Federal Court  Cour fédérale

Date: 20250314

Docket: T-723-20

Citation: 2025 FC 485

2025 FC 485 (CanLII)

Vancouver, British Columbia, March 14, 2025

PRESENT: Case Management Judge Kathleen Ring

BETWEEN:

MARGORIE HUDSON

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

I. Overview

[1] This is a motion brought by the Plaintiff for leave to file additional evidence in support of her motion for certification of the proposed class proceeding. Specifically, the Plaintiff seeks to file another affidavit from her proposed expert (Dr. Workman-Stark), an affidavit attaching an expert report from a new proposed expert (James Craig), a paralegal's affidavit attaching eight public reports and academic articles, and seven affidavits from class members.

[2] The Defendant does not object to the filing of the seven affidavits of class members. The balance of the motion is opposed on the basis that some of the additional evidence is protected by

parliamentary privilege, and much of it is inadmissible hearsay and opinion evidence. According to the Defendant, the discretionary factors to be considered in determining whether to grant leave weigh against granting the motion.

[3] Having reviewed the motion records and considered the oral submissions of counsel for the parties, and for the reasons that follow, I conclude that the Plaintiff's motion should be granted in part.

2025 FC 485 (CanLII)

II. **Facts**

A. ***General Background to the Action***

[4] Launched in 2020, this proposed class proceeding alleges systemic racism within the Royal Canadian Mounted Police [RCMP] on the basis of race, national or ethnic origin, colour or religion. The representative Plaintiff, Margorie Hudson, is a former member of the RCMP who is of aboriginal ancestry. She seeks to represent a class comprising "all racialized individuals who, at any time during the Class Period, worked for or with the RCMP": Statement of Claim [the "Claim"] at para 3.

[5] The Claim seeks damages on behalf of the Plaintiff and the other class members for breach of their constitutional rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, and pursuant to the *Charter of Human Rights and Freedoms,* CQLR c C-12 and the *Civil Code of Quebec,* CQLR c C-1991.

[6] The Plaintiff served her notice of motion and affidavits in support of certification on October 5 and 6, 2020. The Plaintiff's affidavits included the affidavit of her proposed expert, Dr.

Angela Workman-Stark sworn on October 6, 2020. On April 30, 2021, the Defendant served four affidavits in response to the certification motion. On May 31, 2021, the Plaintiff served her reply evidence, which consisted of the second affidavit of Dr. Workman-Stark.

[7] On June 8, 2021, the parties agreed to a modified timetable for the completion of the remaining steps leading to the hearing of the certification motion on January 18 and 19, 2022. The timetable included a new deadline for "completion of cross-examinations" by September 15, 2021. The Defendant cross-examined Dr. Workman-Stark on her affidavits on September 15, 2021. No cross-examinations were conducted by the Plaintiff by the agreed upon deadline.

[8] On October 30, 2021, the Plaintiff served two additional affidavits to address evidentiary deficiencies identified by the Federal Court of Appeal in *Canada v Greenwood*, 2021 FCA 186 [*Greenwood*], which is another proposed class proceeding that alleges systemic negligence and workplace misconduct in the RCMP. One of the Plaintiff's additional affidavits is the third affidavit of Dr. Workman-Stark. The Defendant did not object to the delivery of either of the Plaintiff's additional affidavits.

[9] In mid-November, 2021, the parties agreed to another modified timetable that fixed deadlines for, among other things, the delivery of any further affidavits by the Defendants and for the "completion of cross-examinations on new affidavits, if any". By Order dated December 1, 2021, this Court adjourned the certification motion and vacated the hearing dates.

[10] On January 28, 2022, the Defendant served an affidavit in response to the Plaintiff's two additional affidavits. No cross-examinations were conducted on the affidavits that the parties exchanged on October 30, 2021 and January 28, 2022.

2025 FC 485 (CanLII)

[11] On March 1, 2022, the parties agreed that this proceeding should be held in abeyance pending a final disposition by the Supreme Court of Canada of the certification order made in *Greenwood*. The Supreme Court denied leave to appeal in *Greenwood* on March 17, 2022.

[12] The remainder of 2022 was taken up with various interlocutory motions by both parties. On April 19, 2022, the Plaintiff served a motion seeking to enforce the Preclusion Order previously made in her favour, by staying an overlapping class action filed in 2022, namely, *Pierrot v Canada*, Court File No. T-142-22 [*Pierrot*]. In June 2022, Mr. Pierrot filed a motion for carriage of the claims for systemic racism. Ultimately, the Plaintiff and Mr. Pierrot agreed to work together. Their counsel entered into a consortium agreement in June 2022. Mr. Pierrot agreed to hold his action in abeyance pending the final determination in this proceeding. Mr. Pierrot's counsel is now counsel in this case, and Mr. Pierrot seeks to file the evidence from his proceeding in this case.

[13] In June and July 2022, the Defendant served motions to stay this action and the *Pierrot* action.

[14] In August 2022, the Defendant served and filed a notice of motion to strike the Claim in this case on jurisdictional grounds. The Notice of Motion indicates that the evidence to be relied on for that motion is the same evidence as is already filed on the certification motion. The Defendant advised the Court by letter dated August 23, 2022 that they would seek to have their motion to strike heard at the same time as the certification motion, if their motion to stay was denied.

[15] On January 10, 2023, this Court denied the Defendant's motions to stay. In February 2024, the Federal Court of Appeal dismissed the Defendant's appeals from those decisions.

