Federal Court  Cour fédérale

Date: 20190222

Docket: T-1284-15

Citation: 2019 FC 219

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 22, 2019

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SYLVAIN LAFRENIÈRE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The respondent, the Attorney General of Canada [AGC], is seeking to have the statement of claim [the Statement] filed by the applicant, Sylvain Lafrenière, dated September 11, 2018, struck out without possibility of amendment, on the grounds that it failed to disclose any reasonable cause of action or that it otherwise constitutes an abuse of process.

[2] The Statement was served and filed by the applicant following a decision rendered by the Federal Court of Appeal in docket No. A-363-16, dated August 13, 2018:

a) Allowing the applicant's cross-appeal and reversing the decision rendered by the Federal Court in docket No. T-1284-15, dated July 7, 2016 (*Lafrenière v Director General Canadian Forces Grievance Authority)*, 2016 FC 767 [FC Decision]);

b) Ordering that the application for judicial review filed by the applicant on July 31, 2015, in docket No. T-1284-15, be treated and proceeded with as an action, pursuant to subsection 18.4(2) of the *Federal Courts Act*, RSC 1985, c F-7 [FC Act]; and

c) Prescribing that the applicant's statement of claim be served and filed within thirty days of the decision rendered by the Federal Court of Appeal (*Canada (Attorney General) v Lafrenière*, 2018 FCA 151 [FCA Decision]).

[3] For the following reasons, the Court allows the respondent's application in part.

I *Background and Court's general determination*

[4] The applicant joined the Canadian Forces [Forces] on July 30, 1997, and he was discharged in November 2012, for medical reasons. In fact, the applicant's discharge was brought forward to October 23, 2012, at the applicant's request (at paras 42-43 of the Statement).

[5] Since March 2012, the applicant has received or is receiving disability benefits under sections 45 and 46 of the *Canadian Forces Members and Veterans Re-establishment and*

Compensation Act, SC 2005, c 21 [the Compensation Act], for physical and psychological consequences that are related to his service in the Forces or that were aggravated by his service (affidavit of Julie Brunet, paralegal in the legal department of the Department of National Defence and the Canadian Forces, dated October 18, 2018, at paras 2-3, and Exhibits A, B and C; Statement at paras 40-42, 68 xiv, 78, 85-88 and 91-93).

[6] In short, the respondent submits that under section 9 of the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50 [CLPA], no proceedings lie against the Crown and or its servants in respect of any claim for loss or damage if a pension or compensation has been paid or is payable to the applicant under the Compensation Act, which is the case here.

[7] For his part, the applicant objects to the motion to strike, on the grounds that the Court does not have jurisdiction to strike out the Statement in light of the effects of the Federal Court of Appeal decision (referenced as Exhibit P-8 in the Statement), when it is not otherwise plain and obvious that his action against the Crown is doomed to fail, despite the compensation that has been or is being paid under the Compensation Act. In the alternative, the applicant seeks leave to serve and file an amended statement.

[8] The motion to strike is based on paragraphs 221(1)(a) and (f) of the *Federal Courts Rules*, SOR/98-106 [the Rules], which provide as follows:

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;
. . .	[…]
(f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.	f) qu'il constitue autrement un abus de procédure. Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[9] Since I am satisfied that the Court has the jurisdiction to order that a pleading or anything contained therein be struck out on the ground that it discloses no reasonable cause of action or that it otherwise constitutes an abuse of process, I find that it is appropriate to strike out part of the Statement, while also granting the applicant leave to serve and file an amended statement within 30 days of the order made by the Court.

II *Application for judicial review "converted" into action against Crown*

[10] A notice of application was initially served and filed with the Court on July 31, 2015. Further on, we will see the circumstances under which the application for judicial review was, in fact, "converted" into an action against the Crown, as well as the extent to which this Court retains jurisdiction to rule on the motion to strike the Statement.

[11] In his notice of application, the applicant seeks judicial review of a final decision dated June 29, 2015, by Colonel J.R.F. Malo, Director General Canadian Forces Grievance Authority, as Final Authority [FA], which upheld the grievance referenced below but did so without

awarding the relief being sought by the applicant. This decision was rendered pursuant to subsection 29.14(1) of the *National Defence Act*, RSC 1985, c. N-5 [NDA], and Chapter 7 of the *Queen's Regulations and Orders for the Canadian Forces* [QR&O], which allow the Chief of the Defence Staff [CDS] to delegate his/her powers as the FA to any officer who reports directly to him/her.

[12] The following were named as respondents in the notice of application for judicial review: the Director General Canadian Forces Grievance Authority, as FA [tribunal], the Minister of National Defence [the Minister] and the AGC [collectively, the current respondents]. The Minister is named as a respondent in his capacity as employer of the Military Police, [TRANSLATION] "whose serious omissions are also highlighted in the tribunal's decision", and that decision, according to the notice of application filed by the applicant, is tainted by errors of fact and law and therefore unreasonable.

[13] I would mention in passing that the current designation of the respondents in the style of cause of the notice of application does not comply with the rules applicable to applications for judicial review (Part 5). A tribunal cannot be designated as a respondent (paragraph 303(1)(a) of the Rules), while the AGC does not need to be added as co- respondent if the Minister has already been validly named as a respondent (subsection 303(2) of the Rules).

Chronology of events leading to tribunal's decision

[14] In July 2009, allegations of inappropriate conduct concerning Mr. Lafrenière were reported to the Commander QC 2 Div C. According to these allegations, Mr. Lafrenière

produced a DVD using the “Army News” unit’s facilities. He did not receive approval to accept sponsorships. He sold the DVDs and used material protected by intellectual property rights. The applicant personally profited from these actions.

[15] In September 2009, the applicant was suspended from his position as a military journalist, without any explanation, and was transferred to a driver’s position [the administrative measures]. At the same time, the Military Police launched an investigation [the military investigation].

[16] In November 2009, Mr. Lafrenière’s supervisors learned that the Military Police officer tasked with the investigation was on extended sick leave and that the case had not been handed off to another investigator. However, this important information was never communicated to the applicant at the time, just as he was never informed that he was suspected of having committed fraud.

[17] On October 5, 2010, the applicant filed a grievance seeking written explanations regarding his removal from his military journalist position and the grounds for the military investigation; he also challenged the fact that he had not been given adequate opportunity to explain his conduct and defend himself, if necessary.

[18] On November 1, 2011, counsel for the applicant sent the Forces a demand letter to obtain an update on the military investigation and the grievance [the demand letter].

[19] On February 13, 2012, the applicant filed a complaint containing eight allegations of harassment against his sergeant, which had the effect of suspending the grievance process.

[20] In March 2012, the applicant was advised that the military investigation had ended and that the allegations against him had been found to be without merit.

[21] On September 13, 2012, two of the eight allegations of harassment were upheld.

