Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2026 CHRT 8
Date: January 26, 2026
File No.: HR-DP-2982-23

Between:

Mohammed Tibilla

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canada Revenue Agency

Respondent

Ruling

Member: Sarah Churchill-Joly

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I. OVERVIEW

[1] This is a ruling on a motion to stay the Tribunal's proceedings, until the Federal Court of Appeal issues a final decision on the Complainant's application for judicial review of the decision of the Federal Public Sector Labour Relations and Employment Board (the Board) in *Tibilla* v. *CRA*, 2025 FPSLREB 70, which dismissed the Complainant's grievance of his termination.

[2] The Complainant, Mohammed Tibilla, alleges that he experienced discrimination while working at the Canada Revenue Agency (the CRA or the "Respondent") between October 2018 and March 2019. In July 2019, he filed a complaint with the Canadian Human Rights Commission (the CHRC) alleging that his employment contract was not renewed on the ground of his race, national or ethnic origin, and/or colour.

[3] As part of his allegations, he claims that after the end of his contract in the Non Resident Audit Section of the Montreal Tax Service Office on March 29, 2019, the Respondent or its employees orchestrated unauthorized accesses to his personal tax payer file through his CRA employee account, hacking into it and framing him as being the one responsible. These instances of unauthorized access of his personal tax file from his CRA employee account ultimately led the Respondent to terminate his employment for misconduct in February 2021. The Complainant alleges that the hack was done in retaliation for his discrimination complaint, contrary to section 14.1 of the *Canadian Human Rights Act,* R.S.C., 1985, c. H-6 (the CHRA).

[4] Parallel to these proceedings, the Complainant filed a grievance regarding the Respondent's decision to terminate his employment, which was referred to the Board. As part of this grievance, the Complainant took the position that he was not responsible for the unauthorized accesses of his taxpayer file, as his computer had been hacked. On June 10, 2025, the Board determined that there had been no hacking, that the Complainant was responsible for the unauthorized accesses to his personal tax file, and that his termination was justified. The Complainant has applied for judicial review of this decision.

[5] The Respondent argues that, although the Board's decision did not assess whether discrimination or retaliation occurred, its finding that no hacking took place answers the key question that this Tribunal will also have to answer regarding the retaliation allegation, namely, whether the Complainant was responsible for the unauthorized accesses to his personal tax file from his CRA employee account.

[6] If the Board's decision is maintained by the Federal Court of Appeal and the Tribunal allows this allegation and the underlying alleged facts to remain in the current file, the Respondent argues that the Tribunal would be undertaking the same assessment of the facts as the Board, and would answer the same question of who accessed the Complainant's personal tax file. This would create a risk of relitigation, duplication, or double recovery of damages, and would trigger the finality doctrines of issue estoppel, abuse of process, and collateral attack. The Respondent argues that it will find itself having to defend the same allegation in front of two forums by bringing forward the same evidence and witnesses for the second time. For these reasons, the Tribunal ought to stay these proceedings until the Federal Court of Appeal's decision is issued.

[7] The Complainant argues that conversely, since the Board did not make a finding of retaliation, the Tribunal should proceed with these allegations, particularly since he plans to call several additional witnesses who were not present during the Board's proceedings. There are no exceptional circumstances that would, in his view, warrant a stay of these proceedings.

[8] The CHRC argues that a complete stay is not necessary. The Tribunal can simply bifurcate the proceedings and hear the Complainant's case based on section 7 of the CHRA first. It estimates that, by the time the Tribunal is ready to proceed with the retaliation allegations, the Federal Court of Appeal will have rendered its decision.

II. DECISION

[9] The motion is allowed, in part. While it is in the interests of justice for the Tribunal to stay the hearing of the evidence on the allegations of retaliation under section 14.1 of the

CHRA, nothing prevents it from proceeding with hearing the allegations of discrimination under section 7 of the CHRA.

[10] The inquiry will proceed in two phases. In the first, the Tribunal will hear the allegations related to the section 7, as well as on any related remedies. Should the Federal Court of Appeal's decision signify that the retaliation allegations may proceed, the Tribunal will move to a second phase and hear the evidence regarding these allegations, as well as regarding any remedies related to a potential finding that the section 14.1 allegations have been substantiated. Once the first phase of the hearing is completed, if the Federal Court of Appeal has still not issued its decision, the Tribunal may opt to render a decision on the section 7 allegation, separate from the retaliation allegation under section 14.1.

