

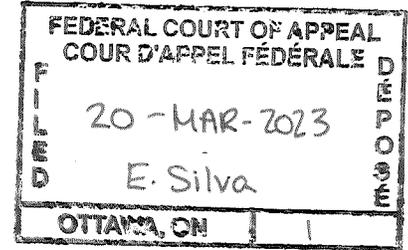
FORM 301 Rule 301
Notice of Application

A-80-23

10:1

APPEAL

(Court File No.)



FEDERAL COURT OF APPEAL

BETWEEN:

David Milovac

Appellant

and

Attorney General of Canada

Respondent

(Title of Document)

(Text of Document) (*Court seal*)

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 *(place where Federal Court of Appeal (or Federal Court) ordinarily sits)*.

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)



Elizabeth Silva

Issued by: *(Registry Officer)*

Address of local office:

TO:

90 Sparks St.
Ottawa, ON
J3V 5J5

(Separate page)

Application

(Where the application is an application for judicial review)

This is an application for judicial review in respect of

Social Security Tribunal of Canada Appeal Division PO Box 9812 Station T Ottawa ON K1G 6S3

(Set out the date and details of the decision, order or other matter in respect of which judicial review is sought.)

I received the decision from the Appeal Tribunal member Neil Nawaz on March 9, 2022, File number: AD-23-74. Mr Nawaz concluded, 'I am not satisfied that the appeal has a reasonable chance of success. For that reason, permission to appeal is refused.'

(State the grounds to be argued, including any statutory provision or rule relied on.)

The applicant makes application for: EI benefits entitlement

The grounds for the application are: The tribunal member was parroting the General Division which was reiterating the Commissions decision without turning his head to the available evidence and making up his own mind and providing rational for his decision;

1) My decision to protect my heart from covid vaccine side effects. I had a heart attack in 2016^a, resulting in heart function less than normal, lowered Ejection Fraction. My employer's Human Resources were aware of my heart attack. I was not defying my employer's policy as I was protecting my health and as such requested an exemption under the Charter section; Freedom of Conscience ^b. This was ignored by the employer even though I am a Crown employee working for a Crown employer. The fact that the Charter exemption was not offered by the employer does not make it null and void and the employer never considered my Charter request for exemption as demonstrated by the fact that the employer never acknowledged my Charter request for exemption to begin with ^c.

2) The Tribunal Member ignored my repeated assertions ^d that I did not foresee that I would be terminated even though I received letters from my employer advising that termination may occur. Mr. Nawaz, cited *Canada (Attorney General) v Lemire*, 2010 FCA in this regard. Lemire is simply not applicable because, as I have stated previously, I did not believe that my employer of 14 years, and an organization I had been part of since 1991 would terminate me. I was an employee in good standing having surpassed corporate targets for home visits, contacts and alike resulting in my manager concluding in my July 2021 job appraisal ^e, "David consistently demonstrates the MH LHIN (HCCSS) values through compassion with his patients and families. He collaborates effectively with colleagues, service providers and patients/families to ensure successful care transitions. David is accountable to his patients and families and uses his skill set to assure solution focused results." I did not believe my organization would go against my employment contract and against the collective agreement, and disregard my health concerns and dismiss my Charter exemption request and terminate me. Furthermore, as *AL vs Canada GE-22-1889* points out Lemir was willing to work under the employer's new policy, meaning he consented to it prior to his dismissal even though it may not have been part of his initial job offer. I never consented to taking the covid vaccine. This termination in light of the context provided above, was not 'foreseen' but was, and continues to be experienced. And yes, they did what they said they would do, but I did not believe they would do it in the context provided above.

Furthermore, Mr. Nawaz, paraphrases the Federal Court of Appeal in *Lemire*,

'There is case law saying that, for the purpose of determining EI entitlement, the only things that matter are whether the employer has a policy and whether the employee deliberately disregarded it. Whether the policy reasonable or even legal is beside the point

This point on its own, seems incongruous with common sense and human integrity i.e., reason. Who would follow a policy that indicated that to remain employed you had to eat magic grass, for instance? Those that are not coerced or terrified into submission,

would look at available evidence juxtaposed against personal values and beliefs to form an informed opinion as to whether the policy was acceptable to follow. Defining a reasoning person as engaged in misconduct is cruel and unusual punishment as it prevents them from obtaining EI, monies necessary to pay for goods and services.

