

CANADA / JUDGMENT

Hudson v. Canada

2023 FC 35

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Hudson v. Canada Court (s) Database Federal Court Decisions Date 2023-01-10 Neutral citation 2023 FC 35 File numbers T-723-20 Decision Content Date: 20230110 Docket: T-723-20 Citation: 2023 FC 35 Ottawa, Ontario, January 10, 2023 PRESENT: The Honourable Mr. Justice Zinn PROPOSED CLASS PROCEEDING BETWEEN: MARGORIE HUDSON Plaintiff and HIS MAJESTY THE KING Defendant ORDER AND REASONS

- [1] Canada moves to stay this proceeding [Hudson] on the basis that the claims asserted and the proposed class fall within two certified class actions: Greenwood and Gray v His Majesty the King (Federal Court File T-1201-18) [Greenwood] and Association des membres de la police montée du Québec Inc et al v His Majesty the King (Québec Superior Court File 500-06-000820-163) [AMPMQ]. It submits that: All three cases involve the same dispute or subject matter: whether the RCMP failed to provide a workplace free of harassment and/or discrimination, intimidation and bullying. The cases traverse the same factual ground, allege the same wrongdoing and claim damages in respect of the same losses.
- [2] The Plaintiff resists this motion. She says that her action “deals with systemic racism – institutional systems, policies, procedures, cultures and behaviours which sometimes appear neutral, but in effect slant against racialized individuals.” She says that neither Greenwood nor AMPMQ is about systemic racism. She submits that: Hudson is the only one of the three actions capable of achieving access to justice and behavioural change on systemic racism. The Greenwood action concerns general harassment and bullying within the RCMP. The AMPMQ action concerns harassment and reprisals regarding speaking French and freedom of association. Hudson is the only action which pleads, explains, particularizes and seeks damages arising from systemic racism. The AMPMQ Action
- [3] An application to the Québec Superior Court to authorize a class proceeding was made on November 2, 2016. On August 15, 2018, the Court authorized the institution of a class action (Association des Membres de la Police Montée du Québec Inc et al v Sa Majesté la Reine, 2018 QCCS 3855). The bilingual order of the Court is attached as Appendix A. This authorization was affirmed on appeal to the Québec Court of Appeal (Association des Membres de la Police Montée du Québec Inc et al v Sa Majesté la Reine, 2018 QCCA 1993).

- [4] The Superior Court authorized a class comprised of all members and civilian members of the RCMP holding a document or series of documents issued by the RCMP stating a position detrimental to them and allowing to presume that they were then victims of one of the Injuries contained in the expression « Abus de pouvoir ». “Abus de pouvoir” or “Abuse of Power” is defined in the authorization as “synonym of ‘injury’ and comprises physical harassment, psychological harassment, retaliation, discrimination and all other form of abuse of power [sic].”
- [5] The record shows that the plaintiffs’ originating proceeding (the “demande introductive d’instance d’une action collective”), issued on December 4, 2018, and Canada entered a statement of defence on February 26, 2021, after the expiry of the opt out period. Canada asserts that the case is moving towards trial. The Greenwood Action
- [6] The Greenwood Action was commenced in this Court on June 22, 2018. It was certified as a class proceeding on January 23, 2020 (*Greenwood v Canada*, 2020 FC 119). An appeal was dismissed (*Canada v Greenwood*, 2021 FCA 186; however, the Federal Court of Appeal amended the class definition to introduce a start date and it narrowed the categories of workers to be included. Following the denial of leave to appeal to the Supreme Court of Canada (*Canada v Greenwood*, 2021 SCCA No 377, 2022 CanLII 19060), a Certification Order issued on September 20, 2022. It is attached as Appendix B.
- [7] The Class in Greenwood is defined as follows: All current or former RCMP Members (ie. Regular, Civilian, and Special Constable Members) and Reservists who worked for the RCMP between January 1, 1995 and the date a collective agreement becomes or became applicable to a bargaining unit to which they belong. This Class Proceeding excludes claims that are covered under *Merlo v Her Majesty the Queen*, Federal Court File No. T 1685 16, *Ross et al v Her Majesty the Queen*, Federal Court File No. T-370-17, and *Gaétan Delisle et al c Sa Majesté Le Roi*, Quebec Superior Court No. 500-06-000820-163.
- [8] The certification order describes the nature of the claims made as “systemic negligence” and details that specifically as the following: [T]here was a culture of systemic bullying, intimidation and harassment at the RCMP that affected all who worked for the RCMP and that in allowing this culture to manifest and permeate the organization from its highest levels, the RCMP failed to fulfil its duties to provide the Class Members with a work environment free of bullying, intimidation and harassment, generally, as well as based on any grounds (including but not limited to sex, gender, race, ethnicity or religion). The Test for a Stay
- [9] It is not disputed that this Court has jurisdiction to grant the relief requested. In *Coote v Lawyers’ Professional Indemnity Company*, 2013 FCA 143 [Coote], Justice Stratas observed that this jurisdiction is founded on section 50 of the Federal Courts Act, RSC 1985, c F-7, and the Court’s plenary jurisdiction to manage and regulate its own proceedings. Here, Canada relies on paragraph 50(1)(b) of the Federal Courts Act which provides that the Court “may, in its discretion, stay proceedings in any cause or matter ... [where] it is in the interests of

