

Court File No: T-8-18

FEDERAL COURT

**RIGHT TO LIFE ASSOCIATION OF TORONTO AND AREA, BLAISE
ALLEYNE AND MATTHEW BATTISTA**

Applicants

and

CANADA (MINISTER OF EMPLOYMENT, WORKFORCE, AND LABOUR)

Respondent

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

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicants. The relief claimed by the applicants appears on the following page.

THE 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 applicants require that this application be heard at the Federal Court in Calgary.

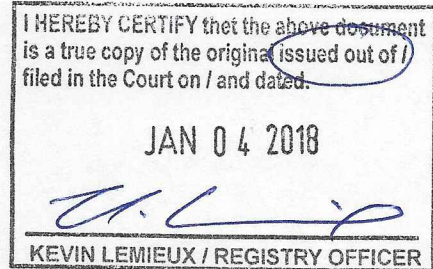
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicants' solicitor, or where the applicants are self-represented, on the applicants, 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.**

JAN 0 4 2018

(Date) **ORIGINAL SIGNED BY**
KEVIN LEMIEUX
Issued by: **A SIGNÉ L'ORIGINAL**



Address of local office:
Federal Court
Canadian Occidental Tower
635 Eighth Avenue S.W.
3rd Floor
Calgary, Alberta
T2P 3M3

**TO: MINISTER OF EMPLOYMENT, WORKFORCE DEVELOPMENT,
AND LABOUR**
c/o DEPARTMENT OF JUSTICE CANADA
Prairie Regional Office- Calgary
Suite 601, 606 4th Street SW
Calgary, Alberta
T2P 1T1

Application

(For a Judicial Review)

The Applicants challenge the decision (“Decision”) of the Minister of Employment, Workforce, and Labour (the “Ministry”), to add to the application for funding under the Canada Summer Jobs (“CSJ”) program which was released on December 19, 2017, the requirement that the applicants attest to the following:

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.

The Application Guide states that, “The attestation is required for the application to be considered complete and eligible for assessment” (pages 6, 11 and 22). If applicants submit online, “you must check this box (the attestation requirement) in order to proceed, otherwise the system will not allow you to continue. If you are submitting a paper application, you must check this box in order for your application to be assessed” (page 22).

The Application Guide also states the following:

The employer attestation for CSJ 2018 is consistent with individual human rights in Canada, Charter rights and case law, and the Government of Canada’s commitment to human rights, which include women’s rights and women’s reproductive rights, and the rights of gender-diverse and transgender Canadians.

The government recognizes that women’s rights are human rights. This includes sexual and reproductive rights- and the right to access safe and legal abortions.

On December 20, 2017, TRTL submitted a paper copy of its 2018 application, accompanying the application with a cover letter to the Minister which said the following:

On the basis of conscience, we are unable to express the words that the Minister has required in the Applicant’s Guide. We are, however, able to attest that “we support all Canadian law, including Charter and human rights law.” We believe the Minister does not have the jurisdiction under law to compel us to make a statement that conflicts with our conscience rights under

the Charter. Nor does the Minister have the right to compel speech as a condition of receiving a financial benefit from the government of Canada. We respectfully decline to make a statement that is inconsistent with our fundamental personal beliefs about the value of life and the right to life under section 7 of the Charter. Please confirm that you will accept our application with the above noted statement in substitution for the statement set forth in the on line application process and in the Applicant's Guide.

TRTL received confirmation that its materials were delivered to Service Canada on December 22, 2017.

The Applicant's Guide states that, "For employers applying by mail or in person an acknowledgment confirming receipt will be emailed to you within 10 business days" (page 5). On January 3, 2018, TRTL received a receipt from Service Canada indicating it had received its application. TRTL received no response to its letter of objection and substitute attestation.

In 2016, Right to Life Association of Toronto and Area ("TRTL") applied for summer student funding in the amount of \$28,800.00 and was approved for the amount of \$10,800.00. In 2017, TRTL applied for funding in the amount of \$29,184.00. Its 2017 application for funding was denied.

