Federal Court  Cour fédérale

Date: 20251209

Docket: T-786-23

Citation: 2025 FC 1947

Ottawa, Ontario, December 9, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MR. KEVIN HAYNES

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendant

REASONS AND ORDER

I. INTRODUCTION

[1] Mr. Kevin Haynes (the "Plaintiff") appeals from the Order of Associate Judge Molgat dated September 25, 2024, granting the motion of His Majesty the King in Right of Canada (the "Defendant") to strike the Statement of Claim in this matter, without leave to amend. The Associate Judge determined that the Plaintiff's Claim is barred pursuant to the provisions of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22 (the "Act").

[2] In her Reasons for Order, Associate Judge Molgat (the "Associate Judge") considered the status of the Plaintiff as a public servant, employed with the Department of Employment and Social Development Canada ("ESDC") as a software developer. She considered the scope of the Act, in particular section 236 which provides as follows:

Disputes relating to employment	**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.
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.
Exception	**Exception**
(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.	**(3)** Le paragraphe (1) ne s'applique pas au fonctionnaire d'un organisme distinct qui n'a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu'un manquement à la discipline ou une inconduite.

[3] As well, the Associate Judge addressed the fact that the Plaintiff is subject to the *"Agreement between the Treasury Board and the Professional Institute of Public Service of Canada."* (the "Agreement").

[4] The Associate Judge also considered the arguments advanced by the Plaintiff that the bar imposed by section 236 of the Act can be overcome by the exercise of discretion in "exceptional" circumstances.

[5] In his appeal from the Order by which his Statement of Claim was struck without leave to amend, the Plaintiff submits that the Associate Judge committed many errors, including failure to appreciate the evidence and arguments that he submitted in response to the Defendant's motion to strike.

[6] The Defendant in the action argues that the Plaintiff has failed to show a reviewable error on the part of the Associate Judge and that the appeal should be dismissed.

II. THE STANDARD OF REVIEW

[7] The first issue to be considered is the applicable standard of review. In *Hospira Healthcare Corporation*, [2017] 1 F.C.R. 331, the Federal Court of Appeal addressed the standard of review that applies upon the appeal of a decision of an Associate Judge, as follows:

> [27] […] a discretionary decision made by a prothonotary is clearly wrong, and thus reviewable on appeal by a judge, where it is based: (1) upon a wrong principle – which implies that correctness is required for legal principles – and (2) upon a misapprehension of facts – which seems to be the equivalent of the "overriding and palpable error" criterion of the *Housen* standard if it caused the Prothonotary's decision to be "clearly wrong".
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> […]
>
> [66] In *Housen*, the Supreme Court enunciated the standard of review applicable to decisions of trial judges. More particularly, it concluded that with respect to factual conclusions reached by a trial judge, the applicable standard was that of palpable and

> overriding error. It also stated that with respect to questions of law and questions of mixed fact and law, where there was an extricable legal principle at issue, the applicable standard was that of correctness (*reference omitted*).

III. THE MOTION TO STRIKE

[8] The Defendant brought his motion to strike out the Plaintiff's Statement of Claim pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 (the "Rules"), which provides as follows:

Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it:	**221 (1)** À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas:
(a) discloses no reasonable cause of action or defence, as the case may be;	**a)** qu'il ne révèle aucune cause d'action ou de défense valable;

[9] This Rule provides that upon a motion to strike, the Court is to make clear in disposing of the motion whether leave to "amend" the pleading is allowed or denied.

[10] In this case, the Order of the Associate Judge was clear, that the motion to strike was granted without leave to amend the Statement of Claim.

[11] Just as there is a legal test in an appeal from an order of an associate judge, there is a legal test upon a motion to strike a Statement of Claim.

[12] The Defendant filed a responding Motion Record in response to the Plaintiff's appeal. That motion record was filed on May 8, 2025. It contains the affidavit of Ms. Chanelle Bisson, affirmed on May 5, 2025, as well as a Memorandum of Fact and Law.

[13] Ms. Bisson is a legal assistant with the Civil Litigation Section of the Department of Justice. She assisted Counsel for the Defendant in connection with the Plaintiff's appeal. In her affidavit she deposed to the steps taken by Counsel for the Defendant in pursuing the motion to strike the Plaintiff's Statement of Claim, beginning on June 16, 2023 when the motion to strike was served and filed. A copy of the motion record in that regard is attached as Exhibit "A" to her affidavit.

[14] Ms. Bisson also deposed to receipt of the Plaintiff's record in response to the motion to strike. A copy of that record is attached as Exhibit "B" to her affidavit.

[15] Ms. Bisson deposed to the service and filing of the Defendant's Reply to the Plaintiff's responding record. A copy of that Reply is attached as Exhibit "C" to her affidavit.

