



04-DV-001010
Court File No.: ~~04CV~~

Ontario
**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

-and-

CANADIAN UNION OF LABOUR EMPLOYEES

Respondent

NOTICE OF APPLICATION FOR JUDICIAL REVIEW
pursuant to sections 2 and 6(2) of the
Judicial Review Procedure Act, R.S.O. 1990, c. J.1 as amended

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Court on a date to be fixed by the Registrar at the place of hearing requested by the applicant. The applicant requests that this application be heard at Ottawa Divisional Court at 161 Elgin Street, Ottawa, Canada, at a time and date to be fixed by the Registrar at 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 an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a

lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 20, 2004

Issued by:



Local Registrar

161 Elgin Street

Ottawa, Ontario K2P 2K1

TO: Canadian Union of Labour
Employees
c/o Public Service Alliance of
Canada
Calgary Regional Office
Hillhurst Professional Building
301-14th Street N.W.
Suite 302
Calgary AB T2N 2A1

Attention: Mr. David Jackson
President

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AND TO: Pamela Chapman
415 Riverdale Avenue
Ottawa ON K1S 1R8

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APPLICATION

1. **THE APPLICANTS MAKE APPLICATION FOR:**

- (a) judicial review of the decision of Pamela A. Chapman, Sole Arbitrator, dated February 19, 2004 granting the grievance of Alain St-Amour against the termination of his employment effective August 15, 2002;
- (b) an Order setting aside the decision and remitting the matter to the arbitrator upon a direction by this Court that the grievance be dismissed;
- (c) costs of this application; and
- (d) such further and other relief as counsel may advise and as to this Court may seem just.

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

- (a) the arbitrator exceeded the scope of arbitral review and thereby acted beyond jurisdiction and erred in law by granting the grievance against termination by a probationary employee despite:
 - (i) the arbitrator finding merit in the employer's conclusion the grievor was unsuitable for the position in which he was employed on a probationary basis; and
 - (ii) having made no finding that the decision of the employer to terminate the grievor's employment during the probationary period was arbitrary, discriminatory or made in bad faith;

- (b) The arbitrator erred in law by granting the grievance against termination of the employment of a probationary employee solely on grounds that the employer had failed to draw the specific concerns of the employer about the grievor's performance to the attention of the grievor on an ongoing basis throughout the probationary period.
- (c) Article 15 of the Collective Agreement between the Canadian Union of Labour Employees and the Public Service Alliance of Canada.
- (d) Sections 48, 50 *Labour Relations Act*, S.O. 1995, c.1, Sch. A., as amended.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- (a) the decision of Pamela Chapman, Sole Arbitrator, dated February 19, 2004;
- (b) the record of proceedings and exhibits filed;
- (c) such further and other material as counsel may advise and this Court may permit.

DATE: May 20, 2004

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Solicitors for the Applicant

PUBLIC SERVICE ALLIANCE OF CANADA
Applicant

and

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Ontario
**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Proceeding commenced at Ottawa

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JUDICIAL REVIEW**

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