

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 98
Date: September 26, 2025
File No.: HR-DP-3111-25

Between:

Hume Gunn

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

International Longshore and Warehouse Union Local 500

Respondent

Ruling

Member: Jo-Anne Pickel

I. OVERVIEW

[1] The following are my reasons for denying the motion made by the Respondent, the International Longshore and Warehouse Union Local 500, requesting that this complaint be held in abeyance pending the outcome of a judicial review application that it has filed in another case.

[2] The Complainant, Hume Gunn, is a member of the Respondent union. At the time he filed this complaint with the Canadian Human Rights Commission (the “Commission”), the Complainant was either 71- or 72-years old. He was receiving a pension under the Waterfront Industry Pension Plan (the “pension plan”) but wished to continue working at least until he turned 76 years old.

[3] The Complainant alleges that the Respondent’s rules for the dispatch of workers discriminate against him based on age contrary to the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6 (CHRA). Two of the Respondent’s policies are at the core of this complaint: the Pensioner Dispatch Rule (PDR) and the Pension Equalization Rule (PER). The PDR provides that employees who elect to receive pension benefits are not allowed to be dispatched for work until non-pensioned employees have been dispatched. The PER makes the PDR applicable, not only to workers who elect to receive a pension, but also to workers who are forced by the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) to begin receiving pension benefits at the age of 71. In addition to challenging the Respondent’s dispatch policies, the Complainant alleges that certain representatives or members of the Respondent made harassing comments against him based on his age.

[4] A different member of the Tribunal decided a complaint raising substantially the same issue regarding the PDR and PER in *Sidhu & Kopeck v. International Longshore and Warehouse Union Local 500*, 2025 CHRT 11 [*Sidhu & Kopeck*]. The parties disagree on whether the facts of the two cases are substantially the same or slightly different. However, I do not find that any differences in the facts are pertinent to this motion. The member in *Sidhu & Kopeck* agreed to bifurcate the proceeding and to issue a decision on the merits before addressing the remaining issues in the case. In his merits decision, the member

concluded that the Respondent's implementation of the PDR and PER were discriminatory contrary to the CHRA. The Respondent sought judicial review of the Tribunal's merits decision. It also asked the member to stay the proceeding (that is, to not proceed with the remaining steps in the case) until the judicial review was resolved. The member denied the Respondent's request, concluding that it was not appropriate to stay the proceeding pending a decision in the judicial review application.

[5] The Respondent has brought a similar motion in this case. It has asked that I put this complaint into abeyance until the completion of its judicial review application in *Sidhu & Kopeck*.

II. DECISION

[6] For the reasons detailed below, I deny the Respondent's motion.

III. ISSUE(S)

[7] The sole issue I must determine is whether it is appropriate to place this complaint into abeyance pending the results of the judicial review of the *Sidhu & Kopeck* decision.

IV. ANALYSIS

A. Issue 1: Is it appropriate to place this complaint into abeyance?

[8] No. For the reasons set out below, I find that it is not appropriate to do so.

(i) What the complaint is about

[9] In its motion, the Respondent states that the Complainant alleges that the Respondent has discriminated against him by having the pension plan conform with the *Income Tax Act* and its regulations. In fact, that is not what the Complainant is alleging in his complaint. Instead, what he is alleging is that the combined effect of the Respondent's own policies, the PDR and the PER, discriminate against him by reducing his dispatch

opportunities, at least in part, because of his age. It is true that the Complainant has sought as a remedy that his pension be supplemented by a certain amount. However, contrary to the Respondent's submission, the Complainant has not challenged *the Income Tax Act's* provisions regarding the age at which he was required to begin receiving his pension or the rules against pension accrual for those who work past age 71. Instead, what he is challenging are the Respondent's dispatch rules, which apply to him as a worker older than 71 who was forced to start receiving pension benefits. It is this issue that was referred to the Tribunal by the Commission, and it is this issue that I will have to address in this case.

(ii) Related proceedings

[10] In its motion, the Respondent argued that there are three ongoing proceedings that bear on the material issues of this complaint:

- 1) The judicial review application of the Tribunal's merits decision in *Sidhu & Kopeck*;
- 2) The ongoing *Sidhu & Kopeck* proceeding at the Tribunal which includes addressing a notice of constitutional question filed by the Respondent regarding the constitutionality of the *Income Tax Act* and its regulations as well as the appropriate remedy in the case; and
- 3) A motion for an injunction filed by another member of the Respondent union.

(iii) Abeyance is not appropriate in the circumstances

[11] It is well accepted that the Tribunal has the power to stay its proceedings or place complaints into abeyance where it is in the interest of justice to do so: *Laurent Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2018 CHRT 5. However, the Tribunal will only do so in exceptional circumstances: *Bailie et al. v. Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 at para 22. In assessing whether it is in the interest of justice to place a complaint into abeyance, the Tribunal will consider all of the circumstances, including the risk of duplication of judicial and legal resources, the length of the requested abeyance, the

reason for the request, the stage of the proceedings and any prejudice to the parties: *Adams v. Canadian Nuclear Laboratories*, 2024 CHRT 87 at para 11.

[12] The Respondent argues that there would be a significant risk of duplicating proceedings in a landscape of legal uncertainty if I were not to grant the abeyance they have sought. It argues that this would undermine the principle of finality and waste judicial resources. The Respondent argues that its judicial review will address a number of issues, including (i) whether the member in *Sidhu & Kopeck* departed from established case law by interpreting the *Canada Labour Code*, R.S.C., 1985, c. L-2 and (ii) whether the member failed to properly assess the impact of the decision on other union members. The Respondent argues that it is in the interest of justice and finality to have these issues decided before this complaint is addressed. It also argues that the resulting delay would be minimal.

[13] I do not agree with the Respondent's arguments.

[14] To begin, it is worth recalling that this 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. In my view, if I were to place this complaint into abeyance, the delay would likely be significant. The Respondent filed its application for judicial review in March 2025. There is no evidence that the Federal Court has taken any steps in relation to the application other than naming the Attorney General of Canada as a respondent. The hearing of the application and any potential appeals could take a very significant amount of time.

[15] Meanwhile, the Complainant filed his complaint with the Commission over four and a half years ago, in January 2021. Based on his submissions, he was either 71 or 72 when he filed his complaint, which would mean that he is currently 75 or 76 years old. A factor that I must weigh is the potential prejudice caused to the Complainant of further delay in this case, given his advanced age.

[16] On the other side of the coin, I must weigh any potential waste of judicial resources or uncertainty in the law that would arise from my denial of the Respondent's motion. At this point, it is unclear how the Federal Court will decide the Respondent's judicial review

application. While the Respondent argues that the member in *Sidhu & Kopeck* erred by interpreting the *Canada Labour Code*, it seems clear from his decision that he did not do so. The fact that the member did not accept the Respondent's justification which was itself based on the *Canada Labour Code* does not mean that the member applied the *Code*. It is clear from his decision that he applied the CHRA and the case law applicable to the *bona fide occupational requirement* (BFOR) defense under the CHRA. In addition, although the Respondent argues that the member in *Sidhu & Kopeck* erred in not applying the more relaxed BFOR test, the member provided detailed reasons for his application of the standard BFOR test as set out in the Supreme Court of Canada's case law: *Sidhu & Kopeck* at paras 43–46. For this reason, it is far from clear that the result of the Respondent's judicial review application will have a significant effect on this case.

[17] As for the fact that the Respondent has filed a Notice of Constitutional Question in *Sidhu & Kopeck*, I do not see the relevance of such a Notice to the case before me. The Notice in *Sidhu & Kopeck* appears to raise the issue of the constitutionality of the sections of the *Income Tax Act* and its regulations that require persons to begin receiving pension benefits at the age of 71 and that prevent them from continuing to accrue pensionable service after that time. As noted above, this complaint does not challenge these provisions. What it challenges are the Respondent's policies which restrict dispatch opportunities for workers who chose to continue working even as they collect pension benefits after the age of 71. One of the remedies sought by the Complainant in this case is an increase in his pension benefits which may or may not be a remedy that this Tribunal has the power to order. However, the fact that he has sought this remedy does not convert his complaint to a challenge to the *Income Tax Act* or its regulations. Given that the complaint does not challenge either the *Income Tax Act* or its regulations, I do not consider it relevant that the Respondent has filed a Notice of Constitutional Question that remains to be addressed by the Tribunal in *Sidhu and Kopeck*.

[18] Finally, I do not consider that the injunction application filed by another union member has any relevance to my decision as to whether this complaint should be held in abeyance. As noted by the Respondent in its reply, the Federal Court has dismissed the application. Therefore, it has no bearing on my ruling on this motion.

[19] Weighing all of the relevant factors, I find that the prejudice caused to the Complainant and to the expeditiousness of this process if I were to place this complaint into abeyance outweighs any potential for the waste of judicial and legal resources that could theoretically arise by denying this motion.

V. ORDER

[20] For all the above reasons, the Respondent's motion is denied. The Tribunal's registry will write to the parties to advise them of the deadlines for the next steps in this proceeding.

Signed by

Jo-Anne Pickel
Tribunal Member

Ottawa, Ontario
September 26, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3111-25

Style of Cause: Hume Gunn v. International Longshore and Warehouse Union Local 500

Ruling of the Tribunal Dated: September 26, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Hume Gunn, Complainant

Craig D. Bavis, for the Respondent