2025 FC 485 (CanLII)

B. ***The Current Motion***

[16] The Plaintiff brings this motion for leave to file additional evidence as part of her certification record. The additional evidence that the Plaintiff seeks to admit consists of the following:

a) The affidavits of seven additional class members, formerly represented in the *Pierrot* action, now subsumed into the *Hudson* action [collectively, the "Class Member Affidavits"]:

   i. The Affidavit of Harvey Pierrot sworn/affirmed on June 19, 2024;

   ii. The Affidavit of Bradley Carpenter sworn/affirmed on June 19, 2024;

   iii. The Affidavit of Merle Carpenter sworn/affirmed on June 20, 2024;

   iv. The Affidavit of Glen Gordon sworn/affirmed on June 21, 2024;

   v. The Affidavit of Brian Kishayinew sworn/affirmed on June 24, 2024;

   vi. The Affidavit of Dale McArthur sworn/affirmed on June 24, 2024; and

   vii. The Affidavit of Gerry Kisoun sworn/affirmed on June 24, 2024;

b) The Affidavit of a paralegal, Eduardo Tanjuatco, sworn on June 27, 2024 [the "Tanjuatco Affidavit"], which attaches the following reports and articles [collectively, the "Reports"]:

   i. *The Toxic Culture of the RCMP: Misogyny, Racism and Violence Against Women in Canada's National Police Force* (May 2022), Canadian Feminist Alliance for International Action [the "Toxic Culture Report"];

2025 FC 485 (CanLII)

ii. *Systemic Racism in Policing in Canada*, House of Commons Standing Committee on Public Safety and National Security (June 2021) [the "HoC Committee Report"];

iii. *Systemic Discrimination in Policing: Four Key Factors to Address* (March 2021) [the "Journal Article"];

iv. *Management of the RCMP Conduct Process: 2017 Annual Report* (2018), Royal Canadian Mounted Police [the "2017 RCMP Report"];

v. "First Nations police officers survey" Report (1996), Ministry of the Solicitor General of Canada [the "Survey Report"];

vi. *Final Report on Tiller/Copland/Roach RCMP Class Action,* (June 2022), Office of the Assessors [the "Tiller Report"];

vii. *Inclusion in the Workplace for Racialized Employees,* (October 2023) Report of the Auditor General of Canada [the "Auditor General's Report"]; and

viii. *Anti-Black Racism, Sexism & Systemic Discrimination in the Canadian Human Rights Commission,* Report of the Standing Senate Committee on Human Rights (December 2023) [the "Senate CHRC Report"];

c) The Affidavit of James Craig affirmed on June 28, 2024, attaching an expert report of Mr. Craig (June 28, 2024) [the "Craig Affidavit"];

d) The Affidavit of Dr. Angela Workman-Stark sworn on June 27, 2024 [the "2024 Workman-Stark Affidavit"].

[collectively, the "Additional Evidence"]

2025 FC 485 (CanLII)

[17] The Defendant does not object to the filing of the Class Member Affidavits, and therefore an Order will be made granting that part of the Plaintiff's motion. The Defendant opposes the filing of the remaining Additional Evidence.

III. **Issues**

[18] This motion raises three issues which will be addressed in the following order:

1) Are the HoC Committee Report and the Senate CHRC Report protected by parliamentary privilege and therefore inadmissible on the certification motion?

2) Does the Plaintiff require leave of the Court to file the remaining Additional Evidence, pursuant to Rule 84(2) of the *Federal Courts Rules*, SOR/ 98-106 [*Rules*] or otherwise?

3) If leave of the Court is necessary, have the requirements for leave been met?

IV. **Law and Analysis**

A. ***Are the Parliamentary Reports Protected by Parliamentary Privilege?***

[19] The Defendant submits that the Court should deny leave to file the HoC Committee Report and the Senate CHRC Report [collectively, the "Parliamentary Reports"], being Exhibits B and H to the Tanjuatco Affidavit, on the basis that they are protected by parliamentary privilege.

[20] For the same reasons, the Defendant urges the Court to deny leave to admit the portions of the Craig Affidavit and the 2024 Workman-Stark Affidavit that adopt or opine on the Parliamentary Reports.

2025 FC 485 (CanLII)

[21] The Plaintiff argues that parliamentary privilege does not preclude the admission of the Parliamentary Reports. While freedom of speech may prevent the Parliamentary Reports from being admitted for the truth of their contents, the Plaintiff submits that they are admissible to confirm uncontradicted facts, including that the reports were published, what prompted the reports, what was reported, and what recommendations were given. Here, they are intended to demonstrate that concerns were expressed and that investigations have been conducted. The Plaintiff points out that such reports are frequently admitted as context evidence at certification.

2025 FC 485 (CanLII)

[22] The Plaintiff also submits that the Parliamentary Reports are a permissible source of information for experts after being made public, as the expert report is not proffered as a basis of liability.

(1) *Parliamentary Privilege must be Addressed at the Onset*

[23] Parliamentary privilege is a rule of curial jurisdiction. When a matter falls within the scope of parliamentary privilege, the exercise of the privilege cannot be reviewed by the Court. In other words, the effect of parliamentary privilege is to confer an immunity from judicial review over the privileged matter: *Canada (Attorney General) v Power*, 2024 SCC 26 at paras 151 and 153 [*Power*].

[24] Accordingly, the Court must address the issue of parliamentary privilege at the onset because, if it applies to the Parliamentary Reports, it ousts the Court's jurisdiction to even entertain the privileged matter: *Thompson v Canada*, 2024 FC 1414 at para 18 [*Thompson* Appeal].

(2) *The Nature and Purpose of Parliamentary Privilege*

[25] Parliamentary privilege refers to "the sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and provincial legislative assemblies, and by each member individually, without which they could not discharge their functions": *Canada (House of Commons) v Vaid*, 2005 SCC 30, at para 29(2) [*Vaid*].

[26] At the federal level, parliamentary privilege has an express constitutional foundation in section 18 of the *Constitution Act, 1867*: *Vaid* at paras 36 and 37. Through section 4 of the *Parliament of Canada Act*, RSC 1985, c P-1, the Senate and House of Commons and their members hold the privileges, immunities, and powers held by the U.K. House of Commons at the time of the passing of the *Constitution Act, 1867*, as well as those defined by statute, which cannot exceed those held by the Parliament at Westminster at the time the statute is enacted.

[27] Individuals who appear before House of Commons and Senate committees may also benefit from parliamentary privilege in relation to their testimony: *Thompson* Appeal at para 19.

[28] Section 5 of the *Parliament of Canada Act* mandates that the "privileges, immunities and powers" of Parliament are "part of the general and public law of Canada" and "shall" be judicially noticed by all courts in Canada: *Power* at para 147.

