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July 19, 2024 19 juillet 2024			
Genevieve Vallee			
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**APPLICATION**

(Court File No.)

**FEDERAL COURT**

**BETWEEN:**

FAN YANG

**Applicant**

**and**

ATTORNEY GENERAL OF CANADA

**Respondent**

**APPLICATION UNDER SECTION 18.1 OF THE FEDERAL COURTS ACT**

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**Notice of Application**

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**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 Montreal, QC.

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: July 19, 2024

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

Address of local office:

Agent du greffe | Registry Officer  
Service administratif des tribunaux judiciaires / Courts Administration Services  
Gouvernement du Canada  
30, rue McGill, Montréal QC H2Y 3Z7

**TO:** Quebec Regional Office  
Department of Justice Canada  
Guy-Favreau Complex  
East Tower, 9th Floor  
200 René-Lévesque Boulevard West  
Montréal, Quebec H2Z 1X4

YVONNE Y FEARON, Service Canada.  
CYDNY C HARDY, Service Canada.  
ELYSE ROSEN, the General Division of Social Security Tribunal (SST).  
JANET LEW, the Appeal Division of SST.  
MAYA SHPAYER, Human Resource, McGill University, the Employer.

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**Respondents**

# Application

Following the Order of Federal Court dated 20240708, Docket: 24-T-81:

1. This is an application for judicial review of the decision (AD-23-1102) made by the Commission from the Appeal Division of the Social Security Tribunal (the “Commission”), dated March 26, 2024 (the “Decision”), which refused the Applicant’s request for leave (permission) to appeal regarding his 2023 Employment Insurance Benefit Application, pursuant to the Employment Insurance Act, (S.C. 1996, c. 23) (the “Act”), and relevant jurisprudence.

## Relief Sought

2. The applicant makes application for:
  - a. a Declaration that the Commission’s Decision to refuse leave to appeal was unreasonable;
  - b. an Order setting aside the Commission’s Decision and directing the Commission to grant the Applicant’s request for Employment Insurance Benefit;
  - c. in the alternative, an Order setting aside the Commission’s Decision and referring the Decision of the Commission back for re-determination in accordance with such directions as this Honourable Court deems appropriate;
  - d. in the further alternative, an Order setting aside the Commission’s Decision and referring the Decision of the Commission back for re-determination;
  - e. an Order granting the Applicant costs of this Application; and
  - f. an Order setting aside the Commission’s Decision and directing Service Canada to grant the Applicant’s Employment Insurance Benefit Application and to pay the Employment Insurance Benefit due to the Applicant, in the amount of \$89,000.00 along with interest and damages;
  - g. such further and other relief as this Honourable Court may deem just.

## Grounds for Application

3. The grounds for the application are:
  - a. The Applicant’s employment contract expired on February 13, 2023 (Exhibit<sup>1</sup> A of GD3, page 28);

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<sup>1</sup> The **Exhibit** is labeled and used in this application with the same label as in the previous application and Affidavit of Applicant. Please refer to the section titled “Evidence to be Relied Upon” for further details.

