

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 24  
**Date:** March 31, 2025  
**File No.:** HR-DP-2982-23

**Between:**

**Mohammed Tibilla**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canada Revenue Agency**

**Respondent**

**Ruling**

**Member:** Sarah Churchill-Joly

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## I. OVERVIEW

[1] This is a ruling on a motion by the Respondent, the Canada Revenue Agency (CRA), for an order striking portions of the Statement of Particulars (SOP) filed by the Complainant, Mohammed Tibilla. The Respondent seeks to limit the scope of the complaint before the Tribunal to events between October 29, 2018, and March 29, 2019, while the Complainant worked as a specialty tax examiner (SP-05) at the Montreal Tax Service Office.

[2] The Complainant filed a complaint of discrimination against CRA on July 3, 2019 (the “2019 Complaint”). In his complaint form, he indicates that the discrimination started in 2009 and 2013, but he limits his description to events that occurred between October 29, 2018, and March 29, 2019, when he worked at the Montreal Tax Service Office. His SOP, however, extends this description to events that occurred during two earlier periods of time, both of which were the subject of separate human rights complaints:

A) April 2006 to June 2009: During this time, the Complainant worked for CRA as a term auditor (SP-05) at the Montérégie Tax Service Office. In 2012, the Complainant filed a human rights complaint alleging that his team leader made racist remarks towards him (the “2012 Complaint”). The Canadian Human Rights Commission (the “Commission”) dismissed his complaint as untimely. While the Complainant took steps to judicially review the decision, he abandoned the Federal Court proceedings after the Court prohibited him from taking further steps until he posted security.

B) March 2013: While working as a term benefit officer (SP-04) at the Jonquière Tax Service Office, the Complainant filed a human rights complaint, alleging that his manager terminated his employment in retaliation for his filing of the 2012 Complaint (the “2013 Complaint”). The Commission decided that further inquiry was not warranted and dismissed his complaint. The Complainant filed an application for judicial review of the decision with the Federal Court, but he discontinued this application after the Court prohibited him from taking further steps until he posted security.

[3] I find that the Tribunal does not have the jurisdiction to examine the allegations from these earlier periods, as they are an attack on the Commission’s decisions, which the Tribunal has no power to vary or nullify. Given that these events have no nexus with those of the 2019 Complaint and that they are not mentioned in the documents that form part of the history of the 2019 Complaint, I find that they are also out of scope. For these reasons, they ought to be struck. I decline to keep them for the purposes of providing context, as they

are not connected to the events before me and retaining them would be unfair to the Respondent.

[4] The Complainant's SOP also contains allegations that he obtained a permanent position in 2009, a fact he says he uncovered during the disclosure phase of the Tribunal's process, and which is not mentioned in the complaint form. I find that these allegations could have an impact on the 2019 Complaint and that it is appropriate for the Tribunal to hear them. Finally, I conclude that the Complainant's allegations of discriminatory incidents occurring after March 2019 should not be struck where they are connected to the facts and issues before me. To restrict this evidence at this stage would be premature.

[5] I issued an order to this effect on March 11, 2025. These are my reasons for that order.

## **II. DECISION**

[6] The motion is granted in part. The portions of the Complainant's SOP that relate to the 2012 Complaint and the 2013 Complaint are struck and will not be kept as context.

[7] The Complainant is allowed to argue his permanent status, allegedly acquired in 2009.

[8] The allegations post March 2019 are not struck; they may be advanced where they are connected to the events that gave rise to the 2019 Complaint.

## **III. ISSUES**

1. Should the impugned sections of the Complainant's Statement of Particulars relating to the 2012 Complaint and the 2013 Complaint be struck?
2. Should they be kept as context?
3. Should the allegations post March 2019 be struck?

