Federal Court  Cour fédérale

Date: 20250718

Docket: T-1001-25

Citation: 2025 FC 1287

Ottawa, Ontario, July 18, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

LIAM JOSEPH JARBEAU

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

I. Introduction

[1] The Plaintiff, Liam Joseph Jarbeau, joined the Canadian Armed Forces (CAF) in June 2016. With the onset of the COVID-19 pandemic, he was subject to the Directives issued by the Chief of Defence Staff (CDS) regarding vaccination against the virus. The Plaintiff objected to certain aspects of these policies, and eventually he filed a grievance about the rejection of his request for accommodation from the vaccination requirement on the basis of his spiritual beliefs.

[2] The Plaintiff was offered an extension for the remainder of his 25 years of service, but did not reach terms that were acceptable to him. His career with the CAF came to an end in March 2024.

[3] On March 25, 2025, the Plaintiff filed a Statement of Claim putting forward several claims, including constructive dismissal and breaches of his rights under the *Canadian Charter of Rights and Freedoms* [the *Charter*], as well as undue delay and denial of due process. His claims are discussed in greater detail below.

[4] On April 28, 2025, the Defendant filed a motion in writing asking the Court to strike the Plaintiff's Statement of Claim. The Defendant argues that the Statement of Claim discloses no reasonable cause of action and that the Court should decline to take jurisdiction over the action because the Plaintiff had access to a grievance scheme that is available to members of the CAF. That is the matter before the Court.

[5] For the reasons set out below, the Defendant's motion will be granted. The Plaintiff's claim for wrongful dismissal is barred by the law and he has failed to plead material facts regarding the alleged *Charter* breaches and his other claims. Moreover, the Plaintiff had access to a comprehensive grievance scheme that could have dealt with the issues he raises in his Statement of Claim. Based on this, the Defendant's motion will be granted, and the Plaintiff's Statement of Claim will be struck.

[6] This may seem to be a harsh outcome to the Plaintiff, but it is the result that is compelled by the law, in light of the pleadings he has filed and the factual and legal context of his claim.

II. The law on motions to strike

[7] Motions to strike a statement of claim are governed by Rule 221 of the *Federal Courts Rules*, SOR/98-106. The relevant portions for the motion before the Court are the following:

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

[8] The Federal Court of Appeal recently summarized the legal principles that apply to a motion to strike a statement of claim on the basis that it does not disclose a reasonable cause of action in *Brink v Canada*, 2024 FCA 43, leave to appeal to SCC refused, 41266 (10 October 2024):

> [43] … a statement of claim should not be struck unless it is plain and obvious that the action cannot succeed, assuming the facts pleaded in the statement of claim to be true: *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, [1990] S.C.J.

> No. 93 at 980; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 63. In other words, the claim must have no reasonable prospect of success: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17.
>
> [44] The onus is on the party who seeks to establish that a pleading fails to disclose a reasonable cause of action: *La Rose v. Canada*, 2023 FCA 241 at para. 19; *Edell v. Canada*, 2010 FCA 26 at para. 5. The threshold that a plaintiff must meet to establish that a claim discloses a reasonable cause of action is a low one: *Brake v. Canada (Attorney General)*, 2019 FCA 274 at para. 70.
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> [45] Pleadings must, moreover, be read generously, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document: see *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, [1985] S.C.J. No. 22 at 451.
>
> [46] Motions judges should not delve into the merits of a plaintiff's argument, but should, rather, consider whether the plaintiff should be precluded from advancing the argument at all: *Salna v. Voltage Pictures, LLC*, 2021 FCA 176 at para. 77. Recognizing that the law is not static, motions judges must also err on the side of permitting novel, but arguable claims to proceed to trial: *R. v. Imperial Tobacco*, above at paras. 19-25; *Mohr v. National Hockey League*, 2022 FCA 145 at para. 48, leave to appeal to SCC refused, 40426 (20 April 2023).

[9] In this case, the Plaintiff represents himself, as he is fully entitled to do. I discussed the application of the principles on a motion to strike in where a plaintiff is self-represented in *Fitzpatrick v Codiac Regional RCMP Force, District 12*, 2019 FC 1040 [*Fitzpatrick*]:

> [19] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above: *Barkley v Canada*, 2014 FC 39 at para 17. The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure that the hearing is done in a fair and efficient manner. A court would have difficulty ruling that a particular piece of evidence was or was not relevant, for example, if the claim is speculative or not clear. This

> will inevitably lead to “fishing expeditions” by a party seeking to discover the facts needed to support their claims, as well as to unmanageable trials that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.
>
> [20] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the *Rules* and the principles set out in the cases seek to ensure.

