

Court File No.

**FEDERAL COURT**

BETWEEN:

DARLENE CARREAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER S. 18.1 OF THE *FEDERAL COURTS ACT*

**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 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 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 \_\_\_\_\_ Issued by \_\_\_\_\_  
(Registry Officer)

Address of  
local office: Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa ON K1A 0H9

TO: Shalene Curtis-Micallef  
Deputy Attorney General of Canada

## APPLICATION

This is an Application for an order of *mandamus* compelling the Courts Administration Service (“CAS”) to issue a decision rejecting the conclusion of harassment against the Applicant from the investigative report of QMR Consulting (“QMR”) dated May 28, 2024 (the “QMR Report”), pursuant to the *Canada Labour Code* (R.S.C. 1985, c. L-2) (the “Code”) and the *Work Place Harassment and Violence Prevention Regulations* (SOR/2020-130), made under the Code (the “Regulations”).

In the alternative, this is an Application for judicial review in respect of CAS’ decision to implicitly accept the QMR Report’s conclusion of harassment against the Applicant by implementing recommendations from the QMR Report. This decision was made despite QMR’s refusal to finalize its investigation, and CAS’ acknowledgment that the investigative process was flawed due to its failure to respect the Applicant’s right to procedural fairness. This decision was communicated to the Applicant on January 10, 2025, via letter from Roland Desjardins, Acting Designated Recipient for CAS.

### THE APPLICANT MAKES APPLICATION FOR:

1. An order (in the form of a writ of *mandamus*) directing CAS to issue a decision explicitly rejecting the conclusions in the QMR Report, on the basis that it is substantively baseless and procedurally flawed;
2. In the alternate to #1, an order quashing CAS’ decision to implicitly accept the QMR Report’s conclusion of harassment against the Applicant by implementing the recommendations from the QMR Report, as conveyed to the Applicant by letter dated January 10, 2025, from Roland Desjardins (Acting Designated Recipient for CAS);
3. The costs of this Application; and,
4. Such further and other relief as this Honourable Court may deem appropriate.

**THE GROUNDS FOR THE APPLICATION ARE:**

***Factual Background to the Application***

1. The Applicant is CAS' deputy head.
2. In March 2022, a CAS employee (the "Complainant") contacted the Applicant by e-mail to request assistance related to a conflict with her director. That same day, the Applicant responded to the Complainant to offer such assistance. The Applicant immediately delegated the matter to the appropriate internal CAS authority to facilitate this. She received monthly updates from this delegated authority on the progress of the matter.
3. In August 2022, while the Applicant was on vacation, the Complainant contacted her again (as well as other CAS senior executive members) to request assistance with this conflict. The Applicant instructed the senior executive acting for her in her absence to immediately take action to limit communication between the parties involved and to initiate measures for support.
4. Four days later, the Complainant formally alleged harassment against her director. A written complaint of harassment was filed in September 2022. The Complainant went on extended leave at the end of August 2022. When the Complainant returned to work in January 2023, measures were in place (including a change in reporting structure and workflow) to prevent any alleged harassment on a go-forward basis.
5. In July 2023, an investigation was commenced by QMR into the harassment allegations.
6. In August 2023, the Complainant submitted a new harassment complaint against three senior CAS executives (including the Applicant), claiming that CAS had failed to take timely action in response to the initial harassment allegations. No specific act of harassment or workplace violence was alleged against the Applicant.

7. QMR was engaged to investigate this new complaint and hired an investigator (the “Investigator”) to do so.

8. The Investigator interviewed the Applicant and other parties, and then issued the QMR Report. The QMR Report found that the allegation of harassment against the Applicant was founded.

9. Despite the Investigator having titled the QMR Report as a “Final Report”, on June 5, 2024, CAS’ Designated Recipient advised the Applicant (and the other named responding parties) that they would have an opportunity to provide comments on this report prior to its being finalized by QMR.

10. On June 19, 2024, the Applicant provided her comments to the Investigator via CAS’ Designated Recipient. Among other things, the Applicant noted that she was not a properly named respondent; that there were a number of factual errors and unsupportable conclusions in the QMR Report; and that the allegation against her did not meet the definition of workplace harassment on a *prima facie* basis. The Applicant further highlighted several serious procedural failures committed by the Investigator, including the Investigator’s failure to provide the Applicant with an opportunity to review and respond to much of the factual assertions in the Report.

