IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Pleau v. Canada (Attorney General), 2008 NSSC 118

Date: 20080418
Docket: SH 110085
Registry: Halifax

Between:

Paul Pleau, Heather Pleau and Adrianna and Paul Phillip Pleau,
by their litigation guardian, Heather Pleau

Plaintiffs

and

The Attorney General Of Canada, Donald Uhrich,
Roy Halfyard, Marcel Bujold, Paul Seguin,
Janet Ball, Ed Snyder, Allan Bagnall, Ann MacDonald
and Robert Bourgeois

Defendants

Judge:	The Honourable Justice Arthur J. LeBlanc
Heard:	April 3, 2008 in Halifax, Nova Scotia
Counsel:	Blair H. Mitchell, Esq., for the Applicant Sandra MacPherson Duncan, Q.C. , for the Respondent

By the Court:

Introduction

[2] The defendants seek summary judgment pursuant to Rule 13.01. The defendants say the dispute is encompassed by a legislated dispute resolution scheme, encompassing federal legislation and policies under a collective agreement.

Summary judgment

[3] Rule 13.01 provides, in part:

> 13.01. After the close of pleadings, any party may apply to the court for judgment on the ground that:
>
> (a) there is no arguable issue to be tried with respect to the claim or any part thereof;

[4] The correct approach to an application for summary judgment was recently reviewed by Cromwell J.A., for the court, in *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General) et al.* (2007), 253 N.S.R. (2d) 144 (C.A.). Referring to

the Supreme Court of Canada decision in *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, Justice Cromwell said, at para. 8, "[s]ummary judgment is appropriate when a defendant shows that there is no genuine issue of material fact requiring a trial and a responding plaintiff fails to show that its claim is one with a real chance of success...."

Facts

[5] The plaintiff Mr. Pleau is a federal civil servant, employed by the Department of Supply and Services and its successor department, Public Works and Government Services Canada. His employment is governed by the *Public Service Staff Relations Act* and by a collective agreement, known as the "Master Agreement," between the Treasury Board of Canada and the Public Service Alliance of Canada. The collective agreement includes, by implication, a harassment policy issued by the Treasury Board. Mr. Pleau was employed in this capacity at all material times. The personal defendants were employed by the same department as Mr. Pleau, and were subject to the same legislative and collective bargaining scheme.

[6] Mr. Pleau's employment was terminated for disciplinary reasons relating to alcohol use in August 1990. He grieved the termination under s. 92 of the Act, and was conditionally reinstated in April 1991. He returned to work in May 1991, working under the supervision of Donald Uhrich. Mr. Pleau subsequently complained of harassment by Mr. Uhrich, and accused Mr. Uhrich of removing parabolic steroids from his desk. This dispute was referred to the department's security branch. An investigation established no evidence to support the allegation, and Mr. Pleau was suspended for ten days. He grieved the suspension to the Public Service Staff Relations Board, and an adjudicator concluded that in view of Mr. Uhrich's treatment of him, Mr. Pleau had some basis upon which to believe that Mr. Uhrich might have taken the steroids from his desk. The suspension was rescinded. The defendants say this very matter is raised in the statement of claim, even though it has been subject to independent adjudication.

[7] In June 1992, Mr. Pleau came under the direction of a new supervisor, Roy Halfyard. In July 1992 Mr. Pleau sent letters to the prime minister and several other government figures in which he described various irregularities in management procedures within the department, as well as making allegations of "immoral, unethical [and] illegal conduct." These are the so-called "whistle-

blower" letters. Robert Bourgeois forwarded one of the letters to Ed Snyder, with a request for an investigation. Paul Seguin, of the security branch, recommended a full internal audit on the basis of a preliminary investigation of Mr. Pleau's claims. A subsequent security investigation, by Mr. Seguin and Mike Ryan, found no evidence of criminal activity, only technical irregularities. A staff relations investigation by two private consultants, John Mackay and Maurice Canting, resulted in a recommendation by Mr. Canting that Mr. Pleau be discharged for making unfounded allegations of criminal activity. On the strength of Mr. Canting's recommendation, Robert Bourgeois recommended Mr. Pleau's discharge to the deputy minister, Nick Murder, who discharged Mr. Pleau effective December 11, 1992.

[8] Mr. Pleau took his discharge before the Public Service Staff Relations Board. The adjudicator ordered that Mr. Pleau be reinstated, finding that the dismissal letter referred to "unfounded allegations" when, in fact, the investigation had revealed irregularities. Mr. Pleau advanced allegations of harassment in the course of the grievance and adjudication process. The defendants say these are the same allegations that appear in the statement of claim, and that have therefore been subject to independent adjudication.

