

e-document	T-2265-23-ID 1
F I L E D	FEDERAL COURT COUR FÉDÉRALE
	October 11, 2023 11 octobre 2023
Natasha Fitter	
VAN	1

Court File No. T-XXXX-XX

FEDERAL COURT OF CANADA

ADEEB AHMED

Applicant

-and-

CANADA REVENUE AGENCY

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 Calgary, Alberta.

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 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.

October 11, 2023

Issued by: _____
Registry Officer

Address of Local office: 635 8 Avenue SW
Calgary, AB T2P 4H5

TO: Canada Revenue Agency
National Headquarters
340 Laurier Avenue West
Ottawa, ON K1A 0P9

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

APPLICATION

This is an application for judicial review in respect of a decision likely made by Nadine Huneault, the Director of the Audit Division (the “Decision Maker”) in relation to the administration of a selection process and a staffing action with respect to staffing of an AU-04 position. The Applicant learnt about the decision on September 11, 2023.

The Decision Maker, in the capacity of a Hiring Manager, permanently appointed Ms. Jennifer Wirag to an AU-04 position on or about August 14, 2023. This decision of the Decision Maker is the subject of this Notice of Application (“the subject Decision”).

The selection process RN# 56360557 (“the subject selection process”), prior appointment and the extension appointment for the AU-04 position, within this selection process were the subject of a judicial review application T-2019-22. The application was struck down by the Federal Court, pursuant to a motion to strike brought by the Respondent - Canada Revenue Agency (CRA).

In the subject Decision, contrary to the requirements of the CRA’s Policy on the Staffing Program (the “Staffing Policy”); the Procedures for Recourse on staffing (Staffing Program) (the “Recourse Policy”); and contrary to the Employment Equity considerations, the Decision Maker:

- failed to acknowledge the existence of an Employment Equity gap to the AU-04 position (to the Applicant);
- failed to apply Employment Equity considerations in making appointments to the AU-04 position;
- administered and managed the subject selection process in an arbitrary manner;
- made staffing appointment(s) and extensions in arbitrary manner at various times in the subject selection process;
- denied providing relevant records or information on status of the subject selection process;
- made a staffing appointment contrary to the grounds raised or arguments presented by the Respondent in its motion to strike in T-2019-22;
- made a permanent AU-04 staffing appointment before exhausting the remedies proposed by CRA in its motion to strike and as accepted by the Federal Court;

- effectively blocked the Applicant from being permanently appointed to the subject AU-04 position or effectively denied an opportunity to the Applicant to establish a claim to the AU-04 position.

The Applicant makes application for:

- (a) an Order allowing this application;
- (b) an Order setting aside the subject Decision (permanent appointment of Ms. Wirag) and remitting the matter back to be decided by a new Decision Maker external to and distant from the influence of the Decision Maker and Branch management up to the level of the Assistant Commissioner; and in accordance with the reasons of this Honourable Court;
- (c) an Order prohibiting further appointments, either temporary or permanent, to the AU-04 position until the last of the matters with respect to this judicial review application are finalized and settled;
- (d) an Order, subject to Court’s jurisdiction, deeming the subject selection process as invalid and excluding the Decision Maker and her superiors, as applicable, who were involved directly or indirectly in the decision making, from further involvement in the subject selection process;
- (e) the costs for this application; and,
- (f) any further relief the Applicant may seek and that this Honourable Court may allow.

The grounds for the application are:

Facts:

- 1) The Applicant is an employee of the CRA with a substantive position in the CI-05 team of the Audit Division (“AD”) of the Registered Plans Directorate (“RPD”) within the Legislative Policy and Regulatory Affairs Branch (“LPRAB”).
- 2) In July 2021, the Applicant applied for an advertised staffing opportunity for an AU-04 position, with requisition number RN# 56360557.

- 3) In October 2021, the Applicant was placed in a pool of eligible candidates within the subject selection process, for the AU-04 position.
- 4) In December 2021, another individual (“initial appointee”) was given a temporary acting appointment of 6 months-less-a-day.
- 5) In June 2022, the initial appointee was granted a further extension of 3 months (“extension appointment”) until October 2022.
- 6) In July 2022, after learning of the extension appointment, the Applicant made two distinct Individual Feedback (“IF”) requests to the Hiring Manager. The Hiring Manager denied the requests for IF in August and September 2022.
- 7) In October 2022, the Applicant filed a Notice of Application (T-2019-22) for a judicial review with respect to the decisions of the Hiring Manager. The Applicant later submitted an amended Notice of Application in February 2023. In the amended Notice of Application, the Applicant sought:
 - (i) The decision on denying of IF requests be sent for re-determination; and
 - (ii) setting aside of the extension appointment.
- 8) In May 2023, the Respondent proposed to offer an IF to the Applicant while proposing Mr. Stephane Charette, to conduct the IF. Mr. Charette is incidentally the immediate supervisor of the Decision Maker.
- 9) In June 2023, the Respondent raised a motion to strike the application while arguing
 - (i) moot consideration citing that the subject AU-04 position was vacant as the initial appointee was not further extended after October 3, 2022 and that there was no practical effect to setting aside the extension appointment; and
 - (ii) that an offer for IF was already proposed and as such there was no live controversy for the judicial review application.

- 10) The Applicant in his motion, amongst other things, made an argument that Mr. Charette was not an appropriate candidate to conduct the IF. The Respondent CRA, in its rebuttal submitted that Mr. Charette was only an individual who the CRA proposed to conduct the IF, but that it remained open to have a different decision-maker conduct the IF.
- 11) On August 14, 2023, the Honourable Madam Justice Furlanetto pronounced an Order allowing the motion to strike of the Respondent. Madam Justice accepted the arguments of the Respondent that there was no practical effect in setting aside the extension appointment given that the initial appointee was no longer extended; and that there was no longer any live or concrete issue at dispute as the Respondent had proposed offering the IF that covers the subject matter of the Applicant's IF requests.
- 12) Apparently, effective August 14, 2023, the Hiring Manager permanently appointed Ms. Jennifer Wirag to the subject AU-04 position and through a non-advertised staffing action i.e. the subject decision to this judicial review application ("permanent appointment").
- 13) On September 11, 2023 and upon an inquiry from the Applicant, the Decision Maker acknowledged:
 - (i) The date AD/RPD/LPRAB initiated the discussion on appointment for the AU-04 position on January 20, 2023;
 - (ii) The permanent appointment was made through a non-advertised appointment;
 - (iii) The permanent appointment was effective August 14, 2023;
 - (iv) The permanent appointment was made through a lateral move at an equivalent level;
 - (v) No recourse notification(s) were sent per the recourse procedures.
- 14) The Decision Maker also confirmed that Ms. Wirag was initially consulted and offered the AU-04 position in June 2023.

- 15) Since September 29, 2023, the Applicant followed up with the Decision Maker to obtain additional information surrounding the permanent appointment. As of the date of filing this judicial review application, the Decision Maker did not respond to the follow-up queries posed to the Decision Maker.
- 16) On October 5, 2023, Mr. Charette sent an invite proposing the name of one manager to conduct the IF. In management hierarchy, this proposed manager at MG-05 level is below Mr. Charette and Ms. Huneault who are both of EX levels.

Grounds

- 17) The Decision Maker erred in law; failed to observe a principle of natural justice, procedural fairness when she managed and conducted the subject selection process in an arbitrary manner;
- 18) The Decision Maker erred in law; failed to observe a principle of natural justice, procedural fairness when she provide misleading staffing action notifications to the candidate(s) in the subject selection process;
- 19) The Decision Maker erred in law; failed to observe a principle of natural justice, procedural fairness when she failed to document the decisions, reasons for the decision and consultations with her supervisor, if any, in the process of decision making and making appointments or extensions to the subject AU-04 position;
- 20) The Decision Maker erred in law; failed to observe a principle of natural justice, procedural fairness when she made appointments and/or extension appointments to the subject AU-04 position in an arbitrary manner;
- 21) The Decision Maker, and including her superiors and staffing administration section in the LPRAB, failed to provide requested information and records of RN# 56360557 and failed to uphold principles of natural justice and procedural fairness;

