

Federal Court



Cour fédérale

Date: 20260304

Docket: T-2082-24

Citation: 2026 FC 287

Toronto, Ontario, March 4, 2026

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

MOHAMMED JAFFAR

Applicant

and

THE TORONTO-DOMINION BANK

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a July 15, 2024 decision [Decision] of the Canadian Human Rights Commission [CHRC], dismissing the Applicant's complaint against the Respondent, the Toronto-Dominion Bank [TD], pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [CHRA]. On receipt of the investigator's report [Report], the CHRC found that an inquiry into the complaint was not warranted.

[2] In his complaint, the Applicant alleged that he was denied banking services based on his identity as a Black, Muslim man. He alleged that TD discriminated against him in the provision of a service on the grounds of race, national or ethnic origin, colour, and/or religion by treating him in an adverse differential manner contrary to section 5 of the CHRA.

[3] In the Decision, which adopted the Report, the CHRC found the evidence did not support a link between the treatment of the Applicant and the alleged grounds of discrimination. The Applicant has not established a reviewable error with the Decision, nor has he established that there was a breach of procedural fairness. As such, the application is dismissed.

I. **Materials Considered**

[4] This decision is based on the Applicant's Record and the Applicant's oral submissions made at the hearing held on February 11, 2026. While the Respondent filed a Notice of Appearance and was served with documents throughout the proceeding, they did not file a Respondent's Record. Thus, although counsel for the Respondent attended the oral hearing, they were not permitted to make oral responding submissions.

II. **Background**

[5] The Applicant, Mr. Mohammad Jaffar, opened a TD bank account on August 23, 2019.

[6] On August 24, 2019, the Applicant deposited three cheques into his account through TD's mobile banking application, which were flagged by TD's risk management detection tool.

Two cheques were stale dated beyond six months, and one cheque was returned as it had already been previously endorsed.

[7] On September 5, 2019, the Applicant attended an in-person meeting at a TD branch where he was informed that his account was on hold because of the flagged transactions. At the meeting, the Applicant was advised that he could continue to access his account through a cash card that would allow him to withdraw funds, however, deposits would have to be made in-person, rather than through an ATM or mobile banking. As the Applicant was unsatisfied with this approach, he initiated the first step of TD's client complaint process.

[8] TD's "Customer Problem Resolution Process" involves three steps [Complaint Process]:

- Step 1: Voicing the complaint with either: personal banking, business banking and lending services, insurance services, investment services, wealth, direct investing, securities or asset management
- Step 2: Escalate the complaint further, either through a member of the bank personnel or on one's own behalf, to the customer care unit
- Step 3 (i): Escalate the complaint to a Senior Customer Complaints Office; an impartial body within TD responsible for reviewing customer complaints that remain unresolved; or
- Step 3 (ii) Escalate the complaint in writing to the Ombudsman for Banking Services and Investigations

[9] On September 10, 2019, the Applicant went to a TD branch to complete an in-person transfer. However, the transfer was denied. The Applicant asserts that he was advised by TD that they were going to close his account due to "suspected fraudulent transactions".

[10] On September 16, 2019, TD sent a letter to the Applicant advising that his account “would be exited” effective October 21, 2019. The letter indicated that TD would return any remaining funds to the Applicant by mail.

[11] On October 7, 2019, the Applicant escalated his concerns to Step 2 of the Complaint Process. He asserts that after this, he received multiple calls from TD proposing temporary solutions. This included requiring the Applicant to use a cash card for six months and if there were no irregularities during this period, then he would be provided with a regular access card. The Applicant refused these conditions.

[12] On November 5, 2019, TD responded to the Step 2 complaint. In their response, TD advised that its fraud department had reviewed the matter again but would not revise its decision to place restrictions on the Applicant’s access to his account. TD also advised the Applicant that if he was still dissatisfied, he could escalate his complaint to Step 3 of the Complaint Process.

[13] On April 12, 2020, the Applicant initiated Step 3 of the Complaint Process by filing a complaint with the TD Ombudsman.