[10] Under Rule 221(2), no evidence is admissible on a motion to strike because a claim discloses no reasonable cause of action. An exception has been carved out, however, where the argument relates to the jurisdiction of the Court to hear the matter: *Dunn v Canada (Attorney General)*, 2025 FC 652 at paras 30–33 [*Dunn*], citing *McMillan v Canada*, 2024 FCA 199 at para 79; and see *Tuharsky v O'Chiese First Nation*, 2022 CanLII 20057 at para 13. The affidavits filed by the parties will, therefore, only be considered in relation to the jurisdiction argument advanced by the Defendant.

[11] With this background, I turn to the questions raised in the Defendant’s motion to strike.

III. The motion to strike

A. *The Plaintiff’s Statement of Claim*

[12] As a first step, I am required to review the Statement of Claim with a view to characterizing its essential components. I must read the claim with a view of distilling the essential elements of his claims. This process is not a formalistic one, and I will focus on the substance rather than the form of the pleading.

[13] Having reviewed the Statement of Claim, I find that it is useful to group the Plaintiff's legal claims into three baskets. That will assist in understanding the essential components of his legal claims, and in the analysis that follows. It is not necessary to reproduce every detail in the 43-page Statement of Claim; instead, I will describe the essential elements of the various components.

[14] The Plaintiff's Statement of Claim describes the material time as falling between June 2021 and 26 March 2024. Within that time period, he alleges that he experienced a variety of legal wrongs, which can be grouped as follows:

1. Constructive Dismissal

- Displacement from his Regiment, placement at Camp Petersville, limited access to training opportunities;

2. Breach of *Charter* Rights

- Breaches of freedom of conscience and religion (s 2(a)); life, liberty and security of the person (s 7), and discrimination on prohibited grounds (s 15(1));

- Unlawful directives relating to COVID-19 vaccination and testing, which were used for punitive purposes against CAF members, including the Plaintiff;

- Rejection of demands for spiritual accommodation;

3. Other allegations

- Coerced disclosure of private medical information, namely his COVID-19 vaccination status;

- denial of access to justice;

- denial of procedural fairness, bad faith conduct and unreasonable administrative demands and delays, all of which denied him due process.

[15] The background to these claims is summarized in the Plaintiff's narrative of this portion of his career. He alleges that as a result of unlawful Directives issued by the Chief of Defence Staff, he was required to undergo mandatory antigen testing for COVID-19 and was penalized because he was unable to be vaccinated. The CAF did not provide timely responses to his request for spiritual accommodation, which was ultimately denied. He was subsequently denied training opportunities on the unlawful grounds that he was unwilling to receive the vaccine for COVID-19. The Plaintiff alleges he was posted to undesirable postings, denied training opportunities and disqualified from promotions due to his vaccination status. He was later assigned to a posting at Camp Petersville, which he says also harmed his career progression. Following that, the Plaintiff claims that he experienced continuing instances of discriminatory and unlawful treatment, and refusal by the CAF to implement corrective actions.

[16] The Plaintiff states that he experienced a series of unjustified delays throughout this period, and in particular in the handling of his grievance and its referral to the Military Grievance External Review Committee (MGERC). He says that these delays, and the CAF's failure to provide accurate information in response to his requests, denied him due process.

[17] Finally, the Plaintiff alleges that he was unable to sign a Terms of Service offer for another 18 years of service – the remainder of his CAF career, because the CAF refused to acknowledge the harms he had experienced or to ensure that the problems would not be repeated in the future.

[18] This sets out the essential elements of the Plaintiff's legal claims. I must acknowledge, however, that this summary is incomplete insofar as it does not capture a core aspect of his claim, namely the significance of his service in the Canadian Armed Forces. To do justice to this, I will quote the Plaintiff's own words:

> 39.The Canadian Armed Forces represent far more than just a career; it is an integral part of an individual's identity. The institution acknowledges this deeper connection through its reintegration programs for retiring members. For the Plaintiff, this was certainly the case. Over his 8 years of service, he developed a profound sense of purpose, with his sense of self becoming intricately tied to his role within the Armed Forces. This context is crucial when considering the term "vocation" — it was not just a job, but a core part of his identity. Therefore, the loss of this role, especially when imposed against his will, constitutes not just a career disruption, but a significant harm to his character and sense of self.