[22] In the fall of 2012, the applicant was discharged from the Forces for medical reasons. In fact, since November 2009, his situation had been very hard on him, in terms of his physical and mental health as well as his professional and family life. Initially, the employer was unwilling to acknowledge any connection to the events that had occurred in 2009. However, further to a favourable decision by the Veterans Appeal and Review Board, the applicant started receiving disability benefits under the Compensation Act in March 2012.

[23] On July 22, 2013, Brigadier General Jean-Marc Lanthier, in his capacity as the Initial Authority [IA], answered the three questions raised in Mr. Lafrenière's grievance, but not to the applicant's satisfaction.

[24] On October 4, 2013, the applicant, through his legal counsel, challenged the IA's decision and took his grievance to a higher administrative level. He also amended his grievance to request a letter of apology signed by senior military management, compensatory damages in the amount of $400,000 and punitive damages in the amount of $100,000 [amended grievance].

[25] On December 1, 2014, the Military Grievances External Review Committee [External Committee] reviewed the decision rendered by the IA. It found that the applicant's right to procedural fairness had been violated and recommended that the FA refer the case to the Director Claims and Civil Litigation [DCCL] for the purpose of evaluating whether financial compensation was appropriate. However, as explained below, on June 29, 2015, Colonel Malo, as FA, reached a contrary conclusion and decided not to follow this recommendation in the decision now under judicial review.

Tribunal's decision

[26] In this case, the FA concluded that that there is no legal duty of procedural fairness when the chain of command imposes an administrative measure, such as removing a member of the Forces from working in a particular position. That said, he stated that the applicant's chain of command should have been much more diligent and compassionate in handling Mr. Lafrenière's case. Nevertheless, the FA noted that the appropriate mechanism for contesting the delay related to the military investigation would have been to file a complaint with the Military Police Complaints Commission, instead of filing a grievance.

[27] With respect to the specific remedies sought by the applicant in the amended grievance, first, the FA refused to order a letter of apology because it would not be sincere; second, the FA also refused to refer the case to the DCCL for the purpose of evaluating whether the applicant could be compensated financially since the measures taken against him did not precipitate his discharge from the Forces, did not deprive him of benefits related to his military service and did not deprive him of allowances or disability benefits related to his health. The FA also noted that

section 9 of the CLPA bars the applicant from initiating proceedings against the Crown, since the alleged actions and the damage sustained as a result of the actions of government officials related to the applicant's military service make him eligible to receive a pension or compensation under the Compensation Act.

Remedies sought in notice of application

[28] In addition to asking that the tribunal's decision be quashed and that senior military management provide a letter of apology, the notice of application dated July 31, 2015, also seeks an order from the Court under subsection 18.4(2) of the FC Act that the application for judicial review be treated and proceeded with as an action, as the applicant wants to obtain damages.

[29] In the alternative, the applicant asks the Court to render the decision that the tribunal should have rendered, which would include a letter of apology and damages. The applicant further requests in the alternative that the case be severed and stayed with respect to the determination of appropriate remedies, pending the transfer of the case from the tribunal to the DCCL for the purpose of evaluating whether financial compensation is appropriate.

[30] Lastly, the applicant requests reimbursement for legal costs and extra-judicial professional fees and disbursements incurred since sending the demand letter, given the excessive delays and the tribunal's slowness in rendering a final decision.

Federal Court decision

[31] On July 7, 2016, the application for judicial review was allowed by my colleague, the Honourable Madam Justice St-Louis [the trial judge], solely on the ground that the FA should not have confined himself to the External Committee's recommendation to have the grievance case transferred to the DCCL. The FA should also have considered the possibility of the CDS exercising jurisdiction to award monetary compensation—even though such compensation could not exceed $100,000 under the *Canadian Forces Grievance Process Ex Gratia Payments Order*, PC 2012-0861 [Order].

[32] According to the trial judge, this omission constitutes a fatal error, thus rendering the impugned decision unreasonable and justifying that it be quashed and that the matter be referred back to the tribunal for redetermination (FC Decision at paras 62-68). The Court also decided that it could not consider the option of having the application for judicial review treated and proceeded with as an action because the applicant had not yet exhausted all other forms of remedy available to him (FC Decision at para 69).

Appeal and cross-appeal

[33] Since both parties were dissatisfied with the outcome of the proceedings, the respondent (the AGC) and the applicant turned to the Federal Court of Appeal.

[34] On the one hand, the respondent asked the Federal Court of Appeal to quash the Federal Court decision and dismiss the application for judicial review because the trial judge had erred in concluding that the tribunal's decision was unreasonable, when all claims for damages against

the Crown are inadmissible for various reasons (prescription, remedy excluded under section 9 of the CLPA, etc.) [the main appeal].

[35] On the other hand, the applicant wanted the Court of Appeal to grant him one of the remedies already being sought in his notice of application for judicial review, because the trial judge had erred in exercising the discretion mentioned in subsection 18.4(2) of the FC Act, by refusing to order that the application for judicial review be treated and proceeded with as an action [the cross-appeal].

Federal Court of Appeal decision

[36] On August 13, 2018, the Federal Court of Appeal allowed the cross-appeal and quashed the decision by the Federal Court, but did so without granting the monetary and other remedies that were being sought in the notice of application, other than to direct that the application for judicial review should now be treated and proceeded with as an action (Judgment filed in docket No. A-363-16).

[37] Since the issue of the FA's decision becomes theoretical with the "conversion" of the application for judicial review into an action, it is therefore not necessary to render a decision on the main appeal (FCA Decision at paras 3 and 18).

[38] The Federal Court of Appeal's general reasoning—the reasons for the decision were provided by the Honourable Mr. Justice de Montigny—takes the following two aspects into account.

[39] First, the trial judge made an error of law in finding that the applicant was required to exhaust internal remedies before commencing an action for damages (FCA Decision at para 24, referring to the Federal Court of Appeal's decision in *Meggeson v Canada (Attorney General)*, 2012 FCA 175 [*Meggeson*]). In other words, since the judgment rendered in 2010 by the Supreme Court of Canada in *Canada (Attorney General) v TeleZone Inc*, [2010] 3 SCR 585 [*TeleZone*], a plaintiff is no longer required to have a decision rendered by a tribunal quashed before commencing an action for damages before provincial courts or the Federal Court, from the moment that the plaintiff is able to prove fault.

[40] Referring to *TeleZone*, Justice de Montigny noted, [TRANSLATION] "Keeping in mind concerns about access to justice, [the Supreme Court of Canada] unanimously refused to require an applicant seeking compensation for losses suffered as a result of an administrative decision to first file an application for judicial review" (FCA Decision at para 23) [Emphasis added]. As discussed below, excluding the damages stemming from the excessive delays involved and the amount of time that the tribunal took to process the grievance in 2010, the largest monetary claim specified in the Statement concerns the prejudicial effects that the administrative measures and the military investigation had on the applicant's mental and physical health, reputation, professional career and personal life.

