

Federal Court



Cour fédérale

Date: 20260408

**Dockets: T-35-25
T-164-25**

Citation: 2026 FC 451

Ottawa, Ontario, April 8, 2026

PRESENT: Madam Justice Pallotta

BETWEEN:

MUNCHANG CHOI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] These reasons address two applications for judicial review that relate to recruitment processes for positions at the Department of Fisheries and Oceans (DFO). The applicant, Munchang Choi, participated in two recruitment processes: 21-DFO-WCCG-EA-CCG-323941 advertised in 2021 (2021 Recruitment Process), and 24-DFO-NCR-EA-CCG-615679 advertised

in 2024 (2024 Recruitment Process). For both, Mr. Choi was selected for inclusion in a pool of qualified candidates, but he was not offered a position.

[2] Mr. Choi brings applications for judicial review to challenge:

- DFO's decision, in the 2024 Recruitment Process, to select a different candidate for a position (file number T-35-25); and
- a decision by the Public Service Commission of Canada (the Commission) not to investigate DFO's actions in the 2021 Recruitment Process (file number T-164-25).

[3] Following the parties' joint requests made under paragraphs 45 to 50 of the Court's *Amended Consolidated General Practice Guidelines* (June 20, 2025), T-35-25 and T-164-25 were referred to me for a disposition in writing. For the reasons below, I am dismissing both applications.

II. Issues

A. *T-35-25*

[4] The respondent raises a preliminary and allegedly dispositive issue. The respondent submits that T-35-25 should be dismissed for being premature, because DFO's staffing decision in the 2024 Recruitment Process was made pursuant to delegated authority under the *Public Service Employment Act*, SC 2003, c 22 [*PSEA*] and Mr. Choi started this application before he exhausted the administrative process under the *PSEA*.

[5] I agree with the respondent that T-35-25 turns on the issue of prematurity, and this issue is dispositive.

B. *T-164-25*

[6] The respondent raises two preliminary issues:

- while Mr. Choi originally named DFO and the Commission as respondents in T-164-25 and he raises issues with DFO's actions in the 2021 Recruitment Process, the only reviewable decision is the Commission's decision not to investigate DFO's actions; and
- Mr. Choi's January 27, 2025 affidavit in T-164-25 is not confined to evidence that was before the Commission and facts that are within his knowledge; parts of the affidavit are inadmissible and should be struck.

[7] On the first preliminary issue, I agree with the respondent that only the Commission's decision is subject to judicial review. When a remedy exists at a higher administrative level, the Court will only consider the decision from that higher level: *Lessard-Gauvin v Canada (Attorney General)*, 2016 FC 227 at para 10. In T-164-25, the question for the Court is whether Mr. Choi has established that the Commission's decision was unreasonable or procedurally unfair.

[8] On the second preliminary issue, parts of Mr. Choi's affidavit are inadmissible, but not all parts that the respondent challenges.

III. Analysis

A. *T-35-25*

[9] Mr. Choi applied for a Technical Inspector and Investigator position under the 2024 Recruitment Process. He was one of five candidates selected for inclusion in a pool of qualified candidates. In December 2024, one of the candidates in the pool was selected for a position. There is an internal DFO memorandum explaining why this candidate was selected over others in the pool. Among other things, the candidate had the highest overall score on interviews and was tied for the highest score in the assessment of their achievement record and references.

[10] Later in December 2024, Mr. Choi commenced this application for judicial review. He alleges that: (i) the staffing decision was procedurally unfair in that DFO withheld scoring records and relied on undisclosed hiring criteria that deprived him of meaningful participation; (ii) DFO failed to adequately accommodate his disability; (iii) the staffing decision breached the merit principle under the *PSEA* by relying on subjective and undisclosed assessment criteria rather than merit-based criteria; and (iv) there is no assurance that DFO met its obligations under the *Employment Equity Act*, SC 1995, c 44, because the evaluation was opaque and the scoring was not disclosed. Mr. Choi asks the Court to quash the hiring decision and order DFO to re-do the 2024 Recruitment Process with full disclosure of evaluation records, elimination of undisclosed criteria, and meaningful accommodations.