[19] The Plaintiff seeks damages, as well as a variety of orders that are meant to ensure that the CAF institutes adequate procedures for dealing with claims for religious accommodation.

[20] The Defendant's motion seeks to strike the Statement of Claim because it discloses no cause of action, since the Plaintiff's claim of wrongful dismissal is barred in law and he fails to plead the necessary material facts for his *Charter* claims. In the alternative, the Defendant argues that the Court should decline to assume jurisdiction because the Plaintiff had access to a comprehensive grievance scheme (the MGERC) that could have dealt with all of his claims.

B. *Does the Statement of Claim disclose a reasonable cause of action?*

[21] The question on this point is whether it is plain and obvious that the action cannot succeed, assuming the facts pleaded in the claim to be true? In other words, to strike the claim at

this stage, I must find that it has no reasonable prospect of success: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17.

[22] This portion of the analysis will focus on the first two arguments advanced by the Defendant.

(1) The constructive dismissal claim

[23] The first major legal claim advanced in the Statement of Claim is for constructive dismissal on the grounds of "significant unilateral breach" of the terms of the Plaintiff's contract with the CAF, including a breach of his *Charter* rights (discussed below). In the alternative, he pleads constructive dismissal on the grounds of "Cumulative Effects" as a result of significant misconduct by the CAF.

[24] This ground cannot succeed. There is abundant caselaw confirming that a CAF member cannot invoke traditional employment law remedies: see *Gligbe v Canada*, 2016 FC 467 at paras 13–16, and the cases cited there. The terms of service to which CAF members are subject are unique in some respects. They can be called to perform their duties at virtually any time, in any place, and even where doing their duty will place their lives at risk. As a matter of law, however, they serve "at pleasure." As explained in *Gallant v The Queen in Right of Canada*, 1978 CanLII 2084 (FC) at p. 696, "…the Crown is in no way contractually bound to the members of the Armed Forces [and]…a person who joins the Forces enters into a unilateral commitment for which the Queen assumes no obligations…"

[25] As discussed below, CAF members have access to a very comprehensive grievance scheme for service-related claims. They do not, however, have access to the ordinary courts to pursue legal claims based in contract.

[26] The Plaintiff's claim for constructive dismissal must therefore be struck.

(2) The *Charter* claims

[27] The Plaintiff claims that the CAF breached his freedom of conscience and religion under s 2(a), violated his right to security of the person under s 7, and discriminated against him contrary to s 15. The Defendant claims that the Statement of Claim must be struck because the Plaintiff failed to plead the material facts necessary to support these claims.

[28] It is settled law that *Charter* claims are subject to the usual rules on the requirement to plead material facts, and a claim that fails to do so may be struck: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 21 [*Mancuso*]. The rationale for this is simple: *Charter* claims should not be decided in a factual vacuum: *Mackay v Manitoba*, 1989 CanLII 26, [1989] 2 SCR 357, (SCC) at p. 361. As applied in the context of a motion to strike, this rule serves to ensure that a Defendant knows the case they have to meet, and that the Court can understand the essential facts supporting the cause of action based on the pleadings alone.

[29] I discussed the concept of "material facts" in *Fitzpatrick's*:

> [18] As explained by Justice Roy in *Al Omani v Canada*, 2017 FC 786 at para 17 [*Al Omani*], "[a] modicum of story-telling is required." The law requires, however, a very particular type of story to be set out in a statement of claim – one which describes

> the events which are alleged to have harmed the plaintiff, focused only on the "material facts," and set out in sufficient detail that the defendant (and the Court) will know what the specific allegations are based on, and that they support the specific elements of the various causes of action alleged to be the basis of the claim.

[30] What is a material fact is determined in light of the cause of action and the damages sought to be recovered: *Mancuso* at para 19.

[31] In simple terms, each cause of action has several core legal elements which depend on certain facts, and those facts must be set out – at least in summary form – so that the Defendant can understand precisely what they are being sued for. This usually requires that a Plaintiff explain who did what, and when – the facts that support the alleged legal wrong they allege occurred, and for which they seek relief. If these facts align with the elements of the cause of action, the Defendant and the Court have sufficient material facts to understand the nature and scope of the claim.

[32] In analyzing this question, it will be helpful to treat each claim separately.

