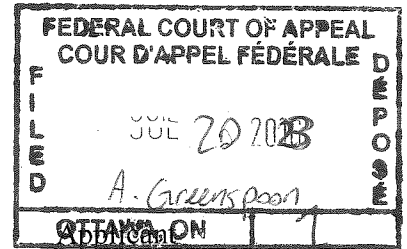


Court File No. A- 185 -23

FEDERAL COURT OF APPEAL

B E T W E E N:

ATTORNEY GENERAL OF CANADA



- and -

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

NOTICE OF APPLICATION
(Section 28 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED 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 in 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 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.

Dated: July 20, 2023.

Issued by: Alison Greenspoon
(Registry Officer)


Address of
local office: 90 Sparks Street
Ottawa, Ontario,
K1A 0H9

TO: RAVEN LAW LLP
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K1P 5Z9

Per: Zachary Rodgers
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Counsel for the Respondent

AND TO: Federal Public Sector Labour Relations and Employment Board
C.D. Howe Building
West Tower, 6th floor
240 Sparks Street
Ottawa, Ontario
K1P 5V2

Tel.: (613) 990-2008
Fax: (613) 990-1849

APPLICATION

This is an application for judicial review in respect of a decision dated June 23, 2023 (2023 FPSLREB 65) rendered by the Federal Public Sector Labour Relations and Employment Board (“Board”), wherein the Board allowed a group grievance filed by the respondent on behalf of thirty-six grievors employed as core agents in the Employment Insurance Contact Centre in Toronto, Ontario, of the Department of Employment and Social Development.

The grievance alleges that the employer did not make every reasonable effort to equitably offer overtime work to readily available and qualified employees, as required by clause 28.04 of the collective agreement between the Treasury Board (“employer”) and the respondent, the bargaining agent for the Program and Administrative Services group (expiry date June 20, 2014) (“collective agreement”). The respondent referred this grievance to adjudication before the Board pursuant to section 216 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 (“*FPSLRA*”).

The Board found that some of the overtime tasks could have been performed by the core agents, and that the obligation to distribute overtime equitably applied even at the stage of organizing the tasks that were assigned as overtime. Thus, it allowed the grievance and declared that the employer breached clause 28.04 of the collective agreement. The Board’s findings are contrary to binding jurisprudence and section 7 of the *FPSLRA*. The Board’s findings are based on an unreasonable and/or erroneous interpretation of the collective agreement, creating a positive obligation on the employer to organize the work such that overtime can be distributed to all employees.

The Board ordered that the grievors be compensated for the lost opportunity to perform any overtime work offered for which they were qualified during the period of June 2014 to April 2015, a period going beyond the 25 days prior to the filing of the grievance dated January 15, 2015, despite binding jurisprudence limiting the time period for remedies.

The applicant makes application for:

- (a) An order allowing this application for judicial review, with costs;
- (b) An order setting aside the Board's decision dated June 23, 2023;
- (c) An order remitting the matter back to the Board for reconsideration in accordance with the reasons of this Court; and
- (d) Such further and other relief as counsel may request and this Court may deem just or appropriate.

The grounds for the application are:

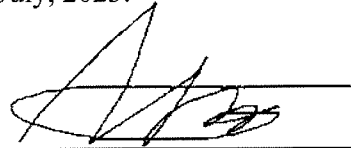
1. The Board erred in law and/or rendered an unreasonable decision by:
 - (a) issuing a decision that limits the employer's managerial rights, expanding the employer's obligation to equitably allocate overtime, and imposing a positive obligation restricting the employer's ability to manage its operations contrary to the language of the collective agreement, and binding jurisprudence;
 - (b) failing to consider and/or making findings contradicting section 7 of the *FPSLRA*;
 - (c) departing from, failing to apply and/or consider, without justification, the principles established in binding jurisprudence requiring that equitability be assessed over a reasonable period of time, and imposing a new onus on the employer to demonstrate a cogent reason for organizing its operations;
 - (d) departing from, without justification, binding decisions by extending the effective remedial period beyond the timeframes allowed in the collective agreement; and/or

2. Paragraphs 18.1(4), (c), (d) and (f) of the *Federal Courts Act*; and/or
3. Such other grounds as counsel may advise and this Court may permit.

The application will be supported by the following material:

- (e) The affidavit(s) of affiant(s) to be identified, which will include *inter alia* the record of the materials that was before the Board; and
- (f) Such further and other material as counsel may advise and this Court may permit.

Dated at Ottawa, Ontario this 20th day of July, 2023.



ATTORNEY GENERAL OF CANADA

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Treasury Board Secretariat Legal Services
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Counsel for the Applicant

Federal Courts Fees Receipt
Reçu pour frais judiciaires des cours fédérales

NO. **A 623540**



Federal Court of Appeal /
 Cour d'appel fédérale



Federal Court /
 Cour fédérale



Court Martial Appeal Court of Canada /
 Cour d'appel de la cour martiale

To / À : Name/Nom : <u>Sagal Omar</u> Organization/Organisation : <u>Treasury Board / Department of Justice</u> Address/Adresse : _____ _____ _____	Date : <u>July 20, 2023</u> Issuing Office / Bureau émetteur : <u>Ottawa</u> Prepared by / Préparé par : <u>A. Greenspan</u> Court File No. / N° du dossier de la Cour : <u>A-185-23</u>
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Style of Cause & Description of Services Provided Intitulé de la cause et description des services rendus	Cost(s) Frais
<p style="font-size: 2em;">AGC v. PSAC</p> <p style="font-size: 1.5em;">Notice of Application</p>	<p>Total = <u>50.00</u></p>

Method of Payment / Mode de paiement		
<input checked="" type="checkbox"/> Account / Compte Dept# / # Département : <u>013</u> Org Code / Code org : <u>0130</u> Reference Code / Code référence : <u>3002</u> <input type="checkbox"/> Cash / Comptant <input type="checkbox"/> Debit Card / Carte de débit	<input type="checkbox"/> Cheque No. / N° chèque : _____ <input type="checkbox"/> American Express: _____ <input type="checkbox"/> MasterCard: _____ <input type="checkbox"/> Visa: _____	

White - Original file - Ottawa
 Blanche - Dossier original - Ottawa

Blue - Accounting - Ottawa
 Bleue - Comptabilité - Ottawa

CAS/SATJ-26 (REV 2/11)

Goldenrod - Accounting 2nd copy. Local Office
 where costs retained by Province (Ottawa Statistics)

Or - Comptabilité 2^e copie. Bureau local lorsque
 les frais sont retenus par la province (Statistiques Ottawa)

Pink - Party
 Rose - Partie

Canary - Duplicate - Local office
 Jaune - Duplicata - Bureau local