Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

**Citation:** 2025 CHRT 74
**Date:** July 29, 2025
**File Nos.:** HR-DP-2899-22 & HR-DP-2900-22

**Between:**

**Amanda Lepine and Amanda Lepine (on behalf of A.B.)**

**Complainants**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Correctional Service Canada**

**Respondent**

**- and -**

**West Coast LEAF**

**Interested party**

# Ruling

**Member:** Jo-Anne Pickel

**Contents**

## I. OVERVIEW

[1] Amanda Lepine and her son A.B., the Complainants, allege discrimination in the provision of services provided by Correctional Service Canada, the Respondent, through its Mother-Child Program. Ms. Lepine is a Métis woman who was incarcerated at Fraser Valley Institution while newly pregnant. A.B. is her indigenous minor son to whom she gave birth while she was still incarcerated. Ms. Lepine alleged that she and A.B. were discriminated against in the provision of services contrary to section 5 of the *Canadian Human Rights Act,* R.S.C., 1985, c. H-6 (CHRA) based on one or more of the following prohibited grounds of discrimination: race, national or ethnic origin (indigeneity), sex, disability, family status and age.

[2] The Complainants' allegations are wide-ranging. Their current Statement of Particulars (SOP) is their third amended SOP (i.e., their fourth SOP in total). The Complainants' SOP spans 180 paragraphs over 26 pages. It includes a multitude of allegations that may implicate dozens of the Respondent's staff members. For example, the Complainants' SOP alleges that Ms. Lepine did not receive pre- and post-natal care in line with community standards, including care from a midwife. The Complainants' SOP alleges discrimination in the provision of parenting supports, various delays in treatment and care, a failure to provide adequate necessities to A.B., a failure to accommodate Ms. Lepine's knee injury, and a failure to provide adequate COVID-19 precautions in requiring that officers escort Ms. Lepine during her absences from the institution. The Complainants' SOP also alleges a discriminatory lack of privacy due to the presence of correctional officers, including male officers, during medical appointments and A.B.'s birth. The Complainants' allegations extend to the level of cleanliness of the designated Mother-Child Program house as well as the BPA containing tableware provided to the Complainants. These are just some of the allegations contained in the SOP filed by the Complainants.

[3] The Respondent has brought a written motion to strike allegations from the Complainant's latest SOP on the basis that they have no reasonable prospect of success. The main reason why the Respondent has sought to strike allegations from the Complainants' SOP is because of their alleged failure to establish a connection between

any prohibited grounds of discrimination and the adverse differentiation or service denial they allege. The Respondent argues that most of the Complainants' allegations are either allegations of wrongful behaviour or of generalized adverse effects that have no apparent connection to any prohibited ground of discrimination. It argues that the Complainants have made bare assertions of a connection to prohibited grounds without particularizing facts that can establish such a connection.

[4] The Complainants oppose the motion.

[5] The Canadian Human Rights Commission (the "Commission") is a party to this case and has been participating in the case management stage. However, the Commission did not make submissions in response to the motion.

[6] West Coast LEAF was granted interested party status to participate in case management and make limited submissions in the case. It did not make submissions on this motion.

## II. DECISION

[7] I find it appropriate to defer consideration of the Respondent's motion until after the Complainants have presented their evidence. In the circumstances of this case, I find it appropriate to hear evidence from the Complainants and their witnesses before I address the issues raised in the Respondent's motion. At the end of the Complainants' case, I will hear submissions from the parties as to whether the Complainants have failed to make out a *prima facie* case with respect to any of their allegations. I will then issue a ruling on the issue and set out any allegations on which the Respondent is required to provide responding evidence.

## III. ISSUES

[8] The issue I address in this ruling is whether it is appropriate to determine this motion at this stage of the proceeding.

## IV. CHRONOLOGY AND BACKGROUND

[9] The Complainants filed their complaints with the Commission in March 2021. The Commission referred them to the Tribunal in November 2022, and they were assigned to a member shortly thereafter. The Complainants have had legal representation throughout this proceeding. They filed their initial SOP in March 2023.