(a) *Freedom of conscience and religion*

[33] To establish an infringement of s 2(a) based on freedom of religion, the claimant must show "(1) that he or she sincerely believes in a practice or belief that has a nexus with religion, and (2) that the impugned state conduct interferes, in a manner that is non-trivial or not insubstantial, with his or her ability to act in accordance with that practice or belief": *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 at para 68.

[34] The law on claims based on freedom of conscience is not entirely settled, but the following description by Justice Tarnopolsky in *R v Videoflicks Ltd*, 1984 CanLII 44, 48 O.R. (2d) 395 (ON CA) captures the scope of the protection:

> None the less, and without attempting a complete definition of freedom of conscience, the freedom protected in s. 2(a) would not appear to be the mere decision of any individual on any particular occasion to act or not act in a certain way. To warrant constitutional protection, the behaviour or practice in question would have to be based upon a set of beliefs by which one feels bound to conduct most, if not all, of one's voluntary actions. While freedom of conscience necessarily includes the right not to have a religious basis for one's conduct, it does not follow that one can rely upon the Charter protection of freedom of conscience to object to an enforced holiday simply because it happens to coincide with someone else's sabbath. Rather, to make such an objection one would have to demonstrate, based upon genuine beliefs and regular observance, that one holds as a sacrosanct day of rest a day other than Sunday and is thereby forced to close one's business on that day as well as on the enforced holiday. No appellant informed this Court of any such fundamental belief based upon conscience rather than religion.

[35] The British Columbia Supreme Court provided the following guidance, in *Hoogerbrug v British Columbia*, 2024 BCSC 794 (appeal quashed as moot: 2025 BCCA 181) [*Hoogerbrug*]:

> [239] Turning to freedom of conscience, this aspect of s. 2(a) has received less judicial attention than freedom of religion. In my view, the following principles emerge from the cases:
>
> > a) freedom of religion may be viewed as a subset of freedom of conscience, in that religious belief and practice are "paradigmatic of conscientiously-held beliefs" (*R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 1985 CanLII 69, at para. 123);
> >
> > b) freedom of conscience is aimed at protecting serious matters of conscience based on strongly held moral ideas of right and wrong (*Roach v. Canada (Minister of State for Multiculturalism and Citizenship*), [1994] 2 F.C. 406, 1994 CanLII 3453 (C.A.));

> c) freedom of conscience is not the mere decision to act or not act in a certain way. To warrant constitutional protection, the behaviour or practice must be based upon "a set of beliefs by which one feels bound to conduct most, if not all, of one's voluntary actions" (*R. v. Videoflicks Ltd.*, 48 O.R. (2d) 395, 1984 CanLII 44 (C.A.) at 40, rev'd in part on other grounds in Edwards Books); and
>
> d) the commitment must have a "profound moral dimension" and be embedded in a "larger belief system of right and wrong" The Amselem test for infringement of religious freedom might be adapted and applied to an alleged infringement of freedom of conscience by substituting "nexus with conscience" for "nexus with religion" in the first branch of the test (*Affleck v. The Attorney General of Ontario*, 2021 ONSC 1108 at paras. 40-46, 51-52).

[36] The Defendant focuses on the freedom of religion claim because that it how the Plaintiff expresses it in his Statement of Claim. As noted above, he states that the CAF refused to grant his request for accommodation on the basis of his spirituality and this is what gave rise to his claim that his freedom of religion was breached. The Defendant argues that the claim should be struck because the Plaintiff's pleading did not identify a specific religious belief or practice in which he sincerely believes. That is a necessary element of a cause of action under s 2(a) of the *Charter*, according to the Defendant, citing *Qualizza v Canada*, 2024 FC 1801 at para 29 [*Qualizza*].

[37] The same principle applies in regard to a claim based on freedom of conscience: the pleading must set out the facts that demonstrate the claimant's adherence to a deeply-felt moral code that guides their behaviour in regard to fundamental life choices. That is a necessary element of a cause of action under s 2(a) regarding a breach of freedom of conscience.

[38] The Plaintiff points to affidavit evidence he filed in the course of the grievance process, saying that this explains the nature of his spirituality and its importance to him. However, as explained previously, I am barred from considering any affidavit evidence in assessing the motion to strike as not disclosing a reasonable cause of action. The Plaintiff's claim must stand or fall based on a generous reading of the pleading itself, no evidence is admissible at this stage.

