



Court File No.: T-918-19

FEDERAL COURT

BCM INTERNATIONAL (CANADA) INC.

Applicant

- and -

CANADA (MINISTER OF EMPLOYMENT, WORKFORCE DEVELOPMENT AND
LABOUR, and THE ATTORNEY GENERAL OF CANADA)

Respondent

APPLICATION UNDER Sections 18.1 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules*.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicants. 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 applicants. The applicant requests that this application be heard at Calgary, Alberta.

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.

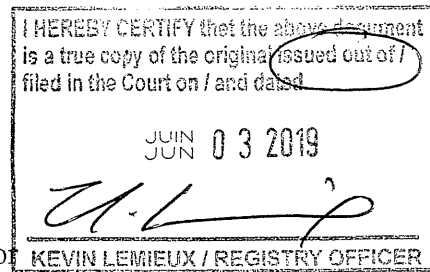
IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: June 3, 2019

**ORIGINAL SIGNED BY
KEVIN LEMIEUX
A SIGNÉ L'ORIGINAL**

Issued by: _____
(Registry Officer)

Address of local office: Canadian Occidental Tower
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Calgary, Alberta T2P 3M3



**TO: CANADA (MINISTER OF EMPLOYMENT, WORKFORCE DEVELOPMENT
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Application

This is an Application for Judicial Review in respect of a decision of the Respondent Minister of Employment, Workforce, and Labour (the “Minister”), through her delegate, a representative of Service Canada, a department of the Ministry of Employment, Workforce, and Labour (the “Ministry”), denying the Canada Summer Jobs (“CSJ”) application of BCM International (Canada) Inc. (“BCM”) for grants supporting youth employment at a summer camp, hereinafter referred to as the “Mill Stream Decision”.

In respect of the Mill Stream Decision, the Minister denied BCM’s CSJ application by stating without explanation that “[t]he proposed project/activity was ineligible” because the projects and activities “restrict access to programs, services, or employment, or otherwise discriminate, contrary to applicable laws” on the basis of listed grounds. BCM makes application for:

1. An Order setting aside the Minister’s refusal of BCM’s CSJ application;
2. A declaration that the Mill Stream Decision was unreasonable;
3. A declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* that the Mill Stream Decision unreasonably interferes with the Applicant’s rights protected under sections 2(a), 2(d) and 15(1) of the *Charter*;
4. A declaration that the Mill Stream Decision was unreasonable in failing to provide sufficient reasons;
5. A declaration that the Minister, in its decision-making process, breached its duty of procedural fairness owed to BCM
 - a. by failing to provide notice of the case to be met,
 - b. by acting with bias or creating a reasonable apprehension of bias, and
 - c. by acting in bad faith;
6. Orders pursuant to sections 18(1) and 18.2 of the *Federal Courts Act* and section 24(1) of the *Charter*:
 - i. in the nature of *certiorari* quashing the Mill Stream Decision;

- ii. in the nature of *mandamus* requiring the Respondent to award those CSJ funds which would be awarded but for the Mill Stream Decision, or in the alternative remitting the Mill Stream Decision to a different delegate to be determined in accordance with the Court's reasons for judgment;
7. A declaration that the following provision listed in the Canada Summer Jobs 2019 Applicant Guide deeming ineligible certain projects and job activities, as interpreted and applied by the Minister, (the "Impugned Provision") is overly broad and inconsistent with sections 2(a), 2(d) and 15(1) of the *Charter* and that such inconsistencies cannot be demonstrably justified in a free and democratic society:
Ineligible Projects and Job Activities:
...
 - Projects or job activities that:
 - restrict access to programs, services, or employment, or otherwise discriminate, contrary to applicable laws, on the basis of prohibited grounds, including sex, genetic characteristics, religion, race, national or ethnic origin, colour, mental or physical disability, sexual orientation, or gender identity or expression;
8. An order pursuant to section 52 of the *Constitution Act*, 1982, declaring that the Impugned Provision is of no force or effect, or alternatively, reading down the Impugned Provision to appropriately respect the rights and freedoms guaranteed in sections 2(a), 2(d) and 15(1) of the *Charter*.
9. Such further and other relief as counsel may advise and this Honourable Court considers just; and,
10. BCM's costs.

THE GROUNDS FOR THIS APPLICATION ARE:

The Parties

1. The Applicant, BCM, is a federal not-for-profit corporation and registered charity, which runs two youth camps for recreational and religious purposes. One youth camp operated by BCM is the Mill Stream Bible Camp & Retreat Centre ("Mill Stream") located near Peterborough, Ontario. Mill Stream offers a series of camps over the summer for youth aged 5 to 15 years old.

2. The Minister and the Ministry function pursuant to the *Department of Employment and Social Development Act*, SC 2005, c 34 (“*DESDA*”). Service Canada is a department of the Ministry of Employment, Workforce, and Labour. Acting through Service Canada, the Ministry awards yearly funding to organizations across Canada through the CSJ Program pursuant to the *DESDA* (“CSJ Program”).
3. The Minister, through the Ministry and Service Canada, operates and manages the CSJ Program, which is intended to provide employers with financial support in an effort to create summer jobs for youth.