[10] The member previously assigned to these cases held numerous case management conference calls with the parties. One of the main topics on the calls was the need for the Complainants to provide additional particulars regarding some of their allegations. Counsel for the Respondent and the Complainants' former counsel also spent a significant amount of time preparing an Agreed Statement of Facts that was filed with the Tribunal in advance of the hearing that had been scheduled to start in December 2024.

[11] Based on the hearing estimates provided to the Tribunal prior to the December 2024 hearing dates, the hearing would require four to five weeks of hearing time. The parties estimated that the hearing would require testimony from at least 44 witnesses in total, including two expert witnesses. The 18 hearing days the Respondent estimated it would need to present its case included at least four to five hearing days that would be taken up with testimony from 21 primary workers (front line personnel) whom the Respondent intended to call. The Respondent said that its need to call numerous primary workers stemmed from Ms. Lepine's failure to adequately particularize her allegations about their behavior while she was hospitalized for her child's birth.

[12] The case was reassigned to me in December 2024. In both of my case management conference calls with the parties, I reminded them of the Tribunal's mandate to manage its cases as efficiently and expeditiously as possible. I also advised them that it was not proportional to use up several hearing days for the sole reason that a handful of allegations could not be adequately particularized. Moreover, I questioned whether many of the allegations for which the Complainants could not provide sufficient particulars would have a reasonable prospect of success under the CHRA. These allegations included, for example, allegations that primary workers had played loud videos on their phones and kept the lights on day and night. Even if these allegations by the Complainants were accepted as true, it

was difficult to see how many or most of them would amount to discrimination under section 5 of the CHRA. While the impugned conduct would amount to insensitive or wrongful behaviour, no facts were pleaded that could establish a connection between the conduct alleged and any prohibited grounds by which the Complainants are identified.

[13] I urged the Complainants' former counsel to focus the complaint on the allegations that have the most merit and consider withdrawing allegations that lacked sufficient particulars or appeared to lack a reasonable prospect of success. The Respondent's counsel indicated that he would bring a motion to strike allegations from the Complainants' SOP if the Complainants did not do so. I provided counsel for the Respondent and the Complainants' former counsel, and subsequently their new counsel, a limited amount of time to attempt to resolve matters without the need for a formal motion.

[14] The Complainants' new counsel and the Respondent's counsel did make progress. However, the Respondent proceeded to file an amended motion in which it argues that many of the Complainants' remaining allegations have no reasonable prospect of success. The Complainants filed their third SOP with their response to the Respondent's motion. Based on the amended SOP, it does appear that the Complainants agreed to withdraw many of the allegations that caused me the most concern in terms of lacking an apparent connection to any prohibited grounds of discrimination by which the Complainants are identified. However, the Respondent has raised legitimate questions about whether the Complainants will be able to establish a connection between any prohibited grounds of discrimination and some of the remaining alleged instances of service denial or adverse differentiation set out in their SOPs. These questions will require examination by the Tribunal.

## V. ANALYSIS

### A. Should the Tribunal dismiss the impugned allegations prior to hearing any evidence?

#### (i) Legal principles relating to motions to dismiss all or parts of the complaints

[15] The Tribunal has a mandate to conduct proceedings as informally and expeditiously as the requirements of natural justice and the *Canadian Human Rights Tribunal Rules of Procedure*, 2021, SOR/2021-137 (the "Rules of Procedure") allow: section 48.9(1) of the CHRA; Rule 5 of the Rules of Procedure. The Tribunal's mandate is limited to applying the CHRA. In the context of a section 5 complaint, this means determining whether an individual was denied a service, denied access to a service or subjected to adverse differentiation in the provision of a service on a prohibited ground.

[16] Significantly, the Tribunal does not have a broader mandate to redress all inadequacies in services or instances of mistreatment or inappropriate conduct in the provision of services that are not connected to any of the prohibited grounds of discrimination listed in the CHRA.

[17] Human rights statutes or rules of procedure in some other jurisdictions expressly provide tribunals with the power to dismiss all or part of complaints if they have no reasonable prospect of success: see, for example, the *Human Rights Code*, RSBC 1996, c. 210, s. 27(1)(c); Rule 19A of the Ontario Human Rights Tribunal Rules of Procedure. Both of these examples relate to jurisdictions in which complaints are filed directly with a human rights tribunal instead of first going through a commission screening process.

