

Court File No.

FEDERAL COURT

B E T W E E N:

DAN AIKEN and LINDSAY MACLELLAN

Applicants

-and-

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following pages.

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 the hearing will be as requested by the Applicants. The Applicants request that this application be heard at Ottawa, 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 prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor, or where the Applicants are self-represented, on the Applicants, 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.

February 16, 2024

Issued by: _____

(Registry Officer)

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APPLICATION

This is an application for judicial review in respect of an investigation into a workplace violence and harassment complaint, conducted under section 25 of the *Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130 (the “*Regulations*”); the resulting Investigation Report under subsection 30(1) of the *Regulations*, completed January 10, 2024 and communicated to the Applicants on January 17, 2024; and the Respondent’s decision to accept the Investigation Report.

The Applicants are employee representatives on the Occupation Health & Safety (“OHS”) Committee for the Charlottetown Tax Services Office (“TSO”) of the Canada Revenue Agency (“CRA”). At the relevant time, the Applicants were also both executive members of the Union for Taxation Employees (“UTE”) Local 90002. In January 2023, the Applicants sent a letter (the “January 2023 Letter”) to the UTE Regional Vice President (who was also a member of the CRA Health and Safety Policy Committee), outlining their concerns about dysfunction at the OHS Committee for the Charlottetown TSO. The Applicants expressed their views that, because of this dysfunction at the Charlottetown OHS Committee, issues affecting employee health and safety were going unaddressed. The Applicants raised specific concerns about the conduct of the OHS Advisor, Scott LeBlanc (“LeBlanc”) including their understanding that LeBlanc had deleted a T4009 hazardous incident report without due process and proper investigation. The Applicants requested the assistance of the CRA Health and Safety Policy Committee to address these concerns.

The January 2023 Letter was subsequently disseminated by the Respondent (without the Applicants’ knowledge or consent) to LeBlanc who, in turn, filed a complaint under the *Regulations* alleging that the Letter constituted harassment towards him. In accordance with the *Regulations*, the CRA appointed an investigator to investigate LeBlanc’s harassment complaint. In the Investigation Report issued under section 30 of

the *Regulations*, the investigator concluded that the Applicants' statements about LeBlanc in their January 2023 Letter constituted harassment. In reaching her conclusion, the investigator found that the allegations about LeBlanc made in the Letter were vague, unsubstantiated and inappropriate to include in a formal written workplace communication. The investigator concluded that she was not asked to make findings of fact regarding the Applicants' allegations about LeBlanc. At the same time, the investigator found that there was no evidence to support the "most serious allegation" that LeBlanc removed a workplace report from the system.

The Respondent distributed the Investigation Report to the Applicants on January 17, 2024. On January 23, 2024, the Respondent accepted the Investigation Report when it communicated to the Applicants that it was providing a copy to the Work Place Health and Safety Committee, per subsection 30(2) of the *Regulations*, for the purpose of implementing the Report's recommendations.

The Applicant makes application for:

- (a) An Order allowing this Application for judicial review;
- (b) An Order setting aside the Investigation Report dated January 10, 2024, and the Respondent's decision to accept the Investigation Report's findings;
- (c) An Order referring the matter back to the Respondent for redetermination after a new workplace investigation is conducted by a different investigator;
- (d) The costs of this Application; and
- (e) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- (a) The investigator unreasonably concluded that statements made by the Applicants in the January 2023 letter constituted harassment under the *Canada Labour Code*, RSC 1985, c L-2 (the “Code”) and its regulations;
- (b) The investigator erred in law by misapplying the definition of harassment found under subsection 122(1) of the *Code*;
- (c) The January 2023 letter constituted union correspondence discussing workplace health and safety concerns and, as such, the statements made therein were protected by qualified privilege;
- (d) The investigator acted without jurisdiction or acted beyond her jurisdiction in finding that statements made in the January 2023 letter constituted harassment;
- (e) The investigator erred in law and acted unreasonably by reaching a conclusion that frustrates the purpose of the *Code* by discouraging employees from raising concerns about workplace health and safety matters;
- (f) The investigator failed to interview two key witnesses whose names were provided by the Applicants and who had information about LeBlanc removing a workplace report from the system;
- (g) By failing to interview key witnesses, the investigator denied the Applicants’ their rights to procedural fairness and natural justice;
- (h) The investigator made unreasonable findings of fact which were illogical and inconsistent with the evidence;

- (i) The investigator acted unreasonably in ignoring uncontested evidence on key points and in failing to meaningfully grapple with key issues;
- (j) The Respondent's appointment of the investigator, the conduct of the investigation and the delivery of the Investigation Report all occurred under the *Regulations* which were authorized by subsection 157(1) of the *Code*;
- (k) the CRA is a tribunal within the meaning of s. 2(1) of the *Federal Courts Act*, RSC 1985, c F-7;
- (l) the Attorney General of Canada is the Respondent to this application, pursuant to R. 303(1)(a) of the *Federal Courts Rules*, SOR/98-106;
- (m) *Canada Labour Code*, RSC 1985, c L-2 and *Workplace Harassment and Violence Prevention Regulations*, SOR/2020-130;
- (n) *Federal Courts Act*, RSC 1985, c F-7, sections 18 and 18.1;
- (o) Such further and other grounds as counsel may advise and this Honourable Court may permit.

The application will be supported by the following material:

- (a) The Affidavits of Dan Aiken and Lindsay MacLellan and attached exhibits; and
- (b) Such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicants request pursuant to Rule 317 of the Federal Courts Rules that the Investigator send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Investigator to the Applicants and to the Registry:

The full record of all materials and documents gathered in the course of the Investigation, including interview notes, correspondence, audio and/or video recordings, and drafts of the Investigation Report at the time of its decision dated January 10, 2024.

Dated at Ottawa, Ontario, this 16th day of February, 2024.



Per: Christine Johnson

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