- b. The Employer violated the Collective Agreement (GD03-27);
- c. The Employer provided the erred and false information to Service Canada (see below);
- d. The Report of Employmnt (ROE) submitted by the Employer inccorectly used code E (quit) (GD03-13 and GD03-27);
- e. The Employer did not inform the Applicant when and how the ROE was filed (GD3-3 to 12);
- f. The Applicant submitted a request, on April 27, 2023, for Employment Insurance Benefit Application (GD3-3 to 12);
- g. An Agent of Service Canada did not comply with their procedural requirement (by either telephone, email, or mail) to communicate the Applicant for gathering the Applicant's information after receiving the Applicant's EI Application. This failure, specifically, no phone talks, no email, no mail, is evidenced in the document of Service Canada (GD3-3 and 4, GD3-15), until Applicant received two letters of the Notice of Decision dated as May 18, and 19, 2023 (GD3-35 and 36).
- h. In the document of Service Canada, two phone calls were documented by the Agent, respectively, on May 16, 12:18pm and May 18, 2:11pm, 2023, but no voice message was left for the Applicant and documented as "client's mailbox is full" (GD3-15).
- i. However, despite the Applicant carefully reviewing his telephone usage data, he cannot find any record of the two phone calls made on May 16 at 12:18 PM and May 18 at 2:11 PM, 2023, in the usage histories from two telephone companies. This indicates that the information is fabricated, particularly in the "Supplementary Record of Claim" document from Service Canada (GD03-15).
- j. The Agent communicated and contacted with the Employer on May 17, 12:20pm and May 18, 11:57am, 2023 (GD3-16), the Employer provided incorrect information to Service Canada, that is evidenced in the document of Service Canada such as "client was overpaid until 20/02/2023" stated by the Employer, that is proven to be false (see Exhibit B of GD8, page 5, the Applicant's payslip as no overpaid), and other biased information to Service Canada.
- k. Without any communication with the Applicant, in two letters of the Notice of Decision, dated, respectively, in May 18, and 19, 2023, the Agent issued and communicated its first decision regarding the Applicant's EI Application. The Agent denied the Applicant's request (GD3-35 and 36).
- l. On June 2, 2023, the Applicant replied Service Canada by a mailed letter with additional documents and facts enclosed. The letter was received on June 5, 2023 by Service Canada (GD03-18 to 29).

including but not limited to:

- i. the Applicant's employment contract expired on Februray 13, 2023 (GD3-28);

- ii. the Grievance by the Association of McGill University Research Employees (AMURE) (GD3-27);
- iii. End of Contract was Februray 13, 2023 (GD3-29);
- m. The Applicant followed up twice by visiting the Service Canada Centre on July 12 and August 18, 2023, but received no response regarding the Applicant's request. There was no communication from Service Canada between June 5 and August 18, and it wasn't until September 14, 2023, that a reconsideration was initiated. This constitutes a significant and unreasonable delay (GD3-34, and 38 to 41).
- n. The Applicant sent a follow-up letter, on August 18, 2023, including a request for reconsideration, to Service Canada (GD3-33 to 37).
- o. By letter, another Agent issued the Notice of Decision, dated September 15, 2023, that is the subject of this EI Application for reconsideration. The Agent again denied the request (GD3-38 to 41).
- p. However, incorrect, erroneous and false information is documented in the reconsideration document of "Supplementary record of claim" (GD3-38 and 39), such as:
  - i. "but about two weeks before that they told me verbally that it might be renewed" as the answer of the Applicant;
  - ii. "Agent explained that he stated that he had at least 2 weeks of verbal notice that his contract could have been extended";
  - iii. "Explained that there is no evidence that he attempted to resolve any of his concerns until after his contract ended and after he refused an extension" (see also Exhibit B of GD8, page 6 and 7).
- q. The Applicant provided the General Division with additional documents and facts to appeal (GD8-3 to 8)  
including but not limited to:
  - i. the Applicant's payslip recorded as "payment to Februray 13, 2023" (no overpaid) which was issued on March 29, 2023 (GD8-5).
- r. The hearing was held on November 7, 2023, and the Commission recorded two parts of the audio during the hearing. However, not all parts of the audio recording were provided to the Applicant, despite requests for the complete recordings.
- s. The Commission from the General Division regarded the erroneous, false, and fabricated information in Service Canada's documents as mere technical issues, characterizing the information as inaccurate or incomplete (see Exhibit E as Decision - Appeal Division, page 11 [44] and 12, and Exihbit B as GD8-3 to 4, and Exhibit D as GE-23-2823\_Application to the Appeal Division of SST, page 1 and 2).

- t. By email, the Commission from the General Division issued the General Division EI Decision, dated November 9, 2023, that is the subject of this EI Application. The Commission dismissed the appeal (**Exhibit C**).
- u. The Applicant reported above issues of the erroneous, false and fabricated information in the documents of Service Canada to the Appeal Division to apply the Leave to Appeal, on December 6, 2023 (**Exhibit D**).
- v. By email, the Commission from the Appeal Division issued the Leave to Appeal Decision, dated March 26, 2024, that is the subject of this EI Application. The Commission refused leave (permission) to appeal (**Exhibit E**).
- w. This represents another significant and unreasonable delay, with the receipt of the Appeal Application on December 6, 2023, and the SST's Appeal Decision not issued until March 26, 2024.
- x. Furthermore, the Commission from the Appeal Division concluded and described in her/his Decision [47] "The information at GD3-15 is inconsequential. Nothing turns on the fact that the Commission recorded that it was unable to either speak with the Claimant or unable to leave any voice mail messages with him".