III. ISSUE(S)

[11] I must decide the following issues:

- Is it in the interest of justice to stay these proceedings?
- If not, should I bifurcate the proceedings?

IV. ANALYSIS

[12] Administrative tribunals are masters of their own procedure: *Canada (CHRC)* v. *Canada (AG*), 2012 FC 445, para 129. Although the power to stay proceedings is not expressly found in the CHRA, the Tribunal's jurisprudence has repeatedly recognized its ability to exercise its discretion to stay proceedings, albeit only in exceptional circumstances (see *Bailie et al.* v. *Air Canada and Air Canada Pilots Association*, 2012 CHRT 6 at para 22). Indeed, because human rights complaints are first made to the Canadian Human Rights Commission, under the gatekeeper model of human rights adjudication, complaints that are referred to the Tribunal have invariably already been in existence for some time. Moreover, Parliament has instructed the Tribunal to proceed with matters "expeditiously". Stays of proceedings inherently cause delays and are therefore generally seen as running counter to this objective. In exceptional circumstances, however,

a stay can result in a fairer and even more “expeditious” process. The Respondent argues that there are such exceptional circumstances here that warrant a stay.

[13] For motions seeking the suspension of an adjudicative body’s own proceedings, as is the case here, the Federal Court of Appeal considers whether, given all the circumstances, the “interest of justice” supports delaying the matter (see *Mylan Pharmaceuticals ULC* v. *AstraZeneca Canada, Inc.*, 2011 FCA 312, 426 N.R. 167 at para 14 [*Mylan*]; and *Clayton* v. *Canada (Attorney General)*, 2018 FCA 1, paras 24-26 [*Clayton*]). This is a different test than the demanding three-branch Supreme Court of Canada test in *RJR-MacDonald* v. *Canada (Attorney General)*, 1994 CanLII 117 (SCC) which is used when a court is staying other bodies’ proceedings pending an appeal or other matter, or for an injunction.

[14] The Tribunal adopted the Federal Court of Appeal’s “interest of justice” approach in *Duverger* v. *2553-4330 Québec Inc. (Aéropro)*, 2018 CHRT 5 [*Duverger*], where it incorporated the principles of *Mylan* under the CHRA framework. Unlike paragraph 50(1)(b) of the Federal Courts Act, R.S.C., 1985, c. F-7, which authorizes the Federal Courts to stay proceedings “where for any other reason it is in the *interest of justice* that the proceedings be stayed” and on which the *Mylan* and *Clayton* decisions are grounded, the language of the CHRA does not explicitly refer to the “interest of justice.” Still, as stated by the Court in *Korea Data Systems (USA), Inc.* v. *Aamazing Technologies Inc.*, 2012 ONCA 756 at para 18, “the interest of justice is the core tenant underlying any court’s power to impose a stay of proceedings”. This Tribunal recognized in *Duverger* that the interest of justice allows the Tribunal to examine a broad range of relevant factors when determining a motion to stay proceedings, which would include the principles of natural justice, procedural fairness, and expeditiousness found at section 48.9(1) of the CHRA, as well as the public interest (see *Duverger* at paras 50-60).

[15] In other words, in determining a motion to stay its proceedings, the Tribunal must consider whether there are interest of justice considerations which support granting the motion.

A. Issue 1: Is it in the interest of justice to stay these proceedings?

[16] No. While I appreciate the Respondent's concerns, the circumstances do not show that it is in the interest of justice to stay these proceedings in their entirety. It is however, in the interest of justice to defer hearing the retaliation allegations under section 14.1 of the CHRA.

[17] Interest of justice considerations are broad and discretionary and can vary according to circumstances. They can include the risk of duplication of judicial and legal resources, the length of the requested stay, the procedural status of the proceedings, the possibility of inconsistent decisions, and any prejudice to the parties (see *Mylan* at para 5; *Duverger* at para 60; *Power To Change Ministries* v. *Canada (Employment, Workforce and Labour)*, 2019 CanLII 13579 at para 20).