justice that the proceeding be stayed.”

- [10] Useful guidance on the principles to be considered when analyzing the interests of justice may be found in the many authorities put before the Court. These include: *Coote*; *Mylan Pharmaceuticals ULC v AstraZeneca Canada Inc.*, 2011 FCA 312; *Clayton v Canada (Attorney General)*, 2018 FCA 1; *Power to Change Ministries v Canada (Employment, Workforce and Labour)*, 2019 CanLII 13579; 1395804 *Ontario Ltd (Blacklock’s Reporter) v Canada (Attorney General)*, 2016 FC 719; *Jensen v. Samsung Electronics Co, Ltd.*, 2019 FC 373; *Campeau v Canada*, 2021 FC 1449; and *Richards v Canada*, 2021 FC 231 [Richards].
- [11] Ultimately, as Justice Norris observed in *Richards* at para 10: “This being a matter of discretion, there are no hard and fast rules.” The burden is on Canada to persuade the Court that the interests of justice is served if this action is stayed. Canada’s Position
- [12] Canada submits that the interests of justice warrants the requested relief being issued and its submissions are focused on the following: Both the factual foundation and the issues raised herein are duplicative of those in *Greenwood* and *AMPMQ*; The granting of a stay will prevent unnecessary and costly duplication of judicial and legal resources; Allowing this action to proceed creates a risk of inconsistent decisions; Allowing this matter to proceed is inherently prejudicial to Canada and a stay causes no prejudice to the Plaintiff; and This action is at an early stage in the litigation, whereas *Greenwood* and *AMPMQ* have both been certified and are well into the litigation.
- [13] In my assessment, all of Canada’s submissions that a stay is warranted rest on its view that the factual foundation and the issues raised herein are duplicative of those in *Greenwood* and *AMPMQ*. If so, then it follows that a stay will likely prevent unnecessary costly duplication of judicial and legal resources, lessen the risk of inconsistent decisions, and reduce any prejudice to Canada in having to defend the same allegations on different fronts.
- [14] Canada submits that “all three cases involve the same dispute or subject matter: whether the RCMP failed to provide a workplace free of harassment and/or discrimination, intimidation and bullying.” Canada says that *Hudson* arises from the same factual allegations as *Greenwood* and *AMPMQ* “and fundamentally seeks relief for the same alleged injuries on behalf of the same groups of workers.” It asserts that *Hudson* seeks to examine the same questions regarding the duty of the RCMP in the workplace, and the same systems, processes, and people as *Greenwood* and *AMPMQ*. In its memorandum at paragraphs 52 and 53, Canada states: The essential character of the *Hudson*, *Greenwood* and *AMPMQ* claims are duplicative. The claim advanced in *Hudson* is said to arise from, inter alia, the alleged failure of the RCMP, as employer, to provide the plaintiff and other Class Members with a workplace free from harassment or discrimination. The particulars of the claim allege a series of failures which involve examination of the RCMP’s internal complaint, harassment and grievance procedures, which Ms. *Hudson* alleges are inadequate to detect, deter, investigate and provide adequate corrective action in situations of harassment or discrimination on the basis of race. Each of the overlapping claims share the same factual

