Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 114
Date: December 15, 2025
File Nos.: HR-DP-3104-25

Between:

Dr. Amir Attaran

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Immigration, Refugees and Citizenship Canada

Respondent

Ruling

Member: Jo-Anne Pickel

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I. OVERVIEW

[1] This ruling addresses the admissibility and admission of First Hearing Evidence in this case. It is an issue that appeared deceptively simple but that has been rendered more complex by the various evidentiary rulings made by the former Chairperson who conducted the first inquiry in this case.

[2] Dr. Amir Attaran (the "Complainant") filed a complaint with the Canadian Human Rights Commission (the "Commission") alleging that he was discriminated against in the provision of services by Immigration Refugees and Citizenship Canada (previously Citizenship and Immigration Canada) (the "Respondent"). In general terms, Dr. Attaran alleged that the Respondent adversely differentiated against him, and other potential immigration sponsors, because of its delay in processing applications to sponsor parents and grandparents to immigrate to Canada.

II. CHRONOLOGY AND BACKGROUND

[3] This complaint has a very long and complicated history of legal treatment which I have already summarized in *Attaran v. Immigration, Refugees and Citizenship Canada*, 2025 CHRT 68 at para 6–8. As described in that ruling, Dr. Attaran filed his complaint with the Commission in 2010. The Commission initially declined to refer his complaint to the Tribunal and dismissed it. The Federal Court denied Dr. Attaran's application for judicial review, but he was ultimately successful on appeal to the Federal Court of Appeal (see *Attaran v. Canada (Attorney General)*, 2013 FC 1132; and *Attaran v. Canada (Attorney General)*, 2015 FCA 37).

[4] The Commission then referred Dr. Attaran's complaint to the Tribunal for an inquiry. After approximately 22 hearing days, the Tribunal's former Chairperson dismissed the complaint. He concluded that Dr. Attaran had failed to make out a *prima facie* case of adverse differential treatment in the Respondent's provision of a service within the meaning of section 5 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the CHRA) (see *Attaran v. Citizenship and Immigration Canada,* 2023 CHRT 27). In essence, the former Chairperson found that the government's actions that contributed to longer processing times

to sponsor parents and grandparents did not fall within the meaning of "provision of a service" as that term is used in section 5 of the CHRA. For ease of reference in this ruling, I will refer to this issue as the "service issue."

[5] Dr. Attaran and the Commission successfully sought judicial review of the former Chairperson's decision (see *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2025 FC 18 [*Attaran* JR 2025]). Justice Brown of the Federal Court set aside the former Chairperson's decision because he found that the latter had demonstrated a reasonable apprehension of bias toward Dr. Attaran. Specifically, the reasonable apprehension of bias arose from the former Chairperson's unexpected completion of his reasons with a "Bias Allegation Addendum."

[6] In my initial case management conference calls with the parties, I proposed hiving off the "service issue" and addressing it in a preliminary hearing or, in other words, as a preliminary issue on which I would hear evidence and submissions. I also encouraged the parties to consent to the re-use of as much of the evidence from the first hearing as possible, so long as that evidence was not tainted by the former Chairperson's reasonable apprehension of bias toward Dr. Attaran. In my case management calls with the parties, both the Commission and Dr. Attaran argued that the evidence from the first hearing was admissible and that as much as possible should be reused. Meanwhile, the Respondent argued that the evidence from the first hearing is not admissible due to Justice Brown's ruling and applicable caselaw.

[7] Given the importance and complexity of this issue, I provided the parties with the opportunity to make written submissions on the matter for me to consider before issuing a formal ruling. This is that ruling.

III. DECISION

[8] The First Hearing Evidence is admissible in this redetermination. However, pursuant to applicable caselaw, the parties retain the right to object to the admission of any specific portion of that evidence. An objection may be raised if a party believes the evidence was tainted by the former Chairperson's apprehended bias toward Dr. Attaran, or if its admission

would otherwise result in unfairness. I set out below the process I will use to ensure that I have received any such objections to specific portions of the First Hearing Evidence.

IV. ISSUES

[9] I must address the following two issues:

1. Is the First Hearing Evidence admissible in this redetermination?

2. If so, should all or parts of the First Hearing Evidence be admitted?

V. ANALYSIS

A. "First Hearing Evidence"

[10] In their submissions, the parties used various terms to refer to the evidence from the first hearing. In this ruling, I use the term "First Hearing Evidence." When I use that term, I am referring to:

1. the testimonial evidence accepted in the first hearing which is found in the audio recordings and transcripts from the first hearing; and

2. the versions of all documents admitted into evidence as accepted exhibits in the first hearing.

