

Court File No.: T-1291-18

FEDERAL COURT

REMUDA BUILDING LTD.

Applicant

- and -

CANADA (MINISTER OF EMPLOYMENT, WORKFORCE DEVELOPMENT 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 RESPONDENT:

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 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: July 3, 2018

Issued by:  **VALERIE JEAN-GILLES**
REGISTRY OFFICER
AGENT DU GREFFE
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario K1A 0H9

TO: CANADA (MINISTER OF EMPLOYMENT, WORKFORCE, AND LABOUR)
Civil Litigation Section
Department of Justice Canada
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date JUL 03 2018
Date de dépôt _____

JUL 03 2018 
Dated _____
Fait le _____

VALERIE JEAN-GILLES
REGISTRY OFFICER
AGENT DU GREFFE

Application

This is an Application for Judicial Review in respect of the decision of the Minister of Employment, Workforce, and Labour (the “Minister”), informing the Applicant, Remuda Building Ltd. (“Remuda”) that its application for Canada Summer Jobs (“CSJ”) funding had been denied (the “Decision”).

The Minister imposed an obligation on all CSJ applicants to make an Attestation which aligned the CSJ applicant with a particular position on abortion, a controversial moral, ethical and social issue and perhaps the most politically divisive issue in Canada. As a for-profit corporation, Remuda does not have a position or opinion on abortion or other political, moral, ethical and social issues completely unrelated to its business.

Remuda advised the Minister of its view and specifically requested that its *Charter* rights be accommodated. The Minister failed or refused to consider Remuda’s *Charter* rights and request for an accommodation of its *Charter* rights.

As a result, the Minister has acted without jurisdiction or beyond its jurisdiction; has erred in law; and is acting contrary to law within the meaning of section 18.1 of the *Federal Courts Act*.

The Applicant makes application for:

1. An Order setting aside the Minister’s refusal of Remuda’s CSJ application;
2. A declaration that the Decision violates sections 2(a) and 2(b) of the *Charter* and cannot be saved under section 1;
3. In the alternative, a declaration that the Decision was unreasonable;
4. A declaration that the Minister’s failure or refusal to provide Remuda with an accommodation of its *Charter* and other rights as requested violates sections 2(a) and 2(b) of the *Charter* and cannot be saved under section 1;
5. In the alternative, a declaration that the Minister’s failure or refusal to provide Remuda with an accommodation of its *Charter* was unreasonable;

6. A declaration that the imposition of the Attestation and the Minister's failure or refusal to accommodate Remuda's *Charter* rights constitutes a violation of the duty of state neutrality;
7. Orders pursuant to section 24(1) of the *Charier* and sections 18(1) and 18.2 of the *Federal Courts Act*:
 - i. in the nature of *certiorari* quashing the Decision;
 - ii. in the nature of *mandamus* requiring the Respondent to award those CSJ funds which would be awarded but for the requirement of the attestation;
8. Such further and other relief as counsel may advise and this Honourable Court considers just; and,
9. Its costs.

THE GROUNDS FOR THIS APPLICATION ARE:

The Parties

1. The Applicant, Remuda Building Ltd. is a for-profit corporation based out of Calgary, Alberta, and which is in the construction business.
2. Remuda intentionally does not engage in moral, ethical or social issues that are unrelated to the business in which it is engaged.
3. The Minister and the Ministry function pursuant to the *Department of Employment and Social Development Act*, S.C. 2005, c. 34 (the "*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*.
4. 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 students.

The Canada Summer Jobs Program

5. The CSJ is an initiative of the Summer Work Experience program. It provides wage subsidies to employers to create employment for secondary and post-secondary students.
6. CSJ 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 young people aged 15 to 30 years who are full-time students intending to return to their studies in the next school year.
7. The CSJ is created and operated pursuant to the *DESDA* which authorizes the Minister to:
 7. The Minister may, in exercising the powers and performing the duties and functions assigned by this Act, 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.
8. The Attestation is a new requirement in the CSJ program which was announced on December 19, 2017. It requires all organizations applying for a CSJ grant to make a attestation which included the following (the “ 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.
9. The CSJ program issued an Application Guide to provide applicants and prospective applicants with information related to the CSJ program. The Application Guide describes the Attestation as being “required for the application to be considered complete and eligible for assessment” (pages 6, 11 and 22). If applicants submit their application online, they “must check this box in order for [their] application to be assessed” (page 22).
10. The Application Guide provides a further explanation of the Attestation. It states:

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.(pages 3, 4)

11. On January 23, 2018, in the face of national outrage and controversy regarding the Attestation, the Ministry issued a document entitled "Supplementary Information." The Supplementary Information defined "core mandate" as used in the Attestation, as follows:

Core mandate: This is the primary activities undertaken by the organization that reflect the organization's ongoing services provided to the community. It is not the beliefs of the organization, and it is not the values of the organization.

Examples are illustrative and are provided to assist organizations in determining and attesting to their eligibility to apply:

- Example 1: An organization whose primary activities are focused on removing , or actively undermining existing women's reproductive rights, applies for funding. This organization would not be eligible to apply.
- Example 2: A faith-based organization with anti-abortion beliefs applies for funding to hire students to serve meals to the homeless. The organization provides numerous programs in support of their community. The students would be responsible for meal planning, buying groceries, serving meals, etc. This organization would be eligible to apply.
- Example 3: A faith-based organization that embraces a traditional definition of marriage but whose primary activities reduce social isolation among seniors applies for funding to hire students. The students would be responsible for developing and delivering programs to all seniors, regard less of sexual orientation, gender identity or expression. This organization would be eligible to apply.
- Example 4: A summer camp submits an application to hire students as camp counselors. However, the camp does not welcome LGBTQ2 young people. The camp is not eligible to apply.

12. On February 12, 2018, Remuda submitted an application for CSJ grants to fund 1 student job. When it submitted its CSJ application, Remuda did not check the box to confirm that it was making the Attestation. It did not check the box because doing so would have been a violation of its *Charter* rights to freedom of conscience, freedom of expression, freedom of thought, freedom of belief and freedom of opinion.
13. On February 13, 2018, Remuda was advised by Service Canada that its CSJ application was incomplete because the "I attest" box confirming that Remuda was making the Attestation had not been checked. Remuda was invited to resubmit its CSJ application by confirming that it was making the Attestation.
14. On February 22, 2018, Remuda responded to Service Canada's February 13, 2018 correspondence by confirming that its decision to not check the "I attest" box was intentional and was made in an effort to protect and preserve Remuda's *Charter* rights to freedom of conscience, freedom of expression, freedom of thought, freedom of belief and freedom of opinion. Remuda requested that its *Charter* rights be accommodated. The correspondence from Remuda:

We received a notification that our Canada Summer Jobs Program application form was incomplete because the Attestation box was not checked-off. This was intentionally left blank for reasons of conscience, thought, belief and opinion. We are a construction company and do not take or express positions on political, moral or social issues. We are therefore unable to attest that "Both the job and our 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 or sexual orientation, or gender identity or expression;" as set out in the Application, the Applicant's Guide and the Articles of Agreement.

Remuda Building respects all laws and regulations to which it is subject, but intentionally remains neutral on political, social and moral issues. If Remuda Building were to attest to the words and statements set out in the Application, the Applicant's Guide and the Articles of Agreement:

- we would be making a statement that we otherwise would not make, which we believe violates our freedom of expression under the Charter of Rights and Freedoms;
- we would be adopting or endorsing a political, social, moral or ethical view which we would not otherwise adopt or endorse, which we believe violates our freedom of conscience, freedom of thought, freedom of opinion and freedom of belief under the Charter; and,
- we would be attesting to factual statements that are vague, contested and controversial which we would not otherwise adopt or endorse, which we believe violates our freedom of expression, freedom of conscience, freedom of thought, freedom of opinion and freedom of belief under the Charter.

Remuda Building exists to construct buildings, not to pronounce itself on controversial or contested political, moral and social issues.

In our view, the Minister is prohibited from compelling Remuda Building to make statements or attestations, or adopt or endorse positions or views related to controversial or contested political, moral and social issues, for example, abortion.

We have no problem attesting to the following:

- I have read and understood the Canada Summer Jobs Articles of Agreement and referred to the Applicant Guide as needed;
- The job would not be created without the financial assistance provided under a potential contribution agreement;
- I have all the necessary authorities, permissions and approvals to submit this application on behalf of myself and the organization.

We therefore are requesting an accommodation of our rights under the Charter.

15. Remuda never received a response to its request for an accommodation of its *Charter* rights.
16. On June 1, 2018, Remuda was advised that its CSJ application had been ineligible because it was “incomplete and therefore ineligible for assessment” (the “Decision”).
17. The Decision did not address or respond to Remuda’s request for an accommodation of its *Charter* rights.

18. In previous years, Remuda successfully applied for CSJ grants. In 2017 for example, Remuda applied and was approved for a CSJ grant to hire a summer student. Nothing in Remuda's activities or business changed from 2017 to 2018.
19. The Decision to reject Remuda's CSJ application and to not accommodate Remuda's *Charter* rights violates the *Charter* and the duty of state neutrality. Specifically, the Decision violates Remuda's *Charter* rights to:
- a. Freedom of conscience;
 - b. Freedom of expression;
 - c. Freedom of thought;
 - d. Freedom of belief; and,
 - e. Freedom of opinion.
20. Remuda is a for-profit corporation in the construction business. Remuda as a corporation has no belief, thought or opinion on controversial moral, ethical and social issues including abortion.
21. Remuda has the right to operate in accordance with its objects and purposes (its corporate conscience) which do not include "taking sides" on divisive political, moral, ethical and social issues such as abortion.
22. By requiring it to check the "I attest" box, the Minister was compelling Remuda to say words or make statements it would not say or make but for the Minister's compulsion to do so.
23. The right to freedom of expression includes the right to say nothing. Similarly, the right to freedom of thought, belief and opinion include the right to have no thought, belief or opinion on specific matters, particularly controversial moral, ethical, social and political matters unrelated to one's business.

24. The Minister's failure or refusal to accommodate Remuda's *Charter* rights violates Remuda's rights to freedom of conscience, freedom of thought, freedom of belief and freedom of opinion and is unreasonable.
25. The Minister's failure or refusal to accommodate Remuda's *Charter* rights violates the duty to state neutrality.
26. The Attestation is *ultra vires* the Minister, whose authority, discretion and statutory mandate is set out in the *Department of Employment and Social Development Act*, S.C. 2005, c. 34.
27. The Attestation violates the *Charter*.
28. The Attestation attempts to impose *Charter* obligations on private actors.
29. Imposing the Attestation on Remuda and not addressing Remuda's request for an accommodation of its *Charter* rights does not contribute to the development of the human resources of Canada and the skills of Canadians and does not contribute to the social development of Canada. As such, it is contrary to the Minister's statutory authority and objectives.

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 Charter of Rights and Freedoms*, s 7, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c11, ss. 1, 2(a), 2(b), 24(1) and 32(1);
3. *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1.
4. *Federal Courts Rules*. SOR/98-106.

This Application will be supported by the following material:

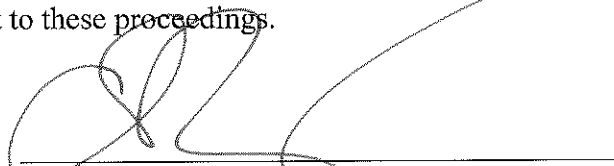
1. The Affidavit of Steve Schouten, to be sworn;
2. The record before the Minister or her delegates;

3. Such further and other affidavits and material as counsel may advise and this Honourable Court permit;

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

1. The record of all documents and other materials before the Minister in forming the decision to impose the Attestation on all CSJ applicants.
2. The record of all documents and other materials before the Minister or her delegates in forming the decision to reject Remuda's CSJ application and to not accommodate Remuda's *Charter* and other rights as requested by Remuda.
3. 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: July 3, 2018



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Court File No.:

FEDERAL COURT OF CANADA

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REMUDA BUILDING LTD.

Applicant

- and -

CANADA (MINISTER OF
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Respondent

NOTICE OF APPLICATION

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