

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 64
Date: June 24, 2025
File No.: HR-DP-3026-24

Between:

Alden Chow

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

The Toronto-Dominion Bank

Respondent

Ruling

Member: Ashley Bressette-Martinez

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I. OVERVIEW

[1] Alden Chow, the Complainant, is asking me to order the Toronto-Dominion Bank (TD), the Respondent, to disclose documents and provide a new list of documents he says are arguably relevant to his complaint. The documents he is asking for are about Personal Identification Number (PIN) and anti-fraud policies, information about fraud at TD, documents about his complaint to TD and an audit about employment practices relating to racial bias.

[2] TD wants this motion dismissed, with legal costs awarded against Mr. Chow. It is opposed to most of Mr. Chow's requests for documents. It says this motion is a fishing expedition because there is no rational connection between the documents and the underlying facts, issues or relief sought in this case. TD agrees to produce the Authenticate Customer – Personal policy (the "Policy") so long as I impose confidentiality measures. Both Mr. Chow and the Canadian Human Rights Commission (CHRC) oppose this, for different reasons.

[3] The CHRC provided submissions on the legal principles that apply to disclosure. Aside from opposing the confidentiality measures TD asked for on the Policy, it did not take a position on any of the other requests Mr. Chow made.

II. BACKGROUND

[4] Mr. Chow's complaint is about adverse differential treatment under section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA). The alleged discrimination took place when Mr. Chow went to a TD branch to deposit a cheque. When he got to the counter at the bank, he entered his PIN. The TD employee then asked him to answer additional questions about his age, the number of accounts he had and his date of birth to verify his identity. She allegedly asked those questions because the person in front of her looked younger than the age listed in the TD system and wanted to ensure he was, in fact, Mr. Chow before providing access to the account.

[5] Mr. Chow did not answer the questions because there was another client beside him. The TD employee asked him to provide photo identification, which he did. His cheque was then deposited into his account, and he left the bank.

[6] Later that day, Mr. Chow went back to the branch. While he was there, he spoke with another employee and told her what had happened earlier. This employee explained that there had been instances of fraud where people impersonate customers and that she understood why he was asked for information to confirm his identity. She mentioned an incident of fraud in Richmond, British Columbia, where someone used an access card and a PIN to impersonate a customer.

[7] A week later, Mr. Chow sent an email complaint to the branch manager. The branch manager sent him a response the following day. TD did not hear back from Mr. Chow until he filed a complaint with the CHRC a year later, in 2020.

[8] In 2024, the CHRC referred the complaint to the Tribunal. The parties filed their Statements of Particulars in the fall of 2024. Since then, Mr. Chow says TD has not disclosed all arguably relevant documents. Mr. Chow wants copies of documents in Requests 2, 3, 4, 5, 6, 8, 9 and 10 listed in his Statement of Particulars.

III. DECISION

[9] The motion is allowed in part.

[10] TD must disclose documents in Request 8 and Request 9 because they are arguably relevant to this case.

[11] Request 5 is partially allowed because the Policy on card access and PINs is arguably relevant to this case. No other policies about access cards and PINs need to be produced because they are not relevant to this case.

[12] Requests 2, 3, 4, 6 and 10 are denied because the documents are not relevant to this case and do not need to be disclosed.

[13] TD must produce an updated document list to reflect the additional documents that are being disclosed under Requests 5, 8 and 9.

[14] No legal costs will be awarded because the Tribunal has no authority to award costs to any party as part of any proceeding.

IV. ISSUE(S)

[15] There are three issues to deal with in this case:

1. Are the documents Mr. Chow is asking for arguably relevant to this case?
2. Does TD have to produce a further list of documents?
3. Will the Tribunal award legal costs against Mr. Chow?

V. ANALYSIS

[16] Parties in a proceeding at this Tribunal have a right to have a full and ample opportunity to present their case and prepare for a hearing (see section 50(1) of the CHRA). Disclosure is critical in ensuring that proceedings are fair and efficient, and parties are entitled to receive documentary disclosure from each other before the hearing.

