Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 100
Date: October 3, 2025
File No.: HR-DP-2807-22

Between:

Amar Ahlawat

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Employment and Social Development Canada

Respondent

Decision

Member: Ashley Bressette-Martinez

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I. OVERVIEW

[1] Amar Ahlawat, the Complainant, was terminated from his job with the City of Toronto after it found that he committed fraud while on medical leave. Following his termination, Mr. Ahlawat applied for Employment Insurance (EI) benefits through Service Canada which is part of Employment and Social Development Canada (ESDC), the Respondent. Dustin Bell was the Benefits Officer assigned to Mr. Ahlawat's file. In January 2017, Mr. Bell spoke with Mr. Ahlawat on the phone on five occasions over a two-day period to gather information to make an assessment about his eligibility for EI benefits. He found that Mr. Ahlawat was ineligible for EI due to misconduct and denied his application.

[2] Mr. Ahlawat says he experienced adverse differential treatment in the delivery of services by Service Canada on the grounds of disability, race, national or ethnic origin and religion, in contravention of sections 5(a) and (b) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA). His examples of discrimination are that Mr. Bell spoke too quickly, refused to use specific medical vocabulary, did not pre-schedule calls with him, refused to inquire about his cultural and religious activities, failed to allow him to provide medical information to support his application, failed to accommodate his invisible disability and denied his application for EI. He also made allegations of unconscious bias.

[3] ESDC says that Mr. Ahlawat failed to show a *prima facie* case of discrimination because there is no evidence that Mr. Ahlawat experienced an adverse impact and no evidence that his protected characteristics were a factor in how it dealt with him. ESDC says that Mr. Bell followed the requisite legislation, policy and procedures in processing Mr. Ahlawat's EI application and denying his claim based on misconduct. ESDC also argues that it had no obligation to accommodate Mr. Ahlawat because he never made an explicit request for accommodation in his conversations with Mr. Bell.

II. DECISION

[4] Mr. Ahlawat's complaint is dismissed because he did not establish that it was more likely than not that he was subjected to discrimination because of his disability, race, national or ethnic origin, or religion.

III. ISSUES

[5] The issues in this case are:

1. Has Mr. Ahlawat established a *prima facie* case of discrimination under section 5 of the CHRA?

2. Did ESDC have a duty to accommodate Mr. Ahlawat?

IV. CONTEXT

A. Mr. Ahlawat lost his job with the City of Toronto

[6] Mr. Ahlawat worked as a nurse for the City of Toronto for 11 years. He is South Asian, Hindi and says he suffers from an invisible disability. While he was employed with the City of Toronto, he went on medical leave. While he was on medical leave, his physician encouraged him to have a normal routine. Mr. Ahlawat says his physician encouraged him to continue being involved in cultural and religious activities, such as Diwali events.

[7] While Mr. Ahlawat was on medical leave, the City of Toronto got a tip on their fraud and waste hotline that Mr. Ahlawat was engaging in fraud. It hired an investigator who found that Mr. Ahlawat attended what was described as “nightclub promotion” and “Bollywood” events promoted on social media. After meeting with Mr. Ahlawat to discuss this situation, the City of Toronto terminated Mr. Ahlawat’s employment in the fall of 2016. Mr. Ahlawat then applied for EI benefits in December 2016.

B. The employment insurance regime in Canada

[8] In its submissions and at the hearing, ESDC explained how EI applications are assessed. EI benefits are intended to assist workers by providing financial assistance to those who become unemployed for reasons outside of their control and who are available for work but cannot find a job. All insured workers can access regular and special benefits if they meet qualifying and entitlement conditions that are set out in the *Employment Insurance Act*, S.C. 1996, c. 23 (the “EI Act”). Benefits officers rely on policies, procedures and tools

to determine an applicant's eligibility. One of the tools benefits officers rely on is the Digest of Benefit Entitlements (the "Digest") which sets out guidance on the legislative and regulatory requirements and principles that are applied when making decisions on EI eligibility. Mr. Ahlawat does not take issue with the Digest and, in fact, suggests at times that Mr. Bell's discrimination stems from not following established procedures.

[9] Benefits officers conduct "fact-finding" to understand why a person has lost their job. It is a three-step process which involves I) setting the stage for what occurred; II) gathering information about the situation; and III) reviewing the facts of the file to decide on eligibility for EI. Both an employer and employee have an opportunity to provide their version of the facts. Officers may assess credibility where there are conflicting versions of what transpired. Officers typically conduct fact-finding over the phone and do not pre-schedule calls.

[10] Misconduct disqualifies a person from getting EI. Misconduct is defined as being "'wilful misconduct', where an individual knew or ought to have known that their conduct was such that it would result in dismissal" (see section 30 of the EI Act). An officer making this assessment does a three-step analysis: 1) gather information from various sources; 2) evaluate the evidence without prejudice; 3) make a decision based on the weight of evidence.

[11] If a benefits officer determines an applicant is not entitled to EI, the applicant can request a reconsideration of the decision. Benefits officers are required to advise an applicant on how to request a reconsideration (see section 52 of the EI Act).

C. Mr. Ahlawat's EI claim

(i) January 24, 2017

[12] Mr. Bell was assigned Mr. Ahlawat's EI application on January 24, 2017. Typically, a benefits officer will start fact-finding by calling the employer to get its version of events. That same day, Mr. Bell called the City of Toronto but was unsuccessful in reaching anyone. He left a message to have someone return his call.

[13] Mr. Bell then called Mr. Ahlawat to get his version of why he was no longer working. This was their first conversation. Mr. Bell was prepared to discuss the issues he would be required to adjudicate, namely availability, misconduct and just cause. According to the notes from Mr. Bell's call, Mr. Ahlawat shared some details about his termination along with the fact that he was ready to return to work. This call lasted roughly 10–15 minutes.

[14] Mr. Bell then spoke with the City of Toronto. It explained that Mr. Ahlawat was terminated for fraud. The City of Toronto had evidence that Mr. Ahlawat was running a business while on medical leave. This was the first time Mr. Bell was made aware that Mr. Ahlawat was possibly engaged in self-employment.

[15] Mr. Bell then called Mr. Ahlawat a second time to discuss whether he was self-employed. Mr. Bell did this because self-employment can impact eligibility for EI (section 30(3) of the *Employment Insurance Regulations,* SOR/96-332). Following his call with Mr. Ahlawat, Mr. Bell determined the self-employment issue to be "minor". The fact-finding notes show that Mr. Ahlawat acknowledged he was a host and promoter for the events and that he was paid for his services. According to the notes, he told Mr. Bell that, since this issue came up with his former employer, "he has backed away from the business, but not completely".

