

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 76  
**Date:** August 1, 2025  
**File No.:** HR-DP-3038-24

**Between:**

**Brad Rustad**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Canada Revenue Agency**

**Respondent**

**Ruling**

**Member: Ashley Bressette-Martinez**

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## **I. OVERVIEW**

[1] Brad Rustad, the Complainant, asks for two things in this motion. First, he wants the Tribunal to accept the amended Statement of Particulars (SOP) he filed on June 27, 2025 (the “amended SOP”) that expands the scope of his complaint to include allegations that the Canada Revenue Agency (CRA), the Respondent, violated his rights under sections 7 and 8 of the *Charter of Rights and Freedoms* (the “Charter”), when it allegedly withheld information about a Criminal Investigation Division (CID) investigation it was conducting against him. Mr. Rustad also wants to be able to include information about an August 2024 audit referral (the “2024 Referral”) and violations of the *Privacy Act*, R.S.C., 1985, c. P-21 (the “Privacy Act”). He also wants to include reference to the Royal Proclamation of 1763 and other laws to support his case.

[2] Mr. Rustad’s second request in this motion is for additional disclosure from the CRA. He wants the CRA to provide him all the information related to his and his spouse’s 2005 and 2006 tax returns along with any supporting information, T-slips and reassessments.

[3] The CRA says the motion should be dismissed.

## **II. DECISION**

[4] The motion to file the amended SOP dated June 27, 2025, is allowed in part. Mr. Rustad can include a reference to Acts of Parliament and the Royal Proclamation of 1763 as part of his legal argument in his SOP. However, Mr. Rustad cannot expand the scope of his complaint to include allegations and information about Charter violations because this is an entirely new complaint. His allegations and information about the Privacy Act do not have a link to alleged discrimination and cannot be included. Finally, the 2024 Audit cannot be included as part of the amended SOP because doing so would have a prejudicial effect on this proceeding.

[5] The motion for disclosure is denied. I will not order the CRA to produce Mr. Rustad’s (or his spouse’s) 2005 or 2006 tax returns because he failed to demonstrate they are arguably relevant to this case.

### III. ISSUES

[6] This ruling determines two issues:

1. Can Mr. Rustad add allegations and information to his complaint and file his amended SOP?
2. Has Mr. Rustad demonstrated that the 2005 and 2006 tax documents he wants copies of are arguably relevant to his case?

### IV. ANALYSIS

#### **A. Can Mr. Rustad add allegations and information to his complaint and file his amended SOP?**

##### **(i) Legal framework – scope of a complaint**

[7] The *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA) sets out a comprehensive framework for dealing with complaints of discrimination. The Canadian Human Rights Commission (CHRC) is responsible for receiving, screening and investigating complaints (sections 40, 44 and 49 of the CHRA). The Tribunal gets its jurisdiction to hear complaints based on the original complaint filed with the CHRC and its decision when it refers a complaint to the Tribunal (sections 44(3) and 49(1) of the CHRA; *Garnier v. Correctional Service of Canada*, 2023 CHRT 32 at para 9 [*Garnier*]).

[8] A party's SOP sets out their position on the case (Rules 18, 19 and 20 of the *Canadian Human Rights Tribunal Rules of Procedure*, 2021, SOR/2021-137 (the "Rules of Procedure")). It is true that a party's SOP can clarify, refine and elaborate on a complaint, but it cannot introduce information and allegations that are not connected to the original complaint. The SOP needs to respect the factual foundation of the original complaint (*Levasseur v. Canada Post Corporation*, 2021 CHRT 32 at para 15 [*Levasseur*]).

[9] The Tribunal can amend, clarify and determine the scope of a complaint to decide the real questions in controversy between the parties, so long as the amendment does not cause a prejudice to the other parties (*Canada (Attorney General) v. Parent*, 2006 FC 1313).

at para 30). However, amendments cannot introduce an entirely new complaint since this would undermine the CHRC referral process set out in the CHRA (*Garnier* at para 10). In assessing whether amendments to an SOP should be allowed, the Tribunal can consult the original complaint form filed with the CHRC, the CHRC's investigation report and referral letter, along with any other administrative forms in the file to determine if there is a sufficient nexus between the new information and the original complaint (*Levasseur* at paras 16–17). The Tribunal will not generally grant an amendment if it is plain and obvious that the amendment cannot succeed in proving discrimination (*Garnier* at para 11) and will apply the principle of proportionality (*Temate v. Public Health Agency of Canada*, 2022 CHRT 31 at para 58 [*Temate*]). However, striking portions of an SOP should only be done in the clearest of cases (*Richards v. Correctional Service Canada*, 2020 CHRT 27 at para 86).

