

Court File No: T-1285-17

IN THE FEDERAL COURT OF CANADA

BETWEEN:



DONGMEI YE, ~~QINGRONG QIU~~
D.f.e

-and-

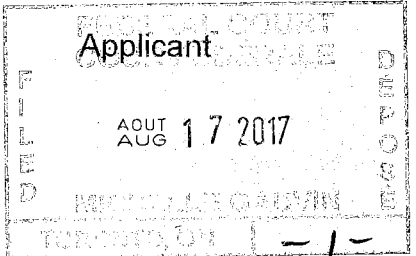
THE ATTORNEY GENERAL OF CANADA

-and-

HONOURABLE MR. JUSTICE I.V.B. NORDHEIMER

-and-

CANADIAN JUDICIAL COUNCIL



Respondents

NOTICE OF APPLICATION

(Pursuant to ss. 18-18.1 *Federal Courts Act*, and ss. 24, 52 of the
Constitution Act, 1982)

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 at Toronto 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 where 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.

MICHELLE GAUVIN
REGISTRY OFFICER
AGENT DU GREFFE

Date: August 17, 2017

Issued by:

180 Queen Street West **180, rue Queen Ouest**
Suite 200 **bureau 200**
Toronto, Ontario **Toronto, Ontario**
M5V 3L6 **M5V 3L6**

Address of local office: _____

TO: Attorney General of Canada
 Department of Justice, Toronto Regional Office,
 First Canadian Place Box 36, Toronto ON M5X 1K6

AND TO: Canadian Judicial Council Ottawa, ON K1A 0W8,
 Fax: 613-288-1575

AND TO: The Honourable Mr. Justice I.V.B. Nordheimer
 c/o The Ministry of the Attorney General, 720 Bay Street
 Toronto ON M7A 2S9
 and
 c/o Judges Reception, Superior Court of Justice, Divisional
 Court, 130 Queen Street West Toronto ON M5H 2N5

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF the decision of the Executive Director ("ED"), of the Canadian Judicial Council (the "CJC"), Mr. Norman Sabourin, to commence a proceeding on a day and at a time and place to be set by the Court, pursuant to s. 18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c. F-7 as amended, seeking declaratory and prerogative relief from the decision of the ED, acting for and through the authority of the CJC, dismissing the Applicant's complaint, dated June 19, 2017, but received and therefore communicated on July 20, 2017, and which decision is in Canadian Judicial Council file# 17-0067

The applicant makes application for:

1. A declaration that:
 - a. It is contrary to the law and the Constitution of Canada to permit CJC to act or refuse to act in respect of an application for statutory redress for the alleged violation of constitutional rights, without legal standards or criteria from statute or subordinate legislation;
 - b. The complaint concerned the conduct of Justice Nordheimer in a civil proceeding that violated the Applicant's constitutional rights including:
 - 1). The unwritten constitutional principles of: the Rule of Law; Judicial Independence.
 - 2). The specific rights that flow from above principles: non-arbitrary application of the law; the duty to act judicially; the judicial duty to act with diligence, integrity, independence and impartiality; the open court principle; procedural fairness;
 - 3). The Charter's rights to a fair hearing; the right to make full answer and defense; to have an interpreter without qualification; in circumstances that can't be justified under s.1 of the Charter, if applicable.

c. the summary dismissal of the applicant's complaint violated applicant's rights under unwritten constitutional principles of the Rule of Law and Judicial Independence and the Charter's rights.

d. the ED of CJC does not have lawful authority to summarily dismiss any complaint of alleged judicial misconduct based on any CJC policy including the "review procedure", purporting to authorize such dismissal based on the definition of "conduct" which excludes judicial decision-making;

e. The CJC erred in law, acted contrary to law and refused to exercise its jurisdiction in failing to refer the complaint for consideration on its merits by a CJC Committee.

f. Applicant's complaint that a judge denied applicant's right to be litigant and right to present the case; misstated the issues; acted as a counsel for the respondents; abused his authority to award erred party cost; and arbitrarily amended endorsement while off the record, such acts constituted judicial misconduct.

