approaching delivery date of Ms. Cruden's child and her desire to complete the hearing before giving birth. The reasoning in that decision does not apply here based on this key factual distinction.

[19] Mr. McLearn also relies on *Mercier and Besirovic and al. v. Correctional Service of Canada et al*, 2022 CHRT 19 [*Mercier*], where the Tribunal held that procedural delays generally are not in the public interest. However, that statement cannot be taken in isolation from the facts of that case and applied here. In *Mercier*, four years had passed since the complaint had been referred to the Tribunal, and there was a risk that witnesses could become unavailable. *Mercier* also involved 24 complaints made by nine complainants against nine different respondents, which had been consolidated into a single inquiry. The inherent complexity of having 24 complaints and 18 parties is not present here. The passage that Mr. McLearn cites in his submissions arose from a four-year long delay at the Tribunal. It differs materially from the circumstances in the present case.

[20] Also in *Mercier*, the Tribunal was not convinced that the issues in Ms. Mercier's case were so similar to the other cases that Ms. Mercier's complaint should proceed in the consolidated inquiry (*Mercier* at para 56). This differs from Mr. McLearn's complaints against the Commission and ESDC, in which the issues appear to be so similar that they are almost identical.

[21] It is unfortunate that Mr. McLearn's two complaints were not received by the Tribunal simultaneously. However, the factors in *Lattey* that weigh in favour of joining these complaints still outweigh the factors that favour separate complaints. To preserve procedural fairness and afford ESDC adequate preparation time, I agree that the April 2025 hearing dates in the complaint against the Commission must be vacated.

[22] I am also not persuaded by the Complainant's contention that delays cannot be mitigated. There are procedures available to streamline the process and minimize delays. I will set clear timelines for a joint process in an upcoming case management conference call.

[23] Nor am I persuaded that the hearing must be delayed until December 2025, a full nine months from now. ESDC has not provided substantive justifications for such an

extended timeline. Procedural fairness can be maintained for all parties while pursuing more expeditious scheduling options.

[24] Overall, in this context of one complainant with two complaints that deal with substantially similar allegations of fact and legal issues, consolidation preserves resources. Witnesses will testify once. Document disclosure will be consolidated. I agree that the CHRA's reference to conducting Tribunal hearings expeditiously connotes more than mere speed (*Bailie et al v. Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 [*Bailie*] at para 23). It refers to a balanced approach that must be prompt yet prudent. In certain circumstances, such as in this case, measured delays may serve the public interest by preserving resources, mitigating the risk of inconsistent factual findings and achieving a better final result (*Bailie* at para 22).

[25] Based on my consideration of the factors in *Lattey*, I find that any prejudice to Mr. McLearn from rescheduling the upcoming hearing involving one respondent is outweighed by the prejudice and risks that would result from continuing with two separate proceedings.

## **VI. Order**

[26] I grant the Commission's motion. Mr. McLearn's complaints against the Commission and ESDC will be heard together in a single inquiry.

[27] The April 2025 hearing dates are vacated.

[28] I will hold a case management conference call to discuss a scheduling order with timelines for the completion of Statements of Particulars, document disclosure, and witness lists, and to set potential hearing dates.



[29] Should there be concerns about delays as the joint inquiry moves forward, the parties may make a request to revert to separate inquiries.

*Signed by*

Gary Stein  
Tribunal Member

Ottawa, Ontario  
March 20, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal Files:** HR-DP-2997-24 & HR-DP-3068-24

**Style of Cause:** Allen McLearn v. Canadian Human Rights Commission & Employment and Social Development Canada

**Ruling of the Tribunal Dated:** March 20, 2025

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

**Written representations by:**

Ilinca Stefan and Gabriel Reznick, for the Complainant

Jessica Warwick, for the Respondent, Canadian Human Rights Commission

Tengteng Gai and Sahara Douglas, for the Respondent, Employment and Social Development Canada