



RECORD OF DECISION

COMPLAINT INFORMATION

File Number: 20250379
Complainant: Shannon Wylie
Respondent: WestJet Airlines
Date of Decision: August 18, 2026
Decision Maker: Julie Lassonde

DECISION OF THE COMMISSION

On behalf of the Canadian Human Rights Commission (the “Commission”), I decide not to deal with this Complaint because taking the allegations in the Complaint as true, it is plain and obvious that this Complaint could have been dealt with by a grievance or other review procedure.

This decision is made under paragraph 41(1)(a) of the Canadian Human Rights Act (the “Act”).

INTRODUCTION

Shannon Wylie (the “Complainant”) alleges that WestJet Airlines (the “Respondent”) discriminated against her on the basis of her religion, disability and genetic information. Specifically, she makes different allegations against the Respondent, including that it

harassed her and discriminated against her by asking her to complete a form to declare her vaccination status, by asking her to disclose personal and private medical information, by denying her request for religious accommodation related to not receiving the Covid 19 vaccine, and ultimately by firing her. The Complainant submitted a human rights Complaint to the Commission.

This decision addresses this preliminary issue, i.e. whether the Commission should deal with this Complaint or not, because:

- The Complainant should complete another process available to address it.

CONTEXT

What is a preliminary issue?

A preliminary issue can be identified by either the Respondent or the Commission and may lead the Commission to not deal with a Complaint.

The Commission is required by law to screen out and “not deal with” complaints in certain situations.¹ The courts have also made decisions that limit the types of complaints that the Commission can deal with. The Commission is required to follow the decisions of the courts and the law in determining which complaints it will deal with.

If the Commission decides not to deal with this Complaint, the file will be closed.

If the Commission decides to deal with this Complaint, steps will be taken to determine whether a referral to the Canadian Human Rights Tribunal is warranted. The Commission may also explore further options to resolve the complaint through conciliation or mediation.

¹*Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s. 41(1).

In some cases, the Commission may decide to deal with some allegations in the Complaint and not deal with other allegations in the Complaint.

How does the Commission address Preliminary Issues?

The Commission considers preliminary issues before it investigates or makes a decision on the merits of a complaint.

In decisions relating to preliminary issues, the allegations are presumed to be true, and the Commission can only decide not to deal with a complaint if it is plain and obvious that a preliminary issue applies.²

How has this complaint been processed?

A notice provided to the parties and dated September 25, 2025 (the “Notice”) has identified the following preliminary issues:

- the Complainant failed to complete an available grievance process or other review procedure (section 41(1)(a)/42(2) of the Act);
- the allegations in the complaint were already dealt with through another process (section 41(1)(d) of the Act).

The Notice explains how the preliminary issue may apply to this Complaint and the criteria and factors the Commission considers in assessing this preliminary issue.

The Respondent and the Complainant have been invited to provide submissions on the preliminary issue addressed in this decision. The submissions of each party have also been shared with the other party, and both parties have had an opportunity to reply to the other parties’ submissions.

² See *Keith v Correctional Service of Canada*, 2012 FCA 117 at paragraphs 50 and 51.

Both parties have filed submissions. In its submission, the Respondent raises other preliminary issues under paragraph 41(1)(d) of the Act. However, considering my decision regarding the preliminary issue under paragraph 41(1)(a) of the Act, which was raised in the Notice, it will not be necessary to address other preliminary issues.

The Commission has reviewed the Complaint Form, the Notice, and both parties' submissions before rendering this decision.

What specific preliminary issue is being examined in this decision?

The preliminary issue that is being examined in this decision can be found at paragraph 41(1)(a) of the Act. This paragraph means that the Commission may decide not to deal with a complaint if there is another process (e.g. grievance, harassment complaint, etc.) and that the other process is reasonably available.

Human rights laws are implicitly included in all collective agreements, even if they are not explicitly referenced.³ Grievance arbitrators have the power and responsibility to consider substantive human rights and award remedies if appropriate.⁴

The Commission considers a number of factors in assessing this preliminary issue that can be found in "Appendix A" at the end of this decision.

LAW & ANALYSIS

The determinative issue in this case is whether the Complainant is solely responsible for not exhausting the grievance procedure when it was available to her.

The Complainant submits that the Canadian Union of Public Employees (the "Union") filed a grievance on her behalf against the Respondent for terminating her in violation of

³ *Parry Sound (District) Social Services Administration Board v. OPSEU, Local 324*, 2003 SCC 42 at para. 23 [*Parry Sound*].

⁴ *Ibid.* at para. 40.

her collective agreement. She provides a copy of this grievance form. The grievance form indicates that the Respondent made mandatory vaccination a condition of employment contrary to the hiring policy that was in place when the Complainant was hired. It requests that the Complainant be reinstated, placed on leave, made whole including any lost wages, seniority and benefits, and any other remedy deemed appropriate.

