

Federal Court



Cour fédérale

Date: 20241210

Docket: T-1086-22

Citation: 2024 FC 2002

Ottawa, Ontario, December 10, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

GARETH LLEWELLYN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Gareth Llewellyn [Mr. Llewellyn], seeks judicial review of the decision of the National Security Intelligence Review Agency [NSIRA], dated May 9, 2022, which dismissed Mr. Llewellyn's complaint against the Canadian Security Intelligence Service [CSIS].

[2] Mr. Llewellyn argues that NSIRA erred in finding that it did not have jurisdiction to investigate his complaint and erred in finding that his complaint was frivolous. Mr. Llewellyn also argues that NSIRA breached the duty of procedural fairness owed to him.

[3] Mr. Llewellyn seeks relief against the allegedly erroneous decision and procedurally unfair process, initially requesting that the Court order NSIRA to investigate his complaint, and subsequently to provide the results of NSIRA's investigation of his complaint to the Prime Minister of Canada and the Director of CSIS. At the hearing of this Application, he focussed on the alternative relief of remitting the complaint to NSIRA for reconsideration.

[4] For the reasons that follow, the Application for Judicial Review is dismissed. NSIRA reasonably found that it did not have jurisdiction to investigate Mr. Llewellyn's complaint, which set out 53 allegations, including because the complaint was frivolous. NSIRA did not misinterpret or narrow its mandate to investigate "any activity carried out by the Canadian Security Intelligence Service", nor did NSIRA conflate the two criteria to establish jurisdiction by focussing on its finding that the complaint was frivolous. NSIRA did not err in finding that Mr. Llewellyn had made a similar complaint in 2008 regarding similar allegations to the Security Intelligence Review Committee [SIRC], which found that the SIRC had no jurisdiction, and that the similar allegations in the 2021 complaint were *res judicata*. Nor did NSIRA breach the duty of procedural fairness owed to Mr. Llewellyn; NSIRA followed its stated process and Mr. Llewellyn was not denied a meaningful opportunity to participate in the complaint process.

[5] The Court reiterates the same sentiment noted by Justice Noël in *Llewellyn v Canadian Security Intelligence Service*, 2014 FC 432 at para 40, which dismissed Mr. Llewellyn's two applications for judicial review of decisions of CSIS and the Canada Border Services Agency [CBSA] respectively, regarding his requests pursuant to the *Privacy Act*, RSC 1985, c P-21 for personal information :

Before signing this judgement, the Court would like to reach to the Applicant in order to appease his impression about his views that he is investigated by the CSIS and the CBSA with the participation of Prime Minister Harper. This Court informs that, having had a full view of all the information, it did not identify any CBSA or CSIS investigation that would have involved the Prime Minister. Therefore, if that can be understood by the Applicant, he should go on in his life in peace and with the satisfaction that there is no investigation involving him.

[6] The Court again notes that while Mr. Llewellyn may sincerely believe that the incidents he describes were orchestrated by CSIS, including that CSIS has taken several threat reduction measures [TRMs] against him to address a perceived national security threat, there is no objective basis to support this belief. The incidents he describes do not appear to have any potential to reduce any threat that he could possibly pose to the security of Canada, nor is there any evidence of why he would be perceived as a threat, other than his description of his early career and involvement in the Northern Foundation in the mid-1980s, which is long in the past.

[7] Mr. Llewellyn may wish to consider that there are many other reasonable explanations for the conduct he labels as surveillance and harassment by CSIS. For example, many men wear baseball hats, many people park on the street and walk in neighbourhoods and in the Experimental Farm, accidents happen, flat tires occur from time to time, noisy occupants in neighbouring hotel rooms are not uncommon and Bell linesmen climb telephone poles to do their work.

I. Background

A. *The Complaint to NSIRA*

[8] Mr. Llewellyn’s 2021 complaint to NSIRA includes allegations against CSIS of violations of several statutes, such as the *Canadian Charter of Rights and Freedoms* [Charter], the *Canada Labour Code*, RSC 1985, c L-2, the *Criminal Code*, RSC 1985, c C-46 [Criminal Code], the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23 [CSIS Act], and the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment*, Can TS 1987 No 36.

[9] Mr. Llewellyn’s complaint is set out in a document totalling 203 pages and includes 53 specific allegations against CSIS regarding incidents he describes and attributes to CSIS spanning over 30 years. The Certified Tribunal Record [CTR] includes at least two complete copies of the complaint, which includes detailed narratives and several appendices (for example, email exchanges, newspaper clippings, and photographs), all of which were submitted by Mr. Llewellyn to NSIRA, as well as other correspondence between Mr. Llewellyn and NSIRA and the NSIRA decision.

[10] The background to the complaint was described in *Canada (Attorney General) v Llewellyn*, 2024 FC 143 at paras 11-13 [*Llewellyn I*]:

[11] In his complaint, Mr. Llewellyn describes his career, noting that in 1997 he was engaged as a researcher for the “back bench committee” designed to identify potential candidates for federal election. He subsequently co-founded the Northern Foundation [NF], also designed to attract potential federal candidates.

Mr. Llewellyn states that the NF was infiltrated by a neo-Nazi. Mr. Llewellyn also states that he reported the infiltration of the neo-Nazi to CSIS, which led to CSIS associating Mr. Llewellyn with the neo-Nazi and, in turn, led to CSIS's ongoing interest in Mr. Llewellyn.

[12] Mr. Llewellyn also describes his past employment with Revenue Canada and the Canadian Border Security Agency [CBSA]. He claims that he was investigated by CSIS while in these roles.

[13] Mr. Llewellyn claims that CSIS surveyed and harassed him over a period of several years. He describes most of his complaints as relating to TRMs that he contends were taken against him by CSIS. In his request to NSIRA to review and investigate CSIS's activities, he alleges that the former Prime Minister directed a campaign to have him "deemed" as involved in terrorist activity, which derailed his career and affected his health. The key aspects of his allegations of harassment are summarized in the NSIRA decision.

[11] The Respondent groups Mr. Llewellyn's 53 allegations into several categories: entrapment and collusion by CSIS with other individuals and foreign governments; defamation, use of TRMs and other actions because he was allegedly viewed as a Neo-Nazi, spy or asset and a threat to the security of Canada; interference with his employment, particularly at the CBSA; and, interference in his personal life and treatment for health conditions, including discouraging countless lawyers from assisting him, disrupting his wedding, and exposing him to COVID-19 while awaiting treatment at the University of Ottawa Heart Institute.

[12] Mr. Llewellyn's affidavit, filed in support of this Application, characterizes and re-characterizes the incidents underlying his complaint and adds other information. As noted below, he seeks to admit "new" evidence that was not part of his complaint to NSIRA.

[13] Mr. Llewellyn's affidavit describes the incidents which led to his complaint, the complaint process and the outcome. Mr. Llewellyn recounts, among other things, that he was exposed to TRMs or disruption activities in the late 1980s, which he attributed to attention that he drew to himself by challenging government legislation. He recounts his involvement in the Northern Foundation and asserts that this involvement led to him being perceived as a neo-Nazi or associated with a neo-Nazi. He also recounts his various employment opportunities, including with the Canada Customs and Revenue Agency and the CBSA. He reiterates allegations that CSIS orchestrated a campaign of surveillance and harassment on and off since the early 1990s, which ramped up in the 2000s. He refers to incidents, including vandalism, parked cars, mysterious packages, "honey traps", disruption of his honeymoon, being followed in his neighbourhood, being forced off walking paths in parks, making complaints to the Ottawa Police Service that were taken by fake police (impersonators) and having his complaints ignored; travelling to Maine and New York to obtain a safety deposit box for his documents and being detained and advised by border guards that CSIS was concerned he would release classified information; unsuccessfully seeking refugee status in South America and being surveilled by CSIS in South America. He states that CSIS "TRM personnel" followed him into the University of Ottawa Heart Institute while he was undergoing medical procedures and influenced or interfered in assessments done by medical personnel. He further asserts that CSIS operatives were present in the operating room when he underwent various medical procedures.

B. *Chronology of the Complaint Process*

[14] In 2008 Mr. Llewellyn made a complaint to the Security Intelligence Review Committee [SIRC] (the predecessor to NSIRA) with similar allegations, including that CSIS had engaged in

a harassment campaign against him, interfered with his career via his CBSA manager, surveilled him, intercepted his communications and accessed his work computer to induce security lapses. SIRC concluded that it had no jurisdiction to investigate his complaint.

