Federal Court  Cour fédérale

Date: 20260304

Docket: T-529-23

Citation: 2026 FC 301

Ottawa, Ontario, March 4, 2026

PRESENT: The Honourable Mr. Justice Southcott

PROPOSED CLASS PROCEEDING

BETWEEN:

MARCO VACHON AND STEPHANE RAYMOND

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] This decision addresses a motion brought by the Defendant [the Motion] in the underlying proposed class action [the Action] in which the representative Plaintiffs, members of the Royal Canadian Mounted Police [RCMP], allege that their right to privacy has been violated

by the RCMP and other agents of His Majesty the King in right of Canada [Canada] and consequently claim damages and other relief against Canada.

[2] Specifically, the Action alleges that, between October 2017 and early 2020, in the course of an investigation identified as Project J-Trinity, Canada's agents recorded 557 days of audio conversations between the Plaintiffs and other members of the RCMP, without the consent of the Plaintiffs or other parties to the conversations and without the benefit of a court order, and subsequently shared those recordings with other authorities [the Alleged Privacy Breach]. The Plaintiffs assert various causes of action against Canada in relation to the Alleged Privacy Breach: the tort of intrusion upon seclusion, negligence, and violation of the Plaintiffs' rights under section 8 of the *Canadian Charter of Rights and Freedoms,* Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], to be secure against unreasonable search and seizure by the state.

[3] The Motion now before the Court, brought pursuant to subsection 50(1)(b) of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], and section 111(2) of the *Pension Act*, RSC 1985, c P-6 [*Pension Act*], by the Defendant, the Attorney General of Canada acting on behalf of Canada, seeks to stay Action pending a final decision by the Veterans Review and Appeal Board [VRAB] of Veterans Affairs Canada [VAC], regarding the Plaintiffs' entitlement to a disability pension for the injuries alleged in the Action.

[4] For the reasons explained below, the Motion will be granted and this Action stayed on the terms requested by the Defendant.

II. **Background**

[5] The Action was commenced by Statement of Claim dated November 22, 2023, on behalf of the Plaintiff, Sergeant Marco Vachon, and another then Plaintiff, Corporal Pascal Dugas. These Plaintiffs subsequently filed an Amended Statement of Claim.

[6] On April 14 to 15, 2025, the Court heard: (a) a motion by the then Plaintiffs to certify the Action as a class proceeding; and (b) a motion by the Defendant to strike the Amended Statement of Claim, without leave to amend, including on the basis that the Action was barred by section 9 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 [CLPA], due to the availability to the Plaintiffs and the proposed class members of compensation under the *Royal Canadian Mounted Police Superannuation Act*, RSC 1985, c R-11 and the *Pension Act*, and that the pleadings failed to disclose a viable cause of action. Each of the then Plaintiffs had applied for and received a disability pension pursuant to that legislation, including in relation to post-traumatic stress disorder [PTSD].

[7] Section 9 of the CLPA provides as follows:

No proceedings lie where pension payable	**Incompatibilité entre recours et droit à une pension ou indemnité**
9 No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.	**9** Ni l'État ni ses préposés ne sont susceptibles de poursuites pour toute perte — notamment décès, blessure ou dommage — ouvrant droit au paiement d'une pension ou indemnité sur le Trésor ou sur des fonds gérés par un organisme mandataire de l'État.

[8] On May 8, 2025, the Court issued its Order and Reasons (*Dugas v Canada (Attorney General)*, 2025 FC 842 [*Dugas*]), granting the Defendant's motion and striking the Amended Statement of Claim. The Court found, *inter alia*, that:

A. The Alleged Privacy Breach formed part of the factual foundation for a pension application by Cpl. Dugas and the resulting payment of benefits to him as compensation for his development of PTSD, such that section 9 of the CLPA afforded the Crown immunity from the claim he was advancing in the Action and the allegations he was advancing should be struck; and

B. As Sgt. Vachon had not had the benefit of an assessment by VAC of his entitlement to pension compensation for exacerbation of his PTSD as a result of the Alleged Privacy Breach, there was currently no such compensation being paid or payable to him that might engage the application of section 9 of the CLPA, such that, in relation to the allegations he was advancing in the Action, the motion to strike failed.