[41] Second, applying the criteria mentioned in *Association des crabiers acadiens Inc v Canada (Attorney General)*, 2009 FCA 357 (at para 39) [*Association des crabiers acadiens*] should have led the trial judge to conclude that the request to have the application for judicial review treated and proceeded with as an action was justified, partly because the applicant could

not establish proof of the damage that he allegedly suffered by simply filing affidavits, when a medical report and actuarial evidence would undoubtedly be relevant (FCA Decision at para 27). Moreover, the Federal Court cannot award damages in the context of a judicial review, whereas if the FA had decided to transfer the case to the DCCL, any compensation would have been limited to $100,000 due to the ceiling provided in the Order (the Federal Court of Appeal does not explicitly refer to the CDS, who personally has jurisdiction to award an *ex gratia* payment under the Order) (FCA Decision at para 28).

[42] In short, considerations related to access to justice make a strong case for the "conversion" of the application for judicial review into an action for damages against the Crown (FCA Decision at paras 29-33) because, to quote Justice de Montigny, [TRANSLATION] "[t]he application for judicial review therefore does not provide adequate remedies [for the applicant], and only a claim for damages would make the relief being claimed [by the applicant] possible", whereas the [TRANSLATION] "conversion therefore provides the only remedy that will allow [the applicant] to obtain compensation, if all the constituent elements of extra-contractual liability are established" (FCA Decision at paras 28 and 31) [emphasis added].

[43] As can be seen by reading the reasons of Justice de Montigny, the Federal Court of Appeal did not explicitly address the issue of whether the applicant's request for judgment against the Crown, as formulated in his notice of application for judicial review, could be inadmissible, either in whole or in part, under section 9 of the CLPA, because the applicant had received or was receiving a pension or disability benefits under the Compensation Act.

[44] I would mention in passing that Justice de Montigny takes care to note that [TRANSLATION] "the prescription period for filing a claim for damages has now expired, given that the cause of action took place in September 2009 and the damage crystallized in July 2012 at the very latest, with the filing of the medical reports concerning the psychological consequences suffered by [the applicant]" (FCA Decision at para 31).

Practical effects of Federal Court of Appeal's decision

[45] In this case, the Federal Court of Appeal prescribed, in the decision filed in docket No. A-363-16, that the applicant [TRANSLATION] "will have 30 days following this date to serve and file his statement" [emphasis added]. In practical terms, it is therefore not Part 5 (sections 300 to 334 of the Rules) which will apply to the application for judicial review (paragraph 300(a) of the Rules), but Part 4, which applies to actions (sections 169 to 299 of the Rules).

[46] In his reasons, Justice de Montigny refers to a "conversion", while the decision filed by the Federal Court of Appeal in A-363-16 mentions that [TRANSLATION] "the application for judicial review . . . will be treated and proceeded with as an action, pursuant to subsection 18.4(2) of the *Federal Courts Act*". Nevertheless, in *Meggeson*, on which Justice de Montigny relied, the Federal Court of Appeal in fact suggests that subsection 18.4(2) of the FC Act can "allow administrative law remedies and monetary remedies to be pursued simultaneously against the Crown in the same proceeding before the Federal Court" (at para 35) [Emphasis added].

[47] Does this mean that the Court of Appeal intended for these proceedings to continue as a hybrid proceeding, which would undoubtedly involve an additional administrative burden and an additional degree of complexity?

[48] However, the Federal Court of Appeal recently reminded us in *Canada (Human Rights Commission) v Saddle Lake Cree Nation*, 2018 FCA 228 at paras 23-26 [*Saddle Lake*], that an order rendered under subsection 18.4(2) of the FC Act does not have the effect of replacing the judicial review with a fresh action, or replacing the notice of application with a statement of claim. Normally, such an order will specify in what ways the judicial review is to be treated and proceeded with as an action, including the procedure to follow (*Saddle Lake* at para 25).

[49] Lest there be any confusion on the subject of "conversion", it involves keeping two different regimes separate while facilitating the procedure applicable to this type of remedy. I will explain.

[50] On the one hand, applications for judicial review involving a tribunal require the exercise of the exclusive jurisdiction provided in sections 18 and 28 of the FC Act. On the other hand, actions against the Crown fall under the concurrent jurisdiction of the Federal Court, pursuant to section 17 of the FC Act. However, actions are subject to the substantive rules of law concerning Crown liability set out in the CLPA and in provincial law (incorporated by reference in the case of relief under section 17 of the FC Act). The substantive rules applicable to an application for judicial review depend on the Federal Court (section 18 of the FC Act) or the Federal Court of Appeal (section 28 of the FC Act) choosing, at the outset, the right standard of review applicable

to the review of a tribunal decision. The rules applicable to an action for damages against the Crown require a different test (fault of a servant of the Crown, quantum of damages suffered, and a causal link).

[51] That said, at this time, the Statement does not seek any relief that the Court has the statutory power to grant in an application for judicial review filed under sections 18 and 18.1 of the FC Act, following the decision rendered on June 29, 2015, by the FA (tribunal). On the contrary, in his Statement, the applicant seeks remedies exclusively against the Crown, when the Court only has the statutory power to grant relief in an action validly commenced under section 17 of the FCA – assuming, of course, that such an action is not considered inadmissible because it is time-barred or because an action against the Crown is not possible, owing to the application of section 9 of the CLPA.

[52] Nevertheless, any practical difficulty arising from the "conversion" could eventually be resolved by the Court, and the parties could always request that these proceedings continue as a specially managed proceeding. I should point out that section 57 of the Rules explicitly provides that "[a]n originating document shall not be set aside only on the ground that a different originating document should have been used".

[53] For the time being, under section 221 of the Rules, the Court may "at any time" decide on a motion to strike validly filed against an action. The Court therefore has full jurisdiction, in today's proceedings, to render a decision on the respondent's motion to strike and determine

whether the Statement discloses a reasonable cause of action, or otherwise constitutes an abuse of process, owing to the exception provided in section 9 of the CLPA.

III *Motion to strike allowed in part*

[54] To start, it would be helpful to review certain general principles which, by the way, are well known and which the Court considered in its analysis of the Statement and the arguments submitted by the parties.

General principles

[55] First and foremost, the Statement must be read generously in favour of the plaintiff, with allowance for drafting deficiencies (*Canada v Scheuer*, 2016 FCA 7 at paras 11-12; *Operation Dismantle Inc. v The Queen*, CanLII 74 (SCC), [1985] 1 S.C.R. 441 at p 451. Moreover, in order for the motion to strike to be allowed, it must be plain and obvious that the action has no prospect of success (*Simon v Canada*, 2011 FCA 6 at para 8; *Hunt v Carey Canada Inc*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959). The Court must also make sure that the Statement "is not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court" (*Canada v Roitman*, 2006 FCA 266 at para 16; *Moodie v Canada (National Defence)*, 2010 FCA 6 at paras 8-9).