[15] On April 6, 2021, Mr. Llewellyn filed a complaint with NSIRA, which made 53 specific allegations against CSIS.

[16] NSIRA invited submissions from both CSIS and Mr. Llewellyn. On July 29, 2021, CSIS provided classified representations to NSIRA. NSIRA provided a copy of NSIRA's unclassified submissions to Mr. Llewellyn. On September 21, 2021, Mr. Llewellyn made written submissions to NSIRA indicating that NSIRA has jurisdiction to investigate his complaints and that his complaints were not frivolous or vexatious, but rather showed clear instances of his contact with CSIS, including that his name appeared in CSIS documents.

[17] On March 7, 2022, Mr. Llewellyn advised NSIRA that on January 16, 2022 he had sent an updated complaint to NSIRA via mail. This addendum referred to his polygraph examination in 2005 and discussions with CSIS employees.

[18] On March 11, 2022, NSIRA advised Mr. Llewellyn that it had made its determination with respect to its jurisdiction on February 16, 2022, and that the reasons for the determination would be provided to him by letter. NSIRA advised that it would communicate again with Mr. Llewellyn once NSIRA received his updated complaint.

[19] On April 5, 2022, NSIRA advised Mr. Llewellyn that its February 16, 2022 determination was made based on its review of the information available at that time. NSIRA had not received Mr. Llewellyn's updated complaint via mail and requested that he provide a copy by email. Mr. Llewellyn did so.

[20] NSIRA rendered its decision on May 9, 2022.

[21] Mr. Llewellyn filed this Application for Judicial Review of NSIRA's decision on May 27, 2022, which he amended on July 18, 2022.

C. *The Section 38 Canada Evidence Act Application*

[22] The Attorney General of Canada [AGC] filed a Notice of Application (as amended) on October 19, 2022, pursuant to section 38.04 of the *Canada Evidence Act*, RSC 1985, c C-5 [CEA] [the Section 38 Application], seeking an order confirming the statutory prohibition on disclosure of certain sensitive or potentially injurious information, as those terms are defined in the CEA. The information was redacted in several documents that NSIRA produced to Mr. Llewellyn in the Certified Tribunal Record [CTR] in accordance with Rule 317 of the *Federal Courts Rules*, SOR/98-106 for the purpose of his Application for Judicial Review. The Court's determination of the AGC's Section 38 Application is set out in *Llewellyn I*.

[23] As noted in *Llewellyn I*, the majority of documents in the CTR are documents provided by Mr. Llewellyn to NSIRA, including his complaint, appendices that elaborate on his complaint, correspondence with various people and agencies regarding, among other things, past

grievances against his employers and less formal employment-related issues. Although some information in the CTR is redacted and cannot be made public, Mr. Llewellyn is aware of the vast majority of this information. There are only three documents that did not originate from Mr. Llewellyn that have been redacted in part:

- A letter dated July 29, 2021, from the Director General External Review and Compliance at CSIS to the Registrar of NSIRA describing the results of CSIS's search of its holdings and noting that NSIRA can attend CSIS's premises to review the holdings electronically. Spaces in three lines have been redacted. The letter also notes "[t]he Service does not have any submissions to make with respect to the Review Agency's [NSIRA's] jurisdiction at this time."
- A one-and-a-half-page email memo dated August 19, 2021, from the Registrar of CSIS to Nathalie Pelletier (copied to two others) bearing the subject line "NSIRA File 07-403-53 (Gareth Llewellyn) Memo to file regarding Quality Assurance Check". The memo describes the Registrar's findings based on her attendance at the CSIS premises to conduct a quality assurance check. It notes the words used to search a database. The redactions are to three blocks and a few additional spaces.
- The Record of Decision and Determination of Jurisdiction by the designated member of NSIRA, Mr. Craig Forcese, dated February 16, 2022 is redacted in one and a half lines on two pages and a few paragraphs on page 3, which reiterate the results of the Quality Assurance Check as set out in the August 19, 2021 memo noted above. The redactions are identical.

II. The Relevant Statutory Provisions

[24] Section 12.1 of the *CSIS Act* states:

12.1 (1) If there are reasonable grounds to believe that a particular activity constitutes a threat to the security of Canada, the Service may take measures, within or outside Canada, to reduce the threat.

(2) The measures shall be reasonable and proportional in the circumstances, having regard to the nature of the threat, the nature of the measures, the reasonable availability of other means to reduce the threat and the reasonably foreseeable effects on third parties, including on their right to privacy.

(3) Before taking measures under subsection (1), the Service shall consult, as appropriate, with other federal departments or agencies as to whether they are in a position to reduce the threat.

(3.1) The *Canadian Charter of Rights and Freedoms* is part of the supreme law of Canada and all measures taken by the Service under subsection (1) shall comply with it.

(3.2) The Service may take measures under subsection (1)

12.1 (1) S'il existe des motifs raisonnables de croire qu'une activité donnée constitue une menace envers la sécurité du Canada, le Service peut prendre des mesures, même à l'extérieur du Canada, pour réduire la menace.

(2) Les mesures doivent être justes et adaptées aux circonstances, compte tenu de la nature de la menace et des mesures, des solutions de rechange acceptables pour réduire la menace et des conséquences raisonnablement prévisibles sur les tierces parties, notamment sur leur droit à la vie privée.

(3) Avant de prendre des mesures en vertu du paragraphe (1), le Service consulte, au besoin, d'autres ministères ou organismes fédéraux afin d'établir s'ils sont en mesure de réduire la menace.

(3.1) La Charte canadienne des droits et libertés fait partie de la loi suprême du Canada et toutes les mesures prises par le Service en vertu du paragraphe (1) s'y conforment.

(3.2) Le Service ne peut, en vertu du paragraphe (1),

that would limit a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms* only if a judge, on an application made under section 21.1, issues a warrant authorizing the taking of those measures.

(3.3) The judge may issue the warrant referred to in subsection (3.2) only if the judge is satisfied that the measures, as authorized by the warrant, comply with the *Canadian Charter of Rights and Freedoms*.

(3.4) The Service may take measures under subsection (1) that would otherwise be contrary to Canadian law only if the measures have been authorized by a warrant issued under section 21.1.

(3.5) The Service shall, after taking measures under subsection (1), notify the Review Agency of the measures as soon as the circumstances permit.

(4) For greater certainty, nothing in subsection (1) confers on the Service any law enforcement power.

12.2 (1) In taking measures to reduce a threat to the security of Canada, the Service shall not

prendre des mesures qui limiteraient un droit ou une liberté garanti par la Charte canadienne des droits et libertés que si, sur demande présentée au titre de l'article 21.1, un juge décerne un mandat autorisant la prise de ces mesures.

(3.3) Le juge ne peut décerner le mandat visé au paragraphe **(3.2)** que s'il est convaincu que les mesures, telles qu'autorisées par le mandat, sont conformes à la Charte canadienne des droits et libertés.

(3.4) Le Service ne peut, en vertu du paragraphe (1), prendre des mesures qui seraient par ailleurs contraires au droit canadien que si ces mesures ont été autorisées par un mandat décerné au titre de l'article 21.1.

(3.5) Dans les plus brefs délais possible après la prise de mesures en vertu du paragraphe (1), le Service avise l'Office de surveillance de ces mesures.

(4) Il est entendu que le paragraphe (1) ne confère au Service aucun pouvoir de contrôle d'application de la loi.

