Court File No. T-1387-21

FEDERAL COURT OF APPEAL

BETWEEN:

DREENA DAVIS

Appellant

and

Royal Canadian Mounted Police

Respondent

---

# NOTICE OF APPEAL

---

Federal Court Rules 337 and 338

The address for the Appellant is:
Dreena Davis
302- 2275 McIntyre St
Regina, Sask
S4P 2S1
Phone: 306-580-4324
Email: davisdreena@gmail.com

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

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 (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

**Saskatoon, Saskatchewan.**

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 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after 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 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(*Date*)

Issued by:_____

(*Registry Officer*)

Address of local office:_____

TO: ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Prairie Region
National Litigation Sector
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Fax: (306) 518-0800
Per: William Kuchapski
Tel: (306) 518-0731
E-mail: William.Kuchapski@justice.gc.ca
Solicitor for the Respondent

Court File No. T-1387-21

**THE APPELLANT APPEALS** to the Federal Court of Appeal from the Judgement and Reasons Order:

1. Judge V. Rochester dated February 28, 2023 by which the appeal was dismissed.

> [94] For the foregoing reasons, this motion to appeal the Order of Associate Judge Coughlan dated March 16, 2022, is dismissed.
>
> [95] The Defendant seeks costs. Considering the facts of the matter, and my discretion pursuant to Rule 400 of the Rules, costs in the amount of $500.00 shall be awarded to the Defendant.

2. Associate Judge Coughlan dated March 16, 2022 by which the Motion to Strike was granted.

> 1. The motion to strike the Statement of Claim is granted.
> 2. The Statement of Claim is struck out, without leave to amend.
> 3. The Plaintiff shall pay costs to the Defendant hereby fixed at $1,000.00, inclusive of disbursements and taxes.

**THE GROUNDS FOR THE MOTION ARE**

1. With the numerous palpable and overriding errors calls into the question whether Judge Rochester and Associate Judge Coughlin was alert and sensitive towards the matters in front of them (Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII) at para 128). Decision dated March 16, 2022 by Associate Judge Coughlin and Decision dated February 28, 2023 by Judge Rochester shows that neither Judge grappled with the key or central issue of Legislative Error (employment and labour law; Notice of Appeal #5). The decisions lack “requisite degree of justification, intelligibility and transparency,” that is required (*Vavilov* at para 100). The appellant right to be heard was denied. Secondly, the onus is on the respondent to prove the Motion to Strike, not the appellant as the defender.

2. As to para 42 of decision dated February 28, 2023 “When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing, rather the entire tree must fall (South Yukon at para 46;

Mahjoub at para 61).” The following palpable and overriding errors does make the entire tree fall per se. Neither Judge considered the core questions. If the excluded and unrepresented employee is not covered by the collective agreement clauses, the entire Part 2 fails in the context of the excluded and unrepresented employee. The scheme did not see the unintended consequences of s. 206 and s. 236 of Federal Public Sector Labour Relations Act (the Act) upon the excluded and unrepresented employee, the unrepresented employee has the right to sue [Bron v. Canada (Attorney General), 2010 ONCA 71 (CanLII)]. As in Bron, there is a statutory gap that was unforeseeable. Section 236 has given the employer impunity as the unrepresented employee has very little redress. The statutory gap has limited the unrepresented employee the right to bring a broad range of issues to the grievance process and to the adjudication process Wojdan v Canada (Attorney General), 2021 FC 1341 (CanLII).

3. Judge Rochester and Associate Judge Coughlin were not alert and sensitive to the matters in front of them. The error of “onus” is a basic concept of law that should not have occurred in the above decisions. The appellant was the defendant not the applicant, in the Motion to Strike proceeding. This has cost the appellant significant: unnecessary and unreasonable delay of more than a year; countless hours of preparation time on the appeals; the award of $1,500 to the respondent and no access to justice for her claim. The onus is on the presiding judge to ensure the process is fair and equal to all.

4. Judge Rochester made a palpable and overriding error when she assigned the onus to the appellant (para 5 and 88 Decision dated February 28, 2023). Associate Judge Coughlin also placed the onus on the appellant and not on the moving party, the Attorney General (Sibomana v. Canada, 2016 FC 943 (CanLII) para 10). The appellant was the defendant in the Motion to Strike proceeding. The onus belongs to the moving party, the Attorney General. The Attorney General had the onus to prove that the appellant had no path to the court including questions of law and/or any exceptions (Sibomana v. Canada, 2016 FC 943 (CanLII) para 10).