In [69] "the Claimant's innuendoes that the Commission distorted or fabricated evidence", "unless the Claimant was able to provide credible evidence to support his allegations" (Exhibit E).

- y. in denying the Applicant's EI Application, the Agents and the Commissions erred in fact and law, and made a decision that is unreasonable. The Agents and the Commissions:
  - 1) acted without jurisdiction, beyond her/his jurisdiction or refused to exercise her/his jurisdiction;
  - 2) failed to observe a principle of natural justice or procedural fairness;
  - 3) erred in law in making a decision, whether or not the error appears on the face of the record;
  - 4) based on her/his Decisions on an erroneous finding of fact that she/he made in a perverse or capricious manner and/or without regard for the materials before her/his;
  - 5) acted, or failed to act, by reason of fraud or perjured evidence; or
  - 6) acted in any other way that contrary to law.

z. In particular:

- i. the Employer provided the erred and false information to Service Canada;

- ii. the document of Service Canada contain the erred, false and fabricated information;
  - iii. the Agents and the Commissions in making her/his Decision, failed to have regard for the fact and evidence before her/his when considering the Applicant's EI Application, and appeal;
  - iv. the Agents and the Commissions acted contrary to law and thereby erred in law and fettered her/his discretion by misinterpreting what constitutes "the reasonable alternatives and just cause";
  - v. the Employer, the Agents and the Commissions failed to take into account the Applicant's efforts to resolve the issues of the work environment and circumstances;
  - vi. the Agents and the Commissions based her/his decision on perverse and capricious findings not warranted by the facts and evidence before her/his and thereby acted without jurisdiction.
- aa. the *Employment Insurance Act*, (S.C. 1996. c. 23) and the jurisprudence.
  - ab. <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/quit-job.html> (reasonable alternatives) and [https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-6/checklist.html#a6\\_8\\_1](https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-6/checklist.html#a6_8_1) (6.8.1 List of 40 Main Circumstances to Take Into Consideration);
  - ac. section 18.1 and 18.2 of the *Federal Courts Act*; R.S.C. 1985, c. F-7 (Application for Judicial Review was initially filed on 2024-04-25, with confirmation number of CAS-2024-4-25-120553672229447);
  - ad. Part 5 of the *Federal Courts Rules*, SOR/98-106;
  - ae. Part 7 of the Federal Court Rules, SOR/98-106;
  - af. such further and other grounds as counsel may advise and this Honourable Court may permit.

### **Evidence to be Relied Upon**

4. This application will be supported by the following material:
- a. The Affidavit of the Applicant;
  - b. The GD03 - Reconsideration File of Service Canada from SST dated October 17, 2023 (**Exhibit A**, see footnote 1 for labeling);
- including following documents, but not limited to:
- i. the initial claim for benefits (the Applicant's EI Application) ;

- ii. Record of employment;
- iii. Supplementary record of claim;
- iv. Supplementary record of claim (employer);
- v. Supplementary record of claim;
- vi. Documents (claimant);
  - a) Additional documents and facts enclosed;
  - b) the Grievance by the Association of McGill University Research Employees (AMURE);
  - c) the employment contract (employer);
  - d) End of Contract (employer);
- vii. Supplementary record of claim;
- viii. Letter of decision;
- ix. Request for Reconsideration;
- x. Supplementary record of claim;
- xi. Notice of decision - Reconsideration;
- c. The GD08 - Additional Documents of SST dated November 6, 2023 (**Exhibit B**); including following documents, but not limited to:
  - a) the Applicant's Payslip;
- d. The Decision - General Division of SST as GE-23-2823 dated November 9, 2023 (**Exhibit C**);
- e. The GE-23-2823 Application to the Appeal Division of SST dated December 6, 2023, by the Applicant (**Exhibit D**);
- f. The Decision - Appeal Division of SST as AD-23-1102 dated March 26, 2024 (**Exhibit E**);
- g. Such further and other materials as counsel may advise and this Honourable Court may permit.

