Federal Court of Appeal | Cour d'appel fédérale

Date: 20240306

Docket: A-179-22

Citation: 2024 FCA 39

CORAM: **WEBB J.A.**
RENNIE J.A.
BIRINGER J.A.

BETWEEN:

SAMEER EBADI

Appellant

and

HIS MAJESTY THE KING, JAMES DOE, JOHN DOE, JOSEPH DOE, JANE DOE, JULIE DOE and DAVID VIGNEAULT

Respondents

Heard at Toronto, Ontario, on October 10, 2023.

Judgment delivered at Ottawa, Ontario, on March 6, 2024.

REASONS FOR JUDGMENT BY:	RENNIE J.A.
CONCURRED IN BY:	BIRINGER J.A.
DISSENTING REASONS BY:	WEBB J.A.

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REASONS FOR JUDGMENT

RENNIE J.A.

Overview

[1] This is an appeal from a decision of the Federal Court striking the appellant's statement of claim. The appellant alleged various intentional torts and breaches 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 (the Charter) by his employer, the Canadian Security Intelligence Service (CSIS) and certain employees. The Federal Court (*Ebadi v. Canada*, 2022 FC 834 *per* Brown J.) struck the action, holding that it was barred by the combined operation of sections 236 and 208 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 (FPSLRA). Together, these provisions bar any civil recourse for "any dispute relating to… terms or conditions of employment" which can be addressed through a grievance procedure.

[2] I would dismiss the appeal. The Federal Court correctly understood and applied paragraph 208(1)(*b*) and section 236 of the FPSLRA, and did not err in refusing to exercise its residual discretion to allow the claim to proceed.

The Federal Court decision

[3] The appellant, a Canadian citizen and practicing Muslim, has been employed with CSIS since 2000 in the Prairie Regional office in Edmonton. He has been on sick leave since January of 2018 because of an alleged pattern of discrimination, humiliation, harassment and psychological abuse in the workplace. He commenced an action in the Federal Court against CSIS alleging the intentional torts of mental suffering, assault and battery, as well as breaches of his Charter rights under sections 2, 7, and 15. The appellant sought damages in tort and under subsection 24(1) of the Charter.

[4] Applying the "plain and obvious" test from *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45 (Federal Court decision at paras. 26-29), the Federal Court granted the respondents' motion to strike the claim. After examining the allegations in the claim in light

of the jurisprudence, the Federal Court held that section 236 of the FPSLRA barred all of the appellant's claims.

[5] The Federal Court judge acknowledged that the bar in section 236 of the FPSLRA only applies to disputes that may be grieved under section 208 of the FPSLRA. However, the judge found that the appellant's allegations relating to threats, harassment, and discrimination could be grieved under paragraph 208(1)(*b*) of the FPSLRA, noting that prior case law had applied this provision to a wide range of workplace-related disputes, including allegations of discrimination and harassment (Federal Court decision at paras. 38-41). Also, in the Federal Court's view, the fact that the appellant requested Charter remedies (Federal Court decision at paras. 43-44) did not place the claims outside the scope of section 208. These conclusions were described as the "complete answer to his submissions" (Federal Court decision at para. 48).

[6] In reaching his decision the judge noted that the harassment allegations fell within the scope of the CSIS Safe, Healthy and Respectful Workplace Policy, as well as the corresponding CSIS policy dealing with the resolution of harassment complaints (collectively, the Harassment Policy). While article 5.19 of the Harassment Policy precluded a grievance in respect of a harassment investigators' report, the judge noted that this only precluded grievances in respect of the conclusions of an investigator in a harassment claim; a complainant would still be able to grieve the manner in which the investigation was conducted, management's decision to accept or reject the investigator's report and management's decision with respect to a remedy (Federal Court decision at para. 58).

[7] Finally, the Federal Court held that the circumstances of the case did not warrant the exercise of any residual discretion that the Court might retain in light of the statutory scheme. In this regard, the Court noted that the appellant had never filed a complaint under the Harassment Policy in the course of his 20-year career at CSIS nor had he engaged the CSIS grievance procedure (Federal Court decision at para. 47). The Federal Court also did not find the appellant's evidence in support of the assertion that the harassment and grievance procedures at CSIS were "futile" or "broken" to be convincing (Federal Court decision at para. 61).

The appellant's case

[8] The core of the appellant's appeal is that the Federal Court erred in concluding that the Charter breaches and intentional torts alleged by the appellant were grievable under paragraph 208(1)(*b*) of the FPSLRA, as this brings too broad an interpretation to the language of "terms and conditions of employment". He argues that employees do not forgo civil remedies they might have against their employer in respect of intentional torts. In this regard, the appellant emphasizes that he could not have grieved his claims of harassment, given the existence of article 5.19 of CSIS's Harassment Policy, which channels harassment complaints away from the grievance procedure.

[9] His second ground of appeal is that the Federal Court erred in declining to exercise its residual discretion to hear the appellant's action. The appellant emphasizes that the judge overlooked key facts that were relevant to the exercise of residual discretion. Those included that the appellant does not belong to a union, that the remedies sought are not available through existing CSIS procedures, that CSIS's harassment procedures provide limited procedural rights

and avenues of review and that there was systemic discrimination, harassment, and a fear of reprisal for complaints within CSIS.

[10] The appellant also raises a new argument before this Court. He challenges the constitutional validity of section 236 of the FPSLRA, arguing that section 236 of the FPSLRA is unconstitutional to the extent that it prohibits a court from hearing claims under the Charter.

[11] I will deal briefly with this argument now.

[12] The appellant did not raise this issue at first instance, and did not serve a notice of constitutional question in accordance with section 57 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 until one month after the respondents raised the issue in their submissions.

[13] The decision whether to hear a constitutional challenge for the first time on appeal is discretionary, albeit one governed by specific considerations including the state of the record, fairness to all parties, the importance of having the issue resolved, the issue's suitability for decision, and more broadly, the fair and efficient administration of justice. The burden is on the challenging party to show that hearing the issue would be appropriate and non-prejudicial (*Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3 at para. 23).