5. The Attorney General knew or ought to have known that systemic harassment is an exception open to RCMP employees [Davidson v Canada (Attorney General), 2015 ONSC 8008 at para 25 [Davidson] and Rumley v British

Columbia, 2001 SCC 69 at para 30 [Rumley]; Corriveau v. Canada, 2021 FC 267 (CanLII); Canada v. Greenwood, 2021 FCA 186 (CanLII); Merlo v Canada, 2017 FC 51 [Merlo] and Tiller v Canada 2019 FC 895 [Tiller]. Greenwood v. Canada, 2020 FC 119 (CanLII); and Nasogaluak v. Canada (Attorney General), 2021 FC 656 (CanLII)] . The court has found systemic harassment as a cause of action. The statement of claim listed several allegations of harassment and discrimination. The appellant does not have to prove the cause of action in the Motion to Strike proceeding will succeed (Hunt v. Carey Canada Inc., 1990 CanLII 90 (SCC), [1990] 2 SCR 959; In H. V. K. v. Children's Aid Society of Haldimand- Norfolk, 2003 CanLII 2364 (ON SC) para 14).

6. Paragraph 88 in the Decision date February 28, 2023: Judge Rochester cites "Murphy (Appeal) at paras 80-82; Hudson at para 93; Lebrasseur v Canada, 2007 FCA 330, at para 19" as authorities in placing the onus upon the appellant. Each of these parties was the moving party and not the defending parties. However, these authorities support the appellant 's argument that it is the moving party, the respondent, that has the onus to prove there were no questions of law and exceptions (grievance process and systemic negligence) and not the appellant.

7. Judge Rochester made a palpable and overriding error when she wrote that the appellant "did not establish that the grievance process did not apply to her." The appellant as the defender of the Motion to Strike does not have to establish the "why" until trial. The appellant had laid out a legal argument and gave examples. The appellant's pleaded facts are to be taken as true. Documents to establish the "why" are not allowed to be introduced at the Motion to Strike proceeding. Associate Judge Coughlin also did not take the pleaded facts as true (Toronto Regional Real Estate Board v. IMS Incorporated, 2021 FC 1239 (CanLII) para 15; Agriculture and Agri-Food), 2010 SCC 64 (CanLII), [2010] 3 SCR 639 para 20. In Tingley v. The Attorney General of Canada et al., 2021 NBCA 18 ). This is enough to say that s. 236 is not an explicit ouster and the court has residual discrepancy to hear the case.

8. Judge Rochester made a palpable and overriding error in her review. Within a fair hearing, the appellant must be allowed to present their case and be provided with the opportunity "to be heard…"[MG v Canada Employment

Insurance Commission, 2022 SST 661 (CanLII)]. The appellant was not allowed to argue her key or central issue being the Legislative Error. The appellant 's right to be heard was severely compromised when the respondent and Associate Judge Coughlin dismissed the argument before it was heard. Associate Judge Coughlin then proceeded to determine the argument as not valid.

9. Judge Rochester made a palpable and overriding error in her review as she upheld Associate Judge Coughlin predetermination of the appellant ’s argument which can only be made at trial (Hunt v. Carey Canada Inc., 1990 CanLII 90 (SCC), [1990] 2 SCR 959; In H. V. K. v. Children's Aid Society of Haldimand-Norfolk, 2003 CanLII 2364 (ON SC) para 14; Tingley v. The Attorney General of Canada et al., 2021 NBCA 18 (CanLII) para 113). In para 85, Judge Rochester supports Associate Judge Coughlin by stating that she relied on jurisprudence is moot. The Motion to Strike proceeding does not allow a presiding judge to make predetermination of the appellant ’s argument(s) [Tingley v. The Attorney General of Canada et al., 2021 NBCA 18 (CanLII)]. Pleaded facts are to be taken as true. (Toronto Regional Real Estate Board v. IMS Incorporated, 2021 FC 1239 (CanLII) para 15; Agriculture and Agri-Food, 2010 SCC 64 (CanLII), [2010] 3 SCR 639 para 20. Tingley v. The Attorney General of Canada et al., 2021 NBCA 18)

10. Judge Rochester’s review of paragraphs 72-77 is a palpable and overriding error(s). The Supreme Court of Canada has endorsed “The Statement of Principles for the Self Represented and Accused Persons 2006” (Pintea v. Johns, 2017 SCC 23 (CanLII), [2017] 1 SCR 470). The elements set out in the document is to ensure a fair and equal treatment to all. Canlii shows a large amount of information about the statement as it has been used in numerous cases. The appellent finds it odd that none, zero, of the cases were found in the Decision dated February 28, 2023. In addition, all of the authorities that Judge Rochester used were before 2017 when the Supreme Court of Canada gave its endorsement. This clearly shows that Judge Rochester was not alert and sensitive with the matters before her (Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII) para 128).

