



Court File No.: T-917-19

**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.

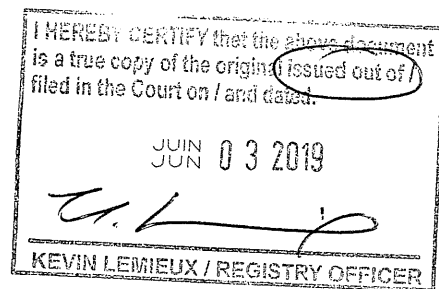
Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

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

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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”) applications of BCM International (Canada) Inc. (“BCM”) for grants supporting youth employment at a summer camp, hereinafter referred to as the “Mount Traber Decision”.

In the Mount Traber Decision, the Minister rejected BCM’s CSJ application claiming that “[t]he application does not demonstrate that measures have been implemented to provide a workplace free of harassment and discrimination”, despite the fact that BCM had outlined the comprehensive measures that it had implemented to ensure a safe, inclusive and healthy workplace, and the fact that BCM had successfully applied for CSJ grants in 13 previous years. BCM makes application for:

1. An Order setting aside the Minister’s refusal of BCM’s CSJ application;
2. A declaration that the Mount Traber Decision was unreasonable;
3. A declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* that the Mount Traber Decision unreasonably interferes with the Applicant’s rights protected under sections 2(a), 2(b), 2(d) and 15(1) of the *Charter*;
4. A declaration that the Mount Traber 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,
  - 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 Mount Traber Decision;
  - ii. in the nature of *mandamus* requiring the Respondent to award those CSJ funds which would be awarded but for the Mount Traber Decision, or in the alternative remitting the Mount Traber Decision to a different delegate to be determined in accordance with the court's reasons for judgment;
7. A declaration that the twelfth eligibility requirement listed in the Canada Summer Jobs 2019 Applicant Guide (the "Impugned Provision") is inconsistent with sections 2(a), 2(b), 2(d) and 15(1) of the *Charter* and that such inconsistencies cannot be demonstrably justified in a free and democratic society.
  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(b), 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 Mount Traber Bible Camp & Retreat Centre ("Mount Traber") located northeast of Halifax, Nova Scotia. Mount Traber offers a series of camps over the summer for youth aged 5 to 18 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 has 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 Mount Traber.
8. Without the CSJ grants, BCM is restricted in its ability to hire staff at Mount Traber 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 summer student employment and development, but does not permit the Minister to create a program designed to promote or enforce political or ideological conformity.
11. The federal government spends \$330 million each year in 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 were required 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, including several court challenges to its constitutionality, brought by non-profits and small businesses across Canada. The 2018 Compulsory Attestation required them to affirm the government’s views of abortion, sexuality and gender as a condition of participation in the CSJ Program.
14. On or about January 24, 2018, BCM submitted an application for a CSJ grant for Mount Traber (“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 due to its refusal to check the 2018 Compulsory Attestation.

### The 2019 CSJ Grant Application Process

15. On December 17, 2018, the Minister removed the 2018 Compulsory Attestation, replacing it with the following:

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. The Canada Summer Jobs 2019 Applicant Guide (“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”. 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”.
17. The Impugned Provision was added as a new eligibility requirement for 2019 CSJ applications and as is listed in the Applicant Guide as follows:

- 12. Hiring practices and work environment:** You must demonstrate that you have implemented measures to ensure hiring practices and a work environment free of harassment and discrimination, such as raising awareness and prevention activities.

Mount Traber Application

18. On or about January 24, 2019, BCM submitted an application for a CSJ grant for Mount Traber ("Mount Traber Application"). In addressing the Impugned Provision, BCM described its supervision plan, its health and safety practices and the means whereby it would maintain a harassment-free work environment, including training sessions with local RCMP and health professionals on harassment and bullying.
19. On March 7, 2019, Service Canada emailed BCM regarding the Mount Traber Application. The relevant portion of the email stated:

Your application is missing and/or requires clarification of an essential requirement in your application:

Measures to provide a workplace free of harassment and discrimination

Other and/or Additional Information: Please provide additional information or clarification on the practices you have implemented to provide a work environment that is safe, respectful and free from harassment and discrimination. As per the Canada Summer Jobs Applicant Guide, you must demonstrate that you have implemented measures to ensure hiring practices and a work environment free of harassment and discrimination, such as raising awareness and prevention activities. Ineligible projects and job activities include those that advocate intolerance, discrimination and/or prejudice.

