Federal Court  Cour fédérale

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:

a. Both the factual foundation and the issues raised herein are duplicative of those in *Greenwood* and *AMPMQ*;
b. The granting of a stay will prevent unnecessary and costly duplication of judicial and legal resources;
c. Allowing this action to proceed creates a risk of inconsistent decisions;
d. Allowing this matter to proceed is inherently prejudicial to Canada and a stay causes no prejudice to the Plaintiff; and
e. 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

POUR CES MOTIFS, LE TRIBUNAL :

[231] **ACCUEILLE** en partie la demande d'autorisation;

[232] **AUTORISE** l'exercice de l'action collective suivante :

Action en responsabilité civile avec conclusions déclaratoires et injonctives et de condamnation à des dommages-intérêts et à des dommages punitifs;

[233] **ATTRIBUE** à l'Association des membres de la police montée du Québec inc., à Paul Dupuis et à Marc Lachance (mais non à Gaétan Delisle) le statut de représentants aux fins d'exercer cette action collective pour le compte du groupe et des sous-groupes décrits au paragraphe suivant;

[234] **DÉCRIT** comme suit le groupe et les deux sous-groupes pour lesquels l'action collective est autorisée :

DESCRIPTION FINALE

1. Groupe principal : tous les membres et membres civils de la Gendarmerie royale du Canada détenant un document (ou une série de documents) émanant de la GRC exprimant une position qui leur est défavorable et laissant présumer qu'ils sont alors victimes d'une des Fautes englobées dans l'expression « Abus de pouvoir » (définie ci-après), de la part d'un membre de l'État-major de la GRC (défini ci-après), à la condition de remplir l'une des conditions suivantes :

[231] **GRANTS** in part the application for authorization;

[232] **AUTHORIZES** the institution of the following class action :

Action in civil liability with declaratory and injonctive conclusions, and the award of damages and punitive damages;

[233] **DESIGNATES** l'Association des membres de la police montée du Québec inc., Paul Dupuis and Marc Lachance (but not Gaétan Delisle) to act as representatives of the group and subgroups described in the following paragraph;

[234] **DESCRIBES** as follows the main class and the two sub-classes for which the class action is authorized :

FINAL DESCRIPTION

1. Main class : all members and civilian members of the Royal Canadian Mounted Police 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 » (defined hereinafter), by a member of the Staff of the RCMP (defined hereinafter), on the condition of fulfilling one of the following requirements :

- avoir subi le préjudice de la Faute au Québec;
- avoir subi le préjudice de la Faute commise par un membre de l'État-major alors situé au Québec;
- avoir été tenu d'exercer au Québec leurs fonctions au sein de la GRC, au moment de la commission de la Faute;
- avoir été domiciliés au Québec ou y avoir résidé au moment de subir le préjudice de la Faute;

2. Premier sous-groupe : en tant que premier sous-groupe, tous les membres du groupe principal qui, tout en remplissant les critères du sous-paragraphe 1, ont subi le préjudice en raison de leur appartenant au groupe linguistique francophone;

3. Deuxième sous-groupe : en tant que deuxième sous-groupe, tous les membres du groupe principal qui, tout en remplissant les critères du sous-paragraphe 1, ont subi le préjudice en raison de leurs activités en lien avec la liberté d'association et le droit de former un syndicat;

4. Personnes exclues : sont toutefois exclues toutes les personnes appartenant au groupe régi par le jugement de la Cour fédérale du 30 mai 2017 dans l'affaire *Merlo* c. *Canada*;

5. L'expression « État-major » inclut,

- having suffered the Injury in Québec;
- having suffered Injury resulting from a Fault committed by a Staff member then situated in Québec;
- having to perform their duties for the RCMP in Québec, at the time when the Injury was committed;
- having the domicile or their residence in Québec when they suffered the Injury;

2. First subclass : as the first subclass, all the members of the main group who, while meeting the criteria of subparagraph 1, suffered the Injury by reason of belonging to the language group of French locutors;

3. Second subclass : as the second subclass, all the members of the main group who, while meeting the criteria of subparagraph 1, suffered the Injury by reason of their activities related to freedom of association and the right to unionize;

4. Excluded persons : are however excluded all persons belonging to the class governed by the judgment of the Federal Court rendered on May 30, 3017 in the matter of *Merlo* v. *Canada;*

5. The word « Staff » includes alternatively :

alternativement :

a) tout officier de la GRC détenant au moment de la Faute un grade plus élevé que celui de la victime;

b) une personne détenant un attribut de l'autorité patronale de la GRC envers la victime, notamment parce qu'oeuvrant à des fonctions de relations de travail, de ressources humaines, de dotation, de santé et de sécurité au travail, de rémunération, d'avantages sociaux, de finances ou de contentieux;