[9] Notwithstanding the above findings in relation to Sgt. Vachon, the Court struck the Amended Statement of Claim in its entirety due to other pleading deficiencies, but it granted Sgt. Vachon leave to amend in accordance with the Court's Reasons. As the claim had been struck, the Court also dismissed the Plaintiffs' certification motion. *Dugas* further identified that the Plaintiffs had not established any basis in fact to support their proposed class (as then defined).

[10] Subsequently, the Amended Statement of Claim was further amended, including to substitute a new Plaintiff, retired Corporal Stephane Raymond, and to amend the Plaintiffs' factual allegations in response to the pleading deficiencies identified in *Dugas*. The current

version of that pleading is a Third Amended Statement of Claim dated October 2, 2025 [the Third Amended Claim], with Sgt. Vachon and Cpl. Raymond as Plaintiffs.

[11] The proposed class identified in the Third Amended Claim consists of class members defined as follows (after parsing relevant definitions employed therein) [the Class Members]:

> all members of the Royal Canadian Mounted Police who were directly affected by the allege [*sic*] privacy breach during the Project J-Trinity Investigation in New Brunswick between 2017 and 2020, and who were alive as of March 18, 2023

[12] Although not included in this definition, the Third Amended Claim also defines a Class Period from October 17, 2027, to May 2020.

[13] The Third Amended Claim alleges that from October 2017 to early 2020, the RCMP and other agents of Canada recorded radio conversations [the Recordings] between the Plaintiffs and other RCMP members working in the RCMP's division in New Brunswick while performing their duties in the course of the organized crime investigation referred to as Project J-Trinity, without the participants' consent or other lawful justification. The Claim describes these conversations as containing, *inter alia*, highly personal information including private conversations about family matters, personal health, and non-operational discussions among colleagues. The Plaintiffs also assert that the RCMP later provided the Recordings to the Public Prosecution Service of Canada and other RCMP members and public service employees.

[14] Based on these allegations, the Plaintiffs assert various causes of action on behalf of the Proposed Class against the Defendant. I commented in *Dugas* (at para 15) that the Plaintiffs' articulation of these causes of action was somewhat lacking in precision, which comment remains applicable to the Third Amended Claim. However, consistent with my observations in *Dugas*, and with the benefit of the amendments in the Third Amended Claim, I interpret those causes of action to be the following:

A. negligence or systemic negligence, involving breach of a common law duty of care;

B. the tort of intrusion upon seclusion; and

C. breach of the protection against unreasonable search and seizure under section 8 of the *Charter*.

[15] The Third Amended Claim asserts that the Alleged Privacy Breach caused the Plaintiffs (and Class Members) to suffer injury including distress, humiliation and anguish, pain and suffering, loss of self-esteem and feelings of degradation, loss of income, loss of enjoyment of life, an impairment of the capacity to function in the workplace, and a permanent impairment in the capacity to earn income. As a result, the Plaintiffs claim various categories of relief including declaratory relief, common law damages including punitive and exemplary damages, and damages under subsection 24(1) of the *Charter*.

[16] Through the case management process, the Defendant subsequently identified its intention to file the present Motion. As previously noted, the Motion seeks a stay in reliance on subsection 111(2) of the *Pension Act*, which provides as follows:

> **Stay of action against Crown until pension refused**
>
> **(2)** An action that is not barred by virtue of section 9 of the *Crown Liability and Proceedings Act* shall, on application, be stayed until
>
> > **(a)** an application for a pension in respect of the same disability or death has been made and pursued in good faith by or on behalf of the person by whom, or on whose behalf, the action was brought; and
> >
> > **(b)** a decision to the effect that no pension may be paid to or in respect of that person in respect of the same disability or death has been confirmed by an appeal panel of the Veterans Review and Appeal Board in accordance with the *Veterans Review and Appeal Board Act*.
>
> **Suspension d'instance**
>
> **(2)** L'action non visée par l'article 9 de la *Loi sur la responsabilité civile de l'État et le contentieux administratif* fait, sur demande, l'objet d'une suspension jusqu'à ce que le demandeur, ou celui qui agit pour lui, fasse, de bonne foi, une demande de pension pour l'invalidité ou le décès en cause, et jusqu'à ce que l'inexistence du droit à la pension ait été constatée en dernier recours au titre de la *Loi sur le Tribunal des anciens combattants (révision et appel)*.

