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	July 18, 2023 18 juillet 2023
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Court File No. T -

FEDERAL COURT OF CANADA

B E T W E E N:

CLAIRE (BIWEI) ZHANG

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.**

July 18, 2023

Issued by: _____
Registry Officer

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

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

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

APPLICATION

1. This is an application for judicial review in respect of the Record of Decision 2023-036, (the “Decision”) dated June 19, 2023, of the Public Service Commission of Canada (the “Commission”).
2. By virtue of the Decision which was sent to the Applicant on or about June 21, 2023, the Commission adopted Amended Investigation Report 2019-BSF-00086.31223 (the “Investigation Report”), prepared by the Investigations Branch of the Commission, which concluded that the Applicant had committed fraud in advertised internal appointment process 2018-EA-HRB-EC-03/04/05-208, conducted to staff various positions at the EC-3, EC-4 and EC-5 group and levels within the Canada Border Services Agency (CBSA) in Ottawa, Ontario.
3. The finding of fraud followed the Applicant’s erroneous submission of two applications to the appointment process. While the Commission found that there was nothing fraudulent about submitting two applications online, it nonetheless found that the Applicant committed fraud when she failed to subsequently clarify that she was the same candidates and took, at the CBSA’s invitation, the standardized exams twice.
4. Pursuant to the Decision, the Commission imposed corrective action under section 69 of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (the “PSEA”).

The Applicant makes application for:

1. An order quashing the Commission’s Decision dated June 19, 2023;
2. an order referring the matter back to the Commission for redetermination in accordance with the law and the instructions of this Honourable Court;
3. her costs of this application; and
4. such further and other relief as counsel may advise and to this Honourable Court may allow.

The grounds for the application are:

1. 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 in concluding that the Applicant had committed fraud in the external appointment process number 2018-EA-HRB-EC-03/04/05-208, resulting in it rendering an unreasonable decision, including by:
 - a) failing to provide a transparent and intelligible justification for why it deemed that the Applicant's subsequent actions in respect of the failure to inform CBSA of the two applications and to take the standardized take-home exams twice constituted committing fraud after it concluded that the fact that the Applicant submitted two applications did not constitute fraud;
 - b) failing to give appropriate consideration to the relevant factual matrix, including the CBSA's own flawed hiring and screening process, such as the failure of CBSA to recognize that the two near identical applications belonged to the Applicant and its subsequent actions of sending her two invitations to take the take-home exams along with vague and unclear instructions;
 - c) failing to give appropriate consideration to the evidentiary record and relevant factual matrix, including the Applicant's youth and the fact that as a student she had limited experience applying through the external appointment process; and
 - d) failing to give appropriate consideration to the submissions by the Applicant, the evidentiary record and/ or the relevant factual matrix, including the Applicant's language barriers when responding to correspondence from the CBSA and when navigating the unclear instructions throughout the appointment process;
 - e) failing to give any weight to the fact that the Applicant was explicitly informed that the only consequence of writing the qualifying exams twice was that second exam would not count. At no time was she told that by writing the qualifying exams twice, she could be found to have committed fraud in the appointment process.

2. The Commission unreasonably concluded that the Applicant acted dishonestly when she signed, at the CBSA's invitation, the Confidentiality agreement multiple times and participated twice in each of the standardized exams, despite the Commission itself implicitly recognizing that the Applicant had no intent to deceive the CBSA, when it found as follows in the Report, *inter alia* that:
 - the Applicant did not alter her name in her applications in order to deceive the department into thinking she was two different persons;
 - listing her employer as PSPC instead of ESDC was simply an error and was not done with an intent to deceive;
 - the responses given to the screening questions in both applications listed information from the Applicant's own experience, and thus were truthful;
 - a reasonable person looking at Ms. Zhang's two applications side-by-side would conclude that the applications were from the same individual; and
 - there was nothing fraudulent or dishonest about submitting two applications for the same appointment process;
3. The Commission unreasonably concluded that the Applicant's actions amounted to a risk of deprivation and found that they could have compromised the appointment process;
4. 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 in concluding that corrective actions should be imposed on the Applicant;
5. The Commission erred in law and inappropriately exercised its jurisdiction by implementing disproportionate corrective measure on the Applicant and failing to give adequate consideration to mitigating factors when determining the corrective measure;
6. The Applicant was denied procedural fairness and/or natural justice;
7. 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

8. 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;
- (b) The material in the possession of the Commission, relating to Investigation Report 2019-BSF-00086.31223 and Record of Decision 2023-036, the decision that is the subject of this Application; and
- (c) 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 Commission to the Applicant and to the Registry:

- (a) 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 appointment process 2018-EA-HRB-EC-03/04/05-208, which were the subject of investigation and which the Commission considered in preparing the Amended Investigation Report 2019-BSF-00086.31223 and Record of Decision 2023-036, which is the subject of this Application.

Date: July 18, 2023


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