Federal Court  Cour fédérale

Date: 20101126

Docket: T-88-10

Citation: 2010 FC 1194

Ottawa, Ontario, November 26, 2010

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

DR. NOEL AYANGMA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is another chapter in a long saga that has involved several proceedings before this Court, two appeals to the Federal Court of Appeal and two applications for leave to appeal to the Supreme Court of Canada.

[2] The Applicant is a black person who is originally from Cameroon, Central Africa. He was hired by Health Canada in January 1999. He applied for a number of more senior positions within Health Canada between 1999 and 2004, but was unsuccessful. Following an audit of his travel claims, he was dismissed in May 2004. In a complaint filed later that month with the Canadian Human Rights Commission (the "Commission"), he alleged that certain senior managers at Health

Canada had discriminated against him based on his race, colour, national or ethnic origin and his culture, contrary to the provisions of sections 7 and 10 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 ("CHRA").

[3] In a decision dated December 23, 2009, the Commission dismissed his claims.

[4] The Applicant seeks to have that decision set aside on the basis that the Commission erred by, among other things:

i. acting outside its jurisdiction when it determined that his complaint regarding a competition for an EX-01 position was *res judicata*;

ii. unreasonably and incorrectly concluding that his complaint regarding the EX-01 competition had already been addressed by prior decisions of this Court and the Federal Court of Appeal;

iii. failing to investigate his complaints regarding competitions for an EX-02 position and a PM-05 position, and related matters;

iv. failing to refer to the Canadian Human Rights Tribunal (the "Tribunal") his complaints pertaining to his suspension and termination; and

v. breaching the principles of procedural fairness and natural justice, by failing to conduct a thorough, fair and neutral investigation and analysis of his complaints.

[5] For the reasons that follow, this application is dismissed.

[6] The additional errors alleged to have committed by the Commission will be dealt with in the course of dealing with the alleged errors listed above.

I. Background

[7] The errors alleged to have been committed by the Commission relate to three competitions and the Applicant's subsequent suspension and termination.

(i) *The EX-01 Competition*

[8] The competition for the position of Acting Assistant Regional Director, an EX-01 position, was held in 2000. The Applicant participated in the competition, together with several other candidates. However, he was unsuccessful, as the competition ultimately was won by Ms. Monique Charron, a Caucasian who had held the position in an acting capacity since 1997.

[9] The Applicant appealed Ms. Charron's appointment to the Public Service Appeal Board (PSAB) on various grounds. That appeal was partially successful, as the PSAB determined that the selection board members did not have sufficient knowledge of French to communicate with the Applicant during his interview, contrary to subsection 16(2) of the *Public Service Employment Act* (PSEA), R.S.C. 1985, c. P-33. In response, Health Canada conducted a new competition with a new selection board, but did not revoke Ms. Charron's appointment.

[10] The Applicant refused to participate in the new competition unless Ms. Charron's appointment was revoked, as he felt that she would have an advantage if she retained the position during the new competition, even though it was clear that her appointment would be revoked should she not be the successful candidate. Once again, Ms. Charron won the competition.

[11] The Applicant then filed a statement of claim in this Court alleging, among other things, that his rights under s. 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11, had been violated. That action was dismissed, as was the Applicant's appeal to the Federal Court of Appeal and his request for leave to appeal to the Supreme Court of Canada.

(ii) *The PM-05 Competition*

[12] The Applicant was hired as the Atlantic Regional Project Coordinator, First Nations and Inuit Health Information System, in January 1999 by Health Canada's regional office in Halifax. There were six other similar Regional Project Coordinator positions across Canada. In February 2000, senior management at Health Canada decided to update the job description to transform those positions into Program Manager positions. This would result in the positions being reclassified from a PM-04 level to a PM-05 level.

[13] The first region to make this change was Alberta, where the incumbent Regional Project Coordinator, a Caucasian, was appointed to the Program Manager position without a competition. According to the Applicant, the same thing occurred in the other regions of Canada. However, in Atlantic Canada, a competition was held for the PM-05 position in March 2003. The Applicant voiced his objection to the holding of the competition a number of times, alleging that he should have been appointed to the position like his Caucasian colleagues in Alberta and elsewhere. After management initially refused to cancel the competition, the Applicant withdrew his application in May 2003.

[14] Despite withdrawing his application, the Applicant was appointed Acting Program Manager on May 26, 2003. Ultimately, he was replaced on August 18, 2003 by Ms. Agatha Hopkins, a Caucasian woman. Ms. Hopkins was appointed to the position through an interchange agreement. The competition was officially cancelled on September 2, 2003. The Applicant alleges that management discriminated against him by failing to appoint him to the position without a competition, as was done with his colleague in Alberta.

(iii) *The EX-02 Competition*

[15] In 2002, a competition was held for the position of Regional Director, an EX-02 level position. The Applicant participated in that competition, but once again it was won by someone else, Ms. Debra Keays-White, a Caucasian woman. In 2003, Ms. Sarah Archer was appointed to that position on an acting basis. The Applicant claims that although he was qualified for the EX-02 position, he was excluded from the processes that resulted in the appointments of Ms. Keays-White and Ms. Archer.

(iv) *The Applicant's Suspension and Termination*

[16] The remainder of the Applicant's complaints relate to an investigation into his travel claims, his suspension without pay effective December 3, 2003 and the subsequent termination of his employment effective May 7, 2004.

[17] When Ms. Hopkins was appointed to the Program Manager position, she became responsible for approving the Applicant's travel claims. In September 2003, shortly after her appointment, the Applicant submitted some travel claims that Ms. Hopkins considered irregular, so she requested him to provide further information. He refused to do so. As a result, on October 6,

2003, Ms. Hopkins requested an internal audit of all of the travel claims submitted by the Applicant from 1998 to 2003.

