Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2026 CHRT 11
Date: February 2, 2026
File Nos.: T2733/10921 and T2734/11021

Between:

Kewal Sidhu & Robert Kopeck

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

International Longshore and Warehouse Union Local 500

Respondent

Ruling

Member: Paul Singh

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I. OVERVIEW

[1] Robert Kopeck and Kewal Sidhu (the “Complainants”) say that the International Longshore and Warehouse Union Local 500 (the “Respondent” or the “Union”) engaged in age-based discrimination contrary to sections 9 and 10 of the *Canadian Human Rights Act* R.S.C., 1985, c. H-6 (the “CHRA”) when the Union instituted a policy limiting their work opportunities because they collect a pension (the “Complaints”).

[2] The Complaints were consolidated with the consent of the parties, and it was agreed that the proceedings would be bifurcated into two separate phases. If liability was established, the Tribunal would then determine remedies in a subsequent hearing.

[3] The Union subsequently served on the Attorney General of Canada (the “AGC”) and the attorneys general of the provinces a Notice of Constitutional Question (the “NOCQ”) and filed a copy with the Tribunal. The legal basis for the NOCQ is a constitutional challenge of sections 8502(e)(i) and 8503(3)(b)(i) of the *Income Tax Regulations*, CRC, c. 945 (the “*Regulations*”). The Union says that these sections violate the equality provisions of section 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). The Union seeks a remedial order that sections 8502(e)(i) and 8503(3)(b)(i) of the *Regulations* are of no force and effect to the extent that they require Union members to begin collecting pension benefits based on their age.

[4] Therefore, the NOCQ is framed as challenging the *Regulations*, rather than addressing the Union’s dispatch rules that are the subject of the Complaints. On consent of the parties I directed that the NOCQ be held in abeyance and addressed by the Tribunal if discrimination was found against the Union.

[5] Following a five-day liability hearing, I determined that the Complaints were substantiated and that the Union’s actions constitute discrimination (see *Kewal Sidhu & Robert Kopeck* v. *International Longshore Warehouse Union Local 500*, 2025 CHRT 11 (the “Liability Decision”)).

[6] I subsequently directed the parties to provide written submissions on whether the Tribunal has jurisdiction to determine the constitutional issues raised in the NOCQ. The AGC provided submissions alongside the parties. This Ruling is issued before the remedial hearing stage commences.

II. RULING

[7] The Tribunal does not have jurisdiction to determine the NOCQ. The requested *Charter* remedy sought in the NOCQ is not sufficiently linked to the substantiated discriminatory practice. Accordingly, the NOCQ is struck.

III. BACKGROUND

[8] At all material times, the Complainants were members in good standing with the Union and were employed on the Vancouver waterfront by various employers under the provisions of a collective agreement in force between the Union and the various employers represented by the BC Maritime Employers Association (the “BCMEA”).

[9] Pursuant to the terms of the collective agreement, workers in the Complainants’ category of work (fork-lift operators) were assigned work at the waterfront on a daily basis. Work was generally allocated based on a member’s accrued seniority, with the more senior members being assigned work ahead of less senior members, and ahead of “casual” workers who were not accorded membership status with the Union.

[10] In about 2011, following the federal government’s repeal of mandatory retirement at age 65 in the federal sector, the Union and the BCMEA eliminated mandatory retirement in the industry. Members who had reached the age of 65 and who elected to continue working were allowed to avail themselves of the Waterfront Industry Pension Plan income (“Pension income”) that they had accrued over the term of their employment and membership in the Union.

[11] The Union says that many of its members objected to the fact that members could continue earning full wages after availing themselves of Pension income, a term that the Union referred to as “double dipping.”

[12] In response to these objections, the Union instituted a rule in 2014 whereby if a member elected to receive Pension income, they would be given work allocation only after other members and casual workers were provided work allocation, despite any accrued seniority (the “Pensioner Dispatch Rule” or “PDR”).

[13] This policy impacted those workers over the age of 65 but under the age of 72 who elected to receive Pension income. However, as workers grew older, there came a point when the receipt of Pension income was no longer optional. Pursuant to the *Regulations*, receipt of Pension income was mandatory for those over the age of 71.

[14] In 2017, the Union passed a rule whereby members were required to follow the PDR at the end of the year in which they were mandated to start collecting Pension income under the *Regulations* if they had not already elected to do so earlier (the “Pensioner Equalization Rule” or “PER”).

[15] In 2018, the Complainants filed their Complaints with the Canadian Human Rights Commission (the “Commission”). At the time, both Complainants were over the age of 71 and were therefore required to receive Pension income under the *Regulations*. They both sought to continue working and say that other members and casual workers were assigned work before them despite their decades of accrued seniority due to the operation of the PDR and the PER (collectively, the “Policy”). The Complainants alleged that the Union’s implementation of the Policy discriminated against them on the basis of age and caused them to sustain income loss and other damages. In 2021 the Commission referred the Complaints to the Tribunal for an inquiry.

