

Federal Court



Cour fédérale

**Date: 20210113**

**Docket: T-1868-19  
T-1925-19  
T-709-20**

**Citation: 2021 FC 49**

**Ottawa, Ontario, January 13, 2021**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**IGOR STUKANOV**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] These applications for judicial review involve three decisions of the Canadian Human Rights Commission (Commission), refusing to consider complaints filed by the applicant, Mr. Stukanov. The Commission determined that Mr. Stukanov failed to establish a link between his complaints and a prohibited ground of discrimination under the *Canadian Human Rights Act*,

RSC 1985, c H-6 [*CHRA*], and decided not to deal with his complaints on the basis that they are frivolous, pursuant to subsection 41(1)(d) of the *CHRA*.

[2] The Commission acts as a gatekeeper to the Canadian Human Rights Tribunal, and fulfills a screening role: *Hartjes v Canada (Attorney General)*, 2008 FC 830 [*Hartjes*] at para 11; *Cooper v Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC), [1996] 3 SCR 854 at paras 52-53. Subsection 41(1)(d) of the *CHRA* provides that the Commission may decline to deal with a complaint if the Commission is of the opinion that the complaint is trivial, frivolous, vexatious or made in bad faith.

[3] Mr. Stukanov's complaints to the Commission related to: (a) the Canada Revenue Agency's (CRA) tax audits of a transaction involving his business (CRA Complaint); (b) the Canadian Intellectual Property Office's (CIPO) rejection of his patent application filed in 2007 (First CIPO Complaint); and (c) CIPO's rejection of his patent application filed in 2009 (Second CIPO Complaint).

[4] Mr. Stukanov commenced three applications for judicial review, seeking to set aside the Commission's decisions regarding the complaints above. All three applications involve the same parties and almost identical issues. Court file nos. T-1868-19 and T-1925-19, the applications that relate to the CRA Complaint and the First CIPO Complaint, were heard together. Although Court file no. T-709-20, the application that relates to the Second CIPO Complaint, was heard later, it involves similar underlying facts and issues, particularly in relation to the First CIPO

Complaint. Due to the significant overlap, and as I see no prejudice in doing so, I have decided to issue one set of reasons, to be filed in each file.

[5] Mr. Stukanov alleges that the Commission's decisions should be set aside. He alleges that the Commission breached procedural fairness, and that the Commission's decisions were unreasonable.

[6] For the reasons below, Mr. Stukanov has not established that the Commission breached procedural fairness or unreasonably rejected his complaints. These applications for judicial review are dismissed.

## II. **Facts**

### A. *T-1868-19: CRA Complaint*

[7] Mr. Stukanov filed the CRA Complaint on May 9, 2019, alleging that the CRA discriminated against him in the provision of services by subjecting him to adverse differential treatment, contrary to section 5 of the *CHRA*. Mr. Stukanov alleged that the CRA identified a business transaction that he made in 2016 as suspicious, and audited that transaction three times between 2016 and 2018. He demanded an explanation from the CRA to justify its actions, but none was provided.

[8] The CRA Complaint alleged that three prohibited grounds of discrimination—citizenship, ethnicity, and country of origin—were factors in the CRA’s adverse differential treatment. To support his claim, Mr. Stukanov relied on the following as evidence of discrimination:

- i. “statistical evidence” that the CRA audited him more than it normally audits taxpayers in relation to the same transaction or issue;
- ii. popular beliefs, prejudices, and stereotypes that people of some ethnicities are less honest on their taxes than people of other ethnicities, and that taxpayers with some countries of origin are less honest on their taxes than others; and
- iii. the CRA did not justify its actions, and thus had hidden intent.

[9] Mr. Stukanov argued that since the CRA Complaint was supported by three different and independent bases, there were reasonable grounds to support a link between the adverse treatment and a prohibited ground of discrimination.

