Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 105
Date: November 7, 2025
File No.: HR-DP-3045-24

Between:

Kagusthan Ariaratnam

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canadian Security Intelligence Service

Respondent

Ruling

Member: Ashley Bressette-Martinez

Contents

I. OVERVIEW

[1] This motion is about what happens to a complaint at the Canadian Human Rights Tribunal (the "Tribunal") when the Canadian Human Rights Commission (CHRC) refers a complaint under s. 45 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (CHRA) to the National Security and Intelligence Review Agency (NSIRA).

[2] Kagusthan Ariaratnam, the Complainant, has waited a long time for his complaint to be heard by the Tribunal. He filed his complaint with the CHRC in 2018. It took more than six years for it to be referred to the Tribunal. Shortly after case management of his complaint began, he filed a detailed Statement of Particulars (SOP) in February 2025. Instead of filing its SOP in April 2025, the Canadian Security and Intelligence Service (CSIS), the Respondent, filed a motion to have parts of Mr. Ariaratnam's SOP struck because it is too broad in scope, does not respect the original complaint filed with the CHRC, and concerns Canada's national security. In parallel to the motion to strike parts of the SOP, the Minister of Public Safety and Emergency Preparedness filed a notice (the "Notice") under s. 45 of the CHRA because of national security considerations arising in this complaint.

[3] Section 45 of the CHRA compels the CHRC to do one of two things when it receives such a notice: dismiss the complaint or refer it to NSIRA. The CHRA does not tell the Tribunal what it must do when such a notice is filed. The CHRC referred Mr. Ariaratnam's complaint to NSIRA in June 2025 (the "Referral").

[4] In this motion, the CHRC and CSIS take essentially the same position: by referring the complaint to NSIRA, the complaint before the Tribunal has been "recalled". They ask that the complaint be held in abeyance until such time as the CHRC completes its obligations under ss. 45 and 46 of the CHRA and determines if it should be re-referred to the Tribunal for inquiry. CSIS argues that NSIRA is the most specialized and appropriate forum with the legal authority and operational infrastructure to inquire into national security considerations.

[5] The Complainant disagrees and asks that the motion be dismissed. He argues that the CHRC's interpretation of the statutory provisions is incorrect and inconsistent with the modern approach to statutory interpretation. He says that nothing in the CHRA indicates

that a complaint is “recalled” from the Tribunal when a notice is filed under s. 45 of the CHRA. He says that the Tribunal only loses jurisdiction over a complaint when it renders a decision under s. 53 of the CHRA. He argues that placing this complaint in abeyance would go against the purpose of the CHRA to deal with complaints expeditiously.

II. DECISION

[6] The motion to place the complaint in abeyance is dismissed. Under the relevant provisions of the CHRA, the Tribunal is not prohibited from dealing with the complaint when s. 45 of the CHRA is engaged, and it would not be in the interests of justice to hold this complaint in abeyance since the scope motion could address the concerns raised by CSIS.

III. ISSUES

[7] This motion is about the following issues:

1. What happens to a complaint before the Tribunal when s. 45 of the CHRA is engaged?

2. Should the Tribunal exercise its discretion and hold this matter in abeyance?

IV. BACKGROUND

[8] A brief outline of the facts giving rise to Mr. Ariaratnam’s complaint is crucial to understanding where we are today. He says that he is a former child soldier forced at a young age to join the Liberation Tigers of Tamil Eelam. He fled to Canada and was granted refugee status. He says that, beginning in the year 2000, CSIS used him as an unpaid informant. His SOP details the alleged mistreatment he experienced on the part of CSIS.

[9] Several years later, in 2016, Mr. Ariaratnam applied for a job on Parliament Hill as a security guard. Part of the application process required him to obtain a site access clearance. His application for a clearance was cancelled. In December 2016, he wrote to

the Director of CSIS requesting information about why his clearance was cancelled. He says that, in March 2017, he received "an opaque" response from CSIS. He then filed two separate complaints about CSIS.

A. Two complaints about CSIS filed with NSIRA and the CHRC

[10] Mr. Ariaratnam first filed a complaint about CSIS in December 2017 with the Security Intelligence Review Committee (now NSIRA) regarding the cancellation of his clearance. He filed his second complaint about CSIS with the CHRC in January 2018 where he says that he experienced discrimination contrary to s. 5 of the CHRA on the grounds of disability and national or ethnic origin.

[11] The CHRC put his complaint "on hold" in July 2018 pending information about the complaint he filed with NSIRA. A year later in July 2019, NSIRA held a hearing about his clearance complaint. When Mr. Ariaratnam received those hearing transcripts from NSIRA in November 2019, he learned for the first time that a CSIS employee provided information about his mental health to the House of Commons and the Parliamentary Protective Service. He shared this information with the CHRC.

