

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 71

Date: July 23, 2025

File No(s): T2736/11221 & HR-DP-3094-26

Between:

June Francis

**Complainant
(File No.: T2736/11221)**

- and -

Gertrude Antwi

**Complainant
(File No.: HR-DP-3094-25)**

and

Canadian Human Rights Commission

Commission

- and -

Air Canada

Respondent

Ruling

Member: Athanasios Hadjis

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I. OVERVIEW

[1] This is a ruling on a motion that a single inquiry be held into two complaints.

[2] The first complaint (T2736/11221, the “Francis complaint”) was filed by Dr. June Francis against Air Canada, the Respondent, on December 28, 2018. She claims that she was treated in an abusive, dismissive, and humiliating manner by Air Canada staff at the check-in counter in Vancouver International Airport and that she was then confronted by a supervisor and a security agent. She alleges that her colour, race, sex, national and ethnic origin, and disability were factors in the treatment. The Canadian Human Rights Commission (the “Commission”) referred the complaint to the Tribunal for inquiry on October 7, 2021. The hearing into the complaint is scheduled to begin on July 28, 2025 (i.e., next week).

[3] The second complaint (HR-DP-3094-25, the “Antwi complaint”) was filed by Gertrude Antwi against Air Canada on November 13, 2020. Ms. Antwi alleges that she was treated abusively by the crew of a flight operated by Air Canada and that she was forcibly removed from the plane. She claims that her race, sex, and colour were factors in the treatment. The Commission referred the complaint to the Tribunal for inquiry on March 19, 2025.

[4] On June 30, 2025, the Commission filed a motion requesting that the two complaints be joined and that the evidence for each be heard one after another by the same Tribunal member. The Commission’s proposal maintains the currently scheduled hearing dates in the Francis complaint but delays their expert witness until after the Antwi evidence is heard. Dr. Francis and Ms. Antwi, the Complainants, support the Commission’s request. Air Canada does not consent to it but has proposed that some of the issues in the cases be heard jointly.

II. DECISION

[5] The Commission’s motion is denied.

III. LEGAL FRAMEWORK

[6] The Tribunal conducts proceedings as informally and expeditiously as the requirements of natural justice principles and procedural rules allow (section 48.9(1) of the *Canadian Human Rights Act*, R.S.C., 1985, c H-6 (CHRA)). The Tribunal maintains the discretion to consolidate separate complaints into a single inquiry (section 50(2) of the CHRA).

[7] The Tribunal should at least consider and balance the following 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 any of the parties and to the public in general that could result from a single hearing, including the lengthening of the hearing, the potential for confusion that may result from the introduction of evidence that may not relate to the allegations specifically involving one complaint or the other; and
- 3) Whether there are common issues of fact or law.

(see *McLearn v. Canadian Human Rights Commission & Employment and Social Development Canada*, 2025 CHRT 22, at paras 11–13 [*McLearn*])

[8] I have taken these factors into account in my analysis.

IV. ANALYSIS

[9] Given how close the hearing dates are for the Francis complaint, I have tried to keep my reasons succinct.

[10] To begin with, I can confirm to the parties that the Chairperson has assigned me to hear the Antwi complaint.

[11] That said, I am not persuaded by the Commission's arguments to join the complaints into a single inquiry even though I am assigned to both cases. I also decline to organize the two complaints in the sequential manner that Air Canada suggests in its response to the motion. Significantly, I am not persuaded that either the Commission or Air Canada's approach will create benefits that outweigh the inevitability of delay from joining a complaint that is on the eve of a hearing with a complaint where the filing of Statements of Particulars (SOPs) has not yet been completed. Consequently, I direct that the Francis complaint proceed as already planned and scheduled.

[12] I am not convinced that the commonalities between the complaints require them to be joined. The Commission points out that there are overlapping grounds between both complaints (race, sex, and colour) and that both are claiming intersectionality of grounds. The Complainants are also represented by the same legal counsel.

[13] This is hardly a unique situation. It is not rare for the Tribunal to receive complaints by different complainants against the same respondent alleging the same grounds of discrimination, sometimes even represented by the same lawyer who has a practice that brings them often before the Tribunal. This is not a basis necessarily to join complaints into a single hearing. Furthermore, the existence of systemic issues is not necessarily enough to require complaints to be heard together (*Mercier v. Correctional Service of Canada*, 2022 CHRT 19 at para 56 [*Mercier*]).