[18] A few days later, the Applicant sought and was granted a medically approved leave for six weeks. On December 2, 2003, he indicated his intention to return to work. However, the following day he was told that he was suspended without pay pending the results of the review of his travel claims. On May 7, 2004, he was then terminated based on the findings of that review, which determined that he had (i) submitted over $28,000 in false travel claims, (ii) failed to report absences from work, and (iii) used his government cell phone and laptop for non-government purposes.

[19] The Applicant then submitted a grievance with the Public Service Staff Relations Board ("PSSRB"). Ultimately, an adjudicator (the "Adjudicator") concluded that his termination was justified. In his complaint to the Commission, the Applicant alleged that the investigation into his travel claims was flawed, biased, discriminatory, unjust and abusive.

(v) *The First Commission Decision*

[20] Upon receiving the Applicant's complaint, the Commission appointed an investigator (the "First Investigator") to determine whether (i) the Applicant's complaints had been made within the applicable one-year limitation period, and (ii) if so, the complaints would be more properly dealt with through other available avenues of redress.

[21] On September 2, 2004, the First Investigator issued his report. In short, that report contained the following recommendations:

i. Pursuant to paragraph 41(1)(e) of the CHRA, the Commission should rule on the Applicant's allegations regarding the EX-01 competition, because there was evidence that he had contacted the Commission within the applicable one-year time period.

ii. Pursuant to the same provision, the Commission should rule on the respondent's submission that the several of the Applicant's allegations had been made beyond at one-year time limit, because the Applicant had failed to provide an explanation for his delay in making his complaints.

iii. Pursuant to paragraph 41(1)(b) of the CHRA, that the Commission should decline to deal with the complaints related to the EX-01 competition at that time, because the allegations in question could be more appropriately dealt with in other proceedings. On this point, the First Investigator added that at the end of those other proceedings, or if it becomes manifest that those proceedings are not normally open to the Applicant, the Commission may, if the Applicant so requests, choose to exercise its jurisdiction to rule on those allegations.

[22] Subsection 41(1) of the CHRA states:

Commission to deal with complaint	**Irrecevabilité**
41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that	**41.** (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :

(*a*) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;	*a*) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;
(*b*) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;	*b*) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;
(*c*) the complaint is beyond the jurisdiction of the Commission;	*c*) la plainte n'est pas de sa compétence;
(*d*) the complaint is trivial, frivolous, vexatious or made in bad faith; or	*d*) la plainte est frivole, vexatoire ou entachée de mauvaise foi;
(*e*) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.	*e*) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.

[23] In a short decision dated November 17, 2004, the Commission adopted the First Investigator's recommendations.

(vi) *The Second Commission Decision*

[24] On May 6, 2008, after exhausting the other avenues of address available to him, the Applicant requested that the Commission re-open his complaint. Ms. Louise Chamberland (the "Second Investigator") was appointed to prepare a report for the purposes of giving notice to the parties that a decision would be made by the Commission pursuant to subsection 41(1) of the CHRA and to identify the factors that are relevant to that decision.

[25] The Second Investigator's report was issued on December 18, 2008. In brief, that Report:

i. Summarized the Commission's first decision, dated November 17, 2004, by stating that it had informed the Applicant that:

- he ought to exhaust his other avenues of redress before it would make a determination as to whether to proceed to consider the allegations that had been made within the prescribed one-year timeframe with respect to the EX-01 competition; and
- his other allegations could not be accepted because he had not provided adequate justification for the late filing of his complaint.

ii. Noted that the Commission would determine whether it would refuse to rule on the Applicant's complaint (presumably with respect to the EX-01 competition) pursuant to paragraph 41(1)(b).

iii. Summarized the factors relevant to a decision under paragraph 41(1)(b).

iv. Invited the parties to make submissions concerning the allegations related to the competition for the EX-01 position and the factors that had been identified as being relevant to a decision under paragraph 41(1)(b).

v. Advised the parties that, based on their submissions, the Commission would decide either to (i) deal with the complaint under subsection 41(1); or (ii) not deal with the complaint, pursuant to paragraph 41(1)(b), on the basis that the allegations of

discrimination had already been addressed through another process available to the Applicant.

[26] On May 6, 2009, the Commission decided that it would rule on the allegations regarding the EX-01 competition. That decision was simply a standard form report in which the Commission checked off two boxes indicating that it would rule on the complaint because: “the complaint seems to have merit and is clearly based on certain grounds” (*translation*). That decision was sent to the Applicant under the cover of a short letter dated May 19, 2009.

[27] The Commission then appointed Ms. Pascale Lagacé (the “Third Investigator”) to investigate the merits of the complaint. On September 30, 2009, the Third Investigator issued her report. In short, her recommendations were as follows:

i. Pursuant to paragraph 44(3)(b)(ii) of the CHRA, the Commission should dismiss the part of the complaint concerning the competition for the EX-01 competition on the grounds set forth in paragraph 41(1)(d) of the CHRA, because the human rights issues had already been addressed by decisions issued by this Court and by the Federal Court of Appeal in 2002 and 2003, respectively.

ii. Pursuant to subsection 41(1) of the CHRA, the Commission should rule on the part of the complaint that concerns the suspension and dismissal of the complaint, because the alternative recourse that had been pursued by the Applicant had not addressed his allegations of discrimination.

iii. Pursuant to paragraph 44(3)(b)(i), the Commission should dismiss part of the complaint involving the Applicant's suspension and dismissal because:

- the evidence did not support the Applicant's allegations that he was a victim of adverse differentiation in the course of employment because of his race, his colour, his national or ethnic origin; and

- given all the circumstances of the complaint, an inquiry by the Tribunal is not warranted.

