Court File No. A-20-25 ID#9

FEDERAL COURT OF APPEAL

Proposed Class Proceeding

B E T W E E N :

HIS MAJESTY THE KING

Appellant

and

STACEY HELENA PAYNE, JOHN HARVEY and LUCAS DIAZ MOLARO

Respondents

APPELLANT'S MEMORANDUM OF FACT AND LAW

April 14, 2025

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OVERVIEW

1. The plaintiffs are unionized employees of the federal public service. They were placed on leave without pay because they refused to be vaccinated against COVID-19, contrary to the Government of Canada's workplace vaccination policy. This is, at base, a dispute over the terms and conditions of their employment. Like similar challenges to the vaccination policy that have already been struck on jurisdictional grounds, the plaintiffs' claim relates to matters that could have been grieved and therefore cannot form the basis of a civil claim. The Court committed reversible errors in declining to strike the claim in its entirety.

2. Under the *Federal Public Sector Labour Relations Act* (the "*FPSLRA*" or the "Act"), employees enjoy a broad right to grieve virtually any dispute relating to their employment. This includes a right to grieve the interpretation or application of a provision of any instrument issued by the employer, as well as a right to grieve any occurrence or matter affecting the terms and conditions of employment. The right to grieve is in lieu of any right of action: s. 236 of the Act ousts the courts' jurisdiction over any matter that could have been grieved.

3. The motion judge acknowledged that litigants cannot avoid the application of s. 236 through artful pleading. Nevertheless, he committed reversible errors in finding that one of the pleaded causes of action – framed in s. 2(d) of the *Charter* – was not grievable and could proceed. First, he erred in law by failing to apply the correct legal test. He failed to assess whether the dispute, in its essence, related to a matter that could be grieved under the *FPSLRA*. Instead, he relied on the fact that a similarly characterized dispute – about the "process" by which terms and conditions were changed – could not be grieved under the labour relations regime that was considered by the Supreme Court of Canada in *Morin*. However, the right

to grieve under the *FPSLRA* is much broader than the right to grieve in *Morin.* Had the motion judge applied the broad grievance provisions of the *FPSLRA*, his distinction between "process" and substance would have been irrelevant: the dispute relates to the terms and conditions of the plaintiffs' employment and is therefore grievable.

4. Second, the motion judge committed a palpable and overriding error in accepting that the plaintiffs' s. 2(d) claim relates only to the process by which the vaccination policy was adopted. This was simply not supported by the statement of claim, which pled no material facts relating to how that process could have engaged – let alone infringed – the plaintiffs' rights to freedom of association under s. 2(d) of the *Charter*. For the same reason, the motion judge erred in accepting that the claim discloses a reasonable cause of action for breach of s. 2(d) of the *Charter*.

5. But for the foregoing errors, the motion judge would have had no choice but to strike the claim in its entirety without leave to amend. The Federal Court does not have jurisdiction over any aspect of the plaintiffs' claim, whether framed in misfeasance or for breach of s. 2(d). This is not a deficiency that can be cured by amendment. Rather, it is a function of the essential nature of the dispute and the breadth of the plaintiffs' statutory grievance rights. Leave to amend cannot be granted to allow the plaintiffs to substitute themselves for another party whose claim could come within the Court's jurisdiction. If the Court does not have jurisdiction over the plaintiffs' action, the fact that it might have jurisdiction over a similar claim brought by a different plaintiff is irrelevant.

PART I - STATEMENT OF FACTS

A. THE PLAINTIFFS' EMPLOYMENT & THEIR DISPUTE OVER THE VACCINATION POLICY

6. According to the statement of claim, the plaintiffs are or were employees of the federal public service who were suspended or resigned after they refused to be vaccinated against COVID-19 pursuant to the Treasury Board's *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (the "Vaccination Policy" or the "Policy").[1]

7. At the relevant time, the plaintiff Stacey Helena Payne was an employee of the Department of National Defence ("DND"); the plaintiff John Harvey was an employee of the Correctional Service of Canada ("CSC"); and the plaintiff Lucas Diaz Molaro was an employee of the Federal Economic Development Agency for Southern Ontario ("FEDA").[2]

8. The Vaccination Policy took effect on October 6, 2021, and remained in place until it was suspended on June 14, 2022.[3] It applied to employees in the core public administration, which includes DND, CSC and FEDA.[4]

9. While it was in place, the Vaccination Policy imposed, as a condition of employment, a requirement that all employees of the core public administration be

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[1] Statement of Claim, T-2142-23 dated October 6, 2023 ["Statement of Claim"] at paras 5-7, **Appeal Book ["AB"], Tab 4, p 170-171**.
[2] Statement of Claim at paras 5-7, **AB, Tab 4, p 170-171**.
[3] Affidavit of Charles Vézina, affirmed August 16, 2024 ["Vézina Affidavit"] at paras 4, 6, **AB, Tab 6, p 187, 188**; Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police, Exhibit A to Vézina Affidavit ["Vaccination Policy"], **AB, Tab 6A, p 193**. The policy has since been rescinded.
[4] *Financial Administration Act*, RSC, 1985, c F-11 [*Financial Administration Act*], s. 11(1) and Schedules I, IV.

vaccinated against COVID-19. Exceptions were made for employees who could not be vaccinated due to a certified medical contraindication, religion, or any other prohibited ground of discrimination as defined in the *Canadian Human Rights Act*. Employees unwilling to be vaccinated or to disclose their vaccination status were placed on administrative leave without pay.[5]

10. The plaintiffs say that they were suspended pursuant to the Policy, or resigned.[6] Two of the plaintiffs, Ms. Payne and Mr. Harvey, filed grievances pursuant to s. 208 after they were placed on leave without pay, raising allegations that are similar to those made in this action.[7] As of the date when Canada's evidence on the motion to strike was affirmed, both grievances were at the third level of the grievance procedure.[8]

11. DND, CSC and FEDA are part of the public service, as defined by the *FPSLRA*.[9] Accordingly, it was not disputed on the motion below that the plaintiffs were all "employees" within the meaning of s. 206 of the *FPSLRA* and that their right to file individual grievances was therefore defined by s. 208 of the *FPSLRA*.[10]

12. On October 6, 2023, the plaintiffs commenced this claim as a proposed class action. They seek an unspecified amount of general, special and *Charter* damages

