Federal Court Cour fédérale

Date: 20260203

Docket: T-2092-24

Citation: 2026 FC 150

Ottawa, Ontario, February 3, 2026

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

CHRISTIAN JESUS JONATHAN JACOB MILLER

Applicant

and

THE TORONTO DOMINION BANK

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a Canadian Human Rights Tribunal decision (the "Decision") dismissing the Applicant's complaint under section 7 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the "*CHRA*"), in which the Applicant alleged that the Respondent demoted him on the basis of race, colour, and/or disability in the course of implementing a national restructuring program known as IRIS.

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] The Applicant is a former employee of the Respondent, the Toronto-Dominion Bank. The Applicant self-identifies as a Black man of African Caribbean descent. He worked for the Respondent for about eight years, and over time, he progressed through positions and locations within the Respondent's organization and later went on medical leave and received long-term disability benefits through the Respondent's insurer.

[4] In March 2015, the Applicant commenced a full-time Financial Advisor position in Saskatoon. In March 2017, he accepted a Manager of Customer Service and Sales ("MCSS") position at the Respondent's Owen Sound branch. This new role was a promotion because it was classified at pay level 7, whereas the Financial Advisor role was classified at pay level 6. The Applicant's final performance evaluation in his prior Financial Advisor role was "S" for solid performance. In October 2017, he received a performance assessment of "D" for developing in his new MCSS role.

[5] In early 2017, the Respondent approved IRIS, a national restructuring initiative directed at cost savings and profitability, including eliminating positions said to have become redundant in light of changes in customer banking behaviour, including greater reliance on internet banking, ATMs, and other technology. The program rolled out nationally in the first months of 2018 and affected approximately 961 employees, including 119 employees in the position of

MCSS. Rural branches without dedicated Branch Managers generally maintained the MCSS position. However, in rural branches with Branch Managers, the MCSS position was eliminated.

[6] Under IRIS, the Applicant's MCSS position at the Owen Sound branch was eliminated because the branch had a dedicated Branch Manager. In about March or April 2018, the Applicant was "mapped" into a Financial Advisor role at the Port Elgin branch, at pay level 6 rather than pay level 7. His pay was maintained at level 7 for two years, and he received an additional $500 to account for increased travel. Prior to accepting the Port Elgin Financial Advisor role, the Applicant was offered a Manager of Customer Service position at Port Elgin, which was also pay level 6. The Applicant declined that option and accepted the Financial Advisor role.

[7] Two other employees in the Applicant's district whose MCSS positions were eliminated were White men. Their branches met minimum staffing requirements to create Manager Financial Services positions as part of the restructuring. Both were promoted into those new positions at pay level 8.

[8] The Applicant filed a human rights complaint dated February 22, 2019. The Canadian Human Rights Commission referred the matter to the Canadian Human Rights Tribunal (the "Tribunal") for inquiry on a defined issue, namely whether the Applicant's race, colour, and/or disability was a factor, directly or indirectly, in the Respondent's decision to demote him when it implemented IRIS, contrary to section 7 of the *CHRA*.

[9] The Applicant had legal counsel for an early portion of the proceeding and during mediation. The Tribunal held a multi-day virtual hearing on March 26-27, 2024, and May 29-31, 2024. The Applicant began the hearing self-represented and later was represented by counsel for portions of his evidence and for cross-examinations and final submissions.

[10] On August 1, 2024, the Tribunal dismissed the Applicant's complaint.

[11] On August 9, 2024, the Applicant filed a notice of application for judicial review. The Applicant also brought a motion seeking further answers on cross-examination and additional production. On June 24, 2025, this Court dismissed that motion and limited the live procedural fairness issues to those specifically pleaded in the notice of application.

[12] On September 17, 2025, the Applicant filed a motion seeking leave to serve and file supplementary evidence consisting of documents that the Applicant filed with the Canada Industrial Relation Board. By directions dated September 29, 2025, Associate Judge Horne directed that the Applicant's motion for leave to serve and file supplementary evidence would be determined by the judge assigned to hear the application and would be heard at the same time as the merits of the application.