The reasons for the 2017 denial were communicated to TRTL via email on April 27, 2017, by a representative of Service Canada, a department of the Ministry, informing TRTL that its application for CSJ funding had been denied on the following basis: "Unfortunately, although your application is considered eligible, we are unable to offer you Canada Summer Jobs funding, since the demand for funding has exceeded the budget available in your constituency."

Subsequent to the denial, TRTL discovered that other similar organizations had received funding denials. TRTL received information from Guelph and Area Right to Life Association ("GRTL") and the Canadian Centre for Bio-Ethical Reform ("CCBR") that on the same date, April 27, 2017, they had been also denied funding. GRTL and CCBR told TRTL that they had received identical reasons as TRTL via email from a representative of Service Canada, telling them that their funding had been denied "since the demand for funding has exceeded the budget available in your constituency."

On May 25, 2017, TRTL, GRTL and the CCBR each filed notices of application for judicial review in Federal Court against the Ministry for denying their applications for summer student job funding on the basis of their beliefs.

The judicial reviews alleged that the Ministry had issued a directive to instruct members of the Liberal Party to deny funding to organizations like TRTL. This conclusion was based on an April 13, 2017, iPolitics article written by Amanda Connolly, “Anti-abortion group got \$56K federal grant from Liberal MP” where she said the following:

When iPolitics requested clarification from Khalid’s office as to whether the funding might be some kind of legacy grant issued by her Conservative predecessor, officials referred the request to the spokesperson for Employment Minister Patty Hajdu.

“Our government has been unequivocal in our support of a woman’s fundamental right to choose,” said Matt Pascuzzo, press secretary for Hajdu. “The minister is currently looking into this matter and we will have a resolution shortly. We will continue advancing gender equality and standing up for a woman’s right to choose.”

Following publication, Pascuzzo provided a second response saying the 2016 grant was a mistake and would not happen again.

“Any funding provided to an organization that works to limit women’s reproductive rights last summer was an oversight,” he said. “That’s why this year we fixed the issue and no such organizations will receive funding from any constituencies represented by Liberal MPs.”

The Applicants pleaded that a denial of their applications on the basis of their opinion and belief was not an authorized factor under the applicable legislative framework for assessing the merits of applications for CSJ funding, and was also prohibited by the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

The Applicants also pleaded that the denials were both unlawful on administrative law grounds (including on the basis of consideration of irrelevant considerations, a fettering of discretion, breach of duty of procedural fairness, and Reasonable Apprehension of Bias), and limited each Applicant’s 2(b) *Charter* right to freedom of expression more than was reasonably necessary in order to achieve the statutory objectives of the legislation underlying the CSJ program.

The Applicants asked for declarative relief in regard to *Charter* breach, as well as relief in way of *certiorari*, *mandamus*, and *prohibition*.

On November 23, 2017, the three Applicants received an offer of settlement from the Ministry, which they accepted, which included full payment of the funds which were initially approved by the Ministry, and costs.

Upon settlement, the Ministry also provided the following statement to the Applicants:

The Canada Summer Jobs Program is providing this settlement because the publicly available Applicant's Guide indicated that applications would be assessed against seven criteria (including local priorities) using a scoring guide. However, your clients were denied funding on the basis of a criteria neither set out in the applicant's Guide nor included in the MP's list of local priorities for 2017.

The Applicants make application for:

1. A declaration that the Decision infringes sections 2(a), 2(b) and 15 of the *Charter* and cannot be saved under section 1;
2. A declaration that the Decision is *ultra vires*, unlawful, unreasonable, or is an otherwise invalid decision;
3. Orders pursuant to section 24(1) of the *Charter* and sections 18(1) and 18.2 of the *Federal Courts Act*:
 - (a) in the nature of *certiorari* quashing the Decision;
 - (b) in the nature of *mandamus* requiring the Respondent to award those CSJ funds which would be awarded but for the requirement of the attestation;
 - (c) in the nature of relief by way of an urgent interim injunction to stay the operation of the Respondent's decision to add an attestation requirement to the application for Canada Summer Student Job funding, as included in the 2018 Canada Summer Jobs Applicant Guide made available December 19, 2017, pending final determination of the originating application; and
 - (d) in the nature of *prohibition* prohibiting the Respondent from denying CSJ funding in future in whole or in part on the basis of the attestation.

4. Such further and other relief as counsel may advise and this Honourable Court considers just; and
5. Costs.

The grounds for the application are:

1. The Applicant, TRTL, is a registered charity incorporated under the *Corporations Act*, R.S.O. 1990, c. C.38, carrying on business in Toronto and the GTA. TRTL is a volunteer, non-sectarian human rights organization dedicated, through education, to “upholding the sacredness and inviolability of human life from conception to natural death.”
2. Blaise Alleyne is President of TRTL.
3. Matthew Battista is a student at the University of Toronto who intends to apply for employment this summer with TRTL. The funding for his position will come from the Canada Summer Jobs programs.
4. 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.
5. On April 27, 2017, Service Canada sent an email to TRTL, GRTL and CCBR, informing them that their applications for funding were denied, stating the following: “Unfortunately, although your application is considered eligible, we are unable to offer you Canada Summer Jobs funding, since the demand for funding has exceeded the budget available in your constituency.”
6. TRTL, GRTL, and CCBR had all received funding from the CSJ program prior to the application year of 2017.
7. TRTL, GRTL, and CCBR concluded that the funding denial was based on information they received from an April 12, 2017, iPolitics article written by Amanda Connolly, “Anti-abortion group got \$56K federal grant from Liberal MP” where she quoted Matt Pascuzzon, press secretary for the Minister of Employment, Workforce, and Labour, as saying, “Any funding provided to an organization that works to limit women’s reproductive rights last summer was an oversight,” he said. “That’s why

this year we fixed the issue and no such organizations will receive funding from any constituencies represented by Liberal MPs.”

8. On May 25, 2017, TRTL, GRTL and the CCBR each filed notices of application for judicial review against the Ministry for denying their applications for summer student job funding on the basis of their belief and opinion.

9. On November 23, 2017, the Ministry made an offer of settlement to the three parties, which the parties accepted, remitting the amounts originally approved, costs, and providing the following statement:

The Canada Summer Jobs program is providing this settlement because the publicly available Applicant’s Guide indicated that applications would be assessed against seven criteria (including local priorities) using a scoring guide. However, your clients were denied funding on the basis of a criteria neither set out in the Applicant’s Guide nor included in the MP’s list of local priorities for 2017.

10. On December 19, 2017, the Ministry released its 2018 Application. Contained within this application was the new requirement that applicants attest to the following in order to receive funding:

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.”

11. On December 20, 2017, TRTL applied for funding, objecting to the Ministry’s attestation and asking the Minister to process TRTL’s application on the basis of its own substitute statement.

12. On January 3, 2018, TRTL received a receipt from Service Canada indicating it had received its application. TRTL received no response to its letter of objection and substitute attestation.

13. The Decision fetters the discretion of the decision-makers who approve applications for summer student job funding.

14. The Decision is also *ultra vires*, unlawful, unreasonable, or is otherwise invalid.

15. The Decision also constitutes a breach of sections 2 a), 2 b) and 15 of the *Charter*.

The application will be supported by the following material:

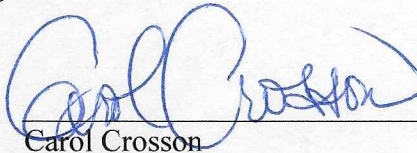
1. Such affidavit(s), to be sworn, as may be necessary to bring to the attention of the Court any facts pertaining to this Notice of Application;
2. Material requested pursuant to Rule 317 of the *Federal Courts Rules* and produced to the applicants and to the Court pursuant to Rule 318; and
3. Such further and other materials as counsel for the Applicants may advise and this Honourable Court will permit.

Pursuant to Rule 317 of the *Federal Court Rules*, the Applicants request that the respondents provide to the applicants and to the Registry of the Federal Court:

(a) all documents relating directly or indirectly to Minister's Decision to require the attestation, including directives, memoranda, emails, handwritten notes, and policies, authored by, or sent to or from or within the possession or control of, the respondent; and

(b) all documents consulted or considered by the Respondent relating to the Decision to impose the attestation.

DATED this 4 day of January, 2018



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Counsel for the Applicants

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