[11] For further clarity, the First Hearing Evidence does not extend to evidence that was proposed or tendered but not accepted. Nothing in this ruling should be taken as restricting a party's ability to call witnesses other than those who testified in the first hearing or to tender documents that were not admitted into evidence as exhibits in the first hearing. Instead, the ruling is focused on minimizing the amount of time and resources that would otherwise be spent hearing testimony from persons who already testified in the first hearing or readmitting documents that were admitted as exhibits in the first hearing, unless there is a valid reason for doing so.

B. Is the First Hearing Evidence admissible in this redetermination?

[12] Yes. In my view the First Hearing Evidence is admissible in this redetermination. It can legally be admitted (in other words, considered) by this Tribunal. Whether or not it **should** be admitted is an issue that I address later in this ruling.

(i) The parties' arguments

[13] The Respondent argues that the First Hearing Evidence should not be considered in this redetermination because it has been contaminated due to Justice Brown's finding that the former Chairperson had a reasonable apprehension of bias toward Dr. Attaran. It argues that Justice Brown's reasonable apprehension of bias finding voids all of the previous Chairperson's decisions. The Respondent argues that this includes his decisions (rulings) on objections to witness testimony and the admissibility of evidence. Based on this, the Respondent argues that none of the First Hearing Evidence is admissible in this redetermination. According to the Respondent, admitting the First Hearing Evidence would amount to a collateral attack on Justice Brown's decision.

[14] Meanwhile, both the Commission and Dr. Attaran argue that the effect of Justice Brown's decision is to retroactively void only **decisions** and **orders** from the first hearing. They argue that Justice Brown's ruling does not nullify the testimonial evidence and documents entered as exhibits in the first hearing. Both the Commission and Dr. Attaran seek to rely upon the Federal Court of Appeal's decision in *Sawridge Band v. Canada (CA)*, 2001 FCA 338 [*Sawridge Band*] at paras 5–6 to argue that Justice Brown's reasonable apprehension of bias determination does not preclude the admission of the First Hearing Evidence in this redetermination. They submit that in appropriate circumstances, testimony given under oath and subject to cross-examination in a first hearing remains valid and can be used in a later hearing.

[15] Dr. Attaran argued that the Respondent is in effect seeking a "mulligan" (a second chance) because of certain evidentiary rulings of the former Chairperson that were unfavourable to it. In effect, Dr. Attaran used the golf term to suggest that, even if the Respondent was the successful party in the first hearing, it is attempting to get a second

chance to block certain evidence that was unfavourable to it. In response, the Respondent claims it is not seeking a second chance but instead that it is concerned with: not contravening Justice Brown's ruling; avoiding procedural inefficiencies; and avoiding procedural unfairness resulting in prejudice.

[16] In my view, when the parties used the term "reuse of evidence" in their submissions, they elided the distinction between two separate issues: the **admissibility** of the First Hearing Evidence versus the **admission** of the First Hearing Evidence. In other words, the parties' submissions did not clearly distinguish between the issue of whether the First Hearing Evidence **can** legally be considered in this redetermination as distinct from the issue of whether I should exercise my discretion to admit the First Hearing Evidence, or parts of it, in this redetermination.

[17] In follow-up correspondence to the parties, I asked them to confirm my understanding of their positions on the two distinct issues set out above. The Respondent confirmed that its position was that the First Hearing Evidence is not admissible in this redetermination. However, if I were to find otherwise, the Respondent's position is that all of the First Hearing Evidence must be admitted, and the parties must not be allowed to cherry-pick evidence that is favourable to them. The Commission confirmed that its position was that all of the First Hearing Evidence was both admissible and should be admitted. Dr. Attaran confirmed his position that the First Hearing Evidence is admissible. The only First Hearing Evidence that he specifically objected to having admitted was the testimony of one witness, Mr. Glen Bornais, on the basis that his cross-examination was not completed.

[18] As I detail below, I agree with portions of the Respondent's submissions and portions of the submissions made by Dr. Attaran and the Commission.

(ii) All decisions, orders, and rulings from the first hearing are void and without effect

[19] I agree with the Respondent that the effect of a reasonable apprehension of bias finding is to void all of the decisions, orders, and rulings made by the decision-maker who was found to have a reasonable apprehension of bias.