[14] On November 16, 2020, the TD Ombudsman’s Office informed the Applicant that his account had been reinstated and that he could go into any TD bank to get a new access card. An official letter of decision from the Ombudsman Office was delivered to the Applicant on November 23, 2020. The letter indicated that the Applicant could seek an appeal to the ADR Chambers Banking Ombuds Office if the Applicant was not satisfied with the outcome.

[15] On August 5, 2021, the Applicant filed his complaint with the CHRC.

[16] He sought to mediate the dispute through the CHRC in June 2022. However, his scheduled mediation was cancelled on July 5, 2022 as it was deemed inappropriate for mediation. The file was then sent for further investigation and assessment.

[17] On May 29, 2024, the Investigator issued their Report recommending that the CHRC dismiss the complaint. In preparing their Report, the Investigator reviewed all information submitted by the parties and interviewed Mr. Jaffar, the Senior Manager of TD's Canadian Fraud Operations, and the TD Ombudsman Investigator.

[18] The Investigator agreed with the Applicant that negative treatment had occurred in that the Applicant was not permitted to access typical banking services. However, the Investigator disagreed that there was a reasonable basis in the evidence to support a finding that the negative treatment could be linked directly or indirectly to race, national or ethnic origin, colour, and/or religion. The Investigator instead found the Applicant was prevented from accessing typical banking services because of the nature of the Applicant's deposits and the close proximity of the deposits to his having newly opened an account with TD.

[19] The CHRC issued the Decision on July 5, 2024, dismissing the complaint under subparagraph 44(3)(b)(i) of the CHRA. In addition to its reliance on the Report, the CHRC provided the following additional reasons for the Decision:

The Commission has reviewed the Complainant's submission to the report and notes that he has provided an excerpt from a policy

he was given by the Personal Service Representative on the day he opened his account. Under the heading “Cheque Hold Periods”, the document states that the Respondent may make the maximum hold period on deposited cheques longer than the standard time period if the date on the cheques is more than six months prior to the date on which the deposit was made. The restrictions imposed on the Complainant’s banking privileges by the Respondent were related to cheques he deposited which had been issued more than six months before the date the account was opened, in addition to one that was returned NSF. In the Commission’s view, the Respondent’s decision to impose conditions on the Complainant’s banking options was consistent with its policy which was disclosed to the Complainant when he opened his account. The Commission agrees with the conclusion in the report that there is no reasonable basis in the evidence to conclude that there was a link between the negative treatment alleged and the grounds of discrimination cited in the Complaint.

III. **Preliminary Motion**

[20] As a preliminary matter, the Applicant filed a motion requesting leave to adduce a supplemental affidavit. There was no response from the Respondent to this motion. By Direction dated December 8, 2025, Associate Judge Coughlan directed that this motion be heard along with the merits of the application.

[21] The Applicant submits that the supplemental affidavit provides two documents that are necessary to complete the Certified Tribunal Record. The documents include: (a) a Report for Decision (Preliminary Issues) dated March 14, 2023, which recommended that the CHRC not deal with the complaint because it was out of time; and (b) a Letter of Decision (Preliminary Issues) dated May 31, 2023, where the CHRC rejected the report’s recommendation and chose to deal with the complaint.

[22] It is well established that the evidentiary record before the Court on judicial review is restricted to the evidentiary record that was before the administrative decision maker, absent exceptional circumstances: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 86, 98.

[23] In this case, the documents the Applicant seeks to admit relate to preliminary findings made in response to a request by the Respondent to dismiss the complaint under paragraph 41(1)(d) of the CHRA as being frivolous, and under paragraph 41(1)(e) of the CHRA as being beyond the one-year limitation period. As noted in the Report, the CHRC dismissed the request and decided to deal with the complaint as it found it was not plain and obvious that the complaint was frivolous within the meaning of the CHRA. The CHRC found “it [was] not possible to assess the link between the alleged discrimination and the cited grounds, without assessing the details of the complaint by an investigation under the scope of section 44 of the Act.” Contrary to the report provided and recommendations given, the CHRC also found that the continuing nature of the alleged events did not take the complaint outside the limitation period. The summary provided in the Report as to the CHRC’s findings on these preliminary issues is not disputed.

[24] The Applicant seeks to argue that the Decision is inconsistent with the CHRC’s findings at this preliminary screening stage; however, this argument is misplaced and fails to recognize the distinction between preliminary screening under section 41 and a section 43/44 review.