[28] Paragraph 44(3)(b) states:

44. (3) On receipt of a report referred to in subsection (1), the Commission	**44.** (3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :
…	...
(*b*) shall dismiss the complaint to which the report relates if it is satisfied	*b*) rejette la plainte, si elle est convaincue :
(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or	(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,
(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*).	(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41*c*) à *e*).

II. The Decision under Review

[29] In a short decision dated December 23, 2009, which essentially reiterated the Third Investigator's recommendations verbatim, the Commission adopted those recommendations.

[30] It is well accepted that when the CHRC adopts an investigator's recommendations and provides no, or only brief, reasons the investigator's report is treated as constituting the Commission's reasoning for the purpose of reviewing a decision made under section 44. The consequence is that if the report that provided the basis for the CHRC's decision is flawed, the CHRC's decision itself is equally flawed (see, *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No. 2056 at paras. 37 and 38).

[31] Following a brief explanation of the purpose of her report and a brief summary of both the complaint and the investigative process that she would follow, the Third Investigator restated the Commission's initial decision dated November 14, 2004. After observing that the Commission's decision was not entirely clear, she stated that a thorough examination of the complaint form and the other documents in the file indicated that, apart from the allegations concerning the EX-01 position, the Commission had decided not to rule on allegations relating to various other matters described in the Applicant's complaint because (i) those aspects of the complaint had been made beyond the applicable one-year time period, and (ii) the Applicant had not provided a valid explanation for his lateness in contacting the Commission. She noted that she would therefore not examine those other aspects of the complaint, which included the allegations relating to the reclassification of the Applicant's PM-04 position and the ensuing competition for the PM-05 position, the allegations concerning the EX-02 position, and allegations concerning incidents that occurred between 1998 and 2000.

[32] The Third Investigator added that the aspect of the Applicant's complaint concerning the internal audit of his travel expenses and his subsequent suspension and termination had been submitted within the applicable period and therefore would be examined as part of her investigation.

[33] She then acknowledged the Applicant's position that his complaint regarding the PM-05 competition had not been made beyond the one-year time limit because the competition had not been cancelled until September 2003. However, she rejected this position on the following three grounds:

i. A thorough review of the complaint form and the documents submitted by the Applicant indicated that the alleged discrimination pertained to the holding of the competition to staff the PM-05 position, which he had been occupying on an acting basis. The decision to hold the competition was made in March 2003 and upheld in May 2003, as communicated to the Applicant on May 16, 2003.

ii. Although the competition had not been cancelled until September 2003, the Applicant had already indicated in the spring of that year that he refused to submit to the selection process and was withdrawing his candidacy.

iii. The Applicant had not provided any explanation for his delay in submitting his complaint in respect of the PM-05 competition that was initiated in March 2003.

[34] Based on the foregoing, the Third Investigator therefore stated that these aspects of the complaint seemed to have been submitted late and were, in any event, addressed in the Commission's decision of November 17, 2004 (which ruled that those aspects of the complaint had in fact been submitted beyond the applicable one-year time limit).

[35] The Third Investigator then considered the alternative recourse pursued by the Applicant with respect to the two surviving aspects of his complaint.

[36] Regarding the EX-01 complaint, she began by noting that the Applicant had filed various appeals and proceedings regarding that matter. She then extensively quoted from Justice Blanchard's decision in *Ayangma v. Canada (Attorney General)*, 2002 FCT 707 ("*Ayangma 1*"), where the Applicant's action for damages for a breach of section 15 of the *Charter* was dismissed. She also quoted from the Federal Court of Appeal's decision in that case (*Ayangma v. Canada (Attorney General)*, 2003 FCA 149). After noting that those decisions had concluded that the Applicant had submitted no evidence to support his allegations of discrimination under section 15 of the *Charter*, she observed that "it would seem that we have *res judicata* on this allegation and that this part of the complaint is not receivable, as it does not fall within the Commission's jurisdiction in light of the decisions of the Federal Court and the Federal Court of Appeal concerning the impugned competition."

[37] Regarding the complaint about his suspension and dismissal, the Third Investigator reviewed the decisions of the Adjudicator, the Federal Court, and the Federal Court of Appeal that were issued in 2006 and 2007 and concluded that none of those decisions had examined the

Applicant's allegations of discrimination. As a result, she proceeded to consider that aspect of the Applicant's complaint.

[38] After noting that she had examined all of the documents submitted by the parties and that she had held many discussions with the Applicant, the Third Investigator noted that the Applicant had provided a list of five witnesses. She stated that since none of these witnesses were involved in the decisions to audit the Applicant's travel claims, to suspend him, or to dismiss him, she had decided not to interview any of them because they did not have direct knowledge of the incidents in the complaint and the subject of the complaint.

[39] After then reviewing the evidence submitted by the Applicant in support of his allegations, the Third Investigator concluded that he had not provided any evidence that would serve to establish that his treatment by Health Canada was linked to the grounds cited in his complaint. She further observed that although the Applicant had represented to the Adjudicator from the PSSRB that he was the target of a discriminatory conspiracy, he had submitted no evidence to the Adjudicator establishing a connection between the cited grounds of discrimination and his treatment by senior management at Health Canada. In addition, she found that the Respondent had provided a reasonable explanation for its actions which did not seem to be a pretext for unlawful discrimination based on the race, colour, or national/ethnic origin of the Applicant.

[40] Based on the foregoing, the Third Investigator concluded by making the recommendations discussed at paragraph 27 above.

III. Standard of review

[41] The questions of fact and of mixed fact and law that are at issue in this case are reviewable on a standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 51 to 55; *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 45; and *Canada (Attorney General) v. Davis*, 2010 FCA 134, at para. 5). However, the questions that have been raised with respect to jurisdiction, procedural fairness and natural justice are reviewable on a standard of correctness (*Dunsmuir*, above at paras. 55, 59, 60, 79 and 87; *Khosa*, above, at paras. 42 to 44; and *Davis*, above, at para. 6).