[39] Having reviewed the Statement of Claim, I am unable to find the material facts needed to support a claim under s 2(a). The Plaintiff makes repeated references to his "spirituality" but does not elaborate on the nature of his belief system or his adherence to it. He says that this is all explained in the affidavits he submitted, but I cannot have regard to those at this stage of the analysis. Reading the claim generously, and with a view to understanding the essence of what the Plaintiff asserts, I find that he has failed to plead the necessary material facts to support a cause of action under s 2(a): *Qualizza* at para 30; *Mancuso* at para 23.

[40] In saying this, I want to underline that this finding does not cast doubt on the sincerity of the Plaintiff's belief in his spirituality or his practice of it. Such a finding is well beyond the scope of this motion. All that I have found is that the Plaintiff's Statement of Claim as filed does not set out the material facts needed to support the cause of action he asserts.

[41] The Plaintiff has failed to plead the necessary facts with sufficient particularity to support his allegation of a breach of his freedom of conscience and religion. While the Plaintiff did set out his narrative recounting of the incidents that gave rise to his various claims, he did not

include key details regarding the nature of his spirituality and its importance in guiding his life decisions. Because of that, this aspect of his Statement of Claim will be struck.

(b) *Security of the Person*

[42] The Plaintiff makes a series of claims regarding his alleged mistreatment by the CAF, saying the denial of training opportunity, the disadvantageous postings he endured, and the delays he encountered in seeking redress, added up to "punitive" conduct that violated his s 7 rights.

[43] The Defendant argues that the claim does not engage s 7 interests, because the Plaintiff has not demonstrated how being subjected to a mandatory vaccination requirement or being posted to different locations amounted to serious, state-imposed stress.

[44] I am persuaded by the Defendant's arguments on this point. As a CAF member, the Plaintiff knew that he could be posted to different locations and given different assignments. The fact that he was subjected to temporary postings, even unfavourable ones, does not engage the type of security interests that s 7 is meant to protect. As described by the Supreme Court of Canada in *New Brunswick (Minister of Health and Community Services) v G (J)*, 1999 CanLII 653 (SCC) at para 60:

> [T]he impugned state action must have a serious and profound effect on a person's psychological integrity. The effects of the state interference must be assessed objectively, with a view to their impact on the psychological integrity of a person of reasonable sensibility. This need not rise to the level of nervous shock or psychiatric illness, but must be greater than ordinary stress or anxiety.

[45] In addition, there is now abundant case-law confirming that being subjected to a mandatory COVID-19 vaccination policy does not, in itself, violate s 7: *Neri v Canada*, 2021 FC 1443 at paras 55–61; *Hoogerbrug* at para 18. There is also an unbroken line of authority for the proposition that s 7 does not protect the right to practice a profession or continue in a particular occupation: *Tanase v College of Dental Hygienists of Ontario*, 2021 ONCA 482 at para 40, leave to appeal to SCC refused, 39862 (24 February 2022).

[46] The fact that the Plaintiff's career with the CAF has ended also does not support a s 7 claim, on the evidence in the record. He was offered an extension so that he could complete his career, but in the end he refused to accept the offer. On the facts put forward by the Plaintiff, I am unable to find the basis for a s 7 claim arising from the way in which his CAF career ended.

[47] The Plaintiff has failed to plead the material facts needed to support a cause of action under s 7. This aspect of his claim will therefore be struck.

(c) *The equality claim*

[48] To demonstrate a breach of s 15(1), the claimant must establish that "the impugned law or state action on its face or in its impact, creates a distinction based on enumerated or analogous grounds; and imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage:" *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 27.

[49] The Plaintiff claims that he was subjected to discriminatory treatment, but his pleading does not explain how his treatment related to any enumerated or analogous ground that is protected by s 15(1) of the *Charter*. That alone is fatal to this aspect of his claim.

[50] The Plaintiff's pleading does not indicate the material facts that support his claim of a discrimination contrary to s 15. This aspect of his claim must therefore be struck.

(d) *The other claims*

[51] The Plaintiff made other claims largely focused on the delays he has encountered at various points during the relevant period, which he claims denied him due process. In particular, he claims that there were undue delays in the process of handling his grievance, including when it was referred to the MGERC, and towards the end of his service when he attempted to find a resolution in the course of several retention interviews.