[17] The *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the “Rules of Procedure”), require the parties to disclose the documents in their possession that relate to the facts, issues or remedies that are raised in the complaint in their Statement of Particulars (see Rules 18(1)(f), 19(1)(e) and 20(1)(e)). The obligation to disclose relevant documents is ongoing throughout the proceeding (Rule 24 of the Rules of Procedure).

[18] When parties dispute the relevance of documents, the Tribunal can order the production of what it deems to be “arguably relevant” (*Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 at para 4–10 [*Brickner*] and in *Turner v. Canada Border Services Agency*, 2018 CHRT 1 at para 31 [*Turner*]). A requesting party does not have a high threshold to meet for establishing arguable relevance. The tendency is to allow more rather than less disclosure so long as the party asking for disclosure can demonstrate there is a

rational connection between the information they are seeking and the facts, issues or relief identified by the parties (*Brickner* at para 6). Consideration is also given to whether the disclosure is related to a side issue rather than the main issue in dispute (*Brickner* at para 8). This can be achieved by examining the parties Statement of Particulars (*Warman v. Bahr*, 2006 CHRT 18 at para 6–7 [*Warman*]; *Syndicat des communications de Radio-Canada v. Canadian Broadcasting Corporation*, 2017 CHRT 5 at para 36 [*Syndicat*]; *Casler v. Canadian National Railway*, 2017 CHRT 6 at para 9).

[19] A request for documents should be particularized and should not be speculative or a “fishing expedition” (*Gagno v. Royal Canadian Mounted Police*, 2023 CHRT 10 at para 7 [*Gagno*] and *Turner* at para 30). The Tribunal can only order a party to produce documents it has in its possession, and it cannot order a party to create documents that do not exist (*Brickner* at para 10).

[20] A request for disclosure needs to be proportional to the case (*Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at paras 8–15 [*Temate*]). Given the Tribunal’s duty to process complaints in a way that is as expeditious and informal as the rules of natural justice and the Rules of Procedures allow (section 48.9(1) of the CHRA), many considerations are taken into account in this exercise of proportionality. This includes considering whether the disclosure would increase the cost, add to the complexity or extend the duration of the proceeding without compromising equitable and accessible participation.

[21] Finally, disclosure of arguably relevant information should also not be confused with evidence and the admissibility of evidence. Just because a document is disclosed, it does not mean it will be produced or admitted as evidence at a hearing (*Brickner* at para 9).

A. Issue 1: Are the documents Mr. Chow is asking for arguably relevant to this case?

[22] Yes, Requests 8 and 9 are relevant to this case and must be disclosed.

[23] Request 5 is partially allowed.

[24] Requests 2, 3, 4, 6 and 10 are denied because the documents are not relevant to this case and do not need to be disclosed.

(i) Disclosure allowed: Requests 8 and 9

(a) Request 9: April 30, 2020, letter and enclosures from Nick Fitz to the Canadian Human Rights Commission

[25] According to the submissions, Request 9 was produced by TD and shared with the Commission during its investigation. When Mr. Chow's complaint was referred to the Tribunal, Request 9 was included in the Commission's disclosure but marked as "privileged", meaning that Mr. Chow did not receive a copy. TD said it does not believe the documents in Request 9 are arguably relevant but provided no submissions to support its position.

[26] TD does not object to producing Request 9 and does not consider it to be privileged. However, in its submissions, TD stated that the Commission listed the documents in its disclosure as "privileged". As a result, TD sought confirmation from the Commission that it had no concerns with disclosure. The Commission did not take a position on this request.

[27] This request is allowed. The document appears on the Commission's disclosure list, and, since TD has no concerns about sharing it, TD must share Request 9 with Mr. Chow. Request 9 should be included in the list of documents which is part of the Statement of Particulars and should be removed from the Commission's list of privileged documents.