[11] The 2024 Recruitment Process was an “external appointment process,” meaning it was not limited to public service employees. Section 66 of the *PSEA* allows the Commission to investigate an external appointment process and take corrective action if it is satisfied that an

appointment was not based on merit, or if there was an error, an omission, or improper conduct affecting the selection of the person who was appointed or proposed for appointment. Mr. Choi did not ask the Commission to investigate the 2024 Recruitment Process. His application for judicial review in T-35-25 is premature because he commenced it before exhausting all adequate remedial recourse in the administrative process: *CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61, including at paras 30-32. Absent exceptional circumstances, parties cannot proceed to the court system until the applicable administrative process has run its course: *CB Powell Limited* at para 31.

[12] Mr. Choi's notice of application also asks for an order requiring DFO to disclose information and documents he alleges were improperly withheld from the response to his Access to Information and Privacy (ATIP) request made under the *Access to Information Act*, RSC 1985, c A-1 [*AIA*], a declaration that DFO's actions violated his rights under the *Canadian Human Rights Act*, RSC 1985, c H-6, the *Employment Equity Act*, and the *AIA*, and an order requiring DFO to implement corrective actions to address systemic shortcomings. I agree with the respondent these are not proper requests in the context of T-35-25. The process for challenging the disclosure made in response to Mr. Choi's ATIP request is set out in the *AIA* (as the Court explained in an earlier order in this proceeding). The requests for a declaration and an order for corrective action exceed the relief that is available on judicial review based on the grounds that Mr. Choi raised.

[13] In conclusion, T-35-25 is premature and I agree with the respondent that the application must be dismissed on this basis.

B. *T-164-25*

(1) Background

[14] The 2021 Recruitment Process was an “external appointment process” for a TI-06/TI-07 inspector position. Mr. Choi participated in the process and, in October 2022, he was added to a pool of qualified TI-06/TI-07 candidates and told he would be advised if he was selected for the next phase of the process. In May 2023, Mr. Choi was told that TI-06 positions were no longer available but this did not change his status in the pool because DFO and other government departments could use the pool to staff positions that are similar to TI-06, or TI-07 positions.

[15] On December 6, 2024, Mr. Choi submitted a complaint to the Commission. Mr. Choi alleged that there were significant procedural irregularities in the 2021 Recruitment Process and that DFO did not comply with the *PSEA*, including because of:

- breaches of transparency (contrary to *PSEA* section 48), in that there was no substantive communication or timeline for over two years and TI-06 positions had been reclassified without sufficient explanation or clarity;
- violations of procedural fairness (contrary to *PSEA* section 30), in that the reclassification of TI-06 positions and suggestions that he might have to restart the process undermined the integrity and fairness of the selection process and violated principles requiring appointments to be based on merit; and

- a failure to accommodate equity-seeking candidates (contrary to *PSEA* section 31(3)), in view of the protections afforded to him under the *Employment Equity Act* and the *PSEA* as a visible minority and a person with disabilities.

[16] Mr. Choi alleged that the 2021 Recruitment Process was mishandled, causing him significant harm, and he asked the Commission to investigate the procedural violations, assess the legality and fairness of reclassifying TI-06 positions, ensure accountability in the process, confirm that equity-seeking candidates were not disadvantaged due to procedural failures, and implement corrective actions.

[17] On December 9, 2024, the Commission decided that the concerns Mr. Choi raised were not sufficient to open an investigation, including because the *PSEA* does not require hiring organizations to provide feedback to candidates in external appointment processes, reclassification decisions are not within the Commission's mandate, and organizations have the discretion, taking into account the relevant circumstances, to determine whether they are able to make an offer of employment at the end of an appointment process. The Commission added that being included in a hiring pool or "inventory" does not mean that a position is available or that a candidate will be offered a position.