[29] Parliamentary privilege serves an important role in maintaining the fundamental separation of powers between the legislative, executive, and judicial branches of government. It does this "[b]y shielding some areas of legislative activity from external review" and by granting "the legislative branch of government the autonomy it requires to perform its constitutional functions": *Chagnon v Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39 at paras 1 and 21.

2025 FC 485 (CanLII)

(3) *Two-Step Test for Parliamentary Privilege at the Federal Level*

[30] An objection based on parliamentary privilege is subject to a two-step test at the federal level. First, the court must assess whether the existence and scope of the claimed privilege have been authoritatively established under Canadian or British precedent. If so, the Court's inquiry stops there. The Court must accept the privilege without further inquiry into the necessity of the privilege or the merits of its exercise: *Vaid* at paras 37 and 39.

[31] Second, if the proposed category of privilege has not been authoritatively established, then the Court asks whether the privilege claimed is justified under a "necessity" test. The Court must consider whether the activity is "so closely and directly connected" with the functions of the legislative assembly or its members that "outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency": *Vaid* at para 46.

[32] While the courts are empowered to determine the *existence* and *scope* of the parliamentary privilege being claimed, by applying the above-noted test, they may not review the propriety of its *exercise* in any particular case: *Vaid* at para 40.

[33] The onus for establishing that parliamentary privilege applies lies with the party claiming the privilege: *Vaid* at para 5.

(4) *The Established Categories of Parliamentary Privilege*

[34] There are several categories of parliamentary privilege that have been authoritatively established by precedent, including: (a) freedom of speech; (b) control by the Houses of Parliament over "debates or proceedings in Parliament", including the day-to-day procedure in the House; (c)

2025 FC 485 (CanLII)

the power to exclude "strangers" from proceedings; (d) disciplinary authority over members; (e) disciplinary authority over non-members who interfere with the discharge of parliamentary duties; and (f) immunity of members from subpoena during parliamentary session: *Vaid* at para 29(10).

2025 FC 485 (CanLII)

[35] Matters within these established categories attract absolute immunity: *Power* at para 221. In *Prebble v Television New Zealand Ltd.*, [1994] 3 All E.R. 407 (P.C.) [*Prebble*], an authority cited approvingly by the Supreme Court in *Vaid* at para 29 (10), the Privy Council held (page 414):

> The courts will not allow <u>any challenge to what is said or done in Parliament</u>. … [I]t would be a breach of privilege to allow what is said in Parliament to be the subject matter of <u>investigation or submission</u>."
>
> [my emphasis]

(5) ***Freedom of Speech***

[36] The Defendant relies on the "freedom of speech" category of parliamentary privilege. This category of privilege protects "proceedings in Parliament" (as does the related category of Parliament's exclusive control over parliamentary proceedings). It is well-established that the activities of parliamentary committees constitute "proceedings in Parliament": *Gagliano v Canada (Attorney General)*, 2005 FC 576 at paras 62-97 [*Gagliano*]; *Royal Canadian Mounted Police Deputy Commissioner v Canada (Attorney General)*, 2007 FC 564 at para 65; *Lavigne v Ontario (Attorney General)* (2008), 91 O.R. (3d) 728 (S.C.J.) at paras 49-55; *Duffy v Canada (Senate)*, 2020 ONCA 536 at paras 53 and 66 [*Duffy ONCA*]; *Attorney General (Canada) v MacPhee*, 2003 PESCTD 6 (CanLII) at para 41.

[37] As regards the activities of parliamentary committees, the privilege extends not only to statements made by members of Parliament in those committees, but to anyone taking part in the

parliamentary proceeding (e.g., witnesses, counsel, parliamentary staff): *Thompson Appeal* at paras 19 and 24; *Ontario v Rothmans et al*, 2014 ONSC 3382 [*Rothmans*], cited with approval in *Power* at para 183.

[38] The "freedom of speech" category of parliamentary privilege ensures that speech and testimony taking place in the context of parliamentary proceedings is unhampered by legal repercussions and fear of reprisals. The privilege is absolute. As the Ontario High Court of Justice observed in *Roman Corp. Ltd., et al. v Hudson's Bay Oil & Gas Co. Ltd. et al.*, 1971 CanLII 499 (ON SC), in striking out pleadings allegations regarding statements made by the then Prime Minister and a cabinet minister: "The Court has no power to inquire into what statements were made in Parliament, why they were made, who made them, [and] what was the motive for making them or anything about them" (p. 139).

[39] The policy objective underlying the protection of freedom of speech in parliamentary proceedings was explained by the Privy Council in the following terms at page 474:

> The important public interest protected by such privilege is to ensure that the member or witness *at the time he speaks* is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect.

[40] This category of privilege has, for example, been found to deprive the courts of jurisdiction to hear challenges to the content of Senate committee reports and Senate decisions, including based on illegality or impropriety: *Duffy ONCA* at para 66, leave to appeal to SCC refused, 39361 (February 11, 2021).

2025 FC 485 (CanLII)

(6) ***Analysis***

[41] On this motion, the Court is tasked with deciding whether two categories of proposed Additional Evidence are protected by parliamentary privilege, and therefore inadmissible on the certification motion: (a) the two Parliamentary Reports; and (b) the portions of the Craig Affidavit and the 2024 Workman-Stark Affidavit that adopt or opine on the Parliamentary Reports. I will address each category in turn.

(a) **The Two Parliamentary Reports**

[42] My role on this motion is limited to deciding whether the two Parliamentary Reports which the Plaintiff seeks to adduce fall within the scope of parliamentary privilege. For the reasons that follow, I conclude that both of the Parliamentary Reports are protected by parliamentary privilege and therefore the Plaintiff's motion to adduce these Reports must be dismissed.

[43] First, I find that the Parliamentary Reports fall squarely within the established category of "freedom of speech". In other words, the existence and scope of the privilege claimed by the Defendant over the Parliamentary Reports has been authoritatively established under Canadian precedent.

[44] In the *Thompson* Appeal, *supra*, as in this case, the plaintiff brought a motion for leave to adduce additional evidence, including parliamentary proceedings, to support their position on a motion for certification of a proposed class proceeding. Although the Case Management Judge declined to address the issue of parliamentary privilege, on appeal of that decision Justice Gagné held that the disputed Senate committee report and transcripts of Senate committee hearings were covered by parliamentary privilege and were therefore inadmissible as evidence on the plaintiff's certification motion.

