

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.**

November 15, 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 the staffing of an AU-04 position.

The Decision Maker, made a decision to adopt a non-advertised staffing process (“Decision# 1”), to address the staffing of a vacant AU-04 position, as opposed to using the available advertised staffing selection process - RN# 56360557 (“the subject selection process”) that was still open.

On October 19, 2023, the Applicant learnt about the Decision #1 and that it was not related to a staffing process.

The Decision Maker identified the month of January 2023 (without specifying an exact date) as the time when the Decision Maker was in consultation with Ms. Jennifer Wirag regarding the appointment for an/the AU-04 position.

On October 26, 2023, the Applicant requested the Decision Maker to provide the exact date when the Decision# 1 was taken. The Applicant later escalated the request to two individuals above in the management hierarchy, the Director General (“DG”) of the Registered Plans Directorate (“RPD”) and the Assistant Commissioner of the Legislative Policy and Regulatory Affairs Branch (“LPRAB”) respectively, to provide the exact date of when the Decision #1 was taken. Despite these requests, the Applicant was not provided with an exact date.

The Applicant files this judicial review application taking into consideration October 19, 2023 as the date when the Applicant learnt of the Decision# 1.

The Applicant has an on-going judicial review application T-2265-23 which is also related to the subject advertised staffing selection process – RN# 56360557. For clarity, in T-2265-23, the Applicant is challenging a separate decision, per Rule 302 of the *Federal Courts Rules*.

In the subject Decision# 1, 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:

- administered and managed the subject selection process right from the start in an arbitrary manner;
- failed to adhere to the Employment Equity policies within CRA;
- failed to adopt the advertised selection process for permanent appointment and fill the Employment Equity gap, despite being aware of the Employment Equity gap to the AU-04 (AU0624) position in AD;
- adopted the non-advertised staffing process for permanent appointment to the AU-04 position and adversely limited the candidacy of the Applicant, the sole-candidate in the advertised staffing pool who fit the Employment Equity gap criterion;
- circumvented exploring the subject selection process for identifying a suitable AU-04 candidate by adopting a non-advertised selection process;
- was not transparent or gave misleading information to candidate(s) in the pool of the subject selection process, which included the Applicant;
- failed to acknowledge the existence of an Employment Equity gap to the AU-04 position in response to the Applicant's query;
- responded to the Applicant's query on her knowledge of the Employment Equity gap to the AU-04 position in a vague manner;
- exhibited a pattern of failing to record the decisions and reasons thereof;
- exhibited a pattern (and as replicated by her superiors) of denying relevant records; providing incomplete or inaccurate information to the Applicant surrounding the administration of the subject selection process;
- exhibited a pattern (and as replicated by her superiors) of denying relevant records; providing incomplete or inaccurate information to the Applicant on the Employment Equity gap;
- 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 remitting the matter back to be decided by a new Decision Maker external to and distant from the influence of the Decision Maker and her supervisors up to the level of the Assistant Commissioner of the LPRAB; and in accordance with the reasons of this Honourable Court;
- (c) an Order requiring the new Decision Maker to adopt the subject (advertised) selection process and further the process while addressing the existing Employment Equity gap;
- (d) 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 and that of T-2265-23 are finalized and settled;
- (e) an Order, subject to Court's jurisdiction and powers, 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;
- (f) the costs for this application; and,
- (g) 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 candidates for the AU-04 position ("pooled candidates").

- 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 that it remained open to have a different decision-maker conduct the IF.

- 11) On or about June 21, 2023, the Applicant discussed with the current manager of CI-05 of having received an offer for an acting position in a different work area within Ontario Region of CRA.
- 12) On July 31, 2023, Ms. Wirag was offered a permanent lateral move for the AU-04 position and effective August 14, 2023.
- 13) On August 14, 2023, the Honourable Madam Justice Furlanetto pronounced an Order (“the Order”) allowing the motion to strike of the Respondent CRA. 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.
- 14) 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.
- 15) In the same email communication, the Decision Maker also confirmed that Ms. Wirag was initially consulted or offered the AU-04 position in June 2023, without specifying the exact date.
- 16) On October 11, 2023, the Applicant filed a judicial review application (T-2265-23) which is also related to the subject advertised staffing selection process – RN# 56360557, but is against a different decision of the Decision Maker.

- 17) On October 19, 2023, the Applicant learnt about the permanent lateral move of Ms. Wirag per a non-advertised process and at the level.
- 18) On October 26, 2023, the Applicant queried the Decision Maker on the date when the Decision# 1 was resorted to despite an advertised process being available. The Decision Maker failed to respond to the query. The Decision Maker's immediate supervisor, the DG of RPD alluded to identifying Ms. Wirag as a candidate for AU-04 appointment in January 2023, and without clearly specifying the date when the Decision #1 was taken.
- 19) On October 27, 2023, the Applicant queried with the Assistant Commissioner of LPRAB, i.e. the supervisor of the DG of RPD, on the date when Decision #1 was taken. The Assistant Commissioner also did not provide the date when the Decision #1 was taken.
- 20) The Individual Feedback to the Applicant, as proposed by CRA in May 2023 and which was a factor considered in the Order of this Court on August 14, 2023 (T-2019-22) by this Court has not been completed to date by CRA.

### **Grounds**

- 21) 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;
- 22) The Decision Maker erred in law; failed to observe policies or procedures of CRA when she provided misleading staffing action notifications to the candidate(s) in the subject selection process;
- 23) 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, consultations with staffing resource or HR advisors, and consultations with her supervisor, if any, in the process of decision making and making appointments, extensions or adopting of non-advertised selection process to the subject AU-04 position;

- 24) 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;
- 25) The Decision Maker erred in law; failed to observe a principle of natural justice, procedural fairness; failed to act with integrity when she abandoned the available advertised staffing process and opted to use non-advertised staffing to permanently staff the vacant AU-04 position;
- 26) The Decision Maker, and including her superiors and staffing administration section in the LPRAB, failed to provide requested information and records of RN# 56360557; withheld information and failed to uphold principles of natural justice and procedural fairness;
- 27) The Decision Maker and/or superior(s) failed to act with integrity when she decided, in a unfair and unreasonable manner, to circumvent the available pooled candidate(s) of the subject selection process and staff the subject AU-04 position through a non-advertised staffing mechanisms;
- 28) The Decision Maker and/or superior(s) failed to act with integrity when she limited the opportunity of permanent appointment to the candidate(s) in the pool from the advertised subject staffing process;
- 29) 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;
- 30) 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;

- 31) The CRA, the Decision Maker or her superiors apparently acted without transparency or integrity 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;
- 32) The CRA, and by extension, the Decision Maker or her superiors apparently acted without transparency or integrity when they failed to inform the Federal Court of the changes to the grounds on which the mootness argument was raised in CRA's motion to strike against the judicial review application T-2019-22;
- 33) The Decision Maker erred in law, inappropriately exercised her jurisdiction; failed to apply integrity based decision making as required of CRA's policies; and/or failed to adopt best practices at various instances of decision making in the administration of the subject selection process;
- 34) 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;
- 35) 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;
- 36) 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;
- 37) Section 18.1 of the *Federal Court Act*, Rules 300-317 of the *Federal Courts Rules*; and
- 38) 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 CRA, relating to the subject Decision# 1 against which this judicial review application is filed;
- (c) The material available with the CRA and/or LPRAB relating to integrity in decision-making; non-advertised staffing; and policies on addressing; policies on employment equity in CRA and in LPRAB;
- (d) The outcome and documentation to the staffing recourse (Individual Feedback and Decision Review as applicable) on the arbitrary nature of the Decision Maker's June 2022 decision;
- (e) Such further and other material as the Applicant may request and this Honourable Court may permit; and
- (f) 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 with 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# 1, 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# 1;

(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 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#2 Records on pools and sub-pools created for RN# 56360557 since November 2021 to date including any pools or sub-pools that were closed;

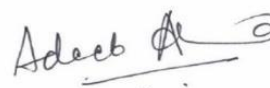
R#3 Recourse notifications sent to the candidates in the pool and/or sub-pools since November 2021, for RN# 56360557;

R#4 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#5 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#6 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 her supervisor and/or HR Advisors in relation to adopting the non-advertised staffing process to staff the AU-04 position
- R#7 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#8 Records from HRMT system and email correspondences to/from HR Branch and/or HR-LPRAB Staffing, in respect of Decision# 1.
- R#9 Records from HRMT system and 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 Decision #1.
- (d) The Applicant intends to consolidate this application with T-2265-23.

November 15, 2023



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**(This document has been signed electronically)**