

CANADA / JUDGMENT

Dobbie v. Air Canada

2026 CHRT 39

COURT

Canadian Human Rights Tribunal

DECIDED

23 April 2026

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Ruling

Grounds Age Decision Content Canadian Human Rights Tribunal Tribunal canadien des droits de la personne Citation: 2026 CHRT 39 Date: April 23, 2026 File No. : HR-DP-3122-25 Between: Mitchell Dobbie Complainant

- and - Canadian Human Rights Commission Commission
- and - Air Canada Respondent

Ruling

Member: Anthony Morgan Contents I. OVERVIEW 1 II. RULING 1 III. CONTEXT 1 A. The Complaints 1 B. The Complainant's SOP 3 IV. ANALYSIS 3 C. Legal framework 3 D. My reasons 5 V. CONCLUSION AND ORDER 7 I. OVERVIEW [1] Mister Mitchell Dobbie (the "Complainant") alleges that Air Canada (or "the Respondent") discriminated against him in employment on the ground of age by terminating his employment in violation of s. 7 of the Canadian Human Rights Act, R.S.C., 1985, c. H-6 (the CHRA). Mr. Dobbie also alleges that, contrary to s. 14.1 of the CHRA, Air Canada has retaliated against him because he filed a complaint with Canadian Human Rights Commission ("the Commission") in relation to this alleged discriminatory treatment. Mr. Dobbie was 65 years old during the material times of his initial complaint to the Commission.

- [2] Air Canada submits that Mr. Dobbie's Statement of Particulars (SOP) exceeds the scope of the complaint referred to the Tribunal by the Commission. As such, Air Canada has filed a motion seeking to have the Tribunal clarify the scope of these proceedings. Specifically, Air Canada submits that the allegations of retaliation in Mr. Dobbie's SOP are beyond the scope of the complaint that the Commission referred to the Tribunal and that these allegations should be struck from Mr. Dobbie's SOP as the Tribunal is without jurisdiction to address these allegations. Mr. Dobbie opposes the motion. The Commission declined to make

submissions on the motion. II. RULING [3] Air Canada's motion is granted. III. CONTEXT A. The Complaints [4] In November 2020, Mr. Dobbie filed a human rights complaint with the Commission. He alleged that despite a successful tenure of almost 8 years that was marked by strong work performances and significant industry experience, in June 2020, his employment with Air Canada was terminated without cause. Mr. Dobbie's employment was terminated amid staffing reductions resulting from the COVID-19 pandemic and the associated decline air travel. Mr. Dobbie alleged that Air Canada terminated his employment while retaining employees who were considerably younger than him and had less operational experience and years of company service. I will refer to this complaint as the "Initial Complaint."

- [5] During the Commission's review of Mr. Dobbie's complaint, in March 2022, Mr. Dobbie advised the Commission's Human Rights Officer that Air Canada had begun to re-hire former employees and claimed that Mr. Dobbie's previous position had become available again. Mr. Dobbie submitted to the Commission that he was not offered the opportunity to return to the role from which he was terminated or any other similar role with Air Canada and alleged that this was due to his current complaint before the Commission. On this basis, Mr. Dobbie claimed he was being retaliated against for filing his complaint, based on s. 14.1 of the CHRA.
- [6] In the Commission's Human Rights Officer's June 2025 Report for Decision, Mr. Dobbie's March 2022 allegations of retaliation were considered. The Commission's Human Rights Officer determined that the alleged retaliation appears to be a new issue that is distinct from the allegations raised in the Initial Complaint. On this basis, the June 2025 Report for Decision recommended to the Commission that Mr. Dobbie's complaint be referred to this Tribunal, while expressly excluding the allegations of retaliation.
- [7] On August 20, 2025, the Commission's Record of Decision indicated that the Commission had decided to refer Mr. Dobbie's complaint to the Tribunal for an inquiry. The Record of Decision states that the Commission had found that an inquiry into Mr. Dobbie's complaint was warranted and that the Commission had adopted the reasons for referring the complaint that were articulated in the Commission's Human Rights Officer's Report for Decision of June 2025. This is to say that the Commission referred Mr. Dobbie's complaint, excluding his allegations of retaliation. This is how we come to the Initial Complaint.
- [8] On August 14, 2025, Mr. Dobbie filed a second complaint with the Commission. This complaint reiterated Mr. Dobbie's March 2022 request to have his retaliation allegations referred to the Tribunal for an inquiry. I will refer to this complaint as the "Subsequent Complaint." The Subsequent Complaint has not been referred to the Tribunal. B. The Complainant's SOP [9] As part of the Tribunal's process in dealing with the Initial Complaint, on November 12, 2025, Mr. Dobbie filed his SOP. This SOP included the allegations raised in both the Initial Complaint and the Subsequent Complaint. In response to Mr. Dobbie's SOP, on November 28, 2025, Air Canada filed the present motion seeking clarity on the scope of the proceedings and arguing that the retaliation allegations that make up the Subsequent