2025 FC 485 (CanLII)

[45] Importantly, the disputed Senate committee report in the *Thompson* Appeal is the very same report that is in question on this motion - *i.e.,* the Senate CHRC Report. In arriving at her conclusion, Justice Gagné stated that:

> [23] I agree with the Intervener that the Senate CHRC Report and Senate Committee Transcripts are inarguably proceedings of the Senate. Freedom of speech and exclusive control over parliamentary proceedings have been authoritatively established in the United Kingdom […], as well as in Canada [citations omitted].
>
> …
>
> [25] The Plaintiffs are expressly seeking to use the Senate CHRC Report and Senate Committee Transcripts to call into question the efficacy of the Canadian Human Rights Commission to meet its mandate to adjudicate systemic complaints; a fact that is controversial in the case at bar.
>
> [26] Allowing parliamentary proceedings to be adduced to establish facts that are controversial in litigation is irreconcilable with the existing jurisprudence.

[46] Likewise, Justice Fothergill recently upheld a decision striking out an affidavit which referred to a Senate Standing Committee report, in part because "offering the Senate Report as evidence on a disputed issue is incompatible with parliamentary privilege": *Mobile Telesystems Public Joint Stock Company v Canada (Attorney General)*, 2025 FC 181 at para 32.

[47] Other Canadian courts have also recognized that committee transcripts and reports, evidence considered by committees, as well as reports commissioned by and for the Senate and House of Commons, are protected by parliamentary privilege and cannot be produced in Court proceedings. In *Duffy v Senate of Canada*, 2018 ONSC 7523 at para 12 aff'd *Duffy ONCA*, the Ontario Superior Court held that:

> Finally, parliamentary privilege protects freedom of speech in the Senate. Allegations in a statement of claim about what was said in

2025 FC 485 (CanLII)

> parliament must be struck, because statements in parliament cannot be reviewed by a court. Neither a senator nor a third party can be compelled to testify in court about anything they said or did in the course of Senate proceedings. Transcripts of proceedings, and reports produced by or commissioned for the Senate, can likewise not be produced in court proceedings.
>
> [my emphasis]

2025 FC 485 (CanLII)

[48] Accordingly, based on established Canadian precedent, I conclude that the Parliamentary Reports fall within the established category of "freedom of speech". As such, the Court's inquiry ends there, and the Court must accept the privilege.

[49] Even if I am wrong, and the Court must engage in an inquiry into the necessity of the privilege (the second prong of the test), I conclude that the privilege claimed is justified under the "necessity" test. The two Parliamentary Reports are the direct work product of parliamentary committees. Each report emanates from a parliamentary proceeding, summarizes the testimony received from witnesses, and sets out recommendations based on the evidence heard. As such, the reports reflect activities that are closely and directly connected with the functions of Parliament.

[50] The Plaintiff articulates her intended use of the two Parliamentary Reports in her main written representations [the "PMWR"] on this motion. As was the case in the *Thompson* Appeal, the Plaintiff here seeks to use to the Senate CHRC Report to call into question the efficacy of the Canadian Human Rights Commission to adjudicate systemic racism complaints. According to the Plaintiff, that Senate CHRC Report "describes an institutional bias by members of the Canadian Human Rights Commission, blocking racism claims from reaching the Canadian Human Rights Tribunal" (PMWR at para 36). The efficacy of internal recourse mechanisms is a fact that is controversial on the Plaintiff's certification motion.

[51] In a similar vein, the Plaintiff seeks to use the HoC Committee Report to establish the prevalence of systemic racism within the RCMP and the efficacy of internal resource mechanisms (PMWR at paras 26 and 72). According to the 2024 Workman-Stark Affidavit, the HoC Committee Report "concludes internal mechanisms are 'wholly inefficient' to deal with systemic racism, and that the RCMP is not capable of addressing systemic racism within itself" (PMWR at para 70). Again, the efficacy of internal recourse mechanisms is a fact that is controversial on the Plaintiff's certification motion.

[52] While the Plaintiff herself may not challenge the Parliamentary Reports at the certification hearing, admitting them into evidence to prove controversial facts on the certification motion would undoubtedly lead to challenges to the content of those reports by the Defendant, whether by way of their submissions to the Court or otherwise. That is the nature of an adversarial process. In the result, the Court would be required to evaluate the reliability of the Parliamentary Reports in determining whether there are adequate alternative recourse mechanisms.

[53] The Parliamentary Reports are based on meetings between parliamentarians and witnesses, whose evidence cannot be impugned, as it is necessary to the proper function of Parliament for parliamentarians and witnesses to be able to speak freely and openly. Allowing these Reports to be adduced to establish facts that are controversial in litigation is irreconcilable with parliamentary privilege, because it effectively permits challenges to what has been said and done within parliamentary committee activities. As such, it would undermine the level of autonomy required to enable these parliamentary committees "to do their work with dignity and efficiency": *Vaid* at para 46.

2025 FC 485 (CanLII)

[54] The Plaintiff argues that reproduction of the Parliamentary Reports, by itself, does not interfere with freedom of speech. This argument does not assist the Plaintiff because she is not simply seeking to *reproduce* the two reports. She seeks to *rely upon* the content of these reports to satisfy the elements of the certification test and to respond to the Defendant's motion to strike.

[55] The Plaintiff also submits that the Parliamentary Reports "are admissible to confirm uncontradicted facts including that the reports were published, what prompted the reports, what was reported, and what recommendations were given" (Reply, para 15). The Plaintiff is correct that parliamentary proceedings may be used for proof of uncontroversial facts: *Alberta v Canadian Copyright Licensing Agency (Access Copyright)*, 2024 FC 292 at para 131. In *Prebble*, the Judicial Committee of the Privy Council confirmed that parliamentary proceedings may be used "to prove the occurrence of parliamentary events"—that is, "to prove what was done and said in Parliament as a matter of history" (p. 418).

