

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2026 CHRT 20
Date: March 12, 2026
File No.: HR-DP-2989-24

Between:

Timothy Dunphy

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

WestJet Airlines

Respondent

Ruling

Member: Gary Stein

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I. OVERVIEW

[1] This ruling determines Timothy Dunphy's motion to add the Workers' Compensation Board–Alberta (the WCB) as a party to his human rights complaint.

[2] Mr. Dunphy (the "Complainant") worked as a baggage handler for WestJet Airlines (the "Respondent"). In December 2014, he was injured on the job. WestJet provided modified work assignments in 2015 and 2016. It did not provide modified work or a permanent accommodation for Mr. Dunphy's disability after November 2016.

[3] In June 2019, Mr. Dunphy filed a complaint with the Canadian Human Rights Commission (the "Commission"), alleging that WestJet discriminated against him by not properly accommodating for his disability. WestJet denies the allegation.

[4] Mr. Dunphy's complaint to the Commission refers to his workplace injury claim to the WCB and to the WCB's communications with WestJet.

[5] Mr. Dunphy has brought a motion to add the WCB as a party to this complaint. WestJet requests that the motion be dismissed.

II. DECISION

[6] The motion is dismissed. The Tribunal does not have jurisdiction to inquire into a human rights complaint against the provincially regulated WCB.

[7] Moreover, for completeness and to respond to the parties' submissions, if the Tribunal had jurisdiction to consider adding the WCB as a party, it would not have done so because Mr. Dunphy has not established that the requirements for granting the motion have been met.

III. ISSUE

[8] The only issue to be determined is whether to add the WCB as a respondent to this complaint.

IV. ANALYSIS

A. Legal framework

[9] The Tribunal has the authority to add parties to a complaint (see Rule 29 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021*, SOR/2021-137 (the Rules of Procedure)). In deciding whether to do so, the Tribunal considers the following factors:

- a. Is the presence of the new party necessary to dispose of the complaint?
- b. Was it reasonably foreseeable, when the complaint was filed with the Commission, that the addition of a new respondent would be necessary to dispose of the complaint?
- c. Will the addition of a new party result in serious prejudice to the opposing party?

(see *Kapoor v. LTL Transport Ltd.*, 2024 CHRT 88 at para 11 [*Kapoor*], citing *Syndicat des employés d'exécution de Québec-téléphone section locale 5044 du SCFP v. Telus communications (Québec) Inc.*, 2003 CHRT 31 at paras 30 and 36.)

[10] A main concern when the Tribunal is asked to add a party is the loss of the procedural protections that the Commission's screening function provides (see *Kapoor* at para 13). For this reason, adding a party should only occur in exceptional circumstances (see *Kapoor* at para 13, citing *MCFN v. AGC*, 2021 CHRT 31 at para 40).

[11] The Tribunal may also consider other relevant factors, on the understanding that it must conduct its proceedings as informally and expeditiously as the requirements of natural justice and the Rules of Procedure allow (see section 48.9(1) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the CHRA)).

B. The positions of the parties

[12] Mr. Dunphy submits that he communicated regularly with the WCB about the effect of his injuries on his ability to work, but that the WCB "downplayed" the significance of his injuries. He argues that WestJet was in continuous contact with the WCB, that WestJet ignored him when he raised concerns about accommodations and the suitability of employment for him, and that WestJet relied on the WCB's decisions in assessing permanent accommodations. In Mr. Dunphy's view, he was "caught" between the WCB and

WestJet. He submits that he could not have foreseen that the WCB would have been a respondent when he filed his complaint to the Commission, and that the WCB is a necessary party to dispose of this complaint.

[13] WestJet makes the following submissions:

- A) Mr. Dunphy brought his complaint under section 7 of the CHRA, which prohibits discriminatory practices related to employment. However, the WCB was not his employer, and its decisions were restricted to assessing his workplace injury in relation to his fitness for work.
- B) The WCB had no control over WestJet's conduct or decisions. In addition, the Tribunal's determination of whether WestJet met its duty to accommodate Mr. Dunphy's needs does not require adding the WCB as a party.
- C) The parties have the WCB's entire file for Mr. Dunphy, with all the medical documentation and the full record of correspondence between the WCB and the parties.
- D) Whether the WCB "downplayed" Mr. Dunphy's workplace injuries, as he submits, is to be addressed through its system of internal appeals and by way of judicial review of decisions if necessary. The Tribunal does not have the jurisdiction to determine this issue.
- E) Mr. Dunphy's complaint to the Commission and WestJet's response to it refers to the WCB's involvement in assessing Mr. Dunphy's workplace injuries, workplace restrictions, and proposed accommodations. Accordingly, the addition of the WCB as a party to this complaint was reasonably foreseeable when Mr. Dunphy filed his complaint with the Commission.
- F) Neither the complaint to the Commission nor Mr. Dunphy's Statement of Particulars (SOP) allege any facts that could support a finding that the WCB discriminated against him. Accordingly, adding the WCB as a party would add new issues and prolong and complicate these proceedings. Doing so is inconsistent with the Tribunal's mandate to conduct its proceedings informally and expeditiously. In WestJet's view, the Tribunal can fairly adjudicate this complaint without adding the WCB as a party.

C. The WCB's position

[14] Mr. Dunphy sent his request and his submissions to the WCB. The WCB's counsel stated that it has not received a copy of Mr. Dunphy's complaint to the Commission or any other documentation. The WCB briefly noted that it is not a federally regulated entity.

D. Should the WCB be added as a respondent in this complaint?

[15] No.