Complaint should be struck from Mr. Dobbie's SOP. IV. ANALYSIS C. Legal framework [10] It has been well-established in Tribunal rulings that the legal principles that are applicable to motions to strike are the same as the guiding principles the Tribunal has developed to determine the scope of a complaint. (*Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at para 7)

- [11] Section 49 of the CHRA limits the Tribunal's jurisdiction to hearing only the complaints that the Commission has referred to the Tribunal for an inquiry.
- [12] For complaints to the Commission that are referred to the Tribunal, the scope of the Tribunal's inquiry is limited to matters raised in the formal complaint made to the Commission (see *Last v. Correctional Service Canada*, 2024 CHRT 112 at para 6).
- [13] After the Commission refers a complaint to the Tribunal for an inquiry, the Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137 (the "Rules of Procedure") shape the conduct of the inquiry, including the content of SOPs. Rule 18 of the Rules of Procedure states that a complainant's SOP must set out their case, including details related to the facts, issues, witnesses, and documents that the complainant intends to present at the hearing.
- [14] In proceedings before this Tribunal, a complainant's SOP may be used to clarify, refine, or elaborate on the allegations of discrimination raised in the complainant's original complaint to the Commission. However, the complainant is not permitted to include in their SOP allegations that fall outside of the scope of the complaint that was referred by the Commission to the Tribunal. If a complainant includes allegations in their SOP that were not included in their original complaint, the complainant will usually be found to have inappropriately introduced a substantially new complaint before the Tribunal. Such an SOP would be considered to include allegations that amount to a substantially new complaint where the Tribunal finds that the new allegations are not reasonably connected to the factual foundation of the original complaint filed with the Commission and referred to the Tribunal (see *Shirafkan v. Immigration, Refugees and Citizenship Canada*, 2025 CHRT 73 at para 13; and *Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at paras 15–16).
- [15] The Tribunal has no authority to allow a complainant to introduce a substantially new complaint as this would permit the party to bypass the Commission referral process. The CHRA does not allow this. The CHRA only enables the Tribunal to hear complaints that have been referred by the Commission to the Tribunal for the conduct of an inquiry into the complaint (see *Mohamed v. Royal Bank of Canada*, 2023 CHRT 20 at paras 10 and 12; and *Canadian Association of Elizabeth Fry Societies v. Correctional Services of Canada*, 2022 CHRT 12 at para 14).

