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I S S U E D	FEDERAL COURT COUR FÉDÉRALE  December 12, 2022 12 décembre 2022
	Kelly Shimonek
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Court File No. \_\_\_\_\_

**FEDERAL COURT – TRIAL DIVISION**

**BETWEEN:**

**KINISTIN SAULTEAUX NATION  
represented by its Council**

Applicant (Respondent)

**-and-**

**MOHAMMED A. CHOUDHARY**

Respondent (Applicant)

**-and-**

**THE ATTORNEY GENERAL OF CANADA and  
MINISTER OF LABOUR (CANADA)**

Respondents

**IN THE MATTER OF A WAGE RECOVERY APPEAL  
UNDER DIVISION XVI – PART III,  
SECTION 251.11 OF THE  
CANADA LABOUR CODE, R.S.C. 1985, C. L-2**

**APPLICATION UNDER SECTION 18.1 *FEDERAL COURTS ACT***

**NOTICE OF APPLICATION  
FOR JUDICIAL REVIEW**

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 order otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Saskatoon, Saskatchewan.

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 Court Rules, 1998* 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 Court Rules, 1998*, 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 this 12th day of December, 2022.

Issue by: \_\_\_\_\_  
(Registry Officer)

Address of  
Local office: \_\_\_\_\_

TO: Mr. Mohammed A. Choudhary  
11646 80<sup>th</sup> Avenue  
Delta BC V4C 1X7

TO: Attorney General of Canada  
Department of Justice  
Prairie Region, Saskatoon Office  
410 – 22<sup>nd</sup> Street East, Suite 410  
Saskatoon SK S7K 5T6

AND TO: Minister of Labour (Canada)  
House of Commons  
Ottawa ON K1A 0A6

## APPLICATION

1. This is an Application for Judicial Review of a Referee's Decision by Referee Catherine M. Zuck dated November 10, 2022 and received by the Applicant (Respondent) Kinistin Saulteaux Nation via e-mail on November 11, 2022 (Statutory Holiday) in the matter of a wage recovery appeal made by the Respondent (Applicant), Mohammed A. Choudhary against the Applicant (Respondent), Kiniston[sic] Saulteaux Nation under Division XVI – Part III, Section 251.11 of the *Canada Labour Code*, R.S.C. 1985, c. I[sic]-2 in File No. YM 2727-2935.
2. In advance of setting out this Application, the Referee's Decision contains at least four typos which require the following corrections:
  - a) The name of the Applicant (Respondent) is "Kinistin Saulteaux Nation" and not "Kiniston Saulteaux First Nation" which has been corrected in the style of cause;
  - b) The citation for the *Canada Labour Code* is "R.S.C. 1985, c. L-2" and not "R.S.C. 1985, C. I-2" which has been corrected in the style of cause;
  - c) The Referee's reference to the Investigator's Payment Order in paragraphs 3, 39, 44, 45 and 83 should read "February 12, 2019" and not "February 27, 2019;" and
  - d) The Referee's references in paragraphs 26 and 55 to "Personal" Policy should read "Personnel" Policy.
3. At paragraph 65 of the Referee's Decision, Referee Catherine M. Zuck determined the main issue of the wage recovery appeal by stating the following:
  65. The main issue is whether or not the Appellant was a manager, superintendent or exercised management functions. If he was, he is not entitled to overtime under the *Canada Labour Code*.
4. Upon determination that the Respondent (Applicant) Choudhary was not a manager, superintendent or exercised management functions, the Referee effectively reversed both the Preliminary and Final Determinations of Inspector Jennifer Langelier of the Labour Program – Employment and Social Development Canada, stating at paragraph 75 of her Decision that:
  75. . . . I find that the Appellant has proven on a balance of probabilities that he was not a manager or supervisor nor did

he exercise management functions as contemplated by s. 167(2) of the *Canada Labour Code*. He is not excluded from Division I of the *Code*.