(b) Request 8: Information about TD's follow-up/investigation into Mr. Chow's complaint

[28] The parties disagree with whether all arguably relevant information was disclosed about TD's follow-up/investigation into Mr. Chow's experience at the branch. The branch manager at the time reviewed Mr. Chow's complaint and sent him an email to address his concerns. TD never heard from Mr. Chow again and says that no investigation into the incident ever took place. TD says there are no other records about this matter to produce.

[29] Mr. Chow said he is concerned that TD did not specify what time period it used when it conducted its search for the records for Request 8. That time period is not specified in TD's submissions.

[30] Mr. Chow noted in his Reply submissions that he also wants "all documents pertaining to the Branch employees' responses and communications to each other". He listed the relevant time period as January 17, 2019, to September 3, 2024, which is the day he filed his Statement of Particulars with the Tribunal. He also relied on Exhibit C in his motion materials to argue that TD contacted employees during the Commission investigation phase prior to June 2020.

[31] Exhibit C is an email chain between counsel for TD and the CHRC. It spans from April 30, 2020, to October 14, 2020. There is an email from TD counsel dated June 18, 2020, which says TD "had to contact various employees, including in BC, to review the facts...". If TD has documents about its contact with employees about the alleged incident of discrimination which were produced as part of the CHRC investigation, they could be arguably relevant and must be disclosed to Mr. Chow, subject to any privilege being claimed. If no such documents exist, I cannot order TD to produce them (*Brickner* at para 10).

[32] This request for documents in Request 8 is allowed.

[33] While Mr. Chow is concerned that TD did not specify the period covered in its search for records regarding employee messages and emails, Rule 24 of the Rules of Procedure requires parties to disclose anything that is arguably relevant on an ongoing basis. This means that if either party finds information in its records that could be arguably relevant, they need to share it with the other party.

(ii) Disclosure partially allowed: Request 5

(a) Request 5: All of the Respondent's policies on the access card and PIN

[34] Mr. Chow is asking TD to produce all its policies on the access card and PIN. Mr. Chow did not provide a specific list of policies he is seeking.

Authenticate Customer – Personal policy

[35] In response to this request, TD says it will produce the policy titled “Authenticate Customer – Personal” that was in place in January 2019 for authenticating in-branch customers. TD asks that reasonable conditions be put in place to protect the information because PIN policies go beyond in-branch interactions. TD says the Tribunal has done this in other cases, notably with respect to proprietary confidential information (*Eadie v. MTS Inc.*, 2013 CHRT 5 at paras 11–12 [*Eadie*]).

[36] Mr. Chow says the confidentiality conditions TD is asking for to protect the information breaches public interest and the recognized principle of open-court proceedings before this Tribunal. He says there is a public interest element in the public knowing and understanding how criminals attempt to circumvent TD’s verifications techniques. He says increased public awareness about these techniques could reduce the number of instances of fraud. Mr. Chow says that *Eadie* is distinguishable because TD’s policy is not confidential proprietary information and TD has not argued that it is subject to a confidentiality clause with any third parties.

[37] The Commission says that the Policy ought to be disclosed because it is arguably relevant and that TD can file a formal motion for confidentiality closer to or during the hearing.

[38] There is no dispute between the parties about the arguable relevance of the Policy that concerns authenticating customers in-branch. Under Request 5, I am ordering TD to produce the Policy that was in place in January 2019 that deals with in-branch customer authentication because it has a rational connection to Mr. Chow’s case (*Brickner* at para 6).

