

FEDERAL COURT

BETWEEN:

David Brown

Applicant

and

Attorney General of Canada

Respondent

APPLICATION FOR JUDICIAL REVIEW  
UNDER SECTION 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 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 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.

February 26, 2024

Issued by: \_\_\_\_\_

*(Registry Officer)*

Address of local office: 90 Sparks Street, 5th floor  
Ottawa, ON K1A 0H9

TO: The Attorney General of Canada  
Department of Justice  
50 O'Connor Street, Suite 500  
Ottawa, ON K1A 0H8

TO: TBS Legal Services  
219 Laurier Ave  
Ottawa, Ontario K1A 0R5  
Canada  
Floor 6

TO: Marie-Pierre Jackson  
Director General  
Human Resources Division, Treasury Board of Canada Secretariat  
90 Elgin Street  
Ottawa, Ontario K1A 0R5  
Canada  
Building Flaherty Building  
Floor 6

## Application

This is an application for judicial review in respect of the decision rendered February 2, 2024 by Marie-Pierre Jackson, Director General, Human Resources Division of the Treasury Board of Canada Secretariat regarding the Applicant's Grievances 322231 & 322274.

To better understand the specific relief sought in this application it is essential to understand the context of the situation and barriers the Applicant has needed to face and overcome.

First, the Applicant's challenging situation occurred during the Covid pandemic while he was on a gradual return to work following a severe mental illness exacerbated by the Covid pandemic. This put the Applicant under a great deal of stress and strain from the start of his gradual return to work.

Second, as the Applicant works in HR and is part of the PE occupational group, he is unrepresented and has no union to support him. In order to deal with this challenging situation, he was and is alone in trying to navigate the complex formal recourse mechanisms, without any significant support or clear guidance. This increased the stress he was under.

Third, the Applicant is a professional human resources (HR) policy analyst. He develops, reviews and determines how HR policies are applied in various situations. As such, he is experienced in knowing and identifying the issues and challenges of HR policies from a broader HR perspective. Thus, when there is an issue with an HR policy, it is like a clear signal to him that the policy needs to be revised. Many of the Applicant's questions pertain to broader HR management and policy issues rather than his own personal situation.

Lastly, it is recognized that the Applicant has episodic mental health disabilities of anxiety and depression which affects him emotionally and psychologically at times, predominantly in high stress situations, and is neurodivergent with attention deficit disorder. What is not readily recognized is that this combination provides the Applicant with the ability to become hyper focused and obsessive in stressful situations and see his work and the operations, policies and procedures of the organization from another perspective. This gives him an alternative, broader view of the operations and management of the organization and in particular from the perspective of a neurodivergent person with episodic mental health disabilities. This perspective however is often misunderstood by others and is clouded by the Applicant's emotional communication in high stress situations. This is reflected in these grievance submissions as well.

From the perspective of this context, the Respondent's decision misses the main point of the Applicant's grievance entirely. The first main point of the grievance was to get answers to the Applicant's outstanding questions and issues as this was causing the Applicant harm due to his mental health disabilities. Secondly, due to the conduct, delays and non-response of management in addressing these issues and questions over the past three years, it has significantly impacted the Applicant as a person with episodic mental health disabilities to the extent that he was unable to work and function for a significant period of time. As such, the

Applicant wants to have his pay reimbursed for the time period that he was receiving leave without pay due to this situation and those in the public service to be held accountable for their behavior as and if warranted. Even in this grievance process, the vast majority of the Applicant's questions remain unanswered demonstrating the same behavior that has negatively impacted the Applicant for over the past three years.