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[5] Vézina Affidavit at para 4, **AB, Tab 6, p 188**; Vaccination Policy, s. 3.2, 4.3, 7, **AB, Tab 6A, p 194, 197-198, 200-201.**
[6] Statement of Claim at paras 5-7, **AB, Tab 4, p 170-171**.
[7] Vézina Affidavit at para 16, **AB, Tab 6, p 190**; Grievance of Stacey Payne, Exhibit C to Vézina Affidavit ["Payne Grievance"], **AB, Tab 6C, p 214-224**; Grievance of John Harvey, Exhibit D to Vézina Affidavit ["Harvey Grievance"], **AB, Tab 6D, p 232**.
[8] Vézina Affidavit at para 16, **AB, Tab 6, p 190**.
[9] *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [*FPSLRA*], s. 2(1) (definition of "public service"); *Financial Administration Act*, s. 11(1) and Schedules I, IV.
[10] *FPSLRA*, s. 206(1) (definition of "employee").

arising from the Treasury Board's issuance and enforcement of the Vaccination Policy, including special damages corresponding to past or future loss of income, medical expenses and out of pocket expenses.[11] They allege misfeasance in public office on the part of the Treasury Board and that the Policy infringes their right to freedom of association under s. 2(d) of the *Charter.*[12]

13. The plaintiffs propose representing a class consisting of:

> "…all existing unionized employees and all persons hired within the core public administration of the Federal public service and the RCMP during the Class Period who were either subject to or subjected to discipline, including but not limited to suspension of employment and termination, pursuant to the Policy as a result of failing to disclose their vaccination status or failing to become vaccinated".[13]

14. However, the plaintiffs have not yet moved to have their action certified as a class action.

B. CANADA'S MOTION TO STRIKE

15. On August 19, 2024, the Attorney General of Canada ("Canada") moved to strike the claim on the following grounds:

- The Court is without jurisdiction because the plaintiffs' claim relates to matters that could be grieved under the *FPSLRA* and are therefore barred by s. 236 of that Act; and

- In the alternative, the claim does not plead sufficient material facts to disclose a reasonable cause of action, whether in the tort of misfeasance in public office or for breach of the plaintiffs' right to freedom of association

[11] Statement of Claim at para 1, **AB, Tab 4, p 168-169**.
[12] Statement of Claim at paras 3-4, **AB, Tab 4, p 170**.
[13] Statement of Claim at para 8, **AB, Tab 4, p 171**.

under s. 2(d) of the *Charter*.[14]

16. Canada argued that it was therefore plain and obvious that the action could not succeed and should be struck without leave to amend.

C. THE DECISION BELOW

17. The motion judge began by canvassing the jurisprudence on s. 236, citing this Court's recent decisions in *Adelberg v Canada* and *Ebadi v Canada*.[15] He concluded that "the question for the Court's determination is whether the essence of the Plaintiffs' claim (or, expressed otherwise, the essential character of the dispute) raises a matter that could have been the subject of a grievance under section 208 of the *FPSLRA*."[16] He then proceeded to consider the two pleaded causes of action separately. He struck the claim in misfeasance in public office with leave to amend but declined to strike the s. 2(d) claim.[17]

1. The plaintiffs' claim framed in misfeasance in public office was struck with leave to amend

18. With respect to the claim framed in misfeasance, the motion judge found that the essential character of the dispute related to the plaintiffs' terms and conditions of employment and could therefore be grieved under s. 208.[18] As a result, he found that the Court lacked jurisdiction over that aspect of the claim. If he had not struck the misfeasance claim on jurisdictional grounds, he would have found

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[14] Notice of Motion to Strike dated August 19, 2024, **AB, Tab 5, p 182**.
[15] *Payne v Canada*, 2025 FC 5 ["Federal Court Reasons"] at para 26, **AB, Tab 2, p 19**, citing *Adelberg v Canada*, 2024 FCA 106 [*Adelberg FCA*], leave to appeal refused, 2025 CanLII 5342; *Ebadi v Canada*, 2024 FCA 39 [*Ebadi*], leave to appeal refused, 2024 CanLII 98823.
[16] Federal Court Reasons at para 32, **AB, Tab 2, p 22**.
[17] Federal Court Reasons at para 41 and 39, **AB, Tab 2, p 25-26**.
[18] Federal Court Reasons at paras 40-41, **AB, Tab 2, p 25-26**.

that the statement of claim pleaded sufficient material facts to support a claim in misfeasance, and would have dismissed that aspect of Canada's motion to strike.[19]

19. Since he did not have jurisdiction over the plaintiffs' misfeasance claims, the motion judge granted leave to amend to permit the plaintiffs to identify other proposed representative plaintiffs "who are not afforded grievance rights by the *FPSLRA*" (such as casual workers or students)" and to plead material facts in relation to claims [in misfeasance] by such plaintiffs".[20]

2. The plaintiffs' claim framed in s. 2(d) of the *Charter* was not struck

20. With respect to the parts of the statement of claim framed in s. 2(d) of the *Charter*, the motion judge came to a different conclusion. He accepted the plaintiffs' contention that the essential character of that aspect of their dispute related not to the "interpretation or application of the terms and conditions of their employment but rather involves the process by which those terms were altered by the Policy in the absence of collective bargaining."[21]

21. The motion judge then relied on the Supreme Court of Canada's decision in *Morin*[22] for the proposition that a dispute "as to whether the process leading to the adoption of the alleged discriminatory clause in the collective agreement violated the *Quebec Charter*, did not relate to how [a collective] agreement should be interpreted and applied" (emphasis added).[23] He acknowledged that *Morin* was not on all fours with the case before him – "it involved different labour relations and

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[19] Federal Court Reasons at paras 52-53, **AB, Tab 2, p 29-30**.
[20] Federal Court Reasons at para 4, **AB, Tab 2, p 10-11**.
[21] Federal Court Reasons at paras 33, **AB, Tab 2, p 22**.
[22] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Quebec (Attorney General)*, 2004 SCC 39 [*Morin*].
[23] Federal Court Reasons at para 37, **AB, Tab 2, p 24-25**.

human rights legislation and different allegations" – but found that there was a sufficient parallel to prevent him from concluding that it is plain and obvious that the plaintiffs' claim could be grieved.[24]

22. In this respect, the motion judge relied on the parallel between the language used by the Supreme Court in *Morin*, underlined above, and the text of s. 208(1)(a) of the *FPSLRA*, which permits employees to grieve "the interpretation or application" of a provision of a collective agreement or of a direction or other instrument issued by the employer.[25] He did not consider whether s. 208(1)(a) could be interpreted as including disputes over how an instrument was adopted.[26] Nor did he consider whether a claim relating to process could be grieved under the other paragraphs of s. 208, which include a right to grieve "any occurrence or matter affecting [an employee's] terms and conditions of employment."[27]

23. The motion judge did not consider whether the statement of claim pled sufficient material facts to support a reasonable cause of action under s. 2(d).

