

FORM 301

Notice of Application

Filed: 2022-09-27

FEDERAL COURT

BETWEEN:

Christopher Priest

APPLICANT

and

The Professional Institute of the Public Service of Canada (PIPSC)

RESPONDENTS

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F I L E D	FEDERAL COURT COUR FÉDÉRALE February 06, 2023 06 février 2023	D É P O S É
Nicole Hradsky		
TOR		1

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 Toronto.

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.

2022-09-27

Issued by:

180 Queen Street West
Toronto, ON M5V 3L6

TO:

The Professional Institute of the Public Service of Canada (PIPSC)

Application

This is an application for judicial review in respect of

The Federal Public Sector Labour Relations and Employment Board.

On 2023-01-05, Mr. Priest received a Decision from the Board on a question of whether a settlement agreement was valid, final and binding.

The matter was heard by a panel composed of David Orfald, a member of the board.

The applicant makes application for:

Orders setting aside the decision and finding that;

The Decision was unreasonable.

The grounds for the application are:

1. At paragraph 10 in the Decision the Board identified that the jurisdiction of the Board was limited to three questions. The first was;
 - 1) Was a valid, final, and binding settlement agreement reached?
2. This question of whether there was a meeting of the minds was not answered. The Decision, per Vavilov, is not reasonable.
3. At paragraph 33, the Board confirms that my essential argument is that PIPSC, which refers to itself as the Institute, failed to notify me that only Mr. Ferrand would be providing me with advice.
4. The Settlement Agreement states "*The Institute (PIPSC) agrees to review documents ... and offer comments to the best of its ability.*"
5. A true representation of what was offered by the Institute would be stated as "*Mr. Ferrand agrees to review documents ... and offer comments to the best of his ability.*"
6. In my brief to the Board, I provided clear reasons why Mr. Ferrand's assistance instead of the Institute's assistance was unacceptable.
 - a) My research prior to the mediation showed him as having no Federal Court experience. Canlii does not list any appearances before Federal Court.
 - b) Mr. Ferrand had demonstrated a lack of interest in my claim of discrimination when it was being handled as a grievance.

- c) Other Institute personnel and specifically Harinder Mahil who had been the former commissioner of the BC Human Rights Commission was a person I deeply wished to discuss my case with and obtain his comments.
 - d) Kim Veller who had been a Human Rights consultant to the TTC was also someone with Human Rights knowledge that I wished to consult.
 - e) My matter before the Federal Court involved Human Rights and Discrimination. By advising the Institute's Employment Officer to reject my request for assistance in 2019, Mr. Ferrand, demonstrated both a lack of knowledge of Human Rights and a lack of due consideration of my case. He was not someone I trusted to properly advise me.
7. At paragraph 72, the Board dismisses my argument that there was no meeting of the minds as is required by contract law with the simple statement; *Following Amos, Fillet, and Tench, the question before me is whether the parties reached a valid, final, and binding settlement agreement. On the record before me, I find that they did.*
 8. That is a conclusion rather than reasons. The Board needs to discuss how the Settlement Agreement statement that "*The Institute (PIPSC) agrees to review documents ... and offer comments to the best of its ability.*" is fulfilled by Mr. Ferrand and Mr. Ferrand alone and whether I would have accepted a true representation of the offering of "*Mr. Ferrand agrees to review documents ... and offer comments to the best of his ability.*"
 9. *Amos, Fillet, and Tench* are all cases where the disagreement was over whether a party had failed to comply with the terms of the agreement.
 10. t paragraph 64, the Board affirms that it is the "*outward expression of his intention*", not what was in Mr. Ferrand's mind, that should have governed what the Settlement Agreement was to provide.
 11. When I discovered that I was not to receive the Institute's assistance but only Mr. Ferrand's, I rescinded the agreement.
 12. There are no reasons that discuss my first and essential argument.
 13. The CHRC has no authority to sever events under section 41(1)(e) of the Act. It only has authority to consider whether the last event occurred within a year.
 14. The commissioner ignored the facts and simply accepted the Report for Decision without considering the arguments given in submission to that report. The subsequent submission goes beyond the facts used by the Report for Decision and need to be considered. Vavilov demands full consideration (or a reasonable subset) of the arguments be demonstrated in the final decision.