[12] In February 2020, the CHRC spoke with Mr. Ariaratnam, and he says that they agreed that the complaint he filed should be amended to reflect the new information about the CSIS employee sharing information about him which led to the cancellation of his clearance. That same month, the CHRC told the parties that it would prepare a report to determine whether the CHRC should opt to not deal with the complaint because it may be dealt with by NSIRA. Both parties provided submissions, but the CHRC never prepared a report. Instead, in October 2020, the CHRC told the parties the complaint was selected to be referred to NSIRA as part of a decision-making pilot project. As part of this motion, none of the parties have indicated this was a referral to NSIRA under s. 45 of the CHRA.

[13] NSIRA issued its report in December 2020 finding that CSIS representatives shared information about the Complainant and his mental health with two representatives from the House of Commons and the Parliamentary Protective Service.

[14] A month later, in January 2021, the CHRC told the parties that it was considering dismissing the complaint on the basis that NSIRA could have addressed the allegations of discrimination as part of its process. A year later in February 2022, the CHRC issued its report on whether it should dismiss the complaint, but it failed to consider the submissions the Complainant provided. A month later, in March 2022, the CHRC issued a supplementary report to the parties recommending it not deal with the complaint. Finally, in June 2022, the CHRC dismissed Mr. Ariaratnam's complaint under s. 41(1)(d) of the CHRA because "the other procedure [the NSIRA complaint] has addressed or could have addressed the allegations of discrimination overall".

B. The Complainant's judicial reviews of the CHRC decision

[15] Mr. Ariaratnam filed a judicial review of the CHRC's decision. In August 2023, the Federal Court of Canada ordered the CHRC to redetermine his complaint within six months of its decision. The CHRC did not meet that deadline, and the Complainant's counsel wrote to the CHRC in March 2024 requesting that it render a decision. In the absence of a response from the CHRC, the Complainant filed another judicial review in May 2024 seeking a mandamus to compel the CHRC to make a decision about the complaint.

C. The complaint at the Tribunal

[16] In August 2024, the CHRC referred Mr. Ariaratnam's complaint to the Tribunal. The Tribunal held its first case management conference call with the parties in December 2024, and CSIS signalled that national security considerations may be an issue in this complaint, making reference to a notice under s. 45 of the CHRA. To preclude the public disclosure of any confidential materials relating to national security, the Tribunal told the parties that they could consider filing a motion for a confidentiality order under s. 52 of the CHRA before any SOPs were filed with the Tribunal. No motion was filed.

[17] The Complainant filed a detailed SOP in February 2024 setting out a chronology of events dating back as far as 1997, the legal basis for the complaint, and his requested remedy. In April 2025, just before its SOP was due, CSIS told the Tribunal that it sent a

s. 45 CHRA notice to the CHRC. CSIS said that it would not be filing an SOP and, instead, that it would file a motion to limit the scope of the complaint since, in its view, the complaint is only about the clearance application in the context of the security guard job he applied for in 2016.

[18] At a case management conference call on May 13, 2025, the CHRC told the Tribunal and the parties that it had not determined if it would refer the complaint to NSIRA. However, the CHRC took the position that if it did refer the complaint to NSIRA, the Tribunal should hold the complaint in abeyance while the NSIRA process is ongoing. In the absence of any official referral or a timeline from the CHRC on when it might decide what to do, I asked the CHRC to provide an update on the Notice by June 10, 2025. I also set filing deadlines for submission on the motion to restrict the scope of the complaint.

[19] CSIS filed its submissions on the scope motion on May 20, 2025. On June 12, the CHRC wrote to the Tribunal and said that it referred the matter to NSIRA a week earlier on June 6, 2025, and once again requested that the matter be put into abeyance without providing a timeline as to when the abeyance period should end. The following day, I asked the parties to file submissions on the abeyance request, and I also asked if they wished to proceed with the scope motion filed by CSIS. The parties agreed to first deal with the motion on abeyance and then address the motion on scope.

[20] The CHRC filed its submissions for this motion in July, followed by the Complainant in August and the Respondent in September 2025. The Complainant's counsel wrote to the Tribunal on September 12, 2025, and shared that the CHRC wrote to the parties on August 20, 2025, to inform them that NSIRA requested an extension until January 15, 2027, to complete its report. The CHRC confirmed a few days later that NSIRA is to provide its report to the CHRC by December 12, 2025.

V. SECTIONS 45 AND 46 OF THE CHRA

A. Statutory framework

[21] Sections 45 and 46 of the CHRA are included below for ease of reference:

Definition of Review Agency
45 (1) In this section and section 46, Review Agency means the National Security and Intelligence Review Agency.

(2) When, at any stage after the filing of a complaint and before the commencement of a hearing before a member or panel in respect of the complaint, the Commission receives written notice from a minister of the Crown that the practice to which the complaint relates was based on considerations relating to the security of Canada, the Commission may

(a) dismiss the complaint; or
(b) refer the matter to the Review Agency.

