

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 82

Date: August 22, 2025

File No.: T2566/12320

Between:

Marcus Williams

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Bank of Nova Scotia

Respondent

Decision

Member: Edward P. Lustig

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I. OVERVIEW

[1] The Complainant, Marcus Williams, self-identifies as a Black Canadian male who worked as a casual employee for the Respondent, the Bank of Nova Scotia (the “Bank”), from February 9, 2015, until October 26, 2017, when his employment was terminated by the Bank.

[2] Mr. Williams alleges that the Bank discriminated against him in his employment with the Bank, on the basis of his race, colour, national or ethnic origin, sex and/or age by treating him in an adverse differential manner in: (1) denying him employment opportunities (both posted and non-posted), (2) denying him an annual bonus and a salary raise and (3) in terminating his employment, contrary to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA).

[3] Mr. Williams alleges his protected grounds were a factor in the Bank denying him employment opportunities, bonuses and raises and in terminating his employment.

[4] The Bank denies that it discriminated against Mr. Williams in any way during his employment and that none of its decisions respecting his employment were in any way related to any of his protected grounds under the CHRA as alleged.

[5] The Bank submits that Mr. Williams was not qualified for employment opportunities he applied for, not entitled to a bonus or pay raise as a casual contract employee, and was terminated as part of a corporate wide cost savings restructuring exercise that identified his casual job status as one that was no longer required and could be eliminated. The Bank submits that, while Mr. Williams has the impression that he was discriminated against in his employment, his impression is not supported by evidence adduced at the hearing of any discrimination by the Bank.

II. DECISION

[6] Mr. Williams failed to provide sufficient evidence during the hearing to allow an inference to be made that the Bank's actions were discriminatory to him. As such, he has failed to substantiate his complaint against the Respondent, and it is dismissed.

III. ISSUE

[7] Did the Bank discriminate against Mr. Williams, contrary to section 7 of the CHRA between November 16, 2016, and October 26, 2017, as alleged in paragraphs 2 and 3 above?

IV. BACKGROUND AND EVIDENCE

[8] On March 28, 2022, the Canadian Human Rights Commission (the "Commission") determined that the temporal scope of the allegations of Mr. Williams' complaint was from November 16, 2016, to October 26, 2017, (the "relevant time period") and referred the matter to the Tribunal for an inquiry. The Commission did not participate in the hearing. The Commission and the Tribunal directed that the scope of the allegations of discrimination to be determined at the hearing would be limited to the matters described in paragraph 2 above within the relevant time period of the complaint.

[9] Mr. Williams was self-represented at the start of the hearing on May 12, 2025. After testifying on his own behalf for the first three days of the hearing, including being cross examined by the Bank's counsel, he advised the Tribunal on the morning of May 15, 2025, that he intended to seek legal representation the next day to continue with his case.

[10] Several weeks prior to the start of the hearing, at the request of Mr. Williams, the Tribunal issued summonses to him to serve on eight witnesses. The Tribunal issued the requested summonses and provided him with written directions on how to properly serve the witnesses personally and provide them with the required attendance fees. Mr. Williams advised the Tribunal on the morning of May 15 that he had not personally served any of the

witnesses on his list of witnesses and was not able to contact any of the witnesses to attend the hearing.

[11] Christopher Karas of Karas Legal Services attended at the start of the fifth day of the hearing on May 16, 2025, to represent Mr. Williams. He advised the Tribunal at that time that he was closing his client's case without calling any further witnesses or any other evidence, after which the Bank commenced its case and proceeded to call six witnesses who were examined in chief by the Bank's counsel, O'Hearn Davies and Samantha Black, and cross-examined by Mr. Karas. There was no reply evidence offered by the Complainant after the Respondent's case. Written arguments were provided by the parties on May 26, 2025, followed by oral arguments the next day.

[12] Mr. Williams was the only witness to testify in support of his case. None of the other witnesses that Mr. Williams had on his list of witnesses, for which summonses had been issued, were called by him either in chief or reply. In his own testimony during the hearing, he indicated that some of the witnesses on his list would be able to support his allegations against the Bank, but he didn't call any of them at the hearing and had not served any of them with summonses issued by the Tribunal. As well, he did not call Trevor Kobe, his former senior manager, for part of the relevant period who he claimed had provided him with some of the information upon which he based his belief that the Bank was discriminating against him by thwarting his employment opportunities. Mr. Kobe was not on his witness list, and Mr. Williams didn't request a summons for him.

[13] At the outset of the hearing, I explained various procedural aspects for the hearing, including the procedure for introducing into evidence documents that were included in the Books of Documents filed by the parties. I instructed the parties that, to properly have documents entered into evidence as exhibits, the document would have to be identified and then tendered as an exhibit and admitted into the hearing record of evidence by the Tribunal, either on consent or through a witness. I made it clear that the mere filing of the Book of Documents did not constitute the admission into evidence of any document contained therein and that only the documents admitted at the hearing would be considered the evidence of the case before the Tribunal, together with the oral evidence given.

[14] In spite of my instructions, it appeared to me that, as he was concluding his testimony in chief, Mr. Williams did not initially understand the need to actually introduce documents from his Book of Documents to be admitted as evidence at the hearing by the Tribunal. As a result, I explained the procedure again to him and he then proceeded to introduce numerous documents from his Book of Documents that I admitted into evidence as exhibits. For the most part, he simply described what the documents were that he wanted entered as exhibits.

[15] There were a number of documents that Mr. Williams attempted to have admitted into evidence during his testimony in chief that were objected to by the Respondent and not admitted into evidence. I made rulings on these objections—sustaining some and overruling others. I did so on the basis of the wide discretion I have to admit evidence under the CHRA in order to best get to the truth of the matters in dispute as informally and expeditiously as possible while preserving the parties' rights to a fair and just hearing.

[16] One of the rulings I made was to not admit a copy of the Commission's Investigation Report of Mr. Williams complaint dated September 11, 2020, that he submitted during his testimony in chief for introduction as an exhibit. This was raised again by Mr. Karas later in the hearing. I ruled that, as this hearing was a *hearing de novo*, the investigation by the Commission that took place over four years before the hearing and before the complaint was referred to the Tribunal by the Commission for an inquiry under the CHRA was not relevant as evidence in this hearing. Moreover, I also pointed out the potential prejudice and unfairness of admitting a document prepared by the investigator who made the report but was not present at the hearing to give evidence about the report or to be cross examined.

[17] Following the hearing, Mr. Karas wrote several emails to the Tribunal and the Respondent wanting to have evidence not admitted at the hearing to be admitted after the hearing. I refused his requests as the hearing had concluded.

[18] Prior to the hearing, in order for it to proceed in the most expeditious and fair manner possible, I directed Mr. Williams, who had alleged in his amended Statement of Particulars that there were numerous hiring decisions by the Bank that were discriminatory to him during the relevant time period, to limit his challenges at the hearing to five hiring decisions of his

choosing that he felt were discriminatory, which he did. He chose a whole group of hiring decisions that he alleged were not posted internally in the Bank for him to apply for as one of the challenges and four posted hiring decisions that he applied for as the remaining challenges.

[19] I found Mr. Williams to be a straightforward and generally a credible witness. No doubt his termination of employment, his failure to succeed in job opportunities and his failure to receive a bonus or pay raise had an adverse impact on him and hurt him and possibly could have been avoided by the Bank. However, I found that his perceptions, suspicions and impressions of the Bank's actions towards him as being discriminatory were not supported by evidence adduced at the hearing.

[20] As noted above, Mr. Williams self-identifies as a Black Canadian male. His employment with the Bank started on February 9, 2015, in accordance with a contract he first reviewed and then signed with the Bank dated January 28, 2015. His employment was terminated, without cause, by the Bank on October 26, 2017, and he was paid his regular wages for four weeks thereafter.