The Complainant explains that her Union did not mention her human rights in this grievance. She states that her Union was not responsive when she asked to grieve the Respondent's denial of a religious accommodation in relation to its vaccination policy. She says that she told her union that she wanted her grievance related to her termination to be referred to arbitration, but that her Union decided to put her grievance in abeyance instead of sending it to arbitration. She states that her Union then engaged in settlement negotiations with the Respondent on her behalf. When the Respondent offered to reinstate her, she explains that she refused to settle due to terms in the memorandum of settlement with which she disagreed. She mentions that her Union then decided to withdraw her grievance. She provides a copy of a legal opinion dated October 31, 2022, and sent to her Union and her, stating that the Respondent settlement offer was reasonable and consistent with the likely outcome at arbitration. The Complainant states that she appealed the Union's decision to withdraw her grievance and that the Union's appeal board declined her appeal. The Complainant says that she then filed a duty of fair representation claim against her Union at the Canada Industrial Relations Board (the "CIRB"). She asserts that the CIRB dismissed her claim. The Complainant provides copies of different documents supporting her Complaint. She does not include a copy of the CIRB decision. The Complainant argues that the grievance procedure has not been completed and is no longer reasonably available to her. She asks that the Commission deals with her Complaint.

The Respondent agrees that the Complainant submitted a grievance through her Union regarding her termination of employment, and that her Union withdrew this grievance at the settlement discussion stage. The Respondent considers that the Complainant had

access to a grievance and review procedure, including a way to make a complaint against her Union for unfair representation, which could deal with the human rights issues raised in the Complaint. It argues that this procedure has concluded and has already dealt with the human rights issues raised in the Complaint. It asks the Commission not to deal with the Complaint.

If the Commission concludes that a grievance or other review process is reasonably available and has not been exhausted, the Commission must determine whether the Complainant ought to exhaust the other process. If, in the view of the Commission, the Complainant should not be required to exhaust the other process (for example, because it is a systemic complaint or a matter that is in the public interest), the Commission should deal with the Complaint.

If the Commission decides that a Complainant should use a grievance or review procedure that is available to deal with the human rights issues, it is important that the Complainant use that other process and try to get a final decision in that process. Otherwise, the Commission could refuse to deal with the complaint under subsection 42(2) of the Act:

Before deciding that a complaint will not be dealt with because a procedure referred to in paragraph 41(1)(a) has not been exhausted, the Commission shall satisfy itself that the failure to exhaust the procedure was attributable to the Complainant and not to another.

This means that the Commission can decide not to deal with a complaint under paragraph 41(1)(a) of the Act if it finds that the Complainant chose not to finish another process that was reasonably available to them. The Commission may also decline to deal with a complaint where the Complainant had the opportunity to raise all of the concerns identified in the human rights complaint through procedures that were otherwise available to them.⁵

⁵ *Hood v. Canada (Attorney General)*, 2019 FCA 302 at para. 40.

If the other process is no longer available to the Complainant, the Commission must determine why that process was not used or was not finished. If the failure to use or finish the other process is in any part the fault of someone other than the Complainant (for example, if the union abandoned the grievance), then the Commission should deal with the Complaint. However, if the Commission determines that the Complainant is the only one responsible for the fact that the other process was not used or finished, the Commission may decide to not deal with the Complaint.

In this case, it is uncontested that the Complainant is a member of the Union, and that members of the Union are covered by a collective agreement that includes access to a grievance procedure. As stated above, human rights laws are implicitly included in all collective agreements.⁶ The final decision maker in the grievance procedure would be a labour arbitrator, independent from the Complainant and the Respondent. As noted above, labour arbitrators have the power and responsibility to enforce substantive human rights.⁷ In addition, they can award remedies similar to those available under the Act, such as reinstatement of employment and lost wages. It appears, therefore, that the grievance procedure could resolve the issues raised in this Complaint.

In addition to the grievance procedure and as the Complainant states in her submission, should the Complainant find that her Union failed to fairly represent her, she has access to a procedure to complain against her Union. This procedure starts by an appeal to her Union's appeal board, followed by a duty of fair representation complaint at the CIRB, under the Canada Labour Code (the "CLC").⁸ A CIRB decision may be reconsidered⁹ or judicially reviewed at Federal Court.

In summary, the Union filed a grievance on behalf of the Complainant regarding at least one of the issues raised in this Complaint, i.e. the Complainant's termination of employment for non-compliance with the Respondent's vaccination policy. While the grievance covers only the termination issue raised in the Complaint, other human rights

⁶ *Parry Sound* at para. 23.

⁷ *Parry Sound* at para. 40.

⁸ *Canada Labour Code, R.S.C., 1985, c. L-2, s. 37 [CLC]*.

⁹ *Canada Industrial Relations Board Regulations, 2012, SOR/2001-520, s. 45; CLC, s. 22.*

issues raised in the Complaint are related to the termination issue because they all connect to the Respondent's vaccination policy. As stated above, the grievance procedure can deal with all issues raised in the Complaint and the Complainant can make a complaint about her Union about unfair representation. The Complainant did not provide evidence that she has complained about her Union regarding not including all human rights issues in the grievance the Union made on her behalf, or for not having made a grievance on her behalf regarding some of the human issues raised in the Complaint including the Respondent's denial of her accommodation request. The Complainant does not provide a copy of her collective agreement or information about whether this agreement allows her to bring a private grievance in the absence of support from her union. Based on the evidence before me, it appears that up to the point at which the Union filed the grievance regarding her termination of employment and at the beginning of this process, the Complainant accepted her Union's decisions.

The Union withdrew the grievance at settlement negotiation stage because the Respondent offered to reinstate the Complainant, therefore substantively resolving the grievance. There has been no final decision on the grievance. However, the Complainant made a duty of fair representation complaint against her Union about the Union's decision to withdraw her grievance. The CIRB dismissed her claim regarding her Union's duty of fair representation. The Complainant did not provide a copy of the CIRB decision and did not mention whether she applied for reconsideration of this decision or judicially reviewed it.

While the grievance did not go to arbitration, there was no final decision regarding it and there was no settlement of it, which means that the grievance procedure was not completed, there is no indication that the Union abandoned the Complainant's grievance. The Union provided an explanation for withdrawing her grievance and information about how she could challenge this decision, which she did. The Complainant provided copies of correspondence between her Union and her. The Complainant states that the CIRB dismissed her claim regarding her Union's duty of fair representation. I see no evidence to the effect that the Complainant contested the CIRB

decision. Overall, based on the evidence before me, I cannot conclude that the Union acted in bad faith or unfairly, failed to communicate with the Complainant, disengaged with the grievance process, or that the Complainant did not have a process through which she could challenge her Union's actions. The Union negotiated a settlement that substantively addressed her grievance. This is confirmed by the outcome of the CIRB application against the Complainant's Union. The Union is therefore not responsible for the Complainant's failure to complete the grievance procedure.

There is no evidence before me to the effect that any other person could be responsible for the Complainant's failure to exhaust the grievance procedure.

The Complainant did not provide evidence as to why she did not raise all human rights issues through the grievance procedure and why she did not contest other decisions by her Union if she thought her Union refused to raise these issues.

In this context, I conclude that the Complainant had access to a grievance procedure that could have dealt with the human rights issues raised in the Complaint. The grievance procedure is no longer available to the Complainant. The Complainant is solely responsible for not exhausting the grievance procedure when it was available to her. The Complaint does not raise systemic discrimination issues. It is not in the public interest that the Commission deals with this Complaint when another procedure could have dealt with it.

CONCLUSION

On behalf of the Commission, I have decided not to deal with this Complaint, because taking the allegations in the Complaint as true, it is plain and obvious that this Complaint could have been dealt with by a grievance or other review procedure.

This decision is made under subsection 41(1) of the Act.

APPENDIX A: FACTORS CONSIDERED BY THE COMMISSION WHEN ASSESSING
PRELIMINARY ISSUES UNDER PARAGRAPH 41(1)(A) OF THE CHRA

1. Is there another process available to the Complainant that could address the allegations raised in this complaint?
2. If the Complainant is not using the other process, why not?
 - a. Is the other process still available to the Complainant?
 - b. Has the Respondent confirmed that they will not oppose the Complainant using the other process, even if they are beyond the time limit?
3. The other process:
 - a. Who are the decision-makers?
 - b. What are the different levels / steps?
 - c. If the decision-maker is an employee of the Respondent, are they at arm's-length or removed from the situation the Complainant is complaining about?
 - d. Does the decision-maker have any training or expertise in the area of human rights?
 - e. Does the decision-maker have the authority to decide human rights issues?
 - f. Does the other process have a "no-retaliation" clause?
4. If the other process cannot deal with all of the issues raised in this complaint, why not and what issues cannot be dealt with (for example, systemic discrimination)?
5. What are the types of remedies the other process can provide that would resolve the issues raised in this complaint:
 - a. If the complaint alleges systemic discrimination, could the potential remedies address these issues?
 - b. If the complaint alleges a discriminatory policy or practice, could the potential remedies address this issue?
6. Is the other process no longer available?

7. Was there another process available to the Complainant that could have addressed the allegations raised in this complaint but was either not used or not finished?
 - a. What was the other process?
 - b. What allegations were not raised in the other process?
 - c. Why is the other process no longer available?
 - d. Could the other process have provided a remedy that would have resolved the allegations raised in this complaint, if warranted?
8. Is there evidence that demonstrates that the Complainant was aware of the other process?
9. Is the Complainant solely responsible for not using or finishing the other process?
10. Why did the Complainant not use or complete the other process?