[9] The defendants assert that after the adjudication, Mr. Pleau continued to advance his claims of harassment on the basis of the same facts that had been dealt with in adjudication. He proceeded with the present action and neither laid a complaint with the Public Service Commission nor a claim under the *Canadian Human Rights Act.*

[10] The allegations in Mr. Pleau's statement of claim include the following:

1. Claims of defamation against the defendants Uhrich and Halfyard, arising from an investigation into allegations the plaintiff made about improprieties in the workplace;

2. Claims of abuse of office and authority, and breach of fiduciary duty, against the defendants Bujold and MacDonald, with respect to the alleged alteration of a record of a harassment complaint;

3. Claims of conspiracy against the defendants Bagnall and Bourgeois with respect to alleged attempts to halt an investigation of a private consultant, John Mackay;

4. A claim against the defendant Snyder for disregarding statutory duty and abuse of office, with respect to the conduct of an investigation into the alleged whistle-blowing;

5. A claim against the defendant Seguin for negligent or reckless exercise of authority for signing the investigation report; and

6. A claim against the defendant Ball for intentional abuse of authority with respect the alleged alteration of the investigation report.

[11] The defendants claim that Mr. Pleau was unable to articulate on discovery any specific wrongdoing on the part of several defendants.

[12] The statement of claim was previously attacked under Rule 14.25. That challenge failed. The Court of Appeal decision affirming the chambers judge's dismissal of the application to strike can be found at (1999), 181 N.S.R. (2d) 356. The record on that application, according to Cromwell J.A., was "in essence, confined to the pleadings, the legislation, the collective agreements and the Departmental Harassment Policy and some admissions. The proceedings before the adjudicator and the adjudicator's decision are not before us" (para. 4). The adjudication proceedings and decision are before the court on the present application.

Argument

[13] The defendants say the *Public Service Staff Relations Act* and the collective agreement create a comprehensive dispute resolution scheme that encompasses the disputes arising from the plaintiffs' claims, and to which the court should defer. The defendants say Mr. Pleau had access to independent adjudication of his claims, in that his claims arose in the context of events leading to a suspension and dismissal, were therefore arbitrable under s. 92(1) of the Act, and were, in fact, adjudicated before the Public Service Staff Relations Board. The defendants add that the Treasury Board harassment policy also provided access to adjudication, in that case before the Public Service Commission.

[14] The defendants submit that the harassment policy in question was discussed in a manner binding on this court in *Adams v. Cacique* (2006), 242 N.S.R. (2d) 66 (C.A.).

[15] The defendants also take the position that the dispute resolution process under the Act offers effective redress of Mr. Pleau's complaints which, they say, conclusively excludes recourse to the court in view of the decisions in *Adams* and *Vaughan v. Canada*, [2005] 1 S.C.R. 146.

[16] In any event, according to the defendants, summary judgment should be granted in favor of a number of the individual defendants, against whom the plaintiffs have advanced no allegations that would found an arguable issue to be tried.

[17] The plaintiffs take the position that the abuses alleged by Mr. Pleau are actionable in his personal capacity, not dependent upon his status as an employee. Therefore, they argue, the action does not relate to matters arising under the collective agreement and the court's jurisdiction is not ousted.

Law

[18] The law relating to disputes as to jurisdiction between superior courts and alternative adjudication schemes, such as those found in collective agreements and statutory dispute resolution processes, has been developed through several decisions of the Supreme Court of Canada, including *St. Anne Nackawic Pulp & Paper v. CPU*, [1986] 1 S.C.R. 704; *Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057 et al.*, [1990] 1 S.C.R. 1298;

Weber v. Ontario Hydro, [1995] 2 S.C.R. 929; *Regina Police Association Inc. and Shotton v. Board of Police Commissioners of Regina*, [2000] 1 S.C.R. 360; *Commission des droits de la personne et des droits de la jeunesse (Que.) v. Quebec (Attorney General) et al.* (the "Morin" case), [2004] 2 S.C.R. 185; and *Vaughan v. Canada*, [2005] 1 S.C.R. 146.

