

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	Jan 13, 2025
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TORONTO, ON	- 1 -

FEDERAL COURT OF APPEAL
Proposed Class Proceeding

Court File No.: A-20-25

BETWEEN:

HIS MAJESTY THE KING

Appellant

- and -

**STACEY HELENA PAYNE, JOHN HARVEY and
LUCAS DIAZ MOLARO**

Respondents

TO THE RESPONDENTS:

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** 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.

January 13, 2025

Issued by: _____
(Registry Officer)

180 Queen Street West, Suite 200
Toronto, ON M5V 1Z4

TO: THE ADMINISTRATOR
Federal Court of Appeal
180 Queen St. W.
Toronto, ON M5V 1Z4

AND TO: SHEIKH LAW
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Counsel for the Respondents

APPEAL

THE APPELLANT, THE ATTORNEY GENERAL OF CANADA, APPEALS to the Federal Court of Appeal from the Order of the Honourable Justice Southcott (the “Motion Judge”) of the Federal Court dated January 2, 2025, in which he dismissed the Defendant’s motion to strike the Statement of Claim.

THE APPELLANT ASKS that this Honourable Court:

1. Allow the appeal and set aside the Order of January 2, 2025;
2. Strike the Statement of Claim, without leave to amend;
3. Grant such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

4. The Motion Judge erred in law in taking jurisdiction over this matter and not striking the action in accordance with s. 236 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22 (“*FPSLRA*”) by:
 - (a) misapplying the robust body of jurisprudence related to s.236 being a statutory bar on any right of action an employee may have in relation to a grievable matter;
 - (a) misunderstanding and misapplying Federal Court of Appeal jurisprudence, such as *Adelberg v Canada*, 2024 FCA 106, which determined that the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*, (COVID-19 policy) was an employment policy related to terms and conditions of employment and emphasized that it matters not the way the claim is characterized, whether as a *Charter* breach or tort;

- (b) failing to consider evidence of the Plaintiffs' comprehensive use of the alternative remedial processes, including the grievance regime, to challenge the COVID-19 policy;
 - (c) misapprehending the applicability of the Supreme Court of Canada decision in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Quebec (Attorney General)*, 2004 SCC 39 [*Morin*] to the federal statutory grievance process and s. 208 of the *FPSLRA*.
- 5. The Motion Judge erred in finding that the Statement of Claim disclosed a reasonable cause of action for breach of s. 2(d) of the *Charter*:
 - (a) in assuming material facts necessary had been pled to satisfy the elements of the cause of action.
- 6. The Motion Judge erred in granting leave to amend the Statement of Claim to identify additional proposed representative plaintiffs:
 - (a) in assuming material facts necessary had been pled to satisfy the elements of the cause of action;
 - (b) by failing to justify departing from the horizontal precedential jurisprudence of the Federal Court which determined that no material facts had been pled to establish the tort of misfeasance in public office, based on deficiencies like those which underlie this claim, and which had been dismissed without leave to amend;
- 7. The Motion Judge erred in finding that the Statement of Claim disclosed a reasonable cause of action in tort for casual workers, students and RCMP members as there were no representative plaintiffs for any of these categories, nor had material facts necessary been pled and was based on a misapplication of the Federal Court of Appeal decision in *McMillan v Canada*, 2024 FCA 199.

8. Such further and other grounds as counsel may advise and this Honourable Court permit.

January 13, 2025



ATTORNEY GENERAL OF CANADA

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