#### IV. ANALYSIS

##### 1. **Should the impugned sections of the Complainant's Statement of Particulars relating to the 2012 Complaint and the 2013 Complaint be struck?**

###### (i) ***September 2008 to June 2009 allegations (Montréal Tax Service Office)***

[9] Paragraphs 5 to 11 of the Complainant's SOP pertain to events that allegedly occurred when the Complainant held the position of Term Auditor SP-05 in the Montréal Tax Service Office in Brossard, Quebec, between September 2006 and June 2009. These paragraphs describe a conversation that took place in September 2008 during the Complainant's annual performance evaluation when his team leader allegedly made racist remarks towards him. The Complainant contends in his SOP that the Team Leader repeated these remarks on other occasions but provides no details of these events. The Complainant also states that, in March 2009, a different supervisor gave him a negative performance evaluation which did not comply with the evaluation guideline process, a decision which he alleges also had racist underpinnings. In June 2009, due to this negative performance evaluation, the Complainant's employment was terminated.

[10] These paragraphs relate to some of the same facts that the Complainant described in the 2012 Complaint which the Commission dismissed.

[11] In the 2012 Complaint, the Complainant describes incidents that occurred between 2007 and 2009, when he held the position of Term Auditor SP-05 in the Montréal Tax Service Office. He describes incidents in April 2007, April 2008 and October 2008 involving himself and the same Team Leader whom he claims in his SOP made racist remarks towards him. In this complaint, the Complainant does not refer to the conversation alleged to have occurred in September 2008. He does, however, detail other incidents when this Team Leader allegedly made similar racist remarks (the use of the word "Nigger") before and after this date.

[12] The Complainant also describes a negative performance evaluation which did not, according to him, follow the evaluation guidelines process and led to his termination. Similar

to what is alleged in his SOP, the Complainant argues in the 2012 Complaint that the negative performance evaluation and termination were a pretext for discrimination, although he dates this evaluation to April 29, 2009, rather than March 2009 as stated in his SOP. Given the overlap of the description of these events however, I attribute this discrepancy to an error and am satisfied that the Complainant in both instances refers to the same incident. I conclude that this group of allegations, which has antecedents in the 2012 Complaint, involves the same individuals and falls within the same period of the 2012 Complaint allegations.

[13] The Complainant grieved his termination from the Montérégie Tax Service Office, but did not raise allegations of discrimination in his grievance (see the Federal Court's finding on this point in *Tibilla v. Canada (Attorney General)*, 2011 FC 163 at paras 32–33). The Federal Court dismissed his application for judicial review of the grievance decision. The Federal Court of Appeal dismissed his appeal for delay, and the Supreme Court of Canada dismissed his application for leave to appeal.

[14] On February 6, 2012, the Complainant also filed the 2012 Complaint with the Commission against his former employer. The Commission dismissed this complaint on the ground of timeliness, as the last alleged discriminatory act had occurred more than one year before receipt of the complaint, and because the Complainant had not done everything a reasonable person would have done in the circumstances to proceed with his complaint. The Complainant filed an application for judicial review of this decision. These proceedings came to a halt when the Federal Court ordered the Complainant to give security for the Respondent's cost and prohibiting him from taking further steps until he posted security, which the Complainant did not do.

**(ii) March 2013 allegations (Jonquière Tax Service Office)**

[15] These paragraphs describe an incident that occurred four days after the Complainant started his employment as a benefit officer (SP-04) at the Jonquière Tax Service Office. The Complainant alleges that, on March 8, 2013, his new manager advised him that he was aware of the Complainant's employment history at the Montérégie Tax Service Office and

of the 2012 Complaint. The manager allegedly notified the Complainant that he would be terminating his contract at the end of its term.

[16] These events led the Complainant to file, on November 4, 2013, the 2013 Complaint. The Commission decided to dismiss the 2013 Complaint because it found that, having regard to all the circumstances, further inquiry was not warranted. The Complainant filed an application for judicial review of the Commission's decision with the Federal Court. However, he discontinued this application after the Court prohibited him from taking further steps until he posted security.

[17] The 2013 Complaint describes the same occurrences as those described in paragraphs 12–14 of the Complainant's SOP but elaborates on the incidents. In the end, both documents speak to the same events, dates, allegations and individuals involved.

### **(iii) *Parties arguments and analysis***

[18] The Respondent's position regarding these allegations can be summarized in two key arguments.