Notice

(3) After receipt of a notice mentioned in subsection (2), the Commission

(a) shall notify in writing the complainant and the person against whom the complaint was made of its action under paragraph (2)(a) or (b); and
(b) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under paragraph 2(a) or (b).

Stay of procedures

(4) Where the Commission has referred the matter to the Review Agency pursuant to paragraph (2)(b), **it** [Emphasis added] shall not deal with the complaint until the Review Agency has, pursuant to subsection 46(1), provided it with a report in relation to the matter.

National Security and Intelligence Review Agency Act

(5) If a matter is referred to the Review Agency under paragraph (2)(b), sections 10 to 12, 20, 24 to 28 and 30 of the National Security and Intelligence Review Agency Act apply, with any necessary modifications, to the matter as if the referral were a complaint made under subsection 18(3) of that Act, except that a reference in any of those provisions to “deputy head” is to be read as a reference to the minister referred to in subsection (2).

Statement to be sent to person affected

(6) The Review Agency shall, as soon as practicable after a matter in relation to a complaint is referred to it pursuant to paragraph (2)(b), send to the complainant a statement summarizing such information available to it as will enable the complainant to be as fully informed as possible of the circumstances giving rise to the referral.

> Report
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> 46 (1) On completion of its investigation under section 45, the Review Agency shall, not later than 90 days after the matter is referred to it under paragraph 45(2)(b), provide the Commission, the minister referred to in subsection 45(2), the Director of the Canadian Security Intelligence Service and the complainant with a report containing the Agency's findings. On request of the Agency, the Commission may extend the time for providing a report.
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> Action on receipt of report
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> (2) After considering a report provided pursuant to subsection (1), the Commission
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> (a) may dismiss the complaint or, where it does not do so, shall proceed to deal with the complaint pursuant to this Part; and
> (b) shall notify, in writing, the complainant and the person against whom the complaint was made of its action under paragraph (a) and may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of that action.

B. The Tribunal's experience with a s. 45 CHRA notice

[22] Mr. Ariaratnam's case is only the second time this Tribunal has been faced with what to do with a complaint when s. 45 of the CHRA is engaged. The only other example is a group of complaints known as the *Irannejad et al. v. Immigration, Refugees and Citizenship Canada, Public Safety Canada, Canada Border Services Agency and Canadian Security Intelligence Service* complaints (the "Irannejad Complaints"). All three parties refer to these complaints in their submissions.

[23] The Irannejad Complaints are ongoing at the Tribunal and have a complex history: see *Irannejad et al. v. Immigration, Refugees and Citizenship Canada, Public Safety Canada, Canada Border Services Agency and Canadian Security Intelligence Service*, 2024 CHRT 23 and *Amir Abdi et al. v. Immigration, Refugees and Citizenship Canada, Public Safety Canada, Canada Border Services Agency and Canadian Security Intelligence Service*, 2025 CHRT 81 [*Abdi et al.*]. They involved more than 100 Iranian nationals who filed complaints with the CHRC against government respondents about alleged discrimination. Before the complaints were referred to the Tribunal, during the CHRC

process, the government respondents asked that the cases be referred to NSIRA pursuant to s. 45 of the CHRA. The CHRC, however, refused to grant the request as it did not come from a minister of the Crown as required under the law. The CHRC proceeded to refer the complaints to the Tribunal in late 2020/early 2021.

[24] Following the referrals to the Tribunal, the respondents requested that the CHRC refer the complaints to NSIRA under s. 45(2)(b) of the CHRA. The government respondents then asked the Tribunal to suspend all case management deadlines pending the final report from NSIRA and CHRC's determination on next steps. After being notified of the government respondents' intention to invoke the NSIRA process, but before the CHRC received written notice under s. 45(2) of the CHRA, the Tribunal placed all deadlines in abeyance. The abeyance continued until the CHRC decided as to the next steps under s. 46(2) of the CHRA. There is no evidence on the record of these complaints that the parties were ever asked for submissions on what happens to a complaint when s. 45 of the CHRA is engaged.

[25] Two years later, NSIRA finished its report in March 2023, and the CHRC referred the complaints to the Tribunal. The government respondents, however, had procedural fairness concerns with the NSIRA report and filed an application for judicial review. In June 2025, the Federal Court sent the NSIRA report back to NSIRA for redetermination (*Canada (Attorney General) v. Canada (Human Rights Commission)*, 2025 FC 1137 [*NSIRA JR*]).

[26] As a result of the *NSIRA JR*, the member assigned to hear those cases temporarily placed the complaints in abeyance once again in September 2025 pending further information from the parties about 1) the status of the judicial review of the CHRC's referral decision and 2) the status for the new NSIRA review: see *Abdi et al*.