[16] Mr. Bell contacted the City of Toronto a second time to ask further questions about their rationale for terminating Mr. Ahlawat's employment. The City of Toronto told Mr. Bell that Mr. Ahlawat claimed to be "completely incapacitated"; however, it hired a private investigator to look into his alleged self-employment. The investigator provided evidence which contradicted Mr. Ahlawat's statement about not being able to work. The City of Toronto official told Mr. Bell that it met with Mr. Ahlawat, and he maintained that he was not capable of modified duties. However, when the City of Toronto shared the evidence from the investigator with him that he attended events described as "Bollywood-style events like Halloween Galas, boats cruises, Bombay Nights" (Fact-finding notes January 24, 2017), he said he was ready to return to work. The City of Toronto official told Mr. Bell that Mr. Ahlawat was paid nearly $41,000 in sick pay, which it claimed was in direct contravention of their fraud policy. It then sent Mr. Ahlawat's dismissal letter and the applicable policies to Mr. Bell.

[17] Later that day, Mr. Bell called Mr. Ahlawat for a third time and shared the information that the City of Toronto official told him and provided Mr. Ahlawat with an opportunity to present his side of the story. According to the fact-finding notes, Mr. Ahlawat denied that he attended an event described as “Bollywood Nights Halloween Gala” because he says it had a different title. Mr. Ahlawat allegedly accused the City of Toronto of misrepresenting the facts and accused Mr. Bell of the same error. However, he did admit to being at a Halloween-themed event.

[18] Mr. Bell ended the call because he said his workday was finished and the conversation would continue the next day.

(ii) First call on January 25, 2017

[19] Mr. Bell called Mr. Ahlawat for a fourth time but was unable to reach him and left a voicemail. Later that morning at 10:30 a.m., they spoke to discuss Mr. Ahlawat’s availability to work. At the hearing, Mr. Bell described the conversation as “tense” as there was a dispute about the use of the medical term “contraindicated” and, according to the fact-finding notes, Mr. Ahlawat began to disagree with Mr. Bell’s suggestions about attending a meeting about modified duties with his former employer. He told Mr. Bell that he had to continue speaking about this issue and would prefer submitting forms from his doctor to substantiate his statements. On this call, Mr. Bell requested medical documents from Mr. Ahlawat. However, at this point in the conversation, Mr. Ahlawat asked Mr. Bell to end the call so that he could relocate in his home for the remaining portion of the call.

[20] Before calling Mr. Ahlawat back, Mr. Bell spoke with a mentor to seek a second opinion on Mr. Ahlawat’s case. During his testimony, Mr. Bell could not recall whom he spoke with; however, he says the mentor helped him realize he had all the information he needed to decide this application and that he did not need any medical documents.

(iii)Final call on January 25, 2017, recorded by Mr. Ahlawat

[21] Mr. Bell called Mr. Ahlawat back for a fifth time at 11:45 a.m. At some point after the call began, Mr. Ahlawat began recording the call. The recording captures the final 25

minutes of their conversation. Mr. Ahlawat never told Mr. Bell the call was being recorded. The call was a final conversation in which Mr. Bell summarized their previous conversations. At the end of the call, Mr. Bell told Mr. Ahlawat that he no longer required any medical information and that his claim for EI benefits was denied on the basis that he was disqualified from receiving EI because of his own misconduct. Mr. Bell encouraged Mr. Ahlawat to apply for a reconsideration of the decision and told him that he would likely be successful.

[22] Mr. Ahlawat was officially deemed ineligible for benefits on February 1, 2017, and he applied for a reconsideration on February 22, 2017. On March 21, 2017, he received a decision telling him he was eligible for benefits.

D. Mr. Ahlawat's complaint and the scope of the hearing

[23] Mr. Ahlawat filed a complaint of discrimination with the Canadian Human Rights Commission (CHRC) on January 23, 2018, nearly a year after his final telephone call with Mr. Bell. In that complaint, he originally listed January 25, 2017, as the date on which the discrimination began and ended. He also listed disability as the prohibited ground of discrimination. Race, religion, national or ethnic origin were additional grounds added to the complaint later. The CHRC referred his complaint to the Tribunal in 2022.

[24] Over a two-year period, the file was case managed at the Tribunal. Mr. Ahlawat filed several motions during that time, one of which was a motion to bifurcate the proceeding. This request was made because of the work associated with Mr. Ahlawat finalizing his documentary disclosure for the more than $500,000,000 in remedy for damages and losses he was claiming against ESDC for the alleged discrimination.

[25] In December 2024, ESDC consented to Mr. Ahlawat's request to bifurcate the proceeding. The parties agreed to proceed with a hearing on the liability portion of this complaint. If liability was established by Mr. Ahlawat, then the parties would move forward with the remedy portion of the complaint. Mr. Ahlawat withdrew all the other motions in December 2024, and the parties filed new Statements of Particulars on liability only in preparation for the hearing.

V. THE HEARING

A. Witnesses and evidence

[26] The hearing on the liability portion of this complaint took place over three days in April 2025. At the hearing, Mr. Ahlawat provided evidence for his case and he cross-examined ESDC witnesses. Richard Kup assisted Mr. Ahlawat in presenting his case by asking Mr. Ahlawat questions during his examination-in-chief. Mr. Kup also cross-examined ESDC's witnesses.

[27] At the outset of the hearing, I reminded the parties that only the statements from witnesses would be considered as evidence. During Mr. Ahlawat's testimony, ESDC raised objections on the basis that Mr. Kup was attempting to give evidence rather than simply asking questions of Mr. Ahlawat. I reminded the parties that I cannot consider questions that were asked by Mr. Kup as evidence because the people asking the questions are not sworn in as witnesses themselves—only the witnesses' answers are evidence. I raise this because a portion of Mr. Ahlawat's submissions rely on questions being posed as "evidence". Mr. Ahlawat provided his evidence on the first day of the hearing, and I have considered his testimony while he was sworn in as a witness in the assessment of the evidence of this case. Mr. Kup's statements and questions throughout the hearing are not evidence because he himself was not called as a witness. The same applies to Mr. Ahlawat when he was asking questions of ESDC's witnesses on cross-examination.

[28] ESDC called two witnesses of its own as part of its case: Christian Beauchamp, Director of Operations for ESDC, and Mr. Bell.

[29] Only the documents entered as exhibits at the hearing were considered as evidence in my determination of this case. As ESDC correctly pointed out, it would be prejudicial to consider any other proposed evidence since it was not able to test that evidence at the hearing.