[21] His contract with the Bank provided for Mr. Williams to be hired as a casual employee in the position of CARDS officer, job level 04, in the Credit Risk Administration (CRA) department at an hourly rate of \$19.45. His hours of work were to be "scheduled on as needed basis". He was not entitled under his contract to an annual salary increase or a bonus available to permanent employees or temporary contract employees. The Bank could terminate his employment at any time without cause, upon the provision of two weeks notice.

[22] Throughout Mr. Williams' employment, he worked full-time hours of 37.5 hours per week. He did not receive a bonus or a salary increase despite his request for one. He was the only CARDS officer employed on a casual basis. He was one of three Black employees in the CRA department.

[23] The CRA department operated at the time with three teams—international, corporate and commercial, based upon the type of credit authorizations and clients involved. Mr. Williams worked in the commercial team which dealt with non-retail commercial clients as opposed to international clients or large corporate clients that were dealt with by the other

teams. His job essentially involved entering or inputting data from commercial presentations into the CARDS database.

[24] Mr. Williams' job performance was assessed once during his employment in a performance achievement review conducted by his immediate manager, Julie Chan, and his senior manager, Mr. Kobe, on October 28, 2016. Neither of these two managers were witnesses at the hearing. They rated him overall as "Quality" or "Meets Expectations" which was the same rating that Mr. Williams rated himself for all of the rated categories. This was an average type of rating—neither the best nor the worst. It was noted in the performance review that Mr. Williams "interacted well in the team". While Mr. Williams' performance in terms of the time taken to process and enter data had been assessed to be on the slow side, it was noted in his performance review that he was improving but still needed to further improve his accuracy and timeliness in entering data.

[25] Ms. Chan reported to and worked with Mandrake Kahn, a long-time employee of the Bank who was installed as the Director of the CRA department in February of 2017. Mr. Kahn decided to terminate Mr. Williams' employment with the Bank after advising the Employee Relations department by an email on September 12, 2017, that Mr. Williams "was not our sharpest, and we are seeking to terminate". Mr. Kahn testified that he sent this email because he had not dealt with a situation involving a casual employee who worked full-time hours before and that he wanted to know what to do regarding severance. He was advised by Employee Relations to provide information about his performance and, in reviewing his performance review and speaking with Ms. Chan, who advised him that Mr. Williams was not a strong performer, he wrote the email based on that information.

[26] Other than the performance review on October 28, 2016, there was no subsequent assessment or guidance provided by the Bank to Mr. Williams on his performance prior to his termination on October 26, 2017.

[27] Mr. Kahn was a witness at the hearing whom I found to be forthright and credible. He has worked for the Bank for over 30 years in management positions starting in Trinidad where he is from.

[28] Mr. Kahn testified that, in his view, neither he nor the Bank discriminated against Mr. Williams by terminating his employment with the Bank. He testified that Mr. Williams' protected characteristics under the CHRA were not a factor in his decision to terminate Mr. Williams.

[29] Mr. Khan testified that Mr. Williams' termination of employment was solely related to operational challenges that impacted employment in the CARDS system that had to be addressed when he took over his role of directing the CARDS team in February of 2017. It was these challenges that eventually resulted in him deciding to eliminate the position of a casual CARDS officer that Mr. Williams held that was deemed to be no longer needed at the time. He testified that, while he did not personally know Mr. Williams or observe his performance on the job, he did receive some negative feedback from Ms. Chan about Mr. Williams' accuracy and timeliness in doing his job.

[30] The operational issues impacting employment that Mr. Khan faced in 2017 after he came on board to run the CRA department were two-fold. Firstly, there was the planned phase out initiative of the CARDS system with a new database system that was subsequently reversed. Secondly, there was the Bank-wide Structural Cost Transformation (SCT) initiative designed to reduce costs and improve efficiency in the Bank's various business groups.

[31] In order to comply with banking regulations and to streamline the data entry system, the Bank embarked on a program of replacing the CARDS system with a new database system called Risk Origins (RO). At first, the corporate client data was migrated to RO with the intention of migrating all of the data from CARDS to RO and eventually eliminating CARDS and possibly the CRA department.

[32] As a result of the uncertainty about the future, CARDS officers were initially leaving CARDS to go to work at the new RO system or to other Bank jobs. This added to an existing backlog of work in CARDS as the RO project was on a tight time schedule and needed to ensure that the backlog of data was first inputted into the CARDS system accurately and quickly so as not to delay the implementation of the project.

[33] In order to address this situation, in the spring of 2017, Mr. Kahn obtained approval of a plan to hire six new employees on six-month contracts to deal with the temporary backlog in CARDS. As well, he obtained approval to upgrade six existing CARDS contract employees, who were either managers or senior members of the CARDS team, to full-time from contract positions to ensure continuity and maintain experience and expertise.

[34] There was disputed evidence about whether the new jobs in CARDS during 2017 were posted internally or not. The Bank's evidence was that, in accordance with its policies, the six new positions were all posted internally and externally and were competitively filled from applicants for these positions. The Bank's evidence was that it does not post vacancies externally without posting internally as well. The six upgraded employees were existing employees in the CARDS team, not new employees.

[35] Mr. Williams' evidence was that the jobs were not posted internally, and as a result he did not know about them or have an opportunity to apply. He testified that he felt that he was being discriminated against because of his protected characteristics by the Bank not posting the jobs internally, thereby depriving him of an opportunity to know about and apply to obtain a more permanent employment status. He felt that the Bank was thwarting his employment opportunities, even though he would have been in the same position as his CARDS officer colleagues who did not possess his protected characteristics, as far as the alleged non-posting of the jobs internally was concerned.

[36] Later in the spring of 2017, it became clear that the RO project was not going to be successful as a result of various issues with the proposed new system, even after a large amount of the data had been migrated to RO from CARDS. There was then a reversal of plans, and it was decided to close the RO system and instead to retain the CARDS system.

[37] Rodrigo Zuniga Castro was a witness at the hearing whom I found to be forthright and credible. He has worked for the Bank for over 17 years in management positions and was tasked as the director of the RO team in 2015 until July of 2017. He was not directly involved with the CARDS team but dealt with the CARDS team first through Mr. Kobe and later through Mr. Kahn when Mr. Kahn came on board to run CARDS.

[38] RO was located in downtown Toronto at 130 King Street West, and CARDS was located separately at 44 King Street West. Mr. Zuniga didn't know Mr. Williams during his employment with the Bank. Mr. Zuniga testified that there were a number of former CARDS employees at RO that he had contact with, including some of the analysts or "super users" who also did data entry. He testified that their jobs required a higher level of skill than CARDS officers as there was some analysis of the data inputted that was required to be done by them, and they were paid at a level 5 or 6 while the CARDS officers were paid at a level 4 and didn't have to do the more complex analysis. Mr. Williams testified that there was very little, if any, difference between what the super users did and what he did as a CARDS officer in inputting data and that the skill level was more or less the same for both jobs.

[39] Mr. Zuniga testified that ordinarily he was not directly involved in employment procurement beyond approving postings and delegating the hiring activities to senior managers who reported to him. However, when it became clear that RO was going to be shut down and that people were going to be let go from RO, he was authorized by his boss Karen Tait, Vice-President, Global Risk Management at the Bank, to try to retain good candidates from RO who could fit into roles in the CARDS team as well as the Corporate Credit Risk Analytics team.