5. As a result of this finding, the Referee at paragraph 83 of her Decision varied Inspector Langelier's Payment Order of February 12, 2019 by adding overtime pay in favour of the Respondent (Applicant) Choudhary in the amount of \$22,725.86.
6. The Applicant, Kinistin Sauteaux Nation makes application for the following relief sought by way of applicable public law remedies including an order for *certiorari*:
  - a) That the decision of the Referee finding that the Respondent (Appellant) Choudhary was not a manager, superintendent or that he exercised management functions be quashed;
  - b) That the decision of the Referee varying the Inspector's Payment Order by awarding the Respondent (Applicant) Choudhary overtime pay in the amount of \$22,725.86 be quashed; and
  - c) Such further and other relief as this Honourable Court may consider and order.
7. The grounds for the application are as follows:
  - a) The decision of the Referee is both unreasonable and/or incorrect in law and/or in mixed fact and law:
    - i) by failing to consider and uphold the rules and regulations set out in the *Kinistin Sauteaux Nation Personnel Policy and Regulations, October 2013* of the Applicant (Respondent) which are supported and protected under Articles 17, 27, 34 and 40 of the *United Nations Declaration on the Rights of Indigenous Peoples, S.C. 2021, c. 14 (UNDRIP)*;
    - ii) by failing to provide case law to support her Decision, ignoring case law provided by the Inspector, and mistakenly attributing the Inspector's case law to counsel for the Applicant (Respondent);
    - iii) by relying upon testimony without any evidence from the Respondent (Applicant) which proved on a balance of probabilities that he was not a manager;
    - iv) by determining that the Respondent (Applicant) was not a manager because he did not perform all of the duties required of a manager within his period of employment;

- v) by making her own determination of what constitutes “matters of importance” for the Applicant (Respondent);
  - vi) by incorrectly stating her role and responsibilities in making a decision when considering an Inspector’s determination;
  - vii) by failing to acknowledge that the Applicant (Respondent) provided a Job Description for the position of Chief Financial Officer;
  - viii) by making a palpable and overriding error by calculating overtime from a spreadsheet created by the Respondent (Applicant) without comparing the spreadsheet to actual overtime hours recorded by the Respondent (Applicant) over many e-mail messages, thus impacting the credibility and reliability of a self-serving spreadsheet; and
- b) Such further and other grounds as may be presented and this Honourable Court may consider.

8. This Application for Judicial Review will be supported by the following materials:

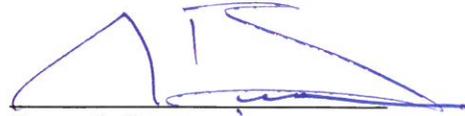
- a) Affidavit evidence on behalf of the Applicant Kinistin Saulteaux Nation with Exhibits;
- b) *Kinistin Saulteaux Nation Personnel Policy and Regulations*, Amended October 3, 2013;
- c) All Records of the Referee, Catherine M. Zuck appointed by the Minister of Labour (Canada); and
- d) Such further and other materials as may be required and this Honourable Court may consider.

9. The Applicant, Kinistin Saulteaux Nation also requests the Referee, Catherine M. Zuck send a certified copy of her Decision dated November 10, 2022 in File No. YM 2727-2935 together with all materials both in her possession from the Labour Program – Employment and Social Development Canada Inspector Langelier, and upon which she relied to make her decision including materials that may not be in the possession of the Applicant to the Applicant and to the Registry including the following:

- a) All records provided to and in possession of the Referee, Catherine M. Zuck including all records provided by the Inspector, Jennifer Langelier of Employment and Social Development Canada in File No. 18M0N1C00690; and

- b) Such further and other documents as are in the file of Employment and Social Development Canada and in possession of the Referee, Catherine M. Zuck related to this matter.

DATE: December 12, 2022



Bruce J. Slusar,  
Barrister & Solicitor

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