11. It is clear that the statement of principles for self represented and accused persons is highly regarded in the Federal Court and tribunals to protect rights. In The Estate of GT v Minister of Employment and Social Development, 2020 SST 986 (CanLII) para 10 states that "These principles endorse case management activities, such as prehearing conferences, in order to protect the interests of persons who are not represented by legal counsel." This clearly shows the Motion to Strike proceeding under Special Case Management Program is not excluded from implications of the Statement of Principles on self represented and accused persons 2006. The following cases illustrate the statement has been used in several ways :

    a. **Reduce award costs:** In Smith v. Canada (Attorney General), 2018 FC 993 (CanLII) para 117, the statement of principles for self represented and accused persons was used as a basis to reduce the costs that were awarded. This case was decided in Federal Court.
    b. **Raising new issues by the presiding judge:** In RC v Minister of Employment and Social Development, 2021 SST 539 (CanLII) para 32-34 deals with raising of new issues. The presiding decision maker has the jurisdiction to raise new issues to ensure a fair and impartial process and to prevent an unfair disadvantage. Associate Judge Coughlin had the right to raise the issue of onus and to whom it applied to; how to introduce a novel interest; that determinations are not made at trial; and the court rules surrounding the statement of claim. Failure to do so resulted in an unfair disadvantage for the appellant.
    c. **To be heard:** A.K. v Minister of Employment and Social Development, 2019 SST 1345 (CanLII) para 17 states that "the decision-maker needs to take steps to protect the right to be heard". Judge Rochester erred in that protection of rights is not advocating for the appellant. The appellant's right to be heard was not protected by Associate Judge Coughlin. In fact, it was her action to disallow a novel argument, the Legislative error, that violated the appellant's right to be heard in its entirety. She then made the decision "There is no legislative gap and the Plaintiff's assertion of "legislative error" has no merit." goes against every aspect of due process. Judge Rochester never grappled with this issue.
    d. **Amendments:** In Romana v. Canada (Canadian Radio-Television and Telecommunications Commission), 2022 FC 1455 (CanLII) para 23 and 24

> [23] …The statement explains that self-represented persons are generally uninformed about their rights and the consequences of choosing the options available to them. Court procedures can be complex, confusing, and

> intimidating to self-represented litigants. [24] On this point, the Plaintiff (Romana) has been granted several amendments as well as having a Court appointed case manager…"

In this case, the appellant has not been granted the chance for one amendment to the statement of claim under the case manager direction of Associate Judge Coughlin.

e. **Rights:** In Mazraani v. Industrial Alliance Insurance and Financial Services Inc., 2018 SCC 50 (CanLII), [2018] 3 SCR 261 para 39 states that appearing in court does not exclude the person's rights. The appellant's disability rights under the Canadian Human Rights Act apply regardless of the Court's definition. The Court is a Canadian Institution established by Parliament. The Court has extended accommodation to the hearing impaired, the visually impaired and those who have mobility issues. There is no information on the Federal Court of Canada website. Yet, the appellant was denied accommodations due to a brain injury. Once the appellant notified the court and the court knew that the appellant was self represented, the statement of principles on Self Representative and Accused Person was activated. This statement is about protecting the process as being fair to all including the Self Represented. The statement places the onus on the presiding Judge to provide information that is important to the process including the procedures. Appellant did not have access to information such as legal definitions, options that are available to appellant, or what medical information is needed by the court. Associate Judge Coughlin did not inform the appellant that she could return to the court should she need additional support. This does not affect the line between advocacy and impartiality as it does not deal with the details of the case.

12. In para 50-52 of Decision dated February 28, Judge Rochester made a palpable and overriding error. The onus is not on the appellant but on the Prothonotary to ensure the process is fair as the above cases illustrated.

13. Rule 221 of the Federal Court rules states that a statement of claim can be struck with or without leave to amend. The Appellant statement of claim should have been with leave to amend; in Sibomana at para 9, Judge Roy states that the issue is about access to justice. Associate Judge Coughlin erred that s. 236 is an explicit ouster without considering the questions of law or cause of action. These questions challenge whether or not s. 236 applies to the excluded and unrepresented employees. Judge Rochester erred in the review when she upheld Associate Judge Coughlin's decision. Associate Judge Coughlin overstepped her role as presiding judge by ruling the

legislative error was not valid: the court has said that the facts are assumed to be true and the decision is only made at trial. This cannot occur in the Motion to Strike proceeding [Tingley v. The Attorney General of Canada et al., 2021 NBCA 18 (CanLII)]. Judge Rochester made a palpable and overriding err with the right to be heard when the core issue was dismissed and not allowed to be argued or considered. (Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII)

14. The appellant should not be "unduly blame" for a poorly written statement as it was prepared without counsel [Sibomana v. Canada, 2016 FC 943 (CanLII para 9)]. In Sivak v. Canada, 2012 FC 272 (CanLII), the pleading was to be reviewed as to whether it could be saved. This was not done.

15. The appellant's disability needs to be addressed. The appellant is receiving less accommodations than those with a hearing impaired; than those with a visually impaired, or those with mobility issues.

**Remedies Sought**

16. The case management program to be cancelled for the appellant.

17. The Motion to strike is entirely dismissed without leave.

18. Associate Judge Coughlan's decision dated March 16, 2022 including costs be set aside

19. Judge Rochester's decision dated February 28, 2023 including costs be set aside

20. Leave to amend the Statement of Claim

21. The appellant is asking for increased costs in the three proceedings (Motion to Strike, The appeal to Federal Court, and The appeal to the Court of Appeal) as a deterrent for the Attorney General in bringing forth other frivolous motions; the abuse of process and the unnecessary delays.

**Alternatively**

22. An Estoppel is granted against s214 and s236 due to the corrupt grievance process

23. An Estoppel is granted against s214 and s236 being an exceptional case based on systemic negligence and harassment.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

Decisions

Prothantory Coughlan decision March 16, 2022

Decision dated February 28, 2023

Statements

The Statement of Principles for the Self Represented and Accused Persons 2006”

Legislation

FPSLRA Act

Rule 221 of the Federal Court rules

Cases

Agriculture and Agri-Food), 2010 SCC 64 (CanLII), [2010] 3 SCR 639
A.K. v Minister of Employment and Social Development, 2019 SST 1345 (CanLII)
Bron v. Canada (Attorney General), 2010 ONCA 71 (CanLII)].
Canada v. Greenwood, 2021 FCA 186 (CanLII
Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (CanLII)
Corriveau v. Canada, 2021 FC 267
Davidson v Canada (Attorney General), 2015 ONSC 8008
Erdmann v Canada, 2002 FCA 240
The Estate of GT v Minister of Employment and Social Development, 2020 SST 986 (CanLII)
Greenwood v. Canada, 2020 FC 119 (CanLII);
Hudson v. Canada, 2022 FC 694 (CanLII)
Hunt v. Carey Canada Inc., 1990 CanLII 90 (SCC), [1990] 2 SCR 959
H. V. K. v. Children's Aid Society of Haldimand-Norfolk, 2003 CanLII 2364 (ON SC)
Lebrasseur v Canada, 2007 FCA 330
Massabki v. Deputy Head (Department of Foreign Affairs, Trade and Development), 2022 FPSLRMazraani v. Industrial Alliance Insurance and Financial Services Inc., 2018 SCC 50 (CanLII), [2018] 3 SCR 261 EB 79 (CanLII)

Merlo v Canada, 2017 FC 51 [Merlo]
Miglialo v. Royal Bank of Canada, 2018 FC 525 (CanLII)
Murphy v. Canada (Attorney General), 2023 FC 57 (CanLII)
Nasogaluak v. Canada (Attorney General), 2021 FC 656 (CanLII)]
Pintea v. Johns, 2017 SCC 23 (CanLII), [2017] 1 SCR 470).
RC v Minister of Employment and Social Development, 2021 SST 539 (CanLII)
Rifai v. Canada (Attorney General), 2014 FC 529 (CanLII)
Romana v. Canada (Canadian Radio-Television and Telecommunications Commission), 2022 FC 1455 (CanLII)
Rumley v British Columbia, 2001 SCC 69
Sibomana v. Canada, 2016 FC 943 (CanLII)
Sivak v. Canada, 2012 FC 272 (CanLII)
Smith v. Canada (Attorney General), 2018 FC 993 (CanLII)
Tiller v Canada 2019 FC 895 [Tiller].
Tingley v. The Attorney General of Canada et al., 2021 NBCA 18
Toronto Regional Real Estate Board v. IMS Incorporated, 2021 FC 1239 (CanLII)
Wojdan v Canada (Attorney General), 2021 FC 1341 (CanLII).

Dated at Regina, Saskatchewan this 20 day of March, 2023.

__Dreena Davis (signed electronically)_

Dreena Davis, Appellant
302- 2275 McIntyre St
Regina, Sask
S4P 2S1
Phone: 306-580-4324
Email: davisdreena@gmail.com

TO: The Registrar

Federal Court of Appeals of Canada

AND TO:

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Prairie Region National Litigation Sector
410 – 22nd Street East, Suite 410 Saskatoon, SK S7K 5T6
Fax: (306) 518-0800
Per: William Kuchapski
Tel: (306) 518-0731
E-mail: William.Kuchapski@justice.gc.ca
Solicitor for the Respondent