[19] Cromwell J.A., for the court, reviewed the law on jurisdiction in *Adams v. Cacique et al.* (2006), 242 N.S.R. (2d) 66 (C.A.). He said:

> [13] Since at least the mid 1980's, the Supreme Court of Canada has recognized that the courts should be cautious not to undermine "... a comprehensive statutory scheme designed to govern all aspects of the relationship of the parties in a labor relations setting.": *St. Anne* ... at 721. To avoid doing "violence" to such a scheme, the courts ought to show "judicial deference" by not routinely hearing cases that fall within it: *St. Anne* at 721. This hands-off policy applies not only where there are clear legislative provisions which expressly oust court jurisdiction. It also applies where the scheme as a whole makes it clear that the courts were intended to have "... but a small role if any to play in the determination of disputes covered by the statute.": *Gendron* ... at 1321.
>
> 14] *Weber* ... is still the leading case in this area. Its holding was recently summarized in *Morin* ... at para. 11:
>
> > (I) *Weber* holds that the model that applies in a given situation depends on the governing legislation, as applied to the dispute viewed in its factual matrix. In *Weber*, the concurrent and overlapping jurisdiction approaches were ruled out because the provisions of the *Ontario Labor Relations Act*, R.S.O. 1990, c. L.2,

> when applied to the facts of the dispute, dictated that the labor arbitrator had exclusive jurisdiction over the dispute.
>
> (ii) *Weber* does not stand for the proposition that labor arbitrators always have exclusive jurisdiction in employer-union disputes. Depending on the legislation and the nature of the dispute, other tribunals may possess overlapping jurisdiction, concurrent jurisdiction, or themselves be endowed with exclusive jurisdiction....
>
> (iii) Because the nature of the dispute and the ambit of the collective agreement will vary from case to case, it is impossible to categorize the classes of case that will fall within the exclusive jurisdiction of the arbitrator."

[20] Cromwell J.A. went on to describe the steps necessary to carry out the jurisdictional analysis:

> [15] To carry out the required analysis, the court must follow two main steps. The first is to examine the dispute resolution scheme in order to determine its intended ambit and the second is to examine the dispute to determine whether it falls within that intended ambit. At this second step, the court must look at the essential character of the dispute, determined according to its full factual context, not the legal characterization which the parties have chosen to place on it....
>
> [16] Many of the cases have dealt with whether disputes should go to court or to a labor arbitrator acting under a collective agreement. However, the Supreme Court has made it clear that the analysis from *Weber* applies much more generally. The *Weber* analysis should be used "... whether the choice of forums is between courts and a statutorily created adjudicative body or between two statutorily created bodies.": *Regina Police Association* ... at para. 39; *Vaughan* ... at para. 14.
>
> [18] The final general point is this. Deference may be due to a comprehensive dispute resolution scheme even if it does not address every conceivable complaint

> or provide access to third-party neutral adjudication. As Binnie, J., pointed out in *Vaughan*, even in the collective bargaining setting, many matters are reserved for the discretion of management and not every dispute is grievable, much less arbitrable: at para. 26.

[21] The *Adams* decision dealt with the same statutory scheme and harassment policy that is advanced by the defendants in this case as the appropriate route for resolution of the plaintiffs' claims. In discussing the *Public Service Staff Relations Act* itself, Cromwell J.A. referred to an earlier decision in this proceeding, arising out of a jurisdictional challenge based on the pleadings alone:

> [17] It is now settled that the PSSRA sets up a comprehensive workplace dispute resolution scheme to which the courts ought generally to defer: *Pleau v. Canada (Attorney General) et al.* (1999), 181 N.S.R.(2d) 356 ... leave to appeal refused [2000] S.C.C.A. No. 83; ... *Vaughn*, para. 2, paras. 33-41. Even though the PSSRA scheme, unlike *Weber*, does not contain language clear enough to oust court jurisdiction, judicial deference is nonetheless appropriate given the clear legislative intent that employment disputes should generally be resolved within the legislative dispute resolution scheme: *Pleau*, para. 33; *Vaughn*, paras. 21 and 29-41.

[22] The defendants say the comprehensive nature and intended ambit of the dispute resolution scheme in the Act and federal employment standards legislation that is implicit in the collective agreement represents an all-embracing legislative program. They say the claim, on its face, falls within the ambit of the dispute resolution process. Finally, they submit, the adjudication board had the power to

provide effective redress for the alleged wrongs because they occurred in the context of a suspension and subsequent termination. The adjudication board could apply the common law and statute law to the facts, and could deal with facts giving rise to actionable torts: see *Weber* at paras. 55-56; *Bisaillon v. Concordia University*, [2006] 1 S.C.R. 666 at paras. 42, 55.