12.2 (1) Dans le cadre des mesures qu'il prend pour réduire une menace envers la sécurité du Canada, le Service ne peut :

(a) cause, intentionally or by criminal negligence, death or bodily harm to an individual;	a) causer, volontairement ou par négligence criminelle, des lésions corporelles à un individu ou la mort de celui-ci;
(b) wilfully attempt in any manner to obstruct, pervert or defeat the course of justice;	b) tenter volontairement de quelque manière d’entraver, de détourner ou de contrecarrer le cours de la justice;
(c) violate the sexual integrity of an individual;	b) tenter volontairement de quelque manière d’entraver, de détourner ou de contrecarrer le cours de la justice;
(d) subject an individual to torture or cruel, inhuman or degrading treatment or punishment, within the meaning of the Convention Against Torture;	d) soumettre un individu à la torture ou à d’autres peines ou traitements cruels, inhumains ou dégradants, au sens de la Convention contre la torture;
(e) detain an individual; or	e) détenir un individu;
(f) cause the loss of, or any serious damage to, any property if doing so would endanger the safety of an individual.	f) causer la perte de biens ou des dommages importants à ceux-ci si cela porterait atteinte à la sécurité d’un individu.
(2) [Repealed, 2019, c. 13, s. 99]	(2) [Abrogé, 2019, ch. 13, art. 99]

[25] Section 8 of the *National Security and Intelligence Review Agency Act*, SC 2019, c 13, s

2 [*NSIRA Act*] states:

8 (1) The mandate of the Review Agency is to	8 (1) L’Office de surveillance a pour mandat :
(a) review any activity carried out by the Canadian Security Intelligence Service or the	a) d’examiner toute activité exercée par le Service canadien du renseignement de

Communications Security Establishment;	sécurité ou le Centre de la sécurité des télécommunications;
(b) review any activity carried out by a department that relates to national security or intelligence;	b) d'examiner l'exercice par les ministères de leurs activités liées à la sécurité nationale ou au renseignement;
(c) review any matter that relates to national security or intelligence that a minister of the Crown refers to the Agency; and	c) d'examiner les questions liées à la sécurité nationale ou au renseignement dont il est saisi par un ministre;
(d) investigate	d) de faire enquête sur :
(i) any complaint made under subsection 16(1), 17(1) or 18(3),	(i) les plaintes qu'il reçoit au titre des paragraphes 16(1), 17(1) ou 18(3),
(ii) any complaint referred to the Agency under subsection 45.53(4.1) or 45.67(2.1) of the <i>Royal Canadian Mounted Police Act</i> ,	(ii) les plaintes qui lui sont renvoyées au titre des paragraphes 45.53(4.1) ou 45.67(2.1) de la <i>Loi sur la Gendarmerie royale du Canada</i> ,
(iii) reports made to the Agency under section 19 of the <i>Citizenship Act</i> , and	(iii) les rapports qui lui sont adressés en vertu de l'article 19 de la <i>Loi sur la citoyenneté</i> ,
(iv) matters referred to the Agency under section 45 of the <i>Canadian Human Rights Act</i> .	(iv) les affaires qui lui sont transmises en vertu de l'article 45 de la <i>Loi canadienne sur les droits de la personne</i> .
(2) In the course of its review of activities carried out by the Canadian Security Intelligence Service, the Review Agency must, each calendar year, review at least one aspect of the Service's performance in taking	(2) Dans le cadre de l'examen des activités du Service canadien du renseignement de sécurité, l'Office de surveillance examine, chaque année civile, au moins un aspect de la prise, par le Service, de mesures pour

measures to reduce threats to the security of Canada. réduire les menaces envers la sécurité du Canada.

[...]

[...]

16(1) Any person may make a complaint to the Review Agency with respect to any activity carried out by the Canadian Security Intelligence Service and the Agency must, subject to subsection (2), investigate the complaint if

16 (1) Toute personne peut porter plainte contre des activités du Service canadien du renseignement de sécurité auprès de l'Office de surveillance; sous réserve du paragraphe (2), celui-ci fait enquête à la condition de s'assurer au préalable de ce qui suit :

(a) the complainant has made a complaint to the Director with respect to that activity and the complainant has not received a response within a period of time that the Agency considers reasonable or is dissatisfied with the response given; and

a) d'une part, la plainte a été présentée au directeur sans que ce dernier ait répondu dans un délai jugé normal par l'Office de surveillance ou ait fourni une réponse qui satisfasse le plaignant;

(b) the Agency is satisfied that the complaint is not trivial, frivolous or vexatious or made in bad faith.

b) d'autre part, la plainte n'est pas frivole, vexatoire, sans objet ou entachée de mauvaise foi.

III. NSIRA's Decision

[26] On May 10, 2022, the Registrar of NSIRA sent Mr. Llewellyn an email noting that a letter dated May 9, 2022, setting out the decision had been mailed to him and citing the contents of the letter *verbatim* (which is described below). The email also explained that the updated information sent by Mr. Llewellyn had been sent to the wrong address but had subsequently been located, redirected to NSIRA and considered, but did not change the outcome of the decision. The email also referred to motions that Mr. Llewellyn had made to NSIRA.

[27] The letter from the Registrar of NSIRA, dated May 9, 2022, was sent to Mr. Llewellyn by registered mail. The letter states that NSIRA conducted a preliminary review of the information received from Mr. Llewellyn and determined that some of the allegations were not substantially different from allegations he made in his 2008 complaint to NSIRA's predecessor, SIRC. With respect to the new or additional allegations since 2008, NSIRA noted it had conducted a preliminary review of the information available, including the complaint and the written representations, and determined that NSIRA did not have jurisdiction to investigate these allegations pursuant to section 16 of the *NSIRA Act*.

[28] The letter notes that section 16 of the *NSIRA Act* provides the mandate for NSIRA "to investigate complaints regarding any activity carried out by the Service" and cites subsection 16(1) with respect to the criteria to investigate a complaint. The letter notes that NSIRA carefully reviewed the complaint, conducted an independent verification of the allegations against CSIS, and determined that the allegations "do not refer to an activity carried out by CSIS". The letter states that "the first criteria to establish jurisdiction pursuant to subsection 16(1) has not been met. Because your complaint is not directed to an activity done by CSIS, it is not within [NSIRA's] mandate to initiate an investigation..." [Emphasis added].

[29] The letter also states that NSIRA determined that there was a lack of an evidentiary basis to support the allegations and accordingly, NSIRA is satisfied that the complaint is frivolous pursuant to paragraph 16(1)(b) of the *NSIRA Act*.

[30] NSIRA's Record of Decision and Determination of Jurisdiction [Determination] rendered by Mr. Craig Forcese, a member of NSIRA, along with the letter described above, constitute the reasons for NSIRA's decision [the Decision].

[31] The Determination notes that a single member of NSIRA can determine whether NSIRA has jurisdiction to investigate a complaint or to refer it to NSIRA for investigation.

[32] The Determination sets out the background, noting that Mr. Llewellyn submitted a complaint to the Director of CSIS in January 18, 2021, alleging that he was the subject of "unjust and illegal activities", including TRMs. The Determination notes several of Mr. Llewellyn's allegations, including that CSIS regarded him as a neo-Nazi in or around 1988 and launched "a TR or disrupt" campaign against him; placed eavesdropping devices in his home; lured him to join Revenue Canada's investigation unit in 2002; launched a "counterfeit sting" operation against him in Paris; harassed him in 2006; intruded on his wedding in 2008; monitored his computer; blocked his attempt to seek refugee status in another country; interfered with his complaint to the Law Society of Upper Canada; obscured his entry to the University of Ottawa Heart Institute in January and February 2021; and conducted a defamation campaign against him.

[33] The Determination notes that Mr. Llewellyn alleged that CSIS breached several statutes including the *Charter*, *Criminal Code* and *CSIS Act* and incorrectly identified him as a threat to the security of Canada, as well as entrapped, defamed, overtly surveilled, harassed, subjected him to "medical surveillance" and stole his documents and mail.

[34] The Determination acknowledges that Mr. Llewellyn submitted many documents with his complaint, including the documents submitted regarding his 2008 complaint to SIRC, photos, medical information, court documents, news articles, information related to a security screening interview and information related to a grievance.

[35] The Determination also notes the similar complaints made by Mr. Llewellyn in 2008 to SIRC, alleging that CSIS had undertaken a harassment campaign against him, and SIRC's conclusion that it did not have the jurisdiction to deal with the complaint because some allegations did not pertain to "an act or thing" done by CSIS and other allegations were frivolous.

[36] The Determination acknowledges that the current complaint includes additional allegations and refers to CSIS's use of TRMs, which was not a power available to SIRC in 2008. The Determination states "to the extent that the matter duplicates allegations made to SIRC, those allegations were already dealt with and should be considered *res judicata* or issue estoppel."

[37] With respect to the allegations of CSIS activity, the Determination explains that CSIS provided representations to NSIRA indicating that CSIS had searched its corporate and operational holdings and that initial searches revealed two security screening requests for upgraded security clearances in 1995 and 2004. The corporate holdings revealed correspondence and administrative documents related to ATIP requests, complaints to the Director of CSIS, responses from CSIS, the 2008 complaint to SIRC, records from CSIS's Global Operations

Centre relating to Mr. Llewellyn, and records related to Mr. Llewellyn's candidacy for a secondment to CBSA.

