

Court File No. T -

FEDERAL COURT OF CANADA

B E T W E E N:

EMILIO ZAVARELLA

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION FOR JUDICIAL REVIEW
UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard in Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and necessary information may be obtained on request to the Administrator of this Court Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

December 9, 2022

Issued by: _____
Registry Officer

Address of Local office: 90 Sparks Street, 5th floor
Ottawa, ON K1A 0H9

AND TO: **The Attorney General of Canada**
Department of Justice
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

AND TO: **Canadian Human Rights Commission**
344 Slater St. 8th Floor
Ottawa, ON K1A 1E1

APPLICATION

1. This is an application for judicial review in respect of the decision of the Canadian Human Right Commission (the “Commission”) provided to the Applicant by letter dated November 9, 2022 (the “Decision”). In the Decision, the Commission dismissed the Applicant’s complaint of discrimination based on disability against Immigration Refugees and Citizenship Canada (the “Complaint”) pursuant to paragraph 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC, 1985, c. H-6 (“*CHRA*”) without addressing the key allegations raised by the Applicant. The Commission determined that an inquiry into the complaint was not warranted and declined to refer the complaint to the Canadian Human Rights Tribunal.

The Applicant makes application for:

- a) an order allowing this application;
- b) an Order remitting the matter back to the Commission for a fresh investigation by a new investigator and a new decision by the Commission based on a full record and in accordance with the reasons of this Honourable Court;
- c) the costs of this application; and
- d) such further and other relief as counsel may advise and this Honourable Court may allow.

The grounds for the application are:

- a) The Applicant’s Complaint was filed with the Commission on July 6, 2021 and alleges that Immigration Refugees and Citizenship Canada (the “Respondent”) discriminated against him because of his disability pursuant to sections 7 and 10 of the *CHRA*.
- b) The Applicant’s allegation of discrimination relates in large part to the Respondent’s conduct after the Applicant had disclosed his disability during the hiring process for a Foreign Service Officer position. Namely, the Respondent

provided the Applicant with false or misleading information which served to discourage and prevent him from accepting the job offer he ultimately received.

- c) The Complaint also alleged that the Respondent's policy requiring Foreign Service Officers to be "fully rotational" systemically discriminates against employees with disabilities pursuant to section 10 of the *CHRA*.
- d) The Commission conducted an investigation into the Complaint and submitted a final report on August 2, 2022, recommending that the Commission dismiss the Complaint (the "Final Report"). The reasoning in the Final Report is primarily based on the investigator's conclusion that the Applicant did not accept the offer and therefore the duty to accommodate had not been engaged. With respect to the section 10 complaint, the Final Report simply accepts the Respondent's assertion about the requirement of Foreign Service Officers to be fully rotational and does not engage in an analysis of whether the policy "...deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination..." within the meaning of section 10 of the *CHRA*.
- e) The Applicant made submissions to the Commission on September 6, 2022 taking issue with the analysis in the Final Report and providing information to show that some of the factual findings in the final report were contrary to the documentary evidence that was presented during the course of the investigation.
- f) The Commission's Decision refers to the Complaint, the Final Report and the submissions provided by the parties but does not provide reasons.
- g) In its decision, the Commission erred in law, inappropriately exercised its jurisdiction and/or based its decision on erroneous findings of fact that it made in a perverse or capricious manner in dismissing the Applicant's Complaint. Without limiting the generality of the foregoing, the Commission:
 - i) Unreasonably focused its analysis on the issue of whether the duty to accommodate had been engaged and failed to address the core issue raised by the Complaint of whether the Respondent adversely differentiated against the Applicant because of his disability when it discouraged him from accepting

the Foreign Service Officer position by providing him with false or misleading information during the hiring process.

- ii) Unreasonably failed to conduct any analysis and/or conducted an inadequate analysis of whether the Respondent's requirement that Foreign Service Officers be fully rotational "...deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination..." within the meaning of section 10 of the *CHRA*.
 - iii) Unreasonably accepted as accurate factual assertions of the Respondent which were directly contradicted by other information provided during the course of the investigation.
 - iv) Provided reasons that were insufficiently transparent, intelligible, and/or justified.
- h) The Applicant was denied natural justice and/or procedural fairness during the course of the Commission's process. Without limiting the generality of the foregoing, the Commission:
- i) Conducted an insufficiently thorough investigation when it failed to investigate the key issues of adverse differential treatment based on disability during the hiring process or whether the Respondent's requirement that Foreign Service Officers to be fully rotational "...deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination..." within the meaning of section 10 of the *CHRA*.
 - ii) Failed to give any or adequate consideration to information provided during the course of the investigation which contradicted claims made by the Respondent on key issues in the investigation.
 - iii) Failed to give any or adequate consideration to the submissions provided by the Applicant in response to the Final Report which demonstrated that the

investigator accepted as true information provided by the Respondent which was contradicted by the documentary evidence.

- i) Section 18.1 of the *Federal Courts Act*, rules 300-317 of the *Federal Courts Rules*, the provisions of the CHRA; and
- j) Such further and other grounds as the Applicant may advise and this Honourable Court may permit.

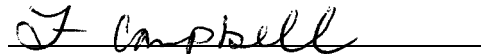
This application will be supported by the following material:

- a) The affidavit of the Applicant and/or another individual, together with exhibits attached thereto, to be sworn and filed in this Honourable Court;
- b) The material in the possession of the Commission, relating to the Report and the decision that is the subject of this Application; and
- c) Such further and other material as counsel may advise and this Honourable Court permit.

The Applicant requests that the Respondent complies with Rule 317 and send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Commission to the Applicant and to the Registry:

- a) The complete file in the possession of the Commission that is relevant to the decision that is the subject of this application.

Date: December 9, 2022



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