

**FEDERAL COURT**

BETWEEN:

**THE ATTORNEY GENERAL OF CANADA**

Applicant

-and-

**THE CANADIAN HUMAN RIGHTS COMMISSION**

Respondent

**NOTICE OF APPLICATION**  
(Section 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 3, 2023

Issued by: \_\_\_\_\_  
(Registry Officer)

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Thomas D'Arcy McGee  
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## APPLICATION

**THIS IS AN APPLICATION FOR JUDICIAL REVIEW** in respect of the report of the National Security and Intelligence Review Agency (the “Review Agency”), first communicated to the Attorney General of Canada (“Attorney General”) on November 29, 2022 and as re-issued with *errata* on February 3, 2023 (the “Report”). The Report follows referral by the Canadian Human Rights Commission (the “Commission”) of a number of complaints to the Review Agency under paragraph 45(2)(b) of the *Canadian Human Rights Act (CHRA)*. The Report makes findings in accordance with subsection 46(1) of the *CHRA* without having afforded procedural fairness to the respondents to the complaints (Immigration, Refugees and Citizenship Canada (IRCC), the Canadian Security Intelligence Service (CSIS), the Canada Border Services Agency (CBSA) and Public Safety Canada (PS)), as represented by the Attorney General in this proceeding.

### **THE APPLICANT MAKES AN APPLICATION FOR AN ORDER:**

1. Allowing this application for judicial review, with costs;
2. Setting aside the Review Agency’s Report;
3. Referring the matter back to the Review Agency with the direction that the respondents to the complaints be afforded procedural fairness in accordance with the reasons of this Court;
4. Declaring that the right to make representations set out in subsection 25(2) of the *National Security and Intelligence Review Agency Act* includes the right to be heard and to make representations on the merits of the matter referred to the Review Agency following the presentation of all evidence, for the purpose of the Review Agency conducting its investigation in private; and
5. Such further and other relief as counsel may request and this Honourable Court may permit.

## **THE GROUNDS FOR THE APPLICATION ARE:**

1. IRCC, CSIS, CBSA and PS as represented by the Attorney General are each respondents to a number of human rights complaints brought by various complainants alleging discriminatory delay in the processing of immigration applications, largely due to the security screening of the complainants' applications.
2. As initially filed with the Commission, the complaints consisted of an identical complaint by 47 individuals against each of the four respondents (IRCC, PS, CBSA and CSIS) (the "Group Complaint") as well as 66 individual complaints against each of the same four respondents.
3. The Commission investigated the complaints and referred 41 complaints from the Group Complaint to the Canadian Human Rights Tribunal (the "Tribunal") on July 8, 2020 (the complaints against IRCC and PS) and on April 7, 2021 (the complaints against CBSA and CSIS). The Commission also referred 55 individual complaints to the Tribunal on a rolling basis between November 2020 and January 2021.
4. On or about March 24, 2021 pursuant to subsection 45(2) of the *CHRA*, the Deputy Minister of IRCC notified the Commission that the practice to which the complaints against IRCC relate was based on considerations relating to the security of Canada. On or about April 6, 2021, the Deputy Minister of PS notified the Commission that the practice to which the complaints against PS relate was based on considerations relating to the security of Canada. The practice to which all of the complaints against each of the respondents relate is referred to as the "Matter" and is broadly described as the security screening process for immigration applications.
5. On April, 28, 2021, the Commission referred the Matter as against IRCC and PS to the Review Agency under paragraph 45(2)(b) of the *CHRA* which provides that if 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 refer the matter to the Review Agency.

6. On May 7, 2021 the President of the CBSA notified the Commission that the practice to which the complaints against CBSA relate was based on considerations relating to the security of Canada. On May 13, 2021, the Director of CSIS notified the Commission that the practice to which the complaints against CBSA related was based on considerations relating to the security of Canada.
7. On June 23, 2021, the Commission referred the Matter as against CBSA and CSIS to the Review Agency under paragraph 45(2)(b) of the *CHRA*.
8. From May 25, 2021 through November 2022, the Review Agency conducted an investigation into the Matter referred, which, at that point, consisted of 41 complaints in the Group Complaint and 54 individual complaints.
9. The Review Agency first communicated the Report to the respondents to the complaints on November 29, 2022 for the purpose of consultation under section 52 of the *NSIRA Act*, to ensure that the Report did not contain information the disclosure of which would be injurious to national security, national defence or international relations or information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege.
10. On December 20, 2022, the Respondents complied with the Review Agency's consultation requirements under section 52 of the *NSIRA Act* and provided additional classified factual information in connection with the merits of the investigation.
11. Also on December 20, 2022, the respondents expressed concern about the lack of procedural fairness afforded them in the Review Agency's investigation and requested the opportunity to make formal submissions to the Review Agency in respect of any findings the Review Agency might make, in accordance with subsection 25(2) of the *NSIRA Act*, prior to the Review Agency providing its report to the Commission.

12. The respondents also cited Rule 7.20 of the Review Agency's *Rules of Procedure* which provides that the Review Agency shall notify the complainant, the Minister referred to in subsection 45(2) of the *CHRA* and the Director of their opportunity to make representations under subsection 25(2) of the *NSIRA Act* and noted that the Review Agency had not discharged its duty to so inform the parties.
13. On February 3, 2023, the Review Agency re-sent the Report with *errata* and issued a Procedural Ruling dated January 27, 2023 which determined that the Respondents to the complaints were accorded procedural fairness and there was no transgression by NSIRA of procedural entitlements under section 25 of the *NSIRA Act*.
14. Also on February 3, 2023, the Review Agency advised the Respondents of its intention to deliver the Report to the Commission and to the complainants on February 27, 2023.
15. On February 17, 2023, the Respondents to the complaints complied with the Review's Agency's further consultation requirements under section 52 of the *NSIRA Act*.
16. The Review Agency arrived the findings set out in the Report in violation of the principles of natural justice or procedural fairness insofar as:
  - a. The Respondents to the complaints were denied a meaningful opportunity to present evidence in connection with the Matter; and
  - b. The Respondents were not given the opportunity to make representations to the Review Agency on the merits of the Matter.
17. The Review Agency erred in law failing to provide the Respondents to the complaints with procedural fairness in the course of the investigation into the Matter;
18. It is necessary to the overall process and a requirement of procedural fairness that the Respondents to the complaints be able to make submissions to the Review Agency on the merits of the matter referred based on the sensitive and potentially injurious information that the Review Agency receives, as there is no statutory provision nor any practical means

by which such submissions could be made to Commission or the Tribunal in any future proceedings; and

19. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

1. An affidavit in respect of the procedural fairness issues; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated: March 3, 2023

*J. Sanderson Graham*

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