

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2026 CHRT 13
Date: February 16, 2026
File No.: 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 is a follow-up ruling to one I issued regarding the treatment of evidence from the first hearing that took place in this case: *Attaran v. Immigration, Refugees and Citizenship Canada*, 2025 CHRT 114 [first ruling on the treatment of First Hearing Evidence].

[2] I have already set out the background context to this case in my two previous rulings and will not repeat it here (see the first ruling on the treatment of First Hearing Evidence at paras 3–6 and *Attaran v. Immigration, Refugees and Citizenship Canada*, 2025 CHRT 68 at paras 6–8).

[3] For present purposes, it suffices to say that this is a redetermination of this complaint following the Federal Court’s decision granting judicial review of the Tribunal’s previous decision. In *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2025 FC 18, Justice Brown set aside the Tribunal’s previous decision because of a reasonable apprehension of bias on the part of the Tribunal’s former Chairperson toward Dr. Attaran. The reasonable apprehension of bias arose from the former Chairperson’s unexpected completion of his reasons with a “Bias Allegation Addendum.”

A. The first ruling on the treatment of First Hearing Evidence

[4] In the first ruling on the treatment of First Hearing Evidence, I found that evidence from the first hearing (the “First Hearing Evidence”) is admissible in this redetermination. However, I found that, pursuant to the Federal Court of Appeal’s decision in *Sawridge Band v. Canada (C.A.)*, 2001 FCA 338 [*Sawridge Band*], the parties retain the right to object to the admission of any specific portion of that evidence. As the Federal Court of Appeal held in that case, an objection may be raised if a party believes the evidence was tainted by the former decision-maker’s apprehended bias, or if its admission would otherwise result in unfairness.

[5] In my ruling, I set out a process by which the parties would first confer with each other to determine which parts of the First Hearing Evidence they agree to have me admit in this redetermination. I then provided deadlines for the parties to make submissions identifying

each piece of the First Hearing Evidence to which they object and to explain why they believe that the evidence was affected by the apprehended bias of the former Chairperson or that admitting it would otherwise be unfair (see *Sawridge Band* at para 6). I also directed the parties to specify whether they consent to the redactions made to the First Hearing Evidence and to the reissuance of confidentiality orders made by the former Chairperson in the first hearing.

[6] I made clear that this process would be the final opportunity the parties would have to object before me to the admission of any of the First Hearing Evidence. I indicated that, once I had a chance to review the parties' submissions, I would rule on the most efficient way forward as between:

- 1) admitting parts of the First Hearing Evidence and ruling on objections raised by the parties; or
- 2) 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.

II. DECISION

[7] All of the First Hearing Evidence will be admitted once the issue of appropriate redactions is determined, with the exception of:

- 1) The transcript and audio recording of the testimony of Glen Bornais and Exhibits 91–129 which were admitted through Mr. Bornais' testimony; and
- 2) The transcript and audio recording of the testimony of Professor Michael Haan and Exhibits 130–154 which were admitted through Professor Haan.

[8] As I explain in more detail below, the above evidence may not be used by any party for any purpose in this redetermination. However, the Respondent may present replacement witnesses and the exhibits listed above may be entered into evidence through these replacement witnesses.

III. ANALYSIS

[9] I have read and carefully considered all of the submissions filed by the parties in response to my first ruling on the treatment of the First Hearing Evidence. In the interest of expediting the issuance of this ruling, I do not repeat the parties' submissions below. I only refer to their submissions as necessary to support my findings.

A. The *Sawridge Band* analysis

[10] In *Sawridge Band*, the Federal Court of Appeal held that evidence taken at a hearing tainted by a reasonable apprehension of bias can be used in a subsequent hearing "in appropriate circumstances."

[11] The Federal Court of Appeal stated as follows:

[5] Contrary to the appellants' submissions, we are of the view that *Newfoundland Telephone* does not stand for the proposition that evidence taken at a trial tainted by reasonable apprehension of bias can never be used in a subsequent trial. We think that a finding that a hearing is void means that, even if the ultimate decision is correct, it cannot stand because of the inherent unfairness in the conduct of the hearing. A void hearing must result in a void order.