The email further pointed BCM to the Applicant Guide for clarification regarding the program eligibility requirements. Upon inquiring with Service Canada, BCM was simply told to provide further clarity and details to its prior response.

20. On March 13, 2019, BCM responded to Service Canada's request for more information. In its response, BCM further outlined the various ways it had implemented measures promoting a harassment and discrimination-free workplace, including
- having a zero-tolerance harassment policy;
  - explaining its complaint process to all staff and campers;
  - reviewing its harassment complaint policy annually;
  - interviewing all staff and volunteers and requiring three references and vulnerable sector checks;

- requiring all staff to attend a four-day staff training and to complete various courses; and
- having the camp director at the beginning of each camp week explain in detail to all campers and staff the importance of following the policy of having a harassment-free and discrimination-free environment.

21. On May 2, 2019, Service Canada issued the Mount Traber Decision, informing BCM that its Mount Traber Application was deemed ineligible. The relevant portion of the email stated:

After seeking additional information from you, your application has been deemed ineligible for the following reason(s):

The application does not demonstrate that measures have been implemented to provide a workplace free of harassment and discrimination.

The Department's decision on Canada Summer Jobs applications are final.  
[Emphasis added]

#### Mount Traber Decision is unlawful

22. The Mount Traber Decision denied BCM's application at the first stage of assessment, *eligibility*, without proceeding to the second stage to determine the *quality* of the application. BCM's application was denied on the basis that it failed to meet the requirements of the Impugned Provision.
23. The Mount Traber Decision was unreasonable. BCM's application and response demonstrated that it has implemented measures to ensure a work environment free of harassment and discrimination, far exceeding requirements of the Impugned Provision to determine *eligibility* for the CSJ Program. In fact, the information provided by BCM further showed the high *quality* of its Mount Traber Application pursuant to the second stage of assessment, warranting that this application should have been approved.
24. Further, the Minister ignored BCM's responses or did not properly consider them in its decision-making process.
25. Further, the Mount Traber Decision failed to provide BCM, or this Court, with sufficient reasons to understand why it was made and whether it falls within a range of acceptable outcomes.



26. Further, the Minister's Mount Traber Decision was not procedurally fair. The Minister based her Mount Traber Decision on unspecified and unknown criteria, which were not disclosed to BCM. BCM provided responsive submissions to all questions in accordance with the Applicant Guide and Service Canada's inquiry. If there was some substantive reason why the BCM's responses were inadequate, the Minister owed a duty of procedural fairness to articulate that reason in order to provide BCM with adequate notice of the case to be met and a sufficient opportunity to address those (previously undisclosed) points. The Minister breached this duty.
27. In light of the above, there is a reasonable apprehension that, in making the Mount Traber Decision, the Minister or Service Canada had conscious or unconscious bias against BCM, a Christian ministry which in 2018 did not sign the 2018 Compulsory Attestation required by the Minister. The Minister has not set out any deficiency whatsoever in BCM or its operations.
28. 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 Mount Traber Application of BCM, whose views differ from those preferred by the Minister, as indicated by the 2018 Compulsory Attestation.
29. In this context, BCM's *Charter* rights, including those under sections 2(a), 2(b), 2(d) and 15(1) are unreasonably impaired.

The Impugned Provision is unconstitutional

30. 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(b), 2(d) and 15(1) of the *Charter*. These violations cannot be saved under section 1 of the *Charter*.
31. As applied by the Minister, the Impugned Provision sets an ideological and religious test for participation in the CSJ Program and pursues no proper purpose.

**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 Mount Traber 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 Mount Traber 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

  
**Marty Moore, Rod Wiltshire and Jay Cameron**  
Lawyers for the Applicant

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