2. An order of *certiorari* quashing the CJC decision.

3. An order of *mandamus* returning the matter to CJC and requiring CJC to investigate and refer the matter to the Committee for consideration on the merits of the complaint in accordance with the directions and declarations of this Court.

4. Costs of this application.

5. Such further relief as counsel may advise and this Court grant.

The grounds for the application are:

A. BACKGROUND

1. The appellant is an immigrant family with English as second language. When the husband worked for a plant of THI, not only he was paid less than others who did same jobs, but also paid short of worked time. Wage is paid based on employee hand punched time records. He found his original hand punched time records were often alternated without his awareness. He asked for his time records, his manager threatened him with his employment.
2. With the suspicious time records fraud/falsification/theft of time, he asked HR for his punched time records to inspect how much time he was paid short under the Employment Standard Act. The request was denied, the HR director lied that there was no such record. Then appellant was terminated without cause.
3. The appellant sent an e-mail to the Chief financial officer of the headquarter of the company requesting the time records, and then the senior counsel provided with only partial time records and admitted that there were such records.
4. The appellant filed a claim on Jan 2nd, 2013 seeking original hand punched time records for the entire period of his employment (July 12, 2010- December 17, 2012) from the employer (THI) under section 15 of the ESA before the Ministry of Labour, and was reviewed by the Ontario Labour Relations Board. Such records are the evidence/base for calculation of unpaid wages.
5. The Board issued interlocutory order directing THI to produce such records for a period of one year, but THI provided false records to mislead the Board. The Board scheduled a hearing for this issue. THI filed the response with the Board 2 years later than the filing deadline. THI also brought irrelevant materials to mislead, interfere the proceeding without filing any counter claims. The appellant had to serve and file over 500 pages evidence and reply on the hearing day.

6. The key issue before the Board is a question of fact: whether THI had produced truthful records requested? The decision/answer must be one word yes or no. If answer is no, it is offence under section 131 of ESA to keep and provide false and misleading information.
7. On the Board hearing day, the vice chair denied appellant's son as interpreter and wife as speaker; switched the usual presentation order to let THI present first to introduce misleading materials and make the husband respond to the irrelevant issues without preparation or understanding the language. Appellant's written opening statement and over 500 pages evidence were refused to be introduced but only taken for vice chair to read after the hearing. After 3 months the decision is only copy from the lying HR director's testimony with fraudulent information, without relevant evidence or legal basis. There was no decision for the claimed issue but was some falsification of facts contained in the decision.
8. The Board decision 23: "Appended to the application for review are approximately 750 pages of payroll records provided by the employer to Mr. Qiu. The payroll records are for the entire period of Mr. Qiu's employment and include time sheet signed by Mr. Qiu; electronic time card reports (indicating the time he signed/swiped in and out of work) a payroll register(indicating the hours worked, wages paid and deductions);some work order history reports(tasks assigned to the claimant) and audit document. On the day of the hearing Mr. Qiu sought to enter into evidence an additional 500 pages of time records many of which are duplicates of the time records appended to the application."
9. The appellant complained to the Board and filed reconsideration questioning where the '750 pages records' are. THI confirmed it in the factum for judicial review: "Not only did THI provide Mr. Qiu with these documents at the appropriate time through his employment, but they

were again produced for the hearing. These documents were made of approximately 750 pages of records." The appellant requested the disclosure of evidence for that "750 pages" and "additional 500 pages" for many times without result.