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[24] Federal Court Reasons at para 38, **AB, Tab 2, p 25**.
[25] *FPSLRA*, s. 208(1)(a)(i)-(ii).
[26] See *Murphy v Canada (Attorney General)*, 2022 FC 146 [*Murphy First Instance*] at paras 17-19, affirmed 2023 FC 57 [*Murphy Appeal*]. The Court struck an application that challenged the legality of the Vaccination Policy on the basis that the matter could be grieved. The Court held that, as "the Vaccination Policy is a direction or instrument made or issued by the Applicants' employer, which affects their terms and conditions of employment, the subject-matter of the application clearly falls within subsection 208(1) of the Act and entitles the Applicants to file a grievance."
[27] *FPSLRA*, s. 208 (1)(b).

PART II - POINTS IN ISSUE

24. The issues for determination on this appeal are whether:

(a) The motion judge committed reversible errors in finding that he could take jurisdiction over any part of the claim, and in particular whether:

(i) he erred in law by failing to apply the correct legal test on a motion to strike under s. 236 of the *FPSLRA*, namely whether the essential character of the plaintiffs' claim relates to a dispute that could have been grieved under s. 208;

(ii) he committed palpable and overriding errors in accepting that part of the plaintiffs' claim is, in its essential character, solely about the process by which the Vaccination Policy was adopted;

(b) The motion judge committed palpable and overriding errors in finding that the pleading would have disclosed a reasonable cause of action even if the dispute was within the Court's jurisdiction; and

(c) But for the foregoing errors, the motion judge would have had to deny leave to amend.

PART III - SUBMISSIONS

A. STANDARD OF REVIEW ON APPEAL

25. The appellate standard of review in *Housen v Nikolaisen* applies to a discretionary order of a motion judge.[28] Determinations of law are reviewable on a correctness standard, while a palpable and overriding error standard applies to findings of mixed fact and law.[29] A palpable and overriding error is one that is obvious and goes to the very core of the outcome.[30]

26. The question of whether the motion judge identified and applied the correct legal test to determine whether the court has jurisdiction is a question of law,

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[28] *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*].
[29] *Housen* at paras 8, 10.
[30] *Benhaim v St-Germain*, 2016 SCC 48 at para 38.

assessed on the standard of correctness. While his characterization of the essential nature of the dispute is a question of mixed fact and law,[31] his determination of whether that dispute can be grieved under s. 208 is a question of law.[32]

27. The palpable and overriding standard applies to the motion judge's assessment of whether the statement of claim pleads sufficient material facts.[33] Likewise, his decision to grant the plaintiffs leave to amend their statement of claim is a discretionary one, which is subject to reversal if tainted by palpable and overriding error or if the discretion was exercised on a wrong principle.[34]

B. THE MOTION JUDGE ERRED BY ASSUMING JURISDICTION

28. The motion judge erred by taking jurisdiction over any aspect of the plaintiffs' claim. First, he erred in law by failing to apply the correct legal test. Instead of assessing whether the dispute related to a matter that could be grieved under the *FPSLRA*, he relied on the fact that a similar issue could not be grieved under the labour relations regime that was at issue in *Morin*. Had the motion judge rendered his decision based on the language of s. 208, he would have found it plain and obvious that the matter could be grieved regardless of whether it was characterized as a dispute over the terms and conditions of employment or a dispute over the process by which terms and conditions were changed.

29. Second, and in any event, the motion judge committed palpable and overriding errors in accepting that the essential nature of the plaintiffs' s. 2(d) claim

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[31] *Canada v Hudson*, 2024 FCA 33 at para 61.
[32] *Ebadi* at para 16.
[33] *Adelberg FCA* at para 39; *Jensen v Samsung Electronics Co Ltd*, 2023 FCA 89 at para 38, leave to appeal refused, 2024 CanLII 543; *Bigeagle v Canada*, 2023 FCA 128 [*Bigeagle FCA*] at para 25, leave to appeal refused, 2024 CanLII 50586.
[34] *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 54.

related only to process.[35] He wrongly assumed that the essential character of the dispute would be different for each of the two causes of action pled. This approach was contrary to consistent appellate authority holding that a court's characterization of the essential nature of a dispute must be based on the facts giving rise to the dispute, and not by the legal characterization of the wrong.[36] Since none of the material facts pled related to the process by which the Vaccination Policy was adopted, it was a palpable and overriding error to conclude that that was the essential character of the dispute.

1. The motion judge failed to apply the correct legal test

a) Section 236 ousts the Court's jurisdiction over matters that could be grieved

30. On its motion to strike, Canada challenged the Court's jurisdiction pursuant to s. 236 of the *FPSLRA*. Section 236 ousts the Court's jurisdiction and bars any right of action for matters that could have been the subject of a grievance:

No Right of Action **Disputes relating to employment**	**Absence de droit d'action** **Différend lié à l'emploi**
236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.	**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

[35] Federal Court Reasons at para 38, **AB, Tab 2, p 25**.
[36] See, for example, *Prentice v Canada*, 2005 FCA 395 [*Prentice*] at para 24, leave to appeal refused, 2006 CanLII 16454; *Moodie v Canada (National Defence)*, 2010 FCA 6 [*Moodie*] at paras 6-7; *Adelberg FCA* at para 56; *Ebadi* at paras 21-22.

Application	**Application**
(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.	**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.
[…] (emphasis added)	[…]

31. As the Ontario Court of Appeal held in *Bron*, and as the Federal Court and this Court have consistently affirmed, the provision is "clear and unequivocal" and "explicitly ousts the jurisdiction of the court over claims that could be the subject of a grievance under s. 208 of [the *FPSLRA*]."[37]

32. Under s. 208 of the *FPSLRA*, public service employees enjoy a broad right to grieve. In the court below, it was not disputed that, at the relevant time, the plaintiffs' grievance rights were defined by s. 208(1), which applies to "employees" as defined in s. 206 regardless of whether they are unionized:[38]

Right of employee	**Droit du fonctionnaire**
208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved	**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :

[37] *Bron v Canada (Attorney General)*, 2010 ONCA 71 [*Bron*] at paras 4, 29, 33; *Ebadi* at para 28; *Davis v Canada (Royal Canadian Mounted Police)*, 2024 FCA 115 [*Davis*] at para 71; *Murphy Appeal* at para 14; *Wojdan v Canada*, 2023 FC 182 [*Wojdan*] at paras 8, 20; *Adelberg v Canada*, 2023 FC 252 [*Adelberg FC*] at para 13. See also *Thompson v Kolotinsky*, 2023 ONSC 1588 (Div Ct) [*Kolotinsky*] at paras 15, 17; *Yeates v Canada (Attorney General)*, 2011 ONCA 83 at para 3.
[38] *Davis* at paras 67, 70.

