

FEDERAL COURT

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June 20, 2023 20 juin 2023		
File No:		
Kadara Thompson		
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Notice of Application

BETWEEN:

JENNIFER HARNUM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Notice of Application for Judicial Review

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 (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

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.

June 20, 2023

Issued by:

Address of local office:

TO: Minister of Justice and Attorney General of Canada
c/o Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

Chairperson
Immigration and Refugee Board of Canada
344 Slater Street, 14th Floor
Ottawa, ON
K1A 0A1

Application

This is an application for judicial review in respect of:

The decision of Kevin Whitehouse, Director General, Immigration and Refugee Board of Canada on behalf of Roger Ermuth, Executive Director of the Immigration and Refugee Board of Canada dated and communicated to the Applicant on May 23, 2023 in grievance number 32256. That decision denying that the employer breached the Collective Agreement in pursuing the a cost recovery action against the Applicant.

The decision is the result of a hearing which took place before Mr. Ermuth on March 29, 2023.

The Applicant has received a copy of the decision. The Applicant has not received any “attachment” referred to in the decision.

In essence, the Employer is asking the Applicant to apply for “maternity leave” in 2022 for children born in 2017. The Applicant argued that this is a breach of the employer’s duty to “act reasonably, fairly and in good faith in administering this agreement” under article 5.02 of the LP Collective Agreement incorporated into the Applicant’s Terms and Conditions of Employment.

The applicant makes application for:

The Court to quash the decision of Mr. Whitehouse and request a new decision on the grievance from a different panel.

The grounds for the application are:

1. Jurisdiction of the Federal Court – The Applicant is an excluded employee and not subject to the LP Collective Agreement. No recourse is available to the Federal Public Service Labour Relations and Employment Board.
2. The decision is unreasonable. It fails to address the main substantive issue raised in the grievance. The decision contains an erroneous account of the evidence and fails to address issues raised in the hearing.
3. Adequacy of reasons – The decision raises issues which were not raised at the hearing without explanation yet the main issue, whether it was fair or reasonable for the employer to assert a breach of the Collective Agreement five years after the fact is not addressed.
4. Numerous breaches of procedural fairness, including but not limited to:
 - (i) The decision was rendered by a decision-maker who was not present at the hearing, refused to hear oral evidence, and rendered the decision based on all elements of the file as well as the information shared at the

hearing. The hearing was not recorded and no transcript or notes were produced for the Applicant. The Applicant rejected the employer's request that a substitute decision-maker render the decision without hearing oral evidence or a record of the proceedings being shared.

- (ii) The decision is based, at least in part, on evidence that was not presented at the hearing nor disclosed by the panel to the Applicant. The Applicant had no opportunity to see or respond to this evidence.
- (iii) The decision is based on issues that the decision-maker at the hearing indicated would be outside the scope of the hearing. No notice was provided to the Applicant of the change of scope of the hearing.
- (iv) The panel who signed the decision did not provide a reasonable opportunity for the Applicant to be heard.
- (v) The master of the proceedings was not the decision-maker who signed the decision.
- (vi) There is no evidence that undertakings made by the panel hearing the grievance were ever completed.

This application will be supported by the following material:

1. Affidavit of the Applicant
2. Letter from Public Services and Procurement Canada dated November 30, 2022
3. Decision of Kevin Whitehouse dated May 23, 2023.
4. Terms and conditions of employment for the employees who occupy excluded positions in the Law Practitioner Group dated February 7, 2014.
5. LP Collective Agreement – expired May 2018
6. LP Collective Agreement – expired May 2022
7. E-mail exchanges between Julie Charette and the Applicant.
8. Section 209 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2)
9. Rule 317, *Federal Courts Rules* (SOR/98-106)

The applicant requests Immigration and Refugee Board of Canada 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 Immigration and Refugee Board of Canada to the applicant and to the Registry:

1. Attachment to the decision dated May 23, 2023.
2. Notes written by Roger Ermuth during the proceeding on March 29, 2023.

3. All evidence and material considered and reviewed by Kevin Whitehouse in preparation of the decision.
4. Any decision of the Pay Center with respect to case #3190051 including the decision that there was a “cost-recovery” under the *Crown Liability and Proceedings Act*, date the decision was made, name and position of the decision-maker, and all evidence that was considered by that decision-maker.
5. All communications between Albert Morse, Odette Lalumière, Neil Modi, and the Pay Center from 2017-18 with respect to this matter.
6. Any other material relevant to the this matter.

Ottawa, June 20, 2023

J.Harnum

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