

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251023

Docket: A-20-25

Citation: 2025 FCA 192

**CORAM: STRATAS J.A.
LEBLANC J.A.
GOYETTE J.A.**

BETWEEN:

HIS MAJESTY THE KING

Appellant

and

**STACEY HELENA PAYNE, JOHN HARVEY
and LUCAS DIAZ MOLARO**

Respondents

Heard at Toronto, Ontario, on October 23, 2025.

Judgment delivered from the Bench at Toronto, Ontario, on October 23, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on October 23, 2025).

STRATAS J.A.

[1] The appellant appeals from the judgment of the Federal Court (*per* Southcott J.): 2025 FC

5. In this proposed class action, the Federal Court dismissed part of the appellant's motion to

strike the statement of claim. In this Court, the appellant says that the Federal Court should have struck the entire statement of claim.

[2] The statement of claim asserts causes of action under section 2(d) of the *Charter* and the tort of misfeasance in public office arising from the Treasury Board's *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*. Under the *Policy*, subject to exceptions, all employees of the core public administration (defined under subsection 11(1) of the *Financial Administration Act*, R.S.C. 1985, c. F-11) had to be vaccinated against COVID-19. Those who were unwilling to be vaccinated or to disclose their vaccination status were placed on administrative leave without pay.

[3] The Federal Court struck the portion of the statement of claim related to the tort of misfeasance in public office. It also permitted the respondents to amend their statement of claim. The Federal Court permitted the portion of the statement of claim concerning the *Charter* to proceed.

[4] In our view, the appeal must be allowed and the statement of claim must be struck in its entirety without leave to amend. For the following reasons, the Federal Court and this Court have no jurisdiction over any of the respondents' claim, nor do they have jurisdiction in these circumstances to allow an amendment curing the claim.

[5] The statement of claim concerns "an occurrence or matter", namely the *Policy*, that affects the respondents' "terms and conditions of employment". Thus, all of the named

respondents can launch a grievance under section 208 of the *Federal Public Sector Labour Relations Act*. And under section 236 of the *Federal Public Sector Labour Relations Act*, courts have no jurisdiction over “any act or omission giving rise to [a] dispute” that can be grieved.

[6] These provisions of the *Federal Public Sector Labour Relations Act* are “clear and unequivocal” and “explicitly [oust] the jurisdiction of the court over claims that could be the subject of a grievance under section 208 of the [Federal Public Sector Labour Relations Act]”: *Bron v. Canada (Attorney General)*, 2010 ONCA 71 at paras. 4, 29 and 33; see also *Adelberg v. Canada*, 2024 FCA 106, *Davis v. Canada (Royal Canadian Mounted Police)*, 2024 FCA 115 and *Ebadi v. His Majesty the King et al.*, 2024 FCA 39 at para. 28.

[7] In *Bron*, the Ontario Court of Appeal correctly held (at para. 50) that “[a]lmost all employment-related disputes can be grieved” under section 208 of the *Federal Public Sector Labour Relations Act*. This includes claims in tort and alleged breaches of the Charter: *Ebadi* at para. 29; *Adelberg* at para. 56. In the case of alleged breaches of the Charter, those deciding grievances can decide questions of law and, thus, can deal with claims under the Charter: *Nova Scotia (Workers’ Compensation Board) v. Martin*; *Nova Scotia (Workers’ Compensation Board) v. Laseur*, 2003 SCC 54, [2003] 2 S.C.R. 504, and for a specific example, see *Boivin v. Treasury Board*, 2009 PSLRB 98.

[8] By failing to apply and give effect to these provisions and governing authorities, the Federal Court erred in law and so this Court can interfere. In particular, the Federal Court wrongly relied on the Supreme Court’s decision in *Quebec (Commission des droits de la*

personne et des droits de la jeunesse) v. *Quebec (Attorney General)*, 2004 SCC 39, [2004] 2 S.C.R. 185. There, the Supreme Court considered a Quebec provision that limited the right to grieve to “any disagreement respecting the interpretation or application of a collective agreement”. That is far narrower than the very wide bar in sections 208 and 236 of the *Federal Public Sector Labour Relations Act*. The authorities set out in paragraph 6, above, apply. And nothing is pleaded that would constitute exceptional circumstances that might get around the very wide bar in sections 208 and 236. Therefore, the entire claim is barred.

[9] The respondents say that their claim challenges the “process” that was followed in imposing the *Policy*. A reading of the statement of claim does not support this. In any event, even if that were so, this remains the sort of employment-related dispute that can be grieved under sections 208 and 236 under the above authorities.

[10] The respondents say that this Court should grant them leave to amend their statement of claim. The respondents posit, assert or speculate, without any evidence in support, that some members of the proposed class, as yet unnamed and unidentified, do not have grievance rights under section 208. As a result, they say that they should be granted leave to add these unnamed, unidentified and presently unknown persons as plaintiffs, and to make consequential amendments to the statement of claim.

[11] The respondents rely on *McMillan v. Canada*, 2024 FCA 199 at paras. 104-112. However, in *McMillan*, evidence was filed and, on the evidence, the named plaintiff had a potentially viable claim and so the court permitted the amendment. That is not the case here.

[12] Under questioning during the course of oral argument, counsel for the respondents candidly agreed that if the Court accepted the appellant's arguments, the statement of claim could not be cured. We agree that in this situation, no amendments to the statement of claim would permit this action to avoid the very wide bar under sections 208 and 236 of the *Federal Public Sector Labour Relations Act*.

[13] This is sufficient to determine this appeal. We need not consider the other issues raised by the parties.

[14] Therefore, we will allow the appeal with costs here and below, set aside the judgment of the Federal Court, and strike the Claim in its entirety for want of jurisdiction without leave to amend.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-20-25
STYLE OF CAUSE:	HIS MAJESTY THE KING v. STACEY HELENA PAYNE, JOHN HARVEY AND LUCAS DIAZ MOLARO
PLACE OF HEARING:	TORONTO, ONTARIO
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REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. LEBLANC J.A. GOYETTE J.A.
DELIVERED FROM THE BENCH BY:	STRATAS J.A.

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