**(ii) What is the substance of Mr. Rustad's complaint?**

[10] To decide if the new allegations are within the scope of Mr. Rustad's complaint, I need to determine the substance of his original complaint to the CHRC along with what the CHRC referred to the Tribunal. In 2019, Mr. Rustad filed his complaint with the CHRC. On his complaint form, he checked off race, national or ethnic origin, sex, marital status and family status as his protected characteristics. His complaint is about adverse differential treatment in services under section 5 of the CHRA.

[11] His complaint form says he experienced discrimination by the CRA in the context of GST and income tax audits that took place in 2011, 2018 and 2019. The CRA's SOP filed on March 24, 2025, clarifies that the 2011–2019 audit timeframe includes four separate audits:

1. The first GST audit initiated in November 2010 and concluded in July 2011
2. The first income tax audit initiated in October 2011 and concluded in 2012
3. The second GST audit initiated in July 2016 and concluded in August 2018

4. The second income tax audit initiated in March 2019 and concluded in September 2021

[12] Mr. Rustad says that, during the 2019 audit, one of the CRA employees working on his file made racist and sexist comments about him and his spouse, who is First Nations. Mr. Rustad also says that he was treated differently by the CRA because he is married to a woman who is a First Nations' person because the CRA attempts to move income from the First Nation spouse to the non-First Nation spouse "so the Minister can be unjustly rewarded".

[13] The CHRC's Record of Decision to the Tribunal says: "the Commission considers that, based on all reviewed documents, there is a possibility that the incidents around the three audits show a pattern of behaviour that should be considered as a whole, including the alleged discriminatory comments made during these audits".

[14] For this motion, I have compared his complaint form and the Commission's Record of Decision with his amended SOP. I will decide this motion based on what Mr. Rustad included in his amended SOP. It is not necessary for me to consider arguments from the motion that go beyond the scope of the amended SOP because the ultimate question is whether his amended SOP should be accepted.

**(iii) Paragraphs to be struck from the amended SOP**

**(a) Sections 7 and 8 of the Charter – paragraphs 18–24, 28–29 and 40–44**

[15] Mr. Rustad says throughout his amended SOP that the CRA's failure to advise him of the "penal investigation" it was conducting was a violation of his right to fundamental justice under section 7 of the Charter and his right against unreasonable search and seizure under section 8 of the Charter (paragraphs 43 and 44). He says that he had a right to be advised that the nature of the investigation changed from an administrative investigation to one of a criminal nature. Mr. Rustad does not argue that these allegations were part of his original complaint filed in December 2019 but argues that they have a sufficient nexus to his

original complaint. The CRA says these allegations are independent claims arising in the criminal context and fall beyond the Tribunal's jurisdiction and, for this reason, have no reasonable prospect of success. The CRA says that determining Charter claims is not within the scope of what this Tribunal is being asked to decide because what this Tribunal determines in any complaint is whether discrimination occurred under the CHRA (*Matson et al v. Indian and Northern Affairs Canada*, 2012 CHRT 19 at para 13).

[16] The real questions in controversy in this complaint are whether the CRA treats individuals like Mr. Rustad differently by trying to move income from a First Nations' spouse to the non-First Nations' spouse and whether CRA auditors working on his GST and income tax audits discriminated against him during a meeting about the 2019 audit. This complaint is not about the work done by the CID of the CRA (which I addressed in *Rustad v. Canada Revenue Agency*, 2025 CHRT 59 at para 27 [*Rustad 1*]). The CID is an entirely different division of the CRA, and there is no evidence or argument before me that the employees working on the CID file were the same as those auditors working on Mr. Rustad's GST and income tax audits. There is simply no nexus to his original complaint (*Levasseur* at para 35). Mr. Rustad's allegations about Charter violations do not merely clarify, refine or elaborate on his original complaint (*Richards v. Correctional Service Canada*, 2025 CHRT 5 at para 20), but rather are an entirely new complaint. Allowing the proposed amendments would not only bypass the screening function of the CHRC (*Garnier* at para 10) but would also be futile because the new information and allegations about Charter violations in no way assist in determining whether discrimination happened under section 5 of the CHRA (*Garnier* at para 11; *Temate* at para 58).