[52] Once again, the Plaintiff has failed to plead the material facts that might support a claim of abuse of process as a result of delays in the administrative processes: *Law Society of Saskatchewan v Abrametz, 2022 SCC 29 (CanLII)*; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII).

[53] These claims must also be struck. The pleading does not set out sufficient material facts to sustain the cause of action advanced by the Plaintiff.

[54] The analysis set out above would be sufficient to grant the Defendant's motion. For the sake of completeness, I will briefly discuss the alternative ground advanced by the Defendant.

C. *Whether to decline to assume jurisdiction because of the CAF grievance process*

[55] In the alternative, the Defendant argues that the Court should decline to allow the claim to proceed because the Plaintiff failed to exhaust the grievance process that was available to him as a CAF member, and which could have addressed his claims. According to the Defendant, the Plaintiff's claims are solely about service-related matters, including his issues relating to the CDS Directives or his allegations of mistreatment as a result of his refusal to become vaccinated. The Defendant argues that this was all within the scope of the grievance process.

[56] The Defendant urges the Court to defer to the comprehensive CAF grievance regime. CAF members who are aggrieved by any decision, act, or omission in the administration of the affairs of the CAF, for which no other process for redress is provided under the *National Defence Act*, RSC 1985, c N-5, may submit a grievance. The grievance system is broadly worded, and this Court has recognized its comprehensive scope, in cases such as *Fortin v Canada (Attorney General)*, 2021 FC 1061 [*Fortin*]:

> [25] The breadth of grievances contemplated by this provision were discussed in *Jones v Canada*, (1994) 87 FTR 190 at paras 9, 10 [*Jones*] and reiterated in *Bernath v Canada*, 2005 FC 1232 at para 35 [*Bernath*] as follows:
>
> > … it's the broadest possible wording [of section 29 of the Act] that accommodates any and every wording, phrasing, expression of injustice, unfairness, discrimination, what-not. It covers everything. It leaves nothing out. It's exhaustively comprehensive […] there is no equivalent provision in any other statute of Canada in terms of the scope of the wrongs, real , alleged, imagined wrongs that a

> person can get redress for anything. That is the difference between the civilian and the military person.

[57] The record shows that the Plaintiff did, in fact, file a grievance complaining about his treatment. The record is not entirely clear on the nature and scope of his grievance, or the outcome of the process. Because his complaints related in part to the CDS Directives, his grievance was referred to the MGERC for examination, and in the normal course that body would analyze the grievance based on the evidence presented and make a recommendation to the CDS. The CDS would make the final decision, as the Final Authority in the process. that decision, in turn, could be subject to judicial review in this Court.

[58] The Defendant argues that the grievance process could deal with all aspects of the Plaintiff's claims, including his *Charter* claims, and their affidavit evidence includes a MGERC recommendation and CDS decision dealing with another case where a CAF member complained that the CDS Directives violated their *Charter* rights.

[59] Based on this, the Defendant argues that the Court should not allow the Plaintiff's claim to proceed.

[60] In response, the Plaintiff appears to be content to have the MGERC deal with his complaints, as long as it does so in a timely manner. Although it is not entirely clear, he appears to seek a Court Order directing the MGERC to do that. I will simply note that this is beyond the scope of the present motion, which is limited to the question of whether the Plaintiff's Statement of Claim should be struck or halted at this preliminary stage.

[61] Based on the abundant case-law on this point, I am persuaded that the Plaintiff's claim should not proceed because he had access to a comprehensive grievance process that could have dealt with all of his claims: see, for example: *Moodie v Canada (National Defence)*, 2010 FCA 6; *Doucette v Canada (Attorney General)*, 2018 FC 697 [*Doucette*]; *Lafrenière v Canada (Attorney General)*, 2019 FC 219; *Fortin*; *Dunn*; *Qualizza*; *Graham v Canada*, 2007 FC 210.

[62] The rationale for declining to take jurisdiction over these sorts of matters was explained in *Vaughan v Canada*, 2005 SCC 11, and has been applied in many cases where CAF members sought to bring claims in this Court for service-related matters. In *Qualizza* the point was explained as follows:

> [63] As confirmed by the Supreme Court, when Parliament provides a specialized administrative scheme for the resolution of workplace conflicts, the courts should decline jurisdiction and defer to the statutory scheme in all but the most unusual circumstances: *Weber v Ontario Hydro*, [1995] 2 SCR 929 at paras 50-58 and 67, 1995 CanLII 108 (SCC); *Vaughn v Canada*, 2005 SCC 11 at para 2 [*Vaughn*].

