

T-947-23 ID#

Court File No

F I L E D	FEDERAL COURT COUR FÉDÉRALE		D É P O S É
	MAY 03 2023		
	ADAM YOUNG		
Applicant		HALIFAX, NS	

FEDERAL COURT

BETWEEN:

HARVEY ADAMS

and

CANADA (MINISTER OF TRANSPORT),  
TRANSPORTATION APPEAL TRIBUNAL OF CANADA  
and ATTORNEY GENERAL OF CANADA

Respondents

**NOTICE OF APPLICATION**  
(application for judicial review under s.18)

**TO THE RESPONDENTS:**

**A PROCEEDINGS 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 the Federal Court in Halifax, Nova Scotia.

**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.**

Dated this 3 day of May, 2023

ORIGINAL SIGNED BY  
ADAM YOUNG

Issued by: \_\_\_\_\_ ORIGINAL SIGNÉ PAR  
(Registry Officer)

Address of local office:  
1801 Hollis Street, 17<sup>th</sup> Floor  
Suite 1720  
Halifax, NS B3J 3N4

**TO: Minister of Transport**

**TO: Transportation Appeal Tribunal of Canada**  
344 Slater Street  
15<sup>th</sup> Floor, Suite 200  
Ottawa, ON K1A 0C2

**TO: Attorney General of Canada**

## APPLICATION

**THIS IS AN APPLICATION FOR** judicial review in respect of a decision (the “Decision”) of the Transportation Appeal Tribunal of Canada (the “Tribunal”) dated on or about April 11, 2023, denying the Applicant’s appeal and upholding the review determination.

The Tribunal delivered the Decision to the Applicant on April 11, 2023.

**THE APPLICANT MAKES APPLICATION** pursuant to Section 18.1 of the *Federal Courts Act* for:

- a) A declaration that the Tribunal erred in law when it failed to apply the *Canadian Human Rights Act* and consider the Minister of Transport’s duty to accommodate to the point of due hardship under subsection 15(2);
- b) An order that the Minister of Transport issue a Master Mariners’ Certificate to the Applicant;
- c) In the alternative, an order setting aside the Tribunal’s April 11, 2023 Decision and referring the matter back to the Tribunal for a determination in accordance with the directions of this Honourable Court;
- d) An order awarding costs to the Applicant for this application; and
- e) Such further and other relief as may be requested by the Applicant and considered appropriate by this Honourable Court.

### **THE GROUNDS FOR THE APPLICATION ARE:**

1. The Tribunal erred in law when it failed to apply the *Canadian Human Rights Act* by failing to consider whether the Minister of Transport had accommodated Mr. Adams’ medical restrictions to the point of undue hardship;
2. Section 278(5) of the *Marine Personnel Regulations*, SOR/2007-115 adopted under the *Canada Shipping Act, 2001*, S.C. 2001, c. 26, states that the Minister of Transport’s decision with regard to any medical certificate shall be based on several criteria, including any relevant consideration linked to human rights as set out in the *Canadian Charter of Rights and Freedoms*;
3. Such further and other grounds as the applicant may raise and this Honourable Court may allow.

### **THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

- a) The record of the proceedings before the Tribunal;
- b) The Applicant’s Affidavit and such other affidavits as are necessary;
- c) The Application Record.

THE APPLICANT REQUESTS pursuant to Rule 317 of the *Federal Court Rules*, that the Transportation Appeal Tribunal of Canada send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Tribunal to the applicant and to the Registry:

1. The full record of all materials, including transcripts of the hearing and all exhibits, which were before the Tribunal at the time it rendered its Decision.

**NAME, ADDRESS AND TELEPHONE NUMBER OF THE TRIBUNAL:**

Tribunal: Transportation Appeal Tribunal of Canada  
344 Slater Street, 15<sup>th</sup> Floor, Suite 200  
Ottawa, ON K1A 0C2

Tribunal File No.: MA-0610-28  
MoT File No.: CDN# 0006458M

Tribunal's telephone: (613) 990-6906

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

May 3, 2023

  
for Brian Casey, K.C.  
Solicitor for the Applicant  
**BOYNECLARKE LLP**  
Barristers and Solicitors  
99 Wyse Road, Suite 600  
Dartmouth, NS Canada B3A 4S5  
Telephone: (902) 460-3468  
Fax: (902) 463-7500

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the \_\_\_\_\_

day of MAY 03 2023 A.D. 20\_\_\_\_  
Dated this MAY 03 2023 day of \_\_\_\_\_ 20\_\_\_\_

**S. LEANNE FLETT**  
A Barrister of the Supreme  
Court of Nova Scotia

**Adam Young**  
Registry Officer  
Agent du greffe