[17] Paragraphs 18–24, 28–29 and 40–44 of the amended SOP are struck because they are about the alleged Charter violations and the CID which are not part of this complaint.

#### **(b) Allegations about the Privacy Act – paragraphs 25–26 and 45–46**

[18] Mr. Rustad's amended SOP wants to introduce new allegations that the CRA "inappropriately and intentionally redacted the information from the required disclosure knowing that I had a right to the information". The redacted information Mr. Rustad refers to

is about the CID conducting a “penal investigation”. There is no dispute that, in his original complaint to the CHRC, Mr. Rustad says that he received significantly redacted disclosure which “hid the racist bias in the conduct of the audit”. However, in his reply to submissions on this motion, he says the additions to his complaints “were not intended to create new claims of discrimination but to highlight the Respondent’s discriminatory conduct” which he says is within Tribunal’s jurisdiction.

[19] My jurisdiction is limited to determining whether the CRA discriminated against Mr. Rustad in contravention of section 5 of the CHRA because of his protected characteristics. The CRA is correct that I have no jurisdiction to decide whether a government institution properly applied provisions of the Privacy Act. That responsibility falls to the Privacy Commissioner of Canada. Mr. Rustad’s new allegations and information about the intentional misuse of redactions to documents are not linked in any way to his protected characteristics under the CHRA, and he has not explained how the CRA’s behaviour in responding to his Privacy Act request falls within this Tribunal’s jurisdiction. It is plain and obvious that the new information and allegations in the amended SOP cannot succeed in proving discrimination (*Garnier* at para 11). It would not be in keeping with the principle of proportionality to allow these amendments (*Temate* at para 58), and paragraphs 25, 26, 45 and 46 must be struck from the amended SOP.

### **(c) August 2024 audit referral – paragraph 30**

[20] In his amended SOP, Mr. Rustad included information about a 2024 referral. He says this information is intended to provide the Tribunal with further evidence of discrimination and retribution for filing complaints because the 2024 Referral was made by the same auditor who worked on his 2011–2019 audits. In response, the CRA says that, since this audit post-dates Mr. Rustad’s original complaint and the CHRC referral to the Tribunal, I have no jurisdiction to deal with it.

[21] Section 48.9(1) of the CHRA requires the Tribunal to proceed “as informally and expeditiously” as the requirements of natural justice and the Rules of Procedure allow. This is balanced, however, with section 50(1) of the CHRA which says that parties are to be



“given a full and ample opportunity” to present their case at a hearing. The Tribunal is responsible for striking a balance between a party’s right to have a full and ample opportunity to present their case and the need to have the complaint dealt with expeditiously.

[22] While it is true that complaints can be amended when there is a reasonable nexus to the original complaint and the core issues in dispute, Mr. Rustad’s request to include the 2024 Referral is based on the single sentence that “the Respondent continued to rely on the misrepresentations made by the Auditor [who worked on his 2011–2019 audits] regarding the reasonableness of my reported expenses”. However, Mr. Rustad has not explained what those misrepresentations are and whether they are tied to the core issues in dispute about discrimination in this case. The lack of explanation to support his argument is fatal to Mr. Rustad’s request to add this information to his complaint. And, even if I were to agree that the 2024 Referral had a reasonable connection to his original complaint and the main issues in dispute, I must consider proportionality in the context of the circumstances of this case and how it has moved through case management.

[23] Mr. Rustad filed his first SOP in November 2024, and he was given an opportunity to amend it in March 2025. The CRA filed its SOP that same month, and Mr. Rustad opted not to file a reply. Following the ruling in *Rustad 1*, in June 2025, Mr. Rustad was instructed to file his document list, witness list and detailed will-say statements because he had not done that in the first two versions of his SOP. However, Mr. Rustad decided to go further and added new information and allegations, submitting an amended SOP that he asked to file.