[39] As for the concerns TD raised about the confidentiality of the information, I agree with TD that there is a serious risk of harm to the public if this information were to find its way into the public domain. Client accounts could be compromised. However, we are not at the point where the Tribunal needs to deal with a confidentiality motion under section 52 of the CHRA. When documents are produced in the disclosure stage of proceedings at the Tribunal, they are protected by an implied undertaking of confidentiality (*Gagno* at para 19; *Miller v. ILA*, 2022 CHRT 43 at para 65). The same implied undertaking applies to this case. This means

that Mr. Chow (and the CHRC) is not to share, use or disclose the documents and information that are provided as part of this proceeding to any other person, nor can they be used for any other purpose other than this complaint (*Constantinescu v. Correctional Service of Canada*, 2020 CHRT 4 at para 138).

[40] As the CHRC and Mr. Chow pointed out in their submissions, just because something is produced at the disclosure stage, it does not form part of the official public record until the document is proposed as evidence at the hearing (*Brickner* at para 9). The document is not shared with the Tribunal at this stage of the proceeding, and there is nothing to seal in the record now. If TD has concerns about the Policy becoming part of the public record closer to the hearing, it can file a confidentiality motion in accordance with section 52(1) of the CHRA and all the parties will be able to make submissions.

[41] In addition to the implied undertaking, because of the serious risk of harm if the Policy were to find its way into the public domain, I am ordering Mr. Chow to return the Policy to TD and destroy any copy of it at the final disposition of this matter, once all judicial recourses have been exhausted. The Commission, as a government institution, will preserve the confidential nature of the Policy and will follow all governmental policies and directives on how to safeguard the confidential information and nature of the Policy.

All other policies on access card and PIN

[42] Mr. Chow has not satisfied the threshold required for arguable relevance for the disclosure of any other policies about access cards and PINs. Ordering disclosure of any other policies, beyond what TD has already agreed to, would amount to a fishing expedition since Mr. Chow did not provide a list of policies he is asking for, nor did he provide any additional particulars to support his position (*Turner* at para 30; *Brickner* at para 7). No further disclosure of any other policies about access cards and PINs are required to satisfy the requirements of natural justice and fairness (*Brickner* at para 7). With the Policy, Mr. Chow will have the information he needs to adequately prepare for the hearing about his in-branch experience, which is his right under section 50(1) of the CHRA.

[43] The request for disclosure of all other policies on access card and PIN is denied.

(iii) Disclosure denied: Requests 2, 3, 4, 6 and 10

(a) Request 2: All records and information from the Respondent on how an access card and PIN could possibly be “fraudulently manipulated”

[44] Mr. Chow says that there is a public interest consideration in disclosing information about how access cards can be fraudulently manipulated. He says having this information in the public domain would raise awareness about fraud committed by criminals and would reduce and minimize instances of fraud.

[45] TD is opposed to providing documentation about this because it has already explained to Mr. Chow how access cards and PINs can be manipulated: a person other than the client has the access card and PIN. TD says there are no further records in its possession to produce in response to Request 2.

[46] In this case, I will decide whether Mr. Chow was discriminated against when he was asked additional questions after entering his PIN at the branch, before he was able to complete his banking transaction. His complaint is not about how access cards and PINs can be manipulated. His request for Request 2 is not related to the facts, issues or remedies he is seeking (*Warman* paras 6–7; *Syndicat* para 36).

[47] Ordering disclosure of documents about how access cards and PINs can be manipulated would not be in keeping with the principle of proportionality (*Temate* at paras 8–15). This would extend the length, complexity and cost of this complaint at the disclosure and hearing stage. Mr. Chow does not need to know how access cards and PINs can be compromised to advance his case. He knows what happened to him when he went to the branch and can provide his own evidence and can cross-examine TD’s witnesses about his experience.

[48] Disclosure for Mr. Chow’s Request 2 is denied.

[49] In its submissions, the CHRC took no position on this request. It did suggest generally, however, that detailed will-say statements from TD about what its witnesses will give as evidence would assist Mr. Chow in understanding the case he will need to meet at the hearing. I agree. For context, this motion was filed before the member assigned to this

file could discuss the need for detailed will-say statements with the parties. This will be a discussion at an upcoming case management conference call. I will provide direction to the parties on this to ensure they each know what case they must meet in keeping with the principles set out at section 50(1) of the CHRA.