[18] In the federal human rights system, the Commission plays a screening function which assists in reducing the likelihood that the entirety of a referred complaint cannot succeed under the CHRA: *Zoghbi v. Air Canada*, 2024 FCA 123 para 47. See also Marshall v. Membertou First Nation, 2021 CHRT 36 at para 148. However, nothing in the CHRA requires that the Commission be convinced that every allegation in the complaint warrants an inquiry. Therefore, the Commission may refer to the Tribunal complaints that include very

wide-ranging allegations without specifically determining that an inquiry is warranted for each of them. Given this reality, it is important for the Tribunal to be guided by a sense of proportionality with a view to focusing its publicly funded time and resources on those allegations that assert a viable claim under the CHRA. This is especially important in cases, like this one, that are large in scope and raise a multitude of allegations implicating many potential witnesses and large volumes of documentary evidence. To be sure, where the entire complaint is referred for inquiry, it remains the Tribunal's duty under the CHRA to inquire into all of it. However, if it is clearly established at the SOP stage that certain allegations do not disclose a viable claim, then the inquiry ends there, for those allegations.

[19] The Federal Court has confirmed that this Tribunal may consider and grant preliminary motions to dismiss complaints so long as it does so in a procedurally fair manner, cautiously, and only in the clearest of cases (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General),* 2012 FC 445 at paras 119, 132, 140, 157 [*FNCFCS*].

[20] In motions to dismiss all or parts of complaints on a summary basis, the Tribunal has examined whether it is plain and obvious that the impugned allegations cannot succeed: *Dorey et al. v. Employment and Social Development Canada*, 2023 CHRT 23 at para 79; *Maloney v. Mi'kmaq Nova Scotia Tripartite Forum*, 2024 CHRT 106 at para 16.

[21] The Tribunal has dismissed complaints in numerous cases through preliminary motions to determine key legal issues, often in the context of motions to strike claims from SOPs: see, for example, *Dorey*; *Cushley et al. v. Veterans Affairs Canada*, 2022 CHRT 21 at paras 16–18; *Richards v. Correctional Service Canada*, 2020 CHRT 27 at para 86*; Karas v. Health Canada*, 2024 CHRT 133.

[22] However, the Tribunal's power to dismiss all or part of a complaint without holding a hearing is not limited to cases that raise a pure question of law. The Tribunal may also dismiss all or part of a complaint without holding a full merits hearing in other circumstances: *FNCFCS* at para 143. For example, it may do so where there is no dispute as to the facts or where there exist discrete or threshold questions whose determination could potentially

narrow the issues, focus the hearing or dispose of the case altogether: FNCFCS at paras 143–147.

[23] When dealing with motions to dismiss all or part of a complaint prior to a hearing, the Tribunal generally proceeds on the assumption that all of the facts as alleged by the complainant are true: *Dorey* at para 17. Therefore, there is no dispute as to the facts for the purposes of such motions.

[24] In such motions, the Tribunal must take a generous approach and err on the side of permitting a novel but arguable claim to proceed to a hearing. However, even a complex and novel legal claim may properly be dismissed where, even if the allegations are accepted as proven, it is plain and obvious that the claim cannot succeed (i.e., a *prima facie* case cannot be made out): *Dorey* at para 17.

[25] The Tribunal must also be guided by the principle of proportionality when it deals with motions to dismiss or strike parts of complaints. Generally, the principle of proportionality requires that the Tribunal not conduct a full merits hearing in respect of allegations that, even if proven, would not establish a *prima facie* case of discrimination. Conducting a full merits hearing in such cases would result in additional costs in terms of time and resources for the Tribunal and the parties alike. It would also inevitably have adverse impacts on the Tribunal's process as a whole and on access to justice for other parties who are waiting for their cases to be heard: *Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at para 16.