[38] The Determination notes that the Registrar of NSIRA had attended at CSIS to review their holdings. The results of the Registrar's "Quality Assurance Check" and their repetition in the Determination are redacted pursuant to *Llewellyn I*, however, the Court has reviewed the unredacted documents.

[39] With respect to the additional allegations against CSIS post-2008, including the alleged TRMs, the Determination concludes that "there is no evidence of activity in the sense of operational conduct by the Service. As such, the first criteria to establish jurisdiction pursuant to subsection 16(1) of the *NSIRA Act* has not been met".

[40] The Determination also concludes that, due to the apparent lack of any evidentiary basis to support Mr. Llewellyn's allegations, the allegations met the definition of frivolous. The Determination states:

Furthermore, a complaint is frivolous when, on its face, it is devoid of substance and/or where there is no rational argument in support of the allegation ... (citations omitted). Based on my review of the submissions of the parties, and the apparent lack of any evidentiary basis to support the Complainant's allegations, the allegations raised in this complaint meet this definition.

[41] The Determination notes that subsequent to filing his 2021 complaint, Mr. Llewellyn alleged that CSIS was interfering with his ability to retain a lawyer. The Determination

concludes that “there is no information available that supports [Mr. Llewellyn’s] assertion that the Service is interfering with his ability to retain a lawyer”.

IV. The Applicant’s Submissions

[42] Mr. Llewellyn’s written submissions recount the incidents that he described in his complaint to NSIRA, with some differences. Mr. Llewellyn reiterates that he was subjected to a longstanding campaign by CSIS of surveillance and harassment which has had a devastating impact on his health and his safety. This includes CSIS’s alleged use of TRMs against him since 2015 (the date that the *CSIS Act* was amended to authorize TRMs).

[43] Mr. Llewellyn’s submissions at the hearing of this Application focussed on: the interpretation of section 16 of the *NSIRA Act*; the differences in NSIRA’s mandate from that of its predecessor, SIRC; NSIRA’s role in providing broad oversight for CSIS’s activities and the national security related activities of other government agencies and departments; and, highlighting an incident that was the subject of the 2008 complaint to SIRC. Mr. Llewellyn emphasized that the purpose of this Application was not to revisit the merits of his complaint and his specific allegations, but rather to determine if NSIRA erred in finding that it did not have jurisdiction to investigate. In his view, NSIRA misinterpreted and narrowed its mandate and should have found that it had jurisdiction to investigate his complaint and that there was an air of reality and evidence to support his allegations—at least one of them.

[44] Mr. Llewellyn first submits that new evidence should be admitted and considered by the Court. In particular, Mr. Llewellyn seeks to rely on his own affidavit filed in support of this

Application, which summarizes his complaint and adds additional details to some incidents described therein. He also seeks to rely on the affidavit of the AGC's affiant in the section 38 Application, who provided a public affidavit describing, in general, the types of information that CSIS seeks to protect from public disclosure in accordance with the CEA. He also seeks to rely on the transcript of the cross-examination of the affiant.

[45] Mr. Llewellyn argues that these documents provide general background information and/or fill in gaps in the record before the Court regarding the meaning of "activity" in section 16 of the *NSIRA Act* and fall within exceptions to the general principle that the Court reviews a decision on the basis of the record before the decision-maker.

[46] Mr. Llewellyn submits that the applicable standard of review for all the issues in this Application is correctness, in particular regarding NSIRA's interpretation of its enabling legislation. Mr. Llewellyn submits that the determination of NSIRA's mandate, in particular, the meaning of "any activity" is a question of general importance to the legal system as a whole and that one single interpretation is required. Alternatively, if the reasonableness standard applies, Mr. Llewellyn submits that the principles of statutory interpretation lead to only one interpretation of the relevant provisions.

[47] Mr. Llewellyn argues that the Decision that it did not have jurisdiction to investigate the complaint is incorrect or unreasonable; Mr. Llewellyn submits that NSIRA erred in interpreting its jurisdiction narrowly, contrary to the plain meaning of the *NSIRA Act*; Mr. Llewellyn also

submits that NSIRA's determination that it lacked jurisdiction pursuant to paragraph 16(1)(a) was tainted by its finding pursuant to paragraph 16(1)(b) that the complaint was frivolous.

[48] Mr. Llewellyn argues that NSIRA incorrectly or unreasonably found that his complaint was frivolous. Mr. Llewellyn points to documents that support his account of CSIS conducting a polygraph examination in 2005 and requiring that he permit CSIS and CBSA to retrieve documents from his home, which he characterizes as an attempt by CSIS to thwart his security clearance and secondment to the CBSA. He submits that these documents provide an air of reality to his complaint about the activity of CSIS and CBSA.

[49] Mr. Llewellyn further argues that NSIRA incorrectly or unreasonably found that his complaint was "largely" *res judicata*. He argues that NSIRA's mandate is broader than that of its predecessor, SIRC, and that SIRC's determination of his 2008 complaint did not address the conduct of CSIS together with CBSA, which NSIRA could now address pursuant to its broader mandate and review of activities of government departments related to national security. He adds that it is not clear which allegations NSIRA found to be *res judicata*.

[50] Mr. Llewellyn contends that NSIRA breached its duty of procedural fairness. He recounts that he was advised by NSIRA that he would be provided with a copy of CSIS's Protected B submissions in response to the complaint on the issue of NSIRA's jurisdiction and that he would have an opportunity to reply. He argues that he did not have a meaningful opportunity to participate due to the redaction of the documents in the CTR and due to the lack of any submissions from CSIS on the issue of NSIRA's jurisdiction.

V. The Respondent's Submissions

[51] The Respondent submits that the Decision is reasonable and NSIRA did not breach the duty of procedural fairness owed to Mr. Llewellyn.

[52] The Respondent submits that NSIRA reasonably interpreted its enabling statute when it found that it did not have jurisdiction to investigate the complaint. NSIRA is owed deference in its interpretation and the Court should not proceed with its own interpretation.

[53] The Respondent emphasizes that the Decision responds to Mr. Llewellyn's complaint: NSIRA did not expound on its interpretation of its mandate to investigate complaints in general. NSIRA reasonably found that Mr. Llewellyn's complaint did not refer to an "activity carried out by CSIS". The Respondent submits that this conclusion is supported by the independent verification by NSIRA of CSIS's holdings.

[54] The Respondent further submits that NSIRA reasonably determined that *res judicata* applied to the similar 2008 allegations and no exceptions apply in this case. The Respondent notes that NSIRA did not find that the doctrine applied to all of the allegations, only those raised in the 2008 complaint. NSIRA considered the new allegations.

[55] The Respondent notes that the definition of frivolous as cited by NSIRA fits the allegations and reflects the hallmarks of finding a complaint to be frivolous (for example, as

addressed in Ontario's *Rules of Civil Procedure*, RRO 1990, Reg 194); NSIRA reasonably determined that the complaint is frivolous.

VI. The Standard of Review

[56] Mr. Llewellyn submits that the issues on the Application relate to the interpretation of the *CSIS Act* and the *NSIRA Act* and, as such, raise general questions of law that are of central importance to the legal system, requiring the correctness standard of review.

[57] Mr. Llewellyn argues that the reasonableness standard is rebutted because the rule of law requires a single answer and greater legal certainty to guide NSIRA's review of other complaints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 32, 62 [*Vavilov*]). Mr. Llewellyn submits that the interpretation of section 16 is of central importance to the legal system because the issue goes beyond his complaint and informs the mandate of NSIRA to review complaints about CSIS.

[58] Mr. Llewellyn relies on recent jurisprudence, including *Del Grande v Toronto Catholic District School Board*, 2024 ONCA 769 at para 17, where the Ontario Court of Appeal cited *Vavilov* regarding correctness applying where the rule of law so requires (but found on the facts of that case that reasonableness remained the presumptive standard) and *Association of Management, Administrative and Professional Crown Employees of Ontario v Ontario (Ministry of the Attorney General)*, 2024 ONSC 1555, where the Divisional Court cited para 59 of *Vavilov* regarding the need for questions of law to result in a consistent answer given their impact on the administration of justice as a whole.

[59] Mr. Llewellyn alternatively argues that if the reasonableness standard applies, the precise language in the *NSIRA Act* limits the interpretation of section 16 to a single interpretation (*Vavilov* at para 68).

[60] The Respondent submits that there is no basis to rebut the presumptive standard of review of reasonableness.

[61] The Court notes that the recent jurisprudence relied on by Mr. Llewellyn applies the principles established in *Vavilov* to the facts and this jurisprudence does not break new ground.

