

FORM 301 Rule 301
Federal Court of Appeal

**Notice of Application
Between
Alexey Khodykin (Applicant)
And
Social Security Tribunal (Respondent)**

Notice of Application

TO THE RESPONDENT:

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 of Appeal 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.

09/27/2023

Issued by:

Address of local office: 180 Queen Street West, Suite 200, Toronto, ON, M5V 3L6

TO: Alexey Khodykin, 702-53 Warrender Ave., Toronto, M9B5Z7 ON, Canada

AND

Social Security Tribunal of Canada PO Box 9812 Station T Ottawa, ON, K1G 6S3

e-document-6	A-269-23-ID 1	
F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE September 29, 2023 29 septembre 2023 Sherri Ally	D É P O S É
TOR		1

Application

This is an application for judicial review in respect of *Social Security Tribunal of Canada Appeal Division decision August 31, 2023 (AD-23-326)*

On Sep.1, 2023 I received a letter from the SST for the decision made regarding my EI eligibility review saying that I was not eligible to EI benefits as I did not meet the criteria that: *"the Claimant was suspended from his employment because of misconduct. In other words, it found that he did something or failed to do something that caused him to be suspended."*

The applicant makes application for Judicial review of the decision made regarding misconduct and wishes to get the EI benefits which are legally justified for him and be paid in full for the period starting on November 14, 2021 and covering the entire time of absence from work.

The grounds for the application are: EI agent and *The Tribunal Member made an error of law by failing to apply the appropriate test for misconduct. As to prove misconduct "There must be a breach on an expressed or implied duty arising out of the employment contract"- Refer to Canada Attorney General v. Lemire, 2010 FCA 314. The Tribunal Member made no mention of this aspect of the test for misconduct or considers it as part of her analysis.*

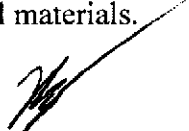
The Tribunal Member also made an error of fact by failing to consider that my collective bargaining agreement (CBA) contains no provisions on any mandatory medical treatment. It therefore should not have been found that I committed misconduct by declining to release personal health information, because there is no express or implied duty in my collective bargaining agreement requiring me to do so.

The tribunal erred in law and in fact by agreeing with the Commission, which has not met the burden of proof to substantiate misconduct; that is, that I breached an expressed or implied duty owed to my Employer. The imposition of any medical treatment or releasing confidential information requirement constituted a unilateral change to my employment contract made without my agreement or my bargaining agent, and therefore cannot be said to be an express or implied duty of my employment agreement.

This application will be supported by the following material: Collective Bargaining Agreement (CBA), Canada Attorney General v. Lemire, 2010 FCA 314., Responsibilities of EI agent (Canada.ca), Court of King's Bench of Alberta Citation: Ingram v Alberta (Chief Medical Officer of Health), 2023 ABKB 453 Date: JULY 31, 2023 Docket: 2001 14300 Registry: Calgary, CAF Annex I — Constitutionality of the Canadian Armed Forces COVID-19 vaccination policy Date: 18 July 2023

The applicant requests Federal Court of Appeal to send a certified copy of the materials that is not in the possession of the applicant but is in the possession of the Social Security Tribunal to the applicant and to the Registry: All materials.

09/27/2023



Alexey Khodykin
702-53 Warrender Ave., Toronto, M9B5Z7, ON.,
647-244-7383 /alex_khodykin@yahoo.com