[56] However, subsection 221(2) of the Rules provides that no evidence shall be heard on a motion to strike based on the fact that the pleadings failed to disclose any reasonable cause of action or defence (paragraph 221(1)(a) of the Rules). Nonetheless, this latter limitation does not apply in a case where a party files a motion to strike pleadings for any other reason, including on the ground that it constitutes an abuse of process (paragraph 221(1)(f) of the Rules).

Nevertheless, even in the context of a motion based on paragraph 221(1)(a) of the Rules, the case law accepts that where a document is referred to and incorporated by reference in a statement of claim (or notice of application) a party may merely append the document, nothing more, for the assistance of the Court (*Turp v Canada (Foreign Affairs)*, 2018 FC 12 at para 20; *JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 54 [*JP Morgan*]).

[57] In this case, the applicant is not contesting the admissibility of the three Board decisions cited in the respondent's motion record (affidavit by Julie Brunet, paralegal in the legal department of the Department of National Defence and Canadian Forces, dated October 18, 2018, at paras 2-3, and Exhibits A, B and C; Statement at paras 40-42, 68 xiv, 78, 85-88 and 91-93). In fact, during her oral argument, counsel for the applicant even made reference to passages in Exhibit B of Ms. Brunet's affidavit. In these circumstances, the Court's consideration of decisions rendered by the Board does not conflict with the justifications for the rule of inadmissibility, and in this case, the exception serves the interests of justice (*JP Morgan* at paras 52-64). Indeed, the Board's decisions set out, without controversy, the factual source of the disability benefits paid to the applicant under the Compensation Act.

Factual basis of disability benefits paid to applicant

[58] It is clear that the adjustment disorder with anxiety – for which the applicant had been receiving disability benefits since March 2012, under section 45 of the Compensation Act – is directly related to the events that occurred in 2009 and to the military investigation that ended in March 2012. Moreover, because of these events that destroyed his health and psychological balance, the applicant was discharged from the Forces for medical reasons in the fall of 2012.

[59] One need only refer to the following analysis provided in the Board's decision (Review Panel):

> [TRANSLATION]
>
> Did the applicant's adjustment disorder with anxiety arise out of or was it directly connected with his service in the Regular Forces?
>
> **EVIDENCE AND ARGUMENT**
>
> . . .
>
> The applicant attributes his claimed condition to the fact that he was the subject of a military investigation, which ultimately concluded that the allegations against him were unfounded.
>
> . . .
>
> The applicant's file includes a request for consultation for sleep and mood disturbances, on November 5, 2009, for the following consideration:
>
> > Pt under investigation ^ 2 months. Injustice, jealousy, smear campaign.
> > Situation beyond his control.
> > Anger because he is a very straightforward person who acts with integrity.
> > Troubled about having to leave the armed forces because the situation was too unfair.
> >
> > [*Transcript*]
>
> Subsequently, in an Assessment Report, dated January 21, 2010, Lise Ouellet, psychotherapist, explained that the problem was due to the fact that the applicant was under investigation for producing a DVD used to create an assistance fund for members in Afghanistan. She indicated that he was suspected of having pocketed the funds and that consequently, he had lost his job as a journalist and been assigned to work as a driver. She described the applicant as being completely overwhelmed by the ordeal and indicated that his resulting feelings of powerlessness had manifested in the form of a passive anger internalized as an attack on his integrity.
>
> Consequently, on February 22, 2010, the applicant was diagnosed with an adjustment disorder, due to the fact that the applicant had been under investigation since the fall of 2009 and had been removed from his workplace.

In September 2010, the applicant had another consultation for issues with insomnia, due to the fact that he was experiencing problems at work and was not feeling alright. The applicant was referred to a psychiatrist and Dr. Lyne Vanier, psychiatrist, subsequently provided an initial assessment report, dated July 26 2010. She found that he was suffering from an adjustment disorder with mixed mood-related problems, with the military investigation into his conduct serving as stressor because he did not know exactly why he was being investigated, which was a major source of concern for him.

In the section for Military History, Dr. Vanier explained that the applicant's performance at work had been very good until September 2009, when he learned, to his great surprise, that he was being relieved of his duties. He was transferred to the Land Force Quebec Area Training Centre (LFQATC) in November 2009, where he was employed as a driver, but he could not bring himself to accept this transfer.

In terms of background information, Dr. Vanier explained that in 2007, the applicant had obtained a position as a military journalist on the base. He was the first corporal in Canada to work in this position, and his performance in this position had been very good until September 2009.

Then, on September 7, 2009, a chief warrant officer entered his office, asked him to stand at attention and informed him that he had been relieved of his duties. The applicant did not know why he was being investigated or why he was not given any explanations.

Dr. Vanier confirmed that the applicant was dealing with an intense and considerable level of stress and that his intense symptomatology had required an atypical pharmaceutical intervention.

The applicant's file includes a grievance filed with the initial authority, on October 6, 2010, because the final decision on the results of the investigation had still not been rendered. It includes the following information:

> The member has been under investigation for over a year. He lost his job with the Army News unit and has still not received any relevant information to justify his dismissal or the allegations pertaining to his investigation.

In 2010 and 2011, the applicant's file therefore includes a number of regular psychiatric assessments provided by Dr. Vanier, due to the fact that he was suffering from adjustment disorder with anxiety.

Subsequently, on September 1, 2011, the applicant had an appointment with Dr. Serge Gauthier, in his capacity as an independent psychiatrist, in order to determine whether there was any causal link between the applicant's clinical condition and the incident that occurred on August 7, 2009. (RD-L1) Dr. Gauthier reviewed all the documents included in the applicant's file. He looked at the history of the applicant's current condition, his personal history, his personal medical history, and also conducted a mental status examination. He ultimately concluded that the applicant's psychological symptoms had developed after the incident that occurred on August 7, 2009, and resulted from this incident and its consequences. Dr. Gauthier added that prior to the incident of August 7, 2009, the applicant had not presented with any personal condition or history of psychiatric or psychological problems, had been active and had not presented any symptoms, limitations or restrictions in any sphere of his activities, other than the after-effects of a knee injury.

. . .

In the fall of 2009, he was relieved of his duties, his phone and computer were taken away from him, and he was assigned to work as a driver, without being provided with any explanation for why all of this was happening. He was informed that he was under investigation and that he was suspected of committing fraud but was not given any information.

. . .

The Advocate subsequently referred to an excerpt of the applicant's service medical record, dated October 4, 2011, (RD-Annexe-L1), establishing a direct link between the applicant's condition and the problems he was experiencing in the context of his job in the military.

> Mr. . . . has heard about the fact that he is under investigation; friends and acquaintances have called to inform him that the military police had come to see them and question them. Mr. . . . is very concerned about the investigation's implications for his professional career, given the seeds of doubt that are being planted about him in the minds of his

> family and friends. He is left to wonder whether they will still trust him afterwards.