[18] The Respondent argues that proceeding with this matter would provide the Complainant with the opportunity to re-litigate the same facts regarding the alleged hacking of his CRA account that were already decided by the Board. The Court upholding Board's finding that there was no hacking would mean that there was no retaliation, since it is at the core of the Complainant's retaliation argument. In addition to triggering the finality doctrines of issue estoppel, abuse of process, and collateral attack, the Respondent argues that the Federal Court of Appeal proceedings give rise to the application of the principle of *lis pendens* as both files have the same parties, object, and cause. Therefore, according to the Respondent, it is in the interest of justice, fairness, the integrity of the judicial system, and the economy of its resources that the current file be stayed.

[19] The Complainant argues that the finality doctrines do not apply, as the Board did not make any human rights findings, and therefore, its conclusions are not dispositive of this complaint. The Board did not hear from several witnesses which he now intends to call before the Tribunal. He also argues that the Board erred when it rendered its decision based solely on findings of credibility, which the Complainant describes as "subjective" and giving "undue deference" to the Respondent's position. He alleges that the Board made no evidential or factual analysis to determine whether there had been retaliation. In the absence

of such a finding and given the prejudice that he would experience from the delay inherent to a stay of proceedings, the Tribunal should continue with hearing this complaint.

[20] I share the Respondent's view that proceeding with this matter without consideration of the forthcoming Federal Court of Appeal decision creates a risk of relitigation. Section 28 of the Federal Courts Act provides for review mechanisms for decisions of the Board, and there is an inherent unfairness in this Tribunal allowing the relitigation of the same issue, in an effort to obtain a different result. While the Complainant is correct that the Board made no findings regarding the existence of retaliation under section 14.1 of the CHRA, the Board's finding that there was no hacking is likely still dispositive of the retaliation question and the Complainant has not argued otherwise.

[21] The Complainant consistently framed his allegation of retaliation in his Statement of Particulars (SOP) as revolving around the hacking of his laptop:

> Following the unsafe and unsecure removal of my Laptop by Chow, on march 29th, 2019, my computer was hacked on April 4th 2019 and thereafter. The occurrence of these events immediately after that of March 29th 2019, and thereafter exposed that these were acts of retaliation to get me termination. […] These internal hacks led to my dismissal, of which, I vehemently believe it was done in retaliation to facilitate the termination of my employment and it did. (para. 44)

[22] At paragraph 57 of his SOP, he stated as follows:

> Subsequent to Mdm. Chow's removal of my laptop, without the required security and safety measures on March 29th 2019, my work computer was hacked on April 4th 2019 and thereafter. These hacks led to the termination of my employment. **I believe that, these were internal hacks, and were orchestrated to facilitate my dismissal in retaliation. Hence contravened section 14.1 of the [CHRA].**
>
> [Emphasis added]

[23] Therefore, the allegation is that the hacking was retaliatory. It flows that if there is a judicial finding that no hacking occurred, there may be no retaliation.

[24] The Board's conclusions regarding the absence of hacking into the Complainant's CRA account are clear:

> Returning to *Faryna*, a witness's story must be in harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in that place and in those conditions. The grievor's story fails to do so. I find that the evidence overwhelmingly supports the determination that he accessed his account on April 4, 2019, and March 23 and 24 and April 1, 2020, as set out in the audit log (para. 179).

[25] Should the Federal Court of Appeal uphold the decision, the evidence before me strongly suggests that the Tribunal proceeding with addressing the allegations of retaliation under section 14.1 of the CHRA would result in the relitigation of an issue already determined by another adjudicative body. The Complainant's contention that he intends to call additional witnesses in support of his allegation that his account was hacked also supports the conclusion that the Tribunal proceeding with a hearing on the hacking question would result in relitigation.