[19] The first is that the Tribunal does not have the jurisdiction to examine the allegations detailed in the Complainant's SOP that precede October 29, 2018, as these allegations fall outside the scope of the complaint that the Commission referred to the Tribunal pursuant to section 49(1) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA).

[20] The second is that these allegations are barred from proceeding by virtue of the application of the common law principle of *res judicata*. I will address this argument first.

#### **(a) *Res judicata***

[21] The Respondent notes that the Commission has already ruled that the events covered in the 2012 Complaint and the 2013 Complaint should not be referred to the Tribunal and that the events covered by the 2013 Complaint did not constitute discrimination. These decisions have therefore acquired the force of *res judicata* and bind the Tribunal. The Commission agrees with the Respondent.

[22] The parties did not elaborate on the applicability of the principle of *res judicata* and its two constitutive branches, issue estoppel and cause of action estoppel. I find that the principle, which precludes the relitigation of issues previously decided in court in another proceeding, is ill-suited to these circumstances. This is because although the facts alleged in paragraphs 5 to 14 of the Complainant's SOP are, with one exception, the same as those that were examined by the Commission in the 2012 Complaint and the 2013 Complaint, the issues that were ultimately decided are not the same.

[23] When the Commission determined that the 2012 Complaint and 2013 Complaint should not proceed, it did so on two grounds.

[24] In the case of the 2012 Complaint, on the basis of section 41(1)(e) of the CHRA, which provides the Commission with the discretion not to deal with complaints based on "acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint". In other words, the Commission based this decision on timeliness considerations, as it is empowered to do.

[25] In the case of the 2013 Complaint, the Commission relied on section 44(3)(b)(i) of the CHRA, which provides it with the jurisdiction, following the conclusion of an investigation, to dismiss a complaint "if it is satisfied that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted".

[26] In both instances, the Commission fulfilled its role of dealing with the intake of complaints and screening them for admissibility. The Commission is not an adjudicative body; that is the role of the Tribunal. When deciding whether the Tribunal should inquire into a complaint, the Commission fulfills a screening analysis. It is not the job of the Commission to determine if the complaint is made out. Rather its duty is to decide if, under the provisions of the CHRA, an inquiry is warranted having regard to all the facts: *Cooper v. Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC) at para 53.

[27] In other words, the Commission decided not to deal with the 2012 Complaint and that an inquiry into the 2013 Complaint was not warranted. This is different than the Tribunal conducting an inquiry and adjudicating on the merits of the complaints referred, which is



what the Complainant is requesting here. In raising allegations relating to events involving his superiors in the Montérégie and Jonquière Tax Service Offices between 2006 and 2009 and in 2013, the Complainant is asking this Tribunal to adjudicate on whether they amount to discrimination within the meaning of section 7 of the CHRA. This adjudication was not conducted by the Commission when it rendered its decisions under sections 41(1)(e) and 44(3)(b)(i) of the CHRA. In the absence of common issues, the doctrine of *res judicata* cannot apply.

### **(b) Jurisdiction**

[28] The Tribunal's jurisdiction to conduct inquiries into complaints is derived from section 49 of the CHRA, pursuant to which the Tribunal Chairperson must institute an inquiry into a complaint upon receipt of a request from the Commission (section 49(2)). The scope of the Tribunal's inquiry is therefore limited to the issues arising from the complaints that accompany these requests. The Tribunal does not have the jurisdiction to review the Commission's decision to refer the matter for inquiry: *Torraville v. Jazz Aviation LP*, 2020 CHRT 40 at paras 27–32. In the case at hand, I find that the Complainant's impugned submissions are aptly struck on this jurisdictional basis.

[29] The Complainant's allegations described at paragraphs 5–14 of his SOP attempt to circumvent the Commission's two final decisions that disposed of the 2012 Complaint and 2013 Complaint. In these decisions, the Commission ultimately determined that the complaints should not be referred to the Tribunal for adjudication. The Complainant is now, in effect, asking the Tribunal to adjudicate on the merits of these complaints. This is an attack on the Commission's decisions.