[17] Pursuant to deadlines set by the Court, the Defendant filed its motion record on December 12, 2025, and the Plaintiffs filed their responding motion record on February 16, 2026. The only evidence in the record before the Court in this Motion is the December 8, 2025 affidavit of Meghan Clark, the acting manager of the Disability Benefits Program Management Section within the Service Delivery Branch of VAC, which provides an overview of benefits available to members of the RCMP generally and information with respect to benefits being provided or available to the Plaintiffs [the Clark Affidavit].

[18] The Clark Affidavit provides information surrounding the Plaintiffs' applications for disability benefits and the results of those applications, which the Defendant's written representations summarize as follows:

A. In 2018, Sgt. Vachon was granted a disability entitlement for PTSD (effective 2017). In 2023, he applied for and received an increase to his disability pension for deep vein thrombosis, carpal tunnel syndrome and right and left tendonitis of the shoulders. He has not sought reassessment for the worsening of a mental health disability such as PTSD, in relation to the Alleged Privacy Breach or at all.

B. In 2012, Cpl. Raymond was granted a disability entitlement for a hearing loss condition. In 2016, he was granted a disability entitlement for a lumbar spine condition. Cpl. Raymond's disability application for bruxism is in progress. He has not applied for pension entitlement for a mental health disability, such as PTSD, in relation to the Alleged Privacy Breach or at all.

[19] The Plaintiffs agree with the above summaries. More broadly, the parties agree that neither of the Plaintiffs has applied to VAC for a disability pension or other disability benefits or programs related to the Alleged Privacy Breach.

[20] The parties argued the Motion in person in Fredericton on March 2, 2026.

III. **Issue**

[21] The parties agree that the sole issue for the Courts' adjudication in the Motion is whether the Action should be stayed, pursuant to section 111(2) of the *Pension Act*, until the Plaintiffs' entitlement to disability pensions for the alleged service-related injuries has been fully determined by VAC.

IV. **Analysis**

[22] The Defendant submits that the language of subsection 111(2) of the *Pension Act* (reproduced above in these Reasons) is mandatory, requiring the Court upon request to stay an action until a plaintiff exhausts the administrative disability benefit scheme in relation to the disability resulting from injuries alleged in an action. The Defendant argues that subsection 111(2) operates in conjunction with section 9 of the CLPA, which bars civil actions where a pension or compensation has been paid or is payable in respect of the same injury or event. Where a plaintiff has not yet applied for a disability pension for the injuries alleged in an action, it is not yet possible to determine whether section 9 would bar the action. The Defendant submits that subsection 111(2) therefore mandates a stay in such circumstances until the disability benefit scheme has been exhausted, so that it can subsequently be determined whether section 9 applies.

[23] The Plaintiffs oppose the requested stay on the basis that they have not applied for pensions resulting from the Alleged Privacy Breach, and they take the position that subsection 111(2) does not require them to do so. The Plaintiffs emphasize that the Action seeks remedies arising from alleged breaches of the right to privacy and section 8 of the Charter, which they

argue are distinct from physical or service-related injuries typically compensated under the *Pension Act*. The Plaintiff argue that section 9 of the CLPA therefore has no application to the Action and, as such, subsection 111(2) is also not engaged.