[18] The same day, Mr. Choi asked the Commission to reconsider and clarify its decision. Among other things, he stated that the lack of detailed feedback undermined the principles of procedural fairness and transparency in *PSEA* section 48 and there was no evidence that the

staffing process adequately addressed potential barriers or biases that may have adversely affected equity-seeking candidates like him.

[19] The Commission's December 13, 2024 response repeated that there is no requirement to provide feedback in external appointment processes and noted that *PSEA* amendments extending the Commission's investigative powers to concerns about bias and barriers to equity-seeking groups did not apply to the 2021 Recruitment Process, which had commenced before the amendments came into force. The Commission remained of the view that there was insufficient information to open an investigation.

[20] The same day, Mr. Choi repeated his request for reconsideration and clarification, and repeated his allegations that the hiring process violated the protections afforded to him under the *Employment Equity Act* and *PSEA* section 31(3). The Commission's December 16, 2024 response concluded, for the reasons it had given previously, that the Commission did not have the mandate or sufficient information to open an investigation.

(2) Affidavit evidence

[21] The respondent asks the Court to strike or give no weight to the following parts of Mr. Choi's affidavit:

- section 3 (all three paragraphs), an email in Exhibit C-1 (page 39 of the applicant's record), and Exhibit C-2, because the evidence was not before the decision maker or it is unnecessary; and

- section 4 (both paragraphs), paragraph 6.2, and section 7 (both paragraphs), because the evidence is not confined to facts within Mr. Choi's knowledge and includes arguments.

[22] Section 3 and Exhibit C-2 of Mr. Choi's affidavit contain evidence that was not before the Commission and does not fall within a recognized exception to the general rule that documents that were not before the decision maker are inadmissible on judicial review: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19. Section 3 and Exhibit C-2 of Mr. Choi's affidavit are inadmissible.

[23] The email in Exhibit C-1 is duplicated in Exhibit C-3 (at page 58 of the applicant's record), and the respondent does not object to Exhibit C-3. It would serve no purpose to rule that part of Exhibit C-1 is inadmissible.

[24] While I agree with the respondent that section 4, paragraph 6.2, and section 7 of Mr. Choi's affidavit are not facts, these parts of the affidavit largely repeat arguments that Mr. Choi made in his correspondence to the Commission or in his memorandum of fact and law in this proceeding. I see no prejudice to the respondent, and in my view, it would serve no purpose to rule that these parts of the affidavit are inadmissible.

(3) Analysis

[25] Mr. Choi submits that the Commission's decision is both unreasonable and procedurally unfair.

[26] Mr. Choi alleges that: (i) he received shifting and inconsistent communications from DFO and the Commission about the TI-06 staffing pool; (ii) the ATIP disclosure reveals that material, internal documents are missing from the certified tribunal record (CTR), impairing his ability to fully understand and challenge the decision; and (iii) the Commission did not provide adequate reasons for its decision and did not adequately accommodate his disability.

[27] Mr. Choi's notice of application raises procedural fairness issues with the 2021 Recruitment Process, including that DFO did not provide timely updates, meaningful communication, or clear criteria regarding the process, and that DFO produced redacted documents in response to the ATIP request, obscuring non-sensitive information that was directly relevant to the fairness and transparency of the hiring process. It appears that Mr. Choi's allegation that his repeated requests for accommodation were ignored or inadequately addressed also relate to the 2021 Recruitment Process, rather than the Commission's process, although he states that the Commission's refusal to investigate his complaint compounded these issues. Relying on *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), Mr. Choi asserts (among other things) that his vulnerability, his right to equality, and the decision's effect on his livelihood heighten the duty of fairness that he was owed.

[28] The guiding principles for reasonableness review are set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness review focuses on the administrative decision and the justification offered for it: *Vavilov* at para 15. The Court’s role is to conduct a deferential but robust form of review that examines the reasons given by the administrative decision maker to determine whether the decision (including the reasoning process and the outcome) was transparent, intelligible, and justified: *Vavilov* at paras 13-15, 82-87, 99.