The Canada Summer Jobs Program

4. The CSJ Program is an initiative of the Summer Work Experience program. It provides wage subsidies to employers to create employment for youth.
5. The CSJ Program provides funding to not-for-profit organizations, public-sector employers and small businesses with 50 or fewer full-time employees to create summer job opportunities for youth aged 15 to 30 years.
6. BCM had applied for CSJ grants to hire summer students since 2007. BCM has received CSJ grants each year that it has applied, save 2018 and 2019.
7. BCM relies on CSJ grants to support and offset costs associated with hiring youth to serve campers at Mill Stream.
8. Without the CSJ grants, BCM is restricted in its ability to hire staff at Mill Stream to serve its campers.
9. The CSJ Program is created and operated pursuant to the *DESDA* which authorizes the Minister to:

 establish and implement programs designed to support projects or other activities that contribute to the development of the human resources of Canada and the skills of Canadians, or that contribute to the social development of Canada, and the Minister may make grants and contributions in support of the programs.
10. The statutory authority for the CSJ program permits the establishment of a program promoting youth employment and development, but does not permit the Minister to create a program designed to promote or enforce political and ideological conformity of any kind.

11. The federal government spends \$330 million each year on its Youth Employment Strategy, which includes the CSJ Program. Beginning in Budget 2016, the federal government committed to spending an additional \$339 million over three years to create up to 35,000 additional summer jobs under the CSJ Program, doubling the number of job opportunities for young people under the CSJ Program.

2018 Canada Summer Jobs Attestation

12. On December 19, 2017, the Minister announced that all parties applying for a CSJ grant had to sign a compulsory attestation which included the following (“2018 Compulsory Attestation”):

Both the job and the organization's core mandate respect individual human rights in Canada, including the values underlying the Canadian Charter of Rights and Freedoms as well as other rights. These include reproductive rights, and the right to be free from discrimination on the basis of sex, religion, race, national or ethnic origin, colour, mental or physical disability, sexual orientation, or gender identity or expression.

13. The 2018 Compulsory Attestation sparked national controversy. The 2018 Compulsory Attestation was strongly opposed by numerous non-profits and businesses on the basis that, by way of the 2018 Compulsory Attestation, the government was compelling speech, in violation of the *Charter*'s free expression guarantee. Further, some religious organizations and individuals disagreed with the requirement to execute the 2018 Compulsory Attestation since it conflicted with their own beliefs about abortion, gender and sexuality.
14. On or about January 24, 2018, BCM submitted an application for a CSJ grant for Mill Stream (“2018 Application”). In its 2018 Application, BCM refused to sign the expansive 2018 Compulsory Attestation because it was compelled speech, and further because the 2018 Compulsory Attestation was inconsistent with BCM's beliefs about the value of life. BCM's 2018 Application was denied on this basis.

The 2019 CSJ Grant Application Process

15. On December 17, 2018, the Minister removed the 2018 Compulsory Attestation, and replaced it with the following attestation for 2019:

Any funding under the Canada Summer Jobs program will not be used to undermine or restrict the exercise of rights legally protected in Canada.

16. However, in 2019, the Minister revised the CSJ Articles of Agreement and published a Canada Summer Jobs 2019 Applicant Guide (“Applicant Guide”). Both the Articles of Agreement and the Applicant Guide contained the Impugned Provision, which included language that in some respects mirrors the 2018 Compulsory Attestation. The Impugned Provision specifically deems *ineligible* CSJ applications that “restrict access to programs, services, or employment, or otherwise discriminate, contrary to applicable laws” on the basis of the listed grounds, “including sex, genetic characteristics, religion, race, national or ethnic origin, colour, mental or physical disability, sexual orientation, or gender identity or expression[.]”
17. The Articles of Agreement for prior years and for 2019 already include the requirement that any employer must carry out the project “in compliance with all applicable laws”.
18. The Minister published the Applicant Guide to provide information on the 2019 CSJ application process.
19. The Applicant Guide outlines a two-stage process for evaluating a CSJ grant application. First, the *eligibility* of the application is assessed against 15 “eligibility requirements”. The Applicant Guide also lists five grounds that render an application ineligible. If a project is deemed eligible, it proceeds to the second stage of assessment. The second stage assesses the *quality* of the application according to three “assessment criteria”.
20. The Impugned Provision is part of the first *eligibility* stage of the CSJ evaluation process.

Mill Stream Application

21. BCM submitted a CSJ grant application for Mill Stream on or around January 24, 2019 (“Mill Stream Application”). In the Mill Stream Application, BCM requested funding for six student positions, just as it had done in 2017 when it received CSJ grants for four students. The positions applied for in 2019 included both a male and female section leader, an assistant program coordinator, an activity coordinator and two cabin leaders.
22. In the Mill Stream Application, BCM described each position, including its duties and associated supervision plan.

