Federal Court  Cour fédérale

Date: 20250520

Docket: T-3593-24

Citation: 2025 FC 909

Ottawa, Ontario, May 20, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JESSY NAGLE

Plaintiff
(Respondent on Motion)

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendant
(Moving Party)

JUDGMENT AND REASONS

I. Overview

[1] This decision addresses a motion brought by the Defendant, named in this action as the Attorney General of Canada [AGC], to strike the Amended Statement of Claim [the Claim] in the underlying action [the Action] wherein the Plaintiff, a veteran of the Canadian Armed Forces, alleges that Veterans Affairs Canada [VAC] wrongfully cancelled his rehabilitation plan (and

therefore entitlement to income replacement benefits) under the Rehabilitation Services and Vocational Assistance Program [the Rehabilitation Program] and subsequently denied his appeals, resulting in financial loss, personal hardship, emotional distress, and psychological distress.

[2] The Claim asserts the following grounds for the Action against the Defendant: (a) negligence; (b) breach of procedural fairness; (c) unreasonable decision-making; (d) violation of VAC policies; and (e) infringement of the Plaintiff's rights under sections 2(b) and 15 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], regarding freedom of expression and equality rights, respectively.

[3] The Defendant moves to strike the Claim in its entirety under Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 [Rules], without leave to amend, arguing that the Claim discloses no reasonable cause of action. In the alternative, if the Court does not strike the Claim in its entirety, the Defendant seeks an amendment to the style of cause to name the Defendant as His Majesty the King in Right of Canada (rather than the AGC), and an extension of time to file its Statement of Defence [Defence].

[4] As explained in further detail below, this motion is granted in part and the Claim is struck, without leave to amend, in so far as it asserts causes of action based on breach of procedural fairness, unreasonable decision-making, violation of VAC policies, and infringement of *Charter* rights. However, the Claim is not struck insofar as it asserts a cause of action in

negligence. As the Action will therefore proceed, the Defendant is granted the requested amendment to the style of cause and extension of time to file its Defence.

II. **Background**

[5] The Rehabilitation Program is administered by VAC under the authority of section 18 of the *Veterans Well-being Act*, SC 2005, c 21 [VWA], pursuant to which the Minister of Veterans Affairs [the Minister] may upon application provide rehabilitation services (ss 8(1)) and pay an income replacement benefit to a qualified veteran who has a physical or mental health problem resulting primarily from service in the Canadian Forces that is creating a barrier to reestablishment in civilian life (ss 18(1)). A veteran who is entitled to an income replacement benefit may be required to participate in the development and implementation of a rehabilitation plan (ss 18(2)).

[6] Under section 17 of the VWA, the Minster may cancel a rehabilitation or vocational assistance plan for any of the reasons listed in paragraphs 14(1)(a)–(c) of the *Veterans Well-being Regulations*, SOR/2006-50 [VWR] made under the VWA. These reasons include the person failing to participate to the extent required to meet the goals of the plan or failing to comply with a request for information or documents.

[7] As of April 21, 2017, the Plaintiff was approved for a plan under the Rehabilitation Program for rotator cuff syndrome in his right shoulder. Following subsequent assessments, the Plaintiff's plan related only to vocational rehabilitation services, which included academic

upgrading and pursuit of a diploma in Civil Engineering Technology [CET] at New Brunswick Community College [NBCC].

[8] Read generously as they must be for purposes of a motion under Rule 221(1)(a) (*McMillan v Canada*, 2024 FCA 199 [*McMillan*] at para 76), the factual allegations in the Claim include the following. The Plaintiff commenced the CET program at NBCC on September 6, 2022, and on July 28, 2023, he was given instructions to demonstrate his continued participation in the CET program, with which he complied. However, on November 28, 2023, the Plaintiff became aware of correspondence from VAC, first suspending and then cancelling his plan under the Rehabilitation Program. Following numerous unsuccessful attempts to reinstate his plan by contacting relevant managers with VAC, the Plaintiff initiated an administrative appeal to the National First Level Appeals Unit [N1LA] on November 30, 2023. That appeal was denied on February 2, 2024 [the N1LA Decision].

[9] Meanwhile, the Plaintiff's tuition fees were overdue, and NBCC withdrew the Plaintiff from the CET program. The Plaintiff appealed the N1LA Decision to the National Second Level Appeals Unit [N2LA], and that appeal was again denied [the N2LA Decision]. The Plaintiff then reapplied to the Rehabilitation Program on April 12, 2024, and was approved on June 5, 2024. The Plaintiff also applied for judicial review of the N2LA Decision, which resulted in a Judgment by Justice Michael Battista issued on November 19, 2024, in Court File No. T-1096-24, on motion of the Respondent, quashing the N2LA Decision and remitting it back to the N2LA for redetermination by a different decision-maker [the Battista Judgment].