[25] The role of the CHRC under section 41 of the CHRA is limited and is directed at determining whether to screen out a complaint from further inquiry where it is clear, without evidence, that it cannot succeed: *Khapar v Air Canada*, 2014 FC 138 at para 64, aff'd 2015 FCA 99. In deciding to deal with a complaint, the CHRC is not rendering a final decision (*Laurentian Bank of Canada v Fortin*, 2020 FC 921 at para 18), it is only determining that further investigation is required.

[26] A decision under section 44 of the CHRA is a separate screening decision that is made with the benefit of an investigation. By necessity, it revisits grounds under section 41. On receipt of an investigation report, the CHRC has three options, it can: (1) refer the complainant to the appropriate authority if the complainant ought to exhaust other available procedures, or if the complaint could more appropriately be dealt with elsewhere (CHRA, subsection 44(2)); (2) request the Chairperson of the Canadian Human Rights Tribunal institute an inquiry into the complaint if the CHRC is satisfied that an inquiry into the complaint is warranted and that the complaint should not be dismissed on any ground mentioned in paragraphs 41(1)(c) to 41(1)(e) (CHRA, paragraph 44(3)(a)); or (3) dismiss the complaint if the CHRC is satisfied that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or that the complaint should be dismissed on any ground mentioned in paragraphs 41(1)(c) to 41(1)(e) (CHRA, paragraph 44(3)(b)). A determination that no further inquiry is warranted under paragraph 44(3)(b) thus is not inconsistent with a preliminary finding under paragraph 41(1)(d) that the complaint should proceed to an investigation. A paragraph 44(3)(b) decision is a final decision that is separate from the preliminary screening decision and is reviewable: *Keith v Canada (Correctional Service)*, 2012 FCA 117 at paras 47, 50.

[27] The additional documents, which relate to the preliminary section 41 decision, are therefore neither relevant nor necessary for a judicial review of the Decision. As such, they shall not be admitted.

IV. Issues

[28] There are two issues raised by this application: 1) was the Decision reasonable; and 2) has there been a breach of procedural fairness.

[29] The Applicant asserts, and I agree, the standard of review of the merits of the Decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision is one that is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at para 85. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 95-96.

[30] In reviewing the decision for reasonableness, this Court’s role is not to reweigh the evidence or to interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. To succeed in an application for judicial review under the reasonableness standard, an applicant must establish the decision contains fundamental flaws that are so sufficiently central or significant that they warrant intervention: *Vavilov* at para 100.

[31] On the second issue, the ultimate question is whether the applicant knew the case they had to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55.

V. **Analysis**

A. *Was the Decision reasonable?*

[32] The Applicant asserts the Decision was unreasonable because it did not recognize that there was no policy basis for TD's adverse differential treatment. He argues that the Decision was not based on the evidence and that it disproportionately infringes on his rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*] by effectively applying the Ombudsman decision reinstating his account when he has no intention of continuing to bank with TD. The Applicant asserts that the Report includes errors of fact in its characterization of the status of his account, TD's obligations to return the Applicant's funds, and the reason for cancelling the mediation session that was scheduled after the complaint was filed.

[33] In my view, none of the Applicant's arguments establish a reviewable error with the Decision.

[34] As highlighted in the Decision, and as conceded by the Applicant, the bank's file opening documents provided a cheque hold policy. The policy indicated that TD could make the maximum hold period on deposited cheques longer than the standard time-period if the date on the cheque was more than six months prior to the date on which the deposit was made. While

there were other restrictions placed on the Applicant's banking services, there was no evidence to suggest that these restrictions were imposed because of discriminatory grounds. Rather as reasonably found in the Report, the evidence indicated that the steps taken by the bank were connected to the suspicious cheques submitted and the fact that the Applicant was a new customer, without any prior banking history with TD.

[35] The Investigator considered the documents submitted by the Applicant and his evidence, along with evidence from the bank's fraud manager, but found the actions taken by TD to be a direct consequence of TD's risk management. Although no policy was referenced for the subsequent steps taken, the conditions placed on the Applicant's account were reviewed through the Complaint Process and by the Ombudsman and were ultimately upheld as appropriate steps in the circumstances. There was no evidence to suggest that any course of action was taken because of the Applicant's race, national or ethnic origin, colour, and/or religion.

