

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2025 CHRT 102

Date: October 16, 2025

File No.: HR-DP-3036-24

Between:

Ravi Gupta

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Armed Forces

Respondent

Ruling

Member: Ashley Bressette-Martinez

I. OVERVIEW

[1] The Respondent, the Canadian Armed Forces (CAF), filed this motion and asks that I exclude three witnesses of the Complainant, Dr. Ravi Gupta, from being called at the hearing. Those witnesses are the current Minister of Foreign Affairs and former Minister of National Defence, Anita Anand, former Minister of National Defence, Harjit Sajjan, (together, the “Ministers”) and Kenneth Gamble, who investigated a harassment complaint Dr. Gupta filed against the CAF.

[2] The CAF argues that the proposed evidence from all three witnesses is not relevant and lacks probative value, that Minister Anand is subject to Parliamentary privilege, and that Mr. Gamble’s evidence is inadmissible because the principle of deliberative secrecy applies to him in his role as an investigator. Dr. Gupta disagrees and says that the anticipated evidence from all three proposed witnesses is relevant. He says that the Ministers were an integral part of his chain of command and that he exchanged communications with them about the alleged discrimination he experienced at the CAF. He says that the principle of deliberative secrecy does not apply to Mr. Gamble and that he will provide evidence about the harassment investigation process and his findings. Dr. Gupta says that Mr. Gamble’s testimony is necessary to make up for witnesses he cannot locate and summon to the hearing.

II. DECISION

[3] The motion to exclude the three proposed witnesses is allowed.

III. ISSUES

[4] This ruling addresses two issues:

1. Is the proposed evidence from Minister Anand and former Minister Sajjan relevant to Dr. Gupta’s complaint?

2. Is the proposed evidence from Mr. Gamble inadmissible based on the principle of deliberative secrecy? If not, is it admissible and relevant to resolving the main issues in dispute in this complaint?

IV. BACKGROUND

[5] Dr. Gupta alleges that he experienced adverse differential treatment while he was employed with the CAF and that he was subject to harassment because of his sex, colour, national or ethnic origin, race, religion, disability, and gender identity or expression. His allegations are that the CAF (and its employees) treated him differently, failed to reflect his advanced medical training in his personnel evaluation reports (PER) and his contributions to the unit, failed to advance his harassment complaint and PER grievance until he notified the CAF Surgeon General, and failed to put an end to the allegedly discriminatory conduct, even after an investigation found that his harassment allegations were founded.

[6] Dr. Gupta also alleges that members of the CAF made discriminatory comments towards him, harassed, bullied, and threatened him. He claims his concerns were ignored by the chain of command at the CAF and that his mental health suffered because, as a man, he was expected to tolerate the discriminatory treatment.

[7] Dr. Gupta filed a complaint with the Canadian Human Rights Commission in November 2020. His complaint was referred to the Tribunal four years later in July 2024. Dr. Gupta filed his Statement of Particulars in this proceeding in the fall of 2024, and the three disputed witnesses were on his witness list. The CAF always maintained an objection to these three individuals being called at the hearing, which is scheduled to start in late November 2025.

V. ANALYSIS

A. The Law

[8] Parties before the Tribunal must be given a full and ample opportunity to present evidence and make representations (s. 50(1) of the *Canadian Human Rights Act*, R.S.C.,

1985, c. H-6 (CHRA)). The Tribunal must also conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (s. 48.9(1) of the CHRA).

[9] The Tribunal has a wide discretion to summon witnesses to a hearing and to receive and accept any evidence and information that would otherwise be inadmissible in a court of law, including hearsay evidence (ss. 50(3)(a) and (c) of the CHRA). The Tribunal must exercise this discretion in a way that is consistent with the objectives of the CHRA and the principles of natural justice, balancing the rights of all parties to a full and fair hearing (*Clegg v. Air Canada*, 2019 CHRT 4 (CanLII) at para 68 [Clegg]; ss. 48.9(1) and 50(1) of the CHRA).