(a) by the interpretation or application, in respect of the employee, of	**a)** par l'interprétation ou l'application à son égard :
(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or	**(i)** soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) a provision of a collective agreement or an arbitral award; or	**(ii)** soit de toute disposition d'une convention collective ou d'une décision arbitrale;
(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	**b)** par suite de tout fait portant atteinte à ses conditions d'emploi.
[…] (emphasis added)	[…]

33. The only exception to the bar in s. 236(1) is articulated in s. 236(3).[39] None of the plaintiffs fall within the ambit of that provision. While some courts have suggested in *obiter* that they might retain some residual discretion to assume jurisdiction in exceptional circumstances where there is evidence that the grievance process is entirely corrupt,[40] the plaintiffs did not allege that such exceptional circumstances are engaged in this case.[41]

34. Accordingly, the only question remaining for the Court in determining

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[39] *FPSLRA*, s. 236(3): "Subsection (1) does not apply in respect of an employee of a separate agency that has not been designated under subsection 209(3) if the dispute relates to his or her termination of employment for any reason that does not relate to a breach of discipline or misconduct."

[40] *Adelberg FCA* at para 58, aff'g on this point *Adelberg FC* at para 17; *Bron* at para 29. Despite those statements, since s. 236 came into force in 2005, no court has ever invoked a residual discretion to assume jurisdiction in its face: *Adelberg FC* at para 17.

[41] If such residual discretion exists, the plaintiffs would have the onus of establishing that it should be exercised: *Adelberg FCA* at para 59; *Davis* at paras 74, 90.

whether its jurisdiction over the claim was ousted by s. 236 was whether the claim related to a matter that could have been grieved under s. 208.[42] The plaintiffs had the onus of establishing that the grievance process is clearly not available. As the Federal Court has held, to hold otherwise would "amount to asking the Court to prejudge the admissibility of a grievance and to usurp the role of the grievance authority in respect of the interpretation and application of the provisions governing the grievance procedure."[43]

b) The motion judge failed to assess whether the dispute related to a matter that could be grieved under s. 208

35. The motion judge averted to the correct legal test: he canvassed relevant authority, including from this Court, before correctly stating that "the question for the Court's determination is whether the essence of the Plaintiffs' claim (or, expressed otherwise, the essential character of the dispute) raises a matter that could have been the subject of a grievance under section 208 of the *FPSLRA*."[44]

36. However, for the reasons outlined in paragraphs 49-69, below, the motion judge committed palpable and overriding errors in accepting the plaintiffs' argument that the essential character of their dispute framed in s. 2(d) related only to the process by which the Vaccination Policy was implemented.

37. Regardless, those errors would not have affected the outcome if the motion judge had applied the legal test and assessed whether the dispute could be grieved under s. 208.

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[42] See, for example, *Attorney General of Canada, on behalf of Correctional Service of Canada v Robichaud and MacKinnon*, 2013 NBCA 3 [*Robichaud*] at para 13.
[43] *Adelberg FC* at paras 26-28, quoting *Murphy First Instance* at para 33; *Murphy Appeal* at para 82. See also *Davis* at para 74.
[44] Federal Court Reasons at para 32, **AB, Tab 2, p 22**.

38. Instead, he held that what "carries the day" for the plaintiffs is the Supreme Court of Canada's decision in *Morin*.[45] In that case, the Court considered s. 100 of Quebec's *Labour Code*, which stipulated that "[e]very grievance shall be submitted to arbitration in the manner provided in the collective agreement […]."[46] The *Labour Code* defined "grievance" as "any disagreement respecting the interpretation or application of a collective agreement."[47] This is much narrower than the right to grieve in s. 208, which extends to "any occurrence or matter affecting his or her terms and conditions of employment" and applies even to employees who are not subject to any collective agreement at all.[48]

39. It was therefore a legal error to treat as determinative the fact that, under a different legislative regime with a different right to grieve, a labour arbitrator did not have exclusive jurisdiction over a similarly characterized dispute. Indeed, the motion judge relied on *Morin* as authority for a broad proposition that disputes over process are not grievable and are therefore within a court's jurisdiction. This was contrary to the Supreme Court's express caution in *Morin* that the question of whether an arbitrator has exclusive jurisdiction always "depends on the governing legislation, as applied to the dispute viewed in its factual matrix."[49]

c) The plaintiffs' claim is barred by s. 236 regardless of which characterization is accepted

40. Instead of merely relying on *Morin* as determinative, the motion judge was required to consider the second part of the test: *is the dispute, in its essential character, one that can be grieved under s. 208 of the FPSLRA?* Had he considered

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[45] Federal Court Reasons at paras 35-39, **AB, Tab 2, p 23-25**.
[46] *Morin* at para 16, citing *Labour Code*, CQLR c C-27 [*Quebec Labour Code*], s. 100.
[47] *Morin* at para 16 citing *Quebec Labour Code*, s. 1(f)
[48] *FPSLRA*, s. 208 (1)(b).
[49] *Morin* at paras 11, 15.

that question, he would have had to answer it in the affirmative.

41. As the Ontario Court of Appeal said in *Bron*, "[a]lmost all employment-related disputes can be grieved under s. 208 of the *PSLRA*".[50] Consistent appellate jurisprudence since *Bron* has confirmed that virtually any dispute relating to a public servant's employment can be grieved pursuant to s. 208 and will therefore be outside the jurisdiction of the courts, pursuant to s. 236.[51]

42. Section 208 makes no distinction between matters of process and matters of substance. Instead, s. 208 captures any matters or occurrences that *affect* the terms and conditions of employment, and the bar in s. 236 is in relation to "any act or omission giving rise to [a] dispute" that could be grieved. The broad language of s. 208 does not exclude issues relating to the procedure by which a term or condition of employment was changed or implemented.[52]

43. Further, the law is clear that alleged *Charter* violations may be grieved under s. 208. This Court has repeatedly affirmed that conflicts relating to "terms or conditions of employment" can "encompass allegations of defamation, discrimination, harassment, malice and bad faith, *Charter* breaches, and intentional torts".[53]

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[50] *Bron* at para 15. See also *Ebadi* at para 35.
[51] *Ebadi* at paras 35-36; *Davis* at para 68; *Goulet c Mondoux*, 2010 QCCA 468 at paras 5-6; *Robichaud* at para 11; *Cyr v Radermaker*, 2010 QCCA 389 at para 16; *Kolotinsky* at para 37; *Davis* at paras 68, 75.
[52] See, for example, *Brescia v Canada (Treasury Board)*, 2005 FCA 236 [*Brescia*] at paras 18, 50, leave to appeal refused, 2006 CanLII 1123; *Davis* at paras 7, 99. See also *Appleby-Ostroff v Canada (Attorney General)*, 2011 FCA 84, which concerned a grievance that, *inter alia*, called into question whether the employer had validly changed the grievor's terms and conditions of employment.
[53] *Ebadi* at para 29; *Adelberg FCA* at para 56; *Davis* at para 75. See also *Price c Canada*, 2016 FC 649 at paras 31-33.