6. L'expression « Abus de pouvoir » est synonyme du mot « Faute » et englobe le harcèlement physique, le harcèlement psychologique, les représailles, la discrimination et toute autre forme d'abus de pouvoir;

[235] **IDENTIFIE** comme suit les principales questions de faits ou de droit qui seront traitées collectivement :

a) la GRC et son État-major avaient-ils à l'égard des membres une obligation de respecter leurs droits en vertu des Chartes et de fournir un milieu de travail exempt d'Abus de pouvoir, y compris protection en raison de l'affiliation linguistique francophone des membres ou de leur militantisme en faveur de la liberté d'association et de la syndicalisation?

b) la GRC et son État-major, avaient-ils à l'égard des membres une obligation de prévenir l'Abus de

(a) any officer of the RCMP holding at the time of the Injury a rank higher than that of the victim;

(b) a person holding an attribute of the RCMP's management rights as employer, in particular by performing functions of labour relations, human resources, staffing, occupational health and safety, remuneration, social benefits, finances or litigation;

6. The expression "Abuse of power" is synonym of "Injury" and com-prises physical harassment, psychological harassment, retaliation, discrimination and all other form of abuse of power;

[235] **IDENTIFIES** as follow the main issues of fact and law to be dealt with collectively :

(a) were the RCMP and its staff obligated to respect the rights of the members under the Charters and to provide a workplace exempt from Abuse of power, including protection on the basis of belonging to the language group of French locutors or of their militancy in favour of freedom of association or the right to unionize?

(b) were the RCMP and its staff obligated to the members to

pouvoir y compris en raison de l'affiliation linguistique francophone des membres ou de leur militantisme en faveur de la liberté d'association et de la syndicalisation?

c) est-ce que l'inconduite de la GRC et de son État-major a donné lieu d'octroyer aux membres des dommages-intérêts et, si oui, de quel montant?

d) est-ce que l'inconduite de la GRC et de son État-major a donné lieu d'octroyer des dommages punitifs et, si oui, de quel montant?

[236] **IDENTIFIE** comme suit les conclusions recherchées qui s'y rattachent :

a) **DÉCLARER** que la défenderesse et la GRC, sa direction et ses hauts gradés étaient tenus d'une obligation envers les membres du groupe et des sous-groupes de :

1. faire preuve de diligence raisonnable pour assurer le bien-être de ses membres;

2. fournir un milieu de travail sécuritaire et exempt de harcèlement, de représailles, de discrimination et d'abus de pouvoir pour tout motif, y compris pour des motifs liés à l'exercice des droits protégés par les Chartes, tels que l'affiliation linguistique et la défense de la liberté d'association et de syndicalisation;

prevent Abuse of power on the basis of belonging to the language group of French locutors or of militancy in favour of freedom of associatiion and the right to unionize?

(c) does misconduct by the RCMP and its staff justify awarding damages to the members, and if so, what amount thereof?

(d) does the misconduct by the RCMP and its staff justify awarding punitive damages, and if so, what amount thereof?

[236] **IDENTIFIES** as follows the resulting conclusions sought :

(a) **DECLARE** that the defendant, the RCMP and its staff were obligated towards the members of the class and subclasses :

1. to show reasonable diligence in ensuring the well-being of the members;

2. to provide a workplace safe and free from harassment, retaliation, discrimination and abuse of power of any kind, including for reasons linked to the exercise of rights protected by the Charters, among which language affiliation and the defense of freedom of association and of unionization;

3. fournir des possibilités d'emploi et d'avancement à tous ses membres, sans discrimination et indépendamment de leur origine linguistique, de leur défense de la liberté d'association et de leurs activités syndicales;

4. élaborer et mettre en œuvre des politiques, des codes, des lignes directrices et des procédures appropriées pour assurer le respect de toutes les obligations susmentionnées;

b) **DÉCLARER** que la GRC, et son État-major ont manqué à telles obligations à l'égard des membres du groupe et des sous-groupes;

c) **QUANTIFIER** le préjudice subi par les membres du groupe et des sous-groupes, soit sur une base collective, soit sur une base individuelle; si sur une base collective, **FIXER** le montant des dommages-intérêts et dommages punitifs; si sur une base individuelle, **FIXER** les modalités du recouvrement individuel;

d) **CONDAMNER** la défenderesse à verser des dommages-intérêts compensatoires et dommages punitifs;

e) **ORDONNER** à la GRC d'instaurer des mesures préventives et réparatrices contre les diverses formes d'Abus de pouvoir;

f) **CONDAMNER** la défenderesse à payer les honoraires et débours judiciaires et extrajudiciaires, y