[10] While the Tribunal has considerable discretion when it comes to admitting and determining the appropriate weight to give to evidence it does admit, the Tribunal is not required to admit all evidence that is tendered in every case (*Clegg* at para 73). In determining whether to admit evidence, the Tribunal may consider whether the evidence is relevant, if its admission is consistent with the principles of natural justice and procedural fairness, whether its probative value outweighs any prejudicial effect, and if there is any bar to its admission (*Clegg* at para 84).

[11] The Tribunal is not performing a purely administrative function when it decides to issue a subpoena (*Schechter v. Canadian National Railway Company*, 2005 CHRT 35 (CanLII) at para 21 [Schechter]). Unless there is a relevant connection between the evidence which is sought from witnesses whom subpoenas are required and the matter before the Tribunal, subpoenas will not be issued (*Schechter* at para 21). Put another way, testimony at the hearing must be necessary and relevant to a question of fact, law or remedy in the complaint (*Nash v. Canadian Armed Forces*, 2023 CHRT 22 (CanLII) at para 100 [Nash], citing *Dorais v. Canadian Armed Forces*, 2021 CHRT 13 (CanLII) at para 21) before the Tribunal will decide to issue a subpoena under s. 50(3)(a) of the CHRA.

[12] The Tribunal is the master of its own procedure (*Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560 at 568–9) and may decide all questions of law or fact necessary to determining any matter under inquiry (s. 50(2) of the CHRA). This

includes determining when it should decide a motion or issue in dispute (*Canada (CHRC) v. (Canada AG)*, 2012 FC 445 at paras 129, 144–147).

B. Issue 1: Is the proposed evidence from Minister Anand and former Minister Sajjan relevant to Dr. Gupta’s complaint?

[13] No, the proposed evidence from the Ministers is not relevant and would not assist the Tribunal in resolving the main issues in dispute in this complaint which are about whether Dr. Gupta experienced discrimination between January 2013 and June 2020.

[14] The parties do not dispute that ministers are required to testify when their evidence is truly necessary and not for improper purposes of advancing political agendas, engaging in debate or asking ministers for their explanation or personal views of legal or policy issues (*Buffalo v. Canada*, 2003 FC 1421 at para 23). Dr. Gupta is not proposing to call the Ministers for any improper purpose.

[15] The CAF argues that the proposed evidence from the Ministers is not relevant because Dr. Gupta’s communications with their offices did not happen during the temporal scope of his complaint (January 2013 to June 2020). The CAF also says that their testimony would have little probative value because the Ministers’ evidence would primarily be based on briefings given to them, sourced from individuals directly involved in the matter. Dr. Gupta, however, argues that, despite his communications taking place outside of the time period particularized in his complaint, the Ministers were an integral part of his chain of command. He says that his communications to them were a continuation of his effort to bring his concerns to their attention and that their testimony is about their direct involvement in his dispute with the CAF.

[16] The Tribunal wrote in *Richards v. Correctional Service of Canada*, 2025 CRHT 57 at para 12 that “[i]f ‘relevance’ were a binary question, and permissiveness the only approach—without any assessment of the intended evidence—there would be very little limit to what could be admitted in a proceeding”. Based on the parties’ submissions, the proposed evidence from the Ministers appears to fall outside of the temporal scope of this complaint which spans from January 2013 to June 2020. Dr. Gupta’s exchanges with

Minister Anand took place in 2022, two years after the period of alleged discrimination in his complaint. Minister Anand's will-say statement says that she will give evidence that she received correspondence in 2022 about Dr. Gupta's attempts to obtain information about his release from the CAF and his concerns about the discrimination and harassment he experienced as a member. There is no suggestion or explanation in Dr. Gupta's submissions that Minister Anand has any direct knowledge of what allegedly happened to him, nor how or why the proposed evidence would assist the Tribunal in making findings about whether he experienced discrimination between 2013 and 2020. Based on this, her testimony is not relevant. I also find that her testimony, at least based on the will-say statement and the submissions, would have little probative value overall in the assessment of whether Dr. Gupta experienced discrimination since there is no explanation of what her direct involvement in this matter was, beyond being alerted to Dr. Gupta's dispute with the CAF.

[17] The same can be said about former Minister Sajjan's proposed evidence. While he was the Minister responsible for the CAF from 2015 to 2021, Dr. Gupta emailed him in July 2020, the month after the temporal scope of this complaint ended in June 2020. While Dr. Gupta brought his concerns to the attention of the Minister's office, he has not shown that former Minister Sajjan has any direct knowledge of what allegedly happened to him. The will-say statement Dr. Gupta provided for former Minister Sajjan says that he will give evidence about Dr. Gupta's request for voluntary withdrawal and that, through his efforts, Dr. Gupta was reinstated into the CAF in July 2020. Former Minister Sajjan would also give evidence that he ensured an assisting member external to Dr. Gupta's unit would be made available to him following his release from the CAF. These are not central issues in dispute in this complaint, and having this evidence would not assist me in deciding whether Dr. Gupta did in fact experience discrimination.

[18] The allegations in Dr. Gupta's complaint are serious, and he is entitled to a fair and ample opportunity to make his case (s. 48.9(1) of the CHRA). This hearing is scheduled for ten full days. Dr. Gupta will provide testimony about what happened to him and is planning to call 18 witnesses with first-hand knowledge of the alleged discrimination he experienced (excluding the three disputed witnesses). In addition, as the CAF said in its submissions, any correspondence Dr. Gupta sent to the Ministers could be entered as evidence through

his own testimony, which will be extensive based on his will-say statement. An Agreed Statement of Fact between the parties to address these facts is also possible. Dr. Gupta will have ample time and opportunity at the hearing to provide evidence that is relevant to the issues I need to decide. Given the explicit statutory requirement to conduct hearings as expeditiously and fairly as the rules of natural justice and rules of procedure allow, the need to focus the hearing on evidence that is relevant to the main issues in dispute is even more important. Based on this, the Ministers will not be called as witnesses, and no summons will be issued for them to appear at the hearing (*Schechter* at para 21).

[19] Finally, the parties are also correct and agree that ministers are entitled to Parliamentary privilege and cannot be summoned to a hearing when Parliament is in session (*Telezone Inc. v. Canada (Attorney General)*, 2004 CanLII 36102 (ON CA), 69 OR (3d) 161 (ONCA) at paras 29–33). Given that I found Minister Anand’s testimony to not be relevant to the main issues in dispute, there is no need to consider whether the hearing ought to be adjourned in order to call Minister Anand as a witness when Parliament is not in session.

C. Issue 2: Is the proposed evidence from Mr. Gamble inadmissible based on the principle of deliberative secrecy? And if not, is it admissible and relevant to resolving the main issues in dispute in this complaint?

[20] Dr. Gupta says that he should be able to call Mr. Gamble because he has always been on his witness list and because he is not challenging the decision he made in the harassment investigation. Rather, Dr. Gupta is proposing to call Mr. Gamble to testify about his substantive findings and the process used to investigate his 2015 harassment complaint. He says that Mr. Gamble’s evidence “would provide the Tribunal with relevant and probative evidence into the matters raised in this course of his investigation, which does have some overlap into the matters to be adjudicated in this proceeding”. The CAF argues that Mr. Gamble’s evidence about his substantive findings must be excluded from this hearing under the principle of deliberative secrecy, which Dr. Gupta disagrees with.

[21] The CAF explained in its submissions that Mr. Gamble investigated and authored the final investigation report with respect to Dr. Gupta’s 2015 harassment complaint against

Major Joe Tyson. It says that Mr. Gamble was acting in a “purely adjudicative capacity as an administrative decision maker” under the Defence Administrative Order and Directive (DAOD) 5012-0 Harassment Prevention and Resolution under the authority of the Deputy Minister of National Defence and Chief of the Defence Staff. Based on this, the CAF says that he cannot be called to provide evidence about his findings (*Commission scolaire de Laval v. Syndicat de l’enseignement de la région de Laval*, 2016 SCC 8 at paras 57–58 [Laval]; *Nash* at para 112–122).

[22] For context, in *Nash*, the complainant asked to call the Chief of the Defence Staff as a witness at the hearing. However, the Tribunal declined to summons him as a witness since the complainant appeared to want to dispute the decision he rendered on her grievance and because she waited until the eve of the hearing to request a summons. In that case, the Chief of the Defence Staff was acting in an adjudicative capacity under the authority of the *National Defence Act*, R.S.C., 1985, c. N-5. Based on *Laval*, the principle of deliberative secrecy extends to adjudicative decision makers, but it does not appear to extend that principle to persons conducting administrative investigations.

[23] Based on the facts before me, Mr. Gamble was not acting in an adjudicative capacity under the authority of an Act of Parliament (as was the case in *Nash*) when he conducted the harassment investigation into Dr. Gupta’s allegations. Rather, he was an investigator responsible for providing findings about whether Dr. Gupta experienced harassment under the authority of an administrative order. For this reason, I do not find that the principle of deliberative secrecy explained by the Supreme Court of Canada in *Laval*, extends to Mr. Gamble in his capacity as an investigator.

[24] Turning now to the question of whether Mr. Gamble’s proposed evidence is admissible, I rely on the framework from *Clegg* set out above. In his submissions, Dr. Gupta says that Mr. Gamble “will have material, probative evidence to add which will assist the Tribunal in rendering a just and fair decision on the basis of a fulsome evidentiary record”. His will-say statement says that he will tell the Tribunal that he was the investigator assigned to the 2015 harassment complaint, that he issued his final report in June 2018 concluding that six of nine allegations were founded, and that he will give evidence about the substantive findings he made in the course of the investigation, including who was and who

was not provided to him to interview. As part of this motion, Dr. Gupta also told the Tribunal for the first time that Mr. Gamble's evidence will be used to make up for witnesses that cannot be located due to the passage of time.

[25] The parties are well into the final stages of hearing preparation. Their witness will-say statements have been provided to the Tribunal. The hearing will begin next month, and the Tribunal will hear from roughly twenty-five witnesses over ten days. While I need to balance the parties' right to a full and ample opportunity to present their case and I must also balance the requirement to conduct proceedings as fairly, informally, and expeditiously as possible (ss. 50(1) and 48.9(1) of the CHRA).

[26] Dr. Gupta has not said as part of his submissions (or in the will-say statement), how Mr. Gamble's proposed evidence "overlaps" with this complaint in terms of its relevance, and there is no indication that he has any direct evidence to provide about the alleged discrimination Dr. Gupta experienced. Rather, his proposed evidence is limited to his role about the harassment investigation. Dr. Gupta has also not said how many witnesses he is unable to locate, who those witnesses are, what their evidence would be or how Mr. Gamble's evidence would make up for the missing witnesses, and how it would assist the Tribunal in deciding the core issues in dispute in this complaint. Based on this, Mr. Gamble's testimony does not appear to be relevant and would be of minimal probative value. I do not find that it is necessary for the hearing and consideration of the complaint (s. 50(3)(a) of the CHRA; *Schechter* at para 20).

VI. ORDER

[27] The motion is allowed. Minister Anand, former Minister Sajjan, and Mr. Gamble will not be called as witnesses in this proceeding.

Signed by

Ashley Bressette-Martinez
Tribunal Member

Ottawa, Ontario
October 16, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3036-24

Style of Cause: Ravi Gupta v. Canadian Armed Forces

Ruling of the Tribunal Dated: October 16, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Ryan Nerbas, for the Complainant

Amanda Neudorf, for the Respondent