[42] In *Khosa*, at para. 59, reasonableness was articulated by Justice Ian Binnie as follows:

> […] Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of *justification*, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome. (Emphasis added.)

IV. Analysis

A. *Did the Commission act outside of its jurisdiction in its handling of complaint regarding the EX-01 competition?*

[43] The Applicant submits that the Commission erred in law by determining that the aspects of his complaint relating to the EX-01 competition were *res judicata* and that therefore they were beyond the jurisdiction of the Commission. He asserts that there was in fact sufficient evidence before the Third Investigator to warrant a further inquiry by the Tribunal, and that therefore the

finding that the Commission lacked jurisdiction to review these aspects of his complaint constituted an error of law and a failure to exercise its legislative mandate pursuant to s. 41 of the CHRA.

[44] I disagree.

[45] The Third Investigator did not recommend that these aspects of the Applicant's complaint be dismissed on the ground set forth in paragraph 41(1)(c), which allows complaints to be dismissed on the ground that they are "beyond the jurisdiction of the commission." Rather, after completing her screening of the allegations and the evidence adduced by the Applicant, she recommended that those allegations be dismissed on the ground set forth in paragraph 41(1)(d), which allows complaints to be dismissed on the ground that they are "trivial, frivolous, vexatious or made in bad faith." Her explanation for making this recommendation was that "the human rights issues raised by this allegation have already been addressed by the Federal Court and the Federal Court of Appeal."

[46] In my view, it is clear from the foregoing, which was repeated essentially verbatim in the Commission's decision, and from the context in which the Third Investigator's decision was made, that her prior observations, at paragraph 18 of her report, regarding the Commission's jurisdiction related to its jurisdiction under paragraph 41(1)(d), as opposed to under paragraph 41(1)(c).

[47] I am satisfied that her comment, in that same paragraph, that "it would seem that we have *res judicata* on this allegation," was not intended to be a conclusion that the Commission had no jurisdiction to consider these aspects of the complaint based on the legal principle of *res judicata*. Given the Applicant's failure to adduce any evidence in support of his claims, which had not already been considered in the prior proceedings, the Third Investigator was simply concluding that

the complaint had become trivial, frivolous, vexatious or made in bad faith, as contemplated by paragraph 41(1)(d). She reached that conclusion after conducting a thorough investigation.

[48] Given the underlying history of this aspect of the Applicant's complaint, this was precisely one of the findings that were open to the Third Investigator and the Commission. As discussed at paragraphs 20 to 25 above, the Commission had previously decided to postpone making a determination on this part of the complaint because it wanted to wait to see whether the allegations in question could be more appropriately dealt with in other proceedings.

[49] When asked, during the hearing, whether there were any issues or evidence relevant to these aspects of his complaint that were not considered in the prior proceedings before this Court and the Federal Court of Appeal in *Ayangma 1,* above, the Applicant simply replied that Justice Blanchard had refused to admit as evidence transcripts from two prior proceedings. The first of those proceedings was a hearing before the Tribunal that was held in 1995 and 1996. That proceeding led to a decision by the Tribunal in March 1997 (*National Capital Alliance on Race Relations v. Canada (Health and Welfare),* [1997] C.H.R.D. No. 3 (the "NCARR decision")). Justice Blanchard refused to admit the transcripts from that proceeding on the basis that (i) the Respondent had not had the opportunity to cross examine on that evidence, (ii) the Applicant was not a party to those proceedings, (iii) the specific facts of the motion then before him were not at issue during those proceedings, and (iv) the very competition which led to the Applicant's complaint (the EX-01 competition) had not yet occurred. The second proceedings involved the Applicant's grievance in respect of the EX-01 competition before the PSCAB. In *Ayangma 1*, above, Justice Blanchard refused to admit the transcripts from that proceeding on the basis that (i) no evidence of

discrimination was led in that proceeding, and (ii) the procedure did not afford the Respondent the opportunity to cross-examine the Applicant.

[50] In a letter to the Applicant dated August 26, 2010, the Commission confirmed that these transcripts were included in the investigation file in this matter, although it noted that they were not before the Commission itself when it reached the decision under review. I would add that the Applicant did not adduce those transcripts into evidence, in the case at bar. When asked about this during the oral hearing before me, he stated that he had the transcripts with him and would be prepared to provide them to the Court. However, given that counsel for the Respondent had not been provided with any prior opportunity to review those transcripts, I ruled that those transcripts were not admissible at that time.

[51] Given all of the foregoing, I am satisfied that the Commission did not err by dismissing, on the grounds set forth in paragraph 45 above, the aspects of the Applicant's complaint relating to the EX-01 competition. The Commission was entitled to dismiss those allegations pursuant to paragraphs 44(3)(b)(ii) and 41(1)(d), on the basis that they had already been addressed by this Court and by the Federal Court of Appeal in *Ayangma 1*, above, and therefore had become "trivial, frivolous, vexatious or made in bad faith."

[52] Contrary to the Applicant's assertion, the Commission did not fail to exercise its legislative mandate pursuant to s. 41 of the CHRA. It explicitly did exercise that mandate, pursuant to paragraphs 44(3)(b)(ii) and 41(1)(d), and conducted a full review of the substance of the Applicant's allegations and the evidence that he adduced. The Applicant has adduced no evidence in support of his assertion that the record did not support this aspect of the Commission's decision, and that there

was in fact sufficient evidence before the Third Investigator to warrant a further inquiry by the Tribunal. When explicitly asked during the oral hearing before this Court whether he could point to any such evidence, he simply replied that it is typically difficult to provide direct evidence of discrimination and that his evidence was circumstantial in nature. Having reviewed that evidence, I am satisfied that the record does not support his assertion that there was sufficient evidence before the Third Investigator to warrant referring this aspect of his complaint to the Tribunal.