III. The Decision

[13] The Tribunal dismissed the complaint because it found insufficient evidence to sustain the Applicant's allegation that the Applicant's race, colour, and/or disability was a factor, directly or indirectly, in the Respondent's decision to demote him when it implemented IRIS.

[14] The Tribunal set out the governing legal framework under sections 3 and 7 of the *CHRA* and the *prima facie* discrimination test, citing authorities including *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc*, 2015 SCC 39, *Moore v British Columbia (Education)*, 2012 SCC 61, and *O'Malley v Simpsons Sears*, [1985] 2 SCR 536.

[15] The Tribunal accepted that the Applicant satisfied the first two elements of the *prima facie* test, namely that he had protected characteristics and that he experienced adverse treatment in employment. The Tribunal focused on whether the Applicant established the third element, namely that race, colour, and/or disability was a factor in the adverse treatment.

[16] The Tribunal summarized the Applicant's evidence as consisting mainly of impressions and general observations about alleged systemic racial discrimination by the Respondent and about unfair treatment in the workplace. It noted that the Applicant did not produce corroborating statistical or other evidence about alleged underrepresentation of Black employees or systemic discrimination in the Respondent's hiring, promotion, or termination practices.

[17] The Tribunal summarized the Respondent's evidence from four witnesses, including two human resources witnesses involved in aspects of the national implementation of IRIS, the Port Elgin branch manager, and the District Vice President who made final mapping decisions in the district. The Tribunal accepted the Respondent's evidence about the design and implementation of IRIS, including that it did not track or use employees' protected characteristics, and that performance, tenure, and geography were the relevant factors in mapping displaced employees

into vacancies. The Tribunal concluded that, on the evidence, the Applicant was mapped to the Port Elgin Financial Advisor role because there were no suitable level 7 vacancies available and because the Applicant was not ready for promotion to a Manager Financial Services role.

[18] The Tribunal found that the two employees in the same district who were promoted from their eliminated positions into new Manager Financial Services positions at pay level 8 had high performance ratings, lengthy tenure, and strong familiarity with their branches and communities. The Tribunal found that their branches met criteria that, as part of the IRIS restructuring, resulted in the creation of their new Manager Financial Services positions.

[19] The Tribunal considered the Applicant's argument that an asserted asymmetry between diversity-focused hiring and performance-based redundancy protocols amounted to adverse effect discrimination. The Tribunal rejected that submission on the record before it, finding no evidence that IRIS, as a neutral program applied without reference to protected characteristics, had a disproportionate negative impact on a protected group.

[20] The Tribunal concluded that the Applicant did not establish, on a balance of probabilities, that race, colour, and/or disability was a factor in his demotion. It also concluded that, on the evidence, this was not a case of adverse effect discrimination.

IV. Issues

[21] There are two issues in this case:

1. whether the Decision is reasonable; and

2. whether the Applicant was afforded procedural fairness.

V. Standard of Review

[22] The standard of review with respect to the Tribunal's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

VI. Analysis

A. *Preliminary Issue – The Applicant's Motion for Leave to File Supplementary Evidence*

[23] On judicial review, the Court generally confines itself to the record before the decision maker, subject to limited exceptions such as to provide general background information, to point out procedural defects not evident in the record, or to highlight the complete lack of evidence before the decision maker on a particular finding (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20; *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8). The Court must assess the reasonableness of the Decision on the basis of the record that was before the Tribunal.

[24] The Applicant submits supplementary evidence consisting of documents filed with the Canada Industrial Relations Board in relation to his complaint against the Respondent filed with

that tribunal in August 2025. Those materials were not before the Tribunal and go to the merits of his underlying complaint to the Canadian Human Rights Commission and do not meet the necessary criteria to satisfy any of the enumerated exceptions and therefore are not admissible.

B. *Reasonableness*

(1) Alleged Legal Error

[25] The Applicant submits that the Tribunal misapplied section 7 of the *CHRA* by failing to recognize adverse effect and systemic discrimination. He submits that a policy that is neutral on its face may nonetheless be discriminatory if it disproportionately and adversely affects a protected group and argues that the Tribunal required direct evidence of discriminatory intent and considered his circumstances in isolation, failing to engage with broader context.