[24] While the CRA has not argued that including the 2024 Referral would be prejudicial, the parties have been working on preparing their cases for a hearing for nearly a year. Hearing dates were set for this matter in May 2025 but were suspended because Mr. Rustad filed a motion for further disclosure. In early July at a case management conference call, I planned to discuss hearing dates with the parties since the only outstanding information was Mr. Rustad’s document list, witness list and will-say statements. However, when Mr. Rustad tried to file the amended SOP, the subject matter of the case management conference call turned into a conversation about this motion which originally only sought to add the Charter violations to his complaint.

[25] As part of this motion and request to file the amended SOP, Mr. Rustad has not explained why it took him nearly a year after he found out about the August 2024 Referral to include it as part of his complaint. Mr. Rustad has not told the Tribunal that he was previously unaware of the 2024 Referral and only recently learned of it. Allowing the amendment about the 2024 Referral would expand the scope of this complaint and would cause further delay in getting this matter to a hearing, requiring new SOPs, updated witness lists and will-say statements from the parties. This would potentially require more disclosure, more case management and would lead to a longer hearing.

[26] I am satisfied that Mr. Rustad's has had ample opportunity to present his case in accordance with his right under section 50(1) of the CHRA. The prejudice in allowing the amendment simply outweighs the benefits of including it at this stage of this complaint. Mr. Rustad is not seeking any specific remedy tied to this allegation, and the probative value of the information is minimal based on what was argued in this motion.

[27] Given that the CRA has already set out its responding case and that the Tribunal has twice tried to set hearing dates, the obligation is on Mr. Rustad in these circumstances to demonstrate why his amendment should be allowed. The Tribunal is entitled to assume that he has put his best foot forward to make his case and, in doing so, he has not convinced me that this amendment should be allowed. Had Mr. Rustad provided additional rationale as to why this information was not previously shared as part of his complaint and bolstered the reasons why it ought to be included, the outcome may have been different.

[28] Paragraph 30 of the amended SOP is struck.

**(iv) Paragraphs that are not struck from the amended SOP**

**(a) Paragraphs 31–34 about the Royal Proclamation and other laws**

[29] Mr. Rustad has included a reference to the Proclamation of 1763 (and other laws) in his amended SOP as legal authority to support that he was always conducting business activities on lands that were never ceded or sold to the Crown. He says the laws of Canada

need to respect the Royal Proclamation of 1763 and that the Tribunal has an obligation to consider the Royal Proclamation of 1763 in applying the CHRA.

[30] The CRA argues that paragraphs 31–34 of the amended SOP should be struck because they are about constitutional assertions of law which are not within the scope or connected to the Tribunal's task of determining whether Mr. Rustad experienced discrimination.

[31] Mr. Rustad can make legal arguments to support his case and will have an opportunity to do so when he makes submissions following the hearing. It will be up to him to determine how best to present his legal argument that supports his position that a *prima facie* case of discrimination has been made out. Paragraphs 31–34 of the amended SOP are not struck.

**B. Has Mr. Rustad demonstrated that the 2005 and 2006 documents about his tax filings are arguably relevant to his case?**

**(i) Legal framework – disclosure**

[32] The legal principles applicable to motions for disclosure are set out in *Brickner v. Royal Canadian Mounted Police*, 2017 CHRT 28 at paras 4–10 [*Brickner*]. In deciding whether information ought to be disclosed, the Tribunal considers whether information is arguably relevant. This standard is meant to prevent the production of documents that is speculative and time-consuming (*Brickner* at para 5). While a party requesting disclosure does not have a high threshold to meet, they do need to show a rational connection between the information they are seeking and the facts, issues or relief identified by the parties (*Brickner* at para 6). The Tribunal should, however, be cautious to ensure that a request is not speculative or that a fishing expedition and documents should be identified with reasonable particularity (*Brickner* at para 7).

[33] Proportionality is also considered to ensure a proceeding is informal and expeditious, so long as the requirements of natural justice are respected (*Brickner* at para 7; Rule 5 of the Rules of Procedure). The Tribunal can deny disclosure where the probative value of evidence does not outweigh its prejudicial effect on the proceeding (*Brickner* at para 8).