VI. ANALYSIS

A. Modern principles of statutory interpretation

[27] The Supreme Court of Canada has given guidance to administrative decision-makers about how they must interpret statutory provisions. It said that statutory interpretation cannot be founded on the wording of the legislation alone and the words of a

statute must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para 33, [2011] 3 SCR 471 [*Mowat*], citing *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 (CanLII) 837 (SCC), [1998] 1 S.C.R. 27 at para 21, citing Driedger, *Construction of Statutes* (2nd ed. 1983) at 87). More recently, it instructed administrative decision-makers to show in their reasons that they are alive to the issues of text, context and purpose in the statutory interpretation process (*Canadian National Railway Company v. Canada (Transportation Agency)*, 2025 FCA 184 at para 44, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at paras 115–124), *Piekut v. Canada (National Revenue)*, 2025 SCC 13 [*Piekut*]).

[28] While the Supreme Court does not require a formulaic approach to the analysis since they are often related or interdependent (*Piekut* at para 43), I have opted to address the text, purpose, and context separately since this is the first time the Tribunal is addressing this question of statutory interpretation.

B. Issue 1: What happens to a complaint before the Tribunal when s. 45 of the CHRA is engaged?

[29] The parties touched only briefly on the modern principles of statutory interpretation in their submissions. However, this is at the core of the analysis in this ruling and the basis for arriving at the conclusion that the Tribunal remains seized with the complaint while the NSIRA process under s. 45 of the CHRA is engaged by the CHRC.

[30] The CHRC and CSIS generally take the same position in this motion. They say that the wording of ss. 45 and 46 of the CHRA allows for an interruption of the Tribunal proceeding and for the complaint to be redetermined by the CHRC right up to the commencement of a hearing by this Tribunal. The CHRC says that these sections “recall the current complaint from the Tribunal’s case management process” and that the complaint “must be put through the Commission’s process again and be referred to the Tribunal before the Tribunal can institute another inquiry pursuant to subsection 49(2)” of the CHRA. These parties say this shows that Parliament contemplated that, where the security of Canada is

at issue in a discriminatory practice, the complaint can be interrupted if the Minister provides notice under s. 45 of the CHRA because a referral to NSIRA fundamentally affects a complaint and has the potential to change the nature of the inquiry at the Tribunal, including the scope of what was originally referred to the Tribunal. The CHRC and CSIS ask that the complaint be placed into abeyance until such time as the CHRC decides whether to re-refer the complaint to the Tribunal. For clarity, this motion is not addressing what might happen if the CHRC decided to not "re-refer" the complaint to the Tribunal.

[31] Mr. Ariaratnam disagrees and says that, when the Tribunal considers the text, context, and purpose of the CHRA under the modern approach to statutory interpretation, the CHRA does not prohibit the Tribunal from dealing with the complaint. He says that a closer examination of the statute shows that the complaint is not "recalled" from the Tribunal and does not need to be re-referred. He disagrees that abeyance is the appropriate remedy, should the Tribunal find there is no statutory bar to proceeding with the complaint.

(i) Text

[32] Section 45 of the CHRA sets out what happens when a complaint relates to considerations about the security of Canada. It requires that a minister of the Crown file a notice with the CHRC. Both the CHRC and CSIS argue that when the CHRC receives a notice under s. 45 of the CHRA—whether the matter has been referred to the Tribunal or not—the CHRC has two options: it can dismiss the complaint or it can refer the matter to NSIRA (ss. 45(2)(a) and (b) of the CHRA).

[33] The parties do not dispute that a notice under s. 45 of the CHRA can happen at the CHRC or Tribunal stage because of the wording "before the commencement of a hearing" in s. 45(2) of the CHRA. As CSIS pointed out in its submissions, the term "hearing" is not defined in the CHRA. I agree with its suggestion that "hearing" is not a term of art and ought to be read with a plain language meaning, recognizing that only the Tribunal holds hearings under the CHRA.

[34] Section 45 of the CHRA, however, is silent on what happens to a complaint that has already been referred to the Tribunal when s. 45 of the CHRA is engaged. This contrasts

with the CHRC being prohibited from dealing with the complaint from the time it refers it under s. 45(2) of the CHRA until it receives a report from NSIRA under s. 46(1) of the CHRA (s. 45(4) of the CHRA). Once NSIRA provides its report to the CHRC, it may exercise any of the statutory decision-making powers it has under Part III of the CHRA, including the power to appoint a conciliator; it can also dismiss the complaint or refer it to the Tribunal for further inquiry (s. 46(2) of the CHRA).