[26] I do not accept that characterization of the Tribunal's reasons. The Tribunal set out the correct legal test for *prima facie* discrimination, that a protected ground need only be a factor, and that discrimination may be established through circumstantial evidence and need not be intentional (*Stewart v Elk Valley Coal Corp.*, 2017 SCC 30 at para 69, citing *Moore v British Columbia (Education)*, 2012 SCC 61 at para 33; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at paras 40-41, 60-63; *Basi v Canadian National Railway*, 1988 Can LII 108 (CHRT); *British Columbia (Public Service Employees Relations Commission) v BCGSEU*, 1999 CanLII 652 (SCC) at para 29). The Tribunal therefore understood that discrimination may occur without direct evidence of intent and that its analysis must look at the circumstances. The Tribunal

identified that the first two elements of the legal test were met, namely protected characteristics and an adverse employment impact, and focused its analysis on the third element, whether a protected ground was a factor.

[27] The Applicant's primary complaint is ultimately not that the Tribunal misstated the test, it is that the Tribunal reached the wrong conclusion on the third element, and that it should have inferred discrimination from the overall context and comparator outcomes. The Applicant further argues that the Tribunal should have found discrimination from the fact that the two other employees in the same district were promoted into higher-pay roles while the Applicant was mapped to a lower-pay role, and from the fact the Applicant had been recruited with stated diversity objectives shortly before his MCSS position was eliminated. Those are fundamentally challenges to how the Tribunal weighed evidence and drew inferences.

[28] The Tribunal did not ignore the circumstances the Applicant identifies. The Tribunal expressly acknowledged the Applicant's frustration with being promoted and then demoted within a year, and the optics created by the two promotions of other employees in the same district. The Tribunal nonetheless explained, with reference to the record, why it did not draw the inference the Applicant argues it should have. The Tribunal accepted the Respondent's evidence about the design and implementation of IRIS, including the criteria used and the absence of reliance on protected characteristics. The Tribunal accepted the evidence that the two comparator branches met the requirements to create a new Manager Financial Services role, and that the promotion of the two employees was supported under the program's criteria by their performance ratings and tenure. The Tribunal also accepted evidence that the Applicant's branch

did not meet minimum staffing requirements for an equivalent new role, that there were no suitable pay level 7 vacancies, and that the Applicant was still developing in the MCSS role that had been eliminated. The Tribunal further accepted evidence that the District Vice President, who made the final mapping decisions, did not consider race, colour, or disability, and that she was unaware of any disability the Applicant had at the time of his demotion.

[29] Those Tribunal findings provided an intelligible explanation for the differential outcomes that did not depend on a prohibited ground. While the Applicant disagrees with that explanation, his disagreement does not establish unreasonableness.

[30] The Applicant argues that the Tribunal effectively required statistical proof to establish adverse effect discrimination, and that this imposed an improper evidentiary threshold. I do not accept that the Tribunal imposed a rigid requirement that adverse effect discrimination can only be shown by statistics. The Tribunal noted the absence of corroborating evidence because, on the record before it, the Applicant's evidence about systemic patterns was "general and impressionistic and not backed up by any specifics or statistics". The Tribunal remained entitled to consider whether the evidentiary foundation was sufficient to support the inferences that the Applicant asked it to draw and to conclude that the record before it did not show that the program, though is neutral on its face, had a disproportionate negative impact on a protected group. Those were factual and evidentiary assessments the Tribunal was entitled to make, particularly after it heard live testimonial evidence at the hearing and made credibility findings.

[31] The Tribunal correctly set out the legal question it had to answer, and it explained why the evidence did not establish that a prohibited ground was a factor in the Applicant's demotion.

(2) Alleged Failure to Engage with Material Evidence

[32] The Applicant argues that the Tribunal failed to grapple with key evidence. However, the Tribunal's reasons demonstrate that the Tribunal considered the evidence provided by the witnesses, including from the Applicant, finding the Respondent provided sufficient evidence to show that, on a balance of probabilities, discrimination was not made out. The Tribunal found the Respondent's witnesses credible and found that the Applicant had not presented evidence sufficient to support his claims. An error in assessing evidence will not be found unless the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at paras 125-126). Such fundamental misapprehension by the Tribunal or failure to account for evidence is not demonstrated on the record.