[10] The Plaintiff also refers in the Claim to negative interactions between the Plaintiff and relevant managers at VAC and circumstances that the Plaintiff considers to suggest that VAC's cancellation of his plan under the Rehabilitation Program was due to the Plaintiff's beliefs and opinions in connection with the COVID-19 pandemic.

[11] As previously noted, the Claim asserts that the actions of VAC, the N1LA, and the N2LA represent: (a) negligence; (b) breach of procedural fairness; (c) unreasonable decision-making; (d) violation of VAC policies; and (e) infringement of the Plaintiff's rights under sections 2(b) and 15 of the *Charter*, regarding freedom of expression and equality rights, respectively. The Plaintiff alleges that he suffered financial loss, personal hardship, emotional distress, and psychological distress and seeks various forms of relief from the Defendant, including declaratory relief and damages.

[12] The Plaintiff filed the Action on December 20, 2024, and the Claim (amending his original Statement of Claim) on January 31, 2025. Pursuant to a Notice of Motion dated February 26, 2025, the Defendant subsequently filed its motion to strike the Claim in its entirety without leave to amend, for disclosing no reasonable cause of action (Rule 221(1)(a)), for being scandalous, frivolous, or vexatious (Rule 221(1)(c)), and for being an abuse of process of the Court (Rule 221(1)(f)). The Defendant also sought, in the alternative, a stay of proceedings pending the redetermination of the N2LA Decision. As a procedural matter, if the Court declined to strike the Claim in its entirety, the Defendant sought an extension of time from the disposition of this motion to file its Defence.

[13] However, in its written representations dated May 1, 2025, the Defendant advised that, since the filing of its Notice of Motion, the N2LA had (by letter to the Plaintiff dated April 10, 2025) made its redetermination following the Battista Judgment quashing the N2LA Decision. This redetermination reinstated the Plaintiff's eligibility for the Rehabilitation Program (and therefore income replacement benefits) effective November 2023 [the Reinstatement Decision].

[14] As a result of the receipt of the Reinstatement Decision, the Defendant adjusted its position in this motion, such that it now seeks to strike the Claim only on the basis that the Claim discloses no reasonable cause of action under Rule 221(1)(a). The Defendant also no longer seeks a stay of proceedings as an alternative remedy. As an additional procedural matter, the Defendant seeks an amendment to the style of cause to name His Majesty the King in Right of Canada (instead of the AGC) as the Defendant.

[15] The Court heard oral submissions from the parties on this motion on May 12, 2025.

III. **Issues**

[16] Based on the parties' written and oral representations, this matter raises the following issues for the Court's determination:

A. What is the appropriate record for the Court to take into account in adjudicating this motion?

B. Should the claim for breach of procedural fairness and unreasonable decision-making be struck, with or without leave to amend?

C. Should the claim for violation of VAC policies be struck, with or without leave to amend?

D. Should the claim for negligence be struck, with or without leave to amend?

E. Should the claim for breach of section 2(b) of the *Charter* be struck, with or without leave to amend?

F. Should the claim for breach of section 15 of the *Charter* be struck, with or without leave to amend?

G. If the Court does not strike the Claim, should the Court order amendment of the style of cause to change the name of the Defendant and grant the Defendant an extension of time to file a Defence?

[17] In identifying the above list of issues, most of which focus upon the individual causes of action asserted in the Claim, I am conscious that the list does not include the tort of misfeasance in public office. I raise this point, because the Plaintiff's written representations, served and filed the week before the hearing of this motion, raised for the first time the allegation that the Defendant has liability under this tort. However, as the Defendant argued at the hearing, the Claim itself does not assert liability under the tort of misfeasance in public office. As such, the possible application of this tort to the facts pleaded by the Plaintiff is not the subject of the Defendant's motion and will not be addressed in these Reasons.

IV. **Law**

[18] Pursuant to Rule 221, on motion the Court may order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the grounds enumerated under Rule 221(1)(a)–(f). The test applicable on a motion to strike under Rule 221(1)(a) is whether it is plain and obvious, assuming the facts pleaded are true, that the claim has no reasonable prospect of success (*McMillan* at para 74).

[19] To disclose a reasonable cause of action, a claim must: (a) allege facts that are capable of giving rise to a cause of action; (b) disclose the nature of the action which is said to be founded on those facts; and (c) indicate the relief sought, which must be of a type that the action could produce and that the Court has jurisdiction to grant (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5).

[20] Pursuant to Rules 174 and 181, pleadings must include all materials facts and sufficient particulars considering the causes of action asserted and the damages sought. A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. A pleading must tell the defendant who, when, where, how, and what gave rise to its liability (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, leave to appeal to SCC refused, 36889 (23 June 2016) [*Mancuso*] at paras 16–20; *McMillan* at paras 63, 66–67).

[21] Pleadings should be read generously such that inadequacies in the claim that are merely the result of drafting deficiencies should be accommodated (*McMillan* at para 76). However,

bald allegations of fact or conclusory statements of law are not sufficient to represent a pleading of material facts (*Mancuso* at paras 17–18).

