

FORM 301 Rule 301
Notice of Application

(Court seal)

Court File No. T-776-24

ID#1

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F I L E D	FEDERAL COURT COUR FÉDÉRALE 08-AVR-2024 C Zamalloa Tremblay	D É P O S É
Montréal, QC		1

FEDERAL COURT

BETWEEN:

Steven Petruska
Applicant

And:

Air Canada
Respondent

APPLICATION UNDER sections 18.1 of the Federal Courts Act
R.S.C. 1985, c. F-7 and Rule 301 of the Federal Court Rules,
1998.

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 30 McGill Street Montréal, Quebec H2Y 3Z7.

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)

(S) April 10, 2024
Catherine Zamalloa Tremblay
Registry Officer

Issued by: (Registry Officer)

Address of local office:

30 McGill Street
Montréal, Quebec
H2Y 3Z7
(514) 283-4820

TO THE RESPONDENT(S):

Air Canada (AC)

Vanessa Marotta

Senior Paralegal, Labour and Employment

Parajuriste Sénior – Droit du travail et de l'emploi

Centre Air Canada 1270

P.O. Box 7000, YUL 1276

Dorval, Québec, Canada H4Y 1J2

AND TO:

Canadian Human Rights Commission (CHRC)

Mark S

Human Rights Officer

344 Slater Street

Ottawa, Ontario, K1A 1E1

Application

(Where the application is an application for judicial review)

This is an application for judicial review in respect of

The decision of the Canadian Human Rights Commission of March 7, 2024 regarding complaint number 20230593 (with notification to the Applicants on March 7, 2024):

- not to exercise its discretion to deal with the complaint
- does not accept that the alleged discrimination is ongoing

The Applicant makes application for:

1. Set aside the decision of the CHRC and make orders to solve discrimination;
2. A declaration that the decision of the CHRC to refuse to deal with the complaint, and the process leading up to it, failed to meet the fiduciary and constitutional duties of the Commission or otherwise violates the Applicant's right to be heard;
3. A declaration that the Applicant is entitled to be treated equally under *section 15 of the Charter of Rights and Freedoms*;
4. A declaration that there is a reasonable apprehension of bias within the Commission and there is clear breach of fairness;
5. Costs;
6. Such other order as the Federal Court may deem appropriate.

The grounds for the application are: (*State the grounds to be argued, including any statutory provision or rule relied on.*)

1. When the Applicant was returning to work from a sick leave, he was approved for CARE COVID-19 Federally regulated, job protected leave of absence to take care of his 4-year-old daughter. The Respondent then revoked the leave approval and abruptly fired him for job abandonment without following the Collective Agreement discipline procedure.
2. The Applicant's employment status was reversed from "termination" on June 14, 2021 to "suspension pending discharge" multiple times, from the International Association of Machinists and Aerospace Workers (IAMAW) on October 21, 2021 and from the Respondent on December 23, 2021. This particular letter was purposely delivered "PRIORITY OVERNIGHT" to the Applicant in an abusive manner (bullying/harassing), unwelcome Christmas present.
3. The Respondent was fully aware of the Applicant's medical condition and family status, but abused its authority and failed to address the legitimate concerns. This discriminatory practice continuously reflects negative effects on the Applicant and his family.
4. After receiving the letter from the Respondent and the IAMAW that the case was dropped, the Applicant filed a complaint with the Canada Industrial Relations Board (CIRB) and exerted all efforts possible in reaching out to the CHRC to file the complaint within timeline limit including phone calls, online submission and emailing, but did not receive responses. When the CHRC finally called the Applicant back, it suggested that the due date has passed. However, in fact, the first time the Applicant officially submitted a complaint via email was on April 9, 2022, but was never addressed.

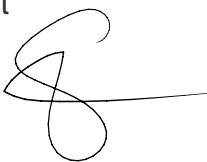
5. The CHRC insisted to use the first employment status change from “termination” to “suspended pending discharge” sent by the IAMAW on October 21, 2021 as the last alleged discriminatory act, but completely ignored the second time sent by the Respondent on December 23, 2021 and most importantly the second time the Applicant’s employment status change from “suspended pending discharge” to “termination” based on the new evidence received from the Respondent on January 23, 2024. If the CHRC made the wrong choice in using the inappropriate timeline which seriously affects the Applicant’s case, what else could have been overlooked?
6. Federal labour standards state that “If one’s employment ends and he is owed vacation pay, the employer must pay it within 30 days after his last day of work.” The recent cheque received from the Respondent dated January 23, 2024. According to this pay cheque, it confirmed that the Applicant’s employment was officially terminated on December 23, 2023. It took 980 days for the Respondent to investigate the case instead of 10 days as set out in the Collective Agreement. The Applicant forwarded this information to the CHRC on February 25, 2024 but it was completely ignored.
7. The CHRC stated in its decision that the Applicant only claimed not to have received a follow-up call. In fact, its record should also show that the Applicant sent numerous emails beside his phone calls. It seems the CHRC is more concerned about deadline than the discrimination conduct itself, but failed to investigate the true complaint submission time.

This application will be supported by the following material: *(List the supporting affidavits, including documentary exhibits, and the portions of transcripts to be used.)*

1. Applicant’s first official submission to the CHRC via email on April 9, 2022
2. Email termination from the Respondent
3. Respondent’s “suspension pending discharge” letter sent on December 23, 2021
4. Photos and audio recordings proofs of discrimination
5. Memorandum received from the IAMAW
6. Vacation cheque received from the Respondent on January 23, 2024
7. Federal labour standards’ information
8. Applicant’s Service Canada Account records of employment
9. The audio recording phone conversation between the Applicant and Neil Roy, Air Canada scheduler, on June 10, 2021

April 4th, 2024

Applicant



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