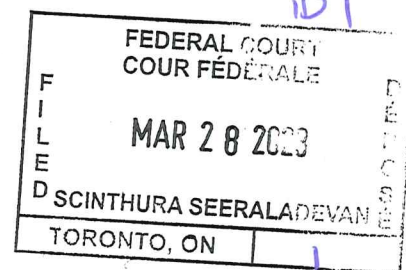


Court File No. T-610-23

## FEDERAL COURT

BETWEEN:

DAVID FRENCH



Applicant

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent

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**NOTICE OF APPLICATION**

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**TO THE RESPONDENT:**

A **PROCEEDING HAS BEEN COMMENCED** by the Applicant. The relief claimed by the Applicant appears on the following pages 3 et seq.

**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 by videoconference between the Toronto Local Office of the Court and Bath Institution, Canada.

**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 Court 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 Court 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, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

*March* \_\_\_\_, 2023

Issued by: \_\_\_\_\_

*(Registry Officer)*

Address of local office: Toronto Local Office  
180 Queen Street West,  
Suite 200  
Toronto Ontario  
M5V 3L6

**TO: FEDERAL COURT OF CANADA**

Chief Administrator  
Courts Administration Service

Toronto Local Office  
180 Queen Street West, Suite #200  
Toronto Ontario  
M5V 3L6

**AND TO: THE ATTORNEY GENERAL OF CANADA**

Respondent

per: *Federal Court Rules*, Rule 133

## APPLICATION

**THIS IS AN APPLICATION** for judicial review under section 18.1 of the *Federal Courts Act* in respect of a decision made at National Headquarters (“NHQ”) of the *Correctional Service of Canada* (the “CSC”). The decision is in respect of the Applicant’s “Grievance Presentation” at the ‘Final Level’ of the CSC – administered grievance process required by the CCRA, Part 1, pursuant to ss. 4 (f), 90 and 91 thereof, and whereby Larry Motiuk (“Motiuk”), Assistant Commissioner, Policy, upon ‘analysis’ by L. Larizza (“Larizza”), Analyst, Offender Redress, CSC NHQ, acted for the Commissioner of Corrections (the “Commissioner”) denying, the Applicant’s said Grievance Presentation Reference No. V40R00045740 (“45740”), and, in the result, failed to fulfill CSC’s legal obligation to pay the Applicant fair and equal pay for days worked as a Caregiver at Bath Institution during a 14-day work period.

The decision is dated “2023-02-17” but was first received by the Applicant only this 2023-03-14 through CSC’s tardy internal mail process.

The Larizza -authored, Motiuk decision is such as to, once again, remind of the words of The Honourable Louise Arbour who, in 1996, condemned the CSC organization top to bottom as a “deplorable defensive culture” in which “THE ABSENCE of the Rule of Law is most noticeable at the management level, both within the prison and at the Regional and National levels” – and that “even if the law is known, there is a general perception that it can always be departed from for valid reasons [sic], and that, in any event, compliance with prisoners’ rights is not a priority.” (emphasis added)<sup>1</sup>

The Applicant filed Offender Complaint Presentation #V4R00045740 requesting fair and equal pay for days worked as a Caregiver at Bath Institution during a 14-day work period. The Complaint was initially denied based upon the arbitrary finding that there is a high rate of unemployment in the institution and that someone else could be

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<sup>1</sup> Arbour, **Commission of Inquiry**: Chap 2.3.3.3, 2. 12 “**Measuring CSC’s Performance Against its Mission Statement**”, p. 173 at 174; Chap. 3.1.2 “**The breakdown of the Rule of Law**”, p. 179 at 180, and para. 2.3.3.3. Ottawa Public Works and Government Services Canada, 1996.

hired and paid to work the additional days that the Applicant was working and not being paid for. The Applicant filed Initial Grievance Presentation #V4R00045740 indicating that the decision itself clearly infers that the decision-maker was fine with someone else receiving pay for the extra days the Applicant was required to work as long as it was not him getting paid. Initial Grievance Presentation #V4R00045740 noted that this was not consistent with several other positions, all of which received pay for 14-days despite the institution's "high rate of unemployment." Initial Grievance Presentation #V4R00045740 further noted that the Applicant had been caring for up to three people at one time since being hired for the job for which only one inmate was assigned per caregiver at the time of hire. Initial Grievance Presentation #V4R00045740 also noted that the Applicant had made himself available mornings, afternoons, and evenings in an effort to meet the demands of an increasing workload while trying to meet his legal expenses and student loan debt. The Applicant received Initial Grievance Response #V4R00045740, authored by Ryan Beattie, Warden, denying Initial Grievance Presentation #V4R00045740 based on nonsensical and convoluted reasoning, as well as misleading information. The Applicant filed Final Grievance #V4R00045740 indicating that his complaint/grievance was denied based upon bias and arbitrary reasoning that was both inaccurate and completely unfounded in CSC policy. On March 14, 2023, the Applicant received Final Grievance Response #V4R00045740 denying his grievance based upon the bias and arbitrary finding that he was being paid appropriately in accordance with policy. While Final Grievance Response #V4R00045740 clearly noted that some inmates receive 14 days' pay because their hours are spread out over a 14-day period, and did not dispute that the Applicant's hours were similarly spread out over a 14-day period, the decision-maker did not determine that equal pay in the Applicant's circumstances was warranted.