44. While the motion judge noted "a dearth of authority on whether an alleged violation of *Charter* section 2(d) in particular can be grieved",[54] there is no principled reason why s. 2(d) would be the sole exception to the general proposition that *Charter* breaches may be grieved. Moreover, while grievance decisions are not publicly reported, there are examples of grievances raising s. 2(d) claims in the publicly reported adjudication decisions of the Federal Public Sector Labour Relations and Employment Board.[55]

45. Accordingly, had the motion judge applied the correct legal test, he would have had to strike the claim pursuant to s. 236. It is plain and obvious that the plaintiffs' claim can be grieved, even if it is characterized as relating only to the process by which the terms and conditions of the plaintiffs' employment were changed. As this Court noted in *Ebadi*, it would undermine Parliament's intention to allow large categories of claims – such as, in this case, any dispute over the process by which terms and conditions were adopted – to escape the operation of the *FPSLRA*.[56]

2. The plaintiffs' use of the grievance process for the same complaints confirms that the essence of their dispute is grievable

46. The motion judge erred in failing to consider the uncontradicted evidence establishing that two of the three plaintiffs have in fact pursued similar claims by way of grievance under s. 208. Both Ms. Payne and Mr. Harvey grieved the

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[54] Federal Court Reasons at para 34, **AB, Tab 2, p 23**.
[55] *Boivin v Treasury Board*, 2009 PSLRB 98 at para 28; *King v Deputy Head*, 2010 PSLRB 125 at para 134, application for judicial review refused 2012 FC 488, appeal dismissed, 2013 FCA 131, leave to appeal refused, 2014 CanLII 3503; *Andres et al v Canada Revenue Agency*, 2009 PSLRB 36 at para 90. Not all grievances can be referred for adjudication under s. 209, meaning that the publicly reported decisions of the Board may not reflect the full range of topics that can be grieved under s. 208.
[56] *Ebadi* at para 36.

Vaccination Policy.[57] They sought the same remedies in their grievances as they do in this action, including damages for lost income and *Charter* breaches.[58]

47. In her grievance, Ms. Payne raises complaints about process that are, in substance, the same as those raised in this claim. She lists several reasons for her grievance, including her belief that the Vaccination Policy is "an unreasonable not agreed upon term and condition of [her] employment" (emphasis added).[59] She further states that the "Policy is a set of unilaterally imposed rules by the employer that have changed the terms and conditions of my employment" (emphasis added).[60] The tatement of claim similarly pleads that the Policy was "a unilateral term and condition of employment inserted into [the plaintiffs'] employment contracts".[61]

48. These grievances eliminate any doubt that the essence of the plaintiffs' claim falls squarely within the matters that can be grieved pursuant to s. 208 of the *FSPLRA.* Consequently, s. 236 of the Act ousts the Court's jurisdiction.

3. The motion judge committed reversible errors in characterizing the essential nature of the dispute

49. Even if the motion judge was right that the plaintiffs could not grieve a dispute over the process by which the Policy was adopted, he also committed two reversible errors in finding that the essence of the plaintiffs' claim was only about process. First, he erred in principle by allowing the legal framing of the causes of action – instead of the facts pled – to drive his assessment of the claim's essential nature. Second, he committed palpable and overriding errors in accepting the

[57] Payne Grievance, **AB, Tab 6C, p 214**; Harvey Grievance, **AB, Tab 6D, p 232**.
[58] Payne Grievance, **AB, Tab 6C, p 214**; Harvey Grievance, **AB, Tab 6D, p 232**.
[59] Payne Grievance, **Appeal Book, Tab 6C, p 214**.
[60] Payne Grievance, **AB, Tab 6C, p 216**.
[61] Statement of Claim at para 1, **AB, Tab 4, p 168**.

plaintiffs' argument that the essential nature of their claim framed in s. 2(d) related solely to the process by which the Vaccination Policy was implemented. This argument is simply not borne out by the statement of claim, which pleads so few facts about process that it would fail to disclose a reasonable cause of action for breach of s. 2(d) even if it came within the Court's jurisdiction.

a) The motion judge failed to focus on the facts pled and the practical result sought when characterizing the claim

50. In order to identify the essential character of a claim, the Court is required to consider the incidents or "facts giving rise to the dispute" [62] and gain a realistic appreciation of "the practical result sought" by the litigant,[63] instead of relying on the "characterization of the wrong" alleged.[64] In the employment context, this Court and the Supreme Court of Canada have cautioned that, "otherwise, 'innovative pleaders' could 'evade the legislative prohibition on parallel court actions by raising new and imaginative causes of action.'"[65]

51. Accordingly, as this Court recently confirmed in *Ebadi*, "the application of section 208 cannot be driven by the label that a party assigns to the behaviour or conduct. This would divert from the true inquiry, which is the degree of connectedness between the complaint and the workplace."[66]

52. The motion judge fell into this error. He allowed the labels that the plaintiffs assigned to the conduct in question to drive his assessment of the essential nature

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[62] *Prentice* at para 24; *Moodie* at paras 6-7.
[63] *Canada v Hirschfield*, 2025 FCA 17 at para 66.
[64] *Prentice* at para 24.
[65] *Prentice* at para 24, citing *Weber v Ontario Hydro*, 1995 CanLII 108 (SCC) at para 49; *Vaughan v Canada*, 2005 SCC 11 at para 11. See also *Moodie* at para 6; *Davis* at para 98.
[66] *Ebadi* at para 37.

of the dispute. This is best illustrated by his decision to assess the essential nature of the dispute separately for the two causes of action alleged.[67] By examining the two causes of action in silos, he failed to conduct the holistic assessment that the case law requires. He was distracted from the proper question, which was whether, based on the facts pled and the practical result sought, the dispute was related to terms and conditions of employment. As outlined below, the two causes of action are based on the same pleaded facts and both relate to the impact of the Vaccination Policy on the terms and conditions of the plaintiffs' employment.

b) The claim is plainly directed at the Policy's impact on the terms and conditions of the plaintiffs' employment, not the process by which the Policy was implemented

53. The motion judge committed palpable and overriding errors in accepting the plaintiffs' argument that their s. 2(d) claim related, in its essential character, only to the process by which the terms and conditions of their employment were changed.

i) Almost all of the pleaded facts relate to the Policy's impact on the plaintiffs' employment

54. The statement of claim focuses overwhelmingly on the alleged impact that the requirement to be vaccinated had on the plaintiffs and on their employment. In other words, the facts pled relate to the implementation of the Policy and its application to the plaintiffs – not to the process by which the Policy was adopted.