[35] To support its position, CSIS relies on *NSIRA JR* at paragraph 79 for the proposition that the NSIRA report will replace the CHRC investigator's report as the basis for the CHRC's decision. CSIS submits that if the CHRC's report is being replaced by NSIRA, the CHRC's first decision will be superseded by a new decision considering NSIRA's report. It says that the NSIRA process will automatically lead to a new decision from the CHRC and that, in its view, it is "illogical (and a waste of time and resources) for the Tribunal to continue with steps in the proceeding at this time". However, the *NSIRA JR* is not analogous to the situation in this complaint. The issue front and centre in the *NSIRA JR* was the procedural fairness owned by NSIRA to the government respondents in those complaints. Even if the Federal Court found that the NSIRA process is a proxy for a CHRC staff investigation, it did not address what happens to a complaint at the Tribunal when s. 45 of the CHRA is engaged. In *Abdi et al*., the Court made no orders regarding the status of the complaint before the Tribunal. As a result, the *NSIRA JR* does not assist me in deciding the issue of what happens to a complaint at the Tribunal when s. 45 of the CHRA is engaged.

[36] A guiding principle of statutory interpretation is that the text of provision must remain the "achor" of the interpretative exercise (*Québec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para 24; *Piekut* at para 45). I agree with the Complainant that, in considering the text at ss. 45 and 46 of the CHRA, only the CHRC is barred from taking any action on a complaint when a s. 45 CHRA notice is filed (s. 45(4) of the CHRA). I also do not find anything in the CHRA precludes the CHRC from making another referral following the NSIRA process as was done in *Abdi et al*. As in that case, the Tribunal would have to address the two referrals with the parties through its usual case management process. Without any explicit indication in the statute that the Tribunal must not proceed, s. 49(2) of

the CHRA requires that the Tribunal conduct an inquiry into a complaint that is referred to it by the CHRC, and Rule 3(1) of the *Canadian Human Rights Tribunal Rules of Procedure*, *2021*, SOR/2021-137 (the "Rules of Procedure") indicates when a complaint is over—when a member renders a final decision under s 53 of the CHRA or when the complaint is settled, abandoned, or withdrawn.

[37] I find that the text of the CHRA does not support a finding that a s. 45 CHRA notice has the effect of "recalling" a complaint or that the Tribunal is in any way precluded from dealing with a complaint when s. 45 of the CHRA is engaged.

(ii) Purpose

[38] The parties do not dispute that the purpose of s. 45 of the CHRA is to protect Canada's national security. It does that by ensuring that, in complaints where the security of Canada is at issue, a minister can request that the CHRC refer the matter to NSIRA which has the appropriate security clearance and infrastructure to handle confidential information.

[39] The Complainant argues that the purpose of the CHRA to hear complaints expeditiously must also be factored into any decision on the impacts of a s. 45 CHRA notice. He says that, under the CHRC and CSIS's interpretation of the statute, the Respondent could avoid adjudication of this matter indefinitely by having a minister issue repeated notice. He says that this would undermine the CHRA's stated purpose to give effect to anti-discrimination protections (s. 2 of the CHRA) and would force him to incur even greater legal costs to continue adjudicating this matter. However, I do not agree that there is any indication CSIS is purposely delaying these proceedings. Rather, it is using options available to it under the CHRA to protect information that, in its opinion, relates to the security of Canada.

[40] CSIS says that, in a case like this one, it was only able to assess the national security concerns once the Complainant filed his SOP with the Tribunal. It says that if an NSIRA referral was not possible at the Tribunal pre-hearing stage, it would mean that a complainant could add or clarify allegations about national security and entirely circumvent the NSIRA referral process and the role it plays in the protection of national security. For this reason, CSIS says that the Tribunal should hold the complaint in abeyance since there would be no

logical reason to proceed at this time since the complaint could change after the CHRC completes its work post-NSIRA report.

[41] CSIS says that, to respond to the Complainant's concerns in this case, it may need to tender evidence about its information collection and information sharing practices which are likely classified. It says that NSIRA has the legal authority and operational infrastructure to deal with this type of information, whereas the Tribunal has no authority to conduct *ex parte* inquiries and may not have the functional operational capacity to receive and consider classified information as part of a complaint. CSIS says that if the complaint goes forward, it will likely need to invoke s. 38 of the *Canada Evidence Act*, R.S.C., 1985, c. C-5 if classified information is compelled which will further delay hearing this matter.

[42] The CHRA is quasi-constitutional and deserves a broad, liberal, and purposive interpretation (*Mowat* at para 62). But this interpretation cannot supplant a textual and contextual analysis simply to give effect to a policy decision different from what Parliament intended (*Mowat* at para 62). I agree that NSIRA plays a critical role under the CHRA when it comes to information about the security of Canada. However, s. 45 of the CHRA is not the only line of defence in the legislation, and an automatic stay of proceedings is not necessarily required in order for the Tribunal to proceed with case management of this complaint.

