

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 33

**Date:** April 30, 2025

**File No.:** HR-DP-2989-24

**Between:**

**Timothy Dunphy**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**WestJet Airlines**

**Respondent**

**Ruling**

**Member:** Gary Stein

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## **I. OVERVIEW**

[1] Mr. Dunphy, the Complainant, worked as a baggage handler for WestJet, the Respondent. In December 2014, he was injured on the job. WestJet provided modified work assignments in 2015 and 2016. The last assignment ended in November 2016. WestJet did not provide modified work or a permanent accommodation for Mr. Dunphy's disability after November 2016.

[2] In June 2019, Mr. Dunphy filed a human rights complaint with the Canadian Human Rights Commission (the "Commission"). Mr. Dunphy alleged that WestJet discriminated against him by not properly accommodating for his disability, both before and after November 2016.

[3] The Commission referred Mr. Dunphy's complaint to the Tribunal. Mr. Dunphy filed his Statement of Particulars (SOP). This ruling is about the scope of Mr. Dunphy's SOP.

[4] Mr. Dunphy's SOP includes allegations going back to January 2015. Mr. Dunphy says that WestJet's discrimination against him started in January 2015 and that his SOP is consistent with his original complaint to the Commission.

[5] WestJet disagrees. It asks the Tribunal to strike parts of Mr. Dunphy's SOP and to require that Mr. Dunphy submit an updated SOP. WestJet says that, when the Commission referred Mr. Dunphy's complaint to the Tribunal for inquiry, it excluded the allegations about events that occurred between January 2015 and November 2016. Therefore, Mr. Dunphy's SOP should not include them. WestJet also says that the SOP includes new allegations that were not in the original complaint.

## **II. DECISION**

[6] I grant the motion in part. The references in the SOP to allegations occurring between January 2015 and November 2016 are struck. Other issues will be resolved in a case management conference call.

### III. ISSUES

[7] I must consider the following issues:

- a. Should paragraphs in Mr. Dunphy's SOP be struck because they include allegations that the Commission excluded when it referred the complaint to the Tribunal?
- b. Should paragraphs in Mr. Dunphy's SOP be struck because they involve new allegations that are not related to the original complaint?
- c. Does Mr. Dunphy's SOP otherwise comply with the Canadian Human Rights Tribunal Rules of Procedure, 2021?

### IV. ANALYSIS

#### A. Legal Framework

[8] The same legal principles apply whether the Tribunal is dealing with a motion to strike allegations in an SOP or a motion to expand the scope of a complaint (*Temate v. Public Health Agency of Canada*, 2022 CHRT 31 [*Temate*] at paras 6–7).

[9] Amendments to a human rights complaint should be allowed for the purpose of determining the real questions in controversy between the parties, provided that they do not result in prejudice to the other party (*Canada (Attorney General) v. Parent*, 2006 FC 1313 [*Parent*] at paras 30, 40).

[10] The considerations for whether to strike or amend allegations in an SOP are summarized in *Mohamed v. Royal Bank of Canada*, 2023 CHRT 20 [*Mohamed*] at paras 8–12:

[8] As part of its authority to determine the scope of a complaint, the Tribunal has the power to strike portions of a Statement of Particulars that exceed the scope of the complaint. However, the Tribunal must exercise its authority “cautiously” and only in the “clearest of cases” (*Richards v. Correctional Service Canada*, 2020 CHRT 27 at para. 86).

[9] Under section 44(3) and section 49 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the Act or CHRA), a request to the Tribunal to institute an inquiry into a complaint may be made only when the Commission has

considered the complaint. Indeed, the SCC in *Cooper v. Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC), [1996] 3 S.C.R. 854, at para. 48 states that the Act sets out a complete mechanism for dealing with complaints and that the Commission is central to that mechanism.