[56] However, this exception to parliamentary privilege does not assist the Plaintiff here, having regard for her intended use of the Parliamentary Reports. The Plaintiff does not merely seek to establish the *existence* of the reports as a matter of historical fact. Instead, it is evident from her submissions that she intends to rely on the *content* of the reports to establish facts that will be in squarely in dispute on the certification motion, including the adequacy of alternative recourse mechanisms.

[57] Finally, the Plaintiff asserts that this Court should admit the Parliamentary Reports because they are frequently admitted as context evidence at certification, citing *Canada v Greenwood*, 2021 FCA 186 and *Araya v Canada (Attorney General)*, 2023 FC 1688 [*Araya*]. With respect, I do not regard either of these decisions as authority for the proposition that parliamentary privilege does

2025 FC 485 (CanLII)

not protect Parliamentary Reports when they are being tendered as context evidence. The issue of parliamentary privilege was not raised by the parties in either of these cases nor addressed by the Court in their reasons: *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 44.

[58] Accordingly, I conclude that the Parliamentary Reports are covered by parliamentary privilege, and therefore the Plaintiff's motion for leave to file them is dismissed.

2025 FC 485 (CanLII)

(b) The Portions of the Proposed Expert Affidavits that rely on the Parliamentary Reports

[59] The 2024 Workman-Stark Affidavit and the proposed Craig Affidavit make extensive references to the Parliamentary Reports and rely upon them in rendering their opinion evidence.

[60] The Plaintiff submits that the Parliamentary Reports are a permissible source of information for experts after being made public, and they do not impact freedom of speech as the expert report is not proffered as a basis of liability.

[61] I reject the Plaintiff's arguments. Parliamentary privilege is not waived or lost by publication of the Parliamentary Reports. The fact that these Reports are public or publicly available has no bearing on whether privilege attaches to them: *Rothmans* at para 34: *R. v Duffy*, 2015 ONCJ 694 at paras 116-117.

[62] When a claim of parliamentary privilege is raised, the issue is not whether liability will be determined in the proceeding. Instead, the question is whether the Parliamentary Reports are being tendered to prove controversial facts, and thereby inviting questioning of and challenge to what was said or done in parliamentary proceedings.

[63] For the same reasons as stated in the preceding section of these Reasons, I conclude that the portions of the Craig Affidavit and the 2024 Workman-Stark Affidavit that adopt or opine on the Parliamentary Reports are protected by parliamentary privilege and are therefore inadmissible in this proceeding. Dr. Workman-Stark and Mr. Craig rely on the Parliamentary Reports for controversial facts. Specifically, they adopt the statements in and conclusions of those Reports as the basis of their opinion evidence that existing recourse mechanisms are inadequate.

[64] If the Court were to admit the portions of these expert reports that rely on the Parliamentary Reports, it would open the door to challenges to the content of these Reports. Expert evidence is commonly tested by challenging the reliability of the sources relied upon by the expert. When such a challenge is made, it will necessarily require the Court to evaluate the reliability of the information contained in the Parliamentary Reports. This is precisely the mischief that the doctrine of parliamentary privilege is intended to prevent.

[65] For these reasons, I conclude that the proposed expert reports cannot be used as a 'back door' through which to admit the Parliamentary Reports into evidence. Paragraph 4 and footnote 1 of the 2024 Workman-Stark Affidavit, and paragraphs 60-65 of the Expert Report attached to the Craig Affidavit, are protected by parliamentary privilege, and are therefore inadmissible in this proceeding.

B. ***Does the Plaintiff Require Leave of the Court to Adduce Additional Evidence?***

[66] In June 2021, the parties agreed to a timetable for the steps relating to the Plaintiff's certification motion whereby "completion of cross-examinations" would occur by September 15, 2021. The Defendant cross-examined the Plaintiff's expert by that deadline. The Plaintiff elected not to cross-examine any of the Defendant's affiants.

2025 FC 485 (CanLII)

[67] The parties disagree on whether the Plaintiff requires leave of the Court to file the Additional Evidence under Rule 84(2) of the *Rules* in these circumstances. Rule 84(2) states that a party who has cross-examined an affiant may not then file additional evidence or affidavits, except with the consent of the opposing parties or with leave of the Court. The Plaintiff argues that Rule 84(2) is not engaged because she has not conducted cross-examination on the Defendant's affidavits on the certification motion.

[68] In my view, it is not necessary to decide whether Rule 84(2) is engaged on the fact of this case because the Plaintiff requires leave of the Court to file the Additional Evidence in any event. The manifest purpose of the Additional Evidence is to provide further evidentiary support for the Plaintiff's certification motion. Indeed, the genesis of the present motion was an earlier motion filed by the Plaintiff on April 19, 2024, for an Order setting "a certification timetable" and proposing, as the first step, that the Plaintiff serve and file "further certification evidence". Since the Plaintiff served her notice of motion and supporting affidavits for certification on the Defendant in October 2020, the Defendant served affidavit evidence in response, and the Plaintiff filed reply evidence, the proposed Additional Evidence is effectively further reply evidence.

[69] The Federal Court of Appeal laid out the principles governing the admissibility of reply evidence on an interlocutory motion in writing in *Amgen Canada Inc. v Apotex Inc.*, 2016 FCA 121 [*Amgen*]. As a starting point, the appellate court held that Rule 369 does not expressly allow for reply evidence to be filed, and therefore "a party must seek leave of the Court in order to file reply evidence" (para 7) [my emphasis].

[70] For the same reasons, I find that the Plaintiff must seek leave of the Court to file the Additional Evidence in the present circumstances. The Plaintiff's certification motion is an

2025 FC 485 (CanLII)

interlocutory motion that is governed by Part 5.1 (Class Proceedings) and Part 7 (Motions) of the *Rules*. The *Rules* that apply to the Plaintiff's certification motion do not expressly allow for reply evidence such as the Additional Evidence to be filed. Since the applicable *Rules* are silent on the matter, the Plaintiff must seek leave to file the Additional Evidence.

2025 FC 485 (CanLII)

[71] My conclusion is reinforced by Rule 3 which requires the Court to interpret and apply the *Rules* so that "every proceeding" is determined "on its merits" in "the just, most expeditious and least expensive" way. The principle of proportionality, now codified in Rule 3, likewise encourages interpretations and applications of the *Rules* that are proactive in preventing, eliminating or minimizing conduct that causes delay and cost: *Lukács v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 55 at para 9.