10. As self-represented family party, appellant filed an application for judicial review to the divisional court. The original simplest claim that is only for a piece of evidence, was misled to remain undecided for over 4 years by breach of procedures to deny the appellant's right to be heard, submission of thousands of pages irrelevant materials to mislead justice and to waste the appellant's time to study them with second language.
11. The respondents' judicial reviews responses continue to not comply with the rules of civil procedure. OLRB's response was intentionally filed late and does not respond regarding any merit of the application. Neither of the two responses comply with the responding rules r. 68.04 (6) (a) (b) (c) to respond to the claimed issues. OLRB misstate the applicant's allegation and the issues before the court. THI ignored almost all the facts and the claimed issues before court and submitted almost same misleading materials.
12. The appellant questioned OLRB with the late response and non-compliance. The counsel answered that he has been doing this for 14 years and has never been an issue with the lateness. And then he threatened: "your email stating that you do not consent to the late filing made me realize that there is an issue that you should carefully consider. Although family members may represent other family members before tribunals, it is my understanding that only lawyers may appear before the superior court of justice." "Accordingly, I think it would be prudent for you to be prepared for the Divisional Court to raise this issue." (This exactly happened in the motion hearing.) And he attached a provision of the *Law Society Act*, R.S.O. 1990, c. L. 8. The wife answered she is self-

represented. The law society regulation regarding professional qualification does not apply to her.

13. The appellant brought a motion to request (1) inspect/examine the evidence under r. 30.02(1)(2) and 30.04(1)(2)(3). And (2) resolve the non-compliance issues for procedural fairness under r. 2.01 (1), r.21.01 (1) (b) and r.25.11 in order to prevent the continuing misleading justice. The argument of the motion is only on these 3 issues described in paragraph (c) of the single judge confirmation of hearing form. They are:

- a. Disclosure of the evidence for the said "750 pages of payroll records" of the Board decision which is confirmed by THI response in the judicial review factum.
- b. OLRB provide all appellant submission (including written opening statement) on Board hearing day Mar. 31, 2015 as part of Board record.
- c. The OLRB's and THI's response do not comply with civil procedures r.68.04 and are misleading, they should be struck out.

14. The motion judge looked like a close friend of the respondents. Before the hearing he already had prior knowledge of facts that are prejudicial to appellant. Without respondents doing anything such as filing factums (written argument) to respond to the claim, they even didn't need to appear...and judge acted as their counsel. He breached mandatory standards of judicial conduct, judicial rules of procedure, laws and evidence; he did not follow rules of civil procedures nor usual court hearing orders. He followed the instruction from OLRB counsel's email to raise new issues; he intervened to preclude the wife as a speaker or helper or interpreter and kept interrupting with the husband's presentation in a rude manner; he had been in litigation against the appellant and came to a decision to favor the respondents.

15. Judge misstated the claimed issues and interfered or refused to hear the real issues. He acted as the respondents' counsel and led the counsels as witnesses. He took counsels' oral answer to his leading questions as facts without evidence needed; he dismissed the motion; he ignored respondents' non-compliance and error; he ruled the erred parties win with cost fixed at \$3500 without allowing translation or appellant's participation; he discussed the cost issue only with one side after the matter was over and amended the endorsement himself after he was already off record to continually favor respondents.
16. Applicant made a complaint to the CJC on April 10, 2017 regarding all above judge's misconducts.
17. In a letter dated June 19, 2017, but only received on July 20, 2017, the ED of the CJC Mr. Norman Sabourin summarily dismissed the complaint on the bases that:
 - a. He was applying section 4.1 of the review procedures of the CJC. Section 5(b) allows to summarily dismiss a complaint if it does not relate to "conduct". The complaint falls within the section 5(b) as it does not involve the judge's conduct.
 - b. It is not for CJC to review the manner in which a judge exercised his judicial discretion in the conduct of a case, nor how he came to findings of facts and law. The Council has no jurisdiction to review a judgment, nor the process of judicial decision-making. This role more appropriately belongs to the court at the appellate level.