[10] On August 1, 2019, a Commission investigator prepared a report, referred to as a Section 40/41 Report, recommending that the Commission not deal with the CRA Complaint. The investigator found that Mr. Stukanov’s allegations were bald assertions, and that he did not offer any information or facts to support his allegations of the CRA’s differential treatment based on national or ethnic origin. The investigator determined Mr. Stukanov had not demonstrated a reasonable basis for believing the CRA’s conduct towards him was discriminatory under the *CHRA*, and had not established a link to a prohibited ground of discrimination under the *CHRA*. The investigator concluded it was plain and obvious that the CRA Complaint could not succeed.

[11] Mr. Stukanov was given an opportunity to respond to the Section 40/41 Report. His submissions in response alleged several errors, including that the investigator's statements were false because they contradicted a "mathematical proof" that a link exists between the CRA's actions and a prohibited ground of discrimination. To present mathematical proof, Mr. Stukanov subjectively assigned to each of the three items of evidence listed above, an assumed mathematical probability that a prohibited ground of discrimination was or was not a factor in the alleged evidence of adverse differential treatment, and then calculated a mathematical probability for the full set of three items to arrive at a greater than 50% probability that discrimination was a factor.

[12] By letter dated October 27, 2019 (Commission's CRA Decision), the Commission informed Mr. Stukanov that it had decided not to deal with the CRA Complaint because it is frivolous.

B. *T-1925-19: First CIPO Complaint*

[13] Mr. Stukanov filed the First CIPO Complaint on August 19, 2019, alleging that CIPO discriminated against him in the provision of services by subjecting him to adverse differential treatment, contrary to s. 5 of the *CHRA*. Mr. Stukanov alleged that CIPO engaged in acts of differential treatment in examining, and ultimately rejecting, his Canadian patent application filed in 2007.

[14] The First CIPO Complaint alleged that three prohibited grounds of discrimination—citizenship, ethnicity, and country of origin—were factors in CIPO's adverse differential

treatment. To support his claim, Mr. Stukanov relied on the following as evidence of discrimination:

- i. “statistical evidence” showing CIPO accepted more patent applications from individuals whose country of origin is not Canada;
- ii. popular beliefs, prejudices, and stereotypes that people of some ethnicities should be treated differently than people of other ethnicities;
- iii. CIPO took longer to respond to Mr. Stukanov’s communications than the average time of 6 months;
- iv. CIPO took longer to examine his patent application than the average time of 3 years;
- v. CIPO referred more of his patent applications to the Patent Appeal Board than the average (3 out of the 8 applications that he filed in Canada); and
- vi. CIPO refused to refer this particular patent application to the Patent Appeal Board.

[15] Mr. Stukanov argued that since the First CIPO Complaint was supported by six different and independent bases, there were reasonable grounds to support a link between the adverse treatment and a prohibited ground of discrimination.

[16] On August 30, 2019, a Commission investigator prepared a Section 40/41 Report recommending that the Commission not deal with the First CIPO Complaint. The investigator found that a complaint requires more than a statement or bald assertion that conduct is discriminatory and that Mr. Stukanov had not provided information, beyond speculation, to

support his allegation that CIPO denied him a service on the basis of national or ethnic origin. The investigator also found the allegations that CIPO treated him differently and the general claim regarding popular beliefs and prejudices did not draw a sufficient connection or link between CIPO's actions and Mr. Stukanov's national or ethnic origin. The "statistical evidence" that CIPO issues more patents to inventors whose country of origin is not Canada did not establish that CIPO refused Mr. Stukanov's patent application on the basis of his Canadian citizenship. The investigator concluded it was plain and obvious that the First CIPO Complaint could not succeed.

[17] Mr. Stukanov was given an opportunity to respond to the Section 40/41 Report. His submissions in response alleged twelve errors in the report. Mr. Stukanov also attached a "mathematical proof" that a link exists between CIPO's actions and a prohibited ground of discrimination. To present mathematical proof, Mr. Stukanov subjectively assigned to each of the six items of evidence listed above, an assumed mathematical probability that a prohibited ground of discrimination was or was not a factor in the alleged evidence of adverse differential treatment, and then calculated a mathematical probability for the full set of six items to arrive at a greater than 50% probability that discrimination was a factor.

[18] By letter dated November 6, 2019 (Commission's First CIPO Decision), the Commission informed Mr. Stukanov that it had decided not to deal with the First CIPO Complaint because it is frivolous.