[26] In *British Columbia (Workers' Compensation Board) v. Figliola,* 2011 SCC 52 [*Figliola*], at para. 34, the Supreme Court summarized the common principles underlying the doctrines of *issue estoppel*, abuse of process and collateral attack. Although applied in the context of the *British Columbia Human Rights Code*, the Federal Court of Appeal has since made clear that their application extends to this Tribunal (see *Canada (Human Rights Commission) v. Canadian Transportation Agency,* 2011 FCA 332 [*CTA*] at paras. 24-26). Four of these principles have application here:

- Respect for the finality of a judicial or administrative decision increases fairness and the integrity of the courts, administrative tribunals and the administration of justice; on the other hand, relitigation of issues that have been previously decided in an appropriate forum may undermine confidence in this fairness and integrity by creating inconsistent results and unnecessarily duplicative proceedings (*Toronto (City)*, at paras. 38 and 51).
- The method of challenging the validity or correctness of a judicial or administrative decision should be through the appeal or judicial review mechanisms that are intended by the legislature (*Boucher*, at para. 35; *Danyluk*, at para. 74).
- Parties should not circumvent the appropriate review mechanism by using other forums to challenge a judicial or administrative decision (*TeleZone*, at para. 61; *Boucher*, at para. 35; *Garland*, at para. 72).
- Avoiding unnecessary relitigation avoids an unnecessary expenditure of resources (*Toronto (City)*, at paras. 37 and 51).

[27] Without pronouncing myself on the applicability of each of the finality doctrines relied upon by the Respondent, I agree that proceeding without consideration of the forthcoming Federal Court of Appeal decision risks generating a duplication of judicial and legal resources that risks compromising the integrity of the administration of justice and would not be in the interest of justice. This approach aligns with the guidance provided by the Supreme Court that Tribunals "should be guided less by precise doctrinal catechisms and more by the goals of the fairness of finality in decision-making and the avoidance of the relitigation of issues already decided by a decision-maker with the authority to resolve them" and that "Justice is enhanced by protecting the expectation that parties will not be subjected to the relitigation in a different forum of matters they thought had been conclusively resolved": *Figliola* at para 36; see also *CTA* at para 26.

[28] Given these circumstances, I share the Respondent's view that it would therefore not be in the interest of justice for the Tribunal to proceed with a hearing on the retaliation allegations at this time. Having said this, I disagree with the Respondent that this means that I need to stay the proceedings in their entirety. The Federal Court of Appeal's decision regarding the Board's findings on the alleged hacking of the Complainant's computer do not address his allegations of discrimination under section 7 of the CHRA which, regardless of the outcome of the Federal Court of Appeal's proceedings, will still need to be determined by this Tribunal. As the CHRC argues, a stay of the section 7 matter will delay justice unnecessarily and increase the likelihood that relevant evidence or witness testimony could be diminished or lost over time. Some of the allegations at issue before the Tribunal refer to events occurring more than six years ago. Waiting for a final decision to be reached on the Complainant's grievance could negatively impact the availability and quality of the evidence, which would be prejudicial.

[29] The impact of these anticipated delays on all of the evidence, coupled with the only partial impact of the Federal Court of Appeal's decision on the Tribunal's proceedings, convinces me that a stay of proceedings in respect of the entirety of the allegations is not in the interest of justice, particularly when there are alternative solutions, as discussed below.

B. Issue 2: Should I bifurcate the proceedings?

[30] Yes. I should proceed with a phased process and start by hearing the section 7 allegations first. Once the Federal Court of Appeal has issued its decision on the grievance, I will, provided that the finality doctrines do not apply, proceed with hearing the allegations of retaliation and thereafter render one decision on all the allegations. In my view, this approach aligns with the Tribunal's authority to manage the proceedings before it by virtue of section 50(3)(e) of the CHRA, and Rules 3(2), 5, and 7 of the Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137, which includes the ability to determine questions of procedure and control its own procedure.

[31] The CHRC is of the view that I should not grant a complete stay of the proceedings. However, the concerns regarding the risk of duplicating the litigation, rendering inconsistent findings, and undermining the principles of finality and judicial economy support the conclusion that proceeding with a full hearing of the human rights complaint before the Federal Court of Appeal completes its review of the Board's decision is equally problematic. The CHRC suggests that I address this by bifurcating the hearing in two phases, with the first phase focusing on the allegations that took place before April 1, 2019, and the second focusing on the allegations of retaliation and of discriminatory conduct taking place after this date, as well as any questions of remedy. The Tribunal would proceed with the first phase immediately, and then defer the second phase until the conclusion of the review of the Board's decision by the Courts.