[72] Here, the mischief sought to be avoided by requiring leave of the Court to file further evidence is manifold. If a litigant in a proposed class proceeding was entitled, as of right, to adduce further evidence on a certification motion, without leave of the Court or consent of the parties, it effectively allows that litigant to split their case. Moreover, it opens the door to an unending merry-go-round of litigation, as each new traunch of "further" evidence triggers a right of cross-examination, which invariably drives up the cost and delay in the proceeding.

[73] The Plaintiff also submits that the Additional Evidence is responsive to the Defendant's motion to strike, and she has a right to file evidence on that motion. I find this to be a straw man argument because all of the issues raised on the strike motion were raised by the certification motion. At the hearing, the Defendant confirmed that they are not intending to file any further evidence on that motion.

[74] In conclusion, the Plaintiff requires leave of the Court to adduce the Additional Evidence.

C. ***Should Leave be Granted to the Plaintiff to file the Additional Evidence?***

(1) *The Governing Legal Principles*

[75] In determining whether to allow the filing of reply evidence on a motion in writing, *Amgen* teaches that guidance can be found in the legal principles developed under Rule 312 concerning the admission of additional affidavits in applications. This same approach applies in deciding whether leave should be granted to permit reply evidence on a motion to be heard orally: *Amgen* at para 13; *Gemak Trust v Jempak Corporation*, 2024 FC 82 at para 23.

[76] To obtain leave pursuant to Rule 312(a) - and by extension, on this motion - the moving party must first satisfy two preliminary requirements: (1) the evidence must be admissible on the application for judicial review; and (2) the evidence must be relevant to an issue that is properly before the reviewing court: Forest Ethics Advocacy Association v National Energy Board, 2014 FCA 88 at paras 4-6 [*Forest Ethics*].

[77] Assuming the moving party establishes these two preliminary requirements, the party must then convince the Court that it should exercise its discretion in favour of granting the order under Rule 312. In determining whether the granting of an order under Rule 312 is in the interests of justice, the Court should be guided by the following three questions: (1) Was the evidence sought to be adduced available when the party filed its affidavits under Rule 306 or 307 (as the case may be) or could it have been available with the exercise of due diligence? (2) Will the evidence assist the Court, in the sense that it is relevant to an issue to be determined and sufficiently probative that it could affect the result? (3) Will the evidence cause substantial or serious prejudice to the other party?

2025 FC 485 (CanLII)

(2) ***The Reports***

[78] As regards the first preliminary requirement, the Plaintiff must establish that the proposed Reports are admissible. While the evidentiary burden on a certification motion is the low "some basis in fact" test, the Plaintiff must discharge that burden by admissible evidence. The evidence tendered on a certification motion must meet the usual criteria for admissibility: *Schick v Boehringer Ingelheim (Canada) Ltd.*, 2011 ONSC 63 at para 13; *Ernewein v General Motors of Canada Ltd.*, 2004 BCSC 1462, 2005 BCCA 540 at para 31, leave ref'd, [2005] SCCA No 545.

[79] The Plaintiff submits that the Reports are admissible to provide context to direct evidence from class member affidavits and expert reports. She argues that they are admissible as "context evidence", but not for the truth of their contents. The "context" is that the individual experiences are not confined to the class members who swore affidavits. Context evidence demonstrates the widespread nature of the claim in a way that direct evidence cannot.

[80] The Defendant argues that the Plaintiff should not be granted leave to file the Reports (including the two Parliamentary Reports) attached to the Tanjuatco Affidavit because they are inadmissible opinion and hearsay. The Defendant says that the Reports are replete with opinions, and the affiant is not qualified to provide an opinion on the contents of the documents. According to the Defendant, the Reports are also offered as hearsay because they are being adduced to prove the truth of their contents. The Defendant says that no recognized exception to the hearsay rule applies in this case, and neither requirement of the principled approach is satisfied.

[81] Hearsay evidence is (1) an out-of-court statement that is adduced to prove the truth of its contents; and (2) there is an absence of a contemporaneous opportunity to cross-examine the declarant: *R. v Khelawon*, 2006 SCC 57 at paras 2 and 35 [*Khelawon*].

2025 FC 485 (CanLII)

[82] Without question, the Reports are filled with out-of-court statements. For example, the following passages from the Tiller Report cited by the Plaintiff exemplify both hearsay and opinion evidence (PMWR at para 35):

> Many claimants reported that they feared retribution for raising incidents of misconduct in the workplace. They reported having witnessed the impacts on coworkers who lodged complaints, including loss of training opportunities, stalled career advancement, and adverse effects on their mental health.
>
> …
>
> It is abundantly clear to us that the Tiller claimants were adversely affected by the harassment inflicted by RCMP members and other perpetrators. There were no or inadequate resources to assist claimants to deal with the pain they experienced.

[83] The Plaintiff argues that these Reports are not hearsay because they are not being tendered for the truth of their contents, but rather as "context evidence". However, based on the Plaintiff's own submissions, it is apparent that these documents are not being adduced merely to prove that the Reports exist, or that they were published on a certain date, or for some other reason unrelated to their content. Instead, the Plaintiff's submissions plainly state that these Reports are relevant because they "discuss the prevalence of systemic racism in the RCMP" and "the efficacy of internal recourse mechanisms" (para 26).

[84] In other words, the documents are being tendered because of *what they say* about controversial issues on the certification motion, and with the expectation that the Court will accept the *content* of the Reports as demonstrating "some basis in *fact*" as to the prevalence of systemic racism in the RCMP and the inadequacy of internal recourse mechanisms.

[85] I recognize that there are several decisions, relied upon by the Plaintiff, where the Federal Courts have considered evidence similar to the Reports in determining a certification motion:

2025 FC 485 (CanLII)

Greenwood at paras 94 and 96; *Araya* at paras 47 to 49; *Sweet v Canada*, 2022 FC 1228, paras 49, 50; *Tippett v Canada*, 2019 FC 869 at paras 24, 25; *Bigeagle v Canada*, 2021 FC 504 at para 47; aff'd 2023 FCA 128 at para 44.

