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FEDERAL COURT
COUR FÉDÉRALE
March 10, 2023
le 10 mars, 2023
Ginette Lischenski

VAN	1

ID : 1

FEDERAL COURT

BETWEEN:

MICHAEL HEY

and

THE ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER s.18.1 of the *Federal Court Act*

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

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.

MARCH 10, 2023

Issued by: 
Digitally signed by Lischenski, Ginette
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Date: 2023.03.14 07:02:35 -07'00'

Ginette Lischenski

Registry Officer | Agent du Greffe

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(604-666-3232 | (604-754-8014| 6 604-666-8181

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

APPLICATION

This is an application for judicial review in respect of the decision of Janet Lew, tribunal member of the Appeal Division of the Social Security Tribunal ("Tribunal"), dated February 21, 2023, Appeal No. AD-22-972, refusing the Applicant leave to appeal the decision of the General Division of the Tribunal with respect to the Applicant's eligibility to receive employment insurance benefits.

The applicant makes application for:

1. An order setting aside the decision of the Tribunal Member and granting leave to appeal the General decision to the Appeal Division of the Tribunal

2. In the alternative, an Order setting aside the decision of the Tribunal Member and returning the matter to the Appeal Division of the Tribunal for redetermination by a different member with such directions as the Honourable Court considers appropriate.

3. Such other Order as Council may advise and the Honourable Court may permit.

The grounds for the application are:

4. The Applicant was dismissed from his duties as a transit bus driver in November of 2021 through no fault of his own.

5. The Applicant applied for EI benefits in December of 2021. His application was denied by the Employment Insurance Commission. His appeal of the Commission's decision was heard by the General Division of the Tribunal on November 22, 2022.

6. On December 8, 2022 the General Division denied the Applicants appeal. The Tribunal found that because the Applicant's actions were willful and because they contravened the employers' "Mandatory Vaccination Policy", the reason for dismissal should rightly be classified as "misconduct".

7. The Applicant explained to the Tribunal that while the policy in question was called a "mandatory vaccination policy", this nomenclature is deliberately misleading as the policy in question had nothing whatsoever to do with vaccination.

   A medicine which has been proven to increase the likelihood that a person will be infected with a particular disease cannot rightly be considered a form of immunization against that disease. Since the medication in question is not a vaccine, the policy is not a vaccination policy. Furthermore, since the gene therapy medication in question is experimental (by definition), the policy is in actual fact a medical experiment. As such, the Nuremburg Code applies which

explicitly states that in the case of medical experimentation conducted on human beings the human test subject absolutely must be given the opportunity to provide informed consent.

8. The Tribunal noted that an employer has the right to change the conditions of employment. The Applicant asked the Tribunal to specify whether or not there are any limitations to this right. Specifically, the Applicant asked Audrey Mitchell, the member of the General Division, to specify whether or not an employer has the right to murder an employee as a condition for continued employment. The member chose not to answer this question directly but the ruling, as written, implies that the employer does have such a right.

9. In his move to appeal the decision by the General Division, the applicant asked the Tribunal to clarify whether or not it is indeed the opinion of the Tribunal that an employer enjoys the right to murder an employee as a condition for continued employment, and if so, if this particular interpretation of the Employment Insurance Act is not in violation of The Canadian Charter of Rights and Freedoms, section seven, which guarantees the right to life. The Appeal Division chose to ignore these questions. In her nine page ruling, the member reiterates the previously stated reasons for denying EI benefits but makes no mention of the Labour Code (which guarantees a safe work environment), the Nuremburg Code or the Charter, and offers no explanation as to why none of these are deemed to apply in this instance.

   The General Division insists, in a ruling upheld by the Appeals Division, that in the case of a "vaccination policy" the question as to what is actually in the syringe is irrelevant and has absolutely no bearing on any determination as to whether or not misconduct can meaningfully be said to have occured under the law. It is the express opinion of the Tribunal that even in a hypothetical scenario where an employee is required to be injected with a poison – even a lethal poison – the employee is obligated to consent so long as two conditions are met: a.) The stated purpose for the injection is "vaccination", and b.) The consequence of non-compliance has been communicated by the employer to the employee.

10. The Appeal Division erred as follows:

a.) The Tribunal noted that role of the Tribunal is very narrowly defined under law and therefore, the members are in no position to rule whether or not there is any factual basis for any of the claims made by the applicant. However, it is not clear why the Tribunal chooses to interpret its limitation to mean that the Tribunal is bound to perpetuate a lie through the deliberate misuse of language.

   It is a lie to call a forced medical experiment a "vaccination policy". Regardless of whatever limitations may constrict the Tribunal, the Tribunal should still be bound to use proper language in the ruling. Proper use of language in this case requires only an understanding of what the words "vaccine" and "experimental" mean. If the Tribunal members understand the meaning of these words, then it ought to be clear that the medication in question has none of the attributes conventionally associated with "vaccines". Further, since the gene therapy medication in question is experimental by definition, the policy under discussion is one of forced medical experimentation, not one of vaccination.

In her decision not to grant an appeal, Janet Lew writes:

[20] ... "The General Division was entitled to describe the vaccine as a vaccine, given that it is widely referred to as a vaccine. And, as the Claimant's employer described the policy as a "Mandatory COVID-19 Vaccination for Employees", it was only natural to adopt the employers' name for the policy for ease of reference.

There is a difference between adopting the name for a policy "for ease of reference" or using the name of the policy as the only relevant consideration in determining what the policy is actually demanding of employees.

b.) In our conversation of November 22, 2022, the member of the General Division Audrey Mitchell stressed that as she is not a medical doctor, she is in no position to know whether or not the medicine that the applicant was required to take was in fact a vaccine or something else entirely.

It is logically inconsistent for the member to claim that she is not in a position to know the difference between a poison and a vaccine, and then present a ruling that is entirely premised on the a-priory assumption that the medicine is a vaccine and not something else. In her ruling of December 8, 2022, Ms. Mitchell writes:

"I don't find that in the unusual circumstances of the COVID-19 pandemic, the employer updating its policy, as it states, to keep its employees, customers and communities it serves safe is unreasonable."

The presumption that the experimental gene therapy medication in question could in some way contribute to keeping the community safe is demonstrably false. Either the member is in a position to understand this or she is not. If she is in a position to consider factual information, then she must come to the conclusion that the policy is not reasonable.

Alternately, if, as she claims, she is not in a position to make any determination as to whether or not the medication is safe, effective, potentially deadly or even a vaccine by any conventional understanding of the word, then she is in also in no position to render a ruling that is predicated precisely on such a determination.

How can the member be of the opinion that a policy of forced injection is reasonable if she is not in possession of the tools to discern what it is that the employee is to be injected with?

This particular problem with the initial ruling, whereby the member predicates the ruling on a determination which in her own estimation she is not qualified to make, is another item which the Applicant specifically sought to address through the appeal process. As with my other key difficulties with the original ruling, the member of the Appeal Division in her ruling chose not to acknowledge the concern.

This application will be supported by the following material:

11. The Affidavit of the Applicant and exhibits thereto.

12. Such other material as counsel may advise and this Honourable Court may permit.

The applicant requests the Appeal Division of the Social Security Tribunal to send a certified copy of the materials in the possession of the Tribunal that were before the tribunal member when she made the decision for which judicial review is sought, to the Applicant and to the Registry:

March 9, 2023

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SOR/2021-151, s. 22