### **Materials Requested**

5. The applicant requests, pursuant to Rule 317 of the Federal Court Rules, that the Commissions, the Agents, and the Employer, respectively, send a certified copy of the following material that is not in the possession of the Applicant but is in the

possession of the Commissions and SST, the Agents and Service Canada, the Employer, or their officials to the Applicant and to the Registry:

**Request to the Commission of the Appeal Division of SST:**

- A. all documents and communications (including but not limited to memoranda, reports, studies, comments, notes, and documents and communications in electronic form such as email correspondence, voicemail messages, audio recordings) relating to, or in any way concerned with the Applicant's appeal and the Decision of the Commission of the Appeal Division dated March 26, 2024 as AD-23-1102;
- B. Material, documents and Standard Operating Procedures (SOPs) are used to define, respectively, a technical issue, inaccurate, incomplete, false, distorted, fabricated information or evidence, innuendo, in a document, or practically when delay of arrival, start, and finish in the hearing, and delay of the Decision, and the minimum requirement or condition *{e.g., in terms or form of either time (hour:minute:second), monetary value (\$0000.00), its consequence, morals, ethics, rules, or laws}* for such information, event, or issue to be judged and determined to be intolerable, impermissible and unacceptable by the Appeal Division of SST when reviewing the facts, conducting the hearing, and making decision by a Commission of SST.
- C. Material, document and SOPs are used to define credible evidence in a document, and the minimum requirement or condition *{e.g., in terms or form of either time (hour:minute:second), monetary value (\$0000.00), consequence, morals, ethics, rules, or laws}* for credible evidence in a document to be judged and determined to be acceptable by the Appeal Division of SST when reviewing the facts, conducting the hearing, and making decision by a Commission of SST.

**Request to the Commission of the General Division of SST:**

- D. all documents and communications (including but not limited to memoranda, reports, studies, comments, notes, and documents and communications in electronic form such as email correspondence, voicemail messages, audio recordings) relating to, or in any way concerned with the Applicant's appeal and the Decision of the Commission of the General Division dated November 9, 2023 as GE-23-2823;
- E. the whole audio recording (including two parts) during the hearing on November 7, 2023.
- F. Material, documents and SOPs are used to define, respectively, a technical issue, inaccurate, incomplete, false, distorted, fabricated information or evidence, innuendo, in a document, or practically when delay of arrival, start, and finish in the hearing, and delay of the Decision, and the minimum requirement or condition *{e.g., in terms or form of either time (hour:minute:second), monetary value (\$0000.00), its consequence, morals, ethics, rules, or laws}* for such information, event, or issue to be judged and determined to be intolerable, impermissible and

unacceptable by the General Division of SST when reviewing the facts, conducting the hearing, and making decision by a Commission of SST.

- G. Material, document and SOPs are used to define credible evidence in a document, and the minimum requirement or condition *{e.g., in terms or form of either time (hour:minute:second), monetary value (\$0000.00), consequence, morals, ethics, rules, or laws}* for credible evidence in a document to be judged and determined to be acceptable by the General Division of SST when reviewing the facts, conducting the hearing, and making decision by a Commission of SST.

**Request to the Agents of Service Canada:**

- H. all documents and communications (including but not limited to memoranda, reports, studies, comments, notes, and documents and communications in electronic form such as email correspondence, voicemail messages, audio recordings) relating to, or in any way concerned with the Applicant's EI Application, and the Notice of Decision (dated May 18 and May 19, 2023), and the Decision of the Reconsideration (dated September 15, 2023), respectively.
- I. which phone number was used by the Agent to call the Applicant, specifically on May 16, 2023 12:18pm, including Phone service Call Detail record, outgoing calls, call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes).
- J. which phone number was used by the Agent to call the Applicant, specifically on May 18, 2023 2:11pm, including Phone service Call Detail record, outgoing calls, call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes).
- K. which (or both) phone number(s) of the Applicant was called by the Agent, specifically on May 16, 2023 12:18pm, including Phone service Call Detail record, outgoing calls, call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes).
- L. which (or both) phone number(s) of the Applicant was called by the Agent, specifically on May 18, 2023 2:11pm, including Phone service Call Detail record, outgoing calls, call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes).
- M. which phone number was used by the Agent to call this number 514-3984747 (which is the Applicant's Employer phone number), specifically on May 17, 2023 12:20pm, including Phone service Call Detail record, outgoing calls, call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes).
- N. which phone number was used by the Agent to call this number 514-3984747 (which is Applicant's Employer phone number), specifically on May 18, 2023 11:57am, including Phone service Call Detail record, outgoing calls, call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes).