[86] However, the context in which the Courts considered those public reports was very different from this case. In those cases, the public reports already formed part of the plaintiff's motion record when the Court was called upon to determine certification. In other words, those reports were already in evidence. Additionally, the defendant in those cases did not move to strike the reports or contest their admissibility. To the contrary, the Court observed in *Greenwood* that "the Crown recognizes that the Reports could be admitted" (para 97). Similarly, the Court noted in *Big Eagle* that "the RCMP agreed that it was acceptable to admit the reports and inquiries" (para 37).

[87] In contrast, on this motion the Defendant contests the admissibility of the Reports, and the Court is required to determine whether the Reports should be allowed leave to file them in the first instance, taking into account the considerations set out in *Forest Ethics*, including the admissibility of the Reports.

[88] I also recognize that Rule 81(1) permits affidavits on information and belief on an interlocutory motion. However, as this Court recently held in *Thompson v Canada*, 2024 FC 1064 at paras. 66, 67 and 72 [*Thompson*] (appeal dismissed, *Thompson v Canada*, 2024 FC 1752), Rule 81 is not a licence for a litigant to adduce double and triple hearsay. In *Thompson*, the Court dismissed a plaintiff's motion for leave to file similar public reports (and one identical report) as "fresh evidence" on their certification motion, in part because the documents were inadmissible hearsay and opinion evidence. As regards Rule 81, the Court held at para 67:

2025 FC 485 (CanLII)

> … Rule 81 is of no assistance to them on this motion. Rule 81 applies to the permitted use of statements of a deponent's belief in an affidavit if the grounds for the belief are set out in the affidavit itself. The Rule is conceived of in this manner so as to provide the adverse party with sufficient information upon which to test the deponent's belief on cross-examination. It is not a licence for the inclusion of double or triple hearsay, nor a vehicle for the admission of untested and likely untestable anecdotal evidence or opinions, comments, and recommendations from non-experts through the use of exhibits. It is certainly not a vehicle for the inclusion of such otherwise inadmissible evidence that the producing party proposes the Court should rely on.

2025 FC 485 (CanLII)

[89] Having considered the Reports, I reach the same conclusion as in *Thompson* that the Reports sought to be filed by the Plaintiff on this motion are inadmissible because they constitute impermissible hearsay and opinion evidence.

[90] Hearsay evidence is presumptively inadmissible, and it may only be admitted if it falls within a recognized hearsay exception, or under the principled approach to the hearsay rule which allows for the admission of such evidence if it is reliable and necessary to the case. Based on the material before the Court, I find that the Plaintiff has not discharged her burden to demonstrate that the information in the Reports is either reliable or necessary.

[91] In any event, even if the preliminary requirements of admissibility and relevance were met in this case, I am not persuaded that it is in the interests of justice to allow the Reports to be filed by the Plaintiff, having considered and weighed the three discretionary factors set out in *Forest Ethics*.

[92] Four of the eight Reports sought to be adduced by the Plaintiff were available before this proceeding was placed in abeyance in March 2022, namely: the HoC Committee Report (June 2021), the Journal Article (March 2021), the 2017 RCMP Annual Report (2018) and the Survey Report (1996). The Plaintiff has not explained why those Reports could not have been produced

earlier, with the exercise of due diligence, as part of her first set of affidavits served in October 2020, or with her reply affidavits (May 2021) or her third set of affidavits (October 2021).

[93] Second, the Plaintiff has not demonstrated that the evidence in the Reports will assist the Court, in the sense that it is relevant to an issue to be determined and "sufficiently probative that it could affect the result". The latter part of this requirement is particularly problematic for the Plaintiff. By its nature, the information in these Reports has questionable reliability, given how the information was gathered, and the inherent frailties of untested, and likely untestable second hand evidence and opinions, comments and recommendations from non-experts.

[94] The Federal Court of Appeal recently observed that, at best, public reports may play a supportive role by putting the facts pleaded into context. They are not sufficient, on their own, to support the assumption of the Court's residual jurisdiction: *McMillan v Canada*, 2024 FCA 199 at para 125. In the circumstances, I conclude that the second *Forest Ethics* discretionary factor does not weigh in the Plaintiff's favour.

[95] Third, I find that the Reports, if admitted, will cause substantial prejudice to the Defendant. By attaching the Reports to a paralegal's affidavit, the Defendant will be unable to test the findings made in those Reports through cross-examination of their authors, or to test the information provided by witnesses which is summarized in those Reports: *Thompson* at paras 74 and 75. Thus, the third *Forest Ethics* factor does not favour the Plaintiff.

[96] Accordingly, the Plaintiff's motion for leave to admit the Reports is denied.

(3) ***Expert Reports***

(a) **The Craig Report**

2025 FC 485 (CanLII)

[97] Mr. Craig is a proposed legal expert for the Plaintiff. The Plaintiff also seeks leave to file the Affidavit of James Craig, which attaches his expert opinion as an exhibit. Mr. Craig was asked to comment on the discussions of the recourse mechanisms in three of the Reports appended as exhibits to the Tanjuatco Affidavit, and whether the information in these Reports is consistent or inconsistent with his professional knowledge and experience as a labour lawyer. The three Reports in question are the Tiller Report, the Auditor General's Report, and the Senate CHRC Report.

[98] In light of my conclusion in the preceding section of these Reasons denying leave to the Plaintiff to file the Reports and given that the whole purpose of the Craig Report is to summarize and discuss the impugned Reports, it follows that the Plaintiff's motion to file the Craig Report must likewise be dismissed.

[99] Even if I had granted leave to the Plaintiff to file the three Reports which are the subject of the Craig Report, I would have found that the Craig Report is not admissible as expert evidence. In his expert report, Mr. Craig agrees with the findings made in those Reports regarding the "frailties" of the recourse mechanisms referenced in those reports, and he further opines on additional "frailties" with those processes.