(b) Request 3: List of dates and locations of fraud from December 1, 2018, to January 17, 2019, occurring at the Respondent's branches in British Columbia

(c) Request 4: Information on the fraud in Richmond, British Columbia

[50] Requests 3 and 4 are about fraud at TD branches in British Columbia for the period immediately preceding the alleged discrimination. Mr. Chow says having these documents will show whether there was fraud happening in the province and that his protected characteristics were a factor in how he was treated at the TD branch on January 17, 2019.

[51] TD says these requests are not arguably relevant because the employee who dealt with Mr. Chow's complaint about the alleged discrimination used an anecdotal example and information to explain why he was asked additional questions after successfully entering his PIN. Actual incidents of fraud that informed the employee's understanding of what happened to Mr. Chow are not relevant, according to TD.

[52] The Commission took no position on this.

[53] In this case, I am not deciding whether there was fraud in British Columbia, including in Richmond. A list of incidents of fraud committed in the province during the period specified by Mr. Chow would not assist me in determining the main issue in this complaint, which is whether the employee who provided a service to Mr. Chow discriminated against him when she asked him additional questions to verify his identity (*Brickner* at para 6).

[54] Mr. Chow will be able to prepare for the hearing and advance his case based on the disclosure he received to date, and any further disclosure ordered in this ruling. Both parties will have ample time to prepare their witnesses, and each will be required to provide detailed will-say statements of what their witnesses will give as evidence well in advance of the

hearing. Mr. Chow will be able to ask the former bank employees about what was allegedly said that day. Additional information about that incident of fraud would be of little value to Mr. Chow's case because the fraud is not a main issue or fact in dispute here. Therefore, ordering that type of disclosure would not be proportional to the needs of this case (*Warman* at paras 6–7).

[55] Mr. Chow himself acknowledge in his Reply submissions that a great deal of time has passed since the alleged discrimination occurred. Mr. Chow raised concerns that the three employees he dealt with at TD in January 2019 are no longer employed at the branch. However, they can still be called as witnesses. Both parties have the former employees listed in their witness lists. Since Mr. Chow is self-represented, I will ask TD to confirm if it plans to call the former employees as witnesses. If they will be attending, Mr. Chow can cross-examine them. If TD is not planning to call them, Mr. Chow can request a summons from the Tribunal to have them appear (section 50(3)(a) of the CHRA).

[56] Requests 3 and 4 are denied.

(d) Request 6: All of the Respondent's anti-fraud and security policies related to access card, PIN and cheque

[57] Mr. Chow says, "the Respondent is using its anti-fraud and security policies to justify and normalize discrimination". He said TD referenced anti-fraud and security policies in its Statements of Particulars at paragraph 66. He also says the branch manager's email response to him referred to how and when the bank will ask additional questions. Because of this, he says they are arguably relevant.

[58] TD argues that Mr. Chow's request lacks particularity in terms of the type of fraud at issue, the type of security (physical and limited to in-branch) and says disclosure of its policies is dangerous and poses a risk to TD's customers.

[59] I agree with TD that Mr. Chow's request is not particularized and is speculative (*Gagno* at para 7 and *Turner* at para 30). While Mr. Chow referenced *Peterkin v. Toronto Dominion Bank TD Canada Trust*, 2019 FC 579 and *McIlvenna v. Bank of Nova Scotia (Scotiabank)*, 2017 FC 699 in his Reply submissions, neither of these cases support his

argument that the anti-fraud and security policies are arguably relevant. These cases were judicial reviews deciding whether the decisions made by the CHRC were reasonable. Neither of these cases help me decide if Request 6 is arguably relevant to this case.

