Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 70
Date: July 23, 2025
File No.: HR-DP-3010-24

Between:

Beatriz Kanzki

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Bank of Canada

Respondent

Ruling

Member: Ashley Bressette-Martinez

Contents

I. OVERVIEW

[1] The Complainant, Beatriz Kanzki, filed two motions. In one, she asks for an order that the Respondent, the Bank of Canada (BoC), disclose documents she says are relevant to her complaint, including some of which the BoC says are subject to litigation and solicitor-client privilege. In the other motion, Ms. Kanzki asks me to recuse myself from deciding this case. She says I demonstrated a reasonable apprehension of bias in how I case managed this complaint by rushing to set hearing dates at the expense of fairness and by treating her counsel, a sole practitioner, as a "self-represented" litigant. She also says that I am biased because I directed that she file a motion to resolve a disclosure dispute and because, in her view, I have prejudged this dispute. Ms. Kanzki did not participate in any of the case management conference calls herself but rather was represented by her lawyer, Blandie Samson.

[2] This ruling is about the recusal motion only. Allegations of bias are serious and require resolution before any further matters can be addressed.

[3] The BoC asks that I dismiss Ms. Kanzki's motion because she failed to meet the high burden of proof required to establish a reasonable apprehension of bias. In its submissions, the Canadian Human Rights Commission (CHRC) provided an overview of the law on reasonable apprehension of bias. It took no position on the motion.

II. DECISION

[4] The motion is dismissed. Ms. Kanzki has not met the high burden of proving that my management of this case raises a reasonable apprehension of bias. A reasonable, informed person, having thought the matter through, would not conclude that I would not decide this case fairly.

III. ISSUE

[5] The issue for decision is: has Ms. Kanzki demonstrated that my actions and/or decisions in case managing this complaint give rise to a reasonable apprehension of bias?

IV. ANALYSIS

A. Reasonable apprehension of bias – legal principles

[6] Allegations of bias are serious and challenge the integrity of the Tribunal and its members (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2025 FC 18 (CanLII) at para 57 [*Attaran*], citing *Arthur v. Canada (Attorney General)*, 2001 FCA 223 at para 8).

[7] The test for a reasonable apprehension of bias was set out in *Committee for Justice & Liberty v. Canada (National Energy Board)* [1978] 1 SCR 369 at 394 [*Committee for Justice*] and asks: what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude? Would they think that it is more likely than not that the Tribunal Member, whether consciously or unconsciously, would not decide fairly (*Attaran* at para 55)?

[8] Allegations of bias must be raised at the earliest practical opportunity to ensure the decision-maker has an opportunity to address the matter before any harm is done (*Canadian National Railway Company v. Canada (Transportation Agency)*, 2021 FCA 173 at para 68). This ensures that the matter is properly before the decision-maker to resolve before it proceeds further.

[9] The party who files the motion has a high burden to establish a reasonable apprehension of bias as members of tribunals are presumed to be impartial (*Association des employeurs maritimes v. Syndicat des débardeurs, section local 375 (Syndicat canadien de la fonction publique)*, 2020 FCA 29 (CanLII) at para 5). There must be a real likelihood of bias, and mere suspicion, conjecture, insinuations or a party's impressions are insufficient and disagreement with a decision-maker's decision alone is incapable of supporting allegations of bias (*Persaud v. Canada (A.G.)*, 2023 FC 811 (CanLII) at para 58 [*Persaud*]).

[10] Comments and conduct alleged to constitute bias must not be looked at in isolation but rather need to be considered in the context of the circumstances and in light of the whole proceeding (*R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), 3 SCR 484 at para 141). This includes

an assessment of the facts of each case, including a member's obligation to manage a complaint informally and expeditiously, in accordance with the requirements of natural justice (s. 48.9(1) of the *Canadian Human Rights Ac*t, R.S.C., 1985, c. H-6 (CHRA) and Rule 5 of the *Canadian Human Rights Tribunal Rules of Procedure*, *2021,* SOR/2021-137 (the "Rules of Procedure")).

B. Has Ms. Kanzki demonstrated that my actions and/or decisions in case managing this complaint give rise to a reasonable apprehension of bias?

