Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2018CHRT 6
Date: February 21, 2018
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

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I. Introduction

[1] This is a ruling on a motion dated August 10, 2017, by the Chinese and Southeast Asian Legal Clinic ("CSALC") which seeks interested party status in the inquiry into the complaint of Amir Attaran against Immigration, Refugees and Citizenship Canada ("IRCC"). The motion was brought under Rule 3 of the Canadian Human Rights Tribunal (the "Tribunal") *Rules of Procedure* for an Order under Rule 8(1) to grant it interested party status so it could:

A) Intervene in this case;

B) File a statement of particulars and evidence;

C) Make written and oral submissions at the hearing; and

D) Call witnesses and evidence at the hearing.

[2] CSALC proposed to narrow the scope of its participation two times after filing its motion: firstly by way of letter dated August 22, 2017 (see para. 14 herein); and, finally in its reply to the submissions of the other parties (see para. 18 herein.)

[3] Mr. Attaran's complaint against IRCC was filed with the Canadian Human Rights Commission (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*").

[4] 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 Tribunal. The Federal Court dismissed his application and Mr. Attaran then appealed to the Federal Court of Appeal ("FCA").

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

[6] 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.

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

[8] CSALC is a not-for-profit organization incorporated under the laws of Ontario. It provides free legal services to and acts as an advocacy group for non-English speaking, low-income members of the Chinese, Vietnamese, Cambodian and Laotian communities living in Ontario. CSALC is also involved in law reform and has appeared before the Parliamentary Standing Committee on Citizenship and Immigration to make submissions on various topics, including family reunification and family class sponsorship applications. CSALC also engages in test case litigation from time to time. CSALC submits that it is in a unique position to make a contribution to the deliberation of the issues before the Tribunal in Mr. Attaran's complaint.

[9] This is not the first request for interested party status in Mr. Attaran's inquiry. In the Tribunal's ruling cited as 2017 CHRT 16 ("*Stetskevych*"), Ms. Lena Stetskevych's request was denied as she was not able to convince the Tribunal that she possessed any particular expertise, other than also being a frustrated immigration sponsor. While there were some aspects of her experience similar to Mr. Attaran's, her involvement as an interested party would not necessarily have added a different perspective to the legal positions already put forward by Mr. Attaran.

II. The Law

[10] 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.

[11] In the past, the Tribunal has outlined a test for parties seeking interested party status in *Walden v. Canada (Treasury Board)*, 2011 CHRT 19 ("*Walden*"). At paragraph 23 of *Walden*, the Tribunal noted:

> [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.

[12] The Tribunal recently restated the scope of its consideration in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 11 ("*FNCFCS*") suggesting a more holistic approach on a case-by-case basis at para. 3:

> An application for interested party status is determined on a case-by-case basis, in light of the specific circumstances of the proceedings and the issues being considered. A person or organization may be granted interested party status if they are impacted by the proceedings and can provide assistance to the Tribunal in determining the issues before it. That assistance should add a different perspective to the positions taken by the other parties and further the Tribunal's determination of the matter. Furthermore, pursuant to section 48.9(1) of the *CHRA*, the extent of an interested party's participation must take into account the Tribunal's responsibility to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (see *Nkwazi v. Correctional Service Canada*, 2000 CanLII 28883 (CHRT) at paras. 22-23; *Schnell v. Machiavelli and Associates Emprize Inc.*, 2001 CanLII 25862 (CHRT) at para. 6; *Warman v. Lemire*, 2008 CHRT 17 at paras. 6-8; and *Walden et al. v. Attorney General of Canada (representing the Treasury Board of Canada and Human Resources and Skills Development Canada)*, 2011 CHRT 19 at paras. 22-23).

[13] 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.

III. Positions of the Parties

[14] CSALC has submitted a comprehensive brief in support of its motion, and outlined in detail the wealth of experience the organization has in helping immigrant families and participating in law reform initiatives and test case litigation. The original CSALC motion sought an order from the Tribunal for:

a) Permitting CSALC to intervene in this case;

b) Granting interested party status to CSALC;

c) Permitting CSALC to file a Statement of Particulars and evidence as the Tribunal may deem appropriate;

d) Permitting CSALC to make oral submissions and file written submissions at the hearing;

e) Permitting CSALC to call witnesses and evidence at the hearing; and

f) Any further or other order that the Tribunal may deem appropriate.

[15] By letter dated August 22, 2017, CSALC sought to amend its motion, stating:

> Should the Tribunal decide not to grant CSALC full party status, in the alternative, we ask that CSALC be granted intervenor status with the right to:
>
> - Be served with all evidence and documents filed by the parties and copied on the full disclosure from the parties;
> - Cross examine witnesses;
> - File supplementary evidence with leave from the Tribunal; and
> - Make oral and written submissions on the issues arising from the complaint and on the proper public interest remedy, where applicable.

[16] The Commission gave no submissions on this motion, but informed the Tribunal by email that it consents to CSALC's proposed participation.