B. GROUNDS OF REVIEW

I. Judicial misconduct includes judicial decision- making

18. The CJC erred in treating the complaint as being outside the scope of judicial misconduct because it is a part of judicial decision-making.

a. From past CJC cases, it is clear that judicial misconduct does include conduct that is part of the judicial decision-making process (see Marshall; Bienvenue; Boilard; Matlow; Cosgrove; Thompson(Slansky); and several provincial judicial council cases).

b. The exclusion of judicial decision-making from judicial misconduct is contrary to the CJC's own guide to judicial misconduct, the Ethical Principles for Judges ("EPFJ"). It is clear from pages 7 (4), 9 (3/4), 17 (1), 18 (3), 19 (5/6), 27 (A1/A3), 30 (A2) that judicial misconduct includes the decision-making process of judges in open court and in the administration of judicial functions.

c. To dismiss a complaint based on the fact that it was a part of judicial decision-making function is an error of law and a refusal to exercise jurisdiction per *Federal Courts Act*, ("FCA") ss 18.1(4)(a),(b),(c) and (f).

d. This is not a situation where CJC can legitimately say that is a matter for appeal. The motion decision was already appealed. This is clearly a legitimate complaint about a judge's misconduct in respect of the actual bias, bad faith, making decisions against all judicial rules.

II. Complaint disclosed judicial misconduct

19. It is clear from the complaint and the evidence and the EPFJ that this was or was arguably a breach by Justice Nordheimer of the judicial duties in respect of judicial independence (EPFJ, p.7(4),9(3/4),10(5); integrity (EPFJ,p.13,14(1/3); diligence (EPFJ,p.17(1/4),18(1/3),19(5/6),20(7/8),21(12) and impartiality (EFPJ,p.27(A1/A3),30-31(A1/A2),31(A3),33(B1), as well as rule of law, the Canadian Constitution, procedural fairness.

20. The judge also failed in respect of these duties considered in respect of the special need of self represented litigants. The CJC has had a "Statement of Principles on Self-Represented Litigants and Accused

Persons” since 2006 that requires judges to ensure that self represented persons have an opportunity to “understand and meaningfully present their case” as part of a “court process” that should “be, as much as possible, open, transparent...and accommodating” so that such litigants can “participate actively and effectively in their own litigation” and to “provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons” (p2-7)

III. Approach to screening, through the review procedure or otherwise, was unlawful, unconstitutional and/or jurisdictional error.

21. The duties of a judge that define judicial misconduct flow from the rights of litigants before the Courts to, *inter alia*, independence, impartiality, diligence and integrity. These rights of the litigants flow from unwritten constitutional principles such as the rule of law, the standards of judicial conduct, judicial rules of procedure, laws and evidence, Charter’s rights and principles of fundamental justice.

22. The review procedure is not law but was treated as law by the ED of the CJC. He has no such authority in these circumstances. Acting under the review procedure was unlawful, unconstitutional, unreasonable and jurisdictional error because of the following:

a. Since the review procedure is not a law but a policy, the summary dismissal is without legal authority and is unlawful under s. 18.1(4)(f) of the FCA. Parliamentary Supremacy, the Rule of Law (incorporated through principles of judicial review per *Dunsmuir*) and the Charter demand that any discretion in the application of statutory authority must be based on the law. While policy can be considered by any tribunal, any act under a statutory scheme must have authority in law. There is no lawful authority in the *Judges Act* or subordinate legislation that authorizes a summary dismissal of

a complaint by the ED of the CJC, nor any lawful authority setting out the bases for such a dismissal if such a power exists.

b. The discretion pursuant to review procedure was unconstitutional as it permits screening out of legitimate complaint based on the definition of "conduct" which is unconstitutional vague, arbitrary or overbroad: the definition of "conduct" is unconstitutionally vague if its meaning can be limited to exclude judicial decision-making. The above case law, EPFJ and CJC website all describe judicial misconduct including conduct on the bench and administrative functions.

c. Under *Bedford*, the SCC made it clear that a law which does not serve its purpose is arbitrary and is contrary to principles of fundamental justice. SCC also found that a law which goes further than necessary to achieve its purpose is overbroad and is contrary to principles of fundamental justice. The purpose of the CJC provisions of the *Judges Act* is to ensure judicial accountability for misconduct. If the largest sphere of misconduct, judicial decision-making is excluded from the ambit of the Act, then the purpose of the Act is not served and this approach to or definition of conduct is arbitrary and unconstitutional. Also this exclusion goes farther than it needs to go to prevent dealing with complaints that do not allege judicial misconduct and this approach to or definition of conduct is overbroad and unconstitutional. Therefore the dismissal of the complaint was an error of jurisdiction or refusal to exercise jurisdiction, a violation of natural justice and/or fairness and error of law and was contrary to law and must be quashed and relief be granted under ss.18.1(4)(a)(b)(c) and(f) of the FCA.