[20] In his decision, Justice Brown quoted from the Supreme Court of Canada's decision in *R v. Curragh*, 1997 CanLII 381 [*Curragh*] in which the Court held that a finding of a reasonable apprehension of bias on appeal retroactively renders all decisions and orders made during a trial void and without effect.

[21] Justice Brown then stated as follows:

> [117] The Applicants request this matter be sent back with directions concerning the use of previously gathered information, which of course was gathered under the direction of the very panel member whose conduct gave rise to an apprehension of unconscious bias.
> [118] I am not persuaded this is possible given our highest Court has determined that a bias finding retroactively renders all **decisions** and **orders** made void and without effect.
> [119] This matter, then, will follow the usual course, namely being remanded for redetermination by a differently constituted panel. [emphasis added]
>
> *Attaran* JR 2025 at paras 117–119.

[22] It is clear from the caselaw on the issue that all decisions of any kind, including evidentiary rulings, made by a decision-maker who was found to have a reasonable apprehension of bias are rendered void by such a finding. This is clear from the Supreme Court of Canada's finding in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), [1992] 1 S.C.R. 623, at 645 [*Newfoundland Telephone*] that "the **hearing** and any subsequent order resulting from it is void" [emphasis added]. It is also clear from the Supreme Court's finding in *R. v. S. (R.D.),* 1997 CanLII 324 (SCC), [1997] 3 SCR 484 [*RDS*] that reasonable apprehension of bias finding colours the entire former proceeding including, for example, any credibility findings made by a decision-maker against whom a finding of apprehended bias was made (para 100).

(iii) Applicable caselaw does not render the First Hearing Evidence inadmissible

[23] I agree with the Commission and Dr. Attaran that neither Justice Brown's decision nor the caselaw he relied upon renders the First Hearing Evidence inadmissible in this redetermination.

[24] Justice Brown noted that Dr. Attaran and the Commission had requested that the matter be sent back to the Tribunal with directions concerning the use of previously gathered information which he noted was gathered under the direction of the very decision-maker whose conduct gave rise to an apprehension of unconscious bias toward Dr. Attaran (see *Attaran* JR 2025 at paras 117, 5–6). He then said that he was not persuaded that it was possible to provide the directions sought by Dr. Attaran and the Commission given the Supreme Court's determination that a bias finding retroactively renders all decisions and orders made void and without effect. He then remitted the matter back to the Tribunal without directions regarding the use of previously gathered information.

[25] Justice Brown's decision and other applicable caselaw such as *Curragh*, *Newfoundland Telephone*, and *RDS* stand for the proposition that, even if the ultimate decision in a hearing marked by a reasonable apprehension of bias is correct, it cannot stand because of the inherent unfairness in the conduct of the hearing. The Federal Court of Appeal has made clear that these cases do not stand for the proposition that evidence taken at a hearing tainted by a reasonable apprehension of bias can never be used in a subsequent hearing (see *Sawridge Band* at para 5). As found by the Federal Court of Appeal, evidence that a judge has allowed to be admitted when the trial itself was later found to have been tainted by a reasonable apprehension of bias is not "read out of existence" and may be used in a subsequent hearing, "in appropriate circumstances" (see *Sawridge Band* at paras 5–6; and *Almrei (Re),* 2009 FC 3 at para 76). I have no evidence that this binding caselaw from the Federal Court of Appeal was put before Justice Brown and I have no evidence that he considered it. In the end, Justice Brown's decision only finds that decisions or orders made by the former Chairperson are void and without effect. It does not stand for the proposition that all of the First Hearing Evidence is inadmissible in this redetermination. If Justice Brown had intended to foreclose the possibility that a new member may consider previous evidence, he would have done so and sent the case back to the Tribunal for redetermination with directions to that effect.

[26] The Respondent argues that the *Sawridge Band* and *Almrei* decisions are distinguishable from the present case because the Court found that evidence of a first hearing tainted by a reasonable apprehension of bias may be used in a subsequent

proceeding “in appropriate circumstances.” I take the Respondent’s argument to be that, even if I were to apply the reasoning in *Sawridge Band* and *Almrei*, the First Hearing Evidence is not admissible because admitting it would not be “appropriate in the circumstances.”