[17] The Respondent opposes CSALC's motion. It cites the three-part criteria test in *Walden* and argues that CSALC does not meet any of the criteria. Furthermore, the Respondent submits that CSALC wishes to offer its assistance on issues that are not legal in nature, such as the notion of "Western/non-Western" values which it argues are sociological issues. It further argues that the existence and nature of the adverse impact are not the central issues in this complaint. Rather it is the *cause* of the alleged adverse impact and whether it is a result of a discriminatory practice and if so, whether it may be justified or not under the *Act.* The Respondent also argues that CSALC's participation would unnecessarily lengthen the Tribunal's proceeding. In the alternative, the Respondent submits that if CSALC is granted interested party status, there should be conditions and limits attached to that participation. The Respondent would prefer any submissions by CSALC to be based only on the evidence presented by the existing parties. It also suggests that participation should be limited to oral and written submissions which should not overlap with those of the other parties nor address new issues.

[18] Mr. Attaran opposes CSALC's request for full participation, but supports CSALC having some limited ability to participate as an interested party. Mr. Attaran reminded the parties and Tribunal that he is an individual complainant, without a dedicated budget and no prospect to recover his costs. He submits that CSALC's full participation would add greatly to the time and cost of his participation in the inquiry to the extent that it might potentially limit his own ability to participate. Mr. Attaran proposes that CSALC be granted a limited opportunity to intervene on the following terms, which I quote (emphasis in original):

> A. CSALC may file written evidence, and put forward witnesses to testify *viva voce* up to a limit of one day in total. This ensures that CSALC it can contribute to the evidentiary record, but without the risk of unduly protracting the hearing.
>
> B. CSALC may file a factum of 30 pages on the issue of the Respondent's compliance with the *Canadian Human Rights Act*. This will provide CSALC the opportunity to make

legal arguments, without unduly protracting the hearing. Further, 30 pages is sufficient because that is the most one gets in Federal Court or the Supreme Court of Canada.

C. CSALC may not make submissions on the appropriate remedy. This limitation is appropriate since CSALC is a law firm and not a natural person who would be affected by the remedy.

D. CSALC may not have input in scheduling the hearing, but must accept the schedule decided by the Tribunal and the parties. This is to ensure that CSALC does not override my ability to schedule, having regard to when I can get time off work.

[19] In Reply to the submissions of the Respondent and Mr. Attaran, CSALC amended its request for participation and proposes intervention on the following terms:

A. CSALC be permitted to intervene but restricted to the right to make written submissions based on the evidence adduced by the parties and the Tribunal record; and

B. CSALC be granted access to the Tribunal record, including the audio recording of the proceeding, if any, and the evidence adduced by the parties in electronic format.

[20] CSALC also points out that it cannot meaningfully participate in the proceeding as a party if hearing dates are set without its input and if its ability to call *viva voce* evidence is unreasonably limited. Although these concerns are raised, I do not read in CSALC's Reply submissions as these being conditions precedent to their revised request for participation. Rather, I read these concerns as CSALC's acknowledgment that it cannot meaningfully participate as a party if the Tribunal imposes the conditions suggested by the Complainant – hence its revised request for limited intervention.

IV. Decision

[21] 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 *FNCFCS, supra*).

[22] While the Respondent's argument relies heavily on the test outlined in *Walden*, I prefer the approach in *FNCFCS* which takes a more holistic approach to the assessment. The ruling in *Stetskevych* focused on the applicant's lack of any particular expertise, and as such she failed to meet the test enumerated in *Walden*. On the other hand, CSALC has an impressive track record of test case litigation and making representations to Parliamentary committees and I am therefore satisfied that they would bring expertise that could be of assistance to the Tribunal.

[23] However, the Tribunal should also remain mindful of the wishes of the parties themselves. I am particularly concerned about the reservations raised by Mr. Attaran. He is acting on his own behalf and has undoubtedly expended much time and expense to bring his complaint this far. The hearing itself is already likely to be time consuming and Mr. Attaran has reason to be concerned about involvement of third parties adding to his time and cost for the participation in his own hearing. When such reservations are raised by a complainant, the Tribunal should be cautious about making a decision that could possibly impede the complainant's ability to appear at the inquiry, present their evidence and make representations. Mr. Attaran's concerns are also consistent with the Tribunal's obligations under section 48.9 (1) of the *Act* to conduct proceedings as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.

[24] Having taken full stock of the submissions of the parties and the revised scope of CSALC's requested participation, the Tribunal will permit the limited interested party status of CSALC on the following conditions:

A. At the conclusion of the hearing, CSALC will have the right to make written submissions based on the evidence adduced by the parties and the Tribunal record to a maximum of 30 pages;

B. The other parties will be given an opportunity to reply in writing to the submissions of CSALC; and

C. CSALC will not participate in case management conference calls or other pre-hearing matters and will not have input in to the selection of hearing dates.

[25] Pursuant to the public nature of this inquiry, and given that no confidentiality orders have been made in relation thereto, there is nothing to prevent CSALC from being given access to the audio recordings of the hearing and the evidence adduced by the parties.

Signed by

David L. Thomas
Tribunal Member

Ottawa, Ontario
February 21, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2163/3716

Style of Cause: Amit Attaran v. Citizenship and Immigration Canada

Ruling of the Tribunal Dated: February 21, 2018

Motion dealt with in writing without appearance of parties

Written representations by:

Amir Attaran, for himself

Daniel Poulin and Sasha Hart, for the Canadian Human Rights Commission

Korinda McLaine and Abigail Martinez, for the Respondent

Avvy Yao-Yao Go, for the Chinese and Southeast Asian Legal Clinic