[14] The test is strict, and, as a general premise, courts are hesitant to address the constitutional validity of a provision without a sufficient factual context (*Smith v. Canada (Attorney General)*, 2023 FCA 122, 2023 A.C.W.S. 2306 at para. 52; *Filion v. Canada.*, 2017

FCA 67, 77 A.C.W.S. (3d) 211 at para. 14). A constitutional challenge raised for the first time on appeal may rest on an inadequate and potentially prejudicial evidentiary foundation and the appellate court is deprived of a trial judge's reasoning and analysis (*Lukács v. Canada (Citizenship and Immigration)*, 2023 FCA 36, 2023 A.C.W.S. 639 at paras. 73-74).

[15] I would not exercise my discretion to hear the constitutional argument raised by the appellant. The arguments were not developed before us in either memorandum and the Court does not have the benefit of the Federal Court's consideration of the issues. It would be premature for us to offer an opinion on the constitutionality of an important statutory provision in these circumstances.

[16] I return to the substance of this appeal and note that the appellate standards from *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, *i.e.* correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law, apply. There are extricable questions of law raised by this appeal: whether the appellant's claims of Charter breaches and intentional torts could have been grieved under paragraph 208(1)(*b*) of the FPSLRA, and whether, even if the appellant's claims could have been so grieved, the Federal Court has a residual discretion to hear the matter in light of the grievance scheme. Assuming that it did have this discretion, the question of whether the judge erred in the exercise of that discretion is assessed against a standard of palpable and overriding error.

The statutory scheme

[17] I begin with the central issue on this appeal—whether the judge erred in finding that the appellant could have grieved his allegations of intentional torts and Charter breaches under paragraph 208(1)(*b*) of the FPSLRA. Sections 208 and 236 are set forth in their entirety in the appendix at the end of these reasons. I have however extracted the two key provisions in issue in this appeal:

208(1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved	**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :
(*a*) by the interpretation or application, in respect of the employee, of	*a*) par l'interprétation ou l'application à son égard :
(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or	(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) a provision of a collective agreement or an arbitral award; or	(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;
(*b*) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	*b*) par suite de tout fait portant atteinte à ses conditions d'emploi.
236(1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment	**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace

is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.	ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.
(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.	**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

[18] It is instructive to begin with the decisions of the Supreme Court in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108 [*Weber*] and *Vaughan v. Canada*, 2005 SCC 11, [2005] 1 S.C.R. 146 [*Vaughan*]. These decisions provide critical guidance in considering the issues raised by this appeal.

[19] In *Weber* the employer sent a private investigator to the employee's home to investigate the employee's entitlement to the sick leave benefits he had been claiming. The investigator entered the employee's home under false pretenses. The employee filed grievances against his employer and concurrently brought an action in the provincial court based on various torts and breaches of the Charter. The Supreme Court held that the employee's action was barred by subsection 45(1) of *Ontario's Labour Relations Act*, R.S.O. 1990, c. L.2, which provided that all collective agreements "shall provide for the final and binding settlement by arbitration… of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement".

[20] The Court held that the arbitrator was to have exclusive jurisdiction over all disputes arising out of the collective agreement. The Court rejected that there could be overlapping

jurisdiction between courts and labour arbitrators where issues extended to the common law, the Charter, or matters outside of the traditional subject matter of labour law. This approach would undercut not only the clear statutory language at issue, but the purpose of the exclusive arbitration regime that is "at the heart of all Canadian labour statutes", which provides for quick, economic resolution of claims (*Weber* at paras. 39-50).

[21] In determining whether a dispute arises out of a collective agreement, the Court held that decision-makers must look to the "essential character" of the dispute. This involves assessing the facts of the dispute. The place at which the dispute arose and the parties to the dispute may be relevant, but are not determinative (*Weber* at paras. 43 and 51-52).

[22] Importantly, for the purposes of the issues before us, the Supreme Court was clear that it is the facts that govern, and not the legal characterization that counsel give to those facts. This has implications for the appellant's argument that intentional torts can never have a connection to the workplace, as it can never be within the terms and conditions of employment that an employee foregoes a right to sue for compensation for an intentional tort in the workplace. *Weber* teaches that the inquiry must remain focused on the facts that gave rise to the dispute.

[23] The Supreme Court also confirmed the ability of labour adjudicators to consider torts and Charter breaches, as well as to award Charter remedies (paras. 55-56 and 66). While arbitrators may not have the same expertise as courts, they are still subject to judicial review. If there is a remedy required that an arbitrator cannot grant, courts of inherent jurisdiction can take

jurisdiction—though there must be a "real deprivation of the ultimate remedy" sought (*Weber* at para. 57).

[24] The dispute in *Weber* was, in fact, related to the employee's collective agreement. The Court acknowledged that "[i]solated from the collective agreement, the conduct complained of in this case might well be argued to fall outside the normal scope of employer-employee relations" (*Weber* at para. 71). However, the collective agreement provided that the grievance procedure applied to "[a]ny allegation that an employee has been subjected to unfair treatment or any dispute arising out of the content of this Agreement" (*Weber* at para. 72).

[25] A decade after *Weber* came *Vaughan*. In *Vaughan*, the employee, a federal public servant, was denied early retirement benefits. The denial was grievable, but not arbitrable. The employee did not grieve the denial of benefits, but instead brought an action in the Federal Court based in negligence, alleging that his employer ought to have known that he was eligible for the benefits. The employee argued that *Weber* was distinguishable since there was no independent third-party adjudication available to him. (I add, parenthetically, that the appellant in this appeal also has no recourse to adjudication.)