- [16] In other words, the Tribunal has no jurisdiction when it comes to allegations that the Commission has considered and determined should be excluded from the complaint that the Commission has decided to refer to the Tribunal. This is to say that where only part of a complaint is referred by the Commission to the Tribunal, the portion referred defines the scope of the Tribunal's inquiry. (*Garnier v. Correctional Service of Canada*, 2023 CHRT 32 at paras 9-10)
- [17] Where a party disagrees with the Commission's exercise of its discretion on whether to refer a complaint or certain allegations within a complaint to the Tribunal for an inquiry, the only avenue available for a party who seeks to challenge this decision is a judicial review before the Federal Court. The Tribunal has no authority under the CHRA to review any of the Commission's decisions. This means that the Tribunal has no jurisdiction related to the Commission's determinations or processes regarding the screening and investigation of complaints. Nor does the Tribunal have jurisdiction to review the Commission's decisions related to how to deal with a particular complaint. D. My reasons [18] I grant Air Canada's motion to strike from the Complainant's SOP the allegations of retaliation raised by Mr. Dobbie in March 2022 and repeated in his Subsequent Complaint to the Commission in August 2025. The Tribunal does not have jurisdiction to hear these allegations. They must be struck from the Complainant's SOP.
- [19] As noted above, in the Commission's August 2025 Record of Decision, the Commission decided to refer part of Mr. Dobbie's complaint to the Tribunal for an inquiry. The Commission's Human Rights Officer's June 2025 Report for Decision discusses and excludes Mr. Dobbie's allegations of retaliation in its recommendation to the Commission to refer the complaint to the Tribunal. The Commission accepted the recommendation in the Report to refer Mr. Dobbie's complaint to the Tribunal minus his allegations of retaliation.
- [20] The Commission's Human Rights Officer's June 2025 Report for Decision indicates that as early as 2022, the Commission advised Mr. Dobbie that pursuing his allegations of retaliation required the filing of a new complaint. The Report for Decision also indicates that Mr. Dobbie was encouraged to file a new complaint in a timely manner. Mr. Dobbie did not seek to have this decision by the Commission judicially reviewed by the Federal Court.
- [21] Given the Commission's consideration and exclusion of the retaliation allegations from the referral of the complaint, the Tribunal has no authority to overrule or alter the Commission's referral decision by reintroducing Mr. Dobbie's retaliation allegations into the complaint that is now before the Tribunal. The statutory scheme of the CHRA simply does not permit the Tribunal to do this.
- [22] Mr. Dobbie was advised in early 2022 that the Commission views his retaliation allegations as a new and distinct complaint that is separate from the complaint it referred to the Tribunal. It was not until August 2025 when Mr. Dobbie responded to this by filing a new complaint with the Commission.

- [23] I have reviewed Mr. Dobbie's Subsequent Complaint to the Commission, filed in August 2025. It was included in the Respondent's materials as part of their submissions to the Tribunal as part of present motion. The substance of the Subsequent Complaint reflects the same retaliation allegations raised in March 2022 that the Commission excluded from Mr. Dobbie's Initial Complaint when the Initial Complaint was referred to the Tribunal in August 2025.
- [24] The Subsequent Complaint is essentially identical in substance to the retaliation allegations featured in Mr. Dobbie's November 2025 SOP that has been submitted before the Tribunal as part of the inquiry into the Initial Complaint.
- [25] That the Commission has not referred the Subsequent Complaint to the Tribunal for an inquiry is another reason why the retaliation allegations must be excluded from Mr. Dobbie's SOP in this proceeding. Because the Commission has not referred the Subsequent Complaint to the Tribunal, the retaliation allegations it raises are beyond the scope of the present complaint. This is because, as noted above, the CHRA only permits the Tribunal to inquire into complaints that have been referred to it by the Commission. It is not within the Tribunal's statutory authority, let alone its discretion to allow Mr. Dobbie's retaliation allegations to bypass the Commission's screening process.
- [26] Mr. Dobbie argues that it is impractical, inefficient and prejudicial to him to be required to proceed with a new complaint before the Commission and return to the 'back of the line' with the retaliation allegations. He argues that the facts underlying the retaliation allegations in the present matter arise from the same factual matrix as the facts in the Initial Complaint. For these reasons, he argues, his retaliation allegations should be included within the scope of the present complaint rightly before the Tribunal.
- [27] These submissions cannot succeed without the Tribunal exercising jurisdiction that Parliament has not granted the Tribunal under the CHRA.
- [28] Mr. Dobbie's concerns would be better directed at the Federal Court through a judicial review of the Commission's referral decisions regarding his complaints. V. CONCLUSION AND ORDER [29] Air Canada's motion is granted.
- [30] The Tribunal orders the retaliation allegations struck from Mr. Dobbie's SOP. Signed by Anthony Morgan Tribunal Member Ottawa, Ontario April 23, 2026 Canadian Human Rights Tribunal Parties of Record File No. : HR-DP-3122-25 Style of Cause: Mitchell Dobbie v. Air Canada

Ruling

of the Tribunal Dated: April 23, 2026 Motion dealt with in writing without appearance of parties
Written representations by: Amanda Hunter, for the Complainant Jackie VanDerMeulen, for the Respondent

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