[53] The Applicant further submits that the Commission erred in dismissing, pursuant to paragraphs 44(3)(b)(ii) and 41(1)(d), the aspects of his complaint relating to the EX-01 competition, because it did not have the jurisdiction to revisit its prior decisions to allow those aspects of his complaint to proceed. He asserts that in reaching those decisions, the Commission implicitly rejected the submissions that the Respondent has made from the outset that his allegations with respect to the EX-01 competition should be dismissed on the basis that they have already been addressed by this Court and by the Federal Court of Appeal in *Ayangma 1*, above. He maintains that the Commission's previous decisions to allow these aspects of his complaint to proceed were final decisions, and that therefore the Commission was *functus officio* in respect of those issues. He adds that his position is further strengthened by the fact that in each of its two prior decisions, the Commission had explicitly informed the Respondent that it had the right to seek judicial review of its prior decisions, yet the Respondent did not seek such review.

[54] I disagree.

[55] As discussed at paragraphs 20 to 22 above, the Commission decided in its first decision involving the Applicant's complaint that it would rule on the allegations pertaining to the EX-01

competition. However, it also decided to postpone making a determination on this part of the complaint until after the other avenues of address available to the Applicant had been exhausted and a determination could then be made as to whether the allegations had been appropriately addressed.

[56] As discussed at paragraphs 23 to 25 above, in its second decision, after those other avenues of address had been exhausted, the Commission then decided that it would proceed to make a determination on these allegations, after having received the parties' submissions and evidence in respect of the factors that the Second Investigator had identified as being relevant to a decision under paragraph 41(1)(b).

[57] Contrary to the Applicant's assertion, the Commission did not at any time prior to the decision under review make any determination regarding the merits of these allegations. Its first two decisions were simply procedural in nature, and served to allow these aspects of the complaint to proceed on the basis that they had been filed within the applicable one-year time limit and seemed to have merit and to be clearly based on certain grounds. This explains why the Third Investigator refused to accept the Respondent's position that she should not investigate these allegations because they had already been dealt with elsewhere. As explained at paragraph 12 of her Report, she decided to proceed with her investigation of these allegations because the prior proceedings had never been analyzed by the Commission.

[58] Accordingly, the Applicant's position that the Commission had already made a determination with respect to the merits of his allegations relating to the EX-01 competition is without merit. There was no such prior decision in respect of which the Commission had become *functus officio*.

B. ***Did the Commission err in concluding that the complaint regarding the EX-01 competition had already been addressed by the Federal Court and the Federal Court of Appeal?***

[59] The Applicant submits that the Commission erred in failing to refer his allegations regarding the EX-01 complaint to the Tribunal, because there was sufficient evidence before the Third Investigator to warrant a further inquiry by the Tribunal. This is a question of mixed fact and law in respect of which considerable deference must be accorded to the Commission's decision (*Davis*, above, at para. 5).

[60] The Applicant maintains that the fact that Justice Blanchard rejected, in *Ayangma 1*, above, his claim that his rights under s. 15 of the *Charter* had been breached did not provide a sufficient basis for the Commission to rely largely on the findings in that case in deciding not to refer his allegations to the Tribunal.

[61] Subsection 15(1) of the *Charter* provides as follows:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.	La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

[62] In *Ayangma 1*, above, at para. 76, after reviewing the jurisprudence regarding the meaning of discrimination under subsection 15(1), Justice Blanchard reached the following conclusion:

> In this case, the plaintiff has not provided any factual basis to found a claim of discrimination. It is therefore not necessary to conduct a comprehensive assessment of the three broad inquiries set out in Law, *supra*. The plaintiff did not establish a differential treatment in the impugned staffing process that discriminated against him in a substantive sense. The plaintiff did not obtain the position he applied for because he did not have the necessary qualifications, not because he was a member of a visible minority. The Public Service Appeal Board rejected his claim of discrimination and the plaintiff's application for judicial review of the Appeal Board decision was discontinued. It is no longer open to the plaintiff to allege discrimination. I can find no evidence on the record before me and no factual basis for his claim of discrimination.

[63] On appeal, the Federal Court of Appeal in *Ayangma 1*, above, at para. 33, reached the following conclusion in respect of the Applicant's *Charter* claims:

> The motions judge did not err when he concluded that the appellant had no provided any factual basis to found a claim of discrimination under section 15 of the *Charter*. The long extracts of the decision of the PSE Appeal Board cited by the appellant in his memorandum at paragraphs 93 and 94, relate to the selection process. They do not establish discrimination. The Appeal Board found as a fact that the appellant did not meet the qualifications for the position.

[64] The Applicant's complaint to the Commission was based on Sections 7 and 10 of the CHRA, which state as follows:

7. It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

1976-77, c. 33, s. 7.

7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

a) de refuser d'employer ou de continuer d'employer un individu;

b) de le défavoriser en cours d'emploi.

1976-77, ch. 33, art. 7; 1980-81-82-83, ch. 143, art. 3.

…

…

10. It is a discriminatory practice for an employer, employee organization or employer organization

(a) to establish or pursue a policy or practice, or

(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

R.S., 1985, c. H-6, s. 10; 1998, c. 9, s. 13(E).

10. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

a) de fixer ou d'appliquer des lignes de conduite;

b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

L.R. (1985), ch. H-6, art. 10; 1998, ch. 9, art. 13(A).

[65] A discriminatory practice is defined in subsection 3(1) of the CHRA, as follows:

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.	3**.** (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

[66] As is evident from the foregoing, the types of discrimination alleged by the Applicant, namely, discrimination based on his race, colour and national or ethnic origin (including his culture) are addressed in both s. 15 of the *Charter* and ss. 3, 7 and 10 of the CHRA. The Applicant did not allege in his complaint before the Commission a type of discrimination that was not considered and addressed in the decisions by this Court and the Federal Court of Appeal in *Ayangma 1*, above.

[67] The only relevant evidence that the Applicant was able to identify that was not considered by Justice Blanchard were the transcripts from the NCARR and PSCAB hearings, discussed in part IV. A. of these reasons, above. Significantly, he was unable to identify any relevant issues that were not addressed by Justice Blanchard. In my view, in these circumstances, it was reasonably open for the Commission to decide not to refer the Applicant's allegations regarding the EX-01 complaint to the Tribunal. In these circumstances, the Commission's decision not to refer those allegations to the Tribunal was well "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47). The Commission's decision was also appropriately justified, transparent and intelligible.

[68] In addition, in these circumstances, the jurisprudence cited by the Applicant with respect to parallel proceedings under the *Charter* and the CHRA does not assist the Applicant. The Commission did not decide to refrain from referring the Applicant's allegations to the Tribunal because it believed that it was precluded from doing so simply because those same allegations had been already addressed. In fact, it decided to investigate those allegations after implicitly rejecting the Respondent's position that those allegations had already been addressed before this Court and therefore ought not to be addressed again. However, after the Third Investigator then conducted her investigation and made her recommendation that the allegations not be referred to the Tribunal, the Commission adopted her recommendation. It bears underscoring that this recommendation was made after the Third Investigator's thorough review of the evidentiary record and after she had reached the conclusion that the allegations had become "trivial, frivolous, vexatious or made in bad faith", as contemplated by paragraph 41(1)(d) of the CHRA.

[69] The Applicant submits that his position is supported by the decisions in *Perera v. Canada*, [1997] F.C.J. No. 199 (T.D.) and *Ayangma v. Prince Edward Island Eastern School Board*, 2000 PESCAD 12. Those decisions are distinguishable on the basis that they involved motions to strike a *Charter* claim, which is different from the case at bar, which involves the Commission's assessment of whether a matter which had already been the subject of proceedings under the *Charter* should be dismissed on the basis that the complaint had become trivial, frivolous, vexatious or made in bad faith. Similarly, *Ayangma v. Eastern School Board*, 2009 PESC 20 is distinguishable on the basis that it involved an (unsuccessful) attempt to obtain summary judgment on a *Charter* claim, based on the fact that a finding of discrimination had already been made in respect of a similar complaint that the Applicant had filed under the *Human Rights Act*, R.S.P.E.I. 1988, c. H-12.

[70] In the absence of any evidentiary foundation for the Applicant's claims under the CHRA, the jurisprudence cited by him with respect to processes that have been found to be flawed also does not assist him. In short, notwithstanding that Ms. Charron's appointment to the EX-01 position was not revoked after it was decided to hold a new competition for that position, the fact remained that the Applicant did not establish any link between the decision to keep her in that position and his allegations under the CHRA.

C. *Did the Commission err in failing to investigate the complaints regarding the EX-02 competition, the PM-05 competition and related matters?*

[71] The Applicant alleges that the Commission erred in failing to investigate the aspects of his complaint regarding the EX-02 competition, the PM-05 competition and related matters. He further submits that the Commission erred in law in accepting the Third Investigator's findings that the aspects of the Applicant's complaint which dealt with these matters had been submitted beyond the applicable one-year time limit. The related matters included the Applicant's allegations with respect to the reclassification of his PM-04 position to a PM-05 position, the selection process to fill the PM-05 position, the appointment of Agatha Hopkins to the PM-05 position through an interchange agreement and the cancellation of the competition for the PM-05 position.

[72] I disagree.

[73] The conclusive determinations and findings made in respect of all of these matters were made in the Commission's decision dated November 17, 2004 and in the report of the First Investigator, dated September 2, 2004.

[74] As noted at paragraph 21 above, the First Investigator recommended that the Commission rule on the allegations that the Respondent submitted had been made beyond the applicable one-year time period. In making this recommendation, the First Investigator stated that "the complainant did not provide any valid explanation for his delay in contacting the Commission." This recommendation was adopted by the Commission in its first decision, dated November 17, 2004.

[75] The Second Investigator and the Third Investigator simply confirmed that these prior findings and decisions had been made. It is for this reason that the decision under review, made on December 23, 2009, did not address any of these matters.

[76] In short, in the initial background section of the Second Investigator's report, it was observed that the Applicant had been informed, in the Commission's first decision, that the allegations he had made with respect to matters other than the EX-01 competition "could not be accepted because [he] had not provided adequate justification for the late filing of his complaint."

[77] In the background section of the Third Investigator's report, at paragraph 7, it was observed that the initial decision of the Commission had not clearly identified which allegations the Commission considered to have been filed late. In this regard, the principal uncertainty appears to have been with respect to whether the allegations concerning the internal audit of the Applicant's travel expenses, and his subsequent suspension and dismissal, had been made on time. The Third Investigator clarified that a thorough examination of the complaint form and the other documents in the file indicated that:

i. the allegations with respect to these three matters as well as the EX-01 competition had been made on time; however,

ii. the Commission had previously determined that it would not rule on the allegations that had been made with respect to the EX-02 competition, the PM-05 competition and related matters, because those aspects of the complaint had been filed beyond the applicable one-year time limit and the Applicant had not provided a valid explanation for his lateness.

[78] The Third Investigator therefore observed that the allegations involving the EX-02 competition, the PM-05 competition, and related matters, would not be examined by her.

[79] Based on the foregoing record, it is abundantly clear that the conclusive determinations and findings made in respect of all of these allegations were made in the Commission's decision dated November 17, 2004 and in the report of the First Investigator, dated September 2, 2004. The Applicant was explicitly informed in that decision of the Commission that he could seek judicial review in respect of that decision. He failed to do so. It is no longer open to him to seek such review in respect of these allegations. They were not part of the decision made in the Commission's decision dated December 23, 2009.