3. to provide work and promotion opportunities to all its members, without discrimination and regardless of language affiliation or of the defense of freedom of association and of unionization;

4. to design and implement appropriate policies, codes, guidelines and procedures in order so as to ensure performance of the obligations mentioned above;

(b) **DECLARE** that the RCMP and its staff defaulted on said obligations to the members of the class and subclasses;

(c) **QUANTIFY** the injury suffered by the members of the class and subclasses, on a collective basis or on an individual basis; if on a collectrive basis, **SET** the amount of damages and punitive damages; if on an individual basis, **SET** the modalities of individual recovery;

(d) **CONDEMN** the defendant to pay compensatory damages and punitive damages;

(e) **ORDER** that the RCMP put in place preventive and restorative measures against the various types of Abuse of power;

(f) **CONDEMN** the defendant to pay judicial and extrajudicial fees and expenses of the plaintiffs, including

compris les honoraires pour les rapports d'expertise et les frais de justice encourus dans la présente instance et **ORDONNER** le recouvrement collectif de ces sommes;

fees for expert reports and costs in this instance, and **ORDER** collective recovery of same;

g) **CONDAMNER** la défenderesse à verser aux membres les sommes susmentionnées, augmentées des intérêts au taux légal, plus l'indemnité additionnelle prévue par la loi, à compter de la date de signification de la demande d'autorisation;

(g) **CONDEMN** the defendant to pay to the members the amounts stated above, increased by interest at the legal rate plus the additional indemnity provided by law, starting on the date of service of the application for authorization;

h) **CONDAMNER** à payer les frais engagés pour toutes les enquêtes nécessaires afin d'établir la responsabilité en l'espèce, y compris les honoraires extra-judiciaires des avocats pour les demandeurs et les membres des groupes et les débours extra-judiciaires, ainsi que les honoraires des experts et les coûts des rapports de ces derniers;

(h) **CONDEMN** the defendant to pay all costs borne for the investigations required in order to establish liability, including the extrajudicial fees of counsel for the plaintiffs and the members as well as the fees of experts and their reports;

[237] **DÉCLARE** qu'à moins d'exclusion, les membres du groupe et des sous-groupes seront liés par tout jugement à intervenir dans le présent dossier, tel que prévu par la loi;

[237] **DECLARES** that, unless they opt out, the members of the class and subclasses will be bound by every further judgment to be rendered in this case, as provided by law;

[238] **REPORTE** à une audition subséquente la fixation du délai d'exclusion et de son point de départ;

[238] **ADJOURNS** to a subsequent hearing the setting of the deadline to opt out and of its starting date;

[239] **REPORTE** à une audition subséquente l'approbation de l'avis abrégé et de l'avis long à donner aux membres, des modalités de leur publication et de l'attribution des frais de publication;

[239] **ADJOURNS** to a subsequent hearing the approval of the long notice and of the abbreviated notice to the members, the modalities of their publication and the allocation of publication costs;

[240] **DÉTERMINE** que l'action collective sera exercée dans le district judiciaire de Montréal;

[241] **RÉFÈRE** le dossier au juge en chef ou à la juge coordonnatrice en vue de désigner le/la juge chargé/e de la gestion particulière de l'action collective autorisée;

[242] **LE TOUT** avec frais de justice au stade de l'autorisation; et **FRAIS À SUIVRE** quant à la suite de l'instance.

[240] **DETERMINES** that this class action shall be instituted in the judicial district of Montréal;

[241] **REFERS** the case to the Chief Justice or the Associate Chief Justice in order to assign the special case management of the class action to a member of the Court;

[242] **THE WHOLE** with costs at the stage of authorization; and **COSTS TO FOLLOW** regarding the conduct of the proceeding.

PIERRE-C. GAGNON, j.c.s.

Me James R.K. Duggan
Avocat pour les demandeurs

Me Ginette Gobeil
Me Paul Deschênes
Me Nadine Perron
MINISTÈRE DE LA JUSTICE CANADA
Avocats pour la défenderesse

Dates d'audience : 14 et 15 juin 2018

Appendix B

Federal Court Cour fédérale

Date: 20220920

Docket: T-1201-18

Citation: 2022 FC 1317

Ottawa, Ontario, September 20, 2022

PRESENT: Madam Justice McDonald

CLASS PROCEEDING

BETWEEN:

GEOFFREY GREENWOOD and TODD GRAY

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

ORDER

UPON by the Plaintiffs for an Order settling the Certification Order in this action, as directed by the Federal Court of Appeal in the Reasons for Judgment dated September 21, 2021 (2021 FCA 186), wherein the Federal Court of Appeal upheld the certification of this action as a class proceeding pursuant to the *Federal Courts Rules*, SOR/98-106 and remitted settlement of the Certification Order to the Federal Court;

AND UPON considering all of the materials filed, including the consent of the parties;

THIS COURT ORDERS that:

1. This matter is hereby certified as a Class Proceeding.

2. The definition of the Class shall be:

   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.

