

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2017 CHRT 16

Date: May 26, 2017

File No.: T2163/3716

Between:

Amir Attaran

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

**Immigration, Refugees and Citizenship Canada
(formerly Citizenship and Immigration Canada)**

Respondent

Ruling

Member: David L. Thomas

Table of Contents

I.	Introduction	1
II.	The Law.....	2
III.	Positions of the Parties.....	2
IV.	Decision.....	3

I. Introduction

[1] This is a ruling on a motion dated April 3, 2017, by Olena Stetskevych, who seeks interested party status in the inquiry into the complaint of Amir Attaran against Immigration, Refugees and Citizenship Canada (formerly Citizenship and Immigration Canada) (“IRCC”). The motion is brought under Rule 3 of the Canadian Human Rights Tribunal *Rules of Procedure* for an Order under Rule 8(1) to grant her interested party status so she may make written and oral submissions at the hearing.

[2] Mr. Attaran’s complaint against IRCC was filed with the Canadian Human Rights Commission (“CHRC” or the “Commission”) on July 28, 2010. The complaint alleged that the significant delay in processing sponsorship applications for parents and grandparents, compared to other categories under the Family Class (as defined in the Regulations to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27), was discriminatory, contrary to section 5 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the “Act”).

[3] On February 22, 2012, the Commission decided that an inquiry into the complaint was not warranted. Mr. Attaran made an application to the Federal Court for a judicial review of the Commission’s refusal to refer the complaint to the Canadian Human Rights Tribunal (the “Tribunal”). The Federal Court dismissed his application and Mr. Attaran then appealed to the Federal Court of Appeal (“FCA”).

[4] On February 3, 2015, the FCA allowed the appeal and referred the complaint back to the CHRC, finding that it had not adequately addressed the issue of IRCC’s *bona fide* justification (*Attaran v. Canada (A.G.)*, 2015 FCA 37).

[5] Pursuant to section 44(3)(a) of the *Act*, on September 6, 2016, the Commission requested the Tribunal Chairperson to institute an inquiry into Mr. Attaran’s complaint.

[6] The parties to this matter have submitted their Statements of Particulars (SOPs) but dates for the hearing have not yet been set.

[7] Like Mr. Attaran, Ms. Stetskevych also sponsored her parents for immigration to Canada. She alleges she has suffered set-backs in the process and believes she has also

received discriminatory treatment from IRCC. Ms. Stetskevych disputes certain aspects of the Respondent's SOP and alleges that she has suffered even more than Mr. Attaran.

II. The Law

[8] Section 50 of the *Act* gives the Tribunal discretion to grant interested party status. The onus is on the applicant to demonstrate how its expertise will be of assistance in the determination of the issues before the Tribunal. Interested party status will not be granted if it does not add significantly to the legal positions of the parties representing a similar viewpoint: *Schnell v. Machiavelli and Associates Emprize Inc.*, [2001] C.H.R.D. No. 14 at para. 6 (C.H.R.T.) (QL); *Nkwazi v. Canada (Correctional Service)*, 2000 CanLII 28883 (C.H.R.T.), para. 23 (QL); *Warman v. Lemire*, 2006 C.H.R.T. 8 at para. 18.

[9] Rule 8 of the Tribunal's Rules of Procedure states:

8(1) Anyone who is not a party, and who wishes to be recognized by the Panel as an interested party in respect of an inquiry, may bring a motion for an order granting interested party status.

8(2) A motion under 8(1) shall comply with the requirements of Rule 3 and shall specify the extent of the desired participation in the inquiry.

[10] Ms. Stetskevych has specified, in accordance with Rule 8(2), that she would like to be afforded the opportunity to make written and oral submissions to the Tribunal.

III. Positions of the Parties

[11] In her motion at paragraph 11, Ms. Stetskevych states that her "...experience and her participation in the case will add to the legal position of the Complaint and will help more clearly demonstrate the Respondent's adverse and differential treatment of parents to be sponsored to Canada, compared to other family members."

[12] Mr. Attaran did not make formal submissions on this motion. He did, however, send an email to the Tribunal's Registry Office advising that he "consented" to Ms. Stetskevych's "intervention, with full rights of participation."