[30] The Complainant argues that his complaint form referred to the years 2009 and 2013 as start dates of the alleged discriminatory incidents and that the Respondent never took issue with this fact before the Commission. He feels that to allow the Respondent to strike these paragraphs now is therefore unjust and should not be allowed. While I understand the Complainant's frustration, I find that the reference to these years in the "start date" box of the complaint is, on its own, insufficient to overcome the rest of the compelling evidence that

supports that these allegations are not part of the complaint referred to me. I am persuaded by the Commission's view: the impugned paragraphs of the SOP relate to allegations which were not contemplated during its investigation, nor referred to the Tribunal. More importantly, they relate to previous final determinations made by the Commission that were not overturned.

[31] The Complainant also highlights that the Commission dismissed the 2012 Complaint because of timeliness and therefore, did not conclude that the merits of the complaint itself were without foundation. I find that the basis for the Commission's decision is not relevant to the jurisdictional issue. The Tribunal does not have the jurisdiction to review decisions made by the Commission in its screening process, regardless of the basis. Only the Federal Court may do so (*Canada (Human Rights Commission) v. Warman*, 2012 FC 1162 (CanLII) at para 56). The Complainant is aware of the Federal Court's jurisdiction, given that he attempted to judicially review both the Commission's decisions not to refer the 2012 Complaint and the 2013 Complaint to the Tribunal. In both these applications, the Federal Court issued an order pursuant to Rule 416(1)(f) of the *Federal Court Rules* requiring the Complainant to give security for the Respondent's costs and prohibiting the Complainant from taking further steps in the application until security had been posted. In the case of the 2013 application, the Complainant formally discontinued the proceedings following this order. In the case of the 2012 application, the docket reflects that he took no further steps. In both cases, the judicial review application process ended there, leaving no reason to doubt the finality of the Commission's decisions regarding the 2012 Complaint and the 2013 Complaint.

[32] Rather than advance these proceedings as instructed by the Court, the Complainant is essentially now asking the Tribunal to vary or nullify the Commission's decisions not to refer the 2012 Complaint and the 2013 Complaint. He is attempting to bypass the Commission's decision-making and challenge the same events that occurred when he worked in the Montérégie and Jonquière Tax Service Offices that the Commission opted not to refer and hoping for a different result.

[33] This is not the right avenue to achieve this. To allow a Complainant to raise before the Tribunal the very same issues that the Commission decided not to refer would frustrate the scheme of the CHRA and the meaning of section 49 specifically.

[34] I find that the Tribunal does not have the jurisdiction to examine the facts that relate to the 2012 Complaint and the 2013 Complaint. On this basis, I would grant the Respondent's motion to strike these paragraphs of the Complainant's SOP.

**(c) Additional allegations**

[35] Some of the allegations in the impugned paragraphs of the Complainant's SOP fall within the period covered by the 2012 Complaint but are not actually mentioned in the complaint. I do not find that these added allegations alter my conclusion. Paragraphs 5 and 6 of the Complainant's SOP refer to a conversation that occurred in September 2008 between the Complainant and his team leader, who allegedly made racist remarks towards him. The Complainant did not mention this conversation in the 2012 Complaint. However, the September 2008 remarks resemble others that, in the 2012 Complaint, the Complainant alleges the same team leader made to him, both before and after this date. There is no explanation for why the Complainant did not include this conversation in the 2012 Complaint, which is surprising given that it relates to the same period, the same position held by the Complainant and the same individuals.

[36] These allegations, as framed by the Complainant, are part of his attempt to relitigate the 2012 Complaint and the 2013 Complaint; they bear a striking similarity to, and are contemporaneous with, the allegations contained in the earlier complaints. They are further means to try to bypass the Commission's decisions, which the Complainant challenged but then abandoned in Federal Court. The Tribunal does not have the jurisdiction to examine them.

**(d) Scope**

[37] I have already found that the Tribunal does not have jurisdiction to consider the allegations pertaining to the 2012 Complaint and the 2013 Complaint, given the

Commission's decisions not to refer them to the Tribunal. However, I also find that the allegations should be struck on the basis that they fall outside of the scope of the complaint which has been referred for inquiry.

