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| F              | FEDERAL COURT      | D             |  |
| I              | OF APPEAL          | É             |  |
| L              | COUR D'APPEL       | P             |  |
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|                | September 01, 2023 | É             |  |
|                | 01 septembre 2023  |               |  |
| Alexie Quesnel |                    |               |  |
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Court File No.: A-23-23

**FEDERAL COURT OF APPEAL**

B E T W E E N:

**ANDY MATOS**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

**NOTICE OF APPLICATION  
(Section 28 of the *Federal Courts Act*)**

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 at 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 other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-996-6795) 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.

September 1, 2023

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of  
Local office: \_\_\_\_\_

TO: Attorney General of Canada

AND TO: Federal Public Sector Labour Relations and Employment Board  
C.D. Howe Building  
West Tower, 6<sup>th</sup> Floor  
240 Sparks Street  
Ottawa, ON K1P 5V2

## APPLICATION

This is an application for judicial review in respect of the decision of Adjudicator Bryan Gray of the Federal Public Sector Labour Relations and Employment Board (the “Board” or the “FPSLREB”), rendered on August 3, 2023.

The decision concerns a set of grievances presented by the Applicant, pursuant to section 208 of the *Federal Public Sector Labour Relations Act*. The grievances alleged that the Applicant had been discriminated against when his employer, the Canada Border Services Agency, removed him from the “Primary Inspection Line” at the Ambassador Bridge and took away his defensive tools based on the results of a medical exam, which stated only that the Applicant was unfit to undergo “Control and Defensive Tactics” and firearms training courses, not that the Applicant was unfit for regular work on the Primary Inspection Line. The Applicant alleged he was discriminated against on the basis of age and disability, contrary to the Collective Agreement and the *Canadian Human Rights Act*.

By his decision, dated August 3, 2023, the Adjudicator dismissed the Applicant’s grievances.

### THE APPLICANT MAKES APPLICATION FOR:

- (a) An Order allowing this application for judicial review, with costs;
- (b) An Order setting aside the decision of the FPSLREB, dated August 3, 2023;
- (c) An Order remitting the matter back for reconsideration by a different Adjudicator in accordance with the directions of the Court; and
- (d) Such further and other relief as counsel may advise and this Honourable Court will permit.

**THE GROUNDS FOR THE APPLICATION ARE:**

- (a) The Board erred in law in its application of the test for *prima facie* discrimination, including, but not limited to, by failing to apply the principles applicable to establishing *prima facie* discrimination in human rights law;
- (b) The Board erred in law by ruling that taking away the Applicant's defensive tools and removing him from the Primary Inspection Line were not adverse impacts for the purposes of establishing *prima facie* discrimination;
- (c) The Board erred in its alternative assessment of the Applicant's claim for damages under subsections 53(2)(3) and 53(3) of the *Canadian Human Rights Act*, including, but not limited to, by finding that the Applicant did not experience significant pain and suffering and that the Respondent's discriminatory conduct was wilful, reckless or intentional;
- (d) The Board otherwise erred in law in arriving at its decision;
- (e) The Board violated the principles of natural justice or procedural fairness in the course of arriving at its decision;
- (f) The Board based its decision on erroneous findings of fact made in a perverse and capricious manner and without regard to the material before it; and
- (g) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

- (a) The Affidavit of the Applicant or his representative or such further affidavit, including the exhibits attached thereto;
- (b) The complete record of the material that was before the FPSLREB in respect of its decision, dated August 3, 2023;

- (c) Such further and other material as counsel may advise and this Honourable Court may permit.

**THE APPLICANT REQUESTS** pursuant to Rule 317 of the *Federal Courts Rules* that the FPSLREB send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the FPSLREB to the Applicant and to the Registry:

- (a) The full record of all material in the possession of the FPSLREB at the time of its decision, dated August 3, 2023.

Dated at Ottawa, this 1<sup>st</sup> day of September, 2023.



Per: **Andrew Astritis/Jessica Greenwood**

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**Solicitors for the Applicant**

**FEDERAL COURT OF APPEAL**

**B E T W E E N:**

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Solicitors for the Applicant