

T-1869-23
301

Court File No. [REDACTED]

FEDERAL COURT COUR FÉDÉRALE	
FILED	SEP 07 2023
BRITTNEY CHANNER	
TORONTO, ON	

FEDERAL COURT

BETWEEN:

(Court Seal)

CONFEDERATION COLLEGE

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER 18.1 OF THE FEDERAL COURTS ACT

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 Toronto, 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 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.

ALICE PRODAN GIL
REGISTRY OFFICER
AGENT DU GREFFE

-2-

Date SEP 05 2023 Issued by _____
(Registry Officer)

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

TO: **THE ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

AND TO: **EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA,
LABOUR PROGRAM**
4900 Yonge Street
8th Floor
North York, ON M2N 6A8

APPLICATION

This is an application for judicial review by Confederation College of Applied Arts and Technology in respect of the Jurisdiction Determination of the Official Delegated by the Head of Compliance and Enforcement of Employment and Social Development Canada's Labour Program (the "ODH") dated May 11, 2023 (the "Jurisdiction Determination"), made under the Canada Labour Code (the "Code"), determining that Confederation College's School of Aviation is subject to federal jurisdiction for the purposes of labour legislation.

THE APPLICANT MAKES APPLICATION FOR:

1. an Order quashing and setting aside the Jurisdiction Determination, and referring it back for determination by another ODH, in accordance with such directions as the Court considers to be appropriate;
2. costs of this application; and
3. such further and other relief as this Honourable Court may deem appropriate and just to grant.

THE GROUNDS FOR THIS APPLICATION ARE:

1. The ODH issued the Jurisdiction Determination on May 11, 2023.

2. In the Jurisdiction Determination, the ODH advised that he had concluded an investigation regarding the jurisdiction of the Aviation Centre of Excellence (the "ACE"). The ACE is located at the Thunder Bay International Airport and houses Confederation College's school of aviation.

3. The ODH determined that the ACE is subject to federal jurisdiction because it is engaged in the operation of aircraft and aircraft maintenance, activities which fall under federal jurisdiction pursuant to section 2(e) of the Code.

4. The ODH's Jurisdiction Determination with respect to the ACE is the basis for this judicial review application.

The ACE Workplace

5. Confederation College is a college established pursuant to the *Ontario Colleges of Applied Arts and Technology Act, 2002*, S.O. 2002, c. 8, Sch F, and is an agency of the Crown.

6. The mandate of Confederation College is to offer a comprehensive program of career-oriented, post-secondary education and training in order to assist individuals:

- (a) in finding and keeping employment,
- (b) to meet the needs of employers and the changing work environment; and

- (c) to support the economic and social development of local and diverse communities in which the college is located.

7. Confederation College's main campus is located in Thunder Bay, Ontario, and it operates regional campuses in other parts of Northern Ontario such as Dryden, Fort Frances, Geraldton, Kenora, Marathon, Sioux Lookout and Red Lake.

8. Through its School of Engineering Technology, Trades and Aviation, Confederation College offers, *inter alia*, the following two diploma programs:

- (a) The Aviation Flight Management Program, which is a Transport Canada certified flight training unit ("FTU");
and
- (b) The Aviation Technician – Aircraft Maintenance Program, which is a Transport Canada approved training organization ("ATO").

9. These programs are offered, in part, at Confederation College's Aviation Centre for Excellence ("ACE"), which is a campus/building located at the Thunder Bay International Airport on the northside of the main runway.

10. There are 28 permanent full time staff employed at the ACE. Pursuant to the *Colleges Collective Bargaining Act, 2008*, the Ontario Public Sector Employees' Union ("OPSEU") represents the Academic, Full-Time and

Part-Time Support Staff employed at the ACE through collective agreements between the College and the respective bargaining units.

11. The ACE currently has 13 certified and registered flight training aircraft, which are owned and registered to the College. The aircraft are only used for activities consistent with the ACE's role as a Flight Training Unit under Transport Canada.

12. All payroll, human resources, safety and workplace policies, including those that apply to the ACE, are centrally administered through the College. Further, all of these areas are currently operated in accordance with the Ontario *Occupational Health and Safety Act*, the Ontario *Colleges of Applied Arts and Technology Act, 2002*, the *Colleges Collective Bargaining Act, 2008*, and the *Employment Standards Act, 2000*.

13. The ACE is not engaged in the transportation of cargo, chartered flights, or any form of transportation. The ACE's main operational purpose is to provide post-secondary education, which includes instruction in aircraft and simulators to students.

The ODH's Investigation and Jurisdiction Determination

14. In or around December 8, 2022, the ODH emailed Colin Kelly, Dean of the School of Engineering Technology, Trades and Aviation (the "Dean") seeking information about the ACE to assess if federal jurisdiction applied.

15. The ODH's investigation took place via a single virtual meeting between the ODH and representatives of the College, after which, the ODH asked follow-up questions over email regarding the day-to-day operations of the ACE workplace.

16. On May 11, 2023 the ODH issued a one-page Jurisdiction Determination rejecting the College's position that the ACE is provincially regulated. The ODH determined that the ACE is subject to federal jurisdiction for the purpose of labour legislation.

The ODH Erred in the Jurisdiction Determination

17. The ODH erred in the Jurisdiction Determination, including as follows:

- (a) The ODH erred in law, or based its decision on erroneous findings of fact, when it determined that the ACE is "engaged in the operation of aircraft";
- (b) The ODH erred in law, or based its decision on erroneous findings of fact, when it determined that the ACE is "engaged in aircraft maintenance"; and
- (c) The ODH erred in law, or based its decision on erroneous findings of fact, when it determined that the ACE is subject to federal jurisdiction for purposes of labour legislation.

18. In addition, the ODH's investigation was not procedurally fair as it was not thorough.

Other Grounds

19. The Applicant relies upon the following in support of its application:

- (a) Sections 2, 4 and 44 of the *Canada Labour Code*;
- (b) Section 1 of the Ontario *Occupational Health and Safety Act*;
- (c) Section 3 of the *Ontario Colleges of Applied Arts and Technology Act*;
- (d) Section 18.1 to 18.5 and section 28 of the *Federal Courts Act*;
- (e) Sections 300 to 319 of the *Federal Court Rules*;
- (f) Such further grounds as counsel may advise and this Court may accept.

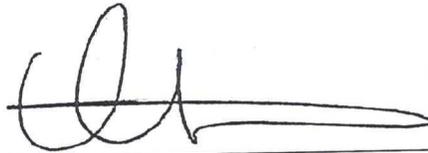
THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING

MATERIAL:

- 1. The Applicant's affidavit, to be filed.
- 2. Such further evidence as counsel may advise, and this Court may accept.

The Applicant requests the Official Delegated by the Head of Compliance and Enforcement of Employment and Social Development Canada's Labour Program to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the ODH to the Applicant and to the Registry:

1. The entire record which was before the ODH, and which the ODH considered in making its decision.



September 7, 2023

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Solicitors for the Applicant

Court File No.: 23-T-71

FEDERAL COURT

CONFEDERATION COLLEGE

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

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Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of SEP 07 2023 A.D. 20____

Dated this _____ day of SEP 07 2023 20____

**ALICE PRODAN GIL
REGISTRY OFFICER
AGENT DU GREFFE**