[27] According to the Respondent, it would not be appropriate to admit the First Hearing Evidence in this redetermination because the former Chairperson made several rulings on the admissibility of evidence after vigorously contested objections and formal motions. However, I do not agree that this necessarily makes it inappropriate to admit any of the First Hearing Evidence. In my view, the types of factors that would make it inappropriate to admit First Hearing Evidence are set out by the Federal Court of Appeal in *Sawridge Band*: if it is shown that the evidence was affected by statements or other actions of the decision-maker who was found to have a reasonable apprehension of bias or if unfairness would otherwise arise (see paras 5–6). Unless it can be shown that portions of the First Hearing Evidence were tainted by the former Chairperson’s apprehended bias or it would be otherwise unfair to admit it, then it may be admitted. That said, the fact that the First Hearing Evidence was subject to various redactions and confidentiality orders does render what at first seemed a deceptively simple question a good deal more complex. I set out a process for determining the appropriate way forward below.

(iv) Not a collateral attack

[28] I do not agree with the Respondent’s argument that finding the First Hearing Evidence admissible in this redetermination would amount to a collateral attack on Justice Brown’s decision. A collateral attack is an impermissible attempt to nullify the result of another proceeding outside of the proper channels for the review of that decision (see *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at para 39). In this case, it is not a collateral attack for the Commission and Dr. Attaran to ask the Tribunal to rule on an issue upon which Justice Brown declined to rule. Moreover, as noted by Dr. Attaran, neither he nor the Commission would have a right to appeal, nor any reason to appeal, Justice Brown’s judgment as he found in their favour. Moreover, neither Dr. Attaran nor the Commission would have a right to appeal the portion of Justice Brown’s decision in which

he discussed the reuse of evidence. The *Federal Court Act* R.S.C., 1985, c. F-7 provides a right to appeal the types of decisions listed in section 27 of that Act. Justice Brown's refusal to provide directions does not fall within the types of decisions listed in that provision.

[29] Moreover, for the reasons set out above, Justice Brown simply declined to issue directions on the reuse of the First Hearing Evidence. Therefore, it cannot reasonably be said that this ruling on the admissibility and admission of the First Hearing Evidence "nullifies" the result of the judicial review proceeding or permits the Commission and Dr. Attaran to bypass proper channels for reviewing Justice Brown's judgment. For these reasons, I do not agree that this ruling amounts to, or permits, a collateral attack on Justice Brown's judgment.

(v) Summary on admissibility of First Hearing Evidence

[30] For all of the above reasons, I find that the First Hearing Evidence is admissible in this redetermination.

C. Should all or parts of the First Hearing Evidence be admitted?

[31] Even if the First Hearing Evidence is admissible in this redetermination, it is open to parties to object to the admission of that evidence if they are of the view that it was affected by the statements or actions of the decision-maker who was found to have a reasonable apprehension of bias, or if unfairness would otherwise arise (see *Sawridge Band* at para 6). When I asked the parties to confirm their positions on the admission of the First Hearing Evidence if I were to find it admissible, the only objections made by the parties were the following: Dr. Attaran argued that it would be unfair to admit Mr. Bornais's evidence as his cross-examination was not completed. Meanwhile, the Respondent took the position that, if I were to find that the First Hearing Evidence was admissible, then the entirety of that evidence should be admitted, not just parts of it. The Commission confirmed its position that all of the First Hearing Evidence is both admissible and should be admitted in this redetermination. However, it took the position that certain rulings on the admissibility of evidence (for example, relating to the scope of the complaint) may require reconsideration.

[32] I agree with Dr. Attaran that no party should be allowed to seek an evidentiary "mulligan" that is unconnected to any apprehended bias by the former Chairperson or any unfairness arising from his decision. I also agree with the argument made by the Respondent that the Tribunal must adopt procedures that will avoid protracted and time-wasting battles over which parts of the First Hearing Evidence should be admitted and which evidence should not be admitted on the basis that it was tainted by the reasonable apprehension of bias on the part of the former Chairperson or unfairness would otherwise arise.

[33] The Tribunal has a mandate to proceed as efficiently as possible in every case before it. This is especially important when dealing with a complaint such as this one that was filed 15 years ago and on which the Tribunal and the parties have already spent 22 days hearing evidence. There may be some basis for the Respondent's concern and its belief that starting with a fresh slate would be most efficient. However, I do not find that is necessarily the case, especially in light of the limited objections I have received from the parties to reusing the First Hearing Evidence.