[40] Mr. Zuniga chose to retain six analysts from his RO team who were former CARDS officers who had previously applied for and accepted positions as analysts in RO. In June of 2017, these six employees were transferred to the CARDS team on one-year fixed term contracts. They were all either at a level 5 or 6 pay rates and maintained their pay rates after their transfer to the CARDS team. Mr. Kahn testified that these positions were not posted because these individuals were not filling vacancies but were rather being transferred, and it is not the Bank's policy to post a position prior to initiating a transfer.

[41] In addition, Mr. Kahn testified that in June of 2017 he still needed more staff to help clean up the existing backlog in the CARDS system and that he received approval to hire six contract term employees and fill two further vacancies of employees who had left. He only hired three of the approved new CARDS officers in 2017 and the other three in 2018. These positions were posted both internally and externally according to the Bank and were

for fixed term contracts to deal with the backlog at CARDS. In addition, there were a number of summer students hired to assist with the backlog during this time.

[42] Mr. Williams did not apply for any of the CARDS jobs that the Bank says were posted internally but that Mr. Williams contends were not posted internally. There is no evidence that he took up any concerns he had about the new hires and transfers to management. He testified that, given his position as a casual employee, he did not want to “rock the boat” so to speak and jeopardize his tenuous status as the only casual employee. He testified that his manager, Mr. Kobe, who was a supporter of his, suggested to him that he was being held back because of his protected characteristics. He did not call Mr. Kobe as a witness. Mr. Kobe was let go by the Bank in August of 2017 as part of the SCT initiative described below.

[43] As noted in paragraphs 29 and 30 above, the SCT initiative was a separate challenge for Mr. Kahn from an employee impact point of view when he began his job managing the CARDS team in February of 2017. In addition to dealing with the reversal of the largely completed RO project back to CARDS, which contributed to a backlog of work at CARDS that had to be addressed immediately through temporary hirings and transfers to CARDS, there was the ongoing SCT initiative aimed at reducing the headcount of employees across all of the business groups within the Bank, including the CARDS team and the CRA department.

[44] Mr. Williams testified that there was confusion and concern among CARD officers about what was going on with all of these hires and transfers into CARDS, although none of these officers were called as witnesses. Mr. Williams was watching all of these new people being transferred or hired into the CARDS team at the same time that his existing casual employment in CARDS was being reviewed as part of the SCT downsizing exercise across the whole company that led to his employment with the Bank being terminated.

[45] The SCT initiative was instituted by the CEO of the Bank and was ongoing in 2017. The initiative was intended to save costs and optimize and streamline operations, across all of the business groups in the Bank, by eliminating positions and processes that were not deemed to be necessary and identifying efficiencies.

[46] Beginning in May of 2017, an SCT team reviewed the CRA department by meeting with members of the team, job shadowing and reviewing current processes.

[47] By July of 2017, the SCT team had developed a project plan for the CRA department. The project plan identified efficiencies, including adding second computer monitors for CARDS officers to eliminate the need to print credit applications thereby freeing up time and personnel capacity to increase the inputting of data and to reduce the backlog which they predicted would be addressed within three months.

[48] As a result, the SCT team concluded that not as many CARD officers would be needed and recommended the reduction of two Full-Time Equivalent (FTE) CARDS officers by October 31, 2017. As well, the SCT team recommended the elimination of three additional FTE positions, including the level 9 senior manager position held by Mr. Kobe, an executive assistant position and a vacant CARDS officer position previously held by a person on medical leave.

[49] Mr. Kahn testified that all of the positions identified for elimination were eliminated by October 31, 2017. The vacant position was eliminated in August, followed by Mr. Kobe's position, the executive assistant position and the two FTE CARDS officer positions in October. One of the FTE CARDS officer positions eliminated was a contract position in the international team. The other was Mr. Williams' casual position in the commercial team, which was the only casual position in the department and was determined by Mr. Kahn to no longer be needed when he terminated Mr. Williams' employment on October 26, 2017.

[50] In spite of the SCT team's recommendation that two FTE positions on the CARDS team be eliminated, Mr. Williams contends that this quota was achieved when two other CARDS officers resigned. These resignations together with the contract position in the international team that was eliminated meant that three CARDS officer positions had been eliminated.

[51] Mr. Williams submits that he should not have been terminated as the FTE headcount reduction quota of two officers in the CARDS team had been met and exceeded. For Mr. Kahn to still terminate him without a poor performance evaluation and no particular

feedback from management about performance issues demonstrated that he was the victim of discrimination based upon his protected characteristics under the CHRA.

[52] This view is buttressed, in Mr. Williams' view, by Mr. Kahn's email in September of 2017, referred to in paragraph 25 above, about him not being "our sharpest". This was despite the fact that, after his "Quality" rating, there wasn't any really negative performance feedback or direction to him from the Bank to base it on, and at the same time the Bank continued to schedule him for full-time hours throughout his employment. Mr. Williams testified that this is evidence that there was an untrue negative stereotypical bias against Mr. Williams as a Black man by the Bank's management that was discriminatory and led to this termination.

[53] To support his view in this respect, Mr. Williams also testified to two other examples of incidents that occurred demonstrating this untrue negative stereotypical discriminatory bias against him by the management of the Bank because of his protected characteristics under the CHRA—both of which the Bank denied ever happened.

[54] The first incident allegedly occurred when Mr. Kahn was touring the offices after he was appointed to manage the CARDS team and CRA. Mr. Williams testified that during a walk through with Theresa Culnan, Vice-President of CRA, she commented to Mr. Kahn that Mr. Williams was "not going anywhere". A colleague of Mr. Williams who sat next to where the comment was allegedly made was not called as a witness. Mr. Kahn testified that he had no recollection of the incident occurring.

[55] The second incident that allegedly occurred was that Mr. Kobe told Mr. Williams at some point that he intended to promote him to a full-time employee but that Rob Smith who was formerly a director of the CRA department and other managers did not want to advance him because of his race. Neither Mr. Kobe nor Mr. Smtih, who was on Mr. Williams' witness list, were called as witnesses.

[56] According to Mr. Williams, Ms. Chan, his former manager, who was also on his witness list but not called as a witness, allegedly had a preference for Asian women to be hired and advanced instead of him. Mr. Williams testified that this was further evidence of the discriminatory bias against him by the Bank based on untrue negative stereotyping of

Black males like him, although there was no concrete evidence presented at the hearing of the preponderance of Asian women in the workforce or the underrepresentation of Black men.

[57] Mr. Khan acknowledged that it was Ms. Chan who advised him that Mr. Williams was not a top performer which influenced him in not keeping him on and instead terminating him when the quota determined by the SCT team for reduction in the CARDS team of two positions had already been met by the resignations of two CARDS officers and the termination of the CARDS officer from the international team who was on a short-term contract.

[58] Mr. Kahn, however, was adamant in his testimony that he did not discriminate against Mr. Williams in terminating him and in not keeping him on. Mr. Kahn testified that his decision related to the casual position, not the person occupying that position. He testified that his decision had nothing to do with Mr. Williams' race or any of his protected characteristics under the CHRA. Mr. Williams' position was the only casual position on the CARDS team, and Mr. Kahn testified that in view of the uncertainty of the future of the CRA department at the time he preferred to keep only short-term contract employees.

[59] Mr. Kahn testified that he had made the decision in August to terminate the casual position, but it didn't get actioned or communicated to Mr. Williams until October. Further, he testified that, even if he had received positive feedback from Ms. Chan, Mr. Williams would still have had to apply for any available job vacancy and compete for the vacant job opportunity. Mr. Williams could have applied for any CARDS officer non-casual job that was available in order to remove himself from a casual position, but he failed to do so. There was no guarantee that he would have gotten a job if he had applied.

[60] In addition to the Bank's hiring decisions in the CARDS team during the relevant time period, as described above, that Mr. Williams alleged at the hearing were discriminatory to him because they were not posted internally, there were an additional four positions that were posted for jobs inside the Bank but outside of the CARDS team that he applied for but was unsuccessful. He alleged at the hearing that the hiring decisions by the Bank in these applications were also discriminatory to him for reasons explained later in this decision.