[16] Finally, Ms. Bisson deposed to the receipt of the Order from the Associate Judge on September 25, 2024. A copy of that Order, granting the Defendant's motion to strike, is attached as Exhibit "D" to her affidavit.

[17] The motion record served and filed by the Defendant on May 8, 2025 includes the affidavit of Ms. Dominique Lyrette. This affidavit was affirmed on June 12, 2023 and was filed in support of the Defendant's motion to strike the Plaintiff's Statement of Claim.

[18] Ms. Lyrette is the Senior Human Resources Advisor, Labour Relations, Human Resources Services Branch, with ESDC. As such, she has knowledge of the matters addressed in her affidavit.

[19] Ms. Lyrette deposed that the Plaintiff was hired by ESDC on May 12, 2008 and that at the time she provided her affidavit, he was employed in a full-time, indeterminate position as a Program Analyst at the CS-02 group and level within the Innovative, Information and Technology Branch ("IITB"). She deposed that in this position, the Plaintiff's terms and conditions of employment were governed by the agreement for all employees of the Computer Systems ("CS") group.

[20] Ms. Lyrette attached a copy of the Agreement to her affidavit as Exhibit "A".

[21] Ms. Lyrette deposed that she had reviewed the Plaintiff's Amended Statement of Claim and found that his allegations of discrimination and harassment are the same as those presented in his original grievance filed in May 2021. She deposed that the Plaintiff sought the same relief in the Amended Statement of Claim as he did in his grievance. She attached a copy of the May 2021 amended grievance to her affidavit as Exhibit "B" and a copy of the Amended Statement of Claim as Exhibit "C".

[22] Ms. Lyrette further deposed at paragraph 7 of her affidavit as follows:

> As part of his May 2021 grievance process, an external investigation was recommended to address the Plaintiff's claims of discrimination and harassment. The investigation is in abeyance due to the Plaintiff's request to await the pending decision of this Court on the judicial review of his 2022 grievance process.

[23] Ms. Lyrette also deposed that the allegations set out in the Plaintiff's Amended Statement of Claim are "grievable", pursuant to section 236 of the Act.

[24] Ms. Lyrette further deposed that the allegations of a "botched investigation and perjury" set out in the Plaintiff's Amended Statement of Claim relate to disputes arising from the terms and conditions of his employment at ESDC.

[25] Finally, Ms. Lyrette deposed that the Plaintiff's allegations in the Amended Statement of Claim relative to the *Accessible Canada Act* S.C. 2019, c. 10 also address a grievable "element" pursuant to section 210 of the Act.

IV. SUBMISSIONS

[26] The Plaintiff now argues that the Associate Judge committed many errors in her Reasons for the Order granting the Defendant's motion and striking out his Amended Statement of Claim without leave to amend. In particular he submits that the Associate Judge erred by failing to acknowledge the discretion that would allow an action to proceed when the grievance process cannot provide an appropriate remedy or effective redress.

[27] For his part, the Defendant contends that the Associate Judge made no reviewable errors in granting the motion to strike without leave to amend.

V. DISCUSSION AND DISPOSITION

[28] The Defendant brought his motion pursuant to Rule 221 of the Rules. Rule 221 (1)(a) and Rule 221 (2) are applicable to the within appeal and provide as follow:

Motion to strike	Requête en radiation
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be…	a) qu'il ne révèle aucune cause d'action ou de défense valable…
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

[29] The test upon a motion to strike a pleading, in this case an Amended Statement of Claim, is whether it is "plain and obvious" that the claim discloses no "reasonable cause of action". In that regard I refer to the decision of the Supreme Court of Canada in *Hunt v. Carey Can. Inc.* [1990] 2 S.C.R 959.

[30] In this case, the Defendant's principal argument upon his motion to strike pursuant to Rule 221, was that this Court lacks jurisdiction over the claims advanced in the Plaintiff's Amended Statement of Claim.

[31] The closing words of Rule 221 (1) are important.

[32] Upon deciding a motion to strike a pleading pursuant to Rule 221, the Court has a discretion whether to allow a person to file an amended pleading. According to the decision of the Federal Court of Appeal in *Collins v. Canada*, 2011 FCA 140, in disposing of a motion to strike a Statement of Claim pursuant to Rule 221, the Court must say if an amendment is allowed.

[33] The Plaintiff contends that the Associate Judge committed many errors. He argues that paragraph 22 of her Reasons contains an error of law. That paragraph provides as follows:

> The issue to be decided is whether the Claim falls within the scope of section 236 of the *FPSLRA* such that it is plain and obvious that the Court lacks jurisdiction to entertain it.

[34] The Plaintiff submits that paragraph 27, cited below, contains "many errors":

> In claims subject to the grievance process, the role of the Court is limited to judicial review: *Price* at para. 14; *Green* at para. 14.

[35] The appeal in this case lies from the Order of Associate Judge Molgat, and not from her Reasons. The effect of the Order is to strike out the Plaintiff's Statement of Claim without leave to amend.

[36] The Associate Judge carefully reviewed the facts relating to the Plaintiff's employment, including his history of informal and formal access to grievance processes. She noted that

applications for judicial review pursued by the Plaintiff and the fact that he was twice successful upon his recourse to judicial review.

[37] The Associate Judge acknowledged the jurisprudence cited by the Plaintiff in his response to the Defendant's motion to strike the Amended Statement of Claim, in particular the decisions of the Ontario Court of Appeal in *Bron v. Canada (Attorney General)* 2010 ONCA 71 and of the Federal Court of Appeal in *Canada v. Greenwood*, 2021 FCA 186.

[38] The Associate Judge clearly distinguished the facts of those cases from the facts prevailing here, relative to the Plaintiff. It is not necessary for me to repeat what she said.

[39] The critical fact in the present case is the status of the Plaintiff as a public servant. In that capacity, he is subject to the terms of the Act. The Associate Judge referred to paragraph 208 (1)(b) of the Act which provides as follows:

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 :
(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.

[40] The Associate Judge also referred to section 210.1 of the Act, in respect of the Plaintiff's allegations in his Amended Statement of Claim about a breach of his rights under the *Accessible Canada Act*, S.C. 2019, c. 10. Section 210.1 provides as follows:

210.1 (1) When an individual grievance has been referred to adjudication and a party to	**210.1 (1)** La partie qui soulève une question liée à une contravention à une disposition

the grievance raises an issue involving the contravention of a provision of regulations made under subsection 117(1) of the Accessible Canada Act, that party must, in accordance with the regulations, give notice of the issue to the Accessibility Commissioner, as defined in section 2 of that Act.	des règlements pris en vertu du paragraphe 117(1) de la Loi canadienne sur l'accessibilité dans le cadre du renvoi à l'arbitrage d'un grief individuel en donne avis au commissaire à l'accessibilité, au sens de l'article 2 de cette loi, conformément aux règlements.

[41] The Associate Judge reasonably considered the factual circumstances in both *Bron, supra* and *Greenwood, supra*, and distinguished them. There is no error arising from her consideration and application of these authorities.

[42] The Associate Judge applied the relevant legal principles to the motion to strike. She reasonably concluded that this Court has no jurisdiction over any of the causes of action advanced by the Plaintiff.

[43] As a public servant whose employment is governed by a collective agreement, the remedies available to the Plaintiff for employment issues are governed by the Act. The Act bars a right of action and requires an employee, such as the Plaintiff, to pursue a remedy by means of the grievance process.

[44] This Court's lack of jurisdiction is determinative. I agree with the conclusion of the Associate Judge in this regard.

[45] I refer to the decision of the Federal Court of Appeal in *Inuksuk I (The Ship) et al v. Sealand Marine Electronics Sales and Services Ltd.,* 2023 FCA 170 where the Court said the following at paragraph 38:

> In addition, as mentioned, the jurisdiction of the Federal Court to deal with the crossclaim of the appellants is a key preliminary issue. Parties cannot consent to the court having jurisdiction. It follows that their non-contestation on a question regarding the jurisdiction over a subject matter cannot confer jurisdiction on a court which it does not have…

[46] Here the Federal Court of Appeal confirmed that the jurisdiction of the Court cannot be conferred by consent.

[47] The Plaintiff argues that the Associate Judge erred in failing to consider the "exceptional" circumstances of his situation, where he alleges that he suffered harassment and discrimination for many years.

[48] The Associate Judge did not ignore the Plaintiff's submissions in this regard. I refer to paragraphs 29 and 30 of her Reasons, as follow:

> [29] Relying on *Bron* and *Canada v. Greenwood*, 2021 FCA 186 [*Greenwood*] Mr. Haynes contends that the exceptional circumstances of his case justify that his Claim be allowed to proceed. He argues that the fact that the Court has granted both his applications for judicial review, and that his 2021 Grievance has again been remitted back for reconsideration is "a clear and obvious indication" that the grievance process has failed to provide him with any remedies or redress such that it is appropriate for the Court to hear his Claim.
>
> [30] With respect, Mr. Haynes urges the Court to adopt an approach that is not supported by the case law. "[…] *Bron* does not strongly endorse this approach. *Bron* notes that there is no residual discretion for the Court to consider a matter based on the lack of

> access to third party adjudication. *Bron* suggests that the residual discretion is even more limited. The residual discretion would only arise if the issue is clearly not grievable and even then, it remains a discretion to be exercised with the guidance of the jurisprudence. *Bron* sends the same message as *Vaughan*: that resort to the grievance process is the first recourse.": *Public Service Alliance of Canada v. Canada (Attorney General),* 2020 FC 481 at para. 65.