Lastly, the Advocate concluded that the applicant's severe adjustment disorder with mixed mood-related problems was directly linked to the job-related problems he was experiencing within the military.

. . .

ANALYSIS/REASONS

The Panel reviewed the available evidence on record and considered new evidence submitted during the hearing, as well as testimony provided by the applicant and his brother . . . and, most notably, the Advocate's arguments.

. . .

Unquestionably, and this fact is not contested, the applicant has in fact suffered from an adjustment disorder with anxiety since February 22, 2010, for which he had requested a consultation as early as November 5, 2009. As early as November 2009, the applicant had sought a medical consultation for sleep and mood disturbances, due to the fact that he had been under investigation for two months.

. . .

The evidence on record demonstrates that right from the beginning of the applicant's medical consultations for sleep and mood disturbances, these issues were attributed to the problems he was experiencing in connection with the fact that he was under investigation.

When his initial diagnosis was established a few months later, the applicant's condition was once again attributed to this investigation, because he still did not know the allegations against him and this was a major source of concern for him.

The information in his file is consistent and demonstrates that the applicant received medical follow up, on an ongoing basis, for his claimed condition, which was related to job-related problems, i.e., the loss of his job, his new job working only as a driver, and the fact that he still did not know the exact nature of the allegations against him.

> The evidence on record also seems to demonstrate that the accusations were not substantiated and turned out to be unfounded, as confirmed by his superior, Warrant Officer . . . .
>
> The evidence also reveals that the applicant experienced intense atypical symptomatology which even led to special treatment in terms of medication, due to the intensity of the stress he was experiencing.
>
> Due to the clear medical evidence on record, and considering the testimony provided by the applicant and . . . ; considering the evidence that appears to demonstrate that the allegations against the applicant, concerning his use of military resources for personal purposes, were ultimately unfounded and lastly, considering that the Guidelines for adjustment disorder require the presence of an acute stress factor for a period of three months prior to the manifestation of clinical worsening of an adjustment disorder, the Panel finds that there is sufficient evidence to link the claimed condition to the applicant's military service.
>
> [Emphasis added]

[60] Is the present action against the Crown inadmissible, either in whole or in part, because the Crown is paying benefits to the applicant for the physical and psychological issues that arose from the events that occurred in 2009 and the military investigation which ended in March 2012?

[61] At this point, it is important to examine the scope of section 9 of the CLPA.

Scope of section 9 of Crown Liability and Proceedings Act

[62] The respondent essentially maintains that under section 9 of the CLPA, the applicant's Statement failed to disclose any reasonable cause of action and should be struck out without the possibility of amendment. The Court notes that the respondent's motion to strike does not cover

any remedy that the Court has the power to grant under sections 18 and 18.1 of the FC Act, following the decision rendered on June 29, 2015, by the tribunal concerned.

[63] In this case, it is common ground that an applicant cannot take legal action against the Crown for damage resulting from wrongdoing by servants of the Crown, when the factual basis for the action is the same as the factual basis conferring entitlement to a pension or compensation paid under sections 45 and 46 of the Compensation Act.

[64] It is helpful to reproduce section 9 of the CLPA here, which reads as follows:

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.
[Emphasis added.]	[Je souligne.]

[65] The leading case concerning the scope and effect of section 9 of the CLPA was rendered in 2002 by the Supreme Court of Canada in *Sarvanis v Canada*, [2002] 1 SCR 921 [*Sarvanis*]. In paragraphs 28 to 29, The Justice Iacobucci explained that it is important to give a very broad scope to this statutory provision, which aims to prevent double recovery for the same claim where the government is liable for misconduct but has already made a payment in respect of that misconduct:

> [28] In my view, the language in s. 9 of the Crown Liability and Proceedings Act, though broad, nonetheless requires that such a pension or compensation paid or payable as will bar an action against the Crown be made on the same factual basis as the action thereby barred. In other words, s. 9 reflects the sensible desire of Parliament to prevent double recovery for the same claim where the government is liable for misconduct but has already made a payment in respect thereof. That is to say, the section does not require that the pension or payment be in consideration or settlement of the relevant event, only that it be on the specific basis of the occurrence of that event that the payment is made.
>
> [29] This breadth is necessary to ensure that there is no Crown liability under ancillary heads of damages for an event already compensated. That is, a suit only claiming for pain and suffering, or for loss of enjoyment of life, could not be entertained in light of a pension falling within the purview of s. 9 merely because the claimed head of damages did not match the apparent head of damages compensated for in that pension. All damages arising out of the incident which entitles the person to a pension will be subsumed under s. 9, so long as that pension or compensation is given "in respect of", or on the same basis as, the identical death, injury, damage or loss.
>
> [Emphasis added.]

[66] In this case, the applicant has been receiving disability benefits for an adjustment disorder with anxiety, diagnosed in February 2010, and which presented in the fall of 2009, after he was relieved of his duties as a military journalist and transferred to work as a driver, without any explanation; he was also the subject of a military investigation, allegedly for fraud (see the decision by the Board's Entitlement Review Panel dated March 27, 2012, Exhibit B of Ms. Brunet's affidavit). The applicant has also been receiving disability benefits for his claimed conditions of erectile dysfunction and drug-induced gynecomastia, consequential to his adjustment disorder with anxiety (see the two decisions rendered by the Board (Appeal Panel) dated January 20, 2015, in a bundle, Exhibit C of Ms. Brunet's affidavit). These Board decisions were rendered under the authority of the *Veterans Review and Appeal Board Act*, SC 1995, c 18

(see sections 2, 4, 19 and 27), and their admissibility for the purpose of ruling on the motion to strike is not really at issue.

[67] We cannot accept the applicant's claim that section 9 of the CLPA depends on the nature of the relief sought against the Crown, including the type of damage (or loss) for which a pension or compensation is paid under the Compensation Act. Indeed, according to *Sarvanis*, the characterization of a particular claim for damages is not in itself relevant; instead, what is important is the characterization of the cause of action that serves as a basis for the claim against the Crown. If the factual basis for the action is the same as the factual basis that resulted in the applicant receiving a pension or compensation under sections 45 and 46 of the Compensation Act, section 9 of the CLPA applies.

