

FEDERAL COURT OF APPEAL

B E T W E E N:

ATTORNEY GENERAL OF CANADA

Applicant

- and -

PUBLIC SERVICE ALLIANCE OF CANADA

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 in 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: April 27, 2023

Issued by:



WAYNE SAWTELL
REGISTRY OFFICER
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(Registry Officer)

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Representative for the Respondent

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APPLICATION

This is an application for judicial review in respect of a decision rendered by the Federal Public Sector Labour Relations and Employment Board (Board), dated March 29, 2023 (*Public Service Alliance of Canada v Treasury Board*, 2023 FPSLREB 31). The Board's decision pertains to a complaint by the Public Service Alliance of Canada (PSAC) alleging that the Employer failed to comply with its obligation to bargain in good faith the terms of the Public Service Dental Care Plan (Dental Plan).

The Dental Plan is negotiated between the parties outside of the collective bargaining regime. On January 10, 2022, the PSAC served the Treasury Board Secretariat of Canada (TBS) with a Notice to Negotiate the terms of Dental Plan. On May 13, 2022, TBS invited the PSAC to participate in a joint benchmarking study to inform negotiations in light of significant changes to the economic landscape. A benchmarking study was a fundamental consideration for the President in providing a mandate for negotiations. On May 20, 2022, the PSAC declined to participate in the study. On May 27, 2022, TBS confirmed it would be pursuing a benchmarking study and reiterated its invitation to the PSAC to participate in the process.

On June 30, 2022, the PSAC filed a complaint that TBS failed to bargain in good faith as prescribed by s. 106 of the *Federal Public Sector Labour Relations Act (FPSLRA or Act)*. During the hearing, neither party disputed the fact that the Dental Plan is negotiated outside of collective bargaining. TBS argued that the Board did not have jurisdiction to hear the complaint. The Board found that the Dental Plan is not a collective agreement, but that the duty to bargain in good faith pursuant to s. 106 extends to the negotiations of the Plan. The Board determined that it had jurisdiction under the *FPSLRA* to hear the matter. It also ruled that the employer violated s. 106 of the *Act* and allowed the complaint.

The applicant makes application for:

- (a) An order allowing this application for judicial review, with costs;
- (b) An order setting aside the Board's decision dated March 29, 2023;
- (c) An order remitting the matter back to the Board for reconsideration in accordance with the instructions of this Honorable Court;
- (d) Such further and other relief as counsel may request and this Honourable Court deems just or appropriate.

The grounds for the application are:

- (a) The Board acted without jurisdiction and/or acted beyond its jurisdiction in determining the complaint. The Board rendered an unreasonable decision by finding that it had jurisdiction under the *FPSLRA* to hear the complaint.
- (b) The Board rendered an unreasonable decision by finding there was a breach of the duty to bargain in good faith pursuant to s.106 of the *FPSLRA*.
- (c) The Board erred in law in making its decision and/or unreasonably interpreted and applied s. 106 of the *FPSLRA* to the negotiation of the Dental Plan when the statutory preconditions set out in that section were not met.
- (d) The Board erred in law in making its decision and/or unreasonably interpreted and applied s. 182 of the *FPSLRA* to the negotiation of the Dental Plan when the statutory preconditions set out in that section were not met.
- (e) The Board erred in law in making its decision and/or unreasonably interpreted and applied the Preamble of the *FPSLRA* to give substantive meaning to the clear language of s. 106 the *FPSLRA*,

contrary to s. 13 of the *Interpretation Act* and the existing jurisprudence.

- (f) The Board erred in law in making its decision and/or unreasonably interpreted and applied s. 12 of the *FPSLRA* by asserting that it's jurisdiction over the negotiation of the Dental Plan is incidental to the attainment of the objectives of the *FPSLRA*.
- (g) Paragraphs 18.1(4) (b), (c), (d) and (f) of the *Federal Courts Act*; and
- (h) Such other grounds as counsel may advise and this Honourable Court may permit.

The application will be supported by the following material:

- (a) The affidavit of affiant(s) to be identified, which will include *inter alia* the record of the materials that was before the Board; and
- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Ottawa, Ontario this 27th day of April, 2023.

"Sean Kelly"

Shalene Curtis-Micallef
Deputy Attorney General of Canada

Per: Sean Kelly

A/ Director and General Counsel
Treasury Board Secretariat Legal
Services

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