

Court File No. T -

FEDERAL COURT OF CANADA

B E T W E E N:

ANIKET JOSHI

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 Court 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 Court 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.**

August 23, 2024

Issued by: _____
Registry Officer

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

TO: The Attorney General of Canada
Department of Justice
284 Wellington Street
Ottawa, ON K1A 0H8

AND TO: Public Service Commission of Canada
22 Eddy Street, 13th Floor
Gatineau, Québec
K1A 0M7

APPLICATION

1. This is an application for judicial review in respect of the decision of Ashley McCulloch, Assessment Specialist dated July 24, 2024 (the “July 24, 2024 Decision”) and the review of that decision by Aoife Brennan, Head, Test Defense, dated August 13, 2024 (the “August 13, 2024 Decision”) (jointly the “Decisions”), of the Public Service Commission of Canada (the “Commission”).
2. By virtue of the July 24, 2024 Decision, the Commission invalidated the oral French language test result (reference number 202409608) that was administered on July 9, 2024, and communicated to the Applicant on July 23, 2024, on the basis that “irregularities with the standardized administration of the test were noted.”
3. The August 13, 2024 decision upheld the July 24, 2024 decision invalidating the test results on the basis that “standardized testing conditions and Terms of Use may not have been respected” and that test had been administered remotely, this despite the fact that the Personnel Psychology Centre of the Commission had previously agreed to a number of accommodations for the Applicant in light of his recognized disability, which included that the test be administered remotely *inter alia*.
4. As a result of the Decisions, the Commission is now requiring the Applicant to retake his oral French language test in person, contrary to the accommodations measures that the Commission itself had previously approved and put in place.

The Applicant makes application for:

- (a) An order quashing the Commission’s Decisions dated July 24, 2024 and August 13, 2024;
- (b) an order reinstating the Commission’s original decision regarding the test results, namely that the Applicant had obtained a level C on his July 9, 2024, oral test, which was communicated to the Applicant on July 23, 2024;

- (c) in the alternative, an order referring the matter back to the Commission for redetermination in accordance with the law and the instructions of this Honourable Court;
- (d) his costs of this application; and
- (e) such further and other relief as counsel may advise and to this Honourable Court may allow.

The grounds for the application are:

- (a) 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 and capricious manner, rendering its decision unreasonable, when it decided to invalidate the oral French language test result (reference number 202409608) that was administered on July 9, 2024;
- (b) The Commission erred in law, inappropriately exercised its jurisdiction and/or based its decision on erroneous findings of fact, rendering its decisions unreasonable, when it failed to give appropriate consideration to relevant facts, including *inter alia* that the Applicant has a recognized disability requiring accommodation and that the modified “testing conditions” that it used as a basis for its Decisions to invalidate were in fact approved and agreed to accommodation measures as set out in its Accommodation Assessment Report dated June 5, 2024;
- (c) The Commission erred in law, inappropriately exercised its jurisdiction and/or based its decision on erroneous findings of fact, rendering its decisions unreasonable, when it failed to give appropriate consideration to relevant facts, including *inter alia* that the Commission had previously determined that the Applicant had obtained a level C on his July 9, 2024, oral test, and communicated that fact to the Applicant on July 23, 2024;

- (d) The Commission erred in law, inappropriately exercised its jurisdiction and/or based its decision on erroneous findings of fact when it failed to take into consideration its duty to accommodate pursuant to the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 in its Decisions invalidating the test results and by requiring the Applicant to retake the test in person;
- (e) 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 and capricious manner, rendering its decisions unreasonable, by requiring that the Applicant retake the test in person, contrary to the accommodation measures that the Commission itself had approved and put in place in its Accommodation Assessment Report dated June 5, 2024;
- (f) The Commission acted in a manner that was contrary to the law when it violated its duty to accommodate and discriminated against the Applicant contrary to the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 in its Decisions invalidating the test results and by requiring the Applicant to retake the test in person;
- (g) The Decisions of the Commission are unreasonable as they provide vague, unclear and insufficient reasons as to the basis for the Decisions invalidating the test results and requiring the Applicant to retake the test in person;
- (h) Section 18.1 of the *Federal Court Act*, rules 300-317 of the *Federal Court Rules* and relevant provisions of the *PSEA*, including section 69, 70 and 133; and
- (i) 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, together with exhibits attached thereto, to be sworn and filed in this Honourable Court;

- (f) The material in the possession of the Commission, relating to Commission's Decisions dated July 24, 2024 and August 13, 2024 that are the subject of this Application; and
- (b) Such further and other material as counsel may advise and this Honourable Court permit.

The Applicant requests that the Commission comply 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 Tribunal to the Applicant and to the Registry:

- (g) all of the documents, notes, reports, letters, memorandums, transcripts, files and electronic files, emails, guidelines and marking grids, exams and answers, and any other relevant documents concerning the Commission's Decisions dated July 24, 2024 and August 13, 2024, which are the subject of this Application.

Date: August 23, 2024

X Aniket Joshi

Aniket Joshi

Signed by: JOSHI ANIKET

Mr. Aniket Joshi

Aniket.Joshi@cbsa-asfc.gc.ca

454 Edison Avenue,
Ottawa, ON, K2A 1T9

Tel.: 343-541-7183

Self-Represented Applicant