[26] The Supreme Court held that the employee's action was barred by what are now sections 208 and 209 of the FPSLRA. While these provisions did not explicitly oust the court's jurisdiction, the comprehensive nature of the scheme and the rationale behind it signalled that courts should defer to grievance processes. The lack of third-party adjudication did not, in and of itself, allow a court to exercise its residual discretion to hear a claim. Courts exercise their

residual discretion, for example, in circumstances where a whistle-blowing claim is brought or where the integrity of the grievance process or the effectiveness of available remedies is called into question. However, courts should generally decline to get involved in such disputes, except via judicial review (*Vaughan* at paras. 13, 16-17, 22, and 39).

[27] The Court, echoing *Weber*, noted that permitting parallel access to the courts would jeopardize the comprehensive scheme for labour disputes meant to provide specialized, expedient resolutions. The Court also cautioned litigants against "dressing [] up" grievable disputes as negligence actions, guidance which is particularly apposite to this appeal (*Vaughan* at paras. 37, 40, and 42).

[28] Following *Vaughan*, Parliament added section 236 to the FPSLRA, which provides that the court's jurisdiction is ousted by grievance processes even where there is no third-party adjudication. The Ontario Court of Appeal in *Bron v. Canada (Attorney General)*, 2010 ONCA 71, [2010] O.J. No. 340 [*Bron*] noted that this effectively patched the "whistle-blower exception" coming out of *Vaughan*, leaving courts with residual discretion to hear grievable claims only where the grievance process cannot provide an appropriate remedy (*Bron* at paras. 27-30).

[29] Since *Weber* and *Vaughan*, conflicts related to the "terms and conditions of employment" referred to in paragraph 208(1)(*b*) of the FPSLRA have been considered to encompass allegations of defamation, discrimination, harassment, malice and bad faith, Charter breaches, and intentional torts, including intentional infliction of mental suffering (see, for example: *Nosistel v. Canada (Attorney General)*, 2018 FC 618, [2018] CarswellNat 10225 (WL Can) at

para. 66; *Price v. Canada (Attorney General)*, 2016 FC 649, 268 A.C.W.S. (3d) 866 at paras. 26-31; *Green v. Canada (Border Services Agency)*, 2018 FC 414, 291 A.C.W.S. (3d) 402 at para. 16; *Bron* at paras. 14-15; *Thompson v. Kolotinsky*, 2023 ONSC 1588 (Div. Ct.), 2023 A.C.W.S. 2518 at paras. 37-39).

[30] In *Hudson v. Canada*, 2022 FC 694, 2022 C.L.L.C. 220-053 [*Hudson*] the Federal Court held that allegations of sexual assault in the workplace were grievable. The Court noted that given the breadth of section 208, the plaintiffs could not escape the operation of section 236 of the FPSLRA simply by alleging that their claims were not "ordinary workplace disputes". The Federal Court pointed to *Jane Doe v. Canada (Attorney General)*, 2018 FCA 183, 428 D.L.R. (4th) 374, in which this Court found that an adjudicating board had unreasonably denied compensation for pain and suffering to an employee who had been subject to a sexual assault by her co-worker—demonstrating that sexual assault claims have been, at least implicitly, recognized as grievable (*Hudson* at paras. 102-103).

[31] Two cases are helpful in fleshing out the contours of the required nexus to the workplace/employment.

[32] In *Martell v. AG of Canada & Ors.*, 2016 PECA 8, 376 Nfld. & P.E.I.R. 91 [*Martell*], the claimant brought an action against her employer alleging harassment and a hostile work environment, as well as harassment by individual defendants that occurred after her resignation. The Court held that the claims covering occurrences during her employment were grievable, as they arose in the workplace, during the course of her employment and by perpetrators in the

performance of their duties (*Martell* at paras. 11-13). The claims that arose post-resignation, though, were not grievable, as "[c]laims of abuse, threats, and harassment which occurred long after the employment relationship ended cannot be considered matters in which the essential character of the dispute is rooted in the appellant's term of employment" (*Martell* at para. 37).

[33] Similarly, in *Joseph v. Canada School of Public Service et al.*, 2022 ONSC 6734, 2022 CarswellOnt 17461 [*Joseph*], the claimant was terminated following a security investigation at her workplace, during which her employer involved the police. The claimant alleged the torts of breach of privacy, negligence, and defamation. The Court held that the portions of the claim dealing with the employer's involving of the police and the consequent alleged breaches of privacy were not grievable, since their essential character did not relate to the employee's collective agreement, but rather to "potential resort to the criminal process" (*Joseph* at para. 29). The balance of the claims (negligence and defamation, in association with the suspensions and investigation) were grievable, as they related to the managerial duties of discipline (*Joseph* at para. 31).

[34] The appellant contends that the words "affecting… terms and conditions of employment" must be given a more restrictive meaning than that accorded to them by the Federal Court, or indeed, by much of the jurisprudence. I do not agree.

[35] Each word in a statute must be given meaning; it is presumed that the legislature does not speak in vain. Courts should therefore "avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless" (Ruth Sullivan, *The Construction of Statutes*,

7th ed. (Toronto, ON: LexisNexis Canada, 2022) at §8.03). Every word has a specific role to play in advancing the legislative purpose, and in this case the word "affecting" is integral to understanding the meaning of the section. Parliament chose a word with a broad sweep; it did not say *"in the terms and conditions of employment"*. As observed by the Ontario Court of Appeal in *Bron* at paragraph 15, "[a]lmost all employment-related disputes can be grieved under s[ection] 208".

[36] This interpretation aligns with the object of the FPSLRA, which was to establish a comprehensive and exclusive scheme for the resolution of labour disputes (*Vaughan* at para. 39). To allow large categories of claims—such as any claim involving an intentional tort or Charter breach—to escape the operation of the FPSLRA would undermine Parliament's intent. Many if not all workplace grievances could, through artful pleading, be cast as intentional torts: for example, a manager speaking harshly to an employee could be said to be intentionally inflicting mental harm, or the failure to be promoted an act of discrimination. To exempt these claims from the grievance process could effectively gut the scheme, reducing it to the most mechanical and administrative elements of employment relationships, such as hours of work, overtime, classification and pay.