[38] The parties made detailed submissions on whether the scope of the 2019 Complaint could extend to include consideration of the 2012 Complaint and the 2013 Complaint. The Respondent argues that there is no ambiguity about the scope of the 2019 Complaint, which pertains to allegations of discrimination that would allegedly have occurred between October 29, 2018, and March 29, 2019; they have no nexus with the events said to have occurred in 2008, 2009 and 2013.

[39] The Complainant argues that his inclusion of the years 2009 and 2013 as "start dates" for the discrimination in his complaint form is evidence that the allegations from this period formed part of the 2019 Complaint. He points out that the Commission is not required to investigate every allegation during its investigation and argues that because the Commission's Record of Decision referring the complaint to the Tribunal does not specify that the 2009 and 2013 dates have been screened out, the 2019 Complaint is referred to the Tribunal in its entirety and mandates the Tribunal to conduct a "full hearing" into the allegations from this period as well.

[40] The Commission's referral letter to the Tribunal helps define the scope of "what" is being referred to the Tribunal for inquiry, but it cannot be disconnected from the long history of the complaint and the context into which the Tribunal is seized of the matter: *Murray v. Canada*, 2014 FC 139 at para 67. In order to develop an overall understanding of the complaint, its history and the general context, the Tribunal may consult, among other things, the original complaint, as argued by the Complainant here, but also the Commission's investigation report and the letters sent by the Commission to the Chairperson and the parties, and any administrative forms: *Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at para 17; *Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2 at para 30.

[41] To this end, I take note of several documents drafted by the Complainant and the Commission prior to the filing of the SOPs which, as highlighted by the Respondent, make no prior reference to the events occurring in 2009 or in 2013:

- A) The Complaint: While the Complaint itself includes the years 2009 and 2013 in the “start date” box for the discrimination, there are no references to events occurring in these years elsewhere in the complaint. The Complainant also attached to the complaint form a detailed statement of his complaint in a three-page letter but makes no mention of events that took place in either in 2009 or 2013. Instead, the first event described by the Complainant occurs on October 29, 2018.
- B) The Commission’s Summary of the Complaint only refers to alleged discrimination occurring between October 2018 and March 2019.
- C) The Commission’s Report for Decision, dated December 3, 2021, refers only to the first alleged event, said to have occurred on October 29, 2018.
- D) The Commission’s referral letter, dated March 3, 2022, does not refer to events in 2009 or 2013.
- E) The Commission’s Report for Decision, dated June 2, 2023, does not refer to events in 2009 or 2013.
- F) The Commission’s Supplementary Report for Decision, dated October 16, 2023, does not refer to events in 2009 or 2013.

[42] Complainants can clarify, refine and elaborate on the discrimination alleged in their complaints when filing their SOPs. As articulated by this Tribunal in *Levasseur*, at para 15, the substance of an SOP, however, must reasonably respect the factual foundation, and the allegations set out in a complainant’s initial complaint.

[43] The Complainant did not set out the facts relating to the 2009 and 2013 events in his complaint form, and I find that there is no nexus between the allegations that form the basis for the current complaint and those relating to the 2012 Complaint and the 2013 Complaint. The 2012 Complaint and the 2013 Complaint relate to events that involved the same federal department, but took place in different offices, involved different individuals and unfolded at different time periods. In the 2013 Complaint, the Complainant alleged that he experienced retaliation for filing his 2012 Complaint, thereby creating a connection between these events. He has not made similar allegations in the context of the 2019 Complaint that would link this complaint with either the 2012 Complaint or the 2013 Complaint. There is nothing before me

that suggests that the events described in the 2019 Complaint are in any way related to those mentioned in either the 2012 Complaint or the 2013 Complaint.

[44] When combined with the notable absence of any mention of the events occurring in 2009 and 2013 from the documents relating to the complaint, I find that the Complainant's mention of the years 2009 and 2013 in the "start date" box of the 2019 Complaint form is insufficient to bring these additional allegations within the scope of the Complaint, as referred to the Tribunal by the Commission.