[63] The Defendant argues that the Plaintiff has not demonstrated that his situation is one of the "most unusual circumstances" warranting the exercise of the Court's discretion.

[64] I agree.

[65] The Plaintiff's claim shows that he filed a grievance about his alleged mistreatment as a result of the CDS Directives. The record before me is incomplete as to the nature and scope of his grievance or its outcome, but there can be no doubt that he had taken the step to pursue a grievance. There is also no doubt that the CAF grievance process was sufficiently broad in scope

to deal with all aspects of the Plaintiff's claims, including his *Charter* claims. On the face of it, the Plaintiff has not established a compelling reason to exercise the discretion to allow this claim to proceed.

[66] The failure to pursue available internal administrative redress procedures to their conclusion is not, itself, a reason to allow the claimant to pursue a civil claim for damages: *Sandiford v Canada*, 2007 FC 225. Further, the fact that the grievance procedure is no longer available to the Plaintiff since his release from the CAF does not render the grievance remedy inadequate: *Dunn* at para 124, citing *Doucette* at paras 32–34.

[67] Based on the analysis set out above, I decline to exercise my discretion to allow the Plaintiff's claim to proceed, because he had access to a comprehensive CAF grievance system that was competent to deal with all of his claims.

D. *Should leave to amend the pleading be granted?*

[68] Rule 221(1)(a) contemplates granting leave to amend pleadings which have been struck. For leave to amend to be granted, the defect in the struck pleading must be curable by amendment: *Simon v Canada*, 2011 FCA 6 at para 8.

[69] However, in this case the pervasive absence of material facts throughout the pleading is not a flaw that can be addressed by amendment. Moreover, as I have concluded that this Court should not take jurisdiction over this matter, leave to amend should not be granted.

IV. Conclusion

[70] For the reasons set out above, the Defendant's motion to strike will be granted.

[71] Although the Defendant sought its costs in the matter, in exercise of the very broad discretion granted to me under Rule 400, I will not make any award of costs. The Plaintiff pursued his claim in good faith and should not bear the additional costs of this motion. Each party shall bear their own costs.

[72] In closing, I acknowledge that the Plaintiff may well feel frustrated and disappointed that he has been denied his "day in Court." While I understand why he may feel that way, it does not change the legal outcome. As discussed in these reasons, the law is clear and directly applicable to this case. The Plaintiff's claim of constructive dismissal is barred as a matter of law. His pleading did not set out the material facts to support the *Charter*-related causes of action and other claims he put forward. Moreover, he had access to a CAF grievance system that could have dealt with all of his claims, and indeed it is clear that he filed a grievance.

[73] Allowing a claim to proceed that is destined to fail, or that lacks sufficient facts to enable the Defendant to respond and the Court to properly supervise the proceeding is unfair to everyone and a waste of valuable public resources. It is also an injustice to other claimants with viable legal claims, waiting in the wings for their cases to be dealt with. That is why the motion to strike exists in our law and is included in the Court's Rules. In this case I have found that the

Defendant's motion should be granted. That is an inevitably harsh result, but it is what the law, and the proper administration of justice, demand.

[74] One final matter relates to the style of cause in this proceeding. The Plaintiff named "The Canadian Armed Forces as represented by The Attorney General of Canada" as the defendant. However, the proper defendant is "The Attorney General of Canada." The style of cause is amended accordingly, with immediate effect.

ORDER in T-1001-25

THIS COURT ORDERS that:

1. The Defendant's motion to strike the statement of claim is granted.

2. No costs are awarded. Each party shall bear their own costs.

3. The style of cause is amended to name The Attorney General of Canada as defendant instead of The Canadian Armed Forces as represented by The Attorney General of Canada, and the amended style of cause shall be reflected in this Order and Reasons.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1001-25
STYLE OF CAUSE:	LIAM JOSEPH JARBEAU v THE ATTORNEY GENERAL OF CANADA
DEALT WITH IN WRITING	PURSUANT TO RULE 369
ORDER AND REASONS	PENTNEY J.
DATED:	JULY 18 2025

WRITTEN SUBMISSIONS BY:

Liam Joseph Jarbeau	ON HIS OWN BEHALF
Jan Jensen	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Liam Joseph Jarbeau	ON HIS OWN BEHALF
Attorney General of Canada Halifax, Nova Scotia	FOR THE RESPONDENT