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MAY 30 2023

(Date)

Issued by:  
(Registry Officer)



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## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the final judgement of Mr. Justice Ahmed of the Federal Court dated May 23<sup>rd</sup>,2023 in the file T-290-22 by which my application for Judicial Review was dismissed.

The Legal Department of the Canada Human Rights Commission was a party for the Public Interest. The lawyer for the CHRC stated at the hearing that the CHRA has special powers given to them and they are remedial in nature. A broad, liberal and purposive interpretation advances the policy goals underlying quasi-constitutional human rights statues, like the CHRA.

Section 25 of the CHRA is unambiguous. CHRA gives a non-exhaustive definition of the word "employment" which "includes a contractual relationship with an individual for the provision of services personally by the individual. Case law from the Commission showed employees under the CHRA. This was disregarded by the Tribunal and Justice Ahmed. As the Commissions lawyer said they are far away from being employees in the traditional sense yet found to be employees under the CHRA.

A very serious question of Law was tried. I was terminated by my immediate supervisor, Dibyو Sakar from Loomis Express, without justification in a two minute phone call on April 6<sup>th</sup>,2016 when I was home recovering from a heart attack. No warning or documentation was given. Nor was a record of employment given. When I asked for a reason my supervisor said this phonecall is all that's needed and all you will get. After being employed by the Respondent for 18 years. I was employed in a fulltime position doing deliveries and pickups as a Courier driver for the Respondent in the town of Slave Lake, Alberta.

I was known as "Warren, the Loomis guy in Slave Lake for 18 years. My income ended the day of my heart attack on January 21<sup>st</sup>,2016. The Respondent took my livelihood of \$125,000 a year in a phonecall. I couldn't even claim employment benefits as Loomis mis-classified me.

My employee/employer relationship was indisputable, It could never be challenged or argued against in any jurisdiction. I worked on their workforce and was paid from payroll for 18 years as seen in my documentary evidence.

The CHRT in his decision dated January 21<sup>st</sup>,2021 dismissed my complaint for discrimination. Further

he saw no employee/employer relationship or discrimination. Justice Ahmed agreed with him. He ignored legal statue, the CHRA. He made false misrepresentations as to the material facts. My evidence was disregarded or perverted. The Transportation of Dangerous Goods certificate issued by my employer, mandatory training. Employee Warren Fick. He disregarded My evidence, the indisputable facts and the law, which clearly support the correct outcome, that I was an Employee of the Respondent. The Tribunal misrepresented the Truth.

The Respondent violated my protected rights under the CHRA. Sarah Chenevert-Beaudion, lawyer with the CHRC at the hearing of the CHRT told the adjudicator several times to move to the remedies, she said, "you are in the realm to award Mr. Fick

the remedies available to him under the CHRA". He continued for six days, when the evidence alone showed a prima facie case. The Tribunal also ignored my summary judgement which the Commission submitted in their record.

The CHRT's decision was a palpable and overriding error. Clearly wrong, logical error, irrational, unreasonable and unsupported by the evidence, the facts, and the law. The only decision could be that I was an employee and Loomis Express violated my Canadian Human Rights.

Justice Ahmed's decision is seriously palpable and overriding error, which affected the unjust outcome. He also disregarded my evidence, the indisputable facts and the law.

Instead he based his decision on false statements, the perjured testimony of my manager who had me terminated and the false statements from In-House Counsel Mr. Blaine. Both worked for the same Employer who terminated me. No honest decision-maker could believe the tale the Respondent spun.

The Respondent has never produced one substantiating piece of evidence. They used their In-House Counsel Mr. Blaine who suborned perjury, encouraging Matt Davis to make false statements under oath. .

The CHRC's lawyer Anshumala Juyal said the Tribunal misapplied and misinterpreted the law. The Tribunal ignored the evidence, no analyze of how he came to his conclusion, there were fatal flaws, he did not put any weight to relevant evidence, nor give any reasons. The Commission said Mr. Fick was a longtime employee. He worked out of the Respondents warehouse.