[68] In other words, the Crown cannot be held liable for consequential damages for which compensation has been or is being paid to a veteran under the Compensation Act, even if the applicant's monetary claim references separate heads of damage (*Enright v Canada*, 2018 FC 802 at paras 20-21; *Arial v Canada*, 2017 FC 270 at paras 4, 30-33, 44-46 [*Arial*]; *Sherbanowski v Canada*, 2011 ONSC 177 at paras 12-15, 43-44 [*Sherbanowski*]; *St-Cyr c Canada (Forces armées)*, 2004 CanLII 29626 (QC CS) at paras 12- 24; *Doucette v Canada (Attorney General)*, 2018 FC 697 at paras 22-26; *Hardy (Estate) v Canada (Attorney General)*, 2015 FC 1151 at paras 63-70 [*Hardy (Estate)*]; *Lebrasseur v Canada*, 2007 FCA 330 at paras 8-13; *Lebrasseur v Canada*, 2011 FC 1075 at paras 24-36, aff'd on appeal: *Lebrasseur v Canada*, 2012 FCA 252). Such is the case here.

[69] On the other hand, the wording of section 9 of the CLPA uses the term “proceedings” in English and the term “poursuite” in French. However, According to Black’s Law Dictionary, the English term “proceeding” is defined as follows:

> 1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing. . . .
>
> ‘Proceeding’ is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied.
>
> (Bryan A. Garner, ed., *Black’s Law Dictionary*, 10th ed (St. Paul, MN: Thomson Reuters, 2014)
>
> [Emphasis added.]

[70] For his part, Hubert Reid provides the following definition of the French term “poursuite” in the electronic version of *Dictionnaire de droit québécois et canadien*, 5th ed, Montréal, Wilson & Lafleur, 2016, distributed by the Centre d’accès à l’information juridique (CAIJ):

> [TRANSLATION]
>
> 1. Legal action instituted by a person to assert that person’s rights or to obtain a sanction against the perpetrator of an offence.

[71] Usually, unless otherwise indicated in the statutory instrument concerned, the term “proceeding” or “poursuite” therefore concerns matters before the courts in general and is not limited to monetary claims. In my opinion, this interpretation of “proceeding”/“poursuite” appears to reflect Parliament’s intent to give section 9 of the CLPA a broad scope (*Sarvanis* at paras 20-29). This therefore means that after awarding a pension or compensation under the

Compensation Act, the Crown will not subsequently be required to defend itself in the context of legal action for any monetary claim or any other complaint with the same factual basis.

Analysis of Statement

[72] In this case, a thorough analysis of the Statement reveals that most of the alleged wrongdoing that the applicant is ascribing to military authorities and stakeholders stemmed primarily from events that occurred during the course of the four-year period preceding the applicant's discharge from the Forces (2009–2012). Section 9 of the CLPA makes any proceedings against the Crown inadmissible in cases where the factual basis for the action confers entitlement to a pension or compensation that has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown. The fact that the Statement is now seeking to characterize the [TRANSLATION] "wrongdoing" concerned as [TRANSLATION] "violations" of the applicant's [TRANSLATION] "fundamental human rights", does not change the nature of the claim against the Crown or its factual basis, which to a large extent is the same as the factual basis for the condition which entitled the applicant to receive disability benefits under sections 45 and 46 of the Compensation Act.

[73] The Statement is essentially divided into eight sections, bearing the following headings in bold letters:

[TRANSLATION]

A. **Cause of action** (paras 1-3);

B. **Previous court decisions** (paras 4-5);

C. **Allegations of fact** (paras 6-7):

C.1. Factual context of serious violations of the applicant's fundamental human rights (paras 8-43);

C.2. Admission of facts by military authorities and stakeholders (paras 44-68);

D. Violations of fundamental human rights, prejudice suffered, and causal link (paras 69-96);

E. Case well founded in fact and law (para 97);

F. Documents previously filed and forwarded to the respondent (para 98);

G. Additional document (paras 99-100);

H. Place of hearing (para 101).

[74] We will follow the same general plan.

SECTION A. CAUSE OF ACTION

[75] In paragraph 1 of the Statement, the applicant claims [TRANSLATION] "relief from the Attorney General of Canada, acting on behalf of the Minister of National Defence and the Canadian Armed Forces". It is true that section 23 of the CLPA does in fact provide that in proceedings against the Crown, the Attorney General may be named as a respondent. Nevertheless, according to section 48 of the FC Act, Her Majesty the Queen is usually named as a respondent when any action is brought against the Crown, under section 17 of the FC Act (Schedule [1] (section 48) of the FC Act; *Liebmann v Canada (Minister of National Defence)*, [1994] 2 FC 3; *Rodriguez v Canada*, 2018 FC 1125 at para 5; *Bergeron v Canada (Correctional Service)*, 2016 FC 235 at paras 6-8; *Mandate Erectors and Welding Ltd v The Queen*, [1996] FCJ No 1130 (QL) 1996 CanLII 3818 (FC)).

[76] Paragraph 1 of the Statement is upheld (even though the current inclusion of the Attorney General of Canada as a respondent in the style of cause does not comply with either the FC Act or the Rules).

[77] Paragraph 2 of the Statement does not specify what [TRANSLATION] "the cause of action" is, apart from a general reference to [TRANSLATION] "multiple wrongful acts committed and admitted by military authorities and stakeholders, serious misconduct, which violated his constitutional rights, fundamental rights and civil rights and engage the liability of the Attorney General of Canada as a named respondent" [emphasis added].

[78] That said, an analysis of sections C and D of the Statement allows us to divide the [TRANSLATION] "serious misconduct" and [TRANSLATION] "multiple wrongful acts" engaging the respondent' liability into three main categories:

a) First, the applicant's superiors were negligent or otherwise acted wrongfully at the time of the events in 2009, by suspending the applicant, without explanation, from his position as a journalist and transferring him to work as a driver during the military investigation [the first cause of action];

b) Second, during the military investigation which took place from September 2009 to March 2012, the military police acted wrongfully by failing to adhere to the principles of procedural fairness and by violating the applicant's fundamental human rights. Most notably, the military police questioned numerous individuals and told them that the military investigation concerned a so-called "fraud" [the second cause of action];

c) Lastly, the responsible authorities acted wrongfully in handling the applicant's grievance and harassment complaint. In particular, the delays involved were excessive and unacceptable, which also caused him prejudice [the third cause of action].

[79] Therefore, in addition to complaining that the situation violated his fundamental human rights, the applicant also alleges that the situation had an adverse impact on his health and his income-earning capabilities, led to the breakdown of his relationship, damaged his reputation, prevented him from having a civilian career in communications, turned his life upside down and caused him various problems and inconveniences. However, any damage arising from the events that occurred in 2009, and the military investigation that ended in March 2012, constitutes a loss that shares the same factual basis as the disability benefits paid to the applicant since the decision rendered by the Board in March 2012. In this case, the Court is satisfied that the Statement does not disclose any reasonable cause of action concerning the allegations and types of damage related to the first two causes of action, because the applicant has received or is receiving benefits under sections 45 and 46 of the Compensation Act.

[80] However, the third cause of action reveals a scintilla of a cause of action against the Crown (*Al Omani v Canada*, 2017 FC 786 at para 18). At first glance, it appears that the facts that occurred after the applicant was discharged from the Forces in the fall of 2012 – including delays by the tribunal in ruling on the applicant's grievance – are not covered by section 9 of the CLPA.