B. January 25, 2017, audio recording

[30] At the outset of the hearing when Mr. Ahlawat began providing his evidence, ESDC objected to the inclusion of the January 25, 2017, audio recording as evidence because it was surreptitious and unauthorized. Mr. Ahlawat argued that he needed to rely on this recording to prove his case. I allowed the audio recording to be admitted as evidence based on section 50(3)(c) of the CHRA which allows the Tribunal to admit evidence that would otherwise not be admissible in a court of law. I noted ESDC's objection, and I asked the parties to provide submissions on the weight I should give to the recording.

[31] For context, this audio recording was not a surprise to ESDC at the hearing. Mr. Ahlawat relied on this recording since he filed his complaint with the CHRC in 2018. At some point in the complaint process, Mr. Ahlawat produced a transcript of the audio recording. After hearing dates were set for this complaint, ESDC raised concerns about the authenticity of the transcript of the audio recording because it was missing words from the conversation. ESDC did not have concerns about the recording being fraudulent. Mr. Ahlawat agreed to have a certified transcription produced, which he did. In the final case management conference call before the hearing in March 2025, ESDC was satisfied with the accuracy of the transcript of the audio recording. However, it maintained that it had issues with its authenticity.

[32] During his testimony, Mr. Ahlawat said that he recorded the call because he had trouble following the conversations from the previous day and wanted to understand his interaction with Mr. Bell. He said in his testimony that he did not alter the recording in any way. He says that he played it for his representative, Mr. Kup, shortly after the call took place because he "had difficulty processing what had occurred".

[33] Mr. Ahlawat says he did not record the phone call for strategic or adversarial reasons, but rather as a defensive measure "prompted" by the threat of Mr. Bell. He says that "ESDC officers, as with police officers, should have no expectation of not being recorded in today's world…". He cited jurisprudence from various jurisdictions, including this Tribunal, which he says does not support ESDC's position that it should be given little to no weight. *Khouri and Khouri v. Virgin Mobile Canada*, 2019 CHRT 26 [*Khouri*] was a case in which a Tribunal

member was required to decide a motion to produce documents. The complainants in that case were legally blind and requested disclosure from the respondent. In that case, the Tribunal member was not deciding how much weight to give to an audio recording, but rather determining arguable relevance of call notes and audio recordings between the parties. The member in that case assumed that an audio recording may be more accessible to a person who is legally blind rather than a transcript and ordered it be disclosed (*Khouri* at para 36). In *Majidigoruh v. Jazz Aviation LP*, 2017 FC 295 at paras 40–41, the Federal Court dealt with whether a CHRC investigator's rationale for refusing to listen to an audio recording was reasonable. Again, this case did not contemplate or assess the weight that the audio recording ought to be given. Neither of these cases help me in terms of the weight I should give to the audio recording.

[34] Mr. Ahlawat did, however, spend considerable time in his submissions explaining why the audio recording and transcript were vital to his case. He believes that the recording allows me to assess the tone and intonation in Mr. Bell's conduct. He also says that the audio recording shows Mr. Bell was unprofessional and discourteous, and not open to accepting critical medical terminology around the use of the word "contraindicated". He says that the recording shows that Mr. Bell did not follow the Digest procedures and that this is an inference of differential treatment. Mr. Ahlawat's submission also argues that the audio recording proves that Mr. Bell's notes are not accurate because things he told Mr. Bell are not included in the notes.

[35] ESDC argues that I should give the audio recording no weight because Mr. Bell was not aware that he was being recorded, and it only represents the final 25 minutes of their conversations when Mr. Bell was providing a summary of his fact-finding to Mr. Ahlawat. It says that issues around credibility and reliability arise with surreptitious evidence because the recording may not reflect the entirety of the conversation, and it could be inaudible or curated. It says tribunals such as this one typically do not ascribe much weight to this type of evidence.

[36] In fairness, Mr. Ahlawat went so far as to produce a certified transcript of the recording to appease concerns about its accuracy. And while that transcript obviously did not address concerns about reliability and authenticity, ESDC did have a chance to cross-

examine Mr. Ahlawat, and he provided testimony that he did not alter the recording. ESDC could have asked Mr. Bell if the audio recording was accurate to the best of his memory, and I did not hear any evidence from ESDC that what was captured in Mr. Bell's notes from that call was substantially different from what we heard on the recording. While I understand both parties' concerns—Mr. Ahlawat's about it being a critical piece of evidence and ESDC's concerns about its reliability, the audio recording is useful evidence, and I will give it weight insofar as it confirms what was said during those 25 minutes and corroborates or differs from Mr. Bell's testimony and his notes from the call. While I am not persuaded by the arguments ESDC makes to have the recording excluded, the recording is a single piece of evidence and is limited in its ability to answer questions about what may have been said on other calls, including tone, language and conduct since it only covers a portion of the final interaction between the two individuals.

VI. CREDIBILITY

[37] In assessing the credibility and reliability of the evidence that was presented at the hearing, I have applied the legal test for credibility set out in *Faryna v. Chorny*, 1951 CanLII 252 (BCCA) 357. I have done this to decide which version of the facts is "in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable" in the circumstances (*Starr v. Stevens*, 2024 CHRT 127 at para 32). I have considered the following factors in assessing whether a witness's testimony is in "harmony with the preponderance of the probabilities":

- the internal consistency or inconsistency of evidence;
- the witness's ability and/or capacity to apprehend and recollect;
- the witness's opportunity and/or inclination to tailor evidence;
- the witness's opportunity and/or inclination to embellish evidence;
- the existence of corroborative and/or confirmatory evidence;
- the motives of the witnesses and/or their relationship with the parties; and
- the failure to call or produce material evidence.

(see McWilliam v. Toronto Police Services Board, 2020 HRTO 574 (CanLII), at para 50, citing Shah v. George Brown College, 2009 HRTO 920 at paras 12–14; Staniforth v. C.J. Liquid Waste Haulage Ltd., 2009 HRTO 717 at paras 35–36).

[38] I recognize that being a witness in one's own complaint can be challenging, along with the fact that the alleged discrimination in this complaint took place eight years ago. However, I found that portions of Mr. Ahlawat's testimony were not candid and forthcoming and were not corroborated by the documentary evidence, specifically around what he told Mr. Bell about his invisible disability and any requested accommodation. Mr. Ahlawat at times appeared to tailor his evidence and embellish portions of it particularly around what Mr. Bell said regarding his ability to apply for a reconsideration of his application for EI. His answers were evasive. Based on this, I have drawn an adverse inference.

[39] Finally, ESDC asked Mr. Ahlawat questions at the hearing about other legal proceedings against his former employer, ESDC and other institutions. While Mr. Ahlawat was uncomfortable with the questions being brought up, he did provide answers to ESDC's questions during his cross-examination. I have not drawn any negative inference against Mr. Ahlawat from his responses to the questions he was asked and answered, nor have I drawn any negative inference about the substance of those cases or their outcomes.

