

e-document	T-1539-23-ID 1
I S S U E D	FEDERAL COURT COUR FÉDÉRALE July 24, 2023 24 juillet 2023
	É M I S
Kadara Thompson	
OTT	1

Court File No.

FEDERAL COURT

B E T W E E N:

CANADIAN HUMAN RIGHTS COMMISSION

Applicant

- and -

**THE ATTORNEY GENERAL OF CANADA,
AMIR ATTARAN, CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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 prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where 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.

Dated: July , 2023

Issued by: _____
(Registry Officer)

Address of local office:
Thomas D'Arcy McGee Building
90 Sparks Street, Main Floor
Ottawa, ON K1A 0H9

TO: Shalene Curtis-Micallef
Deputy Attorney General of Canada
Per: Sean Stynes, Senior Counsel
Kelly Keenan, Counsel
Susanne Wladysiuk, Counsel
Department of Justice
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8
Tel: 613-670-6238
Fax: 613-954-1920
Email: sean.stynes@justice.gc.ca
kelly.keenan@justice.gc.ca
susanne.wladysiuk@justice.gc.ca

AND TO: Dr. Amir Attaran
77 Delaware Avenue
Ottawa, ON K2P 0Z2
Email: amir@amirattaran.com

AND TO: Ada Chan
Executive Director/Lawyer
Chinese and Southeast Asian Legal Clinic
123 Edward Street, Suite 505
Toronto, ON M5G 1E2
Tel: 416-971-9674
Fax: 416-971-6780
Email: chanada@lao.on.ca
Solicitor for the Respondent Chinese and Southeast Asian Legal Clinic

AND TO: Canadian Human Rights Tribunal
240 Sparks Street, 4th Floor West
Ottawa, ON K1A 0X8
Fax: 613-995-3484
Email: registry.office@chrt-tcdp.gc.ca

APPLICATION

This is an application for judicial review in respect of a decision of the Canadian Human Rights Tribunal dated July 4, 2023, in the matter of Amir Attaran against Immigration, Refugees and Citizenship Canada, formerly Citizenship and Immigration Canada, Tribunal File No T2163/3716, 2023 CHRT 27 (Decision).

In its Decision, the Tribunal dismissed a human rights complaint in which Amir Attaran (Dr. Attaran) alleges that Immigration, Refugees and Citizenship Canada engaged in discriminatory practices based on race, national or ethnic origin, age and family status in the provision of services customarily available to the general public, contrary to section 5 of the *Canadian Human Rights Act*, RSC, 1985, c H-6 (*CHRA*).

The applicant applies for:

1. An order quashing the Tribunal Decision dated July 4, 2023 and setting it aside without costs.
2. An order remitting the record of the matter back to a differently constituted panel of the Tribunal for reconsideration in accordance with the directions of this Court.
3. Such further and other relief as counsel may request and this Court deems just.

The grounds for the application are:

1. The Tribunal acted unreasonably in deciding that Dr. Attaran and Commission had not established a *prima facie* case of discrimination.
2. The Tribunal acted unreasonably in concluding that Dr. Attaran and Commission had not established adverse differential treatment.

Breaches of Procedural Fairness and Unreasonableness of the Decision

Bias: Addendum

3. The Tribunal erred by not assessing the merits of the complaint in an unbiased and impartial manner; its reasons entitled “Addendum Bias – Allegation” (Addendum) serving as proof of its real or apprehended bias thereby tainting the Decision in its entirety.
4. The Tribunal erred and acted unreasonably in opining on issues in the Addendum, including unconscious bias, without notice to the parties and in so doing deprived the parties of an opportunity to make submissions on the issues therein addressed.

Central Arguments and Evidence Relating to Race, National or Ethnic Origin, Age and Family Status

5. The Tribunal erred and acted unreasonably by failing to consider and give reasons concerning the extended family systemic discrimination argument and related expert evidence that Dr. Attaran advanced. This argument and evidence were central factors in support of the allegation of adverse differential treatment based on race, national or ethnic origin, age and family status and the intersection or combination of these grounds. Such a failure to consider this argument and evidence serves as further proof of the Tribunal’s real or apprehended bias.
6. The Tribunal erred and acted unreasonably by failing to consider and give reasons concerning the written argument on adverse effect discrimination based on the grounds of race and national or ethnic origin that the Chinese and Southeast Asian Legal Clinic advanced. Such a failure to consider this interested party’s written argument serves as further proof of the Tribunal’s real or apprehended bias.

