

FEDERAL COURT OF APPEAL

TEAMSTERS CANADA RAIL CONFERENCE

Applicant

and

**CANADIAN NATIONAL RAILWAY COMPANY and CANADIAN PACIFIC KANSAS
CITY RAILWAY COMPANY**

Respondents

**APPLICATION UNDER SECTIONS 18.1, 28(1)(h) and 28(2) OF THE *FEDERAL
COURTS ACT***

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court hears otherwise, the place of hearing will be as requested by the applicant. The Applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario.

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 Court 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 Court 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.

August 29, 2024

Issued by: _____
(Registry Officer)

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AND TO:

Attorney General of Prince Edward Island
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APPLICATION

1. The Applicant, Teamsters Canada Rail Conference (“TCRC”) makes application for:
 - a. An Order in the nature of *certiorari* quashing the bottom-line decision of the Canada Industrial Relations Board (“CIRB”) dated August 24, 2024 in relation to Canadian National Railway Company (the “CIRB Decision”);
 - b. An Order in the nature of *certiorari* quashing Order No. 1566-NB made pursuant to the CIRB decision (the “CIRB Order”);
 - c. A Declaration that the CIRB Decision and CIRB Order infringe the Applicant’s associational rights guaranteed under section 2(d) of the *Canadian Charter of Rights and Freedoms* (the “Charter”);
 - d. A Declaration that the infringement is not a reasonable limit as prescribed by law as can be demonstrably justified in a free and democratic society under section 1 of the *Charter*;
 - e. A Declaration that the CIRB Decision and CIRB Order are *ultra vires* the Canada Industrial Relations Board pursuant to the *Canada Labour Code*, RSC 1985 c L-2 (the “Code”);
 - f. A Declaration that the CIRB Decision and CIRB Order are of no force or effect, or otherwise invalid;
 - g. An Order of damages pursuant to section 24 of the *Charter*;
 - h. Any other remedial order the Court considers appropriate and just in the circumstances pursuant to section 24 of the *Charter*;
 - i. The costs of this proceeding; and
 - j. Such further and other relief as Counsel may advise and this Honourable Court may deem just.


2. The grounds for the application with respect to the CIRB Decision are:
 - a. The CIRB failed to provide adequate procedural fairness to the TCRC before issuing the CIRB Decision and CIRB Order;

- b. The CIRB's interpretation and application of the *Code*, and in particular section 107, is unreasonable;
 - c. The CIRB erred in its conclusion that it was mandated to implement any Ministerial direction made pursuant to section 107;
 - d. The CIRB erred in failing to address the Applicant's challenge to the constitutionality of the Ministerial Direction made pursuant to section 107 dated August 22, 2024 ("**August 22 Direction**");
 - e. The CIRB erred by failing to conclude that the infringement on the Applicant's section 2(d) *Charter* rights by the August 22 Direction was not a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under section 1 of the *Charter*; and
 - f. The CIRB's Decision and CIRB Order was *ultra vires* the CIRB's jurisdiction pursuant to the *Code*; and
 - g. Such further and other grounds as Counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- a. The CIRB's bottom-line decision dated August 24, 2024 with respect to the Ministerial Direction made in relation to the dispute between the TCRC and Canadian National Railway Company;
 - b. The CIRB's Order dated August 24, 2024 implementing the August 24, 2024 Decision;
 - c. The CIRB's decision with reasons to be issued with respect to Ministerial Direction made in relation to the dispute between the TCRC and Canadian National Railway Company once issued to the Parties;
 - d. Material relevant to this application in the possession of the Canada Industrial Relations Board pursuant to Rule 317 of the *Federal Court Rules*;
 - e. An affidavit, to be filed by the Applicants if necessary, to ensure all the materials relevant to this application is before the Court, including with respect to the *Charter* issue(s);

- f. Any evidence presented by the Crown with respect to our *Charter* challenge to the Ministerial Directions;
 - g. A Notice of Motion for an expedited hearing to be filed;
 - h. A Notice of Motion filed pursuant to Rule 105(a) of the *Federal Court Rules* to consolidate this application for judicial review with an application for judicial review to be filed with respect to CIRB's decision dated August 24, 2024 implementing the Ministerial Direction dated August 22, 2024 regarding the dispute between the TCRC and CN;
 - i. A Notice of Constitutional Question to be filed;
 - j. Such further and other evidence as Counsel may advise and this Honourable Court may permit.
4. The Applicant requests the CIRB to send a certified copy of the following material that is not in the possession of the Applicant but it is in the possession of the Canada Industrial Relations Board to the Applicant and to the Registry:
- a. The full Record of Proceeding by which the CIRB made its August 24 Decision and issued its Order.
5. The Applicant requests that this matter be scheduled by the Judicial Administrator on an expedited basis.
6. The Applicant reserves the right to add to, amend or vary the grounds of this Notice of Application once the CIRB issues its reasons in relation to its August 24, 2024 Decision.

Dated at the City of Toronto, in the Province of Ontario, this 29th day of August, 2024.

CaleyWray Lawyers

Per: 
Michael A. Church
Counsel for the Applicant,
Teamsters Canada Rail Conference

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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Teamsters Canada Rail Conference
Applicant

-and-

**Canadian National Railway Company and
Canadian Pacific Kansas City Railway Company**
Respondents

Court File No.

FEDERAL COURT OF APPEAL

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

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Solicitors for the, Applicant,
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Federal Court of Appeal Electronic Filing System

Submission Confirmation

You have made a submission to the Federal Court of Appeal's E-Filing System.

Please note that a document is not considered filed until it is accepted for filing by the Court or the Registry. You will receive an email confirming the status of your submission after it has been reviewed by the Registry.

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You have submitted 1 document(s) to the Toronto Registry Office.

Your confirmation number is **2024-8-29-100404587452151**.

Date submitted: 2024-08-29 10:04:04 Eastern time zone
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Filing Fees

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Information on Your Submission

Court: Federal Court of Appeal

Language: English

Proceeding Type: Application for Judicial Review

Proceeding Subject: Application for Judicial Review

Proceeding Nature: Canada Industrial Relations Board

Party's Internal File Number: 48091

Style Of Cause: Teamsters Canada Rail Conference v.
Canadian National Railway Company et al.

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Language of communication with Registry: English

Filing Information

Filing Urgency: No

Registry Office: Toronto

Filing Documents

Documents Submitted	Filing Party	Handling Instructions for the Submission
Document Type Notice of Application	Teamsters Canada Rail Conference	
Document Name 240829 - TCRC and CN Rail and CPKC Rail - Notice of Application - CN.pdf		
Document Language English		

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Date modified:

2024-02-22

Rozana Singh

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Sent: Thursday, August 29, 2024 10:07 AM
To: Michael Church
Cc: Rozana Singh
Subject: Federal Court of Appeal E-Filing Submission Confirmation

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Date submitted: 2024-08-29 10:05:10 Eastern time zone

Court: Federal Court of Appeal
Confirmation Number: 2024-8-29-100404587452151

Proceeding Type: Application for Judicial Review
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Is Filing Urgent?: No

Urgency Description:

Filing Party: Teamsters Canada Rail Conference

Document Type: Notice of Application

Document Name: 240829 - TCRC and CN Rail and CPKC Rail - Notice of Application - CN.pdf

Party List

Party Name: Teamsters Canada Rail Conference

Party Role: Applicant

Party Name: Canadian National Railway Company

Party Role: Respondent

Party Name: Canadian Pacific Kansas City Railway Co

Party Role: Respondent

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