[26] In each case, the Tribunal must determine the most expeditious way of disposing of motions to dismiss that is also fair to all parties. In some cases, this may mean proceeding with a motion like this on a summary basis without hearing any evidence and assuming all of the facts to be true. In other cases, it may mean proceeding with a full hearing because the time and resources it would take to consider and decide a motion to dismiss all or part of a complaint would not generate any significant savings in time and resources when compared to carrying out a full hearing. In still other cases, it is most appropriate for the Tribunal to adopt a staged approach in which it chooses to entertain a motion to dismiss all or part of a complaint after hearing some evidence (*FNCFCS* at paras 141–157). If it does so, it must remain cognizant of the fact that, in human rights cases, a complainant must

frequently resort to proving their case through circumstantial evidence that may be established through the testimony of the respondent's witnesses. In the end, the Tribunal is the master of its own procedure and has the discretion to determine the most appropriate way of dealing with such motions: see Rule 26(3) of the Rules of Procedure; see also *FNCFCS* at paras 148, 157. The most appropriate way of proceeding will depend on the circumstances of each individual case.

[27] Having set out the principles applicable in motions like this one, I now turn to the legal framework under section 5 of the CHRA. I will then address the Respondent's request to strike allegations from the Complainants' latest SOP.

### (ii) Legal framework under section 5 of the CHRA

[28] Section 5 of the CHRA provides that it is a discriminatory practice in the provision of services customarily available to the general public:

> (a) to deny, or to deny access to, any such service to any individual, or
>
> (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

[29] It is well established that complainants have the onus of making out a *prima facie* case of discrimination. To make out a *prima facie* case under section 5 of the CHRA, complainants must establish on a balance of probabilities that:

> i. The respondent denied them a service, or denied access to a service, or differentiated adversely in relation to complainants in the provision of a service customarily available to the public; and
>
> ii. There is a connection between the service denial or the adverse differentiation, on the one hand, and one or more prohibited grounds of discrimination, on the other. (*Quebec (Commission des droits de la personne et des droits de la*

*jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 52 [*Bombardier*]; *Moore v. British Columbia (Education)*, [2012] SCR 61, at para 33).

[30] The prohibited ground(s) of discrimination need not be the sole, or even primary, cause of the service denial, denial of access or adverse differentiation. However, there does need to be a connection between the denial, denial of access or adverse differentiation and the prohibited ground(s) of discrimination: *Bombardier.*

[31] A respondent can either present evidence to refute the allegation of *prima facie* discrimination, put forward a defense justifying the discrimination, or do both (*Bombardier* at para 64). Where the respondent refutes the allegation, its explanation must be reasonable. It cannot be a pretext to conceal discrimination. Where the respondent puts forward a defense justifying the discrimination, it bears the burden of proof in that regard: *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.) (Meiorin Grievance)* [1999] 3 S.C.R. 3.

### (iii) Respondent's arguments

[32] The Respondent has sought to strike allegations from the Complainants' SOP primarily because they fail to plead facts that establish a connection between any prohibited grounds of discrimination and the adverse differentiation or service denial they allege.

[33] In their response to the motion, the Complainants generally argue that they pleaded the existence of a connection and that a hearing is required to hear the evidence in the case. I agree with the Respondent that it is not sufficient to simply assert that there is a connection between the prohibited grounds by which the Complainants are identified and the adverse differentiation or service denial in their case. To establish a connection to one or more prohibited grounds, the Complainants must, in their SOP, be able to point to facts or evidence that they will rely upon to establish a likely connection between one or more

prohibited grounds of discrimination and the service denial or the adverse differentiation they allege.

### (iv) Reasons for deferring consideration of this motion

[34] In this case, I am conscious of the fact that the Complainants identify themselves in reference to multiple intersecting prohibited grounds of discrimination. Among other things, they have argued in their SOP that substantive equality dictates that women in prison receive appropriate and responsive health care that is appropriate to their needs, in particular the needs of pregnant and post-partum women. The Complainants also raise several other arguments about adverse effects discrimination based on indigeneity and discrimination against A.B. based on age and/or family status. I am also conscious that I must proceed cautiously, in a procedurally fair manner, and only dismiss allegations in advance of a hearing in the clearest of cases (*FNCFCS* at para 140).

[35] That said, it is important to remember that the Tribunal is not intended to serve as a royal commission of inquiry into general allegations relating to any government service or program, such as the Respondent's Mother-Child Program. Its mandate is specifically tied to applying the CHRA.