[62] In *Vavilov*, the Supreme Court of Canada stated at para 32:

That being said, our starting position that the applicable standard of review is reasonableness is not incompatible with the rule of law. However, because this approach is grounded in respect for legislative choice, it also requires courts to give effect to clear legislative direction that a different standard was intended. Similarly, a reviewing court must be prepared to derogate from the presumption of reasonableness review where respect for the rule of law requires a singular, determinate and final answer to the question before it. Each of these situations will be discussed in turn below.

[63] The Supreme Court then identified five types of questions or issues where the standard of reasonableness is rebutted: when there is a legislated standard of review or statutory appeal mechanism; and, when required by the rule of law, for constitutional questions, general questions of law of central importance to the legal system and for questions regarding the jurisdictional boundaries between two or more administrative bodies. The Supreme Court noted that other types of questions could emerge where correctness review applies.

[64] I agree with the Respondent that the issues raised in this Application (apart from the allegations regarding procedural fairness) do not fall into any of the categories that call for correctness review. No issue of central importance to the legal system arises. The issue is whether NSIRA erred in finding that it had no jurisdiction to investigate Mr. Llewellyn's complaint. This does not engage a broad interpretation of NSIRA's mandate or the interpretation of section 16 for all purposes or in the abstract.

[65] As noted in *Vavilov* at para 61:

We would stress that the mere fact that a dispute is “of wider public concern” is not sufficient for a question to fall into this category — nor is the fact that the question, when framed in a general or abstract sense, touches on an important issue (citations omitted).

[66] In *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*], the Supreme Court of Canada reiterated that the presumptive standard of review for administrative decisions is reasonableness, including when the interpretation of statutory provisions are at issue (at para 38) as in the present case.

[67] Whether the Decision is reasonable is reviewed in accordance with the principles set out in *Vavilov*. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[68] With respect to the allegations of a breach of procedural fairness, the Court notes that the scope of the duty of procedural fairness owed by the decision maker is variable and is informed by several factors established in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 21 [*Baker*]. The factors include, where applicable: the nature of the decision, the nature of the statutory scheme, the importance of the decision to the person affected, the legitimate expectations of that person, and the choice of procedure made by the decision-maker.

[69] More generally, the Court must determine whether the procedure followed by the decision-maker, in this case, NSIRA, is fair having regard to all of the circumstances. The Court must ask “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

VII. The Preliminary Issue – New Evidence Submitted on Judicial Review

A. *The Applicant’s Submissions*

[70] Mr. Llewellyn notes that his affidavit filed in support of this Application includes additional information that he identifies in an Appendix to his written Memorandum of Fact and Law. The information seeks to elaborate on his submissions in a similar manner as a footnote. He submits that this additional evidence should be considered by the Court because it falls into one or more of the exceptions to the rule that the Court determines the reasonableness of the decision

on the basis of the record before the decision-maker. Mr. Llewellyn primarily relies on the “general background” exception.

[71] Mr. Llewellyn also seeks to rely on the affidavit filed by the AGC in the section 38 Application and the transcript of his cross-examination to fill in gaps regarding CSIS’s view of “activity” or “operational activity”.

B. *The Respondent’s Submissions*

[72] The Respondent submits that only the documents in the CTR should be considered by the Court in determining the reasonableness of the Decision.

[73] The Respondent disputes that Mr. Llewellyn’s affidavit is simply a summary of the complaint and that the additional information is background. The Respondent points to several examples that expand on Mr. Llewellyn’s narrative regarding his allegations or are entirely new narratives, all of which would have been known to Mr. Llewellyn at the time he submitted his complaint. The Respondent further notes several examples of information that Mr. Llewellyn identifies as related to his complaint or his submissions, but which differ or embellish the information, including his recount of why he was refused entry to the United States.

[74] However, the Respondent acknowledges that a few references in Mr. Llewellyn’s additional information could be regarded as general background information; for example, the reference to the introduction of TRMs in the *CSIS Act*, the Canada Customs and Revenue Agency being reorganized into CBSA and CRA, and the fact that the Court determined the

AGC's application pursuant to section 38 of the CEA [CEA Application] regarding certain redactions to the CTR.

[75] The Respondent submits that no other additional information should be considered as it is either irrelevant to the issues on the Application or seeks to supplement the original complaint.

[76] The Respondent submits that evidence considered by the Court in its determination of the AGC's CEA Application cannot be relied on by Mr. Llewellyn and is not relevant in any event. The affidavit filed by the AGC explained only the categories of information that CSIS would seek to protect as sensitive or injurious information and does not address the issue on this judicial review, which is whether the Decision that it did not have the jurisdiction to investigate the complaint is reasonable.

C. *The new evidence is not admissible*

[77] As a general rule, new evidence (i.e. evidence not part of the record before the decision-maker) is only permitted on judicial review on an exceptional basis (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20 [*Access Copyright*]; *Bernard v Canada Revenue Agency*, 2015 FCA 263 at paras 17-19). The recognized exceptions are for evidence that: (1) provides general background information that may assist in understanding the relevant issues but does not add new evidence on the merits; (2) draws the attention of the reviewing court to procedural defects that cannot be found in the decision-maker's record; and (3) highlights the

absence of evidence before the decision-maker on a particular finding (*Access Copyright* at para 20).

[78] As noted by the Respondent, some of the additional information could be considered general background; however, this information does not assist the Court in understanding the issues. The Court fully understands the issues.

[79] The affidavit and cross-examination of the AGC's affiant in the Section 38 Application was for a different purpose. The affiant described categories of information that CSIS would generally seek to protect from public disclosure in accordance with section 38 of the CEA. The affiant's response to questions about operational activity is not opinion evidence about the meaning of "activity carried out by [CSIS]" or NSIRA's jurisdiction to investigate a complaint.

[80] To the extent that Mr. Llewellyn seeks to rely on his additional descriptions in his affidavit to bolster his allegations against CSIS, the information is not helpful to him or to the Court. The issue for the Court is whether the Decision, which is based on NSIRA's assessment of the voluminous material submitted by Mr. Llewellyn, is reasonable and/or procedurally fair and this will be based on the record before the decision-maker, NSIRA.

VIII. NSIRA did not breach its duty of procedural fairness

[81] Mr. Llewellyn submits that the majority of the *Baker* factors support his entitlement to a high degree of procedural fairness, which was breached by NSIRA. He submits that NSIRA's predecessor, SIRC, was recognized as having powers that were adjudicative in nature, and

therefore, so must NSIRA. He also submits that the absence of a right of appeal, the importance of the decision, and his legitimate expectation that NSIRA would provide “the fullest opportunity to participate”, including to respond to CSIS’s submissions on NSIRA’s jurisdiction, support a high duty of procedural fairness. He asserts that he only received a “heavily redacted” package of information from NSIRA, and as a result, he had no meaningful opportunity to participate.

[82] The Respondent submits that the duty owed was at the lower end of the range and that NSIRA fully met its duty. The Respondent more generally submits that Mr. Llewellyn cannot assert that he did not know the case to be met as it was his complaint and the onus was on him to support his complaint.

[83] Both Mr. Llewellyn and the Respondent point to the *Baker* factors in support of their respective positions regarding the scope or level of the duty of procedural fairness owed by NSIRA in the present circumstances.

[84] Contrary to Mr. Llewellyn’s submission, consideration of the relevant *Baker* factors does not support that NSIRA owed him a high degree of procedural fairness.

[85] The NSIRA process involves two stages—a preliminary review and an investigative stage. The process is not adversarial or “court-like”; NSIRA’s first task was to determine whether it was required—in accordance with subsection 16(1)—to investigate the complaint.

[86] NSIRA's governing legislation does not set out any particular process; NSIRA has flexibility in establishing its own process and has set out its process in its *Rules of Procedure*. The *Rules of Procedure* provide that upon receipt, the Registrar of NSIRA will notify the complainant that their complaint has been received; a member shall conduct a preliminary review of the complaint to determine if NSIRA has jurisdiction to investigate; NSIRA may request submissions from the parties on NSIRA's jurisdiction; the respondent Director or Chief is to provide a Protected B version of any representations on jurisdiction; if the member of NSIRA determines that any of the conditions precedent to the investigation of a complaint set out in subsections 16(1) or 17(1) of the *NSIRA Act* have not been fulfilled, NSIRA shall notify the complainant and respondent that it does not have jurisdiction and shall set out the grounds; and, if the member or NSIRA determines that it does not have jurisdiction under subsections 16(2) or 17(2) of the *NSIRA Act* to investigate the complaint, NSIRA shall notify the complainant and the respondent.

[87] Mr. Llewellyn cannot assert a legitimate expectation that another particular process would be followed but was not followed. NSIRA complied with its own rules as the chronology of the complaint reveals. Mr. Llewellyn submitted his detailed complaint, received CSIS's response to the complaint, provided a reply to CSIS's response, argued that NSIRA had jurisdiction to investigate, submitted additional information to NSIRA that was considered by NSIRA, and received a written decision.

[88] The importance of the decision to those affected is a significant factor in determining the scope or level of the duty of procedural fairness, but it is not determinative. Mr. Llewellyn would

not have pursued his extensive complaint if it was not important to him; however, this is true of all persons who make complaints to oversight agencies.

[89] As this Court noted in *National Council of Canadian Muslims v Canada (Attorney General)*, 2022 FC 1087 at para 208, “[t]he importance of the decision to the complainants, on its own, does not support finding a higher level of procedural fairness than that provided”.

[90] In any event, whether the duty of procedural fairness is at the lower or mid range of the spectrum, the basic requirements of procedural fairness must be met. Individuals affected by decisions should have the opportunity to present their case and to have decisions affecting their rights and interests made in a fair, impartial, and open process that is appropriate given the statutory, institutional, and social context of the decision (*Baker* at para 28). NSIRA fully met these requirements.

[91] Mr. Llewellyn’s submission that he was thwarted in his ability to address NSIRA’s jurisdiction because CSIS did not make submissions on jurisdiction is without merit.

Mr. Llewellyn regards paragraph 16(1)(a) as the criteria for determining jurisdiction and paragraph 16(1)(b) as a separate determination; however, both criteria or “conditions precedent” (the term used in NSIRA’s *Rules of Procedure*) must be met for NSIRA to have jurisdiction to investigate the complaint. CSIS provided submissions on jurisdiction that focussed on the first criteria, noting the results of the search of CSIS’s holdings. Mr. Llewellyn provided his submissions on jurisdiction including his argument that the complaint was not frivolous. Contrary to Mr. Llewellyn’s submission, CSIS’s choice not to dispute NSIRA’s jurisdiction does

not suggest to the Court that CSIS was of the view that NSIRA had jurisdiction to investigate the complaint.

[92] Mr. Llewellyn's allegation that he was denied a meaningful opportunity to participate and respond because he received a "heavily redacted" package from NSIRA is a gross exaggeration and overlooks the reality that Mr. Llewellyn provided most of the very large package of information that became the CTR to NSIRA. Mr. Llewellyn knows its content, although some information cannot be publicly disclosed. Three documents that did not originate from Mr. Llewellyn are not "heavily" redacted, but they are redacted in accordance with the requirements of section 38 of the CEA and the Court's determination in *Llewellyn 1* (noted above in para 22). The same redactions were applied to CSIS's submissions regarding the search of its holdings and the Decision. In any event, the Court is aware of the unredacted content and is confident that Mr. Llewellyn's inability to access the redacted lines in three documents has not deprived him of a meaningful opportunity to respond to NSIRA or to advance his arguments on this Application.

[93] As noted in *Llewellyn 1* at para 106, "the information that cannot be disclosed to him or to the public does not assist in advancing Mr. Llewellyn's argument that NSIRA narrowed its jurisdiction or misinterpreted its statute. These arguments can be made without the redacted information". Mr. Llewellyn has made these arguments.

IX. NSIRA reasonably found that the allegations previously addressed in the 2008 complaint were *res judicata*

[94] Mr. Llewellyn notes that his complaint deals primarily with TRMs taken by CSIS against him, which were not part of CSIS's mandate until 2015. He submits that these allegations are new and could not have been addressed in his 2008 complaint and cannot, therefore, be *res judicata*.

[95] He further argues that the Decision does not clearly indicate either the specific allegations that NSIRA found were addressed in his 2008 complaint or the specific allegations that NSIRA found were not within their jurisdiction to investigate and also frivolous.

[96] Mr. Llewellyn argues that NSIRA has a broader mandate than its predecessor, SIRC, which permits NSIRA to investigate complaints relating to collaboration and/or gaps between CSIS and other agencies and departments, including CBSA, relating to national security. He highlights, as an example, his complaint previously determined by SIRC, which found that it had no jurisdiction to investigate his allegations about the conduct of CSIS and CBSA regarding the administration of a polygraph in 2005 and the related incidents.

[97] Mr. Llewellyn now argues that NSIRA would have jurisdiction to investigate these same allegations because NSIRA has a broader jurisdiction, including to oversee CBSA, and, therefore, the allegations are not *res judicata*. Mr. Llewellyn notes that his 2008 complaint related to the incidents surrounding his polygraph examination conducted by CSIS for CBSA, which was required as part of a security screening for a secondment to the ITAC unit at CBSA,

and which led to CBSA and CSIS attending at his home and removing secret documents.

Mr. Llewellyn regards this incident as an attempt by CSIS and or CBSA to disrupt or thwart an employment opportunity.

[98] The Court finds that NSIRA did not err in concluding that “a number of the allegations raised in your complaint are not substantially different than those raised in your complaint to the Review Agency’s predecessor, the [SIRC]” or in finding in the Determination that “to the extent that the matter duplicates allegations made to SIRC, those allegations were already dealt with and should be considered *res judicata* or issue estoppel”.

[99] The doctrine of issue estoppel or *res judicata* is well established. In *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 [*Danyluk*], the Supreme Court of Canada explained that the purpose is to prevent the re-litigation of the same cause of action or the same issues or material facts (*Danyluk* at para 20). The goal is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case (*Danyluk* at para 33).

[100] Three criteria must be met to find issue estoppel or *res judicata*: “(1) that the same question has been decided; (2) that the judicial decision which is said to create the estoppel was final; and, (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies” (*Danyluk* at para 25 citing *Angle v MNR*, 1974 CanLII 168 (SCC), [1975] 2 SCR 248 at p 254). If the criteria are met,

the decision-maker must then consider whether the application of issue estoppel or *res judicata* would lead to injustice (*Danyluk* at para 67).

[101] Contrary to Mr. Llewellyn's current argument, the same or similar allegations were addressed in the 2008 complaint to SIRC. The 2021 complaint included allegations dating back to the mid-1980s, including the allegations addressed by SIRC of a harassment campaign.

[102] Correspondence between CSIS and SIRC dated May 8, 2008, in the CTR, notes that the complaint had three parts: alleged surveillance by CSIS, complaints against Mr. Llewellyn's manager at CBSA, and a competition process at CSIS (noting that Mr. Llewellyn alleged that he was being investigated under the guise of the competition process at CSIS and was also under investigation as a security risk for possession of classified information).

[103] The SIRC decision responding to Mr. Llewellyn's 2008 complaint explains that SIRC considered all the allegations and submissions and that pursuant to section 41 of the *CSIS Act* (as it read at that time), SIRC can only investigate a complaint with respect to "any act or thing done" by CSIS. SIRC noted that the allegations regarding the activities of the CBSA and Mr. Llewellyn's supervisor at the CBSA would not fall within SIRC's jurisdiction. With respect to the allegations of improper and unwarranted conduct by CSIS, SIRC found that there was no factual material to support these allegations. SIRC concluded that the complaint was "clearly futile, does not have the slightest chance of success, and would fall within the meaning of 'frivolous' in paragraph 41 (1) (b)".

[104] NSIRA did not err in finding that the allegations about CSIS and CBSA regarding Mr. Llewellyn's polygraph and subsequently the removal of documents from his home and the CBSA investigation and similar allegations that predated 2008 were determined by SIRC and are *res judicata*. The issues are the same, the parties are the same and the SIRC decision was final.

[105] Contrary to Mr. Llewellyn's submissions, NSIRA's broader oversight mandate does not mandate it to revisit complaints determined by its predecessor. Mr. Llewellyn's attempt to characterize his 2008 complaint as about cross-cutting issues and collaboration or gaps between the CBSA and CSIS does not change the fact that the pre-2008 allegations were the same or similar, were addressed by SIRC and are *res judicata*.

