

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20121003**

**Docket: A-389-11**

**Citation: 2012 FCA 252**

**CORAM: BLAIS C.J.  
STRATAS J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**TERRY LYNN LEBRASSEUR and  
JOSEPH ALAIN LEBRASSEUR**

**Appellants**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on October 3, 2012.

Judgment delivered from the Bench at Ottawa, Ontario, on October 3, 2012.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**CHIEF JUSTICE BLAIS**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Ottawa, Ontario, on October 3, 2012)

**BLAIS C.J.**

[1] This is an appeal from the order of the Federal Court (*per* Justice Martineau): 2011 FC 1075.

[2] The Federal Court struck out an action brought by the appellants on the ground that the claims in the action were barred by section 9 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the appellants had not exhausted all available avenues of redress under Part III of the *Royal Canadian Mounted Police Act*, R.S.C. c. R-10, and the action was based on facts that were

the subject-matter of an earlier action that was struck: *Lebrasseur v. Canada*, 2006 FC 852 and 2007 FCA 330.

[3] On the last mentioned issue – essentially an application of the well-known bar against relitigation – the Federal Court found that, in the present action, only “a limited number of new facts have been added up, put into context, or further detailed by the [appellants]” (at paragraph 29). It added (also at paragraph 29) that the allegations are essentially a continuation of the same set of facts that made up the earlier action that was struck or are totally unrelated to the losses pleaded in the statement of claim. We are not persuaded that these findings are wrong.

[4] There are two allegations that might be considered to be new: RCMP officers driving by the appellants’ home every three months and the service of documents without further aggravating conduct (see statement of claim, paragraphs 31, 40 and 41). These are directed to the tort of intentional infliction of nervous shock. As pleaded, they do not possess the quality of extremeness, flagrancy or outrageousness that would give rise to the tort (*Prinzo v. Baycrest Centre for Geriatric Care*, (2002), 60 O.R. (3d) 474 (C.A.)) and pleadings can be struck out on that basis (*High Parklane Consulting Inc. v. Royal Group Technologies Limited*, 2007 CanLii 410 (Ont S.C.J.)).

[5] Our conclusions on these issues are sufficient to uphold the Federal Court’s overall conclusion that the appellants’ action should be dismissed.

[6] As in the Federal Court, the parties raised before us wider issues relating to whether section 9 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c C-50 and the grievance system under

the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 constitute bars to pursuing claims in the Federal Court. Though these issues have been considered in our Court in *Lebrasseur*, above, and have been the subject of later decisions from other appellate jurisdictions (see notably *Sulz v. Canada (Attorney General)*, 2006 BCCA 582, 276 D.L.R. (4<sup>th</sup>) 391; *Smith v. Canada (Attorney General)*, 2007 NBCA 58, 282 D.L.R. (4<sup>th</sup>) 193; and *Merrifield v. Canada (Attorney General)*, 2009 ONCA 127) it is not necessary for us to resolve them in this appeal. Consequently, our decision to dismiss this appeal should not be understood as an endorsement of the Federal Court judge's reasons on these issues.

[7] Therefore, we shall dismiss the appeal with costs.

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“Pierre Blais”  
Chief Justice

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-389-11

Appeal from the order of Martineau J. of the Federal Court, dated September 19, 2011 (2011 FC 1075).

**STYLE OF CAUSE:** TERRY LYNN LEBRASSEUR and  
JOSEPH ALAIN LEBRASSEUR  
and  
HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** October 3, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** BLAIS C.J.  
STRATAS J.A.  
MAINVILLE J.A.

**DELIVERED FROM THE BENCH BY:** CHIEF JUSTICE BLAIS

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