[13] The Commission raises a concern that Ms. Stetskevych has not met the Tribunal's test for being added as an interested party. However, the Commission suggests that Ms. Stetskevych could be called as a witness by Mr. Attaran to give evidence about her experience.

[14] The Respondent submits that it would not be appropriate to add Ms. Stetskevych as an interested party because she fails to meet the test outlined in *Walden v. Canada (Treasury Board)* 2011 CHRT 19 ("*Walden*"). At paragraph 23 of *Walden*, the Tribunal summarized its test as follows:

[23] Concisely put, the case law indicates that interested party status has been granted in the past by the Tribunal in situations where:

- (a) the prospective interested party's expertise will be of assistance to the Tribunal;
- (b) its involvement will add to the legal positions of the parties; and
- (c) the proceeding will have an impact on the moving party's interests.

[15] The Respondent argues that Ms. Stetskevych meets none of the above requirements. Ms. Stetskevych sponsored her parents for immigration much later than Mr. Attaran, under a new system that involves an element of chance or lottery for the opportunity to sponsor parents or grandparents. This makes her situation significantly different than Mr. Attaran's. Secondly, Ms. Stetskevych will not add to the legal position of Mr. Attaran because her complaint, as she states in paragraph 8 of her motion, "...is exactly the same legal issue." Lastly, the outcome of Mr. Attaran's case will have no impact on Ms. Stetskevych's situation as her sponsorship application is subject to a very different set of rules than Mr. Attaran's: in particular, the new lottery system for selecting applications that is intended to manage the intake flow.

IV. Decision

[16] From time to time the Tribunal receives applications for interested party status, usually for higher profile cases with a significant public interest. However, many times applicants fail to address whether they will advance different and valuable insights and

perspectives that will actually further the Tribunal's determination of the matter. A successful applicant for interested party status must satisfy the Tribunal that they do possess some expertise or perspective that is not already available or before the Tribunal. Interested party status should not be conferred to give a third party a platform on which to make policy statements unrelated to the inquiry before the Tribunal. Participation should be limited to parties who can demonstrably add to the deliberations of the Tribunal (See *e.g.*, *FNCFCS v. Canada* 2016 CHRT 11, paras. 3-4, 10-11).

[17] Although I am convinced that Ms. Stetskevych's sponsorship application is subject to a very different set of rules than those which were applied to Mr. Attaran's application, the essence of her argument is the same as Mr. Attaran's: sponsorships of parents and grandparents are handled very differently than sponsorships of other members of the Family Class. Therefore, it is within the realm of possibility that a finding of discrimination in Mr. Attaran's case might impact her sponsorship application and others like it.

[18] However, Ms. Stetskevych has not satisfied the Tribunal that her written and oral submissions dealing with her experience will assist the Tribunal in deciding the complaint before it. She has not made a case that she possesses any particular expertise, other than also being a frustrated immigration sponsor. While there may be some aspects of her experience that are similar to the Complainant's, her involvement as an interested party will not necessarily add a different perspective to the legal positions already put forward by Mr. Attaran.

[19] Perhaps Ms. Stetskevych has grounds for her own separate human rights complaint. However, such complaint would have to be filed with the Commission, and based on the facts applicable to her situation.

[20] For the foregoing reasons, the Tribunal dismisses Ms. Stetskevych's motion for interested party status. As suggested by both the Commission and the Respondent, Mr. Attaran may wish to consider calling Ms. Stetskevych as a witness at the hearing if she has relevant evidence to offer, subject to the Tribunal's determination of the admissibility of her evidence.

Signed by

David L. Thomas
Tribunal Member

Ottawa, Ontario
May 26, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2163/3716

Style of Cause: Amir Attaran v. Immigration, Refugees and Citizenship Canada
(formerly Citizenship and Immigration Canada)

Decision of the Tribunal Dated: May 26, 2017

Motion dealt with in writing without appearance of parties

Written representations by:

Amir Attaran, for himself

Olena Stetskevych, for herself

Daniel Poulin and Sasha Hart for the Canadian Human Rights Commission

Korinda McLaine, for the Respondent