[33] The Applicant argues that the Tribunal failed to consider disability-related impacts, psychological harm, and alleged failures to accommodate. The Tribunal noted that the Respondent was not aware of the Applicant's mental health issues at the time of the mapping decision. The Tribunal also noted that the only medical document tendered by the Applicant was a psychiatrist's note dated October 22, 2018, several months after the mapping decision and after the Applicant had taken leave. Those findings are justified, intelligible, and transparent (*Vavilov* at paras 15, 95), and reasonably supported the Tribunal's conclusion that disability was not shown to be a factor in the mapping decision.

C. *Procedural Fairness*

(1) Alleged Bias

[34] During the hearing, the Applicant submitted that he was not alleging actual bias, but that a reasonable apprehension of bias was raised. The Applicant does not identify anything in the record showing that the Tribunal member had a disqualifying conflict of interest or displayed conduct that would lead to a conclusion the Tribunal would not decide fairly. Generalized allegations about systemic bias within institutions, without a specific connection to the Tribunal's conduct or to the Tribunal member's impartiality, do not demonstrate a reasonable apprehension of bias.

[35] The Applicant also alleges bias or conflict of interest based on the involvement of an investigator previously employed by the Respondent. However, the Applicant must still demonstrate how the alleged circumstance resulted in unfairness in the Tribunal's process or undermined the integrity of the Tribunal's own fact-finding in its proceeding. That link is not established on the record.

(2) Alleged Late Disclosure of a Final Investigation Report

[36] The Applicant argues that a final investigation report was disclosed late, depriving him of a meaningful opportunity to respond. The Respondent submits that the disclosure process was managed through the Tribunal's Rules of Procedure and multiple case management steps,

including conferences in January and April 2022. The Respondent also submits that the Applicant was represented by counsel during significant portions of the disclosure process.

[37] The Applicant does not identify the timing of the alleged late disclosure with any specificity, does not identify what specific responsive evidence he was unable to adduce because of the disclosure timing, and does not identify what specific part of the Tribunal's reasoning turned on the final investigation report.

[38] The Tribunal hearing proceeded over multiple days. The Applicant testified, the Respondent's witnesses were cross-examined, and the Applicant's counsel made final submissions. The Tribunal's reasons show it decided the case based principally on the hearing evidence and the absence of corroborating evidence linking the mapping decision to a prohibited ground. On this record, I am not satisfied that the Applicant has shown that the alleged late disclosure deprived him of a meaningful opportunity to respond, or that it affected the fairness of the Tribunal hearing.

[39] The Tribunal's process was robust. There were detailed particulars, the Respondent produced a significant volume of documents as part of the process, the parties made written submissions, multiple case management conferences occurred, and a mediation took place. The Applicant was represented by counsel during part of the process, including during parts of the multi-day hearing. The Applicant does not allege that there were witnesses or evidence that were not allowed at the hearing, and nothing in the record shows that the hearing was unfair. I find no breach of procedural fairness.

D. *The Applicant's Broader Public Interest Submissions*

[40] The Applicant also asks the Court to place weight on broader public interest considerations, including references to international instruments and asserted public acknowledgements of anti-Black racism by institutions. Such submissions do not substitute for the evidentiary requirement in a section 7 complaint to establish, on a balance of probabilities, that a prohibited ground was a factor in the adverse employment treatment at issue. The Tribunal's task was to decide the complaint on the record before it, within the statutory framework and the issue referred, which it did.

VII. Costs

[41] The Respondent seeks its costs of the application. The Respondent has been successful and there is no reason to depart from the usual result that costs follow the event.

[42] The Applicant has pursued a multiplicity of proceedings in this Court, the Ontario Court of Justice, and at the Canada Industrial Relations Board, all based on essentially the same or similar allegations. The cumulative effect amounts to an abuse of process. The Respondent is awarded costs, assessed in accordance with column 2 of Tariff B.

VIII. Conclusion

[43] The application is dismissed.

[44] The Respondent is awarded costs, to be assessed in accordance with column 2 of Tariff B.

JUDGMENT in T-2092-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. The Respondent is awarded costs, to be assessed in accordance with column 2 of Tariff B.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2092-24
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