

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 55
Date: May 22, 2025
File No.: HR-DP-3009-24

Between:

Keri-Lynn Smith

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Staff of the Non-Public Funds, Canadian Forces

Respondent

Ruling

Member: John Hutchings

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I. OVERVIEW AND DECISION

[1] Keri-Lynn Smith, the Complainant, says that the Respondent, Staff of the Non-Public Funds, Canadian Forces (NPF), discriminated against her as a pregnant woman while she was a human resources assistant and a job applicant for an administrative assistant position. She also says that she pursued various recourses against NPF with internal, federal and provincial authorities and that she applied to other positions during her search for a new role. NPF says that the Canadian Human Rights Commission (the “Commission”) never referred the job competition or recourse allegations to the Tribunal. NPF asks me to narrow the scope of the complaint to strike these allegations. Ms. Smith and the Commission oppose the motion.

[2] I dismiss the motion because there is no basis to narrow the scope of the complaint. All of Ms. Smith’s allegations are connected to the complaint, and the Commission referred the entire complaint for inquiry.

II. ISSUE

[3] I must decide the following issue:

- i. Should I narrow the scope of the complaint?

III. ANALYSIS

1. There is no basis to narrow the scope of the complaint.

[4] The legal principles used to decide whether to allow a motion to strike are essentially the same as those used to determine the scope of a complaint. This is because, when a party wants allegations struck, it is ultimately claiming that these allegations fall outside the scope of the complaint referred by the Commission (*Levasseur v. Canada Post Corporation*, 2021 CHRT 32 [*Levasseur*] at para 7).

[5] I must examine both the Commission’s request for an inquiry and the complaint itself to determine the scope of the inquiry (*AA v. Canadian Armed Forces*, 2019 CHRT 33 at

para 59). There must be a reasonable connection between the complaint filed with the Commission and the allegations in the Statement of Particulars (*Levasseur* at para 16).

A. All the allegations touch the complaint's substance.

[6] The allegations in Ms. Smith's particulars have a clear connection to her complaint. To determine the scope of the complaint, I must determine its substance: *Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at para 7. The substance of the complaint relates to how NPF treated Ms. Smith when she was pregnant at work. Work involves both daily job duties and participation in the employer's career development processes, including its job competitions. Ms. Smith's allegations all relate to work during her pregnancy, including job competitions she applied for and recourses she sought in relation to NPF's actions. The Commission says, and I agree, that all the allegations in Ms. Smith's particulars either repeat or elaborate on the text in her initial complaint. I therefore conclude that all five job competitions, Ms. Smith's experiences in the workplace and the recourses she pursued—put another way, all the allegations in her complaint form and particulars—have a connection to the complaint's substance. I make no order to strike content from Ms. Smith's particulars.

B. The Commission referred the entire complaint to the Tribunal.

[7] Declining to analyze Ms. Smith's other recourse allegations does not amount to excluding them from the complaint. Decision-makers need not analyze every possible issue in a case. They need only consider what is determinative to their decision, consistent with the principles of judicial economy and proportionality and with the operational imperatives of a busy administrative body. Accordingly, the Commission's Investigation Report (the "Report") says it "will only consider as many factors as are necessary to make a recommendation" to the Commission: Report at para 9. NPF says, and I agree, that the Report did not consider allegations about Ms. Smith's other recourses in assessing the complaint: Report at para 11. In effect, NPF also invites me to infer that because the Canadian Human Rights Officer (HRO) declined to analyze these allegations, she implicitly found that they should be excluded from Tribunal consideration, and the Commission adopted her finding. While the parties agree, and I accept, that the other recourse allegations

are not central to the complaint, I am unable to find that the Commission decided to exclude them. Ms. Smith details in her particulars how she has pursued a range of recourses, perhaps for the purpose of showing that she was unhappy with her treatment and wanted it addressed. While this is not a material fact in proving the alleged discrimination itself, I am unable to conclude that these recourse allegations should be excluded from the scope of the complaint. Instead, I find that the HRO chose to focus on more determinative issues to help decide whether there was a sufficient basis to refer the complaint for an inquiry. I do not interpret the HRO's choice not to analyze other issues in making that determination as a basis to exclude them from the scope of the complaint.

[8] The job competition allegations are correctly before me. The HRO found no "reasonable basis in the evidence" for the view that someone no better qualified was hired over Ms. Smith because she was pregnant. Because the Commission agreed with the Report and referred the complaint for inquiry, NPF says that the Commission also adopted the HRO's finding about the job competition and did not intend for the Tribunal to inquire further into it. As such, NPF says that I should only hear Ms. Smith's other claim: that NPF told her not to use the bathroom outside of her 30-minute lunch and two 15-minute breaks and that it monitored bathroom use in the Microsoft Outlook calendar. However, I am unable to conclude that the Report excludes the job competition allegations from the complaint. It stops short of determining whether any allegations are established on a balance of probabilities—whether it is more likely than not that they occurred as alleged—and emphasizes instead the Tribunal's authority to determine factual and legal questions (Report at para 104). I am therefore unable to conclude that the Commission meant to exclude the job competition allegations from the scope of the inquiry.

[9] A hearing is required to assess the job competition allegations on a balance of probabilities and to determine whether there is liability for discrimination. Ms. Smith says that she learned of the outcome of the job competition when she was asked, in her capacity as a human resources assistant, to forward the successful candidate's resume to headquarters. She also says that she requested an informal discussion with management to learn from her experience in the job competition, but that she did not receive a response. In other words, she alleges that she found herself in a possible conflict of interest as an

unsuccessful candidate in a job competition being called upon to assist in hiring the successful candidate and that she did not receive the customary career development discussion. While the Report found no “reasonable basis in the evidence” to suggest discrimination in the competition, a hearing with the benefit of all the parties’ evidence might either confirm or depart from this conclusion.

[10] Ms. Smith may or may not be able to prove her job competition discrimination claim at the hearing, and she will have to discharge her own burden of proof: *Constantinescu v. Correctional Service Canada*, 2020 CHRT 4 at para 204. However, because a hearing with the benefit of full evidence might either confirm or depart from the HRO’s analysis, I cannot accept NPF’s submission that hearing these allegations would be absurd. I instead find that a hearing would implement the Commission’s decision to see them pleaded and tested.

IV. ORDER

[11] I dismiss the motion.

[12] I will convene a case management conference to set hearing dates for the complaint.

Signed by

John Hutchings
Tribunal Member

Ottawa, Ontario
May 22, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3009-24

Style of Cause: Keri-Lynn Smith v. Staff of the Non-Public Funds, Canadian Forces

Ruling of the Tribunal Dated: May 22, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Keri-Lynn Smith, Self-represented

Sameha Omer, for the Canadian Human Rights Commission

Céline Delorme and Jean-Michel Richardson, for the Respondent