[22] The rules of pleadings continue to apply in the context of *Charter* claims (*Mancuso* at para 21).

[23] Rule 221(1) contemplates the possibility that the Court, if striking a pleading in whole or in part, may grant leave to amend the pleading. Such leave should only be denied in the clearest of cases, including cases where it is plain and obvious that no tenable cause of action is possible on the facts as alleged and there is no reason to suppose that the party could improve his or her case by an amendment (*McMillan* at para 107; *Turnbull v Canada*, 2019 FC 224 at paras 41-42).

V. **Analysis**

A. *What is the appropriate record for the Court to take into account in adjudicating this motion?*

[24] In support of its motion, the Defendant filed an affidavit affirmed on April 29, 2025, by Ms. Annette Hartlen [the Hartlen Affidavit], a legal assistant employed at the Atlantic Regional Office of the Department of Justice. The Hartlen Affidavit attaches copies of: (a) the Plaintiff's original Statement of Claim; (b) his Amended Statement of Claim; (c) the Battista Judgment; and (d) the Reinstatement Decision.

[25] In response to the Defendant's motion, the Plaintiff has sworn and filed an affidavit dated April 7, 2025, which sets out events leading to and following the commencement of the Action

[the Plaintiff's Affidavit]. The Plaintiff's responding motion record also includes a number of documentary exhibits that are commissioned but are not referenced in the Plaintiff's Affidavit.

[26] Rule 221(2) provides that no evidence shall be heard on a motion to strike under Rule 221(1)(a), asserting that a claim discloses no reasonable cause of action, except where the Court's jurisdiction is contested (*McMillan* at para 79). Rather, a Rule 221(1)(a) motion must be decided based solely on the pleadings.

[27] As previously noted, when the Defendant originally filed its motion and filed the Hartlen Affidavit, its Notice of Motion sought to strike the Claim under other paragraphs of Rule 221(1), asserting that the Claim is scandalous, frivolous, or vexatious (Rule 221(1)(c)) and represents an abuse of process of the Court (Rule 221(1)(f)), and in the alternative sought a stay of the Action under subsection 50(1) of the *Federal Courts Act*, RSC 1985, c F-7. Evidence may be admitted in a motion under any of these provisions.

[28] However, as the Defendant is now relying on only Rule 221(1)(a) and as the Defendant's arguments under Rule 221(1)(a) do not contest the jurisdiction of the Court over the Claim, the Court will not take the Hartlen Affidavit or the Plaintiff's Affidavit into account in adjudicating whether the Claim discloses a reasonable cause of action. The Defendant acknowledges that, if the Court is striking any of the causes of action in the Claim and, in connection therewith, is determining whether to grant leave to amend the Claim as permitted by Rule 221(1), the Court can consider evidence including the Plaintiff's Affidavit in making that determination (*Dugas v Canada (Attorney General)*, 2025 FC 842 [*Dugas*] at para 111).

B. *Should the claim for breach of procedural fairness and unreasonable decision-making be struck, with or without leave to amend?*

[29] The Claim asserts that the VAC decision to cancel his benefits and the subsequent negative appeal decisions by the N1LA and the N2LA were unreasonable and were made in breach of applicable principles of procedural fairness and natural justice. The Defendant argues that the Claim indicates that the Plaintiff is improperly seeking to obtain damages in a civil action based on grounds that would support an application for judicial review. The Defendant submits that the Plaintiff is conflating administrative law principles with civil causes of action and that this aspect of the Plaintiff's pleading discloses no reasonable cause of action.

[30] In response, the Plaintiff refers the Court to authorities including *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 [*TeleZone*], for the principle that the availability of judicial review does not oust the Court's jurisdiction to award damages for tortious activity or *Charter* violations arising from administrative conduct. The Defendant does not dispute this principle but submits that *TeleZone* does not support a conclusion that administrative conduct that is the subject of judicial review, as unreasonable or procedurally unfair, is actionable based on those grounds of review.

[31] I agree with the Defendant's submissions. This distinction between administrative law principles and civil causes of action has been the subject of recent jurisprudence that supports the Defendant's position.

[32] In *Paradis Honey Ltd v Canada*, 2015 FCA 89, leave to appeal to SCC refused, 36471 (29 October 2015) [*Paradis Honey*], Justice Stratas provided *obiter* commentary on the viability of monetary relief based on public law principles (at paras 112, 116–146). In particular, Justice Stratas wrote the following (at paras 130–32; 138–39, 146):