Most of the Applicant's questions ask if certain of the organization's actions are "fair and appropriate", and not about discrimination and wrongdoing. Based on the information before her, the Respondent denied the grievance as she concluded that no wrongdoing occurred and that the Applicant was not the subject to discrimination. However, for the Applicant, it does not matter whether or not there was formal discrimination or wrongdoing to justify reimbursing the Applicant's salary. In whatever way it is characterized, the organization's conduct, delays and non-response pertaining to the serious concerns of performance management, reprisal, harassment, discrimination, wrongdoing and breaking the harassment and violence prevention regulations that the Applicant raised was so impactful that he was forced to go on leave without pay and was hindered in his recovery because of it. This was unfair and considering the severe impact this had on his mental health, the Applicant deserves his salary to be reimbursed. This is because of the harmful way in which his situation was handled and not because there was or wasn't formal wrongdoing or discrimination.

First, the Respondent states that she reviewed the details surrounding the Applicant's previous grievance (322152) but would not consider it because it is a separate grievance. While the Applicant agrees it is not appropriate to re-adjudicate that grievance, it is important to consider the details of the denial of that grievance at every management level. The final redetermination granting the grievance based on the associated federal court ruling demonstrates that management's previous denial of the grievance was unfair. It is clearly evident from the Applicant's communications that management's prior unfair denial of the grievance was one of the most destabilizing factors for the Applicant and harmed his mental health. Just because the grievance was ultimately granted does not excuse or erase the unfair denial in the previous grievance hearings that negatively impacted the Applicant over the three years that it took to resolve this grievance.

With regards to wrongdoing, the Respondent mischaracterizes the issues and situation. The Applicant's concerns of wrongdoing in the organization have no relation to his own individual concerns of code 699 leave. Since May 3, 2021 when the Applicant shared his understanding of the policy with his manager and numerous times subsequently, management has never offered their clarification or understanding of the policy and whether or not it differs from the Applicant and in what way. For over three years the Applicant has been asking for clarification and he has gotten none. It took over a year for the Applicant to be directed to the Public Sector Integrity Commissioner and this did not come from anyone or any manager within the Treasury Board Secretariat. The Applicant had to engage the Clerk of the Privy Council before finally getting some guidance from the Deputy Secretary to the Cabinet on how to deal with his concerns of wrongdoing. These delays further harmed the mental health of the Applicant.

Even if the Respondent has not been presented with evidence of wrongdoing, it does not prove that there is no evidence available or no wrongdoing that has occurred. The Applicant's

questions pertaining the application of the Code 699 policy after November 9, 2020 would lend insight into whether or not there was potential wrongdoing but these questions have never been answered, including in this grievance process. Why has there been no efforts to answer these questions? What is so hard about answering the following question? “In TBS, during the time period that this policy was in effect, in cases where individuals used all of their relevant leave and could not do remote or alternate work, or flexible work hours, did they receive code 699 support or not?” It is this avoidance of management to answer simple questions like this for almost three years that have negatively impacted the mental health of the Applicant triggering his disabilities of depression and anxiety and preventing him from working or functioning for a significant period of time.

With regards to the Applicant’s concerns about performance management, management did not only express concerns pertaining to the Applicant’s fitness to work during the Applicant’s gradual-return-to-work period but also assessed the Applicant as not working up to his occupational group and level and stated that this was not providing enough value to Canadian taxpayers. It was this assessment and comment that triggered the Applicant’s disability on May 26, 2021 forcing him into a situation where he was unable to work and function. As part of his gradual-return-to-work, the Applicant should have been afforded the opportunity to identify further accommodations before being assessed. Despite numerous attempts to obtain clarity and feedback throughout the following months, even if his director was making good faith efforts to facilitate a successful return to work, his director only offered clarity pertaining to this assessment after over a year. This period of non-response was debilitating to the Applicant making the Applicant feel unsafe to return to his work unit and to feel like he was experiencing reprisal for speaking out about his concerns of mental health support and potential wrongdoing. He requested an assignment in another unit but his request was ignored. Again, it took over a year before the Chief Human Resources Officer wrote a commitment letter to him indicating he would not face any reprisal.

With regards to the denial of the Applicant’s second notice of occurrence, the Designated Recipient Unit, broke the harassment and violence prevention regulations in unilaterally determining that the Applicant’s notice of occurrence did not meet the definition of harassment and violence and unjustly refused to proceed with an investigation when the Applicant was convinced the notice of occurrence did meet the definition of harassment and violence. As required, the Applicant proceeded through the Labour Program complaint process which took months to even commence. After initially supporting the Applicant and ordering the Treasury Board of Canada Secretariat to proceed with an investigation, the Labour Program subsequently reversed its decision. Even if the Treasury Board of Canada Secretariat has no control over the Labour Program’s process, they could have forwarded this grievance to the Labour Program so they could respond. Ultimately the Applicant believes the Designated Recipient Unit’s and Labour Program’s determinations are not in accordance with the spirit and intent of the harassment and violence prevention regulations and requests final adjudication from the Federal Court on this matter.

Finally, the Respondent was selective and did not address the other issues raised in the grievances such as the freedom of expression issue of being repeatedly censored and silenced for the past eight months and not even being allowed to engage with the Applicant’s

previous management pertaining to his outstanding questions and issues which remain unresolved. And most importantly, the denial of the Applicant's request for reasonable accommodations in answering the Applicant's questions and if the organization is not in the possibility of providing an answer to be directly told this and why.

All of these issues combined harmed the Applicant as a person struggling with mental health disabilities of anxiety and depression so severely that he was unable to work or function. If the organization had appropriately addressed these issues and immediately facilitated an assignment in another work unit as the Applicant requested on May 26, 2021, he likely would have never needed to take any leave and many of the subsequent issues and senior management involvement would have been avoided. This contributed to the Applicant making application for a redetermination of these grievances and reimbursement of his salary for the time that he needed to be on leave without pay due to the organization's poor support and handling of the Applicant's issues.

The Applicant makes application for:

1. A redetermination of the grievances with direction to:
  - a. Answer any of the Applicant's outstanding questions and/or issues and if the organization is not in the possibility of providing an answer to be directly told this and why as an accommodation for the Applicant as a person with mental health disabilities,.
  - b. Reimburse any lost wages for any leave without pay from May 26, 2021 to January 27, 2023.
  - c. Hold those in the public service accountable for any inappropriate behavior if and as warranted
2. Policy confirmation and/or clarification on the following issues:
  - a. If it is noted that an individual on a gradual return to work may need further accommodations, they should first be given the opportunity to identify these accommodations and have time to implement them before being assessed up to the individual's occupational group and level.
  - b. Based on the harassment and violence prevention regulations, the designated recipient unit has no right to unilaterally determine that a notice of occurrence does not meet the definition of harassment and violence.
  - c. Based on the harassment and violence prevention regulations, the designated recipient unit has no right to not proceed with an investigation if the principal party believes their notice of occurrence meets the definition of harassment and violence.
  - d. The Labour program has no right to rule that the obligation for an investigation has been fulfilled for individual A if another similar investigation for individual B has already taken place. The individuals and actions are different. Whether or not certain individuals actions do or don't meet the definition of harassment does not mean different individuals similar actions do not need to be investigated.
  - e. The freedom of expression of an employee to engage management should not be curtailed even if this engagement "may be perceived as intimidation." This is censorship and silencing before anything is actually



5. Such further and other material as the Applicant may advise and this Honourable Court permit.

Pursuant to rule 317, the Applicant requests the Respondent 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 Respondent to the Applicant and to the Registry:

1. The entire file before Marie-Pierre Jackson, Director General, Human Resources Division of the Treasury Board of Canada Secretariat at and prior to the date and time the Applicant was notified of her final level decision denying the Applicant's grievance.
2. The Applicant's Access to Information Request file number P-2022-01613 / LM Dated January 19, 2023 which has yet to be actioned and submitted to the Applicant.

*Date:* February 26, 2024

*David Brown*

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Signature of Applicant

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