

File No.: T- 2200-22

ID 1  
JR

**FEDERAL COURT**

FEDERAL COURT COUR FÉDÉRALE	
Court File No. T-2200-22	DEPOSED
OCT 24 2022	
FRANK FEDORAK (NF)	
VANCOUVER, BC	1

BETWEEN:

**Gary Nedelec, Alexander Samanek, Michael S. Sheppard,  
Douglas Goldie, Gary Bedbrook, Pierre Garneau, Jacques Couture,  
Larry James Laidman, Robert Bruce Macdonald,  
Gordon A.F. Lehman, Peter J.G. Stirling, David Malcom Macdonald,  
Robert William James, Camil Geoffroy, Brian Campbell, Trevor  
David Allison, Benoit Gauthier, Bruce Lyn Fanning, Marc Carpentier,  
Mark Irving Davis, Raymond Calvin Scott Jackson,  
John Bart Anderson, David Alexander Findlay,  
Warren Stanley Davey, Keith Wylie Hannan, Michael Edward Ronan,  
Gilles Desrochers, William Lance Frank Dann, John Andrew Clarke,  
Bradley James Ellis, Michael Ennis, Stanley Edward Johns,  
Thomas Frederick Noakes, William Charles Ronan, Barrett Ralph  
Thornton, David Allan Ramsay, Harold George Edward Thomas,  
Murray James Kidd and William Ayre**

(Coalition) Applicants

- and -

**Eric William Rogers, Robert James McBride, John Charles Pinheiro,  
William Ronald Clark and Stephen Norman Collier**

(Self-Represented) Respondents

- and -

**Canadian Human Rights Commission**

Commission

- and -

**Air Canada and Air Canada Pilots Association**

Respondents

APPLICATION UNDER Sections 18 and 18.1 of the *Federal Courts Act* and Rules 300 and 317 of the *Federal Court Rules*

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**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

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TO THE RESPONDENTS:

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 at *(place where Federal Court of Appeal (or Federal Court) ordinarily sits)*.

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 Courts 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 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.

October 24, 2022

ORIGINAL SIGNED BY  
JOYCE FAN  
Issued by: A SIGNÉ L'ORIGINAL  
(Registry Officer)

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BETWEEN:

**Gary Nedelec et al.**

(Coalition) Applicants

- and -

**Eric William Rogers et al.**

(Self-Represented) Respondents

- and –

**Canadian Human Rights Commission**

Commission

- and –

**Air Canada and Air Canada Pilots Association**

Respondents

**APPLICATION FOR JUDICIAL REVIEW**

1. This is an application for judicial review of the Canadian Human Rights Tribunal Ruling issued September 23, 2022 wherein the Tribunal pre-determined a specific methodology for interpreting Paragraph 15(1)(c) of the *Canadian Human Rights Act* (“CHRA”) (as it was then in force, in respect of the facts giving rise to this proceeding) as it applies to the Complaints before it—namely the determination of the “normal age of retirement” for pilots engaged in “positions similar” to the position of pilots of Air Canada.
2. In its Ruling the Tribunal specified that in determining the composition of the “comparator group,” (the set of Canadian airline pilots who work in “positions similar” to the positions of Air Canada pilots) it would consider only pilots who met a series of “conjunctive” criteria—criteria that have the effect of eliminating from comparison the majority of non-Air Canada pilots in Canada as being employed in “positions similar.”
3. The selection of the specific criteria to be applied by the Tribunal to identify the determination of a “position similar” to the position of an Air Canada pilot for the purposes of Paragraph 15(1)(c) of the CHRA, namely a “conjunctive” collection of

factors that, individually but not necessarily collectively, describe the work of Canadian airline pilots working in “positions similar” to that of an Air Canada pilot, constitute an arbitrary, unreasonable and unduly constrained interpretation of Paragraph 15(1)(c), inconsistent with and contrary to the intention of Parliament in constructing the provision.

4. By arbitrarily electing to restrict the composition of the “comparator group” in advance of a hearing and in the absence of any evidentiary basis for so restricting the comparator group, ostensibly simply on the basis of judicial economy and similar legal precepts, the Tribunal has unreasonably denied the Complainants their right, pursuant to Section 50 of the *CHRA*, to:

“give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.”

5. Similarly, by so restricting the composition of the “comparator group” the Tribunal has pre-ordained a jurisprudential outcome that is patently absurd in that pilots who are employed:

- (a) in positions that are “identical” to the position in which Air Canada pilots are employed, namely pilots that operate the “identical” aircraft to the “identical” destination as Air Canada pilots do, notwithstanding that their employer operates only “one” type of aircraft or “one” size of aircraft, are excluded from the comparator group; or
- (b) in positions patently different from Air Canada pilots, for example pilots who operate float planes in the Canadian north, but whose employer coincidentally meets all of the restrictive criteria chosen to conjunctively restrict the composition of the group—are included in the comparator group...

and in so doing, the Tribunal has so disregarded the intention of Parliament in constructing the statutory exemption as to render preliminary determination of the construction of the comparator group unreasonable.

6. The Applicants make application for:
  - a. an Order quashing the Ruling of the Tribunal dated September 23, 2022 in respect of the specified complaints;

- b. an Order remitting the decision back to the Tribunal for consideration in accordance with the reason of this Honourable Court;
- c. an Order awarding costs to the Applicants; and
- d. such further and other relief as this Honourable Court considers just in the circumstances.

7. The grounds for the Application are as follows:

The Tribunal, in arriving at its Ruling:


- a. erred in fact and law by failing to adequately and properly interpret and apply the appropriate principles of statutory construction with respect to Paragraph 15(1)(c) of the *CHRA*;
- b. erred in fact and law by fettering its own decision by restricting its interpretation and application of the statutory provision by simply applying a questionable non-binding jurisprudential precedent to the issues before it; and
- c. contravened Section 50 of the *Canadian Human Rights Act* by failing to afford the Complainants a full and adequate opportunity to appear at the inquiry, present evidence and make representations about an absolutely critical legal and factual issue in the determination of the Complaints before it, prior to *a fortiori* deciding that critical issue.


8. The Applicants plead and rely upon:

- a. Sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended;
- b. Rules 300 and 317 of the *Federal Court Rules*, SOR/98-106;
- c. Paragraph 15(1)(c) of the *Canadian Human Rights Act*, as it was enacted at the relevant times giving rise to these complaints; and
- d. Such further and other statutes as counsel may advise and as this Honourable Court may permit.

9. This Application will be supported by the following materials:
- a. a supporting affidavit on behalf of the Applicants served and filed in accordance with Rule 306;
  - b. the relevant documentary submissions that were before the Tribunal; and
  - c. such further and other evidence as counsel may advise and this Honourable Court may permit.

Respectfully submitted this 24<sup>th</sup> day of October, 2022.

  
\_\_\_\_\_  
Raymond D. Hall  
Counsel to the "Coalition Complainants"

I HEREBY CERTIFY that the above document is a true copy of  
the original, issued out of / filed in the Court on the \_\_\_\_\_  
day of OCT 24 2022 A.D. 20\_\_\_\_  
Dated this \_\_\_\_\_ day of OCT 24 2022 20\_\_\_\_  


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