[23] The defendants say Mr. Pleau had access to effective redress through the adjudication process. They refer to the comments of Cromwell J.A. in *Adams*:

> [32] *Vaughan* is of assistance with the question of what constitutes effective redress. First, it affirms that the availability of effective redress within the scheme is a relevant consideration in relation to whether the courts should entertain the action: para. 22. Second, what constitutes effective redress must be considered in light of the nature of the particular dispute. Not every conceivable complaint an employee can make must have a remedy: even in the collective bargaining sphere, many matters are left to the discretion of management: para. 26. Third, in assessing what redress the scheme provides, the court should look to the facts giving rise to the dispute, not the legal characterization which the party has attached to it: paras. 11, 41. Fourth, effective redress does not necessarily require access to third party neutral adjudication for all manner of disputes: para. 26. Fifth, as Steel, J.A., noted in *Harrison* (in a passage approved in *Vaughan* at para. 36), the dispute resolution mechanism does not have to provide for exactly the same remedy as would a court: what is important is that the scheme provide a solution to the problem.
>
> [33] Thus, while the capacity of the scheme to afford effective redress is a factor for consideration, whether it does must be considered in light of the facts giving rise to the particular dispute and whether the system can provide a solution to the problem. That solution need not be the same one which a court would provide and the absence of independent adjudication as the means to obtain the solution is not conclusive.

[24] With respect to the matter before the court, Cromwell J.A. said:

> [34] Underlying the appellant's position is the view that this is a case in which access to some type of dispute resolution process independent of management is necessary in order to sustain judicial deference to that process. I agree with this view. It cannot have been Parliament's intention that, even with the safeguard of judicial review, a person with the appellant's complaints could be left only with the remedy of complaining to the harassers or those higher in the management structure who are responsible for their actions. In my view, the critical question is not whether effective redress of the appellant's complaints required that some form of third party redress capable of addressing the substance of his complaints was available. The question is whether the processes available to the appellant provided for this. The focus of the case, therefore, is not whether such a process was required, but whether it was available.
>
> [63] In my view, the PSC process afforded effective redress for the appellant's complaints as advanced in his lawsuit. The factual substance of his complaints fell within the authority of the PSC. It provided a fact finding forum which was independent of the management structure whose decisions were being scrutinized. The process provided the opportunity to the appellant to adduce oral evidence and subject the opposing evidence to testing through questioning of witnesses. The PSC had extensive remedial powers. In short, the central contentions now advanced in the appellant's court action could have been, and in fact were, carefully considered and flatly rejected by the PSC process available to the appellant through his statutory workplace dispute resolution process. Had the PSC concluded in the appellant's favor, it had a broad power to require corrective action.

[25] As to the appellant’s claim that he was a “whistle-blower”, Cromwell J.A. said:

> [68] The appellant says that he falls within the whistle-blower exception outlined in *Vaughan*. In my view, the whistle-blower cases simply provide examples of situations in which a grievance process internal to management does not provide effective redress. As Binnie, J., put it in *Vaughan*, the courts are understandably reluctant to say that the whistle-blowers "... only recourse [is] to grieve in a procedure internal to the very department they blew the whistle on, with the final decision resting in the hands of the person ultimately responsible for the running of the department under attack ...": para. 20. As in my view the appellant had access to processes that were independent of management to address the substance of his complaints, the whistle-blower exception does not apply to him even if he was a whistle-blower.

[26] In light of *Adams*, the defendants say Mr. Pleau had access to an independent dispute resolution process outside his department.

[27] The plaintiffs say the geographic location of the complaints as the workplace is not conclusive, citing *Weber* for the proposition that “not everything that happens in the workplace may arise from the collective agreement....” (para. 52). They say there is no pre-emptive preclusion of the court’s jurisdiction, but that the issue must be decided in the context of the factual dispute between the parties. *Vaughan*, they say, deals with the manner in which the court should exercise its discretion to decline jurisdiction in favor of a competing forum, and the court retains a residual jurisdiction. The plaintiffs note that in *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, [2008] N.S.J. No. 92 (C.A.), the court found that the Human Rights Commission’s jurisdiction over a

dispute was preserved in the face of an explicit conferral of jurisdiction on a collective agreement-based dispute resolution system. I note that that case did not involve a conflict between a court and an alternative forum.

