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F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE October 25, 2023 25 octobre 2023 Imrana Ahmed
Court File No. TOR	1

FEDERAL COURT OF APPEAL

BETWEEN:

AAREN JAGADEESH

Appellant

and

CANADIAN IMPERIAL BANK OF COMMERCE (CIBC)

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at the Federal Court of Appeal in Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

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

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

(Date)

Issued by: _____
(Registry Officer)

Address of local office: _____

TO: *(Name and address of each respondent)*

Mr. Victor G. Dodig
President and Chief Executive Officer
Canadian Imperial Bank of Commerce (CIBC)
Commerce Court
199 Bay Street
Toronto, Ontario. M5L 1A2

(Name and address of every other person required to be served)

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order of Madam Justice Pallotta of the Federal Court dated September 28, 2023, in Aaren Jagadeesh v. Canadian Imperial Bank of Commerce (CIBC) (T-731-22) by which the Appellant's judicial review application of the decision of the Canadian Human Rights Commission (the "Commission" or CHRC) dated March 16, 2022 and bearing the file number 20170548 was dismissed (the "Judgment").

THE APPELLANT ASKS that (*the relief sought*).

1. An order setting aside the decision of the Federal Court in Aaren Jagadeesh v. Canadian Imperial Bank of Commerce (CIBC) (T-731-22) and making the decision the Federal Court should have made by allowing the underlying judicial review application;
2. An order directing the Commission to refer the Appellant's complaint to the Chairperson of the Canadian Human Rights Tribunal for a hearing on the merits;
3. In the alternative, an order quashing or setting aside the Commission's decision and referring the matter back to a differently constituted Commission with the direction that it dealt with both the disability and sexual orientation discrimination complaint in full, in a time-bound, expeditious manner based on the principles of natural justice and 'justice delayed is justice denied' principle in accordance with the reasons of this Honorable Court;
4. A declaration that (contrary to law) the Commission (including its Investigation into the complaint and the Assessment Report, dated September 23, 2021, pursuant thereto) failed to conduct a proper Investigation into the evaluation of the Appellant's complaint;
5. A declaration that the Commission's investigator conducted a biased Investigation and is unfair, unjust, unethical, and unreasonable;
6. A declaration that the Commission's decision is unjust, unfair and unreasonable;
7. An order for the costs of this appeal and judicial review application in favor of the Appellant as against the Respondent;
8. Such further or other order(s) and/or relief as the Appellant may request the Court consider and deem appropriate and/or just and equitable in the circumstances; and,

9. The Appellant submits to this Honorable Court “Since his termination on 10 May 2016, he is unemployed” and as of date his wages since his termination is ZERO (\$0) because of CIBC. The initial complaint with the Commission was filed in April 2017. Till today, the Appellant is suffering the effects of discrimination, harassment and mental torture. The Appellant requests this Honorable Court to consider him for any interim financial relief from the Respondent which is just and equitable in the circumstances until his complaint is finally settled as per *Section 18.2 of the Federal Courts Act*.

THE GROUNDS OF APPEAL are as follows:

1(a). Madam Justice Pallotta (**the “Judge”**) erred in law by not considering the full scope of Federal Court’s order and direction in her analysis and Judgment.

Federal Court’s Direction [part of CTR].

2019 FC 1224 - Aaren Jagadeesh v. Canadian Imperial Bank Of Commerce (CIBC) (FC Jagadeesh) [emphasized]

... the Commission did not turn its mind to Mr. Jagadeesh’s submissions nor evidence at all... Doing so resulted in a breach in procedural fairness: FC Jagadeesh at para 62.

... the Commission, though it acknowledged the allegations of breach of procedural fairness and natural justice in Mr. Jagadeesh’s Notice of Application, declined to provide Mr. Jagadeesh’s rebuttal evidence as part of the certified tribunal record, asserting it was not before the decision maker and therefore shielded from review ...

... Mr. Jagadeesh explicitly referred to portions of this evidence - which he did not resubmit under the assumption it was already in the CHRC’s possession - in his Reply evidence to substantiate his allegations that the investigation was not thorough. Mr. Jagadeesh was not asking the Commission to re-conduct the investigation; instead, he directly pointed to parts of his Reply submissions he believed the Investigator overlooked or otherwise misconstrued, and requested the Commission consider this. ...

... In such circumstances, where the Applicant alleges the Investigator’s Section 40/41 Report is under-inclusive and where the Applicant points to evidence previously provided to substantiate that allegation, the Commission is **required** to consider the evidence. Failing to do so is further evidence that their review of his Reply submissions was not thorough. ... : **FC Jagadeesh at para 63.**

Accordingly, the question of whether the CHRC's investigation and decision were procedurally fair must be answered in the negative. :

FC Jagadeesh at para 64.

Conclusion:

Based on the Commission's lack of thoroughness in reviewing the grounds of Mr. Jagadeesh's complaint, I grant the application for judicial review. The decision under review is set aside and the matter is returned to the Commission to conduct a fresh investigation, with a different investigator, of Mr. Jagadeesh's complaint and render a new decision based on the full record. ... :**FC Jagadeesh at para 66.**

The Commission's New Assessment Report (AR) and Appellant's Post-AR-Submissions [part of CTR].

After the above Judgment (FC Jagadeesh), on 23 September 2021, the Commission's third investigator produced her new AR.

On 23 October 2021, in his post-AR submissions the Appellant informed the Commission that:

- As already informed the Commission (investigator), in my email *[CHRC email-September 27, 2021 8.54 AM], " ... the final decision of the CHRC decision makers is Life Changing, and has a direct effect on my Life, Liberty and Livelihood." As a victim of ruthless discrimination and harassment from my employer, waiting for justice for nearly 5 years, the outcome of my discrimination and harassment case & the impact it has on me is severe and life changing
[as at para, 28 post-AR-submissions] also at [paras, 7, 49, 66, 88, Memorandum of Fact and Law] [Transcription/Hearing Audio].

- The AR is procedurally unfair, biased, under inclusive, unreasonable, and also unethical.

- In spite having that option, the Commission denied his fully justified request for more pages for the his post-AR-submissions **[Exhibit P]**

- To show that the AR is under-inclusive and unfair, he pointed to the most relevant evidences, references, and proof from his complete evidentiary record (full record), which was provided, and already with the Commission.

- He gave the details of the 'full record' including specific information on crucial emails and documents, and requested the Commission to consider

his evidentiary record referenced and pointed to in those 10 pages as per the directions of the Federal Court (FC Jagadeesh, para63).

Without considering the Court's direction and the 'full record', in its Record of Decision dated 15 March 2022, the Commission endorsed the Investigator's AR, and without giving reasons dismissed the Appellant's complaint for the second time. Most crucial evidences material to the outcome of the case were not even considered by the Commission.

Few Examples: The Commission did not consider crucial material evidence

1. *[Rebuttal Evidence, page 51-52]: Diagnosis and confirmation of the Appellant's voice disability by CIBC-recommended medical specialist.
2. *[Rebuttal Evidence, CIBC Emails Pgs 28-29]: Showing how CIBC managers were forcing the Appellant to do 'outbound calls full-time', in spite of doctors advise and Appellant's health and how the Appellant was telling his managers what he can do and what he can't do medically.
3. *[CHRC email: February 21, 2021 8:01 PM]: Among all other important details, this email also explained how the investigator was forcing the Appellant to finish the interview and declined to give him an opportunity to fully present his case in spite of his voice disability. The Appellant was literally begging her saying "I want to have an opportunity to give my full evidence please". Also explained Investigator's 'several attempts' to misconstrue his evidence and the adverse impact of CIBC's false entries on the Appellant's ROE's **[Exhibit N][Exhibit G]**
4. *[Rebuttal Evidence page 7-8 IIb corroborative evidence]: Included details of 'proof of prima facie discrimination' and adverse effects, how CIBC was forcing the Appellant to do outbound calling during STD, against doctor's advise, and how CIBC cut his salary and declined to pay for his medical breaks **[Exhibit L]**
5. *[CHRC email: August 30, 2020 11: 53 PM Answer5 and, Para 40]: CHRC Email-Shows the full evidential record of how CIBC was manipulating Appellant's Statistics, and how CIBC denied him jobs and work accommodation **[Exhibit M]**
6. *[Respondent's Evidence -List of Exhibits #2 February 2015 WAR]: Appellant's first CIBC Workplace Accommodation Request Form (WAR1) Details filled also included: how the Appellant was unable to have continuous conversations for 6-8 hours/day, and informing CIBC that he is ready to serve CIBC in any capacity other than on phone with customers, Ex: Increasing Revenue/ Productivity Efficiency/Computer Software/Quality Assurance. Change requested as soon as possible-As per Doctor's Advise **[Exhibit A]**

7. *[Respondent's Evidence -List of Exhibits #4 July WAR]:

Appellant's second CIBC Workplace Accommodation Request Form (WAR2) Details filled also included: Dr. Hands has confirmed that he has 'Muscle Tension Dysphonia' ... he is unable to read long disclosures ... unable to talk to customers for extended periods of time on phone due to severe pain ... his PRESENT JOB is BASICALLY 'HIS VOICE' ... Because of severe pain, cough, & dryness of throat he is not able to do any Sales & have conversation on phone. As an Electrical Engineer and Technologist with experience in Revenue Generation, Computer Hardware /Software, Technical Analysis, Face-to-Face Selling, he can perform successfully in any ... with very little initial training. He is trainable & keeping Toronto as base, willing to travel for business Accommodation need - Immediate -suggested by Doctors...suggested by CIBC Health Dept. **[Exhibit D]**

8. *[CIBC email: April16, 2015 11.36 AM pg 44]: included details of 'proof of prima facie discrimination' and how, even during his Short Term Disability (STD), CIBC forced him to make outbound calls, which was against doctors advise and injurious to his health and adverse effects. **[Exhibit B]**

9. *[CIBC email: July 20, 2015 14.20 PM pg 40 #6]: Included details of 'proof of prima facie discrimination' and how, even during his STD, as on July 20, CIBC forced him to make outbound calls, which was against doctors advise and injurious to his health. **[Exhibit C]**

The Commission did not comply with the reasons and findings of the Judgment (FC Jagadeesh) allowing the judicial review, as well as with the directions or instructions explicitly stated by the reviewing court in its conclusions.

1(b). The Commission committed an error of law by failing to consider evidence (crucial and material to the outcome) that the law requires it to consider.

1(c). The Commission erred in law by not considering Federal Court's order and direction in its analysis and Decision.

The Appellant highlighted this issue in his Notice of Application, Memorandum of Fact and Law and in his submissions to the Court (both oral and written).

Also, the Appellant informed the Judge about his voice disability and his needs for more time to present his full evidence slowly, drinking water in between.

[Transcript / Hearing Audio] [Memorandum of Fact and Law].

And, the Judge erred in law by not considering the full scope of Federal Court's order and direction in her analysis and Judgment.

2. Prima Facie Disability Discrimination: Applying the proper legal test for 'prima facie disability discrimination', the Appellant meets all the requirements of prima facie test as prescribed by the Honorable Supreme Court of Canada. The Judge erred in law or alternatively, made errors of mixed fact and law, or, extricable question of law, on the issue of his prima facie disability discrimination in concluding otherwise. In particular:

2(a). The Judge erred by failing to consider all of the evidence in relation to Appellant's prima facie disability discrimination in her analysis and Judgment.

2(b). The Judge erred in dismissing Appellant's Judicial Review application, even though there was prima facie evidence before the Court.

2(c). The Judge erred in misapprehending Appellant's conclusive proof of prima facie disability discrimination.

2(d). The Commission erred by failing to consider evidence (crucial and material to the outcome of the case) that the law requires it to consider.

2(e). The Commission erred by not considering Federal Court's order and direction in its analysis and Decision of Appellant's prima facie discrimination.

Test for establishing a prima facie discrimination.

As the Supreme Court of Canada explained in *Moore v. British Columbia (Education)*, 2012 SCC 61 at paragraph 33 [Moore]:

In his post-AR-submissions to the Commission (**paras, 45-50**), the Appellant has shown the conclusive proof based on the Supreme Court of Canada (SCC) test.

In his submissions (both Oral & Written), the Appellant has shown the complete proof to the Judge, and explained how he meets the SCC test for prima facie, and has highlighted the Commission's non-consideration of his prima facie proof, in spite of his request and complete evidence [**Transcript / Hearing Audio**].

(1) The Appellant has a prohibited ground of discrimination protected by the CHRA

[45] He had a disability within the meaning of the Act. (CHRA) - His disability was "Muscle Tension Dysphonia."

[46] Medical Evidence - Diagnosis and confirmation of his disability: First, Appellant's doctor diagnosed his illness in February 2015. CIBC asked him to go through CIBC's medical doctor Dr. Brown. Dr. Brown in turn recommended Medical Specialist Dr. Hands, who conducted a thorough and comprehensive

medical exam, Videostroboscopy evaluation, and several tests, and said:

"A diagnosis of 'muscle tension dysphonia' was confirmed." - "In addition to direct voice therapy, accommodations for the workplace were also recommended to facilitate progress." - "Ultimately, a break from his current telephone position would be ideal." - **"Without accommodations to reduce vocal demands, it is anticipated that inefficient voicing patterns will continue to be reinforced, which may prevent Mr. Jagadeesh from achieving maximum recovery."**

***[Rebuttal Evidence: page 51-52] [Emphasized]**

(2) The Appellant experienced an adverse impact—that is— he was treated differentially in the course of employment or harassed in respect of employment, pursuant to sections 7, 10 and 14 of the CHRA

[47] Upon his request for accommodation based on his doctor's recommendation, CIBC declined his request and closed his official Workplace Accommodation Request Form (WAR). Again, immediately after the Specialist's diagnosis, he requested for accommodation through a second WAR, and CIBC's report (as below - emphasized), declined his accommodation request again.

[48] CIBC's 'Report' said ... "Mr. Jagadeesh is ... performing non-telephone work since March 30, 2015 ... temporary job tasks include administrative duties, and tasks which do not rely on continuous and prolonged speaking as an essential duty ... duties that do not require continuous speaking for approximately five months to date ... **Therefore** there are no recommendation for accommodation solutions ... this file will be closed." This is how CIBC unjustly closed his file.

[49] The appellant showed and proved to the Commission that the CIBC Report was false and misguided using conclusive evidence which is already with the Commission in his Rebuttal evidence and gave the specific details of this crucial evidence (CIBC Pay stubs at pages 65-74, corroborative evidence at page 7-II b, and CIBC Emails: April 16, 2015 11.36 AM at page 44 and July 20, 2015 14.20 PM at page 40 #6. These evidences were marked for the Commission based on the Federal Court's direction, and the Appellant mentioned details of the Court's direction in his post-AR-submissions and requested the Commission to consider the same. The Commission was required to consider these evidences.

These evidences proved that the Appellant was forced to do 'outbound calling and continuous speaking on the phone' during the 5 months period (from approximately April 2015 to September 2015), negating the CIBC Report that said "Jagadeesh's duties did not require continuous speaking for five months".

[Exhibit E][Exhibit F]

These above mentioned crucial evidences also included details, showing how:

- The Appellant's BASIC pay was cut for essential 'Medical Breaks'
- The Appellant's senior manager went to the extent of changing the company procedure, to instruct the Appellant's manager to enter a 'no pay code into the system on the Appellant's profile to punish him for taking 'Medical Breaks'
- CIBC refused several requests for a non-phone based job as advised by doctors and forced him to do the same dangerous job which was injurious to his health
- CIBC paid him differently compared to all his colleagues, and never paid him incentive and bonus like his colleagues
- CIBC forced him to stay in office even when he was NOT paid, saying that is the CIBC rule

This CIBC report **became a trigger** for everything else that followed including:

- Continued discrimination, harassment, warning letters and finally his termination
- Based on this report, CIBC forced the Appellant to do 'outbound calling' full time, which was against the medical advice of his Doctor, CIBC-recommended Specialist Doctor, and was injurious to his health
- CIBC also used this report to decline him 'medical breaks' and pay for them.
- CIBC manipulated his daily stats by not considering medical breaks at all, and
- CIBC also cut his BASIC pay. **[Exhibit H] [Exhibit I] [Exhibit J]**

(3) The prohibited ground of discrimination (disability) was a factor in the adverse impact experienced

[50] The Appellant's Voice Disability was a major factor in Adverse Impact:

Because of his voice disability, he had to take medical breaks. His Job was basically his VOICE. Medically, he was unfit to do the job. CIBC was forcing him to do his job without taking medical breaks. He was struggling for breath between calls to meet CIBC targets. He could not risk losing his vocal cords. He had to take his 'medical breaks', so, he took. After his STD, CIBC never counted his medical breaks for daily STATS, such as WRAP TIME and ADHERANCE TIME. So, he had no way of meeting their STATS. CIBC said he was not meeting STATS and his performance was not satisfactory, and terminated his employment, and never paid his due benefits.

During the Court hearing, the Appellant explained details to the Judge including the SCC case law and FC case law [Transcript / Hearing Audio]

***Moore v. British Columbia (Education)*, 2012 SCC 61 at paragraph 33 (as in his Factum para, 76). In addition to details in his Factum, the appellant also**

read out some highlighted sections of TAB 20. Ottawa (City) v. Todd, 2022 FC 579 at paras, 69-70, 85-86.

76. As the Supreme Court of Canada explained in *Moore v. British Columbia (Education)*, 2012 SCC 61 at paragraph 33 [*Moore*]

[94] The test for establishing a case of discrimination is well known. As the Supreme Court of Canada explained in *Moore v. British Columbia (Education)*, 2012 SCC 61 at paragraph 33 [*Moore*]:

[33] ... to demonstrate *prima facie* discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under human rights statutes. If it cannot be justified, discrimination will be found to occur. (Emphasized)

TAB 20-Ottawa City v. Todd, para 85 has full details of Moore para 33...to demonstrate prima facie... required to show disability was a factor in his termination...was not required to show disability was the only or even primary reason for termination...also at para 86...under CHRA...direct evidence is not required to establish discrimination ... will consider if there exists a subtle scent of discrimination.

3. Compound Discrimination: The Judge made an error of law by misconstruing or misapplying the relevant legal tests to the Appellant's issue of intersecting or compound discrimination in her analysis and Judgment

3(a). The judge made an error of law in not considering the full scope of the Honorable Federal Court of Appeal's verdict in *Turner v Canada (Attorney General)*, 2012 FCA 159 [*Turner*]

3(b). The Judge erred in law by not considering the full scope of the case law in her analysis and Judgment while analyzing the Appellant's issue of intersecting or compound discrimination

3(c). The Judge erred in law or alternatively, made errors of mixed fact and law, or, extricable question of law, on the issue of compound discrimination

3(d). The Commission erred in law by assessing the disability complaint entirely separately from sexual orientation complaint.

3(e). The Commission committed an error by failing to consider evidence (crucial and material to the outcome of the case) that the law requires it to consider.

- In analyzing compound discrimination, in her Judgment at paras 47-48, the Judge is not considering the complete context of the Appellant's discrimination complaint. In Appellant's case, as in his initial complaint to the Commission, the discrimination, harassment, and mental torture was based on both his voice disability and his sexual orientation as a heterosexual person. As in his complaint, in addition to his disability discrimination, after the 15 September 2015 one-on-one meeting with his manager in which he refused to join their 'group' of gay/bisexual employees and managers, his discrimination, harassment and mental torture was intensified by his CIBC managers.

- In analyzing compound discrimination, in her Judgment at paras 47-48, the Judge is not considering CHRA 3.1. The Appellant's submissions to the Court (both oral and written) were also clearly focused on CHRA 3.1.

- In analyzing compound discrimination, in her Judgment at paras 47-48, the Judge is not considering the complete scope of *Turner v Canada (Attorney General)*, 2012 FCA 159 [Turner], in that the Judge is not applying the 'Radek test/factor' which is at Turner para 49 and the conclusion at para 50. The Judge is trying to interpret Turner in isolation (using para 49 only) without considering Radek at para 49, the CHRA 3.1 and the Conclusion at para 50.

- The Appellant has highlighted all these paras in his submissions to the Court in his Book of Authorities (**Tab 26-Turner paras 31 to 34 and also 48-50**)

- In his post-AR-submission to the Commission, as indicated, he had no space to include any more details and his request for more pages was denied [**Exhibit P**].

Moreover,

- With regard to the effect of both grounds, the Honorable Federal Court has already noted this (FC Jagadeesh based on Appellant's arguments and it says at para 25 (as in his Factum para 72):

[25] ... Mr. Jagadeesh clarified the discrimination he detailed in his complaint form stemmed from discrimination both on the grounds of disability and sexual orientation, and therefore the Investigator should have looked at both grounds of alleged discrimination as a source. ...

Also, at para 48 (FC Jagadeesh): He further asserts that the Investigator failed to look into whether he did not receive alternative job offers due to this discrimination on both grounds.

Therefore, all relevant details of Turner as shown above apply to my case also. Therefore, I believe, the Judge erred in law.

The Commission ignored Appellant's compound discrimination and dismissed his case without giving any reasons.

In his initial complaint to the Commission, the Appellant has informed the Commission of discrimination, harassment, and mental torture based on both his voice disability and his sexual orientation-as a heterosexual person.

At the same time, in spite of Commission's denial of his request (with full justification for more pages, even though it was option offered by the Commission), the Appellant in his post-AR-submission has given full details of

his complaint in a clear format at paras 6-25. The Appellant has also requested the Commission to consider Sections of CHRA apply to his case: 7, 10, and 14 - Discrimination based on: disability, sexual orientation, the combination of both, & harassment - including sexual harassment] at para 26. In addition to this, the Commission had the Judgment (FC Jagadeesh) in front of it. In spite of all this, the Commission ignored compound discrimination, decided not to apply CHRA 3.1, and dismissed his case without giving any reasons.

Therefore, I believe, the Commission erred in law by assessing the disability complaint entirely separately from sexual orientation complaint. And,

The Commission committed an error by failing to consider evidence (crucial and material to the outcome of the case) that the law requires it to consider.

4. Procedural Fairness and Natural Justice

1. Commission breached its duty of procedural fairness by failing to consider Appellant's 'full record' as directed by the Honorable Federal Court in its decision (FC Jagadeesh):

On 23 October 2021, in his Post-AR submissions the Appellant informed the Commission that:

-The AR is procedurally unfair, biased, under inclusive, unreasonable, and also unethical.

- In spite having that option, the Commission denied his fully justified request for more pages for the his post-AR-submissions **[Exhibit P]**

-To show that the AR is under-inclusive and unfair, he pointed to the most

relevant evidences, references, and proof from his complete evidentiary record (full record), which was provided, and already with the Commission.

-He gave the details of the 'full record' including specific information on crucial emails and documents, and requested the Commission to consider his evidentiary record referenced and pointed to in those 10 pages as per the directions of the Federal Court (FC Jagadeesh, paras 62-64, 66).

Without considering the Court's direction and the 'full record', in its Record of Decision dated 15 March 2022, the Commission endorsed the Investigator's AR, and without giving reasons dismissed the Appellant's complaint for the second time. Most crucial evidences material to the outcome of the case were not even considered by the Commission.

2. The Commission fails to address the following central and significant issues (as in 2(a)-2(d) below) in the Appellant's discrimination complaint. He had informed the Commission (and its Investigator) and requested the Commission to consider them. His post-AR-submissions (para 28—as below) detailed his request

[28] As already informed the Commission (investigator), in my email *[CHRC email-September 27, 2021 8.54 AM], " ...the final decision of the CHRC decision makers is Life Changing, and has a direct effect on my Life, Liberty and Livelihood." As a victim of ruthless discrimination and harassment from my employer, waiting for justice for nearly 5 years, the outcome of my discrimination and harassment case & the impact it has on me is severe and life changing.

2(a). The Commission breached its duty of procedural fairness by failing to apply CHRA 7, 10 and 14 to Appellant's discrimination complaint in spite of his specific request. However, the Commission's Assessment Report (AR) unfairly shows the application of only CHRA 7 to his discrimination complaint.

2(b). The Commission breached its duty of procedural fairness by failing to consider Appellant's 'Harassment' ground' including sexual harassment, in spite of his specific request. The Commission's Assessment Report (AR), considered only disability and sexual orientation grounds **[Exhibit K]**.

2(c). The Commission breached its duty of procedural fairness by failing to consider Appellant's sexual harassment and mental torture by CIBC, in spite of his specific request. The Commission's Assessment Report (AR), considered only disability and sexual orientation grounds **[Exhibit O]**.

2(d). The Commission breached its duty of procedural fairness by failing to consider Appellant's 'Compound discrimination ground (combination of disability and sexual harassment grounds)' in spite of his specific request.

The Commission's Assessment Report (AR), considered only disability and sexual orientation grounds.

2(e). The Commission breached its duty of procedural fairness by failing to consider Appellant's CHARTER RIGHTS in spite of his specific request. His discrimination complaint (Discrimination, Harassment, & Mental Torture) includes irreparable harm caused by his employer and both the CHRA & the CHARTER impose a duty to accommodate his disability needs, especially when his employer has created his disability.

3. The Appellant's prima facie disability discrimination

3(a). The Commission breached its duty of procedural fairness by failing to consider all of the evidence in relation to Appellant's prima facie disability discrimination in its analysis and Decision.

3(b). The Commission breached its duty of procedural fairness by dismissing Appellant's discrimination complaint, even though there was prima facie evidence before the it.

3(c). The Commission breached its duty of procedural fairness by misapprehending Appellant's conclusive proof of prima facie disability discrimination.

3(d). The Judge breached her duty of procedural fairness by failing to consider all of the evidence in relation to Appellant's prima facie disability discrimination in her analysis and Judgment.

3(e). The Judge breached her duty of procedural fairness by dismissing Appellant's Judicial Review application, even though there was prima facie evidence before the Court.

3(f). The Judge breached her duty of procedural fairness by misapprehending Appellant's conclusive proof of prima facie disability discrimination.

3(g). The Judge misapplied the standard of review of procedural fairness to the Appellant's Judicial Review application.

3(h). The Judge breached her duty of procedural fairness by failing to consider Appellant's CHARTER, delay and irreparable harm submissions.

5. Palpable and Overriding Error

As detailed in the Appellant's Memorandum of Fact and Law (at paras 92-94), the Commission's investigator committed a "palpable and overriding error", (in her Assessment Report at paras 48, 54 and 56) when concluding that "... Based on the foregoing, the evidence does not support that the respondent denied the complainant accommodation between February and September 2015, and therefore the analysis will not continue."

As described in the Appellant's "post-AR-submissions at paras 77-79", this conclusion by the investigator was flawed and without merit. As shown, the investigator ignored crucial objective evidence and came to wrong conclusion. The Appellant believes this is a "palpable error", and is the result of investigators' failure to make findings due to her complete disregard for the evidence. By ignoring both WARs, and contradicting her own findings in para 48, the Investigator came to this conclusion at paras 54, 56.

At the same time, the Appellant submits that this is also an "overriding error" because, after disregarding the crucial objective evidence (WAR), she concludes, stops analysis, and moves-on towards her final conclusion, recommending dismissing the Complaint. This error of the investigator affects the outcome of the case, and also her final conclusion. Therefore, the Appellant believes **this is a palpable and overriding error and is unreasonable.**

[Transcript / Hearing Audio] [Memorandum of Fact and Law]

6. Commission's unreasonableness

1. The Commission made an error by including reasons that fail to justify its decision on the Appellant's conclusive prima facie proof with full evidence. The Commission's decision is not justified, intelligent and transparent and **does not meet the Vavilov Standard (para 95) and is unreasonable.**

2. The Commission made an error by providing a decision, which is based on an unreasonable chain of analysis. When considered in light of the record the reasons provided for Appellant's prima facie proof contain fundamental gaps. This is unjustified and **does not meet the Vavilov Standard (para 96) and is unreasonable.**

3. The Commission made an error by not providing reasons on a critical point. The Commission's decision does not allow us to understand its reasoning on the Appellant's prima facie evidences and proof leaving unanswered questions that are central to his discrimination complaint. Given the serious consequences for

the Appellant, not providing responsive reasons that justify the decision, the Commission's decision is unjustified and **does not meet the Vavilov Standard (para 103) and is unreasonable.**

4. The Commission made an error by not meaningfully accounting for the central issues and concerns raised by the Appellant. The Commission did not consider Appellant's prima facie evidence meaningfully. The Commission's reasons are silent on this. This is unjustified and **does not meet the Vavilov Standard (paras 127-128) and is unreasonable.**

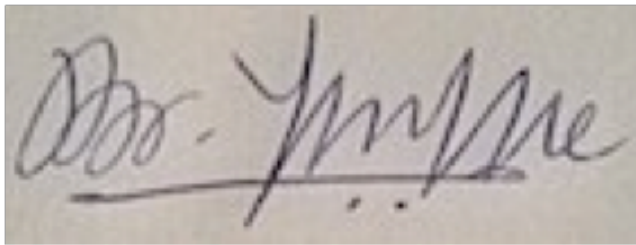
5. The Commission made an error by ignoring the crucial evidences in the Appellant's prima facie case, which is a fundamental issue of central importance to his case. The Commission's decision has a direct impact on Appellant's Life, Liberty and Livelihood. The Commission's reasons provided to the Appellant do not reflect the stakes. **This does not meet the Vavilov Standard (para 133) and is unreasonable.**

6. The Judge misapplied the standard of review of reasonableness to the Appellant's Judicial Review Application.

7. The Appellant proposes that this Appeal be held in Toronto.

8. The Appellant further proposes that this Appeal be heard on an expedited basis.

October 24, 2023

A handwritten signature in dark ink, appearing to read 'Aaren Jagadeesh', written over a horizontal line.

(Signature of solicitor or appellant)

AAREN JAGADEESH
(Self-Represented Appellant)

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SOR/2004-283, ss. 35 and 38