23. On February 27, 2019, Service Canada emailed BCM regarding the Mill Stream Application. In the email, Service Canada stated that the Mill Stream Application was missing information or required clarification regarding the health and safety practices at Mill Stream.
24. On February 28, 2019, Service Canada sent another email to BCM requesting that BCM confirm the duration of and compensation provided for all mandatory training for the requested positions.
25. On March 4, 2019, BCM responded to Service Canada's request for more information regarding health and safety practices in the workplace. In its response, BCM outlined the various health and safety practices at Mill Stream, including safety training courses, abuse and harassment prevention and risk management training.
26. On March 4 and 8, 2019, respectively, BCM responded to Service Canada's request for confirmation regarding the dates of and compensation provided during the mandatory training. BCM replied that the employees would be paid at their regular rates of pay and that the training dates would occur during May and July 2019.
27. On May 2, 2019, BCM received an email from Service Canada informing it that after a full assessment, its application had been deemed *ineligible* on the basis of the Impugned Provision because the proposed job activities discriminated on the basis of prohibited grounds. The relevant portion of the email stated:

After a full assessment, your application has been deemed ineligible for the following reason(s):

The proposed project/activity is ineligible - Projects or job activities that restrict access to programs, services, or employment, or otherwise discriminate, contrary to applicable laws, on the basis of prohibited grounds, including sex, genetic characteristics, religion, race, national or ethnic origin, colour, mental or physical disability, sexual orientation, or gender identity or expression.

Mill Stream Decision is unlawful

28. The Mill Stream Decision denied BCM's application at the first stage of assessment, *eligibility*, without proceeding to the second stage to determine the *quality* of the Mill Stream Application.

29. The Mill Stream Decision is unreasonable because it provides no basis upon which BCM, or this Court, can understand why it was made and whether it was reasonable. BCM can only speculate as to why the Minister rejected its Mill Stream Application.
30. Further, the Mill Stream Decision was unreasonable because there is no reasonable basis in BCM's Mill Stream Application or its subsequent exchanges with the Minister, or any other information available to the Minister, upon which to conclude that the job activities applied for restricted access or otherwise discriminated contrary to applicable law, particularly in light of the fact that BCM had, as recently as 2017, successfully applied for CSJ grants for the same positions at Mill Stream.
31. Further, the Minister ignored BCM's responses or did not properly consider them in its decision-making process.
32. The Mill Stream Decision was further procedurally unfair, failing to provide BCM with adequate notice of the case to be met and therefore also failing to provide BCM with a sufficient opportunity to respond appropriately.
33. In light of the above, there is a reasonable apprehension that, when making the Mill Stream Decision, the Minister or Service Canada had conscious or unconscious bias against BCM, a Christian organization that in 2018 had been unable to sign the 2018 Compulsory Attestation required by the Minister.
34. Even if the Impugned Provision can be applied without unjustifiably violating the *Charter* rights of BCM, the Minister has used this requirement inappropriately and without good faith for the illegitimate purpose of denying the Mill Stream Application of BCM, whose views differ from those preferred by the Minister, as indicated by the 2018 Compulsory Attestation.
35. In this context, BCM's *Charter* rights, including those under sections 2(a), 2(d) and 15(1) are implicated and unreasonably infringed.

The Impugned Provision is unconstitutional

36. Further, or in the alternative, if the Court is inclined to defer to the Minister's interpretation, the Impugned Provision violates sections 2(a), 2(d) and 15(1) of the *Charter*. These violations cannot be saved under section 1 of the *Charter*.
37. The Impugned Provision is applied by the Minister to deny CSJ applications from organizations, who comply with all applicable laws, but who nonetheless are deemed, to

“restrict access to programs, services, or employment, or otherwise discriminate, contrary to applicable laws”.

38. The purpose and effect of the Impugned Provision is to prevent organizations adhering to certain conscientious or religious beliefs from being eligible for CSJ grants, in violation of sections 2(a), 2(d) and 15(1) of the *Charter*.

The Applicants rely on the following statutory provisions, rules and principles:

1. *Department of Employment and Social Development Act*, S.C. 2005, c. 34;
2. *Canadian Human Rights Act*, (R.S.C., 1985, c. H-6), ss. 2, 3(1), 5(a), 10 and 12;
3. *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;
4. *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1.
5. *Federal Courts Rules*. SOR/98-106.

This Application will be supported by the following material:

1. The Affidavits of the Applicant to be sworn;
2. The record before the Minister or her delegates;
3. Such further and other affidavits and material as counsel may advise and this Honourable Court permit;

Pursuant to Rule 317, the Applicant requests that the Minister send the following material that is not in the possession of the Applicant but is in the Minister's possession, to the Applicant and to the Registry:

1. The record of all documents and other materials before the Minister or delegates informing the Minister's Mill Stream Decision.
2. The record of all documents and other materials in the possession or control of the Minister regarding BCM in relation to BCM's 2018 CSJ application for Mill Stream and the reasons for its denial.
3. The record of all documents and other materials before the Minister informing the Minister's decision to impose the Impugned Provision on any CSJ application.
4. Such further and other material that may be in the possession, power or control of the Minister and which may be relevant to these proceedings.

Date: June 3, 2019



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