[28] The plaintiffs deny that Mr. Pleau had access to independent adjudication of his claims by the Public Service Commission by way of the harassment policy. They say the Commission is appointed for a fixed term, with a duty to report to the Governor-in-Council, is entitled to delegate powers to a deputy minister and is obliged to consult "separately" with representatives of employee organizations and the employer, who may have interests adverse to those of a person reporting misconduct. As such, the plaintiffs submit, the appearance of independence is more illusory than real. Further, arbitration proceedings are not presumptively open to the public, and arbitrators have limited powers (by comparison, apparently, with courts). As such, the plaintiffs say there is no "objective, independent process available ... in the circumstances of the important public interest this matter addresses."

[29] The plaintiffs further submit that, contrary to the position of the defendants, *Adams* is not binding on the facts of the present matter, apparently because the

court in *Adams* did not consider the appellant to be a whistle-blower; the "legal matrix ... was not analyzed from a whistle-blower protection perspective"; and the "actual capacity of the Public Service Commission to function 'independently' in the redress of the Plaintiff's claims was not explored."

[30] As to the defendants' claim that the dispute resolution process offered effective redress for the plaintiffs' claims, the plaintiffs dispute this assertion, apparently because the analysis depends on the nature of the dispute.

[31] The Court of Appeal confirmed in *Adams* that the Treasury Board harassment policy furnishes an independent adjudicative process by way of the investigative powers accorded to the Public Service Commission (see paras. 37-39). The redress mechanisms available under the harassment policy are a grievance, a complaint to the Canadian Human Rights Commission and a complaint to the investigations directorate of the Public Service Commission. While the plaintiffs argue that the PSC process should not be regarded as truly "independent," I am bound by the Court of Appeal's conclusion that it does provide independent adjudication. It does not appear to be in dispute that Mr. Pleau was aware that he could lodge a complaint respecting harassment with the

PSC investigations directorate, and his discovery evidence indicates that he contacted the PSC and the Human Rights Commission, without lodging complaints before those bodies.

[32] As to whether Mr. Pleau's claims are caught by the harassment policy, the Court of Appeal, on a limited record, remarked that the policy "arguably addresses the substance of Mr. Pleau's allegations" (para. 86). According to the defendants, the essential character of the dispute relates to the employment contract and the implied employment standards, matters within the intended ambit of the dispute resolution process, matters which were before the adjudicator and which the adjudicator had the power to deal with and provide remedies for. Further, the defendants say, it is apparent from Adams that these matters would have been subject to the harassment policy and the adjudication process thereunder.

[33] In fact, of course, Mr. Pleau grieved his dismissal through the independent adjudicative process provided by s. 92 of the *Public Service Staff Relations Act*, resulting in his reinstatement as a result of the decision of the Public Service Staff Relations Board. As I have noted, this adjudication proceeding was not in the record before the Court of Appeal in its 1999 decision. The defendants' position is

that the allegations of harassment were before the adjudicator. Mr. Pleau continued to advance the allegations after the adjudication, despite having had his attention directed to the harassment policy and being advised of the complaint processes available before the Public Service Commission, as well as the Canadian Human Rights Commission.

Pre-"whistle blowing" matters and alleged admissions

[34] The defendants submit that any allegations relating to matters arising prior to the alleged whistle-blowing events in 1992 will obviously not fit within the narrow "whistle-blower" exception to the general rule stated in Vaughan. This would include allegations against Ann MacDonald, Marcel Bujold, Mr. Uhrich and Mr. Halfyard. They add that Mr. Pleau's discovery evidence indicates that he had no basis for claims against Mr. Bagnall and Mr. Bourgeois. They also say that the statement of claim discloses no tortuous activity by Mr. Snyder. As such, they say, partial summary judgment would be required in favor of Ms. MacDonald, Mr. Bujold, Mr. Bagnall, Mr. Snyder, Mr. Bougeois, and with respect to pre-whistle blowing allegations against Mr. Uhrich and Mr. Halfyard.

[35] The defendants rely upon Mr. Pleau's discovery evidence. The plaintiffs argue that any "admissions" arising from the discovery evidence are, at best, merely "informal admissions" that may be explained or contradicted, rather than formal admissions made for the purpose of dispensing with the necessity for proof at trial (see *Vancouver Art Metal Works Ltd. v. Canada*, [2001] F.C.J. No. 483 at paras. 9-18). As such, the plaintiffs say, Mr. Pleau's statements on discovery do not furnish a basis for summary judgment.

[36] I am satisfied that Mr. Pleau's statements on discovery, without contrary evidence being offered, establish that the claim should be struck as against the defendants referred to. These statements were given under oath, and nothing that would call them into question has been raised by the plaintiffs. The defendants have shown that there is no genuine issue of material fact, by Mr. Pleau's own words. Mr. Pleau has not pointed to any basis to believe that these claims have a real chance of success.

