

FORM 301 Rule 301
Notice of Application

Philip Davidson (Applicant) vs. Attorney General of Canada
(Respondent)
(Court seal)

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Notice of Application

06-JAN-2023

Modelisa Hennessy

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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.

January 6, 2023

Original Signed by
Modelisa Hennessy
Issued by: (*Registry Officer*)

TO:

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

Address of local office:
Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B6

Canada Employment Insurance Commission
Place du Portage
Phase IV
Gatineau QC K1A 0J9

Application

This is an application for judicial review in respect of

Social Security Tribunal of Canada.

- 1) Decision in respect of which judicial review is sought: denial of Leave to Appeal Decision, made on December 6, 2022, by the Social Security Tribunal (SST) of Canada (Tribunal File Number: AD-22-865), received December 7, 2022, to deny the Applicant's request to appeal the decision of the General Division of the Canada Employment Insurance Commission, made November 18, 2022, (GE-22-2052) to deny the Applicant Employment Insurance benefits on the basis of employee misconduct.
- 2) The Applicant (Claimant), Philip Davidson, was placed on an unpaid leave of absence from work because he did not comply with the employer's COVID-19 policy (Policy). The Claimant then applied for Employment Insurance (EI) regular benefits.
- 3) The Respondents (SST, Commission) decided that the Claimant was suspended from his job because of misconduct. Because of this, the Commission decided that the Claimant is disentitled from receiving EI benefits. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division. The Applicant was denied leave to appeal this decision by the SST.
- 4) The Applicant's employer introduced the Policy without consultation or consideration, unilaterally changing the terms and conditions of the Applicant's employment.
- 5) The Applicant sought a reasonable accommodation to the employer's Policy, namely working remotely from home, but was denied.
- 6) The employer reported the Applicant's leave to the Respondent as a Leave of Absence, when there was no provision for this in the Applicant's employment contract and it was not requested by the Applicant.
- 7) The Respondents interpreted this leave of absence as a suspension for misconduct. On this basis the Applicant was denied Employment Insurance.

The applicant makes application for:

- 8) The decision to be overturned and the Applicant awarded Employment Insurance benefits.

The grounds for the application are:

9) Breach of contract; abuse of process; lack of administrative fairness.

This application will be supported by the following material:

10) Communications between the Applicant and the Respondent

11) The Applicant's employment contract


The applicant requests the Appeal Division of the SST 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 Appeal Division of the SST to the applicant and to the Registry: all materials relied upon in coming to the decision.

January 6, 2023



Philip Davidson

209-647 Michigan Street
Victoria, BC V8V 1S9
250-891-7707

I HEREBY CERTIFY that the above document is a true copy of the original <i>issued out of</i> the Court on <u>06/01/2023</u> Dated <u>09/01/2023</u>  <i>Modelisa Hennessy</i> Registry Officer
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[SOR/2021-151, s. 22](#)