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December 23, 2022 23 décembre 2022			
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Court File No.: T- -22

FEDERAL COURT

B E T W E E N:

SUSAN HOLITA

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

**NOTICE OF APPLICATION
(Section 18.1 of the *Federal Courts Act*)**

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.

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 where 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.

December 23, 2022

Issued by: _____
(Registry Officer)

Address of
Local office: _____

TO: Attorney General of Canada

AND TO: Quintet Consulting
376 Churchill Avenue North, Suite 301
Ottawa, ON K1Z 5C3

AND TO: Guy Cyr
Director General, Workplace Management Directorate
Human Resources Services Branch
Employment and Social Development Canada
140 Promenade du Portage
Gatineau, Quebec K1A 0J9

APPLICATION

This is an application for judicial review in respect of the report of the investigator, Quintet Consulting Corporation (“Quintet”), an investigator appointed pursuant to sections 27-28 of the *Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130, as adopted by the Applicant’s employer, Employment and Social Development Canada (“ESDC”), by letter of Guy Cyr, the Designated Official for Harassment and Violence Prevention and Resolution, ESDC, dated November 14, 2022. The letter, which summarized the results of Quintet’s investigation and provided the Applicant with a copy of Quintet’s investigation report, was received by the Applicant on December 4, 2022.

The letter and investigation report concern the Applicant’s May 28, 2021 Notice of Occurrence, which she provided to ESDC to identify workplace violence and harassment that she had been exposed to, pursuant to the *Canada Labour Code*, RSC, 1985, c L-2, and the *Work Place Harassment and Violence Prevention Regulations*. Between September 2021 and November 2022, Quintet performed an investigation into the occurrences. By its report, dated November 8, 2022, Quintet concluded that two of the Applicant’s identified occurrences constituted workplace harassment and/or violence but that the majority of occurrences did not constitute workplace harassment and/or violence. Quintet further concluded, however, that the cumulative effect of all occurrences on the Applicant was significant, that there was a lack of insight on the part of the responding parties with respect to the Applicant’s concerns, and that “a key underlying contributing factor of the situation was the lack of awareness surrounding the core tenets of equity, diversity and inclusion within the Office.” The report acknowledged that the Applicant’s experiences were impacted by the fact that she was a Black woman in a predominantly White workplace and that this factor played a role in several of the occurrences described.

By Mr. Cyr’s letter, dated November 14, 2022 and received by the Applicant on December 4, 2022, ESDC adopted the conclusions of the report that only two of the identified occurrences were founded. The letter made no mention of Quintet’s

conclusions regarding the cumulative nature and impact of the occurrences or the impact of the Applicant's race on the occurrences.

THE APPLICANT MAKES APPLICATION FOR:

- (a) An Order allowing this application for judicial review, with costs;
- (b) An Order setting aside the Quintet report, dated November 8, 2022, and the letter of Mr. Cyr, dated November 14, 2022;
- (c) An Order remitting the matter back for redetermination after a fresh work place investigation is conducted by a new investigator, in accordance with the reasons of this Honourable Court; and
- (d) Such further and other relief as counsel may advise and this Honourable Court will permit.

THE GROUNDS FOR THE APPLICATION ARE:

- (a) The conclusions and recommendations in the Quintet report, as adopted by ESDC, were arrived at in violation of the principles of natural justice and procedural fairness including, but not limited to, because:
 - i) The investigation was not neutral and thorough;
 - ii) The Applicant was not given an adequate opportunity to be heard, make submissions on all the evidence gathered in her absence, and comment on Quintet's findings before a report was completed; and,
 - iii) There was an inordinate delay in the investigation process;
- (b) The conclusions and recommendations in the Quintet report were based on an error of law, including, but not limited to:

- i) Errors with respect to the interpretation and application of the *Canada Labour Code* and *Work Place Harassment and Violence Prevention Regulations*; and,
 - ii) The analysis of occurrences in isolation and the failure to analyze, reach conclusions, or make recommendations with respect to whether the occurrences, cumulatively, constituted work place harassment and violence or engaged ESDC's obligations to provide a harassment and violence-free work place;
- (c) ESDC otherwise erred in law in adopting the investigator's conclusions, including, but not limited to, by failing to address the report's conclusions with regard to the role the Applicant's race had in the occurrences;
- (d) The conclusions and recommendations in the Quintet report, as adopted by ESDC, were based on erroneous findings of fact made in a perverse or capricious manner or without regard for the material before the investigator, including, but not limited to, by unreasonably dismissing the evidence of the Applicant, without reasons or justification, and by accepting the evidence of responding parties over that of the Applicant, without reasons or justification; and
- (e) Such further and 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 the Applicant or such further affidavit, including the exhibits attached thereto;
- (b) The complete record of the material that was before Quintet, in respect of its report, dated November 8, 2022;

- (c) The complete record of the material that was before ESDC, in respect of Mr. Cyr's letter, dated November 14, 2022; and,
- (d) Such further and other material as counsel may advise and this Honourable Court may permit.

THE APPLICANT REQUESTS pursuant to Rule 317 of the *Federal Courts Rules* that Quintet and ESDC send certified copies of the following materials that are not in the possession of the Applicant but are in the possession of Quintet and ESDC to the Applicant and to the Registry:

- (a) The full record of all material in the possession of Quintet respecting the investigation into the Applicant's Notice of Occurrence, including any correspondence with representatives of ESDC in respect of the investigation and report;
- (b) The full record of all material in the possession of ESDC, at the time of and with respect to the letter of Mr. Cyr, dated November 14, 2022; and
- (c) Such further and other materials as counsel may advise and this Honourable Court may permit.

Dated at Ottawa, this 23rd day of December, 2022.



Per: Andrew Astritis/Morgan Rowe

RAVENLAW LLP/s.r.l.
Barristers & Solicitors
1600-220 Laurier Avenue West
Ottawa, ON K1P 5Z9

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Solicitors for the Applicant

FEDERAL COURT

B E T W E E N:

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