

APPLICATION

(Court File No.)

FEDERAL COURT

BETWEEN:

TIMOTHY WILSON

Applicant

and

RYDER TRUCK RENTAL CANADA LTD.

Respondent

APPLICATION UNDER section 18.1 of the Federal Courts Act

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

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 at Toronto.

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 file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicant's solicitor or, if 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 other necessary information may be obtained on request to the Administrator of this Court at 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.

DATE: November 20, 2023

Issued by:

Address of Court:
180 Queen Street West
Toronto, ON M5V 1Z4

TO: **RYDER TRUCK RENTAL CANADA LTD.**
201-6755 Mississauga Road
Mississauga, ON L5N 7Y2

AND TO: **CANADIAN HUMAN RIGHTS COMMISSION**
344 Slater Street, 8th Floor
Ottawa, ON K1A 1E1

APPLICATION

1. This is an application for judicial review of a decision of the Canadian Human Rights Commission (the “**Commission**”) rendered on or about October 19, 2023 and received by the Applicant, Timothy Wilson, on or about October 23, 2023 (the “**Decision**”). This decision dismissed the Applicant’s discrimination complaint, bearing file number 20181051, against the Respondent, Ryder Truck Rental Ltd.
2. The Applicant makes an application for:
 - a. An Order quashing and/or setting aside the Decision of the Commission;
 - b. An Order remitting the matter to the Canadian Human Rights Tribunal for a hearing;
 - c. In the alternative to paragraph (b) an Order remitting the matter back to the Commission in accordance with the reasons of this Honourable Court for reconsideration;
 - d. An Order awarding costs to the Applicant; and,
 - e. Such further and other relief as this Honourable Court considers just in the circumstances.
3. The grounds for the application are:
 - a. The Applicant filed a complaint of discrimination on or about October 12, 2018 (the “**Complaint**”) wherein the Applicant alleged that the Respondent discriminated against him and failed to provide reasonable accommodation. He further alleged that as a consequence of same he had suffered wage loss and would continue to do so.

- b. Subsequent to filing the Complaint, the Respondent terminated the Applicant giving rise to further claims against the Respondent under the common law and statute, including for wrongful dismissal.
- c. On or about September 23, 2022, a Human Rights Officer appointed pursuant to section 43 of the Act released a report stating, *inter alia*, that “The Respondent has not provided sufficient information to demonstrate that it made a reasonable effort to accommodate the Complainant [the Applicant] in his original position...” (the “**Report**”).
- d. The Report did not request evidence or make material findings with respect to the Applicant’s compensation, normal hours, or wage loss.
- e. The Report recommended that the Commission refer the parties to conciliation and to the Canadian Human Rights Tribunal (the “**Tribunal**”) if conciliation was unsuccessful.
- f. On or about December 29, 2022, the Commission held that, “the Commission further decides, pursuant to paragraph 44(3)(a) of the CHRA, to request that the Chairperson of the Canadian Human Rights Tribunal (the Tribunal) institute an inquiry into the complaint, because having regard to all the circumstances of the complaint, further inquiry is warranted.” No Chairperson was ever appointed to the Applicant’s knowledge.

- g. The Commission further held that it would not review all allegations which the Applicant raised in the course of the investigation.
- h. The Commission further compelled the Applicant to waive settlement privilege without his consent and to provide settlement offers to the Commission in contravention to section 47(3) of the Act. The Commission stated as follows:

If, during the course of the conciliation, the respondent has made an offer to settle the complaint that has not been accepted by the complainant, but remains open for acceptance for a period of thirty (30) days following the Commission's final decision, the complaint and related materials, as well as the terms of settlement, will be referred to the Commission to determine whether such terms of settlement are reasonable in all the circumstances of the complaint and render a decision under section 44 of the CHRA.

- i. The parties attended conciliation on or about March 8, 2023.
- j. On or about April 4, 2023, the Respondent presented a settlement offer to the conciliator (the “**Offer**”), which expressly stated that it was “without prejudice to either party” and conditional on the Applicant signing a full and final release (“**the Release**”).
- k. The Release discharged the Respondent from not only liability related to allegations outlined in the Complaint but any further claims in conjunction with his termination including claims for wrongful dismissal, notwithstanding the fact that the Respondent terminated the Applicant after the Applicant made his Complaint. It stated as follows:

Wilson releases Ryder and any other person or corporation who might or could claim contribution or indemnity from Ryder from all claims, debts, demands, actions and liabilities of any kind or

nature whatsoever in law, in equity or otherwise, against Ryder or any other person or corporation who might or could claim contribution or indemnity from Ryder, existing up to the date of execution of these Minutes of Settlement by Wilson, including those which are not now known or anticipated but which may arise in the future and which relate to the issues raised and incidents alleged or could have been raised or alleged in the Complaint.