[37] The application of section 208 cannot be driven by the label that a party assigns to the behaviour or conduct. This would divert from the true inquiry, which is the degree of connectedness between the complaint and the workplace. Here, the essential character of the appellant's allegations is that CSIS failed to provide the appellant that which it committed to provide by its policies—a safe and harassment-free workplace. A safe and harassment-free

workplace, manifested by managerial practices and co-worker behaviour, must at the very least be impliedly part of any employee's terms and conditions.

Whether CSIS policy bars grievance

[38] The appellant argues that, in any event, he could not grieve the allegations in the statement of claim in light of article 5.19 of the Harassment Policy and thus the grievance process could not provide him with an effective remedy:

> 5.19: The investigator's conclusion(s) cannot be subject to a grievance.

[39] The Federal Court held that while the appellant could not have grieved the conclusions of an investigator, other key elements of a harassment claim could be grieved, including the manner in which an investigation was conducted, management's decision to accept or reject the investigator's report and any decision with respect to remedy or discipline (Federal Court decision at para. 58).

[40] I agree with the Federal Court that the harassment investigation process, and what management did with the report, including any remedy, could have been grieved; but I would go further. While inelegantly framed, article 5.19 does not constitute a dead-end for the employee; rather it simply means that the report itself does not trigger a new, independent grievance, separate and apart from the conduct that sparked the filing of the harassment complaint. Article 5.19 confirms that the investigation report itself is a preliminary step, with no direct consequence unless and until accepted by management. The effect of article 5.19 is to ensure that the harassment inquiry is not diverted from the true focus—the conduct in question. Management's

decision to accept or reject the report is therefore grievable. It is then that the substantive right to grieve arises; acceptance of the report makes it a management decision.

[41] This result accords with Kane J.'s holding in *Thomas v. Canada (Attorney General)*, 2013 FC 292, 430 F.T.R. 1 [*Thomas*]. There, the Court held that there was no procedural unfairness in a harassment complainant not being provided with a copy of the investigator's final report for comment prior to its submission to the responsible manager. The Court pointed out that such an approach would be inefficient and contrary to the set-up of the scheme: the investigation itself is delegated, with the manager making the ultimate decision based on the final report of the investigator (*Thomas* at para. 89). While *Thomas* dealt with a different workplace and therefore a different investigatory scheme, the case stands for the proposition that the ultimate conclusion of a manager, though based on an investigation, is purposefully separate from the conclusion of the investigator. This reasoning, when applied to the CSIS Harassment Policy, leaves the conduct complained of grievable.

[42] In addition, subsection 208(5) of the FPSLRA does not assist the appellant. Subsection 208(5) provides that "[a]n employee who, in respect of any matter, avails himself or herself of a complaint procedure established by a policy of the employer may not present an individual grievance in respect of that matter if the policy expressly provides that an employee who avails himself or herself of the complaint procedure is precluded from presenting an individual grievance under this Act".

[43] For the provision to apply, two conditions must be met: the employee must avail himself or herself of a complaint procedure established by a policy of the employer, and that policy must expressly provide that the employee is precluded from grieving the matter.

[44] As explained below, the appellant did not avail himself of the complaint procedure under the Harassment Policy. In any event, as I have concluded, article 5.19 of the Harassment Policy does not preclude an employee from presenting an individual grievance under the FPSLRA. Subsection 208(5) does not affect the appellant's right to grieve.

[45] I would therefore dismiss this argument.

Whether the Court should have exercised its residual discretion

[46] The Federal Court did not err in declining to exercise its residual discretion to hear the appellant's action.

[47] In *Canada v. Greenwood*, 2021 FCA 186, [2021] 4 F.C.R. 635, this Court confirmed the existence of a residual discretion but confined its exercise to circumstances where "the internal mechanisms are incapable of providing effective redress" (at para. 130). Similarly, the New Brunswick Court of Appeal has confined the discretion to circumstances where the grievance process itself is entirely "corrupt" (*Attorney General of Canada, on behalf of Correctional Service of Canada v. Robichaud and MacKinnon*, 2013 NBCA 3, 398 N.B.R. (2d) 259 at para. 10). Therefore, the Court's residual discretion arises where the available mechanisms cannot provide effective redress, either because the legislative scheme does not cover the circumstances,

or because the existing processes are demonstrably ineffective (see, for example, *Weber* at para. 67; *Bron* at para. 29).

[48] The Federal Court determined, and I agree, that the interpretation or application of CSIS policies, including the Harassment Policy, could be grieved under subparagraph 208(1)(*a*)(i) (Federal Court decision at paras. 48-49). I agree that this would encompass various claims of the appellant, with the broader paragraph 208(1)(b) capturing the balance of his claims. There is no legislative gap.

[49] The Federal Court also found that the evidence put forward by the appellant did not support the conclusion that the CSIS grievance process was "broken" or "futile" or "untrustworthy" (Federal Court decision at para. 61). The Federal Court considered both a statement of the Director of CSIS as to the existence of systemic racism and the assertion in an expert report of a culture of fear of reprisal. The Federal Court was not persuaded by this evidence and gave thoughtful reasons in support of its conclusion. I see no reviewable error in its assessment of this evidence.

[50] I turn to the argument that the judge erred in finding that a harassment complaint had not been filed, and that this coloured his approach to the exercise of his discretion.

[51] The appellant alleges that he filed a harassment complaint pursuant to the Harassment Policy, but that it was ignored. To this end, he points to two emails he sent to management in 2017 as constituting his filing of a complaint. He says that they are sufficient to put management

on notice of his concerns and that the Federal Court judge erred in concluding that the Harassment Policy had not been invoked.