Delivering and picking up Loomis freight daily. Loomis controlled him, they directed him, they controlled his pay. His remuneration resulted in dependency. He was directed and controlled by Loomis scanners. When he asked to be paid more due to an increase in his workload, his manager Matt Davis refused to pay him as seen in evidence. DHL asked him to return in 2006. Mr.Fick's income tax is irrelevant. The name the Respondent called him is also irrelevant. Training was mandatory. He was denied an opportunity for advancement under the CHRA.

The CHRC said to overturn the decision of the CHRT as the facts were misapplied among other things.

As stated by the CHRC "The outcome does not align with the protective nature of human rights legislation, which to cite Justice Abella in McCormick, is "often the final refuge of the disadvantaged and disenfranchised. Mr. Fick has suffered the harsh consequences of this decision.

Both the Tribunal and Justice Ahmed undermined the Administration of Justice as I will show you in my Grounds for Appeal.

THE APPELLANT ASKS that this Honourable Court does what the Federal Court as a matter of Law should have done. Set aside the Federal Court's decision. Replace it with the Correct decision. As the only right answer in light of the Law, the facts, the evidence clearly support that I was an Employee of the Respondent for 18 years and my Canada Human Rights were infringed upon. Send the matter back to a panel of members with the CHRT for the remedies available to me under the CHRA. Thank You for considering my Appeal.

THE GROUNDS OF APPEAL are as follows:

1. Pursuant to subsection 27(1)(a) of the Federal Courts Act, the Appellant appeals to the Federal Court of Appeal from the final judgement of Justice Ahmed of the Federal Court dated May 23<sup>rd</sup>, 2023, file number T-290-22.
2. Loomis Express is a Unionized Employer and all drivers for Loomis must fall into that category
3. The Union is the sole bargaining agent for a group of employees from an organizations perspective. It can only manage the business subject only to the limitations in the collective agreement.
4. I worked for Loomis from 1997 until 2016. I was forced to quit in 2005. I worked long hours, without remuneration for overtime. No holidays, no legal benefits. I left Loomis's employment as I was burnt-out.
5. My manager from that time period testified to the Business operations of DHL. In 2011 the Canadian operations of DHL was acquired by Transforce and subsequently changed the name to Loomis Express. They continued to operate the same illegal Business practices. The Company was in breach of Federal Labour Standard Laws among others that governed their Business operations. I worked 18 hr days and was denied my legal benefits given in legislation. I was classified properly as an employee.
6. In 2006 a manager with the then Company name DHL, offered me more money, a flat rate of pay and a slight pay raise to \$500 a day from roughly \$400 to \$450 on Commission. They also split up my large run and hired another driver to do the out-of-town business for the Company. My hours were now less. Holidays and time off were also to be given.
7. I did not know at the time that this was a collusive agreement as they went behind the Unions back. They are a unionized company and as such all negotiations for hours worked, rate of pay, the size of the area they want employees to cover, among other things are negotiated in Collective Bargaining. Management has no authority over these matters. I was deceived.
8. As seen in Bill C-86, misclassification of employees is strictly prohibited. In unionized workplaces employers use this model to undermine the Union contract. The evidence showed No individual agreements as seen in the Union agreement, which the Respondent submitted.
9. This illegal Business practice is what the Tribunal and Justice Ahmed based their decision on, along with perjured testimony and the illegal argument of Mr. Blaine, In-House Counsel.
10. Yet evidence shows they paid me from Payroll deposit, mandatory training was required under the Transportation of Dangerous Goods Act, 1992. Which shows Employee Warren Fick, employer's Name. Among other documents that clearly conclude I was an employee of the Respondent.
11. Documents showing the manager who had me terminated, sent to their warehouse through interoffice mail which I received daily, a document from the Canada Industrial Relations Board, an Act of parliament, who governs their Business.. Notice to Employees with Matt Davis's signature.
12. Bill 148 fair workplaces, better jobs Act. Section 5.1 received royal assent

Nov.2017. Employers are strictly prohibited from misclassifying employees as independent contractors. Definition of employee, a person who receives training from an employer, if the skill being used by the employer is a skill used by the employers employees.

13. Evidence shows a document from the Union and Mr. Blaine, he said he was there, at the meeting and that the document meant nothing. It said Transforce Breaking the Law insisting employees are Independent Contractors.
14. T-force another Transforce Company, the same as Loomis just settled a 15 million dollar lawsuit.
15. TFI International paid out another settlement for 4.75million to Flores v. TFI International , both lawsuits are for misclassifying employees as independent contractors, depriving them of their legal benefits given to them in legislation.
16. Justice Ahmed allowed my wife to read the statements from Alain Bedard, Ceo of TFI, parent Co. who is representing their wholly owned subsidiary Co. Loomis Express. It says TFI International CEO Alain Bedard called on Canadian authorities to “wake up and smell the coffee” about Driver Inc. carriers who have become a “cancer” in the freight market by undercutting rates through intentionally misclassifying drivers as contractors. Transforce is the “cancer”,
17. The CHRT called me an independent contractor, the evidence, facts and law show otherwise.
18. Justice Ahmed in [9] of his Judgement said “Loomis informed Mr. Fick that he would retain his employment upon his return.” He saw the Truth, heard the Truth, and then perverted the Truth. His whole Judgement is flawed as it is a Misrepresentation of the Truth.
19. In his Judgement Justice Ahmed contradicted the Truth, which is impossible to cover up and said No employee/employer relationship exists. He erred in an Obvious false statement saying I was in a Business relationship, which defies all logic and reason. Totally contradicting the Indisputable Fact as he saw it himself, the Evidence and the Law.
20. This statement clearly substantiates my position that I was an Employee of Loomis Express.
21. Further in par.[10 and 11] Justice Ahmed erred when he showed his bias,condoning the fact that Loomis terminated me without justification because I sent a letter to management and the Vice-President, as Matt Davis was ignoring my phonecalls about my return to work.
22. The “strongly worded letter” in which I said discrimination is misleading, as Sarah Chenevert- Beaudoin with the Commission’s, legal department said I did not find the letter discourteous as Mr. Fick was simply standing up for his protected rights. She also said Loomis acted arbitrarily and never responded to my letter, terminating me instead. Justice Ahmed condoned the unlawful action of the Respondent who acted, arbitrarily and unilaterally terminating me while I was home recovering from a heart attack without legal justification.
23. Justice Ahmed erred when he undermined the Administration of Justice, my Fundamental rights under the Charter of Rights and Freedoms under the Constitution my right to a fair, honest and impartial hearing was denied.My protected rights were infringed upon as neither the Tribunal or Justice Ahmed

acted in accordance with the facts, the evidence and the Law. Its obvious both were influenced as the outcome of both decisions have brought the Administration of Justice into disrepute. Both the Tribunal and Justice Ahmed were deceitful.