[11] No, Ms. Kanzki has not met the high burden for showing that I have a reasonable apprehension of bias. Ms. Kanzki does not allege that "my stringent management of the complaint or proceedings creates the appearance of bias". Rather, she says that my impatience and abruptness, along with the accumulation of comments and conduct, amount to a violation of the right to be heard. I have grouped Ms. Kanzki's bias allegations into three categories: i) the direction to the parties about the disclosure dispute; ii) allegations the Tribunal is biased against Ms. Kanzki's counsel; and iii) case management discussions about setting hearing dates.

[12] The BoC did not address each of Ms. Kanzki's specific allegations in its submissions, but rather argues that, overall, I "consistently maintained an appearance of impartiality" and that my conduct cannot be characterized as "exhibiting pre-judgment against the Complainant". It says that I have interpreted and applied the Rules of Procedure in a manner that secures the informal, expeditious and fair determination of the case. The BoC says that this motion is a disagreement with how I case managed this complaint, including my directions to the parties on procedural and pre-hearing issues, which is analogous to *Constantinescu v. Correctional Service Canada*, 2020 CHRT 3.

[13] While I make no finding on the issue of waiver, and it was not argued by the parties, many of the allegations of bias Ms. Kanzki raised occurred in the course of case management from January to April 2025. Her motion was filed on May 2, 2025.

(i) The Tribunal's direction to the parties about the disclosure dispute

April 11 direction to the parties

[14] Ms. Kanzki argues that the direction I issued to the parties on April 11, 2025, suggested that I had already decided that the BoC's privilege claims were well founded and that a motion for the production of documents would be a "fishing expedition". She also says that I failed to take into consideration the imbalance of power between the parties and that I was not impartial when I directed that she file a motion about the disputed disclosure and claims of privilege. She says that the BoC can "dispense its immense financial resources in the hopes of drawing out the Complainant financially". She claims that I am "required by procedural fairness to make every effort to prevent such from happening especially when a fair, cost-effective solution is available". Ms. Kanzki argues that the fair and cost-effective way to resolve this dispute was for me to review the BoC's privileged documents, under seal, rather than forcing her to file a motion, which she says only further delays the hearing on the merits.

[15] It is true that parties do not always have equal financial resources to litigate complaints. In an adversarial system like this one, when parties can resolve disputes without the need for a motion, it saves time and costs for both parties and the Tribunal and allows a hearing on the merits to happen sooner. But this is not what happened in this case. The parties tried to resolve the dispute about the disclosure and claims of privilege for more than two months. It was raised and discussed over the course of three case management conference calls with the Tribunal between January and March. At the March case management conference call, Ms. Kanzki maintained her position that, while she was not questioning the professionalism of counsel for the BoC, she said that she was not able to determine if the claims of privilege and disclosure were proper. The BoC's position was that their disclosure and claims of privilege were appropriate and justified. The parties were clearly at an impasse. As part of case management, I directed the BoC to provide me with copies of the redacted documents to understand the basis of the dispute.

[16] I reviewed the redacted documents and an additional document provided by BoC describing each document and the nature of the privilege claimed. In the absence of formal

submissions or a motion from Ms. Kanzki as to why the privilege claims from the BoC were not proper, I issued a direction to the parties, in keeping with this Tribunal's duty to conduct proceedings informally and expeditiously (s. 48.9(1) of the CHRA and Rule 5 of the Rules of Procedure). I asked the BoC to make revisions to the redactions to show the header of the emails to reveal the date and the "to" and "from" lines, and I asked the BoC to provide an explanation for another brief redaction. I indicated that if it declined to make those revisions, Ms. Kanzki could file a motion by April 25. I referenced *Letnes v. RCMP*, 2022 CHRT 32 [*Letnes*], a case where the Tribunal agreed to review a sampling of documents over which a respondent claimed privilege. However, in that case, the member still required the parties to provide submission on each document being reviewed (*Letnes* at para 17), noting that this process could not be used as a fishing expedition (*Letnes* at para 15).