> [130] This anomaly should now end. The law of liability for public authorities should be governed by principles on the public law side of the divide, not the private law side. A number now seem to agree: see, e.g., United Kingdom Law Commission, *Consultation Paper No. 187, Administrative Redress: Public Bodies and the Citizen* (London: The Law Commission, 2010); Peter Cane, "Remedies Available in Judicial Review Proceedings" in D. Feldman, ed. *English Public Law* (Oxford: Oxford University Press, 2004) 915 at page 949.
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> [131] This idea is not so novel. In the past, on multiple occasions, the Supreme Court has suggested public authorities could be liable when they act "without legal justification," a concept that seems to echo public law principle, not private law torts: *Conseil des Ports Nationaux v. Langelier et al.*, [1969] S.C.R. 60 at page 75, 2 D.L.R. (3d) 81; *Roman Corp. v. Hudson's Bay Oil & Gas Co.*, [1973] S.C.R. 820 at page 831, 36 D.L.R. (3d) 413. And in two cases—one more than a half century ago, the other a century ago—the Supreme Court awarded monetary relief for improper public law decision making on the basis of public law principles existing at that time. In *McGillivray v. Kimber* (1915), 52 S.C.R. 146, 26 D.L.R. 164, the Supreme Court granted monetary relief and, in so doing, did not invoke negligence principles or any other nominate cause of action in private law. And in *Roncarelli*, above, the Supreme Court (per Justice Rand, at page 142) granted monetary relief, relying not only on negligence (then article 1053 of the Civil Code of Québec) but also on "the principles of the underlying public law".
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> [132] What are the principles of the underlying public law? Today, they are found primarily in administrative law, in particular the law of judicial review. Broadly speaking, we grant relief when a public authority acts unacceptably or indefensibly in the administrative law sense and when, as a matter of discretion, a remedy should be granted. These two components—unacceptability or indefensibility in the administrative law sense and the exercise of remedial discretion—supply a useful framework for analyzing when monetary relief may be had in an action in public law against a public authority. This framework explains the outcome in cases

like *Roncarelli* and *McGillivray*, both above, as well as negligence cases like *Hill*, *Syl Apps*, *Fullowka*, all above, and others mentioned below.

…

[138] In an application for judicial review, remedies are discretionary: *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6; *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, 111 D.L.R. (4th) 1. Courts inform their remedial discretion by examining the acceptability and defensibility of the decision, the circumstances surrounding it, its effects, and the public law values that would be furthered by the remedy in the particular practical circumstances of the case: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167, at paragraphs 15–21; and see the enumeration of public law values in *Wilson v. Atomic Energy of Canada Limited*, 2015 FCA 17 at paragraph 30, citing Paul Daly, "Administrative Law: A Values-Based Approach" in Mark Elliott and Jason Varuhas, eds., *Process and Substance in Public Law Adjudication* (forthcoming, Hart: Oxford, 2015).

[139] This framework—the unacceptability or indefensibility in the administrative law sense of the public authority's conduct and the court's exercise of remedial discretion—should govern whether monetary relief in public law may be had by way of action.

…

[146] The considerations governing the discretion to award remedies in a judicial review, set out in paragraph 138 of my reasons, above, apply equally to the granting of monetary relief in public law. Among other things, one must assess the circumstances surrounding the public authority's conduct, its effects, and whether the granting of monetary relief would be consistent with public law values: see *Wilson* and Daly, both above; see also much of the discussion in the Charter damages case of *Ward*, above. Concerns about public authorities being saddled with indeterminate liability and being left free, not chilled, from exercising their legislative mandates are well-supported by some of these public law values. In appropriate cases, those concerns must form part of the exercise of remedial discretion.

[33] This *obiter* in *Paradis Honey* could be read to support the Plaintiff's position, that where loss is alleged to have resulted from an administrative decision, damages can be claimed based on the administrative decision having been procedurally unfair or unreasonable, rather than based on a private law or *Charter* claim. However, the Supreme Court of Canada [SCC] rejected this portion of *Paradis Honey* in *Nelson (City) v Marchi*, 2021 SCC 41 [*Nelson*] at paragraphs 40–41:

> [40] Although there is consensus "that the law of negligence must account for the unique role of government agencies", there is disagreement on how this should be done (*Imperial Tobacco*, at para. 76). Some even argue that private law principles of negligence are wholly incompatible with the role and nature of public authorities. Echoing the *obiter* in *Paradis Honey Ltd. v. Canada (Attorney General)*, 2015 FCA 89, [2016] 1 F.C.R. 446, at paras. 130 and 139, for example, the City of Abbotsford intervened to propose that only public law principles should govern public authority liability. Instead of examining how core policy immunity operates within negligence law, it suggests that courts should focus on indefensibility in the administrative law sense and exercise remedial discretion where appropriate to grant monetary relief.
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> [41] Such an approach has no basis in this Court's jurisprudence. It also runs counter to Crown proceedings legislation in Canada, which subjects the Crown to liability as if it were a private person. This Court's approach has been to accept that, "[a]s a general rule, the traditional tort law duty of care will apply to a government agency in the same way that it will apply to an individual" (*Just*, at p. 1244). However, to resolve the tension arising from the application of private law negligence principles to public authorities, the Court has adopted the principle from *Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.), that certain policy decisions should be shielded from liability for negligence, as long as they are not irrational or made in bad faith. This approach accounts for the unique nature of public authority defendants and is firmly grounded in both the legislation and this Court's jurisprudence dating back to *Barratt v. Corporation of North Vancouver*, [1980] 2 S.C.R. 418, and *Kamloops (City of) v. Nielsen*, [1984] 2 S.C.R. 2.