15. The decision is not justified in relation to the relevant factual and legal constraints that bear on the decision.
16. The CHRC decision that the grievance process has addressed my concerns has no basis in fact. The body itself says it is without jurisdiction and this fact is recorded in Appendix C of the Report for Decision at the end of para three.
17. Comments made by a body without jurisdiction and without expertise are of no value and should not be considered by the Commission as determinative.
18. The grievance process breached the “He who decides must hear” rule and sub-sub-sub-sub delegated the hearing and decision to a low level Human Resources staffer. Rubber stamping by the Assistant Commissioner is not a legitimate hearing. The Assistant Commissioner never spoke to me nor heard a word of my complaint. Federal Court has determined that Human Resources within CRA lack expertise in interpreting and applying the Human Rights Act.
19. The grievance process is normally appealable to the FPSLREB. The final grievance is not the end of the process. Human Rights issues for non-staffing issues go that route. It is incorrect for the Human Rights Commission to close off appeal rights in favour of a body not recognized as having the independence or final authority by the broader public service.
20. The Tribunal based its decision on an erroneous finding of fact that it made without regard to the material before it
21. The Human Rights **Tribunal** is the only body that can determine the appropriate remedy for the discrimination that I have faced.

Material

This application will be supported by the following material: *(List the supporting affidavits, including documentary exhibits, and the portions of transcripts to be used.)*

Note: the 8 digits in the front of the file name is the date.

This material was before the commission in making its decision.

20180720 complaint submitted.pdf

20180815 email from CHRC.pdf

20180823 Memo To File CJP re CHRC hold.pdf

20201027 Final Grievance Reply Priest.pdf

20201125a C Priest complaint form.pdf

20201125b C Priest CHRC submission.pdf

20201125c C Priest CHRC replies from grievance.pdf

20201125d C Priest CHRC Chronology.pdf

20201222a CHRC OTTAWAITI7-#2864464-v1-Letter_-_notification_to_sectio_40-41_to_C.PDF

20201222b CHRC Complaint Form - 20180899.pdf

20201222c CHRC Information Sheet - 41(1)(d) Vexatious.pdf

20201222d CHRC Information Sheet - 41(1)(e) Out of Time.pdf

20210106 CJP Out of Time - 2864464.pdf

20210106 CJP Vexatious - 2864464.pdf

20210129 email from CHRC mgr.pdf

20210225 CJP Out of Time - 2864464.pdf

20210225 email to CHRC.pdf

20211121 email to CHRC.pdf

20211124 email request change to dates.pdf

20211201a email from CJRC reply 1 to request to change dates.pdf

20211201b email from CJRC reply 2 to request to change dates.pdf

20220225 email from HRO accepting addendum.pdf

20220304a email Report for Decision cover email.pdf

20220304b Report for Decision 20180899 REPORT 40-41.pdf

20220304c Report Instruction Sheet - Prepare a Submission.pdf

20220317 Claimant's Submission.pdf

20220323 1717a CRA Additional Submissions and cover letter.pdf

20220323 1717b CRA Submission.pdf

20220324 0942 email Deborah Yu now before commissioners.pdf

20220404 email to CHRC.pdf

20220830a email - CHRC Decision Letter.PDF

20220830b CHRC Decision Letter.PDF

20220830c email to CHRC requesting clarification.pdf

20220831a CHRC clarification.pdf

20220926 Affidavit of Christopher Priest

The Canadian Human Rights Act

The CRA Act

PIPSC union contracts re grievance process

Priest vs AGC T-234-21 Applicant's record

The Applicant will Rely on

1. Vavilov, 2019 SCC 65 <https://canlii.ca/t/h4j13>
2. Patterson 2011 FC 1398, at para 30, <https://canlii.ca/t/fp9kk#par30>
3. Fraser v. Canada (Attorney General), 2020 SCC 28 <https://canlii.ca/t/jb370#par20>

The applicant requests *CHRC* to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the *CHRC* to the applicant and to the Registry:

Record of all emails and communication within the CHRC with regards to this case.

Specifically requested are the “respondent’s positions” (CRA) on the application and section 40/41 submissions of the applicant. These documents are mentioned in the email of 2021-01-29 from the CHRC. These have never been provided to the applicant.

Dated: 2022-09-27

A handwritten signature in black ink, appearing to read 'Priest', with a large, stylized initial 'P'.

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