[81] Paragraph 2 of the Statement is therefore struck out, insofar as the applicant is seeking relief against the Crown as a result of wrongdoing committed by military authorities and stakeholders during the three-year period prior to the applicant's discharge from the Forces, since these allegations are excluded under section 9 of the CLPA.

[82] The specific relief that is currently being sought by the applicant is set out in paragraph 3 of the Statement.

[83] First, it is important to note that in his Statement, the applicant is not seeking the reversal of the decision rendered on June 29, 2015, nor is he seeking to have the matter referred back for redetermination, two outcomes that the Court has the power to order, under subsection 18.1(3) of the FC Act, in cases where the tribunal has committed a reviewable error. In the first two conclusions of the Statement, the applicant is instead asking the Court to take cognizance of the fact that the FA and the External Committee admit that the applicant was aggrieved and, consequently, that wrongful acts were committed by several individuals in the chain of command of the Department of National Defence. At the same time, the applicant is also asking the Court, in the third conclusion, to declare that the authorities, stakeholders, representatives and agents of the Forces and, consequently, the respondent are liable for the prejudice caused to the applicant as a result of their actions and/or omissions.

[84] Second, the applicant asks the Court to order the respondent to give him a letter of apology signed by senior military management (para (a) of the fourth conclusion); pay him the amount of $400,000 in compensatory damages (para (b) of the fourth conclusion); pay him the

amount of $100,000 in punitive damages (para (c) of the fourth conclusion); and reimburse him for and extrajudicial fees and disbursements incurred since the beginning, excluding legal expenses (fifth, sixth and seven conclusions).

[85] Most notably, the applicant is claiming the amount of $400,000 in compensatory damages, subject to amplification, detailed as follows:

a) For the violation of his fundamental human rights, under sections 2(b), 7, 8, 10, 11, 12 and 24 of the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [Canadian Charter] and sections 1, 3, 4, 5, 6, 23, 24, 24.1, and 49 of Quebec's *Charter of Human Rights and Freedoms*, CQLR c. C-12 [Quebec Charter]: $75,000;

b) For prejudice caused by the delays in processing and handling his harassment complaint and his grievance: $75,000;

c) For the deterioration of his family life: $75,000;

d) For damage to his reputation and social life: $75,000;

e) For the loss of his second career as a civilian in communications, marketing and artist management: $50,000;

f) For the loss of enjoyment of the best years of his life: $50,000 $; and

g) For the difference between his actual losses and the veterans pension already paid: an amount to be determined at a later date.

[86] In paragraph (a) of the fourth conclusion of his Statement, the applicant states that he wants the respondent to be ordered to provide him with a letter of apology signed by senior military management. First, according to subsection 22(1) of the CLPA, this Court cannot, in actions against the Crown, subject the Crown to an injunction or an order for specific performance, which is precisely the remedy being sought in the Statement (*Attawapiskat First Nation v Canada*, 2012 FC 146 at paras 36-38; *Esgenoôpetitj First Nation v Jones*, 2005 FC 884 at para 27; *Zenon Environmental Inc v Canada*, 2005 FC 210 at paras 14-18; *Rhéaume v Canada*, 2003 FCT 44 at paras 26-32). Second, ordering a letter of apology for the first two causes of action covered in section 9 of the CLPA is also barred. Indeed, section 9 of the CLPA clearly states, "No proceedings lie against the Crown or a servant of the Crown . . . " / "Ni l'État ni ses préposés ne sont susceptibles de poursuites . . . " [emphasis added]. In this context, any proceedings based on the events that occurred in 2009 and the military investigation that followed and ended in March 2012 is inadmissible or otherwise constitutes an abuse of process.

[87] In passing and without expressing a final opinion on this subject – since the Statement does not seek the reversal of the decision rendered by the FA, who refused to order senior military management to apologize – I strongly doubt that the Court has the statutory power, under sections 18 and 18.1 of the FC Act, to order the respondent to provide the applicant with a letter of apology in the context of a judicial review (*Saibu v Canada (Attorney General)*, 2015 FC 255 at para 33; *Lawrence v Canada Post Corporation*, 2012 FC 692 at para 36), when such a

sanction appears to have been deemed to be totalitarian when the contents of the employer's letter of apology was dictated by the tribunal (*National Bank of Canada v Retail Clerks' International Union et al*, [1984] 1 SCR 269, *per* Justice Beetz).

[88] With the exception of the claim for $75,000 for the prejudice caused by the delays in handling and processing his harassment complaint and his grievance and the request for reimbursement of extrajudicial fees and disbursements and costs, all the relief sought in paragraph 3 of the Statement is barred by section 9 of the CLPA. Paragraph 3 is therefore struck out, without prejudice to the applicant's right to serve and file an amended statement to obtain any relief against the Crown which is not otherwise precluded under section 9 of the CLPA.

SECTION B. PREVIOUS COURT DECISIONS

[89] Paragraphs 4 and 5 of the Statement refer to the findings in the decisions rendered by the Federal Court and the Federal Court of Appeal. There is no reason to strike out these two contextual paragraphs, which shall remain.

SECTION C. ALLEGATIONS OF FACT

[90] Broadly speaking, in section C (paras 6 to 68), the applicant restates all of the general allegations made in his notice of application for judicial review, but places particular emphasis on the wrongful nature of actions, between 2009 and 2012, by the employer and the military authorities during the time that he was a member of the Forces, which engages the extracontractual liability of the respondent.

[91] Most notably, the facts alleged by the applicant in section C.1, that is, paragraphs 8 to 43 of the Statement, are almost identical to those alleged in the notice of application for judicial review (paras 1 to 35); the latter is the originating document in this case (subsection 62(1) and paragraph 63(1)(d) of the Rules). In short, reference is made to the events that occurred in 2009 (the first cause of action) as well as to the military investigation that followed and ended in March 2012 (the second cause of action). In this case, there is no doubt that the application of administrative measures and the launch of a military investigation, without any explanation, had a profound impact on the applicant's physical and psychological health, as of November 2009. It is clear that all the allegations against the military authorities and stakeholders took place at a time when the applicant was still a member of the Forces. According to section 9 of the CLPA, these allegations cannot serve as the basis for proceedings against the Crown, since the applicant had received disability benefits paid under section 45 of the Compensation Act.