[6] But evidence taken at that trial, under oath, in open court, subject to cross-examination and transcription, is not read out of existence. The evidence subsists and, **in appropriate circumstances**, we see no reason why transcripts of such evidence may not be used at a subsequent trial, including use for the purposes of cross-examination. Of course, **it is open to the parties or interveners to object to the use of the evidence if they are of the view that the evidence was affected by statements or other actions of the Trial Judge at the original trial or that unfairness will otherwise arise. That will be determined by the Trial Judge.**

[emphasis added]

[12] As can be seen above, the Federal Court of Appeal drew a distinction between the decision-making process being tainted by bias and the continued use of the evidentiary record. The governing question is whether the parties have raised a reasonable basis to conclude that some of the evidence itself was affected by the former Chairperson's statements or conduct, or that its admission would give rise to unfairness. It is through this

lens that I examine whether any of the First Hearing Evidence should be excluded because there exists a reasonable apprehension that the evidence was “affected by statements or other actions” of the former Chairperson “or that unfairness [would] otherwise arise” if it were admitted.

B. Glen Bornais’ evidence is excluded

[13] I find it appropriate to exclude the transcript and audio recordings of Mr. Bornais’ testimony. However, the Respondent may present one or more replacement witnesses to cover the matters dealt with by Mr. Bornais. The documents that were admitted into evidence through the latter’s testimony may be admitted through any such replacement witness(es).

[14] The Respondent and the Commission took the position that I should admit Mr. Bornais’ evidence. However, Dr. Attaran objected to the admission of the transcripts and audio recordings of Mr. Bornais’ testimony for reasons of procedural fairness and due to the apprehended bias of the former Chairperson toward him. In particular, Dr. Attaran challenged decisions made by the former Chairperson regarding medical notes that curtailed Mr. Bornais’ testimony before cross-examination by the Commission. Dr. Attaran is the person toward whom the Federal Court found that the former Chairperson had a reasonable apprehension of bias. In light of his objections summarized above to Mr. Bornais’ testimony, there exists a reasonable apprehension that Mr. Bornais’ evidence was affected by statements or other actions of the former Chairperson or that unfairness would otherwise arise if it were admitted.

[15] The transcript and audio recording of Mr. Bornais’ testimony is excluded from this redetermination. The Respondent argued that, if I excluded Mr. Bornais’ testimony, it should be allowed to put forward a different witness to provide evidence that was initially proffered by Mr. Bornais. In this scenario, the new witness’ evidence would supplant that of Mr. Bornais. The Commission objected to the Respondent presenting a new witness if I did not exclude Mr. Bornais’ testimony. However, no party objected to the Respondent calling a new witness to testify to the matters dealt with by Mr. Bornais if his evidence were

excluded. I agree that it is appropriate to allow the Respondent to call one or more replacement witnesses to testify to the matters to which Mr. Bornais testified. The Respondent may also tender into evidence the documents that were identified as Exhibits 91–129 in the first hearing through any such replacement witness(es).

C. Professor Haan's evidence is excluded

[16] I find it appropriate to exclude the transcript and audio recordings of the testimony of Professor Haan. However, the Respondent may present a replacement witness for Professor Haan and the documents that were admitted into evidence through Professor Haan's testimony may be admitted through that witness or any other permitted witness such as the witness(es) replacing Mr. Bornais.

[17] The Respondent took the position that I should admit the transcript and audio recording of Professor Haan's evidence. However, Dr. Attaran and the Commission objected to the admission of his evidence for reasons of procedural fairness and reasonable apprehension of bias.

[18] I find that there exists a reasonable apprehension that Professor Haan's evidence was affected by statements or other actions of the former Chairperson or that unfairness would otherwise arise if it were admitted. Among other things, as argued by Dr. Attaran and the Commission, the former Chairperson certified Professor Haan as an expert witness without reference to applicable case law. He advised the parties that he would provide more detailed reasons for qualifying Professor Haan in his merits decision. However, he never did so. Based on this, and the reasons that led to Justice Brown's finding of reasonable apprehension of bias, I find that Professor Haan's evidence should be excluded.

[19] The Respondent argued that, if I exclude Professor Haan's evidence from this redetermination, I should allow the Respondent to rely upon Professor Daniel Hiebert as a replacement expert witness. This position was not disputed by the other parties, although they have already indicated that they will raise objections to Professor Hiebert's evidence. I find that it is appropriate to allow the Respondent to put forward Professor Hiebert as a witness to replace Professor Haan. I will hear the objections that Dr. Attaran and the

Commission have to qualifying Professor Hiebert as an expert witness at the appropriate time. The Respondent may seek to tender the documents identified as Exhibits 130–154 in the first hearing through Professor Hiebert or through any other permitted witness.

D. Excluded evidence cannot be referred to by any party

[20] I do not find it appropriate to allow any party to refer to, or seek to admit, any portion of the transcript or audio recordings that I have excluded above.

[21] In its submissions, the Commission argued that evidence can be admitted only for use by certain parties or only for certain purposes and not others. The Commission argued that, even if the testimony of Mr. Bornais and Professor Haan is excluded, it should be available to the Commission and Dr. Attaran to use in cross-examination. In support of this position, the Commission relies on the broad latitude traditionally afforded to cross-examination under the common law and relies on principles governing the use of prior inconsistent statements during cross-examination.

[22] I disagree for the following two reasons.

[23] First, the Federal Court of Appeal made clear in *Sawridge Band* that transcripts of evidence provided at a hearing marked by apprehended bias may only be used in a subsequent proceeding, including use for the purposes of cross-examination, **unless** the evidence was affected by statements or other actions of the original decision-maker or that unfairness would otherwise arise. I have excluded the testimony of Mr. Bornais and Professor Haan on this basis. Therefore, that testimony may not be used in this proceeding for any purpose, including cross-examination.

[24] Second, I agree with the Respondent that it would be fundamentally unfair to allow only certain parties to rely upon evidence and not others. When evidence is admitted in a Tribunal proceeding, it becomes part of the Tribunal's record, which can then be relied upon by all parties. If evidence is excluded because of concerns about it being tainted due to apprehended bias or procedural fairness, then no party can seek to admit it or rely upon it.

[25] I disagree with the analogy that the Commission seeks to make between the excluded evidence in this case and prior consistent statements. The Commission is correct insofar as the general rule is that prior consistent statements are presumptively inadmissible, subject to limited exceptions, such as where an allegation of recent fabrication has been made. However, contrary to what the Commission has argued, there is no exception to the presumed inadmissibility of prior consistent statements “if an opposing party wishes to make use of them in cross-examination.” The *R. v. Ellard*, 2009 SCC 27 [*Ellard*] decision cited by the Commission does not stand for that proposition.

[26] Perhaps most importantly, I find that the example of prior inconsistent statements fails to account for the critical distinguishing feature of this case, which is that the evidence has been excluded because it is tainted by a finding of reasonable apprehension of bias. That finding places the excluded testimony in a different category from evidence, such as prior consistent statements, that is presumed inadmissible but may be admissible in certain circumstances. The parties have failed to point to any case in which a court or tribunal has permitted a party to use evidence tainted by a reasonable apprehension of bias finding in their cross-examination of witnesses in a redetermination.

[27] Finally, I disagree with the Commission and Dr. Attaran that they may refer to or read out portions of the testimony given by Mr. Bornais or Professor Haan in their cross-examination of other witnesses even if it is not admitted into evidence. If any party were to read out previous testimony, it would be necessary for that party to tender a copy of the testimony into evidence. Otherwise, there would also be no way for me to rely upon the previous testimony in a future decision unless it was actually entered in the record before me. This would then lead to the admission of evidence that I have found excluded under the *Sawridge Band* analysis, contrary to my finding above.

[28] For the above reasons, I do not find it appropriate for any party to refer to, or seek to admit, any portion of the testimony I have excluded above.

E. The rest of the First Hearing Evidence

[29] Any of the First Hearing Evidence that has not been specifically excluded above will be admitted once the issue of appropriate redactions has been determined. I will address this issue with the parties either in writing or in my next case management conference call with them. Of course, the parties will also be free to make arguments as to the weight that I should give to the admitted to any First Hearing Evidence I admit in this redetermination.

F. Redactions and confidentiality orders

[30] As I found in my first ruling on the treatment of the First Hearing Evidence, the effect of Justice Brown's decision is to render all rulings from the first hearing void and without effect. Therefore, I am not bound by any of the former Chairperson's prior rulings, including his confidentiality rulings. In my first ruling on the treatment of the First Hearing Evidence, I directed the parties to specify whether they consented to the redactions to the First Hearing Evidence and the other confidentiality orders issued by the former Chairperson. What I was really asking was whether they disputed the soundness of those orders.

[31] Dr. Attaran did not agree to the reissuance of any of the confidentiality orders made by the previous Chairperson. The Commission did not object to the reissuance of the confidentiality orders, subject to some submissions it made regarding a confidentiality order made relating to Mr. Bornais. The Respondent asked that I reissue three confidentiality orders made by the previous Chairperson—two relating to Mr. Bornais and one concerning documents that were found subject to Cabinet confidentiality under section 39 of the *Canada Evidence Act*, R.S.C., 1985, c. C-5.

[32] The Respondent argued that, in the interest of efficiency, I should redetermine the confidentiality rulings based on the submissions that the parties made to the Chairperson in the first proceeding. I would have agreed with this approach except that, as noted by Dr. Attaran, it is not clear that there exist any identifiable sets of submissions that I can review and consider for most of the former Chairperson's confidential rulings as the latter were often made orally at different points throughout the hearing or in case management conference calls. That said, I do not believe that redetermination of the confidentiality issues

arising in this case will be unduly onerous due, in particular, to the existence of the Canadian Human Rights Tribunal access to official records policy, the applicable provisions of the *Canada Evidence Act*, and the exclusion of Mr. Bornais' evidence in this redetermination.

[33] There appear to be three main categories of information that I am admitting in this redetermination that were subject to confidentiality rulings in the first proceeding:

- 1) Personal Identifiers or other personal information: The Tribunal now routinely removes Personal Identifiers, pursuant to section 3 of the Canadian Human Rights Tribunal access to official records policy, before publicly releasing a document from the official record of a proceeding. This policy was not yet in place at the time of the first hearing in this case. Any personal information that does not fall within the meaning of "Personal Identifiers" as that term is used in the policy would need to meet the criteria set out in section 52 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6. However, I do not believe that this category of redactions should be controversial.
- 2) Evidence that is subject to *Canada Evidence Act*: Certain documentary evidence admitted in this redetermination was subject to confidentiality orders arising from the application of sections 37, 38, and 39 of the *Canada Evidence Act*. These provisions allow specific officials—such as a Minister of the Crown, the Clerk of the Privy Council, or another designated official—to object to the disclosure of certain information on the ground of a specified public interest (section 37), for reasons of international relations, national defence, or national security (section 38), or cabinet confidence (section 39). Generally, any challenges to these nondisclosure objections fall under the jurisdiction of the Federal Court.
- 3) Solicitor-client privilege: In the first hearing, the former Chairperson admitted a document into evidence identified as Exhibit 15. He then later admitted a redacted version of the same document into evidence. In his submissions, Dr. Attaran argues that the redacted document is in fact a completely different document and not a redacted version of Exhibit 15. However, it is obvious that the Respondent mistakenly referred to the redacted document as the document identified as Exhibit 87 when it was in fact the document identified as Exhibit **85**.

The Respondent takes the position that only the redacted version of the document (that is, Exhibit 85) should be entered into evidence in this redetermination as the information that was redacted is subject to solicitor-client privilege. I will rule on any objections to the redactions made to the document identified as Exhibit 15 after hearing the parties' positions on the issue.

[34] I will address the issue of confidentiality rulings and redactions with the parties in writing on in my next case management call with them.

G. The Respondent's request for a "decorum directive"

[35] In a previous case management conference call, the Respondent's counsel raised concerns about what he saw as "bullying" by Dr. Attaran. I advised the parties that I would not allow any bullying in this proceeding. That said, the line between "bullying" and heated debate or zealous advocacy is not always clear. I advised the parties that I did not perceive that anyone on the call had crossed the line from heated debate into bullying. However, I asked all participants in the call to bring down the temperature, which they did. I also told the parties that they could raise any concerns in the future if they felt that another party had engaged in abusive or otherwise improper behaviour.

[36] In its submissions, the Respondent objected to portions of the written submissions filed by Dr. Attaran in which he accused the Respondent's counsel of engaging in "sharp practice," not telling the truth, engaging in unprofessional conduct, and abusive attempts to relitigate issues, among other things. The Respondent asked that I issue a "decorum directive" akin to the one that the former Chairperson issued in the first hearing. Based on the bias allegation addendum that the former Chairperson included in his decision, it appears that he issued a letter to the parties concerning decorum on May 20, 2021. The Respondent attached a copy of the letter to its submissions. In the letter, the former Chairperson outlined his expectations for hearing decorum and the good order required to complete the inquiry. The Respondent asks that I issue a similar directive in this redetermination.

[37] Dr. Attaran and the Commission argued that it was improper for the Respondent to raise its concerns in its responding submissions. I disagree, as the Respondent's concerns flowed from statements that Dr. Attaran made in his submissions and both he and the Commission had the opportunity to address the request in their replies.

[38] That said, I do not find it appropriate to issue the "decorum directive" akin to the one issued by the former Chairperson. All parties to legal proceedings have the obligation to treat each other and the Tribunal with courtesy and respect. Parties are allowed to engage in zealous advocacy but must not cross the line into inflammatory or abusive conduct (see *Constantinescu v. Correctional Service Canada*, 2019 CHRT 49 at paras 145–161; and *Martins et al. v. Dehal*, 2026 ONSC 185 at paras 19–22.) I do not find it helpful to issue a special decorum directive when the parties are bound by the principles set out in this case law.

[39] While Dr. Attaran may certainly have engaged in zealous advocacy, I do not believe that he has crossed the line into abusive behaviour in his submissions to date. When appropriate, I will continue to ask the parties to bring down the temperature in case management conference calls or at the hearing. I will also strictly enforce rules against abusive behaviour as the Tribunal moves toward hearing witness testimony in this case.

IV. ORDER AND DIRECTIONS

[40] For the reasons set out above, I make the following orders and directions:

- 1) All of the First Hearing Evidence will be admitted once the issue of appropriate redactions has been determined, with the exception of the following:
 - a. The transcript and audio recording of the testimony of Glen Bornais and Exhibits 91–129 which were admitted through Mr. Bornais' testimony; and
 - b. The transcript and audio recording of the testimony of Professor Michael Haan and Exhibits 130–154 which were admitted through Professor Haan.
- 2) The transcript and audio recording of the testimony of Mr. Bornais and Professor Haan may not be used by any party for any purpose in this redetermination.

- 3) The Respondent may present one or more witnesses in this redetermination to testify to the matters to which Mr. Bornais testified in the first hearing. They may also tender the documents that had been identified as Exhibits 91–129 through any such witness(es).
- 4) The Respondent may put forward Professor Daniel Hiebert as a witness to replace Professor Haan. I will hear the objections that Dr. Attaran and the Commission have to qualifying Professor Hiebert as an expert witness at the appropriate time. The Respondent may seek to tender the documents identified as Exhibits 130–154 in the first hearing through Professor Hiebert or any other permitted witness.
- 5) The Respondent's request that I issue a "decorum directive" akin to the one issued by the former Chairperson is denied.
- 6) I will address this issue of redactions and confidentiality orders with the parties either in writing or in my next case management conference call with them.

Signed by

Jo-Anne Pickel
Tribunal Member

Ottawa, Ontario
February 16, 2026

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: February 16, 2026

Motion dealt with in writing without appearance of parties

Written representations by:

Dr. Amir Attaran, self-represented

Caroline Carrasco, for the Canadian Human Rights Commission

Stephen Kurelek and Aman Owais, for the Respondent