

Court File No. A- 15-23

FEDERAL COURT OF APPEAL
PROPOSED CLASS PROCEEDING

BETWEEN:

HIS MAJESTY THE KING



- and -

HARVEY ADAM PIERROT

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	JAN 20 2023
VANESSA GEORGE	
TORONTO, ON	- / -

Appellant
(Defendant)

Respondent
(Plaintiff)

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at the Federal Court of Appeal in Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

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 APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date): 20 JAN 2023 Issued by: _____

VANESSA GEORGE
(Registry Officer) REGISTRY OFFICER
AGENT DU GREFFE

Address of Local office: 180 Queen Street West
Suite 200
Toronto, ON M5V 3L6

TO: The Administrator
Federal Court of Appeal
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO: **Cooper Regel LLP**
77 Chippewa Road
Sherwood Park, Alberta T8A 6J7
Phone: 1-780-570-8448
Fax: 1-780-570-8467

Steven Cooper: Steve@cooperregel.ca
Mary Grzybowska: Mary@cooperregel.ca
Jenna Broomfield: Jenna@cooperregel.ca

Murphy Battista LLP
2020 – 650 West Georgia Street
Vancouver, BC V6B 4N7
Tele: (604) 683-9621
Fax: (604) 683-5084

Angela Bespflug: Bespflug@murphybattista.com
Janelle O'Connor: oconnor@murphybasttista.com

Counsel for the Respondent

AND TO: KLEIN LAWYERS LLP

Barristers and Solicitors

David Klein

Aden Klein

40-1385 West 8th Avenue

Vancouver, BC

V6H 3V9

Tel: (604) 874.7171

Fax: (604) 874.7180

Counsel for the Respondent

APPEAL

THE APPELLANT, HER MAJESTY THE QUEEN, APPEALS to the Federal Court of Appeal from the Judgment of the Honourable Justice Zinn (the “Motion Judge”), dated January 10, 2022, in which he dismissed the Appellant’s motion for an order staying the action without costs (the “Order”).

THE APPELLANT ASKS that this Honourable Court:

1. Allow the appeal and set aside the Order;
1. Stay the action indefinitely; and
2. Grant such further and other relief as counsel may advise and this Honourable Court permit.

THE GROUNDS OF APPEAL are as follows:

2. The Respondent is an Indigenous former member of the Royal Canadian Mounted Police (“RCMP”). In the court below, the Appellant sought to stay this proposed class action, and the proposed class action in *Hudson v HMTK*, Federal Court File No.: T-723-20, as they overlap and are duplicative of two already certified class proceedings: *Greenwood and Gray v HMTK*, Federal Court File No. T-1201-18 (“*Greenwood*”); and *l’Association des membres de la police montée du Québec Inc., et al v. HMTK*, Québec Superior Court File No.500-06-000820-163, (“*AMPMQ*”). In the alternative, the Appellant sought to permanently stay the *Pierrot* action in favour of the *Hudson* action.
3. In the Reasons for Order, dated January 10, 2023, the Motion Judge found that “[b]oth *Hudson* and *Pierrot* base the action on systemic racism whereas, as is described in the Reasons for dismissing the motion for a stay in *Hudson*, *Greenwood* and *AMPMQ* appear to address acts of direct and overt discrimination.” On this basis, he declined to stay the action in favour of *Greenwood* and *AMPMQ*. Instead, the Motion Judge granted the alternative relief sought in part, and ordered a *temporary* stay of the action, pending a final determination in *Hudson*.
4. The Motion Judge erred in law in defining discrimination as binary or comprised of two discrete categories: individual (explicit or overt) or systemic (implicit). This error in principle resulted in an artificial or arbitrary distinction that was, in any event, not grounded in a proper analysis of the pleadings. All four actions are based on alleged systemic failures, which have led to “negative impacts” in the form of general and enumerated grounds-based harassment, as well as adverse effects discrimination on enumerated grounds.