[43] First, s. 38 of the *Canada Evidence Act* sets out a process which prevents the disclosure of information or documents that contain what is defined as "sensitive" or "potentially injurious" information without the consent of the Attorney General of Canada (AGC) or a court order. Parties are required to provide notice to the AGC before disclosing such information, and the AGC then decides whether to authorize disclosure of the information. Section 38 of the *Canada Evidence Act* also grants jurisdiction to the Federal Court, on an application from the AGC or other party, to determine whether information over which the AGC has claimed privilege may be disclosed and in what form.

[44] Section 52 of the CHRA also provides a mechanism for confidentiality orders which ensure information in a complaint is not made part of the public record and is stored in secure facilities. The Tribunal acknowledges that confidentiality orders may not address concerns the parties have with the adjudicator not having the required security clearance to

handle the confidential information (or *ex-parte* proceedings); however, other complaints before this Tribunal have made use of confidentiality orders to address issues about the names of employees (*CB v. Canadian Security Intelligence Service*, 2024 CHRT 27), the use of video for hearings (*AB v. Canadian Security Intelligence Service*, 2023 CHRT 37) and information that is sensitive or potentially injurious within the meaning of s. 38 of the *Canada Evidence Act* (*GH v. Canadian Security Intelligence Service*, 2024 CHRT 111).

[45] The options available to the parties under the *Canada Evidence Act* and under s. 52 of the CHRA can be explored to address concerns about information relating to the security of Canada, all the while ensuring the complaint proceeds as expeditiously as possible considering the unique processes that may be engaged throughout the proceeding. This supports an interpretation that the complaint can proceed before the Tribunal giving effect to and balancing the purpose of the security of information and the purpose of the CHRA to provide a meaningful remedy for those who suffered discrimination, which includes hearing complaints expeditiously and fairly (s. 48.9(1) of the CHRA).

[46] As I found with the text portion of the analysis, I find that the purpose of the CHRA does not support a finding that the complaint was “recalled” or that the Tribunal is precluded from dealing with the complaint while s. 45 of the CHRA is engaged.

(iii) Context

[47] There are two important parts to consider in terms of context: 1) the distinct institutional roles of the CHRC and the Tribunal and 2) the nature of case management before the Tribunal.

[48] The parties do not dispute that the CHRC and Tribunal are two separate and distinct entities under the CHRA—the Tribunal being established as an independent adjudicative body under s. 48.1 and the CHRC under s. 26 of the CHRA. The Tribunal is independent of the CHRC. If the CHRC takes part in the Tribunal’s inquiry, it does so as a party, and its role is to adopt positions in relation to the complaint that are, in its opinion, in the public interest (s. 51 of the CHRA, *Public Service Alliance of Canada (Local 70396) v. Canadian Museum of Civilization Corporation*, 2006 CHRT 1 at para 14 [*Canadian Museum of Civilization*]).

[49] Accordingly, to ensure fairness and avoid a perception of bias, there needs to be institutional independence and impartiality. This point is reinforced by a judicial history where the Tribunal's lack of independence from the CHRC has been challenged, at times successfully (*MacBain v. Canadian Human Rights Commission*, 1984 CanLII 5379 (FC), [1984] 1 F.C. 696 (T.D.) [*MacBain FC*]; *MacBain v. Lederman*, 1985 CanLII 5548 (FCA), [1985] 1 F.C. 856 (C.A.) [*MacBain FCA*]; *Bell Canada v. Canadian Telephone Employees Assn.*, 1998 CanLII 9055 (FC), [1998] 3 F.C. 244 [*Bell 1*]; and (*Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36, [2003] 1 SCR 884 [*Bell 2*]).

[50] In *MacBain FC*, the Federal Court found there was a lack of independence between the Tribunal and the CHRC in a case where, after the CHRC found a complaint to be substantiated, it was responsible for appointing members of the Tribunal to hear the case, and it participated as a party at the hearing. This finding was substantially upheld in *MacBain FCA* (although the legislation changed shortly before that hearing such that the CHRC no longer had a role in appointing Tribunal members to hear a case).

[51] After *MacBain*, there were continued efforts to ensure a separation of roles between the two institutions to ensure the Tribunal "responsibility for all aspect of the carriage of the case" (*Bell 1* at para 38, 264, para 51, 269, para 56, 271 and para 62, 275). Notably, in *Bell 1*, the Federal Court had concerns that the power of the CHRC to issue binding guidelines about how the CHRA applies in a particular case and found this jeopardized institutional impartiality (*Bell 1* at para 154, 311–312). Once the CHRC's guideline power no longer allowed it to interfere in individual cases, it was no longer found to impair the Tribunal's impartiality and independence: *Bell 2.*

[52] This judicial history highlights the importance of the Tribunal's independence and impartiality with respect to the CHRC making decisions that have a binding impact on the Tribunal. Evidently the CHRC's ability to unilaterally halt a proceeding based on national security considerations raises different concerns than those in the *MacBain* and *Bell* cases. However, this highlights the perils of the CHRC (a party to a proceeding) being able to make binding decisions about a complaint before the Tribunal since the case law indicates that a complaint belongs to a complainant—and the complainant has the independent right to

proceed with the complaint at the Tribunal stage, regardless of the actions taken by the Commission (*Canadian Museum of Civilization* at paras 17–18).