24. Judges and all decision makers have a duty to uphold and defend judicial independence , not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial Judges.
25. Justice Ahmed erred when he recklessly and wilfully without any regard for my Life went along with the Fraud of the Respondent to deprive me of the remedies available to me under the CHRA.
26. Also he heard an article stating that the Minister of Labour, Seamus O'Regan has invested 26 million to stop this illegal Business practice. Unifor, Transforce/Loomis's Union also calling it wage theft and fraud. Misclassifying workers as independent contractors depriving them of their guaranteed rights under federal labour standards. Unethical employers use this model to undermine benefits negotiated in collective agreements, said Len Poirier, Unifor Assistant to the President. Revenue Canada, Employment and Social Development along with the Canadian Trucking Alliance are rallying together to end this, Drivers Inc. Scam.
27. As seen in my evidence Misclassification-IPG-105. Explaining how shady, unethical Employers such as Loomis operate illegally and its strictly prohibited under Bill C-86 and Bill 148.
28. The Respondent submitted 2,822 incriminating documents which were irrelevant to the CHRT's decision. The bias and misleading, false statements from Justice Ahmed are obvious when he says in his Judgement that I submitted large volumes of documents. When in fact my record was 135 pages, the Respondents. 2822. He erred by being untruthful and deceitful.
29. One affidavit which I showed Justice Ahmed was signed by my manager Matt Davis. The question was asked Is this a contract of service, where an employee provides services which are an integral part of the business, or a contract of services, where the work done is not an integral part of the business, only an accessory to it. Matt Davis refused to answer, and he referred it to Mr. Blaine who also refused. Justice Ahmed disregarded this evidence also. Further showing Justice Ahmed undermining the Administration of Justice.
30. Under the Canada Evidence Act 5 (1) No witness shall be excused from answering the question on the ground that the answer to the question may tend to criminate him or tend to establish his liability to any person.
31. Seven years later and I still have not had a fair and impartial decision maker, which is my right under the Constitutions Acts 1867 to 1982- Fundamental Justice has not been observed. Which is my right under the Charter of Rights and Freedoms, which is Federal Statue.
32. Justice Ahmed did not care that the Respondent refused to allow me to cross-exam Matt Davis on the affidavit with exhibits in this matter in front of the Federal Court. The CHRC gave dates for a hearing under Rule 308 for cross-examination. I went to the Court as I had no response from the Respondent. Mr.

Blaine, in a letter to the Court promised to produce his witness. I never heard from him again on the cross-examination.

33. Justice Ahmed disregarded this Crucial step towards Justice and denied me a Fair and Just hearing. Justice Ahmed showed contempt along with the Respondent, as to rule 308 of the Federal Court. Justice Ahmed erred when he ignored the Federal Courts rules. Fundamental Justice for the Administration of Justice was not met. My substantive rights under Rule of Law were not met.
34. I pointed to the perjured testimony in Matt Davis's affidavit where he says he contacted human resources with DHL and Loomis to verify all files as they may relate to Mr. Fick for any and all-pertinent information. They advised that there was no file on Mr. Fick.
35. This is perjured testimony from the manager who had me terminated.
36. Putting all the Unjust, Unfair abusive treatment I've endured aside.
37. I just wanted this Court to understand why after seven years of putting 2 complaints in to the CLC and the CHRA. Both prima-facie cases based on the evidence alone. The facts and the law only further corroborate that I am an Employee under the law and Loomis Express violated both the CLC and CHRA.
38. Justice Ahmed disregarded The Dangerous Good Act; the literal meaning must apply. It says what it means and means what it says. Employee Warren Fick, mandatory training by my Employer. When my wife pointed this out he became very upset, he treated her in a harsh manner when she pointed to the truth. The CHRC's lawyer was a witness.
39. Justice Ahmed disregarded the case that the Canada Human Rights Commission argued was most relevant to this case and was heard in Judicial Review of the Federal Court in 2002. In which Ms. Lapierre was found to be an employee under the CHRA, and she was a True contractor. As the decision was in the Federal Court judicial review.. The Supreme Court clarified horizontal stare decisis, that decisions of the same Court should be followed as a matter of Judicial comity. He also erred when he did not follow stare decisis.
40. In 1998 Parliament enacted some amendments in the Canada Human Rights Act of which adds the following definition in section 25 of the Act to the definition for the purpose of the CHRA." employment" included a contractual relationship with an individual for the provision of services personally by the individual. As the Commission argued it is unambiguous. Clear and precise in the definition. It means what it says. I was the individual who personally provided the services.
41. Justice Ahmed disregarded the compendium submitted to him just before the hearing. The Commission showed the Dangerous Goods Act, Warren Fick Employee. Evidence of a letter from DHL Express and Loomis Express in 2011 when I lost my home and all belongs in the wildfires of Slave Lake, including the agreement between Warren Fick and DHL. As Anshumala Juyal argued the Director of Operations gave Mr. Fick \$10,000 collected from drivers from across Canada, including head office and regional office calling him "one of our own". This was his workplace family.
42. She also submitted evidence of the scanners, Loomis Express on them, showing direction and control. Dictating to him daily their Business.
43. The letters written by Loomis customers identifying me as their Loomis driver for