[34] I have already followed up with the parties to obtain their position on the admission of the First Hearing Evidence. Based on their responses, it does not appear that the parties have many objections to it now that I have found it admissible. However, based on their responses, it appeared necessary that a more specific and detailed process was required to ensure that the parties raise any objections they have to specific pieces of the First Hearing Evidence now rather than attempting to do so later in the process. It is also clear that, due to the voiding of earlier rulings as an effect of Justice Brown's decision, the foundation for any proposed redactions to documents must be re-established on the record **before** any documents are admitted.

[35] The process set out below will enable me to determine the most efficient and fair way forward as between:

i. admitting parts of the First Hearing Evidence and ruling on objections raised by the parties; or

ii. starting with a clean slate in which the parties refile all evidence on which they will seek to rely in this redetermination, which could include the First Hearing Evidence or any other evidence.

VI. ORDER AND DIRECTIONS

[36] For the reasons set out above, the First Hearing Evidence is admissible in this redetermination. I provide the following directions to determine the most efficient and fair way forward for determining whether I should exercise my discretion to admit all or parts of the First Hearing Evidence in this redetermination:

1) By **January 9, 2025**, the parties must confer with each other to determine which parts of the First Hearing Evidence they agree to have me admit as evidence in this redetermination. By **January 14, 2025**, they must file a list of all of the First Hearing Evidence they consent to have me admit as evidence in this redetermination. For ease of reference, for admitted exhibits, the parties must note on their list each document's exhibit number from the first hearing. The parties should take note that they may consent either to the entirety of an accepted exhibit or witness testimony being admitted in this redetermination or to portions of an accepted exhibit or witness testimony being admitted. The parties must also specify that they consent to the redactions to the First Hearing Evidence and the legal basis for such redactions. The parties must identify any confidentiality orders that require re-issuance. They must also refile any documents relied upon to substantiate redactions pursuant to the *Canada Evidence Act* to ensure that the evidentiary basis for the redactions is properly on record.
2) Any objections to the admission of all or part of the First Hearing Evidence shall proceed in stages:
    a. By **January 21, 2026**, Dr. Attaran and the Commission must each file succinct written submissions identifying each piece of the First Hearing Evidence they object to and explain why they believe that the evidence was affected by the statements or actions underlying Justice Brown's

apprehended bias finding or that admitting it would otherwise be unfair (see *Sawridge Band* at para 6). They do not have to repeat any written submissions they have already made.

b. By **January 28, 2026,** the Respondent may file its own objections to all or parts of certain First Hearing Evidence with succinct written submissions.

c. By **February 4, 2026**, Dr. Attaran and the Commission may reply to the matters raised in the Respondent's response.

3) The parties do not have to repeat any written submissions they have already made. They may simply adopt any prior written submissions as their submissions in response to this ruling, as appropriate.

4) This process will be the final opportunity that the parties will have to object to the admission of any First Hearing Evidence in this redetermination. No further objections will be allowed to the admission of any First Hearing Evidence later in this proceeding. The reason for this is the need to avoid a situation in which a party consents, or does not object, to the use of some piece of First Hearing Evidence now but then attempts to raise objections later in the proceeding. Such conduct would inevitably lead to a protracted string of objections to the use of the First Hearing Evidence at various points with all of the disruption, inefficiency, and potential prejudice that would entail.

5) Once I have had a chance to review the parties' list of First Hearing Evidence that they consent to have admitted in this redetermination and their submissions to support any objections, I will rule on the most efficient way forward:

i. admitting parts of the First Hearing Evidence and ruling on objections raised by the parties; or

ii. starting with a clean slate in which the parties refile all evidence on which they will seek to rely in this redetermination, which could include First Hearing Evidence or any other evidence.

6) The Tribunal's Registry will send the parties a list of the First Hearing Evidence (that is, a list of versions of documents that were accepted as exhibits as well as a list of the witness testimony accepted during the first hearing). The Registry will also provide the parties with an internal working document listing documentary redactions that the former Chairperson ordered in the first proceeding to assist them in navigating the management of the First Hearing Evidence. As noted above, the effect of Justice Brown's decision is to render all rulings from the first hearing void. Therefore, I am not bound by any prior rulings. I am only providing this document to the parties to support them as they confer with each other and respond to this ruling.

Signed by

Jo-Anne Pickel
Tribunal Member

Ottawa, Ontario
December 15, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: HR-DP-3104-25

Style of Cause: Dr. Amir Attaran v. Immigration, Refugees and Citizenship Canada

Ruling of the Tribunal Dated: December 15, 2025

Motion dealt with in writing without appearance of parties

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