5. The Motion Judge made palpable and overriding errors of fact and of mixed fact and law in characterizing the nature of each of the actions and the common issues that have been certified. In particular:
- (a) the Motion Judge erred in his characterization of *Hudson* as focused on implicit misconduct, policies, and procedures that do not require explicit actions in order to be discriminatory. In fact, the Respondent's Statement of Claim and affidavit are replete with allegations of explicit acts of racism and race-based harassment. Both *Greenwood* and *AMPMQ* allege systemic discrimination, which includes explicit or implicit misconduct. Moreover, in *Greenwood* and *AMPMQ*, the certified common issues are based on the RCMP's negligent failure to provide RCMP members and others working in RCMP workplaces with a safe and healthy workplace, free from discrimination and harassment. These common issues are identical to the "essential character" of the claim advanced in *Hudson* and in *Pierrot*;
 - (b) the Motion Judge erred in his characterization of *Greenwood* in particular, when he found that, that class proceeding was focused on "the negative impacts of touching, exposure, belittling and demeaning comments." In fact, as noted by the certification judge and the Federal Court of Appeal, the *Greenwood* action is broadly cast to include any and all instances of workplace harassment, or discrimination of any form, and on any ground, including race;
 - (c) the Motion Judge erred in his characterization of *AMPMQ*, when he found that: "The only allegations of specific discrimination are stated to be based on "belonging to the language group of French locutors" and "by reason of their activities related to freedom of association and the right to unionize." In fact, while the Quebec Superior Court did identify the two subgroups described here, the main class was cast broadly to include any abuse of power, including discrimination on any enumerated ground, including race, colour, national or ethnic origin or religion; and
 - (d) the Motion Judge further erred in failing to give authoritative and binding effect to the *Greenwood* and *AMPMQ*'s certification decisions, which determine their scope and essence in consideration of the goals of class proceedings: access to justice, behaviour modification and judicial economy, and in concluding that both *Hudson* and *Pierrot* are not a subset of the above certified classes.
6. In characterizing the claims as he did, the Motion Judge committed palpable and overriding errors of fact and mixed fact and law. But for these errors in characterization, the Motion Judge's reasons are clear that the considerations for a stay, which include the "unnecessary costly duplication of judicial and legal resources, lessen[ing] the risk of inconsistent decisions, and reduc[ing]

any prejudice to Canada in having to defend the same allegations on different fronts” would weigh in favour of granting the Appellant’s motion. This statement in *Hudson*, applies equally to *Pierrot*.

7. The Motion Judge made further palpable and overriding errors of fact and mixed fact and law in failing to take into account, as a relevant factor in the exercise of his discretion, that the common issues that were certified in *Greenwood* and *AMPMQ*, were by definition focused on systemic acts and omissions, and are not limited to individual or overt acts of harassment and discrimination.
8. The Motion Judge made an error in principle in failing to consider the goals of class proceedings in dismissing the motion to stay *Pierrot*. The Motion Judge’s decision does not consider the context of class proceedings in its assessment of the interests of justice. Although a stay is a discretionary decision, it must be made within its complete context and in light of a whole of a class perspective, which includes the avoidance of a multiplicity of overlapping and duplicative proceedings.
9. Additionally, the Motion Judge erred in his identification of the appropriate remedy and should have entered a permanent stay in *Pierrot*. In acknowledging that *Pierrot* is duplicative of *Hudson*, it was appropriate to enter a permanent stay of proceedings.
10. *Federal Courts Act*, RSC 1985, c F-7, Sections 27 and 50.
11. *Federal Courts Rules*, SOR/98-106, Rules 3, 4, 105 and Part 5.1.
12. Such further grounds as counsel may advise and this Honourable Court may permit.

January 20, 2023

**Pollice,
Jacob**

Digitally signed by Pollice, Jacob
DN: C=CA, O=GC, OU=Jus-Jus, CN="Pollice, Jacob"
Reason: I agree to specified parts of this document
Location: your signing location here
Date: 2023.01.20 16:00:35-05'00"
Foxit PhantomPDF Version: 10.1.1

Attorney General of Canada
Department of Justice Canada
National Litigation Sector
120 Adelaide Street West Suite #400
Toronto, ON M5H 1T1

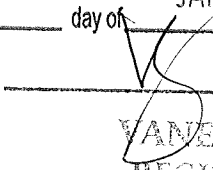
Per: Christine Mohr/ Jacob Pollice/
Marilyn Venney
Tel: (416) 953-9546 / (416) 256-0542
Fax: (416) 952-4518
File:

Counsel for the Appellant

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 JAN 20 2023 A.D. 20 _____

Dated this _____ day of JAN 20 2023 20 _____


VANESSA GEORGE
REGISTRY OFFICER
AGENT DU GREFFE