[40] ESDC called two witnesses: Mr. Bell and Mr. Beauchamp who was the Director of Operations for ESDC in 2017. Mr. Beauchamp's evidence was based on his 22-year career with ESDC. He provided testimony and showed an in-depth and detailed understanding of how EI applications are processed based on the policies and procedures, the EI Act and its associated regulations. His responses to questions both in examination-in-chief and cross-examination were truthful and forthcoming, corroborated by the documentary evidence such as the Digest and Mr. Bell's notes.

[41] Mr. Bell provided evidence about how he dealt with Mr. Ahlawat's EI application, from the time it was assigned to him through the fact-finding phase. His testimony was concise and consistent with his notes from January 2017. Mr. Ahlawat takes issue with those notes because he says they do not refer to everything they spoke about. However, Mr. Beauchamp testified about the process for documenting conversations with applicants, and he said that notes are intended to be a summary of the discussion. Mr. Bell provided that same testimony. I do not find that Mr. Bell lacked credibility during his testimony when I compare what he said against the documentary evidence the parties presented.

[42] Mr. Bell's evidence was corroborated by what the Tribunal heard from Mr. Beauchamp in terms of processes and procedures set out in the Digest. Mr. Bell provided truthful responses to questions he was asked in his examination-in-chief, even when challenged with difficult questions about his own work and behaviour. His cross-examination was challenging, and his answers were admittedly short and to the point. However, he was credible and did not evade questions, particularly when he was challenged about concepts around unconscious bias, when asked about racial discrimination and about his knowledge of religious holidays, such as Diwali.

[43] Overall, the evidence from the witnesses from ESDC was more credible than Mr. Ahlawat's. Where there are discrepancies and divergence in the evidence, I prefer ESDC's witnesses and evidence and have given it more weight.

VII. REASONS AND ANALYSIS

A. Submissions from the parties

[44] Mr. Ahlawat provided nearly 500 pages of submissions. The presentation and content of them make it challenging to address every point he raised. However, I analyzed the case based on the most salient issues I was able to identify in the first 240 pages (and in his reply), which are a combination of portions of the hearing transcript, with some arguments and references to case law and evidence. The remaining 200 pages are only portions of the hearing transcript and contain no legal argument or assessment of the evidence. I grouped the allegations of discrimination in the analysis below based on my understanding of Mr. Ahlawat's submissions. Those categories are:

a) failure to pre-schedule calls;

b) speaking too quickly;

c) choosing to use different terminology;

d) failure to inquire into Mr. Ahlawat's cultural and religious activities;

e) failure to provide an opportunity to submit medical information;

f) denying the application for EI; and

g) unconscious bias and systemic discrimination.

[45] ESDC's submissions focus primarily on their position that Mr. Ahlawat did not show a *prima facie* case of discrimination. While it acknowledges Mr. Ahlawat has protected characteristics, it says Mr. Bell was not aware of them. ESDC says that Mr. Ahlawat did not show he experienced any adverse impact and that there is no evidence linking Mr. Ahlawat's protected characteristics to any adverse differential treatment. ESDC also provided its position that the duty to accommodate was not triggered in this case and that imposing any such duty to accommodate would cause it undue hardship.

B. Legal framework

[46] This complaint is about whether Mr. Ahlawat experienced adverse differential treatment in the delivery of a service that is customarily available to the public as defined by section 5 of the CHRA. This Tribunal has described a "service" as something of benefit that is held out to members of the public for whom the service was meant to benefit in the context of a public relationship (*Lock v. Peters First Nation*, 2023 CHRT 55 (CanLII) at para 123).

[47] In this case, neither of the parties' dispute that ESDC was offering a service to Mr. Ahlawat as defined by section 5 of the CHRA. Mr. Ahlawat's allegations are about how Mr. Bell treated him during their telephone interactions while Mr. Bell was assessing his eligibility for EI. Mr. Ahlawat is clearly a member of the public and was trying to access EI benefits through the service offered by ESDC. It is important to be clear that Mr. Ahlawat has not argued that the EI Act or its regulations are discriminatory. But this Tribunal does not have the jurisdiction to decide complaints that are challenges to legislation, since legislation itself is not a "service" (*Canada (Human Rights Commission) v. Canada (Attorney General),* 2018 SCC 31 (CanLII) at paras 57–62). I have analyzed the allegations in this case based on whether the service Mr. Ahlawat received during his interactions with Mr. Bell was delivered in an unequal way that constitutes discrimination.

[48] To establish a *prima facie* case of discrimination, Mr. Ahlawat needs to show on a balance of probabilities that: 1) he has characteristics protected from discrimination under the CHRA; 2) he was denied a service or was adversely differentiated against in relation to a service as defined by section 5 of the CHRA; and 3) his protected characteristics were a factor in the adverse impact he experienced (*Moore v. British Columbia (Education)* 2012 SCC 61 at para 33). The "balance of probabilities" standard means that Mr. Ahlawat needs to show that it is more likely than not that he meets all three parts of the test set out above (*Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at paras 56, 64 [*Bombardier*]). If he does not meet that standard, I cannot find that discrimination took place.

[49] The protected characteristics do not have to be the sole factor leading to discriminatory conduct, and no causal connection is required (*Bombardier* at paras 44–52, *Holden v. Canadian National Railway Co.*, (1991) 14 C.H.R.R. D/12 (F.C.A.) at para 7). Direct evidence of discrimination or proof of an intention to discrimination is not required to establish a discriminatory practice under the CHRA (*Basi v. Canadian National Railway*, 1988 (CanLII) 108; *Bombardier* at paras 40–41). In my assessment of whether Mr. Ahlawat has shown a *prima facie* case of discrimination, I can consider evidence from both parties. ESDC can refute the allegations with evidence, provide a defense justifying the conduct under section 15 of the CHRA, or do both (*Bombardier* at paras 64, 67 and 81). Where a respondent puts forward a defense justifying the discrimination, it bears the burden of proof in that regard (*British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.)* [1999] 3 S.C.R. 3).

C. Issue 1: Has Mr. Ahlawat established a *prima facie* case of discrimination?

(i) Does Mr. Ahlawat have protected characteristics?

(a) Race, religion, national and ethnic origin

[50] ESDC argues that Mr. Ahlawat only raised disability and race during the hearing and that Mr. Bell did not know about his protected characteristics. This stage of the *prima facie*

test is not about whether Mr. Bell knew about Mr. Ahlawat's protected characteristics; that is addressed in later parts of this analysis. The parties do not dispute that Mr. Ahlawat has the protected characteristics of race, religion, national and ethnic origin. Based on this, I find that Mr. Ahlawat met his burden and qualifies for protection from discrimination under section 5 of the CHRA because of his religion, race, national and ethnic origin.