[80] Given that the Commission had already decided, in its decision dated November 17, 2004, not to rule on these allegations, it was not an error for the Commission to fail to rule on those allegations in its decision dated December 23, 2009 and it was not an error for the Third Investigator

to fail to investigate those allegations in her report dated September 30, 2009. The Commission also did not err in accepting the clarification provided by the Third Investigator with respect to which allegations had previously been determined to have been made too late and which allegations remained to be ruled upon. That clarification was entirely reasonable and, indeed, correct.

D. ***Did the Commission err in failing to refer to the Tribunal the Applicant's allegations regarding the investigation into his travel claims, his suspension and his dismissal?***

[81] The Applicant submits that the Commission dismissed these allegations on the basis of the findings of the Adjudicator. He further submits that the Third Investigator "completely ignored new evidence that was before her," including evidence that was not disclosed to the Applicant until after the Adjudicator's decision was made on May 29, 2006.

[82] I disagree.

[83] There is no question that the Adjudicator's focus was on whether the Applicant had submitted fraudulent travel claims, rather than on issues related to discrimination. It is for this reason that the Adjudicator refused to admit evidence that related solely to the Applicant's human rights complaint.

[84] However, the Adjudicator did review evidence pertaining to the Applicant's allegation that certain senior managers at Health Canada had engaged in a conspiracy against him, insofar as that evidence was relevant to the issue of his suspension and his termination.

[85] Accordingly, the Adjudicator's findings were relevant to the Third Investigator's review for two reasons. First, they had a bearing on whether the Respondent had a reasonable explanation for initiating the review of his travel claims, and then suspending and terminating him. Second, they had a bearing on the Applicant's claim that the alleged conspiracy formed part of the circumstantial evidence that he had been the subject of unlawful discrimination.

[86] In addition to reviewing the Adjudicator's findings, the Third Investigator also reviewed three volumes of information that the Applicant sent to her on August 3, 2009, after she invited him to provide her with documents and other evidence in support of his allegations. At paragraph 33 of her report, the Third Investigator stated: "A thorough review of this documentation indicates that, while it does confirm that the complainant had his travel claims audited, it establishes no connection between his race, colour and national or ethnic origin and his treatment by the respondent." This conclusion was consistent with a prior, more general, observation made at paragraph 31 of her report, where she observed that the Applicant had "submitted no evidence in support of his allegation."

[87] Ultimately, the Third Investigator stated her formal finding that "[a] thorough review of the evidence submitted for the complainant in support of his allegations indicates that there is no evidence that would serve to conclude that his treatment by the respondent was linked to the grounds cited in his complaint." She also formally found that the Respondent had provided a reasonable explanation for its actions. In this regard, she noted that the Adjudicator had determined that the Applicant had made false travel claims totalling $19,586.26 and that he had concluded that the Respondent had just cause to suspend and then terminate the Applicant. She further noted that the Applicant's application for judicial review of the Adjudicator's decision had been rejected by

Justice Phelan, who observed that none of the Applicant's allegations concerning his superiors and the Adjudicator "had any basis whatsoever" and that the "Applicant never substantially challenged the employer's evidence of falsification of travel claims" (*Ayangma v. Canada (Treasury Board)*, 2007 FC 780, at paras. 3 and 33).

[88] Based on my review of the Third Investigator's report and the evidence filed in this proceeding, I am satisfied that this finding was reasonably open to the Third Investigator.

[89] In my view, it was not unreasonable for the Commission to accept her recommendation to dismiss the aspects of the Applicant's complaint dealing with the investigation into his travel claims, his suspension and his dismissal, on the basis that further inquiry into those matters was not warranted, having regard to the circumstances of the complaint, as contemplated by paragraph 44(3)(b)(i).

[90] The Applicant has not identified any evidence that he was discriminated by reason of his race, colour, national or ethnic origin, in connection with the investigation into his travel claims, his suspension and his dismissal. On the contrary, the evidence demonstrates that the Respondent had a reasonable explanation for investigating the Applicant's travel claims, suspending him without pay and, ultimately, terminating him.

[91] Having regard to the foregoing, the Commission's decision to dismiss these aspects of the Applicant's complaint pursuant to paragraph 44(3)(b)(i) of the CHRA was well "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above). The Commission's decision was also appropriately justified, transparent and intelligible.

E. ***Did the Commission breach the principles of procedural fairness and natural justice by failing to conduct a thorough, fair and neutral investigation and analysis of his various complaints?***

[92] The Applicant submits that the investigation conducted by the Third Investigator lacked thoroughness, fairness and neutrality.

[93] In support of this submission, the Applicant submits that the Third Investigator failed to:

i. interview any of the five witnesses he had identified to her;

ii. consider that the discriminatory conduct that he had identified was of an ongoing and systematic nature and involved other visible minorities, as had previously been determined in the Tribunal's NCARR decision;

iii. consider new evidence presented to her, including evidence relating to the outcome of the criminal investigation that had been initiated in respect of the allegations that he had engaged in fraud; and

iv. give due consideration to the First Investigator's determination regarding which allegations ought to be ruled upon.

[94] I disagree.

[95] A judicial review of the Commission's procedure must recognize that the Commission is master of its own process and must be afforded considerable latitude in the way it conducts its investigations (*Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113, at para. 39).

[96] As to the five witnesses that he had identified, the Third Investigator stated, at paragraph 25 of her report:

> After studying all the documents submitted by the complainant and the decision of the Public Service Staff Relations Board adjudicator, the investigator determined that none of these witnesses was involved in the decision to audit his travel claims or the decision to suspend and dismiss him. It also appears that none of these persons was involved in the audit or in the decisions that followed from it. Hence they seem to have no direct knowledge of the incidents that are described in the complaint and are the subject of the present investigation. Therefore, they will not be questioned for the purposes of the investigation.