- l. The Offer was presented to the Applicant thereafter and it was not accepted by the Applicant.
- m. The Offer was provided to the Commission.
- n. On or about October 23, 2023, the Commission reversed its holding on December 29, 2022. Contrary to its decision dated December 29, 2022, it instead determined that “inquiry is not warranted pursuant to subparagraph 44(3)(b)(i) of the Canadian Human Rights Act (CHRA).” It stated that the Offer was “reasonable,” notwithstanding the full and final release which if executed would bar the Applicant from pursuing civil remedies in conjunction with the termination of his employment which occurred after the filing of the Complaint.
- o. The Commission made this decision despite having an incomplete record and inadequate investigation, *inter alia*, as it related to the Applicant’s earnings to quantify the value of the Applicant’s wage loss.
- p. The Applicant states that the Commission erred in dismissing the Complaint and failing to refer it to the Tribunal.
- q. The Applicant states that the Commission acted without jurisdiction or exceeded the jurisdiction conferred to it under the Act by, *inter alia*, engaging in the following conduct:

- i. Usurping the role of the Tribunal by adjudicating the Complaint and doing so in circumstances where the evidentiary record was not complete;
 - ii. Usurping the role of the Tribunal and Superior Court in determining the remedies to which the Applicant would be entitled at a hearing before the Tribunal and in civil proceedings when it arbitrarily deemed that the Offer was reasonable, notwithstanding the overbroad ambit of the release;
 - iii. Ordering the parties to waive settlement privilege and reviewing without prejudice settlement offers without the consent of the parties contrary to section 47(3) of the Act; and
 - iv. Considering the Offer when reversing its decision dated December 29, 2022.
- r. The Commission failed to observe principles of natural justice, procedural fairness, and other procedures that it was required by law to observe by, *inter alia*, engaging in the following conduct:
- i. Failing to provide adequate reasons and failing to particularize the remedies it considered (to the extent it considered the appropriateness of any remedy except those referred to directly in the Decision, which is expressly denied);
 - ii. Failing to provide sufficient reasons regarding (without limitation) its quantification the “loss of income” as

referenced in the Final Order; its quantification of the “lost wages” as referenced in the Final Order; and its holding that Applicant’s damages at the Tribunal would be very modest;

- iii. Arbitrarily compelling the parties to waive settlement privilege, without the consent of the parties;
 - iv. Making determinations, including (without limitation) that the Offer addresses “loss of income”, on the basis of an incomplete evidentiary record and investigation;
 - v. Failing to consider all allegations raised by the Applicant;
 - vi. Treating the Applicant with a lack of transparency, fairness, and impartiality, and stigmatizing the Applicant; and,
 - vii. Failing to consider whether or not the employer met its obligations under the *Employment Equity Act*, 1995.
- s. The Commission erred in law and/or based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it by (*inter alia*) making the following determinations:
- i. Failing to consider all remedies to which the Applicant may be entitled such as reinstatement. In the alternative, to the extent it did consider such remedies, it erred in finding that they were not appropriate in the circumstances; and,
 - ii. Failing to consider the effect of the Release on the other claims that the Applicant has against the Respondent

including wrongful dismissal, punitive, and aggravated damages when determining the Offer was reasonable.

- t. Sections 18 and 18.1 of the Federal Courts Act, RSC 1985 c F-2 as amended;
 - u. Rules 300 and 317 of the Federal Court Rules (“Rules”)
 - v. The *Canadian Human Rights Act*, 1985 including (without limitation) paragraphs 14, 14.1, 15, 27, 39, 41, 43, 44, 47, 47(3), 48, 49, and 50.
4. This application will be supported by the following material:
- a. The Decision of the Commission dated October 23, 2023;
 - b. A supporting Affidavit on behalf of the Applicant served and filed in accordance with Rule 308;
 - c. The relevant submissions before the Commission;
 - d. The Commission’s certified record; and,
 - e. Such further and other materials as the Applicant may advise and this honourable court may permit.
5. The applicant requests the Commission to 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 material that it relied upon to make its decision to the parties and to the Court Registry.

All of which is respectfully submitted this day,

November 20, 2023.



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