[17] This direction did not suggest a predisposition of any kind and was an exercise of my discretion as a decision-maker and master of my own procedure (*Prassad v. Canada (Minister of Employment and Immigration)*, 1989 (CanLII) 131 (SCC), [1989] 1 SCR 560 at 568). It set out a clear, fair and expeditious way forward for resolving the dispute that had been ongoing since January. While I did indicate to the parties that the Tribunal has on occasion inspected documents, ultimately, I opted for a different—but fair—method for determining the validity of the BoC's privilege claims. A motion allows each of the parties to file submissions and provides a full and ample opportunity to present their case and make representations (s. 50(1) of the CHRA). The fact that Ms. Kanzki would have preferred the inspection method, under seal, does not demonstrate a predisposition against her, nor an unwillingness to seriously consider her arguments in respect of these claims.

April 25 case management conference call and disclosure motion extension request

[18] Ms. Kanzki argues that I have not granted reasonable extension requests. She gave one example, namely, that my decision to provide a one-week instead of a two-week extension to file the disclosure motion raises a reasonable apprehension of bias. In its submissions, the BoC says that I have consistently managed the proceedings in accordance with the Rules of Procedure and that I have granted reasonable extension requests.

[19] The CHRC's submissions on this motion suggest that the Tribunal should be open to granting reasonable extension requests to ensure the parties have an ample opportunity to present their case and have their arguments duly considered by the decision-maker. The CHRC also suggests that a party requesting an extension should do so as early as possible so that the Tribunal can hear from the other parties and rule on the request.

[20] Ms. Kanzki could have asked for an extension to file the motion at any point after April 17, when she received the BoC's response to the April 11 direction. She could have also sought an extension prior to April 17, if she suspected the Easter holiday would impact her ability to comply with the deadline. She did not do that. Instead, she made this request on April 25, the day the motion was due, during a case management conference call that was scheduled to discuss hearing dates (not the motion for disclosure).

[21] On that call, Ms. Kanzki's counsel, Ms. Samson, once again shared her client's position that a motion should not be required, preferring that the Tribunal review the documents under seal. Ms. Kanzki's approach in seeking an extension on the due date, while at the same time seeking to relitigate my previous decision, was not conducive to the fair and expeditious advancement of the proceeding and created unnecessary delay. A party cannot ask the Tribunal to vary a past direction simply because it wants a different result (*Richards v. Correctional Service Canada*, 2025 CHRT 35).

[22] As the adjudicator responsible for hearing this case, I have a duty to manage complaints informally, expeditiously and fairly in accordance with the Rules of Procedure and s. 48.9(1) of the CHRA. The parties have a role to play as well, by making reasonable and proportionate requests (*Richards v. Correctional Service Canada*, 2023 CHRT 51 at para 27). They should advise as soon as possible when additional time is required to comply with Tribunal directions because it impacts the processing of complaints throughout the system, and the Tribunal needs to be mindful of its finite resources.

[23] While Ms. Kanzki takes issue with my alleged "impatience or abruptness" on the call, she did not provide actual examples of conduct that would give rise to a reasonable apprehension of bias. While I was polite and courteous to counsel on the call, I do not deny that my dissatisfaction with Ms. Kanzki's counsel's conduct would have been perceptible

because she continued to question the direction I provided to the parties in writing on April 11. However, I remained open-minded and considerate of Ms. Kanzki's request and provided all the parties with an opportunity to share their position on her request for additional time to file the motion. The BoC objected to any extension, noting that Ms. Kanzki had ample time to request an extension and waited until the last minute to do so.

[24] I issued a ruling to grant Ms. Kanzki a one-week extension to file the disclosure motion, instead of the two weeks she had asked for. As stated in *Persaud* at paragraph 58, disagreement with a decision-maker's decision alone is incapable of supporting an allegation of bias. Case management will inevitably result in some parties' requests being dismissed, in whole or in part, but this does not mean that the result was prejudged or that the request was not given balanced and fair consideration. An informed person, viewing this matter realistically and practically, would not conclude that I cannot make a fair decision in Ms. Kanzki's case [*Committee for Justice* at 394].