(i) The WCB is not a federally regulated organization

[16] The Tribunal has jurisdiction to consider human rights complaints involving organizations under the legislative authority of Parliament (see section 2 of the CHRA). The WCB is a creature of provincial statute (see *Workers' Compensation Act*, RSA 2000, c W-15). It does not exercise powers conferred by an act of Parliament (see *Spatling v. Canada (Solicitor General)*, 2003 FCT 445 at paras 5–7). The Tribunal has no jurisdiction involving allegedly discriminatory acts of the provincially regulated WCB.

(ii) It was reasonably foreseeable that the WCB could have been added as a respondent when the complaint was filed with the Commission

[17] To provide a responsive analysis, I also address the issues in the parties' submissions.

[18] Mr. Dunphy has not persuaded me that, when he filed his complaint with the Commission, he could not have foreseen that adding the WCB as a respondent would be necessary to dispose of the complaint. To the contrary, I find that doing so was reasonably foreseeable.

[19] I note that Mr. Dunphy submits that he could not have foreseen that the WCB should have been a party. However, his submissions do not explain this position.

[20] I disagree. Mr. Dunphy's complaint to the Commission includes references to the WCB. The wording of the complaint satisfies me that, when Mr. Dunphy filed the complaint, he knew about the WCB's involvement and understood its role in relation to his workplace injury. However, the complaint does not allege that the WCB played a role in WestJet's alleged discriminatory practices.

[21] On this motion, Mr. Dunphy submits that the WCB “downplayed the significance of [his] permanently disabling injuries.” The complaint to the Commission also did not include this allegation. In my view, this request to add the WCB cannot succeed based on a new allegation that is made more than six years after the complaint was filed.

[22] I am satisfied that Mr. Dunphy could have made this allegation in his complaint to the Commission. Doing so would have allowed the WCB to respond to it and obtain the procedural protections that the Commission’s screening and investigative process includes. It would be procedurally unfair to add the WCB as a party now, based on an allegation that could have been made to the Commission but was not.

(iii) Exceptional circumstances for adding the WCB as a party do not exist

[23] Mr. Dunphy has not argued that exceptional circumstances require the addition of the WCB as a party despite it not receiving the protections afforded by the Commission’s investigation and decision-making about the complaint. I am satisfied that exceptional circumstances do not exist.

(iv) The WCB’s presence is not necessary to dispose of this complaint

[24] Mr. Dunphy has also not satisfied me that the WCB’s presence is necessary to dispose of this complaint.

[25] Mr. Dunphy obtained a copy of his entire WCB file, containing over 3,000 pages, and he provided it to WestJet. Having the entire record of the WCB’s correspondence and decisions ensures that any relevant information involving Mr. Dunphy’s workplace injury claim to the WCB is available to the parties. Accordingly, I am satisfied that adding the WCB as a party is not necessary to ensure the disclosure of information.

[26] I acknowledge Mr. Dunphy’s argument that he has been “caught in the middle” between WestJet and the WCB. However, the availability of the record of correspondence between WestJet and the WCB, and between the WCB and Mr. Dunphy, will permit

Mr. Dunphy to call evidence about this concern. It will also allow WestJet to call evidence attempting to explain or refute it.

[27] Mr. Dunphy has framed this complaint as employment-related discrimination in violation of section 7 of the CHRA. To succeed, Mr. Dunphy must prove that his employer directly or indirectly refused to employ him, or refused to continue to employ him, or that, in the course of his employment, adverse differentiation occurred in relation to him as an employee. The framing of the allegations of discrimination under section 7 of the CHRA satisfies me that WestJet, as Mr. Dunphy's employer, is the only necessary party to this complaint.

[28] WestJet submits that the issue of whether the WCB "downplayed" Mr. Dunphy's workplace injuries, as he argues, is to be addressed through the WCB's system of internal appeals. I agree. I understand Mr. Dunphy's position to be that the WCB made incorrect decisions about his claim. Addressing that concern must proceed through the WCB's appeals process established by provincial legislation, and not by this Tribunal.

(v) Adding the WCB would disproportionately extend and complicate this case

[29] The Tribunal and the parties must be guided by the principle of proportionality. The principle requires all participants in the justice system to avoid making proceedings unnecessarily lengthy, complex, or costly (see *Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at paras 8–15 [*Temate*]; and *Thomas v. Correctional Service Canada*, 2024 CHRT 139 at para 19). The proportionality of the Tribunal's proceedings is also implicit in the CHRA's requirement that the Tribunal hear complaints as informally and expeditiously as the requirements of natural justice and the Rules of Procedure allow (see *Temate* at para 11). The Tribunal considers the principle of proportionality when it decides on a motion and may impose limits based on the circumstances of each case (see *Temate* at paras 13–15).

[30] I am satisfied that the addition of the WCB as a party would disproportionately extend and complicate the complaint that is now before me. It would require changes to the parties'

SOPs. It would be expected to lead to further procedural motions. It may also lead to a request to adjourn the hearing of this complaint, which is now scheduled to proceed in June, and for additional hearing days. I am satisfied that this complaint can be fairly heard without addressing any of these issues. The Tribunal's mandate to hear this complaint informally and expeditiously weighs against the request to add the WCB as a party.

E. Conclusion

[31] The Tribunal does not have jurisdiction to inquire into allegations of discrimination against the WCB. In addition, based on the submissions presented in this motion, I am not satisfied, on a balance of probabilities, that the WCB could have been added as a party.

V. ORDER

[32] The motion to add the WCB as a party is dismissed.

Signed by

Gary Stein
Tribunal Member

Ottawa, Ontario
March 12, 2026

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2989-24

Style of Cause: Timothy Dunphy v. WestJet Airlines

Ruling of the Tribunal Dated: March 12, 2026

Motion dealt with in writing without appearance of parties

Written representations by:

Timothy Dunphy, Self-represented

Joyce Mitchell, K.C. & Zachary Dietrich, for the Respondent