[10] The well-established case law (see for example *Casler* and *Canadian Museum of Civilization Corporation v. Public Service Alliance of Canada (Local 70396)*, 2006 FC 704) states that the scope of the dispute before the Tribunal may not introduce a new complaint that has not already been considered by the Commission and that does not respect the Commission's request to institute an inquiry. The Tribunal therefore does not have the power to deal with a complaint that has not been dealt with first by the Commission and that has not been referred to the Tribunal for inquiry (see *Cook v. Onion Lake First Nation*, 2002 CanLII 61849 (CHRT), [2002] C.H.R.D. No. 12) [Cook]. It is therefore necessary that the Tribunal confine itself to the complaint, the Commission's decisions with respect to the complaint and, in particular, the request for inquiry that the Commission has made to the Tribunal.

[11] The concept of a complaint is nevertheless broad enough to be interpreted in a way that encompasses the full extent of a complainant's allegations (*Cook* para. 11). A complaint is the first step in the process, and it is inevitable that new facts and circumstances will come to light in the course of the Commission's investigation (*Casler*). The complaint is refined and clarified as the process moves forward (*Gaucher v. Canadian Armed Forces*, 2005 CHRT 1, para 11) [*Gaucher*].

[12] However, a limit is necessary when the amendment to a complaint can no longer be considered a simple amendment but is instead more like a new complaint (*Gaucher*). Likewise, upon reading a complainant's Statement of Particulars, the allegations of facts to be analyzed by the Tribunal for the purposes of determining the dispute must somehow emanate from or arise out of the complaint itself and must not depart from it in such a way as to constitute a new complaint.

[11] To determine the scope of a complaint, the Tribunal must decide whether there is a sufficient connection or nexus between the allegations in the SOP and the original complaint filed before the Commission. To do so, the Tribunal may consult, among other things, the Commission's investigation report (the "Report"), the letters that the Commission sent to the Tribunal's Chairperson and the parties, the original complaint and any administrative forms (*Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at paras 16–17).

[12] When the Commission adopts an investigator's recommendations and provides no reasons or only brief reasons, the Report is treated as constituting the Commission's

reasoning for the purpose of the Commission's screening decision under section 44(3) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "Act") (*Sketchley v. Canada (Attorney General)*(F.C.A.), 2005 FCA 404 [*Sketchley*] at para 37; *Miller v. International Longshoremen's Association, ILA Local 269*, 2022 CHRT 39 at para 35).

**B. Should paragraphs in Mr. Dunphy's SOP be struck because they include allegations that the Commission excluded when it referred the complaint to the Tribunal?**

[13] Yes. The Commission's Report concluded that there was no reasonable basis to support the allegations in the period between January 2015 and November 2016, but there was a reasonable basis for the allegations after November 2016. The Commission adopted the Report's recommendations and referred the complaint to the Tribunal on that basis. Therefore, the paragraphs referring to events that occurred between January 2015 and November 2016 are struck.

[14] In Mr. Dunphy's complaint to the Commission, he claimed that:

- a. WestJet only attempted to modify his work and accommodate him in his pre-injury role of baggage handler, and that role was not suitable for him.
- b. WestJet only provided short-term modified work assignments, did not provide permanent accommodations, overlooked other suitable work and did not allow Mr. Dunphy to compete for work outside of baggage handling that he could do.
- c. WestJet ignored Mr. Dunphy's explanations about why a job in a call centre was not suitable and did not offer Mr. Dunphy other jobs within his physical limitations, despite his requests.
- d. WestJet ignored communications about accommodations from the Workers' Compensation Board that could have helped with Mr. Dunphy's injuries.
- e. WestJet acted dismissively when Mr. Dunphy asked about accommodations and made Mr. Dunphy feel humiliated in the modified work assignments that he performed.

[15] According to WestJet, it accommodated Mr. Dunphy's disability in 2015 and 2016 by making offers of suitable modified work, by providing modified work duties and by trying to

find a permanent accommodation for his disability. WestJet did not provide modified work duties to Mr. Dunphy after November 22, 2016.

[16] Mr. Dunphy agrees that WestJet provided modified work until November 22, 2016, but he disagrees that WestJet fully accommodated for his disability by doing so. In Mr. Dunphy's view, the modified work assignments in 2015 and 2016 did not adequately accommodate for his disability.