**THE APPLICANT MAKES APPLICATION FOR:**

1. A writ of *certiorari*, or an Order in the nature pursuant to s. 18.1 (3) (b) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 as am., setting aside the impugned decision and upholding the Applicant's complaint/grievance

with the requested corrective action of 14-days' pay, per pay period, and back pay for the pay periods in which the Applicant has been working 14-days a week, as per the Applicant's required program assignment duties.

2. An Order declaring that the Respondents' acted in a biased and arbitrary fashion toward the Applicant in the taking of the decision.
3. His expenses on this Application and in proceedings in connection with this Application.
4. Such further and other relief as the Honorable Court may permit.

#### **THE GROUNDS FOR THE APPLICATION ARE**

5. **THAT** in accordance with s. 18.1 (1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 as am., (the "Act"), the Applicant is directly affected by the matter in respect of which relief is sought.
6. **THAT** in accordance with s. 18.1 (4) of the Act, the Commissioner by Larizza and Motiuk:
  - a. failed to take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates and the working conditions of staff members are safe, healthful and free of practices that undermine a person's sense of personal dignity, contrary to the CCRA, Part 1, at s. 70, in its refusal to provide equal pay to the Applicant for equal days worked during a 14-day pay period.
  - b. refused to exercise the CSC's legal obligations due and owed the Applicant under and by *Commissioner's Directive* 60 at para. 10, in failing to demonstrate fairness with respect to the Applicant's offender program assignment and inmate pay;
  - c. failed to encourage participation in programs provided by the Service contrary to the CCRA, Part 1, at ss. 78 (1) (a) (b), in

- failing to demonstrate fairness with respect to the Applicant's offender program assignment and inmate pay;
- d. failed to observe a principle of procedural fairness in failing to pay the Applicant for days on which he participated in his program assignment, including weekends;
  - e. failed to observe a principle of procedural fairness in failing to make judgement from the facts submitted and instead based his/her decision on faulty and arbitrary reasoning that is not based on policy;
7. **THAT** in taking the decision, the Respondents' failed to properly exercise their discretion and acted in a biased and arbitrary fashion;
8. In bringing this Application, he acts in person of necessity *bona fides* pursuant to, and for all purposes of in full accordance with:
- a. Statement of Principles on Self-represented Litigants and Accused Persons, adopted in 2006 by the Canadian Judicial Council;
  - b. SOR/98-106 as am., a.k.a. *Federal Court Rules* 3, 119, 122 read in context of the *Interpretation Act*, R.S.C. 1985, c. 1-21 as am., ss. 3, 10, 11, and 12;
  - c. *Federal Courts Act*, R.S.C. 1985, c. F-7 as am, s. 4; and
  - d. *The Canadian Charter of Rights and Freedoms* ("Charter") s. 24 (1) pursuant to s. 32 (1) thereof.
9. S.C. 1992 c. 20 as am., a.k.a. *Corrections and Conditional Release Act*: Part 1, ss. 4 (f), 90, 91 ("Subject to").
10. *Federal Courts Act*, R.S.C. 1985, c. F-7 as am, ss. 4; 18, 18.1.
11. *Federal Courts Rules*, SOR/98-106 as am: Part 5.
12. Such other grounds as this Honourable Court may determine.

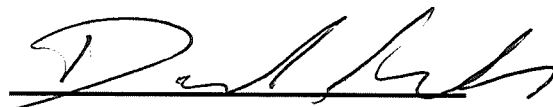
**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

13. The Affidavit of David French and the exhibits referred to therein.
14. Such further and other material as the Applicant may advise and the Honourable Court may accept.

**THE APPLICANT REQUESTS** that the Attorney General of Canada send a certified copy of the following material that is not in the Applicant's possession but is in the possession of the Commissioners of Corrections and his National Headquarters ("NHQ"), to the Applicant and Registry:

15. All emails, notes to file, memoranda, etc., in connection with Final Grievance #V40R00045740 ("45740").
16. The Investigation Record for Final Grievance 45740
17. Such further and other material as the Applicant may request in the course of this application or that this Honourable Court may require.

*March 16, 2023*



(Signature of Solicitor or party)

David French  
5775 Bath Road  
P.O. Box 1500  
Bath ON  
K0H 1G0

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the \_\_\_\_\_  
day of MAR 28 2023 A.D. 20 \_\_\_\_\_

Dated this \_\_\_\_\_ day of MAR 28 2023 20 \_\_\_\_\_  
SCINTHURA SEERALADEVAN  
REGISTRY OFFICER  
AGENT DU GREFFE