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F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE September 11, 2023 11 septembre 2023 Justin Wong		
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Federal Court of Appeal File No. T-445-20  
Federal Court File No. T-445-20

**FEDERAL COURT OF APPEAL**  
**PROPOSED CLASS PROCEEDING**

**B E T W E E N:**

**STEPHANIE DIFEDERICO and JAMESON EDMOND CASEY**

**Appellants**

**and**

**AMAZON.COM, INC., AMAZON.COM.CA, INC., AMAZON.COM SERVICES LLC,  
AMAZON SERVICES INTERNATIONAL, INC., and  
AMAZON SERVICES CONTRACTS, INC.**

**Respondents**

**NOTICE OF APPEAL**

**TO THE RESPONDENTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellants. The relief claimed by the appellants 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 appellants. The appellants request that this appeal be heard at Toronto or such other place where the Federal Court of Appeal ordinarily sits.

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 appellants' solicitor, or where the appellants are self-represented, on the appellants, WITHIN 10 DAYS of 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 \_\_\_\_\_ Issued by \_\_\_\_\_  
(Registry Officer)

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Solicitors for the Respondents

## **APPEAL**

**THE APPELLANTS APPEAL** to the Federal Court of Appeal from the order of The Honourable Chief Justice Crampton dated 28 August 2023 in Court File No. T-445-20 (“Order”) by which the Federal Court dismissed the appellants’ motion to certify this action as a class proceeding.

### **THE APPELLANTS ASK** that:

The Order of the Federal Court be set aside, this Court grant the appellants’ motion to certify this action as a class proceeding, and give any necessary consequential directions for the future conduct of the action.

### **THE GROUNDS OF APPEAL** are as follows:

1. The motion judge erred in law or made palpable and overriding errors by failing to certify the action as a class proceeding under Rule 334.16 (1) of the Federal Courts Rules SOR/98-106.
2. The motion judge erred in law or made palpable and overriding errors by holding that the pleadings do not disclose a reasonable cause of action under Rule 334.16(1)(a) of the Federal Courts Rules SOR/98-106.
3. The motion judge erred in law or made palpable and overriding errors by failing to apply or to correctly apply the law on when pleadings do not disclose a reasonable cause of action under Rule 334.16(1)(a) of the Federal Courts Rules SOR/98-106.

4. The motion judge erred in law or made palpable and overriding errors by considering and judging the merits of the action when reviewing the pleading and applying the certification criteria under Rule 334.16 (1) of the Federal Courts Rules SOR/98-106.
5. The motion judge erred in law or made palpable and overriding errors in failing to apply sections 36(1) and 45(1) of the *Competition Act* R.S.C. 1985, c. C-34 to the allegations pleaded in the Statement of Claim.
6. The motion judge erred in law or made palpable and overriding errors in construing section 36(1) of the *Competition Act* R.S.C. 1985, c. C-34.
7. The motion judge erred in law or made palpable and overriding errors in construing section 45(1) of the *Competition Act* R.S.C. 1985, c. C-34.
8. The motion judge erred in law or made palpable and overriding errors in using extrinsic evidence to interpret the *Competition Act* R.S.C. 1985, c. C-34.
9. The motion judge erred in law or made palpable and overriding errors by disregarding or refusing to apply this Court's decision in *Mohr v. National Hockey League* 2022 FCA 145.
10. The motion judge erred in law or made palpable and overriding errors in preferring his policy over the policy of Parliament when construing the *Competition Act* R.S.C. 1985, c. C-34.
11. The motion judge erred in law or made palpable and overriding errors by concluding that allowing this action to be certified and continue in the Federal Court


would be contrary to the law and practice of the court on cases brought under s. 36(1) of the *Competition Act* R.S.C. 1985, c. C-34.

12. The motion judge erred in law or made palpable and overriding errors by weighing irrelevant factors when considering this motion, including how the decision in the case under appeal will affect future proceedings to be filed in the Federal Court under s. 36(1) of the *Competition Act* R.S.C. 1985, c. C-34.

13. The motion judge erred in law or made palpable and overriding errors in stating that other judges on the Federal Court to whom this case could be assigned will accept the motion judge's disposition of this proceeding and hence will interpret and apply the *Competition Act*, R.S.C. 1985, c. C-34 in the same way as the motion judge did.

14. The motion judge erred in law or made palpable and overriding errors by predetermining how other cases filed in the Federal Court under s. 36(1) of the *Competition Act* R.S.C. 1985, c. C-34 will be decided.

11 September 2023



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Solicitor for the Appellants

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