(b) Disability

[51] "Disability" is defined in the CHRA at section 25 as "any previous or existing mental or physical disability...". The CHRA does not contain a list of disabilities. However, in a legal sense, a "disability" consists of a physical or mental impairment, which results in a functional limitation or is associated with a perception of impairment (*Desormeaux v. Ottawa (City)*, 2005 FCA 311 (CanLII) at para 15, citing *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28 at para 34 [*Granovsky*]). Not all physical or mental impairments give rise to functional limitations (*Granovsky* at para 36). Functional limitations associated with mental health disabilities can vary from mild to severe. These functional limitations can affect people in different ways and can fluctuate at different times of the day. For example, a person who has a psychological disability could struggle with their concentration while taking a test in the morning because of the side effects of medication designed to assist them with mental alertness, meaning they have functional limitations. However, if they take the medication in the evening, the medication does not affect their mental alertness, meaning there are no functional limitations associated with taking the test during the day.

[52] A disability does not have to be permanent, and it is not only the most serious or most severe mental disabilities that engage the protection of the CHRA. However, there still needs to be sufficient evidence to support the existence of a disability (*Mellon v. Canada (Human Resources Development)*, 2006 CHRT 3 at para 88 [*Mellon*]).

[53] Parties are not required to adduce any particular type of evidence to prove they have experienced discrimination (*Chisholm v. Halifax Employers Association*, 2021 CHRT 14 (CanLII) at para 87). Expert medical evidence by a physician is not required to

prove the existence of a disability in the human rights context (*Marshall v. Membertou First Nation*, 2021 CHRT 36 at para 125). A disability can exist even without proof of physical limitations or the presence of an ailment, but there needs to be more than just a bare statement that one suffers from a disability to meet the test. There must be evidence that the disability is there. The link between a medical condition and a functional limitation needs to be made with enough specificity to ensure that a human rights decision is based on evidence rather than on assumptions and/or stereotypes about the capabilities of the individuals, including mental health conditions (*Sturgess v. Canada (Elections)*, 2024 FC 1360 at para 15 [Sturgess]). This evidence can be drawn from the medical information and from the context in which the impugned act occurred (*Mellon* at para 82).

[54] The issue at hand is not the lack of a specific medical diagnosis. Mr. Ahlawat's evidence is based on his statement to Mr. Bell that he had an "invisible disability" and Mr. Bell's statement that he knew that the disability was "psychological". However, Mr. Ahlawat was required to present evidence to support the existence of a disability based on a balance of probabilities, and he did not do that. Mr. Ahlawat refused to share any information about his disability for two reasons. First, Mr. Ahlawat said he had had privacy rights and was not required to share his diagnosis. He refused to answer questions about whether he could perform modified duties for fear it would reveal information about his diagnosis. Second, Mr. Ahlawat told Mr. Bell that he had pending litigation against his former employer and did not want any information getting back to the City of Toronto.

[55] Mr. Ahlawat's evidence, including a Health Professional's Report of Worker's Function from November 2016 (completed by Dr. Greco), indicates that he had no functional limitations. After Mr. Ahlawat provided evidence for an entire day at the hearing, I asked him what he requested as an accommodation for his disabilities other than allegedly asking Mr. Bell to speak more slowly during their conversation because it was still unclear to me. He provided vague answers about what he thinks he told Mr. Bell about his invisible disability, saying that he thinks he asked Mr. Bell to speak more slowly and repeated that the calls were not scheduled in advance.

[56] Establishing a functional limitation is crucial to establishing there is a disability (*Granovsky* at paras 34 and 38), and, in this case, Mr. Ahlawat failed to do so. It was not

possible for Mr. Bell to know what the functional limitations and barriers were to his participation in the process (*Sturgess* at para 15). In the absence of a request or clarification of what he needed to participate in that process, I cannot find that Mr. Ahlawat met his burden on a balance of probabilities to show he had a disability. The legislative framework in the CHRA that I must apply requires a complainant to establish more than an assertion that they had an illness or a medical condition, or even symptoms—whether physical, mental, or both. It requires a functional limitation with a resultant medical need during the time of the alleged discrimination. While I can accept that Mr. Ahlawat has a condition capable of being a disability in some contexts, he has not shown it in this context. Mr. Ahlawat's evidence does not establish that he had a functional limitation or perceived impairment in 2017 (*Granovsky* at paras 34).

[57] Throughout these proceedings, Mr. Ahlawat reminded the Tribunal that he is an unrepresented complainant with no formal legal training. In reply to submissions, Mr. Ahlawat stated that if he was required to provide medical documentation at the liability stage of this proceeding to show he satisfied the three-part *prima facie* test for discrimination, he ought to be afforded that opportunity now. But this is not how complaints before the Tribunal work. Both parties filed their Statements of Particulars well in advance of the hearing and provided disclosure and witness lists. There were no surprises at this hearing. Mr. Ahlawat was aware of the legal test and ESDC's position and arguments. Mr. Ahlawat had every opportunity to decide how to present his case at the Tribunal. The window for providing evidence on liability for both parties closed when the hearing concluded.

(ii) Has Mr. Ahlawat shown he experienced adverse impact at least in part because of his protected characteristics?

[58] No, Mr. Ahlawat has not established on a balance of probabilities that he experienced discrimination either because of a denial of services or because of adverse differential treatment in the provision of a service customarily available to the public, at least in part, because of his disability, race, religion, national or ethnic origin.

(a) Failure to pre-schedule calls

[59] Mr. Ahlawat says that ESDC's failure to pre-schedule calls with him about his application for EI is adverse differential treatment since he believes that he ought to have been accommodated because of his invisible disability. While the parties agree that Mr. Ahlawat has an invisible disability, I have already found this to mean nothing more than the fact that they agree that he had a psychological medical condition and that Mr. Ahlawat did not establish he had a disability within the meaning of the CHRA; his allegation of a failure to pre-schedule calls cannot succeed on this basis (*Granovsky* at para 34).

[60] Even if I had found that Mr. Ahlawat had a disability within the meaning of the CHRA, Mr. Ahlawat never said or explained how the failure to pre-schedule calls adversely affected him. I prefer the evidence I heard from ESDC on this allegation. While Mr. Ahlawat told the Tribunal that he asked for the calls to be scheduled, Mr. Bell denies those requests were ever made. There is no reference to this in his notes from the first three calls. However, there is evidence that, during the fourth call, while not a request to pre-schedule calls, Mr. Ahlawat asked Mr. Bell to end the call so that he could relocate in his home. Mr. Bell accommodated that request. The call ended, and Mr. Bell called Mr. Ahlawat back. This aligns with Mr. Bell's testimony that had a request for accommodation been made, he would have considered it.