[61] These four positions with the Bank, outside of CARDS, that Mr. Williams applied for were:

1. a level 6 analyst strategic projects position on the RO team that he applied for in December of 2016;
2. a level 8 governance, policy and procedures solutions expert position on the Data Governance and Management team that he also applied for in December of 2016;
3. a level 7 business data analyst position through the Successfactors platform that he applied for on August 19, 2017; and
4. a level 7 process analyst position through the Successfactors platform that he also applied for on August 19, 2017.

[62] Mr. Williams only received an interview for the third position referred to above and was unsuccessful in all of his applications for these positions.

[63] The hiring for the level 6 analyst strategic projects position on the RO team was delegated by Mr. Zuniga to his two senior managers, Marianne Soodoo and Sally Sawyer, both of whom were witnesses at the hearing whom I found to be forthright and credible. The position was a temporary full-time position with an end date of December 29, 2017.

[64] Ms. Soodoo and Ms. Sawyer gave similar testimony that they didn't know and had never met Mr. Williams, that they didn't consult with anyone who worked with or managed Mr. Williams in the Bank in reviewing his application, that his application was deficient in various respects and did not match the qualifications that the job required both in terms of his experience and his skills, and that for these reasons he was not granted an interview for the job.

[65] The job involved transferring data from CARDS to RO. According to Ms. Soodoo and Ms. Sawyer, the data input was more complex in RO than CARDS and required a higher level of business knowledge focused on corporate accounts. It required someone with excellent time management and organizational skills with attention to detail.

[66] Both of these witnesses testified that a level 4 employee would not be normally considered for a level 6 job. They both clearly testified that Mr. Williams' application was determined by them to be unsuccessful for valid non-discriminatory work reasons that did not relate in any way to any of his protected characteristics under the CHRA.

[67] The successful candidate for the job was a woman who was far more qualified than Mr. Williams and had been a level 5 analyst on the RO team and a strong performer according to Ms. Soodoo and Ms. Sawyer. Both of these witnesses also testified to the Bank's mandatory policies that promoted respect in the workplace and prohibited discrimination in the workplace.

[68] As with the other three unsuccessful applications that he made that are described below, Mr. Williams testified that he was qualified for the posted positions but that his CARDS managers were contacted by the hiring officers for the positions and gave him poor references for the jobs as they were biased against him because of his protected characteristics under the CHRA.

[69] The Bank denied that any of Mr. Williams' managers were contacted by the hiring managers or their designates in any of his job applications. There was evidence that the Bank only required authorization from managers of employees applying for new jobs in the Bank in their first year of employment. Mr. Williams was not in his first year of employment with the Bank when his applications were made.

[70] The Bank's uncontradicted evidence was that the successful candidates for the jobs that Mr. Williams competed for were clearly the best choices for the jobs based on their skill level and experience for the jobs and that Mr. Williams was neither as qualified nor more qualified than the successful candidates.

[71] Sophia Pugh was the hiring manager for the level 8 governance, policy and procedures solutions expert position. She is currently a vice-president for the Bank and has worked for the Bank for over 20 years in various management positions. Ms. Pugh was a witness at the hearing, and I found her to be forthright and credible.

[72] Ms. Pugh testified that she reviewed Mr. Williams application and decided to give him an interview because she wanted to gather a roster of potential candidates for various jobs that potentially might come up.

[73] Mr. Williams testified at the hearing that, during the interview for this position, one of the interviewers made a comment that “we like the white stuff”. This was the first time that this comment was alleged by him to have been made. Ms. Pugh denied that the comment was made.

[74] Ms. Pugh testified that Mr. Williams’ protected characteristics were not a factor in her decision not to hire him for this position. She testified that he was not the most qualified candidate because he did not possess the knowledge, expertise or experience for the job which was a complex job rated at level 8—far above his job rating at a level 4. The job required expertise in data governance and risk management, as well as experience in writing and executing policy. The successful candidate was a woman who was highly qualified, having served at the director level in two large private financial institutions which was a requirement for the position. Contrary to Mr. Williams’ allegations, Ms. Pugh denied that she contacted any of Mr. Williams’ managers before or after his interview.

[75] Mr. Williams applied to both the business data analyst and the process data analyst postings with virtually identical applications through a platform called Successfactors. Both of these postings were for multiple positions with the Bank, and there were over 330 applications for each posting.

[76] Paul Cameron, Vice President of Talent Acquisition for the Bank, testified about the Bank’s recruitment practices, including those in place in August of 2017 when Mr. Williams made these applications. I found him to be a forthright and credible witness.

[77] Mr. Cameron did not know Mr. Williams. He testified that job recruiters do not have contact with the applicant's managers when screening for interviews. Nor would a recruiter have access to a candidate's protected characteristics through a review of their application. As well, he testified that the recruiters would have had training regarding unconscious bias and the need to avoid discrimination in hiring.

[78] Both of these positions had requirements that candidates have at least three years of similar experience in a financial institution. Mr. Cameron testified that failure to meet this requirement would result in disqualification of the candidate. He testified that Mr. Williams' experience working for the Canada Revenue Agency would not qualify as experience in a financial institution.

[79] Mr. Cameron testified that the business data analyst position was cancelled and that no candidates were hired for that position. Both positions were rated at a level 7 as opposed to Mr. Williams' level 4 job rating. The Bank's evidence was that multi-level promotions were very rare and, if at all possible, only reserved for very high performers. It was the Bank's evidence that Mr. Williams did not get an interview for these positions because he was not qualified and not because of anything related to his protected characteristics under the CHRA.

[80] Mr. Williams did not receive a bonus while he worked for the Bank. He testified that this was because of his race. He was the only casual employee in the CARDS team and one of only three Black employees in CARDS. Non-casual employees did get bonuses yearly at the time of their performance evaluations in October. Mr. Williams felt that his failure to get a bonus was related to what he alleged his manager, Mr. Kobe, told him about management intentionally holding him back by keeping him in the casual role because of his protected characteristics under the CHRA.

[81] Mr. Kahn and Mr. Cameron testified that the Bank did not pay any casual employees bonuses. Mr. Williams was not entitled to a bonus under his contract with the Bank. The Bank's evidence was that this was the only reason he was not paid a bonus, not because of any reason related to any of his protected characteristics under the CHRA. Ms. Soodoo

testified that she was a casual employee of the Bank for three years and did not receive a bonus or benefits.

[82] Mr. Williams did not receive a pay raise during his two plus years of employment with the Bank despite requesting one following his “Quality” rating in his performance review. His email requesting a pay raise wasn’t answered by Mr. Kobe or Ms. Chan. In his view, his failure to get a pay raise was related to his protected characteristics under the CHRA, as other non-casual employees on the CARDS team who did not have his protected characteristics did get pay raises. Neither Mr. Kobe nor Ms. Chan were called by him as witnesses. While Mr. Kahn testified that he didn’t receive the email, he was aware of the request and testified that he told Mr. Kobe to refer the matter to Human Resources (HR) but didn’t know whether Mr. Kobe followed up with HR before Mr. Williams’ employment was terminated in August of 2017.

[83] Mr. Cameron provided evidence about the Bank’s policies regarding base salary adjustments that are considered on an annual basis and are not guaranteed to employees. The determination of whether salary adjustments are warranted, either up or down, from the base pay midpoint/market reference for a particular job, are based on a number of considerations including performance. Normally, this occurs in October, which is when Mr. Williams’ employment was terminated. It is not clear whether he would have received a raise given his performance and his casual employment contract that didn’t provide for a wage increase.