[17] A Commission investigator investigated Mr. Dunphy's allegations and prepared the Report with the following conclusions and recommendations:

- a. Between January 2015 and November 2016, WestJet provided modified work assignments to Mr. Dunphy. The Report also refers to allegations about how Mr. Dunphy was treated during modified work assignments. The Report concluded (at paragraph 46) that there was no reasonable basis to support Mr. Dunphy's allegations of negative treatment during this period and that no further analysis of the complaint's allegations for that period would proceed.
- b. The information available to the investigator did not demonstrate that, after November 2016, WestJet had explored all available temporary accommodation options; and the information did not support WestJet's assertion that, after November 2016, it accommodated Mr. Dunphy's disability to the point of undue hardship. The Report refers to this conclusion several times and includes it in the overall summary (at paragraph 94).
- c. Based on these conclusions, the Report recommended (at paragraph 96) that the Commission request that the Tribunal's Chairperson institute an inquiry about the complaint because, "having regard to all the circumstances of the complaint, further inquiry is warranted". In the context of the full report and its summary, I find that the Report recommended that the complaint be referred to the Tribunal for inquiry with respect to the events occurring after November 2016 only.

[18] On March 31, 2023, the Commission decided to refer Mr. Dunphy's complaint to the Tribunal. The decision states that the Commission reviewed the Report. It requests that the Tribunal's Chairperson institute an inquiry because, "having regard to all the circumstances

of the complaint, further inquiry is warranted". The decision adopts the Report's recommendation word-for-word and has no other substantive reasons.

[19] On February 6, 2024, the Commission wrote to the Chairperson of the Tribunal and made the same request for an inquiry, "having regard to all the circumstances of the complaint".

[20] I apply the Federal Court of Appeal's reasoning in *Sketchley* to these facts. Because the Commission adopted its investigator's recommendation and provided no additional reasons or only brief reasons, I treat the Report as constituting the Commission's reasoning for its decision to refer the complaint to the Tribunal.

[21] Because the Report recommended a referral to the Tribunal for inquiry only with respect to the events occurring after November 2016, the scope of the Tribunal's inquiry is restricted to that period.

[22] The Commission submits that it did not limit its scope when it referred Mr. Dunphy's complaint to the Tribunal. Mr. Dunphy's agrees with the Commission's position. With respect, and as I have explained above, I do not agree.

[23] The Commission also submits that the contested paragraphs should not be struck because they provide context for Mr. Dunphy's complaint. To decide on this issue, I am guided by the principle of proportionality in addition to whether there is a nexus between the original complaint and the SOP (*Temate* at paras 8–15).

[24] The SOP includes details about events that allegedly occurred and statements that WestJet employees allegedly made between January 2015 and November 2016. If these allegations remain in Mr. Dunphy's SOP for context about what occurred after November 2016, they will require testimony seeking to prove or refute them. They might require the testimony of witnesses who would not otherwise testify. Doing so may extend the length of the hearing and distract from its core issues. On balance, the value of allowing the pre-November 22, 2016, allegations to remain in the SOP for context is disproportionate to the time and resources it would take to fairly address the allegations. I do not allow the contested paragraphs to remain in the SOP for context.



[25] *Richards v. Correctional Service Canada*, 2020 CHRT 27 requires that the Tribunal be cautious before striking allegations in an SOP and that the Tribunal only strike allegations in the clearest of cases. I have exercised caution, but my view is that the paragraphs in question should be struck as set out below.

**C. Should paragraphs in Mr. Dunphy's SOP be struck because they involve new allegations that are not related to the original complaint?**

[26] Because I have found that the Commission restricted the scope of its referral of Mr. Dunphy's complaint to the allegations after November 22, 2016, the paragraphs in Mr. Dunphy's SOP involving events that occurred before that date are struck. An additional analysis of whether the pre-November 22, 2016, allegations in the SOP are related to Mr. Dunphy's original complaint is not necessary.