[36] While the Applicant argues that discrimination is "obvious", this assertion is not supported by the record. The Report recognized that the Applicant was a Black, Muslim man, but found the evidence did not support a finding that these aspects of the Applicant's profile had any bearing on the bank's actions. The Applicant has not established that the Investigator failed to consider relevant facts or the relevant legal principles in the Report. The Applicant's argument amounts to disagreement and speculation which is not a basis for finding a decision unreasonable.

[37] The alleged errors of fact highlighted by the Applicant similarly do not establish that the Decision is unreasonable. The Report states that while TD initially planned to close the Applicant's account, it was never finally closed because the Applicant initiated the Complaint Process. I agree with the Applicant that the prior correspondence from the bank suggested that they were treating his account as closed; however, as noted in the Ombudsman's letter, the bank retracted their decision and reinstated the Applicant's account as of November 16, 2020. Thus, I do not view it as erroneous to state that the account was not finally closed as the Investigator did in the Report. Moreover, this disputed fact has no bearing on the reasonableness of the Decision and whether there was evidence to support the assertion that the differential treatment of the Applicant was based on discrimination. Further, on the second disputed fact, while I agree that the characterization of the circumstances relating to the cancellation of the mediation could have been more precise, I do not consider this characterization to render the investigation unreliable. This description has no bearing on the core issues in the complaint. The discrepancies noted by the Applicant do not render the Decision unreasonable.

[38] I also have concerns with the Applicant's *Charter* argument. The Applicant's underlying concern appears to be that the intervention of TD's Ombudsman resulted in a different solution than the specific solution requested (reinstating his account, instead of closing his account and returning his funds). He asserts that this result has forced him to remain associated with TD although he does not wish to continue banking at that institution. However, the *Charter* does not regulate private interactions between an individual and their bank. To raise a breach under the *Charter*, there must be some connection to government action: *Charter*, section 32; *RWDSU v Dolphin Delivery Ltd*, 1986 CanLII 5 (SCC) at paras 33-34, 39; *Canada (Citizenship and*

Immigration) v Canadian Council for Refugees, 2021 FCA 72 at para 84. While the Applicant argues that the state's power, exercised through the CHRC should not be used to compel an individual to maintain a commercial relationship against his will, the Applicant has not established how the Decision is related to, or would have the potential to impact, the status of his account or how it could cause a breach of section 2 of the *Charter*.

[39] Section 2 of the *Charter* provides that:

Everyone has the following fundamental freedoms:	Chacun a les libertés fondamentales suivantes :
(a) freedom of conscience and religion;	a) liberté de conscience et de religion;
(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;	b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
(c) freedom of peaceful assembly; and	c) liberté de réunion pacifique
(d) freedom of association	d) liberté d'association

[40] To raise a breach under subsection 2(b) or 2(d) of the *Charter*, an applicant needs to establish how the activity in question falls within the scope of protected activities and how the administrative decision interferes with the protected activities. Neither of these aspects have been established here. The Applicant has not established what he is asserting as a protected form of expression and how the Decision interferes with this. Nor has he pointed to any protected form of association or any preclusion of association caused by the Decision. The Applicant has not established how the *Charter* is engaged.

B. *Was the Decision procedurally fair?*

[41] The Applicant raises two arguments on procedural fairness. First, he argues that there was a breach of procedural fairness because the TD representative who opened his bank account was not interviewed as part of the investigation. He asserts that this would have revealed important evidence as he disclosed to this individual that he was Muslim during this initial intake. Second, the Applicant argues that the Respondent failed to follow paragraph 627.24(2)(a) of the *Bank Act*, SC 1991, c 46 [*Bank Act*] as they did not notify the Applicant in writing that TD would not make his funds available. I do not agree with either of these arguments.