[14] The Commission claims that there will be a duplication of evidence if the cases are heard separately. I do not agree. The fact scenarios for the two cases are quite different. The Francis complaint relates to an incident in Vancouver International Airport involving staff at an Air Canada ticket counter. The Antwi complaint is about an incident involving a flight and cabin crew after Ms. Antwi boarded an Air Canada aircraft in the United States. The risk of contradictory or inconsistent findings with the other case is unlikely. I address the potential for expert evidence to be duplicated later in this ruling.

[15] The most significant problem with the Commission's joinder request is timeliness. This late request will inevitably cause delay in the Francis complaint, even with the proposals from the parties that would maintain the hearing dates next week. I have a responsibility to ensure cases proceed expeditiously (s. 48.9(1) of the CHRA; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para 46; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 29). The delay in the Francis complaint is already longer than it should be. The events alleged in the complaint occurred over seven years ago.

[16] Dr. Francis filed her complaint with the Commission about six and a half years ago. The complaint has been in the adjudicative process before the Commission and the Tribunal since that time.

[17] The Francis complaint was referred to the Tribunal almost four years ago. All SOPs were filed by July 2022. I held the first case management conference call (CMCC) in October 2022. A second CMCC was held in March 2023, at which the dates for the hearing were scheduled for almost a year later (April 2024) due to difficulties accommodating all the parties' availability. I adjourned the hearing several days before its start at the parties' request who wanted to try and settle the case by mediation. The mediation was held several weeks later but was unsuccessful. In October 2024, I held another CMCC where new hearing dates were set (May 12–16, 2025).

[18] On May 5, 2025, the Tribunal received a letter from Dr. Francis's newly appointed counsel seeking an adjournment. Until this point, Dr. Francis had been self-represented. I hastily arranged a CMCC on May 6, 2025, during which I granted the adjournment request on the condition that the new hearing dates be proximate. I expressed concern about the number of years that had elapsed since the 2018 incident. The parties agreed to hold the hearing from July 28 to August 1, 2025. The hearing is to receive the evidence of the non-expert witnesses as well as the Commission's expert witness (Rachel Zellars) who prepared a report on race, bias, intersectionality, and other related matters.

[19] Dr. Francis' counsel raised a new issue, however, regarding Air Canada's defence that it is not liable for damages under s. 53 of the CHRA because of the terms of the *Montreal Convention* and the *Carriage by Air Act*, R.S.C., 1985, c. C-26. Dr. Francis wanted to

challenge the constitutionality of these restrictions based on s. 15 of the *Canadian Charter of Rights and Freedoms* (the “Charter”). I allowed her to amend her SOP and the others to amend theirs in response.

[20] At the next CMCC, Dr. Francis’ counsel confirmed that they would be calling three additional expert witnesses to address the Charter issue. It was agreed that dates would be decided upon at the July/August hearing for those persons to testify by videoconference, likely on various interspersed dates in the fall of 2025.

[21] The Commission argues that, despite the fact that its motion was made less than a month before the scheduled start of the Francis complaint’s hearing, the “opportunity to consolidate the cases at this stage is timely”. I do not agree. It is preferable to address joining complaints as early as possible (*Karas v. Canadian Blood Services and Health Canada*, 2020 CHRT 12 at para 122 [*Karas*]). Despite being aware of the imminent hearing in the Francis complaint since before the Antwi complaint was referred to the Tribunal, the Commission brought this motion over three months after the Antwi complaint was referred.

[22] The Commission has presumably been dealing with the Antwi complaint since it was filed in 2020. For reasons of which I am unaware, the Commission did not refer the complaint to the Tribunal until over four years later, on March 19, 2025. The referral letter did not request the Chairperson to institute a single inquiry into the complaint, as contemplated in s. 40(4) of the CHRA. At the CMCC of May 6, 2025, Dr. Francis’ counsel only mentioned that another case had recently been referred to the Tribunal. I responded that I had not been assigned to any such case and was therefore not in a position to speak to it.

[23] It was only on June 20, 2025, that the Commission informed the Tribunal by letter that it intended to make this motion. As mentioned, the motion itself was filed on June 30, 2025, less than a month before the Francis complaint hearing is set to finally start. In accordance with filing schedule for submissions that the parties agreed to, I received the Commission’s and the Complainants’ reply submissions on Friday, July 18, 2025.

[24] The Commission and the Complainants appear to believe that the Antwi complaint hearing could easily proceed in the autumn of 2025. They assume that the Tribunal will

readily be able to hold a hearing at any time. This assumption does not consider the realities of the pre-hearing process.

