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Court File No.

## FEDERAL COURT OF APPEAL

BETWEEN:

GCT Canada Limited Partnership

APPLICANT

AND:

International Longshore and Warehouse Union Ship and  
Dock Foreman, Local 514

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 a place where Federal Court of Appeal 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.

June \_\_\_\_\_, 2023

Issued by:

\_\_\_\_\_  
Registry Officer

Address of local office:

Federal Court Registry  
Pacific Centre P.O. Box 10065  
701 West Georgia Street  
Vancouver, BC V7Y 1B6  
Fax: 604.666.8181

TO: International Longshore and Warehouse Union Ship  
and Dock Foremen, Local 514  
c/o Koskie Glavin Gordon  
Suite 1650 – 409 Granville Street  
Vancouver, BC V6C 1T2  
Attention: Shirin Kiamanesh

AND TO: Canada Industrial Relations Board  
C.D. Howe Building  
4th Floor West  
240 Sparks Street  
Ottawa, Ontario K1A 0X8

AND TO: Halifax Employers Association  
c/o Stewart McKelvey  
Queen's Marque  
Suite 600, 1741 Lower Water Street  
Halifax, NS B3J 0J2  
Attention: Brian Johnston, KC

AND TO: Maritime Employers Association  
c/o Fasken LLP  
Tour de la Bourse  
Bureau 3700, C.P. 242  
800, Place Victoria  
Montreal, QC H4Z 1E9  
Attention: Stephanie Fillion and Georges Samoisette-Fournier

AND TO: Attorney General of Canada  
Department of Justice Canada  
(BC Regional Office)  
900 – 840 Howe Street  
Vancouver, BC V6Z 2S9

## Application

The Applicant makes an application for judicial review pursuant to the *Federal Courts Act*, R.S.C. 1985, C.F-7 as amended, in respect of a decision issued by the Canada Industrial Relations Board (Board) on May 10, 2023 (Decision) pursuant to the *Canada Labour Code* R.S.C. 1985, C.L-2 (Code).

In the decision, the Board varied a direction of the Ministerial Delegate Harvinder Singh (Direction) and held that the following provision of the Code had been contravened:

Canada Labour Code Part II, 135(7)(e)

and, further, directed the Applicant; pursuant to paragraph 145(1)(a) of the Code, to terminate its contravention and establish a procedure with the Respondent's Health and Safety Committee for the inspection of vessels.

The Applicant makes application for:

1. An order quashing or setting aside the Decision;
2. An order staying the Decision pending the determination of this application;
3. Costs;
4. Any other Order this Honourable Court deems just.

The grounds for the application are:

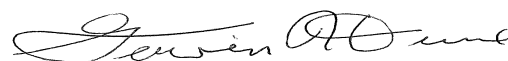
1. The Board failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe when it purported, exercising its appeal jurisdiction under S.146(1) of the Code, to substitute a finding of contravention of S.137(7)(e) of the Code in an appeal from a complaint alleging a contravention of S.136(5)(g) of the Code which resulted in the Direction.

2. The Board erred in law and gave an unreasonable interpretation to Part II of the Code and its applicable provisions when
  - (a) it held that its appeal jurisdiction under S.146(1) of the Code permitted it to fundamentally alter the Direction of the Ministerial Delegate under S.136(5)(g) of the Code to the extent that the Direction under S.136(5)(g) was no longer the subject matter of the appeal under S.146(1). The Board's appellate authority could only reasonably be exercised with regard to the Direction under appeal.
  - (b) it gave an unreasonable interpretation to the provisions of Part II of the Code, and in particular, failed to give effect to the presumption of legislative coherence in statutory interpretation.
  - (c) it refused to apply controlling authority from the Supreme Court of Canada in accordance with the principles of stare decisis which bound it.
3. Sections 28, 18 and 18.1 of the *Federal Courts Act*.

This application will be supported by the following material:

1. Affidavit of Holly Bedford; and
2. Such other affidavits as the Applicant will advise.

Dated: June 6, 2023



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Solicitor for the Applicant

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