- 18 years. One from Larry Schimpf, a lawyer calling me an ideal employee saying I've known Warren since he moved to Slave Lake in or around 1998.
44. Mr. Blaine objected at the Tribunal hearing and the member assured him he would decide the weight of the evidence, he also disregarded these letters. One from manager Jeff Taylor with Shoppers Drug Mart, and Husky oil. Jeff Taylor manager said I've had the pleasure of working indirectly with Warren Fick from Loomis (DHL) for almost 20 years. His dedication to the job the past couple of decades is truly inspirational.
  45. Husky Oil said Mr. Fick has provided Loomis Courier services at our office for approximately 15 plus years and is well known and respected by our senior staff and new employees alike. Warren Fick did a remarkable job representing Loomis and his professionalism and friendly nature has been greatly missed.
  46. Also, the document written by my former manager from 1997-2005 stated, Over those years the company had changed from Loomis Courier to Mayne Logistics and then DHL but the one constant over those years was the dedication, initiative and professionalism that Warren Fick displayed. On Feb. 6.2006 I left the employment of DHL Express still having never found a suitable replacement for Warren. He never knew they rehired me until I asked him to be a witness. The only witness. As I told Justice Ahmed all my witnesses who worked for Loomis refused to testify.
  47. Canada Industrial Relations Board an Act of Parliament who governs the Respondents Business identified me as an employee and so did Loomis as all drivers are employees. Notice to Employees sent to the warehouse I worked out of in Slave Lake, signed by the manager, Matt Davis who had me terminated, This also was excluded.
  48. Also a bank statement showing Loomis Express paying me by payroll. Three deposits on that statement, was also disregarded. Proof I am an employee. The definition of wages in the Canada Human Rights Act Employment (7) For the purposes of this section, wages mean any form of remuneration payable for work performed by an individual and includes payment of any kind. Loomis controlled how much I would be paid and when. I was dependent on them to earn a living.
  49. Evidence of three trucks with Loomis decals which I drove over a 18 year period was disregarded.
  50. Defensive driving and safety certificates also were not mentioned. This was required by law for all Loomis courier driver employees.
  51. Also a posting from another manager who send me an internal posting when he heard that Matt Davis terminated me. He wanted to rehire me for a third time as he admired my work ethic. Dated April 19<sup>th</sup>,2016. It shows the job which included buying a truck to do Loomis business. This shows the unethical, illegal business practices of Loomis Express.
  52. Overwhelming evidence was seen from myself and overwhelming case law from the Commission. This decision could only be found in my favor as a matter of law.
  53. The Respondent never submitted one piece of substantiating evidence in seven years..
  54. In the CHRA section 7 It is a discriminatory practice, directly or indirectly a) to

refuse to employ or continue to employ any individual b) in the course of employment, to differentiate adversely in relation to an employee. Loomis terminated me, took my livelihood without justification.

