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Court File No.

FEDERAL COURT

Between:

CHRISTOPHER ANDREW ANTHONY WILLIAMS

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER S. 18.1 OF THE *FEDERAL COURTS ACT*, RSC 1985, C. F-7

NOTICE OF APPLICATION

TO THE RESPONDENT:

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

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 file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if 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 613-992-4238) 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.

Date:

Issued by:

(Registry Officer)

Address of local office:
Courts Administration Service
Thomas D'Arcy McGee Building
90 Sparks Street, Main Floor
Ottawa, ON
K1A 0H9

TO: **Respondent,**
Attorney General of Canada
Office of the Deputy Attorney General of Canada
294 Wellington Street
Ottawa, ON K1A 0H8

APPLICATION

This is an application for judicial review in respect of a decision by the delegate of the Commissioner of the Royal Canadian Mounted Police (RCMP), Gina Levesque, (the “Adjudicator”) pursuant to s. 37(c) of the *Commissioner’s Standing Orders (Grievances and Appeals)*, SOR/2014-289, in which the Adjudicator dismissed the Applicant’s appeal of denied representation on a grievance in accordance with subsection 47(2) of the *Commissioner’s Standing Orders (Grievance and Appeals)*. In her decision the Adjudicator determined that the Applicant had not established the requirements of standing. The decision of the Adjudicator is dated October 19, 2023 and was served on the Applicant by email on October 19, 2023.

THE APPLICANT MAKES APPLICATION FOR:

1. An order setting aside the decision of the Adjudicator, and remitting the Applicant’s underlying appeal to the RCMP for redetermination;
2. Costs of this application; and
3. Such further and other relief as the Applicant may request or this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

Background

1. The Applicant served for the RCMP for approximately 23 years, from February 26, 1996, until his medical discharge on February 6, 2019. He served in Saskatchewan (F Division), Alberta (K Division), and British Columbia (E Division), in both general duty policing and specialist units.
2. On April 13, 2018, the Applicant’s medical profile was changed to a permanent O6 (permanently disabled and unfit for any police duties) by a doctor working in RCMP Occupational Health Services. That doctor’s decision was approved by the Officer in Charge of “E” Division Occupational Health Services on April 16, 2018.
3. Within days of the April 13, 2018 decision and April 16, 2018 approval, on April 27, 2018, the RCMP initiated a process under the *Commissioner’s Standing Orders (Employment Requirements)* to medically discharge the Applicant based solely on the April 13, 2018 medical profile change.
4. On May 15, 2018, the Applicant submitted a grievance to the RCMP Office of Coordination of Grievances and Appeals (OCGA) contesting the decision of the “E” Division Occupational Health Services doctor and approval of that decision by

the Officer in Charge of “E” Division Occupational Health Services. The decision and approval to change the medical profile status to permanent O6 became the subject of a grievance (“the medical profile grievance”).

5. A preliminary recommendation to discharge the Applicant was presented on September 7, 2018. A recommendation to discharge was made on October 22, 2018. The Applicant was served with a notice of intent to discharge a member on October 25, 2018. All of this was done without any determination with respect to the correctness of the decision to permanently change the Applicants medical profile status to permanent O6 as grieved in the medical profile grievance.
6. On February 6, 2019, a record of decision was issued under s. 6(a) of the *Commissioner’s Standing Orders (Employment Requirements)* and s. 20.2(1)(g) of the *Royal Canadian Mounted Police Act*, medically discharging the Applicant from the RCMP on the basis of a disability as defined under the *Human Rights Act*. The Applicant was deemed unfit for any duties within the RCMP with no prognosis of a return to work.
7. The underlying Health Services Officer decision to change the Applicants medical profile status to permanent O6 (“the medical profile grievance”) was never prioritized for adjudication and was never adjudicated for correctness prior to the discharge decision despite the relevance of the medical profile grievance as the sole justification for the medical discharge recommendations in the first place. The medical discharge recommendation(s) were the sole nexus for commencement of the RCMP initiated administrative discharge process under the *Commissioner’s Standing Orders (Employment Requirements)*.
8. On February 12, 2019, the Applicant filed an appeal of his medical discharge pursuant to subsection 37(c) of the *Commissioner’s Standing Orders (Grievances and Appeals)* - (“the discharge appeal”).
9. On January 4, 2021, Sergeant R.L. requested permission from his line officer to represent the Applicant in his appeal of the non-consensual medical discharge on the basis of a disability as defined under the *Human Rights Act*.
10. On January 6, 2021, the Respondent denied the request citing Sergeant R.L.’s lack of security clearance and his being away from work for unspecified reasons.
11. On January 7, 2021, pursuant to subsection 10(1) of the *Commissioner’s Standing Orders (General Administration)*, SOR/2014-293 [CSO (*General Administration*)], the Applicant submitted a *Statement of Appeal*. The *Commissioner’s Standing*

Orders (General Administration) provides for the appeal of a decision to deprive a member of the opportunity to be represented by another member in accordance with the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [CSO (*Grievances and Appeals*)].

12. On April 19, 2021, Corporal R.L. again requested from his line officer, the Respondent, permission to represent the Applicant in the medical profile grievance.
13. On April 21, 2021, the Respondent again denied the request, again citing Sergeant R.L.'s lack of security clearance and his being away from work for unspecified reasons.
14. On April 22, 2021 the Applicant submitted another *Statement of Appeal* to the OCGA, contesting the Respondent's decision with respect to representation on the medical profile grievance. The Applicant submitted his *Statement of Appeal* pursuant to subsection 10(1) of the *Commissioner's Standing Orders (General Administration)*, SOR/2014-293 [CSO (*General Administration*)], which provides for the appeal of a decision to deprive a member of the opportunity to be represented by another member in accordance with the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289 [CSO (*Grievances and Appeals*)].
15. On July 19, 2021, an RCMP adjudicator rendered a decision with respect to the first denied representation appeal related to the appeal of the administrative discharge. That RCMP adjudicator found in favour of the Applicant and directed that the matter be remitted for a new decision.
16. The denial of representation on the discharge appeal was remitted to another RCMP officer for a new decision at the direction of Sergeant R.L.'s line officer. That new decision by a new decision maker made on August 26, 2021 was ultimately the same as the impugned decision of Sergeant R.L.'s initial line officer and led to yet another appeal which was later dismissed on July 14, 2023 as moot.
17. A final decision made with respect to the related administrative discharge by the Commissioners designate on December 16, 2022. The Applicant's appeal of his medical discharge was dismissed despite the fact that the Applicants medical profile status designation ("the medical profile grievance") was never prioritized for adjudication and despite the absence of a decision on the correctness of that decision prior to the discharge appeal adjudication.
18. The medical profile designation was the sole justification for the commencement of the medical discharge process, the medical discharge recommendations and

ultimately the medical discharge decision.

19. The medical profile grievance and the two related unadjudicated denial of representation appeals related to both the medical profile grievance and the discharge appeal were never prioritized or adjudicated for correctness prior to the December 16, 2022 discharge appeal decision.
20. The medical profile grievance along with the second and third representation appeals were never heard despite their relevance as issues preliminary the discharge decision and appeal. The medical profile designation was the RCMP's sole justification for initiation of the medical discharge process leading to the medical discharge recommendation and ultimately the discharge itself.
21. On July 14, 2023, because the Applicant's parallel discharge appeal was dismissed on December 16, 2022, an RCMP appeal adjudicator determined that the appeal of the Applicant's non-representation on that discharge appeal was moot.
22. On October 19, 2023 the aforementioned adjudicator of this matter dismissed the Applicant's appeal of denied representation on the medical profile grievance in accordance with subsection 47(2) of the *Commissioner's Standing Orders (Grievance and Appeals)* after determining that the Applicant had not established the requirements of standing.
23. In accordance with subsection 47(2) of the *CSO (Grievances and Appeals)*, the decision was final and binding, and not subject to further internal review or appeal thus necessitating the filing of this Judicial Review Application (JRA).

THE APPLICANT RELIES ON:

1. *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10);
2. *Royal Canadian Mounted Police Regulations*, 1988 (SOR/88-361);
3. *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289;
4. *Commissioner's Standing Orders (General Administration)*, SOR/2014-293;
5. *Federal Courts Act* (R.S.C., 1985, c. F-7);
6. *Federal Courts Rules* (SOR/98-106); and

7. Such further and other grounds as this Honourable Court might allow.

GROUNDS FOR JUDICIAL REVIEW:

1. The Statutory Designate erred in fact and law by determining that that the Applicant had not established the requirements of standing;
2. The Respondent, having acknowledged that the decision giving rise to this application was related to the permanent 06 medical designation of the Applicant which in turn led to the medical discharge of the Applicant, erred in fact and law by declining to consolidate the underlying 06 medical designation grievance and also the appeal of the Applicant's medical discharge as afforded by the CSO – G&A;
3. The Statutory Designate, having acknowledged that the underlying appeal took an excessive amount of time, erred in fact and law by declining to exercise her discretion to decide the merits of the underlying appeal;
4. The Respondent lacked the authority to deny the representation of the Applicant, therefore the decision of the Statutory Designate was *ultra vires*; and
5. The Statutory Designate based her decision on a finding that the Applicants medical discharge from the RCMP occurred prior to the Respondent rendering the impugned decision to deny him representation on the medical profile grievance.
6. The Statutory Designate based her decision on an erroneous finding of fact that the appeal did not relate to the Applicant's discharge from the Force.
7. The Statutory Designate based her decision on erroneous findings of fact and therefore her decision was made in a perverse or capricious manner and / or without regard for the material before her.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. The Certified Tribunal Record; and
2. All RCMP Office of Coordination of Grievance and Appeals (OCGA) correspondence and communications related to the appeal including, but not limited to, all correspondence and communications with the RCMP Adjudications Directorate and RCMP National Advisory Services (NAS).
3. Such other material as the Applicant may advise and the Court may permit.

Date: November 16, 2023

Chris Williams

Christopher A. A. Williams
Applicant

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