[25] In contrast to the Francis complaint, the Antwi complaint's hearing process has barely begun. Ms. Antwi just filed her SOP last week. The Commission filed its SOP this week. Air Canada's SOP and the replies are due to be filed by August 2025. In the ordinary course, a CMCC is held once the SOP process is complete. If all documents are in order, which is frequently not the case, hearing dates can be set at this first CMCC. However, quite often, given the unavailability of the parties, witnesses, and the Tribunal member, a hearing cannot be held for many months. In addition, issues commonly arise regarding disclosure of documents, sufficiency of particulars, etc., that need to be resolved in the ensuing months, further hampering the ability to set an early hearing date. The parties have taken no steps to assure the Tribunal that these delays will not occur such as, for example, inquiring with the Tribunal about specific hearing dates when they and the Tribunal would be available.

[26] Furthermore, previous cases where complaints have been joined have emphasized that the complaints were at essentially the same stage of the Tribunal's process (*Toutsaint v. Correctional Service Canada* and *West Coast Prison Justice Society v. Correctional Service Canada*, 2021 CHRT 3 at para 4; *Karas* at para 122). Where the Tribunal has adjourned scheduled hearing dates to join complaints, both complaints involved the same complainant and involved a singular narrative that was so intertwined that a unified approach was necessary (*McLearn* at paras 14–16). The allegations in the Francis and Antwi complaints do not involve the same singular, interconnected narrative.

[27] Consequently, it is far from obvious that joining the two complaints as proposed will lead to only minor delays and ensure an expeditious process, as mandated by the CHRA. The Tribunal has previously considered the risk of delay as a reason not to join cases (*Mercier* at paras 54–61).

[28] The Commission's proposal to defer the Charter-related experts' evidence until the Antwi complaint hearing is completed will lead to an even longer extension of the Francis case. On the other hand, if the case proceeds as currently planned, the parties in the Antwi complaint will have had the benefit of viewing the experts' evidence as presented at the

Francis complaint hearing, which will perhaps help inform them on the use of evidence at the Antwi hearing.

[29] I note that Air Canada does not see any duplication arising from the evidence of its policy witness who is set to testify next week. Air Canada says the witness' focus will differ from one case to the other.

[30] Engaging in the process being suggested by the Commission will unnecessarily delay the resolution of the Francis complaint and risks making the Antwi hearing more protracted. The Francis complaint hearing is ready to be heard almost in its entirety by the end of next week, but for the three remaining expert witnesses who would be heard not long thereafter. A decision on the merits would follow. The Commission's proposal will inevitably delay the Francis complaint to await the hearing in the Antwi complaint. If anything, the inquiry into the Antwi complaint would likely benefit from the findings that will have already been made in any decision emanating from the Francis complaint hearing. This has the potential to simplify and focus the Antwi hearing.

[31] The Commission and Complainants argue that they will risk losing the benefit of collaborative evidence from each other if the cases are not joined. However, these are not the first cases before the Tribunal that are brought by more than one complainant against a given respondent. Nor are these the only cases that were referred alleging similar conduct by Air Canada (see, for instance, *Cherette v. Air Canada*, 2024 CHRT 8, which has now settled, and other similar complaints that came before the Tribunal in recent years of which the Commission and Air Canada are aware). In all such cases, parties are free to call other complainants or victims to testify. It does not mean that all such complaints against a given respondent must be joined.

[32] The Commission also raises concerns about its ability to fund the preparation of another expert's report for the Antwi case. It is not the Tribunal's role to inquire or comment about a party's budgetary situation. Besides, given the particularities of this case, there may exist alternate means for the parties in the Antwi complaint to present or refer to evidence that arose from the Francis complaint case.

[33] Air Canada proposed in its submissions that the two cases remain split but possibly be joined once a decision on liability has been issued in each of them. If Air Canada is found to have engaged in a discriminatory practice in one of the cases, then a hearing would be conducted to determine the Charter issue. This creates the potential for both complaints continuing after a decision that addresses all the issues except for damages under s. 53. I find this approach will prolong matters even further and would work against the principles of informality and expediency prescribed by the CHRA.

V. ORDER

[34] The Commission's motion is denied. The hearing into the Francis complaint will proceed as already scheduled.

Signed by

Athanasios Hadjis
Tribunal Member

Ottawa, Ontario
July 23, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: T2736/11221 & HR-DP-3094-26

Style of Cause: June Francis v. Air Canada and Gertrude Antwi v. Air Canada

Ruling of the Tribunal Dated: July 23, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Sujit Choudhry and Mani Kakkar, for the Complainants

Clay Hunter, for the Respondent

Caroline Carrasco, for the Commission