

Court File No.

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FEDERAL COURT OF APPEAL

BETWEEN:

MELICK BESLEY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

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 requested by the Applicant. The Applicant requests that this Application be heard in person before the Federal Court of Appeal at Toronto.

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 Court 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 Court 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.

September 21, 2023

Issued by: _____

Address of local office: Federal Court of Appeal
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

To: The Attorney General of Canada
Justice Building, 4th Floor
284 Wellington Street
Ottawa, Ontario K1A 0H8

APPLICATION

This is an Application for judicial review in respect of a Decision of the Appeal Division of the Social Services Tribunal given on August 22, 2023 by Member Neil Nawaz under File No.AD-23-221.

The Decision of Member Nawaz of the Appeal Division overturned the Decision of the SST General Division, but jurisdiction was exercised to substitute his own Decision in lieu of remitting the matter back to the General Division, thereby denying the entitlement of the Applicant to EI benefits.

The Applicant asserts that the Appeal Division Member erred in law and acted unreasonably in his Decision substantively and in exercising his jurisdiction to make the determination that he believed the General Division should have made, holding that the Applicant was not entitled to EI benefits.

THE APPLICANT MAKES APPLICATION FOR:

1. An Order setting aside the Decision of the Appeal Division made August 22, 2023, and finding that the Applicant is entitled to EI benefits.
2. Such further and other Order as is determined to be fit and just, including returning the matter to the SST for any determination that is deemed necessary before a differently constituted Member or Members.
3. Awarding the Applicant his costs of the Application.

THE GROUNDS FOR THE APPLICATION ARE:

1. Section 28 (1) (g.1) of the Federal Courts Act, R.S.C. 1985, c.F-7.
2. The Appeal Division of the Social Services Tribunal erred in law, and ruled in an unreasonable manner by mischaracterizing certain grounds of the Claimant's appeal and failing to analyze said grounds, and more particularly failing to consider and weigh the evidence that the employer plan was ambiguous, equivocal and lacking in sufficient clarity, which coloured the Claimant's understanding of the employer policy and his ability to receive proper notice of the applicability of the employer policy terms and the jeopardy that he faced.
3. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, by misapprehending the evidence in a manner that amounts to making perverse factual findings, and more particularly, by failing to observe and make determinations on the Claimant's evidence of the lack of clarity and notice of the employer policy.
4. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, in determining that it could substitute its own decision for the General Division based on the sufficiency of the Record, notwithstanding that the Claimant was self-represented at the General Division hearing and the evidence adduced at the General Division hearing was not adequately probed and did not permit cross-examination by the Claimant, thereby violating principles of natural justice.
5. The Appeal Division of the Social Services Tribunal erred in law, and ruled in an unreasonable manner, in failing to apply or misapplying the binding Supreme Court of Canada decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, which held that the interpretation of language in benefits-conferring legislation is to be resolved with the most broad and liberal construction favourable to the claimant. In the subject case the statutory language of the Employment Insurance Act pertains to the meaning of misconduct.

6. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, in construing and applying the legal test for determining misconduct in an unduly narrow, inappropriate and inaccurate fashion, and in doing by failing to comply with or wrongly interpreting the legal precedent of *Canada v. Lemire* 2010 FCA 314, which requires that a misconduct must arise out an express or implied duty imposed by the employment contract, and by failing to properly analyze the employer conduct in determining misconduct in contravention of the legal precedent of *Astolfi v. Canada* 2020 FC 30.

7. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, by finding that an employer has an unfettered right to impose an employment policy on an employee, and that a purported deliberate abrogation of the policy is sufficient for a finding of misconduct. In so doing he Appeal Division erred in failing to apply legal principles set forth in *Re Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co. Ltd.* [1965] Labour Arbitration Cases Vo.16, P.73.

8. The Appeal Division of the SST erred in law, and ruled unreasonably, in misapplying the law in *Canada v. Boulton* (1996), 2208 N.R. 63 (FCA), by misinterpreting the facts in a manner that was perverse and capricious and the application of the law pertaining to the reinstatement of the Applicant's employment that rebutted the allegation of misconduct.

9. The Appeal Division of the SST erred in law, and ruled unreasonably, in the analysis that the Applicant's sincerely held religious beliefs requiring him not to be vaccinated for COVID-19 were not supported by the employer's policy and could support a basis for a finding of misconduct.

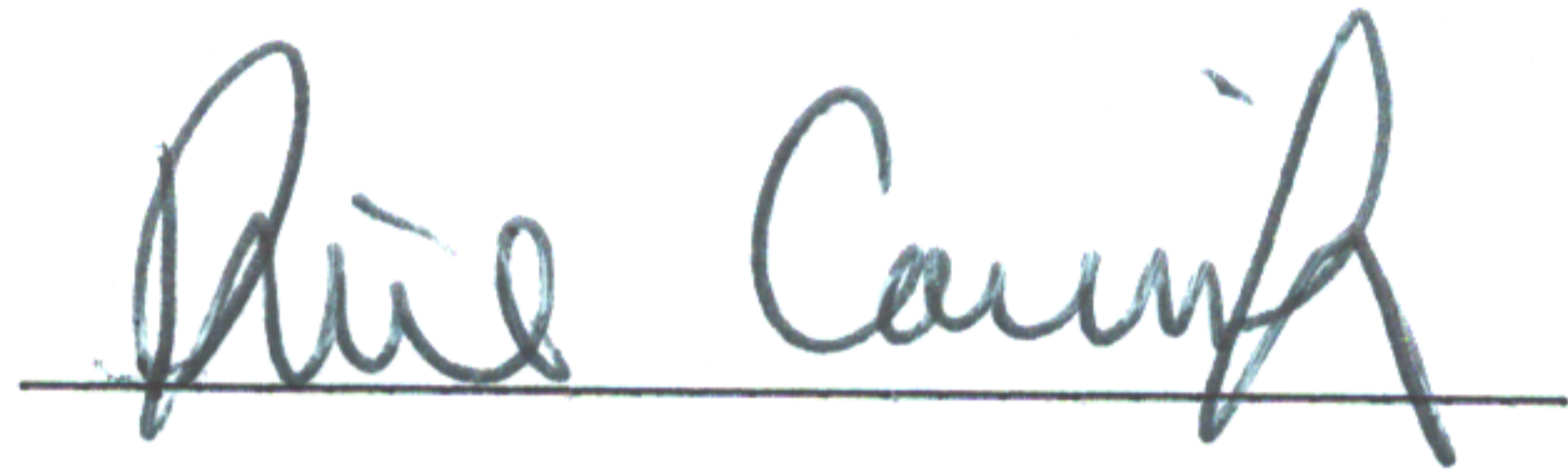
10. Such further and other grounds as the Applicant may identify and present, and the Honourable Court permit.

IN SUPPORT OF THIS APPLICATION THE APPLICANT WILL RELY ON THE FOLLOWING MATERIAL:

1.The Record before the Social Services Tribunal in the General Division and the Appeal Division

2. The Decision of the General Division dated January 31, 2023
3. The Decision of the Appeal Division Granting Leave to Appeal dated May 11, 2023
4. The Decision of the Appeal Division dated August 22, 2023
5. Such further and other material as the Applicant may present and the Honourable Court permit.

Dated at Clinton, Ontario this 21th day of September, 2023.



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