[32] The Respondent disagrees with this approach. It argues that some key testimonies, including those of Ms. Chow, Mr. Brunel, and Mr. Crossley, would have to occur twice, which is inefficient. The Respondent also submits that bifurcating witness testimony between March and April 2019 would also be complicated because the events flow into one another, which will make managing the testimonies difficult. Should the Tribunal decide to bifurcate, the Respondent submits alternatively that it should "only hear evidence regarding allegations other than that of retaliation having occurred after March 2019, without determining whether the Respondent engaged in discriminatory conduct between [April 2019 and October 2020]." Once the final decision on the grievance is rendered, the Tribunal

would resume the hearing and, subject to the application of the finality doctrines, address the allegations of retaliation and remedies at this time.

[33] I understand from this proposition that the Respondent suggests that I hear all allegations under section 7 of the CHRA, excluding the allegations under s. 14.1. Once the Federal Court of Appeal has issued its decision and the questions of retaliation and remedies have been separately dealt with, I would render one decision.

[34] Apart from delaying hearing evidence on the remedies pertaining to the s. 7 allegations, I agree with this proposal. Rather than separate the evidence by date, as the CHRC suggests, I prefer to delineate the evidence by issue, namely allegations relating respectively to sections 7 and 14.1 of the CHRA. Any issues regarding duplication of testimonies can be resolved by entering previous evidence though the use of the hearing transcripts and supplemental cross-examination.

[35] I note that bifurcation, in this instance, does not imply the issuance of multiple distinct decisions, as has occurred in other cases (see, for example, *First Nations Family Caring Society of Canada et al* v. *Attorney General for Canada*, 2016 CHRT 2). Instead, it refers to a **phased** process, with the evidence on the allegations of retaliation being presented separately from that of the section 7 allegations. None of the parties advocate for the issuance of separate decisions and I do not believe that making such an order is necessary at this stage. The judicial review application was filed with the Federal Court of Appeal in July 2025. The Docket Record Entries (file A-301-25) indicate that the Federal Court of Appeal has still not heard Mr. Tibilla's application for judicial review of the FPSLREB's grievance decision. However, if the Respondent's estimate that it will render judgment on judicial review within 12 to 13 months of the Board's decision, an estimate based on the Federal Court of Appeal's timelines from the past two years, reveals itself to be true in this case, the Tribunal will likely benefit from its reasons before, or not long after, it hears the evidence on the section 7 allegations. If this is not the case, I may revisit this decision and opt to issue my reasons on these allegations, separate from those of retaliation.

[36] Finally, I disagree that I ought to hear the evidence on the remedies pertaining to the section 7 allegations separately from the rest of the section 7 evidence. I see no benefit to

this approach. Should the Tribunal proceed with the allegations of retaliation, the parties may want to present additional evidence specific to remedies that would pertain to any breach of section 14.1 of the CHRA. However, this does not prevent me from hearing the entirety of the section 7 evidence now, on both the merits and remedies.

V. ORDER

[37] The Motion is allowed, in part.

[38] The Tribunal will proceed with hearing the allegations under section 7 of the CHRA, as well as those pertaining to any related remedies.

[39] The Tribunal will stay the hearing on the allegations of retaliation under section 14.1 of the CHRA until the Federal Court of Appeal issues its decision on the judicial review of the Board's grievance decision regarding the termination of Mr. Tibilla's employment or until the Tribunal has heard the allegations of discrimination under section 7 of the CHRA, whichever comes first.

[40] If the judgment comes before the end of the Tribunal's hearing of the section 7 allegations, the stay will be lifted. If there is no judgment by the end of the Tribunal's hearing of the section 7 allegations, I will hear submissions on whether to continue the stay.

Signed by

Sarah Churchill-Joly
Tribunal Member

Ottawa, Ontario
January 26, 2026

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2982-23

Style of Cause: Mohammed Tibilla v. Canada Revenue Agency

Ruling of the Tribunal Dated: January 26, 2026

Motion dealt with in writing without appearance of parties

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