3. Geoffrey Greenwood and Todd Gray are appointed as Representative Plaintiffs for the Class.

4. The nature of the claims made on behalf of the Class is systemic negligence. In particular, the Representative Plaintiffs allege that there 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 Representative Plaintiffs claim that the defendant His Majesty the King is vicariously liable for the actions of the RCMP's agents, employees, and servants in this regard.

5. The Class claims the following relief:

   a) a declaration that the Crown was negligent in failing to provide the Class with a workplace free from bullying, intimidation, and harassment;

b) a declaration that the Crown failed to fulfil and/or breached its common law, contractual and statutory duties to provide Class Members with a workplace free from bullying, intimidation, and harassment;

c) general damages;

d) special damages;

e) loss of income;

f) exemplary and punitive damages; and

g) damages equal to the costs of administering the plan of distribution of the recovery of this action.

6. The common questions are approved as follows:

Negligence

1) Did the RCMP, through its agents, servants and employees owe a duty of care to the Plaintiffs and other Class Members to take reasonable steps in the operation or management of the Force to provide them with a work environment free from bullying, intimidation and harassment?

2) If yes, was there a breach of this duty by the RCMP through its agents, servants and employees?

3) If yes, was the Crown vicariously liable for the failure of its agents, servants and employees at the RCMP, to take reasonable steps in the operation and management of the Force to provide a work environment free from bullying, intimidation and harassment?

Damages

4) Does the conduct justify an award of aggravated, exemplary and/or punitive damages?

7. Kim Spencer McPhee Barristers P.C. is appointed as counsel to for the Class.

8. The Plaintiffs' Litigation Plan in the form attached as **Schedule "A"** is approved.

9. The Notice of Certification as a Class Proceeding, substantially in the form and content attached to this Order as **Schedule "B"** (English version) and **Schedule "C"** (French version), is approved (the "Certification Notice").

10. The Certification Notice will be distributed substantially in the manner set out in the Notice Program attached as **Schedule "D".**

11. Trilogy Class Action Services is appointed as Notice Administrator to administer the Notice Program in accordance with the terms set out in the Proposal dated September 7, 2022, attached as **Schedule "E".**

12. The costs of effecting Notice of Certification shall be paid by the Defendant up to a maximum of $300,000, inclusive of taxes.

13. For the purpose of facilitating the Notice Program, the RCMP and other federal government departments and agencies who are reasonably expected to have relevant names and contact information shall make reasonable efforts to identify and provide to the Notice Administrator the names and last known mailing addresses and email addresses, or if unavailable, other last known contact information of the Class Members, except where disclosure of such information is prohibited by law.

14. The Notice Program satisfies the requirements of sections 334.34, 334.35, 334.36 and 334.37 of the Federal Courts Rules and represents fair and reasonable notice of all persons entitled to Notice of Certification.

15. The Opt-Out Form, substantially in the form and content attached to this Order as **Schedule "F"** (English version) and **Schedule "G"** (French version), is approved.

16. A member of the Class may opt out of this class proceeding by returning by mail or email a signed Opt-out Form, in substantially the same form as attached as Schedules "F" and "G", postmarked or otherwise received by no later than **5:00 p.m. E.S.T. on November 23, 2022** to the addresses set out in the Certification Notice.

17. No person may opt out a mentally incapable Class Member without permission of the Court after notice to the Public Guardian and Trustee, as applicable to Class Members resident in Ontario, and to comparable or equivalent entities in the other provinces and territories as applicable to Class Members resident in other provinces and territories.

18. Canada will serve on the Plaintiffs and file with the Court an affidavit stating the dates upon which the Certification Notice was transmitted and published as part of the Internal Notice Program as set out at paragraph 4 of Schedule "D".

19. The Notice Administrator will deliver to the parties and file with the Court under seal, a report outlining the methods and dates on which the notice program was effected, and attaching a listing of the names and addresses of all persons who have opted out of the class proceeding in accordance with this Order, together with a copy of the forms submitted, within 30 days of the opt-out deadline.

20. No other class proceeding may be commenced with respect to the matters addressed in this action, absent leave of this Court. This provision is effective *nunc pro tunc* as of January 23, 2020.

21. No costs are payable on this motion.

"Ann Marie McDonald"
Judge

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:

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