55. First, the plaintiffs themselves characterize the Vaccination Policy as a new term and condition of employment.[68] That characterization is consistent with decisions of this Court and the Federal Court, which have found that claims regarding the implementation of the Vaccination Policy relate, in their essence, to

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[67] Federal Court Reasons at paras 37,40, **AB, Tab 2, p 24-26**.
[68] Statement of Claim at para 47, **AB, Tab 4, p 180**.

the terms and conditions of employment. In *Adelberg*, this Court held that "the Policy was a term and condition of employment and thus subject to grievance under section 208 of the *FPSLRA*".[69] Similarly, in *Wojdan*, the Federal Court held that the same Policy was "a purely employment-related matter".[70]

56. Indeed, the motion judge conceded that the issue in this case relates to a "relevant term of employment".[71] This should have been determinative.

57. Second, the plaintiffs expressly limit the scope of their proposed class to those who were "subject to or subjected to discipline […] pursuant to the Policy as a result of failing to disclose their vaccination status or failing to become vaccinated".[72] Almost all of the facts pled relate to the plaintiffs' beliefs that COVID-19 vaccines are not effective (paragraphs 21-30 of the statement of claim) and that the vaccines are, instead, dangerous (paragraphs 31-41 of the claim).

58. Finally, the plaintiffs also seek the practical result of obtaining compensation for the Policy's impact on their employment. They seek special damages for past or future loss of income, presumably corresponding to the periods when they were on unpaid leave pursuant to the Policy or had allegedly resigned because of the Policy.[73] Accordingly, regardless of the constitutional claim, the proposed class action is, in its essence, an attempt to recover monetary damages for employees who allegedly faced disciplinary action in their workplaces.

59. This is the same relief that may be sought through a grievance under s. 208.

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[69] *Adelberg FCA* at para 55.
[70] *Wojdan* at para 18. See also *Murphy First Instance* at paras 17-18 and *Murphy Appeal* at paras 97-99.
[71] Federal Court Reasons at para 38, **AB, Tab 2, p 25**.
[72] Statement of Claim at para 8, **AB, Tab 4, p 171**.
[73] Statement of Claim at para 1d, **AB, Tab 4, p 168**.

This Court and the Federal Court have recently reiterated that, where the practical relief sought relates to terms and conditions of employment, it matters not that a plaintiff also seeks declaratory relief or to recover under the *Charter* or in tort.[74]

ii) There are so few facts pled about "process" that the claim does not even disclose a reasonable cause of action for breach of s. 2(d)

60. The only fact pled in support of the plaintiffs' claim under s. 2(d) is that, before the Vaccination Policy came into effect, the plaintiffs' "freely negotiated, valid, and binding contractual employment agreements with the Treasury Board" did not require mandatory COVID-19 vaccination.[75] They say that that requirement was "a new term and condition" imposed on their employment without collective bargaining or memoranda of agreement.[76]

61. The mere fact that a new term or condition of employment is alleged to have been imposed outside of collective bargaining cannot be sufficient to conclude that the dispute, in its essential nature, is fundamentally about process. If that were so (and if it were true that such disputes over process could not be grieved), then any public service employee could circumvent the grievance regime and s. 236 by criticizing the process that gave rise to a given term or condition.

62. This would constitute a significant incursion into the federal public sector labour relations regime. Pursuant to sections 7 and 11.1 of the *Financial Administration Act*, the Treasury Board is responsible for and has the authority to establish the terms and conditions of employment of the federal employees who are

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[74] *Hirschfield* at paras 66, 74. See also *Murphy Appeal* at paras 93, 97-98; *Adelberg FC* at paras 32-34; *Adelberg FCA* at para 56; *Ebadi* at para 8, 19, 22-23, 29.
[75] Statement of Claim at paras 45-46, **AB, Tab 4, p 180**.
[76] Statement of Claim at para 47, **AB, Tab 4, p 180**. The plaintiffs also assert here that the requirement was also imposed without "consideration, or consent", but this is a bald allegation of a legal conclusion, not a statement of fact.

part of the core public administration.[77] This means that the Treasury Board can, at any time, establish terms and conditions of employment outside of bargaining, so long as they are not contrary to those found in the collective agreement or to statute. The Vaccination Policy was implemented pursuant to this authority.[78]

63. It was a palpable and overriding error to accept that the essential character of the dispute related to a lack of collective bargaining when the sole fact pled in that regard is that the Policy was not adopted through bargaining.

64. In fact, there are so few facts pled about process that, even if the Court did have jurisdiction over the plaintiffs' s. 2(d) claim, it would have to be struck as not disclosing a reasonable cause of action.

65. Section 2(d) of the *Charter* is not engaged simply because a term or condition of employment is imposed outside of bargaining. Rather, according to the Supreme Court of Canada, s. 2(d) is engaged if an impugned measure disrupts the balance of power between employees and the employer so as to "substantially interfere" with the right to a meaningful process of collective bargaining.[79] Central to whether there has been a "substantial interference" is whether there has been an effect on the capacity of union members to come together and pursue collective goals.[80]

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[77] *Association of Justice Counsel v Canada (Attorney General)*, 2017 SCC 55 [*Association of Justice Counsel*] at paras 18-19; *Adelberg FCA* at paras 9, 20; *Brescia* at para 50.
[78] Vaccination Policy, s. 2.1, **AB, Tab 6A, p 193**.
[79] *Health Services and Support - Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 [*Health Services*] at paras 90-95; *Société des casinos du Québec inc v Association des cadres de la Société des casinos du Québec*, 2024 SCC 13 at para 52. See also *Qualizza v Canada*, 2024 FC 1801 at paras 31-33.
[80] *Health Services* at para 109.