C. *T-709-20: Second CIPO Complaint*

[19] Mr. Stukanov filed the Second CIPO Complaint on February 5, 2020, alleging that CIPO discriminated against him in the provision of services by subjecting him to adverse differential treatment, contrary to section 5 of the *CHRA*. Mr. Stukanov alleged that CIPO engaged in acts of differential treatment in examining, and ultimately rejecting, his Canadian patent application filed in 2009.

[20] The Second CIPO Complaint alleged that three prohibited grounds of discrimination—citizenship, ethnicity, and country of origin—were factors in CIPO’s adverse differential treatment. Mr. Stukanov relied on twelve items of evidence supporting his claim of discrimination. Mr. Stukanov argued that since the Second CIPO Complaint was supported by twelve different and independent bases, there were reasonable grounds to support a link between the adverse treatment and a prohibited ground of discrimination.

[21] On February 26, 2020, a Commission investigator prepared a Section 40/41 Report recommending that the Commission not deal with the Second CIPO Complaint. The investigator found that Mr. Stukanov’s allegations did not draw any connections to his national or ethnic origin, and that Mr. Stukanov did not show that CIPO’s refusal to grant a patent was linked to a prohibited ground of discrimination. The investigator found Mr. Stukanov did not meet his obligation to provide information, beyond speculation, to support his allegation that CIPO denied him a service on the basis of national or ethnic origin, and noted that having a reasonable basis for a complaint requires more than a statement or bald assertion that the conduct is



discriminatory. The investigator concluded it was plain and obvious that the Second CIPO Complaint could not succeed.

[22] Mr. Stukanov was given an opportunity to respond to the Section 40/41 Report. His submissions in response alleged that the report was defective due to twelve serious factual, legal, and logical errors. Mr. Stukanov alleged that his position was supported by “mathematical proof” that a link exists between CIPO’s actions and a prohibited ground of discrimination, with 99.9% certainty. Mr. Stukanov also attached an appendix with twelve items of evidence including “statistical evidence”, similar to the type of evidence relied on in the First CIPO Complaint, and allegedly demonstrating discrimination by CIPO.

[23] By letter dated April 15, 2020 (Commission’s Second CIPO Decision), the Commission informed Mr. Stukanov that it had decided not to deal with his complaint because it is frivolous.

D. *Previous Proceedings*

[24] These three applications for judicial review are not the first applications for judicial review commenced by Mr. Stukanov. He also sought judicial review of the Commission’s refusal to deal with a previous complaint, initially filed with the Commission in May 2017 and re-submitted in June 2017, that CIPO discriminated against him in rejecting the patent application he filed in 2007. The Commission refused to deal with the 2017 complaint on the basis that it was frivolous under subsection 41(1)(d) of the *CHRA*. It appears that the same patent application, filed in 2007, is the subject of what has been defined herein as the First CIPO Complaint.

[25] Mr. Stukanov's application for judicial review was dismissed: *Stukanov v Canada (Attorney General)*, 2018 FC 854. The Federal Court of Appeal dismissed his appeal: *Stukanov v Canada (Attorney General)*, 2019 FCA 38.

[26] Mr. Stukanov also commenced a statutory appeal in this Court, seeking to overturn the Commissioner of Patents' decision to refuse his patent application filed in 2012. Mr. Stukanov's statutory appeal was dismissed: *Stukanov v Canada (Attorney General)*, 2018 FC 1264. The Federal Court of Appeal dismissed his appeal: *Stukanov v Canada (Attorney General)*, 2019 FCA 278. Mr. Stukanov sought reconsideration of the Federal Court of Appeal's decision, and the Federal Court of Appeal determined there was no basis to reconsider its judgment: *Stukanov v Canada (Attorney General)*, 2019 FCA 308.

### III. Issues and Standard of Review

[27] There are two issues that arise on these applications for judicial review:

- A. Did the Commission breach procedural fairness?
- B. Are the Commission's decisions not to deal with Mr. Stukanov's complaints unreasonable?

[28] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], the Supreme Court set out a revised framework for the standard of review analysis. The analysis begins with a presumption that the reasonableness standard applies unless a different standard is required by a clear indication of legislative intent or by the rule of law: *Vavilov* at para 10.

Neither exception applies in the present case, and there is no basis for derogating from the

presumption of reasonableness. This is consistent with pre-*Vavilov* decisions, which held that a review of the Commission's refusal to deal with an applicant's complaint is a discretionary decision and is reviewable according to the reasonableness standard: *Walsh v Canada (Attorney General)*, 2017 FC 451 at paras 22-23; *Hartjes* at para 20.

[29] Issues of procedural fairness are reviewable on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43.

#### IV. Analysis

##### A. *Procedural Fairness*

[30] Mr. Stukanov submits the Commission breached procedural fairness in multiple ways.

[31] He alleges the Commission failed to consider his submissions in response to the Section 40/41 Reports in a neutral and unbiased manner, arguing that the Commission ignored the objective mathematical evidence that he submitted. He argues that the Commission should have prepared new Section 40/41 Reports or explained why the errors that he identified in the Section 40/41 Reports were not critical. Mr. Stukanov also alleges the Commission provided no record of the decisions or transcript of the meetings during which the decisions were made, despite his repeated requests for such documents, and as a result, he asserts the decisions were made in secrecy and were not open, fair, or impartial. He also alleges that the decisions did not follow the Commission's own procedures and requirements, as there was no quorum or vote, and the

decisions were not legitimate, as the Commission's letters signed by a registry official did not constitute legal documents.

[32] I find that the Commission did not breach procedural fairness.

[33] As noted by the respondent, Mr. Stukanov was given an opportunity to respond to the Section 40/41 Reports, which the Commission stated that it considered before rendering its decisions. I am not persuaded that the Commission failed to consider Mr. Stukanov's responding submissions in a neutral and unbiased manner. For the reasons explained in the analysis of the reasonableness of the decisions, below, the Commission did not ignore objective mathematical evidence. The alleged errors that Mr. Stukanov identified in his responses to the Section 40/41 Reports were disagreements with the investigator's findings, and reiterations of the submissions he made in his initial complaints. There were no new submissions that were sufficiently material or significant as to require a specific response from the Commission. A reasonable person would not conclude that the failure to order new reports gave rise to a reasonable apprehension of bias.

[34] Mr. Stukanov has not established any irregular procedure, such as the requirement for a quorum or vote. The lack of a record of the decisions or a transcript of the meetings during which the decisions were made does not constitute a breach of procedural fairness. The decisions themselves are the record. The reasons supporting the Commission's decisions are not secret, and they demonstrate that each decision was made fairly and in accordance with the law, based on the information Mr. Stukanov submitted.

[35] Furthermore, as the respondent correctly notes, no breach of procedural fairness arises from the communication of the Commission's decisions by way of letter, signed by a registry official. The Federal Court of Appeal dispensed with a similar argument in *Stukanov v Canada (Attorney General)*, 2019 FCA 38 at paragraph 7, where it held, "there is no ground to doubt that the Commission did decide the matter for the reasons expressed in the letter." In my view, each of the three letters constitutes a proper decision of the Commission.

[36] I find that the Commission did not breach procedural fairness in rendering the Commission's CRA Decision, the Commission's First CIPO Decision, or the Commission's Second CIPO Decision.

#### B. *Reasonableness of the Decisions*

[37] Mr. Stukanov disagrees with the Commission's decisions that his complaints are frivolous, and submits the Commission's decisions are unreasonable. Mr. Stukanov alleges the Commission relied on Section 40/41 Reports that contained multiple defects and deficiencies, including legal errors, and as a result, the Commission's decisions are also deficient and cannot stand: *Sketchley v Canada (Attorney General)*, 2004 FC 1151 at para 56 (citing *Kollar v Canadian Imperial Bank of Commerce*, 2002 FCT 848 at para 40); *Sanderson v Canada (Attorney General)*, 2006 FC 447 at para 46. According to Mr. Stukanov, the Section 40/41 Reports fail to explain the logic used to arrive at the decision not to deal with each complaint, and fail to present valid arguments supporting the decisions. He also questions the Commission's competence, arguing that the Commission did not understand the relevant law or facts, appreciate the legal requirements for accepting a complaint, or understand his evidence

establishing a causal link to prohibited grounds of discrimination. Mr. Stukanov asserts that a complaint is not frivolous if there is at least a possibility that a link between the alleged acts of discrimination and a prohibited ground of discrimination may be discovered in an investigation, and asserts that he submitted multiple, independent bases providing evidence of discrimination in each of the CRA Complaint, the First CIPO Complaint, and the Second CIPO Complaint. He argues that the evidence establishes a causal link between the adverse differential treatment and prohibited grounds of discrimination, and that the Commission's decisions were unreasonable.

[38] In my view, the Commission properly considered each of Mr. Stukanov's complaints, and reasonably exercised its discretion in declining to deal with them.

[39] Where the Commission exercises its discretion under section 41(1)(d) of the *CHRA*, the investigator's Section 40/41 Report is deemed to constitute the Commission's reasons for its decision not to deal with the complaint: *Love v Canada (Privacy Commissioner)*, 2015 FCA 198 [*Love (FCA)*] at para 10; *Sketchley v Canada (Attorney General)*, 2005 FCA 404, [2006] 3 FCR 392 at para 37; *Herbert v Canada (Attorney General)*, 2008 FC 969 at para 26.

[40] The test to be applied under paragraph 41(1)(d) of the *CHRA* is whether it is "plain and obvious" the complaint cannot succeed, assuming the facts alleged in the complaint are true: *Love (FCA)* at para 23 (citing *Canada Post Corp v Canada (Human Rights Commission)* (1997), 1997 CanLII 16378 (FC), 130 FTR 241 at paras 4-5); *Hérolde v Canada (Revenue Agency)*, 2011 FC 544 at para 35; *Keith v Canada (Correctional Service)*, 2012 FCA 117 at paras 50-51. However, the Commission is entitled to reject bald allegations of discrimination, such as a

complaint that is based on speculation rather than material facts: *Boiko v National Research Council*, 2010 FC 110 at para 36. A complainant must present material facts that are capable of establishing a link between the alleged discriminatory acts and a prohibited ground of discrimination: *Hartjes* at para 23. A complainant cannot merely assert that such a link exists.

[41] The Commission reasonably determined that Mr. Stukanov failed to put forward information capable of establishing a link between the alleged actions of the CRA or CIPO and his ethnicity or country of origin: *Hartjes* at para 30.

[42] In order to establish a link between adverse treatment and a prohibited ground of discrimination, a claimant must do more than demonstrate membership in a protected group and the existence of general prejudices against the group: *Hartjes* at paras 28 and 30. The existence of general stereotypes—for example, Mr. Stukanov’s reliance on popular beliefs, prejudices, and stereotypes that “people of some ethnicities are less honest on their taxes”, and that “people of some ethnicities should be treated differently than people of other ethnicities”—are not capable of establishing that the CRA discriminated against Mr. Stukanov on a prohibited ground when it audited his business transaction, or that CIPO discriminated against him on a prohibited ground when it rejected his patent applications.

[43] Moreover, in addition to the fact that Mr. Stukanov is not qualified to present opinion evidence as an expert, his alleged statistical and mathematical evidence is incapable of establishing the necessary link. In his previous judicial review proceeding against the Commissioner, *Stukanov v Canada (Attorney General)*, 2018 FC 854, this Court noted one of the

problems with the “statistical evidence” used to support Mr. Stukanov’s complaint. In that proceeding, Mr. Stukanov asserted that CIPO granted seven purportedly similar patents, suggesting that discrimination was a factor in CIPO’s refusal of his patent application. The Court noted that Mr. Stukanov confused an alleged correlation with causation (at para 19).

[44] In my view, there is a more fundamental problem with Mr. Stukanov’s alleged statistical evidence in the present cases: Mr. Stukanov has not shown any possible correlation between the bases for his complaints and a prohibited ground of discrimination. Correlation infers a relationship, or link—an interdependence between different variables or factors. Even if I were to accept that three audits of the same transaction is higher than what is “normal”, Mr. Stukanov offers nothing beyond speculation to suggest that being audited three times is correlated with discrimination based on national or ethnic origin. Similarly, even if I were to accept that CIPO took a longer time than the “average” to examine Mr. Stukanov’s patent applications, Mr. Stukanov offers nothing beyond speculation to suggest that the delay is correlated with discrimination. The fact that Mr. Stukanov’s patent applications were rejected while patents in a similar field were issued to non-Canadian inventors does not suggest a correlation between the rejection of his patent applications and his national or ethnic origin or his Canadian citizenship, as alleged in his complaints.

[45] With respect to the alleged mathematical proofs, as noted above, Mr. Stukanov subjectively assigned an assumed mathematical probability to each item of evidence, and then calculated a mathematical probability for the full set, arriving at a greater than 50% probability that discrimination was a factor in the CRA’s or CIPO’s alleged adverse differential treatment.



These proofs fail at the step where Mr. Stukanov subjectively assigns probabilities. For example, to calculate the probability of the “preferable hypothesis” that the prohibited grounds of discrimination were a factor in respect of the three items of evidence supporting the CRA Complaint, Mr. Stukanov used “subjective probabilities of the Appellant [that is, Mr. Stukanov]  $PW1=0.8$ ,  $PW2=0.9$ ,  $PW3=0.6$  as input”, and for the “contrarian hypothesis” that prohibited grounds of discrimination were not a factor, he used complementary inputs of “ $PW1=0.2$ ,  $PW2=0.1$  and  $PW3=0.4$ ”. In other words, Mr. Stukanov determined the inputs. It is not the Commission’s role to investigate hypothetical discrimination.

[46] No mathematical formula is necessary here—applying logic, it is apparent that nothing about the CRA’s or CIPO’s actions suggests a link to a prohibited ground of discrimination. Mr. Stukanov provided no particulars to establish how his alleged evidence of longer response times, rejected patent applications, or repeated tax audits were in any way linked to his national or ethnic origin. Relying on multiple items of evidence that are each incapable of establishing a link does not “add up” to proof of greater than a 50% probability or 99.9% certainty, that there is a link to a prohibited ground of discrimination.

[47] In my view, the Section 40/41 Reports demonstrate that the Commission’s findings were based on an internally coherent and rational chain of analysis, and its findings were justified in relation to the relevant facts and law: *Vavilov* at para 85. Mr. Stukanov’s “independent evidences of discrimination” constituted speculative statements. The Commission reasonably found Mr. Stukanov failed to provide sufficient information to support his claims that the actions of the CRA or CIPO were linked to his national or ethnic origin, or his Canadian citizenship. As

such, the Commission reasonably found that Mr. Stukanov's complaints were based on bald allegations, and that it was plain and obvious his complaints could not succeed.

V. **Conclusion**

[48] Mr. Stukanov has not established that the Commission breached procedural fairness, or unreasonably rejected his complaints. Accordingly, the applications for judicial review are dismissed.

[49] The respondent requests a lump sum award of costs in the amount \$500.00 for each application. In my view, this is reasonable. Costs are awarded in favour of the respondent. The total lump sum award is \$1,500.00.

**JUDGMENT in T-1868-19, T-1925-19 and T-709-20**

**THIS COURT'S JUDGMENT is that:**

1. The applications for judicial review, T-1868-19, T-1925-19, and T-709-20, are dismissed.
2. Costs are awarded to the respondent in the amount of \$500.00 for each matter, a total of \$1,500.00.

"Christine M. Pallotta"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1868-19  
T-1925-19

**STYLE OF CAUSE:** IGOR STUKANOV v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 31, 2020

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** JANUARY 13, 2021

**DOCKET:** T-709-20

**STYLE OF CAUSE:** IGOR STUKANOV v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 2, 2020

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** JANUARY 13, 2021

**APPEARANCES:**

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(ON HIS OWN BEHALF)

Benjamin Wong

FOR THE RESPONDENT

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