

Court File No. A-179-22

FEDERAL COURT OF APPEAL

B E T W E E N:

SAMEER EBADI

FEDERAL COURT OF APPEAL		DEPOSE
COUR D'APPEL FÉDÉRALE		
F	SEPTEMBER 2, 2022	
L E D	B.ROUSSEAU	
TORONTO, ON		1

Appellant

and

HER MAJESTY THE QUEEN, JAMES DOE, JOHN DOE, JOSEPH DOE,
JANE DOE, JULIE DOE and DAVID VIGNEAULT

Respondents

NOTICE OF APPEAL

TO THE RESPONDENT:

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 located at 180 Queen St W, Toronto, ON M5V 1Z4.

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 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.

September 2, 2022

Issued by: 'BERNADETTE ROUSSEAU'
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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Judgment of Justice Brown dated June 6, 2022 which granted the Respondents' motion to strike for want of jurisdiction. The Appellant appeals on the grounds that Justice Brown erred in law in finding that the Federal Court lacked jurisdiction to hear the Appellant's action, in his interpretation of the Federal Court's residual jurisdiction, his interpretation of the *Federal Public Sector Labour Relations Act*, SC 2003, c. 22 (the "*FPSLRA*") and the Canadian Security Intelligence Service ("CSIS") policies and procedures. The Appellant further appeals on the ground that Justice Brown made factual errors in his findings related to the Appellant's efforts to make use of internal CSIS processes prior to commencing this action and the significance of CSIS.

THE APPELLANT ASKS that:

1. The judgment of Justice Brown dated June 6, 2022 be overturned; and
2. The Federal Court of Appeal order that the Appellant's action proceed in Federal Court.

THE GROUNDS OF APPEAL are as follows:

1. The Appellant commenced this action on January 16, 2020 in Federal Court by issuing a Statement of Claim;
2. The Statement of Claim alleges that some or all of the Respondents breached the Appellant's *Charter* rights by engaging in religious and racial discrimination against him, and that they committed intentional torts, motivated by religious and racial hatred, including assault, battery, and intentional infliction of mental suffering;
3. In particular, the Appellant alleges that the Respondents, Jane Doe and Joseph Doe, would repeatedly and intentionally hit the Appellant in the head or body with his office door while he was prostrate at prayer in his CSIS office;
4. The Appellant's action claims both damages and declaratory relief, including a declaration that his *Charter* rights were breached;

5. In his June 6, 2022 judgment, Justice Brown dismissed the Appellant's action in its entirety on the basis that the Federal Court lacked jurisdiction to hear the Appellant's action based on sections 208 and 236 of the *FPSLRA*;
6. Justice Brown further held that the Federal Court lacks residual discretion to hear the Appellant's action;
7. The Judgment is erroneous in law as sections 208 and 236 of the *FPSLRA* do not apply in circumstances where an administrative process does not allow a public sector employee to commence a grievance;
8. The Appellant was prohibited from commencing a grievance for a harassment complaint under the terms of Section 1.2.2 of the CSIS *Human Resources Policies and Procedures* (the "*HRPP*");
9. Under the terms of the *HRPP*, CSIS management designates a "harassment" and a "grievance" track, with harassment complaints kept separate from grievances;
10. Matters that may be grieved under the *HRPP* are, subject to this Court's residual jurisdiction, potentially covered under the *FPSLRA*;
11. Harassment matters, as a result of CSIS's own policies, cannot proceed as grievances and are not subject to sections 208 and 236 of the *FPSLRA*;
12. Subsection 208(5) of the *FPSLRA* precludes an employee from commencing a grievance for the purposes of that Act if the employer has a policy in place that is separate from the grievance process;
13. If an employee avails himself of a complaint procedure separate from a grievance process, section 236 of the *FPSLRA* does not apply;
14. The policy, *CSIS Procedures: Resolution of Harassment Complaints* (the "Harassment Policy"), as it is designed to be separate from CSIS's grievance process, does not provide a complainant with any of the ordinary protections of the *FPSLRA*, including, potentially, the availability of an independent adjudicator to resolve matters related to "disciplinary

action resulting in termination, demotion, suspension or financial penalty” under subsection 209(1)(b) of the *FPSLRA*;

15. Section 5.2 of the Harassment Policy provides that “a grievance and a harassment complaint cannot run concurrently for the same situation”;
16. The Harassment Policy does not provide for the availability of remedies substantively similar to those available in a Court action;
17. Contrary to the findings in the Judgment, complainants have no right to grieve the outcome of a Harassment Policy decision by CSIS;
18. Under section 6.9 of the CSIS Harassment Policy, only respondents to a harassment complaint process may grieve the decision reached, and then only if a disciplinary measure is imposed;
19. Both complainants and alleged harassers must have access to the independent adjudication under the *FPSLRA* in circumstances set out in 209(1)(b);
20. The Judgment has errors in law as it misstates the scope of this Court’s residual discretion;
21. The Judgment is directly at odds with the Federal Court of Appeal’s findings in *Canada v. Greenwood*, 2021 FCA 186;
22. The Judgment failed to account for the importance of unionization in the public sector, as required by the Federal Court of Appeal’s analysis in *Greenwood*,
23. The Judgment failed to appreciate the full context of the Appellant’s circumstances, including pervasive racism and religious discrimination in CSIS, in concluding that CSIS ought to be trusted to consider constitutional, *Charter*-based claims and, consequently, made factual errors;
24. The Judgment failed to identify that the Appellant had taken informal efforts to resolve harassment complaints with CSIS and that filing a formal complaint was unnecessary to commence a harassment complaint;

25. The Judgment failed to recognize, despite the matter being in evidence and raised at the oral hearing, that the Appellant had previously commenced a harassment complaint and was told that he was “delusional” in making the complaint by CSIS management;
26. Such further and other grounds as counsel may advise or that may be considered by this Honourable Court;
27. The Appellant relies upon *Federal Courts Act*, R.S.C., 1985, c. F-7, specifically 27(2)(b) to file the Notice of Appeal; and
28. The Appellant relies upon the following statutes, including any amendments and regulations thereto:
- a. *Federal Courts Act*, R.S.C., 1985, c. F-7;
 - b. *Crown Liability and Proceedings Act*, RSC 1985, c C-50;
 - c. *Federal Public Sector Labour Relations Act*, SC 2003, c. 22; and
 - d. *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

DATED: September 2, 2022



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