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APPLICATION

Court File No.: **A-204-21**

FEDERAL COURT OF APPEAL

BETWEEN:

SHELLEY WEPRUK

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	JUL 26 2021
D MODELISA HENNESSY	
VANCOUVER, BC	

Applicant

and

ATTORNEY GENERAL 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 at (place where Federal Court of Appeal (or Federal Court) 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 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.

Date July 26, 2021

ORIGINAL SIGNED BY
MODELISA HENNESSY
A SIGNÉ L'ORIGINAL

Issued by: _____
(Registry Officer)

Address of local office:

Pacific Centre, PO Box 10065
701 West Georgia Street
Vancouver, British Columbia
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Telephone 604-666-2055
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TO: Attorney General of Canada
Deputy Attorney General of Canada
Department of Justice, Legal Services
Human Resources and Social Development
Pacific Centre, PO Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

APPLICATION

1. This is an application for judicial review in respect of the decision made by a panel of the Federal Public Sector Labour Relations and Employment Board on June 24, 2021 and communicated to the Applicant on or about June 28, 2021.

The decision dismissed the Applicant's individual grievance of Oct. 2014 denying the applicant recourse for her employer's wrongful termination for cause. The panel found that the Applicant lost her federal public service employment by reason of her own misconduct. In addition the Applicant's request for anonymity was denied despite this court, Federal Court of Appeal (FCA) granting anonymity for the same material circumstances in 2019 (S.W. v. Canada (Attorney General) FCA 288)).

2. The applicant makes application for:
 - a) An Order that the Applicant's grievance be allowed, her request for anonymity granted and she be made whole.
 - b) In the alternative, an Order quashing the decision of the dated June 24, 2018 and referring the matter back to the Tribunal for determination by a new Tribunal Panel.
 - c) Any other remedy the Honorable Federal court deems meet and just.
3. The grounds for the application are:
 - a) There are questions of law, fact, mixed law and fact, and/or jurisdiction to which the answer may lead to the setting aside of the decisions rendered by the Federal Public Sector Labour Relations and Employment Board (the Board) on June 24, 2021.
 - b) The Board erred by failing to apply the applicable tests under the Act, and the jurisprudence, namely whether on a balance of probabilities, the Department of Health had just cause to terminate the Applicant. It completely ignored but for the actions of the employer the Applicant would not have acted in the manner she did.
 - c) A fair process was not followed during the hearing. The hearing was untimely, such to taint the proceedings. It was held over the course of several years in small time increments. The only written evidentiary material gathered was about the Applicant. The Employer did not submit discoverable material within its files that would support the employee's case. The Applicant was forced to present first during hearing when the order should have saw the employer going first, irreparably prejudicing the hearing.
 - d) The Applicant was represented by incompetent union counsel, and the Board ignores the active role the union played in the Applicant's termination.
 - e) Under duress and during the hearing the Applicant was forced by counsel to withdraw a harassment and Human rights grievance.
 - f) The Board erred by failing to give sufficient evidentiary weight to the Applicant's documentary and oral evidence.
 - g) The Tribunal erred by failing to consider mental incapacity and applicable federal Health and

Safety legislation (Part XX), and Charter rights for mental disability. An interpretation consistent with the values embodied in the Charter must be given preference to an interpretation which would run contrary to those values.

h) The Tribunal erred by failing to consider educational limitations, language proficiency and past work and life experience and lack of training by the employer.

i) No consideration was given to the weight of evidence supporting employer pre-text, given the close timing of a harassment grievance filed by the applicant just prior termination. No thought turned to whether the not the employer's supposed reason for dismissal was a pre-text because the applicant had become a "nuisance" or labeled a troublemaker for filing grievances. No attention was given to mitigating circumstances and employer provocation by making the claimant report to the harasser, on the day of the employer's alleged dismissal worthy event.

j) No thought was given to whether the burden of proof was shifted to the Applicant when the burden rests on the employer to justify its termination.

k) The Tribunal erred in law in making its decision, whether or not the error appears on the face of the record.

l) The Tribunal based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. For example, the Board discounted the word of its own Board in refuting the decision the Board had already made finding the Applicant was subject to a toxic work environment.

m) The Tribunal acted beyond its jurisdiction or refused to exercise its jurisdiction.

n) The Tribunal consistently preferred the employer evidence, despite the employer's interest in supporting itself and when it was plainly obvious, they were misrepresenting the truth.

o) It appears the Board went out of its way to affirm the decision of the employer to terminate instead of considering all the circumstances it is mandated to.

p) A highly sophisticated Board member, wrote the facts, in such a way, eliminating the important Applicant testimony that makes its appear on the face that is a reasonable decision.

q) The Board member denied the request for privacy when the Federal Court of Appeal has already granted the Applicant privacy in similar circumstances.

r) Any other and further grounds as applicant may propose and this Honourable Court may allow.

3. This application will be supported by the following material:

a) An affidavit to be delivered pursuant to the Federal Court Rules.

b) Documentary exhibits.

c) Audio and written transcripts.

d) Such other and further material as the applicant may propose and this Honourable Court may permit.

4. The applicant requests the Federal Public Sector Labour Relations and Employment Board to send a certified copy of all materials in its possession, including copies of all audio hearing transcripts for which judicial review is sought herein to the Applicant and to the Registry.

July 26, 2021

Shelley Wepruk

Shelley Wepruk, applicant
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V5J 1Z2
Telephone 604-435-6742

SOR/2004-283, ss. 35 and 38

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 _____ JUL 26 2021

_____ A.D. 20 _____
Beted this _____ day of _____ 20 _____

M. Hennessy
MODELISA HENNESSY
REGISTRY OFFICER
AGENT DU GREFFE