[34] In the recent decision of *Turmero v Air Canada*, 2025 FC 673 [*Turmero*], Associate Judge John Cotter [AJ Cotter] rejected the plaintiff's claim against the federal Crown for public law damages resulting from her and her children's visas being cancelled (at paras 1–3). AJ Cotter rejected the plaintiff's reliance on *Paradis Honey*, finding the notion of public damages has been rejected by the SCC in *Nelson* (at paras 113–117). The plaintiff in *Turmero* relied on the Federal Court's decision in *Ronsco Inc v Canada*, 2022 FC 1029 [*Ronsco*], where the Court found that *Paradis Honey* recognized the possibility of a private law claim, alleging abusive administrative action warranting monetary relief based on public law principles, and therefore declined to strike this portion of the statement of claim (at paras 70–73). However, AJ Cotter declined to follow *Ronsco* because the Court in that case had not considered *Nelson* when declining to strike the claim (*Turmero* at para 115).

[35] *Turmero* also noted (at para 116) that Justice Sébastien Grammond observed in *Telus Communications Inc v Vidéotron Ltée*, 2021 FC 1127 at paragraph 84, that *Nelson* had recently disapproved the novel remedy of public law damages.

[36] Of course, none of this is to say that facts that may give rise to a successful application for judicial review cannot also potentially support a civil claim, for instance through the tort of negligence. However, insofar as the Claim asserts that the alleged unreasonableness or want of procedural fairness of the impugned administrative conduct is actionable *per se*, I am guided by the above jurisprudence and find that the Claim does not disclose a reasonable cause of action and should be struck. As no amendment of the pleading could cure this defect, the Court will not grant leave to amend this aspect of the Claim.

C. *Should the claim for violation of VAC policies be struck, with or without leave to amend?*

[37] The Claim pleads that the legal basis for the Action includes VAC's actions and decisions representing breaches of its statutory and policy obligations. The Claim does not identify any particular statutory obligations that are the subject of this allegation. In relation to policy obligations, the Claim asserts that VAC breached section 97(d) of the Rehabilitation Services and Vocational Assistance Plan and section 180(a) of the Income Replacement Benefit policy, by prematurely cancelling the Plaintiff's benefits without providing adequate opportunity for resolution.

[38] The Defendant argues that these allegations suffer from the same flaw as the Plaintiff's effort to assert a cause of action based on unreasonable or procedurally unfair decision-making, i.e., that the Plaintiff is attempting to claim damages in a civil action based on administrative law principles.

[39] I agree with the Defendant's position. As with the Court's above analysis of the Plaintiff's effort to assert a cause of action based on administrative law principles, this is not to say that an administrative decision-maker's failure to abide by a statutory obligation or applicable policy cannot potentially be relevant to a civil claim, for instance by informing the identification of the relevant standard of care in a circumstance where a duty of care exists under the tort of negligence. However, breach of a statutory obligation does not give rise to an independent cause of action in tort (*The Queen v Saskatchewan Wheat Pool*, [1983] 1 SCR 205

at 227, 1983 CanLII 21 (SCC)). Clearly, if breach of a statutory obligation is not a tort, then neither is breach of an applicable administrative policy.

[40] Insofar as the Claim asserts that the alleged breach of statutory obligations or administrative policies is actionable *per se*, the Claim does not disclose a reasonable cause of action and should be struck. As no amendment of the pleading could cure this defect, the Court will not grant leave to amend this aspect of the Claim.

D. *Should the claim for negligence be struck, with or without leave to amend?*

[41] Turning to the tort of negligence, it is trite law that in order to establish a cause of action in negligence, a claim must plead the existence of: (a) a duty of care between the plaintiff and the defendant; (b) a breach of the standard of care owed to the plaintiff by the defendant; (c) causation; and (d) damages.

[42] The Defendant notes that the Claim is silent with respect to a duty of care. However, the Defendant concedes that recent jurisprudence suggests that the relationship between VAC and Canada's veterans establishes sufficient proximity that harm to veterans arising from the misadministration of the services designed for them is reasonably foreseeable, such that a duty of care is not plainly and obviously nonexistent. For instance, in *Knisley v Canada (Attorney General)*, 2025 ONCA 185 [*Knisley*], the Ontario Court of Appeal recognized this relationship and proximity to be such that harm to veterans was reasonably foreseeable as a result of failure by VAC to fulfil their obligations to properly administer the benefits system that Canada has created for veterans (at para 47).

[43] Given this concession, the Defendant's submissions focus upon the other elements of the tort of negligence, arguing that the Plaintiff has failed to plead sufficient material facts to establish a breach of any standard of care owed to him or to establish causation and damages.

[44] In relation to standard of care, the Defendant submits that the only allegations in the Claim that might be assumed to address the standard of care are conclusory statements of law grounded in administrative law principles that cannot form the foundation of a civil action.

[45] On this point, I disagree with the Defendant's position. While the Claim constructed by the self-represented Plaintiff does not expressly and individually address each element of the tort, the pleading must be read generously. It is clear that the facts pleaded in support of the Action include VAC instructing the Plaintiff to take steps to demonstrate proof of his ongoing participation in the CET program at NBCC; the Plaintiff taking such steps; and VAC nevertheless cancelling the Plaintiff's benefits. Against that factual backdrop, the Claim asserts neglect on the part of VAC in disregarding evidence that the Plaintiff had provided.

[46] Of course, it is not the Court's role on this motion to consider whether those allegations amount to a breach of the standard of care applicable under the duty of care of the sort recognized in *Knisley*. However, I am not convinced that the pleading itself is deficient in identifying material facts that the Plaintiff argues represent a breach of the standard of care.

[47] In relation to causation and damages, the Claim pleads that the alleged negligence caused the Plaintiff financial loss, personal loss, emotional distress, and psychological distress. The

Defendant fairly points out that, in relation to some of the categories of damages claimed (such as late fees and penalties accrued due to delayed payments, as well as vehicle loan arrears), the Claim lacks detail as to the nature of these financial losses and fails to explain how they were caused by the alleged negligence. However, other categories of damages do not suffer from these defects. For instance, the Plaintiff claims the loss of financial opportunities related to business ventures under discussion with classmates and an instructor at NBCC, which the Claim asserts were disrupted due to the withdrawal of the Plaintiff's academic funding by VAC and his resulting withdrawal from the program at NBCC. The Claim also asserts general damages for emotional distress resulting from loss of his VAC benefits.

[48] Again, the Court offers no opinion on whether the Plaintiff will be able to support these elements of the tort of negligence either in fact or in law. However, in relation to the tort of negligence, the Claim pleads sufficient material facts to tell the Defendant who, when, where, how, and what is alleged to give rise to its liability, and therefore withstands the motion to strike.

E. *Should the claim for breach of section 2(b) of the Charter be struck, with or without leave to amend?*

[49] The causes of action raised in the Claim include an allegation that VAC's actions infringed the Plaintiff's right to freedom of expression under section 2(b) of the *Charter*, in that the Plaintiff's benefits were suspended and cancelled based on his personal and political views about COVID-19.

[50] While recognizing that the freedom to express oneself openly and fully, as protected by section 2(b) of the *Charter*, is of crucial importance in a free and democratic society, the Defendant emphasizes the elements that must be proven in order to establish infringement of that section. A plaintiff must first prove that their activity was within the sphere of conduct protected by freedom of expression and must then establish that the purpose or effect of the impugned governmental action was to control attempts to convey meaning through the plaintiff's activity (*Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927 at 972, 978–79, 1989 CanLII 87 (SCC)).

[51] The Defendant argues that the Claim lacks sufficient material facts to nourish a cause of action based on infringement of the Plaintiff's freedom of expression, as it pleads neither facts regarding the expressive activity that he asserts was infringed nor facts to permit the Defendant to understand what governmental action is alleged to have infringed upon his expression.

[52] In relation to the expressive activity, the Defendant submits that the Claim contains vague references to personal and political views about COVID-19 but does not plead what these views are or that they constitute activity that is protected by freedom of expression. Similarly, the Defendant submits that the Claim does not plead what government action the Plaintiff alleges infringed upon his freedom to express his views on COVID-19.

[53] The Claim includes the following allegations that it appears may be relevant to the Plaintiff's claim for breach of his right to freedom of expression [the Freedom of Expression Allegations]:

A. the Plaintiff's commencement of the CET program followed preparation including physiotherapy sessions and assessments that were delayed due to the implementation of COVID-19 mandates;

B. during an upgrading period, the Plaintiff was presented with an ultimatum either to undergo a medical procedure or to participate in weekly medical testing as a condition to remain enrolled with NBCC, following which the Plaintiff issued a "cease-and-desist order" to NBCC and the medical requirements were rescinded;

C. the issue of mandatory medical intervention was raised in conversation with a VAC manager, following which the Plaintiff was coerced into undergoing a psychological evaluation;

D. during the judicial review, a VAC manager referred to the Plaintiff's "cease-and-desist" letter sent to NBCC. The Claim pleads that this reference suggests that the cancellation of the Plaintiff's benefits may have been influenced by his beliefs; and

E. the psychologist with whom the Plaintiff met described him as having a number of political viewpoints and beliefs related to COVID-19 that are inconsistent with mainstream beliefs (although not currently unusual) but having no diagnosable mental illness. The Claim pleads that this description by the psychologist implies that the Plaintiff's benefits were cancelled in retaliation for his beliefs.

[54] In relation to the expressive activity, I agree with the Defendant's position that the pleading is deficient. While one might infer from the Claim that the Plaintiff expressed

opposition to measures such as vaccine mandates and mandatory testing, the Defendant is entitled to a pleading that explicitly sets out the expressive activity that is said to ground the Plaintiff's claim under section 2(b) of the *Charter*.

[55] However, it is possible that this particular deficiency could be cured through an amendment to the Claim. If the above inference as to the nature of the political views referenced by the Plaintiff is correct, presumably the Claim could be amended to set out the required material facts, including the expressive activity by which the Plaintiff attempted to convey his views.

[56] Moreover, consistent with *Dugas* (at para 111), the Defendant acknowledges that the Court can look to the broader record before it, including evidence introduced by the Plaintiff, in assessing whether a deficient pleading may be cured by amendment. The Plaintiff's Affidavit refers to what he describes as a heated discussion with a VAC manager in late 2020 or early 2021 related to the topic of mandatory medical intervention, in which the Plaintiff strongly opposed that idea on personal and ethical grounds and expressed concern about what the Plaintiff viewed as overreach by government institutions during the COVID-19 pandemic. This evidence provides additional detail as to the political views referenced in the Claim and the circumstances in which those views were expressed, supporting the conclusion that the Claim is capable of amendment to cure the deficiency in material facts surrounding the Plaintiff's expressive activity.

[57] However, I agree with the Defendant's position that the pleading is also deficient in pleading what government action the Plaintiff alleges infringed upon his freedom to express his views on COVID-19. The Defendant submits that, for purposes of assessing whether a statement of claim discloses a reasonable cause of action, the principle that the facts alleged in the statement of claim are presumed to be true does not apply to allegations based on assumptions and speculations (*Operation Dismantle v The Queen*, [1985] 1 SCR 441 at 455, 1985 CanLII 74 (SCC)). The Freedom of Expression Allegations expressly describe the facts pleaded therein (related to the Plaintiff's "cease-and-desist" letter and the psychologist's description of him) as suggesting or implying that his benefits were cancelled in retaliation against his beliefs. The Claim pleads speculation that VAC cancelled the Plaintiff's benefits due to his political beliefs but no material facts supporting such an assertion.

[58] Turning to whether this deficiency in the pleading is capable of amendment, I have considered the evidence contained in the Plaintiff's Affidavit, including the documentary exhibits found in the Plaintiff's motion record (notwithstanding that they are not properly referenced in the affidavit itself). However, I agree with the Defendant's submission that nothing in this record assists the Plaintiff.

[59] The documentary exhibits include an exhibit described by the Plaintiff as "Screenshot - VAC Case Note Referencing Cease-and-Desist Letter issued 2 years prior" [VAC Case Note], in which a VAC representative appears to be recording whether there are any barriers to the Plaintiff progressing his training at NBCC. The VAC representative indicates that he spoke with the Plaintiff on November 15, 2021, and that the Plaintiff stated that NBCC had delayed the

testing requirement for COVID-19. Later in this exhibit, the VAC representative states the following in relation to a conversation with the Plaintiff:

> He disclosed that he has sent a cease-and-desist letter from his lawyer to the Dean at NBCC a few weeks ago. Mr. Nagle stated that he was advised that the policy regarding testing requirements for COVID-19 for the on-line learners will be updated but he was not advised of how this will be impacted.

[60] As the Defendant emphasizes, the COVID-19 testing requirement referenced in the VAC Case Note was that of NBCC, not VAC. I understand the Plaintiff's position to be that the fact the VAC Case Note (with its references to the COVID-19 testing requirement and the Plaintiff's cease-and-desist letter) was included in the Certified Tribunal Record [CTR], produced by the respondent in the Plaintiff's application for judicial review, indicates that the Plaintiff's views surrounding COVID-19 influenced the decision to cancel his benefits that was under review in that application. It may be that this position is the result of a misunderstanding of the role of the CTR, which represents the record that was before the administrative decision-maker, not all contents of which necessarily influenced the decision. Regardless, I find nothing in the VAC Case Note supporting a conclusion that the Claim could be amended to assert facts representing federal government action infringing upon the Plaintiff's freedom to express his views on COVID-19.

[61] The documentary exhibits in the Plaintiff's' motion record also include an exhibit described as "Psychological Evaluation Report (Jan 2021)", which appears to represent excerpts from the psychological evaluation referenced in the Claim. These excerpts are consistent with the allegations in the Claim, that the Plaintiff has a number of political viewpoints that are inconsistent with mainstream beliefs. However, the psychologist opines that the Plaintiff's

political beliefs aligned with those of many other people worldwide, who do not believe that COVID-19 exists and resist the various regulations in place to protect the public, such as facemasks and physical distancing. The psychologist further opines that the Plaintiff has no diagnosable mental illness.

[62] Again, I find nothing in this document supporting a conclusion that the Claim could be amended to assert facts representing federal government action infringing upon the Plaintiff's freedom to express his views on COVID-19.

[63] As noted in *Dugas* (at para 113), when the Court is considering whether to grant leave to amend a pleading that is impugned on a motion to strike, there is no requirement that an amendment that might cure a pleading defect be supported by evidence. However, in the case at hand, neither the evidence nor any other portion of the record before the Court on this motion, including the Applicant's submissions, suggest any factual basis for an allegation that the government has infringed the Plaintiff's freedom of expression.

[64] Insofar as the Claim asserts a breach of the Plaintiff's right to freedom of expression under section 2(b) of the *Charter*, it does not disclose a reasonable cause of action and should be struck. As I have also concluded that no amendment of the pleading can cure this defect, the Court will not grant leave to amend this aspect of the Claim.

F. *Should the claim for breach of section 15 of the Charter be struck, with or without leave to amend?*

[65] The Claim references section 15 of the *Charter* (the protection of equality rights) only briefly, asserting that, as a disabled veteran, the Plaintiff is entitled to reasonable accommodation under section 15 and that VAC failed to provide such accommodation.

[66] The Defendant submits that this aspect of the Claim represents a bald allegation, unsupported by any material facts. I agree with the Defendant's position. It is not apparent from the Claim how the factual allegations therein would support a claim for breach of section 15 of the *Charter*. Nor does the record before the Court, including the Plaintiff's submissions, suggest the possibility of any amendment that could cure this defect.

[67] Insofar as the Claim asserts a breach of the Plaintiff's equality rights under section 15 of the *Charter*, it does not disclose a reasonable cause of action and should be struck, without leave to amend.

G. *If the Court does not strike the Claim, should the Court order an amendment of the style of cause to change the name of the Defendant and grant the Defendant an extension of time to file a Defence?*

[68] The substantive result of this motion is that the Claim will be struck in part, but not in full, as the Plaintiff's allegations asserting a cause of action in negligence have survived the Defendant's motion. It is therefore necessary for the Court to address the Defendant's procedural requests.

[69] First, the Defendant asks that the Court amend the style of cause in the Action, to name His Majesty the King in Right of Canada (rather than the AGC) as the Defendant. The Plaintiff

has expressed no position on this request. This is a strictly procedural matter, and I agree with the Defendant that an action against the federal Crown (as distinct from an application for judicial review which often names the AGC as a respondent) should be styled as the Defendant suggests. My Order will therefore so provide.

[70] Second, the Defendant asks, if the Claim is not struck in its entirety, that it be afforded an extension of time, to 30 days following the date of the Court's decision in this motion, to file its Defence. In his written representations, the Plaintiff resisted this request, including arguing that the Defendant was in default of its obligation to file a defence within the time prescribed by the Rules and that the Court should therefore enter default judgment against the Defendant. However, at the hearing of this motion, the Plaintiff did not press the request for default judgment or his resistance to a 30-day extension of time for filing the Defence.

[71] Regardless, there is no merit to the request for default judgment. From a procedural perspective, the Plaintiff has not brought a motion for default judgement. Moreover, the Defendant's motion to strike has succeeded in part and has therefore narrowed the issues to be litigated in this matter and to which the Defendant must therefore plead in filing its Defence. The Court therefore has no hesitation in granting the requested extension, and my Order will so provide.

VI. **Costs**

[72] The Defendant's Notice of Motion seeks costs of this motion, although it has not made any particular submissions in relation to costs. The Plaintiff's written representations also seek costs, although again without the benefit of any substantive submissions in relation to costs.

[73] Ultimately, the award of costs is in the discretion of the Court. As each of the parties has been partially successful in this motion, my Order will award costs in the cause, meaning that the party who eventually succeeds in the main proceeding will be awarded the costs of this interlocutory motion (*Larrivée v Canada (Attorney General)*, 2023 FC 894 at para 9).

ORDER IN T-3593-24

THIS COURT'S ORDER is that:

1. The Defendant's motion to strike is granted in part, and the Claim is struck insofar as it asserts causes of action based on unreasonable or procedurally unfair administrative decision-making, breach of statutory obligations or administrative policies, or breach of section 2(b) or section 15 of the *Charter*.

2. Insofar as the Claim asserts a cause of action based on negligence, the Defendant's motion to strike the Claim is dismissed.

3. The style of cause of this action is amended to change the name of the Defendant to His Majesty the King in Right of Canada.

4. The Defendant is granted an extension of time, to the date that is 30 days following the date of this Order, to file its Defence.

5. Costs of this motion shall be in the cause.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3593-24
STYLE OF CAUSE:	JESSY NAGLE v HIS MAJESTY THE KING IN RIGHT OF CANADA
PLACE OF HEARING:	FREDERICTON, NEW BRUNSWICK
DATE OF HEARING:	MAY 12, 2025
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	MAY 20, 2025

APPEARANCES:

Jessy R. Nagle	PLAINTIFF (RESPONDENT ON MOTION) (ON THEIR OWN BEHALF
Victor Ryan	FOR THE DEFENDANT (MOVING PARTY)

SOLICITORS OF RECORD:

Attorney General of Canada Halifax, Nova Scotia	FOR THE DEFENDANT (MOVING PARTY)