- 22) The Decision Maker and/or her immediate superior failed to act with integrity when she endeavored or preferred to staff the subject AU-04 position through a non-advertised staffing mechanisms as opposed to accessing the pool of candidate(s) from the advertised subject staffing process;
- 23) The Decision Maker, and/or her superiors up to the level of the Assistant Commissioner of LPRAB, erred in law; failed to observe a principle of natural justice, procedural fairness or other procedure that was required by law to observe when they jointly or severally failed to apply Employment Equity considerations and address the identified Employment Equity gap that existed to the subject AU-04 position;
- 24) The Decision Maker apparently endeavored, in a unfair and unreasonable manner, to circumvent the available pooled candidate(s) of the subject selection process by opting to permanently staff the subject AU-04 position through a non-advertised staffing mechanism;
- 25) The Decision Maker and/or the CRA apparently failed to act in a fair manner when they endeavored to permanently staff the subject AU-04 position without exhausting all remedy opportunities to the Applicant;
- 26) The CRA, the Decision Maker or her superiors apparently acted without transparency, integrity or indulged in semantics when the Respondent CRA invoked the mootness argument in its motion to strike T-2019-22 while, in the background, the Decision Maker actively engaged and offered permanent appointment to the subject AU-04 position; and also acted in a manner contradictory to the grounds for raising the mootness argument that the AU-04 position was vacant;
- 27) The Decision Maker erred in law, inappropriately exercised her jurisdiction; failed to apply integrity based decision making, as required of CRA's policies and sound practices at various instances in the administration of the subject selection process;

- 28) The Decision Maker failed to adhere to the Staffing Policy; failed to consider all available and/or relevant information before making the staffing action decision;
- 29) The Decision Maker failed to observe a principle of natural justice, procedural fairness or other procedure that was required by law to observe when she provided vague or evasive responses to the Applicant's queries on the selection process RN# 56360557;
- 30) The Decision Maker apparently failed to observe a principle of natural justice, procedural fairness or other procedure that was required by law to observe when she attempted to stonewall and/or refuse providing responses to the Applicant's queries on the subject selection process or when she provided N/A as a response;
- 31) Section 18.1 of the *Federal Court Act*, Rules 300-317 of the *Federal Courts Rules*; and
- 32) Such further grounds as the Applicant may advise and this Honourable Court may permit.

This application will be supported by the following material:

- (a) The affidavit(s) of the Applicant and/or other individual(s), together with exhibits attached thereto, and filed in this Honourable Court;
- (b) The material in the possession of the Canada Revenue Agency, relating to the subject Decision against which this judicial review application is filed;
- (c) Relevant staffing and recourse policies of the CRA for advertised staffing;
- (d) Relevant staffing and recourse policies of the CRA for non-advertised staffing; and
- (e) The material available with the CRA and/or LPRAB relating to integrity in decision-making; non-advertised staffing; and policies on addressing Employment Equity in CRA and in LPRAB;
- (f) Such further and other material as the Applicant may request and this Honourable Court may permit; and
- (g) Such further and other material as the Applicant may provide and this Honourable Court may permit.

The Applicant requests that the Respondent complies with Rule 317 of the *Federal Courts Rules* and send a certified copy of the following material, translated to English where applicable, that is not in the possession of the Applicant but is in the possession of the Arbitrator (CRA), to the Applicant and to the Registry:

- (a) The complete file and documents in the possession of the Decision Maker that is relevant to the subject Decision, including, but not limited to, notes, e-mails, memorandums, letters, Outlook calendar meeting invites; MS Teams chat and call logs; and any other documents considered by the Decision Maker, discussed and exchanged with their superiors (including Director General of RPD and the Assistant Commissioner of LPRAB); with staffing advisors; with HR advisors, with respect to the staffing action and the subject Decision;
- (b) The complete file in (a) above including the following specific information and/or records, in the following order requested while clearly stating
 - (i) “Records do not exist”, when any records or information is not available
 - (ii) Objections, grounds for objection, if any records are not intended to be provided

R#1 Procedures for recourse on staffing (Staffing Program);

R#2 Procedures for staffing (Staffing Program);