[36] Taking into consideration all of the circumstances of this case, it is appropriate to provide the Complainants with the opportunity to call their evidence. I can then hear full submissions from the parties in relation to this motion (or an amended version of it) after the Complainants have presented their evidence. Following this, I will determine whether any allegations should be dismissed based on a failure to make out a *prima facie* case of discrimination. The Respondent will only be required to call evidence in relation to the remaining allegations.

[37] In light of the above, I do not need to address what weight, if any, I should give to the Agreed Statement of Facts prepared by the parties.

### (v) Key considerations in the case

[38] In this case, I will be expecting the parties to ground their allegations and arguments in the specific language of the CHRA. As noted above, section 5 of the CHRA prohibits the denial of a service, denial of access to a service or adverse differentiation in the provision of a service on a prohibited ground. One of the things I will be listening for in this case is evidence of a connection between any of the intersecting prohibited grounds of discrimination by which the Complainants identify themselves and the service denials or the various forms of adverse differentiation they allege.

[39] In addition, I will be carefully considering the parties' submissions on whether a duty to accommodate has been triggered in this case. Many of the Complainants' allegations are framed in a very general way as the Respondent's failure to accommodate the Complainants' personal characteristics. However, the duty to accommodate an individual is not a freestanding obligation owed by a service provider or employer to a complainant identified by one or more prohibited grounds of discrimination: *Moore v. Canada Post Corporation*, 2007 CHRT 31 at para 86; *Chisholm v. Halifax Employers Association*, 2021 CHRT 14 at para 84; *Stacy White v. Canadian Nuclear Laboratories Ltd.,* 2025 CHRT 67 at paras 60-61. See also *Baber v. York Region District School Board*, 2011 HRTO 213 at paras 88-96.

[40] The CHRA does not require accommodation in the absence of proof of *prima facie* discrimination. A complainant who alleges that a respondent has breached its duty to accommodate them is really claiming that (i) they have experienced direct or adverse effect discrimination based on a prohibited ground and (ii) the respondent cannot justify the discrimination by showing that the complainant could not be accommodated without imposing undue hardship on the respondent: see subsection 15(1)–(2) of the CHRA.

[41] As the Tribunal put it in a case involving the accommodation of a disability in the employment context:

> It is not the disability that triggers the obligation to accommodate to the point of undue hardship. It is the existence of a barrier created by that disability in the context of the workplace that requires an employer to take steps to mitigate that barrier and ensure that the employee has every opportunity to

> participate fully at work: *Todd v. City of Ottawa*, 2020 CHRT 26 at para 202 (aff'd 2022 FC 579).

[42] Likewise, in this case, it is not Ms. Lepine's pregnancy, or any other protected characteristic of the Complainants, that triggers a duty to accommodate them. It is the existence of a barrier or disadvantage in the provision of services created, at least in part, by their protected characteristics. It is only if the Complainants establish a *prima facie* case of discrimination that the Respondent is required to provide reasonable accommodations up to the point of undue hardship.

[43] The above comments provide the parties with an indication of some of the evidence I will be listening for in this case and some of the legal issues I will be expecting them to address.

## VI. ORDER

[44] For the above reasons, I find it appropriate to defer further consideration of the Respondent's motion until after the Complainants have presented their evidence. I note that I will be addressing the Respondent's motion to strike the expert reports filed by the Complainants in a separate ruling.

[45] Following the permitted evidence in support of the Complainants' case at the hearing, I will then provide the Respondent leave to reformulate its motion, if necessary, to take into account the evidence that has been led and to address issues of evidentiary insufficiency.

*Signed by*

Jo-Anne Pickel
Tribunal Member

Ottawa, Ontario
July 29, 2025

## Canadian Human Rights Tribunal

## Parties of Record

**File Nos.:** HR-DP-2899-22 & HR-DP-2900-22

**Style of Cause:**

Amanda Lepine v. Correctional Service Canada

Amanda Lepine (on behalf of A.B.) v. Correctional Service Canada

**Ruling of the Tribunal Dated:** July 29, 2025

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

**Written representations by:**

Julian Riddell, for the Complainants

Jon Khan, Quinn Ashkenazy, Hanna Davis, Maria Oswald, & Aleksandra Mihailovic, for the Respondent