(ii) Allegation that the Tribunal is biased against Ms. Samson

[25] Ms. Kanzki claims that I have an unconscious bias against her counsel, Ms. Samson, who she says is a sole practitioner. She believes I suggested that her counsel failed to follow proper procedures in the case management process in discussions about a potential confidentiality order and witnesses. She says that I view Ms. Samson as "akin to a self-represented litigant with little legal knowledge to handle this matter in contrast to the Respondent's counsel".

[26] For context, at the first case management conference call in January 2025 counsel for Ms. Kanzki inquired about whether her client's name could be anonymized for the Tribunal proceedings. The BoC objected to any anonymization of Ms. Kanzki's name. I told the parties that proceedings before the Tribunal are public and that if a party wished to obtain a confidentiality order under s. 52(1) of the CHRA, a motion would be required. I suggested to the parties that they could read Tribunal decisions that have addressed these types of requests because they are generally not granted without detailed submissions being made that are grounded in the Tribunal's jurisprudence. This is because confidentiality orders

constitute a significant exception to the general rule that an inquiry before the Tribunal shall be conducted in public. Ms. Kanzki did not raise the issue of anonymization again, despite being invited to provide agenda items for all subsequent case management conference calls.

[27] Ms. Kanzki also believes I showed bias against her counsel during discussions with the parties about witnesses. She cites two examples: first, she says that I demonstrated bias during the case management process when I told the parties that Ms. Kanzki, as the Complainant, had the onus to move her complaint forward. Second, she says that I was biased because I allowed the BoC to have 18 witnesses without any discussion about their "necessity" but that I questioned her need to have an "expert witness".

[28] When case management of this file began in January 2025, the parties were asked to provide updated witness lists and detailed will-says statements as part of their Statements of Particulars. Under the CHRA, the complainant has the burden of proving *prima facie* discrimination (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center),* 2015 SCC 39 (CanLII), [2015] 2 SCR 789) at para 3). Therefore, at the pre-hearing case management stage, it is a complainant's disclosure that largely determines what a respondent will have to disclose. It was in this context that I told the parties that the onus was on Ms. Kanzki to move her complaint forward. Her counsel, Ms. Samson, clarified on a case management conference call in February 2025 that she would only be able to complete the updated witness list after the disclosure dispute between the parties was resolved. At that moment, I immediately suspended the filing deadline for her to provide an updated witness list and will-say statements to ensure she was able to know the case she needs to meet and to fully prepare for the hearing (s. 50(1) of the CHRA).

[29] In terms of Ms. Kanzki's allegation that I have demonstrated a reasonable apprehension of bias because I questioned the need for an expert witness, as always, context is important. When this discussion took place, the BoC proposed to call 18 witnesses. Ms. Kanzki listed three witnesses and raised the possibility of having an expert witness at the hearing. The BoC questioned whether an expert was necessary and insisted that Rule 22 of the Rules of Procedure would apply to any proposed expert witness.

[30] Ms. Kanzki's allegation that there was no discussion about the necessity of the BoC's 18 witnesses is not a fair characterization of what transpired in case management. Parties have a right to call the witnesses they need to present evidence and make representations in respect of the complaint (s. 50(1) of the CHRA). Recognizing the need to manage the proceeding efficiently, I asked the BoC if all the witnesses on their list were necessary and if the number could be reduced. In response, the BoC said that to address the full scope of the allegations, evidence from all the witnesses was necessary.

[31] I then asked the parties to look at ways of potentially reducing the number of hearing days by having some evidence in-chief done in writing and to consider an agreed statement of fact. They agreed to consider these options. This item was noted for follow-up at a case management conference call.

[32] I also asked the parties to discuss the evidence that Ms. Kanzki's proposed expert witness would provide to determine if an "expert" under the Rules of Procedure was required. I told the parties that the Tribunal can be flexible in what evidence it allows at a hearing because it is not bound by strict rules of evidence (s. 50(4) of the CHRA). However, any party calling an "expert" would need to comply with the requirements at Rule 22 of the Rules of Procedure.

[33] Ms. Kanzki's impression that I believe her counsel is "akin to a self-represented litigant" is a mischaracterization of what took place during case management. The purpose of my interventions on the confidentiality order, the potential expert witness evidence and the overall number of witnesses was to assist the parties in working through any disagreements and to fairly and expeditiously move this case forward in keeping with the objectives of s. 48.9(1) of the CHRA and Rule 5 of the Rules of Procedure. Case management involves a fine balancing of the parties right to be heard with an efficient use of time and resources. In this case, it meant not assuming the parties were aware that proceedings before the Tribunal are public, and probing the necessity of witnesses, including the need for an "expert", while still giving effect to the parties' right to make their case. With this context set out, an informed person, viewing this matter realistically and practically, would not conclude that I cannot make a fair decision in Ms. Kanzki's case [*Committee for Justice* at 394].

(iii)Case management discussions about setting hearing dates

[34] Ms. Kanzki alleges that I "demonstrated a desire to rush the setting of the matter for trial" at the expense of her knowing the case she needed to meet, since the disclosure issue was unresolved.

[35] The official record in this case does not support Ms. Kanzki's position. For context, Ms. Kanzki's allegations of discrimination date back eight years to 2017. She filed her complaint with the CHRC in 2020, and it was referred to this Tribunal in April 2024. In January 2025, case management began, and the parties were asked for their availability for a hearing. The parties agreed to set tentative hearing dates for September 2025. Those dates fell through shortly after the first case management conference call because the parties confirmed their witnesses were not all available.

[36] The discussion about hearing dates between the parties and the Tribunal continued from January to April 2025, in tandem with the disclosure dispute. The parties worked together to try to find common availability for twelve days of hearing time. For context, part of the challenge in finding hearing dates was because the parties had different views on how this hearing should proceed. Ms. Kanzki asked that it be virtual, and the BoC asked that it be held in person in Ottawa. Ms. Kanzki preferred to have 12 straight days of hearing with no interruptions, whereas the BoC did not express a preference and was prepared to proceed when both parties were available.

[37] In early April 2025, the parties confirmed to the Tribunal by email that they had one single day of common availability for a hearing during the period running from January to April 2026. Given the age of this complaint, the parties' differing preferences for scheduling consecutive hearing days and counsel's limited availability for a hearing over the next year, I asked the Registry to schedule a case management conference call. Continuing to exchange emails would not have been efficient or a good use of time for the parties or the Tribunal, and I was mindful that the Tribunal has a duty to ensure cases are heard informally, fairly and expeditiously (s. 48.9(1) of the CHRA). Most of the case management conference call on April 25 was spent discussing the disclosure motion, and the parties and Tribunal did not have sufficient time to find common availability for the hearing.

[38] Ms. Kanzki's examples do not meet the high threshold for showing bias (*Persaud* at para 58). At no point has Ms. Kanzki been prejudiced by not being able to prepare her case for a hearing. To ensure Ms. Kanzki could fully prepare for the hearing, in February 2025 I suspended the deadline for her to complete her Statement of Particulars, her witness list and will-say statements until after the disclosure dispute is resolved so that she can determine if she will require an expert witness or any other witnesses at the hearing. I have tried to accommodate Ms. Kanzki's desire to have as many consecutive days of hearing time as possible given that this is her complaint, and no decision has been made as to whether a hearing will be virtual or in-person. When Ms. Kanzki filed the motions for recusal and disclosure, the discussion about hearing dates was also suspended. To this day, the hearing is not scheduled.

[39] Considering the entire context of what happened in case management, an informed person, viewing this matter realistically and practically, would not conclude that I cannot make a fair decision in Ms. Kanzki's case [*Committee for Justice* at 394].

V. ORDER

[40] The motion is dismissed.

[41] A filing schedule will be sent to the parties to set dates for submissions on the disclosure motion.

Signed by

Ashley Bressette-Martinez
Tribunal Member

Ottawa, Ontario
July 23, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3010-24

Style of Cause: Beatriz Kanzki v. Bank of Canada

Ruling of the Tribunal Dated: July 23, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Blandie Samson, for the Complainant

Julie Hudson, for the Canadian Human Rights Commission

Marianne Abou-Hamad & Marie Bordeleau, for the Respondent