66. Depending on the context, examples of substantial interference could include the unilateral removal of important matters from the bargaining table, imposing "arbitrary outcomes" to bargaining, unilaterally nullifying negotiated terms, removing the right to strike, or imposing limits on future bargaining.[81]

67. The plaintiffs' statement of claim pleads no facts whatsoever to support a finding of substantial interference with meaningful collective bargaining. It says nothing about how a requirement that employees be vaccinated during a global pandemic had any impact on their right to meaningful collective bargaining, let alone an impact that could amount to substantial interference. There is no suggestion, for example, that the Treasury Board removed a collectively bargained right or imposed limits on what can be bargained in the future.

68. Even on the plaintiffs' apparent theory that s. 2(d) can be engaged by the simple imposition of a new term or condition without collective bargaining, they plead no facts going to the question of whether bargaining was required in the particular circumstances of the Vaccination Policy. It has long been established that the employer retains the management right to direct their workforce subject to the terms and conditions outlined in collective agreements.[82] As described above, the Treasury Board can, without bargaining, enact policies and establish terms and conditions of employment that are not contrary to those found in collective agreements or to statute.[83]

69. With no material facts pled about either the process that actually preceded

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[81] *Ontario English Catholic Teachers Association v Ontario (Attorney General)*, 2024 ONCA 101 at para 64.
[82] *Brescia* at paras 40, 50; *Association of Justice Counsel* at paras 18-20.
[83] *Financial Administration Act*, ss. 7 and 11.1; *Association of Justice Counsel* at paras 18-20.

the implementation of the policy or the considerations that would support requiring a different process, it is impossible to conclude that the essential nature of the claim is a challenge to process, or that the claim even discloses a reasonable cause of action for breach of s. 2(d).

C. THE MOTION JUDGE ERRED IN FINDING THAT THE CLAIM IS SUFFICIENTLY PLED

1. The claim pleads no materials facts to support a reasonable cause of action for breach of s. 2(d) of the *Charter*

70. As described in the preceding section, the statement of claim discloses no reasonable cause of action for breach of s. 2(d) of the *Charter* because it contains no material facts relating to the elements of the cause of action.[84] Even if the Court had jurisdiction over the s. 2(d) claim, it would have been an error not to strike it on this basis.

2. The claim does not disclose a reasonable cause of action in misfeasance

71. If the motion judge had not struck the claim in misfeasance in public office pursuant to s. 236, he would have found that it was sufficiently pled and would not have struck it for failure to disclose a reasonable cause of action.[85] His analysis in that regard is premised on palpable and overriding errors.

72. First, the motion judge properly noted that the type of misfeasance alleged (referred to as "Category B" in the case law) requires a public officer who acts with knowledge both that she or he has no power to act in the way complained of and

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[84] *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16-21; *Bigeagle FCA* at paras 39-40; *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 [*Merchant*] at para 34. See, in this context, *Qualizza* at paras 31-33.
[85] Federal Court Reasons at paras 42-53, **AB, Tab 2**, **p 26-30**.

that the act is likely to injure the plaintiff.[86]

73. However, he then went on to find that the claim was sufficiently pled based on particulars that only went to the second essential element of the tort.[87] He identified pleadings relating to why the Vaccination Policy was, in the plaintiffs' view, ill-advised and likely to cause them harm, but did not identify any pleading that any public office holder(s) were acting with knowledge of or reckless indifference to the fact that they had no power to adopt the Policy, or to the illegality of their actions in adopting the Policy.[88]

74. The Supreme Court of Canada has held that the requirement "that the defendant must have been aware that his or her conduct was unlawful reflects the well-established principle that misfeasance in a public office requires an element of 'bad faith' or 'dishonesty'".[89] It described this requirement as a restriction on the ambit of the tort that preserved the authority that public officers must retain, in a democracy, to make decisions that may be adverse to the interests of some citizens.[90] "Knowledge of harm is thus an insufficient basis on which to conclude that the defendant has acted in bad faith or dishonestly."[91]

75. Second, the motion judge erred in relying on *Grand River Enterprises Six Nations Ltd v Attorney General (Canada)* for the proposition that the plaintiffs need not plead the identity of the alleged tortfeasor since they could not be expected to

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[86] Federal Court Reasons at para 46, **AB, Tab 2, p 27**, citing *Anglehart v Canada*, 2018 FCA 115 at para 53, leave to appeal refused, 2019 CanLII 21181; *Adelberg FCA* at paras 9, 20.
[87] Federal Court Reasons at para 47, **AB, Tab 2, p 27-28**.
[88] See *Qualizza* at paras 46-49.
[89] *Odhavji Estate v Woodhouse*, 2003 SCC 69 [*Odhavji*] at para 28.
[90] *Odhavji* at para 28.
[91] *Odhavji* at para 28.

"be privy to information about the internal workings of the Treasury Board and the individual or individuals therein who were involved in the generation and issuance of the Policy."[92] In *Grand River*, the plaintiff still identified the office holder by title. The Ontario Court of Appeal did not do away with the requirement that specific office holders be identified; it simply acknowledged that it may not always be necessary to identify them by name.

76. As this Court held in *Merchant* and affirmed more recently in *Bigeagle*, the plaintiffs are "obligated under Rule 174 to plead material facts and the identity of the individual who are alleged to have engaged in misfeasance is a material fact which must be pleaded."[93]

D. THE DEFECTS IN THE CLAIM CANNOT BE CURED BY AMENDMENT

77. But for the foregoing errors, the Court would have had to deny the plaintiffs leave to amend their claim. When the essence of the dispute is properly viewed in light of the *FPSLRA*'s exceedingly broad grievance provisions, it is plain and obvious that the Court is without jurisdiction over the claim in its entirety. This is not a defect that can be cured by amendment.

78. Moreover, if the entire claim is outside of the Court's jurisdiction, then it is not possible to grant leave to amend to permit the plaintiffs to substitute themselves with different, yet unidentified plaintiffs who do not have grievance rights.

79. The motion judge relied only on *McMillan* as authority for granting leave to amend to allow the plaintiffs to add claims in misfeasance by other plaintiffs who

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[92] Federal Court Reasons at para 49, **AB, Tab 2, p 28**.
[93] *Merchant* at paras 38-39; *Bigeagle FCA* at paras 82-83, affirming *Bigeagle v Canada*, 2021 FC 504 at para 192. See also *Mancuso* at para 26.

do not have grievance rights.[94] However, *McMillan* provides no authority where, as here, the Court has no jurisdiction over any part of the plaintiffs' claim.