[24] I agree with the Defendant's characterization of the relationship between section 9 of the CLPA and subsection 111(2) of the *Pension Act*. I discussed this relationship briefly in *Dugas,* in considering the Defendant's argument that the language, "… has been paid or is payable …", in section 9 serves to bar a claim not only when a pension entitlement has already been paid following adjudication by the VAC, but also in a circumstance where the Court might adjudicate that a pension was payable. I rejected the Defendant's argument, concluding that the term "payable" in section 9 contemplated the application of that section in circumstances where entitlement to payment had already been adjudicated by the relevant administrative body, even though the payment itself had not yet been made (at paras 49-55). My analysis in support of that conclusion included the following consideration of subsection 111(2) of the *Pension Act* (at paras 53-55):

> 53. I prefer this interpretation to that for which the Defendant advocates, which would involve the Court adjudicating entitlement and therefore encroaching on jurisdiction that Parliament has conferred upon an administrative decision-maker. I also consider the *Sherbanowski* interpretation to be consistent with achieving a cohesive relationship between section 9 of the CLPA and a related provision found in subsection 111(2) of the *Pension Act*, which provides as follows:

Stay of action against Crown until pension refused	**Suspension d'instance**
(2) An action that is not barred by virtue of section 9 of the *Crown Liability and Proceedings Act* shall, on application, be stayed until	**(2)** L'action non visée par l'article 9 de la Loi sur la responsabilité civile de l'État et le contentieux administratif fait, sur demande, l'objet d'une suspension jusqu'à ce

(a) an application for a pension in respect of the same disability or death has been **made** and pursued in good faith by or on behalf of the person by whom, or on whose behalf, the action was brought; and	que le demandeur, ou celui qui agit pour lui, fasse, de bonne foi, une demande de pension pour l'invalidité ou le décès en cause, et jusqu'à ce que l'inexistence du droit à la pension ait été constatée en dernier recours au titre de la Loi sur le Tribunal des anciens combattants (révision et appel).
(b) a decision to the effect that no pension may be paid to or in respect of that person in respect of the same disability or death has been confirmed by an appeal panel of the Veterans Review and Appeal Board in accordance with the *Veterans Review and Appeal Board Act*.	

54. In *Dumont v Canada*, 2003 FCA 475, the Federal Court of Appeal provided the following explanation of the operation of this subsection (at para 26):

> Therefore, if the Court has a reasonable doubt about striking out a statement of claim under section 9 of the *Crown Liability and Proceedings Act*, it shall be stayed until " . . . an application for a pension in respect of the same disability or death has been made and pursued in good faith and . . . a decision to the effect that no pension may be paid to or in respect of that person in respect of the same disability or death has been confirmed by an appeal panel of the Veterans Review and Appeal Board in accordance with the *Veterans Review and Appeal Board Act*" (subsection 111(2) of the *Pension Act*).

55. I emphasize that, in the matter at hand, the Defendant has not brought a motion for a stay under subsection 111(2) of the *Pension Act* and confirmed at the hearing that it is not at present seeking such relief. Rather, I reference this subsection because, in my view, the availability of the relief contemplated thereunder is inconsistent with interpreting section 9 of the CLPA as permitting the Court to form conclusions as to pension

> entitlements. Subsection 111(2) recognizes that, if a pension entitlement may serve to bar a legal action by operation of section 9 of the CLPA, but such entitlement has not yet been adjudicated through the administrative decision-making and appeal structure, then it is appropriate to afford an opportunity for such adjudication to take place (by the administrative structure) before the legal action proceeds.
>
> [My emphasis.]

[25] On its face, based on the plain wording of subsection 111(2) and consistent with the above interpretation in *Dugas*, the subsection applies and the stay is warranted. However, before arriving at that conclusion, I must consider the Plaintiffs' arguments.

[26] The Plaintiffs place considerable emphasis on the fact that, as acknowledged by the Defendant, they have not applied for disability pensions for injuries alleged in the Action. They argue that, in the absence of such an application, it is not possible to determine whether section 9 of the CLPA would bar this action and that the request for a stay is premature. In support of their argument, the Plaintiffs rely on the recent decision of the Federal Court of Appeal in *McQuade v Canada (Attorney General)*, 2025 FCA 173 [*McQuade*], which held that it was not plain and obvious at the certification stage of the class action in that matter that section 9 operated to bar either the claims of all proposed class members (at para 69) or those of the proposed representative plaintiffs (at para 105), because there was insufficient evidence before the Court to conduct the required analysis.