3) The Tribunal member made an error of fact in agreeing with the General Division that Directive #6 'excused the employer from breaching the contracts. This not correct because, "The Directive leaves it to the "covered organizations" to decide if they wish to drop the third option and enforce a vaccine or exemption only requirement.²¹ In the absence of specific legislation or directives supported in legislation that obligate individuals to be vaccinated, vaccination remains voluntary." Page 14 in AL vs Canada GE-22-1889

4) My employment contract was unilaterally breached by the employer when they added a new essential condition of my employment, and where no expressed or implied duty to vaccinate in any documents pertaining to my initial employment, including offers of employment ' and in the Collective Agreement ' , was noted. In fact, the Collective Agreement Article 25 states, 'The Employer recognizes that employees have the right to refuse any required vaccination.' Article 25- Flu Vaccine: in the first 2 paragraphs there is a direct link referencing the 'flu' vaccine specifically. But the relevant and necessary sentence that is independent within the section reads, 'The Employer recognizes that employees have the right to refuse any required vaccination.' The word, "any" is synonymous with 'all' and is a modifier that serves to change the discourse from a specific flu vaccine to a generic, 'all' available vaccines regardless of time; past, present or future. In addition, the quoted sentence above is separate and apart from the 'flu' vaccine; as the last 3 stanzas, within article 25, make reference to 'vaccine' only, without virus specificity and this serves to reinforce the understanding of the meaning of the sentence already discussed. Where 'any' means 'any vaccine in relation to any virus,' including the covid virus and vaccine. Clearly the employer breached the Collective Agreement. Neither I nor CUPE consented ' to the unilateral change made by employer and we have been in policy arbitration since 2021. The Tribunal member chose to ignore the Article 25 wording in my collective agreement and ignored the content of employment offer letters, and ignored the CUPE letter advising that CUPE has filed a grievance for the wrongful termination of my employment. And again, the Tribunal Member did not indicate why he did not accept that my contracts were unilaterally changed by the employer.

The instant the employer breached my employment contract, the contract should then have been open for negotiation at best or null in void at worst and at that point there is no misconduct as the contract that bound us was no longer valid.

Finding from *AL v Canada Employment Insurance Commission*, 2022 SST 1428 GE-22-1889 is more closely related to my circumstance in regards to my health concerns, collective agreement wording (which is identical) regarding vaccinations and the unilateral imposition of new conditions by the employer.

Mr Nawaz cites *Cecchetto v Canada (Attorney General)*, 2023 FC 102. This case is not comparable because I did comply with the employer's request to advise on vaccination status-by requesting an exemption on Charter-Freedom of Conscience grounds the employer was aware that I was not vaccinated against covid. The other differences to *Cecchetto* include; complying with the testing request, setting up the required web site to upload test results, and uploaded test results. Whereas, *Cecchetto* did not do any of the listed and thereby, demonstrating that each case is unique and needs to be assessed on its own merits.

This application will be supported by the following material: *(List the supporting affidavits, including documentary exhibits, and the portions of transcripts to be used.)*

- a) Hospital discharge report
- b) Freedom of Conscience exemption request
- c) Employer letters
- d) My response to General Division SST regarding 'foreseeable' as to what was said to the EI interviewing worker
- e) Performance Appraisal
- f) Directive #6
- g) Letters of employment offers
- h) Collective Agreement S 25
- i) CUPE letter regarding termination and arbitration
- j) Copy of covid testing results uploaded to employer designated web site

(If the applicant wishes a tribunal to forward material to the Registry, add the following paragraph:)

The applicant requests *(name of the tribunal)* 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 *(tribunal)* to the applicant and to the Registry: *(Specify the particular material.)*

March 20, 2023

David Milovac

(2280 Owlridge Dr Oakville ON L6M3S9 905-827-0577, serdar741@live.com

Digitally signed by David Milovac, BA(Hons) MSW RSW
DN: cn=David Milovac, BA(Hons) MSW RSW, o, ou,
email=Serdar741@live.com, c=CA

SOR/2021-151, s. 22

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour.

Filing date Mar. 20, 2023
Date de dépôt

Dated
Fait le

Mar. 20, 2023