V. LEGAL FRAMEWORK

[84] Section 7 of the CHRA prohibits discrimination in the course of employment on the grounds of race, colour, national or ethnic origin, sex and/or age.

[85] A complainant alleging an infringement of the CHRA bears the onus of showing a *prima facie* case of discrimination. A *prima facie* case is “one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent” (*Ontario Human Rights Commission and O’Malley v. Simpsons-Sears* [1985] 2 SCR 536 at para 28).

[86] The applicable standard of proof is the civil standard of a balance of probabilities. To discharge the onus, a complainant must establish at least a simple “connection” or “factor” rather than a “causal” connection between the impugned conduct and the prohibited ground under the CHRA: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 SCR 789 at para 65 [*Bombardier*].

[87] A complainant must be able to show a link between the impugned treatment and a prohibited ground of discrimination under the CHRA to succeed. Abstract belief or suspicion, without more, is not sufficient to support a claim of discrimination: *Ozcevik v. Canada (Revenue Agency)*, 2021 FC (CanLII) at para 20; *Banda v. Correctional Service Canada*, 2024 CHRT 89 at para 71.

[88] Once a *prima facie* case has been established, the burden shifts to the respondent to refute the allegations of discrimination or demonstrate that the conduct was justified, within the framework of the exemptions provided under the CHRA. If the conduct cannot be refuted or justified, discrimination will be found to have occurred: *Dulce-Crowchild v. Tsuut’ina Nation* 2020 CHRT 6 at paras 10–11 [*Dulce-Crowchild*]; *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 SCR 360 at para 33 [*Moore*]; *O’Malley* at para 28.

[89] To prove a *prima facie* case of discrimination under section 7 of the CHRA, a complainant must generally demonstrate that: a) the complainant has one or more characteristics protected from discrimination under the CHRA; 2) the complainant was subject to adverse treatment or disadvantage; and 3) the complainant’s protected characteristic(s) was a factor in the adverse treatment or disadvantage: *Moore* at para 33; *Fitzgerald v. Toronto Police Services Board*, 2019 HRTO 22.

[90] The *prima facie* test is necessarily flexible and contextual because it must be applied in cases with many different factual situations and based upon various grounds of discrimination (*Canada (Attorney General) v. Johnstone*, 2014 FCA 110 at para 83).

[91] It is not necessary that discriminatory considerations be the sole reason for the employer’s actions or decisions at issue. It is sufficient that the discrimination be a factor,

even if other factors were also at play: *Bombardier* at paras 44–52; *Khiamal v. Canada*, 2009 FC 496 at paras 80–84.

[92] In addition, complainants are not required to prove that the respondent **intended** to discriminate. It is rather the effect of the discriminatory action that is significant: *Bombardier* at paras 40–41.

[93] Human rights case law recognizes that in many cases there is no direct evidence of discrimination because discrimination is not a practice often displayed overtly. Therefore, the role of a tribunal is to examine all of the circumstances of the complaint and determine if there exists a “subtle scent” of discrimination: *Basi v. Canadian National Railway*, 1988 CanLII 108 (CHRT); *Turner v. Canada Border Services Agency*, 2020 CHRT 1 at para 48.

[94] Circumstantial evidence can assist decision-makers in drawing an inference of discrimination where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses. As such, circumstantial evidence and inferences are therefore typically all the more relied upon in such cases: *Neilson v. Nee Tahi Buhn Indian Band*, 2019 CHRT 50 (Can LII) at para 46; *Peel Law Association v. Pieters*, 2013 ONCA 396 (CanLII) at paras 72–73, 111 [*Pieters*].

[95] Courts and tribunals have recognized that racial discrimination may be challenging to prove given that it often manifests in very subtle ways and because “racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices” (*Pieters* at para 111).

[96] In job competition cases under section 7 of the CHRA, where the complainant is not hired and someone else is, the Tribunal has established a three-part test as a useful guide. In such cases, the complainant must show that: 1) he/she was qualified for the job at issue; 2) he/she was not given the job at issue; and 3) someone no better qualified, but lacking the complainant’s protected characteristic, was given the job. The test is not to be applied in a rigid or arbitrary fashion; rather, the circumstances in each case need to be weighed. Ultimately, the question will be whether the complainant has demonstrated that the evidence is complete and sufficient to justify a verdict in favour of the complainant, in the absence of

an answer from the respondent (*Premakumar v. Air Canada*, 2002 CanLII 23561 (CHRT) at paras 74–77).

[97] A respondent can present evidence to refute an allegation of *prima facie* discrimination. Where a respondent refutes the allegation of discrimination, the explanation must be reasonable, credible and not a mere “pretext” or an excuse to conceal discrimination (*Dulce-Crowchild* at paras 10–11).

[98] A shifting explanation for a respondent’s conduct can be used to support the inference of discrimination (*Pieters* at para 105).

[99] Subconscious or unintentional racial biases are present in society even if no intentional or overt discrimination exists. An inference can be drawn of a subconscious untrue negative stereotypical bias by an employer where an employee is refused an employment opportunity based upon a false perception of his personality and actual performance (*Turner v. CBSA*, 2020 CHRT 1 at paras 49, 106, 109 and 113).

[100] Failure to call witnesses such as co-workers who allegedly have material and direct knowledge supporting a complainant’s case can result in an adverse inference being drawn by a human rights tribunal (*Campbell v. SST Group Construction Companies Ltd.*, 2017 HRTO 1643 at paras 38, 40 and 44–45).

[101] In making staffing decisions, it is not the Tribunal’s role to second-guess the evidence of the decision-makers to determine whether an applicant meets job qualifications or not or whether, in a restructuring, a job should be eliminated; rather, the Tribunal’s role is to determine whether or not those decisions are tainted by discrimination (*Tazehkand v. Bank of Canada*, 2020 FC at para 52; *Durrer v. Canadian Imperial Bank of Commerce*, 2007 CHRT 6 at para 63–64).

VI. SUMMARY OF THE COMPLAINANT’S POSITION

[102] Mr. Williams submits that there were 36 staffing positions in the CARDS team during the relevant time period that were not posted internally and, as a result, he was not given a fair chance to compete. He alleges that this failure to post these positions internally was

related to his protected characteristics under the CHRA. He acknowledges that his CARDS officer colleagues, who did not have his protected characteristics, were also not made aware of these positions because the Bank failed to post them internally. He submits that the positions were filled by other candidates who were not even in the CARDS team, without his protected characteristics, who became aware of the vacancies and were hired.

[103] Mr. Williams submits that he believes that management was deliberately thwarting his career advancement because of his protected characteristics in not posting the CARDS positions internally. He relies on the alleged discussion he had with his former senior manager, Mr. Kobe, who he says told him that he wanted to promote him from his casual status to full-time in CARDS but that other members of management did not want to see him advance, including Ms. Chan. Mr. Williams also alleges that Ms. Chan, who also managed him, favoured Asian women as hires over him. As well, he claims that Ms. Culnan, Vice-President in the CRA department, made an unfounded comment to Mr. Kahn that he “was not going anywhere”, showing her racist bias against him as a Black man.

[104] Mr. Williams argues that he was unjustly denied an interview for the level 6 analyst, strategic projects job posting on the RO team because of his race, colour or ethnic origin. Again, he believes that management was deliberately thwarting his career progression, that Mr. Zuniga would have sought permission from his CARDS managers to interview him and that the managers, including Ms. Chan, would have given him poor reviews because of their racist biases against him, and that Mr. Kahn, who had made the “not the sharpest” comment, and Ms. Culnan, who had made the “not going anywhere” comment referred to above, also would have given him poor reviews for the job because of their racist biases against him. Finally, he submits that he was as or more qualified for this job than other candidates who received interviews for the position.

[105] Mr. Williams did get an interview for the level 8 governance, policy and procedures expert job posting but argues that he wasn’t successful in obtaining this position because of his race, colour or ethnic origin and cites the alleged comment by one of the interviewers that “we like the white stuff” to support his contention. He feels he was qualified for the position. As well, he argues that his CARDS managers were likely contacted and would have given him a negative reference for the reasons referred to above.

[106] Mr. Williams submits that he should have gotten interviews for the level 7 job postings for multiple roles for the business data analyst and the process analyst positions that he applied for at the same time through the Successfactors platform. He contends that the decisions to deny him interviews were discriminatory based upon his protected characteristics and the negative stereotypical biases that his managers at CARDS allegedly had about him when they were contacted by the hiring managers for these positions. He felt he was qualified for at least an interview given his experience and skills.

[107] Mr. Williams contends that he was discriminated against by the Bank for not providing him with a bonus as other employees received. He was the only casual employee in CARDS and one of only three Black employees on the team. Again, in his view, this was a case of management not wanting to let him succeed because of his protected characteristics under the CHRA as Mr. Kobe allegedly had warned him about.

[108] Mr. Williams also submits that he should have got a raise like other employees based upon his performance review. He feels that the failure to even answer his request for a raise shows that management of the CARDS team was biased against him because of his protected characteristics under the CHRA.

[109] Mr. Williams strongly believes that he was discriminated against when his employment was terminated, without cause and without any reason given in his termination letter. He believes that his employment termination was contrary to his “Quality” rating in his performance evaluation. In his view, Mr. Kahn discriminated against him by choosing to terminate his employment, as he could and should have retained Mr. Williams when the headcount had already been reduced by three employees in the CARDS team—one more than the SCT team had recommended. The termination took place at a time when new employees were still being hired into full-time positions in the CARDS team, and the Bank continued to ask him to work full-time hours as a casual employee. Given these contradictions, Mr. Williams believes that Mr. Kahn’s stated reason for terminating his employment for operational reasons, as he held the only casual position in CARDS, was a pretext for discriminating against him because of his race and other protected characteristics under the CHRA.

[110] Mr. Williams contends that the Bank shifted its reasons for terminating his employment. He believes that it was really a case of Mr. Kahn deciding to terminate him without cause on the basis of an unfounded comment made by Ms. Chan that he was not a top performer. This comment was made in spite of his performance review that he was a “Quality” performer who was never given any advice by management about any performance shortcomings after his performance review. Mr. Williams argues the Ms. Chan and Mr. Kahn came to their conclusion about his performance without any basis because they held untrue negative stereotypical views about him based on his protected characteristics. This treatment of him was, in his view, adversely different than the way other employees who did not have his protected characteristics were treated.

[111] Mr. Williams submits that his complaint has been substantiated and that the Tribunal should make such a finding and apply damages for a contravention of section 7 under the CHRA.

VII. SUMMARY OF THE RESPONDENT’S POSITION

[112] The Bank’s main argument is that Mr. Williams failed to discharge the onus of proving his case, in accordance with the law, based on the evidence adduced at the hearing.

[113] The Bank argues that Mr. Williams’ allegations of discrimination are based on his perceptions and impressions about decisions made by the Bank that are not supported by the facts adduced at the hearing or reasonably linked to the grounds of discrimination alleged by him. The Bank urges the Tribunal not to infer discrimination by the Bank from these false perceptions and impressions of events held by Mr. Williams.

[114] The Bank submits that its witnesses were all forthright, genuine and credible in their evidence that the Bank’s decisions during the relevant time period on the matters challenged by Mr. Williams were not discriminatory in any way. The Bank submits that Mr. Williams was not a credible witness in various aspects of his evidence. Wherever there was a dispute between the parties about a point in the evidence, the Bank submits that the fact-based evidence from the Bank’s more experienced and credible witnesses ought to be preferred over the impressionistic and speculative evidence of Mr. Williams.

[115] The Bank argues that the Tribunal ought to draw an adverse inference from Mr. Williams's failure to call any witnesses to support his case, despite testifying that such support existed from potential witnesses, some of whom the Tribunal issued summonses for at his request that were not served. He didn't call Mr. Kobe, his former manager, who he said told him that he would try to make him a permanent employee but that other managers were thwarting his progress because of his race. The Bank says an adverse inference should be drawn by the failure to call Mr. Kobe as a witness as it undercuts one of Mr. Williams' primary perceptions that there was a concerted effort to block his progress by the Bank's managers because of his protected characteristics under the CHRA.

[116] The Bank denies that any of the CARDS jobs that became necessary to fill on a short-term basis to deal with a temporary backlog of work at CARDS because of regulatory requirements and the impacts of the back and forth with the RO project were only posted externally. It relies on its evidence that all vacancies must be posted both internally and externally, except for short-term transfers of existing employees to fill short-term needs, in accordance with the Bank's policies.

[117] The Bank argues that its evidence showed that all of the vacancies in CARDS that Mr. Williams alleges were not posted internally for discriminatory reasons were in fact posted internally and externally and that Mr. Williams could have applied for them but didn't.

[118] Moreover, the Bank argues that if, as Mr. Williams alleges, the CARDS vacancies weren't posted internally, then all of his CARDS officer colleagues who lacked Mr. Williams' protected characteristics would have been treated in exactly the same way as he was. This would have meant that his treatment by the Bank's hiring decisions would not have had an adversely different impact on him than the impact on all of his CARDS officer colleagues and would not meet the legal test for discrimination.

[119] Further, if the CARDS vacancies that he has challenged weren't posted internally and Mr. Williams and his colleagues were genuinely concerned about all the hiring that was observed by them to be taking place in CARDS, as he has testified to, he could have enquired about applying for the vacancies and/or complained to higher management—neither of which he did.

[120] The Bank argues that Mr. Williams' testimony that his former direct manager in CARDS, Ms. Chan, preferred older Asian women as hires should not be accepted. As with Mr. Kobe, Mr. Williams did not call Ms. Chan as a witness even though she was on his witness list and the Tribunal had issued a summons to him for her attendance that he didn't serve. As well, he did not provide any credible evidence about his suspicions regarding Ms. Chan's preferences for Asian women as hires.

[121] Likewise, the Bank denies that the comment that Mr. Williams alleged was made by Ms. Culnan to Mr. Kahn that Mr. Williams was "not going anywhere" ever took place based on the contrary evidence from Mr. Kahn and the failure by Mr. Williams to produce corroborating evidence from a potential witness who sat by where the incident allegedly took place. Even if it had taken place, at best, the Bank argues it was a vague comment that did not establish discrimination.

[122] With respect to the four unsuccessful applications for positions outside of CARDS that Mr. Williams made, the Bank submits that it did not discriminate in any way against him in its decisions. The Bank asserts that Mr. Williams did not prove that he was discriminated against in any of these decisions by presenting any credible evidence of discrimination. The Bank's position is that he was not qualified for any of the positions that he applied for and that is the only reason he was unsuccessful.

[123] The Bank argues that there was no evidence that any of the Bank's CARDS managers were contacted in the hiring process for these positions or that they gave any negative feedback about him. Nor was there any evidence that he was as qualified as any of the successful applicants for any of the positions that were all at a much higher level than his position and required much more experience and skills than Mr. Williams had. Mr. Williams didn't even know who the successful candidates were.

[124] In the one case where Mr. Williams received an interview for the governance and procedures expert job posting at a level 8, the Bank denies that Mr. Williams was told by an interviewer that they "liked the white stuff", as he alleges. This comment was raised by Mr. Williams for the first time at the hearing and it is not clear what it meant in any case, even if it was made. Except for the interviewers for this position who met him for the

interview, none of the other people involved with the hiring process for the positions that he applied for outside of CARDS even knew who Mr. Williams was or what his protected characteristics were.

[125] The Bank submits that Mr. Williams has not adduced any credible evidence to link its decisions with respect to his failure to receive a bonus or pay increase to a protected characteristic. The Bank relies on his casual status and the contract that the Bank had with Mr. Williams to argue that Mr. Williams was not entitled to either a bonus or a pay raise.

[126] Even though the Bank did not reply to his request for a pay raise, by the time a pay raise could have been awarded in October when they were normally paid to employees for performance in conjunction with performance evaluations, Mr. Williams was no longer an employee of the Bank. As such, his treatment by the Bank was not adversely different than any other Bank employee according to the Bank and therefore not discriminatory according to the applicable legal tests.

[127] The Bank relies on its evidence described in paragraphs 25, 28, 29 and 30 above to support its position that Mr. Williams' employment was not terminated because of any of his protected characteristics under the CHRA. Rather his employment was terminated for valid operational business reasons, as a result of a legitimate cost-cutting restructuring initiative carried out by the Bank across the whole Bank that made the retention of Mr. Williams' position, as the only casual position in the system, unnecessary. Most of this evidence was provided by Mr. Kahn, a seasoned professional manager whose evidence, according to the Bank, was credible when he testified that the elimination of the casual position was the focus of the termination rather than the person. Moreover, the Bank argues that Mr. Williams failed to apply for any vacancies of the non-casual vacant positions in CARDS which he could have applied for, but didn't.

[128] As with his other allegations concerning the Bank's decisions that he challenged in this case as being discriminatory, the Bank submits that Mr. Williams' termination was not proven by him to be discriminatory or linked to any of his protected characteristics under the CHRA. It contends that the allegations made by Mr. Williams are based on his impressions and perceptions about events rather than on any credible evidence adduced at the hearing.

The Bank contends that such speculation should not be used to infer that discrimination took place in the termination or any of the other decisions by the Bank that are being challenged in this case by Mr. Williams because of any of his protected characteristics.

[129] The Bank submits that the complaint should be dismissed as it has not been substantiated by Mr. Williams on the basis of the evidence adduced at the hearing and according to the law.

VIII. ANALYSIS

[130] Mr. Williams **feels** that he was discriminated against in his short career with the Bank. He has protected characteristics under the CHRA, including his race and colour. He was subject to adverse treatment or disadvantage by the Bank, including the termination of his employment at a time when others were being hired and the need to reach the SRT recommended headcount reduction had been met in the CARDS team. In this regard, his case satisfies the first two parts of the test in *Moore* referred to in paragraph 89 above.

[131] However, to satisfy the third part of the *Moore* test, there would have to be evidence, either direct or circumstantial, that his protected characteristics were a factor in the treatment or disadvantage.

[132] On the evidence adduced at the hearing, I find that there was no direct (overt) or circumstantial evidence that any of Mr. Williams' protected characteristics were a factor in any of the decisions by the Bank that are being challenged by Mr. Williams.

[133] Mr. Williams made a number of allegations about comments that were made that he felt represented direct evidence of racism or bias against him by the Bank.

[134] For example, Mr. Williams alleged, for the first time at the hearing, that someone at his interview for the position referred to in paragraphs 71–74 above had said that “we prefer the white stuff”. Ms. Pugh, who attended the interview, testified that she did not recall any such thing being said and that she definitely would have remembered it if it had been said. She is Indigenous and has promoted diversity, equity and inclusiveness in the workplace at the Bank. Even if the comment was made, it is unclear what this comment actually meant,

as it could have meant many other things than racism. I accept Ms. Pugh's evidence that the comment was not made.

[135] Another example of alleged direct evidence of discrimination, that Mr. Williams placed a great deal of importance on and repeatedly referred to, was Mr. Kobe's alleged comments to him that he wanted to promote Mr. Williams but that Mr. Williams was being thwarted in his efforts to progress in the Bank because of bias against him on the part of other managers in CARDS because of his race or other protected characteristics. Mr. Kobe was his manager until he too was let go by the Bank as part of the SRT initiative. He could have been called as a witness by Mr. Williams to corroborate this potentially crucial evidence. Mr. Kobe was not even listed as a potential witness on Mr. Williams' witness list for the hearing and didn't appear as a witness at the hearing.

[136] I draw an adverse inference from Mr. Williams' failure to call Mr. Kobe as a witness. I am very doubtful about Mr. Williams' hearsay evidence that Mr. Kobe actually told him that he wanted to promote him but that other managers in CARDS were biased against him and gave him poor references for jobs he applied for in the Bank and were trying to thwart his progress because of any of his protected characteristics under the CHRA. The Bank's witnesses' testimonies at the hearing contradict Mr. Williams' evidence that managers in CARDS were biased against him, and I accept their evidence over Mr. Williams' evidence as it is more credible. There is no evidence that Mr. Williams ever took his concerns regarding alleged discrimination with respect to any of the issues that are in dispute in this case to the Bank's HR department and/or to higher management through the Bank's available internal avenues for employees to raise violations of its respectful workplace behaviour policy or its anti-discrimination policy.

[137] I am also doubtful about Mr. Williams' alleged direct evidence concerning the comment allegedly made by Ms. Culnan to Mr. Kahn, referred to in paragraph 54 above, that Mr. Williams "was not going anywhere". I accept Mr. Kahn's evidence that he didn't remember such a statement being made. I am also drawing a negative inference from the fact that Mr. Williams did not call as a witness a colleague who sat nearby where the incident allegedly occurred to corroborate this allegation. In any case, even if the comment was

made, it is not clear exactly what the comment meant and how it could be connected to a prohibited ground of discrimination under the CHRA.

[138] Ms. Chan was on Mr. Williams' witness list for the hearing and the Tribunal had issued a summons for her to appear as a witness at the request of Mr. Williams. At the outset of the hearing, Mr. Williams indicated to the Tribunal and the Bank that he would be calling all of the witnesses on his list, including Ms. Chan. However, after the hearing was underway, as noted above, Mr. Williams indicated to the Tribunal and the Bank that he had been unable to serve Ms. Chan or contact her or any of the other witnesses on his list that he had received summonses for from the Tribunal at his request several weeks earlier. He made no arrangements for their personal service and appearance fees as directed by the Tribunal in its correspondence with Mr. Williams respecting the summonses.

[139] This is not to suggest that, as a result of not calling Ms. Chan as his witness, I would draw a negative inference about what Ms. Chan's testimony might have been. However, in addition to Mr. Kahn, Ms. Chan is the person who Mr. Williams has alleged was involved with a number of decisions that he believed went against him because of his protected characteristics under the CHRA. Ms. Chan simply didn't appear at the hearing to either corroborate or refute his allegations; however, witnesses that the Bank called gave credible evidence that appears to contradict the evidence of Mr. Williams about Ms. Chan's allegedly discriminatory bias against him.

[140] I do not find, on the evidence adduced at the hearing, that there is any direct evidence of discrimination by Ms. Chan against Mr. Williams as he has alleged. In particular, that Ms. Chan favoured hiring Asian women, that she assisted in Mr. Kahn's decision to terminate his employment by giving him falsely unfavourable information about Mr. Williams' work performance, or that she, along with his other CARDS managers, were blocking his opportunities to progress from his causal job status because of his race or other protected characteristics, including getting a pay raise, a bonus or good references for other jobs that he applied for within the Bank.

[141] Other than making these allegations, Mr. Williams' evidence did not reasonably connect any of these allegations to a prohibited ground of discrimination under the CHRA.

There was no concrete evidence, statistically or otherwise, of a preference by Ms. Chan or anyone else at the Bank for hiring Asian women over Mr. Williams. There was no evidence adduced at the hearing about the race or colour of any of the successful hires for jobs that Mr. Williams applied for and that he is contesting.

[142] Mr. Williams didn't apply for any of the CARDS jobs that he says were not posted internally. This alleged uncompetitive non-posting of internal job openings, if it happened at all, would have affected all of Mr. Williams' colleagues in CARDS officer positions in the same way, regardless of their protected characteristics. I accept the evidence of the Bank's witnesses that postings for jobs are always done internally, and the jobs in question were posted both internally and externally. I also accept the Bank's witnesses' evidence that transfers of existing employees between departments do not need to be posted.

[143] It is inconceivable to me that all of the jobs that Mr. Williams alleged were filled without internal posting in CARDS could have occurred, as he has suggested, for the purpose of targeting him specifically and thwarting his career progression because of his race or colour. There is simply no evidence that Mr. Williams experienced any disadvantage as a result of any alleged non-competitive process that was distinct in comparison to the treatment of others who do not share the same protected characteristics as him. Despite Mr. Williams' perceptions, I find no evidence was adduced at the hearing to prove discrimination by the Bank against Mr. Williams in relation to the alleged uncompetitive non-posting of internal job openings.

[144] None of the hiring managers for the jobs that he applied for knew Mr. Williams or his race, colour or other protected characteristics. I accept the Bank's evidence that none of the hiring managers for his applications contacted Mr. Williams' managers at CARDS or were contacted by Mr. Williams' CARDS managers during the hiring process. In fact, the evidence was that this would not have been permitted. According to the evidence about the Bank's policies, only within the first year of employment with the Bank was the consent of an employee's manager required to make applications for jobs outside of an employee's department that he or she was initially hired into. Mr. Williams' applications for the jobs that are contested in this matter were made after his first year of employment.

[145] Mr. Kahn, not Ms. Chan, made the decision to terminate Mr. Williams' employment. Mr. Kahn did consider the information from Ms. Chan that he was not a top performer when he made his decision not to hire him into a vacancy in CARDS which he could have done. This information may have been flawed, as Mr. Williams had only had the one performance evaluation that was rated "Quality" which is at least an average rating. However, there were some negatives mentioned in his performance review by Ms. Chan involving his productivity and timeliness in doing tasks.

[146] Still the Bank continued to schedule Mr. Williams to work full-time hours through the entire relevant period. The Bank didn't appear to have advised Mr. Williams of any further performance or other issues or give him training or coaching to address and improve any deficiencies in his performance. Instead, Mr. Kahn relied on the information from Ms. Chan, without checking into the veracity of it himself. He should have done so, in my opinion. I think he could have decided to hire him into a vacant position in CARDS, even though Mr. Williams would have had to apply for it, which he didn't do.

[147] I also think that Mr. Kahn could have decided not to terminate Mr. Williams' employment. However, I don't think that he made that decision or any other decision involving Mr. Williams' employment because of a conscious or unconscious bias against Mr. Williams. I am not disposed to second-guess Mr. Kahn's decision about not hiring Mr. Williams to a vacant position or his decision to terminate him, as I do not feel that those decisions were in any way tainted by discrimination. In that regard, I rely on my observations and sense of Mr. Kahn as a person who appeared to me to be absolutely credible, experienced, fair and responsible and not in any way likely to be a racist. I accept his evidence that was consistent throughout that he acted entirely on the basis of what he saw was an operational opportunity to eliminate a position (not the person) that was not necessary and was anomalous in the organization, as the only casual status job. He did not discriminate against Mr. Williams in any way, on the evidence adduced before me at the hearing, in spite of Mr. Williams perception otherwise.

[148] Although his choice of words could have been better, I also accept Mr. Kahn's evidence that he wrote the "not one of our sharpest" email referred to in paragraph 25 above, not for any discriminatory reason but because he had been given information about

Mr. Williams' performance that he relied on as a result of having been directed by the Employee Relations department to check on this as part of his inquiries respecting severance obligations to Mr. Williams under the *Canada Labour Code*, R.S.C., 1985, c. L-2.

[149] All of the hiring managers and others who gave evidence at the hearing about the four applications that Mr. Williams applied for, as noted above, confirmed that the applications submitted did not justify him being hired to any of the positions, and the decisions to not hire him were based entirely on non-discriminatory considerations. I accept their evidence.

[150] The Bank's evidence was consistent that Mr. Williams' applications were deficient, his skills and experience were lacking and the positions being applied for, which all were at significantly higher job ratings than his then-current job level 4, had requirements and complexity beyond Mr. Williams skills and experience. There was no evidence submitted by Mr. Williams that satisfied the third legal test described in paragraph 96 above—namely that someone no better qualified than Mr. Williams, but lacking his protected characteristics, was given the job. In fact, Mr. Williams did not know who got the jobs or what their qualifications or protected characteristics were. The Bank's evidence, which I accept, was that the successful hires clearly were superior to Mr. Williams, in terms of experience, knowledge and skills required for the jobs. I find that there was no credible evidence that any of the decisions made by the Bank in the four job applications for jobs submitted by Mr. Williams that he is challenging in this case were tainted by discrimination.

[151] I am unable to find, on the evidence adduced at the hearing, that the Bank intentionally discriminated against Mr. Williams, in any of the decisions it made that are being challenged in this case by him.

[152] With respect to the Bank's refusal to give Mr. Williams a bonus or wage increase, I also find that there was no credible evidence adduced at the hearing linking these decisions to a prohibited ground of discrimination under the CHRA. While it would have been nice for the Bank to provide Mr. Williams with a bonus and a wage increase, I accept the Bank's

evidence that he was not entitled to either as a casual employee under his employment contract with the Bank or by virtue of the Bank's practices for wage adjustments.

[153] I am unable to find, on the evidence adduced at the hearing, that there is any direct evidence that the Bank discriminated against Mr. Williams in any of its decisions respecting his employment with the Bank or that it intended to discriminate against him in any way.

[154] As is often the case in complaints like this one, where there is no direct evidence of discrimination, the result turns on whether there is sufficient indirect or circumstantial evidence adduced at the hearing from which the Tribunal can reasonably infer that the third part of the legal test described in paragraph 89 above has been satisfied. In making such inferences, one needs to discern whether the alleged acts of discrimination might be unintentional and unconscious. This is a difficult task that essentially involves trying to read the minds of people alleged to have acted in a discriminatory manner even if they did not do so intentionally. However, such an inference must be based on a reasonable and fair assessment of the circumstantial evidence adduced, including whether the impugned actions are connected to a ground of discrimination prohibited under the CHRA.

[155] While Mr. Williams has the feeling or impression that he was discriminated against by the Bank in the decisions it made in his employment that he is challenging, he has failed to produce sufficient evidence linking any of the decisions to a prohibited ground of discrimination under the CHRA. I am unable to draw an inference from the evidence adduced at the hearing that Mr. Williams' protected characteristics were a factor in any of the decisions made by the Bank that he is challenging in this case.

IX. ORDER

[156] As Mr. Williams has failed to substantiate his complaint on the evidence adduced at the hearing, his complaint is dismissed.

Signed by

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
August 22, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: T2566/12320

Style of Cause: Marcus Williams v. Bank of Nova Scotia

Decision of the Tribunal Dated: August 22, 2025

Date and Place of Hearing: May 12-16, 2025
May 20-22, 2025
May 27, 2025

By videoconference

Appearances:

Marcus Williams, Self-represented (May 12-15, 2025)

Christopher Karas, Representative for the Complainant (May 16, 20-22 & 27, 2025)

Tiffany O'Hearn Davies and Samantha Black, for the Respondent