[42] While the representative present when the Applicant opened his account could have confirmed that the Applicant disclosed his Muslim identity, I do not consider the omission of this evidence to result in any unfairness to the Applicant as it would not have impacted the Decision. This is particularly so as other evidence revealed that TD does not retain information about a customer's race, national or ethnic origin, colour or religion in its records. There were also no notes regarding the Applicant's race, national or ethnic origin, colour or religion in the Applicant's file or anywhere in the bank's electronic system. Further, there was no evidence that this same representative who opened the Applicant's account was in any way involved with placing the account on hold or any of the subsequent steps relating to the restrictions placed on the Applicant's bank account. As noted in the Report, the deposits in question were made through mobile banking. TD's automated risk management detection tool did not know the Applicant's race, national or ethnic origin, colour or religion when the deposits were made and flagged. Thereafter the Applicant had a series of interactions with individuals at different TD branches and otherwise dealt with TD remotely in the Complaint Process.

[43] Further, the Report indicates that the Investigator tried to contact all customer service agents mentioned by the Applicant, but messages were not returned. This included the individual (Shifali Pannu) that the Applicant asserted was present during his account opening. There is no mention in the complaint of the individual (Karan Arora) that the Applicant now asserts opened his account. The Investigator cannot be faulted for not contacting an individual that was not previously identified.

[44] With respect to the second argument, I do not consider the cited provision of the *Bank Act* to be triggered. Subsection 627.24(2) of the *Bank Act* details the circumstances where a banking institution has an obligation to provide a written statement to indicate it will not be making a customer's funds available. The obligations are triggered automatically where the deposit is made in person and on request if made by any other means:

Non-application

627.24 (1) Sections 627.21 and 627.22 do not apply

(a) if the institution has reasonable grounds to believe that the deposit is being made for illegal or fraudulent purposes in relation to the depositor's account;

(b) if the account has been open for fewer than 90 days;

(c) if the cheque or other instrument has been endorsed more than once;

Cas de non-application.

627.24 (1) Les articles 627.21 et 627.22 ne s'appliquent pas dans les circonstances suivantes :

a) l'institution a des motifs raisonnables de croire que dépôt est fait à des fins illégales ou frauduleuses en lien avec le compte du déposant;

b) le compte est ouvert depuis moins de quatre-vingt-dix jours;

c) le chèque ou l'autre effet a été endossé plus d'une fois;

(d) if the cheque or other instrument is deposited at least six months after the date of the cheque or other instrument; or

(e) in any prescribed circumstances.

Refusal to make funds available

(2) An institution that relies on subsection (1) as grounds for not complying with section 627.21 or 627.22 shall — immediately, if the deposit is made in person with an employee at one of the institution's branches or points of service or on request of the depositor if the deposit is made in any other manner — provide the depositor

(a) a written statement that indicates that it will not be making the funds available; and

(b) the information referred to in paragraphs 627.65(a) to (c).

d) au moins six mois se sont écoulés depuis la date du chèque ou de l'autre effet;

e) toute circonstance réglementaire.

Refus de permettre le retrait de fonds

(2) L'institution qui invoque l'une des circonstances prévues au paragraphe (1) pour se soustraire à l'application des articles 627.21 ou 627.22 remet au déposant immédiatement, si le dépôt est fait en personne auprès d'un employé d'une succursale ou d'un point de service de l'institution, ou sur demande du déposant, s'il est fait de toute autre manière :

a) une déclaration écrite indiquant qu'elle ne permettra pas le retrait des fonds;

b) les renseignements visés aux alinéas 627.65a) à c).

[45] Here, the Applicant made the relevant deposits via mobile banking. TD's obligation to provide a written statement under subsection 627.24(2) therefore would only have been triggered upon the Applicant's request. The Applicant has not provided any evidence of such request. Moreover, the record indicates that the Applicant was provided with an explanation as to the

status of his account at various stages of the process and after his visits to the branch. The Applicant has not established a breach of the *Bank Act*.

[46] The Applicant has not established a breach of procedural fairness.

[47] For these reasons, the application is dismissed.

[48] There shall be no order as to costs.

JUDGMENT IN T-2082-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2082-24

STYLE OF CAUSE: MOHAMMED JAFFAR v THE TORONTO-DOMINION BANK

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JUDGMENT AND REASONS: FURLANETTO J.

DATED: MARCH 4, 2026

APPEARANCES:

Mohammed Jaffar

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Andrew Dixon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Calgary, Alberta

FOR THE RESPONDENT