[27] In my view, *McQuade* assists the Defendant rather than the Plaintiffs. Importantly, *McQuade* addressed only section 9 of the CLPA, not subsection 111(2) of the *Pension Act*. However, in particular in relation to the proposed representative plaintiffs, the Federal Court of

Appeal's conclusion that the claims were not barred turned on the lack of a sufficient evidentiary record for the Court to compare the basis on which the plaintiffs were being paid disability pensions with the events that were the subject of their action (at para 103). This reasoning supports a conclusion that a stay is appropriate in the case at hand so that, with the benefit of pension applications and adjudication as contemplated by section 111(2), an evidentiary record would be available to support an analysis as to whether section 9 would apply to bar the Plaintiffs' claims.

[28] Similarly, the Plaintiffs reference *Canada v Greenwood*, 2021 FCA 186, in which the Federal Court of Appeal upheld the Federal Court's conclusion that it was premature to assess the application of section 9, because the plaintiff had not applied for a pension and it was unclear whether the portion of the pension that had been awarded to him for PTSD related to the same occurrences as the harassment he alleged in his action (at paras 195-196). However, as in *McQuade*, the Court of Appeal noted the sparse evidence and the fact that the Crown had not brought a stay application under section 111 of the *Pension Act*, which the Federal Court left open as a possible future defence initiative. Again, this authority does not assist the Plaintiffs.

[29] As previously noted, the Plaintiffs also argue that the Action seeks remedies arising from alleged breaches of the right to privacy and section 8 of the *Charter*, which they contend are distinct from physical or service-related injuries typically compensated under the *Pension Act*. They refer the Court to the explanation in *Dumont v Canada*, 2003 FCA 475 [*Dumont*] that it is far from certain that section 9 of the CLPA can be invoked to exclude a claim for infringement of Charter rights (at para 78) and the decision in *Scott v Canada (Attorney General)*, 2013 BCSC

1651 at paragraph 165, which relied on *Dumont* in allowing a *Charter* claim to proceed notwithstanding the defendant's efforts to invoke section 9.

[30] The Plaintiffs also emphasize that, in the Third Amended Claim, they have deleted previous allegations that, as a result of the Alleged Privacy Breach, they suffered injuries and damages such as psychological illness, impairment of mental and emotional health amounting to a severe and permanent disability, emotional and psychological pain and suffering, depression, anxiety and emotional dysfunction. The Plaintiffs have instead added a claim for distress, humiliation and/or anguish, which conditions they argue do not represent illnesses such as could cause section 9 of the CLPA to apply.

[31] In response, the Defendant notes that the term "disability", as used in the *Pension Act*, is defined by section 3 to mean, "… the loss or lessening of the power to will and to do any normal mental or physical act". Observing that the Third Amended Claim includes claims for loss of income and income-earning capacity, the Defendant submits that the Plaintiffs' reformulation of their claims does not in itself take them outside the operation of subsection 111(2) or the *Pension Act* generally.

[32] As explained at paragraph 29 of *Dugas*, the application of section 9 is not governed by the characterization of the damages claimed in an action but rather by the characterization of the event giving rise to it (*Lafrenière v Canada (Attorney General)*, 2020 FCA 110 at para 47, leave to appeal to SCC refused, 39404 (18 March 2021)). The Court is required to consider whether the pension or compensation paid or payable is made on the same factual basis as that of the

action that the Crown seeks to bar. If the same factual foundation is established, there is no Crown liability under ancillary heads of damages for the event already compensated, notwithstanding that the pension or compensation does not relate to those heads of damages (*Sarvanis v Canada*, 2002 SCC 28 [*Sarvanis*] at paras 28–29; *Lebrasseur v Canada*, 2006 FC 852 at paras 28–29, aff'd 2007 FCA 330).