[60] Mr. Chow's request for all of TD's anti-fraud and security policies for access card and cheque transaction services is not proportionate to the issues in this case. I agree with TD in that security and anti-fraud policies are designed to protect customers and that disclosure of them would have the opposite effect and could increase incidents of fraud. Ordering disclosure would be far-reaching and onerous and is not needed to reach a fair and just outcome (*Temate* at para 10).

[61] Request 6 is denied.

(e) Request 10: The Respondent's audit, announced in March 2022, pertaining to its internal employment practices for racial bias and its findings that informed business practices of the Respondent

[62] TD says the report is not arguably relevant; however, it is posted online. Based on the Reply submissions from Mr. Chow, it appears he only became aware of the audit being made public when TD provided their submissions on this motion on April 1, 2025.

[63] While Mr. Chow's submissions discuss the content of the audit, the audit is not an issue in dispute in this case. Since the report is online and accessible to Mr. Chow, there is nothing to order disclosure of, and the request for documents in Request 10 appears to be moot.

B. Issue 2: Does TD have to produce a new list of documents?

[64] Yes. TD is directed to provide an updated list of documents to Mr. Chow to include the additional disclosure ordered in this ruling for Requests 5, 8 and 9.

[65] However, Mr. Chow's request to have an updated list of documents, is based on his assertion that TD failed to provide a list of various policies and training that are referenced

in TD's audit and in the TD Code of Conduct and Ethics. He says these could be used to create anti-Chinese and anti-Asian racism documents.

[66] What Mr. Chow is doing is asking for more disclosure through a request for an updated list of documents. Mr. Chow has not put forward any arguments to satisfy the low threshold required for arguable relevance based on his theory that the training documents about anti-black racism or Indigenous awareness training could be used to create anti-Chinese and anti-Asian racism documents and training (*Brickner* at para 6). This request for documents is highly speculative (*Brickner* at para 7). Allowing this disclosure and requiring TD to produce a new document list for those listed in Mr. Chow's submissions would have a prejudicial effect on this proceeding (*Brickner* at para 8) and there is no reason to order TD to produce a list of every single document referenced in the audit and the TD Code of Conduct and Ethics.

C. Issue 3: Can the Tribunal order legal costs against Mr. Chow?

[67] No. Mr. Chow is correct that the Tribunal has no authority to award legal costs in its proceedings (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471). There will be no costs awarded in this motion or on the merits of this complaints. Each party is responsible for its own legal costs.

[68] Knowing this, the Tribunal encourages parties to resolve as many preliminary issues as possible through discussions and case management. Discussions between the parties can often help resolve concerns quickly and efficiently without the need for costly motions which delay getting to a hearing on the merits of a case.

VI. ORDER

[69] The motion is allowed in part.

[70] TD must disclose documents for Request 8, subject to any privilege being claimed, and the documents for Request 9 within 15 days of this ruling being communicated to the parties.

[71] TD must disclose the Policy as part of Request 5. An implied undertaking of confidentiality applies to the parties in the proceeding. No party is to share, use or disclose the documents and information from this proceeding for any purpose other than this litigation. Mr. Chow must return the Policy to TD and destroy any copy of it at the final disposition of this matter, once all judicial recourses have been exhausted. The Commission, as a government institution, will preserve the confidential nature of the Policy and will follow all governmental policies and directives on how to safeguard the confidential information and nature of the Policy. This must be done within 15 days of this ruling being communicated to the parties.

[72] TD does not have to disclose any documents for Requests 2, 3, 4, 6 and 10.

[73] TD must provide Mr. Chow with an updated list of documents to reference any additional disclosure made because of this ruling for Requests 5, 8 and 9 within 15 days of this ruling being communicated to the parties.

[74] No legal costs are awarded on this motion.

Signed by

Ashley Bressette-Martinez
Tribunal Member

Ottawa, Ontario
June 24, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3026-24

Style of Cause: Alden Chow v. The Toronto-Dominion Bank

Ruling of the Tribunal Dated: June 24, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Alden Chow, Self-represented Complainant

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