[100] In effect, Mr. Craig is expressing his legal opinion on whether the class proceeding is the preferable procedure to address the class members' claims (the fourth requirement for certification) because the clear inference to be drawn from his expert report is that the recourse mechanisms discussed are all inadequate. On a motion for certification, the views of legal practitioners on whether the requirements of certification have been met are not admissible as evidence: *O'Neill & Chiasson v St-Isidore Asphalte Ltee*, 2013 NBQB 72 at para 17. Whether a class proceeding is the preferable procedure is a legal issue for the hearings judge to decide.

2025 FC 485 (CanLII)

[101] Moreover, I agree with the Defendant that portions of the Craig Report offend the exclusionary rule against expert opinions on domestic law. It is well-established that "questions of domestic law (as opposed to foreign law) are not matters upon which a court will receive opinion evidence. Such matters clearly fall within the purview of the court's expertise and opinion evidence on these issues would usurp the court's role as expert in matters of law": *Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43 at para 18; see also *International Air Transport Association v Canadian Transportation Agency*, 2022 FCA 211 at paras 51-52.

2025 FC 485 (CanLII)

[102] Here, many of the statements made by Mr. Craig in his expert report are legal opinions or conclusions. For example, Mr. Craig states at paragraph 39 of his report that:

> A grievance arbitrator appointed under a specific collective agreement would not have the necessary jurisdiction to hear all the claims raised in the proposed class action. A labour arbitrator appointed by parties (trade union and employer) to a specific collective agreement to adjudicate a grievance derives their jurisdiction principally from the specific collective agreement between the parties (to that collective agreement) and the submission of the grievance by the parties to arbitration.

[103] Finally, Mr. Craig describes at some length the concerns and issues raised with him by his clients regarding various recourse mechanisms. This evidence is not opinion evidence. Rather, it is anecdotal hearsay evidence from Mr. Craig's clients that is likely insulated from any rigorous testing on cross-examination by the Defendant due to solicitor-client privilege.

[104] For all of these reasons, I conclude that the motion for leave to file the Affidavit of Mr. Craig must be dismissed.

(b) **The 2024 Workman-Stark Affidavit**

[105] The 2024 Workman-Stark Affidavit provides a clarification to her expert report filed in October 2020. The Plaintiff explains that Dr. Workman-Stark was originally asked "whether there is any documentation in support of the Plaintiff's allegations that discrimination has been persistent and ongoing" [my emphasis].

[106] In *McMillan v Canada*, another class proceeding in which Dr. Workman-Stark was an expert witness, this Court held that the phrasing of the above-noted question tainted her expert evidence: *McMillan v Canada*, 2023 FC 1752 at paras 56 and 57 [*McMillan*].

[107] As a result, Plaintiff's counsel provided a new set of questions to Dr. Workman-Stark to address the Court's concern in *McMillan*. The 2024 Workman-Stark Affidavit is Dr. Workman-Stark's response to those questions. Dr. Workman-Stark also discusses three Reports released since June 2022, namely the HoC Committee Report, the Tiller Report, and the Auditor General's Report.

[108] The 2024 Workman-Stark Affidavit cannot be filed in its current form because it discusses three Reports that the Plaintiff is not permitted to file, one of which is protected by parliamentary privilege. However, I will grant leave to the Plaintiff to serve and file a revised version of the 2024 Workman-Stark Affidavit that may include paragraphs 1 to 3 and 7 of the existing affidavit, and the first sentence of paragraph 4. The remainder of the affidavit, which describes the impugned Reports, must be removed before the revised affidavit is served and filed.

V. **Conclusion**

2025 FC 485 (CanLII)

[109] For the foregoing reasons, the Plaintiff's motion is granted in part. There shall be no order as to costs of this motion as I find that none of the exceptional circumstances in Rule 334.39(1) are engaged.

THIS COURT ORDERS that:

1. The Plaintiff's motion for leave to file additional evidence is granted in part.

2. The Plaintiff is granted leave to file the seven Class Member Affidavits, more specifically described as:

    i. The Affidavit of Harvey Pierrot sworn/affirmed on June 19, 2024;

    ii. The Affidavit of Bradley Carpenter sworn/affirmed on June 19, 2024;

    iii. The Affidavit of Merle Carpenter sworn/affirmed on June 20, 2024;

    iv. The Affidavit of Glen Gordon sworn/affirmed on June 21, 2024;

    v. The Affidavit of Brian Kishayinew sworn/affirmed on June 24, 2024;

    vi. The Affidavit of Dale McArthur sworn/affirmed on June 24, 2024; and

    vii. The Affidavit of Gerry Kisoun sworn/affirmed on June 24, 2024.

3. The Plaintiff is granted leave to serve and file a revised version of the 2024 Workman-Stark Affidavit in accordance with these Reasons.

4. The remainder of the Plaintiff's motion is dismissed.

2025 FC 485 (CanLII)

5. The Defendant is granted leave to serve and file affidavit evidence, if any, that is responsive to the affidavits of the class members listed in paragraph 2 of this Order.

6. There shall be no order as to costs of this motion.

7. The parties shall confer and submit a jointly proposed timetable for the completion of the next steps in this proposed class proceeding by April 4, 2025.

"Kathleen Ring"
Case Management Judge

2025 FC 485 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-723-20
STYLE OF CAUSE:	MARGORIE HUDSON v. HMTK
ORDER AND REASONS:	RING A. J.
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATES OF HEARING:	SEPTEMBER 12, 2024
DATED:	MARCH 14, 2025

2025 FC 485 (CanLII)

APPEARANCES:

David Klein Scott Ashbourne Angela Bespflug Careen Hannouche Steven L. Cooper, K.C. Mary Grzybowska	FOR THE PLAINTIFF
Marilyn Venney Renuka Koilpillai Tiffany Farrugia	FOR DEFENDANT

SOLICITORS OF RECORD:

KLEIN LAWYERS LLP Barristers and Solicitors Vancouver, British Columbia	FOR THE PLAINTIFF
KLEIN AVOCATS PLAIDEURS INC Barristers and Solicitors Montreal, Quebec	
MURPHY BATTISTA LLP Barristers and Solicitors	

Vancouver, British Columbia

COOPER REGEL LLP Barristers and Solicitors Sherwood Park, Alberta	
DEPARTMENT OF JUSTICE Toronto, Ontario	FOR DEFENDANT

2025 FC 485 (CanLII)