Court Of Appeal Confirms Lack Of Jurisdiction To Hear Proposed Gender discrimination Class Action Against Police Service

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The Ontario Court of Appeal in Rivers v. Waterloo Regional Police Services Board has upheld the Superior Court of Justice's determination that it was without jurisdiction to hear a proposed class action on behalf of current and former female officers with the Waterloo Regional Police Service against the Waterloo Regional Police Services Board and the Waterloo Regional Police Association. The claim alleged systemic gender-based discrimination, Charter breaches, and sexual harassment by male members of the Service, over a 30-year period.

Lack of Jurisdiction

The Superior Court followed prior decisions in confirming that the putative class members were bound by their respective collective bargaining agreements, which provided for binding arbitration, as codified under the Police Services Act. For a more detailed analysis of the lower Court's decision, please see our previous case alert.

The Court of Appeal agreed that, "in the policing context … the Superior Court lacks jurisdiction to entertain the proposed class action". The Court rejected the appellants' submissions that the collective agreements did not provide an adequate remedy for class members. The Court noted that the collective agreements did permit group complaints or grievances. The Court also rejected the submission that there were practical barriers to filing a complaint with the Association because of a discriminatory environment. The Court found a "fatal flaw" in this argument in that the putative class members had not attempted to avail themselves of the mandatory arbitration process or led any evidence to demonstrate that it was practically unavailable.

Certification Criteria

Despite finding that it lacked jurisdiction to hear the proposed class action, the Superior Court (at the urging of counsel for the plaintiff) went through the exercise of applying the

certification criteria, ultimately finding that the pleading did not disclose a cause of action. The Court of Appeal refused to mirror such an exercise, finding it unnecessary to address the dismissal of the certification motion.

The Court of Appeal's ruling strengthens the existing body of case law, holding that courts are without jurisdiction to consider proposed class actions when the allegations fall within a collective agreement and legislative scheme providing for binding arbitration.

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