[49] The Associate Judge squarely addressed the Plaintiff's arguments about the "potential" exercise of discretion by the Court to entertain his action. She distinguished the decision of the New Brunswick Court of Appeal in paragraphs 33 and 34 of her Reasons, as follow:

> [33] With respect, I disagree. Firstly, the issues in *Smith* involved what the New Brunswick Court of Appeal found to be "blatant shortcomings of the internal grievance scheme" available to officers of the RCMP, which not only failed to provide for independent third party adjudication but also any oral hearings and hence the opportunity to challenge and make essential findings with respect to credibility (see *Smith* at paras. 3-5). That is not the case here.
>
> [34] Secondly, the Court in *Smith* was satisfied that the findings of internal investigations supported a *prima facie* case that at least two of the appellants were guilty of bad faith conduct or wrongdoing with respect to the processing of the workplace harassment complaints (see *Smith* at paras. 4 & 56). No such investigative findings have been made in Mr. Haynes's case. While the Claim contains an allegation of "Bad faith Conduct," such allegations must be serious and substantiated. "Bald accusations of bad faith and the advancement of conspiracy theories surrounding an employment dispute will not be acceptable for purposes of avoiding the general rule requiring deference to an administrative scheme for resolving disputes": *Smith* at para. 54; *Price* at para. 33.

[50] The Associate Judge understood the Plaintiff's situation. She recognized and applied the applicable legal test upon a motion to strike a Statement of Claim pursuant to Rule 221 (1)(a), that is whether it discloses a "reasonable cause of action".

[51] The Defendant argues that the Plaintiff, in seeking to bring an action, is attempting to challenge the "processes" of the resolution of work-place issues. He submits that in doing so, the Plaintiff ignores the processes set out in the Act for the response to such issues.

[52] I refer, as did the Associate Judge, to the decision of the Supreme Court of Canda in *Vaughan v. Canada*, [2005] 1 S.C.R. 146 at paragraph 39 where that Court said the following:

> 39 Sixthly, where Parliament has clearly created a scheme for dealing with labour disputes, as it has done in this case, courts should not jeopardize the comprehensive dispute resolution process contained in the legislation by permitting routine access to the courts. While the absence of independent third-party adjudication may in certain circumstances impact on the court's exercise of its residual discretion (as in the whistle-blower cases) the general rule of deference in matters arising out of labour relations should prevail.

[53] The Associate Judge reasonably applied the relevant jurisprudence in striking the Plaintiff's Statement of Claim, without leave to amend.

[54] I note the reference by the Associate Judge to the decision of the Federal Court of Appeal in *Collins v. Canada*, 2011 FCA 140 at paragraph 26 where the Court said the following:

> In order to strike a pleading without leave to amend, any defect in the pleading must be one that cannot be cured by amendment. See Simon v. Canada, 2011 FCA 6, 410 N.R. 374 at paragraph 8. In my view, the claim in negligence and the claim based upon violation of the Charter cannot be cured by amendment. However, I believe the claim based upon misfeasance in public office can be cured.

[55] Following the Rules and the applicable jurisprudence, the Associate Judge struck out the Plaintiff's Amended Statement of Claim without leave to amend. She committed no reviewable error in doing so.

VI. CONCLUSION

[56] The key to this appeal is the jurisdiction of the Court. That is a question of law. The law must be applied to the facts, and the critical fact here is the status of the Plaintiff as a public servant, subject to the provisions of the Act. The Act is a "complete code" for the treatment of work-place related issues arising from employment in the public service.

[57] Jurisdiction of a court cannot be conferred by consent. In light of section 236 of the Act, the Court has no jurisdiction over the Plaintiff's action.

[58] When there is no jurisdiction, there can be no "reasonable cause of action".

[59] The Plaintiff has failed to show a reviewable error on the part of the Associate Judge and the appeal will be dismissed with costs to the Defendant.

[60] The Defendant, if successful, seeks costs in the amount of $720.00.

[61] Pursuant to Rule 400 of the Rules, costs lie in the full discretion of the Court.

[62] The amount requested by the Defendant is reasonable, and costs in the amount of $720.00 will be awarded.

ORDER in T-786-23

THIS COURT ORDERS that the appeal is dismissed, with costs to the Defendant in the amount of $720.00.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-786-23
STYLE OF CAUSE:	MR. KEVIN HAYNES v. HIS MAJESTY THE KING IN RIGHT OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 11, 2025
REASONS AND ORDER:	HENEGHAN J.
DATED:	DECEMBER 9, 2025

APPEARANCES:

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