- O. Material, document, and SOPs are used to define the just cause for Employment Insurance (EI) application, duties-intolerable situation, overtime-excessive hours, overtime-failure to pay, working conditions-significant unilateral changes (duties, hours of work, responsibilities), inaccurate, false, and fabricated information in a document, respectively, and their criteria and thresholds *{e.g., in terms or form of either time (hour:minute:second), monetary value (\$0000.00), morals, ethics, rules, or laws}* can be judged and determined to be intolerable, impermissible and/or unacceptable by Service Canada when reviewing the facts, reconsidering an EI application, and making decision.
- P. Material, document and SOPs are used to define the just cause for leaving as either refusing renewal or quit, and the minimum requirement or condition for such event to be judged and determined to be acceptable by Service Canada when reviewing the facts, reconsidering an EI application, and making decision.
- Q. Material, document and SOPs are used to define a list of the reasonable alternatives when or before a renewal is refused or resignation is made by an employee, and the minimum requirement or condition for such event to be considered as the reasonable alternatives have been exhausted that can be judged and determined to be acceptable by Service Canada when reviewing the facts, reconsidering an EI application, and making decision.
- R. Material, document and SOPs are used to define an overpayment, and the minimum requirement or condition in terms or form of monetary value (\$0000.00) can be considered, judged and determined to be an overpayment by Service Canada when reviewing the facts, reconsidering an EI Application, and making decision.

**Request to the Employer:**

- S. all documents and communications (including but not limited to memoranda, reports, studies, comments, notes, and documents and communications in electronic form such as email correspondence, voicemail messages, audio recordings) relating to, or in any way concerned with the Applicant's employment, the reason for separation, and the Decision of the Human Resource, the manager, or other officials.
- T. for the McGill University phone number 514-3984747, there is an incoming call, specifically on May 17, 2023 12:20pm, request information including Phone service Call Detail record, incoming calls, call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes). (concerned with the "reason for separation" of the Applicant).
- U. the relevant logs and documents have been recorded and documented during and after this phone call, specifically on and after May 17, 2023 12:20pm (concerned with the "reason for separation" of the Applicant).
- V. for the McGill University phone number 514-3984747: there is an incoming or outgoing call, specifically on May 18, 2023 11:57am, request information including

Phone service Call Detail record, incoming calls (or outgoing calls), call date, call type/time (hour:minute:second), caller number, called number, and call duration (minutes), (concerned with the “reason for separation” of the Applicant).

- W. the relevant logs and documents have been recorded and documented during and after this phone call, specifically on May 18, 2023 11:57am (concerned with the “reason for separation” of the Applicant).
- X. the resignation letter, report of employment, and other relevant documents concerned with Dr. Hana Hakami (the Applicant’s lab member) “unhappily” left or quit the lab/job, before the Applicant, on March 2022.
- Y. the accident and incident report, other relevant documents and medical documentation which was filed and submitted by Dr. Maria Magdalena Catrinescu (the Applicant’s lab member) and/or by lab manager to McGill University and Environmental Health and Safety, concerned with the work environment, her accident, incident and injuries during her laboratory working.
- Z. material, document and SOPs are used to implement, or to define, or to comply with the employment contract, renewal, collective agreement, duties-intolerable situation, overtime-excessive hours, overtime-failure to pay, working conditions-significant unilateral changes (duties, hours of work, responsibilities), overpayment, the work environment, bullying in work environment, inaccurate, false, and fabricated information in a document, respectively, and their criteria and thresholds {e.g., *in terms or form of either time (hour:minute:second), monetary value (\$0000.00), morals, ethics, rules, or laws*} can be judged and determined to be intolerable, impermissible and unacceptable by the McGill University when dealing with such event, or case, or employee, or manager.

Date: July 19, 2024



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