[45] The Commission also takes the view that these allegations are out of scope, but for different reasons. It argues that the scope of the 2019 Complaint does not extend to matters that the Commission has considered and decided not to refer to the Tribunal for inquiry. In its view, there is no need for the Tribunal to consider whether the events forming the subject of the 2012 Complaint and the 2013 Complaint have a sufficient nexus with the complaint that was referred to the Tribunal, since there is no ambiguity about what constitutes the complaint that was referred. The Commission's decisions regarding the content of the 2012 Complaint and the 2013 Complaint remove any ambiguity about what may or may not be properly before the Tribunal.

[46] I share this view: the scope of a complaint cannot extend to matters that are already the subject of final Commission decisions not to refer to the Tribunal for inquiry. There is a jurisdictional argument that underpins this conclusion, which I have already discussed, but also an argument regarding the clarity of the scope of the Commission's referral. There can be no ambiguity on this question; the Commission did not refer allegations which it has already decided not to refer to the Tribunal.

**(e) Allegations of permanent status**

[47] At paragraphs 9 and 10 of the Complainant's SOP, he alleges that he obtained a permanent position at the SP-05 level at the Montérégie Tax Office in 2009, something which he argues should have prevented the employer from dismissing him from this position and is further evidence of discriminatory conduct at this time since he was terminated as

though he were a temporary employee. The Complainant states that he only became aware of this fact when reviewing the Respondent's disclosure as part of this 2019 Complaint.

[48] In short, the Complainant is seeking to introduce a new allegation relating to the 2012 Complaint, which the Commission did not consider when it decided not to refer the 2012 Complaint to the Tribunal. Specifically, he looks to introduce evidence of a letter which he argues shows that he had obtained a permanent position at this time, which should have prevented his dismissal from his position at the Montérégie Tax Service Office. He cites this evidence as further proof of the continuous nature of the discriminatory conduct by the employer during this period.

[49] The Respondent asks me to strike these paragraphs of the Complainant's SOP. It points out that the letter in question was addressed to him ten years ago and that the Complainant provides no explanation for why he was allegedly denied access to it or why he did not describe this letter in the 2019 Complaint itself. The Respondent questions the weight that the Tribunal ought to give this evidence and argues, among other things, that its object is not to inform the Complainant that he had obtained permanent employment status, but rather that he would receive a bilingualism bonus. Finally, the Respondent affirms that the letter does nothing to change the reality that the Tribunal does not have the jurisdiction to reverse the Commission's decision not to deal with a complaint.

[50] I find that striking these allegations now would be premature. Where they are a further attempt by the Complainant to challenge the Commission's conclusions on the 2012 Complaint, then I would agree with the Respondent that my earlier conclusions regarding this Tribunal's lack of jurisdiction to review this decision apply. Having said this, where the Complainant's alleged permanent status is also relevant to the 2019 Complaint before me, then I could consider its introduction for this limited purpose. Given the uncertainty regarding its relevance and use at this stage, I decline to strike these portions of the Complainant's SOP. It may well be that I will conclude at the hearing that the evidence that the parties introduce regarding these claims is irrelevant, should not be admitted, or ought to be afforded little or no weight. However, I do need not to make this determination now.

**2. Should the impugned sections of the Complainant's Statement of Particulars relating to the 2012 Complaint and the 2013 Complaint be kept as context?**

[51] The Commission argues that although the paragraphs that relate to the Complainant's prior human right complaints cannot be relied upon by the Complainant to obtain independent remedies from this Tribunal, they can be kept "as context of the parties' relationship for the purposes of determining the current Complaint". I note that there are circumstances where such an approach is helpful. In *Wilson v. Bank of Nova Scotia*, 2022 CHRT 34, the Tribunal noted that facts giving rise to earlier allegations could be relevant apart from any liability they could independently establish. At paragraph 64, the Tribunal wrote: "For example, the facts that gave rise to the earlier allegations may possibly be relevant to the witnesses' interpretation of events in 2014–2015. A witness's interpretation of events and their perceptions are often influenced by past experiences and interactions".

[52] Given that (with the exception of the Complainant) the witnesses at issue in all three complaints are different, worked in different offices, and knew the Complainant at different periods of time, the context that these prior allegations provide is not helpful to the witnesses in this complaint. The Commission argues that the allegations provide context "that may assist the Tribunal in understanding the relationship between the Respondent and the Complainant at the time of the material events". I disagree. Considering the absence of nexus between these allegations and the events particularized in the 2019 Complaint, I see no reason for keeping them.

[53] Maintaining these allegations and allowing, as the Commission suggests, the Complainant to advance evidence regarding these events risks unnecessarily complicating and prolonging these proceedings, with no clear advantage or relevance to this background. This would still require the Respondent to defend against the allegations, if only to ensure that the "background" on which the Tribunal is relying reflects the facts as they view them, which in turn could lead to the Tribunal having to make findings of facts on conflicting evidence. This does not align with the Tribunal's obligation under section 48.9 (1) to proceed expeditiously, nor, as I explain below, fairly.



[54] The Respondent emphasized the prejudicial impact of requiring that it defend against these allegations. More than 15 years have elapsed since the earliest of the alleged evidence, and only one person involved is still employed by the Respondent. This impacts its ability to bring forward the appropriate witnesses and also impacts the quality of the evidence the Tribunal will receive. Significantly, given that the Commission previously determined that the Tribunal should not inquire into them, I conclude that this approach would be unfair to the Respondent, who should be able to put these matters to rest.

### **3. Should the allegations post March 2019 be struck?**

[55] The 2019 Complaint, currently before this Tribunal, relates to incidents that occurred between October 29, 2018, and March 29, 2019, during the Complainant's term as an SP-05 Specialty Tax Auditor in the Montreal Tax Service Office. The Complainant subsequently returned to the Jonquière Tax Service Office, resuming a position as an SP-04. On February 18, 2021, he was terminated from this position (the "2021 Termination").

[56] Paragraphs 55, 56 and 71 of the Complainant's SOP refer to this termination which occurred after he filed the 2019 Complaint. The Complainant alleges that the 2021 Termination occurred in retaliation for the events described in the 2013 Complaint and the 2019 Complaint. The Respondent argues that these allegations are out of scope. The 2021 Termination is also currently the subject of a proceeding before the Federal Public Sector Labour Relations and Employment Board (FPSLREB), which heard the grievance in July 2024. While the Complainant argues that the Tribunal has concurrent jurisdiction and can adjudicate on the human rights dimension of the 2021 Termination, the Respondent submits that there is *lis pendens* and that the same facts cannot be tried twice.

#### **(i) Scope**

[57] The Respondent argues that the Complainant's submission that the 2021 Termination was done in retaliation for his prior filing of a human rights complaint should be struck because it relates to a different period of time, when the Complainant was employed in a different office, with different individuals than those alleged to be involved in the 2019

Complaint. For this reason, these allegations relate to a different context and should not be permitted to be argued as part of this complaint.

[58] I disagree. The Tribunal has a long history of allowing complainants to add allegations of retaliations to their complaints, though the allegations must be defensible and tenable: *Tracy Polhill v. Keeseekoowenin First Nation*, 2017 CHRT 34 at para 31. The basis for the complaint must be the filing of the other complaint itself, previously filed with the Commission. The complainant must have suffered an adverse impact and must show that filing the complaint with the Commission was a factor in this adverse impact: *Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at paras 72–73.

[59] In this case, the 2021 Termination occurred after the Complainant filed his 2019 Complaint. Insofar as the allegations are tied to the claim of retaliation for the filing of the 2019 Complaint, I find that they have a “sufficient connection or nexus” with that complaint. The Tribunal can consider them part of the Complaint.

[60] This is not to say that the Tribunal will adjudicate on whether the 2021 Termination was otherwise discriminatory. Given that this termination occurred in the context of a different office and employment and involved different individuals, I share the Respondent’s view that unless they are brought forward as part of a claim of retaliation, these allegations are otherwise out of scope and should have been the subject of a separate complaint.

[61] I conclude that the allegations pertaining to the 2021 Termination can remain to the extent that they are advanced as retaliation for the filing of the 2019 Complaint.

## **(ii) *Lis pendens***

[62] *Lis pendens* (a pending lawsuit) is a preliminary exception which, if triggered, prevents a legal action from proceeding on the basis that there exists another pending legal action which could dispose of the same facts. The principles that guide the application of this exception are the same that apply to *res judicata*, namely, to avoid a multiplicity of court proceedings and the possibility of contradictory judgments. From the perspective of private interest, *lis pendens* shields the defendant from the hardships that would result from multiple proceedings. For the exception to apply, there must be identity of parties, object (or thing)

and cause: *Rocois Construction Inc. v. Quebec Ready Mix Inc.*, 1990 CanLII 74 (SCC), [1990] 2 S.C.R. 440.

[63] The Respondent argues that the proceedings before the FPSLREB give rise to *lis pendens*, such that they could dispose of the same facts raised in paragraphs 55, 56 and 71 of the SOP and therefore ought to be struck. The Respondent submits that while the FPSLREB and this Tribunal benefit from concurrent jurisdiction, the Commission still requires that alternative remedies be exhausted before addressing a complaint to avoid any risk of contradictory decisions or the award of double compensation.

[64] The FPSLREB has jurisdiction to make determinations and give relief regarding breaches of the CHRA. Paragraphs 226(2)(a) and (b) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2. provide that a FPSLREB adjudicator or the Board may, in relation to any matter referred to adjudication, interpret and apply the CHRA and give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the CHRA. The Complainant's 2021 termination letter makes no reference to his filing of the 2019 Complaint. Nor does his grievance, referred for adjudication to the FPSLREB, make any reference to the allegations of retaliation now raised by the Complainant or to the CHRA. Neither party has provided me with evidence of the arguments that were raised at the hearing before the FPSLREB. It is therefore not possible for me at this stage to determine whether the FPSLREB will in fact address this alleged retaliatory human rights aspect of the 2021 Termination.

[65] Given the uncertainty around the scope of what will be determined by the FPSLREB, I cannot find that *lis pendens* applies. I find that the request to strike these allegations on this basis is premature. I may revisit this finding once the FPSLREB has issued its decision.

[66] The Complainant affirms that he also filed a human rights complaint during the Commission's investigation of the 2019 Complaint regarding the 2021 Termination. At Exhibit H of his Motion Record, the Complainant includes a copy of what appears to be a human rights complaint form to the Commission regarding the 2021 Termination. However, and unlike the three other complaints filed by the Complainant, this complaint form is undated and does not include a signed "agreements" section or a final signature page. There

are no records confirming that this document was in fact received by the Commission or indicating whether the complaint form was otherwise processed by them. When combined with the Commission's statement that the 2021 Termination allegations have "not been subject to a complaint before the Commission" [Emphasis added], I am satisfied that no such complaint was properly filed with the Commission. I therefore do not need to determine whether this would have impacted the Complainant's ability to raise these allegations before me now.

## **V. RESPONDENT'S REQUEST TO STRIKE**

[67] In addition to the paragraphs which I ordered struck in my order of March 11, 2025, the Respondent has asked that I strike "the sections of the Complainant's claim that refer to financial losses having occurred before March 31, 2019". The only portions of the SOP that I see that relate to this are those that I have struck from paragraph 73. I therefore see no need to further address this request.

[68] The Respondent also seeks a declaration that all of the Complainant's monetary claims related to events having occurred before July 2018 or after March 2019 are inadmissible. The claims relating to events unrelated to the 2019 Complaint have been struck, and I have found that striking claims related to events after March 2019 would be premature at this stage. I am therefore declining to issue this declaration.

*Signed by*

Sarah Churchill-Joly  
Tribunal Member

Ottawa, Ontario  
March 31, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**File No.:** HR-DP-2982-23

**Style of Cause:** Mohammed Tibilla v. Canada Revenue Agency

**Ruling of the Tribunal Dated:** March 31, 2025

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Mohammed Tibilla, Self-represented Complainant

Geneviève Colverson, for the Canadian Human Rights Commission

Maude Normand, Martin Leblanc & Marie-Kathryn Fortier, for the Respondent