[97] The Third Investigator's obligation to conduct a thorough investigation did not require her to interview witnesses who a reasonable person would expect would not be in a position to provide evidence useful to her investigation (*Tinney v. Canada (Attorney General)*, 2010 FC 605, at para. 28; *Miller v. Canadian Human Rights Commission* (1996), 112 F.T.R. 195, at para. 10; *Egan v. Canada (Attorney General)*, 2008 FC 649, at paras. 17 and 24). However, she had an obligation to explain why she did not interview witnesses identified by the Applicant.

[98] In my view, she fulfilled that obligation in the passage quoted above from her report and her reasons for declining to interview the five witnesses were justified and sufficient. For the reasons that she articulated, I am satisfied that a reasonable person would not have expected any of the five witnesses to be in a position to provide evidence useful for her investigation, particularly given (i)

the extensive documentary and other evidence that she reviewed, (ii) the fact that she had "many discussions" with the Applicant, (iii) the Adjudicator had previously determined that the Applicant had submitted fraudulent travel claims over a significant period of time totalling $19,586.26, and (iv) the Applicant "never substantially challenged the [Respondent's] evidence of falsification of travel claims" (*Ayangma v. Canada (Treasury Board)*, 2007 FC 780, at para. 33). Those witnesses were not involved in the events forming the subject matter of the complaints and therefore could not reasonably be expected to have helpful knowledge and information in respect of the issues in question.

[99] The Applicant asserted that one of the witnesses, Mr. Peter MacGregor, his former immediate supervisor, was particularly well positioned to provide relevant information to the Third Investigator, as he had been responsible for approving the Applicant's travel expense claims prior to the arrival of Ms. Hopkins. However, the Applicant provided no evidence which might indicate that Mr. MacGregor was in any way involved with the decisions to audit his travel claims, to suspend him without pay or to ultimately dismiss him. Given all of the circumstances described above, I am satisfied that a reasonable person would not expect Mr. MacGregor to be able to provide information that might (i) be useful for the purposes of the Third Investigator's investigation, (ii) help to address a significant finding of the investigator, or (iii) help to resolve a controversial and important fact (*Busch v. Canada (Attorney General)*, 2008 FC 1211, at para. 15).

[100] As to the Applicant's submission that the Third Investigator failed to consider that the discriminatory conduct that he had identified was of an ongoing and systematic nature and involved other visible minorities, as had previously been determined in NCARR, above, he has consistently been unable to identify any evidence whatsoever in support of this submission. Indeed, Justice

Blanchard found that the Applicant had failed to establish a breach of the order that was issued in NCARR, on any of the grounds submitted by him. (*Ayangma 1*, above, at para. 55).

[101] Accordingly, I am satisfied that the Third Investigator did not fail to consider any relevant information in this regard. At paragraph 31 of her report, the Third Investigator explicitly acknowledged the Applicant's allegations that he had been subjected to discriminatory treatment since the time he was hired by the respondent and that he was the target of a conspiracy by certain senior managers at Health Canada. This demonstrates that she was well aware of those allegations. However, she then stated, after thoroughly reviewing the documents and other evidence submitted by the Applicant, that she was unable to find any evidence that would support his allegations.

[102] With respect to the Applicant's claim that the Third Investigator failed to consider new evidence presented to her, this has already been addressed at paragraphs 82 to 88 above. As to the specific evidence relating to the outcome of the criminal investigation that had been initiated in respect of the allegations that he had engaged in fraud, I am satisfied that this was not sufficiently relevant or important to warrant explicit mention in the Third Investigator's report. Particularly given the findings of the Adjudicator, discussed above at paragraph 87, the fact that a criminal investigation into the Applicant's conduct in respect of his travel claims had been closed could hardly be considered to be significant evidence that the Respondent did not have a reasonable explanation for initiating its internal investigation, suspending the Applicant and ultimately terminating him.

[103] Finally, the Applicant's claim that the Third Investigator failed to give due consideration to the First Investigator's findings and recommendations regarding which aspects of his complaint

ought to be ruled upon is without merit. For the reasons provided at paragraphs 73 to 80 above, I am satisfied that the Third Investigator's treatment of those findings and recommendations by the First Investigator were entirely appropriate.

[104] In summary, based on the evidence filed by the Applicant in the case at bar, I am unable to find any basis upon which to conclude that the Third Investigator failed to consider any evidence, let alone obviously crucial evidence (*Tahmourpour*, above; *Egan*, above, at para. 6), in support of his claims.

[105] The principle of neutrality requires that the Commission and the investigator upon whose report the Commission relies not be affected by bias and that it maintain an open mind (*Vos v. Canadian National Railway*, 2010 FC 713, at para. 44). The Applicant has not adduced any persuasive evidence that the Commission and the Third Investigator were biased or did not maintain an open mind in their review and consideration of his complaints.

[106] Based on the foregoing, I am satisfied that the Commission did not breach the principles of procedural fairness or natural justice in any of the ways alleged by the Applicant. I am satisfied that the Third Investigator's report, upon which the Commission relied in reaching the decision under review, was neutral and thorough. In addition, I am also satisfied that the Applicant was given a fair appropriate opportunity to respond to that Report, when it was sent to him on September 30, 2009 (*Davis*, above, at para. 6). The Applicant then provided his response on October 6, 2009.

V. Conclusion

[107] The application for judicial review is dismissed with costs to the Respondent. The Applicant's request for an Order that the security in the amount of $4,500 that he has deposited with this Court be paid out of court and returned to him forthwith is rejected.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed with costs to the Respondent.

"Paul S. Crampton"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Dr. Noel Ayangma, on his own behalf	FOR THE APPLICANT
Melissa Chan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT