

FORM 301

Notice of Application

Filed: 2023-05-10

FEDERAL COURT

BETWEEN:

Christopher Priest

APPLICANT

and

The Attorney General of Canada

RESPONDENT

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F I L E D	FEDERAL COURT COUR FÉDÉRALE May 10, 2023 10 mai 2023	D É P O S É
Abigail Grimes		
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Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

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.

2023-05-10

Issued by: _____

Address of local office: _____

TO:

His Majesty the King in Right of Canada (The Attorney General of Canada)

Application

This is an application for judicial review in respect of

a Canada Revenue Agency decision on adverse impact Age discrimination.

On 2022-11-22, the Federal Court considered my previous Application and determined that the CRA had not considered the adverse impact of the education requirement policy. It sent the matter back to the CRA for it to conduct a first instance analysis of adverse impact.

On 2023-04-13 at 8:52 PM, Mr. Priest received an Individual Feedback response from Nicholas Benton Kearney – Senior Research and Technology Manager, SR&ED who ruled that the education requirement applied did not discriminate on the basis of age.

I advance the argument that the CRA again did not perform an adverse impact analysis, did not perform an accommodation analysis and only provided an irrelevant Bona Fide Occupational Requirement (BFOR) argument that, under Common Law, should not be considered until the two prior analysis are performed.

The applicant makes application for:

- a) A determination on whether it is a question of law that adverse impact discrimination can be caused by an education requirement.
- b) A determination that the education requirement creates an adverse impact on Mr. Priest based on age.
- c) A determination that CRA discriminated against Mr. Priest based on age under either or both of the Charter of Rights s. 15(1) and the CHRA s. 10.
- d) A determination whether the complaint should be returned to Individual Feedback or whether the appropriate level is the Commissioner or Deputy Commissioner.
- e) A determination that the CRA has delayed the resolution of this case to such an extent that the court should act to justly resolve the issue, make the Applicant whole and impose the Special Compensation provisions of the CHRA.

The grounds for the application are:

- 1. Fraser 2020 SCC 28 sets the regime for proving discrimination.
- 2. Vavilov 2019 SCC 65 sets the the regime for administrative review.
- 3. Fraser and Vavilov took persuasion from Griggs and Homer which speak to education as a discriminatory barrier.

4. Mr. Benton-Kearney did not do an adverse impact analysis.
5. Mr. Benton-Kearney did not discuss the Accommodation Request in making his decision.
6. Mr. Benton-Kearney did not discuss the factors provided regarding why the policy creates age discrimination.
7. Mr. Benton-Kearney provided only a BFOR argument which per common law is only to be considered after the adverse impact consideration.
8. The written report states conclusions. The justification and explanations necessary for procedural fairness are missing.
9. Transparency is missing into how authority was provided to Mr. Benton-Kearney.
10. This “first instance” review failed to provide a forum for the Applicant to make a presentation. The Applicant non-the-less provided written presentations, affidavits and references to the decision provided by the Federal Court in T-234-21 for Mr. Benton-Kearney and others to consider.
11. In providing no review of the points raised by Mr. Priest, the decision has no intelligibility.
12. The Charter and the Human Rights Act supersede the CRA Act and the Public Service Labour Relations Act and so failure to act on the Human Rights issue is wrong in law.
13. In intentionally ignoring the Human Right Act, ignoring the evidence and abusing procedural fairness, the CRA multiple times in multiple venues, overseen by the Human Resources Branch and visibly to the Commissioners Office and Assistant Commissioners, intentionally breached the Human Rights Act. Special compensation awards are due to Mr. Priest.

Material

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

Note: the 8 digits in the file name is the date.

20210406 Affidavit – Full History

20211116 Applicants Record T-234-21

20221122_JR_E_O_OTT_20221122115113_PNT_2022_FC_1598 - Court Decision

20221201 Presentation for Commissioner

20230227 Loss estimate

Various additional emails since 2022-11-23

Affidavit of Christopher Priest

The Applicant will Rely on

1. Vavilov 2019 SCC 65
2. Taypotat, 2015 SCC 30
3. Taypotat, 2013 FCA 192
4. Meiorin 1999 CanLII 646 (SCC), [1999] 3 SCR 868
5. Ahmad 2011 FC 954
6. Patterson 2011 FC 1398
7. Johnstone, 2014 FCA 110
8. Fraser 2020 SCC 28

and will see persuasion from

9. Griggs v. Duke Power Co., 401 U.S. 424 (1971)
10. Homer v. Chief Constable of West Yorkshire Police, [2012] UKSC 15, [2012] 3 All E.R. 1287
11. Games v. University of Kent [2014] UKEAT_0524_13_DA

The applicant requests *CRA* 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 *CRA* to the applicant and to the Registry:

Record of communication with the DHCE in making this decision.

Record of communication with Human Resources; Any emails and other documents.

Names of people consulted and description of verbal discussions with them.

All records from the DHCE regarding Mr. Priest.

Personal notes of Nicholas Benton Kearney regarding the Individual Feedback.

Dated: 2023-05-10

A handwritten signature in black ink, reading "Priest". The letter "P" is large and stylized, with a long horizontal stroke that loops back under the "r". The rest of the name "riest" is written in a cursive, flowing script.

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- SOR/2004-283, ss. 35, 38
- SOR/2013-18, s. 16