Consideration to whether the documents help resolve the main issue in dispute is also part of this assessment of whether a document is arguably relevant (*Brickner* at para 8). The Tribunal should be cautious in ordering disclosure where it would substantially delay the efficiency of the inquiry or where the documents relate to a side issue rather than a main issue in dispute (*Brickner* at para 8). This principle requires all actors in the justice system to conduct themselves so as to reduce the time and costs associated with legal proceedings as much as possible (*Temate* at para 9).

**(ii) Mr. Rustad has not demonstrated that the documents he is asking for are arguably relevant to his complaint**

[34] Mr. Rustad is correct that parties in a proceeding at this Tribunal have a right to a full and ample opportunity to present their case and prepare for a hearing (see section 50(1) of the CHRA). The Rules of Procedure for this Tribunal require the parties to disclose arguably relevant information as part of their SOP and on an ongoing basis leading up to a hearing (see Rules 18, 19, 20 and 24 of the Rules of Procedure). While the threshold for showing arguable relevance is not high, Mr. Rustad has not shown why the documents he is asking for are arguably relevant.

[35] For context, in his motion, Mr. Rustad asks me to order the CRA to provide all the information related to his and his spouse's 2005 and 2006 tax returns along with any supporting information, T-slips and reassessments. He says the information will refute statements of fact by the CRA that his spouse never claimed her business income on her tax returns. He says having this information will avoid a "he-said she-said argument during the hearing". The CRA says Mr. Rustad has not provided any basis for the relevance of these documents. It also argues the request for further production is not proper because he is essentially making a Privacy Act request to obtain documents about himself and his spouse.

[36] While Mr. Rustad says the 2005 and 2006 tax filing information for himself and his spouse is relevant, he says that it will show that his spouse did in fact claim business income and that they did not conspire to commit tax fraud. However, this is not an issue in dispute in this complaint. I have determined that portions of the amended SOP that reference any

alleged “tax fraud” or work done by the CID is not part of this complaint. This complaint is about whether Mr. Rustad was discriminated against during the course of audits that took place between 2011 and 2019. He has not articulated why the tax filings he requested from 2005 and 2006 about himself and his spouse are otherwise arguably relevant to the main questions in controversy in this case. Proportionality also comes into play in the assessment of the relevance of these documents since I have not seen any argument from Mr. Rustad that the probative value of them outweighs the prejudicial effects on this proceeding. Ordering disclosure could lead to further requests to expand the scope of this inquiry and cause unnecessary delay in getting this matter to a hearing (*Brickner* at para 8). Just because the CRA has documents about Mr. Rustad, it does not mean that every single one is relevant to this complaint, nor does it mean that every interaction he has with the CRA is part of this complaint. The scope of this complaint has been decided.

[37] I must also address one final matter. While Mr. Rustad alleges in his amended SOP and in his motion that his spouse is being treated differently because of her sex and ethnic origin, this complaint is not about Ms. Helland-Rustad. This complaint was filed by Mr. Rustad, and he will need to show a *prima facie* case of discrimination in terms of how the CRA treated him. For this reason, I will not order any disclosure about his spouse, nor will I hear evidence about any alleged discrimination she may have experienced.

[38] The request for disclosure is denied.

## **V. ORDER**

[39] Mr. Rustad’s motion is allowed in part. He does not have to strike paragraphs 31–34 in his amended SOP.

[40] Mr. Rustad must:

- i. Strike paragraphs 18–26, 28–30 and 40–46 from his amended SOP.
- ii. Revise his witness list, will-say statements and witness time estimates to ensure they respect this ruling and must provide an updated version.

iii. Revise his requested remedy to reflect the scope of his complaint as set out in this ruling.

[41] All of the above must be filed no later than seven days after this ruling is communicated to the parties.

[42] Mr. Rustad's request for further production of documents is denied.

*Signed by*

Ashley Bressette-Martinez  
Tribunal Member

Ottawa, Ontario  
August 1, 2025

# **Canadian Human Rights Tribunal**

## **Parties of Record**

**File No.:** HR-DP-3038-24

**Style of Course:** Brad Rustad v. Canada Revenue Agency

**Ruling of the Tribunal Dated:** August 1, 2025

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

**Written representations by:**

Dewey Lotoski, for the Complainant

Kirat Khalsa, Jonathan Cooper and Steven Stechly, for the Respondent