[106] Although NSIRA has a mandate to review the activities of CSIS, the Communications Security Establishment [CSE] and "any activity carried out by a department that relates to national security or intelligence" (paragraph 8(1)(b) of the *NSIRA Act*), the mandate to investigate complaints is more narrowly defined. In any event, Mr. Llewellyn's 2008 complaint about the CBSA was related to a management issue, which would not be part of NSIRA's mandate. As noted, Mr. Llewellyn's allegations in 2008 about CSIS's conduct at the behest of CBSA were found to be frivolous.

[107] Also contrary to Mr. Llewellyn's submissions, NSIRA did not find that his allegations were "largely" *res judicata*. NSIRA found that only the allegations already addressed by SIRC were *res judicata*. NSIRA then assessed whether the remaining allegations fell within its jurisdiction to investigate.

[108] NSIRA’s Determination acknowledges that Mr. Llewellyn’s complaint includes additional allegations, including about TRMs, and notes that CSIS’s mandate did not provide for TRMs in 2008. The Determination explains that the allegations which were dismissed were those already dealt with and that the additional post-2008 complaints were considered.

[109] Although Mr. Llewellyn argues that TRMs are a relatively new concept and could not have been addressed in 2008, it is Mr. Llewellyn that now describes the countless incidents he alleges and attributes to CSIS as TRMs. He described the previous alleged incidents as “disruption” and acknowledges that the pre-2015 incidents are of the same type. However, as explained below, NSIRA reasonably concluded that there is no evidence to support that any of the incidents or experiences described by Mr. Llewellyn were orchestrated by CSIS (i.e., the incidents were not an “activity carried out by the [CSIS]”).

[110] With respect to Mr. Llewellyn’s submission that it was not clear which allegations were found to be *res judicata*, he is well-aware of the similar allegations he made in his complaint to SIRC. NSIRA was not required to itemize each of the 53 allegations.

X. NSIRA reasonably concluded that it did not have jurisdiction to investigate Mr. Llewellyn’s complaint

A. *The Applicant’s Submissions*

[111] Mr. Llewellyn submits that NSIRA’s finding that it had no jurisdiction to investigate the complaint is contrary to NSIRA’s mandate to investigate a complaint with respect to “any activity” carried out by CSIS pursuant to sections 8 and 16 of the *NSIRA Act*. Mr. Llewellyn

submits that neither the *NSIRA Act* nor the courts have defined or explored the meaning of “activity”, but by any definition, it would include “what CSIS subjected Mr. Llewellyn to”.

[112] Mr. Llewellyn argues that the modern principles of statutory interpretation require consideration of the text, the context and the purpose or legislative intent (*R v Guerrier*, 2024 ONCA 838 at para 22). Mr. Llewellyn cites several recent cases where the principles articulated in Ruth Sullivan, *On the Construction of Statutes*, 7th ed (Toronto: LexisNexis Canada, 2022) and as established by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998]1 SCR 27 and subsequent jurisprudence have been applied. He argues that the ordinary grammatical meaning of “activity” should prevail and the Court cannot disregard the actual words of the statute. He argues that if Parliament had intended to limit NSIRA’s jurisdiction to investigate complaints only of “operational activity” or “operational conduct” it would have said so.

[113] Mr. Llewellyn also notes that the *CSIS Act* does not define TRMs, although NSIRA has cited an internal CSIS definition for a TRM as “an operational measure undertaken by the Service, pursuant to section 12.1 of the *CSIS Act*, whose principal purpose is to reduce a threat to the security of Canada as defined in s.2 of the *CSIS Act*”.

[114] Mr. Llewellyn submits that “it would defy logic” for the incidents he described to not constitute “any activity” regardless of whether it is operational or non-operational. Mr. Llewellyn points to his own account or allegations of harassment and surveillance including via photographs and submits that there is an evidentiary basis for his complaint. Mr. Llewellyn

submits that his evidence is “uncontradicted” because he was not cross-examined. He argues that NSIRA has a duty to investigate any complaint regarding any CSIS activity. He also notes his numerous encounters with CSIS employees, including correspondence and memoranda bearing his name.

[115] Mr Llewellyn notes that prior to 2019, SIRC was the oversight agency of CSIS and SIRC was required to review any “act or thing” done by CSIS. Mr. Llewellyn submits that the meaning of “act or thing” is analogous to “any activity”. He relies on *Canada (Citizenship and Immigration) v Telbani*, 2012 FC 474 at para 89 [Telbani], where the Court found that “acts or things” include alleged intimidation, discriminatory practices, harassment and interference by CSIS in employment selection processes, among other things. He submits that these are the same type of activities he has described, and as such, NSIRA should have found that it had jurisdiction to investigate his complaint.

[116] Mr. Llewellyn points to NSIRA’s web page where NSIRA describes its mandate, noting, “NSIRA reviews and investigates all Government of Canada national security and intelligence activities to ensure that they are lawful, reasonable and necessary. NSIRA also investigates public complaints regarding key national security agencies and activities”.

[117] Mr. Llewellyn also points to NSIRA’s website under the heading “History” to support his argument that NSIRA has jurisdiction to investigate his complaint regarding CSIS and CBSA, despite that it arose in 2005 and SIRC found his complaint was without jurisdiction in 2008. The history description includes the following statement relied on by Mr. Llewellyn:

Prior to Bill C-59, SIRC, OCSEC and the CRCC each focussed on reviewing one specific agency, but they lacked the statutory authority to review activities beyond their agency of focus in order to obtain a complete picture of cross-cutting activities. They also could not collaborate or share classified information with other expert national security review bodies. NSIRA, by contrast, is able to review all national security and intelligence activities across the Government of Canada in an integrated manner.

[118] Mr. Llewellyn again focuses on his allegations regarding his 2005 polygraph examination, which he submits was a collaborative effort by CSIS and the CBSA to thwart an employment opportunity. He characterizes the incident as “cross-cutting” and, therefore, falling within NSIRA’s mandate.

[119] Mr. Llewellyn further argues that although NSIRA found that there was “no activity”, the Decision was informed or influenced by the Determination made by Mr. Forcese that there was “no activity in the sense of operational conduct”. Mr. Llewellyn submits that this led NSIRA to misinterpret paragraph 16(1)(a) and narrow its mandate.

[120] Mr. Llewellyn also argues that the Determination muddled or conflated the two elements of subsection 16(1). He argues that NSIRA must first determine whether there is any activity, then determine if the complaint is frivolous. He submits that NSIRA should not have relied on its finding that his complaint was frivolous because there was a lack of an evidentiary basis to support the allegations (which he disputes) in considering whether it had jurisdiction to investigate his complaint pursuant to paragraph 16(1)(a).

[121] Mr. Llewellyn further submits that given that CSIS made no submissions on NSIRA's jurisdiction, CSIS did not dispute that NSIRA had jurisdiction to investigate his complaint.

B. *The Respondent's Submissions*

[122] The Respondent submits that deference is owed to NSIRA's interpretation of its home statute.

[123] The Respondent notes that for a complaint to fall within NSIRA's jurisdiction, it must concern an "activity carried out by the Service" and NSIRA must be satisfied that the complaint is not trivial, vexatious or made in bad faith.

[124] The Respondent submits that NSIRA did not err in finding that the complaint did not refer to an activity carried out by CSIS. This conclusion is based on the facts; CSIS searched its operational and corporate holdings and NSIRA verified this by a Quality Control Check to find that the allegations do not refer to an activity carried out by CSIS as Mr. Llewellyn alleged.

[125] The Respondent submits that the record also does not support Mr. Llewellyn's allegations of harassment, surveillance and TRMs.

[126] The Respondent further submits that the statement in the Determination—that there was "no evidence of activity in the sense of operational conduct"—is reasonable and appropriate, noting that this description reflects that nature of Mr. Llewellyn's allegations. The Respondent notes that the majority of Mr Llewellyn's complaints focus on allegations of disruption

techniques or TRMs. The Respondent notes that TRMs are described—even by Mr. Llewellyn—as “an operational measure undertaken by the Service”.

C. *NSIRA’s finding that it did not have jurisdiction to investigate the complaint is reasonable; the Decision is justified, intelligible and transparent*

[127] NSIRA clearly understands its mandate and the requirement to investigate complaints where the criteria in subsection 16(1) are established, including the first criterion regarding complaints of “any activity carried out by [CSIS]”.

[128] As the Respondent notes, deference is owed to a decision-maker’s interpretation of their own statute. However, in this case, NSIRA did not need to engage in a detailed interpretation of sections 8 and 16 of the *NSIRA Act*. NSIRA did not misinterpret its mandate nor find that only operational activities could be investigated. The issue for NSIRA was whether the complaint fell within subsection 16(1).