Section 5 of the CHRA: Unreasonableness of the Decision

7. The Tribunal acted unreasonably by failing to apply a services analysis under

section 5 of the *CHRA* to the actions complained of and services at issue—the processing of sponsorship and permanent residence applications for parents and grandparents.

8. The Tribunal acted unreasonably by failing to follow binding authority to determine whether the processing of sponsorship and permanent residence applications for parents and grandparents were “services” under section 5 of the *CHRA* (*Watkin*).
9. The Tribunal acted unreasonably by failing to assess relevant evidence concerning the services at issue, evidence directly bearing on the applicable test for services in the jurisprudence, such as their transitive nature, their fee for service, their benefits to applicants, and their availability to the general public (*Gould, Watkin*).
10. The Tribunal acted unreasonably by departing from the established line of jurisprudence concerning a services analysis and in so doing rendering sponsorship and permanent residence applications exempt from human rights scrutiny under the *CHRA*.
11. The Tribunal acted unreasonably by erroneously applying the services analysis to events temporally preceding the provision of the services at issue to the general public such as the Levels Plans and related government actions or instruments.
12. The Tribunal acted unreasonably by conflating the test under section 5 of the *CHRA* with possible *explanations* for the longer processing times for sponsorship and permanent residence applications for parents and grandparents such as the Levels Plans and related government actions or instruments.
13. The Tribunal acted unreasonably in its application of *Matson* and *Andrews* (*CHRC*, 2018, SCC) and related line of authority to the services at issue

thereby falling into error when assessing services under section 5 of the *CHRA*.

14. The Tribunal acted unreasonably by disregarding relevant evidence on the viability of a service standard for parents and grandparents and by relying on the testimony of a respondent witness as determinative that a service standard could not be implemented for parents and grandparents when the witness testified that he did not have the requisite background and knowledge to opine on the issue and whose evidence was otherwise unreliable on this central issue.

Respondent's Proffered Expert: Unreasonableness of the Decision

15. The Tribunal acted unreasonably by departing from a longstanding practice of the Tribunal to consider the *Mohan* principles (1994, SCC) and related common law principles when assessing the qualifications of a proffered expert and which all parties agreed were applicable to the proposed experts in the case.
16. The Tribunal acted unreasonably by relying on the decontextualized submissions of another Commission counsel in an unrelated case involving different circumstances and section 50(3)(c) of the *CHRA* to effectively altogether abandon an assessment of whether the respondent's proffered expert witness was qualified to opine on all subject areas in his report, a witness whose qualifications were in dispute and who acknowledged that he did not have expertise in several of the areas in dispute.
17. The Tribunal acted unreasonably by in effect adopting the position of respondent counsel that Commission counsel are bound by submissions of other Commission counsel in unrelated cases. (Decision, paras 70 and 73).

Further grounds of the application are:

18. Sections 3, 5, 15(1) and (2) of the *CHRA*.

19. *Federal Courts Act*, RSC 1985, c F-7, as amended, section 18.1; and
20. Such further and other grounds as counsel may advise and this Court may permit.

This application will be supported by the following material:

1. Affidavits to be sworn and filed in accordance with the *Federal Courts Rules*.
2. A copy of the Certified Tribunal Record.
3. Such additional materials as counsel may advise and this Honourable Court may permit.

The applicant requests that the Tribunal send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Tribunal to the applicant and to the Registry:

1. Certified copies of all the documents, exhibits, and submissions that were filed during the course of the hearing and/or relied upon by the Tribunal in rendering the Decision, in addition to any existing official transcripts of the hearing.
2. A certified copy of the Decision dated July 4, 2023 (2023 CHRT 27).

Date: July 24, 2023



Caroline Carrasco
Luke Reid
Legal Services Branch
Canadian Human Rights Commission
344 Slater Street, 9th Floor
Ottawa, ON K1A 1E1
Tel: 343-882-8135 / 613-290-5108
Fax: 613-993-3089
Email: caroline.carrasco@chrc-ccdp.gc.ca
luke.reid@chrc-ccdp.gc.ca
Counsel for the Applicant, Canadian Human Rights Commission