[52] In the first email the appellant alleged that he was disturbed during prayer by a co-worker, causing stress and anxiety. The appellant stated that he "need[s]… help" as he did not know what would be "the next plot to harm [him]" (Appeal Book at p. 109). This email resulted in the appellant's manager meeting with one of the appellant's alleged harassers to hear her side of the story and to set certain behavioural boundaries with her. The appellant emailed his manager approximately one week later, alleging that his co-workers continued to bother him by "walking back and forth in front of [his] office and trying to take a peek into [his] office" (Appeal Book at p. 121). The appellant's manager acknowledged his email and stated that further action would be taken. It does not appear that there was any further follow-up by either party.

[53] The appellant also relies on an email sent to management in 2013 in which he alleges an unreasonable workload and mistreatment at work, including subjection to "humiliation, abuse and harassment" (Appeal Book at p. 152). This email resulted in some action by management, including supervision of the appellant, referral to health supports, other employee support programs and to CSIS's Internal Conflict Management Service.

[54] I am not convinced that the judge made a palpable and overriding error in his conclusion that a harassment complaint had not been filed. The judge considered this evidence and concluded that a complaint had not been filed. His decision has an evidentiary foundation. The judge noted that the appellant never engaged the formal Harassment Policy procedures, never

asked that his emails be treated as a harassment complaint and never followed up on them, as one would reasonably expect. The appellant also reluctantly conceded under cross-examination that while he was aware of CSIS's Harassment Policy as early as 2008 or 2009, he never filed a formal complaint (Appeal Book at pp. 814-816 and 820).

[55] The filing of a harassment complaint has consequences for the organization and certainly for the person alleged to have breached departmental standards of conduct. Complaints, whether memorialized or not, about disputes or misbehaviour are insufficient to inferentially trigger the policy. There must be sufficient precision in the complaint, identifying when, whom and what conduct or behaviour, and, importantly, a clear stated intention on the part of the employee to commence a harassment complaint in order for management to begin an investigation.

[56] Finally, the appellant contends that the lack of civil damages and Charter remedies available warrants a favourable exercise of discretion to allow his action to proceed to trial.

[57] I do not agree.

[58] At no time during his twenty-year career did the appellant file a complaint under the Harassment Policy or the grievance procedure. As Brown J. rightly concluded, "[h]e cannot now litigate in this Court the adequacy of procedures he himself chose never to follow" (Federal Court decision at para. 47). This is consistent with what Binnie J. noted in *Vaughan*: courts should generally decline to exercise their jurisdiction where the claimant's legal position would be *improved* by a failure to engage with available grievance procedures. To allow the appellant

to come to the courts without having used the workplace harassment procedures available would undermine efficient labour relations, as it would put the courts in competition with existing labour schemes, clogging up a system designed to streamline dispute resolution (*Vaughan* at para. 37). I note again that a lack of third-party adjudication does not itself make a scheme less worthy of deference, and does not itself allow a court to exercise its residual discretion (*Vaughan* at para. 38).

[59] Further, the absence of remedies argument was based on the assumption that article 5.19 of the Harassment Policy precluded access to grievance procedures. This assumption is, for the reasons I have explained, incorrect. The conduct in issue can be grieved and the final level grievance decision is subject to judicial review.

[60] Nor did this Court hear argument on the scope of remedies available to the appellant should his grievance be successful. We did not hear, for example, of any possibility of compensation under the *Government Employees Compensation Act*, R.S.C., 1985, c. G-5 (GECA). The Federal Court has cited the GECA as a possible source of compensation in lieu of an action for workplace injuries—including injuries to mental health (*Hudson* at para. 61). Additionally, remedial schemes like the GECA are to be interpreted so as to achieve coherence with related legislation, which would include the FPSLRA (*R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867 at paras. 50-52; see also *Lévis (City) v. Fraternité des policiers de Lévis Inc.*, 2007 SCC 14, [2007] 1 S.C.R. 591 at para. 47). I, of course, make no decision whether the GECA would actually allow the appellant to claim compensation under the circumstances.

[61] Accordingly, I would sustain the judge's decision not to exercise his discretion to allow the action to proceed.

[62] I would therefore dismiss the appeal with costs.

"Donald J. Rennie"
J.A.

"I agree.
Monica Biringer J.A."

WEBB J.A. (Dissenting Reasons)

[63] I have read my colleagues' reasons. I would, however, reach a different conclusion with respect to whether the appellant's statement of claim should be struck in its entirety.

[64] The appellant filed a statement of claim in the Federal Court. The alleged incidents are summarized in paragraph 11 of the reasons of the Federal Court Judge. In particular, the appellant alleges that:

> J. He was subjected to insults and assaults from his co-workers while he was praying in his office between 2015 and 2018.

[65] In paragraph 27 of his statement of claim, the appellant expanded upon the alleged incidents that occurred while he was praying:

> 27. Worse still, Jane, Joseph, and others, would enter Sameer's office by quickly swinging open the door, knowing he was at prayer and located just behind the door, and smash the door into Sameer's body or head. They would then feign surprise that Sameer was at prayer, but would laugh outside the door afterwards. Jane and Joseph were the individual defendants who took the most pleasure in this "pastime" and did this to Sameer on several occasions between 2015 and 2017, sometimes as often as weekly. Jane also would invite other employees to the attraction for mockery and amusement.

[66] A further incident is described in paragraph 31 of his statement of claim:

> 31. In late January 2018, Sameer returned from a lunch break to discover that someone had obviously spit on his office door while he was away.

[67] These incidents can generally be characterized as harassment complaints. The alleged causes of action are intentional infliction of mental suffering; assault and battery; and breaches of the appellant's rights under sections 2, 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 (Charter).

[68] The appellant also describes, in his statement of claim, certain interactions with management when he attempted to raise his concerns about harassment and discrimination.