[53] While the *Canadian Museum of Civilization* decision takes place in a different statutory context, I think the same principle applies: the power to withdraw a complaint before the Tribunal belongs to a complainant (*Canadian Museum of Civilization* at para 25) and no other party has that power under the CHRA to "recall" a complaint. The CHRA would be explicit if it were the case that the CHRC could fully override a complainant's choice to proceed with their complaint. This is supported by Rule 3(1) of the Rules of Procedure which sets out when a complaint is over. If Parliament intended to allow a party (the CHRC) to "recall" a complaint, there is an expectation that it would have made such a power explicit in the statute, otherwise the Tribunal's role under the CHRA would be undermined (*Canadian Museum of Civilization* at para 23).

[54] The other important contextual consideration is that the Tribunal engages in significant case management prior to a hearing to ensure the parties have a full and ample opportunity to present their case (s. 50(1) of the CHRA). Issues involving national security may arise during case management as they have in this case and in others, as referenced above.

[55] CSIS points out that the NSIRA report could affect the scope of the inquiry before the Tribunal if, after receiving the report, the Commission decides to dismiss the complaint, refer it to the Tribunal with a different scope, or base its decision on different considerations (s. 46(2)(a) of the CHRA). In essence, the possibility of the complaint changing after the NSIRA process is a reason to place the Tribunal file in abeyance (and the abeyance request is dealt with later in this ruling).

[56] The issue of the CHRC re-referring the same complaint (with potential amendments) to the Tribunal is, however, not at issue in this motion as I have said earlier, and the parties' argument that the NSIRA process will automatically lead to a new decision from the CHRC benefits from some nuance. CSIS maintains that the NSIRA referral is required at this stage as Mr. Ariaratnam's SOP contains new and extensive allegations never investigated or referred to the Tribunal by the CHRC. Accordingly, CSIS filed a motion to limit the scope of

the complaint to the clearance issue. It seems that, if CSIS were successful on this motion, it could negate the need for the NSIRA process altogether. There is no reason this scope motion cannot proceed before the Tribunal since, to date, CSIS has not raised any concerns about confidential information as part of the motion on scope which is still before the Tribunal.

[57] If the CHRA intended to halt the complaint process at this stage, it would deprive the Tribunal of its role to resolve an issue that arose in its own proceeding. It would be open to Parliament to design a process that requires any national security issue that arises before the Tribunal to be resolved exclusively through the NSIRA process. However, the statutory design where there is no mandatory stay of the Tribunal's process, unlike for the CHRC's process (s. 45(4) of the CHRA), supports a practical approach to case management where the CHRA contemplates that there may be times when the Tribunal is best placed to address issues that arise in its process, such as the motion on the scope of this complaint.

[58] For the Referral to be fruitful, Mr. Ariaratnam's entire SOP will presumably be put before the NSIRA, despite the issue of scope not having yet been addressed. It is possible that NSIRA could conduct its analysis of the SOP without having the benefit of the Tribunal's determination on the true scope of the complaint. Not proceeding with case management of this complaint deprives NSIRA of any clarification the Tribunal might make about the scope of the complaint and the issues that therefore actually need to be investigated for national security concerns. This could very well lead to the CHRC making a subsequent, broader referral based on the NSIRA report that includes allegations that the Tribunal would have found were outside the scope of the original complaint had it adjudicated the scope motion.

[59] Based on this, I find that the context favours an interpretation that there is no "recall" of a complaint, and the Tribunal may proceed, if it is appropriate to do so.

(iv) Conclusion

[60] A textual, purposive, and contextual analysis shows that the correct interpretation of the CHRA does not prohibit the Tribunal from continuing the inquiry when s. 45 of the CHRA is engaged if it is appropriate to do so.

C. Issue 2: Should the Tribunal exercise its discretion and hold this matter in abeyance until the NSIRA process is complete?

[61] The Tribunal has a duty to 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). Having found that the Tribunal retains jurisdiction over Mr. Ariaratnam's complaint, granting a request for abeyance is a discretionary remedy, and the question before me is whether I should grant it.