80. In *McMillan*, the defendant's motion to strike and the plaintiff's motion for certification were heard simultaneously. The plaintiff's individual claim survived the defendant's motion to strike: he had pled a reasonable cause of action – that came within the Court's jurisdiction – on behalf of himself and others who were similarly situated. The fact that his claim was out of time was relevant only to the Federal Court's determination that there was no adequate representative plaintiff, as required by the final prong of the certification test.[95] It was in that context that the Federal Court of Appeal held that he should be granted leave to amend his claim to plead additional material facts supporting claims by members of a broader class.[96]

81. In the circumstances at issue here, the fact that the plaintiffs commenced their action as a proposed class action should have no bearing on whether leave to amend is granted. Unless and until an action is certified as a class action, it is simply an individual action for the purposes of the *Federal Courts Rules*.[97] If the Court does not have jurisdiction over the claims of any of the named plaintiffs, the fact that it might have jurisdiction over similar claims by another party is not relevant to the question of whether the plaintiffs should be granted leave to amend their

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[94] Federal Court Reasons at para 59-63, **AB, Tab 2, p 32-33**.
[95] *McMillan v Canada*, 2024 FCA 199 [*McMillan*] at paras 9, 164, 245, 247.
[96] *McMillan* at paras 111-112.
[97] Different principles apply in Ontario, where proposed class actions are commenced under entirely different legislation and require leave of the Court before they can proceed as an individual action. There, the Courts have characterized proposed class actions as being distinguishable from individual actions in certain circumstances pre-certification: *Logan v Canada (Minister of Health)*, 2003 CanLII 20308 (ON SC), at para 16, aff'd 2004 CanLII 184 (ON CA)at para 23; The same approach has not been followed elsewhere: see for example *McLean et al v Canada (Attorney General)*, 2021 MBCA 15 at para 58.

claim.

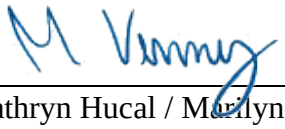
82. Rather, the only relevant questions are whether it is plain and obvious that the claim discloses no reasonable of action, and whether there was reason to suppose that the plaintiffs could improve their case by amendment.[98] The motion judge recognized that the plaintiffs could not improve their own case by amendment if it fell outside of the Court's jurisdiction.[99] Leave to amend should therefore have been denied.

PART IV - ORDER SOUGHT

83. Canada requests that the Court grant the appeal and strike the Plaintiff's claim in its entirety without leave to amend, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Toronto, in the Province of Ontario 14th day of April, 2025.



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Counsel for the Appellant, His Majesty the King

[98] *McMillan* at para 107.
[99] Federal Court Reasons at para 58, **AB, Tab 2, p 31**.

PART V - LIST OF AUTHORITIES

Legislation

1. *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2, ss. 2(1) ("public service"), 206 ("employee"), 208, 236
2. *Canadian Charter of Rights and Freedoms*, s. 2(d), Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11
3. *Financial Administration Act*, RSC 1985, c F-11, ss. 7, 11(1), 11.1; Schedule I ("Department of National Defence"), Schedule IV ("Correctional Service of Canada" and "Federal Economic Development Agency for Southern Ontario")
4. *Labour Code*, CQLR c C-27, ss. 1(f), 100

Jurisprudence

5. *Adelberg v Canada*, 2024 FCA 106, reversing in part 2023 FC 252, leave to appeal refused, 2025 CanLII 5342 (SCC)
6. *Ebadi v Canada*, 2024 FCA 39, leave to appeal refused, 2024 CanLII 98823
7. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Quebec (Attorney General)*, 2004 SCC 39
8. *Murphy v Canada (Attorney General)*, 2023 FC 57, affirming 2022 FC 146
9. *Housen v Nikolaisen*, 2002 SCC 33
10. *Benhaim v St-Germain*, 2016 SCC 48
11. *Canada v Hudson*, 2024 FCA 33
12. *Jensen v Samsung Electronics Co Ltd*, 2023 FCA 89, leave to appeal refused, 2024 CanLII 543
13. *Bigeagle v Canada*, 2023 FCA 128, affirming *Bigeagle v Canada*, 2021 FC 504, leave to appeal refused, 2024 CanLII 50586
14. *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215
15. *Prentice v Canada*, 2005 FCA 395, leave to appeal refused, 2006 CanLII 16454
16. *Moodie v Canada (National Defence)*, 2010 FCA 6
17. *Bron v Canada (Attorney General)*, 2010 ONCA 71
18. *Davis v Canada (Royal Canadian Mounted Police)*, 2024 FCA 115

19. *Wojdan v Canada*, 2023 FC 182
20. *Thompson v Kolotinsky*, 2023 ONSC 1588 (Div Ct)
21. *Yeates v Canada (Attorney General)*, 2011 ONCA 83
22. *Attorney General of Canada, on behalf of Correctional Service of Canada v Robichaud and MacKinnon*, 2013 NBCA 3
23. *Goulet c Mondoux*, 2010 QCCA 468
24. *Cyr v Radermaker*, 2010 QCCA 389
25. *Brescia v Canada (Treasury Board)*, 2005 FCA 236, leave to appeal refused, 2006 CanLII 1123
26. *Appleby-Ostroff v Canada (Attorney General)*, 2011 FCA 84
27. *Price c Canada*, 2016 FC 649
28. *Boivin v Treasury Board (Canada Border Services Agency)*, 2009 PSLRB 98
29. *King v Deputy Head (Canada Border Services Agency)*, 2010 PSLRB 125, application for judicial review refused 2012 FC 488, appeal dismissed, 2013 FCA 131, leave to appeal refused, 2014 CanLII 3503
30. *Andres et al v Canada Revenue Agency*, 2009 PSLRB 36
31. *Canada v Hirschfield*, 2025 FCA 17
32. *Weber v Ontario Hydro*, [1995] 2 SCR 929, 1995 CanLII 108 (SCC)
33. *Vaughan v Canada*, 2005 SCC 11
34. *Association of Justice Counsel v Canada (Attorney General)*, 2017 SCC 55
35. *Health Services and Support - Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27
36. *Société des casinos du Québec inc v Association des cadres de la Société des casinos du Québec*, 2024 SCC 13
37. *Qualizza v Canada*, 2024 FC 1801
38. *Ontario English Catholic Teachers Association v Ontario (Attorney General)*, 2024 ONCA 101
39. *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227
40. *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184
41. *Anglehart v Canada*, 2018 FCA 115, leave to appeal refused, 2019 CanLII 21181

42. *Odhavji Estate v Woodhouse*, 2003 SCC 69

43. *McMillan v Canada*, 2024 FCA 199

44. *Logan v Canada (Minister of Health)*, 2003 CanLII 20308 (ON SC), affirmed 2004 CanLII 184 (ON CA)

45. *McLean et al v Canada (Attorney General)*, 2021 MBCA 15