[27] The allegations that may remain in Mr. Dunphy's SOP involve events that allegedly occurred after November 22, 2016, and which either relate to offers of modified work or a search for permanent accommodation, or provide context, or involve alleged negative treatment.

[28] WestJet's submissions refer to the partial or full paragraphs in Mr. Dunphy's SOP that it asks to be struck.

[29] I decide as follows:

- a. The following paragraphs are struck because they involve allegations of events occurring between January 2015 and November 22, 2016: paragraphs 8–19, 29, 30, 39, 40, 49–51, 57, 59, 60, 62, 63, 68, 72–74 and 83–92, the last four sentences of paragraph 95, paragraphs 97 and 100–112, the last sentence of paragraph 117, paragraphs 118–120 and 124–126, the last two sentences of paragraph 127, and paragraphs 128–132.
- b. The following paragraphs are not struck because they involve events that allegedly occurred in 2017 and may provide context: paragraphs 136 and 138.
- c. Mr. Dunphy shall revise and refile his SOP. For ease of reference, the above paragraphs may be struck out but not deleted. (For example: ~~In about the third week~~

~~of January of 2015, I arrived on time to perform the modified duties assigned in Air Supply. Nobody was there or immediately around to arrange the modified work. In absence of any direction, I logged into the company computer and began completing training modules.)~~

**D. Does Mr. Dunphy's SOP otherwise comply with the Canadian Human Rights Tribunal Rules of Procedure, 2021?**

[30] WestJet submits that Mr. Dunphy's SOP does not comply with the *Canadian Human Rights Tribunal's Rules of Procedure, 2021* (the "Tribunal's Rules of Procedure") in three ways.

[31] First, WestJet submits that the SOP does not definitively confirm the prohibited grounds of discrimination that Mr. Dunphy relies on, as required by Rule 18(1)(b)(i), because the SOP states that the alleged contraventions "primarily" involved physical and mental disability.

[32] I do not agree. The first sentence of the SOP's "Legal Issues" section refers to discrimination based on disability. There is no evidence that Mr. Dunphy relies on any other ground of discrimination. It is also settled law that a characteristic that the Act protects need not be the only factor in any alleged adverse treatment; in that context, the word "primarily" is acceptable and should not be struck.

[33] Second, WestJet submits that the SOP does not adequately identify the issues that the complaint raises and Mr. Dunphy's position on the issues, as required by Rule 18(1)(b).

[34] Third, WestJet submits that the SOP does not adequately explain the relationship between the prohibited grounds of discrimination and WestJet's alleged discriminatory practice, as required by Rule 18(1)(c).

[35] Mr. Dunphy's original complaint to the Commission appears to address WestJet's second and third requests. To proceed expeditiously with this inquiry, these issues will be discussed and resolved in an upcoming case management conference call.

[36] With this ruling, WestJet now has sufficient information to serve and file its SOP.

## **V. ORDER**

[37] I allow WestJet's motion in part.

[38] The following paragraphs are struck from the Complainant's SOP: paragraphs 8–19, 29, 30, 39, 40, 49–51, 57, 59, 60, 62, 63, 68, 72–74 and 83–92, the last four sentences of paragraph 95, paragraphs 97 and 100–112, the last sentence of paragraph 117, paragraphs 118–120 and 124–126, the last two sentences of paragraph 127, and paragraphs 128–132.

[39] The request to strike paragraphs 136 and 138 from the Complainant's SOP is dismissed.

[40] The Complainant shall revise and refile his SOP in accordance with this ruling by May 26, 2025.

[41] The Respondent shall serve and file its SOP by May 30, 2025.

*Signed by*

Gary Stein  
Tribunal Member

Ottawa, Ontario  
April 30, 2025

# **Canadian Human Rights Tribunal**

## **Parties of Record**

**File No.:** HR-DP-2989-24

**Style of Cause:** Timothy Dunphy v. WestJet Airlines

**Ruling of the Tribunal Dated:** April 30, 2025

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

**Written representations by:**

Timothy K. Dunphy, Self-represented

Aby Diagne, for the Canadian Human Rights Commission

Alison M. Adam, for the Respondent