[29] Allegations of procedural unfairness attract a standard of review that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. The duty of procedural fairness is variable, flexible, and context-specific: *Vavilov* at para 77, citing *Baker* at paras 22-23, among other cases. The reviewing court considers what the circumstances required and “whether or not the procedure followed by the administrative decision maker respected the standards of fairness and natural justice”: *Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13.

[30] Mr. Choi’s submissions are largely bare assertions, and do not establish a reviewable error with the Commission’s decision.

[31] I agree with the respondent that the Commission reasonably decided not to open an investigation on the basis that the information Mr. Choi provided was insufficient to raise a possible error, omission, or improper conduct in the 2021 Recruitment Process, particularly since some of his concerns exceeded the Commission’s investigatory powers under the *PSEA*. The

Commission's reasons are transparent and intelligible, and reasonably justify the decision not to investigate. The Commission found that: (i) the *PSEA* does not require hiring organizations to provide feedback to candidates in external appointment processes; (ii) the decision to reclassify the TI-06 positions fell outside the Commission's mandate; (iii) the 2021 Recruitment Process was for a hiring pool or inventory, and organizations have the discretion to decide whether to make an offer of employment; and (iv) qualifying for inclusion in a pool or inventory does not mean that a position is available or that a candidate will be offered a position.

[32] Since the only decision under review is the Commission's decision, the alleged unfairness must relate to that decision and Mr. Choi has not shown that the Commission's process was unfair. I agree with the respondent that Mr. Choi had a fair opportunity to make his case for an investigation. Indeed, the Commission remained open to consider Mr. Choi's subsequent communications and whether there was new information to warrant an investigation of the 2021 Recruitment Process, and it provided meaningful responses each time. Mr. Choi alleges that he was denied adequate accommodation as a visible minority and a person with disabilities; however, Mr. Choi has not shown that he made repeated requests for accommodation that were ignored or inadequately addressed.

[33] Mr. Choi asks for an order that would require the respondent to supplement the CTR to include missing documents. As the respondent correctly points out, Mr. Choi asked for the same relief in an interlocutory motion and the Court refused to grant it.

[34] Similar to T-35-25, Mr. Choi's notice of application in T-164-25 asks for an order requiring DFO to disclose information and documents he alleges were improperly withheld from the ATIP response, a declaration that DFO's actions violated his rights under the *Canadian Human Rights Act*, the *Employment Equity Act*, and the *Accessible Canada Act*, SC 2019, c 10, and an order requiring DFO to implement corrective actions to address systemic shortcomings. I agree with the respondent that these are not proper requests in the context of T-164-25.

[35] In conclusion, Mr. Choi has not established that the Commission's decision was unreasonable or procedurally unfair. He has not established a reviewable error that warrants the Court's intervention.

IV. **Conclusion**

[36] The applications for judicial review in T-35-25 and T-164-25 are dismissed for the reasons given above.

[37] The parties agree that the successful party should be awarded \$500 in costs for each proceeding. This is a modest and reasonable cost award. The respondent is the successful party in both matters. I award the respondent costs totaling \$1,000.

JUDGMENT IN T-35-25 AND T-164-25

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review in T-35-25 and T-164-25 are dismissed.
2. Costs are awarded to the respondent in the amount of \$500 for each matter, a total of \$1,000.
3. The Court's judgment and reasons shall be placed on file T-35-25 and on file T-164-25.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-35-25 T-164-25

STYLE OF CAUSE: MUNCHANG CHOI v THE ATTORNEY GENERAL
OF CANADA

**APPLICATION FOR JUDICIAL REVIEW CONSIDERED IN WRITING IN
ACCORDANCE WITH THE JOINT REQUEST FOR DETERMINATION IN
WRITING DATED OCTOBER 15, 2025**

JUDGMENT AND REASONS: PALLOTTA J.

DATED: APRIL 7, 2026

WRITTEN SUBMISSIONS BY:

Munchang Choi

FOR THE APPLICANT

Andrew Crawford

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT