

Court File No:

FEDERAL COURT

BETWEEN:

CARMELLE GOLDBERG

Applicant

and

**EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA and
INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA**

Respondents

APPLICATION UNDER SECTION 18.1 OF THE FEDERAL COURTS ACT, RSC
1985, C F-7

NOTICE OF APPLICATION

ROSS & McBRIDE LLP

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Lawyers for the Applicant

Notice of Application

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

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 Federal Court in 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.

Date: March 15, 2023

Issued by: _____

Address of local office: 180 Queen Street West
Toronto, ON M5V 1Z4

TO: ESDC Labour Program
Ontario Region
4900 Yonge Street, 8th Floor
Toronto ON M2N 6A4

Tara Withers, Health and Safety Officer
tara.withers@labour-travail.gc.ca

Tel: 905-869-7541

AND: Innovation, Science and Economic Development Canada
C.D. Howe Building
235 Queen Street, 4th Floor
Ottawa, ON K1A 0H5

Simon Kennedy, Deputy Minister
Simon.kennedy@ised-isde.gc.ca

Tel: 1-800-328-6198

AND: Attorney General of Canada
Department of Justice Canada
Ontario Regional Office
120 Adelaide St. W., Suite #400
Toronto, ON K1A 0H8

webadmin@justice.gc.ca

Application

This is an application for judicial review in respect of the decision of Health and Safety Officer, Tara Withers, Official Delegated by the Head of Compliance and Enforcement, Employment and Social Development Canada, dated February 15, 2023 (the “Decision”). The Decision set out that the Head would not investigate the Applicant’s work refusal pursuant to s. 129(1)(a) of the *Canada Labour Code*, RSC 1985, c L-2 (the “Code”).

The Applicant makes application for:

1. An order in the nature of *certiorari*, quashing the Decision dated February 15, 2023;
2. An order in the nature of *mandamus*, directing the Head to investigate the Applicant’s work refusal;
3. An order granting the applicant her costs of the application; and
4. Such other order as this Honourable Court deems appropriate.

The grounds for the application are:

1. The February 15, 2023 Decision was unreasonable in holding that Ms. Goldberg’s matter would be more appropriately dealt with under the *Canadian Human Rights Act*. Ms. Goldberg initiated a work refusal because she experiences episodes of blindness from the use of her computer. This constitutes a danger within the meaning of the *Code*. The Decision has denied Ms. Goldberg access to an investigation pursuant to the *Code*. It is unreasonable to exclude Ms. Goldberg from the processes available under the *Code* to determine whether there is a danger in the workplace simply because she is *also* entitled to accommodations for her disability.

This application will be supported by the following material:

1. The Affidavit of Carmelle Goldberg; and
2. The record of proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of March,
2023.



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CARMELLE GOLDBERG
Applicant

- AND -

EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA et al
Respondents

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**PROCEEDING COMMENCED AT
TORONTO, ON**

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