d. In the alternative to a, if the discretion of dismissal is lawful regardless of whether it based on review procedure, the discretion was not exercised lawfully because it was exercised unconstitutionally. Under *Slaight Communication* (SCC) any law that provides for a discretion that is not, on

its face, constitutional, cannot provide a discretion that allows for the violation of the Constitution. The discretion to dismiss the complaint was exercised unconstitutionally and unlawfully because there is a basis for the complaint (para 19) and the dismissal was unreasonable contrary to *Dunsmuir and Baker*.

e. The behavior of Justice Nordheimer was unconstitutional against unwritten constitutional principles: Rule of Law (Quebec succession Reference and *Dunsmuir and EPFJ*, p.10(5),14(3),30(A1); judicial independence (Provincial Court Judges Reference and *EPFJ*, p.30-31); and the following rights flowing wherefrom: non-arbitrary application of the law; the duty to act judicially; the judicial duty to act with diligence, integrity, independence and impartiality; the open court principle; the Charter's rights.

23. Therefore the dismissal of the complaint was an unreasonable fettering of discretion; it was an error of jurisdiction or refusal to exercise jurisdiction, a violation of natural justice and/or fairness and error of law and was contrary to law and must be quashed and relief be granted under ss. 18.1(4)(a)(b)(c)(f) of the FCA.

24. CJC erred in law, acted contrary to law, failed to act in accordance with natural justice or the duty of fairness and/or refused to exercise its jurisdiction in fulfilling its statutory duties contrary to ss.18.1(4)(a)(b)(c)(f) of the FCA.

25. CJC made perverse and capricious findings, conclusions, and inferences without evidence and in total disregard to the evidence ss.18.1(4)(d) of the FCA.

26. CJC made an unreasonable decision contrary to *Dunsmuir and Baker*.

27. Such further grounds as counsel may advise and this Court may accept.

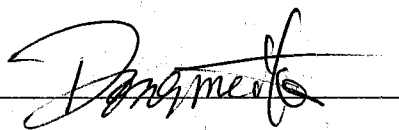
This application will be supported by the following material:

- a. Applicant's complaint to CJC via email
- b. Court Room Audio Record/Original Court Room Audio Record
- c. Transcript
- d. Any additional materials that may exist from CJC through rules 317 and 318
- e. A memorandum of fact and Law
- f. Such further evidence as counsel may advise and this Court permit.

The applicant requests Canadian Judicial Council ("CJC") to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the CJC to the Applicant and to the Registry including:

1. A copy of any and all document, memos, electronic or others, with respect to the complaint, investigation, if any, and decision at the CJC with respect to the Applicant's complaint, except to the extent that such items are clearly privileged;
2. A copy of the tribunal's entire files with the Tribunal touching upon the decision the subject of which within judicial review, except to the extent that such items are clearly privileged.

Dated: August 17, 2017



Applicant: Dongmei Ye

9 Winstanly Crescent Scarborough ON M1B 1N3

Tel: 519-805-4080

Court File No:

FEDERAL COURT OF CANADA

BETWEEN:

DONGMEI YE, ~~QINGRONG QIU~~

Applicant

-and-

THE ATTORNEY GENERAL OF CANADA

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HONOURABLE MR. JUSTICE I.V.B. NORDHEIMER

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Constitution Act, 1982)

Dongmei Ye

9 Winstanly Cres. Scarborough ON M1B 1N3

Tel: 519-805-4080

**DUPLICATE
DUPLICATA**
AUG 17 2017
TORONTO

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of _____ AUG 17 2017 A.D. 20 _____
Dated this _____ day of _____ 20 _____