[62] The Tribunal has the power to stay its proceedings or place complaints into abeyance where it is in the interest of justice to do so (*Laurent Duverger v. 2553- 4330 Québec Inc. (Aéropro)*, 2018 CHRT 5). However, the Tribunal will only do so in exceptional circumstances (*Canadian Association of Elizabeth Fry Societies and Acoby v. Correctional Service of Canada*, 2019 CHRT 30 at para 14, *Bailie et al. v. Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 at para 22). Delays in hearing complaints impact the parties and the Tribunal, which has a duty to all the individuals waiting to have their complaints heard. In assessing whether it is in the interest of justice to place a complaint into abeyance, the Tribunal will consider all of the circumstances of the complaint, including the risk of duplication of judicial and legal resources, the length of the requested abeyance, the reason for the request, the stage of the proceedings, and any prejudice to the parties (*Adams v. Canadian Nuclear Laboratories*, 2024 CHRT 87 at para 11).

[63] This Tribunal has in many cases granted adjournment requests to prevent a duplication of work in the justice system where short-term delay can achieve long-term gain and a better result (*Bailie et al. v Air Canada and Air Canada Pilots Association,* 2012 CHRT 6 at para 22 [*Bailie*]). The considerations in *Bailie* were about looking at the larger context, contrasting the need for an expeditious procedure under the CHRA, and the notion that "expeditious" means more than being done quickly.

[64] CSIS's main argument in this motion is that, regardless of whether an adjournment or stay is mandatory under the provisions of the CHRA, this case should not proceed until the NSIRA process is completed. In contrast, Mr. Ariaratnam argues that it is important that his case proceeds expeditiously, given the length of time that has already passed and the

statutory obligation to proceed as informally and expeditiously as the requirements of natural justice and the Rules of Procedure allow (s. 48.9(1) of the CHRA).

[65] While CSIS's argument has significant merit, it fundamentally overlooks that the next item the Tribunal needs to address in this case is CSIS's motion about the scope of the complaint. If the Tribunal dismisses or partially grants CSIS's motion, it crystallizes the national security issues NSIRA needs to address with regard to any other potential allegations or referral the CHRC must deal with. If the Tribunal fully grants CSIS's motion, the NSIRA process presumably becomes moot. To date, none of the parties have raised any national security considerations that would limit the Tribunal's ability to address this scope motion.

[66] The CHRC and CSIS rely on the Irannejad Complaints to support their position that abeyance is what the Tribunal must do in this case, noting that the member assigned to those cases placed them in abeyance when s. 45 of the CHRA was engaged. However, the Irannejad Complaints can be distinguished from this case. The initial adjournment was granted at the very start of the proceedings and based on an intention to invoke the NSIRA process that was first raised at the CHRC stage. The second time an abeyance was issued it was done so on a temporary basis to allow the Tribunal to obtain more information about the pending judicial review of the CHRC's referral and the status of the NSIRA process.

[67] The Complainant, however, argues that there are no binding precedents or authorities that support holding this matter in abeyance. He argues that the single other case of a complaint with a s. 45 CHRA notice carries little weight. I agree with the Complainant. Administrative tribunals are not bound by their own past decisions (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 129), and the Irannejad Complaints can be distinguished from this case. In this case, the Referral is based on developments that occurred in the Tribunal process, namely the allegations contained in Mr. Ariaratnam's SOP.

[68] The delay in getting this complaint to a hearing is a concern for the Tribunal since it has a duty to hear cases expeditiously under the CHRA. Mr. Ariaratnam's complaint spent several years at the CHRC and in other legal proceedings. It has been with the Tribunal for

more than a year. He filed his SOP, but the other parties have not. While the NSIRA is scheduled to provide its report to the CHRC in December 2025, the parties did not specify when they believe the abeyance period should end.

[69] Based on these facts, it is not in the interests of justice to hold this complaint in abeyance. It would be illogical to pause the case management of this complaint while the NSIRA process is ongoing since it may not fix the core underlying issue about scope and could lead to further delays in this complaint. The decision to proceed with this inquiry is not about the Tribunal involving itself in national security issues, but rather about advancing the case under the framework of the CHRA to resolve the complaint as expeditiously as possible. As I said earlier in this ruling, the next item on the Tribunal's case management agenda for the parties is to set deadlines to deal with CSIS's motion to restrict the scope of this complaint to the facts about the clearance since none of the parties raised any issues about confidential information or national security prohibiting the Tribunal from proceeding with the motion. At this stage, the parties have not raised any issues around national security in terms of the motion on scope which would prevent the Tribunal from proceeding with case management. Going forward, the Tribunal will manage the case in a manner that avoids jeopardizing national security interests.

VII. ORDER

[70] The motion is dismissed.

Signed by

Ashley Bressette-Martinez
Tribunal Member

Ottawa, Ontario
November 7, 2025

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-3045-24

Style of Cause: Kagusthan Ariaratnam v. Canadian Security Intelligence Service

Ruling of the Tribunal Dated: November 7, 2025

Motion dealt with in writing without appearance of parties

Written representations by:

Nicholas Pope, for the Complainant

Christine Singh, for the Commission

Charles Maher, for the Respondent