basis—namely that members of the RCMP are subject to harassment and discrimination in the workplace by RCMP employees and management. This is presented in broad terms in AMPMQ and Greenwood to include all forms of harassment and discrimination regardless of the alleged tortfeasors' motivation (i.e. inclusive of harassment or discrimination motivated by racism). The claims outlined in Hudson form a subset of those allegations, focused on 'racism and race-based harassment and discrimination.' Adjudication of the Greenwood and AMPMQ claims will necessarily involve the examination of the exact same workplaces, exact same systems and policies, and the exact same individuals as will be required to adjudicate the claims in Hudson. [citations omitted]

- [15] Canada says that the Hudson claim arises from the alleged failure of the RCMP to provide a workplace free from harassment or discrimination and that it alleges a failure of the RCMP's internal complaint, harassment and grievance procedures. The claim asserts that they are inadequate to detect, deter, investigate, and provide adequate corrective action in situations of harassment or discrimination based on race. Canada further argues that each of the overlapping claims share the same factual basis, that members of the RCMP are subject to harassment and discrimination in the workplace by RCMP employees and management.
- Analysis of Canada's Position
- [16] In my view, Canada characterizes the claims too broadly. Each of the three claims is composed of members of the RCMP who were subject to harassment and discrimination in the workplace by RCMP employees and management; however, the factual basis of Hudson is distinct from that of Greenwood and AMPMQ.
- [17] The focus of the claim in Greenwood is on the bullying, intimidation and harassment of individuals working with or for the RCMP. This includes unwanted physical or sexual exposure and/or touching, retaliation for complaining, and demeaning and belittling comments made to and/or about First Nations Peoples, other non-Caucasian individuals and/or non-native English speakers. Greenwood is focused on the negative impacts of touching, exposure, belittling and demeaning comments.
- [18] The focus of AMPMQ appears to be on abuse of power based on discrimination resulting in injury because of harassment, psychological harassment, or retaliation. 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."
- [19] On the other hand, Hudson focuses on the impact of systemic racism. Hudson alleges a failure by the RCMP to provide adequate training regarding the harmful effects of racism, the failure to have or enforce adequate policies, procedures, and/or guidelines to minimise the risk of being subjected to racism. Hudson is focused on the discriminatory impact on racialized individuals resulting from the procedures and policies.