IV. LAW

[16] The parties have differing positions on whether the Tribunal has jurisdiction to determine the constitutional issues raised in the NOCQ. The Union says the Tribunal has jurisdiction to determine these issues and should exercise its authority to do so. The

Complainants say that the Tribunal has jurisdiction to determine the questions raised in the NOCQ but should decline to do so on the basis that the NOCQ is irrelevant and moot. The AGC says the Tribunal does not have jurisdiction to determine the issues underlying the NOCQ.

[17] Section 50(2) of the CHRA grants the Tribunal jurisdiction to decide all questions of law or fact "necessary to determining the matter." This authority may include constitutional questions, but only when they are necessary for the Tribunal to determine the matter and when they arise in the course of the Tribunal fulfilling its statutory mandate (see *R* v. *Conway*, 2010 SCC 22 at para 78 ("*Conway*"); and *Nova Scotia (Workers' Compensation Board)* v. *Martin*, 2003 SCC 54 at para 3).

[18] In *Canada (Canadian Human Rights Commission)* v. *Canada (Attorney General)*, 2018 SCC 31 ("*Matson and Andrews*"), the Supreme Court confirmed that the Tribunal has remedial authority to render conflicting legislation inoperable, but only where a discriminatory practice has first been established under the CHRA (see *Matson and Andrews* at paras 56 and 61). However, that authority is only engaged where such a remedy is linked to the discriminatory practice properly before the Tribunal (see *Conway* at para 78).

[19] In *Matson and Andrews* no discriminatory practice was established and the Court therefore did not engage the Tribunal's remedial powers. That factual context differs materially from the present matter. Here, the Complainants have substantiated their complaints, and the Union's implementation of the PDR and the PER was found to constitute discrimination contrary to sections 9 and 10 of the CHRA.

[20] However, as emphasized in *Conway*, even where a tribunal has authority to grant *Charter* remedies, that authority does not extend to constitutional matters that are not linked to matters properly before the decision-maker. Constitutional issues that are disconnected from the Tribunal's statutory mandate fall outside of its jurisdiction (see *Conway* at para 78).

[21] The AGC has provided a series of Tribunal decisions for the proposition that standalone constitutional challenges to legislation fall outside the Tribunal's statutory mandate and it does not have jurisdiction over such challenges. While those decisions arise in different factual contexts that are materially distinguishable from the present case, they

reflect the principle articulated by the Supreme Court of Canada that jurisdiction over constitutional questions is limited to questions that are linked to the dispute before it.

[22] In *Matson et al.* v. *Indian and Northern Affairs Canada*, 2012 CHRT 19 ("*Matson*"), the complainants filed a notice of constitutional question with the Tribunal which sought to challenge the constitutional validity of section 6 of the *Indian Act*, RSC 1985, c. I-5. In striking the notice, the Tribunal found that the constitutional question raised by the complainants was not linked to determining whether a discriminatory practice had occurred within the meaning of the CHRA. Rather, it was a separate question of law, unrelated to the Tribunal's statutory mandate (see *Matson* at paras 13–15). This ruling was issued prior to a liability decision.

[23] In *Schulz (on behalf of Bernard Schulz)* v. *Employment and Social Development Canada,* 2022 CHRT 6 ("*Schulz*"), the complainant sought to challenge the constitutionality of the age limit provisions in the *Income Tax Act*, RSC 1985, c. 1 (5th Supp) (the "*Income Tax Act*") for the opening of a registered disability savings plan. He sought to defer the Tribunal proceedings to allow him to proceed with the constitutional challenge in court. In granting the deferral, the Tribunal noted there was no dispute that the constitutional challenge was outside of its jurisdiction (see *Schulz* at para 3).

[24] In *Juneau* v. *Ontario (Transportation)*, 2024 HRTO 1287, the Ontario tribunal found that it did not have jurisdiction to determine whether an age-based restriction in an external regulation violates section 15 of the *Charter*. However, this finding was specific to the wording of the *Regulations* at issue, which provided that they apply **despite** the Ontario *Human Rights Code* RSO 1990, c H.19 (see paras 13, 19, and 20).

[25] Ultimately, these three authorities submitted by the AGC are of limited assistance in the present matter given the factual matrix of this case. Therefore, the Supreme Court of Canada's jurisprudence will govern my analysis, and *Martin*, *Conway*, and *Matson and Andrews* provide the proper analytical framework.

V. ANALYSIS

[26] Where a discriminatory practice has been established, *Matson and Andrews* holds that the Tribunal can, in appropriate cases, render legislation inoperable as a remedy. However, as *Conway* makes clear, this remedial authority arises only where the *Charter* issue is sufficiently connected to the matters properly before the Tribunal.

[27] In this case, the *Charter* remedy sought in the NOCQ is not sufficiently connected to the discrimination found in the Liability Decision. The source of the discrimination is the Union's implementation of the Policy.

[28] The discrimination resulting from the Union's Policy does not arise from and is not caused by the impugned *Regulations*. Section 8502(e)(i) of the *Regulations* provides that a designated pension plan must require "that the retirement benefits of a member under the pension plan begin to be paid out not later than the end of the calendar year in which the member attains 71 years of age." Section 8503(3)(b)(i) of the *Regulations* states that a member of a pension plan cannot accrue additional pension benefits after the day on which they start receiving the benefits.