55. No Bona fide occupational requirement was met. Section 15(2). They did not try to accommodate me, instead they terminated me when I had a heart attack. As the Commissions legal dept. stated When Mr. Fick had a heart attack at age 54 and was forced to take time off for health reasons, Loomis Express treated him in an adverse differential manner by planning to change his duties and reduce his pay. They terminated him instead. The timing and sequence of events gives rise to an inference that Mr. Fick's disability and /or age were at least factors in this adverse differential treatment. If Mr. Fick had not had a heart attack forcing him to stop working temporarily, it seems highly unlikely Loomis would have made the same decisions arbitrarily to reduce his pay, change his duties and terminate him.
56. Justice Ahmed inference drawing process itself is a palpable error.
57. Under section 59 CHRA No person shall threaten, intimidate or discriminate against an individual because that individual has made a complaint. I sent a letter stating my concern over my employment as Matt Davis would not return my phone calls and I was ready to return to work.
58. Instead, they called my letter discourteous, as the lawyer with the Commission said it was not discourteous. Mr. Fick was simply standing up for his protected rights. Matt Davis under oath said this was mostly why he and the Vice President Larry Fuaco terminated me.
59. Steve Anderson's testimony was also disregarded. He is also an employee of Loomis. He said that Matt Davis offered him my job a few days after I had a heart attack.
60. This is a serious legal matter to be heard and made right. It will affect every employee in this country in a devastating way if it isn't. The integrity of our Justice System has been compromised and must be made right. Terminating a longtime employee or any employee when he's had a heart attack is an obvious violation of the CLC and the CHRA.
61. The Commission stated the CLC and the CHRA are two separate and distinct Acts.
62. The Respondent and Justice Ahmed obfuscate the real issues by allowing other cases into this matter. The only relevance is that I have not been heard by a fair and impartial decision-maker.
63. My wife and I have suffered greatly by this Injustice that has dragged on for 7 years. We have suffered the harsh consequences in this fight to make this matter Right. We have lost our home, I have had multiple heart attacks and open heart surgery. I was denied Fundamental and natural Justice which is my Constitutional Right.
64. This Court must remedy this Injustice as a matter of Law. The Supreme Court's decision to revise judicial review in Vavilov in 2019, Justice Ahmed should have used the Correctness standard as this case is of central importance for the public interest. The decision is flawed and deficient, only one outcome is possible.
65. Justice Ahmeds constitutional duty was to correct the CHRT's decision. As both

overreached their lawful powers. Both acted by reason of fraud and perjured testimony. No one is Above the Law. Both refusing to hold Loomis Express accountable under the Law, the CHRA.

66. Justice Ahmed also ignored evidence given by the Respondent showing Mr. Blaine interfering in Justice Ahmed's Federal Court order dated May 30<sup>th</sup>, 2019. I succeeded in Judicial Review. My unjust dismissal under the Canada Labour Code was to be heard anew. As the new adjudicator was setting a hearing date July 2019, Court ordered. Mr. Blaine stopped him. The first adjudicator cancelled a scheduled hearing in April 2017 at Mr. Blaine's request. My unjust dismissal complaint has never been heard.
67. Justice Ahmed also ignored the Fact that the Respondent has no record of me or the agreement when I returned in 2006.
68. Under the CHRA – Employer obligations -Employment Equity-Records and Reports. 17. Every Employer shall, in accordance with the regulations, establish and maintain employment equity records, in respect of the Employers workforce. The Respondent has denied any record of my existence.
69. The CHRC only participates in cases of the utmost importance and very serious issues that affect All Canadian citizens.
70. Justice Ahmed abused his position of power to Undermine the Administration of Justice and protected the Respondent by not holding them accountable under the CHRA for the remedies available to me. The Tribunal did the same.

Dated at the town of Slave Lake, Alberta On this 30<sup>th</sup> day of May, 2023

Warren Fick \_\_\_\_\_

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Style of Cause & Description of Services Provided Intitulé de la cause et description des services rendus	Cost(s) Frais
<p><u>WARREN FICK</u></p> <p align="center">v.</p> <p><u>Canada Human Rights Commission</u></p> <p align="center">v.</p> <p><u>6589856 Canada Inc. cob TR1 Transport 22LP</u>  <u>(operating as Loomis Express)</u>  <u>Notice of Appeal</u></p>	<p>Total = <u>50.00</u></p>

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