11. In or around July 2024, CAS representatives advised the Applicant that the Investigator was refusing to take any of the responding parties’ comments into account and that the Investigator was instead taking the position that the QMR Report was final. CAS representatives assured the Applicant that the CAS had advised QMR of the procedural fairness issues with its investigation process, and that CAS had informed QMR that it was obliged to consider the responding parties’ comments prior to finalizing the report. Based on her conversations with CAS, the Applicant understood that CAS was engaged in dialogue with QMR on these issues following June 2024.

12. On October 24, 2024, counsel for the Applicant wrote to CAS requesting confirmation of whether CAS was adopting or rejecting the QMR Report and its findings. CAS did not provide this confirmation.

13. On November 28, 2024, the Applicant was advised that a new investigator had been assigned by QMR to finalize the QMR Report in a procedurally fair manner.

14. However, on January 10, 2025, CAS' Acting Designated Recipient informed the Applicant that the Complainant's legal counsel had written to QMR objecting to this course of action. CAS further informed the Applicant that in response to this objection, QMR had resiled from its position in November and was now refusing to take any further steps with respect to correcting the procedural deficiencies of the QMR Report. CAS advised the Applicant that, notwithstanding its continued stance that the process underlying the QMR Report was flawed, the report's recommendations would be implemented in accordance with CAS' "Action Plan".

### ***Basis of Application***

#### *Grounds for Mandamus*

15. This case meets all aspects of the *Apotex* test for mandamus relief. CAS has a public duty to act by either affirming or rejecting a finding of harassment that is made in a harassment investigation process. It owes the Applicant that duty, given that she is a respondent in this particular harassment investigation. The Applicant has a clear right to the performance of that duty.

16. In addition, the Applicant has no other adequate remedy available to her given the unique, statutory nature of the harassment investigation process. She seeks mandamus relief as a matter of practical value, as it will provide all parties with clarity regarding the legal import (or lack thereof) of the QMR Report. There is no equitable bar to the relief sought, and the balance of convenience favours granting the mandamus order.

17. Moreover, the Applicant has satisfied all conditions precedent giving rise to the duty, by fully participating in the harassment investigation process. She has made a prior demand for performance of this duty via, *inter alia*, her counsel's letter to CAS of October 24, 2024. The intervening months have provided ample time for CAS to

comply with this demand, which it has instead refused by virtue of the January 10 letter from Mr. Desjardins.

18. Finally, the Applicant has a vested right to CAS' performance of its duty, and CAS does not possess discretion in this matter of the sort which would render mandamus relief unavailable.

*Grounds for Judicial Review*

19. In the alternative to the above, CAS' decision of January 10, 2025 is judicially reviewable.

20. QMR is not a "federal board, commission or other tribunal" within the meaning of s. 18.1 of the *Federal Courts Act*. As a result, the QMR Report is not judicially reviewable standing alone.

21. However, CAS' communications to the Applicant throughout this process and culminating in its letter of January 10, 2025, have refused to reject the QMR Report's finding of harassment against the Applicant despite the numerous procedural fairness violations of that report.

22. CAS has therefore violated the Applicant's right to procedural fairness, by failing to set the QMR Report aside and mandate a new investigation to protect the procedural rights of all parties. The QMR Report is fatally flawed for the reasons set out above.

23. CAS' decision is also unreasonable, because the QMR Report is substantively baseless. The allegation against the Applicant does not meet the *prima facie* threshold of harassment under the *Work Place Violence and Harassment Prevention Regulations*. Moreover, even if the allegation did meet this *prima facie* threshold, the QMR Report's conclusion is factually unsupportable as no finding of harassment can be made against the Applicant on any of the evidence contained within the Report.

24. These violations have caused and continue to cause the Applicant significant prejudice.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

1. The affidavit of Darlene Carreau, to be sworn, with exhibits;
2. Such further and other evidence as may be adduced by counsel and permitted by this Honourable Court.

The applicant requests CAS to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of CAS to the Applicant and to the Registry:

1. Any and all correspondence, documentation, and other material relevant to the QMR Report and to QMR's decision not to appoint a new investigator to finalize that report, as well as CAS' decision under review as described above.

January 29, 2025

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