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Court File No.

**FEDERAL COURT**

BETWEEN:

**DAROLD STURGEON**

Applicant

-and-

**ATTORNEY GENERAL OF CANADA**

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7

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**APPLICATION FOR JUDICIAL REVIEW**

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**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 virtually in English.

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.

Date: August 14, 2023

Issued by:

*(Registry Officer)*

Address of local office:

TO: Attorney General of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

# Application

1. This is an application for judicial review of a decision rendered by Member Melanie Petrunia ("**Member Petrunia**") on July 14, 2023, of the Appeal Division of the Social Security Tribunal of Canada (the "**Tribunal**") which was received by Darold Sturgeon (the "**Applicant**") on July 17, 2023. Member Petrunia denied the Applicant's appeal of a decision (the "**Decision**") rendered by Member Elizabeth Usprich ("**Member Usprich**") on May 26, 2023, of the Tribunal's General Division, itself an appeal of an earlier decision made by the Canada Employment Insurance Commission (the "**Commission**"). brought by Darold Sturgeon. The Commission's earlier decision denied the Applicant for employment insurance benefits ("**EI Benefits**"), which he had submitted after being terminated from his employment as an Executive Director of Medical Affairs with the Interior Health Authority ("**IH**") on November 16, 2021, as a result of being unable to comply with IH's COVID-19 vaccination policy (the "**Policy**") due to the Applicant's religious and conscientious beliefs.
2. Member Petrunia's decision agreed with Member Usprich's Decision and the Commission that the Applicant lost his employment due to "misconduct", and consequently, pursuant to s. 30(1) of the *Employment Insurance Act*, SC 1996, c. 23 (the "**EI Act**"), he was not entitled to EI Benefits.
3. The Applicant submits both Member Petrunia's decision and Member Usprich's Decision committed errors of fact, law, and mixed fact and law and failed to observe a principle of natural justice which attract the intervention of the Federal Court.

## RELIEF REQUESTED

4. The Applicant asks the Federal Court to grant his application for judicial review and seeks orders quashing the Decision and directing the Commission to release to the Applicant the amount of EI Benefits to which he is entitled in its entirety.

## GROUND

5. The Applicant submits that the Decision contains several reviewable errors. First, on a correctness standard of review, the Decision incorrectly holds that the "misconduct" analysis under s. 30(1) of the EI Act does not involve the exercise of the Tribunal's discretion and thus a proportionate balancing under the well-known *Doré/Loyola* analysis of the Applicant's *Charter* rights. The Applicant's *Charter* rights, including particularly his freedom of conscience and religion, were infringed by the Decision, and the Decision was required to proportionately balance that infringement against the applicable objectives of the EI Act. The failure of the Decision to even attempt this analysis requires that the Decision be set aside.
6. Second, alternatively, if the Tribunal's "misconduct" analysis does not involve the exercise of the Tribunal's discretion, then this Court should allow the common

law test for “misconduct” to evolve to guide the Tribunal to engage in the constitutionally-necessary consideration of *Charter* protections where they arise in the course of a “misconduct” analysis.

7. Third, on a correctness standard, the Decision failed to recognize that (a) the Policy did not follow British Columbia law in accordance with Section 4 of the *Health Care (Consent) and Care Facility (Admission) Act* (“**HCCFA**”) of British Columbia (“**BC**”); and (b) the Policy was void *ab initio*, since IH failed, as a matter of employment law, to provide fresh consideration to the Applicant in exchange for the Policy’s imposition on the Applicant. For both reasons, a finding of “misconduct” could not be sustained as a result.
8. Fourth, on a reasonableness standard of review, for several reasons, the discrete requirements of the common law test for “misconduct” were not met.
9. Fifth, on a principle of natural justice, whereby the Tribunal did not ask the Commission, as requested by the Applicant, whether the Commission approved any employment insurance claims throughout Canada where the dismissal was the result of a mandatory COVID-19 vaccination policy (for any or all causes, not just religious). The Applicant was not afforded the opportunity to determine if the ruling of misconduct was consistently applied to all EI cases involving a mandatory COVID-19 vaccination policy by the Commission.
10. Thus, the Applicant submits that he did not engage in “misconduct” within the meaning of s. 30(1) of the EI Act.

#### SUPPORTING MATERIALS

11. This application will be supported by materials to be provided at a later date including references to case law, supporting affidavits, exhibits, and certified copies of the evidence used by the Tribunal once received.
12. The Applicant requests the Tribunal to send a certified copy all material used to render its decisions to the Applicant and to the Registry.

Dated: August 14, 2023, at Kelowna, BC



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