[61] In addition, there does not appear to be any adverse differential treatment towards Mr. Ahlawat in terms of how calls are made. Mr. Bell answered questions on cross-examination about this issue telling the Tribunal that he did not schedule any of the calls with Mr. Ahlawat and that those calls were made at his discretion, at a time that was convenient to him. This aligns with the Digest to the extent that nothing in it requires benefits officers to pre-schedule calls with applicants. It provides instructions about contacting a person by telephone and instructs employees to leave a message for the person if they are unsuccessful in reaching them. There is no mention of scheduling calls. In fact, in this case, on January 25, 2017, Mr. Bell tried to reach Mr. Ahlawat but was unsuccessful in doing so and called him back later that day. What Mr. Bell did aligned with the Digest procedures and is corroborated by the testimony Mr. Beauchamp gave. Even if Mr. Ahlawat had established

that he had a disability, the evidence and testimony I heard do not suggest that he suffered any adverse differential treatment or that his protected characteristics were a factor in the decision to not pre-schedule calls.

(b) Speaking too quickly

[62] Mr. Ahlawat says he experienced adverse differential treatment because of his invisible disability when Mr. Bell spoke too fast and refused to speak slower during their conversations. Mr. Ahlawat and Mr. Bell disagree on what was said during the first four calls. Mr. Ahlawat claims he asked Mr. Bell to speak slower and says he told Mr. Bell he had an invisible disability. Mr. Bell denies he ever asked him to slow down when speaking on the first four calls and said that he never tied his request to his invisible disability. Mr. Bell's notes from the calls make no reference to any such requests from Mr. Ahlawat.

[63] Having listened to the entirety of the recording, Mr. Ahlawat did not explain or tie his need for Mr. Bell to speak more slowly to any functional limitation he has because of his invisible disability (*Granovsky* at para 34). Rather, the evidence leads me to conclude that his request to speak more slowly was made so that he could respond to Mr. Bell's findings, ask questions and challenge Mr. Bell, which he did. The best evidence produced for this allegation is the recording of the call on January 25, 2017. That call starts out with Mr. Bell reading his notes and summarizing his findings point by point for Mr. Ahlawat. Fifty seconds into that call, Mr. Ahlawat asked Mr. Bell to speak more slowly because he "wanted to speak to the points" Mr. Bell was making. Less than a minute later, he once again asked Mr. Bell to speak more slowly because he was "writing stuff down" so that he could respond to what Mr. Bell was saying. It is worth noting that, as the call goes on, Mr. Bell does slow down when the two are engaging in discussion and when responding to Mr. Ahlawat's questions. In fact, at the end of the call, Mr. Ahlawat himself says to Mr. Bell, "I'm not saying what my disability is", and there is no conversation about his invisible or any functional limitations.

[64] One could not reasonably expect a benefits officer to know what a person's functional limitations are unless those functional limitations are expressed and explained with some degree of clarity and specificity (*C.H.R.C. (Cruden) v. Canada (A.G.)*, 2014 FCA 131) at

para 26 [*Cruden*]). Based on the evidence I heard, Mr. Ahlawat hast not met his burden of showing he had a functional limitation tied to his invisible disability, and I cannot find that he experienced discrimination.

(c) Choosing to use different terminology

[65] Mr. Ahlawat believes that Mr. Bell's failure to use a medical term adversely impacted him during the EI application process. He takes issue with the fact that Mr. Bell did not use the medical term "contraindicated" in his notes and in their conversations. Mr. Ahlawat's argument is that Mr. Bell "intentionally misrepresented the term, altering its meaning to undermine" his claim for EI. He says that Mr. Bell was "not open to accepting critical medical terminology" and that this reflects a "reckless indifference" to his invisible disability. He also argues that this "speaks directly to issues of procedural fairness, credibility, and subtle bias in the context of disability-related service delivery". He claims that Mr. Bell's refusal to use this term "suggests a failure to engage with the request in good faith and [ESDC's] duty to accommodate under the *Canadian Human Rights Act*".

[66] Since I have already found that Mr. Ahlawat did not show he has a disability within the meaning of the CHRA, the evidence does not support Mr. Ahlawat's proposition that Mr. Bell's decision to not use the word "contraindicated" was discrimination based on any of his protected characteristics. Even if Mr. Ahlawat established he had a disability within the meaning of the CHRA, Mr. Bell's explanation during his testimony for why he did not use the term "contraindicated" is the evidence that I prefer.

[67] Mr. Bell explained that he preferred to use words that he is familiar with in his work. This is corroborated by his notes. There is nothing controversial or discriminatory about the terms Mr. Bell chose to use. Despite having spent significant hearing time on this issue, there is simply no evidence to support Mr. Ahlawat's allegation, nor is there any evidence whatsoever that not using a specific word was somehow adverse differential treatment or tied to Mr. Ahlawat's invisible disability.

(d) Failure to inquire about cultural and religious activities

[68] Mr. Ahlawat says that Mr. Bell had a duty to inquire about his cultural and religious activities since they were the basis for the termination of his employment and that failing to do so amounts to cultural insensitivity. He says that Mr. Bell's refusal to inquire about the connection between his cultural events and his explanation for why he was at those events in his assessment of misconduct amounts to "systemic racial and religious disregard" and shows a disregard for Diwali, contrasted with Mr. Bell's knowledge about Christmas. ESDC says that there was no duty to inquire about religious or cultural events and that the failure to do so does not amount to adverse impact. ESDC also argues that Mr. Bell was not aware of Mr. Ahlawat's protected characteristics when they spoke in 2017.

[69] In his testimony, Mr. Ahlawat gave evidence about his attendance at what he described as cultural and religious events in 2016 for Diwali. His attendance at these events was relevant to the assessment of his EI application because he was terminated for fraud because he was allegedly running a business while on medical leave. Mr. Bell told the Tribunal that the purpose of the conversation about the "Bollywood Night Halloween Gala" was to confirm whether he attended it since this was relevant to the assessment of misconduct and his eligibility for employment insurance.