[33] I note this jurisprudence to identify that the fact the Plaintiffs seek to distinguish both the types of injuries or losses they have incurred, and the causes of action they assert, from those to which they say compensation under the *Pension Act* typically responds, may not necessarily assist them in escaping the application of section 9 of the CLPA. However, this Motion is not the appropriate stage for the application of those jurisprudential principles because, in the absence of the pension applications and adjudications contemplated by section 111(2) of the *Pension Act*, the evidentiary record necessary to consider the potential application of section 9 does not yet exist.

[34] The decision in *Dumont* illustrates this point. In that case, the Federal Court of Appeal relied upon section 9 of the CLPA to strike the appellants' claims, with the exception of their claim for infringement of section 7 of the *Charter* (at para 82). As the Plaintiffs note, *Dumont* held that it was far from certain that section 9 of the CLPA could be invoked to exclude a claim for infringement of *Charter* rights. However, while *Dumont* declined to strike the *Charter* claim under section 9, it nevertheless stayed that claim under subsection 111(2) of the *Pension Act*, reasoning that it was up to the judge responsible for considering damages claimed under subsection 24(1) of the *Charter* to assess whether the pension that might be awarded was

appropriate and fair in regard to all the circumstances, or whether it would be appropriate to add further compensation (at para 78). That is, a pension application and adjudication would provide information that the Court required in order to assess whether compensation might be available for the alleged *Charter* breach.

[35] The Plaintiffs also refer the Court to authorities that have declined to grant stays under subsection 111(2) of the *Pension Act*. Most recently, in *O'Farrell v Attorney General of Canada*, 2016 ONSC 6342 [*O'Farrell*], the Ontario Superior Court of Justice relied on earlier authorities including the decision of the Federal Court, Trial Division, in *Marsot v Canada (Ministry of National Defence)*, 2002 FCT 226, [2002] 3 FCR 579 [*Marsot*], in finding that subsection 111(2) did not require the plaintiff to apply to the VRAB for a pension redetermination or appeal (*O'Farrell* at para 100).

[36] The Defendant argues that *O'Farrell* is no longer good law, noting that in *Gervais v R*, 2019 QCCS 1087 [*Gervais*] at paragraphs 63 to 67, the Québec Superior Court declined to follow *O'Farrell* as inconsistent with the decision of the Supreme Court of Canada in *Sarvanis* and the more recent decision of the Ontario Court of Appeal in *Vancise v Canada (Attorney General)*, 2018 ONCA 3 [*Vancise*].

[37] While the Plaintiffs have not made submissions in reply to this argument, I note that both *Sarvanis* and *Vancise*, upon which *Gervais* relied in declining to follow *O'Farrell*, are authorities on the application of section 9 of the CLPA. They do not address subsection 111(2) of the *Pension Act*.

[38] However, I agree with the Defendant that *O'Farrell*, and *Marsot* upon which it relies, are not persuasive in the case at hand. In finding that subsection 111(2) did not require the plaintiff to apply to the VRAB for a pension redetermination or appeal, *O'Farrell* adopted reasoning similar to that in *Marsot* to the effect that the plaintiff was not seeking to review her disability pension or to reassess it (*O'Farrell* at paras 99-100). This reasoning can be understood by reference to the Court's explanation of the plaintiff's position that, when she had applied for her pension, she brought to the attention of the VAC all of her claims for damages arising out of the incidents that were the subject of her action. The result was an award in relation to her PTSD that did not award any pension for any other damages claimed in her action. The plaintiff therefore argued that she was already in receipt of a VAC decision to the effect that no pension was payable in relation to those damages (*O'Farrell* at para 90).

[39] In other words, *O'Farrell* declined to grant the requested stay, because the Court concluded that the required pension application and adjudication had already taken place. Similarly, in *Marsot*, it appears that the Court accepted the plaintiff's assertion that she had already applied for a pension that encompassed the major depression that was the subject of her action and had received a decision on that application (at para 77-80).

[40] Finally, I note that I have considered the fact that all the jurisprudence cited by the parties has assessed the application of section 111(2) in the context of individual actions, rather than class proceedings. The Defendant's counsel advised at the hearing that the Defendant has not identified any case law considering section 111(2) in a class action. However, the Defendant takes the position that the there are no different or additional considerations that the Court should

take into account as a result of the Action being a proposed class proceeding. The Plaintiffs' counsel has not argued otherwise. I accept that, while the two Plaintiffs are proposed as representative plaintiffs for purposes of the proposed class action, they are at present the only Plaintiffs, and if the result of the Court's analysis is to stay their claims due to the application of section 111(2), this has the effect of staying the Action.

[41] In conclusion, taking into account subsection 111(2), the related jurisprudence, and the requirement to consider the interests of justice under *Federal Courts Act*, I am satisfied that the Court should grant the Motion and stay the Action.

[42] As for the terms of the stay, I noted at the hearing that the language of subsection 111(2)(b) suggests that the stay should apply until the VAC has made a decision to the effect that no pension is available in respect of the disability that is the subject of the Action and that decision has been confirmed on appeal by the VRAB. That is, subsection 111(2)(b) contemplates the stay remain in place until each Plaintiff makes a pension application and a negative decision has been made and confirmed in relation to those applications. I asked the Defendant's counsel for submissions on the logic of this aspect of the legislation, given my understanding of the Defendant's position that the purpose of the stay was to facilitate the issuance of a pension decision so that the parties and potentially the Court would then have the benefit of the information provided by that decision, regardless of whether the decision on pension availability was positive or negative.

[43] The Defendant's counsel confirmed that the Defendant seeks a stay pending decisions on pension applications by the Plaintiffs, regardless of whether those decisions represent positive or negative outcomes. In my view, this is a logical approach. Referencing as an example the stay granted in *Dumont*, I noted above in these Reasons my understanding of the Court's reasoning that a stay was appropriate because a pension decision would provide information that the Court required in order to assess whether compensation might be available for the alleged *Charter* breach. I do not read the reasoning in *Dumont* as contemplating information that would be available only from a negative pension decision.

[44] It may be that the language of subsection 111(2)(b) is intended to capture the outer limits of the scope for a stay, i.e., circumstances in which the VAC issues and the VRAB subsequently confirms a clear and definitive negative decision (i.e. that no pension is available in respect of the disability that is the subject of an action), in which case it automatically follows that the stay should not survive that event and the action should proceed. However, in less definitive circumstances, where a pension is granted on terms that result in the parties taking divergent positions on whether section 9 of the CLPA is engaged, it would presumably then be available to the plaintiff to move to lift the stay and available to the defendant to move to strike the action under section 9.

[45] In any event, it is not necessary for the Court to opine definitively on these details in the matter at hand, because the Motion presented by the Defendant seeks to invoke subsection 111(2) to support a stay only until such time as the Plaintiffs have presented the required pension applications and pension decisions, whether positive or negative, have been made by the VAC

and confirmed by the VRAB. My Order will therefore provide for a stay on terms consistent with that position, employing language materially the same as proposed in the Defendant's written representations.

V. **Costs**

[46] Consistent with Rule 334.39(1), neither party claimed costs of this Motion, and no costs are awarded.

ORDER IN T-529-23

THIS COURT ORDERS that

1. The Motion is granted, and this Action is stayed in accordance with subsection 111(2) of the *Pension Act*, pending a final decision by the VRAB regarding the Plaintiffs' entitlement to a disability pension for the injuries alleged in this Action.

2. There is no order as to costs.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-529-23
STYLE OF CAUSE:	MARCO VACHON AND STEPHANE RAYMOND v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	FREDERICTON, NEW BRUNSWICK
DATE OF HEARING:	MARCH 2, 2026
ORDER AND REASONS:	SOUTHCOTT J.
DATED:	MARCH 4, 2026

WRITTEN REPRESENTATIONS BY:

Rodney J. Gillis, K.C.	FOR THE PLAINTIFFS
Angela Green Kathryn Hill	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Gilbert McGloan Gillis Saint John, New Brunswick	FOR THE PLAINTIFFS
Attorney General of Canada Halifax, Nova Scotia	FOR THE DEFENDANT