Effect of earlier proceedings

[37] As I have noted, this action was preserved on an earlier application to dismiss under Rule 14.25 and Rule 13.01. That application rested on the pleadings, the statutory regime and the collective agreement, without reference to the adjudication proceeding, which is in evidence before me. The defendants submit that the earlier application, which resulted in the 1999 decision of the Court of Appeal, does not foreclose the present application under Rule 13.01, which rests on an evidentiary basis. According to the defendants, the prior adjudication and the availability of independent review by way of the harassment policy were not thought necessary on the earlier application; however, subsequent decisions of the Supreme Court of Canada and the Court of Appeal – particularly *Vaughan* and *Adams*, as well as *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 S.C.R. 157, 2003 SCC 42 – have clarified the law relating to the harassment policy and clarified the concept of "effective redress."

[38] In response to the suggestion that *res judicata* might arise in the circumstances, the defendants cite the law on issue estoppel as set out by the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, and *Toronto (City) v. C.U.P.E., Local 79*, [2003] 3 S.C.R. 77. The preconditions for the application of issue estoppel appear in Danyluk at para. 25:

> The preconditions to the operation of issue estoppel were set out by Dickson, J. in [*Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248], at p. 254:
>
> > (1) that the same question has been decided;
> >
> > (2) that the judicial decision which is said to create the estoppel was final; and,
> >
> > (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[39] Having concluded that these elements are present, the court is then required to consider "whether, as a matter of discretion, issue estoppel ought to be applied": Danyluk at para. 33.

[40] According to the defendants, the previous decision of Hood, J., as affirmed by the Court of Appeal, was not a final decision as required for issue estoppel to apply. They cite *Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al.*, 2007 MBQB 293, where, at trial, the federal Crown advanced arguments on standing. The plaintiffs argued that the Crown had unsuccessfully sought to strike the statement of claim on the basis of standing in an earlier interlocutory proceeding, and that issue estoppel applied. On a review of the

earlier proceeding, the court held that it was not clear that the decision was, or was intended to be, a final decision on the issue of standing. In any event, however, the fundamental issues before the court had changed, and the case before the court at trial was not the same as the case before the court on the interlocutory proceeding. In addition, even if the preconditions for issue estoppel had been met, the court would have exercised its discretion to decline to apply it, for reasons that included changes in the law (see paras. 344-407).

[41] I am satisfied that the denial of the application to strike, with no evidentiary record before the court, did not constitute a final determination of the question of summary judgment as it has been advanced on this application. The case before the court is clearly different, with the addition of evidence and an expanded record, particularly in view of the preliminary and interlocutory nature of the earlier proceeding. I am also satisfied that the development of the law in *Vaughan* and *Adams* would militate against issue estoppel even if the preconditions were met.

Further arguments

[42] The plaintiffs have advanced a series of submissions premised on the argument that Mr. Pleau was subject to a duty to disclose evidence of "certain specified or generalized offences against the good custody and management of public funds and assets." This duty, it is submitted, arose as a result of general statute law, not "workplace" law, examples being certain provisions of the *Financial Administration Act*, R.S.C. 1985, c. F-11, and the *Criminal Code*, R.S.C. 1985, c. C-46. In addition, the plaintiffs point to the public policy significance of "whistle-blower" protection and says such disclosure has been elevated to the status of a "constitutionally protected action." I am not satisfied that any of these arguments have any effect on the reasoning and result reached through application of the law set out in such cases as *Vaughn* and *Adams.* I would also note that in some cases - such as the reference to the *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46 - the plaintiffs rely on law that post-dates the events with which this proceeding is concerned.

Conclusion

[43] For the foregoing reasons above, I am satisfied that the defendants have established that there is no genuine issue of material fact requiring trial, and that

the plaintiffs have failed to show that their claim is one with a real chance of success. I am also satisfied that the plaintiffs in addition to Mr. Pleau – his family members – would only be in a position to claim through him if the matter was appropriately before this court. The alternate procedures that were available, as described above, were the proper route for Mr. Pleau's claims. The court must defer to them.

[44] Regardless of the result on the main issue, I am satisfied that the defendants have established an entitlement to partial summary judgment as against Ann MacDonald, Marcel Bujold, Ed Snyder, Allan Bagnall and Robert Bourgeois, and with respect to pre-"whistle blowing" allegations against Donald Uhrich and Roy Halfyard.

[45] The parties may provide submissions on costs.

J.