

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

April 24, 2019

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.

By

[Jonathan Thoburn](#), [David Elman](#)

Expertise

[Disputes](#), [Appellate Advocacy](#), [Class Actions](#)

BLG | Canada’s Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at [blg.com/MyPreferences](https://www.blg.com/MyPreferences). If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at [blg.com/en/privacy](https://www.blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.