[69] The motion before the Federal Court was a motion to strike the appellant's statement of claim. The test for striking a pleading is set out in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42:

> [17] … A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15;

> *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] 3 S.C.R. 83; *Odhavji Estate*; *Hunt*; *Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.

[70] The key provision in this appeal is subsection 236(1) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22 (*FPSLRA*), which bars an employee from bringing an action with respect to a particular dispute when that employee has a grievance right in relation to the same dispute. In my view, it is important to focus on the specific wording of this provision:

236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.	**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

[71] This subsection bars "any right of action that the employee may have in relation to any act or omission giving rise to the dispute". The basis for this bar is that this right of action is replaced by "[t]he right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment".

[72] The acts that give rise to the dispute in this case are the acts of certain employees of the Canadian Security Intelligence Service (CSIS). These acts form the basis of the action commenced by the appellant. The reference to "any right of action that the employee may have in relation to any act or omission giving rise to the dispute" (emphasis added) in subsection

236(1) of the *FPSLRA* limits the statutory bar to causes of action that are related to the same acts or omissions for which an employee may seek redress by way of grievance.

[73] This link between the statutory bar and the right to grieve the same matter is identified by the Ontario Court of Appeal in *Bron v. Canada (Attorney General)*, 2010 ONCA 71. In *Bron* the Ontario Court of Appeal addressed the bar in subsection 236(1) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the *PSLRA* which is now the *FPSLRA*):

> [29] Parliament can, subject to constitutional limitations that are not raised here, confer exclusive jurisdiction to determine certain disputes on a forum other than the courts. It will take clear language to achieve that result: *Pleau [Pleau (Litigation Guardian of) v. Canada (Attorney General)*, 1999 NSCA 159, 182 D.L.R. (4th) 373, leave to appeal to SCC refused, 27770 (28 September 2000)] at p. 381 [D.L.R.]. Section 236 is clear and unequivocal. Subject to the exception identified in s. 236(3), which has no application here, s. 236(1) declares that the right granted under the legislation to grieve any work related dispute is "in lieu of any right of action" that the employee may have in respect of the same matter. Section 236(2) expressly declares that the exclusivity of the grievance process identified in s. 236(1) operates whether or not the employee actually presents a grievance and "whether or not the grievance could be referred to adjudication". The result of the language used in s. 236(1) and (2) is that a court no longer has any residual discretion to entertain a claim that is otherwise grievable under the legislation on the basis of an employee's inability to access third-party adjudication: see *Van Duyvenbode v. Canada (Attorney General)*, [2007] O.J. No. 2716 (S.C.), at para. 17, aff'd without reference to this point, 2009 ONCA 11; *Hagal v. Canada (Attorney General)*, [2009] F.C.J. No. 417, [2009 FC 329] (T.D.), at para. 26, aff'd without reference to this point 2009 FCA 364.
>
> [emphasis added]

[74] The Ontario Court of Appeal noted that the bar to bringing an action in relation to a particular dispute applies when an employee has a grievance right with respect to the same matter.

[75] In *Pearce v. Canada (Staff of the Non-Public Funds, Canadian Forces)*, 2021 ONCA 65, the Ontario Court of Appeal identified the purpose of the *FPSLRA*:

> [69]The purpose of the FPSLRA is to ensure that the "Government of Canada is committed to the fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment."

[76] The purpose of having a fair and credible resolution of workplace disputes would be satisfied if an aggrieved employee has a forum in which a particular dispute may be resolved.

[77] In *Vaughan v. Canada*, 2005 SCC 11, at paragraph 22, the Supreme Court of Canada stated:

> The task of the court is still to determine whether, looking at the legislative scheme as a whole, Parliament intended workplace disputes to be decided by the courts or under the grievance procedure established by the PSSRA [*Public Service Staff Relations Act*, R.S.C. 1985, c. P-35, which was replaced by the *PSLRA* and later the *FPSLRA*].

[78] Since the Supreme Court only identified two possibilities — a court procedure or a grievance procedure — if a grievance procedure is not available then it would fall to the Courts to resolve the dispute. This leads to the question of whether redress by way of grievance is available to the appellant for the same matter that is the subject of the statement of claim.

[79] Subsection 208(1) of the *FPSLRA* provides a general right of grievance:

208 (1) Subject to subsections (2) to (7), an employee is entitled to	**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter

present an individual grievance if he or she feels aggrieved	un grief individuel lorsqu'il s'estime lésé :
(*a*) by the interpretation or application, in respect of the employee, of	*a*) par l'interprétation ou l'application à son égard :
(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or	(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) a provision of a collective agreement or an arbitral award; or	(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;
(*b*) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	*b*) par suite de tout fait portant atteinte à ses conditions d'emploi.

[80] Subsection 208(5) provides that an employee is precluded from presenting a grievance if the employee "avails himself or herself of a complaint procedure established by a policy of the employer" and the applicable policy precludes presenting a grievance:

(5) An employee who, in respect of any matter, avails himself or herself of a complaint procedure established by a policy of the employer may not present an individual grievance in respect of that matter if the policy expressly provides that an employee who avails himself or herself of the complaint procedure is precluded from presenting an individual grievance under this Act.	**(5)** Le fonctionnaire qui choisit, pour une question donnée, de se prévaloir de la procédure de plainte instituée par une ligne directrice de l'employeur ne peut présenter de grief individuel à l'égard de cette question sous le régime de la présente loi si la ligne directrice prévoit expressément cette impossibilité.

[81] Since this provision is conditional on an employee availing himself or herself of a separate complaint procedure, rather than being conditional on such a separate complaint procedure being available, it could raise the question of whether an employee would have the option to choose whether to follow the complaint procedure or present a grievance.

[82] In this matter, the appellant did not avail himself of "CSIS Procedures: Resolution of Harassment Complaints" (the Harassment Policy). Neither the Federal Court nor the respondent have suggested that since the appellant did not avail himself of the Harassment Policy he would have been able to present a grievance with respect to his complaint of harassment. If he would have attempted to present a grievance with respect to his complaint of harassment, it would appear that article 1.2.2 e) of the Human Resources Policies and Procedures HUM-502 Grievance Resolution (Grievance Policy) and article 5.2 of the Harassment Policy would have been applied and his complaint would have proceeded under the Harassment Policy:

> **Grievance Policy**
>
> 1.2.2 This policy is not applicable in cases where alternative recourse, through the following policies and procedures, is available:
>
> …
>
> e) Resolution of complaints of harassment - refer to "CSIS Procedures – Resolution of Harassment Complaints"
>
> **Harassment Policy**
>
> 5.2 Should an employee file a grievance in which allegations of harassment are raised, the file is first addressed as a harassment complaint. A grievance and a

> harassment complaint cannot run concurrently for the same situation. If a complaint on the same issue is or has been dealt with through the grievance process, the formal complaint of harassment will not proceed any further and the file will be closed.

[83] Under the Harassment Policy, if a complaint is found to be admissible (article 5.10), an investigator is appointed by the Assistant Director, Human Resources (ADH) (article 5.12). The Investigation Process is set out in articles 5.15 to 5.19:

> 5.15 The ADH must provide the investigator with the Terms of Reference which outline how to proceed with the investigation.
>
> 5.16 A complaint should be investigated and completed within six months. Should there be a requirement to go beyond the six month period, the complainant and respondent must be advised as to the reasons why an extension is required.
>
> 5.17 When the investigation is complete, the investigator must present a final report to the ADH. This report details the allegations, issues and facts provided by the parties and witnesses during the course of the interviews, as well as an analysis and conclusion on whether the allegations of harassment were founded or unfounded.
>
> 5.18 The ADH must review the final report provided by the investigator and make the decision to accept or not to accept the investigator's conclusion(s). The ADH decision and the findings must be provided to the complainant and the respondent. Where corrective or disciplinary measures may be required, the respondent will be given ten working days to provide comments before a decision is made on the appropriate disciplinary measure. The employee's DG [Director General], or where applicable the AD [Assistant Director] or DD [Deputy Director] will receive a copy of the final report and determine the measures in consultation with LR [Labour Relations]. Complainants must be notified of any disciplinary measure to be imposed.
>
> 5.19 The investigator's conclusion(s) cannot be subject to a grievance.
>
> [emphasis added]

[84] Under the Harassment Policy, the investigator's conclusion cannot be the subject of a grievance (article 5.19). This conclusion is the finding that the allegations of harassment were either founded or unfounded (article 5.17). Therefore, there is no right to grieve an investigator's finding that an allegation of harassment is unfounded.

[85] The Federal Court found that the appellant would have some grievance rights:

> [57] In addition, as the AGC notes, it is only the investigator's conclusion(s) under the Harassment Policy that may not be subject to a grievance, by virtue of the article 5.19 of the Harassment Policy quoted above. AGC submits and I find that under the Harassment Policy it is up to CSIS management to accept or reject the investigator's conclusions. It is also up to management to determine what if any remedies to impose.
>
> [58] Therefore, the AGC asserted and I agree that a CSIS employee such as the Plaintiff may grieve (1) the manner in which the investigation was conducted (as the Court found in *Shoan v Canada (Attorney General)*, 2016 FC 1003 per Justice Zinn), (2) management's decision to accept or reject the investigator's report, and (3) management's decision in relation to remedy. This list is not intended to be exhaustive; it deals only with matters arising in the present litigation. In my respectful view, these findings concerning the scope and range of grievable matters in relation to the Harassment Policy answer the Plaintiff's objections to the Defendants' motion to strike.

[86] What is missing from this list of matters that may be grieved is the right to grieve whether the alleged conduct of the employees constitutes harassment. The appellant's dispute is in relation to this conduct and whether this conduct is harassment that could support the causes of action raised in his statement of claim.

[87] The matters that may be grieved, as identified above by the Federal Court, are limited by the ban on grieving the investigator's conclusion as set out in article 5.19 of the Harassment

Policy. A grievance concerning the manner in which the investigation was conducted would do little to address the dispute related to the conduct of the CSIS employees without being able to challenge the investigator's conclusion.

[88] Assume the investigator's conclusion is that the allegations were unfounded. Assume an employee successfully grieves the manner in which the investigation was conducted. Since the investigator's conclusion cannot be the subject of a grievance, would the conclusion (that the allegations were unfounded) remain in place? If a grievance related to the manner in which the investigation was conducted could result in the investigator's conclusion being set aside, this would mean that an employee would be able to do indirectly what that employee could not do directly. It is not plain and obvious that this right to grieve the manner in which the investigation was conducted would be a substantive grievance right.

[89] Likewise, any grievance arising as a result of management's acceptance of an investigator's report that concludes that the allegations are unfounded would presumably not include any right to challenge the investigator's conclusion.

[90] Furthermore, the list of matters that could be the subject of a grievance (as identified in paragraph 58 of the reasons of the Federal Court) are all matters that arise as a result of the actions of someone other than the employees whose acts are the subject of the statement of claim. They are not the same matters that are the basis for the statement of claim. The acts that are grievable are the acts of the investigator (the manner in which the investigation was conducted) or management (management's decision to accept or reject the investigator's report

or management's decision in relation to a remedy). The acts that give rise to the dispute that resulted in the statement of claim being filed are not the acts of the investigator or management. They are the acts of the appellant's fellow employees of CSIS.

[91] There is some support in the decision of the Quebec Court of Appeal in *Pontbriand v. Administration du régime de soins de santé de la fonction publique fédérale*, 2011 QCCA 157 for finding that if a particular procedure excludes a right to grieve, the bar in subsection 236 does not apply. The issue in that case was whether a federal civil servant could commence a Court proceeding against the Federal Public Service Health Care Plan Administration Authority for refusing reimbursement of certain medial expenses that the employee had claimed. The Québec Court of Appeal found that the dispute did not involve a decision of the employer and, therefore, section 236 of the *PSLRA* did not apply. The Court also noted, however, that the directive governing the PSHCP excluded the grievance procedure and, therefore, that subsection 208(5) would also have resulted in section 236 not applying:

> [25] As argued by the intervener, the essence of the dispute here is the refusal of the PSHCP Administration to reimburse medical expenses; in short, it is a matter related to the administration of the Public Service Health Care Plan. No employer decision is involved. Moreover, the directive governing the PSHCP excludes the grievance procedure under subsection 208(5) *PSHCP*. It follows that section 236 *PSLRA*, which provides that the right of an employee to seek redress by way of grievance is in lieu of any right of action in relation to his or her conditions of employment, does not apply…
>
> [The Québec Court of Appeal added emphasis to "conditions of employment" and I added the other emphasis]

[92] The issue in this appeal is not whether the appellant would be successful in his claim. Rather, the issue is whether "it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action" (*R. v. Imperial Tobacco Canada Ltd.* referred to in paragraph 7 above). Absent a clear right to grieve whether the alleged conduct of the employees constitutes harassment, in my view, it is not plain and obvious that subsection 236(1) of the *FPSLRA* would bar the appellant's claims based on the causes of action identified in his statement of claim that arise from the same conduct of the appellant's fellow employees.

[93] As a result, I would allow the appeal and I would not strike the entire statement of claim.

[94] The remedy the appellant seeks is setting aside the Federal Court Judgment and dismissing the Respondents' motion brought under Rule 221 of the *Federal Courts Rules,* SOR/98-106.

[95] The Federal Court Judge, in paragraph 21 of his reasons, noted that, if he had not struck the entire statement of claim, he would nonetheless have struck paragraphs 33 and 34 thereof. These paragraphs related to an alleged breach of the *Access to Information Act,* R.S.C. 1985, c. A-1. The appellant has not provided any submissions that address this finding by the Federal Court Judge. Therefore, the finding that paragraphs 33 and 34 of the statement of claim are struck from the statement of claim would remain in place.

"Wyman W. Webb"

J.A.

Annex

Individual Grievances

Presentation

Right of employee

208(1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved

(*a*) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

(ii) a provision of a collective agreement or an arbitral award; or

(*b*) as a result of any occurrence or matter affecting his or her terms and conditions of employment.

Limitation

(2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.

Limitation

(3) Despite subsection (2), an employee may not present an individual grievance in respect of the

Griefs individuels

Présentation

Droit du fonctionnaire

208 (1) Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :

a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,

(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;

b) par suite de tout fait portant atteinte à ses conditions d'emploi.

Réserve

(2) Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la *Loi canadienne sur les droits de la personne*.

Réserve

(3) Par dérogation au paragraphe (2), le fonctionnaire ne peut présenter de grief individuel

right to equal pay for work of equal value.

relativement au droit à la parité salariale pour l’exécution de fonctions équivalentes.

Limitation

Réserve

(4) An employee may not present an individual grievance relating to the interpretation or application, in respect of the employee, of a provision of a collective agreement or an arbitral award unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit to which the collective agreement or arbitral award applies.

(4) Le fonctionnaire ne peut présenter de grief individuel portant sur l’interprétation ou l’application à son égard de toute disposition d’une convention collective ou d’une décision arbitrale qu’à condition d’avoir obtenu l’approbation de l’agent négociateur de l’unité de négociation à laquelle s’applique la convention collective ou la décision arbitrale et d’être représenté par cet agent.

Limitation

Réserve

(5) An employee who, in respect of any matter, avails himself or herself of a complaint procedure established by a policy of the employer may not present an individual grievance in respect of that matter if the policy expressly provides that an employee who avails himself or herself of the complaint procedure is precluded from presenting an individual grievance under this Act.

(5) Le fonctionnaire qui choisit, pour une question donnée, de se prévaloir de la procédure de plainte instituée par une ligne directrice de l’employeur ne peut présenter de grief individuel à l’égard de cette question sous le régime de la présente loi si la ligne directrice prévoit expressément cette impossibilité.

Limitation

Réserve

(6) An employee may not present an individual grievance relating to any action taken under any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

(6) Le fonctionnaire ne peut présenter de grief individuel portant sur une mesure prise en vertu d’une instruction, d’une directive ou d’un règlement établis par le gouvernement du Canada, ou au nom de celui-ci, dans l’intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.

Order to be conclusive proof

(7) For the purposes of subsection (6), an order made by the Governor in Council is conclusive proof of the matters stated in the order in relation to the giving or making of an instruction, a direction or a regulation by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

Force probante absolue du décret

(7) Pour l'application du paragraphe (6), tout décret du gouverneur en conseil constitue une preuve concluante de ce qui y est énoncé au sujet des instructions, directives ou règlements établis par le gouvernement du Canada, ou au nom de celui-ci, dans l'intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.

No Right of Action

Absence de droit d'action

Disputes relating to employment

236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.

Différend lié à l'emploi

236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

Application

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.

Application

(2) Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

Exception

(3) Subsection (1) does not apply in respect of an employee of a separate agency that has not been designated under subsection 209(3) if the dispute relates to his or her termination of employment for any reason that does not relate to a breach of discipline or misconduct.

Exception

(3) Le paragraphe (1) ne s'applique pas au fonctionnaire d'un organisme distinct qui n'a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu'un

manquement à la discipline ou une inconduite.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-179-22
STYLE OF CAUSE:	SAMEER EBADI v. HIS MAJESTY THE KING ET AL.
PLACE OF HEARING:	TORONTO, ONTARIO
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REASONS FOR JUDGMENT BY:	RENNIE J.A.
CONCURRED IN BY:	BIRINGER J.A.
DISSENTING REASONS BY:	WEBB J.A.
DATED:	MARCH 6, 2024

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