

Federal Court of Appeal**Cour d'appel fédérale**

CANADA

Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur**TO / DESTINATAIRE(S) :****1. Name / Nom : Mr. Christopher Wayland & Mr. Steven Tanner****Facsimile / Télécopieur : 1-416-868-0673 Telephone / Téléphone : 1-416-601-8200** **As requested / tel que demandé** **Left voice message / suite au message vocal**

2. Name / Nom : Mr. Raj Dhir & Mr. Sunil Gurmukh**Facsimile / Télécopieur : 1-416-326-9867 Telephone / Téléphone : 1-416-314-4519** **As requested / tel que demandé** **Left voice message / suite au message vocal**

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Federal Court of Appeal



CANADA

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FROM / EXPÉDITEUR : Rana Farah
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SUBJECT / OBJET :
Court File No. / N° du dossier de la Cour: A-145-12
Between / entre: ATTORNEY GENERAL OF CANADA v.
CANADIAN HUMAN RIGHTS COMMISSION ET AL
Enclosed is a true copy of the Orders (2) of: Trudel J.A.
dated / daté du January 22, 2013

COMMENTS / REMARQUES :

If you require a certified copy of the above-noted decision, please advise and one will be forwarded to you by regular mail. / Si vous avez besoin d'une copie certifiée de la décision susmentionnée, veuillez nous en aviser et nous vous en enverrons une par courrier.

Pursuant to section 20 of the Official Languages Act all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la Loi sur les langues officielles, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130122

Docket: A-145-12

Ottawa, Ontario, January 22, 2013

Present: TRUDEL J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY,
ASSEMBLY OF FIRST NATIONS, CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL

Respondents

ORDER

(Motion for Leave to Intervene by the
Canadian Civil Liberties Association)

HAVING considered the material submitted by the Canadian Civil Liberties Association (CCLA) in support of its Motion for Leave to Intervene in the within appeal; and

HAVING noted that the respondents consent to the Motion while the appellant opposes said Motion;

HAVING considered the appellant's grounds of objection to the proposed intervention; and

HAVING reviewed the submissions already filed on record by the appellant and respondents;

I am of the view that the participation of the CCLA will assist the Court regarding the proper analysis under section 5(b) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA). CCLA has a perspective distinct from that being advanced by the other parties which is relevant to the questions at issue;

As a result, **IT IS ORDERED AS FOLLOWS:**

- I. The Canadian Civil Liberties Association is granted leave to intervene in this appeal with the following limited rights:
 - (a) CCLA is entitled to receive all materials filed in this appeal;
 - (b) CCLA is required to serve, within 15 days from this Order, a memorandum of fact and law not to exceed 10 pages. All other prescription of the Rules as to font and format shall be respected;
 - (c) the only issue to be discussed in CCLA's memorandum of fact and law shall concern the proper analysis of a claim pursuant to section 5(b) of the CHRA as per paragraph 17 of CCLA's motion reproduced below (or paragraph 4 of its memorandum):

17. Specifically, and distinct from the submissions made by the parties to this appeal, the CCLA will argue that the claims brought pursuant to section 5(b) of the CHRA should be analyzed using the following two-step procedure:

Step 1:

The individual must prove that he or she has been adversely impacted by a distinction, made on one or more of the prohibited grounds of discrimination, in respect of access to goods, services, facilities or accommodation customarily available to the general public.

To determine whether the individual has been adversely impacted the Court must apply a purposive and contextual approach to discrimination and is not limited to a formal equality analysis.

Adverse impact may be established through reference to the existence of:

- Stereotypes.
- Differential outcomes and impact on the affected group.
- A comparison to other recipients of the service.
- A comparison to other service providers, including in this case provincial governments.

The Court must consider the purposive and contextual approach to discrimination, being mindful not to place a burden on the claimant that is unduly onerous or unworkable in the circumstances.

Step 2:

Where the tribunal is satisfied that a case of adverse impact has been established, the onus is on the respondent to show that there is a compelling justification for the distinction.

2. CCLA shall accept the file in its current state including the hearing date to be set by the Judicial Administrator;

3. The time for the argument of counsel for the CCLA shall be determined by the panel hearing the appeal, but counsel shall be prepared to limit oral submissions to not more than fifteen minutes;

4. CCLA shall seek no costs in appeal. Whether or not costs are awarded against CCLA shall be decided by the Court upon disposing of this appeal;

5. The style of cause shall be changed to add the Canadian Civil Liberties Association as intervener and hereafter all documents shall be filed under the amended style of cause.

"Johanne Trudel"

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130122

Docket: A-145-12

Ottawa, Ontario, January 22, 2013

Present: TRUDEL J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY,
ASSEMBLY OF FIRST NATIONS, CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL

Respondents

ORDER

(Motion for Leave to Intervene brought jointly by the
Ontario Human Rights Commission, Saskatchewan Human
Rights Commission and Nova Scotia Human Rights Commission)

HAVING considered the material submitted by the proposed interveners and the appellant's written submissions in light of the factors relevant to decide whether or not to grant leave to intervene; and

HAVING reviewed the submissions already filed on record by the parties, including the submissions of the Canadian Civil Liberties Association which has been granted leave to intervene in an Order issued this day;

IT IS ORDERED AS FOLLOWS:

The Motion is denied without costs.

"Johanne Trudel"

J.A.