[129] Mr. Llewellyn finds fault with the reference in the Determination to “[i]n other words, there is no evidence of activity in the sense of operational conduct by the Service” to argue that NSIRA interpreted its mandate as investigating only complaints of operational conduct. This argument overlooks that this sentence is part of a paragraph about the new allegations, all of which were about alleged activities that would reasonably be characterized as operational. Moreover, the Decision states that NSIRA “determined that the allegations raised in your complaint do not refer to an activity carried out by CSIS” and as a result, the first criterion of subsection 16(1) was not met. The Decision repeats “[b]ecause your complaint is not directed

towards an activity done by CSIS, it is not within [NSIRA's] mandate to initiate an investigation into your allegations”.

[130] NSIRA did not conflate its findings with respect to paragraphs 16(1)(a) and (b). Both criteria must be met to trigger NSIRA's duty to conduct an investigation. First, there must be a complaint to CSIS with respect to “that activity”, which refers to “a complaint...with respect to any activity carried out by the [CSIS]” (subsection 16(1)), and the complainant has not received a response from CSIS or is dissatisfied with the response (paragraph 16(1)(a)). Second, NSIRA must be satisfied that the complaint is not “trivial, frivolous or vexatious or made in bad faith” (paragraph 16(1)(b)). NSIRA made distinct findings with respect to both elements.

[131] Mr. Llewellyn appears to argue that any activity should be investigated based on the allegations of a complainant—not only operational activity or operational measures. However, Mr. Llewellyn overlooks that for NSIRA to investigate a complaint it must fall within its mandate pursuant to section 8, and the complaint must be “with respect to any activity carried out by the [CSIS]”.

[132] Mr. Llewellyn's own allegations based on his perceptions and beliefs does not provide supporting evidence that CSIS carried out the activities he describes. Mr. Llewellyn cannot rely on the fact that the Respondent chose not to cross-examine him to assert that his allegations are evidence that what he believes occurred did occur or that the Respondent acknowledges the allegations (*Exeter v Canada (Attorney General)*, 2015 FCA 260 at para 9, citing *Zheng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1311 at para 13).

[133] NSIRA concluded that it did not have jurisdiction following a review of the complaint and submissions from CSIS, supported by NSIRA's quality assurance check, which confirms that there is no evidence of CSIS activity taken against Mr. Llewellyn as he alleges and believes. The Determination and the letter from the Registrar of NSIRA clearly explain the reasons for NSIRA's conclusion.

[134] Mr. Llewellyn's reliance on *Telbani* does not support his argument that NSIRA is required to investigate all allegations of the type noted in *Telbani*. The issue in *Telbani* was whether SIRC had jurisdiction to investigate the complaint and to determine *Charter* issues. Justice Noël noted that the intervener's record provided a "glimpse of the kinds of complaints with regard to CSIS activities that [SIRC] has had to deal with in the past". This statement does not mean that these types of complaints were found to fall within SIRC's jurisdiction or that there was a duty to investigate all such allegations. Clearly, there would need to be some evidence to support that the allegations related to "an act or thing" done by CSIS, just as there must be some evidence to support that Mr. Llewellyn's allegations relate to "an activity carried out by the [CSIS]" in order for NSIRA to have jurisdiction.

[135] Mr. Llewellyn may believe that every incident he experienced was caused by CSIS, but the search of CSIS holdings does not support that CSIS was engaged in the alleged incidents, apart from records that Mr. Llewellyn is aware of related to his security screening; his revelation to CSIS that he had secret documents in his possession at his home and his discussions with CSIS personnel in the context of retrieval of those documents; and ATIP requests and other correspondence generated by him.

[136] With respect to Mr. Llewellyn's submission that NSIRA's 2020 Review of CSIS Threat Reduction Measures [2020 Review] expressed concerns about CSIS's use of TRMs of the type he alleged, this is not a fair assessment. The 2020 Review generally notes that CSIS had complied with the statutory provisions, however, it adds that NSIRA would pay careful attention to TRMs that impact *Charter* rights:

The legal issues and questions raised in this review, as well as our analysis of trends across the five years, point the way to further reviews by NSIRA. In particular, NSIRA was struck by the potential for TRMs where CSIS works with third parties to affect rights and freedoms protected under the *Charter*. In future, NSIRA will pay particular attention to this class of TRMs and the associated legal risks. NSIRA also notes that CSIS has yet to undertake a TRM under the authority of a court warrant. If and when CSIS obtains a TRM warrant, NSIRA will prioritize it for review.

[137] Given NSIRA's resolve to pay close attention to TRMs, NSIRA would not likely have overlooked Mr. Llewellyn's allegations of TRMs if there had been any evidentiary basis to support that any TRMs had been taken.

[138] In addition, if CSIS had taken TRMs against Mr. Llewellyn, CSIS would have been required to notify NSIRA of those measures in accordance with subsection 12.1(3.5) of the *CSIS Act*.

[139] The Court notes that Mr. Llewellyn only pointed to one example among his 53 allegations where there was documentary evidence to support an "activity"; this related to his 2005 polygraph and the related incidents regarding the removal of documents from his home by

CBSA and CSIS, and the follow up investigation by CBSA. As noted above, these allegations were the subject of SIRC's determination in 2008.

XI. NSIRA reasonably concluded that Mr. Llewellyn's complaint was frivolous

[140] Mr. Llewellyn submits that the definition or examples of a "frivolous complaint" as being devoid of substance, lacking a legal basis or having no prospect of success, or lacking an air of reality does not describe his complaint. He again points to his recitation of many instances of activity he attributes to CSIS and that his name appears in CSIS documents.

[141] The Respondent notes the same definition and submits that the complaint clearly meets this definition.

[142] The Respondent also notes that Ontario's *Rules of Civil Procedure* have identified criteria to guide determinations of whether an action is frivolous, vexatious or an abuse of process, including rambling discourse, grandiose complaints of injury and damages claims, multiple proceedings and bald assertions. The Respondent submits that Mr. Llewellyn's allegations reflect these "hallmarks".

[143] The Respondent points to several of Mr. Llewellyn's specific allegations that reflect grandiose claims, including that CSIS orchestrated a motor vehicle accident in an attempt to murder him; impersonated police officers; induced serious health conditions and other ailments; colluded with South American governments to thwart his refugee application and to deny him legal representation; and, deliberately exposed him to COVID 19 in 2021. The Respondent adds

that Mr. Llewellyn's prayer for relief in his complaint to NSIRA further demonstrates his grandiose claims, for example, by seeking a significant amount for compensatory damages.

[144] The Court finds that Mr. Llewellyn's submission that NSIRA did not provide a rational chain of analysis to conclude that his complaint was frivolous ignores that the Determination set out the nature of the allegations in the complaint, in a general manner, and stated that the complaint and the submissions had been reviewed. The Determination then noted the "apparent lack of any evidentiary basis to support the Complainant's allegations" to find that the definition of "frivolous" applied.

[145] Although Mr. Llewellyn now argues that the issues for the Court are legal issues and has downplayed the specific allegations, the Court cannot ignore the 53 specific allegations and narrative in the complaint in determining the reasonableness of NSIRA's finding that it was frivolous. As noted by the Respondent, the very descriptions of the allegations fall within any definition of frivolous, as does the relief he seeks.

XII. Conclusion and Costs

[146] In conclusion, the Application for Judicial Review is dismissed. Counsel for Mr. Llewellyn have pursued every possible argument to seek a reconsideration of the Decision, and I commend them for their thorough submissions. Similarly, Counsel for the Respondent has ably addressed each argument raised.

[147] NSIRA did not err in its finding that it had no jurisdiction to investigate Mr. Llewellyn's complaint. Mr. Llewellyn is encouraged to accept that his beliefs are not grounded in any objective evidence on the record before the Court and that NSIRA's Decision is fully justified by the facts and the law, and is transparent and intelligible.

[148] The parties advised the Court that they have agreed on the costs to be awarded depending on the outcome of this Application. In accordance with their agreement, costs are awarded to the Respondent in the amount of \$6000, inclusive of disbursements.

JUDGMENT in file T-1086-22

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed
2. The Applicant shall pay the Respondent costs in the amount of \$6000.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1086-22

STYLE OF CAUSE: GARETH LLEWELLYN v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 25, 2024

JUDGMENT AND REASONS: KANE J.

DATED: DECEMBER 10, 2024

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