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Labour and Employment Law Group
L'Esplanade Laurier
5th Floor, West Tower
300 Laurier Avenue West
Ottawa, ON K1A 0R5
Tel.: 613-941-8484
Fax.: 613-954-5806

Groupe du droit du travail et de l'emploi
L'Esplanade Laurier
5^e étage, Tour Ouest
300, avenue Laurier Ouest
Ottawa (ON) K1A 0R5
Tél.: 613-941-8484
Téléco.: 613-954-5806

August 7, 2008

Mr. David Jewitt
Canadian Merchant Service Guild
Jewitt McLuckie & Associates
1505 Carling Avenue, 2nd Floor
Ottawa, Ontario
K1Z 7L9

Dear Sir/Madam:

**Re: Attorney General of Canada and Canadian Merchant Service Guild
Issuance of Notice of Application – T-1200-08**

Please find enclosed a copy of a Notice of Application in the above-noted matter that is being served on you as per the *Federal Courts Rules*.

Please do not hesitate to contact me if you have any questions.

Yours truly,

Caroline Engmann
Counsel

Encl.

Canada

FEDERAL COURT

ATTORNEY GENERAL OF CANADA

Applicant

-and-

CANADIAN MERCHANT SERVICE GUILD

Respondent

NOTICE OF APPLICATION
(Section 18.1 of the Federal Courts Act)

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 in Ottawa.

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 Court Rules, 1998* 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 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.

Date: August 1, 2008

Issued by: _____



Registry Officer

PAULA ROY
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office:

Lorne Building
90 Elgin Street,
Ottawa, ON K1A 0H9

APPLICATION

1. (a) **This is an application for judicial review** in respect of a decision of Adjudicator Renaud Paquet, dated July 9, 2008 in Public Service Labour Relations Board file number 569-02-35.

(b) The Adjudicator was appointed under Section 223 of the *Public Service Labour Relations Act* (the "Act") to hear and render a decision in response to a policy grievance filed by the Respondent and referred to adjudication pursuant to section 221 of the Act.

(c) In the grievance, the Respondent alleged that the employer (Department of Fisheries and Oceans) had violated the provisions of the collective agreement, Appendix "H" by the issuance of Fleet Circular FC-03-2007 regarding compensation for training. The said Fleet Circular cited familiarisation training as falling within the purview of the Letter of Understanding (LOU-04-05) contained in Appendix "H" of the collective agreement.

(d) Adjudicator Paquet in rendering his decision allowed the Respondent's policy grievance and ordered the Employer to amend the Fleet Circular and to retroactively compensate unspecified employees who had presumably been negatively affected by the Fleet Circular.

2. **THE APPLICANT MAKES APPLICATION FOR:**

a. An order allowing this application for judicial review with costs.

b. An order setting aside that portion of decision of the Adjudicator Renaud Paquet ordering the employer to amend Fleet Circular FC-03-2007 and ordering that unspecified employees be compensated retroactively; and

- c. An order referring the matter back to the Public Service Labour Relations Board to be decided by an Adjudicator in accordance with the direction or reasons of the Court.

3. **THE GROUNDS FOR THE APPLICATION ARE:**

- a. The Adjudicator committed an error of law and exceeded his remedial jurisdiction on a policy grievance by ordering the Employer to amend Fleet Circular FC-03-2007;
- b. The Adjudicator committed an error of law, exceeded his remedial jurisdiction and made an unreasonable decision by ordering that individual employees who have been negatively affected by the application of the Fleet Circular be compensated retroactively;
- c. The Adjudicator erred in law in making an order for compensation of unspecified employees in the absence of specific factual findings of adverse impact of the Fleet Circular FC- 03-2007 on individual employees;
- d. To the extent that individual employees could have been negatively affected by the application of the Fleet Circular, such employees could have presented individual grievances;
- e. Pursuant to s. 232 of the Act, where a policy grievance relates to a matter that was or could have been the subject of an individual or a group grievance the Board or adjudicator is statutorily precluded from making any order in the nature of an individual or group remedy;
- f. Sections 208-209, 215, 216, and 232 of the Act and paragraphs 18.1 (4)(a) and (c) of the *Federal Courts Act*;
- g. Such further and other grounds as Counsel may advise and this Honourable Court permit.

4. **THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:**

- a. The Affidavit of Louis Germain, sworn and the Exhibits attached thereto;
- b. The Record of material that was before the Adjudicator when he rendered his decision;
- c. Such further and other material as Counsel may advise and this Honourable Court permit.

Date: August | , 2008



Johh H. Sims, Q.C.
Deputy Attorney General of Canada
Per: **Harvey Newman**
Legal Services, Treasury Board
5th Floor, West Tower
300 Laurier Avenue West
L'Esplanade Laurier
Ottawa, ON K1A 0R5

Telephone: (613) 952-3384
Facsimile: (613) 960-0016

Solicitors for the Applicant