

FEDERAL COURT OF APPEAL

B E T W E E N:

ATTORNEY GENERAL OF CANADA

FEDERAL COURT OF APPEAL		D E P O S E
COUR D'APPEL FÉDÉRALE		
F I L E D	21-DEC-2022	
Elizabeth Silva		
OTTAWA, ON		1

Applicant

- and -

LOUISE LYONS

Respondent

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 Ottawa, Ontario.

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 prepare 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 of 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.

Dated: December 21 , 2022

Issued by: Elizabeth Silva
(Registry Officer)

Address of
local office: Thomas D'Arcy McGee Building
90 Sparks Street, Main Floor
Ottawa, Ontario
K1A 0H9

TO: Me Charlie Arsenault-Jacques
UCCO-SACC-CSN
1601 avenue de Lorimier,
Montréal, Québec H2K 4M5

Charlie.Arsenault-Jacques@csn.qc.ca

Counsel for the Respondent

AND TO: Federal Public Sector Labour Relations and Employment Board
C.D. Howe Building
240 Sparks Street
Ottawa, Ontario
K1P 5V2

Tel.: 613-990-1800
Fax: 613-990-1849

APPLICATION

This is an application for judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board (Board) dated November 21, 2022 (2022 FPSLREB 95), in which the Board ordered Correctional Service of Canada (CSC) to pay the Respondent \$310,000.00 in aggravated and punitive damages (Remedial Decision).

The Respondent is a correctional officer at a CSC maximum-security institution. On January 23, 2017, her employment was terminated for engaging in an inappropriate relationship with inmates and introducing unauthorized items and contraband into the institution. After grieving the termination of her employment, which was denied by CSC, the Respondent referred the matter to the Board for adjudication.

On the last day of the hearing on the merits, CSC informed the Board and bargaining agent *in camera* that it was contemplating amending the grounds for termination based on new information that the Respondent had been recently admitted to hospital for a drug overdose. There was no evidence to substantiate this claim and CSC did not pursue its request. The Respondent later raised the issue in her closing statement, requesting further damages.

On December 31, 2020, in a decision on the merits of the termination grievance (2020 FPSLREB 122), the Board partially allowed the termination grievance, substituting the termination for a 30-day suspension and ordered CSC to pay damages, representing gross amount of back pay and lost overtime opportunities.

A hearing regarding additional damages was held from June 22 to 24, 2021. Further to the Board's request, the parties filed supplementary submissions on the concept of "damages for obstruction of justice" were filed on September 20 and 29, 2022.

In the Remedial Decision, the Board subsequently ordered CSC to pay the following additional damages:

- (a) \$135,000.00 in aggravated damages for the manner of the Respondent's dismissal;
- (b) \$75,000.00 in punitive damages for conduct during the investigation, termination and grievance process; and
- (c) \$100,000.00 in punitive damages for stating, at the end of the adjudication process, that the Respondent had been admitted to hospital for a drug overdose.

The Applicant makes application for:

- (a) An order allowing this application for judicial review, with costs;
- (b) An order quashing the Remedial Decision;
- (c) In the alternative, an order remitting the Respondent's request for aggravated and punitive damages back to a different panel of the Board for redetermination in accordance with the instructions of this Court; or
- (d) Such further and other relief as counsel may request and this Court may deem just or appropriate.

The grounds for the application are:

- (a) The Board erred in law and/or mixed fact and law, thereby rendering an unreasonable decision in awarding aggravated and/or punitive damages against CSC by:
 - (i) failing to apply the consistent jurisprudence regarding aggravated and/or punitive damages;

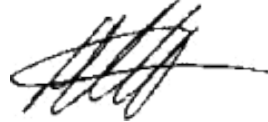
- (ii) failing to address in a meaningful way a fundamental legal issue: the rationality and proportionality of damages;
 - (iii) failing to address in a meaningful way a fundamental legal issue: the independent actionable wrong justifying punitive damages;
 - (iv) awarding punitive damages for conduct which occurred during the Board proceeding and was thus disconnected from the termination; and/or,
 - (v) coming to an incoherent or absurd outcome: it ordered CSC to pay significant aggravated and punitive damages despite the fact that: (i) the Board previously concluded that the Respondent's misconduct warranted a serious disciplinary sanction, a 30-day suspension; and/or (ii) CSC had already been ordered to pay significant damages in back pay and lost overtime opportunities.
- (b) Paragraphs 18.1(4) (c), (d) and (f) of the *Federal Courts Act*; and/or
 - (c) Such other grounds as counsel may advise and this Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- (a) The affidavit of affiant(s) to be identified; and
- (b) Such further and other material as counsel may advise and this Court may permit.

THE APPLICANT REQUESTS pursuant to Rule 317 of the *Federal Courts Rules* that the Board send a certified copy of all material relevant to the application to the parties and the Registry.

Dated at Ottawa, Ontario this 21st day of December 2022.



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
National Litigation Sector
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa (ON) K1A 0H8

Per: Helene Robertson

Tel: 613-670-6245

Email: Helene.robertson@justice.gc.ca

Counsel for the Applicant