R#3 CRA Policy on Employment Equity in staffing processes

R#4 Policy(ies) as adapted by LPRAB to address Employment Equity gaps in the Branch to be applied and implemented by various Directorates and Divisions within LPRAB; and as applicable since June 2021 to date;

R#5 The following material from Infozone on making decisions with integrity:

“Model for integrity-based decision making”, including the decision making steps and the integrity lenses, last updated on 2020-02-24;

- R#6 The following material from Infozone and LPRAB e-Bulletin, as applicable, for the Non-Advertised staffing:
- (i) Non-Advertised Staffing Strategy web page, as available on Infozone (2022-10-11);
 - (ii) LPRAB e-bulletin dated 2021-10-18 with title “Non-advertised staffing”;
 - (iii) Staffing Process File Management, web page, as available on Infozone (2023-02-20);
 - (iv) Non-advertised staffing – File check list Word document, updated in September 2022;
 - (v) Non-advertised Staffing Guide for Managers;
- R#7 The Non-advertised staffing – File check list; Staffing Action Rationale document(s), as completed for each extension and/or appointment for the RN# 56360557 since November 2021; and including applicable records and check lists for the subject appointment;
- R#8 The complete email chain - original chain and with English translation as applicable, and including any attachments in the email segments, with the following specifics:
- Segment: Originating segment of the email chain
From: Andre Generux, on behalf of HR Staffing Processes
Sent: September 28, 2021 8:39 AM
To: Huneault, Nadine
Cc: Gingras-Doucet, William, HR Staffing Process
Subject: Staffing process AU-04 56360557
Addl. Info: Other individuals in the email chain include Marie Verner, Catherine Amyot,
- Segment: Ending segment of the email chain
From: Nadine Huneault
Sent: 10 June, 2022 12:00
To: Catherine Amyot
Subject: RE: Staffing process AU-04 56360557
Addl. Info: Some segments in the email chain are in French
- R#9 Records on pools and sub-pools created for RN# 56360557 since November 2021 to date including any pools or sub-pools that were closed;
- R#10 Recourse notifications sent to the candidates in the pool and/or sub-pools since November 2021, for RN# 56360557;

R#11 All correspondence between the Decision Maker, Staffing Advisors, HR Advisors and/or supervisor of the Decision Maker in relation to the Employment Equity gap identified for the subject AU-04 position;

R#12 The complete email chain, if any, to the email segment with the following specifics:

From: Nadine Huneault
Sent: December 6, 2022 04:36 PM
To: HR Staffing Processes LPRAB (generic mail box)
Cc: Awoussi, Gnicole-Honorine
Subject: RE: Staffing process AU-04 - 56360557
Addl. Info: The email chain includes an email segment from HR Staffing Processes that was sent to Nadine on December 6, 2022 at 04:15 PM in relation to the candidate(s) left in the pool for 56360557.

R#13 Records, since October 3, 2022, of all email correspondence, MS Teams chat logs, MS Teams calls logs etc., reflecting communications between the Decision Maker and their supervisor and/or HR Advisors in relation to identifying Ms. Wirag as a potential appointment for the subject AU-04 position;

R#14 Records of email correspondence, MS Teams chat logs, MS Teams calls logs in relation to the communications between the Decision Maker and Ms. Wirag;


R#15 The letter of employment offer letter extended to Ms. Wirag for the subject AU-04 appointment;

R#16 Records from HRMT system and all email correspondences to/from HR Branch and/or HR-LPRAB Staffing, in respect of appointment of Ms. Wirag.

(c) Where information requested in (b) above is not documented or records are not available, the Applicant requests submission of affidavits by Ms. Huneault and Mr. Charette of all discussions that occurred between them and with relevant advisors or superiors; activities undertaken; dates and mode of interactions; factors considered in decision making from March 1, 2022 to date, with respect to RN# 56360557 and the subject appointment.

(d) The Applicant draws attention of this Court that this application was completed under time-constraints and pressure; and while awaiting further information from the Decision Maker. The Applicant has intentions to amend this application, if warranted.

October 11, 2023



Adeeb Ahmed
Applicant

1210 - 1140 Taradale Drive NE
Calgary AB T3J 0G1

Tel.: 343-572-8743

Email: adeeb_ahm@yahoo.com

(This document has been signed electronically)