[70] The fact-finding notes which are the most reliable sources of evidence about this allegation show that Mr. Bell followed the lines of inquiry as they were shared with him by the City of Toronto and provided Mr. Ahlawat with an opportunity to share his version of events leading to his termination of employment. Instead of providing an explanation for his attendance at the event, Mr. Ahlawat provided brief responses to Mr. Bell without any context. For example, the fact-finding notes say that, when Mr. Bell asked Mr. Ahlawat if he attended a "Bollywood Nights Halloween Gala" on October 29, 2016, at a nightclub, Mr. Ahlawat told him "no". Mr. Ahlawat denied attending that specific event because he said it had a different title. Mr. Bell then asked Mr. Ahlawat if he was at an event at a specific nightclub, on October 29, 2016, which he admitted to being at, but only after accusing Mr. Bell of misrepresenting the facts about the situation just as the City of Toronto allegedly had. The fact-finding notes also show that Mr. Bell inquired about Mr. Ahlawat's role at the

event to which the notes say Mr. Ahlawat “avoids the question” and the call ended shortly thereafter. The notes make no mention whatsoever to Mr. Ahlawat providing an explanation of the event.

[71] Based on the evidence and the parties’ submissions, I do not find that Mr. Bell had a duty to inquire about cultural and religious activities (*Cruden* at para 26) and certainly not to the degree that Mr. Ahlawat alleges. Mr. Ahlawat’s argument and evidence fails to establish a link between his protected characteristics and any adverse treatment because he did not explain how inquiring into these events from a cultural or religious perspective would have made a difference to the assessment of misconduct, nor how it adversely impacted him. For this reason, he has not met his burden of establishing on a balance of probabilities that he experienced discrimination for this allegation.

(e) Failure to provide an opportunity to submit medical information

[72] Mr. Ahlawat says he was prevented from providing medical information supporting his application for EI. He relies on evidence from Mr. Beauchamp who said that, had he been the one processing the application, he would have been open to receiving that information. Because of this, Mr. Ahlawat claims that he experienced adverse differential treatment and the denial of a service because of his invisible disability.

[73] I once again repeat that I have not found that Mr. Ahlawat established that he had a disability within the meaning of the CHRA and, for this reason, has not established a *prima facie* case of discrimination about this allegation (*Granovsky* at para 34). However, even if I had found otherwise regarding the invisible disability, in the fact-finding notes there is no evidence to suggest that Mr. Bell refused to accept medical evidence at least in part because of any of Mr. Ahlawat’s protected characteristics. At no point during this proceeding did Mr. Ahlawat say or explain what this medical information would have shown, nor did he suggest how it would have changed the outcome of the EI determination.

[74] The evidence shows that Mr. Bell did talk to Mr. Ahlawat about providing additional medical information on the fourth call. However, when Mr. Ahlawat asked to end that call so he could relocate in his home, Mr. Bell spoke with a mentor/supervisor about Mr. Ahlawat’s

file. Following that conversation, Mr. Bell determined he had all of the information he needed to finalize his decision on Mr. Ahlawat's application for EI based on misconduct. The evidence does not suggest that he changed his mind or did this because of Mr. Ahlawat's religion, race, cultural or ethnic origin. Mr. Ahlawat has not met his burden on this allegation.

[75] While Mr. Ahlawat took issue at the hearing with Mr. Bell's credibility because he could not remember the name of the supervisor/mentor he spoke with between the fourth and fifth call, I have not drawn an adverse inference against Mr. Bell's credibility or evidence. The issue of who the supervisor was is an entirely peripheral issue and in no way assists me in determining the actual issue in this case. For context, Mr. Ahlawat filed his complaint about discrimination in January of 2018, almost a year to the day after his last call with Mr. Bell in January 2017. The hearing for this matter happened in April 2025, more than eight years after their phone interactions. It can be challenging if not impossible for a person to remember such details, especially for individuals who are working and performing routine and repetitive tasks such as processing EI applications daily and where such details are not recorded in notes.

(f) Denying the application for EI

[76] Mr. Ahlawat's submissions suggest that he believes his application was denied because of his protected characteristics and not because of a finding of misconduct. ESDC's position is that the application for EI was rejected based on a finding of misconduct.

[77] I have no doubt that Mr. Ahlawat experienced a challenging time after losing his job. He said that this had an impact on him and that it was upsetting, stressful and distressing. While I can accept that the denial of EI did have an adverse impact on Mr. Ahlawat because he was denied a benefit, I do not have evidence to suggest he was denied EI because of his protected characteristics. There is no indication that Mr. Ahlawat would have been treated any differently if his disability, race, religion, ethnic and national origin were any different. The evidence I heard is clear that Mr. Bell found Mr. Ahlawat to be ineligible for EI because of misconduct. The evidence, including the Digest and Mr. Bell's notes, along with the testimony from Mr. Beauchamp and Mr. Bell, were consistent with how misconduct is

assessed and determined. The evidence is clear that Mr. Bell based his decision to deny the EI application on his neutral assessment of the facts he gathered from the City of Toronto and from Mr. Ahlawat. Mr. Bell provided evidence that he spent more time than usual on Mr. Ahlawat's file to ensure he had all of the information he needed to make a fair decision in accordance with the EI Act and the Digest. Mr. Ahlawat has not met the burden of showing a *prima facie* case of discrimination.

(g) Unconscious bias and systemic discrimination

[78] Mr. Ahlawat's allegations about unconscious bias appear to be tied to how Mr. Bell conducted his assessment of his application for EI which Mr. Ahlawat described as "emotional baggage – denial". He questions whether Mr. Bell had sufficient training on unconscious bias, which he seems to suggest led to systemic discrimination and linguistic bias against him.

[79] ESDC argued that Mr. Ahlawat made no allegations of systemic discrimination in his complaint and in law; bias cannot be inferred based on the perception of the victim alone (*Davis v. Canada Border Services Agency*, 2014 CHRT 34 at para 234). It says that, in this case, Mr. Ahlawat did not produce any evidence to support an inference of unconscious bias or systemic discrimination. I agree with ESDC.

[80] Mr. Bell provided evidence about his education and his efforts to continuously learn about unconscious bias. He said he read books on this subject and applies what he learns in his daily life. He was challenged on cross-examination, and Mr. Ahlawat argues that many of Mr. Bell's answers were "incorrect". Mr. Ahlawat went so far as to argue Mr. Bell's credibility ought to be impugned because of a lack of candour on this subject and says "it is simply not credible that he read multiple books about it– based on his lack of engagement and that he was a busy student. He is trying to protect himself from what he perceives this is leading to but does not have the depth to see how transparent it is". However, I cannot accept Mr. Ahlawat's argument. A disagreement about what unconscious bias is, is not evidence of unconscious bias itself. Individuals disagree all the time and debate issues where they have diverging views. None of the evidence in this case leads me to believe Mr.

Bell was biased in how he treated Mr. Ahlawat, and Mr. Ahlawat has not shown evidence of how the bias manifested or how it impacted him.

[81] I have already summarized quite a substantial portion of the evidence about how benefits officers are taught and expected to conduct neutral fact-finding, and I have not found any departures from that process in Mr. Ahlawat's case suggesting there could be unconscious bias or systemic discrimination. While Mr. Ahlawat argued that, by speaking with an employer first, the officer is somehow bias, that is not supported by the evidence. Regardless of which party an officer speaks with first when doing fact finding, they are taught to assess the case in a neutral manner. The evidence in this case is that the procedures benefits officers follow are designed to focus the analysis of a case on the relevant issues so that determinations are not made based on irrelevant or inapplicable considerations tainted by bias.

[82] While unconscious bias can be said to affect a person's tone, demeanour and ultimately their actions and decisions, the evidence in this case shows the opposite. Despite the challenging nature of the conversations, Mr. Bell spoke with Mr. Ahlawat five times and gave him the opportunity to provide his version of events. He had several hours of conversation with Mr. Ahlawat. On at least one occasion, Mr. Bell ended a call at Mr. Ahlawat's request so that he could relocate in his home. Mr. Bell took the time to read out his notes to Mr. Ahlawat to provide him with his decision. He told Mr. Ahlawat that he should consider seeking a reconsideration/appeal of the decision because he thought he would be successful. Mr. Bell's tone and delivery of this message on the audio recording shows he was calm and appeared empathetic, despite the tense nature of the earlier discussion. These are not the traits of a person who has unconscious bias or who is seeking to discriminate.

[83] In addition, this complaint is about the service that was provided to Mr. Ahlawat, and not about whether ESDC failed to provide adequate training to its employees. It is possible a service provider acts in a discriminatory manner despite the best training in the world, and it is also possible that a service provider provides non-discriminatory services despite no training. The allegation that ESDC failed to provide adequate training therefore cannot itself be an adverse treatment.

[84] Mr. Ahlawat also argued that “discrimination in language and communication is an operative element in discrimination based on race, national origin and religion” and that his “linguistic background represented a form of leveraged and subjected to attack”. But I do not find this argument is supported by the evidence. Mr. Ahlawat’s evidence and argument on this point are tied to the use of the word “contraindicated” which I have already dealt with earlier in this decision. Relying on the audio recording of the January 25, 2017, call, Mr. Bell did not use words or language that was difficult to understand, and Mr. Ahlawat participated quite ably in that portion of the conversation. Mr. Ahlawat challenged Mr. Bell on several of his findings and provided clarification about the facts of his case at the end of the call with no difficulty. Mr. Ahlawat asked Mr. Bell to add certain notes to his file (suffering reprisal at work, for example). While the two individuals certainly disagreed on the call (particularly about the findings about misconduct and Mr. Ahlawat’s level of effort to return to work), there is no evidence that language was used to discriminate against Mr. Ahlawat.

[85] As the Supreme Court of Canada noted in *Bombardier*, some discriminatory conduct involves multiple factors or is unconscious (*Bombardier* at paras 40 and 41). The intent to discriminate is therefore not a determining factor in whether discrimination happened. But, even in accepting that Mr. Ahlawat has protected characteristics of disability, race, religion, national and ethnic origin, Mr. Ahlawat failed to provide evidence about how any actual alleged unconscious bias and systemic discrimination manifested in this case leading to discrimination. Because of this, he has not met the burden of showing a *prima facie* case of discrimination based on unconscious bias.

D. Issue 2: Did ESDC have a duty to accommodate Mr. Ahlawat?

[86] No, there is no free-standing right to accommodation under the CHRA. The duty to accommodate only arises if a *prima facie* case of discrimination is established, and, in this case, I did not find that Mr. Ahlawat had a disability within the meaning of the CHRA. He failed to meet the burden he had to show a *prima facie* case of discrimination.

[87] The notion that Mr. Bell ought to have accommodated an invisible disability in the absence of a request, in the absence of any information about the “invisible disability” and

in the absence of any information about functional limitations from Mr. Ahlawat is not in keeping with a party's duty to participate in the accommodation process (*Central Okanagan School District No. 23 v. Renaud*, 1992 CanLII 81 (SCC) at p. 994). Mr. Ahlawat had a duty to share at least some information with Mr. Bell about what he required to participate. Mr. Bell told the Tribunal that if an accommodation had been requested for his disability, he would have considered it. This aligns with Mr. Beauchamp's testimony that if an accommodation was requested, it would be accommodated.

[88] Mr. Ahlawat relies on cases that deal with an employer's duty to inquire about accommodation. He cites cases such as *Mellon v. Human Resources Development Canada*, 2006 CHRT 3 at paras 89–99 and *Lafreniere v. Via Rail Canada Inc*., 2019 CHRT 16 at paras 132–133 [*Lafreniere*] for the principle that there is a duty to inquire when there is a mental health disability. However, those case are different primarily because the complainants had established a *prima facie* case of discrimination (in the employment context). In *Mellon*, there was a change in the employees' behaviour over a period of months, and she alerted her employer to her health issue. In *Lafreniere*, the Tribunal found that the complainant had a disability, and that the employer had specific concerns about the employee being medically unwell. In this case, however, Mr. Ahlawat has not established a *prima facie* case of discrimination, and, because of that, there is no duty to accommodate.

[89] As I covered in earlier parts of this decision, Mr. Ahlawat took the position that he was under no obligation to disclose any information about his diagnosis because of privacy rights. However, he seems to have confused the idea that requesting accommodation required him to share his diagnosis when, in fact, he was required to at the very least, request accommodation and explain his functional limitations (*Sturgess* at para 15). Explaining functional limitations does not require a person to share their diagnosis. In the face of this, what was Mr. Bell left to do? He had no information about what Mr. Ahlawat's invisible disability was beyond it being "psychological in nature". Mr. Ahlawat refused to share any information about what he needed to participate in the process. In the absence of a request to accommodate with some information on how that accommodation could be achieved, Mr. Bell's hands were tied. Had Mr. Ahlawat simply said that he needed to be

accommodated, Mr. Bell himself said he would have considered the request. Mr. Beauchamp provided the same evidence.

[90] Simply put, there is not duty to accommodate in the absence of a *prima facie* case of discrimination (*Cruden* at para 26). Mr. Ahlawat's case failed with regard to establishing a *prima facie* case of discrimination because he did not establish that he had a disability by setting out what his functional limitations were. Had he made out his case, ESDC would have the opportunity to justify its conduct, explaining why it would experience undue hardship under section 15(2) of the CHRA.

VIII. ORDER

[91] The complaint is dismissed.

Signed by

Ashley Bressette-Martinez
Tribunal Member

Ottawa, Ontario
October 3, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2807-22

Style of Cause: Amar Ahlawat v. Employment and Social Development Canada

Decision of the Tribunal Dated: October 3, 2025

Appearances:

Amar Ahlawat, Complainant

Monisha Ambwani and Tiffany Farrugia, for the Respondent