

Court File No. A- 168 -23

FEDERAL COURT OF APPEAL

B E T W E E N:

ATTORNEY GENERAL OF CANADA

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
F I L E D	27-JUN-2023 A. GREENSPOON
O T T A W A, O N	1

Applicant

- and -

VÉRONIQUE ST-ONGE

Respondent

NOTICE OF APPLICATION
(Section 28 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 in Ottawa, Ontario.

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 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: June 27, 2023.

Issued by: *Alison Green*
(Registry Officer)

Alison Green
Registry officer
Agente d'urgence

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K1A 0H9

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Counsel for the Respondent

AND TO: Federal Public Sector Labour Relations and Employment Board
C.D. Howe Building
West Tower, 6th floor
240 Sparks Street
Ottawa, Ontario
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Tel.: (613) 990-2008
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APPLICATION

This is an application for judicial review in respect of a decision dated June 1, 2023 (2023 FPSLREB 57) rendered by David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board (“Board”), wherein the Board allowed a grievance referred to adjudication by the respondent.

The National Research Council of Canada (“NRCC” or “the employer”) is a separate agency responsible for, among other things, undertaking, assisting or promoting scientific and industrial research across Canada. Their employees are paid pursuant to a collective agreement, which applies in the same fashion to all regardless of physical location in the country.

The respondent was employed by the NRCC as Client Services Team Lead in Ottawa, Ontario. She initially began a period of sick leave with pay on January 31, 2019, which subsequently became sick leave without pay as of April 17, 2019. She mistakenly continued to be paid until June 12, 2019. On May 10, 2022, the employer notified the employee that it would recover the overpayment she had received between April 17 and June 12, which amounted to a sum of \$7673.95.

The respondent filed a grievance challenging the recovery of the overpayment on the basis that the employer was time-barred under the two-year limitation period in Ontario. The NRCC denied the grievance on the basis that it properly commenced the recovery of the overpayment within the applicable six-year federal limitation period. The respondent referred the grievance to adjudication at the Board pursuant to section 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2).

The Board allowed the grievance on the basis of an erroneous interpretation of section 32 of the *Crown Liability and Proceedings Act* (R.S.C., 1985, c. C-50) (“CLPA”), despite binding jurisprudence to the contrary. As a result, the Board ordered the NRCC to cease the payroll deductions for the recovery of the overpayment and to reimburse the respondent the total sum of the deductions.

The applicant makes application for:

- (a) An order allowing this application for judicial review, with costs;
- (b) An order setting aside the Board's decision dated June 1, 2023;
- (c) An order remitting the matter back to the Board for reconsideration in accordance with the reasons of this Court; and
- (d) Such further and other relief as counsel may request and this Court may deem just or appropriate.

The grounds for the application are:

1. The Board erred in law and/or rendered an unreasonable decision by:
 - (a) unreasonably interpreting section 32 of the *CLPA*;
 - (b) failing to consider the text, context, and purpose of the *CLPA*;
 - (c) conflating principles of collective agreement interpretation with those of statutory interpretation;
 - (d) departing from a prior Board decision in *Dansou v. Canada Revenue Agency*, 2020 FPSLRB 100, without proper justification;
 - (e) departing from a binding Supreme Court of Canada decision in *Markevich v. Canada*, 2003 SCC 9, without proper justification; and/or
 - (f) issuing a decision that produces an absurd result whereby the employer's salary overpayment recovery would vary from one province to another.

2. Paragraphs 18.1(4), (c), (d) and (f) of the *Federal Courts Act*; and/or
3. Such other grounds as counsel may advise and this Court may permit.

The application will be supported by the following material:

- (g) The affidavit(s) of affiant(s) to be identified, which will include *inter alia* the record of the materials that was before the Board; and
- (h) Such further and other material as counsel may advise and this Court may permit.

Dated at Ottawa, Ontario this 27th day of June, 2023.



ATTORNEY GENERAL OF CANADA

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Counsel for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court./

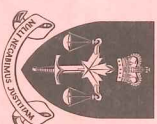
JE CERTIFIE que le document ci-dessus est une copie conforme
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Filing date 27-June-2023
Date de dépôt

27-June-2023
Dated
Fait le

Federal Courts Fees Receipt
Reçu pour frais judiciaires des cours fédérales

NO. **A 623509**



Federal Court of Appeal /
 Cour d'appel fédérale

Federal Court /
 Cour fédérale

Court Martial Appeal Court of Canada /
 Cour d'appel de la cour martiale

To / À :

Name/Nom : Miranda Drapac

Date : 27 June - 2023

Organization/Organisation : Treasury Board

Issuing Office / Bureau émetteur : Ottawa

Address/Adresse : 219 Albert St
Ottawa, ON

Prepared by / Préparé par : A. Greenspoon

Court File No./
 N° du dossier de la Cour : A-168-23

Style of Cause & Description of Services Provided
Intitulé de la cause et description des services rendus

Notice of Application

AGC v. Veronique Strong

Total = 50.00

Cost(s)
Frais

Method of Payment / Mode de paiement

Account / Compte

Cheque No. / N° chèque :

American Express:

Dept# / # Département : 013

Org Code / Code org : 0130

MasterCard:

Reference Code / Code référence :

3002

Visa:

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 Or - Comptabilité 2^e copie, Bureau local lorsque
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