[29] As set out in the Liability Decision, I found that the Union's decision to implement the Policy constitutes age-based discrimination contrary to sections 9 and 10 of the CHRA. I determined that the Union's Policy was implemented for the purpose of reducing the work and income of older workers collecting a pension. This was to enhance work and income opportunities for younger employees because older employees were perceived as an obstacle preventing new members from joining the Union and thereby limiting their work and income opportunities. I also found there was insufficient evidence that the Union considered alternative policies or incentives to achieve equitable distribution of work that would mitigate the adverse impact on employees who choose to work while receiving their Pension income (see the Liability Decision at paras 88, 94, and 107).

[30] The *Regulations* do not mandate the implementation of any policy or practice which affects the availability or assignment of work for Union members. The *Regulations* do not require Union members to stop working, nor do they prevent workers from exercising their accrued seniority.

[31] The adverse impact to the Complainants—the deprivation of work opportunities—is caused solely by the Policy which the Union voluntarily implemented at its sole discretion. It did so to provide greater work opportunities to younger members at the expense of older members and not because of the *Regulations*. Similarly, the Union's failure to consider alternative policies or incentives to achieve a more equitable distribution of work is caused by its own inaction and has no connection to the *Regulations*. Rendering the impugned *Regulations* inoperable would not, in itself, remedy the Policy's adverse effects on seniority-based allocation of work or dispatch practices.

[32] As stated at paragraph 112 of the Liability Decision, the discrimination in this case is not about the Union's lack of authority to govern the distribution of pension income. Rather, it concerned the Union's duty to fairly allocate work. In the NOCQ, the Union argues that the source of the age-based discrimination is the *Income Tax Act*. I rejected that reframing of the issues when I dismissed the Union's preliminary motion to dismiss the Complaints (see *Kewal Sidhu & Robert Kopeck* v. *International Longshore Warehouse Union Local 500* 2023 CHRT 4). I do so again here.

[33] In addition, the lack of connection between the remedies sought in the Union's NOCQ and those sought by the Complainants further underscores the jurisdictional problem. The Complainants do not seek to be relieved from the requirements of the *Regulations* nor are they seeking any other remedies in respect of the *Regulations* such as the ability to accrue further pensionable service or employer pension plan contributions. As set out in their Statement of Particulars, the Complainants simply seek an order that the Union stop applying the Policy and seek compensation for pain and suffering, lost wages and benefits, and interest. Mr. Sidhu separately seeks reinstatement of employment with full seniority.

[34] The inoperability of sections 8502(e)(i) and 8503(3)(b)(i) of the *Regulations* sought in the NOCQ is advanced solely by the Union, is opposed by the Complainants, is fiscal in nature, and is unconnected to the discriminatory conduct that was established. In these circumstances, the constitutional issues raised are collateral to the matter at issue and therefore fall outside the Tribunal's jurisdiction.

[35] The Union says that the Commission "identified the requirements to resolve the constitutionality of the *Income Tax Act* in its recommendation on the Complaints." The Union says that this demonstrates the relevance of the issues raised in the NOCQ and favors the Tribunal assuming jurisdiction over the NOCQ.

[36] I am not persuaded by this submission. I note that it was not the Commission's position that a determination of the constitutionality of the *Regulations* was necessary to resolve the Complaints, nor did it (or could it) determine that the Tribunal has jurisdiction to determine the constitutional question. The document the Union refers to is not the Commission's referral decision but rather the "Report for Decision" written by a human rights officer recommending to the Commission that it dismiss the Complaints. The Commission ultimately declined to follow the recommendation and referred the Complaints to the Tribunal for inquiry.

[37] In any event, any purported position from the Commission on the Tribunal's jurisdiction is not binding on the Tribunal. It is the Tribunal and not the Commission that determines the merits of a complaint and any related matters. The Tribunal is the master of its own process and has broad discretion to determine all matters arising in the course of its inquiry (see *Melissa Paton* v. *Spearing Service L.P.*, 2022 CHRT 37).

[38] The Union cites the Tribunal's decision in *Thwaites et al v. Air Canada and Air Canada Pilots Association*, 2012 CHRT 9 in support of its position that the Tribunal has jurisdiction to determine the NOCQ. However, the facts in *Thwaites* are distinguishable from this case. In *Thwaites*, the question was whether the mandatory retirement provisions in the CHRA violated section 15 of the *Charter*. Unlike in this case, there was a direct link between the validity of the mandatory retirement provisions in the Tribunal's own home statute and the alleged discriminatory practice of dismissing employees who reached the age of mandatory retirement.

VI. ORDER

[39] For reasons set out above, the Tribunal does not have jurisdiction to determine the issues raised in the NOCQ. Accordingly, the NOCQ is struck.

Signed by

Paul Singh
Tribunal Member

Ottawa, Ontario
February 2, 2026

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2733/10921 and T2734/11021

Style of Cause: Kewal Sidhu & Robert Kopeck v. International Longshore and Warehouse Union Local 500

Ruling of the Tribunal Dated: February 2, 2026

Motion dealt with in writing without appearance of parties

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