- [20] Systemic discrimination has been described as one of “the most subtle forms of discrimination:” *Public Service Alliance of Canada v Canada (Treasury Board)*, 1991 CanLII 387 (CHRT) at p 8.
- [21] The Supreme Court of Canada has examined this subtle form of discrimination in the employment context. The earliest is its decision in *CN v Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114 [Action Travail]. At p 1139 Chief Justice Dickson, relying on the Report of the Commission on Equality in Employment authored by then Judge Rosalie Abella, writes: In other words, systemic discrimination in an employment context is discrimination that results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is the result of “natural” forces, for example, that women “just can’t do the job” (see the Abella Report, pp. 9-10). To combat systemic discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged.
- [22] Similar to systemic discrimination as described in *Action Travail*, the factual basis of systemic racism in *Hudson* is based on implicit misconduct, policies, and procedures that do not require explicit actions in order to be discriminatory. Therefore, *Hudson*’s factual basis is distinct from that of *Greenwood* and *AMPMQ*, which requires explicit action from another in order to be discriminatory and found the cause of action.
- [23] Canada further says that the claims outlined in *Hudson* are a subset of those alleged in *AMPMQ* and *Greenwood* that focus on racism and race-based harassment and discrimination. Again, I disagree.
- [24] The focus of *Hudson* is discrimination based on systemic racism, an implicit misconduct, whereas the focus of *Greenwood* is on bullying, intimidation, harassment, and explicit misconducts. To suggest that *Greenwood* is focused on race-based harassment and discrimination implies that *Greenwood* will advance claims of systemic racism. This is far from established. There is little mention of racism and no mention of systemic racism in *Greenwood* or *AMPMQ*.
- [25] The difference between explicit and implicit misconduct alleged in these actions may be illustrated by the following.
- [26] *Greenwood* provides particulars of bullying, intimidation, and harassment as including those “class members who spoke out against, complained or reported bullying, intimidation and/or harassment, suffered retaliation and repercussions from RCMP Employees as they were isolated, ostracized, and/or punished.” These are all actions explicitly taken against class members.

- [27] By way of comparison, in Hudson, although there are allegations of explicit misconduct directed towards her, Ms. Hudson alleges that she was never considered for promotion, received lower remuneration, worse training, education and mentorship than her non-racialized colleagues. The misconducts complained of in Greenwood were because an individual committed an act, such as filing a complaint or report. In Hudson, the Plaintiff merely had to exist and have certain immutable characteristics to suffer the alleged discrimination. This example further demonstrates that Hudson appears to be addressing different factual and legal issues than Greenwood.
- [28] Canada also advanced other submissions, which it argues ought to lead to an order staying Hudson. These include an allegation that Ms. Hudson falls within the certified class definition in Greenwood and that there is no evidence of a putative class member who falls outside either the class definition or class time period in Greenwood, that the proposed class definition includes categories of workers who are not class members of Greenwood and that AMPMQ is unlikely to be successful, and includes public service employees statutorily barred by section 236 of the Federal Public Sector Labour Relations Act, SC 2003, c 22, s 2. To my mind, these are all matters better left to the Judge hearing the certification motion.
- [29] I agree with Ms. Hudson that there is no indication that AMPMQ and Greenwood will look at anything more than explicit behavior. The two certified actions have “no plan to engage with experts to explore the systemically racist effects of recruitment, policies, procedures, cultures, and behaviours which appear neutral on the surface.” Thus, there is no indication that systemic racism will be dealt with in Greenwood.
- [30] I also agree that the observation of Justice Norris in Richards at para 18 is apt here. He observed that it would be unfair to the plaintiff “in the presentation of his case to break that narrative up into discrete pieces and then require him to litigate them in different courts.”
- [31] Similarly, it would be unfair to Ms. Hudson to break her claim into discrete pieces and then require her to litigate them in different actions. Allowing her to present her case in a single narrative will ensure that this Court is in the best position to make the findings of fact in relation to her allegations of systemic racism.

Conclusion

- [32] For these reasons, Canada’s motion to stay Hudson is dismissed, without costs. ORDER in T-723-20 THIS COURT ORDERS that the motion to stay Hudson is dismissed, without costs. "Russel W. Zinn" Judge Appendix A Appendix B FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-723-20 STYLE OF CAUSE: MARGORIE HUDSON v HIS MAJESTY THE KING PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA DATE OF HEARING: October 4, 2022 ORDER AND REASONS: ZINN J. DATED: JANUARY 10, 2023 APPEARANCES: David Klein Aden Klein Angela Bessflug Steven L. Cooper, K.C. Maria Grzybowska For The Plaintiff Christine Mohr Jacob Pollice Marilyn Venney For The Defendant SOLICITORS OF RECORD: Klein Lawyers LLP Barristers and Solicitors Vancouver, British Columbia Klein Avocats

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