[92] All of section C.2 of the Statement, that is, paragraphs 44 to 68, is generally argumentative in nature and does not really allege any new facts. However, it is important to remember that Rule 174 states that "[e]very pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved". The Statement formulates arguments based on the decision of the tribunal (FA) dated June 29, 2015, the decision of the IA dated July 22, 2013, and the opinion of the External Committee dated December 1, 2014; the last two are not covered in the application for judicial review, the scope of which is limited to quashing the decision dated June 29, 2015. The applicant claims that the IA, the External Committee and the tribunal noted [TRANSLATION] "several facts which constitute admissions of serious wrongdoing by the chain of command of the Canadian

Armed Forces, wrongdoing that engages the civil liability of the respondent" (para 44 of the Statement) [emphasis added]. However, no specific wrongful act is alleged to have been committed by the IA, the External Committee or the tribunal, even though the applicant considers the decision rendered on June 29, 2015, to be unreasonable. However, it is not enough to allege that an error of fact or law was committed by the tribunal (or another administrative body) in order to engage the civil liability of the Crown (*Association des crabiers acadiens* at paras 32-33).

[93] Paragraphs 6 to 68 of the Statement will be struck out, but without prejudice to the applicant's right to serve and file an amended statement setting out specific wrongful acts that were committed after the applicant was discharged from the Forces in October 2012 and are related to the third cause of action, which is not barred by section 9 of the CLPA.

SECTION D. VIOLATIONS OF FUNDAMENTAL HUMAN RIGHTS, PREJUDICE SUFFERED, AND CAUSAL LINK

[94] In section D.1 of the Statement, at paragraphs 69 to 90, the applicant essentially alleges the same facts as in sections C.1 and C.2 and lists the damages that he claims to have suffered as a result, most notably: the damage to his health and career; the deterioration of his family life; the loss of enjoyment of the best years of his life; the difference between his actual losses and the veterans pension he received under the Compensation Act; etc.

[95] In particular, with respect to any claim under the Charters, the Statement does not disclose any fact that is separate and distinct from the events that occurred in 2009 and the

military investigation that followed and ended in March 2012, and any such claim is inadmissible under section 9 of the CLPA (*Arial* at paras 30-38, 54; *Sherbanowski* at paras 41-45; *Hardy (Estate)* at para 69). The fact that the applicant learned that certain wrongful acts were committed during the military investigation, after he was discharged from the Forces, does not change the factual basis of these acts. The Board also relied on medical evidence and noted that the interrogations conducted by the military police, in the applicant's community, did in fact contribute to the condition for which the applicant was awarded compensation. Paragraphs 69 to 76 and 80 to 88 of the Statement will therefore be struck out.

[96] However, paragraphs 77, 89 and 90 of the Statement will remain because, assuming that the facts alleged by the applicant are true, these three paragraphs appear to concern the mishandling of the grievance and the excessive delays (third cause of action). At this stage, the Court is prepared to accept that the mishandling of the grievance and the delays involved could constitute a separate and distinct cause of action, not subject to section 9 of the CLPA. Consequently, the applicant can continue to pursue his claim against the Crown for compensatory damages (quantified in his Statement at $75,000), for the professional fees and extrajudicial disbursements that he had to incur because of the delay in processing his grievance by the tribunal, as well as for costs.

[97] Moreover, the applicant had already anticipated a challenge to admissibility based on section 9 of the CLPA because, in section D.2 of the Statement (paras 91-95), he alleges that the claimed damages are not losses entitling him to a pension or compensation paid in lieu thereof. According to the applicant, sections 45 and 46 of the Compensation Act do not provide adequate

compensation for fundamental human rights (including the right to the safeguard of his dignity, honour and reputation). This argument has no merit. For the reasons set out above, paragraphs 91 to 95 will therefore be struck out.

[98] Section D.3 entitled **Causal Link** is found in paragraph 96. In this regard, the applicant states that [TRANSLATION] "the numerous wrongful acts committed by the military authorities and stakeholders are the sole and only cause of all the damages and prejudice suffered and for which he is claiming fair compensation" [emphasis added]. Paragraph 96 will therefore be struck out, insofar as the relief being sought and the facts alleged by the applicant elsewhere in the Statement are barred under section 9 of the CLPA, when compensation paid or payable to the applicant under sections 45 and 46 of the Compensation Act have the same factual basis as the action.

[99] Except for paragraphs 77, 89 and 90, which are relevant to the third cause of action, all the paragraphs in section D concern heads of damage or non-monetary claims that are barred under section 9 of the CLPA and will consequently be struck out.

SECTION E. CASE WELL FOUNDED IN FACT AND LAW

[100] Paragraph 97 shall remain, insofar as the remainder of the applicant's claim against the Crown is not otherwise subject to section 9 of the CLPA.

SECTION F. DOCUMENTS PREVIOUSLY FILED AND FORWARDED TO THE RESPONDENT

[101] Paragraph 98 shall remain, insofar as the remainder of the applicant's claim against the Crown is not otherwise subject to section 9 of the CLPA.

SECTION G. ADDITIONAL DOCUMENT

[102] Paragraphs 99 and 100 shall remain, insofar as the remainder of the applicant's claim against the Crown is not otherwise subject to section 9 of the CLPA.

SECTION H. PLACE OF HEARING

[103] Paragraph 101 shall remain, insofar as the remainder of the applicant's claim against the Crown is not otherwise subject to section 9 of the CLPA.

IV *Conclusion*

[104] For these reasons, the Court allows the applicant's motion in part. Excluding paragraphs 1, 4, 5, 77, 89, 90 and 98 to 101 of the Statement, which shall remain, and excluding the claim for $75,000 for prejudice suffered as a result of the delays in handling and processing his harassment complaint and his grievance, as well as the request for reimbursement of professional fees, extrajudicial disbursements and costs, paragraphs 2, 3 and 6 to 88 of the Statement are struck out.

[105] The applicant will have 30 days following the date of this order to serve and file an amended statement.

[106] At the hearing, counsel for the respondent stated that he would not be seeking costs.

ORDER in T-1284-15

THE COURT ALLOWS IN PART the respondent's motion to strike and **ORDERS that:**

1. Excluding paragraphs 1, 4, 5, 77, 89, 90 and 98 to 101 of the Statement, which shall remain, and excluding the claim for $75,000 for prejudice suffered as a result of the delays in handling and processing his harassment complaint and his grievance, as well as the request for reimbursement of professional fees, extrajudicial disbursements and costs, paragraphs 2, 3 and 6 to 88 of the Statement are struck out;
2. The applicant will have 30 days following the date of this order to serve and file an amended statement;
3. Without costs.

"Luc Martineau"
Judge

Certified true translation
This 30th day of May, 2019.
Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1284-15
STYLE OF CAUSE:	SYLVAIN LAFRENIÈRE v ATTORNEY GENERAL OF CANADA

MOTION CONSIDERED VIA TELECONFERENCE ON DECEMBER 6, 2018, BETWEEN MONTRÉAL, QUEBEC, AND QUÉBEC, QUEBEC

ORDER AND REASONS:	MARTINEAU J.
DATED:	FEBRUARY 22, 2019

APPEARANCES:

Dominique Bertrand	FOR THE APPLICANT
Jean-Robert Noiseux	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet Guy Bertrand Inc. Québec, Québec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT